

 ORIGINAL

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM ABBEVILLE COUNTY
Court of General Sessions

Donald B. Hocker, Circuit Court Judge

Appellate Case No 2014-000197

RECEIVED

APR 16 2015

SC Court of Appeals

The State,. Respondent,

v

Shawn Patrick White, ... Appellant

RECORD ON APPEAL

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STATE OF SOUTH CAROLINA)
COUNTY OF ABBEVILLE)

IN THE COURT OF GENERAL SESSIONS

STATE OF SOUTH CAROLINA)
vs.)
SHAWN PATRICK WHITE)
Defendant)

ORDER
2013-GS-01-244

After carefully reviewing the Defendant's Motion for New Trial, the Court has concluded to respectfully deny the same.

SO ORDERED



DONALD B. HOCKER
PRESIDING JUDGE
EIGHTH JUDICIAL CIRCUIT

Laurens, South Carolina
Date: 1-17-14

STATE OF SOUTH CAROLINA)

v.)

SHAWN PATRICK WHITE,)
Defendant.)

IN THE COURT OF GENERAL SESSIONS
FOR ABBEVILLE COUNTY

INDICTMENT NO. 2013GS01002

EMILY Y. HANAHAN
CLERK OF COURT

2014 JAN 16 PM 1:57

FILED
STATE OF SOUTH CAROLINA
COUNTY OF ABBEVILLE

MOTION FOR NEW TRIAL

Pursuant to Rule 29, SCRCrimP the Defendant, Shawn Patrick White, moves for a new trial. "A trial judge has the discretion to grant or deny a motion for a new trial, and his decision will not be reversed absent a clear abuse of discretion." State v. Johnson, 376 S.C. 8, 654 S.E.2d 835 (2007) (trial judge properly granted new trial when witness improperly testified about polygraph, thereby improperly bolstering his credibility to the jury). The new trial motion is based on the following errors of law:

1 Defendant should have been granted a directed verdict, since the state did not present substantial evidence of the defendant's guilt; the state presented no direct or circumstantial evidence that the defendant did anything to the child victim.

2 Defendant's motion to quash the indictment should have been granted, as the language merely tracked the language of the statute, without putting the defendant on notice for what 'act or omission' he was alleged to have committed.

3 Defendant's motion for 10 peremptory strikes should have been granted, as it was a violation of equal protection to deny defendant the number of jury strikes that is granted to defendants charged with other types of homicides and lesser crimes.

4 Defendant's motion to exclude the use of a video by the State's witness Dr. Anthony Johnson should have been granted, as the video had no relevance to this particular case or this particular victim. The video was not created for this trial; it did not purport to show anything specifically in regards to this victim; and the video did not relate to any evidence submitted by the State of any 'act or omission' of the defendant.

5. Defendant's motion to exclude the testimony of [REDACTED], based on a lack of competency, should have been granted.

6. Defendant's motion to limit the number of pictures from the hospital should have been granted, as the pictures admitted were redundant and prejudicial.

7. Defendant made several objections to hearsay evidence; these objections should have been sustained, as witnesses were referring to things that had been said to them.

8. The Court should grant a new trial based on the cumulative error doctrine which requires a new trial when a combination of errors prevents a party from receiving a fair trial. E.g., State v. Blurton, 342 S.C. 500, 537 S.E.2d 291 (Ct. App. 2000) reversed on other grounds 352 S.C. 203, 573 S.E.2d 803 (2002).

For the foregoing reasons, this Court should grant Defendant's motion for new trial.

IT IS SO MOVED.

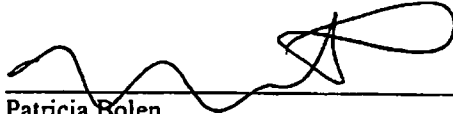


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January 16, 2014
Greenwood, South Carolina

CERTIFICATE OF SERVICE

The undersigned certifies that she has served this Motion for New Trial by hand on opposing counsel (as well as by email at ybrown@greenwoodsc.gov) and by mail on The Honorable Donald Hocker, at PO Box 972, Laurens, SC (as well as by email at dhockerlc@sccourts.org and dhockerj@sccourts.org), on January 16, 2014.



Patricia Bolen
Attorney for Defendant Shawn Patrick White

TRUE COPY
BY 
ABBEVILLE COUNTY CLERK OF COURT

FILED
STATE OF SOUTH CAROLINA
COUNTY OF ABBEVILLE
2014 JAN 16 PM 1:57
EMILY Y MCMAHAN
CLERK OF COURT

STATE OF SOUTH CAROLINA
COUNTY OF ABBEVILLE

IN THE COURT OF GENERAL SESSIONS

STATE OF SOUTH CAROLINA ,)
)
PLAINTIFF,)
)
)
-VS-)
)
SHAWN PATRICK WHITE,)
)
DEFENDANT)
_____)

2013-GS-01-0244

TRANSCRIPT OF RECORD

JANUARY 6, 7, 8, 9, 2014
ABBEVILLE, SOUTH CAROLINA

B E F O R E

THE HONORABLE DONALD B HOCKER, JUDGE, AND A JURY

A P P E A R A N C E S.

ATTORNEY FOR PLAINTIFF:

C YATES BROWN, ASSISTANT SOLICITOR
DAVID STUMBO, ASSISTANT SOLICITOR

ATTORNEY FOR DEFENDANT.

PATRICIA BOLEN, ESQUIRE
JANNA NELSON, ESQUIRE

TARA T. SCOTT, CVR
CIRCUIT COURT REPORTER

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1 THE COURT: We're on the record in the case of *the*
2 *State versus Shawn Patrick White*, Indictment number 13-GS-
3 01-244. As I understand it the Defense has one motion,
4 maybe more. I'm not sure. So Ms. Bolen -

5 MS. BOLEN: Yes, sir.

6 THE COURT: -- I'll be glad to turn the record over to
7 you, ma'am.

8 MS. BOLEN: Thank you, Your Honor. May it please the
9 court. The first -- we do have a few motions which we're
10 hoping to take care of before jury selection. The first
11 thing I had was not really a motion, but just something to
12 clarify on the record. I've spoken with Solicitor Stumbo
13 and Solicitor Brown, as well as my client about this. But
14 there's a companion DSS case in this matter. When the DSS
15 case was first brought Solicitor Stumbo was in private
16 practice and he was the attorney assigned to represent Shawn
17 in the DSS case. At that point, and I don't want to put
18 words in Solicitor Stumbo's mouth, but I think he knew he
19 was coming over to the Solicitor's Office, so he immediately
20 assigned it to another attorney. I've spoken with my client
21 about it. He never met with Solicitor Stumbo. But I just
22 thought for the sake of clarity it would be good to put on
23 the record that in the DSS paperwork it does show David
24 Stumbo was representing my client at one point in the DSS
25 case. But my understanding is that there's no conflict.

1 proceeding. If anyone would like to sit in and observe the
2 trial or any particular part, any day, whatever, you feel
3 more than welcome to come. We'd love to have you. You'll
4 see some great lawyers in action, so we'd love to have you
5 if you have any time to come. With that said, you're free
6 to go. Hope you have a good evening.

7 (Whereupon, remaining Jury Panel dismissed at 3:30
8 p.m.)

9 THE COURT: All right. For the record, any exceptions
10 to selection of the jury from the State?

11 MR. STUMBO: None from the State, Your Honor.

12 THE COURT: From the Defense?

13 MS. NELSON: No, sir, Your Honor.

14 THE COURT: Thank you, very much.

15 MS. NELSON: And I apologize if I missed this. But did
16 you put your ruling on our --

17 THE COURT: No. I'm going to do that. I'm going to go
18 ahead and bring the jury out and go ahead instruct them when
19 to come back, and then I'll put the indictment ruling on the
20 record. Thank you.

21 MS. NELSON: Thank you, Your Honor.

22 THE COURT: Reverend Manning, if you would bring the
23 jury back out.

24 (Whereupon, the jury enters the courtroom at 3:33 p.m.)

25 THE COURT: Let the record reflect the jury is back in.

1 Ladies and gentlemen of the jury, we are going to go ahead
2 and break for today. We will start back in the morning at
3 9:30. Be back in the jury room promptly at 9:30 at which
4 time we will start the trial of this case. When you come
5 back in the morning I'll inform you who I've selected as
6 foreperson of the jury and explain a little bit about that
7 role. Whoever is selected as the foreperson of the jury
8 will sit in this chair right here. The two alternates will
9 always take up these two seats here. And the remaining
10 members of the jury, you're welcome to sit in any chair --
11 other chair that you wish. A lot of times, more often than
12 not, the jurors like to kind of sit in the same -- same
13 seat. You can do that if you want, but you're not bound to
14 sit in the same seat every day.

15 I instructed you not to discuss this case among
16 yourselves and I'm going to instruct you not to discuss
17 anything about this case with any of your family members
18 this afternoon or this evening to any friends that you may
19 come into contact with, anybody whatsoever. You can't do
20 it. If somebody asks you, you know, how was court today, or
21 what's going on with that jury trial, just say the judge has
22 said I can't talk about it, and hopefully that explanation
23 will be sufficient. So I hope everyone has a good
24 afternoon, a good evening, and we'll see you promptly back
25 at 9:30 in the morning. You're free to go for the day.

1 (Whereupon, the jury is dismissed at 3:33 p.m.)

2 THE COURT: We need to place on the record a ruling
3 that I had made in chambers before we started qualification
4 of the jury. That was pertaining to the issue of the
5 indictment where Defense moved to quash the indictment. And
6 after consideration of that motion and the arguments made
7 from both sides I deny that motion to quash the indictment
8 and the indictment will stand. Anything else we need to
9 take up before we adjourn for the afternoon?

10 MR. STUMBO: Your Honor, it's probably obvious since
11 we've already picked the jury we did five and five. But did
12 you ever rule specifically on the Defendant's motion --

13 THE COURT: I did.

14 MR. STUMBO: Okay. On the record. I just wanted to
15 make sure.

16 THE COURT: Right. I did. I denied that.

17 MR. STUMBO: Thank you, Your Honor.

18 THE COURT: We'll -- just, Madame Clerk, if you'll
19 remind us that we need to swear the jury in the morning and
20 for me to pick a foreperson. If you'll help me with that,
21 please. All right. I hope everyone has a great afternoon
22 and evening. We'll see everybody tomorrow.

23 (Whereupon, Court was adjourned at 3:45 p.m.)

24 DAY 2: 01/07/2014

25 THE COURT: We're ready to get started. I understand

1 we have one juror who is ill and we'll have to replace that
2 juror with one of the alternates. Is that everybody's
3 understanding?

4 MS. NELSON: Yes, Your Honor.

5 MR. BROWN: Yes, sir.

6 THE COURT: Do we need to take up anything before we
7 bring the jury out? We'll need to swear the jury, go ahead
8 and designate a foreperson, and then I'll give the
9 preliminary charge, get the opening, and we'll get started.
10 Okay?

11 MR. BROWN: That's fine, Your Honor.

12 THE COURT: All right. If we could bring the jury out,
13 please.

14 (Whereupon, the jury enters the courtroom at 9:41 a.m.)

15 THE COURT: Good morning, everybody. Hope everyone
16 stayed reasonably warm last night and this morning. As I
17 understand it, one of the jurors is ill and unable to make
18 it today, so Ms. Belcher, you are the first alternate, so
19 I'm going to ask at this time if you'll just sit in that
20 chair. And then, Mr. Lusk, if you'll just come up to the
21 first alternate chair.

22 Now, we need to selected a foreperson of the jury. And
23 there's no science to this. I can tell you that. And I
24 think all 13 of you would make excellent forepersons, but we
25 have to pick one. So Mr. James, you're being -- for right

1 now you can stay in that seat, but the next time you come
2 out you will sit in that seat there. And, of course, Mr.
3 Lusk, you'll remain in that seat. And then everybody else
4 can sit wherever you like. Let me just explain a little bit
5 about the duties of a foreperson, foreman of the jury. Your
6 vote counts no more than any other vote from your fellow
7 jury members, but you do preside over the deliberations once
8 those deliberations start. You serve as kind of the
9 mouthpiece between the jury and the court. If there's any
10 issues or concerns or questions, then you would be
11 responsible for kind of orchestrating that. You will also
12 oversee the jury, insofar as when you're back in the jury
13 room, to ensure that deliberations do not begin too early,
14 to make sure that there's no improper conduct. Not to
15 suggest at all that I would think that any of you would do
16 anything improper. But you oversee the workings of the
17 jury. But again, your vote is as equal as everyone else's
18 vote on the jury.

19 So at this time I'm going to ask our clerk to swear the
20 jury in, please.

21 MADAM CLERK: Please stand and raise your right hand to
22 be sworn.

23 (Whereupon, the jury was duly sworn)

24

25 THE COURT: Thank you very much, Madam Clark. Mr.

1 Foreman and ladies and gentlemen of the jury, before we
2 begin this trial I want to tell you that this trial probably
3 will be different from what you might expect. Many people
4 don't have the chance to attend actual court sessions as you
5 are doing now and may think from watching television or
6 movies or reading books that trials are always full of high
7 drama.

8 I've got a little computer problem here. Just bear
9 with me, please.

10 The trials are always full of high drama and tense
11 action and riveting circumstances. And while all of these
12 things may be true at times; this trial is not for
13 entertainment. It is a fundamental part of our democracy.
14 A search for the truth in an effort to make sure that
15 justice is done between the parties before the Court.
16 Searching for the truth and making sure that justice is done
17 is often slow, deliberate and repetitive. The opposite of
18 what you may have seen on television or in movies or have
19 read in books. Now, I will tell you, Mr. Foreman, and
20 ladies and gentlemen of the jury, this courtroom is a place
21 of honor dedicated to the protection and preservation of
22 citizen's rights through what many have called the greatest
23 justice system in the world. The attorneys appear before
24 you are advocates for the parties they represent, but first
25 and foremost they are officers of the court sworn to uphold

1 the integrity and fairness of our judicial system and to
2 help you in the search for the truth. You should expect
3 them to be professional, competent and ethical in the
4 representation of their client's interest. And I'm
5 confident that that will be the case, because I know all
6 four of these attorneys. You are also expected to be
7 professional, reasonable and ethical in serving on this
8 jury. I want to thank you once again for accepting the
9 important responsibility of jury service and for your
10 contribution today through our justice system. I may have
11 mentioned to you yesterday that serving on a jury is
12 considered by many to be the second highest civic
13 responsibility that we all have, second only to serving in
14 the military.

15 What I will now say is intended to serve as an
16 introduction to the trial of this case. These remarks that I
17 make are not a charge on the law in this case. I will
18 instruct you on the law applicable to this case at the end
19 of the trial before you retire to consider your verdict.
20 This is merely an explanation of the procedure that we will
21 follow in the trial of this case so that you may better
22 understand what may be happening. And I'll tell you now
23 that you're not permitted to take any notes during the
24 course of this trial.

25 Now, as I indicated to you yesterday, the Defendant is

1 charged by an indictment filed in this court and the
2 elements of the particular charge will be explained to you
3 later in this proceeding. The indictment is simply the
4 charge by which the case is brought in the court and it is
5 not in any sense evidence of any of the allegations it
6 contains. The Defendant has pled not guilty to this
7 indictment. The State, therefore, has the burden of proving
8 each and every element of the charge in the indictment
9 beyond a reasonable doubt, and you will hear that throughout
10 the course of this trial and certainly at the end of this
11 trial. And it will be your duty, Mr. Foreman, and ladies
12 and gentlemen of this jury, to decide whether this state has
13 met their burden of proof. Your purpose as jurors is to
14 find and determine the facts. You are the sole judge of the
15 facts. If at any time I make any comment regarding the
16 facts you must disregard it. You are to determine the facts
17 from the testimony you hear and the other evidence
18 introduced in court. It is up to you to determine the
19 inferences which you feel may properly be drawn from the
20 evidence. It is especially important that you perform your
21 duty of determining the facts diligently and
22 conscientiously, because ordinarily there is no way to
23 correct an erroneous determination of the facts by a jury.
24 On the other hand, and with equal emphasis, the same law
25 that makes you the judges of the facts makes me the judge of

1 the law. The law as given by the court is the only law that
2 you may consider. You must accept and follow it even
3 though you may disagree with it. I cannot tell you what the
4 facts are, and you cannot disagree with me about what the
5 law is or should be. Your job is to take the law as I give
6 it to you and apply it to the facts as you find them from
7 the testimony of the witnesses and any other evidence that
8 is introduced. After doing that you will render your
9 verdict. A verdict under the solemn oath that you just took
10 as jurors.

11 Now, and as I've mentioned previously yesterday and
12 will mention now, and will continue to mention this
13 throughout the course of this trial, until I tell you that
14 it is time to deliberate you must not discuss this case
15 among yourselves. And then when you take a break for lunch
16 or go home for the evening, as I told you yesterday, you're
17 not permitted to discuss this case with any friends, family
18 members, anyone that you may come in contact with. And
19 certainly anyone involved in this case. The attorneys and
20 parties in this case have been advised that they are not to
21 talk to you at all. So as I mentioned to you yesterday as
22 well, if you see someone connected to this case and they
23 don't speak, they're not being unfriendly. They're just
24 following my instructions, and, of course, you need to act
25 in the same manner.

1 During your deliberations at the conclusion of this
2 case you may only discuss the case in the jury room with
3 your fellow jurors because they have seen and heard the same
4 evidence you have. However, you must not discuss the case
5 with anyone else until you have returned a verdict and the
6 case is at an end. You must decide this case based solely
7 on the evidence presented here in this courtroom. This
8 means that during the course of this trial you cannot -- you
9 are not permitted to conduct any independent research about
10 this case, about the facts of the case, the evidence
11 presented in the case, the people, organizations, anyone
12 connected with this case. Please do not try to find out
13 information from any other source outside of this courtroom.

14 Now, during the course of this trial do not read,
15 listen to or watch any news reports about this case if there
16 are any. I don't know if there would be any or not. You
17 are not to consider any of that, if that may be the case.
18 And if, Mr. Foreman, or any of you on this jury become aware
19 of another juror's violation of any of these instructions
20 then it is your duty to report that to the court
21 immediately. It's so extremely important that you keep an
22 open mind and not decide any issue in this case until all of
23 the evidence has been presented, the parties have made their
24 closing arguments and I have instructed you on the law in
25 this case. It is your solemn responsibility to determine

1 the guilty or innocence of this Defendant and your verdict
2 must be based solely on the evidence as it is presented to
3 you in this trial and the law as I instruct you during and
4 at the close of the trial. Now, there may be times during
5 the course of this trial that one of the lawyers may make an
6 objection, or one of the lawyers may statement that they
7 need to take up a matter of law with the court, thus
8 requiring me to ask you to retire to the jury room for a
9 period of time. The purpose of this is, and we're not
10 trying to hide anything from you, but I may -- in ruling on
11 a legal matter may need to discuss the facts of the case
12 with the lawyers and I don't want to discuss the facts of
13 the case in your presence because you, again, are the sole
14 judges of the facts in this case.

15 In determining what the true facts are in this case you
16 must decide whether or not the testimony of the witnesses is
17 believable. It will be my responsibility to rule as a
18 matter of law as to whether certain testimony or evidence is
19 admissible at or nor not. But once the testimony is
20 admitted whether or not you believe it is solely for you to
21 determine. In deciding whether to believe a witness you
22 have the right to consider the interest of any witness, the
23 bias of any witness, the prejudice of any witness, the
24 opportunity for the witness to have seen the matters and
25 things about which the witness may testify, and the way the

1 witness acts on the witness stand. You have the right to
2 consider anything that is in the record that will help you
3 evaluate the testimony of the witness. That means that it
4 is your duty to pay close attention to the witnesses, to
5 observe the witnesses, to listen to the witnesses, and to
6 pay close attention to the attorneys and to the Court.
7 Don't let your thoughts wonder but give strict attention to
8 everything that goes on in this case, the testimony in this
9 case, and all the evidence that is presented.

10 At this time I'm going to ask the State, are there any
11 objections or exceptions to the preliminary charge made by
12 the court?

13 MR. STUMBO: No objections, Your Honor.

14 THE COURT: And from the Defense?

15 MS. NELSON: No objections, Your Honor.

16 THE COURT: Thank you very much. Now, at this time,
17 the lawyers will make their opening arguments to you. And I
18 would caution you and remind you and tell you that what they
19 say is not evidence. It is just their statement as to what
20 they believe this case is about, their respective positions
21 in this case, and the issues they believe that are involved
22 in this case and the evidence that they believe will be
23 presented in this case. So at this time I'm going to ask
24 the State to begin first in their opening statement. Pay
25 very close attention to the State's opening argument, and

1 also to the opening argument of the Defense. Solicitor?

2 MR. BROWN: Thank you, Your Honor. May it please the
3 Court.

4 THE COURT: Yes, sir.

5 OPENING STATEMENT

6 BY MR. BROWN: Ladies and gentlemen, we're here today
7 because a little girl is not. We're here today because a
8 10-month-old baby, ^{victim} [REDACTED], had her life taken from
9 her by the man sitting at that table. Shawn White denied
10 the opportunity of ^{victim} [REDACTED] to live her life that she
11 deserved to live. Not only denied her that opportunity, but
12 he also denied her the opportunity to grow up with her three
13 older sisters. Now, ^{victim} [REDACTED] was the fourth child of four. It
14 was ^{Child C} [REDACTED], which is the oldest, ^{Child I} [REDACTED], which is next in
15 line, and ^{Child R} [REDACTED]. They're all three older sisters. The
16 four girls lived with their mother, Melody, at [REDACTED]
17 [REDACTED] in Calhoun Falls. And you'll hear throughout
18 this case that on January 1st, 2012 that Shawn White didn't
19 have a place to live, and he had known Melody since they
20 were in high school. They agreed that he would come live in
21 that house, and as Melody would work -- she worked here in
22 Abbeville and worked night hours. She worked at Pop-a-Top
23 Bar here in Abbeville. When she went to work, Shawn would
24 become the babysitter. He'd care for the four girls at the
25 house. This went on. He lived there from January 1st, 2012

1 all the way up until the time of this incident, August 7th
2 and August 8th. On July 29th, 2012 Melody LaBounty, as I
3 already said, the mom of ^{victim} [REDACTED], she went on a little trip.
4 She left on the 29th, which was a Sunday, to go see a friend
5 of hers in North Carolina. And she came back on the 31st.
6 It was a two day trip. When she went to North Carolina the
7 three older girls went to stay with her parents. And as
8 you'll hear, Melody's mom had just been diagnosed with an
9 illness, and so, she didn't feel like she would care for the
10 youngest, ^{victim} [REDACTED]. So Shawn kept ^{victim} [REDACTED] at the house. During
11 that time you'll hear that Shawn's brother came over and
12 they were sitting on the front porch and ^{victim} [REDACTED] was knocked
13 down the front stairs. She skinned her nose and got a bump
14 on her head. And the next day she kind of had a hard time
15 keeping her food down. She was throwing up a little bit.
16 She was real lethargic. And Melody came home on the 31st.
17 When she came home she cared for ^{victim} [REDACTED] the rest of the week.
18 ^{victim} [REDACTED] was also beginning to cut teeth. She was
19 10-months-old. She was starting to have teeth come in.
20 Melody cared for her. You'll hear of different diets she
21 puts her on. And towards the end of that week ^{victim} [REDACTED] is
22 getting better. She's keeping her food down. She's
23 becoming a little more playful. And by August 7th, which is
24 a Tuesday, ^{victim} [REDACTED] is basically back to normal. You'll hear
25 that ^{victim} [REDACTED], with her mom Melody and her three older sisters,

1 registered the three older sisters for school in Calhoun
2 Falls that day. And that ^{victim} [REDACTED] was eating fine. She had
3 her energy back. She was playful. Around 6:00 on August 7
4 Shawn gets off work. 6:00 on August 7 she gets off work.
5 ^{victim} [REDACTED] goes -- or Melody goes to work at 7:00 that night, or
6 right around that time. You'll hear that. And Shawn was
7 the babysitter. Melody had four girls. You'll hear some
8 testimony that since ^{victim} [REDACTED] was feeling better, she had her
9 energy back, she was playful, and Shawn let her stay up with
10 the other girls until approximately 10:00 that night, until
11 Shawn decided it was time for them to go to bed and locked
12 three other girls -- older girls in their bedroom. And
13 Melody -- or ^{victim} [REDACTED]'s bed was a little Pack'n Play. A little
14 Pack'n Play that was in the den. And Shawn would sleep on
15 the couch in the den. Shawn was -- kids go to bed that
16 night after watching a movie. At some point that night
17 ^{victim} [REDACTED] became an inconvenience. She was fussy. She was
18 crying. Shawn had enough. He had enough. And Shawn
19 silenced ^{victim} [REDACTED] at that moment. Not only silenced her for
20 that moment, but he permanently silenced ^{victim} [REDACTED]. Never made
21 another sound. Melody comes back in. Gets off from work.
22 Get to the house around 2:00 that night. She comes to the
23 front door, looks in the Pack'n Play, ^{victim} [REDACTED]'s laying in the
24 bed. Appears to be asleep as a normal child would be
25 asleep. She goes to bed. Shawn gets up around 6:30 that

1 morning and goes to work. Melody also wakes up about 8:30,
2 9:00 that morning when the other girls get up. Since
3 ^{victim} [REDACTED]'s been sick that whole week she allows ^{victim} [REDACTED] to sleep
4 a little longer, or what she thinks she's sleeping a little
5 longer. You'll hear that Melody walks across the street and
6 gets some food for the other girls, because they didn't have
7 much in the house to eat. She comes back and ^{Child C} [REDACTED] the
8 oldest daughter, she's still there with ^{victim} [REDACTED] and ^{victim} [REDACTED] is
9 still not awake. This time it doesn't quite add up. She
10 should be up. It's around 10:00 in the morning. She should
11 be up. Melody goes to the Pack'n Play and checks on ^{victim} [REDACTED].
12 Her eyes are kind of halfway open and ^{victim} [REDACTED]'s not moving.
13 She's limp. She's deadweight. She's not responding.
14 Melody calls 911. 911 comes -- or EMS comes. They take
15 ^{victim} [REDACTED] to Self Memorial in Greenwood. Once she gets to Self
16 she's not there very long. ER doctor orders tests. They
17 realize through the tests and what they see on a CT scan
18 that ^{victim} [REDACTED] has a severe midline shift in the brain. She has
19 some neuro imagines in her brain. They realize they don't
20 have -- they can't care for her here. So they set up a
21 Medevac helicopter and fly her to Greenville Memorial. They
22 had the neurosurgeon waiting on her to be evaluated, and
23 also for emergency surgery. That surgery is done. It's a
24 decompressive craniectomy that's done to relieve the
25 pressure in her head. Three days later on August 11th ^{victim} [REDACTED]

1 is taken off life support and she passed away. And you will
2 hear that the diagnosis is non-accidental head trauma.

3 Now, what does the State have to prove in this case.
4 The State contends that Shawn White is guilty of homicide by
5 child abuse. What makes a person guilty of homicide by
6 child abuse? A person is guilty if it causes the death of a
7 child under the age of 11 while committing child abuse or
8 neglect and the death occurs under circumstances manifested
9 in extreme indifference to the human life.

10 Child abuse from neglect means an act or omission by
11 any person who causes harm to a child's physical health or
12 welfare. And harm to a child's health and welfare occurs
13 when a person inflicts or allows to be inflicted upon the
14 child physical injury, including injuries sustained as a
15 result of excessive corporal punishment.

16 Now, ladies and gentlemen, the State, who is
17 represented by Solicitor Stumbo and I, and based off of
18 investigation of Ms. Charity Herlong who works with the
19 South Carolina Law Enforcement Division. The State has the
20 burden of proof in this case. The burden of proof, as
21 you've already heard from the Judge, the State has to prove
22 beyond a reasonable doubt that Shawn White committed this
23 offense. What is beyond reasonable doubt? Beyond
24 reasonable doubt is a proof leaving you firmly convinced of
25 the Defendant's guilt. It's not all doubt. It's not any

1 doubt. It's every doubt. But it's the proof that leaves
2 you firmly convinced of his guilt.

3 Now, you'll hear from a number of witnesses. You'll
4 hear from a sister of ^{victim} [REDACTED], from her mom, EMS, you'll hear
5 from a number of doctors. We'd ask that you listen to all
6 of them carefully, intently, and at the end of this trial
7 we'll be back before you, and ask that you ask Shawn White
8 guilty of homicide by child abuse. Thank you.

9 THE COURT: Thank you, Solicitor. Defense?

10 MS. NELSON: Thank you, Your Honor. May it please the
11 Court.

12 THE COURT: Certainly.

13 OPENING STATEMENT

14 BY MS. NELSON: Aristotle a long time ago said, "The law is
15 reason free from passion." And I wish I could tell you that
16 I knew that from all the philosophy courses I've taken, but
17 I actually know about that quote from the movie Clueless.
18 It's a pretty good comedy, and of course there is nothing at
19 all funny about what we're here for this week. But that
20 quote really applies to this case, I think, because what
21 happened is so sad and so tragic that any of us with any
22 humanity, it just hits you right here. I'm sure when --
23 when the judge read the indictment to you yesterday during
24 jury selection, even though he told you that's not evidence,
25 just those words, child abuse that caused a death of a

1 10-month-old, that's visceral and that gets you in your gut.
2 But in the courtroom what we have to ask you to do as
3 Shawn's attorneys, and what the law requires you to do, is
4 to put your reason and your logic at the forefront and try
5 to put that emotion and passion that you can't help but feel
6 in this case, try to put that at the back because you've got
7 a job here to listen to the facts, to listen to the
8 evidence. You can, of course, bring your life experience to
9 bear when you listen to people take the stand and you can
10 make judgements about how you feel about what they're
11 saying. But you've also got to -- you've also got to have
12 this case proved to you before you can decide that Shawn is
13 guilty of what the State is accusing him of.

14 Mr. Brown talked to you about proof beyond a reasonable
15 doubt and how that's the burden that the State has to meet.
16 That's a high burden, folks. It's the highest burden of
17 proof that we have in our court system. And the reason that
18 burden of proof is so high is because the price ought to be
19 high when you're trying to take somebody's liberty away.

20 Part of the reason I do what I do, and why Ms. Bolen
21 does what she does, is because we care a great deal about
22 these rights and protections that all of us have from our
23 Constitution and the system and this court system and that
24 the judge has told you it's been called the greatest in the
25 world, and I do believe that.

1 So what we're asking is that you -- is that you
2 understand that the law is reason free from passion and that
3 you do as best you can to put aside your emotions in favor
4 of listening to what is in front of you before -- because
5 the government is banking on the emotion in this case
6 swaying you to say, well, they arrested him. That must be
7 right. He probably did it. We've got to convict him. And
8 that's not what your job is. Your job is to evaluate this
9 evidence that's before you and decide with your reason, with
10 your head, with your logic, rather than with your gut
11 whether that's been proved to you beyond a reasonable doubt.
12 A doubt based on reason. The State's got to leave you, as
13 Mr. Brown said, firmly convinced -- firmly convinced that it
14 happens the way they want you to believe it happened. And
15 in putting your reason and logic at the forefront you're
16 going to have to hear testimony from a number of doctors
17 talking about injuries that this child had, and we're not
18 denying that the child was injured. She had a subdural
19 hematoma that caused her death. And that you will have to
20 see, I imagine, pictures of her. This adorable 10-month-old
21 lying in her hospital bed with injuries that she's not going
22 to recover from. And that -- that makes you -- it makes you
23 want to cry. It'll make you angry enough to want to punish
24 somebody. But before you can do that the State has got to
25 bring you that proof, and you've got to hold them to that

1 burden. You've got to hold their feet to the fire on that.
2 And I ask you remember that quote from Aristotle as you
3 evaluate this case.

4 The other thing that I would ask you to remember is
5 that -- and I think at some point Judge Hocker will explain
6 this to you, and I'm sure you've all heard the phrase
7 "Innocent until proven guilty." That's -- that's the law.
8 Shawn doesn't have to prove anything to you. It's the
9 State's, the government's job in this case to bring you the
10 proof that you need to take somebody's liberty away. Shawn
11 doesn't have to prove to you that he's innocent because as
12 he sits here right now he is. He is innocent. He's an
13 innocent man. He has said he is not guilty of the crime and
14 has spoke with law enforcement. He told them I didn't do
15 this. And he -- as he sits here today is an innocent person
16 unless you all decide in your job as jurors -- unless you
17 all decide that the point has come where the State has given
18 you enough that you are firmly convinced beyond a reasonable
19 doubt that he is guilty of what they're accusing him of. I
20 don't think they can bring that to you folks. I don't
21 believe you're going to hear from anybody who ever says they
22 saw Shawn do anything to abuse ^{victim} [REDACTED]. I don't believe
23 they're going to give you any evidence of when this injury
24 occurred, other than some timeframe between August 7th and
25 August 8th. Shawn was not the only person alone with ^{victim} [REDACTED]

1 during that timeframe. There was about seven to eight hour
2 period while Melody was at work at the Pop a Top and that's
3 it. And the State is not going to be able to give you
4 evidence that says definitively that those injuries were
5 sustained in that time period.

6 Part of -- part of mine and Ms. Bolen's job -- and Ms.
7 Bolen is going to be the one who's doing the questioning of
8 most of the witnesses. As the Judge told you in his
9 preliminary instructions, we are -- there are going to be
10 times when we're going to object to evidence coming in.
11 There are going to be times when we're going to ask the
12 judge to rule on a matter of law. And we have to do that
13 because our job as Shawn's attorneys is also a pretty heavy
14 burden, because we have the responsibility for a man's
15 future. And part of that responsibility makes me want to
16 stand up here and just -- just keep on talking because I'm
17 worried that I'm not going to say everything that I need --
18 that I need you to be thinking about as this case goes on,
19 but I promise I will stop talking. But part of our
20 responsibility in representing Shawn is to make sure his --
21 all of his rights, like all of our rights, are protected and
22 that he gets a fair trial with an impartial jury. And in
23 doing that job there are times we're going to have to do
24 those things that the Judge talked to you about. And all I
25 ask is that if you get irritated with us for causing those

1 interruptions that you not hold it against Shawn. We're
2 just doing our job in representing him.

3 Shawn did move in with Melody and her four children at
4 the beginning of January 2012. She was a single mom,
5 overwhelmed with taking care of these four children that at
6 that time ranged in ages from six-years-old down to ^{victim} [REDACTED]
7 who was about two-months-old at the time. And during that
8 whole eight month period until this nightmare happened he
9 lived there with them, helped take care of those children.
10 He's the one who stepped up and helped. The children's
11 daddies didn't. They didn't come move in and help, but
12 Shawn did.

13 Folks, we're asking, as the Judge has asked you, as Mr.
14 Brown has asked you, that you listen to everything as best
15 you can. I'm asking that you check your passion and your
16 emotion at the door and bring this case to bear with your
17 reason and your logic. At the end of the case we'll come
18 back and ask you to find that the State has not given you
19 evidence to prove Shawn's guilt beyond a reasonable doubt,
20 that there are other just as plausible explanations for what
21 happened, and we'll ask you to find Shawn not guilty. Thank
22 you for listening.

23 THE COURT: Thank you, Ms. Nelson. Is the State ready
24 to call it's first witness?

25 MR. BROWN: We are, Your Honor.

1 THE COURT: Okay. You may proceed.

2 MR. BROWN: Thank you, Judge. The State calls Kimberly
3 Wells.

4 KIMBERLY WELLS, having been first duly
5 sworn, testified as follows:

6 DIRECT EXAMINATION

7 BY MR. BROWN:

8 Q Good morning, Ms. Wells. I take it from that jacket
9 you're wearing there you work for the County?

10 A Yes, sir.

11 Q And what's your job with Abbeville County?

12 A I'm an officer manager.

13 Q And what office with the County do you work in?

14 A 911 Department.

15 Q The 911 Department meaning the emergency response arm
16 of the County?

17 A Yes.

18 Q A part of your job as office manager do you have
19 custody and control over 911 communications?

20 A Yes.

21 Q And when a call is made to 911 by a citizen of
22 Abbeville County it comes into your department, correct?

23 A Yes.

24 Q All right. And those are called, what, dispatchers
25 that answer the phone?

1 A Yes, sir. Telecommunicators.

2 Q Okay. And the communicators that answer the phones, do
3 they have all of their conversations that they get when the
4 calls come in in a report?

5 A All of them. Yes, sir.

6 Q Now, in the case we're involved with here today
7 involving the Defendant, Shawn White, was there a 911 call
8 that came in that was related to him, to this case, on
9 August the 8th of 2012?

10 A Yes, sir.

11 Q Okay. And where did that call originate from? What
12 town?

13 A Calhoun Falls.

14 MR. BROWN: Your Honor, if I may approach the witness.

15 THE COURT: Certainly.

16 Q I'm going to show you what's been marked for ID at this
17 point as State's Exhibit 1. Have you had an opportunity to
18 listen to the contents of that disk?

19 A Yes, sir.

20 Q And you did that this morning, correct?

21 A Yes, sir.

22 Q And are those your initials on the front of that disk?

23 A Yes, sir.

24 Q Okay. Now, was this call recorded and copied for law
25 enforcement for the purposes of this case?

1 A Yes, sir.

2 Q And you have custody and control over that department?

3 A Yes, sir.

4 Q And you reproduced that audio recording of the call for
5 law enforcement?

6 A Yes, sir.

7 Q And that's what's on this disk?

8 A Yes, sir.

9 Q And after listening to it, I'm assuming it's a fair and
10 accurate representation of what was on your all's system at
11 the time?

12 A Yes, sir.

13 Q Of the original report?

14 A Yes, sir.

15 MR. BROWN: Your Honor, at this time the State would
16 offer the 911 call from August the 8th from Calhoun Falls
17 into evidence.

18 THE COURT: Okay. And the position of the State -- I
19 mean, of the Defense rather?

20 MS. BOLEN: May I have just a moment, Your Honor?

21 THE COURT: Sure. Take your time.

22 MS. BOLEN: Your Honor, we have no objection.

23 THE COURT: Okay. Without objection, it'll be marked
24 as State's 1 into evidence.

25 (Whereupon, State's Exhibit No. 1 was entered into

1 evidence.)

2 MR. STUMBO: Thank you, Judge. And at this time State
3 would ask to publish State's 1.

4 THE COURT: All right. Do you need a few moments to
5 get set up?

6 MR. STUMBO: I think we have it, Your Honor.

7 THE COURT: You're good.

8 MR. STUMBO: We may need to adjust the volume, Your
9 Honor --

10 THE COURT: Sure.

11 MR. STUMBO: -- just to make sure the jury can hear.

12 THE COURT: If anyone on the jury has a difficult time
13 hearing this, please raise your hand.

14 (Whereupon, 911 audio was played)

15 MR. STUMBO: No further questions of this witness, Your
16 Honor.

17 THE COURT: Cross examination from the Defense?

18 MS. BOLEN: Very briefly, Your Honor.

19 CROSS EXAMINATION

20 BY MS. BOLEN:

21 Q Ms. Wells, this call came in at 10:53 in the morning;
22 is that right?

23 A I believe so.

24 Q On August 8th, correct?

25 A Yes.

1 MS. BOLEN: That's all I have. Thank you.

2 THE COURT: Thank you for your testimony, ma'am. You
3 can step down.

4 MR. STUMBO: Thank you, Your Honor. Permission for Ms.
5 Wells to be excused.

6 THE COURT: Any objection from the Defense?

7 MS. BOLEN: No objection, Your Honor.

8 THE COURT: Ma'am, your free to leave.

9 MS. WELLS: Thank you.

10 (Whereupon, witness steps down from the witness stand.)

11 MR. STUMBO: Your Honor, at this time the State would
12 call Donald Cabral to the stand.

13 THE COURT: Can you spell the last name, please?

14 MR. STUMBO: C-a-b-r-a-l.

15 THE COURT: Thank you.

16 DONALD CABRAL, having been first
17 duly sworn, testified as follows:

18 DIRECT EXAMINATION

19 BY MR. STUMBO:

20 Q Good morning, Mr. Cabral.

21 A Good morning.

22 Q Where do you currently live?

23 A I live in Belton.

24 Q Where do you currently work?

25 A I work for B&B Pawn Shop in Anderson.

1 Q All right. And before this time you worked in Anderson
2 were you in law enforcement?

3 A Law enforcement for seven years. Six years -- a little
4 over six years in Anderson City and eight months in Calhoun
5 Falls.

6 Q Okay. You said eight months in Calhoun Falls?

7 A Yes.

8 Q And were you working at Calhoun Falls on August the 8th
9 of 2012?

10 A Yes, sir.

11 Q Did you get a call that morning from dispatch to
12 respond based on -- related to this case with Shawn White?

13 A I got a call. I responded to an unresponsive child at
14 [REDACTED].

15 Q And that's in the city of Calhoun Falls?

16 A Yes, sir.

17 Q In the county of Abbeville?

18 A Yes, sir.

19 Q And do you remember the date and time of that?

20 A I remember -- remember the day. I remember everything
21 that happened at that time.

22 Q And that was in the morning; is that correct?

23 A Yeah. Yes, sir.

24 Q After you got the call from dispatch how long did it
25 take you to respond to [REDACTED]?

1 A Just a matter of seconds. I was actually -- I drove
2 right down Main Street and it was right there, and just
3 drove around and pulled up to the front of the house.

4 Q So a minute?

5 A Less than a minute.

6 Q Less than a minute?

7 A Thirty seconds.

8 Q Now, when you get there do you -- is there anybody
9 outside at that point? Outside of the house?

10 A No, sir.

11 Q Do you go in the front door?

12 A I walk up to the door and the -- Ms. LaBounty opened
13 the front door and I walked inside.

14 Q Okay. And that's Melody LaBounty?

15 A Yes, sir.

16 Q Now, when she opened the door for you, you were there
17 to respond to an unresponsive 10-month-old girl, correct?

18 A Yes, sir.

19 Q And was that 10-month-old girl there in the front room?

20 A Yes, sir. Right as I walked in the couch was right
21 directly in front of me up against the wall and she was
22 laying in front of me in the frontal position, laying on her
23 back, while she was on the phone with dispatch. The mother.

24 Q Okay. What did you do next?

25 A She got off the phone. I asked her what was going on.

1 She said she -- she was unresponsive. She usually don't
2 sleep this late. As I made direction toward the child you
3 could see that she was just barely breathing. And as soon
4 as I made -- tried to make contact, I was going to check her
5 pulse, is when EMS arrived. And I explained to them what I
6 got and they pick up the child and took off to the ambulance
7 while I stayed behind with her siblings.

8 Q So you did check the baby's pulse?

9 A I was attempting to. And that's what I explained to
10 him when he came in that I had -- the baby was faintly
11 breathing.

12 Q And how was her pulse?

13 A You could just -- I could just barely see her chest
14 moving.

15 Q Breathing difficulty?

16 A Breathing difficult -- difficulty breathing.

17 Q Did ^{victim} [REDACTED] -- the baby respond at all?

18 A No, she wasn't -- she wasn't -- had eyes closed and
19 wouldn't respond to anything.

20 Q Did she make any sounds?

21 A No, sir.

22 Q And you said EMS followed you fairly quickly into the
23 door?

24 A Yeah. As soon as I walked in the door and I was
25 talking to her, and as I was going toward the child he came

1 in, and I told him what I had seen. And EMS didn't even --
2 he just picked her up and took her to the ambulance without
3 any delay.

4 Q What was the mother, Melody's, demeanor?

5 A She was very distraught. I mean, highly upset, crying.
6 And I just tried to -- I was trying to console her. She --
7 when they took the child to the ambulance she followed and I
8 took the other siblings to the back room to keep them
9 comfortable as much as possible.

10 Q So she never left the baby's side?

11 A No. She stayed with them. When they picked up that
12 baby she followed right behind them.

13 Q And got into the ambulance?

14 A Yes, sir.

15 Q Was there a suggested person to come get the three
16 older girls?

17 A I went outside and I asked her, you know, who do -- you
18 know, who do you want to come get the little girls and she
19 said that her grandfather -- or her father. The children's
20 grandfather. I got the information. I called dispatch and
21 they got in touch with him. And he arrived after -- after
22 all of it took place. Whenever they took the baby away and
23 he showed -- I stayed there until he showed up.

24 Q Now, after the -- while you were waiting on the
25 grandfather to come pick the girls up did you take any

1 pictures inside of the house?

2 A Yeah. I was with Deputy Poteat. We took some
3 photographs of the conditions of the house and, you know,
4 the children. The children were in very good condition, and
5 other than being upset at what happened to their sister.

6 Q Okay. Did you -- were those digital pictures, I'm
7 assuming?

8 A Yes, sir. They were downloaded to the main computer at
9 the police department.

10 Q At Calhoun Falls Police Department?

11 A Yes, sir.

12 Q Now, you said you left law enforcement after that
13 sometime. How long after that -- this event --

14 A I left January 4th at about 11:00 that night.

15 Q And that was your last day with the police department?

16 A Yes, sir.

17 Q And at that point all your files -- your investigative
18 files and reports and whatnot, you didn't take any of that
19 stuff with you?

20 A No, sir. Everything was left at the police department.
21 I had a filing cabinet, and the stuff that was downloaded to
22 the hard drive of the computer.

23 Q Was Calhoun Falls the only agency involved in this
24 investigation?

25 A No. Actually the -- like I said, Deputy Poteat was

1 with me, and then they got SLED involved shortly thereafter
2 when we found out what -- at the time I didn't know what the
3 condition of the baby -- I thought maybe the baby was sick.
4 I didn't find out until later on that evening when a nurse
5 from Greenville Hospital advised me --

6 MS. BOLEN: Objection. That calls for hearsay.

7 THE COURT: Don't repeat what the nurse told you. You
8 can testify as to the result of your conversation with
9 someone, which you did, but you can't repeat what the nurse
10 told you.

11 MR. STUMBO: Well, I can followup with the question.

12 THE COURT: Okay.

13 Q Mr. Cabral, you did followup with the hospital at that
14 time; is that correct?

15 A Yes.

16 Q And you said SLED was called in. And that was by the
17 Chief?

18 A Yes, sir.

19 Q And Lieutenant Charity Herlong, do you ever have
20 occasion to --

21 A I've never had any conversation.

22 Q Okay. But SLED agency had come in and essentially take
23 over the case -

24 A Yes, sir.

25 Q -- shortly thereafter? Were forensic interviews set up

1 by Calhoun Falls for the older sisters?

2 A Yes, sir. They were set up by our victim advocate.

3 Q Okay. And that was part of the investigation that
4 Calhoun Falls was still involved with was with the older
5 siblings, correct?

6 A Yes, sir.

7 Q Have you had any other involvement with this case since
8 you left the police department?

9 A No, sir.

10 MR. STUMBO: Thank you for being here today, Mr.
11 Cabral. No further questions at this time, Your Honor.

12 THE COURT: Cross examination from the Defense.

13 MS. BOLEN: Thank you, Your Honor.

14 CROSS EXAMINATION

15 BY MS. BOLEN:

16 Q Mr. Cabral, you work at a pawn store in Anderson; is
17 that right?

18 A Yes, ma'am.

19 Q And you say you left Calhoun Falls in January of 2013?

20 A Yes, ma'am.

21 Q When you arrived that morning Shawn wasn't there,
22 right?

23 A No, ma'am.

24 Q And you said her eyes -- ^{victim} [REDACTED]'s eyes were closed?

25 A Yes, ma'am.

1 Q Let's talk a little bit about the pictures. So you and
2 Office Poteat took pictures; is that correct?

3 A Yes, ma'am.

4 Q And you took them that morning, right?

5 A Yes, ma'am.

6 Q And then you downloaded them into a computer?

7 A Yes, ma'am. Downloaded to the main computer that my
8 desk terminal went at the City of Anderson Police -- City of
9 Calhoun Falls Police Department.

10 Q And when was the last time you saw those pictures?

11 A Prior to my --

12 Q Was it that morning?

13 A Prior to my leaving the police department. It was
14 still on the hard drive.

15 Q Okay. So for the five or so months between this and
16 when you left in January you knew where the pictures were?

17 A Yes, ma'am.

18 Q Do you know where they are now?

19 A No, ma'am.

20 Q You haven't seen them since?

21 A No, ma'am.

22 Q And Solicitor Stumbo asked you about whether the older
23 sisters got forensic interviews. Those interviews didn't
24 happen until starting at least a week after this date,
25 right?

1 A Yeah. At the request of the victim advocate. She was
2 in the process of trying to find somebody to do the
3 interviews and she found somebody and told me to -- that
4 what her -- what she was going to do, and I then -- did an
5 incident report in my -- on the original case.

6 Q And in terms of the timing, the first one was a week
7 after, and then there were a few more weeks after that,
8 correct?

9 A Yes, ma'am.

10 Q Okay. And you wrote up an incident report based on
11 this -- your response, right?

12 A Yes, ma'am.

13 Q And in that incident report you didn't mention seeing
14 any sorts of marks on ^{victim} [REDACTED] or anything, right?

15 A At the time I think she was wearing a one piece. I
16 didn't have a chance to -- like I said, it was just a split
17 second. I didn't see anything in her face other than her
18 eyes were closed.

19 Q And you didn't note any marks in your report, right?

20 A I didn't see anything at the time.

21 MS. BOLEN: Thank you. Nothing further.

22 THE COURT: Anything in redirect?

23 MR. STUMBO: Just one, Your Honor.

24 REDIRECT EXAMINATION

25 BY MR. STUMBO:

1 Q Referring to the forensic interviews of these children.

2 Ms. Bolen mentioned it was a week after. Did you write a

3 supplemental report on -- on that?

4 A Yes, sir. The victim advocate notified me that she was

5 conducting those interviews, or getting the interviews

6 conducted. She told me to do a supplemental report, and I

7 did that as soon as she advised me.

8 Q Okay. And do you know the date that you did that?

9 A I can't recall.

10 Q If I can show you a report would it refresh your

11 memory?

12 A Yes, sir.

13 (Whereupon, the Solicitor hands the witness a

14 document.)

15 A It was on the 13th of that month.

16 Q 13th of August?

17 A Yes, sir.

18 Q And this incident, you responded to the house on August

19 the 8th?

20 A Yes, sir.

21 Q That's five days, correct?

22 A Yes, sir.

23 Q Or less -

24 A Yes, sir.

25 Q -- the children were being set up for --

1 A Yes, sir.

2 MR. STUMBO: That's all I have, Your Honor.

3 THE COURT: Anything on recross?

4 MS. BOLEN: No, sir. Your Honor.

5 THE COURT: Thank you for your testimony. You can
6 step down.

7 (Whereupon, witness steps down from the witness stand)

8 THE COURT: Any objections to this witness being
9 excused from the courthouse?

10 MR. STUMBO: Absolutely not. None of us, Your Honor.

11 MS. BOLEN: None.

12 THE COURT: You're excused, sir. Have you got another
13 witness you can call before we take a morning break?

14 MR. STUMBO: Yes. The State calls Lewis Murrell.

15 LEWIS MURRELL, having been first
16 duly sworn, testified as follows:

17 DIRECT EXAMINATION

18 BY MR. STUMBO:

19 Q Good morning, Mr. Murrell.

20 A Good morning.

21 Q Let me get your -- you work at Abbeville County EMS,
22 correct?

23 A Yes, sir.

24 Q How long have you worked with EMS?

25 A For Abbeville County for four years and one month.

1 Q And how long have you worked for -- or been a
2 paramedic?

3 A I've been a paramedic for just over five years.

4 Q And to become a paramedic and work for EMS what kind of
5 training do you have to do?

6 A You go through training from an EMT basic level to a
7 paramedic level, so about two years worth of schooling.

8 Q Two years worth of schooling. And during that training
9 you're taught how to care for really any kind of victim if
10 you come -- if you're first response to -- what are you
11 trained to do when you get to the victim?

12 A Assess and treat based on the injury patterns or
13 illnesses that we see for the patient.

14 Q And that could be also from setting up IVs or treat --
15 or basically stabilizing someone. You also provide
16 medication?

17 A Yes, sir.

18 Q And, Mr. Murrell, were you working with Abbeville EMS
19 on August 8th, 2012?

20 A Yes, sir.

21 Q And did you receive a call to [REDACTED]
22 in Calhoun Falls?

23 A Yes, sir.

24 Q What county is that in?

25 A Abbeville County.

1 Q And the state?

2 A South Carolina.

3 Q And, Mr. Murrell, what time did you receive a call to
4 respond to that location?

5 A The call was received at 10:51, and we were also
6 dispatched at 10:51.

7 Q What time did you arrive on the scene?

8 A We arrived on the scene at 10:56.

9 Q And who was all -- who all responded with you?

10 A My partner, Patrick Shay. We had a director, Will
11 Blackwell, also responded with us.

12 Q And who -- do you all have a lead paramedic or --

13 A I was the lead medic.

14 Q You were the lead?

15 A We were the primary unit responding by ambulance. And
16 given the type of call that we responded to, by my being the
17 highest certified, the senior person in the truck, I was the
18 lead on the call.

19 Q Mr. Murrell, once you arrived at [REDACTED]

20 [REDACTED], what did you do?

21 A We were let inside by a law enforcement officer. We
22 found the patient lying supine, which is on their back, on
23 the couch. The patient was unresponsive, which means they
24 do not respond to any stimuli, painful or verbal, and they
25 were not breathing at the time. We took the patient and

1 immediately went to an ambulance and started rescue
2 breathing through what's called a bag valve mask device,
3 which basically is a device used to breath for a patient.

4 Q So when you got there the patient, ^{victim} [REDACTED], was
5 not breathing?

6 A No.

7 Q And once you saw that she was not breathing you rushed
8 her to the EMS?

9 A To -- yeah, to our ambulance. It's a lot more of a
10 controlled environment for us to be in the back of our
11 ambulance. We can lock the doors. We can be in a more
12 secured environment. Given the nature of the call, you
13 know, somebody of that age being not breathing is not
14 common. So we -- with law enforcement being on the scene,
15 we just left from in the house not knowing exactly, you
16 know, what was going on at the time, just to be in the back
17 of our ambulance where we have all of our equipment. It's
18 better. We have the climate controlled, so it's the best
19 place for us to be in our business.

20 Q Once you got ^{victim} [REDACTED] to the ambulance what did you do?

21 A We continued to breath for her. We put in an oral
22 airway to keep her airway open. We started what's called an
23 IO, or intraosseous line. And in patients you need a
24 vascular access so you can give medication for fluids, but
25 with a pediatric patient being that age it's hard to get an

1 IV access within a vein, so we can go into a bone. The
2 tibia just below the knee. And the tibial tuberosity is the
3 flat part of the tibia. So we initiated access there. And
4 within minutes our backup arrived on scene. He drove us to
5 the hospital and we went emergently to Self Hospital.

6 Q What, based on your report, can you tell how long it
7 took you to get to Self and when you turned ^{victim} [REDACTED] over to
8 the hospital staff?

9 A We departed scene at 11:06 and arrived at the hospital
10 at 11:35, so just over 30 minutes -- or just under 30
11 minutes. And we transferred care within two minutes of
12 arriving on hospital -- on the grounds of the hospital.
13 That's just the time to get unloaded out of the ambulance
14 and into the hospital and get the patient transferred over
15 to the bed in the emergency room and for them to take --

16 Q Now, is there any downtime once she's -- once she's
17 transferred from your car to the ER staff, were they waiting
18 on her arrival?

19 A Yes. The security was at the doors with the doors open
20 waiting for us to come in. We didn't have to stand and wait
21 for the doors or anything to open. The trauma team, the
22 doctors, everybody was there waiting for us. The nurses,
23 respiratory therapist, everybody that you could think of to
24 have was there in the hospital room waiting for us.

25 Q And going back to your narrative. What did the

1 patient's eyes -- what did you observe?

2 A When we -- when we first initiated transportation the
3 first thing I did was give her a medication called Narcan.
4 It's to reverse opiates or stuff like pain medicine. Any
5 time you have an unresponsive patient and you don't know
6 what happened you give this medication to try to reverse
7 that, if that's maybe the cause. There was no affect from
8 giving that medication. After giving that I checked her
9 pupils which were found to be fixed and dilated, which means
10 they were not -- not reactive, which can indicate some kind
11 of neurological problem.

12 Q And when you arrived -- going back to when you arrived
13 at the house, who was -- who was all there at the house, if
14 you remember?

15 A The only -- the only two people I remember at the house
16 when we arrived on scene was the law enforcement officer
17 that met us at the door and the patient's mother.

18 Q And when you transported the patient, ^{victim} [REDACTED],
19 to -- from Calhoun Falls to Self Memorial Hospital did
20 anybody ride in the ambulance with you?

21 A I believe her mother rode in the front seat of the
22 ambulance with us.

23 Q So from the time that you got the call at -- or
24 received the call at 10:51 she was -- you were able to get
25 her to Self Memorial Hospital within about 50 minutes, or 45

1 minutes, from the time you got the call until the time that
2 you transferred over --

3 A Yes, sir.

4 Q -- to the hospital staff?

5 A Yes, sir. -

6 MR. STUMBO: No further questions.

7 THE COURT: Cross examination.

8 MS. BOLEN: No cross examination, Your Honor.

9 THE COURT: Mr. Murrell, just for clarification for the
10 record, you described a procedure involving the tibia and
11 you gave a name for that. Can you repeat that name and then
12 spell it, please, sir?

13 THE WITNESS: The process is an intraosseous infusion.

14 THE COURT: Can you spell that? I'm not trying to put
15 you on the spot.

16 THE WITNESS: I understand. It's i-n-t-e-r and the
17 second word is osseous, o-s-s-e-o-u-s.

18 THE COURT: Okay. Thank you very much. And then the
19 second clarification. The initial medication that you gave
20 the child. What was the name and spell that for us.

21 THE WITNESS: It is Narcan, N-a-r-c-a-n.

22 THE COURT: Thank you very much. You can step down,
23 sir.

24 THE WITNESS: Thank you.

25 THE COURT: Thank you for your testimony. Any

1 objections to this witness being excused?

2 MR. STUMBO: None from the State, Your Honor.

3 MS. BOLEN: No objection, Your Honor.

4 (Whereupon, the witness steps down from the witness
5 stand)

6 THE COURT: Let's take about a 10 minute morning break.
7 Mr. Foreman, and ladies and gentlemen of the jury, we're
8 going to take a break and go back to the jury room. If you
9 have any needs, just ask the bailiffs. They can get you
10 something to drink, if you would like that.

11 And again, I remind you not to discuss anything about
12 this case among yourselves, and we'll get you back out
13 promptly right after the break.

14 (Whereupon, the jury exits the courtroom at 10:46 a.m.)

15 THE COURT: All right. We'll be at ease until about
16 11:00.

17 (Whereupon, a short recess was held)

18 THE COURT: Are we ready to bring the jury out?

19 MR. STUMBO: We are, Your Honor.

20 (Whereupon, the jury enters the courtroom at 11:03
21 a.m.)

22 THE COURT: Let the record reflect the jury is back in.
23 Solicitor, you may proceed.

24 MR. STUMBO: Thank you, Your Honor. The State calls
25 Vickie Hallman to the stand.

1 VICKIE HALLMAN, having been first
2 duly sworn, testified as follows:

3 DIRECT EXAMINATION

4 BY MR. STUMBO:

5 Q Good morning, Ms. Hallman. How are you doing?

6 A Good morning, sir.

7 Q Do you work for SLED?

8 A Yes, sir. I do.

9 Q And what is your rank at SLED?

10 A I am a senior agent assigned to the latent prints crime
11 scene unit.

12 Q And as part of your job assigned to the latent print
13 crime scene unit what does your weekly routine consist of?

14 A I actually work Monday through Friday 8:30 to 5:00, but
15 we also remain on on-call status where I run a certain
16 number of weeks of call. When we're on call we receive
17 calls from local agencies, or other agencies, or other units
18 within SLED to assist in the processing of crime scenes
19 throughout the state.

20 Q And that's sometimes at the request of local law
21 enforcement agencies?

22 A Yes, sir. A lot of times it is at the request --
23 actually, the majority of what we do is at the request of
24 local agencies. But because SLED is also an investigating
25 agency sometimes other components of SLED ask for our

1 assistance in processing a scene.

2 Q Okay. And your jurisdiction is the whole state of
3 South Carolina?

4 A Yes, sir. It is.

5 Q How long have you been in law enforcement?

6 A I've been in law enforcement -- March will be 23 years.
7 I spent 13 years at the Lexington County Sheriff's
8 Department. My last four years there was in the crime scene
9 unit. And at the beginning of April I will celebrate my
10 tenth year at SLED, also all in the crime scene unit.

11 Q So the majority of your career you've been
12 investigating crime scenes?

13 A Yes, sir.

14 Q And you've had further training in -- advanced training
15 in crime scene analysis?

16 A Yes, sir. I actually have a bachelor of arts in
17 history from the University of South Carolina. I have a
18 masters of criminal justice from the University of South
19 Carolina. I completed the Criminal Justice Academy. I've
20 been through numerous crime scene schools. I also at some
21 point was doing latent print process. So I've been through
22 schools on how to process items for latent prints. I used to
23 do latent print comparisons. I've went through schools for
24 that. I do footwear and tire tread comparison, and I've
25 completed several 40-hour courses for that. And I also do

1 blood stain pattern analysis, and for that I have also
2 completed several classes. And two years ago I was
3 certified by the International Association for
4 Identification as a certified senior crime scene analyst,
5 which means that I studied and prepared for a test and
6 actually took and passed a 400 question test.

7 Q In addition to all of this training, about how many
8 crime scenes have you worked, just in a ballpark estimate?

9 A Probably 500 to 1,000.

10 Q And one of those crime scenes was in -- did you have
11 occasion to work a crime scene involving the case of Shawn
12 White, the Defendant?

13 A Yes, sir. I did.

14 Q Okay. And where did you respond to?

15 A If I may refer to my notes so I can give you the exact
16 address?

17 Q Absolutely. Take your time.

18 A Our initial response was to [REDACTED] in
19 Calhoun Falls.

20 Q And what was -- you responded to this scene at [REDACTED]
21 [REDACTED] in Calhoun Falls. What was it in regards to?

22 A We had -- my lieutenant of the crime scene unit had
23 received a request from our special victims, or our child
24 fatality unit, in reference to an incident involving a
25 10-month-old. At that point in time she was actually on

1 life support at the Greenville Hospital was not expected to
2 survive, so we were asked to go in and to process the actual
3 home where the incident had occurred.

4 Q Okay. And did you have a search warrant in conjunction
5 with local law enforcement?

6 A Yes, sir. The Chief of Police for Calhoun Falls
7 actually secured a search warrant for us.

8 Q And you were -- you and your folks executed the search
9 warrant?

10 A Yes, sir. We did.

11 Q Now, were you able to take any pictures there at the
12 scene --

13 A Yes, sir. We did.

14 Q -- Agent Hallman?

15 MR. STUMBO: If I may approach the witness, Your Honor.

16 THE COURT: Certainly.

17 Q Agent Hallman, I'm going to hand you a stack of 15
18 photographs. If you could, just briefly review those.

19 THE COURT: Before you look at them, Ms. Witness, let
20 Defense counsel look at them.

21 MR. STUMBO: Certainly, Your Honor.

22 MS. BOLEN: Thank you, Your Honor.

23 MR. STUMBO: Again, if I may approach the witness, Your
24 Honor.

25 THE COURT: Certainly.

1 Q If you could review those 15 photographs and just let
2 me know when you're done, Agent Hallman.

3 A Yes, sir.

4 Q Now, the 15 pictures that you're looking at there, do
5 you recognize those?

6 A Yes, sir. I do.

7 Q And did you take those pictures?

8 A Yes, sir.

9 Q And are they a fair and accurate representation of the
10 outside and inside of the residence at [REDACTED] in
11 Calhoun Falls on August the 9th?

12 A Yes, sir.

13 Q And this was at nighttime, I believe?

14 A Yes, sir. We were notified late that afternoon and it
15 was later in the evening, I believe, about 11:00 that night
16 when we actually started taking photographs inside the
17 residence.

18 MR. STUMBO: Your Honor, at this time the State would
19 offer these 15 pictures into evidence. And I believe we're
20 at maybe State's 3 through 17.

21 THE COURT: Okay. What says the Defense?

22 MS. BOLEN: Without objection, Your Honor.

23 THE COURT: All right. It'll be 3 -- will be marked
24 individually 3 through -- I thought you said 15 pictures?

25 MR. STUMBO: That's correct, Your Honor. And we've

1 already premarked -

2 THE COURT: Right.

3 MR. STUMBO: -- 1 and 2 here separately.

4 (Whereupon, State's Exhibits No. 3 through 17 were
5 admitted into evidence.)

6 THE COURT: All right. Into evidence as State's
7 Exhibits 3 through 17.

8 Q Agent Hallman -

9 THE COURT: Wait one minute, Solicitor. She's -- since
10 her phone has been vibrating in her pocketbook, she's going
11 to go and shut it off.

12 MS. BOLEN: Normally it doesn't -- I apologize.

13 THE COURT: That's okay.

14 MS. BOLEN: Normally it doesn't go off. I apologize.

15 THE COURT: That's all right.

16 MR. STUMBO: We're ready to proceed, Your Honor.

17 Q Agent Hallman, I'm going to show you what's been marked
18 for ID as State's Exhibit 2. Do you recognize that?

19 A Yes, sir. I do.

20 Q Okay. Is this an enlarged copy of a page of your
21 report?

22 A Yes, sir.

23 Q What is it, just for reference?

24 A That is a -- it's a blowup of the crime scene sketch
25 that I -- I apologize. It's a crime scene sketch that I

1 prepared after working the scene in Calhoun Falls. It's
2 basically a diagram of the residence.

3 Q A rough sketch or floor plan of the house?

4 A Yes, sir. It is.

5 MR. STUMBO: Your Honor --

6 Q And it's a fair and accurate representation of the
7 house at [REDACTED]?

8 A Yes, sir. It's just not drawn to scale and there were
9 items that I did not include in the sketch because it was
10 not probative to the investigation.

11 MR. STUMBO: Your Honor, at this time the State would
12 offer State's 2 into evidence.

13 THE COURT: And what says the Defense?

14 MS. BOLEN: No objection, Your Honor.

15 THE COURT: All right. Without objection it'll be
16 marked as State's 2.

17 (Whereupon, State's Exhibit No. 2 was entered into
18 evidence.)

19 MR. STUMBO: I'm going to stand here so the jury can
20 see it. Permission to publish this, Your Honor.

21 THE COURT: Certainly.

22 Q This is the -- just to orient the jury to the home
23 here. Where is the front of the house?

24 A This area here is the front of the house. These are
25 the steps that lead down from the front, so the roadway

1 would be here. This is a covered front porch on the
2 residence. And then you would go into -- this area is the
3 livingroom. And then this is what appeared to be the master
4 bedroom. Right down from it there was an area, you have the
5 kitchen. And then it appeared that the girls shared this
6 room, and then there's a small bathroom in the back and like
7 a laundry room that's on the back of the house.

8 Q Okay. So this front room here, you've marked this
9 number one and it says Pack'n Play. Is that where the
10 Pack'n Play was?

11 A Yes, sir. The Pack'n Play is basically right inside
12 the front door in the livingroom area.

13 Q It's reflected in the pictures as well?

14 A Yes, sir. It is.

15 Q Okay. Now, did you do a full analysis -- crime scene
16 analysis of this residence at the time?

17 A Yes, sir. We did.

18 Q You said you had a great deal of experience in latent
19 fingerprints. Were fingerprints relevant here?

20 A No, sir. They would not have been.

21 Q Okay. How about any kind of -- did you search for any
22 kind of blood or other physical evidence around the house?

23 A Yes, sir. We did do a search of the residence. One of
24 the main areas that we focused on specifically was the
25 Pack'n Play, because that's where we knew the victim had

1 been sleeping. We actually collected all of the bedding out
2 of the Pack'n Play, and during the process of lifting each
3 piece out and bagging it separately we also took photographs
4 as we were pulling those things out. We checked just other
5 areas in the residence just for general living conditions,
6 to check on the amount of food that was there and the actual
7 condition of the house itself.

8 MR. STUMBO: Your Honor, permission to publish the
9 pictures, State's 3 through 17 --

10 THE COURT: Certainly.

11 MR. STUMBO: -- to the jury. I'm going to put these on
12 this overhead, and let me know if you can see it okay.

13 THE WITNESS: Okay.

14 MR. STUMBO: This is State's 17. Looks like we're
15 going to count backwards on these here. I'm going to focus
16 it in, of course.

17 Q Can you see that?

18 A Yes, sir. I can.

19 Q And is this the residence at [REDACTED] in
20 --

21 A Yes, sir. This --

22 Q -- Calhoun Falls?

23 A I apologize. Yes, sir. This is the exterior of the
24 residence from the front side.

25 Q Okay. State's 16. Is that just a closer up of the

1 front of the house?

2 A Yes, sir, it is. Including the steps and the fact that
3 there's like a gated fence on the front of the residence on
4 the porch.

5 Q And what's that on the right side of the screen hanging
6 from the ceiling?

7 A It looks like a child's swing.

8 Q How did you all get into the residence at that point,
9 through the front or the back?

10 A We were notified that nobody with the family could be
11 located to give us a key. We went to the back of the
12 residence and there was a windowpane -- or it was an older
13 door that actually had glass windowpanes in it. We were
14 actually able to maneuver one of the panes out and actually
15 reach in and unlock the backdoor.

16 Q Okay. And when you go in the backdoor -- I'm going to
17 show you State's 15. Does that backdoor go into the -- I
18 believe on your sketch here. Does that go into the --
19 what's this back area here behind the kitchen?

20 A It's actually like a laundry room or -- I would -- in
21 olden days you might have called it like a mud room on the
22 back of the house. The washer and dryer is located there.
23 And in this case there -- this photograph shows a rack of
24 baby clothes that we actually had to move out of the way to
25 actually get inside the residence from the backdoor.

1 Q So this was right in front of the backdoor?

2 A Yes, sir. It was.

3 Q And these appear to be young child baby clothes?

4 A Yes, sir.

5 Q I'm going to show you State's No. 7 here. What room in
6 the house is that?

7 A That would be a photograph of the kitchen area.

8 Q Okay. Did the kitchen appear to be well kept at that
9 point?

10 A Somewhat. Maybe more so than the rest of the house.
11 It was -- the counters were kind of cluttered, but it seemed
12 to be one of the cleaner rooms of the residence.

13 Q Okay. And there's half eaten bowls of cereal there on
14 the table?

15 A Yes, sir. There were two bowls with cereal sitting on
16 the kitchen table.

17 Q State's 6. Is that a closer up of that table?

18 A Yes, sir, it is. That photograph was actually taken, I
19 believe, from the entrance where the laundry room and the
20 kitchen come together. We're basically standing kind of in
21 that doorway of the laundry room and just shooting a
22 photograph into the kitchen area.

23 Q State's No. 5. Is that also in the kitchen?

24 A Yes, sir, it is. It's one of the kitchen counters.

25 Q Does that appear to be some baby bottles?

1 A Yes, sir. And I believe that can is -- I think it's
2 Enfamil. And there's actually -- if you look to the back
3 right of the photograph you can actually see what appears to
4 be jars of baby food also.

5 Q So it appeared to be plenty of food in the house for
6 the baby?

7 A Yes.

8 Q I'll show you State's 14, Agent Hallman. If you could
9 describe that for the jury and what part of the house that's
10 in.

11 A That photograph would have been taken from the entrance
12 -- from the doorway from the kitchen towards the front of
13 the house. The two bags are actually hanging by the front
14 door, and you can probably see the doorknob to the left
15 side, and then the Pack'n Play is on the right side.

16 Q Okay. Is the front door leading out onto the covered
17 porch?

18 A Yes, sir. It is.

19 Q State's 13.

20 A Basically with this one we're just shifting and turning
21 the body a little bit to the right so that you can see the
22 rest of that front wall where the front door is located.

23 Q And this is State's 12 here. Is that a closer up of
24 the Pack'n Play?

25 A Yes, sir. It is. As we originally found it when we

1 went inside the residence.

2 Q Now, there is a cup up to the right-hand side, and it
3 looks like a baby bottle. I'm going to show you State's
4 Number 3. Is that a closer up of that cup -- or it's two
5 cups and a baby bottle?

6 A Yes, sir. It is.

7 Q Were there anything in those cups?

8 A The blue cup actually had 10 small white pills in it.
9 The orange or pinky -- I think it's actually more of a pink
10 colored cup, had some type of liquid that we weren't sure
11 what the identity of it was, but it looked like it could
12 have been something like a Mountain Dew or a yellowish --
13 yellowish-green colored drink.

14 Q I'm going to show you 2 -- well, I'm going to show you
15 State's 4 again, too. And that's the inside of that blue
16 cup?

17 A Yes, sir. It is.

18 Q And it appeared to be some small white pills inside

19 A Yes, sir. It did.

20 Q State's No. 11. Is that -- what side of the room is
21 that?

22 A If we're standing in that same doorway from the kitchen
23 into the livingroom it's going to be the wall to your
24 right-hand side.

25 Q And it appears to be like a china cabinet or shelf

1 beside the TV?

2 A Yes, sir.

3 Q What is this in State's No. 10?

4 A That's actually on the top of the china cabinet, or the
5 little display cabinet. The curio. And it was just two
6 DVDs, and one of them was Saw 2, and I don't recall right
7 offhand what the one on the top was.

8 Q I'm going to show you 9 -- State's 8 and State's 9 in
9 succession here. First State's 8. Would that be the inside
10 of the Pack'n Play?

11 A Yes, sir. At that point I believe we had actually
12 started removing some of the covering and the blankets that
13 were in there. We started pulling off the stuff from the
14 side first. And these would be a succession of photographs
15 that we take -- we took to show what was inside the Pack'n
16 Play.

17 Q And State's 9 is a little bit different angle. Is it
18 the other side of the Pack'n Play?

19 A That's correct.

20 Q Did you take the bedding out of the Pack'n Play?

21 A Yes, sir. We did.

22 Q Now, Agent Hallman, did you respond to wherever the
23 baby was at that point?

24 A Yes, sir. We did.

25 Q And where did you go?

1 A We went to the hospital in Greenville.

2 Q At Greenville Memorial?

3 A I believe so. Yes, sir.

4 Q And at that time were you able to make contact with the
5 baby? With the little --

6 A Yes, sir. We did.

7 Q And where was she in the hospital?

8 A She was in PICU -- or I believe it's Pediatric ICU, but
9 she was in PICU.

10 Q Was she in a hospital bed at that point?

11 A Yes, sir. She was.

12 MR. STUMBO: Your Honor, if I may approach the witness.

13 THE COURT: Sure.

14 Q Agent Hallman, if you could review this stack of 9
15 photographs, and let me know when you're done. Do you
16 recognize these pictures?

17 A Yes, sir. I do.

18 Q Okay. Did you take these pictures?

19 A Yes, sir.

20 Q Do they fairly and accurately represent the baby in the
21 hospital bed that day when you went to see her?

22 A Yes, sir.

23 Q Who you were -- that was identified as ^{victim} [REDACTED]?

24 A Yes, sir.

25 MR. STUMBO: And, Your Honor, at this time the State

1 would offer these nine photographs into evidence. The
2 foundation having been laid by Agent Hallman.

3 THE COURT: All right. What says the Defense?

4 MS. BOLEN: Your Honor, we just renew our pretrial
5 objection based on several photographs being duplicative.

6 THE COURT: Sure. So noted for the record. Be
7 admitted into evidence as Exhibit what numbers?

8 MR. STUMBO: Your Honor, 18 through -- I believe it
9 will be 26. 18 through 26, Judge.

10 THE COURT: Okay. So admitted into evidence.

11 (Whereupon, State's Exhibits No. 18 through 26 were
12 admitted into evidence.)

13 MR. STUMBO: Your Honor, permission to publish at this
14 time.

15 THE COURT: Certainly.

16 Q Agent Hallman, I'm going to show you these one at a
17 time here starting with State's 26. Who is that?
18 A victim

18 A [REDACTED].

19 Q And was she responsive in the bed when you approached
20 to take these photographs?

21 A No, sir. She was not.

22 Q And was your purpose of being there to document what at
23 that time?

24 A Basically we were asked to respond just to document any
25 type of injuries that we saw to her, such as scratches or

1 bruises or anything that was abnormal on a child.

2 Q Were there some abnormal marks on this child?

3 A Yes, sir. She did have some bruising and some areas
4 with abrasions and along with the injury to the head -- or
5 the surgery -- I believe she'd already had surgery, so we
6 also documented that.

7 Q State's 25. Is this just a different angle of ^{victim} [REDACTED] in
8 the hospital bed?

9 A Yes, sir.

10 Q And you can see on the top side of her head as well in
11 the picture; is that correct?

12 A Yes, sir.

13 Q Is this a closer up picture of her -- of ^{victim} [REDACTED]'s face?

14 A Yes, sir.

15 Q And just to note that the left eye appear to be
16 slightly open at that time?

17 A Yes, sir. It did.

18 Q I show you State's 18, Agent Hallman. Is this on the
19 arm of ^{victim} [REDACTED]?

20 A Yes, sir. It was.

21 Q And does it appear to be some abrasions on her arm?

22 A Yes, sir.

23 Q This picture in State's 23, which is a sock on the
24 right-hand side. So this is her leg; is that correct?

25 A Yes, sir.

1 Q And what was noteworthy about taking this photograph?

2 A There actually appeared to be some bruising there. You
3 can actually see it below the ruler. And actually when we
4 do these types of photographs we put the rulers in it just
5 so if it comes up that something needs to be measured
6 width-wise or length-wise that the ruler is actually there
7 in order to do that.

8 MR. STUMBO: If I may approach the witness, Your Honor.

9 THE COURT: Sure.

10 Q Now, Agent Hallman, that middle button there on this
11 laser pointer is what -- this button here.

12 A Okay.

13 Q If you could, demonstrate --

14 THE COURT: You can stand up, if you like. You can
15 move to whatever angle. I think you speak loud enough that
16 we can all hear you, so just get however you want to do it.

17 Q If you could point it to the screen and show the jury
18 where you're referring to.

19 A There's an area here that appeared to be almost like a
20 circular bruise. And then you've got an area here that kind
21 of goes down, and then there's also another area here, are
22 the main ones that I see in this photograph.

23 Q State's 19. Does this appear to be a picture of the
24 back of ^{victim} [REDACTED]'s leg?

25 A Yes, sir. And there appeared to be almost -- they

1 weren't necessarily like puncture wounds, but there were two
2 small areas that appeared to be some type of injury to those
3 particular areas.

4 Q Was there any other bruising in this picture that was
5 noteworthy?

6 A Not that I recall just looking at the photograph. No,
7 sir.

8 Q This is State's 20. You can use the laser pointer to
9 refer to any noteworthy injuries in this picture.

10 A Basically what we did at this point is we -- with any
11 victim that we have we want to document all the injuries, so
12 we check the front and the back. And this area -- there
13 just seemed to be some discoloration just in general on her
14 back that we thought was worthy enough to actually document
15 in photographs just to show that it was there.

16 Q Possible bruising as well?

17 A Possibility. Yes, sir.

18 MS. BOLEN: Your Honor, we've got an objection to her
19 testifying about anything that would require a medical
20 background to determine, just based on training.

21 THE COURT: Repeat your objection, Ms. Bolen.

22 MS. BOLEN: Just an objection to her testimony about
23 any sort of diagnosis or any sort of medical determination
24 of what an injury might be.

25 THE COURT: Well, I think her testimony has pretty much

1 been that she has seen bruising which I don't think would
2 take any sort of expertise or medical training to observe
3 and comment on bruising, and I think that's what she just
4 did. Either she saw bruising or possible bruising.- So your
5 objection is noted, but overruled.

6 MS. BOLEN: Thank you, Your Honor.

7 Q This is State's No. 21. This is ^{victim} [REDACTED]'s front side,
8 correct?

9 A Yes, sir. It is.

10 Q And this mark where my finger is here, the line across
11 her abdomen, what would that have been for?

12 A I don't specifically remember, but I know it had
13 something to do with the surgery that they had performed.

14 Q Okay. That was surgical markings?

15 A From my understanding, from what I recall, yes, sir.
16 It was. And we just wanted to document that it was present.

17 Q And again, you can use the laser pointer. But ^{victim} [REDACTED]'s
18 right leg. If you can see there. What would that be
19 indicative of on the front of her leg?

20 A It actually appeared to be some discoloration like a
21 bruise in that particular area.

22 Q And State's 22. This is -- and what is this a picture
23 of?

24 A That's a photograph basically of the -- let me think.
25 The right side of the head. You can see the ear here and

1 the medical gauze or whatever is placed on after surgery is
2 present here, and we're just basically showing you this
3 general area.

4 Q The markings would indicate some sort of surgery on the
5 brain or --

6 A Yes, sir. That's what it appeared to be.

7 Q Did you take any other grouping of photographs related
8 to your crime scene analysis in this case?

9 A Yes, sir. We went back to the hospital a second time,
10 later the morning -- or the afternoon of the -- let me get
11 my date right. Of the 10th. And during a phone call with
12 Patsy Lightle, who is employed at SLED, she asked that we go
13 back by the residence in the daylight and pay specific
14 attention to the steps of the front of the house just to
15 measure the height and the width, and those general type
16 things specifically with the steps.

17 Q Okay. And I am going to show you one picture, if I
18 may. If you could identify --

19 MR. STUMBO: If I may approach the witness, Judge.

20 THE COURT: Sure.

21 Q Identify whether you've seen that picture before.

22 A Yes, sir. I have.

23 Q And I know we put in some pictures earlier of the
24 inside of the house. Is this another one of those pictures?

25 A Yes, sir. It is.

1 Q Okay. And you took that photograph?

2 A Yes, sir.

3 Q And it's a fair and accurate representation of one of
4 the rooms in the house?

5 A Yes, sir. That appeared to be what I classified as the
6 children's bedroom.

7 Q And it includes the door to the bedroom as well?

8 A Yes, it does. I think that's the -- yeah, that's the
9 children's room.

10 Q It has a number of children's toys in the room,
11 correct?

12 A Yes, sir.

13 MR. STUMBO: Your Honor, at this the foundation has
14 been laid. We'd like to enter this one picture as State's
15 27.

16 THE COURT: What says the Defense?

17 MS. BOLEN: Without objection, Your Honor.

18 THE COURT: All right. Without objection it'll be
19 entered into evidence for the State, No. 27.

20 (Whereupon, State's Exhibit No. 27 was entered into
21 evidence.)

22 MR. STUMBO: And, Your Honor, if I may approach the
23 witness again.

24 THE COURT: Sure.

25 Q These are five additional pictures. You mentioned

1 earlier going back in the daytime and taking pictures of the
2 house. Do you recognize these photographs?

3 A Yes, sir. I do.

4 Q And you took those pictures as well?

5 A Actually, my partner took those pictures. I'm actually
6 the one in there --

7 Q You're in the picture?

8 A Yes, sir.

9 Q And these fairly and accurately represent the [REDACTED]
10 [REDACTED] the following day?

11 A Yes, sir. It does.

12 MR. STUMBO: Your Honor, the State would offer these
13 five photographs which would be State's 28 through 31, I
14 believe, into evidence. There's --

15 THE COURT: It'll be 32.

16 MR. STUMBO: 32. I'm sorry.

17 THE COURT: And what says the Defense?

18 MS. BOLEN: No objection, Your Honor.

19 THE COURT: Without objection it'll be entered into
20 evidence for the State, 28 to 32.

21 (Whereupon, State's Exhibit 28 through 32 were entered
22 into evidence.)

23 MR. STUMBO: Permission to publish the additional
24 photographs, Judge.

25 THE COURT: Certainly.

1 Q Okay. You described this picture earlier, Agent
2 Hallman.. This would be what appeared to be the girls'
3 bedroom?

4 A Yes, sir. That would have -- we would have been
5 standing in the kitchen and basically just -- the photograph
6 was taken from the doorway into the children's room.

7 Q And does the picture also depict the doorknob of that
8 room?

9 A Yes, sir.

10 Q Okay. And let me know if you need to look at it closer
11 again. But the doorknob, how -- how does it appear to be
12 positioned on the door?

13 A I'm not sure what you're asking me.

14 MR. STUMBO: If I may approach the witness, Your Honor
15 --

16 THE COURT: Sure.

17 MR. STUMBO: -- with the photo.

18 Q If you could, Agent Hallman, direct to the doorknob
19 itself. Does the doorknob appear to be turned inside or
20 outside of the room?

21 A It actually appears that the lock part of it would
22 probably be on the outside of the door when you closed it.

23 Q And if you could refer to that and I'm going to put it
24 back on the screen. If you got that laser pointer, show the
25 jury what you're talking about.

1 A Here you can see the little area, the twisting
2 mechanism for the twist lock. When you turn it, like when
3 you go in a room, appears to be on this part of the
4 doorknob, so when you close the door you could actually lock
5 it from the outside instead of from the inside.

6 Q Thank you, Agent Hallman.

7 MR. STUMBO: Permission to publish 28 through 32, Your
8 Honor.

9 THE COURT: Sure.

10 Q I'm going to show you 32. And just before you -- we've
11 talked about this picture, Agent Hallman. What was the
12 purpose of going back and measuring the stairs?

13 A Apparently during the interview we were advised that
14 the -- the Defendant had mentioned something about ^{victim} [REDACTED]
15 possibly falling off the steps or being pushed off the
16 steps, so we were asked to go back with our rulers and
17 actually measure the height on the steps.

18 Q And did you do that --

19 A Yes, sir. We did.

20 Q -- on August 10th?

21 A Yes, sir.

22 Q If you could, show the steps that you measured to the
23 jury? And this is in State's 32.

24 A This photograph is actually the front of the residence
25 again taken from the street, and it's actually a fenced in

1 yard, and the steps that are in question are these cement
2 steps on the front of the residence.

3 Q State's 31. Is that you in the picture --

4 A Yes, sir. It is.

5 Q -- with the ruler?

6 A Yes, sir.

7 Q Now, how high was it to the ground to the top of that
8 -- the highest step?

9 A I believe -- up to this step here I believe we measured
10 it as one foot, six inches, I believe.

11 Q Okay. And did you have -- well, let me refer you to
12 the next picture. This is State's -- this is State's 30. I
13 want to orient you to it here. That's the -- I guess a
14 different angle of the same ruler.

15 A Yes.

16 Q How high was it to the floor of the covered porch?

17 A Best guessing, from what I can see here, two feet three
18 inches maybe.

19 Q Based on the black markings on the ruler that's --
20 that's each foot, correct?

21 A That's correct.

22 Q So to the porch it's just a little over two feet,
23 correct?

24 A Yes, sir.

25 Q And I'm going to show you State's 28. Is that the

1 other side of those stairs?

2 A Yes, sir. It is.

3 Q And about how high was it to the top step there?

4 A Are you referring to --

5 Q From the ground.

6 A To the top of the porch?

7 Q No. To the top of that first step where you have the
8 measuring --

9 A It appears to be approximately the same height from the
10 other side, one foot six inches, or one and a half foot.

11 Q About 18 inches?

12 A Yes.

13 Q Agent Hallman, did you take the stuff that you had
14 collected at the scene, the bedding and whatnot, take that
15 back to SLED with you?

16 A Yes, sir. I did.

17 Q And was that analyzed?

18 A I know inside the Pack'n Play there was what I logged
19 in as a donut pillow. It's one of the U-shaped pillows.
20 There appeared to be some type of stain on it that could
21 have been blood, so that was actually sent to our evidence
22 processing department for further analysis.

23 Q And at that point, that being the baby's Pack'n Play
24 was suspected to be -- suspected to be ^{victim} [REDACTED]'s?

25 A Yes, sir.

1 Q Were there any other tasks that you performed in
2 regards to your crime scene investigation in Calhoun Falls
3 at that point?

4 A We actually did take some computer equipment out of
5 that -- we executed the search warrant and there were
6 certain items that we took back. But at that point, after
7 the photographs, we were basically finished with the scene
8 there.

9 Q Okay. And to your knowledge were those computers ever
10 analyzed?

11 A I do not have any idea. That would be a different area
12 of SLED. It would be our computer crimes division, and I
13 don't really know whether or not anything was done with
14 those.

15 MR. STUMBO: Thank you, Agent Hallman. Please answer
16 any questions --

17 THE COURT: Cross examination from the Defense?

18 MS. BOLEN: Thank you, Your Honor.

19 CROSS EXAMINATION

20 BY MS. BOLEN:

21 Q Agent Hallman, regarding the donut pillow, or what you
22 referred to as the donut pillow, you don't have any
23 knowledge that that was actually analyzed, correct?

24 A That was actually sent to our evidence processing
25 department. I do know what the results of that examination

1 were.

2 Q Okay. And going back to the pictures we just saw about
3 the steps. I think in direct testimony you said something
4 about Shawn saying something about the child falling off the
5 steps. It was actually his brother who said that that
6 happened, correct?

7 A I don't recall. I know I had a conversation with Agent
8 -- or with Agent Lightle at the time and that was -- I don't
9 remember a specific name. But that was brought up during
10 the interview, so we were asked to go back and measure the
11 height on the steps and document it with photographs.

12 Q Going back briefly to the pictures of ^{victim} [REDACTED] in the
13 hospital. There's no picture showing any sort of bruising
14 her armpits, correct?

15 A No -- no, ma'am. Not that I saw.

16 Q And no bruising in her upper chest or anything like
17 that, correct?

18 A That's correct.

19 MS. BOLEN: It's going to take me a moment, Your Honor,
20 just to --

21 THE COURT: Sure. Take your time.

22 MS. BOLEN: -- get the pictures I want to use.

23 Q I'm going to refer you back to State's Exhibit 3.
24 That's the picture of the blue cup with what you said were
25 10 white pills inside. Do you remember that picture?

- 1 A Yes, ma'am.
- 2 Q As well as next to it a cup with some liquid inside.
- 3 You remember that as well?
- 4 A Yes.
- 5 Q And you didn't collect the pills, correct?
- 6 A They were not collected. No, ma'am.
- 7 Q And they were right by the baby's Pack'n Play?
- 8 A Yes.
- 9 Q I'm also going to refer you back to State's 27. And
- 10 that's a picture of the girls' bedroom, right?
- 11 A That's correct.
- 12 Q And when you went to photograph the scene you took a
- 13 lot more pictures than what was introduced, right? You took
- 14 a lot of pictures of the house?
- 15 A Yes, ma'am.
- 16 Q And you actually wrote up a report as well?
- 17 A Yes.
- 18 Q Okay. And the house was in the state of pretty extreme
- 19 disarray, wasn't it?
- 20 A Certain areas. Yes, ma'am.
- 21 Q I think you said in direct that the kitchen was one of
- 22 the cleaner rooms of the residence?
- 23 A Yes, ma'am.
- 24 Q But in the girls' bedroom, as well as the master
- 25 bedroom, there were clothes and toys just everywhere, right?

1 A Yes.

2 Q In fact, it looks in some parts of it like you couldn't
3 even walk through?

4 A Yes.

5 Q And in the master bedroom there were no sheets on the
6 bed but there were a lot of clothes just piled up on the
7 bed?

8 A Yes.

9 Q And clothes piled up beside it?

10 A Yes.

11 Q And basically throughout the entire room, correct?

12 A Yes.

13 Q And outside the house you also noted that there were
14 numerous black trash bags piled up outside the house, right?

15 A Yes.

16 Q In the back?

17 A Yes.

18 Q Probably -- can you estimate how many?

19 A I don't recall. I just know we took photographs of
20 them. I don't recall specifically how many, and I wouldn't
21 want to guess without looking at a photograph.

22 Q And you also noted when you were going to the house
23 that there were bugs and roaches throughout the home, right?

24 A Yes.

25 Q And I think you specifically noted that there were bugs

1 and roaches moving throughout the -- I guess what they're
2 calling the den, or the front room, the livingroom?

3 A Yes.

4 Q Okay. And that's where the baby's Pack'n Play was,
5 correct?

6 A Yes.

7 Q And you actually also found live roaches in the baby's
8 Pack'n Play, correct?

9 A Yes.

10 Q And you took pictures of that?

11 A Yes.

12 Q And you noted that there were bugs and other roaches
13 and other sorts of bugs throughout the entire residence?

14 A Pretty much. Yes, ma'am.

15 Q And you noted that there was limited food in the
16 cabinets and the refrigerator?

17 A There wasn't a lot of food in the cabinets or
18 refrigerator. There were some, but not -- not a large
19 amount.

20 Q A lot of the pictures that you took were of what you
21 categorized, I think, in your report as an extremely messy
22 house?

23 A Well, the purpose of our photographs, especially when
24 we first go in, we want to document the scene as we
25 initially find it. So our primary purpose is basically to

1 walk through the house and photograph the entire house
2 before we start doing any type of processing, if that is
3 needed, and that's what we did in this case. As we do for
4 every crime scene that we respond to.

5 Q And you can see just from this picture, that shows a
6 lot of mess and a lot of clutter in the girls' room,
7 correct?

8 A Yes.

9 Q And these are all pretty small?

10 A Probably about average size for an older house.

11 Q And when you went to the hospital, that was Greenville
12 Hospital, right?

13 A Yes.

14 Q And you went there, I believe, early in the morning of
15 August 9th and then on August 10th?

16 A No. We went -- it was early morning on the 10th, and
17 then later that same day we responded back.

18 Q I see. I was just reading the time incorrectly. I
19 apologize for that. So you went -- you went on August 10th,
20 correct?

21 A That's correct.

22 MS. BOLEN: I don't have anything further. Thank you.

23 THE COURT: Anything in redirect, Solicitor?

24 MR. STUMBO: No further questions of Agent Hallman.

25 THE COURT: All right. Thank you very much for your

1 testimony. You can step down. Any objections to this
2 witness being excused?

3 MR. STUMBO: None from the State.

4 MS. BOLEN: No, sir, Your Honor.

5 THE COURT: You're excused, ma'am. Thank you.

6 THE WITNESS: Thank you.

7 (Whereupon, the witness steps down from the witness
8 stand.)

Child C

9 MR. STUMBO: The State calls [REDACTED].

10 THE COURT: Before this witness is sworn in let me see
11 the lawyers for just a minute.

12 (Whereupon, a bench conference was held)

13 THE COURT: Mr. Foreman, and ladies and gentlemen of
14 the jury, we need to take up a matter of law with the
15 lawyers, so I'm going to ask that you go back to your jury
16 room. I don't anticipate it being very long, but if you'll
17 go back there for just a few minutes, please.

18 (Whereupon, the jury exits the courtroom at 12:07 p.m.)

19 THE COURT: Back on the record. Let me just go ahead
20 and establish for the record. There's going to be a short
21 series of questions for this young lady that I'm going to
22 ask her before she is sworn in. And assuming that she
23 responds as I anticipate her responding, then when the jury
24 comes back in I'll ask those same questions, she'll be sworn
25 in, and then we'll engage in any testimony that you intend

1 to offer.

2 Now, since the jury is out, I know that there was an
3 issue yesterday in some pretrial motions about some possible
4 testimony from the siblings. Do we need to deal with that
5 at this time, or deal with it as we get into her testimony?

6 MS. BOLEN: Your Honor, based on Solicitor Stumbo's
7 responses, they would not be eliciting any testimony about
8 any sort of prior bad acts. Assuming -- I mean, if she
9 starts to testify about that or if there's actually any
10 question --

11 THE COURT: Sure.

12 MS. BOLEN: -- I'll actually object, but --

13 THE COURT: Right.

14 MR. BOLEN: -- my understanding is that they're not
15 going to focus on that.

16 THE COURT: So that one particular issue we talked
17 about yesterday may not, in fact, be an issue?

18 MS. BOLEN: It sounds like it may not. Yes, sir.

19 THE COURT: Okay. Very good. Give me just one second,
20 Child C
please. Hi, [REDACTED]. You want to come up here? Don't
21 swear her in yet. I'm going to get you to come up and sit
22 in this chair right here. Okay? Just have a seat and make
23 yourself comfortable. How are you doing?

24 Child C
[REDACTED]: Good.

25 THE COURT: How old are you?

1 Child C
[REDACTED]: Eight.

2 THE COURT: Eight. Well, you're a pretty girl. I'm
3 going to ask you some questions and you listen to my
4 questions. Okay? Do you know the difference between right
5 and wrong?

6 Child C
[REDACTED]: Yes.

7 THE COURT: Do you know it is right to tell the truth
8 and wrong to lie and not tell the truth?

9 Child C
[REDACTED]: Yes.

10 THE COURT: What would happen to you, Child C
11 [REDACTED], if you
12 told a story, or told a lie, or said something that wasn't
13 true? What would happen?

14 Child C
[REDACTED]: You get in trouble.

15 THE COURT: You get in trouble? Now, if I let you
16 testify as a witness in this courtroom are you going to tell
17 the truth?

18 Child C
[REDACTED]: Yes.

19 THE COURT: I'm going to ask the State, is there any
20 questions concerning capacity for this young lady to testify
21 as a witness? Any additional questions you want the court
22 for me to ask?

23 MR. STUMBO: I think you covered that ground well, Your
24 Honor.

25 THE COURT: How about from the Defense?

MS. BOLEN: If I could just -- just a few, Your Honor,

1 if I could.

2 THE COURT: What I would like to do, if there are some
3 additional questions, if you would write them out and let me
4 -- let me look at them. And then if I feel like they're
5 appropriate then I will ask them. So we'll just be at ease.

6 Child C
And [REDACTED], you just keep sitting right there. Okay?

7 We're off the record.

8 (Whereupon, there was a brief pause in the proceedings)

9 THE COURT: What I'd like to do, would you mind just
10 Child C
taking [REDACTED] back out so we can talk about this?

11 So I'm going to bring you back in just a minute,
12 Child C
[REDACTED]. Okay? So don't go anywhere.

13 (Whereupon, there was a brief pause in the proceedings)

14 THE COURT: There are four proposed questions from the
15 Defense and the State has an objection.

16 MR. STUMBO: Your Honor, Mr. Brown's going to handle
17 it.

18 MR. BROWN: Judge, I think the first three voir dire
19 questions, I think you've pretty much covered those in the
20 questions you've already asked. And a part of the last one,
21 you know, I think that's kind of subjective on what her
22 parenting -- you know, what parents what to do on that
23 question. I think you've kind of covered, you know, what she
24 would -- she'd get in trouble if she told a lie. I think
25 that's already been told, so I just think we've already

1 covered it. This will just be an extra --

2 THE COURT: I'm going to -- I'm not going to ask any of
3 these questions. I'm going to have this marked as Court's
4 Exhibit No. 2.

5 MS. BOLEN: Yes, Your Honor.

6 THE COURT: I just think if she recognizes that if she
7 tells a lie that she gets into trouble, I don't think that
8 we need to pin her down as far as what kind of trouble she
9 thinks she would get in. So that kind of covers the first
10 two. Are there any times you can get in trouble for telling
11 the truth. That's a little -- with all due respect, a
12 little confusing for me. And, of course, I'm not suggesting
13 just because it's confusing to me that it would be confusing
14 to an eight-year-old. She may perfectly understand that.
15 But I don't want to risk getting her confused. Then we've
16 really gone too far about dealing with her and her sister.
17 But I want you all protected. This will be marked as
18 Court's Exhibit No. 2.

19 (Whereupon, Court's Exhibit No. 2 was entered into
20 evidence)

21 THE COURT: So what we will do, we'll bring her back.
22 Bring the jury in and bring her back. I will ask those
23 questions again. And then she will be sworn in and then
24 start with the testimony.

25 MR. BROWN: Yes, sir.

1 MS. BOLEN: Your Honor, we've got one matter we'd like
2 to bring up before the jury is brought back in.

3 THE COURT: Sure. You want to do it before we bring
4 Child C ██████████ in?

5 MS. BOLEN: That would be great.

6 THE COURT: Okay. Just hold one second.

7 MS. BOLEN: Your Honor, we'd ask that Your Honor not
8 reask those questions of her in front of the jury since
9 competency has been determined by Your Honor. Our position
10 is it improperly bolsters her testimony to the jury for Your
11 Honor to ask those questions when those aren't being asked
12 of any other witness.

13 THE COURT: Okay. Well, I think that's a pretty good
14 point. So unless the State just has a strong position on
15 that, I'm going to follow the suggestion of Defense and not
16 re-ask those questions. Make a finding for the record that
17 it's the court's determination that Child C ██████████ is
18 competent to testify as a witness in this case.

19 MR. BROWN: Correct, Your Honor. And just for the
20 record, at cite Rule 601 I was going to say the same thing.
21 I think every witness is presumed -- there's a presumption
22 of competency unless Your Honor has a problem after asking
23 her the questions you just asked her.

24 THE COURT: I think both sides make a good point, and I
25 appreciate that.

1 MR. BROWN: Yes, sir.

2 THE COURT: So we're going to bring her in. We'll get
3 -- let's go ahead and bring the jury in and then you can
4 call your next witness. Let's do it that way.

5 MR. BROWN: Thank you, Your Honor.

6 (Whereupon, the jury enters the courtroom at 12:07)

7 THE COURT: Let the record reflect the jury is back in.
8 Call your next witness, Solicitor.

9 MR. BROWN: The State calls Child C [REDACTED].

10 Child C [REDACTED], having been first
11 duly sworn, testified as follows:

12 THE COURT: Now, Child C [REDACTED], you need to speak loud so we
13 can all hear you. Okay? So you can get close to that
14 microphone. Okay? Your witness, Solicitor.

15 MR. BROWN: Thank you, Your Honor.

16 DIRECT EXAMINATION

17 BY MR. BROWN:

18 Q Child C [REDACTED], I'm going to stand probably right back here so
19 I can make sure I can hear you and the jury can hear you

20 also. Okay? Child C [REDACTED], what's your full name?

21 A Child C [REDACTED].

22 Q And, Child C [REDACTED], how old are you?

23 A Eight.

24 Q Do you know when your birthday is?

25 A Yes.

- 1 Q What is that?
- 2 A ██████████.
- 3 Q And, ^{Child C}██████████, are you in school?
- 4 A Yes.
- 5 Q What school you go to?
- 6 A Springfield.
- 7 Q And where is that?
- 8 A In Greenwood.
- 9 Q And who's your teacher?
- 10 A Ms. Rhodes.
- 11 Q Ms. Rhodes. And what grade are you in?
- 12 A Second.
- 13 Q Second. Do you have a favorite subject?
- 14 A Yes.
- 15 Q What is that?
- 16 A Math.
- 17 Q Math. And we just had Christmas. Did you get any big
- 18 presents for Christmas?
- 19 A Yes.
- 20 Q What did you get?
- 21 A A tablet.
- 22 Q A tablet. And, ^{Child C}██████████, do you have any sisters?
- 23 A Yes.
- 24 Q Can you tell me their names?
- 25 A ^{Child I and Child R}██████████, and I had one that died.

1 Q What was her name?
victim

2 A [REDACTED].

3 Q And who's your momma?

4 A Melody.

5 Q Where is she?

6 A She's right there by Marianne.

7 Q Okay. And Ms. Marianne, she's the -- she's a victim's
8 advocate, right? She works with my office, right?

9 A Yeah.

Child C

10 Q Okay. And, [REDACTED], where do you live?

11 A Greenwood, South Carolina.

12 Q And do you know where you lived two years ago?

13 A Yes.

14 Q Where?

15 A Calhoun Falls, South Carolina.

16 Q Okay. I want to show you what's already been entered
17 evidence as State's Exhibit 32. I want to show you this
18 picture. What is that?

19 A The house that I used to live in in Calhoun Falls.

20 Q What was the address on that house, do you know?

21 A [REDACTED].

22 Q Okay. And look at that house. What do you see -- what
23 do you see on that front porch?

24 A A baby thing that was for my sister.

25 Q Which sister?

1 A ██████████ victim

2 Q ██████████ victim. I'm going to put this up here. Can you see
3 that?

4 A (Indicates affirmative)

5 Q Okay. Is that the house --

6 A Yes.

7 Q -- that you lived in two years ago? Who lived with you
8 at that house?

Child I and Child R

9 A My mom, me, ██████████, and Shawn.

10 Q Okay. And who else lived there?
victim

11 A ██████████.

12 Q And you said Shawn. Who is Shawn?

13 A He's the one that -- he's a person that used to babysit
14 us.

15 Q Do you see Shawn here today?

16 A Yes.

17 Q Can you point him to me?

18 (Whereupon, witness points to Defendant)

19 Q What color shirt is he wearing?

20 A A blue one.

21 MR. BROWN: Judge, let the record reflect that she has
22 identified Shawn White in this case.

23 THE COURT: So noted for the record.

Child C

24 Q Now, ██████████, I want to show you a picture that is

25 marked State's -- just an Exhibit right now, 33. I want you

1 to tell me who that is.

2 A [REDACTED] victim.

3 Q Is that your little sister, [REDACTED] victim?

4 A Yes.

5 Q Do you know about when that picture was taken?

6 A July.

7 Q It was July before she passed away?

8 A Yes.

9 Q Okay.

10 MR. BROWN: Judge, the State moves in as State's --
11 it's been marked for exhibit purposes as State's 33 into
12 evidence.

13 THE COURT: All right. And what says the Defense?

14 MS. BOLEN: No objection, Your Honor.

15 THE COURT: All right. Without objection it'll be
16 entered into evidence for the State, No. 33.

17 (Whereupon, State's Exhibit No. 33 was entered into
18 evidence)

19 Q [REDACTED] Child C, I'm going to do this again. I'm going to
20 publish this picture to the jury. Again, who is that little
21 girl?

22 A [REDACTED] victim.

23 Q And that's your little sister?

24 A Yes.

25 Q Okay. Now, getting back to the house and who lived

- 1 with you. When did -- do you remember when Shawn came to
2 live with you?
- 3 A No.
- 4 Q You just know he lived in he house with you at that
5 address?
- 6 A Yes.
- 7 Q Okay. I'm going to show you State's Evidence No. 13.
8 This is another picture. Do you recognize that picture?
- 9 A Yes.
- 10 Q What is that?
- 11 A The livingroom.
- 12 Q The livingroom. What all do you see in that picture?
- 13 A I see the TV, the baby crib, our self and our pictures,
14 and our lamp.
- 15 Q And whose crib was that?
victim
- 16 A [REDACTED]'s.
- 17 Q That was ^{victim} [REDACTED]'s. I want to show you another picture,
18 State's Evidence 14. See if you can recognize this.
- 19 A It's still our livingroom.
- 20 Q Okay. And is it just a different picture. Different
21 angle?
- 22 A Yes.
- 23 Q Okay. And this is State's Evidence 16. What is that?
- 24 A Our front door.
- 25 Q Front door. What are these -- what's at the bottom of

1 that picture?

2 A Steps.

3 Q Steps to your front of the house?

4 A Yes.

5 MS. BOLEN: Your Honor, at this point we've got an
6 objection just based on this being cumulative and not
7 relevant based on prior testimony that's introduced the same
8 thing.

9 THE COURT: The object is showing this witness those
10 photographs that are already into evidence? I just want to
11 make sure I understand the objection.

12 MS. BOLEN: Yes, sir. It's an objection based on
13 relevance. It's already been testified to.

14 THE COURT: Right. But certainly since the pictures
15 are into evidence he can certainly ask this witness
16 questions concerning those photographs. So noted for the
17 record. Overruled.

18 MS. BOLEN: Thank you, Your Honor.

19 MR. BROWN: Thank you, Your Honor.

20 Child C
20 Q Now, [REDACTED], do you remember -- where did your mom
21 work?

22 A At the bar.

23 Q Where was that bar located?

24 A Abbeville.

25 Q In Abbeville. And when she went to work who would be

- 1 at the house with you?
- 2 A Shawn.
- 3 Q And going to the -- to the reason why we're here. The
- 4 day before ^{victim} [REDACTED] had to go to the hospital, do you remember
- 5 that night before?
- 6 A Yes.
- 7 Q And who was -- who was all at the house the night
- 8 before ^{victim} [REDACTED] had to go to the hospital?
- 9 A Me and my sisters.
- 10 Q Which sisters were those?
- 11 A ^{Child I} [REDACTED] and ^{Child R} [REDACTED].
- 12 Q And ^{victim} [REDACTED] was there?
- 13 A Yes.
- 14 Q And do you remember what you all did that night?
- 15 A We played.
- 16 Q Did ^{victim} [REDACTED] play with you?
- 17 A Yes.
- 18 Q How was she acting that night. Do you remember?
- 19 A She was -- she was acting like she was having fun
- 20 playing with us.
- 21 Q She was having fun playing with you. Who was -- who
- 22 was at the house with you that night when you all were
- 23 playing?
- 24 A Shawn.
- 25 Q And where was your mother?

1 A At work.

2 Q Was anybody else at the house with you that night
3 besides Shawn?

4 A No.

5 Q Do you know when you went to bed that night? Do you
6 remember? I know it's over a year and a half ago that
7 night?

8 A Yes.

9 Q And how do you remember when you went to bed?

10 A What did you say?

11 Q Do you know when you went to bed?

12 A Yeah.

13 Q Tell me when you went to bed that night?

14 A I went to bed after me and my sister were done with
15 playing.

16 Q Did you stay up longer than you usually stayed up?

17 A Yes.

18 Q And why were you able to do that?

19 A Because we were having fun.

20 Q Okay. You all were having fun so you stayed up later.
21 Who told you to go to bed that night?

22 A Shawn.

23 Q And did you go to bed?

24 A Yes.

25 Q Where did you go to bed that night?

- 1 A In our room.
- 2 Q Who went in that bedroom with you?
- 3 A Me and ^{Child I} and ^{Child R}.
- 4 Q So the three older girls stayed in the bedroom, right?
- 5 A Yes.
- 6 Q Where did ^{victim} sleep?
- 7 A She slept in the livingroom.
- 8 Q Who else slept in the livingroom?
- 9 A Shawn.
- 10 Q What would he sleep on?
- 11 A The couch.
- 12 Q And where's that couch -- where would that couch be in
- 13 relation to where ^{victim}'s crib is?
- 14 A It was right across from it.
- 15 Q Right across from it. I want to show you another
- 16 picture, State's Evidence Number 27. Do you recognize that
- 17 picture?
- 18 A A corner of our room when you're getting in.
- 19 Q That's the corner of your bedroom? Is that your door?
- 20 A Yes.
- 21 Q Okay. Now, ^{Child C}, when you -- when Shawn put you in
- 22 the bedroom that night did you get back out?
- 23 A Yes.
- 24 Q You could get back out of the room?
- 25 A We could not.

1 Q You could not get back out of the room? Why couldn't
2 you get back out of the room?

3 A Because it was locked.

Child C

4 Q It was locked? And, [REDACTED], did you hear anything
5 that night that you remember?

6 A Yes.

7 Q What did you hear that night?

8 A I heard a banging sound.

9 Q A banging sound? What else did you hear?

10 A I heard crying.

11 Q Who crying?

victim

12 A [REDACTED].

13 Q And then when did you hear the banging? Was the crying
14 before the banging, or how was that?

victim

15 A The banging was first and then [REDACTED] started crying.

16 Q And who was in the house with you at that time?

17 A Shawn.

18 Q And where was the banging noise coming from?

19 A The livingroom.

20 Q And who was in that livingroom?

victim

21 A Shawn and [REDACTED].

22 Q Can you make the sound that you heard that night?

23 A Yeah.

24 Q If you need to you can get up.

25 (Whereupon, the witness indicates make banging sounds)

- 1 Q Was it about that noise?
- 2 A Yes.
- 3 Q Could you clearly hear it?
- 4 A Yes.
- 5 Q And after that banging noise what did ██████ do? I know
victim
- 6 you couldn't see her because you were in your room, but what
- 7 could you hear?
- 8 A I could hear crying from ██████.
victim
- 9 Q And then did she keep on crying or did she stop?
- 10 A She stopped.
- 11 Q Did you ever hear her cry again after that?
- 12 A No.
- 13 Q Do you know when your mom got home that night?
- 14 A No.
- 15 Q You don't? You just know she got home sometime in the
- 16 middle of the night?
- 17 A Yes.
- 18 Q Now, ██████, the next morning when you woke up what
Child C
- 19 did you and your sister's do and your mom?
- 20 A ██████ and ██████ and momma went to the store and I was
Child I Child R
- 21 there by myself with ██████.
victim
- 22 Q Okay. And when they went to the store, where was the
- 23 store in relation to your house? How far away was the store
- 24 from your house?
- 25 A I can remember the stores that we went to.

- 1 Q What stores were those?
- 2 A I think they went to Dollar General. That was --
- 3 that's across from our house.
- 4 Q Was that -- were they gone very long?
- 5 A No.
- 6 Q They weren't gone very long?
- 7 A No.
- 8 Q When you were at the house with ^{victim} [REDACTED] by yourself what
- 9 ^{victim} was [REDACTED] doing?
- 10 A Sleeping.
- 11 Q Was she in her crib?
- 12 A Yes.
- 13 Q Did she make any noises or anything?
- 14 A No.
- 15 Q Did she ever move around that you could tell?
- 16 A No.
- 17 Q That morning when you and your sisters were up and your
- 18 mom was up did you ever see your momma do anything to ^{victim} [REDACTED]?
- 19 A No.
- 20 Q Did you ever hear any banging noise on the floor when
- 21 ^{victim} your mom was with [REDACTED]?
- 22 A No.
- 23 Q When your mom and ^{Child I} [REDACTED] and ^{Child R} [REDACTED] got back from the
- 24 store what do you remember?
- 25 A I remember that momma laid her on the couch.

- 1 Q Laid [REDACTED] ^{victim} on the couch?
- 2 A Yes..
- 3 Q What did [REDACTED] ^{victim} do?
- 4 A She just had one eye open.
- 5 Q Did she make any noises?
- 6 A No.
- 7 Q She didn't cry?
- 8 A No.
- 9 Q What did your momma do then?
- 10 A She called 9-9-1. ^{victim}
- 11 Q Did she know what was wrong with [REDACTED]?
- 12 A No.
- 13 Q Was she scared?
- 14 A Yes.
- 15 Q Were you scared?
- 16 A Yes.
- 17 Q After she called 9-1-1 did anybody come to your house?
- 18 A Yes.
- 19 Q Who came to your house?
- 20 A The ambulance and the police.
- 21 Q What did they do when they got to the house?
- 22 A They came -- came in -- the police came in our room and
- 23 asked us what was our favorite toy.
- 24 Q What's your favorite toy? And looking at the picture,
- 25 do you remember what your favorite toy was at that time?

- 1 A No.
- 2 Q Look at this picture, State's Evidence 27. What is
- 3 that?
- 4 A Our room.
- 5 Q Did you all have a lot of toys in that room?
- 6 A Yes.
- 7 Q Who gave you all of these toys?
- 8 A Santa and momma.
- 9 Q So you had a lot of favorite toys, didn't you?
- 10 A Yes.
- 11 Q After the policeman took you back there did you see
- 12 your momma or ^{victim} again after that that day?
- 13 A I saw my momma.
- 14 Q Saw your momma? Did you see ^{victim}?
- 15 A No.
- 16 Q Were you able to ever see ^{victim} again from that time?
- 17 A No.
- 18 Q Where did yo go after the policeman asked you about the
- 19 toy and your momma left that day? Where did you go?
- 20 A To our grandma's.
- 21 Q To your grandmother's?
- 22 A Then we went to our Aunt Joanie's.
- 23 Q Your Aunt Joanie's. Now, ^{Child C}, who do you live with
- 24 now?
- 25 A My mom.

- 1 Q And who else?
- 2 A My sisters. Child R Child I
- 3 Q Your sisters [REDACTED] and [REDACTED]?
- 4 A Yes. Child I
- 5 Q And her name is [REDACTED] but she goes by [REDACTED], right?
- 6 A Right.
- 7 Q Okay. And you all live in Greenwood?
- 8 A Yes.
- 9 Q Child C [REDACTED], I want to show you what's been marked -- I'm
- 10 going to show you what's been marked as State's Evidence 7.
- 11 Can you tell me what that is?
- 12 A Our kitchen.
- 13 Q Kitchen. What's on that table?
- 14 A The plates and bowls.
- 15 Q What were you all about to do with those bowls that
- 16 day?
- 17 A We were eating.
- 18 Q Is that what your mom went to the store to get that
- 19 morning?
- 20 A I don't know.
- 21 Q You don't remember? That's fine. If you don't
- 22 remember, that's fine. But is that bowls on the table
- 23 though?
- 24 A Yes.
- 25 Q Okay. I'm going to show you probably one last picture,

1 and this is State's Evidence 11. What do you see in that
2 picture?

3 A The candles, our little cabinet, and our drawers under
4 the -- I see a table. Our TV is on top of the table.

5 Q What's this over here on the bottom left?

6 A The couch.

7 Q Who slept on that couch?

8 A Shawn.

9 Q And that couch is in the same room as State's Evidence
10 12. What is that?
victim

11 A ██████████'s bed.

Child C

12 Q victim ██████████'s bed? Okay. ██████████, just a couple more

13 questions. In that den what was the floor like? Was it
14 hard or was it soft? Do you remember?

15 A I can't remember.

16 Q Can't remember? But it was a normal floor from what
17 you remember?

18 A Yes.

19 MR. BROWN: No further questions, Your Honor.

20 THE COURT: Okay. Cross examination, Ms. Bolen.

21 MS. BOLEN: Thank you, Your Honor.

22 CROSS EXAMINATION

23 BY MS. BOLEN:

Child C

24 Q Hi, ██████████. I've got some questions for you. All

25 right? When you were talking to Mr. Brown you said that you

- 1 were -- you were in bed, right, right with the door closed?
- 2 A Yes.
- 3 Q Okay. And you couldn't see out of your bedroom into
- 4 the livingroom, right?
- 5 A Yes.
- 6 Q You couldn't see into the livingroom or into the
- 7 kitchen or anything?
- 8 A Right.
- 9 Q Okay. And there's a TV in the livingroom, right?
- 10 A Right.
- 11 Q And the TV makes noise if it's on?
- 12 A Yes.
- 13 Q Okay. So when you heard that noise you didn't see
- 14 anything, right?
- 15 A Right.
- 16 Q So you didn't know what the noise was?
- 17 A I heard a banging sound.
- 18 Q So the banging sound could have been -- could have been
- 19 someone knocking on the door? Could have been something
- 20 like that?
- 21 A Yes.
- 22 Q Could have been something from the TV?
- 23 A I think so.
- 24 Q Okay. And you said you heard the banging noise and
- 25 then you hear some crying; is that right?

1 A Right.

2 Q And in that morning you said that your mom left with
3 your two middle sisters, right?

4 A Right. victim

5 Q And you were home with [REDACTED], right?

6 A Yes.

7 Q And you were waiting outside for your mom to come back,
8 right?

9 A I was waiting outside, then I kept on going back in to
10 check on victim [REDACTED].

11 Q Okay. And you don't -- you didn't see any marks on her
12 then, right?

13 A I did see some red dots on her.

14 Q But that was when your mom was back in the house?

15 A I saw them on there when she was laying in the bed,
16 too.

17 Q And after that day you went and lived -- you said you
18 lived with your grandma first, right?

19 A Not -- just for -- just for a little bit, then we went
20 to our Aunt -- to our Aunt Joanie's.

21 Q Okay. And you lived with Aunt Joanie for a while,
22 right? A couple of months?

23 A Yeah.

24 Q And when you lived there your mom came and saw you
25 every day?

- 1 A Yes.
- 2 Q Okay. And you said when you were talking to Mr. Brown
- 3 that the door was locked, right?
- 4 A Yes.
- 5 Q Do you remember talking to a woman named Ms. Trisha
- 6 after this happened a couple of times?
- 7 A Yeah.
- 8 Q And do you remember telling her you weren't sure if the
- 9 door was locked?
- 10 A The door was locked.
- 11 Q Okay. And you talked to Ms. Trisha a couple of times,
- 12 right?
- 13 A Yeah.
- 14 Q And the first time was about a week after this?
- 15 A I can't remember.
- 16 Q Okay. And you didn't -- you didn't tell her about the
- 17 banging noise and [REDACTED] ^{victim} crying until the second time you
- 18 talked to her, right?
- 19 A Yes.
- 20 Q So it was a couple of weeks after this --
- 21 A Yes.
- 22 Q -- right? Okay. You didn't tell her about it the
- 23 first time, right?
- 24 A Right.
- 25 Q And during that time you were living with Aunt Joanie?

1 A Yes.

2 Q But you were seeing your mom every day?

3 A Yes.

Child C

4 Q Okay. And, [REDACTED], I've just got another -- just a
5 very few questions. When you say you lived with your
6 grandma, that's your mom's mom, right?

7 A Yes.

8 Q And is Aunt Joanie your mom's sister or her -- is that
9 her aunt as well?

10 A I don't know.

11 Q You don't know. Okay.

12 MS. BOLEN: I have nothing further. Thank you.

13 THE COURT: Anything on redirect?

14 MR. BROWN: Judge, just a couple of things.

15 REDIRECT EXAMINATION

16 BY MR. BROWN:

Child C

17 Q [REDACTED], she was asking you about when you were in the
18 bedroom and the door was locked. Tell me again what you
19 heard. Could you tell if there was a TV on?

20 A No.

21 Q What did the noise sound like that you heard?

22 A It sounded like a --

23 MS. BOLEN: Objecting as to asked and answered already.

24 MR. BROWN: Judge, I'm trying to clarify what she
25 asked.

1 THE COURT: Right. I think in response to questions
2 about the sound could have come from a TV, or I think you
3 asked front door, I think it's appropriate redirect. Not
4 your objection and overruled.

5 MR. BROWN: Thank you, Your Honor.

6 MS. BOLEN: Thank you, Your Honor.

7 THE COURT: You may want to repeat it again.

8 Q Again, ^{Child C} [REDACTED], where did that sound sound like it came
9 from?

10 A I think it sounded like it came from the floor.

11 Q From the floor of the house?

12 A Yes.

13 Q It was just a boom, boom, boom noise?

14 A Yes.

15 Q And you said ^{victim} [REDACTED] was crying?

16 A I can't remember.

17 Q But at some point right around the boom, boom, boom she
18 was crying?

19 A Yes.

20 Q And then within a short time after the sound did she
21 stop crying?

22 A Yes.

23 Q And did you hear her cry again?

24 A No.

25 MR. BROWN: No further questions.

1 THE COURT: Recross?

2 MS. BOLEN: No, sir.

3 THE COURT: All right. Thank you very much.

4 (Whereupon, the witness steps down from the witness
5 stand)

6 THE COURT: I think this would be a good time now to
7 take a lunch break. Mr. Foreman, and ladies and gentlemen
8 of the jury, we're going to break for lunch, and we have a
9 lot of work to do this afternoon, as I understand it. So if
10 you could be back here at a quarter until 2:00, that'll give
11 about an hour and 10 minutes. Hopefully that'll be enough
12 time to get something to eat or run some errands or whatever
13 you need to do.

14 Again, I remind you not to talk about this case,
15 anything about this case, anything about this case amongst
16 yourselves or anybody that you may come in contact with
17 during your lunch break. And we'll see you back here at a
18 quarter until 2:00. Okay? Have a good lunch.

19 (Whereupon, the jury exits the courtroom at 12:34 p.m.)

20 THE COURT: All right. We'll be in recess until
21 quarter until 2:00.

22 MR. BROWN: Thank you, Judge.

23 MS. BOLEN: Thank you, Your Honor.

24 (Whereupon, a lunch break was taken from 12:35 p.m. to
25 1:52 p.m.)

1 THE COURT: We're back on the record after a lunch
2 break. And prior to breaking at lunch the Defense handed
3 the Court a motion to exclude the testimony of Child I
4 because she is not competent to testify. I think in
5 this particular situation, because of the allegations made
6 by the Defense concerning this child witness we almost will
7 have to take her testimony in camera. I mean, not only
8 examine her with the standard questions about telling the
9 truth and you know the difference between telling a truth
10 and telling a lie, but because the allegations made by the
11 Defense, it appears to me at least, that we would need to
12 take her complete testimony in camera. Let me -- let me get
13 some thoughts. Let me hear from the Defense first because
14 it's their motion, and then certainly hear from the State on
15 that particular thought of the court.

16 MS. BOLEN: Yes, Your Honor. Thank you. I don't
17 believe we have objection to taking testimony in camera from
18 her. Our motion is based specifically with respect to
19 Child I based on her forensic interviews in which she
20 talked about things like monsters and ghosts living in the
21 house. Talking about seeing monsters, hearing them, which,
22 you know, that was after going through the truth, lie
23 analysis with a forensic interviewer.

24 THE COURT: Right.

25 MS. BOLEN: And it's also based on some counseling

-- 1 records we've received in which the counselor indicated that
2 was lying was something she had to go over with Child I [REDACTED].
3 And I think our -- the brief we submitted with the motion
4 goes over the case law. But just directing Your Honor's
5 attention to the State v. Kneads, as well as the State v.
6 Green case, both of which are cited. The factors for
7 competency, "The witness has to be able to perceive the
8 event with a substantial degree of accuracy." We think her
9 statements to the forensic interviewer show that that's not
10 something she was able to do. Communicate about it
11 intelligibly. And again, that was -- oddly that's addressed
12 by some of these sort of fantastical statements she made in
13 the interview about things that just aren't true.

14 THE COURT: Right.

15 MS. BOLEN: And then we're concerned about her ability
16 to tell the truth and her understanding of that based on the
17 counselor's notes.

18 THE COURT: I think if you look at it -- I mean, you
19 cite both the Rule 601 which, you know, I have to make a
20 finding that she is able to express herself and capable of
21 understanding to tell the truth. And then going further
22 with State vs Green. And under State vs Green it appears
23 that there was an in camera testimony by the child before
24 the court made the determination as to competency. So I
25 think that's how we need to proceed. But I'll be glad to

1 hear from the State on that.

2 MR. STUMBO: Well, Judge, my position on this motion is
3 that quite frankly, based on 601, I think the rule states
4 pretty clearly that a witness is presumed competent --

5 THE COURT: Right.

6 MR. STUMBO: Unless Your Honor, in your discretion,
7 finds that there's issues as to ability to discern between
8 truth and a lie, ability to communicate things that really
9 happened.

10 My concern with a full vetting of the testimony
11 beforehand is we're dealing with a six-year-old child. To
12 make her go through this whole process twice I think -- is a
13 great concern to me. And I don't think that the rules, nor
14 the case law require that. They require Your Honor to make
15 a determination of whether she understands why she's here.
16 Understands that -- you know, under the case law, does she
17 have personal knowledge of what happened that night. I
18 think we can ask her that. And ultimately, you know, can
19 she swear to tell the truth under 601. And then under the
20 case law, does she know it's right to tell the truth and
21 wrong to lie. I mean, same sort of questions you ask
22 Child C
23 to determine whether you felt comfortable that she
24 was competent.

25 So I believe the same sort of examination by the court,
instead of by myself and Ms. Bolen would be appropriate for

Child I

Child C

1 [REDACTED] in the same fashion that we handled [REDACTED]. And I

2 don't know anything that was said -- I mean, obviously Ms.

Child I

3 Bolen can cross examine [REDACTED] anything related to stuff

4 that she was talking about in her forensic interview, but I

5 don't know if that's relevant to competency.

6 THE COURT: Right. Well again, I'm really hanging my
7 hat on State vs Green in which there was concerns about the
8 then six-year-old, I think -- maybe I'm not sure of the age.
9 But anyways, there was concern about what that child had

10 seen and was able to express himself. And I agree. I hate

11 to put this child through two rounds of examination. But I

Child I

12 think we have a different situation somewhat between [REDACTED]

Child C

Child I

13 and [REDACTED] because allegations about [REDACTED] were not made

Child C

14 about [REDACTED]. So I think that I -- in order to satisfy my

15 mind that she was able to perceive what she has testified

16 to, that she's firm, I think Green uses the terminology firm

17 and unwavering, at least for a child of that age, and

18 ability to express herself, I don't see how I can do that by

19 just asking the standard four or five questions that I had

Child C

20 asked [REDACTED]. I think we have to go further. And again, I

21 don't want to put her through two rounds of questioning but

22 I don't know how else we can do it for the court to be able

23 to determine competency. And since the allegation has been

24 raised.

25 Now, I'll say this, too, is that, you know, if she

1 testifies and I'm satisfied that she meets these various
2 requirements, the fact that two years ago a counselor felt
3 like she had some problem lying and making up things, I'm
4 not going to really consider that. I mean, I don't have
5 this counselor here to -- you know, to testify to those
6 things, and that was two years ago. So I'm not going to
7 really let that influence me too much. I'm certainly
8 cognizant of what the counselor said two years ago. But,
9 you know, if she does a fairly decent job on the stand then,
10 you know, I'm going to let that certainly control over what
11 the counselor said two years ago.

12 So again, I don't see how else I can do this other than
13 having her testify in full in camera.

14 MR. STUMBO: Okay. I understand your ruling, Your
15 Honor.

16 THE COURT: Anything from the Defense on this point?
17 On this motion? And certainly I guess what we'll do is
18 after she testifies then, you know, let both sides argue on
19 the issue of competency once we hear her testimony.

20 MS. BOLEN: Yes, sir.

21 THE COURT: Now, let me just ask the State. Is it
22 anticipated that her testimony on direct would be of the
23 same length as ^{Child C} [REDACTED]'s testimony, or do you think it would
24 be --

25 MR. STUMBO: Probably less, Your Honor.

1 THE COURT: It would be less?

2 MR. STUMBO: Yes, sir.

3 THE COURT: All right. That makes me feel a little
4 better. All right. Let's do this then. Outside the
5 presence of the jury let's bring in ^{Child I} [REDACTED]. And I'll do the
6 standard questions and then allow for the direct to take
7 place.

8 (Whereupon, witness enters the courtroom)

9 THE COURT: Hey, ^{Child I} [REDACTED].

10 MR. BROWN: Your Honor, do you want us to go ahead and
11 ^{Child I} have [REDACTED] come up?

12 THE COURT: Yeah, and I'll talk with her for just a few
13 minutes and then allow direct to start.

14 ^{Child I} How are you, [REDACTED]?

15 ^{Child I} [REDACTED]: Good.

16 THE COURT: Okay. Now, what I'm going to need for you
17 to do, when you talk, you talk into that microphone. Okay?
18 Pretend like you're singing in front of a big audience, but
19 I don't want you to sing. Okay? I guess you know that
20 ^{Child C} [REDACTED] was here earlier and she talked to us. Did she tell
21 you that, that she was here? You know what, I gave her a
22 piece of candy. And so, I'm going to give you a piece of
23 candy. But you can't have it until you're finished. Okay?
24 Is that okay?

25 Now, tell me your name.

1 Child I
2 [REDACTED]: [REDACTED].

3 THE COURT: Okay. And why do people call you [REDACTED]?

4 Where did that come from?

5 Child I
6 [REDACTED]: I don't know.

7 THE COURT: You don't know? What would you like for us
8 to call you, [REDACTED] or [REDACTED]?

9 Child I
10 [REDACTED]: [REDACTED].

11 THE COURT: Okay, Child I [REDACTED]. It will be [REDACTED] then.

12 Let me ask you. How old are you?

13 Child I
14 [REDACTED]: Six.

15 THE COURT: Okay. I guess you're in school, right?

16 Child I
17 [REDACTED]: Yes, sir.

18 THE COURT: Okay. And what grade in school are you?

19 Child I
20 [REDACTED]: First grade.

21 THE COURT: First grade. Okay. Do you know the
22 difference between right and wrong?

23 Child I
24 [REDACTED]: Yes, sir.

25 THE COURT: All right. Do you know it is right to tell
the truth and wrong to tell a lie?

26 Child I
27 [REDACTED]: Yes, sir.

28 THE COURT: Now, what happens, Child I [REDACTED], if you were to
29 tell a story or a lie today? What would happen?

30 Child I
31 [REDACTED]: I don't know.

32 THE COURT: You don't know. Okay. Now, you know
33 you're here to talk to us? You understand that, don't you?

1 Child I
[REDACTED]: Yes, sir.

2 THE COURT: Okay. Now, when you're talking with us
3 today is it your plan to tell the truth, or is it your plan
4 to tell a lie, or is it your plan to tell a little of both?

5 Child I
[REDACTED]: Tell the truth.

6 THE COURT: Now, have you ever told a lie before? Have
7 you ever told one to your mom?

8 Child I
[REDACTED]: I can't remember.

9 THE COURT: You can't remember. All right. But if
10 someone tells a story or tells a lie or makes something up
11 does anything ever happen?

12 Child I
[REDACTED]: Yes, sir.

13 THE COURT: Tell me what happens.

14 Child I
[REDACTED]: You would get in trouble.

15 THE COURT: Get into trouble. Okay.

16 Okay. I'm going to go ahead and turn it over to the
17 State and allow you to conduct an examination with
18 appropriate cross from the Defense. Okay. You listen to
19 what everybody asks you. Okay, [REDACTED]?

20 Child I
[REDACTED]: Yes, sir.

21 Child I
(Whereupon, In Camera examination of [REDACTED])

22 DIRECT EXAMINATION

23 BY MR. STUMBO:

24 Q Child I
[REDACTED], can you tell us how old you are?

25 A I'm six-years-old.

1 Q And you said you were in the first grade, right? And
2 where do you go to school?

3 A Springfield.

4 Q Good. And you're in the first grade at Springfield.
5 Now, could you tell me where you live right now? Do you
6 know what town you live in?

7 A Greenwood.

8 Q Okay, you live in Greenwood. And who do you live with?
9 Who lives in the house with you?

10 A My mom and my sisters.

11 Q Your mom, and her name -- what's her name?

12 A Melody.

13 Q All right, Melody. And she's here. And your sisters,
14 what are their names?

15 A Child C [REDACTED] and Child R [REDACTED].

16 Q And is Child C [REDACTED] older than you?

17 A Yes, sir.

18 Q And how old is Child C [REDACTED]?

19 A She's eight.

20 Q And how old is Child R [REDACTED]?

21 A She's four.

22 Q And do you have any other sisters, or have you had any
23 other sisters?

24 A I had one named victim [REDACTED].

25 Q And was victim [REDACTED] a baby or a big girl?

- 1 A A baby.
- 2 Q What happened to [REDACTED] ^{victim}?
- 3 A She died.
- 4 Q And what house did you live in -- you say you live in ^{victim}
5 Greenwood now. What house did you live in when [REDACTED] died?
- 6 A We lived in Calhoun Falls.
- 7 Q Okay. In Calhoun Falls. And I'm going to show you a ^{Child I}
8 little picture, [REDACTED]. I'm going to show you -- what the
9 number on this, it says State's Exhibit 17. I'm going to
10 show you this picture. What is in that picture?
- 11 A ^{victim} [REDACTED]'s swing and --
- 12 THE COURT: I could not hear what she said.
- 13 Q You said ^{victim} [REDACTED]'s swing? Talk in the microphone. You ^{victim}
14 said [REDACTED]'s swing in the picture? Can you say it again?
- 15 A ^{victim} [REDACTED]'s swing and our little table and the mailbox.
- 16 Q Okay. So you lived in that house?
- 17 A Yes, sir.
- 18 Q And that was the one in Calhoun Falls?
- 19 A Yes, sir. ^{Child C}
- 20 Q Okay. And [REDACTED], do you remember the night before ^{victim}
21 [REDACTED] went to the hospital?
- 22 A Yes, sir.
- 23 Q And did you live in that house that we saw in the
24 picture then?
- 25 A Yes, sir.

- 1 Q Okay. And, ^{Child I} [REDACTED], do you remember who -- did you go
2 to sleep that night?
- 3 A Yes, sir.
- 4 Q And what room did you go to bed in?
- 5 A In our bedroom.
- 6 Q Okay. Your bedroom -- you say our bedroom. Do you
7 mean the bedroom -- was ^{Child C} [REDACTED] in that bedroom, too?
- 8 A ^{Child C} [REDACTED] and ^{Child R} [REDACTED] were both in there with me.
- 9 Q Okay. How many beds did you have in there?
- 10 A Three.
- 11 Q Three. Were they bunk beds?
- 12 A There was a bunk bed and a plain bed.
- 13 Q Okay. And so, that night before ^{victim} [REDACTED] went to the
14 hospital did you go -- did you go to bed in that room?
- 15 A Yes, sir.
- 16 Q And who, ^{Child I} [REDACTED], was still in the -- who was in the
17 house outside of the bedroom? Do you know who was out in
18 the bedroom -- or out in the livingroom?
- 19 A ^{victim} [REDACTED] and Shawn.
- 20 Q Okay, ^{victim} [REDACTED] was there. Did ^{victim} [REDACTED] have a place to sleep
21 out in the livingroom?
- 22 A Yes, sir.
- 23 Q And where did she sleep?
- 24 A She slept in the -- in her crib.
- 25 Q Okay. And that crib was out in the livingroom; is that

1 right?

2 A Yes, sir.

3 Q Was there a TV out there in that room, too?

4 A Yes, sir.

5 Q And so, after you went in the room was the door locked
6 or was it open?

7 A It was locked.

8 Q Okay. And when you say it was locked, was it locked --
9 did you lock it or did somebody else lock it?

10 A Somebody else locked it.

11 Q Who locked it?

12 A Shawn.

13 Q So he could lock it from the outside of the room?

14 A Yes, sir.

15 Q And he was outside the bedroom?

16 A Yes, sir.

17 Q And so, you weren't able to get out of the room once
18 Shawn put -- sent you in there?

19 A No, sir.

20 Q And did you hear anything outside of the room that
21 night?

22 A Yes, sir.

23 Q What did you hear?

24 A A banging noise.

25 Q Banging like how? Can you show us -- show us what you

- 1 heard or how you heard it?
- 2 A Like (indicating) that.
- 3 Q Did you hear anyone else? Did you hear ^{victim} [REDACTED] at all?
- 4 A No, sir.
- 5 Q But you heard the banging noise?
- 6 A Yes, sir.
- 7 Q Who else was awake in the room with you at the time?
Child C
- 8 A [REDACTED] woke me up because she heard it.
- 9 Q She heard something going on out there?
- 10 A Yes, sir.
- 11 Q And was ^{Child R} [REDACTED] asleep?
- 12 A Yes, sir.
- 13 Q And now, the next day before ^{victim} [REDACTED] went to the hospital
- 14 did you see her sleeping, or did you see her the next
- 15 morning?
- 16 A I saw her when I woke up and she had like red marks all
- 17 over her arm.
- 18 Q Okay. Was that when your mom -- who got her out of her
- 19 crib?
- 20 A My mom.
- 21 Q So your mom was home then?
- 22 A Yes, sir.
- 23 Q The night before when you were in your bedroom, locked
- 24 in the bedroom with ^{Child C} [REDACTED], where was your mom then?
- 25 A She was at work.

1 Q So Shawn was babysitting that night?

2 A Yes, sir.

3 Q And your mom wasn't there the night before?

4 A Yes, sir.

5 Q Now, the next morning -- do you know when your mom got
6 home?

7 A No, sir.

8 Q So you think you were asleep when your mom got home?

9 A Yes, sir.

10 Q And the next morning when you woke up was Shawn there
11 anymore?

12 A No, sir.

13 Q Okay. So it was just your mom and your sisters the
14 next morning when you woke up?

15 A Yes, sir.

16 Q Did you ever see your mommy hurt ██████████ at all that next
17 morning?

18 A No, sir.

19 Q Did you all eat breakfast?

20 A Yes, sir.

21 MR. BROWN: That's all I have, Judge.

22 THE COURT: Cross examination.

23 MS. BOLEN: If I could - Your Honor, If I could just
24 have a --

25 THE COURT: Sure. Take your time. Just a few more

Child I

1 questions, okay, [REDACTED]?

Child I

2 [REDACTED]: Yes, sir.

3 THE COURT: Are you okay?

Child I

4 [REDACTED]: (Indicates affirmative.)

5 THE COURT: Okay.

6 CROSS EXAMINATION

7 BY MS. BOLEN:

Child I

8 Q Hey, [REDACTED]. I just have a couple questions for you.

9 When did you live in the Calhoun Falls house?

10 A A long time ago.

11 Q Okay. And how long ago is a long time ago; a couple of
12 years, a couple of months?

13 A A couple of months ago.

14 Q Okay. And what day was it that [REDACTED] ^{victim} went to the
15 hospital?

16 A I can't remember.

17 Q And how do you remember that what you heard was the
18 night before and not some other night?

19 A I don't know.

20 MS. BOLEN: I don't have anything further.

21 THE COURT: Do you have any followup on that?

22 MR. STUMBO: Nothing on that, Your Honor. I do want to
23 indicate that I know Your Honor said you wanted us to ask
24 all the questions now before the jury. I would say I'll
25 probably ask the witness to identify the Defendant. I did

1 not do that in camera here --

2 THE COURT: That's fine. And, you know --

3 MR. STUMBO: It's the whole candor of the court.

4 THE COURT: And I'm not going to -- I mean, if in
5 direct or cross you think a couple other things you want to
6 ask, but I'm not going to limit you all. Sure, you can ask
7 that.

8 MS. BOLEN: That's wanted I wanted to be sure about.

9 Thank you.

10 THE COURT: Let me get the lawyers to just come up here
11 for just a second. Just take her back there.

12 (Whereupon, a bench conference was held)

13 MS. NELSON: Your Honor, are you going to read the
14 testimony into the record or are you actually going to give
15 them a paper copy, if we agree to this?

16 THE COURT: I think probably read it into the record.
17 I mean, I would allow instead of -- you know, because that
18 will be piece-mealing the part -- a small part however, but
19 nonetheless a part of the transcript, piece-mealing that to
20 the jury. So my inclining would be is to publish it to the
21 jury in some fashion. Now, we'd have to figure out the
22 mechanics of that.

23 MR. STUMBO: Judge, as far as I'm concerned, I think,
24 you know, probably the most accurate and reliable way of
25 doing it, from Ms. Scott's perspective, would just be like

1 when we bring the jury back out during deliberations just
2 play the -- play the tape, instead of the written
3 transcript.

4 THE COURT: I mean, yeah, we could --

5 MR. STUMBO: That would be my -- I think that's the
6 most accurate way to present it to the jury.

7 THE COURT: I'm going to be real -- I just want -- if
8 it's going to be agreed upon that we handle it in some
9 fashion other than another round of live testimony, then I'm
10 certainly open to how that is to be, you know, given to the
11 jury.

12 MR. STUMBO: And essentially, Judge, just for the
13 record's sake I think we -- you know, if it's done in that
14 manner, you know, we would want a record made obviously that
15 it's -- Defendant's waiving kind of a confrontation clause.
16 That would --

17 MS. BOLEN: We would certainly put that on the record.
18 Yes, sir.

19 THE COURT: Sure.

20 MR. STUMBO: And with full consultation with his
21 lawyers.

22 THE COURT: All right. Why don't we do this. Have you
23 agreed yet to do something other than live testimony?

24 MS. BOLEN: Yes, sir.

25 MS. NELSON: Yes, sir.

1 THE COURT: Why don't we take a couple of minutes and
2 how about the four of you all kind of group up there and try
3 to agree on the manner in which the jury is presented with
4 this testimony, whether it's going to be read at some point
5 in time or given in written form or however. I want you all
6 to try to agree to that, if you can.

7 MS. NELSON: I think we can, Your Honor.

8 MS. BOLEN: We'll come to some agreement.

9 THE COURT: All right. We'll be at ease for just a few
10 moments and the four of you all group up, please.

11 (Whereupon, discussions were held off the record)

12 MS. NELSON: Your Honor, could we have an opportunity
13 to actually hear it ourselves before it's played to the jury
14 if that's what we agree on?

15 THE COURT: Sure.

16 MS. NELSON: Does that work for you?

17 THE COURT: Yeah, we can do that. And unless you just
18 want it to be done now, maybe let's -- if you've got some
19 other witnesses let's move on, and then at some break or
20 maybe, you know, first thing in the morning or whatever we
21 can do that. But now, the State may want this out at this
22 stage, and if so, then we'll deal with it. Otherwise, let's
23 move on and deal with it later.

24 MR. STUMBO: Well, Your Honor, we can maybe put up a
25 couple of witnesses, and then during the break if we can

1 listen to it.

2 THE COURT: Sure.

3 MR. STUMBO: Maybe do two witnesses --

4 THE COURT: Sure.

5 MR. STUMBO: -- and take a break, listen to it and the
6 play it before -- I would prefer to play it before the end
7 of the day today. But right now it's --

8 THE COURT: That's not a problem. Let me just place on
9 the record that in light of the court's examination of
10 Child I [REDACTED], and based on the direct and cross
11 examination of her all done in camera outside the presence
12 of the jury, the court finds that she is competent to
13 testify.

14 Secondly, it has been agreed to by both sides that
15 there will not be live testimony -- her live testimony
16 before the jury, but her in camera testimony will be
17 delivered to the jury in some fashion, probably, I guess,
18 just the tape recording played to the jury at some point in
19 time today, and that the defense is waiving any
20 confrontation clause of this witness before the jury.

21 Is that accurately stated? Maybe not very artfully
22 done but --

23 MR. STUMBO: I believe so, Your Honor. And just -- you
24 may have said this. But just that he had time to consult
25 with Ms. Nelson and Ms. Bolen about that decision and that

1 was made freely and voluntarily.

2 MS. NELSON: That's correct, Your Honor. We did
3 consult with him and he is in agreement. And our only --
4 our only concern would be that you can hear the questions on
5 the audio as well as you can hear the testimony itself.

6 THE COURT: And I believe our court reporter feels
7 pretty good that there will be a good sound quality. Okay?

8 MS. NELSON: Yes, sir.

9 THE COURT: All right. Very good. With that said,
10 then we're going to move on to a couple other witnesses.

11 MR. STUMBO: Okay. Your Honor, the State at this time
12 will call Chief John Galloway.

13 THE COURT: We need the jury in, yeah.

14 MR. STUMBO: Yeah, I guess he can sit while we bring
15 the jury back in.

16 (Whereupon, the jury enters the courtroom at 2:24 p.m.)

17 THE COURT: Let the record reflect that the jury is
18 back in. And, Mr. Foreman, and ladies and gentlemen of the
19 jury, I want you to know that we were not taking a longer
20 lunch break than what I allowed you. Promptly at quarter
21 until 2:00 we started working on some matters that were done
22 outside your presence. So it wasn't a situation where I had
23 you come back before we finished lunch. We were finished
24 at the same time.

25 All right. Solicitor, if you'll call your next

1 witness, please.

2 MR. STUMBO: Thank you, Your Honor. The State would
3 call Chief John Galloway.

4 CHIEF JOHN GALLOWAY, having been
5 first duly sworn, testified as follows:

6 DIRECT EXAMINATION

7 BY MR. STUMBO:

8 Q Good afternoon, Chief.

9 A Good afternoon.

10 Q And what are you the Chief of?

11 A The City of Calhoun Falls.

12 Q How long have you been the Chief over the City of
13 Calhoun Falls?

14 A For about 16 months.

15 Q Okay. Before taking over the Chief's job over there
16 where were you employed before that?

17 A Department of Public Safety with the South Carolina
18 Highway Patrol for 13 years.

19 Q So you were a State Trooper at that time?

20 A Yes, sir.

21 Q How long had you been with the patrol?

22 A Thirteen years.

23 Q Did you go straight from the Law Enforcement Academy to
24 the patrol or did you have another stint with another agency
25 between there?

1 A I didn't. US Army. I was there for about seven years
2 and transitioned to the -- with the Department of Public
3 Safety as a State Trooper.

4 Q And when you were working with the patrol were you a
5 road trooper, or what was your role there?

6 A I had a few roles. I was a road trooper training
7 instructor, drill instructor, honor guard. Did different
8 things.

9 Q Okay. Do you live in Calhoun Falls?

10 A No, sir. I live in McCormick County, town of
11 Willington.

12 Q Now, when did you take over the Chief job? I think you
13 said 16 months ago.

14 A Yes, sir.

15 Q When would that have been?

16 A July the 16th of 2012.

17 Q Now, on August the 8th, 2012 did your department -- the
18 morning of August the 8th, did your department have to
19 respond to a house there in the town of Calhoun Falls?

20 A Yes, sir.

21 Q And what was that in regards to in relation to this
22 case?

23 A It was in response to a child that was having trouble
24 breathing. I think unresponsive, unconscious, something of
25 that nature.

1 Q Did one of your officers with the city responded?

2 A Yes, sir. Sergeant Cabral.

3 Q And at what point were you informed of the pending
4 situation?

5 A I think we received a call from dispatch at around
6 10:00 a.m. Officer Cabral called me after he served the
7 call and just advised me that there was baby that was
8 unresponsive that was taken to the medical center, to
9 Greenwood, I would think, and he informed me right after
10 that.

11 Q Okay. And during that day, right at the beginning of
12 this situation, your department had jurisdiction over that
13 house; is that correct?

14 A Yes, sir.

15 Q And so, at the beginning of the investigation the
16 Calhoun Falls Police Department was the agency involved; is
17 that correct?

18 A Yes, sir.

19 Q Now, you mentioned that you were about -- July 16th you
20 were about three weeks into the job there at Calhoun Falls,
21 correct?

22 A Yes, sir.

23 Q And during your time with the Highway Patrol had you
24 had the occasion to investigate or work in child homicide,
25 or child abuse cases?

1 A No, sir.

2 Q That -- the majority of the Highway Patrol's job,
3 correct me if I'm wrong, is patrolling the roads of this
4 state and keeping folks safe --

5 A Yes, sir.

6 Q -- making sure people are obeying traffic laws, working
7 accidents and fatalities on the road, correct?

8 A Yes, sir. Correct.

9 Q Now, what did you do during the course of the next
10 couple of days early on in that investigation? Was it your
11 intent to work this investigation or to elicit help from
12 another agency?

13 A Initially we thought it was just a baby that may have
14 been teething. I think the officer spoke with the mother
15 who said the baby was teething, had been ill for about two,
16 three days. And we thought that was just the extent of it,
17 that the baby was just, you know, teething. I'm not a
18 doctor or anything, but we didn't take it no more than, you
19 know, just the baby was ill. And then later on we found out
20 that maybe there was more to it as far as the injuries.

21 Q So you all were able to communicate with the doctors
22 that were attending to ^{victim} [REDACTED] at that time?

23 A Yes, sir.

24 Q And after you were able to consult with those doctors
25 did you determine to keep the case or to elicit assistance

1 from another agency?

2 A We did. We solicited help from South Carolina Law
3 Enforcement Division after we found out that possibly the
4 baby had severe injuries that were maybe life threatening.
5 And at that time we thought that it was just a case of
6 sickness, something minor. And that time after conversing
7 with the doctors and found it to be a little bit more
8 serious where they was asking for more help in transferring
9 the baby from Greenwood to Greenville for immediate care.

10 Q The baby was actually helicoptered from Greenwood to
11 Greenville, correct?

12 A Correct.

13 Q And so, you did -- who did you contact at SLED to ask
14 for assistance?

15 A Originally after we found out that the baby had life
16 threatening injuries that may not -- may or may not survive,
17 at that time I talked with Director Keel, who I was familiar
18 with from the Highway Patrol who used to be our director as
19 well. At that time asked him did he have any ideas where I
20 could go with the investigation. And at that time Patsy
21 Lightle and Lieutenant Herlong was part of the child's
22 fatality -- I don't know if I'm saying it correct or not.
23 But those were the people that he touched bases with me to
24 contact.

25 Q Okay. So Lieutenant Herlong and Major Lightle from

1 SLED contacted you and ultimately came down to assist this
2 case?

3 A Yes, sir.

4 Q Okay. And at that point, beyond what you all had been
5 able to document real early in the investigation, SLED kind
6 of took over the investigation?

7 A Yes, sir. They handled the bulk of it from the time of
8 the morning up until we called them after we found out that
9 the baby possibly -- it could be fatal. We turned it over
10 to SLED at that time.

11 Q Okay. And now, before I believe that there was
12 arranging of forensic interviews for the children, correct?

13 A Correct.

14 Q And your department helped facilitate that?

15 A We did initially. Our victim's advocate at that time
16 -- there were other kids in the home. Three other siblings.
17 And at that time, after learning all of the details, we did
18 arrange for that in Anderson. But it was going to be a
19 length of time, that we needed it right away. And I think
20 at that time, once we selected SLED help, that they kind of
21 expedited the situation to get other forensics done at that
22 time.

23 Q Okay. And there were some pictures that were taken by
24 Sergeant Cabral, correct?

25 A Correct.

1 Q And we never made those part of this case file; is that
2 correct --

3 A We didn't.

4 Q -- to your knowledge?

5 A We didn't. Again, we thought it was just a baby being
6 ill. And leaving the scene, once we found out further
7 later, I did ask him to go back to take photos at that time
8 and he did. And again, he's no longer with us, but we just
9 had trouble locating those pictures.

10 Q Okay. And you had searched the computers at your
11 office, and to your knowledge you don't have those pictures?

12 A To my knowledge, we don't.

13 Q You did get a search warrant in this case --

14 A We did.

15 Q -- is that correct? And you provided that to SLED and
16 helped them go serve that search warrant; is that correct?

17 A We did.

18 Q And in the course of that search warrant did the SLED
19 crime scene folks take pictures at that time?

20 A They did.

21 Q Multiple pictures?

22 A Multiple.

23 Q And [REDACTED] in Calhoun Falls, that's in the city of
24 Calhoun Falls --

25 A Yes, sir.

1 Q -- correct?

2 A It is.

3 Q And it's in the county of Abbeville; is that correct?

4 A It is.

5 MR. STUMBO: I beg the court's indulgence, Your Honor.

6 THE COURT: Certainly.

7 Q Now, just a couple more questions, Chief Galloway, and
8 we'll be done. Did you have any contact with the Defendant,
9 Shawn White, in this case?

10 A I did.

11 Q Okay. And did you pick him up and bring him in to the
12 department at some point?

13 A We did. We talked down at the department. We did.

14 Q And that was on his free will, correct?

15 A It was. I had contact with him. Actually was given
16 his number by one of the family members of the victim,
17 because they had concerns that that child was in the care of
18 his, and just wanted to talk with him. He agreed to talk
19 with me.

20 Q Okay. And by that point Major Lightle was involved in
21 the case from SLED. She was here -- here with you at that
22 point?

23 A Exactly. I never actually talked to him to interview
24 him. I just talked to him off the record. But I think at
25 that time Major Lightle spoke with him and maybe interviewed

1 him.

2 --Q Okay. Had an interview with him outside of your
3 presence?

4 A Yes, sir.

5 MR. STUMBO: No further questions of Chief Galloway at
6 this time, Your Honor.

7 THE COURT: Cross examination by the Defense.

8 MS. BOLEN: Yes, Your Honor, briefly. Thank you.

9 CROSS EXAMINATION

10 BY MS. BOLEN:

11 Q Chief Galloway, you said that you were dispatched at
12 about 10:00 a.m.; is that correct?

13 A Somewhere roughly in that area. I wouldn't say exactly
14 10:00 a.m. Somewhere in that area. I didn't take the call.

15 Q And you talked about how, you know, when you first got
16 there you thought maybe the baby was sick, and then as you
17 realized it was something else you got SLED involved, right?

18 A Yes, ma'am.

19 Q So it's fair to say you don't get SLED involved in a
20 lot of your investigations, right?

21 A We don't unless it's major.

22 Q Okay. So it's not common to call SLED and have them
23 come and take over an investigation?

24 A Again, it depends on the circumstances of the case.

25 Q Okay. But it's for the sort of more serious, more major

1 cases, right?

2 A For the serious more major cases it is.

3 Q And you agree that this is a pretty serious case,
4 pretty major case?

5 A Yes, ma'am.

6 Q And that's part of the reason you called in SLED,
7 right?

8 A Yes, ma'am.

9 Q Okay. And your Officer Cabral was the first responder,
10 right? He was the first one out there?

11 A Yes, ma'am.

12 Q And you thought it was important enough to send him
13 back to get pictures, right?

14 A Yes, ma'am.

15 Q Okay. And so, it's important to document what the
16 first responders saw, right?

17 A Yes, ma'am.

18 Q Okay. But yet it's not important enough to keep track
19 of those pictures?

20 A Well, again, I wasn't the officer. Investigating
21 officer. So therefore, you know, errors are made sometimes.
22 But I'm not saying we didn't have them. We just didn't
23 locate them at that time.

24 Q Okay. But you're -- as the Chief of Police you're in
25 charge of the whole agency, right?

1 A Yes, ma'am.

2 Q And you don't know where these pictures are, correct?

3 A They were on the computer.

4 Q Okay. But you can't -- you can't find them now?

5 A No, I can't.

6 Q Okay. And you said that Shawn agreed to talk with you,
7 right?

8 A He did.

9 Q He came and talked with you voluntarily?

10 A Yes, ma'am.

11 MS. BOLEN: I don't have anything else. Thank you.

12 THE COURT: Anything on redirect?

13 MR. STUMBO: Nothing in redirect, Your Honor.

14 THE COURT: Thank you, Officer, for your testimony.

15 Any objections to Officer Galloway being excused?

16 MR. STUMBO: None from the State, Your Honor.

17 MS. BOLEN: No, sir.

18 THE COURT: You're welcome to stay with us, if you
19 like, or you're free to go, sir.

20 CHIEF GALLOWAY: Thank you.

21 (Whereupon, the witness steps down from the witness
22 stand)

23 MR. STUMBO: Your Honor, the State calls Melody
24 LaBounty.

25 MELODY LaBOUNTY, having been first

1 duly sworn, testified as follows:

2 DIRECT EXAMINATION

3 BY MR. STUMBO:

4 Q Good afternoon, Melody. How are you today?

5 A I'm okay. How are you doing?

6 Q Could you state your full name for the record?

7 A Melody Christine Ramano LaBounty.

8 Q Okay. And back in August of 2012 did you go by -- what
9 name did you go by then?

10 A Melody Ramano.

11 Q And since then you've gone to LaBounty?

12 A I have.

13 Q Tell me about your daughters. How old are they?

14 A Child C Child I Child R
 [REDACTED] is eight, [REDACTED] is six, [REDACTED] is four.
 victim

15 Q Okay. And [REDACTED] --

16 A She would be two.

17 Q She would be two now. How old was she when she passed
18 away?

19 A Ten months.

20 THE COURT: Need to slide this a little bit closer to
21 you. Okay? Thank you.

22 Q Now, Melody, where did you all live back in August of
23 2012?

24 A In Calhoun Falls on [REDACTED].

25 Q At [REDACTED]; is that correct?

- 1 A Yes, sir.
- 2 Q This picture in State's 17? This house?
- 3 A Yes, sir.
- 4 Q And your four daughters lived there with you?
- 5 A They did.
- 6 Q And who else lived there at that time?
- 7 A Shawn White.
- 8 Q And how did you know Shawn?
- 9 A I've known him from high school.
- 10 Q And what was the nature of your relationship in high
- 11 school?
- 12 A We dated for a few months in high school.
- 13 Q Okay. So he's from Calhoun Falls?
- 14 A Yes.
- 15 Q And you're from Calhoun Falls?
- 16 A Yes, sir.
- 17 Q Now, how long have you lived in the Calhoun Falls area?
- 18 You live there now? Let me backup.
- 19 A I don't now.
- 20 Q Where do you live now?
- 21 A In Greenwood.
- 22 Q Before you moved over to Greenwood you had lived in
- 23 Calhoun Falls for how long?
- 24 A About four years.
- 25 Q Okay. Where else have you lived?

1 A I lived in Columbia before that for about eight years,
2 after I graduated from high school, and I was in Calhoun
3 Falls since I was 10.

4 Q Okay. So you left for about eight years and moved to
5 Columbia, correct?

6 A Yes, sir.

7 Q Four years back in Calhoun Falls?

8 A Yes.

9 Q And how old are you now?

10 A Thirty-two.

11 Q You went to Calhoun Falls High School?

12 A I did.

13 Q I guess it's called Charter School now.

14 A Yeah.

15 Q It was Calhoun Falls High School when you attended
16 there?

17 A Yes, it was.

18 Q And did you -- you did graduate?

19 A I did.

20 Q And where were you in your class when you graduated?

21 A Seventh.

22 Q Now, the father of your older three girls, were you
23 married to him at some point?

24 A I was. I married him in 2005.

25 Q Okay. And what's his name?

1 A Jonathon LaBounty. .

2 Q That's where the girls' last name comes from, correct?

3 A Yes, sir.

4 Q And you've changed your name back to LaBounty now?

5 A I just changed it to LaBounty.

6 Q Okay. Now, let's go back to the -- let's back up a
7 week to July -- the weekend of July 30th and 31st. What did
8 you do that weekend, Melody?

9 A You mean the days I was in North Carolina? Like the
10 Sunday through Tuesday?

11 Q Did you go to North Carolina?

12 A I did. I went to North Carolina Sunday afternoon.

13 Q Okay. And that would have been Sunday the -- I believe
14 the 29th?

15 A I believe so.

16 Q Okay. And you returned on what day?

17 A Tuesday.

18 Q Okay. And while you were gone to North -- by the way,
19 who -- were you going to see a friend in North Carolina?

20 A I was. I went to visit a friend.

21 Q And where did you work at the time?

22 A At Pop A Top Sports Bar in Abbeville.

23 Q What were your work hours? What did your shifts look
24 like?

25 A Normally 8:00 until closing, which was about 2:00 a.m.,

1 and on the weekends later, sometimes earlier.

2 Q So the Sunday through Tuesday when you went to North
3 Carolina you were off of work those days?

4 A I was off that Sunday and the Monday.

5 Q Now, where -- who kept the girls while you were in
6 North Carolina?

7 A Shawn kept ^{victim} [REDACTED] and my mom kept the other two -- three
8 girls until --

9 Q Your mother?

10 A -- until Monday morning.

11 Q And Shawn had the baby -- had ^{victim} [REDACTED] at the house?

12 A Yes, sir.

13 Q Okay. When you got home were the older girls at the
14 house or at your mother's?

15 A They were at home.

16 Q And how did they get home?

17 A My mom called Monday and said that she was tired and
18 she couldn't keep them and I asked if she could take them
19 back over to Shawn, and my dad took them back over there.

20 Q So Shawn had all four of the girls --

21 A He did.

22 Q -- on Monday night? Now, when you returned home was
23 there anything unusual about ^{victim} [REDACTED] at that point?

24 A She had a bump on her head and a scrap on her nose.

25 Q And how was she acting? What was her demeanor like?

- 1 A She was sick. She had -- she was throwing up.
- 2 Q And at that time were you concerned about that?
- 3 A Yes, I was.
- 4 Q Did you believe that the sickness was just -- it was a
- 5 sickness or did you believe that she had -- did you ask
- 6 about what happened to her head?
- 7 A I did. I asked as soon as I saw her what happened to
- 8 her head.
- 9 Q Did you ask Shawn that?
- 10 A I did.
- 11 Q And when we're talking about Shawn, just to identify
- 12 for the record, can you point him out? What color shirt
- 13 does he have on?
- 14 A Like a bluish-gray.
- 15 Q Sitting by his attorney there at this table?
- 16 A Yes, sir.
- 17 Q And did you ask Shawn about the bump on [REDACTED] ^{victim}'s head?
- 18 A I did.
- 19 Q How did he respond?
- 20 A He said that the girls were playing in the yard and he
- 21 was sitting on the steps with ^{victim} [REDACTED] outside on the porch and
- 22 that she fell and hit her head on the steps.
- 23 Q Okay. And he was -- I'm assuming that he was referring
- 24 to these -- I'm going to show you State's 16.
- 25 MR. STUMBO: If I may approach the witness, Your Honor.

1 THE COURT: Sure.

2 Q Those steps on the front of the house?

3 A Yes, sir.

4 Q And he said that she had fallen off the steps?

5 A Yes.

6 Q And at this time was she crawling or walking? How was
7 she --

8 A She was crawling. She was starting to walk. She was
9 trying to pull herself up and --

10 Q Could she crawl up those steps at that time?

11 A She could crawl up them. She had never done it in
12 front of me, but I'm sure she could have.

13 Q And at that point were you satisfied with that
14 explanation of how she got the bump --

15 A Yeah.

16 Q -- on her head?

17 A Yes. It seemed reasonable. I mean, she's moving
18 around a lot and she could have fallen off those steps
19 easily.

20 Q Now, you said she was throwing up at the time?

21 THE COURT: Okay. Let me stop you. Defense counsel is
22 having a little hard time hearing you.

23 THE WITNESS: I'm sorry.

24 THE COURT: And I know you're soft spoken. But if
25 you'll speak up and put that a little closer.

1 MS. BOLEN: I apologize, Your Honor.

2 THE COURT: That's okay.

3 MS. BOLEN: I was trying to be unintrusive.

4 THE COURT: Not a problem. Go ahead.

5 MR. STUMBO: Thank you, Judge.

6 Q Now, Melody, how was ^{victim} acting during this -- the
7 next few days? You said she had thrown up. But was she
8 able to eat?

9 A She was throwing up. It was -- it wasn't easy for her
10 to keep things down. I was giving her different things. We
11 tried Gatorade, Pedialyte. She was getting better. By the
12 third day she ate mashed potatoes and green beans and some
13 chicken. She kept that down. So I wasn't as concerned. I
14 mean, she was keeping food down. She wasn't lethargic or
15 anything. She was fussy. I was sticking my fingers in her
16 mouth checking her teeth and she was cutting four teeth at
17 that time. So I was giving her teething tablets.

18 Q Okay. Was that normal behavior for her to be a little
19 bit fussy when she was cutting teeth?

20 A With four kids, it was definitely normal for her to be
21 extremely fussy cutting four teeth.

22 Q And was it normal for ^{victim} to not feel well while she
23 was cutting teeth?

24 A Yes, sir.

25 Q Now, did you try any other kind of food or diet with

victim

1 [REDACTED] at the time?

2 A Yes. I tried like bread an rice, applesauce, toast. I
3 mean, I had called the doctor but they had never called me,
4 so I just did what the doctor had told me when my previous
5 kids had stomach viruses or nausea. Tried the same kind of
6 foods with her.

7 Q And she seemed to improve at the time?

8 A She was improving. Yes, sir.

9 Q Now, you said about the third day after you got back.
10 Now, that would have been Friday?

11 A Tuesday -- yes, sir.

victim

12 Q Okay. Over the weekend how was [REDACTED] at that point?

13 A I went back to work that weekend, so she was doing
14 better.

15 Q So you didn't work in these few days that she was sick?

16 A I don't remember what my schedule was that week
17 exactly. I know I called in one night because she wasn't
18 feeling good. But I don't remember exactly which days I
19 worked and didn't.

20 Q Melody, you said you went back to work over the
21 weekend, and this was the normal 8:00 to 2:00 a.m. shift at
22 Pop A Top?

23 A Right. The weekend usually lasts a little longer.
24 Maybe 6:00 a.m.

25 Q And Shawn -- you say Shawn was staying there at the

- 1 time. Where did he sleep in the house?
- 2 A Usually on the couch.
- 3 Q Okay. Where was he working at the time?
- 4 A Different side jobs. Right then with Kevin Kilgore.
- 5 Q So he was doing construction type work?
- 6 A Yes, sir.
- 7 Q And that was during -- would have been during the day?
- 8 A Yes, sir.
- 9 Q And at night you were doing work, correct?
- 10 A Yes.
- 11 Q And he kept the kids for you during the nights you were
- 12 at work that week?
- 13 A Right.
- 14 Q I'm going to fast forward to the night of August the
- 15 7th, which is a Tuesday. Did you go to work that night?
- 16 A I did.
- 17 Q And who was left at the house with the girls that
- 18 night?
- 19 A Shawn was.
- 20 Q Shawn kept all four girls that night?
- 21 A He did.
- 22 Q What time did you leave for work approximately?
- 23 A About 7:30.
- 24 Q Was it a fairly normal shift that night?
- 25 A Yes. Tuesdays I had to be there by 8:00, and I usually

1 got out of there as soon as everybody left. I cleaned up,
2 did my paperwork and went home.

3 Q Was it busy on a Tuesday night?

4 A No, it wasn't. I think I had maybe five customers
5 tops.

6 Q Did you have to take anybody home that night after you
7 left work?

8 A I did. I had one -- Andy Tiller. He had a little bit
9 too much, so I gave him a ride home.

10 Q You said he had a little bit too much?

11 A More than I would let him drive for.

12 Q Where did he live?

13 A Due West off of Central Shiloh Road.

14 Q After you dropped Andy Tiller off in the Due West area
15 where did you go after that?

16 A Home.

17 Q And about what time did you get home, Melody?

18 A About 2:00.

19 THE COURT: I didn't hear that. I'm sorry. You need
20 to speak up a little bit, please, ma'am.

21 THE WITNESS: I'm sorry. About 2:00.

22 Q Okay. So you all closed up maybe early that night; is
23 that right?

24 A Yes. When everybody else had left and it was just Andy
25 I went ahead and cleaned up and did my paperwork.

- 1 Q Okay. So about -- even after you took him out to Due
- 2 West and back to Calhoun Falls it was about 2:00 you think?
- 3 A Yes, sir.
- 4 Q When you walk in do you go in the front door or the
- 5 backdoor?
- 6 A The front door.
- 7 Q And what's going in the house when you get home at 2:00
- 8 a.m.?
- 9 A victim was asleep in the playpen next to the door and
- 10 Shawn was asleep on the love seat as I'm walking in.
- 11 Q Okay. How about the older three girls? Were they in
- 12 the bedroom?
- 13 A They were in their room asleep?
- 14 Q Did you go check on them before you went to bed?
- 15 A No, I didn't.
- 16 Q How about the door? Was it -- at that time was it
- 17 locked or was it unlocked?
- 18 A The bedroom door? It was open.
- 19 Q The door was actually open?
- 20 A Yeah.
- 21 Q So you could see in there at that point?
- 22 A Yes, sir.
- 23 Q I'm going to show you -
- 24 MR. STUMBO: Beg the court's indulgence, Your Honor.
- 25 THE COURT: Sure.

1 Q I'm going to show you State's 27. What's in evidence
2 as State's 27. Does that look familiar to you?

3 A Yes, sir.

4 Q Whose bedroom is that?

5 A The girls. The older girls.

6 Q And the -- if you look at the doorknob, which way is it
7 turned?

8 A The lock is on the outside of the door.

9 Q Okay. And could you explain to the jury -- did you
10 have knowledge that the knob was turned around?

11 A Yes, sir.

12 Q Okay. And why was the knob turned around?
victim

13 A [REDACTED], my four-year-old, would go in the room and lock
14 herself in and wouldn't open the door, and we would have to
15 beg her to open the door.

16 Q Okay. So did you turn the knob around, or who did
17 that?

18 A I asked Shawn to turn it around so she couldn't lock
19 herself in.

20 Q Okay. When you get home that night that door is open
21 in the position that it's in there?

22 A It wasn't open all the way, but it was open. It wasn't
23 shut.

24 Q The three girls were in that bedroom?

25 A They were.

1 Q And ^{victim} [REDACTED] was in the Pack'n Play?

2 A She was.

3 Q How did ^{victim} [REDACTED] appear at that point?

4 A She was asleep. She was laying on her back. She was
5 asleep.

6 Q Okay. Did you attempt to wake her up at 2:00 in the
7 morning?

8 A No. You don't wake a baby up at 2:00 in the morning.

9 Q And I think you just answered that question. But had
10 she been sick the previous several days? We discussed that;
11 is that correct?

12 A She had been sick before, yeah.

13 Q She had trouble sleeping during that time?

14 A She had.

15 Q And when you see her asleep in the Pack'n Play as you
16 walk in did you want to disturb her at that point?

17 A No.

18 Q Did you want her to sleep?

19 A Right.

20 Q Then what happened next?

21 A I asked Shawn how she had been feeling. If she was
22 doing okay, and he said that she was fine. That she had
23 been up until around 10:00 playing in the floor with the
24 girls. And she was sleeping good, so I left her alone. I
25 laid on the couch -- the other couch in there until ^{Child R} [REDACTED]

Child R

1 got up. [REDACTED] got up and came and got on the couch with me
2 and we went and got in my bed.

3 Q Was that during the night or was that early in the
4 morning sometime?

5 A That was probably around 3:00 or 4:00 in the morning.

Child R

6 Q And [REDACTED] was in the bed with you from -- back then
7 through the rest of the night?

Child R

8 A She was. And then about an hour after [REDACTED] got in the
9 bed with me [REDACTED] came and got in the bed with me, too.

Child I

10 Q At what time did you all wake up the next morning?

Child C

11 A [REDACTED] came around 8:00. I got up at 6:30 and got
12 Shawn up for work, but then I went straight back to bed. I
13 just opened the door and woke him up and went back to bed.

14 Q He had to get up for work the next day?

15 A Yes, sir.

16 Q And who was that with?

17 A With Kevin Kilgore.

18 Q And after you woke Shawn up did you go back to bed?

19 A I did.

Child C

20 Q You said that [REDACTED] woke up at 8:00. Did she come
21 and try to wake you up at that point?

22 A She came and got in the bed with us.

23 Q Okay. And describe to me that morning. What did you
24 all do? When did you get out of bed?

25 A Probably around 8:30 or 9:00. I got all the girls up

1 and we started getting dressed and stuff, moving around. I
2 had been broke the day before and had only had enough money
3 to get food for that night. So I used my tips from that
4 night and ran into the store across the street to get cereal
5 and milk and some lunch things, and came home and fixed the
6 girls breakfast. I didn't want them to wake up ^{victim} [REDACTED],
7 because she was still sleeping, so I had got their coloring
8 books and crayons and moved their little table out on the
9 porch so they could color out on the porch.

10 Q Okay. And the groceries -- or the Dollar General; is
11 that correct?

12 A Yes, sir.

13 Q And it's right across the street from your house?

14 A It is.

15 Q And ^{Child C} [REDACTED] is there at the house with the baby at that
16 time?

17 A She was.

18 Q Now, did you fix the girls some cereal and milk?

19 A I did. I fixed them cereal and put it on the table. I
20 think they had a few bites and then wanted to play outside.

21 Q Okay. I'm going to show you State's Exhibit.-- State's
22 7. Is that the kitchen?

23 A Yes, sir.

24 Q And what are the bowls on the table?

25 A That's the bowls of cereal.

1 Q Okay. So the girls were actually -- had eaten, or were
2 in the process of eating those bowls of cereal that morning?

3 A Yes, sir.

4 Q How was ^{victim} [REDACTED]? Did you check on ^{victim} [REDACTED] that morning
5 when you woke up?

6 A I touched her to make sure she wasn't hot or cold, but
7 I didn't want to wake her up because she hadn't been
8 sleeping through the night for days. And since she had been
9 up so late the night before I thought she would sleep
10 longer.

11 Q And she did sleep longer that next morning, didn't she?

12 A She did.

13 Q At what point did you think that she had slept long
14 enough?

15 A I was doing something on the laptop and I looked over
16 and it looked like she was waking up. Like her eye was
17 opening. So I went to go pick her up, and that's when she
18 was limp.

19 Q Had you ever picked up ^{victim} [REDACTED] before and felt her limp
20 in that state?

21 A No, sir.

22 Q How were you eyes?

23 A I tried to open her eyes and they wouldn't open.

24 Q Was she -- how was she breathing at that time?

25 A Very, very lightly.

1 Q At that point did you sense that there was something
2 wrong with ^{victim} [REDACTED]?

3 A As soon as I picked her up I knew something was wrong.

4 Q What did you do at that point? When you were holding
5 her in your arms what did you do then?

6 A I opened -- well, the front door was open. I looked
7 outside to see if the EMS vehicle was out there, because
8 they park there a lot. I didn't see them, so I picked up
9 the phone and called my mom, hung up and dialed 911.

10 Q So you peek out -- EMS you said would sometimes just
11 park there during their down time; is that right?

12 A Yes, sir.

13 Q But they weren't there?

14 A No, sir.

15 Q You picked up your phone and you dialed 911?

16 A I did.

17 Q Are you still holding ^{victim} [REDACTED] in your arms?

18 A Yes, sir.

19 Q Do you lay her down at any point?

20 A The dispatcher told me to lay her down flat and I laid
21 her on the couch, and that's when I noticed all the marks on
22 her arms, and she had like red spots. And I called the
23 girls in there and asked them what were these marks. If
24 they knew what happened. And they all said they didn't know
25 what happened to her.

1 Q Who shows up first after your call to 911?

2 A The police. I noticed Will Poteat first, and Cabral
3 was there, too.

4 Q Cabral who was here earlier --

5 A Yes, sir.

6 Q -- with Calhoun Falls? And did the ambulance show up?

7 A Yes, sir.

8 Q And how quickly did they get there after the police?

9 A A few minutes maybe. It wasn't long.

10 Q When the ambulance gets there what do they do? Do they
11 start working on ^{victim} [REDACTED]?

12 A Yes, sir.

13 Q And where did they put her?

14 A They took her and put her on the ambulance, and I went
15 out there with them. And my dad pulled up while I was out
16 there with them.

17 Q Did you ask the police to let the older girls go with
18 your father?

19 A I think they asked me if they could -- if he was coming
20 to get them and I said yes, he was coming to get them. They
21 called him.

22 Q Had there been any of these marks on ^{victim} [REDACTED]'s arm the
23 night before?

24 A No, sir.

25 Q Before you left for work?

- 1 A No.
- 2 Q Had she been alert and playful the night before --
- 3 A Yes.
- 4 Q -- you went to work?
- 5 A Yes, she was.
- 6 Q Where did you go after the -- did the ambulance take
- 7 you to Greenwood; is that correct?
- 8 A They took us to Greenwood.
- 9 Q And from Greenwood where was ^{victim} [REDACTED] taken?
- 10 A In the helicopter to Greenville.
- 11 Q Did you ever have any contact with Shawn over the next
- 12 couple of days after that?
- 13 A When the ambulance was at the house he called and asked
- 14 what was wrong and I told him that ^{victim} [REDACTED] was sick and we
- 15 were going to the hospital. And then when I was at the
- 16 hospital in Greenville he called.
- 17 Q Okay. At that point when he called you in Greenville
- 18 had you already discussed with the doctors ^{victim} [REDACTED]'s
- 19 condition?
- 20 A Yes, sir.
- 21 Q Okay. And what did Shawn say to you in that
- 22 conversation?
- 23 A That he had been interviewed for six hours -- or, I
- 24 guess, by SLED or the police.
- 25 Q Did he ask you where you were and what you were doing?

1 A No, sir.

2 Q Did you tell him where you were and what you were
3 doing?

4 A I did.

5 Q What did you say to him?

6 A I told him I had been at the hospital for the last two
7 days watching my daughter die.

8 Q Did you have any family members with you at that point
9 in time?

10 A Yes, sir.

11 Q Did that conversation end?

12 A It did. My parents took the phone away from me.

13 Q Have you had any conversation with Shawn White since
14 then?

15 A No, sir.

16 Q Just a couple more of the pictures here. I'm going to
17 show you State's 10. Do those movies in that picture look
18 familiar to you?

19 A Yes, sir.

20 Q Okay. And whose were those?

21 A Shawn's.

22 Q Saw 5. What kind of movie is that?

23 A It's a horror movie.

24 Q Is there a lot of violence in it?

25 A Yes, sir.

1 Q Did Shawn like watching horror movies?

2 A Yes, sir.

3 Q I'm going to show you State's 33. Who's in that
4 picture?

5 A ^{victim} [REDACTED].

6 Q Can you tell the jury when this picture was taken,
7 Melody?

8 A This was Fourth of July.

9 Q So about a month before she passed away?

10 A Yes, sir.

11 Q Did you ever physically assault this little girl?

12 A No, sir.

13 Q Did you ever abuse her, Melody?

14 A No, sir.

15 Q You said you talked to Shawn White on the telephone.
16 ^{victim}

Did he ever come up to the hospital to see [REDACTED]?

17 A No, sir.

18 Q Did he ever come up there to check on how she was
19 doing?

20 A No.

21 Q Never came to Greenwood, to Self Memorial?

22 A No.

23 Q Didn't come to Greenville where she was laying in the
24 hospital bed?

25 A No.

- 1 Q Were you with her during that time?
- 2 A I was.
- 3 Q When did ^{victim} [REDACTED] pass away?
- 4 A At 12:34 a.m. on the 11th of August.
- 5 Q And was that at the hospital?
- 6 A Yes, sir. They kept her alive until after her sister's
- 7 birthday was over.
- 8 Q Which sister?
Child I
- 9 A [REDACTED]'s.
- 10 Q [REDACTED]'s birthday was on -- you call her [REDACTED]?
Child I
- 11 [REDACTED]'s birthday was on the 10th?
- 12 A Yes, sir.
- 13 Q She was on life support at this point?
- 14 A She was.
- 15 Q And did you consult with the doctors and did they --
- 16 what did they advise at that point?
- 17 A There was nothing. She was completely brain dead.
- 18 There was nothing we could do. They did two different tests
- 19 to check for any brain activity 24 hours apart and there was
- 20 --
- 21 Q Now, was there anybody else in that -- in the house at
- 22 [REDACTED] when you went to work at Pop A Top that
- 23 night?
- 24 A No, sir.
- 25 Q Just Shawn White, correct?

1 A Yes, sir.

2 Q And your four girls?

3 A And my girls.

4 Q When you got home from work that night was there
5 anybody in that house other than Shawn White and your four
6 girls?

7 A No, sir.

8 MR. STUMBO: No further questions, Your Honor.

9 THE COURT: Okay. Before we start cross I'd like to
10 take just a five minute real short break. That's not going
11 to be necessarily our afternoon break, but I want to talk
12 with the lawyers about something. So, Mr. Foreman, and
13 ladies and gentlemen of the jury, we're going to take a real
14 short break. This is not going to be our regular afternoon
15 break but just a very short break. So if you'll retire to
16 the jury room.

17 (Whereupon, the jury exits the courtroom at 3:08 p.m.)

18 THE COURT: Let me just see the lawyers back in --

19 (Whereupon, a short break was taken)

20 THE COURT: We're back on the record. Let the record
21 reflect that I had a conversation with the lawyers in
22 chambers concerning the testimony of Ms. LaBounty. That
23 there were some areas that I felt like was necessary to be
24 brought out. And both sides have indicated that despite the
25 Court's reluctance to be the one to ask certain questions,

1 both sides have consented to the Court making an examination
2 of Ms. LaBounty if that information that the Court is
3 concerned about is not brought out in either cross or
4 redirect or recross.

5 Is that a correct statement of what we discussed?

6 MR. STUMBO: It is, Judge.

7 MS. NELSON: Your Honor, I think our position is -- I
8 think we have to object on the record to the -- kind of the
9 direction of asking the State to further elicit that
10 testimony. And so, I think if that question is asked we
11 could just offer an objection based on the reasons I'm
12 stating right now, or trying to state. I guess the -- I
13 guess ultimately the outcome is going to be the same,
14 because it is our position that even if we -- even if we
15 didn't really consent to more questions being asked, that it
16 is within the Court's power and it is your prerogative to
17 ask those questions from the bench. So I think ultimately,
18 however they come out, for purposes of what the jury hears
19 may not make -- may not a difference. But I guess what I'm
20 trying to -- what I'm trying to articulate is our objection
21 that the State was kind of directed on further areas to
22 explore rather than leaving the testimony as it was.

23 THE COURT: Right. Right. And certainly your objection
24 is noted even though the Court certainly understands that I
25 have the right and it's within my discretion to conduct

1 examination of any of the witnesses. It was just the
2 Court's personal preference not to do so, and felt like the
3 information needed to come out anyways. And certainly
4 Defense was concerned about the Court directing the State
5 along those lines as far as additional questioning. But I
6 --think it was -- and your objection is noted on the record.
7 But I think we decided to resolve it, is just continue --
8 start with the cross, go to redirect, and then it's going to
9 be up to the court at the conclusion of her testimony
10 whether or not the Court wants to weigh in in any fashion as
11 far as examining Ms. LaBounty. Okay?

12 With that said, bring the jury out, please.

13 (Whereupon, the jury enters the courtroom at 3:18 p.m.)

14 THE COURT: All right. Let the record reflect the jury
15 is back in. That turned out to be our regular afternoon
16 break. And I think we're at a point now of Defense cross
17 examination of this witness. You may proceed.

18 MS. BOLEN: Thank you, Your Honor.

19 CROSS EXAMINATION

20 BY MS. BOLEN:

21 Q Good afternoon, Ms. LaBounty. I've just got some
22 questions to ask you. Let's go back to what you were
23 talking about with going out to North Carolina. You went up
24 to the mountains --

25 A I did.

1 Q -- right?

2 A Yes.

3 Q About end of July, beginning of August?

4 A Yes.

5 Q And you went to visit a friend?

6 A Yes.

7 Q Okay. And you left the four children at home, right?
victim

8 A I left [REDACTED] at home and the other three were at my
9 mom's.

10 Q Okay. So the three older girls with your mom?

11 A Yes.

12 Q And at that time your mom was in Calhoun Falls, right?

13 A Yes, ma'am.

14 Q And you left [REDACTED] with Shawn at your house, right?
victim

15 A I did.

16 Q Okay. And that was for, you said, I think, Sunday
17 through Thursday?

18 A No. Sunday night, all the -- well, the three older
19 were at my mom's. And then Monday she brought the three
20 older back to Shawn. Well, my dad did. And then I came
21 home Tuesday at lunchtime.

22 Q All right. And just backing up. Shawn moved in with
23 you around January 1st of 2012, right?

24 A Yes, ma'am.

25 Q Okay. And when you came back from the mountains you

- 1 said you noticed a bump on ^{victim} [REDACTED], right?
- 2 A Yes, ma'am.
- 3 Q And that you talked to Shawn about it, right?
- 4 A Yes.
- 5 Q And he actually told you that his brother, Chris, had
- 6 been kind of roughhousing with the girls and had accidentally
- 7 knocked her off the porch?
- 8 A Yes.
- 9 Q Okay. So that was -- that was his brother, Chris,
- 10 doing that, right?
- 11 A Yes.
- 12 Q Okay. And Chris was around a good bit, right?
- 13 A He was.
- 14 Q Okay. He also lived in Calhoun Falls?
- 15 A Yes.
- 16 Q And he sometimes stayed over at your house or --
- 17 A Very rarely. He came over.
- 18 Q Okay. And when you got home ^{victim} [REDACTED] was throwing up a
- 19 little bit?
- 20 A She was throwing up.
- 21 Q Okay. And Shawn had said that she had thrown up while
- 22 you were gone as well?
- 23 A I guess that morning. That Tuesday. I came home
- 24 around noon and he said that she had thrown up, yes.
- 25 Q And you said she was just not really feeling well and

1 kind of fussy and throwing up?

2 A Yes, ma'am.

3 Q Okay. But you didn't take her to the doctor?

4 A No, ma'am.

5 Q I think you said you gave her some teething tablets?

6 A Yes, ma'am. She was teething.

7 Q Okay. And then that day, August 7th, you were home
8 with the girls during the day; is that right?

9 A Yes, ma'am.

10 Q And Shawn was at work?

11 A Yes.

12 Q And you were working at the Pop A Top at the time,
13 right?

14 A I was.

15 Q And that's a bar in Abbeville?

16 A Yes, ma'am.

17 Q Okay. And you usually worked basically the night
18 shift, right? You got in, what, around 8:00?

19 A I usually worked from 8:00 until closing.

20 Q Okay. And you left that day you think around 7:00,
21 7:30?

22 A Yes, ma'am.

23 Q Okay. And Shawn and gotten home from work around 6:00,
24 right?

25 A Yes, ma'am.

1 Q Okay. Your job at the bar was basically a bartender,
2 right?

3 A Yes.

4 Q Okay. And you usually drank when you were at work?

5 A Occasionally. Not during work.

6 Q And you sometimes drank with your customers --

7 A Occasionally.

8 Q -- like if they offered to buy you a drink?

9 A Yes.

10 Q Okay. And you sometimes also smoked marijuana with
11 your customers?

12 A Yes, I did.

13 Q In fact, that night you had smoked marijuana with Andy
14 Tiller, right?

15 A I believe I did, yes.

16 Q Okay. And most nights you got home 2:00 or 3:00 in the
17 morning; is that about right?

18 A Anywhere from 12:00 to 3:00, except on the weekends it
19 was later.

20 Q And that night you drove Andy Tiller to Due West,
21 right?

22 A I did.

23 Q And you had smoked with him sometime around 11:00 that
24 night?

25 A If we smoked it was around 11:00, yes.

- 1 Q And you got home, you think, about 2:00 in the morning?
- 2 A Yes, ma'am.
- 3 Q And you went in the front door, right?
- 4 A I did.
- 5 Q And the TV was one, right?
- 6 A I don't remember if the TV was on. If it was, it
- 7 wasn't making any noise.
- 8 Q Okay. And the -- you basically have two bedrooms in
- 9 your house, right?
- 10 A Yes, ma'am.
- 11 Q You've got your room and then the room where the other
- 12 three girls stay, right?
- 13 A Yes, ma'am.
- 14 Q And the door to the girls' bedroom was slightly ajar?
- 15 A Yes, ma'am.
- 16 Q So it wasn't all the way open but it was somewhat open,
- 17 right?
- 18 A Yes, ma'am.
- 19 Q And you didn't go in and check on them when you got
- 20 home, right?
- 21 A No, I didn't.
- 22 Q And you went to sleep on one of the couches, right?
- 23 A I did.
- 24 Q And that's in the livingroom?
- 25 A Yes, ma'am.

- 1 Q And in the livingroom was also another couch and then
victim
- 2 [REDACTED]'s Pack'n Play, right?
- 3 A Right.
- 4 Q Okay. And then at some point you moved to your room?
- 5 A Yes.
- 6 Q You don't know what time that was?
- 7 A No. There's not a clock in the livingroom.
- 8 Q Okay. And on your direct testimony you said you woke
9 up sometime around 8:30 or 9:00, right?
- 10 A Uh-huh.
- 11 Q Okay. Do you remember telling SLED that you woke up
12 when your mom called and it was either 9:00 or 9:30?
- 13 A 8:30 or 9:00. I mean, probably around 9:00.
- 14 Q Okay. And you woke up because your mom called?
- 15 A My mom called and I told her that we were still in the
16 bed and I'd call her back later.
- 17 Q Okay. And ^{victim} [REDACTED] wasn't up at that time, right --
- 18 A No, she wasn't.
- 19 Q -- around 9:00? And do you remember telling SLED at
20 one point that you think your mom called around 9:30?
- 21 A I mean, that morning I didn't have a clock and I was
22 half asleep with the girls in the bed. I wasn't really
23 looking at what time it was.
- 24 Q Okay. Back up a little bit more. You said that ^{victim} [REDACTED]
25 had been sick and throwing up, right?

1 A Yes, ma'am.

2 Q And she had been teething?

3 A Yes, ma'am.

4 Q You didn't take her to the doctor, but you gave her
5 some tablets of some kind?

6 A Yes, ma'am. All natural teething tablets that I've
7 been giving all my girls since they were --

8 Q Okay. And then you said that she was feeling better,
9 right?

10 A Yes, ma'am.

11 Q And then on direct you also said that she hadn't slept
12 well the past couple of nights, right?

13 A She hadn't been sleeping well the entire time. When
14 you're -- teething babies don't sleep well.

15 Q And she was still teething that day, right?

16 A Yes.

17 Q Okay. And at some point in the morning -- and so, you
18 got up around 6:15 or 6:30 to wake Shawn up, right?

19 A Yes.

20 Q And he left the house, right?

21 A Yes.

22 Q So he was gone from 6:15 or 6:30 on?

23 A Yes, he was.

24 Q Okay. And then at some point after that your mom
25 called, 8:30, 9:00, 9:30, somewhere in that timeframe?

- 1 A Yes.
- 2 Q And that got you to kind of wake up and start getting
- 3 the girls up?
- 4 A Well, they were awake. When I got up they were awake.
- 5 They were all in the bed with me.
- 6 Q Okay. So all three were in your bed?
- 7 A Yes.
- 8 Q Okay. And you started getting them dressed, right?
- 9 A Yes.
- 10 Q And then at some point you left with [REDACTED] and Child I
- 11 Child R [REDACTED] to go to the Dollar General to get food?
- 12 A Yes, ma'am.
- 13 Q Because you didn't have enough food in the house for
- 14 breakfast?
- 15 A Yes, ma'am.
- 16 Q And you left Child C [REDACTED] and victim [REDACTED] at home, right?
- 17 A Yes, ma'am.
- 18 Q And you gave a written statement to SLED, right?
- 19 A I did.
- 20 Q But you didn't mention in that statement leaving to go
- 21 get food, right?
- 22 A I don't remember. I haven't seen the statement in over
- 23 a year.
- 24 Q Would it refresh your memory if I were to hand it up to
- 25 you?

1 A Sure.

2 THE COURT: You need to speak up, ma'am.

3 THE WITNESS: Yes, sir.

4 MS. BOLEN: Permission to approach the witness, Your
5 Honor.

6 THE COURT: Sure.

7 Q I'm handing you up three pages. Do you recognize that?

8 A Yes, I do.

9 Q And what is it?

10 A It's my statement to SLED.

11 Q Okay. And can you just read it over to refresh your
12 memory?

13 A Sure. Okay. You're right. I didn't put that in the
14 statement.

15 MS. BOLEN: If I could approach, Your Honor, just to --

16 THE COURT: Sure.

17 MS. BOLEN: Thank you.

18 Q So you left with the two middle girls and then came
19 back with food, right?

20 A Yes, ma'am.

21 Q And you put the older girls outside on the porch; is
22 that right?

23 A Yes. They were coloring.

24 Q Did you feed them before you put them outside?

25 A I did.

- 1 Q Okay. And you were inside with ^{victim} [REDACTED], right?
- 2 A Yes.
- 3 Q And at some point you started -- I think you said you
- 4 were downloading a movie for the kids?
- 5 A Yes.
- 6 Q Okay. And you went to pick her up, right? You said
- 7 her eyes started to open?
- 8 A Yes, ma'am.
- 9 Q And then this was about 10:45, 10:50?
- 10 A I'm not sure.
- 11 Q You don't remember?
- 12 A I thought it was earlier. I don't remember.
- 13 Q And that was the first time all day you had gone to
- 14 pick her up?
- 15 A Yes, ma'am.
- 16 Q And your house is pretty much a four-room house with
- 17 sort of a bathroom and then a laundry room, right? There's
- 18 the two bedrooms, the livingroom, the den, the kitchen?
- 19 A Yes, ma'am.
- 20 Q Okay. So it's a pretty small floor plan?
- 21 A Yes, ma'am.
- 22 Q And ^{victim} [REDACTED] was in the front room, right? What you call
- 23 the livingroom?
- 24 A Yes, ma'am.
- 25 Q All right. And the other kids had been up for a couple

1 of hours at this point? .

2 A About an hour, maybe two, yes.

3 Q Okay. And they're all pretty young. I think you said
4 at the time their ages were six, five and about three?

5 A Three, four and six.

6 Q Okay. So it's fair to say they were probably making
7 noise?

8 A I was keeping them quiet because ^{victim} [REDACTED] hadn't been
9 sleeping. And so, I had asked them, you know, to keep it
10 down. That's why we moved the coloring books and stuff to
11 the porch, so I could still see them. But they were going
12 to be waking her up.

13 Q Okay. And when you had gotten home that night you had
14 said you heard ^{victim} [REDACTED] snoring, right?

15 A I thought I did, yes.

16 Q You thought you did. And you said that was normal for
17 her? She snored?

18 A Yes.

19 Q And when you got home you said she had been on her
20 back, right?

21 A Yes, she was on her back.

22 Q And at some point she moved to her side? You saw her
23 on her side?

24 A Yeah. That morning when I got up she was on her side.

25 Q Okay. So she had moved sometime during the night?

- 1 A She had moved somehow.
- 2 Q And when you went to pick her up you called your mom
- 3 and then you -- you said you noticed she was having a hard
- 4 time breathing and was unresponsive, right?
- 5 A Yes.
- 6 Q But you called your mom first, right, before 911?
- 7 A It was a reflex. I hit my mom. As soon as I realized
- 8 I was calling my mom I hung up. She didn't even answer. I
- 9 hung up and called 911.
- 10 Q Okay. And your house that morning, is it fair to say
- 11 it was pretty messy?
- 12 A Yes, it was.
- 13 Q There was a lot of stuff everywhere?
- 14 A Yeah.
- 15 Q And there were some bugs and roaches around?
- 16 A Yes.
- 17 Q Including some in the Pack'n Play?
- 18 A Yes, ma'am.
- 19 Q And there was a cup with some pills that was left by
- 20 the Pack'n Play, right?
- 21 A It was on the top self of the desk.
- 22 Q But they were just pills in a cup and not in any sort
- 23 of container or anything?
- 24 A No, they weren't. I had given them to Shawn the day
- 25 before. He said he had a headache.

1 Q And the Pack'n Play was right at the front door, right?

2 A It was.

3 Q And when the kids were outside on the porch the front
4 door was open, right?

5 A Yes.

6 Q Okay. Let's talk a little bit about the rest of your
7 kids. You -- all of your kids were behind on their
8 immunizations, right?

9 MR. STUMBO: Objection of the relevance of that.

10 THE COURT: Relevancy?

11 MS. BOLEN: I think it goes to the care given to all of
12 the children.

13 THE COURT: Well, it's cross examination, wide latitude
14 allowed for cross examination. I'll allow it, but maybe not
15 go too far with it, Ms. Bolen.

16 MS. BOLEN: Yes, sir.

17 Q They were all behind in their shots?
Child C Child I

18 A [REDACTED] was not behind. [REDACTED] as about to start to
19 school and had appointments to get hers caught up before
20 school started.

21 Q But Child R and victim were behind?

22 A Child R and victim were behind, yes.

23 Q Okay. And after August 8th, your kids went to live
24 with your Aunt Joanie, right? Well, they went to live with
25 your mom first?

1 A No, they did not live with my mom. They were there
2 until I called my mom and told her we were going to
3 Greenville, and then my mom took the kids to Greenwood and
4 then met my Aunt Joanie and they went to her house from
5 there. They were at my mom's for maybe 30 minutes.

6 Q And they stayed with your Aunt Joanie for quite a few
7 months, right?

8 A They stayed there for 45 days.

9 Q Okay. And then they went into a foster care?

10 A They did.

11 Q And you were living with your parents for a while?

12 A No.

13 Q Where were you living?

14 A In the house.

15 Q Okay. And, in fact, they were in foster care for about
16 14 months, right?

17 A Yes, ma'am.

18 Q And you spoke a little bit about -- on direct about
19 Shawn not coming to the hospital. Didn't you tell him and
20 his father that the police had told you not to have them
21 around?

22 A No, I didn't.

23 Q And you went to work at the Pop A Top the night after
24 victim's funeral, right?

25 A No, I didn't.

1 MS. BOLEN: If I could just have a moment, Your Honor.

2 THE COURT: Sure.

3 Q Just a few more questions, Ms. LaBounty. You talked to
4 SLED twice, right?

5 A Yes, ma'am.

6 Q I mean, probably more than that. But you talked to
7 them sort of officially August 14th and then again, I think,
8 in early September; is that right?

9 A I don't remember the dates, but I'm sure you have
10 copies of it.

11 Q And when you talked to them on August 14th you told
12 them that Shawn was great with your kids, right?

13 A Yes, ma'am.

14 Q And Shawn was out of the house from about 6:30 that
15 morning?

16 A Yes.

17 Q And you checked on ^{victim} [REDACTED], you say, sometime between
18 10:00 and 10:45?

19 A Yes.

20 MS. BOLEN: I don't have anything further. Thank you.

21 THE COURT: Redirect from the State?

22 MR. STUMBO: Just a few, Your Honor.

23 REDIRECT EXAMINATION

24 BY MR. STUMBO:

25 Q Ms. LaBounty, Ms. Bolen asked you about the TV being on

- 1 when you came in. You say you don't remember if it was on
2 or not?
- 3 A I don't remember. I know there wasn't any sound, like
4 it wasn't a movie or anything playing.
- 5 Q So the house was quiet?
- 6 A It was.
- 7 Q But how was the lighting in the --
- 8 A It was dark.
- 9 Q -- in the livingroom? It was dark?
- 10 A Yes.
- 11 Q Possibly the TV was on?
- 12 A I mean, it could have been on, like the movie had
13 stopped and it had just a blank screen.
- 14 Q Okay. And you would have turned it off when you came
15 in if it were on, I assume?
- 16 A Probably.
- 17 Q Now, when you checked -- you mentioned earlier you did
18 check -- check into the Pack'n Play and saw ^{victim} [REDACTED], correct?
- 19 A I did when I got home.
- 20 Q And how was the lighting in the room at the time when
21 you checked on her?
- 22 A Well, there was a light coming through the window from
23 outside from the street light, so I could see her, because
24 she was right at the window.
- 25 Q So it wasn't pitch black in the room because of the

1 window --

2 A No.

3 Q -- is that correct?

4 A Right.

5 Q But there weren't any lights on in the house?

6 A Right.

7 Q And you say you went to sleep on the couch, correct?

8 A Yes.

9 Q And I believe you mentioned earlier at some point [REDACTED] Child R

10 comes and lays on the couch with you, correct?

11 A Yes.

12 Q And she goes -- falls asleep? And why did you move to

13 the bedroom at that point?

14 A She actually wet the bed -- well, the couch. So when

15 she wet the couch we got up, went in my room and got in the

16 bed. Dry bed, so she could go back to sleep.

17 Q Okay. I'm going to show you this. This is in

18 evidence. It's State's Exhibit 2. I'm going stand back

19 here so the jury can see. This is the front of the house

20 here at the steps, correct?

21 A Yes, sir.

22 Q And this is the front room, correct?

23 A Right.

24 Q And the front door is here is number 1. That would be

25 where the Pack'n Play is?

- 1 A It's actually more flush with the door.
- 2 Q Okay. It's closer to the door by scale?
- 3 A Right.
- 4 Q Okay. And there's two bedrooms here. This front
- 5 bedroom that's attached to this room. Whose bedroom is
- 6 that?
- 7 A That's my bedroom.
- 8 Q Is that the bed that you went and got in with [REDACTED] Child R?
- 9 A Yes.
- 10 Q And you mentioned earlier that at some point during the
- 11 night [REDACTED] Child I comes and gets in bed as well?
- 12 A She did.
- 13 Q She got into this bed with you and [REDACTED] Child R?
- 14 A Yes.
- 15 Q And the next morning you mentioned that [REDACTED] Child C came in
- 16 in the morning about 8:00 and crawled in the bed with you
- 17 all, correct?
- 18 A Yes, she did.
- 19 Q And that was in this bed in the front bedroom, correct?
- 20 A Yes.
- 21 Q At that point had you heard a sound out of [REDACTED] victim?
- 22 A No. I hadn't heard a sound at all from the livingroom.
- 23 Q In fact, had you heard a sound out of [REDACTED] victim since you
- 24 came in the house the night before?
- 25 A No.

1 Q And when you woke up the next morning did she appear to
2 be sleeping still in the same position?

3 A She was rolled over onto her side facing towards the
4 room, but she was still asleep.

5 Q Okay. Did she have a blanket on?

6 A She did.

7 Q And an estimate, what time did you all get out of bed
8 and start moving around the house?

9 A It was probably around 9:00. That's about as late as
10 you're going to get my girls to stay in the bed.

11 Q Earlier Ms. Bolen asked you -- said you didn't put that
12 in your written statement to SLED about going to Dollar
13 General.

14 A Right.

15 Q But you did -- you did tell Lieutenant Herlong that?

16 A I did. I did.

17 Q So even though it's not in your written statement, you
18 did tell her that?

19 A And I think I asked when I was writing my statement how
20 detailed I needed to be, and I knew that I was going -- they
21 were going to be asking me every question and writing
22 everything I said, so I was more detailed in my explanation.

23 Q So every single thing that came out of your mouth to
24 Lieutenant Herlong was not line for line in your written
25 statement?

1 A It would have taken pages. We were there for hours,
2 so....

3 Q The written statement you wrote with your own
4 handwriting --

5 A I did.

6 Q -- and signed yourself, correct?

7 A I did.

8 MR. STUMBO: Beg the Court's indulgence.

9 THE COURT: Sure.

10 Q Just a couple more, Melody. Ms. Bolen asked you when
11 you were working at the bar if you had smoked marijuana
12 before. At that time had you been smoking marijuana?

13 A The night before or that morning?

14 Q The night before.

15 A Probably, yes.

16 Q At the bar?

17 A Yes, sir.

18 Q And you told -- you told the SLED agent that when you
19 talked to her?

20 A I did.

21 Q And you told her -- you didn't try to hide that, did
22 you?

23 A No, sir.

24 Q Are you proud of that, that time in your life?

25 A No, sir. I'm not. And I've been clean since that day,

1 so...

2 Q And you don't work at the Pop A Top anymore?

3 A I don't.

4 Q You have your girls back with you now, correct?

5 A Yes, sir.

6 Q And where are you working now?

7 A At Sykes in Greenwood.

8 Q Is that a full-time position?

9 A Yes, sir.

10 MR. STUMBO: No further questions.

11 THE COURT: Anything in recross?

12 MS. BOLEN: Very briefly, Your Honor, if I may.

13 RECROSS EXAMINATION

14 BY MS. BOLEN:

15 Q Ms. LaBounty, you said -- when Solicitor Stumbo was
16 asking you about getting the girls up you said 9:00 was
17 about the latest you could get them to stay in bed, right?

18 A Yes, ma'am.

19 Q And they had actually been up awake earlier than that,
20 right?

21 A I mean, they got up and got in my bed while it was
22 still dark outside.

23 Q And ^{victim} usually woke up around 6:00 or 7:00, right?

24 A She did normally, yes.

25 Q Normally. And then she would sometimes just take a

1 bottle or -- but she'd be up for a while in the morning,
2 right?

3 A She would either get a bottle and go back to sleep, and
4 there was mornings that she would -- if you went and got her
5 out of the crib and put her in bed with you she would go
6 right back to sleep without a bottle --

7 Q But she normally got up --

8 A -- and sleep until 10:00.

9 Q -- around 6:00 or 7:00?

10 A She did normally wake up about that time.

11 MS. BOLEN: That's all I have. Thank you.

12 THE COURT: Thank you very much. Ms. LaBounty, I want
13 to ask you just a couple of questions just to go over some
14 of your testimony.

15 Now, during the day on August 7th I think you were with
16 the girls during the day and Shawn was at work, correct?

17 THE WITNESS: Yes, sir.

18 THE COURT: And he got home around 6:00 on the 7th?

19 THE WITNESS: Yes, sir.

20 THE COURT: And you left around 7:30 to go to work?

21 THE WITNESS: Yes, sir.

22 THE COURT: And you got home from work about 2:00 in the
23 morning?

24 THE WITNESS: Yes, sir.

25 THE COURT: And that would have been August 8th?

1 THE WITNESS: Yes, sir.

2 THE COURT: To your knowledge, was anyone in the home
3 other than your four girls and Shawn, to your knowledge,
4 during that period of time that you were at work?

5 THE WITNESS: No, sir. Not that I know of.

6 THE COURT: All right. And I think you said you came in
7 and had a conversation of some sort with Shawn about ^{victim} [REDACTED],
8 correct?

9 THE WITNESS: I did.

10 THE COURT: About how long did that conversation take,
11 would you just estimate?

12 THE WITNESS: About a minute.

13 THE COURT: Okay. And then did you immediately lie down
14 on the couch?

15 THE WITNESS: I did.

16 THE COURT: All right. Now, Solicitor Stumbo had asked
17 you that there was no lights on inside the house or inside
18 the room where ^{victim} [REDACTED] was but there was light to some extent
19 coming from outside from the street light; is that correct?

20 THE WITNESS: Yes, sir.

21 THE COURT: Were you able to see ^{victim} [REDACTED] okay in the
22 Pack'n Play?

23 THE WITNESS: Yes, I saw her.

24 THE COURT: Was there enough light to be able to see
25 ^{victim} [REDACTED]?

1 THE WITNESS: Yes, sir.

2 THE COURT: And I think when you got there she was on
3 her back?

4 THE WITNESS: Yes, sir.

5 THE COURT: Did you observe any marks or abrasions or
6 any -- anything out of the ordinary on ^{victim} [REDACTED] when you got
7 home at 2:00?

8 THE WITNESS: She had a blanket over her, and the marks
9 that I saw the next morning were on her arms and legs.

10 THE COURT: Did you observe anything on her face --

11 THE WITNESS: No, sir.

12 THE COURT: -- that was not under the blanket?

13 THE WITNESS: No, sir.

14 THE COURT: Was it light enough that if there were
15 anything on her face could you have seen that?

16 THE WITNESS: I may not have -- like if there was a
17 bruise or something I may not have noticed it because of the
18 shadows. But I didn't see any marks on her face, even the
19 next morning.

20 THE COURT: So when you got up the next morning and saw
21 her in the Pack'n Play and then eventually got her out of
22 the Pack'n Play did you observe any marks other than what
23 you had testified to on her arm?

24 THE WITNESS: No, sir. I didn't.

25 THE COURT: And I know you stated that you did not have

1 a clock in the house. But about how long after you got home
2 from work did you get in the bed? I think at that time it
3 was maybe with just one of the children.

4 THE WITNESS: Probably an hour or two. Usually they
5 wake up every couple of hours.

6 THE COURT: Okay. So between 3:00 and 4:00 you got into
7 the bed?

8 THE WITNESS: Yes, sir.

9 THE COURT: And you stayed there until what time?

10 THE WITNESS: 6:30 when I went -- I just poked my head
11 out the door and woke Shawn up.

12 THE COURT: Okay. And did he immediately get up?

13 THE WITNESS: I didn't wait to see if he was getting up.
14 I told him what time it was and I closed the door and I went
15 back to bed.

16 THE COURT: Do you know what time he left the house?

17 THE WITNESS: I don't. I didn't even hear him get up.
18 So when I got up that's when I knew he was gone.

19 THE COURT: What time would he customarily -- even
20 though it may not apply to this day. What time did he
21 customarily leave the house?

22 THE WITNESS: There wasn't any regular time.

23 THE COURT: And I think you testified that when you got
24 home from work [REDACTED] was snoring; is that right?

25 THE WITNESS: I thought I heard snoring, yes.

1 THE COURT: Any questions in direct response to the
2 Court's questions? First from the State?

3 MR. STUMBO: None from the State, Your Honor.

4 THE COURT: And from the Defense?

5 MS. BOLEN: One moment.

6 THE COURT: Sure.

7 MS. BOLEN: Nothing, Your Honor.

8 THE COURT: Thank you very much for your testimony.

9 You may step down.

10 (Whereupon, the witness steps down from the witness
11 stand)

12 THE COURT: Do we want to take this opportunity now to
13 -- the court reporter was assisting us on a particular--
14 matter and we need to deal with that or --

15 MR. STUMBO: I believe so, Your Honor. I believe that
16 will be a good time for it.

17 THE COURT: I think probably, Mr. Foreman, and ladies
18 and gentlemen of the jury, we're going to have one -- one
19 thing left for you to consider but it's going to take a few
20 minutes to get that in place. I think that will probably be
21 all that we'll have for the rest of the day. Of course,
22 we'll start back promptly in the morning. So I'm going to
23 ask that you go back to your jury room and let's -- or at
24 least allow the lawyers to get this in place with the court
25 reporter and then we'll bring you out. Okay?

1 And I'll remind you don't talk about this case among
2 yourselves.

3 (Whereupon, the jury exits the courtroom at 4:28 p.m.)
Child I

4 (Whereupon, audio of [REDACTED]'s testimony is
5 played for the attorneys)

6 THE COURT: All right. We're back on the record. As I
7 understand it you've had an opportunity to listen to the
8 testimony of Child I [REDACTED] and we're going to play that
9 for the jury beginning with the State's direct examination
10 --

11 MS. BOLEN: Yes, sir.

12 THE COURT: -- and go through the cross. I can't
13 remember if there was any redirect, but --

14 MR. STUMBO: There was not.

15 MS. BOLEN: No. It was very brief cross.

16 THE COURT: Right. And very brief cross. I'll just
17 explain to the jury that we're about to listen to the
18 testimony of Child I [REDACTED] that was taken earlier today
19 and -- here in this courtroom, and they'll listen to it. I
20 don't think I need to give any other further instruction.

21 MR. STUMBO: I think that's sufficient, Judge.

22 MS. NELSON: That's fine with us as well.

23 THE COURT: Okay. And after that we're going to go
24 ahead and adjourn for the day?

25 MS. BOLEN: Yes, sir.

1 MR. STUMBO: That's correct, Your Honor.

2 THE COURT: All right. Bring the jury out, please.

3 Start back at 9:30 in the morning?

4 MR. STUMBO: That'll be fine, Judge.

5 (Whereupon, the jury enters the courtroom at 4:47 p.m.)

6 THE COURT: Let the record reflect the jury is back in.
7 Mr. Foreman, and ladies and gentlemen of the jury, the
8 balance of what we're going to do today is that you will --
9 they're going to play the testimony of ^{Child I} [REDACTED] who
10 is a sister of ^{victim} [REDACTED]. That testimony that she gave
11 was taken earlier today in this courtroom, and through the
12 help of the court reporter we're going to play the child's
13 testimony. And that will conclude the work for today in
14 this case. And after that I will excuse you. So Madame
15 Court Reporter, I'll turn it over to you.

^{Child I}
16 (Whereupon, audio of the testimony of [REDACTED]
17 was played for the jury.)

18 THE COURT: Okay. Mr. Foreman, and ladies and gentlemen
19 of the jury, that concludes our work today on this case.
20 We're going to start back at 9:30 in the morning. And I
21 would again caution you not to discuss this case, any aspect
22 about this case among yourselves, any family members,
23 friends, anybody that you come into contact with, and we'll
24 see you back at 9:30 in the morning. Hope you have a good
25 afternoon, good evening. Stay warm.

1 (Whereupon the jury is excused for the day at 4:59
2 p.m.)

3 THE COURT: Okay. We'll be in recess until 9:30 in the
4 morning.

5 DAY 3: 01/08/2014

6 TRIAL DAY 3-01/08/14

7 (Whereupon, the jury enters the courtroom at 9:40 a.m.)

8 THE COURT: Let the record reflect the jury is back in.
9 Good morning. Hope everyone has had a restful evening and
10 ready to work real hard today. We're going to go -- it's
11 going to be a full day, as I understand it, so we will all
12 be working very hard.

13 Solicitor, are you ready to call your next witness?

14 MR. BROWN: Yes, Your Honor. The State calls Dr.
15 Richard Brooksbank.

16 DR. RICHARD BROOKSBANK, having been
17 first duly sworn, testified as follows:

18 DIRECT EXAMINATION

19 BY MR. BROWN:

20 Q Good morning. Dr. Brooksbank.

21 A Good morning.

22 Q I know you're just coming off a late night shift, so
23 just bear with us this morning. Dr. Brooksbank, where are
24 you employed?

25 A Self Regional Healthcare in Greenwood.

1 Q And what is your -- what are your duties there?

2 A I'm one of the staff emergency physicians. My job is
3 to cover the emergency department for any and all life
4 threatening and non-life threatening emergencies that may
5 come through the door.

6 Q How long have you worked there?

7 A I started moonlighting there during my residence
8 program. I've been there a little over two years, and
9 full-time I've been there about a year and a half.

10 Q And, Dr. Brooksbank, where did you attend medical
11 school?

12 A Went to medical school at East Tennessee State
13 University in Johnson City, Tennessee.

14 Q And after medical school did you -- where did you
15 attend in your residency?

16 A I did residency at Palmetto Richland in Columbia, South
17 Carolina.

18 Q And how long is a residency after -- how long is
19 medical school?

20 A Medical school is four years, and then residency for
21 emergency medicine is an additional three years after that.

22 Q And while you're doing a residency you're actually
23 working in the emergency room those three years?

24 A That's correct.

25 Q And are you licensed and board certified in this state?

1 A I am.

2 Q And while working in the emergency room you see all
3 types of illnesses and injuries, right?

4 A That's right.

5 Q Do you see accidental or non-accidental injuries --

6 A Uh-huh.

7 Q -- come in the door?

8 A Yes, sir.

9 Q And, Dr. Brooksbank, have you ever been qualified to
10 testify as an expert in the court of South Carolina?

11 A I have not.

12 Q Have you had the occasion to treat in the emergency
13 room patients who have had traumatic head injuries?

14 A Yes, on many occasions.

15 MR. BROWN: Your Honor, at this time the State offers
16 Dr. Richard Brooksbank to be declared as an expert in
17 emergency medicine.

18 THE COURT: And what says the defense?

19 MS. BOLEN: If we could just have a moment, Your Honor.
20 Your Honor, I think we've got a brief matter of law if we
21 could take up with Your Honor.

22 THE COURT: Okay. All right. Mr. Foreman, ladies and
23 gentlemen of the jury, we have a matter of law that the
24 lawyers need to take up with the courts and I'm going to ask
25 that you retire, hopefully briefly, to the jury room.

1 (Whereupon, the jury exists the courtroom at 9:43 a.m.)

2 THE COURT: Okay, Ms. Bolen.

3 MS. BOLEN: Thank you, Your Honor. Our -- what we
4 wanted to address was not necessarily his qualifications to
5 be an expert but the need for him to be qualified as an
6 expert. Looking at the records, I don't know that he'd be
7 offering an opinion as to anything other than a medical
8 diagnosis as the ER doctor. We're just not seeing the need
9 for him to be qualified as an expert.

10 THE COURT: Well, of course, I don't know what he's
11 going to testify to.

12 MS. NELSON: Well, and that's the thing. We don't
13 either other than what's in the report we -- in the records
14 that we've been provided. We haven't actually been provided
15 any separate expert reports from any doctors with an
16 indication that the State was going to try to qualify him as
17 an expert to give any opinion beyond what's in the records.
18 So --

19 THE COURT: Well, I don't know. Let me turn it over to
20 the State. And is it your intention for this physician to
21 offer any expert opinions on any of the issues related to
22 this case?

23 MR. BROWN: Judge, he -- in his primary diagnosis he
24 talks about acute -- or he talks about cerebral hemorrhages,
25 midline shifts. He has consulted with the radiologist there

1 at Self Memorial. And in his opinion he made the -- it was
2 on his call that he decided to ship her on up to Greenville.
3 And with all that, he's also stated in the records that it
4 was -- it was suspicious nonaccidental trauma -- head
5 trauma.

6 THE COURT: All right. Is all that in the records that
7 has been provided --

8 MR. BROWN: It is. It's all right here in the --

9 THE COURT: -- to Defense?

10 MR. BROWN: It was. It was provided back on February
11 18th, 2013.

12 THE COURT: All right. It would seem like to me that
13 there will be some opinion -- medical opinion offered by
14 this witness as indicated by the State. With that said, it
15 would seem like to me that the qualification of him as an
16 expert would be -- would be necessary. I'll be glad to hear
17 from you further, Ms. Nelson.

18 MS. NELSON: If that's the case and he's not going
19 beyond what we already have in the records. I think that
20 was our main concern as to whether anybody's going beyond
21 what we have been provided.

22 And if we want to go ahead and just address that for
23 any of the other medical witnesses. If -- if we can expect
24 them to say what's in the records that we're aware of then
25 -- then we won't have to do this interruption every time.

1 MR. BROWN: That's -- all the questioning that we'll be
2 asking is based off of what we've been given in their
3 medical records.

4 THE COURT: Very good. Well, I'm going to --

5 MS. NELSON: Thank you very much, Your Honor.

6 THE COURT: All right. I'm going to qualify him as an
7 expert in the field of emergency medicine. I'll do that
8 again when the jury comes out and, of course, give them the
9 standard little short instruction concerning expert
10 witnesses.

11 So would you bring the jury back out, please sir.

12 (Whereupon, the jury enters the courtroom at 9:47 a.m.)

13 THE COURT: Let the record reflect the jury is back out.
14 And I will qualify Dr. Brooksbank as an expert in the field
15 of emergency medicine.

16 Now, Mr. Foreman and ladies and gentlemen of the jury,
17 normally a person cannot give opinion testimony. Normally
18 when a person testifies they must testify as to what they
19 either saw, what they heard or sensed by smell or something
20 of that nature. However, there's an exception when someone
21 is qualified because of education or experience, they are
22 permitted to give their opinion in certain areas if the
23 court qualifies them that way. This witness will be
24 qualified in the area of emergency medicine and will be able
25 to give opinion testimony in that area. That does not mean

1 that you must accept the opinion, but it is evidence for you
2 to use in any way you see fit and give it the weight and
3 credibility you believe that is appropriate.

4 You may continue, Solicitor.

5 MR. BROWN: Thank you, Your Honor.

6 Q Dr. Brooksbank, on August 8th, 2012 did you have the
7 opportunity to treat ^{victim} [REDACTED]?

8 A Yes, I did.

9 Q Can you tell me what time you first had contact with
10 victim [REDACTED]?

11 A It was around 11:40 in the morning.

12 Q 11:40 in the morning on August 8th, 2012?

13 A That's correct.

14 Q And when you first, I guess, approached her or when you
15 saw her, what was her appearance?

16 A She looked acutely and critically ill. She was not
17 responding to any stimuli. She was not moving on her own.

18 A quick exam of her pupils showed that they were
19 nonreactive, which often indicates that there's severe head
20 trauma that's taken place. She was not breathing on her own
21 and EMS was supporting her ventilation by bagging her
22 manually blowing air into her lungs.

23 Q Once you saw that, initially saw her and did the
24 initial exam, what did you do next?

25 A The next step was to secure her airway by means of

1 endotracheal intubation, which is basically putting a tube
2 down her airway into her lungs so that we could breath for
3 her and put her on a ventilator. So we gave her some
4 medications to completely paralyze her and make her muscles
5 all relax so that we could do that. Our nurses were
6 starting an IV. I don't recall if she had one by EMS when
7 she came in. And we were giving medicines through the
8 access that we had obtained to secure her airway.

9 Following that I ordered an initial workup including
10 blood work, chest x-ray to confirm endotracheal tube
11 placement and, importantly, a CAT scan to see if there was
12 any evidence of head trauma.

13 Q Were any other tests ordered? Any other kind of blood
14 tests or urine -- urinalysis?

15 A I did some -- some basic screening tests, blood counts.
16 I did a urinalysis. I did a urine drug screen. We didn't
17 have any history initially of trauma. I didn't know if she
18 had gotten into some medications or if there may have been
19 something else going on. I even -- EMS had given a medicine
20 to counteract narcotics, and I have a medication to
21 counteract benzodiazepines, both of which can cause patients
22 to become unreactive and stop -- and stop breathing on their
23 own. But neither of those medications had any affect on
24 her.

25 Q And with the tests that you ordered for any kind of, I

1 guess, ingestion of any type of narcotics on her own, what
2 were the results of those tests?

3 A Her drug screen came back negative for any narcotics,
4 benzodiazepines, amphetamines, cocaine, cannabis and PCP.

5 Q And you said you did do a urinalysis.

6 A I did.

7 Q What did her urinalysis test come back?

8 A There was no evidence of any urinary tract infection or
9 kidney stones or any other urinary disease.

10 Q Did you have any blood work come back in the short
11 amount of time she was at the hospital?

12 A I did. I remember I had a CBC come back, which --
13 that's her blood counts, and her white blood cell count was
14 elevated. And that's something that we can see with either
15 infection or often times stress or trauma will cause a white
16 blood cell count to go up. Hers was around 16,000.

17 Q So any kind of trauma, like head trauma, would cause
18 the white blood cells to increase?

19 A It can.

20 Q And you said that you ordered chest x-rays and also a
21 CT scan. What exactly would a CT scan -- you said -- also
22 used the phrase CAT scan. What is that?

23 A CT scan, or CAT scan, is imaging technique that we use
24 to take thin slices of certain parts of the body so that we
25 basically format it almost into a 3D image. It gives us

1 high definition information regarding fractures, whether it
2 be the skull or any other parts of the body, and also some
3 information on soft tissue, so -- such as the brain, or
4 lungs, or abdomen. We can tell if there's any evidence of
5 trauma, any bleeding. If someone's had a stroke we can
6 often times pick it up on a CAT scan.

7 Q And just so we're clear. You were the attending
8 physician the whole time --

9 A That's correct.

10 Q -- ^{victim} [REDACTED] was at the hospital?

11 A Right.

12 Q You were the primary physician?

13 A That's correct.

14 Q And when you ordered that CT scan did you actually
15 yourself look at it, or did you consult also with somebody
16 else as well?

17 A I did look at it myself, and I also spoke directly with
18 the radiologist who also looked at it.

19 Q Is that a normal kind of protocol or something you
20 normally do is also consult another doctor to get a second
21 opinion?

22 A Typically our CAT scans or x-rays all go to radiology
23 and the radiologist will read them. It's normal for us to
24 speak directly with them unless there's something highly
25 unusual or some catastrophic finding they discover on the

1 imaging we've ordered.

2 Q And in this case was there something?

3 A There was. There was.

4 Q And when you looked at the images, and also spoke with
5 the radiologist, what did the CAT scan reveal?

6 A So she had a significant amount of blood within her
7 brain which is something that's often seen with trauma. And
8 it was so bad that it had displaced one hemisphere of her
9 brain over to the side, which was suppressing her ability to
10 breath on her own. What happens when the brain starts to
11 shift is the brain stem gets to press down into the base of
12 the skull where it basically doesn't have enough room to
13 function, and that shuts off the patient's respiratory drive
14 to where they stop breathing on their own.

15 Additionally on the scan it looked like there was
16 evidence of acute blood that had been present within the
17 past several hours, and there was also some chronic blood
18 which had been there for days to weeks.

19 Q And just to clarify. When you use the phrase acute
20 blood and the chronic blood, what do you mean by acute
21 blood?

22 A Acute injuries are things that have happened within the
23 past several hours. And that's normally what we see in the
24 emergency department. The patient has a car accident, or
25 some other trauma, and they come in and -- or even stroke,

1 and we see acute blood that shows up a little bit
2 differently. It enhances differently. The color is a
3 little different on the CAT scan than older blood is. And
4 that would be something -- chronic would be something from a
5 previous injury or previous insult to the brain.

6 Q When you mean a previous, how -- I mean, I know it's
7 hard to put a timeframe on it. But usually if you saw
8 chronic blood how -- what's the --

9 A I would think a week to, you know, sometimes it can
10 last several weeks.

11 Q And acute blood would be several hours?

12 A Hours. Hours to maybe a day at the most.

13 Q Okay. So then 24 hours, 12 hours, somewhere in that
14 timeframe?

15 A Right.

16 Q And what else -- was there anything else noted from the
17 CT scans that you -- while looking at them and also
18 conferring with the radiologist?

19 A The midline shift was the other big finding that I --

20 Q Is that the -- midline shift. Is that also -- you were
21 describing how the pressure of the brain moves one
22 hemisphere of the brain over. Is that also what you call
23 midline shift?

24 A That's correct. That's the medical term for it.

25 Q And after receiving the results of the CAT scan what

1 was your primary diagnosis?

2 A My primary diagnosis was intracerebral hemorrhage
3 likely from nonaccidental trauma, and respiratory failure
4 secondary to that.

5 Q And when you say nonaccidental trauma, what do you mean
6 by that?

7 A Nonaccidental trauma is a term used to describe --
8 especially in pediatric patients, some sort of insult or
9 harm that has been done to them by another human being and
10 not as a result of a car accident or a fall. A lot of times
11 in kids, especially this age, it's related to a shaken baby
12 type incident.

13 Q And when you -- you don't call it actually a shaken
14 baby? You call it --

15 A I would call it nonaccidental trauma.

16 Q Nonaccidental trauma. And with this, part of your --
17 from your diagnosis you also look at what your -- what
18 you're told when they come in, and also look at other
19 injuries that the child does not exhibit. Is that correct,
20 when you're making a finding of nonaccidental trauma?

21 What all went into your -- I guess, to your diagnosis
22 of that? What all do you take in and gather to make that
23 finding?

24 A Well, the key thing for her was the CT scan findings.
25 So we had evidence of blood, but there was no evidence of a

1 skull fracture. So it didn't look like she had had any sort
2 of motor vehicle collision or a significant fall from a
3 significant height that had caused that, because usually
4 you'll see a skull fracture with those type injuries.

5 For nonaccidental trauma other things to do are a
6 skeletal survey where we do x-rays of other parts of the
7 body looking for any other fractures. The only other x-rays
8 that I believe we did at Self, the only one we had time to
9 do, was a chest x-ray. And that was to look at the lungs
10 and ribs, but primarily for me to confirm that the
11 endotracheal tube was in place where I needed to be to
12 ventilate her adequately.

13 Q Did you notice -- during your physical exam of ^{victim} [REDACTED]
14 did you notice any other -- any other injuries to her body?

15 A The only other thing that I charted was that she had a
16 splotchy appearing rash on her extremities which was
17 nonspecific. It could have been from a contact reaction to
18 something. I don't recall personally what those looked like
19 to say whether they were bruising or whether it was from
20 some other etiology.

21 Q And do you -- there's another phrase for splotchy.
22 Would you say -- I think you read in your notes where it
23 said mottled?

24 A Mottled, yeah.

25 Q Is that another phrase for that?

1 A That would be another word for it, yeah. So basically
2 a change in skin color. Mottled is often seen with
3 decreased temperature or decreased oxygen saturation, which
4 someone with a decreased respiratory graph would certainly
5 have.

6 Q And after you examined ^{victim} [REDACTED] and received back the
7 results of the CT scans what -- what was your opinion in
8 this case as to what to do next? What was your next step?

9 A Well, unfortunately Self does not have a pediatric
10 neurosurgeon, nor do we have a pediatric intensive care
11 unit, and she was certainly sick enough to need those
12 subspecialties. So what we do with our very ill children is
13 we transport -- transfer them to Greenville Memorial. So I
14 spoke with the neurosurgeon, Dr. Troup, at Greenville and
15 described the CT findings to him and described her exam
16 findings and he agreed to accept the patient and transfer
17 her up to Greenville Memorial.

18 We also coordinated with the pediatric intensive that's
19 there to get her bedding in ICU where they could take
20 another look at her and look at the scans that we had
21 ordered and take over her care from there.

22 Q And were the scans that you ordered at Self, were those
23 also transmitted to Greenville so they'd have a copy of it
24 there as well?

25 A They were, yeah. We printed off all of her imaging on

1 a CD so they could look at them and pull them up themselves.
2 And also, we would have printed off all her blood work and
3 nursing notes and physician records and we would have sent
4 all of her records with her Greenville.

5 Q So it would cut down on the -- basically having to
6 replicate or duplicate the things that you had already done
7 at Self?

8 A That's right.

9 Q Based on your medical records, how long did it take you
10 to do your procedures with ^{victim} [REDACTED]?

11 A I spent a good deal of time with her at the bedside
12 because she was so ill. I spent -- I think I charted about
13 52 minutes of direct constant care and contact with her,
14 observing her and making sure that she was improving after
15 we put the breathing tube in. And that also includes time
16 in consultation on the phone with the radiologist and with
17 the subspecialist in Greenville.

18 Q And how long was ^{victim} [REDACTED] at Self Memorial?

19 A She was at our facility for less than an hour and a
20 half, which is --

21 Q Before she was air --

22 A Before she was airlifted to Greenville, which is a very
23 quick turnaround time for us. But she was very sick and we
24 needed to get her to definitive care.

25 Q And based on all of your findings and what you've

1 already discussed, you felt that was the best course of
2 action --

3 A Yes.

4 Q -- to help her as best you could?

5 A Right.

6 MR. BROWN: No further questions, Your Honor.

7 THE COURT: Cross examination by the Defense.

8 MS. BOLEN: Yes, Your Honor. Thank you.

9 CROSS EXAMINATION

10 BY MS. BOLEN:

11 Q Good morning, Dr. Brooksbank.

12 A Good morning.

13 Q I've just got a couple questions. You said that you --
14 victim
14 you saw [REDACTED] starting at -- I think you said 11:40 in the
15 morning?

16 A She arrived in the ER 11:40 on August the 8th,
17 according to the electronic record.

18 Q And you first talked about running some blood tests and
19 you said the white blood cell count was elevated. And you
20 said that could be from infection, right?

21 A It can be from infection or stress, trauma. Many
22 things can cause that. It's not a specific test.

23 Q And wasn't her red cell blood count also low?

24 A It was slightly low, yes.

25 Q And that could be from mineral deficiencies --

1 A It could be anemia.

2 Q -- anemia?

3 A It could be from chronic disease. Certainly trauma, or
4 in her case she had blood in her head, which would explain
5 why it was low.

6 Q And then you talked about running this CT scan on her,
7 correct?

8 A Uh-huh.

9 Q And you said it showed some chronic blood. So
10 basically an older injury?

11 A It showed some older blood and a large amount of acute
12 fresh injury.

13 Q And the chronic blood would be an injury that you said
14 could have been a week or several weeks beforehand, right?

15 A Several days, to a week, to -- you know, it's not
16 uncommon for us to get, especially in older patients,
17 chronic subdural hematomas that will last weeks before they
18 completely resolve.

19 Q And with the -- you said there was an acute bleed,
20 correct?

21 A That's right.

22 Q And you said that was several hours?

23 A Uh-huh.

24 Q That could have been two or three hours?

25 A Absolutely it could have been two or three. It could

1 have been minutes to --

2 Q Could have been minutes.

3 A -- to several hours. Twelve to 24 hours at the
4 absolute most.

5 Q So it could have been minutes, you said?

6 A Uh-huh.

7 Q And when you ran the CT scan you mentioned seeing the
8 intracerebral hemorrhaging, right?

9 A Right.

10 Q You mentioned the midline shift?

11 A Correct.

12 Q But you didn't notice anything about retinal
13 hemorrhaging, right?

14 A I did not do a retinal exam in the emergency
15 department.

16 MS. BOLEN: I don't think I have anything further.

17 Thank you, Your Honor.

18 THE COURT: Anything on redirect?

19 MR. BROWN: Just a couple of questions, Your Honor.

20 REDIRECT EXAMINATION

21 BY MR. BROWN:

22 Q Getting back to the chronic blood. You already said
23 the chronic is several days to maybe weeks.

24 A Uh-huh.

25 Q And that would have a different color?

1 A - It would. It show up differently on CT scan.

2 Q And did her CT scan show any kind of chronic blood?

3 A It did.

4 Q It did? Was it as much as the acute?

5 A The acute was much more profound than the chronic.

6 Usually with chronic injuries they won't cause midline
7 shift. It takes an acute change to cause the midline shift
8 to occur.

9 Q And again, you were saying that the acute blood -- it
10 could go from minutes before, but it also could be 12 to 24
11 hours?

12 A Correct.

13 Q Could you put a time on that?

14 A I couldn't. You know, I'm not the best one to answer
15 that question. Dr. Troup, the neurosurgeon, would probably
16 be better equipped to answer that than me.

17 Q But it could happen within the past 24 hours?

18 A It could. It could.

19 Q And have you -- based on your experience, have you
20 treated patients that have come in, you know, right after,
21 for example, a car accident within a couple of minutes, and
22 then also one that's lasted -- or maybe the head trauma
23 happened hours before? Could you tell the difference by
24 looking at those two by coloration of the blood?

25 A Not always. Not always on my opinion of the imaging.

1 Sometimes with trauma there's delayed hemorrhaging. So
2 initially the CAT scan may even be normal, and several hours
3 a blood vessel ruptures and then there's a lot of acute
4 bleeding several hours after an accident.

5 Q Several hours after an accident?

6 A Uh-huh.

7 MR. BROWN: No further questions.

8 THE COURT: Anything on recross.

9 MS. BOLEN: No recross, Your Honor.

10 THE COURT: Thank you, Doctor, for your testimony. And
11 certainly understanding that you worked last night, you're
12 excused.

13 THE WITNESS: Thank you.

14 (Whereupon, the witness steps down from the witness
15 stand.)

16 THE COURT: All right. Solicitor, call your next
17 witness, please, sir.

18 MR. BROWN: The State calls Major Patsy Lightle.

19 MAJOR PATSY LIGHTLE, having been
20 duly sworn, testified as follows:

21 DIRECT EXAMINATION

22 BY MR. BROWN:

23 Q Good morning, Ms. Lightle.

24 A Good morning.

25 Q Ms. Lightle, who are you employed by right now?

1 A I recently retired December 6, 2013. I was employed by
2 the South Carolina Law Enforcement Division, better known as
3 SLED, and I retired after 35 years of service.

4 Q Thirty-five years of service. And when did you --
5 while you were working at SLED what was your title there?

6 A At the time of this investigation I was the major of
7 the special victims unit.

8 Q And being over the special victims unit what does that
9 entail?

10 A We investigate specious child deaths under the age of
11 18, and also vulnerable adult and elderly abuse, neglect and
12 exploitation.

13 Q And how long were you in the unit?

14 A The child death investigation unit started in 1993.
15 And then in 2006 they added the vulnerable adult abuse,
16 neglect, exploitation part. So I guess I've been
17 investigating child deaths since 1993.

18 Q What were you -- were you in investigations before 1993
19 also?

20 A I began my career at SLED in the forensic unit. I was
21 doing what they call today CSI. Responding to crime scenes
22 and gathering evidence, blood, semen, saliva, and taking it
23 to court and testifying on that. I went to the FBI Academy.
24 Learned the DNA procedure. Came back and started the DNA
25 lab. And it was in 1993 that I left forensics and went

1 completely into investigations.

2 Q So since 1993 have you done a number of -- number of
3 investigations?

4 A Yes. Typically on average we would get around 200
5 child deaths that were suspicious each year.

6 Q And in the course of this case did you have occasion to
7 investigate the case -- or the death of ^{victim} [REDACTED]?

8 A I did.

9 Q Major Lightle, when did you first become involved -- or
10 your child fatality unit, when did you first become involved
11 in this case?

12 A In this case I became involved on August 9, 2012.

13 Q Now, August 9th, that was actually the day after ^{victim} [REDACTED]
14 was first admitted to the hospital; is that right?

15 A That is correct.

16 Q Now, how did you become involved in this case?

17 A I received a telephone call from Chief Galloway of the
18 Calhoun Falls Police Department asking for assistance on
19 this case.

20 Q What did you learn at that time about this case?

21 A Chief Galloway told me that ^{victim} [REDACTED] was
22 10-months-old -

23 MS. BOLEN: Your Honor, objection just based on it
24 calls for hearsay.

25 MR. BROWN: Judge, this is not a truth of the matter

1 search. It's just her reason why they got involved in this
2 case. A little background of why she was called.

3 THE COURT: I think in light of the fact that Chief
4 Galloway has already testified I'm going to allow it, but
5 let's -- I mean, don't go too far --

6 MR. BROWN: Yes, sir.

7 THE COURT: -- into the discussion. And it probably
8 would go more to information, state of mind on this witness
9 as far as the information she received to start her
10 investigation. So at this point I will overrule.

11 MR. BROWN: Yes, sir.

12 Q But why were you called?

13 A I was called to assist with the investigation of a
14 10-month-old that had been found unresponsive. And with
15 that information he also gave me the telephone number of Dr.
16 Nancy Henderson who was the forensic pediatrician who was
17 attending who I wanted to call to get the initial assessment
18 and prognosis of this child at that time.

19 Q And then once you did talk with Dr. Henderson what was
20 your next -- what did you do next?

21 A After talking with Dr. Henderson she had told -- had
22 given me the phone number for the pediatric intensive care
23 unit at Greenville Memorial Hospital and I wanted to talk to
24 the attending physician there to also get the initial
25 assessment and prognosis of the child to see how the child

1 was and the injuries and things of that nature. And that's
2 what I did. I talked to a Dr. Burning.

3 Q Now, after you first did your initial -- got your
4 initial assessment did you ever travel to Calhoun Falls?

5 A I did. Between the phone calls somewhere in there I
6 also called our crime scene unit and asked them to respond
7 to the scene, and at that time I responded to Calhoun Falls
8 Police Department to meet with Chief Galloway.

9 Q Do you know what time you arrived at Calhoun Falls
10 Police Department?

11 A It was approximately around 8:15 or so. There was a
12 bad storm that night and it took a little bit longer than
13 usual to get to Abbeville and Calhoun Falls.

14 Q So you got there around 8:15 on August the 9th?

15 A That is correct.

16 Q And who was also -- you mentioned that you called your
17 crime scene investigations. Who was part of that crime
18 scene investigation?

19 A I talked to Lieutenant Crooks when I made the phone
20 call. There were two people that responded to the scene;
21 Vickie Hallman and Al Brown.

22 Q Okay. And once you arrived at Calhoun Falls Police
23 Department around 8:15 who was at the police department?

24 A When I arrived at the police department Chief Galloway
25 was there as well as Shawn White.

1 Q And how did Shawn White get there, to your knowledge?

2 A To my knowledge the Chief had picked him up and brought
3 him there.

4 Q Was Shawn White under arrest at that time?

5 A He was not under arrest and he was voluntarily there.

6 Q And did you speak with Shawn White that night?

7 A Pardon me?

8 Q Did you speak with Shawn White that night?

9 A I did. Yes, I did.

10 Q And how did that come about?

11 A Chief Galloway told me that he was there with the child
12 at some point and --

13 MS. BOLEN: Your Honor, again same objection.

14 THE COURT: Well, I think it's already been established
15 in evidence that a portion of August 7th, 8th that the
16 Defendant was there. So I think that's already been
17 established into evidence. So I'll overrule the objection.

18 MR. BROWN: Thank you, Your Honor.

19 Q How did you come to talk to Shawn?

20 A I knew from speaking with Chief Galloway that he had
21 been there at some point in time. And what I wanted to do,
22 as I want to do on all child deaths, is to talk to the
23 people that were there or witnessed anything to gather any
24 facts that I can about what may have happened to the child.
25 And so, Shawn White was there. And so, I wanted to .

1 interview him.

2 Q And did you interview Mr. White?

3 A I did. I asked Chief Galloway if he had an interview
4 room and he said no. And I asked him if he had a room that
5 we could talk and he said that he would allow us to
6 interview in his office. And so, we went into his office.
7 And I kind of went around the table. You go into the door,
8 and I went around the table and sat, and I had Shawn White
9 here so he felt comfortable that he could go out the door at
10 any time. I wanted him to feel comfortable so that we could
11 talk and discuss what happened.

12 Q And never -- at any time you never put him under
13 arrest, or he was always free to go?

14 A That is correct.

15 Q And who was in the room? You said we went in the room.
16 Who went in the room during this interview?

17 A It was just me and Shawn White.

18 Q And Shawn White. Where was Chief Galloway at that
19 time?

20 A Chief Galloway stayed outside at the front desk if
21 somebody came in or something so that we wouldn't be
22 disturbed during the interview.

23 Q And what was the room like in there? You said you were
24 on -- behind the desk away from the door and Shawn was next
25 to the door?

1 A That's correct. When you walk in the door -- I guess,
2 walking in the door you would see the Chief's desk, and then
3 there would be a chair over here, and Shawn sat over here,
4 and I went around the desk and sat. I didn't want him to
5 feel like he couldn't get out because I didn't want him to
6 feel under stress or anything. I wanted him to feel
7 comfortable. Most people will talk when they're more
8 comfortable.

9 Q And did Shawn when you were in that office, did he
10 freely give you -- did you all discuss this, or did he --
11 did you interview him?

12 A I did interview Shawn White. I told him that I knew
13 victim
14 nothing about [REDACTED], or him, or anything about the
15 situation and that I needed for him to please tell me how he
16 victim
17 was related to [REDACTED] and all the events that led up
18 that he knew about to the child being found unresponsive.

19 Q And what did -- what did Shawn tell you during this
20 interview?

21 A Shawn started off saying that he and Melody LaBounty
22 were high school sweethearts and that today, at that time,
23 that they were best friends. He said that he had been
24 living with his parents before he came to live with Melody.
25 He said that he moved in with Melody in January -- January
26 1st, 2012, and that there were four children there. He said
27 Child C Child I
28 there was [REDACTED] who was six, [REDACTED] who was five,

Child R

victim

1 [REDACTED] who was three, and [REDACTED] who was 10 months. He went
2 on to say that he wasn't the biological father of the
3 children and that Melody's parents owned the house.

4 He said that Melody was -- worked at a bar. And that
5 on July 29th Melody had left to go to the mountains to see a
6 friend and that ^{victim} [REDACTED] had stayed with him and the other
7 three girls had gone to stay with Melody's parents. That
8 was on a Sunday, the 29th.

victim

9 And he said that on the 30th, on Monday, he and [REDACTED]
10 were sitting on the front porch on the top step and that his
11 brother came out the door, hit ^{victim} [REDACTED] and knocked ^{victim} [REDACTED] off
12 the top step and she fell to the bottom step. There were
13 three steps. And that ^{victim} [REDACTED] hit her head. He picked her
14 up, and she had skinned her nose. Had a little knot on her
15 head about the size of a half dollar. And he picked her up
16 and she quit crying and she seemed to be okay. He said
17 later that day, or sometime that day, I think Melody's
18 mother, he said, started feeling bad and she brought the
19 other three girls over. So he had the four girls that he
20 was taking care of. That was on Monday.

victim

21 He said that he checked on [REDACTED] that night and she
22 seemed fine. He had fed her at one point some food and a
23 bottle, maybe some mashed potatoes, and that she was sitting
24 with Child C [REDACTED], the older child, and that she vomited. He
25 said later he fed her again and she about an hour or two

1 later vomited. I asked him if the other children vomited,
2 wondering if it was maybe a stomach virus, or a flu or
3 something, and he said the other children didn't.

4 He said Melody came back home on the 31st, which would
5 have been Tuesday. Tuesday. And I asked him if he told
6 Melody about ^{victim} falling down the steps and he said that
7 he was right up front with her. That he told her and that
8 she believed him. And I said, well, did Melody want to take
9 ^{victim} to the doctor, and he said no, she never takes the
10 children to the doctor. In fact, she just recently took
11 them to get their shots for school. And he said after that
12 ^{victim} vomited for like four more days, stopped for two, and
13 then vomited again for another day, and -- which kind of led
14 us up to August the 7th.

15 And on August the 7th he said that he went to work and
16 got home about 6:00, or 6:00 p.m. that day. And Melody was
17 feeding ^{victim}, and he took a shower and grabbed something to
18 eat, and then Melody left to go to work at 7:00 p.m. He
19 said that ^{victim} was feeling better that day, or that night
20 when he got home, and she was playful. And that the girls
21 -- the three other girls and ^{victim} played and they were
22 having a good time. Were so playful that he allowed them to
23 stay up past their bedtime. But their bedtime was usually
24 8:00 p.m. and on this night he allowed them to stay up until
25 10:00 p.m. He said at 10:00 p.m. he put the three girls in

1 their bedroom and put ^{victim} [REDACTED] in her playpen. He said about
2 30 minutes later he went to sleep on the couch and woke up
3 at 6:30 the next morning when Melody woke him up. He said
4 he went to work. On the way out the door he covered ^{victim} [REDACTED]
5 up with the blanket and went to work. Around 11:00 he was
6 working, I think, with the neighbor. The neighbor, he said,
7 got a phone call, and the neighbor told him that the phone
8 call he had received he got information that there was a
9 police car and an ambulance at Shawn and Melody's house. So
10 he calls Melody and asked her what's going on and Melody
11 said that ^{victim} [REDACTED] was barely breathing. And he said right
12 after that, he said, that's about it, and Melody hasn't
13 spoke to me since.

14 And he said something to the fact, he said, I -- he
15 said, I guess they think it happened that night. But ^{victim} [REDACTED]
16 didn't hit her head on that Pack'n Play. On the Pack'n
17 Play. And he said that's it. I'd have to get the
18 memorandum to really get the wording, but he said something
19 to the fact that's it. Nothing's missing.

20 And then right after that he went right on to say that
21 he had had a conversation with ^{Child C} [REDACTED]. That he had told
22 ^{Child C} [REDACTED] that she was jealous of ^{victim} [REDACTED], and ^{Child C} [REDACTED] had told
23 him yeah, that's why I squeeze ^{victim} [REDACTED] and choke her. And he
24 told me that Chief Galloway had asked the doctor if ^{Child C} [REDACTED]
25 could do something like that, a six-year-old could do

1 something like that, and the doctor had said no, a
2 six-year-old can't choke a child and squeeze a child to
3 cause the injuries that ^{victim} [REDACTED] had when she presented to the
4 emergency room. That that would not cause the severe
5 bleeding and the severe swelling and the bleeding in ^{victim} [REDACTED]'s
6- eyes. That that couldn't be caused by a six-year-old.

7 May I refer to my notes --

8 Q Yes.

9 A -- just to kind of refresh my memory a little bit?

10 Q The notes you're looking at, that's a memorandum of
11 what your notes were when you were interviewing him and you
12 were writing the notes down while you were talking with him?

13 A Yes, that's correct. When he's talking and I'm
14 interviewing I'm taking a lot of notes. And then from the
15 notes I will write a memorandum of interview to put those
16 notes into something that can go into our case file. And
17 that's what I'll be referring to now. And I also have my
18 notes with me as well.

Child C

19 After he spoke about [REDACTED] he went on to say that his
20 brother, whose name was Chris White, felt responsible for
21 ^{victim} [REDACTED]'s injuries. He said that -- you know, I asked him at
22 that point. I said, well, what do you think caused ^{victim} [REDACTED]'s
23 injuries, and he said I guess it was the fall down the
24 stairs. When she fell down. And he went on to say -- oh, I
25 asked him, I said, well, who was at the house on the 7th

1 when these injuries occurred sometime between that night
2 victim
3 sometime or that day? Who was there? Who was with [REDACTED]
4 that night after Melody went to work? And he said I was.
5 Child C Child I Child R victim
6 It was just me, [REDACTED], [REDACTED], [REDACTED] and [REDACTED]. And I
7 said okay. And I asked him when he put [REDACTED] in the playpen
8 victim
9 did [REDACTED] go to sleep, and he said that she did. And he
10 said she went to sleep and she slept all night long. And he
11 said they typically go to bed at 8:00, and he said -- and
12 victim
13 she -- he said [REDACTED] usually goes to bed at 8:00 and she
14 gets up at 6:00 a.m., eats a bottle and goes back to sleep
15 until 9:00, or until the children get up the next morning
16 and walk her up. He went back to Tuesday night, the night
before, when he was alone with the children. He said,
again, I put a movie in and dozed off. And he said he slept
on the couch and he did not get up all Tuesday night after
he dozed off.

17 I asked him if he remembered what he fed the children
18 that night before and he said he did not remember. He said
19 -- he said I put ^{victim} [REDACTED] in the Pack'n Play and put a movie
20 in, got on the couch. And he does not remember when he went
21 to sleep. So that was kind of the third time he mentioned
22 that. And then he said everything went to shit after that.
23 You don't think about shaking a baby to see if it's okay.

24 He said Melody comes home late a lot. She comes home
25 at 3:00 a.m. and sometimes she stays in bed until noon. He

1 - said Melody did not find the baby until 11:00 a.m. the next
2 morning. And he went on to say that Melody LaBounty would
3 not hurt her kids ever and that they were spoiled brats.

4 He said that during the four days that ^{victim} [REDACTED] was
5 vomiting, the two days that she wasn't and the one day that
6 she vomited again, that he was there day and night with her.
7 He said that he laid her flat on her back to sleep that
8 night, but that she typically likes to sleep on her belly
9 with her butt up in the air. He said he left a note for
10 Melody that night to wake him up at 6:30 the next morning so
11 that he could go to work.

12 He said he hadn't talked to anyone at the hospital.
13 And I asked him, I said, well, have you been to the hospital
14 to see ^{victim} [REDACTED] to ask her -- or to find out how she's doing
15 and he said no. He said that he loved Melody and he did not
16 expect things to go like this.

17 The interview was kind of concluded at that point. I
18 had called also an agent, Rick Charles, to join me to assist
19 in the interview, and he got there around 10:00. But during
20 all this time I asked Shawn White, I said, would you please
21 reduce all of this to writing. Would you write your own
22 voluntary statement, and he said that he would. And so, I
23 gave him a statement form and he filled that out. And that
24 was signed around about, I think, 10:53 p.m. And the
25 signature was witnessed by Agent Rick Charles.

1 Q Major Lightle, I want to show you -- you said that
2 Shawn White did reduce his interview to writing?

3 A That is correct.

4 Q That he wrote down? I'm going to show you what's been
5 marked for identification purposes State's Exhibit 34. Can
6 you tell me if you recognize that?

7 A Yes.

8 Q How do you recognize that?

9 A I recognize it because it has my signature on it, and
10 this is the one that I witnessed that Shawn White wrote that
11 night, and he signed it as well, and Rick Charles.

12 Q And Rick Charles. And Rick Charles -- tell me again
13 who Rick Charles is.

14 A Rick Charles is a special agent with SLED. I had
15 previously called looking up Charity Herlong, and she wasn't
16 able to respond because of a illness, so I called Rick
17 Charles who is -- actually resides in this area of the
18 state, and asked him to assist.

19 Q And when Shawn wrote that state was Rick Charles
20 present in the room at that time?

21 A Shawn was writing the statement, but Rick Charles
22 wasn't there during the entire writing of the statement.
23 But Rick did get there in time to witness his signature.

24 Q Just so we're all clarified. Is the person that signed
25 that statement, is he in the courtroom today?

1 A Yes, he is.

2 Q Can you identify him for me?

3 A The gentleman sitting at the other desk.

4 Q What color shirt does he have on?

5 A It appears to be white striped. Kind of light green.

6 MR. BROWN: Let the record reflect she's identified Mr.

7 White as the one who wrote that statement.

8 THE COURT: So noted for the record.

9 Q And, Ms. Lightle, did Mr. White sign that statement?

10 A He did.

11 Q What is the top -- what does the top of that form say?

12 A What does the top of this form say?

13 Q What does the top -- what does the form say?

14 A It says I -- it says, "Voluntary statement. Not under

15 arrest." And it says, "I," and then he filled in Shawn

16 White, "am not under arrest for, nor am I being detained for

17 any criminal offenses concerning the events I am about to

18 make known to Patsy Lightle. I understand I am free to walk

19 away without anything and I volunteer the following

20 information of my own free will for whatever purposes it may

21 serve."

22 Q What's the next line?

23 A It says, "I am 30-years of age and I live at [REDACTED]

24 [REDACTED], Calhoun Falls, South Carolina. I can read and

25 write and completed the eleventh grade in school." His date

1 of birth was [REDACTED]. --

2 Q And did Mr. White write a statement out?

3 A Mr. White did write a statement out. Would you like
4 for me to read it?

5 Q Yes, I would.

6 A "On July 30th, ^{victim} [REDACTED] --

7 THE COURT: Do you want to go ahead and offer it into
8 evidence --

9 MR. BROWN: Yes, sir.

10 THE COURT: -- unless -- before she publishes it. Any
11 objections from Defense?

12 MS. BOLEN: No, sir.

13 THE COURT: All right. Without objection the statement
14 will be admitted into evidence as State's 34.

15 MR. BROWN: Thank you, Your Honor.

16 A "On July 30th, ^{victim} [REDACTED] and I were sitting on the front
17 steps. My brother accidentally knocked her off them causing
18 her to hit her head on the bottom step. The next four days
19 she was fussy and didn't keep her food down. Then she was
20 fine for two days. The day after that she started vomiting
21 again. The next day I went to work. Returned around 6:00
22 p.m. Melody went to work at 7:00 p.m. ^{victim} [REDACTED] was in a
23 playful mood for the first time in a week, so I let her
24 sisters stay up until 10:00 p.m. and play with her. I put
25 them all in the bed at 10:00 p.m. I put a movie in and fell

1 asleep on the couch. I got up at 6:30 a.m. the next morning
2 and went to work, covering ^{victim} [REDACTED] up with her blanket on my
3 way out the door. I got a phone call around 11:00 a.m.
4 saying an ambulance was at the house, so I called Melody.
5 She told me ^{victim} [REDACTED] was nonresponsive but breathing, then she
6 hung up."

7 Q Was that the end of the statement?

8 A That is correct.

9 Q And did Shawn White -- is there another marking after
10 that statement on the page?

11 A Yes. There's an X on the page so that no one else can
12 write any additional information, and his initials are
13 there. And then it says, "I have read each page of this
14 statement consisting of one page. Each page of which bears
15 my signature and corrections, if any, bear my initials. And
16 I certify that the facts contained herein are true and
17 correct. The statement was completed at 10:53 p.m. on the
18 9th day of August 2012, Shawn White." And then it was
19 witnessed by myself and Rick Charles. And there's a
20 scratched area on the statement which he did, and then he
21 initialed that to show that he had done that. Made the
22 correction. And then he also put his initials at the
23 beginning of the statement.

24 Q Thank you, Major Lightle.

25 A Yes, sir.

1 Q Now, Major Lightle, after you spoke with Shawn and had
2 his statement reduced to writing what did you do next? Or
3 what do you remember that night?

4 A After that Shawn White and I walked up to the front of
5 the police department area toward the front door. Chief
6 Galloway was going to take him home and he was outside. And
7 I remember the victim's advocate coming in and we were
8 having a discussion. At that point in time Shawn White
9 left, walked off, and Chief Galloway, Rick Charles and I
10 went to [REDACTED], which was the location
11 where [REDACTED] victim was found unresponsive.

12 Q And at that time did the CSI, or the investigators,
13— Vickie Hallman, were they at the scene at that time?

14 A They were at the scene. That is correct.

15 Q And did they -- did they execute a search warrant at
16 that time to examine the house?

17 A They had executed the search warrant when I got there.
18 That is correct.

19 Q And what did you do during this time?

20 A Crime scene goes in to document the scene. We like to
21 have a lot of pictures taken and -- of the scene. So they
22 were processing the scene, documenting everything. We asked
23 them to sketch the area and take photographs. So I did go
24 inside the house just to see the area. Just to get an
25 outlay of the house so that I would understand the location

1 a little bit better. But I didn't go in and -- too far and
2 do too much because I didn't want to bother any of the
3 furniture or surroundings, anything in the house, so that
4 they could document it and everything.---So I came back out
5 of the house and I waited for them to finish processing the
6 house.

7 Q And I'm going to show you what's already been marked as
8 State's Evidence 17. Do you recognize this picture?

9 A Yes, I do.

10 Q What is that?

11 A That is [REDACTED]. That's the house that
12 we went to after the interview where the crime scene was.

13 Q And is that the location that you were made aware of
14 was the incident location for this case?

15 A That is correct.

16 Q And after -- what time did they -- was the house locked
17 when CSI got there? The crime scene investigations got
18 there?

19 A I was told by Vickie Hallman that it was locked. That
20 is correct.

21 Q And after they were done taking pictures of the
22 incident location what did you do next, or what was the next
23 step in your investigation?

24 A I asked Vickie Hallman if they would respond to the
25 hospital and take some additional pictures of any bruises or

1 any injuries that might be on the exterior part of [REDACTED]'s
2 body, just for documentation purposes, and they did respond
3 there. And after that I returned to Columbia and later
4 spoke with Lieutenant Herlong, and we did some followup
5 interviews and continued the investigation.

6 Q Your main part, other than being over the crime scene
7 -- or over the fatality unit, your main part of this case
8 was that you spoke with Shawn White and had the statement
9 reduced to writing?

10 A That's correct. And I assisted Lieutenant Herlong in
11 some of the interviews with some of the doctors and other
12 people.

13 Q Some of the doctors?

14 A That's correct.

15 MR. BROWN: No further questions.

16 THE COURT: Cross examination?

17 MS. BOLEN: Yes, Your Honor.

18 CROSS EXAMINATION

19 BY MS. BOLEN:

20 Q Major Lightle, Shawn told you that he actually put in a
21 movie when he went to bed, right?

22 A That's correct. He said he put a movie in.

23 Q And he fell asleep while the movie was on?

24 A He said he dozed off. That was -- he talked about that
25 three times actually. One time he said he got on the couch

1 and went to sleep around 30 minutes later. One time he said -- - --

2 he put the movie in and dozed off. So it was -- but it as -

3 all about the same. He got on the couch. And one time he

4 did specifically say he put a movie in, yes.

5 Q And this interview that you did with him, you said it

6 started around 8:15?

7 A Somewhere around 8:15, 8:30. Somewhere around in

8 there, because --

9 Q In the evening?

10 A -- yeah. About 8:30, I'd say.

11 Q And the signed statement is at 10:53, correct?

12 A That's correct.

13 Q So he was there for about two and a half hours with

14 you?

15 A That's correct.

16 Q Two hours, 45 minutes almost?

17 A That's correct.

18 Q And he was there voluntarily, right?

19 A Correct.

20 Q And you didn't videotape this interview, right?

21 A No.

22 Q And you didn't audiotape it either?

23 A No.

24 Q And he stayed there until almost 11:00 at night? Shawn

25 did?

1 A That's correct.

2 Q And he also told you that [REDACTED] ^{victim} usually got up around
3 6:00 for a bottle, right?

4 A Correct.

5 Q And she usually went back to sleep and was up again at
6 9:00?

7 A That's what her routine -- her usual routine was. But
8 he had -- they usually go to bed at 8:00, but he had allowed
9 them to stay up later until 10:00.

10 Q And he said that he got up about 6:30 and left for
11 work, right?

12 A That's correct.

13 Q And he also said that Melody came in at some point
14 during the night?

15 A He said Melody left him a note to wake him up, but he
16 didn't remember Melody coming in. That he -- she woke him
17 up at 6:30 that morning.

18 Q And you didn't actually go to the hospital, right? You
19 went to [REDACTED] but you didn't go to the hospital;
20 is that correct?

21 A That is correct.

22 Q Okay. And when he was talking about Melody he said
23 there's no telling what goes on because she stays in bed
24 until around 1:00, right? Isn't that in your notes?

25 A He said that she'll stay into -- in bed until noon

1 sometimes and doesn't know -- he's got something and I can
2 -- if I can look back in my notes. Something about -- yeah,
3 she doesn't know what's going on while she's asleep,
4 correct.

5 Q While he's not there?

6 A Something to that affect, yes.

7 Q And you said you did some followup investigations and
8 followup interviews?

9 A That is correct.

10 Q And one of the people you talked to was Chris White,
11 right?

12 A That is correct.

13 Q And he confirmed what Shawn had told you about the
14 stairs?

15 A Correct.

16 Q That he had -- Chris had accidentally knocked ^{victim} [REDACTED] off?

17 A That was one of the things that he told me, yes.

18 Q And that's something Chris told you, correct?

19 A Correct.

20 Q And then as a result of Chris telling you that you went
21 back and measured some of the stairs; is that right?

22 A Not what Chris told me. Shawn told me about ^{victim} [REDACTED]
23 falling off the steps the night of the 9th. And so that
24 night I mentioned something to Vickie Hallman on the next
25 day. It was within that. But it was based on my interview

1 with Shawn that I wanted those steps measured, because I
2 wanted to know how -- how tall they were, you know, the
3 depth and the height and the width, just so that we would
4 know what the distance was that she fell. And I wanted good
5 documentation of the steps.

6 Q And you talked to him on August 9th, right?

7 A That is correct.

8 Q And you weren't involved with setting up the forensic
9 interviews right?

10 A I was not. I assisted Lieutenant Herlong with the
11 medical interviews to find out the injuries of ^{victim} [REDACTED] and
12 like could this fall down the stairs cause the injuries that
13 ^{victim} [REDACTED] incurred. And those were the kind of things that I
14 was trying to find out from Dr. Troup, Dr. Avant, Dr.
15 Johnson and Dr. Henderson. That's kind of what we do in
16 child fatalities is we investigate, find the facts out, and
17 then we try to find out can this -- could this cause it,
18 could this not cause it. And so, one of the things that I
19 wanted to know is falling down the stairs, could that have
20 caused the injuries that ^{victim} [REDACTED] had, and I found out that
21 they couldn't. That would not cause her injuries at that
22 time. So that kind of eliminated falling down the stairs as
23 being the cause for her injuries that she had that night in
24 the hospital.

25 Q And another thing Shawn told you was that on his way

1 out the door he covered ^{victim} [REDACTED] up with a blanket, right?

2 A That is correct.

3 Q And that he left the house at 6:30?

4 A He said she woke him up at 6:30, so I don't know
5 exactly what time he left. But he was awakened at 6:30 and
6 on his way out the door to work he covered up ^{victim} [REDACTED]. So I
7 don't know if it was 6:45 or 7:00, but he was awaked at
8 6:30. That's what he told me.

9 MS. BOLEN: If I could just have one moment, Your
10 Honor.

11 Q And, Agent Lightle, I know you said you got to the
12 Calhoun Falls Police Station around 8:15 at night, right?

13 A Somewhere around 8:15 approximately, yes.

14 Q But Shawn was already there, right?

15 A Correct.

16 Q Do you know how long he had been there?

17 A I do not.

18 MS. BOLEN: Nothing further. Thank you.

19 THE COURT: Anything on redirect?

20 MR. BROWN: Yes, Your Honor.

21 REDIRECT EXAMINATION

22 BY MR. BROWN:

23 Q Major Lightle, going back. Ms. Bolen asked you, you
24 know, again, was Shawn being there voluntarily.

25 A Yes.

1 Q And she asked you did you videotape it or did you
2 audiotape the statement. Did you videotape it?

3 A No. There's two reasons. One is there was no
4 videotaping -- there was no way to videotape it. There was
5 no -- there was no interview rooms. Sometimes interview
6 rooms will allow you to videotape or audiotape and there
7 wasn't. So we used his office and neither was there, so I
8 couldn't audiotape it or videotape it. But it's SLED's
9 policy that when we interview people that we only take a
10 statement and do a written statement. We interview them, we
11 take our notes, and then we ask them to write their own
12 voluntary statement. You know, we're an assisting agency.
13 We try to assist the agency the way they would like for us
14 to. So in the event that this had had an audio/videotape
15 room and they had wanted us to, we would have. But in this
16 case we didn't have a video camera or audiotape, and it's
17 not SLED's policy to do so anyway.

18 Q And Ms. Bolen also asked you, when you spoke with
19 Shawn, did Shawn mention waking up in the middle of the
20 night when Melody came in. Did he ever mention that he woke
21 up when Melody came in the house?

22 A No. He said that he went to sleep and slept all night
23 long and did not wake up is what he told me.

24 Q Well, what did he say -- how did he say Melody knew to
25 wake up at 6:30?

1 A He said he left a note for Melody to wake him up at
2 6:30.

3 Q And again, she was asking when you learned or why you
4 sent CSI back to go take pictures of the stairs. When did
5 he tell you the fall down the stairs occurred? It didn't
6 happen on August 7th or August 8th. When did he say that
7 ^{victim} [REDACTED] fell down the stairs?

8 A No. He told me the fall down the stairs occurred July
9 the 30th, and that was on a Monday when his brother, Chris,
10 was over at the house. And that would have been about 10
11 ^{victim} days before [REDACTED] was found unresponsive. And all of this
12 goes into our child death investigations, because, you know,
13 they're just a little bit different than an adult death
14 investigation. And the reason being is we like to establish
15 the health of a child. You know, an adult can say they're
16 well or not well, but we can go back and get birth records
17 and pediatric records to find out if the child is healthy
18 before they find them unresponsive. In this case, in
19 ^{victim} regards to [REDACTED], birth records were obtained, pediatric
20 ^{victim} records were obtained, and [REDACTED] had a normal birth. She
21 weighed seven pounds, three ounces when she was born. She
22 was a healthy baby. She left the hospital in the normal
23 time. She had a normal pediatric record -

24 MS. BOLEN: Your Honor, I'm going to object to this as
25 far beyond the scope of Mr. Brown's question.

1 THE COURT: I believe it would be.

2 MR. BROWN: Yes, sir. We'll move on.

3 THE COURT: Okay, thank you.

4 Q Major Lightle, she also asked you a question about --
5 about when Shawn put ^{victim} [REDACTED] in the back of the playpen. How
6 did -- what did he tell you -- how did he lay her in the
7 playpen that night?

8 A He said he put her on her back.

9 Q And that he said normally she would -- she likes to
10 sleep how?

11 A She likes to sleep on her stomach, on kind of her knees
12 with her butt up in the air.

13 Q But he specifically told you that he laid her on her
14 back?

15 A That's correct.

16 MR. BROWN: No further questions.

17 THE COURT: Anything on recross?

18 MS. BOLEN: No, sir, Your Honor.

19 THE COURT: Thank you for your testimony --

20 THE WITNESS: Yes, sir.

21 THE COURT: -- Major Lightle.

22 (Whereupon, the witness steps down from the witness
23 stand.)

24 MR. BROWN: Judge, at this time, we might want to take
25 a five minute break.

1 ---THE COURT: All right. Mr. Foreman, ladies and
2 gentlemen of the jury, we're going to take a -- which may
3 turn out to be our morning break. We'll see. But
4 nonetheless, we'll take a break, and if you'll retire to the
5 jury room. Again, I caution you and remind you not to talk
6 about this case, anything about this case amongst yourselves
7 while you are in the jury room.

8 (Whereupon, the jury exits the courtroom at 10:49 a.m.)

9 THE COURT: Okay. We'll be in recess for a few
10 moments.

11 MR. BROWN: Yes, sir.

12 (Whereupon, the court was in recess from 10:49 a.m. to
13 11:13 a.m.)

14 THE COURT: Bring the jury out, please, sir.

15 (Whereupon, the jury enters the courtroom at 11:13
16 a.m.)

17 THE COURT: Let the record reflect the jury is back in.
18 Solicitor, call your next witness, please.

19 MR. BROWN: Thank you, Judge. The State would call
20 Lieutenant Charity Herlong to the stand.

21 CHARITY HERLONG, having been first
22 duly sworn, testified as follows:

23 DIRECT EXAMINATION

24 BY MR. STUMBO:

25 Q Good morning, Lieutenant Herlong.

1 A Good morning.

2 Q You've been here every day this week. What area of the
3 state do you live in right now?

4 A I live in Spartanburg County.

5 Q Okay. So you drive down here from Spartanburg --

6 A Yes, sir.

7 Q -- every day this week?

8 A Yes, sir.

9 Q And you currently work with SLED; is that correct?

10 A Yes, sir. I do.

11 Q And your rank there is Lieutenant, correct?

12 A Yes, sir.

13 Q I want to make sure I had it right.

14 A Yes, sir.

15 Q What unit are you assigned to there at SLED?

16 A I work for the special victims unit which is child
17 fatality and vulnerable adult. Two separate jobs, and over
18 -- and then the special victims unit is over that.

19 Q Okay. And how long have you been in that role there at
20 SLED?

21 A I have been a lieutenant since the summer of 2012. I
22 have worked for the child fatality, or special victim's
23 unit, since the end of 2009.

24 Q Okay. And before 2009 I believe you were in
25 Spartanburg County?

1 A I actually went to SLED September 2008. I just was a
2 regional agent for about a year and a half. But prior to
3 September 2008 I worked for Spartanburg County Sheriff's
4 Office.

5 Q Okay. And at Spartanburg County Sheriff's Office what
6 was your role there?

7 A In 2000 I became a detective and did property crimes
8 for just a bit, and then I started doing sex crimes. All
9 different -- children, adults. And then in 2005, I believe
10 it was, I started -- I became part of the Internet crimes
11 against children task force. I created a couple child
12 profiles and went online and worked predator cases
13 undercover.

14 Q And I believe we worked together back in that time.

15 A We did. Yes, sir.

16 Q I was with the AG's office prosecuting your cases --

17 A Yes, sir.

18 Q -- sex crimes. Did that involve you posing as a child
19 on the Internet?

20 A Yes, many hours. Morning, noon and night hours.

21 Q The chat room thing?

22 A Uh-huh. Go in our chat room, make a user name up. A
23 profile. Go into chat rooms and wait to be, I guess,
24 approached, per se, electronically by someone.

25 Q And you worked in that capacity for about three years

1 --

2 A Yeah.

3 Q -- until you went to SLED?

4 A Yes, sir.

5 Q And in that time you made a number of arrests in
6 Internet crimes?

7 A Yes, sir. Made dozens of arrests doing that.

8 Q Now, before Spartanburg, did you go straight from the
9 Criminal Justice Academy to Spartanburg County?

10 A I didn't. After I graduated Presbyterian College in
11 1996 I worked for the Greenville County Detention Center for
12 about a year and a half. That was my introduction into,
13 quote/unquote, law enforcement. And then I accepted a job
14 at the Spartanburg County Sheriff's Office like January '98.
15 January '98.

16 Q So you've been in law enforcement from '98 --

17 A Yes.

18 Q -- to 2014? About 15, 16 years?

19 A Yes, sir.

20 Q And about how many investigations you've worked as a
21 detective in Spartanburg County and now with SLED, about how
22 many investigations have you conducted over those 13, 14 --

23 A Five hundred maybe. I know I have 100 cases to my name
24 right now. So probably 500 is an easy -- easy number.

25 Q Did one of those investigations this Defendant, Shawn

1 White?

2 A Yes, sir.- It did.

3 Q Okay. And you responded after, I believe -- Major
4 Lightle, who we heard from earlier, was your supervisor at
5 the time?

6 A Yes, she was.

7 Q Okay. And she contacted you to come to Calhoun Falls?

8 A She had. She did contact me. And I actually -- my
9 back was out and there was -- I couldn't move. And so,
10 that's why she called another agent to help her.

11 Q Okay. And when -- when did you get involved in this
12 case?

13 A August 14th she and I conducted some interviews at the
14 Abbeville County Law Enforcement Center. And that was
15 really my first introduct - well, I say introduction. That
16 was the first time I got hands-on and was part of some
17 interviews.

18 Q Had you had any consult before that date with any of
19 the doctors involved with this -- or examining ^{victim} [REDACTED]
20 [REDACTED]?

21 A Well, actually Dr. Nancy Henderson called me August
22 8th.

23 MS. BOLEN: Your Honor, objection. It's going to call
24 for hearsay.

25 THE COURT: Well, I'm not sure if she's going to repeat

1 what Dr. Henderson said. She just stated she received a
2 phone call.

3 MR. STUMBO: That's correct, Your Honor.

4 Q And so, you did consult with Dr. Henderson?

5 A She notified me about the case and she asked if she
6 could give my number to the local law enforcement. That
7 they might need help. And I didn't get the call, but Major
8 Lightle got the call the next day. And I can't remember
9 from the 9th when Major Lightle got involved until the 14th
10 if she was the one that actually had made contact -- you
11 know, spoken with other doctors on the phone or not. I
12 don't remember that.

13 Q So Dr. Henderson was aware of your all's speciality
14 unit at SLED --

15 A Yes.

16 Q -- that handles child fatalities?

17 A Yes. I've known Dr. Henderson from working sex crimes,
18 so she had my number.

19 Q And so, you do -- you're able to come on the 14th. And
20 who -- what are the first interviews that you conducted at
21 that time?

22 A Major -- Major Lightle and I interviewed Melody
23 LaBounty. I think that was first. And then her mother, Ms.
24 Jodyne Moss. I believe we interviewed her second. Major
25 Lightle asked most of the questions and I took -- I took a

1 lot of notes, and then, of course, I asked a few questions
2 myself as well.

3 Q Okay. And you interviewed, you said, Melody LaBounty
4 on the 14th. And did you interview her again at some point
5 during the investigation?

6 A We did. I believe it was September 6th that Major
7 Lightle and I met Melody LaBounty again and spoke with her.

8 Q Okay.. In addition to this, were you able to collect
9 the recording of the 911 call made by --

10 A Yes, sir. At some point Major Lightle handed that over
11 to me. I was technically the case agent, and so, it was my
12 responsibility to gather all the paperwork to put it all
13 together. And at some point -- I don't know who she got it
14 from specifically, but I know that she -- she handed that to
15 me. The 911 recording.

16 Q And you made that part of your case file?

17 A Yes, sir.

18 Q Did you consult with Vickie Hallman, y'all's crime
19 scene agent, at the time?

20 A I cannot remember any specific conversations that I had
21 with Vickie.

22 Q Did she provide you with her report and --

23 A Yes. I'm sure at some point I did receive the -- all
24 the pictures that they took, I received those on CD, and I
25 think they completed a summary. Investigative summary

1 maybe.

2 Q The pictures that are in evidence here. They were
3 taken by --

4 A Yes.

5 Q -- by Agent Hallman.

6 A Yes, sir.

7 Q Those were the ones that were made part of your case
8 file?

9 A Yes, sir.

10 Q Had -- at that time had you been -- had you had
11 consultation with Major Lightle about any other suspects in
12 the case?

13 A We had -- we talked a lot about other possibilities. I
14 know that Chris White was brought up. Obviously Melody
15 LaBounty was brought up. Shawn White was brought up. So we
16 had a lot of conversation, because we were trying to figure
17 out who -- who was responsible.

18 Q At that point had you been able to review medical
19 records and the findings that the doctors had made?

20 A Yes, sir. Coroner Ashley, Ronnie Ashley, he was at the
21 Abbeville County Law Enforcement Center on August 14th, and
22 he had collected a lot of documentation, ER records from
23 Greenville Memorial, from Self Memorial some ER records,
24 maybe some pediatric records, and he handed those to me.
25 Gave me all of those records. I took possession of those.

1 And so, we, of course, looked through those and discussed
2 what was in those records.

3 Q Okay. Now, by August 14th, the time you come in, was
4 -- had. ^{victim} [REDACTED] died at that point?

5 A Yes, sir.

6 Q She was deceased?

7 A Uh-huh.

8 Q And based on your consultation with the doctors you
9 were investigating this case at that point as an abusive --
10 child abuse homicide?

11 A Yes, sir.

12 Q Now, in the course of that, was there any information
13 in regards to the siblings in the house of ^{victim} [REDACTED]?

14 A I was made aware that there were three other girls in
15 the home. Yes, sir.

16 Q And what steps were you able to take in regards to the
17 sisters of ^{victim} [REDACTED]?

18 A Any time you have siblings or any other children in the
19 home you want them to be interviewed by an expert that is --
20 that does a good job with interviewing children. And so, I
21 set up interviews at the Children's Advocacy Centers in
22 Spartanburg to have them interviewed to find out if they saw
23 anything, if they heard anything. Because, again, at this
24 point we're just trying to figure out who was responsible.

25 Q Now, there are three -- three older sisters --

1 A Yes, sir.

2 Q -- of ^{victim} [REDACTED], the baby. And which ones were sent for
3 forensic interviews?

4 A ^{Child C} [REDACTED] and ^{Child I} [REDACTED]. I think -- I think now ^{Child C} [REDACTED]
5 is eight now and ^{Child I} [REDACTED] is six.

6 Q At the time they were six and four?

7 A Six and four, six and five. I can't -- I can't
8 remember exactly what their ages were.

9 Q And the baby sister, the youngest sister that's older
10 than ^{victim} [REDACTED] ^{Child R} [REDACTED], she's how old -- how old at the time?

11 A I think she was two. Two or three at the time.

12 Q Okay. And she was not sent for a forensic interview?

13 A No, sir.

14 Q And why is that for a two-year-old?

15 A I know a lot of times -- sometimes they just -- you
16 know, they're not good historians. They may -- you know,
17 they may not be able to explain things. It just depends on
18 their age. I know, of course, a six-year-old can, of
19 course, talk a whole lot easier than a two-year-old. Some
20 children are less verbal, more verbal. I can't remember
21 exactly why -- why we chose not to send ^{Child R} [REDACTED]. But that's
22 the decision that we made.

23 Q But ^{Child C} [REDACTED] and ^{Child I} [REDACTED], you were going to attempt to
24 see if they could remember what they saw and what they
25 heard, what --

1 A Uh-huh. If they knew anything about what happened.

2 Q In the forensic interview process, is that -- is there
3 a certain protocol that's used for forensic interview?

4 MS. BOLEN: Your Honor, I've got an objection at this
5 point. I think it's outside the scope of this witness's
6 knowledge if she was not the one doing the actual interview.

7 THE COURT: Okay. Repeat the question again,
8 Solicitor, if you would.

9 MR. BROWN: Is there a protocol used for investigative
10 forensic interviews.

11 THE COURT: I'm going to overrule it. I'll allow it to
12 see if you can tie things in, please.

13 A Well, I know I have sent a lot of children to
14 Children's Advocacy Center in Spartanburg over the years.
15 Maybe even 100. Whose to say. But a high number. And I
16 use them because they are experts and they can assess --

17 MS. BOLEN: Your Honor, I've got an objection as to her
18 classification as the interviewers as experts. They're not
19 recognized as such in our case law.

20 MR. BROWN: Your Honor, I can ask some followup
21 questions and we can get to the point here.

22 Q Why were --

23 THE COURT: Wait a minute. Lawyers approach for just a
24 minute.

25 (Whereupon, a sidebar was held.)

1 Q Lieutenant Herlong, we were talking about the girls
2 going for a forensic interview -- or forensic interviews in
3 Spartanburg.

4 A Yes, sir.

5 Q And why as an investigator on these types of cases
6 would you have a child go to a different place to have an
7 interview done as opposed to you doing them yourself at the
8 police department?

9 A They have had -- even though I've had training in
10 interviewing children, they have had a lot more training.
11 They can assess the child's developmental level, cognitive
12 level, all those types of things that I think that they are
13 much more prepared and trained to do. So I feel very
14 comfortable sending children there to be interviewed in an
15 environment -- it's not a police environment. It's a very
16 safe, comfortable environment for children.

17 Q That was my next question. If you could describe for
18 the jury what kind of rooms do they use for these
19 interviews?

20 A Well, the advocacy -- they're different in each -- in
21 different counties. Whichever county has them. So I can
22 just speak for the one that I sent these children to. It's
23 a two-story house. It looks like a big home. It's very
24 comfortable. A nice lobby with toys and things of such like
25 that for the -- you know, for the people that are waiting.

1 But in the interview rooms it's just a table and chairs -- a
2 couple of chairs. And it's just comfortable. It's a
3 comfortable environment for the children. There's no one
4 else in there with them other than the forensic interviewer.
5 They are establishing a rapport with the children. Try to
6 get the children to be at ease, because the children are
7 talking to a stranger maybe about some, you know, difficult
8 things, speaking in generalities. And so, they do a good
9 job at making the children feel comfortable in all
10 circumstances; environmentally and one on one with the
11 interviewers.

12 Q And the interviewers are trained -- and you've been
13 trained in this same protocol, not to ask leading questions,
14 correct?

15 A Absolutely, yes. Yes.

16 Q And is the purpose to allow the child to tell a story
17 of their experience of what happened and not put words in
18 their mouth?

19 A Absolutely. The whole point is to find out what the
20 children -- the child knows, or doesn't know. It's
21 definitely not to lead them down a path in particular.

22 Q And in this particular case the girls went to the Child
23 Advocacy Service in Spartanburg; is that correct?

24 A Yes, sir.

25 Q And when they conducted their interviews with the

1 forensic interviewer were those video and audio recorded?

2 A Yes. That's their protocol.

3 Q Okay. And you were able to review those?

4 A I was there for -- I think I was there for the
5 interviews. So what I can do is there's a -- there's a room
6 that you can watch. And so, as far as I know, I think I
7 watched most, if not each interview.

8 Q And that's on the other side of kind of a mirror or
9 glass?

10 A Well, actually -- actually, no. It's a completely
11 different room that they've got wired up. I think they have
12 about three interview rooms, and they have a couple flat
13 screen TVs where you can just push a button and it'll show
14 the camera in whatever room. Whoever, you know, is there
15 for your case, you know, that's being interviewed. So it's
16 quite nifty. So it's not even behind a mirror. It used to
17 be, but they -- they changed it.

18 Q And those are also recorded digitally to -- to retain
19 that evidence for later on, correct?

20 A Yes, sir.

21 Q And did you obtain those recordings from the Child
22 Advocacy Center?

23 A I am not the one -- I don't remember obtaining those
24 from the Child Advocacy Center.

25 Q Okay. But they were -- were they made a part of your

1 case file?

2 A Yes. The reports were made a part of my case file, not
3 the CDs. The reports. Because the forensic interviewer
4 completes a hard copy summary, if you will, of the forensic
5 interview process.

6 Q That's right. And then they provide that information
7 to the investigative agency; is that correct?

8 A Provide the summary?

9 Q Right. Their investigative --

10 A Yes.

11 Q -- results --

12 A Absolutely, yes. They provide that, uh-huh.

13 Q And you say you were personally there watching via TV
14 at least some of these interviews?

15 A Yes, at least some of them. I can't remember if I was
16 there for each and every one.

17 Q Were you able to obtain an autopsy report in this case?

18 A Yes, I was.

19 Q And who was the doctor that conducted the autopsy?

20 A Dr. Woodard. He's in Anderson, I believe.

21 Q And did you make that autopsy report part of your case
22 file?

23 A Yes, sir.

24 Q Now, did you ever personally interview the Defendant,
25 Shawn White?

1 A After he was arrested, I think it was September 6th, I
2 read his rights to him and had a brief like interview with
3 him prior to -- I don't know if that was before or after he
4 was 'booked, but a brief interview.

5 Q Okay. And you said you --

6 MS. BOLEN: Your Honor, I think we may have a matter of
7 law. We might be able to handle it at sidebar.

8 THE COURT: Okay. Let's try sidebar, and then we can
9 certainly put it on the record at the appropriate time.

10 (Whereupon, a sidebar was held.)

11 THE COURT: Okay. Mr. Foreman and ladies and gentlemen
12 of the jury, there is a matter of law that we need to take
13 up with the attorneys. So if you'll bear with us, I'll ask
14 that you retire, hopefully for a very brief period of time,
15 to the jury room.

16 (Whereupon, the jury exited the courtroom at 11:34
17 a.m.)

18 THE COURT: Okay, Ms. Bolen.

19 MS. BOLEN: Thank you, Your Honor. Our objection is
20 that Agent Herlong -- or Lieutenant Herlong just made
21 reference to a interview that my client gave her on
22 September 6th, and this is the first time I've heard of
23 this. And furthermore, Your Honor, I spoke with Mr. Brown
24 on Sunday last week, because I noticed on my client's
25 Miranda form it's dated August 9th, which is the one we knew

1 about, and then it's also redated, just the Miranda form,
2 September 6th, and he said he was unaware of any interview
3 that he had given on the 6th.

4 I don't know -- I've not been provided with any
5 statement made on the 6th. I've not been provided that
6 there was a statement made on the 6th. What I've been given
7 is the exact opposite, that there was no other statement
8 past August 9th. And now we've got testimony that he gave
9 some other interview.

10 THE COURT: All right. Okay.

11 MR. STUMBO: Well, Your Honor, quite frankly, you know,
12 in Lieutenant Herlong's report she says she served the
13 warrant on him, booked him, and she was there with him. And
14 I can only surmise she's talking about small talk with him.
15 It was not an interview or a statement that he had made that
16 we intend to put into evidence. And she made have
17 misunderstood my question. It may have been inartfully
18 asked on whether she had -- she ever conducted an interview
19 with him. Because, you know, there is no evidence of a
20 statement given in her report, whether it's reduced in
21 writing in summary or anything else, and we didn't intend to
22 offer any further statements by the Defendant.

23 MS. BOLEN: And my concern of the curative instruction,
24 Your Honor, is that it looks like he's given an interview.
25 I mean, I guess I'm curious about what the content was.

1 What was actually said.

2 THE COURT: All right. Well, let's do this before I
3 make a ruling or take any further argument. Let's ask the
4 Lieutenant Herlong exactly what she meant by that statement
5 and maybe we can kind of resolve things that way.

6 Lieutenant Herlong, you made the statement that after
7 he was arrested, and then you said maybe it was when he was
8 booked, that you had a conversation with the Defendant.
9 What exactly did you mean by that, ma'am?

10 THE WITNESS: Basically I -- basically I told him that
11 I know he did it and, you know, he said he didn't. And it
12 was -- there was nothing much more to it than that. But I
13 just --

14 MR. STUMBO: And this was when you served the warrant
15 on him?

16 THE WITNESS: Yeah, it was at the jail. Literally at
17 the jail.

18 MR. STUMBO: There again, Your Honor, it wasn't a part
19 of the report. Obviously it's not something we planned to
20 offer to the jury, so --

21 MS. NELSON: And now they've been told that she had a
22 conversation with him that now they're not going to hear
23 that leads them to speculate that he could have confessed to
24 everything --

25 THE COURT: Right.

1 MS. NELSON: -- and that somehow it's magically being
2 kept from them.

3 THE COURT: Right. Well, I think -- and I understand
4 your concern. I think the fact that no contents of this
5 conversation was -- has not been -- the toothpaste is not
6 out of the tube. And so, I don't think we have a situation,
7 of you're contemplating -- if you are, some sort of mistrial
8 motion, because the only other remedy is to either give a
9 curative instruction or leave it alone. But if you're
10 thinking about some sort of mistrial situation, I don't
11 think this rises to that level. I'll be more than happy to
12 either give a curative instruction to the jury for them to
13 disregard any of the testimony from Lieutenant Herlong
14 concerning any conversation that she may have had with the
15 Defendant after he was arrested or during the booking
16 process, or I can leave it alone and we just not address it.
17 Glad to hear from you.

18 MS. BOLEN: Can we have a moment?

19 THE COURT: Sure. Yeah, sure. Take all the time that
20 you need.

21 (Whereupon, there was a pause in the proceedings)

22 MS. NELSON: Your Honor, now that we know what the
23 statement was we're not asking you to draw attention to it
24 with any kind of curative instruction. We'll just --
25 whatever else is elicited we'll -- we'll just cross --

1 THE COURT: Right.

2 MS. NELSON: -- Lieutenant Herlong on it. We're not
3 going to make a mistrial motion.

4 THE COURT: All right. Okay. Very good. Bring the
5 jury back out.

6 (Whereupon, the jury enters the courtroom at 11:40
7 a.m.)

8 THE COURT: Let the record reflect the jury is back in.
9 Solicitor, you may continue with your examination of this
10 witness.

11 MR. STUMBO: Thank you, Your Honor.

12 Q Lieutenant Herlong, you conducted a number of
13 interviews in this case with some lay witnesses that knew
14 the individuals involved, correct?

15 A Yes, sir. I did.

16 Q And who were you able to speak with and make part of
17 your investigation?

18 A I already mentioned Melody LaBounty, Ms. Moss, Tina
19 Jabert, I think is how you say it, Chris White.

20 Q And who was -- let me just back up here. Tina Jabert,
21 who was she?

22 A She was, I think, a former girlfriend of Shawn's.

23 Q Okay. And then you said Ms. Moss, and clarify that.
24 Who was Ms. Moss again?

25 A Maternal grandmother to the children.

1 Q And that would Melody LaBounty's mother?

2 A Uh-huh. Yes, sir.

3 Q All right. Were you able to interview -- who else?

4 Was Chris White one of the --

5 A Yes, sir.

6 Q -- those you interviewed?

7 A Myself and Major Lightle, I believe.

8 Q And that's the brother of the Defendant, Shawn White?

9 A Yes, sir.

10 Q Who else did you interview? What other laywitnesses

11 did you interview?

12 A Jennifer Williams, who is a friend of Melody LaBounty.

13 I interviewed her. I spoke to Kevin Kilgore and Zachary

14 Kilgore over the phone, which were friends, I believe, of

15 Chris White. Maybe Shawn White as well.

16 Q Okay. And the purpose of interviewing these other

17 individuals was for what? To compare to information you

18 already had?

19 A Yes, sir. We were just, again, just trying to do a

20 thorough investigation to find out who all had been in the

21 home, what these people knew about -- about who might have

22 been in the home to try to get as much information as we

23 could about Melody, about Shawn. Again, we were just trying

24 to do a complete investigation to try to determine who had

25 done this to ^{victim} [REDACTED].

1 Q Okay. And you had the medical records at this point in
2 August?

3 A Yes. Like I said, I think it was August 14th that the
4 Coroner actually had given me a lot of medical records.

5 Q Okay. And were you able to review the medical records?

6 A We -- yes. Myself and Major Lightle reviewed the
7 medical records.

8 Q As part of your investigation do you followup with the
9 nurses and physicians that attend to a child who has died?

10 A Yes, sir.

11 Q And did you do that in this case?

12 A We did. We spoke with a couple of nurses from Self
13 Memorial, and we also spoke with several doctors from
14 Greenville Memorial.

15 Q Which nurses were you able to interview? And you can
16 refer to your report.

17 A Angela Burdette and Tracy Holden.

18 Q And those are nurses at Self Regional --

19 A Yes, sir.

20 Q -- in the ER?

21 A Yes, sir. I think one was the charge nurse that day.

22 Q Now, if you were able to gather this information, the
23 interviews and the records, the pictures and the other
24 exhibits, did you generate a report based on that -- your
25 investigation?

1 A I did. After a while I had collected everything that I
2 needed to collect. I did generate a report.

3 Q Okay. And this -- you already mentioned earlier that
4 you did arrest this Defendant, Shawn White, and charge him
5 with homicide by child abuse?

6 A Yes, sir. I did.

7 Q And what date was he arrested?

8 A September 6th.

9 Q September 6th of 2012?

10 A I'm sorry. Yes, sir. I apologize.

11 Q Based on all this information that you had gathered at
12 that time had you been able to determine the location of
13 Melody LaBounty when these alleged injuries occurred?

14 A Yes, sir.

15 Q And where was she?

16 MS. BOLEN: Your Honor, I've got an objection as to
17 speculation. There's been no testimony about the time of
18 the injury.

19 THE COURT: Repeat your question again, and don't
20 answer, Lieutenant Herlong -

21 THE WITNESS: Yes, sir.

22 THE COURT: -- until I hear the question. Repeat your
23 question again.

24 MR. BROWN: I can reask the question, Your Honor.

25 THE COURT: Let's reask it, and then if you want to

1 renew your objection you can.

2 Q Where was Melody LaBounty the night before her
3 victim
4 daughter, [REDACTED], went to the hospital? Per your
5 investigation where was she the night before?

6 A She had been at work until the early hours.

7 Q Okay. And until what time of the night approximately?

8 A Around 2:00 a.m.

9 Q And that was information that came from the suspect,
10 Mr. White, and Ms. LaBounty?

11 A Yes, sir.

12 Q And that was consistent between the two of them,
13 correct?

14 A Yes, sir.

15 Q And you were able to review the forensic interviews
16 with these children as well?

17 A Yes, sir.

18 Q Based on your investigation it was determined -- did
19 you consult with any prosecution agency --

20 A I did. Actually, Demetri Andrews from the Eighth
21 Circuit Solicitor's Office. Myself and Major Lightle spoke
22 with him at least -- on at least one occasion while we were
23 in Abbeville conducting interviews. And then on September
24 6th Chief Galloway, Major Lightle and I talked with him at
25 length prior to obtaining an arrest warrant.

26 Q As a team with the prosecution agency you all

1 determined -- made a charging decision in this case?

2 A Yes, sir.

3 Q To charge Shawn White with homicide by child abuse?

4 A Yes, sir.

5 MR. STUMBO: I beg the court's indulgence, Your Honor.

6 THE COURT: Sure, take your time.

7 (Whereupon, there was a brief pause in the
8 proceedings.)

9 MR. STUMBO: No further questions at this time, Your
10 Honor. Please answer any questions --

11 THE WITNESS: Yes, sir. .

12 MR. STUMBO: -- Ms. Bolen may have for you.

13 THE COURT: Cross examination?

14 MS. BOLEN: Thank you, Your Honor.

15 CROSS EXAMINATION

16 BY MS. BOLEN:

17 Q You -- Lieutenant Herlong, you said you got involved in
18 this case in about August 14th, or on August 14th?

19 A That's when I helped on the first interview. Yes,
20 ma'am.

21 Q And you interviewed, you said, Melody LaBounty, and
22 then her mother as well, Ms. Moss?

23 A Yes, ma'am.

24 Q And you said you interviewed Melody a second time in
25 September, right?

1 A Yes, ma'am.

2 Q And that interview was at her attorney's office, right?

3 A Yes, ma'am.

4 Q And you said you scheduled the forensic interviews,
5 correct?

6 A Yes, ma'am.

7 Q And the first one happened on August 15th, 2012,
8 correct?

9 A I believe that's correct. I'm not looking at the
10 dates, but I believe that's correct.

11 Q And then after that it's about a week later, August
12 20th?

13 A I believe it was about a week later.

14 Q Okay. And then August 28th?

15 A That sounds -- that sounds right.

16 Q And you also talked about meeting with -- in the course
17 of your investigation, talking with other witnesses, right?

18 A Yes, ma'am.

19 Q And one that you talked to is Chris White?

20 A Yes, ma'am.

21 Q And he told you about him accidentally knocking the baby
22 down the steps?

23 A Yes, ma'am.

24 Q Okay. And of the people you talked to, not a single
25 one of them had any knowledge of Shawn doing anything to

1 victim
1 [REDACTED] that night, correct?

2 A Correct.

3 Q And when you booked him in on September 6th -- you
4 arrested him about a month later; is that right?

5 A Yes, ma'am. Almost a month later.

6 Q And he told you he didn't do it, right?

7 A Right.

8 MS. BOLEN: Nothing further. Thank you.

9 THE COURT: Anything in redirect?

10 MR. BROWN: Just briefly, Your Honor.

11 REDIRECT EXAMINATION

12 BY MR. BROWN:

13 Q You must mentioned just now when you booked Shawn
14 White, the Defendant, he just mentioned to you that he
15 didn't do it and that's -- that's all there was to it at
16 that point? Which just corroborated what he had already
17 said, which we have in evidence, correct?

18 A Basically. Yes, sir.

19 Q So there was nothing of any evidentiary value really
20 added at that point?

21 A No, sir.

22 Q He had already given a written statement to Major
23 Lightle denying that he had hurt this baby, correct?

24 A Correct.

25 MR. BROWN: Nothing further, Your Honor.

1 THE COURT: Thank you, Lieutenant Herlong, for your
2 testimony.

3 THE WITNESS: Yes, sir.

4 THE COURT: You can step down.

5 (Whereupon, the witness steps down from the witness
6 stand)

7 DR. CHRISTOPHER TROUP, having been first duly
8 sworn, testified as follows:

9 DIRECT EXAMINATION

10 BY MR. BROWN:

11 Q Good morning, Dr. Troup.

12 A Good morning.

13 Q Dr. Troup - your name is Dr. Christopher Troup, right?

14 A Yes, sir.

15 Q And where are you employed?

16 A Greenville Health Systems, the Children's Hospital.

17 Q And how long have you worked there?

18 A Six and a half years.

19 Q Six and a half years. And just going back. Where did
20 you go to medical school?

21 A Mercy University School of Medicine.

22 Q And where did you do your residency after that?

23 A I did an internship in general surgery at Carraway
24 Methodist Medical Center in Birmingham, Alabama. I did a
25 neurosurgery residency at University of Massachusetts School

1 of Medicine. A year of that was at Boston Children's
2 Hospital. And then I did a fellowship of pediatric
3 neurosurgery at the University of Tennessee, Le Bonheur
4 Medical Center at St. Jude's Children Research Hospital.

5 Q And so, you've done quite the follow up to become a
6 pediatric neurosurgeon; is that correct?

7 A Yes.

8 Q And with all those residencies how -- what was the time
9 span to do your residency and then follow it with a
10 pediatric neurosurgery and then your fellowship? I know the
11 fellowship is after all that.

12 A Yeah. A year of internship, five of neurosurgery, and
13 one of peds fellowship.

14 Q And after you completed your fellowship -- and tell us,
15 what is a fellowship? What does that entail?

16 A In neurosurgery you're trained to do all aspects of
17 neurosurgery, and then the fellowship is where you go and do
18 a year of intensive training in a subspecialty. And I
19 wanted to subspecialize in just children, so...

20 Q And since the time of that fellowship where you became
21 a pediatric neurosurgeon how long have you practiced
22 medicine since then, or practiced pediatric neurosurgery?

23 A Seventeen years.

24 Q And over those 17 years where all have you practiced?

25 A I was in Macon, Georgia at the Medical Center of

1 Central Georgia for 10 years, and I've been here for six and
2 a half, seven years.

3 Q And over those just 17 years is there any way you can
4 put a number on how many children you've treated, diagnosed,
5 or actually performed surgery on?

6 A No. Several hundred a year. I couldn't put a number
7 on it, so...

8 Q And the children, if you see several hundred a year,
9 you see all types of injuries?

10 A Yes, sir.

11 Q And with your -- after your fellowship and practicing
12 with pediatric neurosurgery, are you required to keep up the
13 date or attend -- get further education?

14 A Yes. There is a maintenance of certification that we
15 have to maintain.

16 Q And how often do you have to maintain that
17 certification?

18 A There are yearly hurdles you have to jump through, and
19 then you have to retake written boards every 10 years, which
20 I just retook mine last year.

21 Q And throughout these 17 years, and also the time 2012,
22 were you certified and board certified --

23 A Yes. American Board of Neurological Surgery, yes. And
24 there's a subspecialization with peds neurosurgery and I'm
25 board certified in peds neurosurgery as well.

1 Q And do you keep up with all the latest research that
2 comes available on pediatric neurosurgery or --

3 A Yeah, there are several standard journals and you get
4 them every month. Yes, sir.

5 Q And you keep up-to-date on the latest?

6 A Yes.

7 MR. BROWN: Judge, at this time I'd like to offer Dr.
8 Christopher Troup as an expert in pediatric neurosurgery.

9 THE COURT: Okay. What says the Defense?

10 MS. BOLEN: Without objection, Your Honor.

11 THE COURT: Okay. Dr. Troup is found qualified a an
12 expert in pediatric neurosurgery. And I would remind the
13 jury to remember the previous instruction that I gave
14 concerning expert witnesses when the emergency room doctor
15 testified earlier today.

16 You may proceed.

17 MR. BROWN: Thank you, Your Honor.

18 Q Dr. Troup - and I think I've already asked you this
19 question. You were employed with Greenville Hospital System
20 August '8th, 2012?

21 A Yes, sir.

22 Q Do you know if you were working that day?

23 A Yes, sir. As the only one in town, I'm pretty much
24 working every day. So yes, sir.

25 Q You're the only pediatric neurosurgeon in Greenville?

1 A Actually, at the end of this month, I'll be the only
2 full-time pediatric neurosurgeon in the state.

3 Q In the state of South Carolina?

4 A Yeah. The guy in Columbia is moving at the end of the
5 month.

6 Q Now, with that, on August 8th, 2012, did you have the
7 opportunity or the occasion to treat and care for ^{victim} [REDACTED]
8 [REDACTED]?

9 A Yes, sir.

10 Q I want to show you a picture of -- it's already been
11 offered into evidence as State's Evidence No. 25. Can you
12 tell me what that picture is?

13 A That -- it would be hard for me to identify her
14 absolutely as ^{victim} [REDACTED], but it does look like a
15 patient of mine that I have previous operated on. I see my
16 dressing on the side of her head.

17 Q You --

18 A Yes.

19 Q Yes, sir. Now -- but you did operate on patient ^{victim} [REDACTED]
20 [REDACTED] -

21 A Yes, sir.

22 Q -- that day? Do you know when she arrived at the
23 hospital, or when she arrived in your care?

24 A I don't remember exactly what time. I was present when
25 she -- when she came in, but I don't remember exactly what

1 time it was. No, sir.

2 Q And kind of setting up. How did you learn of ^{victim} [REDACTED]

3 [REDACTED]? Do you remember?

4 A I think I was called by the pediatric ICU doctor as he
5 had accepted an incoming patient. But I don't remember the
6 exact phone tree that happened on that particular case. No,
7 sir.

8 Q And do you know where she was being transported from?

9 A I think it was Greenwood.

10 Q Greenwood. And what's -- when you -- you hear of a
11 patient being -- and with your speciality that you are in
12 pediatrics, when you hear of a child coming to be treated by
13 you, or from another county or another hospital, what did
14 you learn when she was being transported to you? Do you
15 remember?

16 A I don't remember exactly the wording. My note may
17 actually specify what I had been told. I don't remember.

18 Q I can show you, Doctor, your notes.

19 A But there was a child with a severe head injury that
20 was in route. They usually tell me what interactions had
21 happened prior to her leaving their facility and those types
22 of things.

23 Q Yes, sir.

24 MR. BROWN: Judge, if I may approach --

25 THE COURT: Sure.

1 MR. BROWN: -- and give him a copy of his notes so that
2 he can refer to them if he has any -- needs to refresh his
3 memory.

4 Q Now, when ^{victim} [REDACTED] arrived at Greenville Memorial
5 Hospital did you learn an age? The age of ^{victim} [REDACTED]?

6 A She was a 10-month-old.

7 Q And before you do any type of operation or any type of
8 surgery what do you look for, or what do you -- what do you
9 try to find out before you make a decision? When you first
10 get a patient what do you look for, or what do you try to
11 observe?

12 A Well, that's kind of a wide open question, so...

13 Q Well, when ^{victim} [REDACTED] arrived at the hospital what
14 did you do?

15 A Yeah. In someone like this, you just try to see what
16 kind of neurologic exam that they have. What can they do
17 and what they can't do. A child or an adult, either one,
18 that's unconscious, you try to see what types of reflexes
19 and things that they have. Are they functional or are they
20 not functional.

21 Q And did you do that in this case?

22 A Yeah. On my exam at the time -- let me look through
23 again. She had -- was not awake. And you're looking for
24 reflex signs if the patient's brain is still alive.
25 Specifically their brain stem. So deep at the base of the

1 skull, the part of the brain that makes us do all of the
2 things that we don't think about doing every day. It makes
3 us wake up. It makes our heart beat. Makes our eyes blink.
4 And basically the reflexes are things the Lord gave us to
5 protect things that are important to us if we can't protect
6 ourselves. So basically my exam in a unresponsive patient
7 was to see was there any functional at all. And on my exam
8 I found that her pupils were not responsive to light. So
9 that's a sign that either the optic nerve itself isn't
10 working or the part of the brain stem that tells the pupil
11 to constrict with light was not working. But when you --
12 she had a breathing tube in place. So when you stick a
13 suction catheter down in her lungs -- your lungs are
14 obviously very important to you, so there's a strong reflex,
15 if anything tickles the lung, to cough. So she had a very
16 weak cough. To keep things from getting in the windpipe at
17 all your gag reflex is pretty strong. So she had a gag
18 reflex. And the statement that I make in here is that the
19 trace movements to deep central pain -- you can almost raise
20 the dead with my pinch. I really, really can get after a
21 pinch, and was pinching her in the axilla. And there's a
22 nerve right at the top of your -- you find a little ridge in
23 your orbit that if you can just lightly push, it's pretty
24 painful. And you dig really hard with the tip of your thumb
25 into that nerve to see how much pain you can inflict. And

1 she barely moved. So she wasn't brain dead, but she had
2 trace reflexes that was kind of on that line between are you
3 alive or not.

4 Q And by doing that push on that -- the nerve below your
5 bone there in your head, that wouldn't cause any type of
6 injury that's --

7 A No. No.

8 Q -- that you'd find on CT scan?

9 A No. No.

10 Q Now, after you tried to see if there was any type of
11 reflex to any of your stimuli, what did you do next?

12 A We looked at the CAT scan, and the CAT scan looked
13 pretty bad. Most of one-half of the brain was very swollen.

14 A lot of it looked dead already. There was also a blood
15 clot that had two different components; an acute component
16 and an older component.

17 Q And with acute, what do you mean by acute?

18 A Fresh.

19 Q Fresh?

20 A Or recent. Very recent. And from, you know, reading
21 my note and the timeframes and remembering it actively, sat
22 down and talked to the mom and said that I wasn't sure that
23 what I saw on the CAT scan was compatible with life at all,
24 no matter what we did. I knew that if we didn't do surgery
25 there was no chance of the child surviving. And even if the

1 child survived, I thought the child would probably die. And
2 if she survived, it would most likely not be in a condition
3 where they would be glad that she survived.

4 Q And going back to when you said acute -- acute
5 bleeding. When you say fresh, how -- what's the period of
6 time that you could --

7 A The very bright blood, the acute blood that's on the
8 scan, is usually within a few hours. Within minutes to
9 hours. It can look bright sometimes up to a day out. Then
10 there was a darker fluid that was outside of that that
11 usually takes days to weeks to transition into that darker
12 fluid. And so, it looked like there was possibility that
13 there was different ages of blood that was in this clot.

14 Q And once you -- you already mentioned that you looked
15 at CT scans before you spoke with her mother, Melody; is
16 that correct? Where did those CT scans originate from?

17 A The one that was before surgery was from Self.

18 Q From Self Memorial?

19 A In Greenwood.

20 Q And they sent that up?

21 A Yes.

22 Q They did? I want to show you what's been marked as
23 State's Exhibit 35 for identification purposes. Can you
24 take a look at this and tell me if you recognize it or if
25 you can identify it and what that is?

1 A This is a copy from Greenville Memorial Hospital when
2 this CT came in from outside, so that it doesn't get
3 misplaced. We load it into our system. So this is a copy.
4 And I think this is the one -- you showed me both of them
5 before and I labeled this one. This is -- this should be
6 the one from Greenwood that we have loaded into our system.

7 Q And have you already -- does it accurately reflect and
8 show what you looked at that day?

9 A Yes, sir.

10 Q And have you had a chance to review this?

11 A Yes.

12 MR. BROWN: Judge, at this time I'd like to offer
13 State's 35 at this time.

14 THE COURT: And what says the Defense?

15 MS. BOLEN: Without objection, Your Honor.

16 THE COURT: All right. Without objection, that will be
17 State's Exhibit 35.

18 (Whereupon, State's Exhibit 35 was entered into
19 evidence.)

20 Q And, Dr. Troup, you've had the opportunity to review --
21 as I already said, reviewed the CTs that are contained on
22 this list?

23 A Yes, sir.

24 Q Could you help us, or explain to us, what these images
25 show on this disk of what --

1 A I'll be glad to.

2 Q -- and, for example -- well, before we do that. What
3 does a CT show? What does a CAT show?

4 A It uses x-rays. Kind of like the x-ray that you get on
5 your chest or whatever. But they're done in such a way that
6 the computer can put them together and give us a much
7 clearer view of what's going on inside the head. And it
8 shows the bone, the brain, the water in the brain, and it
9 gives us a picture of what's going on.

10 Q And does it take just one snapshot, or does it take
11 multiple pictures?

12 A No. The computer puts it together. It's like we took
13 the baby to Bi-Lo and went to the meat department and they
14 did a -- made a spiral ham almost. So you take like you
15 would a spiral ham and lay it out on the table. You can
16 take one slice of the CT, and the next slice. And they
17 start at that bottom and one slice or the other goes up and
18 it's like you're looking from the feet upward. So
19 everything on the right side of the picture is the left side
20 of the body, just like you're looking at me here.

21 Q And when they -- when the computer puts all that
22 together though it almost makes a 3D image; is that right?

23 A Well, you can make a 3D image. There was not a 3D done
24 on the one from Self. I think -- I know for a fact the one
25 from Memorial we did do a 3D.

1 Q And you mentioned the one from Memorial. When was the
2 CT scan done from Greenville Memorial?

3 A I'm pretty sure it was the next morning.

4 Q After the surgery?

5 A After the surgery. Yes, sir.

6 Q And that's typical? You would see --

7 A Uh-huh.

8 Q -- any kind of -- if the surgery actually is helping
9 any kind of pressure on the brain?

10 A It shows us two things. It shows us what impact the
11 surgery had. But it also -- just like if I hit you today,
12 the bruise -- it hurts today, but the bruise shows up more
13 and more tomorrow. It gives us a picture over time of what
14 injury has progressed over that same time period.

15 MR. BROWN: Judge, at this time I ask permission for
16 Dr. Troup to step down and --

17 THE COURT: Sure.

18 MR. BROWN: -- and kind of navigate through this CT
19 scan.

20 (Whereupon, witness steps down from the witness stand.)

21 THE COURT: Can everybody on the jury see the screen
22 okay?

23 Q So we'll change it a couple of ways first.

24 A So like I was talking about, it comes in different
25 slices. And this is starting down at the level of the nose

1 and the bone of your -- below where your jaw goes into the
2 side of the head and it works its way up. So now I'll come
3 back and make it bigger. So as we start down at the bottom
4 nose -- for the record, -I don't like your computer. Let me
5 get it back to the right contrast. There we go.

6 So as we -- so we start down at the bottom. There's
7 the eyeballs, the ears. As I said, everything on the right
8 side of the picture is the left side of the body. As we
9 come up -- as we come up you see the white is bone. This
10 really bright light is bone. The gray is brain. Dark is
11 spinal fluid.

12 Q You said the dark is spinal fluid?

13 A Uh-huh. That dark -- the really dark right here is
14 spinal fluid. And -- let's see if I can figure out how to
15 get the windows back to where it's supposed to be on here.

16 If you look, there's a little white line there and a
17 little white line there (indicating). You should be able to
18 drop a line right down the middle. And on this interface
19 I'm not sure I know how to drop the line on the system.
20 Let's see if we can do it with this. Yeah, there we go.
21 That's the middle of the head. And this, if you can see it,
22 there's a little line right here. That is supposed to be
23 right in the middle right there. So there's a little
24 butterfly. When it looks normal it looks like a butterfly
25 wings in the middle. Those are the normal spinal fluid

1 spaces inside the brain. So there's so much swelling and
2 pressure over here that it has pushed this structure, which
3 should be right in the middle, all the way into the wrong
4 side of the head.

5 If you look here (indicating) you see the brain comes
6 right up to the edge of the bone, and here, that's the line
7 of the brain and there's space right here. That's that
8 fluid around the brain I was talking about. The white is
9 blood. This is bloody fluid that looks like it's older than
10 -- than the very fresh acute blood. It has -- either that
11 or it has not clotted, and it actually was mostly older
12 blood. Let me see if I can get that just a little better
13 there. There we go.

14 Something else to notice is you see -- you see right
15 here (indicating) the color of the brain is kind of bland
16 but gray all the way along? It's not projecting great at
17 all. You can almost make out a little line here where it's
18 darker back here than it is over on the other side. Can
19 everybody see that? If not, I can see if I can change this
20 window on this computer to look a little better. This was
21 that area that I said was -- that looked like it was
22 probably already stroked. Probably already dead brain, or
23 dying brain. And then all of this looks abnormal as well.
24 So there was a lot of swelling. A lot of stroke in this
25 side of the brain, and there was a tremendous amount of

1 shift from one side to the other.

2 Q Dr. Troup, when you say there's tremendous amount of
3 stroke in this part of the brain, what do you mean by that?

4 A It means that it did not get enough blood and was
5 dying. It was either dead or dying brain. And again, I'm
6 not sure how well it projects, but you see this is gray
7 here, and this is all dark through here. Does that project
8 well enough you can see --

9 Q Yes, sir.

10 A So this is what we were looking at. And the fact that
11 we have that much shift, that alone -- the blood vessels
12 that supply the brain stem, which are necessary to keep you
13 alive, have been torque. And even if I could instantly make
14 all of that shift go away, the amount of torque that was on
15 that brain stem, that by itself is frequently not
16 survivable.

17 Q And once you -- once you saw these CT scans and you saw
18 that there's -- and what would you call when a brain is
19 moved past that --

20 A The medical term is midline shift, which is just the
21 midline has been pushed over or shifted over to the other
22 side.

23 Q And once you saw that, was -- did you also -- what did
24 you note as -- I guess the medical terms from looking at
25 this CT scan and evaluating it. What all did you document

1 before your surgery?

2 A You may have a note that says it specifically. But the
3 fact that the midline shift, the amount of edema that was
4 there, the acute and non-acute portion of this clot.

5 Q And based off of that what did you decide to do, with
6 -- with input of her mother?

7 A Do you want me to stay here or do you want me to go
8 back to my --

9 Q You can go back.

10 (Whereupon, the witness returns to the witness stand.)

11 A Again, as I mentioned earlier, I thought this was going
12 to be a dismal outcome no matter what we did. I thought
13 even with maximal intervention the child most likely would
14 die. But being the only glimmer of hope at all was to be
15 aggressive. We decided to go to the operating room for
16 several reasons. One is the brain is in a closed box. So
17 if you have increase mass, in this case the fluid, the blood
18 that was pushed on the brain, the increase in the swelling
19 that was increasing volume in the head, you have to do
20 something about changing the volume or the tissue that has
21 not been permanently damaged is going to get pushed on so
22 hard that it's going to die. So since we had some brain
23 stem function, the goal was to try to remove as much
24 pressure from the brain stem as you can so that the brain
25 stem doesn't progressively die. So the big fancy medical

1 term is I did a decompressive craniectomy - I'll come back
2 and explain what that means. A decompressive craniectomy
3 and evacuation of the clot, and a temporal lobectomy. So
4 the decompressive craniectomy means I took off most of the
5 bone from that side of the head and we leave it out. So
6 I've now cheated the system. A closed box is now an open
7 box. I took out the clot. And then that temporal lobe on
8 the right side, not that the Lord didn't give us purpose of
9 that temporal lobe. We just haven't been smart enough to
10 figure out what it is. But you could -- any of you I could
11 take -- even if you're right-handed. I could take you to
12 the operating room, take out your right temporal lobe, and
13 you'd just be really mad with me for taking it out. You
14 wouldn't have any affect from it. So since that temporal
15 lobe looked already like it was dead or dying, and it's the
16 non-dominant temporal lobe, we knew we could take it out.
17 So I opened up her head. Took out the clot, and I took out
18 that temporal lobe. Took out about four and a half -- let
19 me see if I put it in there, in my note. Usually about four
20 and half centimeters of temporal lobe we take out.
21 Basically I took out the temporal lobe. I didn't -- I
22 didn't specify how much. But usually it's about four
23 centimeters temporal that we take out.

24 Q And once you actually took out the -- actually did the
25 decompressive craniectomy, what did you do? You said you

1 took away the bone flap in the skull. Well, before you did
2 that, based on your CT, the scans and your evaluation of
3 victim, did you notice any kind of brain fracture -- or any
4 skull fractures on victim?

5 A I don't -- I don't think we made note of that on the
6 CT. Let me see what I -- I did not make note of a fracture.

7 Q If there was a fracture, you would have definitely
8 added that to your notes that --

9 A Yeah.

10 Q -- there was a skull fracture.

11 A Yeah.

12 Q But once you -- so there was no actually any fracture
13 of the skull before you --

14 A Right.

15 Q -- took that piece of skull --

16 A Yes.

17 Q -- from the right side of her head?

18 A Yes, sir.

19 Q After you removed that piece of the skull what did you
20 do with that?

21 A I put it in the fatty tissues of the belly, so that if
22 she had survived it's sterile and we can come back and put
23 her bone back in so that she has growing bone, instead of
24 putting in a synthetic plastic plate of some type.

25 Q I want to show you what's already into evidence as

1 State's Evidence 21. Notice any --

2 A Yeah. That's -- that's my incision, and you can
3 actually make out the bulge of her skull plate.

4 Q So that's -- you made that incision and you put the
5 skull plate in there?

6 A Yes, sir.

7 Q And that would be to protect it. And if she had
8 recovered, you could actually hopefully --

9 A Put it back, right.

10 Q Put it back.

11 A Uh-huh. And it would be her bone growing back in
12 there.

13 Q Yes, sir. After you did this surgery, did -- I think
14 you've already said this. The next day you made another --
15 you call requested another CT scan?

16 A Yes, sir.

17 Q And I'm going to show you -- Dr. Troup, I'm going to
18 show you what's been marked as State's -- identification
19 purposes, State's Exhibit 36.

20 A Yes, sir.

21 Q Do you --

22 A And that's the one I saw right before this.

23 Q You saw it right before. And what day was that CT scan
24 done?

25 A If I'm not mistaken, it was the day immediately after

1 the surgery.

2 Q After the surgery. And have you had a chance to review

3 --

4 A Yeah.

5 Q -- the CTs?

6 A Yes, sir.

7 Q Is this a fair and accurate --

8 A Yes.

9 Q -- representation of what the brain looked like at that
10 time?

11 A Yes, sir.

12 MR. BROWN: Judge, I offer State's Exhibit 36 into
13 evidence at this time.

14 THE COURT: Position of the Defense?

15 MR. BROWN: Without objection, Your Honor.

16 THE COURT: All right. Without objection, it will be
17 State's Exhibit No. 36 into evidence.

18 (Whereupon, State's Exhibit No. 36 was entered into
19 evidence.)

20 Q Dr. Troup, I'm going to ask you again if you can kind
21 of narrate us through what your findings were on this CT.

22 (Whereupon, the witness steps down from the witness
23 stand.)

24 Q Dr. Troup, this is the CT from August 9th, 2012. The
25 day after she was brought in, also.

1 A Yeah.

2 Q After the surgery. From that first imagine that's on
3 State's Evidence-36, I believe, what does that one show?

4 A This is the 3D you were referring to before. That's
5 where they take all of those slices that you saw on the
6 first scan, and then we can show you again on this scan, and
7 they take the image that looked primarily at the bone. And
8 the computer stacks them all up, makes a three dimensional
9 model, and strips the skin off so you can just look at the
10 skull.

11 So on this view you can see the side of where -- which
12 you'll see a little better in a second where I did the
13 opening. That is a tube that I placed in her brain to help
14 monitor the pressure and relief spinal fluid as necessary to
15 kind of, again, take stuff out of the box to help release
16 the pressure inside of her brain. Let me scroll through.

17 All of these lines are just the normal growth plates
18 that a baby's skull has. That's the baby's soft spot.

19 Q And, Dr. Troup, that image there, is that opening, kind
20 of the - on the screen, that would be where your spine --

21 A That's the -- that's the opening of the first vertebra
22 of the spine right there. Actually, the second. There's
23 the first vertebra and that's the second. The very tip edge
24 of the second vertebra. Wow, I'm sorry. There we go. So
25 that shows the opening -- that's the normal growth plate

1 called the cranial suture. And I took out all of the bone
2 behind the cranial suture. The temporal lobe sits right in
3 here. So -- and then there's -- you can see through the
4 skull in this image because it's not showing any brain at
5 all. And that's the tube going down into the other side of
6 her brain.

7 Q And that tube was placed there by you --

8 A By me at the time of surgery.

9 Q -- at the time of the surgery to hopefully relieve any
10 pressure, any type of fluid?

11 A And to monitor as well. To do both. So same principal
12 as before. These images were a little crisper than what we
13 saw from the one from Self. Now what it's showing us is you
14 see the bright intensity of this, the back part of the brain
15 called the cerebellum? The whole brain should have kind of
16 that same appearance. And the top of the brain stem and the
17 whole brain is now dark showing that it is dead or dying.
18 The -- there's the opening and you can see how much the
19 brain is bulging out of the head. Even though we're not
20 perfectly straight, you can see that one of the ventricles
21 that was way over here on yesterday's scan is now back on
22 the correct side of the head. So that little bitty nob of
23 black right there, that's still the midline over here. So
24 it's still not perfect, but it's -- it's an attempt to have
25 the ventricle on the correct side of the head. There you

1 go. You can make it out a little bit better there. That
2 was all the way over here on the scan I showed you a minute
3 ago.

4 Also something of importance is I told you I took out
5 four centimeters of temporal lobe. So I took out temporal
6 lobe all the way back to here, and the amount of brain
7 that's swollen in has filled this in and has almost
8 completely filled that cavity of -- you could probably put a
9 ping pong ball at least, as far as width and height, and
10 about that far back into this hole and it's all filled in
11 with swollen brain. So that's how much swelling there was,
12 and is, at this point.

13 Q Now, Dr. Troup, after your surgery of -- after the
14 surgery you performed on ^{victim} [REDACTED] -- yes, sir.

15 (Whereupon, the witness returns to the witness stand.)

16 Q And after -- from the time she came in and your view of
17 the first CT scan, then your surgery you completed on August
18 8th, and then looking at the CAT scan the next day, what --
19 what type of injuries -- or what type of force would it take
20 to create that type of injury?

21 A It's a tremendous amount of force. There's no way this
22 was an oops, I bumped my baby's head kind of force. And
23 there were several things that tells us that. It's not just
24 the findings on the CAT scan. You can have that much
25 swelling and that much dead brain without trauma if you had

1 an elderly person that clotted off their carotid artery. It
2 just completed clotted off. But this was -- with the blood
3 that was in there, and the amount of shift, it was -- it was
4 a violent amount of force that caused this much damage to
5 half of the brain. And then the pressure that ensued ended
6 up causing there to be no flow of blood to the other side of
7 the brain. What that means is every time your heart beats
8 you're pulsing blood up into your brain and fill with
9 carotid pulse. That's the blood trying to get in your
10 brain. What enables the blood to get there is the pressure
11 going in has to be higher than the pressure inside the head.
12 So that's why the whole key is to keep the pressure inside
13 the head down, because if the pressure inside the head ever
14 gets over the pressure that's pushing up, blood can't get in
15 there.

16 And something we didn't talk about that was really
17 striking about her case. It's not uncommon when you operate
18 on someone whose hemisphere is trying to die, for when you
19 open the brain for the brain to not pulse. So if I were to
20 open your head right now, we could video it and show these
21 folks your brain would pulse with every beat of your heart.
22 In her brain -- it also has color to it, as the blood is
23 coursing through the little bitty vessels on the surface of
24 the brain. Her brain was completely pulseless. It was
25 rising out like bread baking in a pan. Just opened like a

1 mushroom out of her as soon as I opened her skull.

2 -Completely-pale. And when I cut into it, it had no bleeding
3 at all. I did not have to coagulate any blood vessels
4 because there was no blood going to that hemisphere at all.

5 The other thing that is very unique is you can see
6 sometimes where there is not active flow in the major
7 arteries on the surface of the brain. Hers had been long
8 enough that she had segmental clots, where she had a clot,
9 and then serum, and then clot, and then serum. And that
10 doesn't happen immediately. That takes a while. And I
11 can't put a timeframe, but we're thinking hours for there to
12 be no flow through that vessel for the artery to completely
13 clot off and have chunks of clot, serum, clot, serum, clot,
14 serum.

15 Q But it wouldn't be -- talking about hours. You know,
16 it would take more than two or three?

17 A Yes.

18 Q It would take a longer, say -- talking about acute
19 blood and chronic blood.

20 A Right.

21 Q But also with the clotting, it would be within that
22 probably 24 hour window, 12 hour window?

23 A Probably. I mean, I can't say what the outside window
24 absolutely would have been --

25 Q Yes, sir.

1 A -- just from that one feature.

2 Q Yes, sir.

3 A Because, you know -- I don't know how -- I know that it
4 didn't happen within an hour or two to make that event
5 happen. How long it could look like that after it happens,
6 I don't know.

7 Q Yes, sir.

8 A One thing is if you -- if you can remember in your mind
9 the comparison between what the left hemisphere, the left
10 half of the brain looked like the day before compared to
11 this, that injury was already progressing in that other side
12 of the brain, but it took that long for it to look that
13 dark. So the fact that there were parts of that brain that
14 were black when she got to us already also is another sign
15 that it took several hours to reach that point. But there
16 were other parts of the brain that were not that dark, so it
17 would -- it had not been like that for over 24, 36, 48
18 hours.

19 Q Yes, sir.

20 A So it has to be kind of in that -- more than a few
21 hours, but not a full day kind of --

22 Q Yes, sir.

23 A -- window-ish.

24 Q Now, also in your notes, I think when you -- I'm trying
25 to think of the medical term. You actually -- they did a --

1 I guess, drew blood out, or actually put fluid into her
2 stomach, or her abdomen, or -- I might be getting my -- did
3 you check to see if there was any type of blood in her
4 abdomen?

5 A I didn't. I don't -- what we did is we asked the ped
6 surgeons to come in. And if I remember correctly that was a
7 Dr. Bob Gates. And they -- they did -- they did an
8 intraoperative ultrasound. But they -- they did what's
9 called a diagnostic peritoneal lavage where they make a
10 little opening, put a small catheter, run fluid in and run
11 it out, so... And I --

12 Q And the purpose of that would be to --

13 A See -- because she became a little unstable at the end
14 of the case. And because of the magnitude of the injury we
15 wanted to make sure she didn't have any active bleeding
16 inside of her abdomen that they might have to, before we
17 left the operating room, open her abdomen, explore and find
18 it.

19 Q Yes, sir.

20 A And the lavage showed that there was nothing that made
21 them want to proceed with opening her belly at that moment.

22 Q Yes, sir. Now, in your notes you did document the
23 severe midline shift and some dural hemorrhages.

24 A Yes.

25 Q And that is -- just to clarify, that is the bleeding --

1 A We got three layers of cover around our brain. The
2 outer layer is the dura mater. It means tough mother, and
3 it is. It's a very like leather substance that surrounds
4 our brain for protection. And the inner layer is the pia,
5 which is almost indistinguishable even under an operating
6 microscope from the surface of the brain. And then
7 something called the arachnoid, which holds the spinal fluid
8 in. So blood that is between the liner and the brain, that
9 middle layer, is called subdural blood. Blood between that
10 lining and the bone is epidural blood. This was all between
11 the lining and the brain. So it's below the dura.
12 Subdural.

13 Q And, Dr. Troup, based on your treatment of ^{victim} [REDACTED], the
14 looks of the CT scan and your surgery, and the post surgery
15 -- CT scan from post surgery, based on a reasonable degree
16 of medical certainty, do you have an opinion on what the
17 cause of this type of brain injury is, or was?

18 A When you look at any type of injury you look at
19 patterns of injury, and frequently any one part of it by
20 itself doesn't paint the whole picture. Something we
21 haven't talked about, and hopefully you have the
22 ophthalmologist come to be the definitive statement on this.
23 But she had multiple layer retinal hemorrhages. So in the
24 back of the eye, the retina in the back of the eye, had
25 hemorrhages. There are multiple reasons why somebody can

1 get a retinal hemorrhage, but multiple layers of hemorrhage
2 implicates a very violent tearing force along all of those
3 blood vessels. And the best way to describe that is if you
4 ever went roller skating growing up and you made the chain,
5 and the person on the front of the chain moves just a little
6 bit and the person at the end of the chain is getting
7 whipped all over the end of the skating rink. Those retinal
8 vessels are like that. If the head is being slammed, or
9 forcefully whipped back and forth -- it doesn't even have to
10 be, in your mind, a shake. A lot of times it's a shake and
11 then a quick slam, and it makes those vessels move and
12 rebound quickly and it tears them. And there are very few
13 things, if anything -- and again, that's -- hopefully an
14 ophthalmologist can answer those questions, that cause those
15 vessels to tear in multiple layers at the same time. So
16 with multiple layer retinal hemorrhages, and this type of
17 head injury, I can't come up with an accidental cause that
18 would match those two things. We have kids that are ejected
19 from cars that have bad head injuries, but they don't get
20 the multiple layer retinal hemorrhages. Fall out of
21 balconies, they don't have this pattern of injury. So this
22 pattern of injury is very, very, very consistent with a
23 nonaccidental shake and shake, slam type of mechanism.

24 Q You said shake and shake, slam?

25 A Yeah.

1 Q You mean, slam like -- what do you mean by that?

2 A The body being-held and the head being slammed, either
3 on a pillow or anything.

4 Q On any kind of hard surface?

5 A It could be a hard surface. I've had people describe
6 this without a mark on them anywhere with retinal
7 hemorrhages and a dead brain where it was even described
8 that it was done on a pillow cushion or -- or a pillow. It
9 doesn't have to be a hard surface as long as the brain
10 inside the head gets that sloshing. Acceleration -- the
11 acceleration motion. A hard surface would cause more of an
12 impact injury as well. But the retinal hemorrhages in this
13 could be caused even without a hard surface, but a hard
14 surface would be part -- could be part of it as well.

15 Q And to get more depth with the brain. With the rapid
16 acceleration and deceleration, can you describe what the
17 brain is doing with regard to the skull on the outside, and
18 you already said there's some fluid around the brain.
19 What's the brain -- what holds that brain in place, and
20 what's causing that blood to pool up or hemorrhage and start
21 bleeding?

22 A Well, the brain's pretty much floating, for lack of a
23 better way to describe it, inside the -- with the spinal
24 fluid. I mean, it's not a cork in a barrel. It's not that
25 much room. But it's not really stabilized that much inside

1 the head. The brain stem holds it down. You've got blood
2 vessels. But it is -- it does have some freedom of movement
3 inside the head. There are some partitions inside there
4 that actually give it a little bit more stability for its
5 movement. But if you had a Jell-o mold in a bowl just
6 bigger than the Jell-o and you start shaking that, you're
7 getting that sloshing of the Jell-o flopping up against one
8 side of the bowl and back to the other.

9 Q And the shaking, plus what you said the slamming, that
10 would cause that subdural hemorrhage?

11 A Well, the subdural, you have vessels that bridge from
12 the brain to the dura that go through the dura out the --
13 out of the head and -- or into draining veins inside the
14 dura. And that -- from a subdural standpoint what you're
15 doing is shearing off those veins, because they -- they're
16 pretty rigid. They've got a little bit of freedom of
17 movement, but not a lot. So if you're really torqueing the
18 surface of that brain back and forth, the veins haven't got
19 that much freedom of movement so it just rips them off.

20 Q And when doing this it doesn't -- you don't have to
21 have a certain amount of time, like a length of time of that
22 -- that acceleration-deceleration, or the amount of time --
23 it could be five seconds, 10 seconds, or however long to
24 generate that kind of damage, or can you even say?

25 A I'm not sure that any -- I think it has more to do with

1 force than it does a -- you know, how many licks does it
2 take to get to the bottom of a Tootsie Roll Pop. I mean, I
3 don't think anybody's ever calculated, oh, five impacts is
4 going to do it before it does it.

5 Q Yes, sir.

6 A I think it has to do more with the amount of force and
7 how much that brain is getting sheared. It could be one
8 really bad one, or it make several -- several. And I don't
9 think anybody has ever calculated exactly how many impacts
10 it takes to do that.

11 Q But you said the real -- the cause of that is force?

12 A Right.

13 Q Now, in your experience, in your opinion, as doing this
14 for 17 and a half years, could a six-year-old child generate
15 that much force?

16 A No. I don't think there's --

17 Q To be able to cause that type of brain injury?

18 A No. I can't imagine they would have the amount of brute
19 force to pick up a 10-month-old and create that kind of
20 acceleration-deceleration injury that would be required to
21 produce this.

22 Q And, Dr. Troup, I want to show you -- I know you've
23 probably never seen this picture before. But if a child
24 fell off a porch -- this is State's Evidence 30. There's a
25 ruler next to that porch. I know you didn't take picture

1 beside the ruler. But based on that ruler can you tell how
2 high that porch is?

3 A Those are foot increments. It's like 24 inches. Two
4 feet, four inches. Something like that.

5 Q If a child fell off of that top step, or the very top
6 of that porch like the -- actually the porch of the house
7 and fell to the bottom stair, would that cause that type
8 injury?

9 A I can say I've had much worse falls that didn't produce
10 anything like that. So no, I would -- it would stretch
11 plausibility to say. Can I say anything in medicine is
12 absolutely impossible? No. But it's pretty close.

13 Q Well, if you added that a fall occurred eight days
14 before she was admitted to the hospital, the falling down
15 the stairs, and you talk about chronic bleeding and acute
16 bleeding, would a fall -- say she came into your care on
17 August 8th. If ^{victim} [REDACTED] fell off those stairs July
18 30th, eight days before, nine days before, would that same
19 -- would that bleeding look like it did on the CT scan?

20 A It wouldn't look like that. You could have -- it could
21 produce a small amount of the chronic blood. But the
22 unclotted part of this, the older looking part of this, was
23 much larger than you would expect from a fall like that.
24 And you -- for it to have been that large, you would have
25 been profoundly symptomatic before that morning. It would

1 -- so it's unlikely, but not impossible, for that fall to
2 cause some bleeding in that space. For it to have expanded
3 to the degree that we saw on that, there's no way that child
4 would have been anywhere close to normal leading up to the
5 day of coming to see us.

6 Q She wouldn't be able to play around?

7 A No.

8 Q If she had that type of thing she wouldn't be playful?

9 A No.

10 Q And based off of your years of experience in dealing
11 with pediatric neurosurgery, your opinion -- what is your
12 opinion again of what this -- what would cause this type of
13 injury?

14 A This falls into a shaken or shake/slam type of
15 mechanism.

16 Q Shaken or shake/slam type of mechanism.

17 A They use the term shaken baby syndrome, and I hate that
18 because it doesn't have to just be a shake. In fact, the
19 slam usually is more impressive than the shake. So -- but it
20 falls into that big basket called a shaken baby syndrome.

21 Q And now the term used that you documented?

22 A It's shake and slam is what most people call it.

23 Q And you documented it as nonaccidental -

24 A Nonaccidental injury. Yes, sir.

25 Q Nonaccidental injury. And you think that the bleeding,

1 or the midline shift with bleeding, happened sometime --
2 several hours -- or some frame --

3 A Right.

4 Q -- before she was brought to your attention?

5 A Yes, sir.

6 MR. BROWN: No further questions.

7 THE COURT: Cross examination.

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

9 THE WITNESS: Your Honor, could I ask the Bailiffs to
10 get me a little glass of water?

11 THE COURT: Sure. By all means. Let's just wait just
12 a moment so the doctor can get some water.

13 (Whereupon, there was a brief pause in the
14 proceedings.)

15 THE COURT: You may proceed.

16 MS. BOLEN: Thank you, Your Honor.

17 CROSS EXAMINATION

18 BY MS. BOLEN:

19 Q Good afternoon, Dr. Troup. You saw [REDACTED] ^{victim} in the
20 Greenville Hospital, right?

21 A Yes, ma'am.

22 Q And that was about what time in the afternoon?

23 A I'm not sure exactly from this note, because this
24 operative report was done after the surgery. My consult
25 note probably would have had the time when I saw her, but I

1 don't have that with me.

2 Q But it was sometime in the afternoon?

3 A I think so. It was right when she got there, so...

4 Q And she was taken from Greenwood, right?

5 A Yes, ma'am.

6 Q And you testified that when you were doing the CT scan
7 you saw some chronic blood, right?

8 A Uh-huh.

9 Q Okay. But when you met with Agent Lightle from SLED
10 didn't you tell her there was no old bleeding? There was no
11 re-bleed or anything like that?

12 A It's not really a re-bleed, but there were two
13 densitiès of blood there. Absolutely two different
14 densities of blood, as you can see on the CAT scan. And I
15 mentioned in my operative report that there was a
16 significant amount of unclotted blood. It's hard in that
17 setting to put that in a timeframe.

18 Q Okay. And you also noted in your report, talked a
19 little bit about -- I hope I'm pronouncing it right.
20 Infarctions; is that --

21 A Yes, ma'am. Same as stroke; infarction, dead brain,
22 dying brain.

23 Q Okay. And you noted that there were signs of early
24 infarction, right --

25 A Right.

1 Q -- on your report?

2 A Uh-huh.

3 Q And this was on --

4 A Meaning that it hadn't been days and it hadn't
5 liquified yet.

6 Q Okay. And this was --

7 A If you wait days, it will -- the brain will start to
8 dissolve itself because it's already dead and it will be
9 gelatinous really. It doesn't even look like brain once you
10 open it at that point.

11 Q And there can be other causes of injuries like this,
12 right? You had, I think, a Von Willebrand test? There are
13 some other diseases that can cause subdural hematomas?

14 A Lots of things that can cause subdurals in general,
15 yeah.

16 Q Okay. So not limited to forceful impact? A subdural
17 hematoma --

18 A Well, I mean, even with Von Willebrands it takes
19 something. Frequently they don't just spontaneously bleed.
20 It usually takes something to cause it to bleed other than
21 just not clotting well. The amount of force that it takes
22 can be fairly insignificant if you have a bad clotting
23 disorder. But yes.

24 Q Okay. And if there's any kind of prior head injury,
25 the amount of force to cause this kind of injury could be

1-- less because of that prior injury, right?

2 A It depends on what you're talking about this kind of
3 injury. If we're talking just about subdural, then we can
4 talk just about subdural. If we're talking about the brain
5 injury and the retinal hemorrhages then you're -- I don't
6 want to wrap everything, so I want to make sure I'm
7 answering the question you're asking me.

8 Q Just with respect to the subdural. I'm sorry. I
9 should have clarified.

10 A In the subdural, if you already have a dilated subdural
11 space then you have veins that are under more stretch and it
12 would take less trauma to just tear another vein. But
13 that's just the subdural, not the degree of brain swelling
14 and infarction.

15 Q And regarding the retinal hemorrhaging, those -- that
16 can actually occur from -- from the intracranial pressure
17 from the subdural hematoma, right?

18 A Not multiple layers it can't. That's what I was
19 saying, is somebody who is crushed by a car will have retina
20 hemorrhages, but they'll have them in one pattern. Somebody
21 that is choked will have retinal hemorrhages in one pattern.
22 Somebody that has a primary intracranial hemorrhage will
23 have a different type of retinal hemorrhages. People who
24 have CPR have a different type of retinal hemorrhages.
25 Retinal hemorrhages from a rapid multiple

1 acceleration-deceleration injury has a very classic
2 appearance because it is in multiple layers. And again, I
3 don't have the ophthalmology report in front of me. But to
4 my understanding this was diffuse multiple layer, and pretty
5 conclusive that this was not any of those other mechanisms.

6 Q Okay. And you said when you first ran tests on ^{victim} [REDACTED]
7 she had a cough, a gag reflex and a deep central pain
8 response?

9 A Uh-huh.

10 Q Okay. And there wasn't any indication of any seizures
11 or anything like that, right?

12 A Not that I remember. With a brain this damaged, to
13 have a seizure would not have been expected. But I don't
14 remember there being anything described as looking
15 specifically like a seizure. But it wouldn't have changed
16 my opinion of anything. A seizure by itself wouldn't have
17 caused that CT appearance. But that CT appearance could
18 very easily have provoked seizures with that much brain
19 injury.

20 Q And you said there's no skull fracture. You didn't
21 note one, right?

22 A Yeah, I did not note one.

23 Q Let's talk a little bit about the time line. You saw
24 her sometime on the afternoon of the 8th?

25 A Uh-huh.

1 Q Okay. And there's -- there's no way that you can say
2 with any degree of medical certainty when the injury
3 occurred that would have resulted in this injury, right?

4 A Reviewing it with colleagues, other neurosurgeons and
5 radiologists, we were all pretty much -- and intensive care
6 doctors that were forensic pediatricians, we were all pretty
7 comfortable that this was not something that happened
8 immediately prior to presenting to Greenwood. That amount
9 of shift, that amount of brain change, the darkness, the
10 early infarction, those things did not happen quickly.
11 Those happened -- it took several hours, at least, for those
12 to evolve. And again, it takes a good while for that blood
13 -- I can't tell you the number of hemispheres that I've
14 looked at that were obviously acutely dead that you had not
15 already started to form serum and clot reactions in the
16 artery. So that did take a good while.

17 Q Okay. And you said -- so, just backing up. You said
18 several hours prior to her being admitted to Greenwood,
19 right?

20 A Yes.

21 Q Okay. So several would be like two or three?

22 A At least. Could be longer.

23 Q But it could have been two or three?

24 A Possibly, yeah.

25 MS. BOLEN: I don't have anything further. Thank you,

1 Your Honor.

2 THE COURT: Anything in redirect?

3 MR. BROWN: Just -- just a few things.

4 REDIRECT EXAMINATION

5 BY MR. BROWN:

6 Q Dr. Troup, she asked you about a re-bleed. What would
7 be a re-bleed in that --

8 A What she's referring to, there's a literature out there
9 -- and actually an actual thing that happened. If you have
10 a hemorrhage -- so, I'm going to step back another step. If
11 I hit you in the arm and you get a bruise, it's purple. And
12 then it goes from purple to green to green-yellow, to
13 yellow, to yellow, and then fades. The body can't just
14 reabsorb blood. It has to break it down into other
15 chemicals. The other thing is, a fresh clot has kind of the
16 consistency -- a big clot has kind of the consistency of a
17 raw liver. It's thick. It's bulky. The body just can't
18 reabsorb that. So it dissolves it and liquefies it. And
19 those difficult chemicals that it takes to go from purple,
20 to green, to yellow is breaking it down into those
21 chemicals. So if your brain is immediately adjacent to the
22 lining around the brain and you put a large enough space in
23 there, those veins that didn't have -- are not supposed to
24 be stretched over a large space, get stretched by the clot.
25 And as it liquefies you have a little bit more range of

1 motion and it makes it easier for those muscles to tear. In
2 a child there's not supposed to be much space between the
3 brain and the lining around the brain to begin with. So if
4 there's enough mass affect to push those two apart to have
5 enough tearing to have a re-bleed usually you're not
6 perfectly normal leading up to that. You have kind of a
7 stuttering course where you have an injury, you do okay from
8 that injury, then you have another jury and you're not doing
9 quite as well because you're not bleeding into that space.
10 So the re-bleeding is kind of a down-up, down-up, down-up.
11 Kind of a stuttering over several days to months for that
12 kind of course. And each time you don't get quite back to
13 your normal status before you've got enough veins under
14 stretch again that you have another injury that tears more
15 veins. If any of you have elderly parents or grandparents,
16 it happens a lot in the elderly because their brain atrophy
17 shrinks, and there's already a lot of space. So their
18 collection between their brain and their skull, they're
19 re-bleeding, they can get massive before they have any
20 symptoms because they kind of have the pea in the barrel
21 anyway. Little brain, big skull. Whereas babies, you have
22 brain right up against skull. You're not going to be normal
23 in between if you have -- if you have enough space to tear
24 those vessels.

25 Q So if there was some type of injury before, you -- a

1 baby wouldn't be all playful or back -- feeling back to
2 normal if there was some severe trauma for -- like for a
3 re-bleed?

4 A Again, the picture you showed me, could you have gotten
5 a little smear of blood between the brain and the skull that
6 was causing no symptoms initially? Yes. For it to have
7 reached enough volume to stretch those veins, the child
8 should have had some symptoms in between. And clearly that
9 size of dark fluid, there's no way you could implicate a
10 re-bleed phenomenon with that much space in a normal
11 interval child.

12 Q And when you took what you found, and also the totality
13 of the circumstances with the multilayer, there was -- you
14 could -- you could -- with your opinion, you could say it
15 was a nonaccidental trauma?

16 A Yeah, absolutely.

17 Q And also you said that when you talked with forensic
18 pediatrician, pediatric ophthalmologist yourself at
19 Greenville Memorial, you said you were all comfortable that
20 this didn't happen immediately before she was brought to
21 Self Regional in Greenwood?

22 A Right.

23 Q That it happened several hours before that?

24 A Before that.

25 MR. BROWN: No further questions.

1 THE COURT: Anything on recross?

2 MS. BOLEN: No, sir. Your Honor.

3 THE COURT: Dr. Troup, let me ask you. Is several
4 hours the outside timeframe? I think you've testified
5 earlier, you correct me if I'm wrong, that in reviewing the
6 Self CT scan you found an acute situation of lighter color
7 fluid, and you testified that that could have occurred
8 minutes to a few hours, up to a day.

9 THE WITNESS: Right.

10 THE COURT: Is that correct?

11 THE WITNESS: Yes, sir.

12 THE COURT: All right. So to a reasonable degree of
13 medical certainty, would this nonaccidental trauma, could it
14 have occurred up to just several hours, or would the one day
15 be the outside timeframe, to your -- in your opinion?

16 THE WITNESS: I don't -- I think that with the variety
17 of the things that we saw there were some acute things that
18 I think meant that it could have been relatively recent.
19 There were some older things that said that it wasn't within
20 a -- that it was immediate. It was within a few hours. And
21 some of the findings led me to believe that if it had been
22 more than a day, one, the child wouldn't have been normal in
23 between, and second, that some of the findings deeper in the
24 brain stem on the other side would have looked worse by
25 then. So that's how I kind of narrow it down on -- it

1 probably is less than 24 to 36 hours, and clearly more than
2 two to three hours. Does that answer your question?

3 THE COURT: Okay. So 24 to 36 hours would be the
4 maximum end time?

5 THE WITNESS: I think so. Yes, sir.

6 THE COURT: Any questions by the State in direct
7 response to the Court's questions?

8 MR. BROWN: No, sir.

9 THE COURT: From the Defense?

10 MS. BOLEN: No, sir.

11 THE COURT: Dr. Troup, thank you for your testimony.
12 You are excused.

13 (Whereupon, the witness steps down from the witness
14 stand.)

15 THE COURT: Okay. Mr. Foreman, ladies and gentlemen of
16 the jury, we're going to take a lunch break, and I'm going
17 to ask that you be back here at 2:15 in your jury room. How
18 you have a good lunch. Again, remind you not to discuss
19 this case among yourselves or anyone that you may come into
20 contact with during the lunch break.

21 (Whereupon, the jury exits the courtroom at 1:03 p.m.)

22 THE COURT: Okay. We'll be in recess until 2:15.

23 (Whereupon, a lunch break was taken from 1:03 p.m. to
24 2:21 p.m.)

25 THE COURT: We're back on the record now. Are we at a

1 THE COURT: So you agree with that. It's always good
2 to see on occasion the State and Defense agreeing on
3 something. That's always -- that's always a good sign.

4 All right. If you'll bring the jury out, please, sir.

5 (Whereupon, the jury enters the courtroom at 2:26 p.m.)

6 THE COURT: Let the record reflect the jury is back in,
7 and turn it over to the State.

8 MR. STUMBO: Thank you, Your Honor. The State would
9 call Dr. Nancy Henderson to the stand.

10 DR. NANCY HENDERSON, having been
11 first duly sworn, testified as follows:

12 THE COURT: Your witness.

13 DIRECT EXAMINATION

14 BY MR. STUMBO:

15 Q Good afternoon, Dr. Henderson.

16 A Good afternoon.

17 Q Tell me where you currently are employed?

18 A I'm employed with Greenville Health System.

19 Q And are you a physician there?

20 A Yes, I am.

21 Q And what is your speciality there at Greenville Health
22 System?

23 A I'm a child abuse pediatrician.

24 Q Okay. And as part of your job as child -- you said
25 child abuse pediatrician?

1 A Yes, sir.

2 Q Do you interact with law enforcement and other agencies
3 involving your examinations?

4 A Yes, I do. A lot of times I'll see children in the
5 hospital and at the -- I work at two different children's
6 advocacy centers, and children are referred for concerns
7 about different types of abuse. And so, there are times
8 when either Department of Social Services or law enforcement
9 is already involved and they may be referring a child, or
10 I'm seeing a child myself and I have concerns and I may be
11 making a report to them.

12 Q Okay. Dr. Henderson, give the jury just a summary of
13 your educational background.

14 A Sure. I attended Rutgers College of Pharmacy. It was
15 an undergraduate degree. Graduated in 1980. And that's in
16 New Jersey. And then I attended Bowman Gray School of
17 Medicine and graduated in 1984 with my medical degree. And
18 that's in Winston-Salem, North Carolina. And then did my
19 pediatric training at T.C. Thompson Children's Hospital,
20 which is in Chattanooga, Tennessee. And I got my board
21 certification in general pediatrics, and then subsequently
22 became board certified in -- sub-boarded in adolescent
23 medicine. And then recently in 2009 there was a new
24 sub-board which is in the area of child abuse pediatrics,
25 and you have to do -- about 50 percent of your practice had

1 to be involving the whole field of child abuse. And then
2 you had to sit for an exam, which I did and passed. And
3 that has to be recertified every 10 years.

4 Q So you're board certified in general and child abuse
5 pediatrics?

6 A Yes, sir.

7 Q And you've touched on this a little bit with your
8 subspecialty and the fact that you're board certified. But
9 have you received additional training in that area of child
10 abuse pediatrics?

11 A Right. I am -- in our state, in South Carolina, there
12 is -- there's a network of pediatricians -- child abuse
13 pediatricians that deal with this area. And also from my
14 license, we have to get ongoing continuing medical education
15 credits, and also for the practice itself. So I've been
16 attending multiple conferences across the country involved
17 in this area of child abuse and neglect.

18 Q And in the course of your experience as a pediatric
19 doctor how many children have you examined in the course of
20 your career? Just an estimate, ballpark.

21 A We probably examine about 300 to 400 children a year
22 for concerns about abuse, and then approximately 60 of those
23 are inpatients. Some more significant injuries with head
24 trauma and areas of physical abuse. And that's on a yearly
25 --

1 Q Just since 2009, at the time you were board certified
2 in child abuse pediatrics, 300 to 400 a year over the past
3 four years, that's well over 1,000 --

4 A Yes, sir.

5 Q -- just in the past several years. And have you ever
6 been qualified as an expert to testify in the courts of this
7 state?

8 A Yes, I have.

9 MR. STUMBO: Your Honor, at this time the State would
10 offer Dr. Henderson as an expert in the field of general and
11 child abuse pediatrics.

12 THE COURT: All right. And what says the Defense?

13 MS. BOLEN: Without objection, Your Honor.

14 THE COURT: Okay. Dr. Nancy Henderson is found to be
15 qualified as an expert in the general area of pediatrics and
16 in the specialty area of child abuse pediatrics. And I
17 would remind the jury to consider the instruction that I
18 gave initially this morning when the emergency room doctor
19 -- the instruction being concerning expert testimony.

20 Q Dr. Henderson, one of these hundreds of children that
21 you examined, was that ^{victim} [REDACTED]?

22 A Yes, it was.

23 Q And how old was she when you -- she came under your
24 care?

25 A Ten months.

1 Q And when was that?

2 A That was August -- well, when I saw her it was August
3 9th, 2012.

4 Q And that was at the hospital in Greenville?

5 A Yes, sir.

6 Q Now, as far as -- it's a pediatric intensive care unit
7 is the unit that ^{victim} [REDACTED] was in at the time?

8 A Yes, sir.

9 Q And part of that unit, are there multiple doctors and
10 staff members working in that unit?

11 A Well, there is what's called the pediatric intensivist,
12 and he primarily is the doctor in charge of the children
13 that are there. And then based on why children -- why a
14 child may be there, he may involve different consultants to
15 come in to help evaluate various problems. And that is how
16 I got involved with ^{victim} [REDACTED].

17 Q Okay. And Dr. Avant, was he one of the other doctors
18 involved with --

19 A He is the pediatric intensivist that was there when
20 ^{victim} [REDACTED] was there.

21 Q Okay. So he -- Dr. Avant, after his initial review and
22 evaluation of ^{victim} [REDACTED], also brings you into the team?

23 A Yes, sir.

24 Q Now, what were ^{victim} [REDACTED]'s primary injuries of note or
25 concern to you?

1 A Well, she -- there were numerous injuries that were of
2 concern.

3 Q And let me back up a second. If we could focus in on
4 -- was there a cerebral, or brain injury here?

5 A Yes. Yes.

6 Q And could you explain to the jury what types of brain
7 injury were present?

8 A Yes. She had arrived the night prior on the 8th and I
9 was consulted the next day. But when she arrived she
10 initially was seen at Greenwood at Self Memorial for initial
11 evaluation and then was transferred to Greenville Health
12 System that night. And the reason why she was transferred
13 was because she had so much bleeding on her brain that was
14 causing so much pressure that something needed to be done to
15 relieve that pressure. And that was the main reason for her
16 to be transferred there to the neurosurgeon that is at our
17 hospital. So one -- so the two main things in her head was
18 the large amount of bleeding and the amount of swelling
19 related to what was going on, or the main things that were
20 going on in her head. Subsequently she also was not
21 breathing, so she also was on a ventilator to help support
22 that as well.

23 Q The fact that she wasn't breathing well, was that
24 related to her brain injuries?

25 A I believe so.

1 Q And were you able to review the CAT scans and some of
2 the other information that had come in at that point?

3 A Yes, sir.

4 Q And cerebral edema, what is that?

5 A Well, edema is swelling, and cerebral is head. So
6 swelling in the head is what that means.

7 Q Okay. And did ^{victim} [REDACTED] have cerebral edema?

8 A Yes.

9 Q And how significant was her swelling in her head?

10 A Extremely significant. And she had the blood and a lot
11 of pressure that was kind of moving things from one side of
12 her brain to the other to accommodate that. In reviewing
13 kind of the surgical report by Dr. Troup, when he tried to
14 relieve that pressure some of that swelling was extremely
15 apparent to him.

16 Q And was there a midline shift --

17 A Yes. That was --
victim

18 Q -- in [REDACTED]'s brain?

19 A Yes, that was the --

20 Q Is that what you were referring to?

21 A Yes, sir.

22 Q Okay. And why is that important?

23 A Well, again, that is showing the amount of pressure
24 that the brain is under causing the brain to kind of have to
25 move from one side to the other.

1 Q Did ^{victim} [REDACTED] have what's none as a subdural hematoma?

2 A Yes, she did.

3 Q And what is that indicative of, Dr. Henderson?

4 A A subdural hematoma is blood under the -- in the dural
5 -- under the dural layer, and that is indicative of -- a lot
6 of different things can cause that. Sometimes it can be
7 related to trauma. Sometimes it can be related to bleeding
8 abnormalities. Sometimes it can be related to infection.
9 So there's lots of things that can just specifically cause
10 subdural hematomas.

11 Q Was there bruising on ^{victim} [REDACTED]'s body anywhere that was
12 significant?

13 A Yes. She did have some open abrasions on her left arm
14 with some sores. She had some sores underneath her
15 fingernails. And she also had two bruises on her -- on each
16 side of her labia, in her genital area.

17 Q Dr. Henderson, I'm going to show you a few pictures
18 that are in evidence at this point. Dr. Henderson, this is
19 State's 26. And is that -- do you recognize the location of
20 this picture? Is that in Greenville Memorial? Does it
21 appear to be?

22 A It could be. I mean, I think it could -- it does look
23 like a picture of a child in the ICU, so I can't say
24 specifically that that is at Greenville. I did not take the
25 picture.

1 Q And you may note some abrasions on the arm of this
2 child. This is -- I'm showing you now what's in evidence.

3 A Yes, sir.

4 Q At this point it's State's Exhibit 18 are pictures -- a
5 picture taken of ^{victim} [REDACTED]. Is this consistent with
6 the arm injuries that you referenced?

7 A Yes, sir. There are also some linear abrasions that
8 you may have pictures of as well.

9 Q This is -- I'm referring to State's 23. This is --
10 this is the leg of ^{victim} [REDACTED]. The right leg. Was there
11 anything of significance as far as bruising in this picture?

12 A I think the things that is concerning about that is
13 that they are equally -- the injury are equally spaced apart
14 and they seem to have a pattern to it. And those are things
15 that we look at when we look at any kind of marks on a
16 child's body.

17 Q Now, based on your examination of ^{victim} [REDACTED], and your
18 review of the surgical notes and the notes of when ^{victim} [REDACTED]
19 came into the hospital, do you have an opinion to a
20 reasonable degree of medical certainty how these injuries
21 were caused to ^{victim} [REDACTED]?

22 A I feel that this was inflicted trauma to ^{victim} [REDACTED].

23 Q When you say inflicted trauma, would that be
24 nonaccidental trauma?

25 A Nonaccidental inflicted head trauma.

1 Q And can you explain to the jury why -- why that's your
2 opinion in this case?

victim

3 A Yes, I can. Not only did [REDACTED] have the bleeding that
4 we talked about, the significant amount of brain swelling,
5 but she also had marked retinal hemorrhages throughout all
6 the layers of the retina. And one of the things, as a child
7 abuse pediatrician, we have multiple -- other specialists
8 that also are involved and one of the physicians is a
9 pediatric ophthalmologist. And although -- when [REDACTED]
10 arrived her pupils were dilated, so they were big. Big
11 enough that, you know, with looking at a ophthalmoscope, the
12 regular that you see in a doctor's office, you can see the
13 blood behind the eye. But he has special equipment that he
14 can do at the beside to also better look at all the areas of
15 the retina and all the way out to the periphery. And based
16 on his findings, along with my own, she had retinal
17 hemorrhages throughout all the layers going all the way out
18 to the periphery. And that finding, based on all of her
19 brain trauma, that is how I made my decision about inflicted
20 injury. Also, in looking at the other things that we had on
21 her laboratory, kind of ruling out other problems, she had
22 areas to look for infection, which did not show any
23 problems. We looked at metabolic problems. Children can be
24 born with an inability to process different kinds of
25 chemicals in the body. That was checked. That came back

1 normal, that she didn't have any problems. Bleeding
2 problems sometimes can cause some bleeding in the brain.
3 Doesn't cause the edema, the swelling that she -- that we
4 saw, doesn't cause the massive retinal hemorrhages that we
5 see, but we also looked at that to see if that was a
6 problem. And some of the initial values that we look at is
7 what we call a prothrombin time. Kind clotting -- what we
8 call clotting factors. And her initially at Greenwood were
9 normal. They subsequently became a little bit elevated,
10 which we see extremely commonly when children have
11 significant head trauma. And we did do some studies, before
12 she got some blood products, to look at the most common
13 cause of bleeding problems, which is Von Willebrand's
14 disease, which came back normal. Now, Von Willebrand's
15 disease really -- it's very rare for that to even cause a
16 subdural hematoma. So even if she had -- it came back
17 positive, I wouldn't have even thought that that caused the
18 injuries that she had because they're -- they're rarely
19 associated together. But for her those values came back
20 normal.

21 Q Which you did the testing for the Von Willebrand
22 syndrome --

23 A Yes, sir.

24 Q -- to rule that out --

25 A Yes, sir.

1 Q -- as a cause for the subdural hematoma?

2 A Yes, sir.

3 Q You mentioned the retinal, the exam. And that was done
4 by the ophthalmologist?

5 A Well, it was done -- I think the ICU doctor normally
6 does it when a child first arrived just using the -- the
7 regular ophthalmoscope is right by the beside at the ICU.
8 And I do it as well. And for ^{victim} [REDACTED] -- a lot of times it's
9 hard for us to do because the eyes are -- the black part of
10 the pupil, the black part of the eyes is small, and when you
11 shine a light on it gets really small. But for her, because
12 of her head trauma, her -- the black part of her eye was
13 already dilated. So the ophthalmologist -- you know, a lot
14 of times what he'll do before he does an exam is put drops
15 in. Like when we go to the eye doctor, put drops in to
16 dilate our eyes. Well, he didn't even need to do that
17 because her eyes were already dilated because of what had
18 happened. So we were able to see the retinal hemorrhages
19 because of that and he certainly was able to document that
20 further.

21 Q In other words, after you observed that, and the ICU
22 doctor observed that, you called in this ophthalmologist
23 specialist to elaborate on that more?

24 A Yes, sir.

25 Q To exam it further?

1 A Exactly, yes.

2 Q And that was Dr. Johnson? --

3 A Yes, sir.

4 Q And just in conclusion, Dr. Henderson, do you have a
5 medical opinion as to what type of force it would have taken
6 to cause this severe of a brain injury?

7 A In the child abuse literature where they have had
8 documented either from people seeing children from being
9 injured and documented statements from people having injured
10 a child, that it takes an incredible amount of force to
11 create these kind of injuries. And that much force, even an
12 adult can only continue to do the injury for about 15, 20
13 seconds. So it's an incredible amount of force that causes
14 the massive edema, the retinal hemorrhages, and the large
15 subdural hematoma. So that entire picture takes an
16 incredible amount of force to be created.

17 Q Could a six-year-old child inflict the type of force
18 that would be needed to cause these injuries on ^{victim} [REDACTED]?

19 A No.

20 Q Is there a comparison you can give to the jury on --
21 I've heard before falling from stories up or a car wreck at
22 so many miles per hour. Is there a comparison that you can
23 give based on your experience and your expertise as to how
24 much force was exerted to ^{victim} [REDACTED] when she received these
25 injuries?

1 A I don't have a comparison like that. I do know that
2 most of the studies looking at short falls in children, from
3 three feet and under, can cause small subdural hematomas but
4 do not create the massive edema, the subdural - the retinal
5 hemorrhages as described by Dr. Johnson. And so, that
6 creates quite a significant amount of force. And it's not
7 just a kind of a free fall type force. It's what we call a
8 rotational force, so that often what happens is -- in
9 children they have their skull and then the brain inside is
10 kind of smaller and there's room for things to kind of
11 jiggle and wiggle around it. And it's that rotation force,
12 the brain inside the skull that causes all of that edema.
13 And also causes the breaking of the blood vessels both in
14 the back of the eye and those connecting -- what we call
15 bridging vessels to cause that subdural hematoma. And then
16 sometimes what we see, not only that, but an impact force.
17 So that rotational force, and then an impact to cause, so
18 the brain is moving, moving, and then it stops suddenly.
19 And so, that -- those type of injuries is what causes the
20 severe brain trauma that we saw in ^{victim} [REDACTED].

21 MR. STUMBO: If I may approach, Your Honor.

22 THE COURT: Sure.

23 Q I'm going to show you what's in evidence now as State's
24 Exhibit 17, and this is [REDACTED] in Calhoun Falls.
25 Based on just your observations of the height of that porch

1 and the stairs in that picture, could a fall from that
2 height have caused the amount of ^{victim} [REDACTED] that was present in
3 [REDACTED] on August the 8th?

4 A I don't believe so. In children that have significant
5 injury are impacted significantly, so that if you have a
6 severe injury to the brain the child is not going to be
7 well. So they're going to act very, very ill, just like
8 [REDACTED] ^{victim} did when she presented to the emergency room. So that
9 you don't typically have a child being severely injured, and
10 then is well for days, and then all of a sudden gets sick.
11 They're sick, because they have all the bleeding, the
12 swelling, and they -- they need a lot of supportive
13 services.

14 Q In other words, after they've healed for a period of
15 time the injuries just don't magically reappear a week
16 later?

17 A Not if they're that significant to cause death.

18 MR. STUMBO: Beg the Court's indulgence.

19 THE COURT: Sure.

20 MR. STUMBO: No further questions of Dr. Henderson at
21 this time.

22 THE COURT: Okay. Cross examination by the Defense?

23 MS. BOLEN: Very briefly, Your Honor. Thank you.

24 CROSS EXAMINATION

25 BY MS. BOLEN:

1 Q Good afternoon, Dr. Henderson. I've just got a few
2 quick questions for you. You saw ^{victim} [REDACTED] on August 9th,
3 correct?

4 A Yes, ma'am.

5 Q Okay. And on your direct exam you mentioned something
6 about two adjacent bruises on her labia?

7 A Yes.

8 Q And you also in your report said that there were
9 multiple catheters inserted in her urethra and rectum --

10 A Yes.

11 Q -- correct?

12 A Yes.

13 Q And you also noted in your report there was no trauma
14 to her vaginal area?

15 A That's correct.

16 Q And no trauma to her rectal area, right.

17 A That's all I have. Thank you.

18 THE COURT: Thank you, Dr. Henderson. You can step
19 down. Thank you for your testimony. You can be excused.
20 (Whereupon, the witness steps down from the witness
21 stand.)

22 MR. BROWN: The State calls Dr. Brett Woodard.

23 DR. BRETT WOODARD, having been
24 first duly sworn, testified as follows:

25 DIRECT EXAMINATION

1 BY MR. BROWN:

2 Q Good afternoon, Dr. Woodard.

3 A Good afternoon.

4 Q Dr. Woodard, where are you employed?

5 A I'm employed with Piedmont Pathology Associations in
6 Anderson, South Carolina.

7 Q And how long have you been there?

8 A For over 32 years.

9 Q Over 32 years. Where did you go to medical school?

10 A I went to Tulane University School of Medicine in New
11 Orleans.

12 Q And did you do a residency after that?

13 A I did a residency in pediatrics at the Charity Hospital
14 of New Orleans, and then I did another residency in
15 pathology at Duke University Medical Center in Durham, North
16 Carolina.

17 Q And how long were those residencies?

18 A One year in pediatrics and four years in pathology at
19 Duke University.

20 Q And since that time are you constantly keeping
21 up-to-date and having to take -- I guess, to be recertified
22 or re-board certified you have to keep up-to-date?

23 A Yes. People in my age bracket weren't required to be
24 recertified, but I volunteered and recertified with the
25 board. I maintain board certification with the American

1 Board of Pathology, and was last recertified in 2007. I
2 would be due for recertification in 2017 again.

3 Q 2017. So at this moment, at the time of 2012, you were
4 board certified?

5 A That's correct.

6 Q Dr. Woodard, over 32 years I imagine you've preformed a
7 number of autopsies.

8 A Somewhere between 200 and 350 a year.

9 Q Two hundred and 350 a year. And I'm not going to try
10 to do that math because I'll probably not get an accurate
11 number. But, Dr. Woodard, have you performed autopsies on
12 adults and children alike?

13 A Yes, I have.

14 Q And from all types of injuries -- or other causes of
15 death?

16 A All types of causes of death.

17 Q And, Dr. Woodard, have you ever testified in a court of
18 South Carolina General Sessions?

19 A Yes, I have on many occasions.

20 Q Do you know how many times you've testified?

21 A Hundreds, if not thousands.

22 Q And, Dr. Woodard, have you been qualified in the field
23 -- as an expert in the field of pathology?

24 A In both the Federal and State Court, yes.

25 MR. BROWN: Judge, at this time I offer Dr. Brett

1 Woodard as an expert in the field of pathology.

2 THE COURT: Okay.. And the Defense?

3 MS. BOLEN: Without objection, Your Honor.

4 THE COURT: Without objection, Dr. Brett Woodard is
5 being qualified as an expert in the field of pathology. And
6 once again, ladies and gentlemen of the jury, I would remind
7 you of the previous expert instruction that I gave to you
8 this morning when the emergency room doctor testified, and
9 that instruction would be applicable here as well.

10 You may proceed.

11 Q Dr. Woodard, did you have the opportunity to perform an
12 autopsy on ^{victim} [REDACTED]?

13 A Yes, I did.

14 Q Dr. Woodard, when did you perform that autopsy?

15 A I performed it on August 12th, 2012.
^{victim}

16 Q Do you know when [REDACTED] passed away?

17 A I was told she died on August 11th, 2012.

18 Q And, Dr. Woodard, when you -- what are your steps when
19 you first have a patient come in and you perform an autopsy?
20 What do you normally do first?

21 A We examine the patient as we receive them in whatever
22 clothing they were in, with whatever medical devices they
23 had on them at the time of their death, and do carefully
24 remove the clothing. We look for any signs of injury or
25 trauma to the overlying clothing, if that would be relevant.

1 If it had been the clothing that had been on at the time the
2 event occurred that started their death process we would
3 collect it and place it into evidence. We then look at the
4 exterior of the body, in a case of someone such as this
5 child that had been in the hospital for a while, so that we
6 can separate injuries that were caused by medical
7 intervention and injuries that would have represented in
8 some event other than medical intervention occurring to the
9 child. We then open the child's body and look for signs of
10 injury within the body. And specifically look underneath
11 the skin as part of that process so that we can see if
12 there's any bruises that hadn't manifest themselves on the
13 surface of the skin. All bruises start in your fat under
14 the skin and then over time work their way to the skin
15 surface. We then look at the internal organs to see their
16 state of disease or health, and look at any manifestations
17 of trauma which are on the -- have been conveyed to the
18 internal organs.

19 Q And, Dr. Woodard, did you do this in this case with --

20 A Yes, I did.

21 Q -- ^{victim} [REDACTED]? As you performed your autopsy --
22 before you actually begin your analysis and diagnosis by
23 looking at the internal organs of the child, do you take
24 pictures --

25 A Yes.

1 Q -- of the outside?

2 A Yes. We take pictures both internally and externally
3 of the -- any events that we see, or if there's been any
4 suggestion made by anyone that some event may have occurred.
5 We take a picture that either does or doesn't show that that
6 event could have occurred.

7 Q Dr. Woodard, I'm going to show you what's been marked
8 for identification purposes as State's Exhibit 37 and see if
9 you recognize this picture.

10 A Yeah, this is a picture that I had caused to be taken
11 of the back of ^{victim} [REDACTED]'s neck as it appeared on the day of the
12 autopsy.

13 Q Is that a fair and accurate reflection of what her neck
14 looked like?

15 A Yes, it is.

16 MR. BROWN: Judge, at this time I'd like to move
17 State's Exhibit 37 into State's Evidence 37.

18 THE COURT: What says the Defense?

19 MS. BOLEN: Without objection, Your Honor.

20 THE COURT: All right. Without objection it will be
21 State's 37.

22 (Whereupon, State's Exhibit No. 37 was admitted into
23 evidence.)

24 MR. BROWN: Permission to publish.

25 THE COURT: Certainly.

1 Q Dr. Woodard, I'm putting up on our projection State's
2 Evidence 37. Can you tell me what -- what you see in that,
3 or what's important in that picture?

4 A Yeah. As you look at the number 142, it identifies our
5 case number that this picture belongs to this particular
6 case. Beneath that, in this central, and off to the child's
7 right side, we see a contusion, a bruise, that's present
8 there that -- has manifested itself on the skin surface and
9 we can see it at this time.

10 Q And did you take -- by taking that picture, you also
11 took that to be of significance --

12 A Yes.

13 Q -- to show that bruising? Dr. Woodard, during your
14 autopsy did you give a -- did you have a provisional
15 anatomic diagnosis?

16 A Yes.

17 Q And what -- before I get into that, what is that?

18 A On the day we do the autopsy we make a list of the
19 things that on that day at that time we can say. We might
20 be able to say more later on as we look at our microscopic,
21 or do specific delicate dissections that we do on a later
22 date. But it gives the police authorities, in this
23 particular case, sort of a listing of things that we found
24 so they can compare them to any kind of statements that any
25 individual may do, and might allow them to ask followup

1 questions to that individual concerning anything they did
2 say.

3 Q And did you have the provisional anatomic diagnosis?
4 What did you find?

5 A That there had been what we call blunt trauma. By that
6 we mean the child came in contact, or something came in
7 contact with a child that produced injury that didn't have a
8 sharp point. In the realm of blunt trauma there were scraps
9 to the skin, we call those abrasions, where some force
10 perpendicular to the skin resulted in the surface portion of
11 the skin being removed. And this blunt trauma had a bruise
12 on the back of the skull and upper neck. There were bruises
13 on the back on both the right and left sides. There had
14 been an acute subdural hematoma that a neurosurgeon had
15 operated on the child in an effort to do what we call
16 decompression. Meaning make more space for the brain to see
17 if it can survive this insult. That there was severe
18 swelling of the brain, and the swelling was so bad that it
19 pushed the brain down toward the spinal cord and resulting
20 in what we call herniation with death of the mid-brain and
21 the brain stem. And there actually had been infarct death
22 of the structures of the brain. They had been unable to
23 handle the swelling and it blocked off their blood flow.
24 Q So an infarction would be basically just a clot? And
25 sometimes we refer to that as if people have a stroke?

1 A Well, no. It could be -- a stroke can present as an
2 infarction, yes. But somehow the arterial blood supply
3 became obstructed, and that leads to death of the brain
4 tissue, which is an irreversible injury to the brain.

5 Q Yes, sir. Now, after you were able to look a little
6 more in-depth, were you able to see anything in addition to
7 the brain trauma, or anything -- did you make anything note
8 of the eyes?

9 A Yes, sir. That day we removed the eyes, and we have to
10 treat them in a special way so that we can then later on
11 open the eyes and confirm injuries which are on the inside
12 of the eyes, but also injuries that maybe involve the nerve
13 that leads from the eye to the brain. The optic nerve. I
14 found that there were hemorrhages into the retina of the
15 eyes, that a portion of the retina was separated in the
16 back, meaning the retina had actually been torn away from
17 its underlying anchors in the eyes, and that a hematoma
18 formed around the optic nerve.

19 Q Dr. Woodard, based on your report and based on your
20 findings at the autopsy, based on a reasonable degree of
21 medical certainty, can you -- can you tell the cause of
22 this, or what would cause this type of injury?

23 A Nonaccidental trauma that had a significant quantity of
24 kinetic energy and resulted in a sudden stopping of the
25 child or the child being projected against some surface that

1 bruised-the back of the child. That causes the little veins
2 that empty out into the central vein of your head to become
3 torn, leads to the acute bleeding around the brain, and
4 leads ultimately to the swelling of the brain.

5 Q And again, you said a significant amount of kinetic
6 energy. Would you say in relation to force, it would take a
7 lot of force to do that?

8 A Outside -- if we were to say what kind of event
9 occurred this, automobile accidents at highway speed greater
10 than 45 miles an hour in unrestrained people. And so, we're
11 talking about a significant amount of kinetic energy.

12 Q Yes, sir. Dr. Woodard, based on your findings and the
13 amount of years you've done this and have seen this, could a
14 six-year-old child cause this type of force or produce this
15 much force or kinetic energy to cause this type of trauma to
16 a 10 month --

17 A Not by their own strength. You know, they would have
18 to have some sling-shotting mechanism in order to produce
19 it.

20 Q And I'm showing you what's been marked as State's
21 Evidence 30, which is a picture of a porch. There's a ruler
22 next to that. Based on -- I know you didn't take that
23 picture. But how high is that porch, or those stairs?

24 A Well, I'm going to assume the dark marks are feet, and
25 that's a three foot ruler. I can't really read it, even

1 with my glasses on. It looks like it's a little over two
2 feet from the top to the bottom of those stairs. A rising
3 rung is usually around nine inches. That would make sense.

4 Q Dr. Woodard, with a child -- 10-month-old child going
5 from the top stairs to the bottom stair, would that cause
6 that type of brain trauma?

7 A Onto a grassy surface like that, it -- a normal child
8 without some congenital abnormality or coagulation disorder,
9 no.

10 Q Or even to the bottom stair?

11 A Even to the bottom stair.

12 Q And also, if it happened -- if that, for example,
13 happened on July 30th and ^{victim} [REDACTED] was admitted to the hospital
14 on August 8th, would that amount of timeframe in between it,
15 that much separation from falling down the stairs and time
16 admitted to the hospital, and then the type of trauma that
17 you saw, or that you documented, if a fall like that
18 occurred and it caused that kind of trauma, would she be
19 able to -- what would her symptoms be from the time of like
20 -- with this type of --

21 A If this trauma had -- well, there's two ways I have to
22 answer that. One way is if this trauma had occurred on that
23 date, she would essentially be nonfunctional from that date
24 on. She wouldn't have eaten. She wouldn't have interacted
25 with any siblings or any person who was around. And without

1 - medical intervention she would have died long before she got
2 to the hospital. But secondarily, if this occurred on the
3 30th and she lives to the 11th, if the subdural had formed
4 it would become what we call a subacute subdural. After
5 about seven days the body says, well, I've got to get rid of
6 this blood and it begins to do its magic in healing and it
7 puts little capillaries, it puts fiberglass in there, so it
8 can pull that blood in, chew it up with its cells that chew
9 up the debris, and get rid of it. So the subdural would
10 become stuck to the dura. It wouldn't simply wipe away like
11 liquid blood. In this particular case, the child's subdural
12 wipes away, and therefore, it couldn't have occurred that --
13 earlier. And there's no staining after about seven -- after
14 about five days the blood begins to break down, and in
15 breaking down -- just as you notice on your own bodies. You
16 start out with a purple bruise and then it changes to all
17 those lovely shades of yellow and green and what you.
18 That's the blood breaking down in the heme molecule, because
19 it breaks down and begins to absorb it with different color
20 frequencies. And that would be evident just to look at the
21 dura, and none of that was present.

22 MR. BROWN: I beg the Court's indulgence.

23 THE COURT: Sure.

24 Q And just to wrap up. Based on your opinion, and based
25 on a reasonable degree of medical certainty, what is your

1 opinion of the cause of death?

2 A That inflected blunt force trauma resulted in a lethal
3 head injury, and that lethal head injury resulted in her
4 death.

5 MR. BROWN: Thank you. I have no further questions.

6 THE COURT: Cross examination by the Defense?

7 MS. BOLEN: If I could have just a moment, Your Honor.

8 THE COURT: Sure.

9 MS. BOLEN: I don't have any cross examination. Thank
10 you, Your Honor.

11 THE COURT: Okay. Thank you very much for your
12 testimony, Doctor. You're free to leave.

13 (Whereupon, the witness steps down from the witness
14 stand.)

15 MR. BROWN: Judge, this might be a good time to take a
16 break, make sure we've got our next witness.

17 THE COURT: All right. Mr. Foreman, ladies and
18 gentlemen of the jury, we're going to take a -- take a break
19 and get you back just as soon as we possibly can. Again, I
20 remember you don't begin deliberation. Don't discuss this
21 case among yourselves.

22 (Whereupon, the jury exits the courtroom at 3:10 p.m.)

23 MR. BROWN: Your Honor, I do have one housekeeping
24 matter before we break. We do have a disk that the court
25 reporter, Ms. Scott, sent to Investigator Jeff Miller of our

1 office. That is the digital copy of [REDACTED]'s
2 testimony. So we have it as -- in disk form here of the
3 audio that we played for the jury yesterday.

4 THE COURT: Right.

5 MR. BROWN: I'm not sure how Your Honor wants to handle
6 this.

7 THE COURT: We'll mark it as a Court's exhibit.

8 MR. BROWN: As a Court's exhibit. I figured that would
9 be the case.

10 THE COURT: Right.

11 MR. BROWN: So I figured we'd go ahead and do that now.

12 THE COURT: Okay. Very good.

13 MR. BROWN: Judge, one other thing we have that we
14 mentioned --

15 THE COURT: Wait one second. Let the court reporter do
16 her marking. Even though she can multitask.

17 (Whereupon, State's Exhibit No. 44 was entered into
18 evidence.)

19 THE COURT: All right. Yes, sir.

20 THE BROWN: Judge, one other thing. I know we've
21 already -- I've talked with Ms. Bolen and Ms. Nelson with
22 regard to our next witness. The animation that he provided
23 our office to help explain how the eyes got to be -- the
24 trauma, you know, that occurred to [REDACTED] victim. This is
25 a general animation. It was not produced for this

1 particular case. It is one that Dr. Johnson has provided to
2 us. And I've let the Defense know that on this disk there's
3 also an animation of a child, also in animation. But we're
4 not going to play that. Just the video of the optic -- or
5 actually the eye in animation. But to make sure we did not
6 play the child -- the animation of the child in front of the
7 jury, we have put the animation of the eye on the computer,
8 but we'll still just introduce the disk that actually has
9 both. We'll just let it be known that we're not introducing
10 that of the child.

11 MS. BOLEN: And, Your Honor, they did explain that to
12 us. And I think this is probably a good time, since I think
13 this is the State's last witness and our last legal issue
14 that had to deal with this -- this very same animation, we
15 had an objection to the animation being introduced as
16 evidence, and I wonder if it may be prudent to deal with
17 that now before the --

18 THE COURT: Sure. Yeah, let's go ahead and deal with
19 it now, yeah.

20 MS. BOLEN: Okay. This is the animation, Your Honor,
21 that the -- I talked with Mr. Brown on Sunday evening and
22 that's when he told me about it. And I was not in the
23 office, so I was working at home. We didn't see it until
24 Monday morning. Our objection is really a two-fold one.
25 Number one, that it wasn't provided to us in ample time for

1 us to get an expert of our own to review it. And number
2 two, we're objecting on 401 relevancy grounds. Our
3 understanding, based on what Mr. Brown has told us, is that
4 this animation was something the doctor already had, so it's
5 not developed particular to this case. It was not developed
6 in response to this case. It's not particular to this case
7 at all. And unlike, Your Honor, the slides that Dr. Troup
8 used, particularly the one of, you know, the computer image
9 of the brain where that was actually ^{victim} [REDACTED]'s brain
10 manipulated by computer, but this is not anything to do with
11 ^{victim} [REDACTED]. It's simply, from our understanding, is
12 something he had from some training session. It's not
13 anything specific to this case. I think the motions being
14 shown are not ones that he can say are the things that
15 happened to her. It's not her eye. And we just object
16 based on relevancy grounds, and also on the grounds that it
17 was untimely disclosed and we've not been able to get an
18 expert to review it.

19 THE COURT: All right. And what says the State?

20 MR. BROWN: Judge, the purpose of this animation is to
21 actually to help the jury understand what he's explaining
22 about the movement of the eye, what causes this multilayer
23 hemorrhages. And it's not going to be -- I'm not planning
24 to offer it as evidence, but just more of a demonstrative
25 way so he can help explain what he's trying to get to with

1 explaining the injuries to ^{victim} [REDACTED] -- the injuries to ^{victim} [REDACTED].
2 And we're basing this off of Rule 703, basis of opinion
3 testimony by experts. And just using this as a way for him
4 to explain this to the jury and give them an idea of what --
5 what would cause this eye to move around and to hemorrhage
6 like that. So that's basically the only reason why we're
7 using it. It's a 10 second clip and that would be the
8 extent of it.

9 MS. BOLEN: And if I could just respond very briefly,
10 Your Honor.

11 THE COURT: Sure.

12 MS. BOLEN: I think he can explain that using words the
13 way the two doctors have already done. We've already heard
14 basically the same explanation from Dr. Henderson and Dr.
15 Troup.

16 THE COURT: Okay. Now, not to provided timely is --
17 the only requirement that the State has is to provide -- and
18 I'm speaking generally. Okay?

19 MR. BROWN: Yes, sir.

20 THE COURT: Anything that is intended to be offered
21 into evidence, I mean, for the most part. I mean, this is
22 something -- it's almost akin to like if an expert gets up
23 and testifies and is to form a basis for his opinion he's
24 relied on some publication that some expert in the field has
25 -- has, you know -- that he's relied on that publication. I

1 don't think the State is obligated to provide the other side
2 everything that the -- that the expert in the case has
3 relied upon, whether it's a treatise, a publication, or in
4 this case some sort of general animation. So as far as it
5 not being provided, I'm not so certain -- and I'll be glad
6 to hear from you and you can correct me if I'm wrong. I'm
7 not so certain that this is something necessarily that the
8 State has the burden of providing it to Defense. Help me
9 with this, Ms. Bolen.

10 MS. BOLEN: Well, Your Honor, I agree that, you know,
11 they certainly don't have to provide us with every treatise
12 or article that a doctor relies on, but he's not relying on
13 this. This wasn't something he was relying on to make is
14 diagnosis. This wasn't something he was consulting to try
15 to figure out what the injuries were. This is -- this is
16 some, I understand, some slide he got from some conference
17 he went to that has no relation to this case and no relation
18 to these particular injuries or this particular child. It's
19 not something he's using to -- yeah, to form his opinion. I
20 think that's the difference between that and, you know, for
21 example, medical articles that all the doctors keep up with
22 that help them form opinions or make diagnoses as they're
23 going.

24 THE COURT: All right. Let me ask you this. Let's
25 say, as opposed to using this animation he has some chart

1 that he gets up and during his testimony he makes certain
2 drawings to try to offer support for his explanation for the
3 opinion that he's rendered? Would that not be basically the
4 same thing? I mean, I'm not trying to split hairs on this.
5 I want to do the right thing. And it may be where we need
6 to go ahead and bring him in and do some in camera testimony
7 and let him testify, lay the foundation. Let's -- let's see
8 the -- you say it's only about 10 seconds in length?

9 MR. BROWN: It's about 10 seconds of the eye.

10 THE COURT: I thought you said that. I'm sorry.

11 MR. BROWN: And it's basically just a side shot of an
12 eye, of an animation --

13 THE COURT: Right.

14 MR. BROWN: -- basically just moving a little bit. And
15 then you can kind of see where vessels or capillaries, you
16 know, would hemorrhage and would fill up the retina.

17 THE COURT: All right. Let's do this. Before I make a
18 ruling let's bring -- is it Dr. Johnson?

19 MR. BROWN: Yes, sir.

20 THE COURT: Let's go ahead and bring him in outside the
21 presence of the jury and get some testimony on this. You
22 don't have to get his whole testimony, but on this one
23 portion that's objected to, and then I'll make a ruling.

24 Is this the last witness for the State?

25 MR. BROWN: Yes, sir.

1 DR. ANTHONY JOHNSON, having been
2 first duly sworn, testified as follows:

3 THE COURT: Solicitor, you may want to explain in your
4 initial examination of Dr. Johnson what we're doing at this
5 present time because the jury --

6 MR. BROWN: Yes, sir.

7 THE COURT: -- is not in here. Okay?

8 IN CAMERA DIRECT EXAMINATION

9 BY MR. BROWN:

10 Q Dr. Johnson, we -- initially we've talked multiple
11 times about this case; is that right?

12 A Yes.

13 Q And during our conversations you have provided me, as
14 being representative of the State, of a disk that had
15 multiple animations basically demonstrating what the -- what
16 the eye would look like to cause this type of trauma to the
17 retina; is that correct?

18 A Yes, that's correct.

19 Q And you've seen those animations before?

20 A I have seen this. Yes.

21 Q And where -- where did you come across these
22 animations? Where did you --

23 A I initially went to a conference that was sponsored by
24 the National Association for Shaken Baby Syndrome in Salt
25 Lake City in about 1999, and that conference was attended by

1 physicians, attorneys, patients, and they had collected
2 gathered a lot of information and prepared some animated
3 information to help explain this mechanism of injury. They
4 prepared that about seven, eight years ago, and that's when
5 I came across the video.

6 Q And in your opinion does it help explain or describe
7 what the -- what the eye -- what the trauma the eye is going
8 through to create multilayered hemorrhages?

9 A Yes, it does.

10 Q And would you liken that to this animation to a chart
11 of the eye and being able to point to it and describe what's
12 going on --

13 A Yes.

14 Q -- when a trauma -- when those type traumas occur?

15 A Yes, I would.

16 THE COURT: Any examination in camera of Ms. Bolen
17 concerning this limited issue that we're dealing with with
18 respect to use of the animation?

19 MS. BOLEN: Yes, sir. Thank you.

20 IN CAMERA CROSS EXAMINATION

21 BY MS. BOLEN:

22 Q Dr. Johnson, you said this was a conference you went to
23 in 1998?

24 A 1998 or '99, something like that like.

25 Q Okay. And --

1 A That's when I first learned about this association.

2 This was actually prepared about five or so years later.

3 Q Who prepared it?

4 A It's the organization, the National Association for
5 Shaken Baby Syndrome. Their website is www.dontshake.com,
6 and it was actually prepared by a group of attorneys.

7 Q But you don't know like an individual?

8 A I'm blanking on their -- a couple of their names that
9 always come up. They always attend the conferences and I'm
10 blanking on that. One of them is actually from Alabama, but
11 I'm blanking on their names right now.

12 Q Okay. And is this -- this is something you can show
13 using -- using a picture or a chart or a graph as well,
14 right, that you could draw it out?

15 A Well, those aren't animated.

16 Q But you could still show --

17 A You can see the anatomy but -- because the eye is so
18 tiny it's difficult to sort of imagine what this would look
19 like and how this would occur. So you can see the anatomy
20 on the flat surface that would represent the eyeball. But,
21 of course, a flat surface is like a flat surface
22 representing the Earth. A globe is a much better
23 representation of, you know, what the Earth looks like.

24 Q And you said, obviously, this was prepared some years
25 ago, right?

1 A Yes.

2 Q And it's --

3 A But it's very current.

4 Q Okay. But obviously not --

5 A And it's still -- and it's still available.

6 Q Okay. But it wasn't prepared with respect to this
7 case, right?

8 A No. It was not prepared with respect to this case.

9 MS. BOLEN: If I could have a moment, Your Honor. I
10 think that's all we have, Your Honor, on this issue.

11 THE COURT: Doctor, let me ask you. Do you believe
12 that this animation is reliable and trustworthy from a
13 medical standpoint?

14 THE WITNESS: Yes, sir. I do.

15 THE COURT: And is this animation generally recognized
16 as such in your particular medical field?

17 THE WITNESS: Yes, very much so.

18 THE COURT: And do you believe that this animation
19 would be useful to you to help explain or support whatever
20 opinions that you may render in this case?

21 THE WITNESS: Yes, sir.

22 THE COURT: Any questions from the State concerning the
23 Court's questions to Dr. Johnson?

24 MR. BROWN: None. No, Your Honor.

25 THE COURT: From the Defense?

1 MS. BOLEN: No, sir.

2 THE COURT: I'm going to deny the motion to exclude the
3 use of this animation. I believe that it's reliable. I
4 don't believe that it's necessarily something that has to be
5 provided in discovery. I believe that it would be for
6 demonstrative purposes for this expert's testimony, and I
7 believe it would provide relevancy for his testimony.

8 So with that said, are you ready to bring the jury out?

9 MS. BOLEN: Actually, Your Honor, if I could just bring
10 up one more issue.

11 THE COURT: Sure.

12 MS. BOLEN: I'm sorry.

13 THE COURT: That's okay.

14 MS. BOLEN: I just - before having the jury back out.
15 On Monday we had discussed -- I think I had put it in a form
16 of a Motion in Limine to exclude testimony about Shaken Baby
17 syndrome and the State had conceded that their witnesses
18 would not be testifying to that.

19 THE COURT: I think the State conceded that they would
20 be using the term nonaccidental trauma. So what I think
21 where you're coming from, you want to make sure that this
22 witness uses the nonaccidental trauma characterization as
23 opposed to the shaken baby.

24 MS. BOLEN: Yes, sir. That was the --

25 MR. BROWN: Yes, sir.

1 THE COURT: All right. And since it was pretty much
2 conceded on Monday, then I would instruct Dr. Johnson to be
3 mindful of that in characterizing whatever condition that
4 you render your opinion on.

5 THE WITNESS: Can I have a minute?

6 THE COURT: Sure.

7 THE WITNESS: Yes, sir. The only reason I even
8 mentioned that phrase is because the name of this
9 organization which dates back to the mid '90s, and they no
10 longer use that phraseology either.

11 THE COURT: Sure, okay.

12 MS. BOLEN: Yes.

13 THE COURT: Very good. That's why a lot of times we
14 have to do things outside the presence of the jury to make
15 sure everybody is singing off the same page. Thank you very
16 much, Dr. Johnson.

17 THE WITNESS: You're welcome.

18 MR. BROWN: Judge, do we need to have Dr. Johnson at
19 least sit here and we can call him up when the jury --

20 THE COURT: Right. Sure. Sure. We're finished on
21 this, then yeah. Just have him in the gallery.

22 MR. BROWN: Can we actually take about a five minute
23 break?

24 THE COURT: Sure. Yeah, we'll be in recess for five
25 minutes.

1 (Whereupon, a short recess was held.)

2 THE COURT: Bring the jury out, please.

3 (Whereupon, the jury enters the courtroom at 3:37 p.m.)

4 THE COURT: Let the record reflect the jury is back in.

5 The State call it's next witness.

6 MR. BROWN: The State calls Dr. Anthony Johnson

7 DR. ANTHONY JOHNSON, having been

8 first duly sworn, testified as follows:

9 DIRECT EXAMINATION

10 BY MR. BROWN:

11 Q Good afternoon, Dr. Johnson.

12 A Good afternoon.

13 Q Dr. Johnson, where are you employed?

14 A I'm in Greenville at Jervay Eye Group.

15 Q Jervay Eye Group? How long have you been there?

16 A I've been in practice in Greenville since 1986, 28
17 years.

18 Q And --

19 A Twenty-eight years.

20 Q Twenty-eight years. And since -- where did you attend
21 medical school?

22 A Went to medical school at the University of Texas in
23 San Antonio and graduated in 1981.

24 Q And did you do a residency after your graduation?

25 A I did. Did a residency in ophthalmology at Tulane in

1 New Orleans between 1982 and 1985, and followed that with a
2 pediatric ophthalmology fellowship in Atlanta and finished
3 in 1986.

4 Q And with the pediatric fellowship in ophthalmology,
5 what is that? What does that entail?

6 A It's just the specific practice of ophthalmology with
7 kids, and dealing exclusively with children's eye problems.

8 Q And over the years have you -- are you board certified
9 and licensed to practice in this state?

10 A Yes, I am. -

11 Q And in order to stay, keep up your current status as
12 being board certified do you have to regularly keep up with
13 the newest publications, newest learning on your field?

14 A Yes. Every 10 years you have to recertify, and I last
15 recertified in 2007.

16 Q So in 2012 you were certified in pediatric
17 ophthalmology?

18 A Well, actually the certification is in ophthalmology
19 and not -- there's no subspecialty certification.

20 Q All right. And, Dr. Johnson, have you testified in
21 court before?

22 A Yes, I have.

23 Q In the Court of General Sessions? In Criminal Court?

24 A Yes, I have.

25 Q How many times?

1 A Probably between 15 and 20.

2 MR. BROWN: Your Honor, at this time I offer Dr.

3 Johnson as an expert in pediatric ophthalmology.

4 THE COURT: What says the Defense?

5 MS. BOLEN: Your Honor, I don't have any objection to

6 him being qualified in the field of ophthalmology but he

7 testified there's no subspecialty in pediatric

8 ophthalmology, so we object to that.

9 Q Dr. Johnson, you said you did a fellowship in Atlanta?

10 A Yes, I did.

11 Q What was that fellowship in?

12 A Pediatric ophthalmology.

13 Q And why did they have a fellowship in pediatric

14 ophthalmology?

15 A To do subspecialty training. In the 24 recognized

16 areas recognized by the American Board of American

17 Specialities ophthalmology is one of the few that has not

18 ever decided to allow subspecialty certification in any one

19 field. But the recognized area of expertise is after doing

20 a fellowship and restricting your practice to that area of

21 speciality.

22 Q And you've restricted your practice to that speciality

23 since 1986?

24 A Yes, I have.

25 Q And so, every -- every patient you see, or for the most

1 part every patient you see are children?

2 A Yes.

3 MR. BROWN: Judge -

4 THE COURT: Anything further on qualifications?

5 MS. BOLEN: No, sir, Your Honor.

6 THE COURT: Okay. I will find that Dr. Johnson is an
7 expert in the area of pediatric ophthalmology and would
8 remind the jury to consider the previous instruction given
9 this morning concerning expert testimony.

10 MR. BROWN: Thank you, Your Honor.

11 THE COURT: You may proceed, Solicitor.

12 Q Dr. Johnson, did you have the opportunity to observe
13 and also document your findings on ^{victim} [REDACTED]?

14 A Yes, I did. ^{victim}

15 Q And when did you see [REDACTED]?

16 A I saw her on the afternoon of August 9th, 2012.

17 Q And was that -- from what you remember, was that the
18 day after she was admitted into Greenville Memorial
19 Hospital?

20 A It was the day after she was admitted and about 24
21 hours after her neurosurgical procedure.

22 Q And what -- when you were -- why were you called?

23 A There's a protocol in the pediatric intensive care
24 unit, and if they are concerned about the possibility of
25 unexplained injury that could be related to nonaccidental

1 trauma there's a protocol of examinations and laboratory and
2 scans that are done. And one of those -- one of those
3 aspects of the protocol is an extensive ophthalmic
4 evaluation to look at the eyes.

5 Q And since you are a pediatric ophthalmologist they saw
6 fit to call you to check her out?

7 A Yes.

8 Q And when you did observe ^{victim} [REDACTED] and did your testing
9 what did you find?

10 A This was about 4:30 that afternoon when I was -- I was
11 called probably an hour before that, and when I arrived in
12 the pediatric intensive care ^{victim} [REDACTED]'s parents were in the
13 room and the pediatric intensivist was there. ^{victim} [REDACTED] was on
14 a ventilator with a breathing tube and she was conscious,
15 and she was positioned on her back. And that's a very easy
16 position to be able to perform an eye exam. Just the
17 external appearance of her was what you would expect if
18 someone's unconscious. She was not breathing on her own,
19 and therefore she was being breathed for by the ventilator
20 with a breathing tubing. Of course, she wasn't blinking
21 because she was unconscious. And her pupils were dilated
22 because of having the increased intracranial pressure. And
23 she had a dressing on her head from the previous surgery by
24 Dr. Troup the day before in his heroic attempt to try to
25 decrease the pressure in her brain. And the external

1 findings of her eyelids, in her eyeballs themselves, was
2 completely normal. There was no evidence of any bruising.
3 No evidence of any -- any injury to them. No evidence of
4 her face striking anything. No bleeding in the front part
5 of the eye. As I said, her pupils were dilated and didn't
6 require any kind of dilating drops to dilate them because
7 they were just unresponsive to light; or to anything, just
8 due to her state of being in a coma.

9 Q And it's quite significant that you didn't see any kind
10 of bruising or any type of -- any kind of markings on the
11 eyelids or the eyes externally. Why is that significant?

12 A Well, it's significant because when you consider the
13 findings of the retinal hemorrhage you would wonder if there
14 was any other trauma to any other part of the eye itself,
15 because the eye has delicate tissues. Very small blood
16 vessels. Very fragile blood vessels. And therefore, if you
17 anticipate any kind of blunt injury to her face you would
18 expect to see bleeding there as well.

19 Q I'm going to show you what's already in evidence as
20 State's Evidence 25. Take a look at that. Is that the
21 little girl that you visited?

22 A Frankly, I can't remember exactly if this is ^{victim} [REDACTED].
23 It's been 17 months ago. But this is exactly the appearance
24 that you would expect from someone that's in that state of
25 consciousness.

1 Q Yes, sir. And when you did your observations and
2 looked further into her eye, what did you do after you saw
3 her external appearance? What did you do, your next step?

4 A Then I looked at the retina and the optic nerve in each
5 eye which requires an instrument that actually is really
6 nothing more than just a headlight that's on your head and
7 allows the free use of the observing lense so you can see
8 all the structures with the retina and the optic nerve. And
9 both retinas were very filled with blood. I mean, just for
10 -- just for information purposes, it's completely abnormal
11 to have any bleeding at all in the retina. So, therefore,
12 just the finding of any bleeding is completely abnormal and
13 --

14 Q Just so everybody's clear. The eye is a complicated
15 thing. Can you go from the outside of the eye, the eye --
16 what we are looking through and what I can see of your
17 eyeball, and work your way back and kind of tell what each
18 part is all the way back to the optic nerve, just to give an
19 idea of the makeup of the eye.

20 A Well, from the front to the back of the eye, the eye is
21 about maybe one and a quarter inches long. So the front
22 part, the part that you see, is the cornea. That's the
23 clear part. Like the watch face that you would think on a
24 watch. And that's where a contact lense would sit, if
25 you're a contact lense wearer. Then just behind that, but

1 on the inside of the eye, is a small space with just clear
2 fluid. And just behind that is the iris, which is the
3 colored part of our eye, and the hole in the center of it is
4 the pupil. And the pupil is where all the light rays come
5 through so they can reach the retina. Just behind that is
6 the lense inside of our eye. It becomes cloudy if we wind
7 up being fortunate to be old enough to have cataracts. And
8 so, you hear about cataract surgery all the time. That's
9 where the lense is that's removed and replaced with an
10 artificial clear lense. And the space behind that is this
11 jelly material almost the same consistency as table Jell-o.
12 and so, if you can imagine having a square of table Jell-o
13 on a saucer and you jiggle it, it doesn't just melt, it's
14 got consistency where it stays together, but at the same
15 time it's not solid like a piece of ice. And then that
16 jelly material is up against and it holds the shape of the
17 eye. If we didn't have the jelly material holding the shape
18 of our eye then our eye would be like a prune. But it's
19 very important that it has the round shape. Not only the
20 part that we can see when we're talking to someone, but also
21 the hidden part that's all behind that, because that's all a
22 closed space. And that jelly material is right up against
23 the very fragile retina, and it's attached to the retina in
24 a few places. It's attached right at the optic nerve. It's
25 attached right along the blood vessels. And it's attached

1 in sort of a donut shape right around the center of our
2 vision. Our 20/20 vision is just a teeny tiny place right
3 straight in the back of our eye. One little tiny
4 specialized part of the retina. And surrounding that the --
5 this jelly material called vitreous is very adherent to the
6 retina. And you'll -- as we -- as I discuss the findings
7 I'll explain why that's important.

8 Q And when you did do -- when you did look into ^{victim} [REDACTED]'s
9 eyes what did find?

10 A As I indicated, both retinas were very extensively
11 filled with blood. And there are certain things that we
12 look for. Certainly just the presence of blood to begin
13 with is completely abnormal. But then the extent of the
14 blood as it goes from the very back of the eye where you can
15 see straight in out and spreads around, the blood extended
16 all the way out to the periphery. It wasn't just in one
17 little tiny place in the back of the eye. And in one eye,
18 in her right eye where she had the worst bleeding, where the
19 vitreous is densely adherent to the retina, that area of the
20 retina, spared in the center where the vitreous is not
21 adherent but surrounding this area of our central vision,
22 was sort of a donut shaped mountain that was filled with
23 blood from underneath. And the way that happens is any kind
24 of force that causes the vitreous which is adherent to the
25 retina, any kind of force that's causing it to just

1 continuously tug, and tug, and tug, and tug, and tug,
2 especially considering at the retina, is tissue paper thin.
3 But on a cellular level it's about 10 layers thick. And all
4 the layers aren't stuck together like Elmer's glue. They
5 can potentially be tugged apart. And when that begins to
6 happen, in that sandwich of all these different layers are
7 two or three layers of teeny tiny capillary blood vessels.
8 And when you're tugging that long enough and violently
9 enough, that area fills up with blood, and what you see when
10 you look in is this dome shaped -- looks like a donut shaped
11 area with the center of it spared. And that's what I
12 described in the right eye.

13 Q And so, you described the right eye as multilayered
14 retinal hemorrhages?

15 A Both eyes were hemorrhages in all layers of the retina
16 extending out to the far periphery. The right eye also had
17 the perimacular raised ridge that I just described.

18 Q Could you tell anything about the optic nerve?

19 A In the right eye I was not able to see the optic nerve
20 because of blood that was in front of the retina. In the
21 left eye I could see the optic nerve and the optic nerve was
22 extremely swollen due to the increased pressure on the
23 brain.

24 Q And before coming to court today we've discussed your
25 findings on this case; is that right?

1 A Yes.

2 Q And through your studies of keeping up-to-date with the
3 latest on pediatric ophthalmology, you provided the State
4 with a demonstrative animation of an eye; is that correct?

5 A Yes. Yes, I did.

6 Q Have you seen that before?

7 A Yes, I have seen that.

8 Q Would that be helpful to demonstrate what --

9 A It would be very helpful.

10 Q -- what kind of trauma -- what the eye would be doing
11 to cause that type of trauma?

12 A I think so.

13 MR. BROWN: Your Honor, at this time I'd like to
14 publish that to the jury.

15 THE COURT: Certainly.

16 MS. BOLEN: Your Honor, we just renew our previous
17 objection.

18 THE COURT: Certainly. So noted.

19 MR. BROWN: We do have it on the -- on the disk here.

20 Q As I play it -- I'm going to play it through, and if
21 you could just describe after what they're seeing.

22 Dr. Johnson, that's only about a 10 second animation.

23 But in that 10 second animation what does that -- what does
24 that show?

25 A Well, that was a cross section. If I were -- if my

1 face were sliced this way it was as though you were looking
2 in from the side of my face. You could see the muscles
3 above and below the eye. And the yellow you could see that
4 was demonstrated by the artist is just the fat that's -- and
5 I'm surrounding the back of our eye, that cushions the eye.
6 And so, the animation shows what happens -- you noticed at
7 the beginning of the animation there were no specs of blood
8 anyway, and the animation showed with repetitive
9 acceleration- deceleration, stopping and starting motion,
10 rotational motion, we see that those blood vessels break.
11 And you also notice that there were different shapes of
12 hemorrhages. One was right in the center where I just
13 described where this donut shaped hemorrhage was. And then
14 you saw other hemorrhages that were further out, out to the
15 peripheral part of the retina. So it's just a -- it's not
16 an actual photograph of an eye. It's just an animated
17 demonstration that's made by an artist.

18 Q And based on what you saw, in your opinion -- based on
19 your opinion, have you -- have you come to an opinion in
20 this case, based on a reasonable degree of medical
21 certainty, what caused this type of trauma?

22 A Yes, I have.

23 Q And what is your opinion in this case?

24 A Well, the combination of the severe intracranial
25 hemorrhage, combined with the retinal hemorrhages in all

1 layers of the retina, extending out to the far peripheral
2 retina, and in combination with that donut shaped
3 hemorrhage, the only way really that this can happen is from
4 acceleration- deceleration type forces.

5 Q And when you're saying acceleration-deceleration type
6 forces, what do you mean by that?

7 A I mean just movement to and fro, back and forth,
8 repetitively with violent force.

9 Q And it would take a good amount of force to be able to
10 generate that?

11 A It would take an incredible amount of force to generate
12 that. This is a 22 pound 10-month-old.

13 Q And as you said, the retina is like a sandwich, and so
14 -- with multiple layers. So that force and that
15 acceleration-deceleration, is that what pulls, you said, the
16 capillary and actually makes the capillaries hemorrhage?

17 A As a result of that jelly material that keeps the shape
18 of the eye being adherent to only very specific areas, it
19 puts traction on those specific areas, and that's where it
20 causes the hemorrhages to happen.

21 Q Now, over a few years of practicing ophthalmology have
22 you had an occasion to see a car accident --

23 A Yes, I have.

24 Q -- patient, or someone falling from a high height?

25 A An accidental head injury. Yes, I have.

1 Q And in those head injuries what do you see in the eyes?

2 A You almost never see any hemorrhage. At most you might
3 see one or two little dots straight back in the back of the
4 eye.

5 Q And by seeing all these multilayered hemorrhages all
6 the way up the periphery and not be able to see the optic
7 nerve, what do you think the cause of this -- that type of
8 damage -- or that of trauma?

9 A To ^{victim} [REDACTED]?

10 Q Yes, sir.

11 A I think the cause of her injury was severe
12 acceleration-deceleration forces.

13 Q Do you think it's an accident?

14 A I don't think it's an accident.

15 Q What would you classify this as?

16 A I would call this an inflicted nonaccidental injury.

17 MR. BROWN: And Judge, just to show -- I think I passed
18 up. It was -- the animation is just a Court -- State's
19 Exhibit. And I think that would be State's Exhibit 38, just
20 for the record. Not offered into --

21 THE COURT: Okay. All right. So let's -- I mean,
22 since it's not being offered into evidence, even though it's
23 been marked for identification, we'll -- we'll retain
24 possession of it.

25 MR. BROWN: Yes, sir.

1 THE COURT: But it's not into evidence and will not be

2 --

3 MR. BROWN: Yes, sir. Beg the Court's indulgence. No
4 further questions.

5 THE COURT: Thank you. Cross examination from the
6 Defense.

7 MS. BOLEN: If I could just have a moment, Your Honor.

8 THE COURT: Sure.

9 (Whereupon, there was a pause in the proceedings.)

10 MS. BOLEN: I don't have any cross examination, Your
11 Honor. Thank you.

12 THE COURT: All right. Thank you, Dr. Johnson for your
13 testimony. You're free to leave.

14 THE WITNESS: Thank you.

15 (Whereupon, the witness steps down from the witness
16 stand.)

17 MR. BROWN: Your Honor, that's the State's case, and at
18 this time we would rest.

19 THE COURT: All right. Thank you very much, Solicitor.
20 Mr. Foreman, and ladies and gentlemen of the jury, I'm going
21 to ask that you retire briefly to the jury room and we'll
22 bring you out shortly. I'll remind you again don't begin
23 discussion of this case. So if you'll go back to your jury
24 room at this time.

25 (Whereupon, the jury exits the courtroom at 4:00 p.m.)

1. THE COURT: What I would like to do is go ahead and
2 hear the motion for directed verdict, which, of course, the
3 Defense will make. Even though I've got a pretty good idea
4 of what I'll -- how I'll rule on that, I'll take it under
5 advisement and we'll regroup in the morning and I can
6 announce my decision.

7 Let me ask Defense. If I were to deny your motion for
8 directed verdict, do you have an idea of whether or not
9 you're going to put up a case, or is that decision not been
10 made yet?

11 MS. BOLEN: My -- at this point I don't believe we will
12 be putting up any witnesses.

13 THE COURT: All right. And don't anticipate changing
14 your decision? I mean, I'm not going to hold you up. I
15 mean, certainly, I mean, if we get back tomorrow and you
16 said you changed your mind and you want to put up a case,
17 then by all means I'll allow you to.

18 MS. NELSON: We're not expecting to, Your Honor.

19 THE COURT: Not expecting to.

20 MS. NELSON: Obviously, if we change our minds, we'll
21 tell you.

22 THE COURT: Sure.

23 MS. NELSON: But at this point, we are not expecting
24 to.

25 THE COURT: All right. Well, here's what I'd like to do

1 then is go ahead and bring the jury out and excuse them for
2 today. And then I'll -- let's see. I think maybe have them
3 return in the morning at 10:00. And, of course, naturally
4 if I were to rule in your favor on your motion then we can
5 excuse them at that time. But that's kind of where I'm
6 coming from. What I'm thinking about. Just have them back
7 at 10:00 and we can -- we can get together at 9:30 and I can
8 go ahead and make my ruling on the motion. Okay? So let's
9 --

10 MR. STUMBO: That's fine with us, Your Honor. Thank
11 you.

12 MS. NELSON: May I quickly put something on the record
13 just for clarification?

14 THE COURT: Sure.

15 MS. NELSON: Exhibit 38, the animation that was shown
16 to the jury, just -- just to clarify again, my understanding
17 is that this has two animations on it, one of which was not
18 shown to the jury --

19 THE COURT: That we -- we would have objected to as
20 well. But it was not shown to the jury on agreement of the
21 State, and that -- that disk wasn't used to play it because
22 of the danger of inadvertently showing the jury that second
23 animation -

24 THE COURT: Right.

25 MS. NELSON: -- that nobody intended for them to see.

1 THE COURT: Right. Right...

2 MS. NELSON: I just wanted to make sure that --

3 MR. BROWN: That's correct.

4 MS. NELSON: -- that it was clear that we understood
5 that that animation was on that exhibit but that it was
6 never intended to be shown or used in this case, Your Honor.

7 THE COURT: Right. And as I understand, that 38 has
8 just been marked for identification. It's not in evidence
9 anyway.

10 MR. BROWN: Yes, sir.

11 MS. NELSON: Yes, sir.

12 THE COURT: But the court reporter will retain
13 possession of it, at least at this time.

14 MS. NELSON: Just out of an abundance of caution, just
15 for its mention in the record, Your Honor.

16 THE COURT: All right. Let me bring the jury out and
17 excuse them for today.

18 (Whereupon, the jury enters the courtroom at 4:03 p.m.)

19 THE COURT: Let the record reflect the jury is back in.
20 And, Mr. Foreman, and ladies and gentlemen of the jury, I'm
21 going to excuse you for the remainder of the day and ask
22 that -- the State has rested their case. And ask that you
23 return in the morning at 10:00. So I'm giving you a half
24 hour more, if you want to stay in and sleep a half hour
25 longer. But in any event, you're excused for the remainder

1 ---of the day, and ask that you be here promptly at 10:00
2 tomorrow.

3 Once again, I caution you and remind you not to begin
4 your deliberations among each other. Don't discuss this
5 case with each other, nor discuss this case or any aspect
6 concerning the case with any of your family members,
7 friends, anyone that you may come into contact with. We'll
8 see you at 10:00 in the morning.

9 (Whereupon, the jury is excused for the day at 4:04
10 p.m.)

11 THE COURT: Ms. Bolen, Ms. Nelson, I'll be glad to hear
12 from you.

13 MS. BOLEN: Thank you, Your Honor. It'll just take me
14 a minute.

15 THE COURT: Do you need a few minutes to kind of get
16 your thoughts together?

17 MS. BOLEN: I think I can do it in just a second. I've
18 just got a lot of stuff to move. That's all.

19 Your Honor, at this time the Defense is moving for a
20 directed verdict. I've got several cases to quote Your
21 Honor to, as well as several things that came up during the
22 testimony. And Ms. Nelson may jump in as well to make sure
23 we've covered everything.

24 THE COURT: Sure.

25 MS. BOLEN: Let me get to the right -- right notebook,

1 Your Honor.

2 THE COURT: She's shaking her head no, sir.

3 MS. NELSON: I don't think I'll need to, Your Honor.

4 MS. BOLEN: Your Honor, this -- just to give Your Honor
5 kind of a roadmap of where we're going. There's five cases
6 that in particular that I'll be referring to and I'm just
7 going to list them now. There's the State v. Lewis and
8 State v. Hepburn cases. I don't yet have the official cite
9 for those because they're so new.

10 THE COURT: Right. And that's okay. I've got -- Lewis
11 came out in May and Hepburn came out --

12 MS. BOLEN: Maybe a month ago.

13 THE COURT: -- probably around a month ago, so --

14 MS. BOLEN: I think the Westlaw cite is available but
15 not the official citation. Those two cases. And then the
16 other ones, Your Honor, are State v. Bostic, and that's 392
17 SC 134. That's a 2011 case. State v. Odoms, 395 SC 582.
18 That's also a South Carolina -- I'm sorry, also a 2001 --
19 2011 case. And the last one that I expect to be referring
20 to, Your Honor, is State v. Logan, 405 SC 83. And that's a
21 2013 case.

22 Your Honor, we're moving for a directed verdict on the
23 basis that this is a -- the only evidence that's been
24 provided against Shawn is circumstantial evidence, and the
25 standard for directed verdict in a circumstantial evidence

1 case, as seen in State v. Logan, and the cases that come
2 after it, is that there must be substantial circumstantial
3 evidence. It's a different standard than used for direct
4 evidence cases and a directed verdict motion. And the Logan
5 case held that circumstantial evidence has to be
6 substantial. That language was used again, Your Honor, in
7 State v. Lewis, and also in State v. Hepburn. And notably,
8 Your Honor, State v. Lewis, and State v. Hepburn were the
9 same charge as this current case. I think the other cases I
10 referred to were murder and burglary, and some other things.
11 And taking some language from State v. Bostic, Your Honor,
12 the court held there that in a substantial -- circumstantial
13 case there must be substantial evidence that reasonably
14 tends to prove the guilt of the accused and that a directed
15 verdict should be granted when the evidence merely raises
16 the suspicion of guilt. That language is again used in
17 State v. Logan and in State v. Lewis, as well as State v.
18 Hepburn. And it's our position, Your Honor, that the
19 evidence presented by the State against our client simply
20 doesn't -- doesn't rise to that level. As I said, there's
21 no direct evidence against Shawn. We've heard no testimony
22 that anyone saw him do anything to [REDACTED], no evidence that
23 he told anyone that he did anything to [REDACTED]. The testimony
24 of [REDACTED] Child C and [REDACTED] Child I is also circumstantial. Neither of
25 them could see anything. Neither of them could see what

1 that noise was, who was inflicting it, or even what time it
2 Child I
3 happened. I think [REDACTED]'s testimony is that she had
4 already gone to sleep. So we don't know at all what time
5 that could have happened. Nor do we know what they heard.
6 And their -- their testimony is actually contradictory to
7 Child C
8 each other in that [REDACTED] says she hears a noise and then
9 victim [REDACTED] crying and Child I [REDACTED] says she hears the noise and does
10 victim
11 not hear anything from [REDACTED]. And that was a direct answer
12 of no, not hearing anything from victim [REDACTED].

13 That's the closest that the State has come, Your Honor,
14 to having any evidence that points to Shawn is the two
15 little girls' testimony. And again, their testimony is
16 itself circumstantial and is -- simply doesn't rise to the
17 levels of substantial circumstantial evidence, because they
18 can't say what they saw. They can't say who they saw doing
19 it. They can't say what time it was.

20 Your Honor, the medical testimony, particular that by
21 Dr. Brooksbank and Dr. Troup, the time line on their -- on
22 their testimony -- I just want to make sure I get to the
23 right spot, Your Honor. Dr. Brooksbank said that victim [REDACTED]
24 arrived at 11:40 in the morning, and he said that the injury
25 could have been minutes to 24 hours. He couldn't put a time
26 on it, and couldn't tell when the trauma happened. That it
27 could have been minutes before her arrival. Likewise, Dr.
28 Troup said that after consulting with some of the other

1 specialists that they put a time line of somewhere in the
2 two to three hour range before [REDACTED] victim arrived at Greenwood,
3 and I think he said the hour limit was somewhere in the 24
4 to 36 hour range. Again, she arrived at Greenwood at 11:40.
5 Two to three hours before that is 9:40 or 8:40, and the
6 testimony has been clear that Shawn was not in the house at
7 that time. Additionally, if you go as far out as the 24 to
8 36 hours, there were other -- other adults around [REDACTED] victim and
9 Shawn was actually at work during a good part of that time
10 period. So the time period is not narrowed down at all to
11 point to exclusively Shawn.

12 And I think the Hepburn case and the Lewis case are
13 particularly notable, Your Honor. And if I could just refer
14 to them in my notes. In this case, Your Honor, both the --
15 both of the defendants moved for a directed verdict and it
16 was denied, and that was overturned on appeal as being an
17 improper denial of directed verdict, in that the State
18 couldn't show that either one of them was the one to inflict
19 the injuries. That there was merely a suspicion. And I
20 think that that's all there is in this case. There may be a
21 suspicion, but there's nothing to point concretely at Shawn.
22 Either by the testimony of the laywitnesses or the medical
23 testimony. And the Court notes in the Hepburn case that
24 sufficient, how that's defined, is a belief or opinion as to
25 guilt, which is based on facts or circumstances which do not

1 amount to proof, and that it's improper to deny a directed
2 verdict when there's a mere suspicion. And I think the
3 facts and circumstances here are exactly that. They may
4 imply a belief or an opinion, but they don't amount to proof
5 of his guilt that he did anything. There's been absolutely
6 no testimony of what act, if any, he did. There's been no
7 testimony about any sort of timeframe that narrows it down
8 to Shawn.

9 If I could just have a moment, Your Honor.

10 THE COURT: Sure.

11 MS. BOLEN: Your Honor, to kind of go along with the
12 timeframe argument. The State v. Odoms case, which I've
13 cited before, but again was a directed verdict case based on
14 circumstantial evidence, that was not a homicide by child
15 abuse. That was, I believe, a burglary. There was
16 circumstantial evidence basically that the defendant on
17 trial was part of this burglary in that he was with the
18 burglars and with stolen goods for 90 -- he was found 90
19 minutes after the burglary happened with some people who had
20 the goods that were stolen from the house in their
21 possession. And then when police arrived he ran. He then
22 knocked on a person's door. I think he was running when he
23 saw the police. He ran from them and went and knocked on
24 someone's door, asked them to let him in and asked them can
25 you tell the police so they -- if the police come in can you

1 tell them that I'm your boyfriend. So they had these three
2 pieces of circumstantial evidence. They had that he's an
3 hour and a half after the burglary he's with people who had
4 the stuff that was taken, they have he ran, and then they
5 have that he's asking a stranger to cover up. And the Court
6 -- Court of Appeals, I believe it was, overturned the
7 conviction on the directed verdict standard, Your Honor,
8 saying that those pieces of evidence were not enough to rise
9 to the level of substantial circumstantial evidence. That
10 directed verdict should have been granted. And they further
11 say that when State fails to produce substantial
12 circumstantial evidence that they defendant committed a
13 particular crime, the defendant must get a directed verdict,
14 and the court relied on the holding in Bostic as well as
15 another case I haven't mentioned, State v. Lollis. That's
16 L-o-l-l-i-s, 343 SC 580. That's a 2001 case. Your Honor,
17 that's -- that's a case where it's basically a murder and an
18 arson, and there was circumstantial evidence that Lollis'
19 wife -- there's direct evidence that Lollis' wife was the
20 one that -- I'm sorry. It's just an arson. Not a murder.
21 I misspoke. Lollis' wife confessed to burning their home.
22 He was charged with it as well. They had circumstantial
23 evidence based on some financial problems he had, the fact
24 that he moved his belongings out of the house directly
25 before the arson, and that he went and got a storage room

1 key right at the time of the arson. And in that case, again
2 the Appellate Court said that those pieces of circumstantial
3 evidence, him happening to move everything out, getting a
4 storage key, did not reasonable tend to prove his guilt, and
5 that a directed verdict should have been granted in his
6 favor because there was not substantial circumstantial
7 evidence.

8 Furthermore, Your Honor, in the -- let me make sure I
9 pull the right case. In the Odoms case they also relied on
10 State v. Hernandez, 382 SC 620. And in that case they say
11 the jury may not convict unless, quote, every circumstance
12 relied upon by the state be proven beyond a reasonable
13 doubt, and all the circumstances proven be consistent with
14 each other and taken together point conclusively to the
15 guilt of the accused to the exclusion of every other
16 reasonable hypothesis. And we simply don't have that here,
17 Your Honor. Some of the circumstances presented by the
18 State are not consistent with each other. Certainly
19 Child I and Child C's testimony is not consistent with each
20 other. The doctors' testimony about the timeframe, leaving
21 it open as little as two or three hours prior to 11:40 and
22 as much as 24 to 36 hours. That certainly leaves open other
23 -- other reasonable hypothesis. There -- the circumstances
24 they have presented do show some inconsistencies, and they
25 certainly don't point conclusively to the guilt to the

1 exclusion of every other reasonable hypothesis.

2 And, Your Honor, trying to just sum it up. State v.
3 Logan, which is the 2013 case. Again, the court says to the
4 extent that the state relies on circumstantial evidence all
5 of the circumstances must be consistent with each other, and
6 when taken together point conclusively to the guilt. And if
7 these circumstances merely portray the defendant's behavior
8 as suspicious, the proof has failed. And I think that
9 that's what we have in this case. There may be some
10 suspicion, but there's no -- there's no direct concrete
11 evidence. The evidence we've had has been contradictory
12 with the statements, as well as some of the medical
13 testimony which cannot put it on Shawn exclusively. And
14 we're asking that Your Honor grant a directed verdict
15 motion.

16 And I think Ms. Nelson may want to --

17 MS. NELSON: Can I just add --

18 THE COURT: Sure.

19 MS. NELSON: -- a couple of things? The only other
20 things I would say for the record, that the only person that
21 the State's witnesses absolutely excluded was ^{Child C} [REDACTED], who
22 was six years old at the time, as a potential perpetrator.
23 ^{Child I} And [REDACTED]'s testimony, she would have only been four
24 years old at the time that this happened. Almost five, but
25 she would have been four years old. And her testimony was

1 also contradictory, because at one point she said she heard
2 a noise, she didn't hear [REDACTED] victim, and then later she said that
3 Child C [REDACTED] woke her up because Child C [REDACTED] was the one who heard
4 it. So it wasn't even clear from her testimony whether she
5 actually heard it or whether it was something that Child C [REDACTED]
6 told her about later.

7 THE COURT: About the noise?

8 MS. NELSON: Yes, sir.

9 THE COURT: I think she was pretty clear. We're
10 Child I talking about [REDACTED]?

11 MS. NELSON: Yes, sir. I know she demonstrated it.

12 THE COURT: She got down on her knees and hit the floor
13 with her hand, and I remember just thinking to myself that
14 when the -- because we played her testimony. It was a lot
15 louder --

16 MS. NELSON: It was.

17 THE COURT: -- that we played -- a whole lot louder --

18 MS. NELSON: Yes, it was.

19 THE COURT: -- when we played it than what she actually
20 Child I demonstrated. But I recall that [REDACTED] actually
21 demonstrated what she heard. But --

22 MS. NELSON: She did. And then later she testified
23 Child C that [REDACTED] woke her up because she heard it. So it
24 sounded like -- it sounded like her testimony was internally
25 inconsistent, Your Honor.

1 THE COURT: All right. Thank you. Let me ask one
2 question before I give the State an opportunity to weigh in
3 on this. Was there any evidence or testimony from any
4 witness as far as really what took place -- I realize we
5 have the mountain trip and the Defendant took care of the
6 kids. I understand that. Falling off the steps. I
7 understand that. But as far as the day of August 7th, do we
8 have any evidence as far as what happened, what took place,
9 whether or not the Defendant went to work, or did it pretty
10 much kind of start about the timeframe that the mother went
11 to work around 7:00, 7:30? Help me with that, and then
12 certainly State can respond, too. I don't recall. I'm not
13 saying that there was not. I just don't recall there really
14 being any evidence on that.

15 MS. BOLEN: Your Honor, I do believe that Ms. LaBounty
16 testified to that. And I think maybe one of the SLED agents
17 did as well in terms of Shawn's statement. But the testimony
18 I remember coming in is that she took the kids to get -- to
19 register for school that day and that he was at work and got
20 home around 6:30. I remember testimony about her taking
21 them to register for school.

22 THE COURT: Right. And you may be correct. That didn't
23 show up in my notes. And, of course, I don't write
24 everything down verbatim. But -- okay.

25 MS. BOLEN: That's my memory, Your Honor. Again, I'd

1 have to look at my notes. But that's what I remember coming
2 out.

3 THE COURT: What's the State's memory on that before
4 you get into your argument?

5 MR. STUMBO: Your Honor, I believe Ms. Bolen's
6 recollection of that is accurate. Not only did, I believe,
7 Melody testify to that date, her taking the kids, going to
8 register for school, seeing a couple of friends. And that
9 Shawn's oral statement to Major Lightle, which she read
10 essentially to the jury and relayed that, gave the same --
11 he gave them the same -- corroborated that timeframe. That
12 he went to work that day and came home sometime around 6:00
13 to 6:30 in the evening.

14 Judge, we would obviously ask Your Honor to deny the DV
15 motion. I had an opportunity to read, read over it a couple
16 of times last night, the Hepburn case, and I've read Lewis
17 obviously when those cases came out with that being in this
18 circuit and being within what's now our jurisdiction. As
19 the Solicitor, I read those very closely.

20 Your Honor, I believe this case on the facts is vastly
21 distinct from the Hepburn case. Hepburn and Lewis. I guess
22 I'll just refer to it as Hepburn from this point forward
23 because that's the most recent case.

24 Your Honor, in that case, Hepburn is the mother of the
25 child that's abused and dies and the victim in that case.

1 Lewis is the boyfriend of the mother of the child who was at
2 the house at the time. Your Honor, I'm sure, has read those
3 cases and are very familiar with those cases. Those two
4 defendants were tried as co-defendants together. The
5 state's evidence in that case was such that the medical
6 testimony appeared to be very strong. In fact, in the
7 opinion it says that no one can attest that the baby died
8 from child abuse in that case. And that no one can attest
9 that -- including the two co-defendants, that the only two
10 people that could have done it were one or the other. And
11 ultimately in that case, Your Honor, Hepburn and Lewis both
12 turned on a very complex legal analysis of the waiverable
13 involving -- the DV motion obviously was made at the time
14 before either of these co-defendants had an opportunity to
15 get up under oath and tell the court and the jury what they
16 -- what their version of the facts was.

17 Your Honor, obviously in this case we don't have -- we
18 actually put the mother of the child, who I'm assuming as
19 the Defendant here, is that the only two people this could
20 have been. There again, I don't want to put words in their
21 mouth. But they seem to be putting it on Melody as being
22 possibly the perpetrator of this. The only other
23 alternative is Shawn based on the timeframes. Judge, that's
24 not -- very distinct from Hepburn in the fact that we're not
25 putting -- there hasn't been a charge against Melody for

victim

1 abusing [REDACTED] to the point that she had massive cerebral
2 hemorrhage and retinal hemorrhage in her eyes. In fact, the
3 State's evidence that we produced, even from the statements
4 made by the Defendant himself, say that he knows Melody, has
5 known her for years, and she'd never harm her children. He
6 said that to the SLED agent. Judge, so by his own words to
7 law enforcement he is telling them that Melody didn't do
8 this essentially, in his view. Furthermore, there is a very
9 short period of time where -- where Melody was at the house
10 with the girls by themselves. If you look at the timeframe,
11 she wakes Shawn up at about 6:30. We don't know what time
12 he left the house because she said she goes back to bed.
13 Ultimately the statement that Shawn gives is that sometime
14 later, after he's woken up, after she peeks her head in and
15 wakes him up, he leaves for work.

Child C

16 Your Honor, testimony from Melody is that [REDACTED], the
17 oldest daughter, wakes up at 8:00 in the morning and comes
18 and gets in bed with her in the bedroom, and she lays in bed
19 with the girls and they -- they stay in the bedroom for a
20 little while at that point before they get up. There's a
21 very short period of time where everybody in the house is
22 asleep and Melody is the only adult in the house in the
23 morning time.

24 Judge, the Defense is exactly right here in the fact
25 that they say the closest the State's come under the

1 substantial circumstantial evidence standard is the
2 testimony of the two girls. And, Your Honor, I would submit
3 that that is far and above what's required of the State on
4 the substantial circumstantial evidence standard. You have
5 both of these girls not only describing what they heard, the
6 pounding on the floor, and ^{Child C} [REDACTED] testifying that they hear
7 victim [REDACTED] cry. But, Your Honor, it corroborates the medical
8 testimony. I don't know if you remember just a few minutes
9 ago Dr. Woodard, our pathologist, testified, based on his
10 view of ^{victim} [REDACTED]'s injuries, exactly what his medical opinion
11 was as to how she died. A throwing on the ground on her
12 back causing bruises on the back of her head, on her back,
13 which caused these massive injuries. That would be exactly
14 consistent with corroborating the way these young girls
15 described -- describing what they heard outside of their
16 door. Outside of their locked door, I should say.

17 Judge, the girls answered very directly when we asked
18 them did your mother ever hurt ^{victim} [REDACTED]. Both girls stated
19 that no, they didn't hear ^{victim} [REDACTED] crying in the time that
20 their mom was home that morning. That they both testified
21 that ^{victim} [REDACTED] was -- they thought was asleep. So, Your Honor,
22 there is zero testimony here, including the evidence out of
23 this Defendant's own mouth, that the mother in this case,
24 Melody LaBounty, is the one that inflicted these extremely
25 violent injuries on this baby. And there again, Melody

1 testified very directly when I asked her, Judge, did you
2 ever hurt this little girl. And I showed her the picture.
3 And she testified under oath in this courtroom no.

4 So, Your Honor, under the Hepburn, the standard that's
5 been laid down by Hepburn and it's progeny here, Bostic and
6 Odoms as Your Honor knows was cited in the Hepburn opinion.
7 I have not been able to review State v. Logan, the more
8 recent case. But under the substantial circumstantial
9 evidence standard here that we have for directed verdict,
10 there is plenty of evidence that's been presented in our
11 case and chief that the Defendant sitting before you is the
12 one that inflicted these injuries on ^{victim} [REDACTED] based on
13 testimony -- statements from his own mouth to law
14 enforcement based on ^{victim} [REDACTED]'s two older sisters who testified
15 under oath in this court this week, and the history of this
16 case which does not show Melody to be a violent person, even
17 by his own admission. She's someone who would never harm
18 her children is what he said. So, Your Honor, Hepburn and
19 Lewis just simply aren't important in this case. If Melody
20 had been charged along with Shawn and we were just kind of
21 throwing it up to the jury and saying, hey, you all decide
22 who's guilty here. We have two parties and we don't know
23 which one it is. That's not the case, Your Honor. The
24 evidence strongly -- very strongly points to this man's
25 guilt, and there is plenty of evidence to put this in front

1 of the jury to make a decision in light viewed most
2 favorably to the State as is the standard in directed
3 verdict. The evidence is -- far exceeds what is necessary
4 to go in front of this jury.

5 Thank you, Judge.

6 THE COURT: Thank you very much, Solicitor. Anything
7 in response?

8 MS. BOLEN: If I could just briefly respond, Your
9 Honor. It's our position that Hepburn and Lewis do apply in
10 that those are both circumstantial evidence cases and this
11 is a circumstantial evidence case. There's no direct
12 evidence that Shawn did anything to [REDACTED] victim.

13 Solicitor Stumbo talked about Shawn saying that Melody
14 wouldn't hurt the kids. She also testified that she told
15 SLED that he was great with her kids. And he brought up
16 that Melody said she didn't do anything. Well, there is
17 ample testimony that Shawn told SLED he didn't do anything
18 as well. There is also medical testimony, Your Honor, that
19 this could have happened in 15 to 20 seconds. I think it
20 was Dr. Troup who testified to that. I'm sorry, Dr.
21 Henderson. And there was, you know, certainly timeframes
22 where he is out of the house for that period of time.

23 I would also like to bring Your Honor's attention in
24 that reviewing the evidence for a directed verdict, it's not
25 the responsibility of the Defendant or the court to prove

1 that someone else did it. That's simply not what the direct
2 verdict was about. The directed verdict is about whether
3 there's substantial circumstantial evidence that this
4 Defendant did, and it's our position there isn't. We're not
5 -- we don't have to prove that someone else did in order to
6 say that the State hadn't met its burden for a directed
7 verdict in this case.

8 Also, just to respond to Solicitor Stumbo. My memory
9 might be wrong, Ms. Nelson's memory might be wrong, but I
10 don't believe ^{Child I} [REDACTED] said anything about not seeing her
11 mother do anything to ^{victim} [REDACTED]. And there's also been no
12 history -- Solicitor Stumbo said that, you know, there's no
13 history of Melody being violent. There's also been no -- no
14 history about Shawn being violent. So that's not -- the
15 fact that no one said that she's a violent person does not
16 mean that all of a sudden he must be one.

17 So we just -- our position is still the same, Your
18 Honor. That under the case law which requires -- it's a
19 different standard for circumstantial evidence cases. It's
20 substantial evidence, not just a mere suspicion, that the
21 evidence here just doesn't -- doesn't meet that standard.

22 THE COURT: Well, thank you very much, and I appreciate
23 the excellent arguments that both sides have made on this
24 point. This -- this is difficult, naturally, and I'm going
25 to spend sufficient time with it and hopefully come up with

1 -- with the correct ruling on this motion. So I'm going to
2 take it under advisement and we'll regroup about 9:30 in the
3 morning and go from there.

4 If I were to decide to deny the motion, then any
5 request to charge, if you want to get anything to me if in
6 the event I were to deny the motion. We have to plan ahead
7 and get something to me.

8 MR. STUMBO: Your Honor, just one question on that
9 matter, and I may not need to submit anything. If you're
10 reasonable doubt charge is standard, firmly convinced and --

11 THE COURT: Firmly convinced. I don't charge that
12 hesitate to act. I do the firmly convinced.

13 MR. STUMBO: Thank you, Judge.

14 THE COURT: And the circumstantial evidence is State
15 vs. Logan language.

16 MS. BOLEN: I was going to ask. So I think that's what
17 --

18 THE COURT: Yeah. Yeah.

19 MS. BOLEN: Okay. So you're just using language right
20 out of State v. Logan.

21 THE COURT: Yeah. And what I do is I will give -- give
22 you a copy of the proposed -- or a draft of the proposed
23 charge and let you look at it and study on it, and certainly
24 add to or take away. So I'm not going to spring it on you.
25 You're going to know in advance where I'm coming from, if it

1 gets to that point. Okay?

2 MS. BOLEN: Yes, sir.

3 MS. NELSON: And, Your Honor, just one thing. I know
4 you've already said you don't give hesitate to act, and I
5 know we've been through this before. We would request the
6 hesitate to act --

7 THE COURT: Right.

8 MS. NELSON: -- reasonable doubt language and would
9 take exception to it not being charged. But I -- I
10 understand what your position is, and we're just --

11 THE COURT: Right. Right.

12 MS. NELSON: -- requesting on the record that that
13 charge --

14 THE COURT: Right. And certainly at the appropriate
15 time, you know, any objections or exceptions can be made,
16 so...

17 MS. BOLEN: Yes, sir.

18 THE COURT: All right. Anything further before we
19 recess for the evening?

20 MR. STUMBO: Nothing from the State, Your Honor.

21 MS. BOLEN: Nothing from the Defense, Your Honor.

22 THE COURT: All right. We'll get together at 9:30 in
23 the morning.

24

25 (Whereupon, court concluded for the day at 4:40 p.m.)

1 MR. NORMAN: -- and realize this until yesterday.

2 THE COURT: No. You probably weren't expected to know
3 that until you got involved in the case. But I do
4 appreciate it, and if you'll just go back to the room where
5 the jurors are in.

6 MR. NORMAN: Okay. Yes, sir.

7 THE COURT: Okay. Thank you very much.

8 (Whereupon, Juror Jimmy Norman exits the courtroom.)

9 THE COURT: It does not appear to me -- it does not
10 appear to me that we have any particular issue with Mr.
11 Norman. He works with a family member, and then some
12 relationship by marriage to the father of his step-children.
13 I don't see where there's any issue. Any objection to
14 keeping Mr. Norman as a juror in this case from the State?

15 MR. BROWN: None from the State, Your Honor.

16 THE COURT: How about from the Defense?

17 MS. BOLEN: No, sir, Your Honor.

18 THE COURT: Okay. Thank you very much. Let me get my
19 stuff and then we'll deal with the directed verdict issue.
20 So everybody be at ease for just a moment, please.

21 (Whereupon, there was a brief pause in the
22 proceedings.)

23 THE COURT: We're on the record. Yesterday the Defense
24 made a motion for a directed verdict, and both sides were
25 extremely confident in their respective positions and, of

1 course, I would expect no less than both sides to exhibit
2 confidence in their respective positions. But I think in
3 reality this case is a very close case when looking at the
4 issue of whether or not there is substantial circumstantial
5 evidence to send this case to the jury.

6 I have reviewed all of my notes in this case and have
7 thoroughly considered the Hepburn case and the Lewis case,
8 and even the Smith case tat Hepburn cites towards the end of
9 that opinion. Of course, the Smith case being one that the
10 denial of the motion for directed verdict as upheld by the
11 Court of Appeals. And it's -- what I'm going to do, I'm
12 going to go through and make a thorough record of the basis
13 for my denial of the motion for directed verdict.

14 I think it's significant, number one, that in this
15 case, and not in the Hepburn or Lewis, or even the Smith
16 case, we do have a Defendant, the sole Defendant, with the
17 child by himself for a period of six and a half hours.
18 Understanding there are other children in the home. I
19 realize that. But as far as any other adults. And we have
20 a timeframe when the doctors established when this injury
21 would have taken place, and certainly the jury can determine
22 whether or not the injury took place during this six and a
23 half hours or not within the six and a half hours. That
24 would be up to the jury. But we do have a Defendant by
25 himself for a substantial period of time with the -- with

1 the child. We do have evidence that the children, they were
2 found competent to be witnesses. Certainly it would be to
3 the -- within the province of the jury to determine whether
4 or not to give their testimony any weight. But nonetheless,
5 we have two children who both said that they heard banging
6 sounds coming from the livingroom where the Defendant and
7 the minor child were -- were in. They were in a bedroom
8 that was locked. And at least one of the children
9 indicating that at the time of the banging sound they heard
10 victim crying.

11 Contrary to the Hepburn case we have two physicians who
12 establish an actual timeframe for when the injury would have
13 occurred. We have one doctor saying minutes to hours to 24
14 hours. We have another doctor who says hours to all the way
15 to 36 hours. So we have established a timeframe when the
16 injury took place. I think it's uncontradicted that victim
17 was fine up until about 10:00 or 10:30. She was playing
18 with the siblings and was allowed to stay up later. So she
19 was fine up until that point in time.

20 It's interesting that in the Smith case one of the
21 factors that the Court determined to be important in the
22 denial of the motion for directed verdict as that there was
23 an attempt to cover up the situation. Now, I'm not
24 suggesting that there's any coverup in this situation, but I
25 think we can make an analogy to the evidence that the

1 Defendant first tried to put the blame of the injuries on
2 the six-year-old, ^{Child C} [REDACTED]. And, of course, the doctors
3 established that that was not possible. And then he tried
4 to blame the injuries on the fall from the -- from the
5 steps. While not suggesting that is a coverup, it certainly
6 is some -- somewhat analogous to that, and I believe that is
7 important as well. Then based upon the mother's testimony
8 the Defendant volunteers the following. During the
9 conversation that he had after he found out that EMS and
10 police were at the house, he makes the statement, "I guess
11 they think it happened last night." That was a volunteered
12 statement. Secondly, he volunteers that ^{victim} [REDACTED] did not hit
13 her head on the Pack'n Play. Question being, why would
14 those two statements be volunteered. And then the statement
15 that continues to -- and I hate to use the word haunt but
16 I'm going to use it. Why would the Defendant state,
17 volunteer to Major Lightle, that he put ^{victim} [REDACTED] down, put the
18 tape in the VCR, did not know when he fell asleep. But then
19 he says "everything after that went to shit." Why would
20 that statement be volunteered? And then he further
21 volunteered the statement -- and I was -- when we met in
22 chambers counsel -- Defense counsel kind of corrected me on
23 this and it may not be a verbatim statement, but something
24 to the effect you think you have to shake a baby to see if
25 the baby is okay, or words to that effect. Those two

1 statements being volunteered to Major Lightle.

2 And, you know, contrary to the Hepburn case we have
3 here in the State's case, we have the other adult who was
4 present with the child for a period of time testifying that
5 -- testifying. Not by out of court statements, but actually
6 testifying that that parent had nothing to do with the
7 injuries.

8 So, with all of that being said, it is the Court's
9 opinion that viewing all of the evidence that was brought
10 out in the State's case in a light most favorable to the
11 State, and determining -- and not giving any weight to the
12 evidence but making a determination whether there exists any
13 substantial circumstantial evidence, the Court makes a
14 determination that there is and will deny respectfully the
15 motion for directed verdict made by the Defense.

16 Now, I was informed yesterday, and I'll ask again, is
17 it the Defense's intention to put up any case?

18 MS. BOLEN: It is not, Your Honor. We are not putting
19 up any witnesses.

20 THE COURT: Thank you very much. We have a draft of a
21 proposed charge. I have fully reviewed that yet. I want to
22 take a few minutes to do that. And once we do, then we'll
23 make some copies and hand them out to your folks and give
24 you all the time that you need to review it, and then we can
25 discuss the final charge.

1 Anything else we need to take up before we take a
2 little recess?

3 MR. BROWN: Nothing from the State, Your Honor.

4 THE COURT: Thank you. Appreciate it. See, he keeps
5 me on the ball all the time. I need to give the Defendant
6 his rights, even though it's been -- I've been informed --

7 MS. BOLEN: Yes, sir.

8 THE COURT: -- that you're not going to put up a case,
9 which, therefore, would include his not testifying, I need
10 to instruct him about his testifying or not testifying. So
11 give me just a minute.

12 Mr. White, if you'll just stand, please, and I need to
13 put you under oath. Raise your right hand.

14 SHAWN WHITE, having been first duly
15 sworn, testified as follows:

16 THE COURT: Even though I've been informed, Mr. White,
17 that it is your decision and the decision of your attorneys
18 that there will not be a case put up on behalf of the
19 Defense, which would therefore include you not testifying,
20 I'm required by law to instruct you about your right to
21 testify or not testify. So if you'll just listen very
22 carefully. This won't take very long. Okay?

23 Mr. White, at this time I'm going to explain to you
24 certain of your rights. If you do not understand anything I
25 say, please let me know. If you want me to explain anything

1 in more detail, please let me know that as well. Do you
2 understand?

3 MR. WHITE: Yes, sir.

4 THE COURT: We've now reached the stage of the trial
5 where you may present your defense. You have the right to
6 claim the protections given to you by the Fifth Amendment to
7 the Constitution of the United States. This amendment
8 states in part, "No person shall be compelled in any
9 criminal case to be a witness against himself." This means
10 that you cannot be required to testify in this case. You
11 have the right to testify on your own behalf, however, no
12 one can make you testify. This is a personal right and no
13 one can waive this right except you. If you decide to
14 testify you'll be subject to the same rules that govern
15 other witnesses and you may be examined and cross examined
16 on any relevant issue in this case. In addition, if you
17 have any convictions involving dishonesty or false statement
18 or for crimes punishable by imprisonment for more than one
19 year and this Court determines that the probative value of
20 admitting this evidence outweighs its prejudicial effect to
21 you, the Solicitor will be able to introduce your record to
22 attack your credibility. If you decide to testify, this
23 decision on your part must be freely, voluntarily and
24 intelligently made with knowledge of the protections given
25 to you by the Fifth Amendment and the consequences of your

1 decision to testify. If you decide not to testify I will
2 instruct the jurors that they cannot give the fact that you
3 did not testify any consideration whatsoever and that there
4 is to be absolutely prejudice to you because you did not
5 testify. It is left entirely up to you whether or not you
6 testify. You may talk with your attorneys, your family and
7 friends, or anyone else, but the final decision will be left
8 entirely up to you. Do you understand what I've explained
9 to you thus far?

10 MR. WHITE: Yes, sir.

11 THE COURT: Do you have any questions about what I have
12 explained to you?

13 MR. WHITE: No, sir.

14 THE COURT: Have you had ample opportunity to talk with
15 your attorneys about whether or not you should testify?

16 MR. WHITE: Yes, sir.

17 THE COURT: Do you need any more time to discuss with
18 them concerning whether or not you should testify?

19 MR. WHITE: No, sir.

20 THE COURT: Okay. And what is your decision? Do you
21 wish to testify or not testify?

22 MR. WHITE: No, sir. I do not wish to testify.

23 THE COURT: Thank you very much, Mr. White. You can
24 have a seat.

25 Okay. We'll be at ease for a few moments, and we'll

1 get you a copy of the draft and go from there. Anything
2 else?

3 MR. BROWN: Nothing from the State, Your Honor.

4 THE COURT: Okay. Thank you very much.

5 (Whereupon, a recess was taken from 10:06 a.m. to 10:24
6 a.m.)

7 THE COURT: We're back on the record and I understand
8 that both sides have had an opportunity to review a draft of
9 the proposed final charge. And I'll first hear from the
10 State. Any -- any issues concerning the final charge?

11 MR. BROWN: Just a couple, Your Honor.

12 THE COURT: Sure. --

13 MR. BROWN: Referring to the statute for homicide by
14 child abuse or neglect. I think, Your Honor, you have
15 generally tracked the language of the statute, but I -- I
16 did pull the current version of the statute and it looks
17 like there are a couple discrepancies.

18 THE COURT: Okay. And we took that straight off the
19 charges that we have --

20 MR. BROWN: Right.

21 THE COURT: -- and did not actually look at the -- what
22 comes out of the code. So there may be a few discrepancies.
23 Let me turn to that page.

24 MR. BROWN: And that would be -- just for the record,
25 that would be 16-3-85.

1 THE COURT: Yes.

2 MR. BROWN: Code of Laws.

3 THE COURT: Okay. Go ahead.

4 MR. BROWN: Judge, I think in subsection (B)(1), this
5 is just one of the things I'm looking at here. It says,
6 "Child abuse or neglect means an act or omission by any
7 person which causes harm to the child's physical health or
8 welfare." You got that in there. But the subsection, I
9 guess, (B)(2)(a) it reads -- the current version of the
10 statute reads that "Harm means inflicting or that inflicts
11 or allows to be inflicted upon the child physical injury,
12 including injury sustained as a result of excessive corporal
13 punishment." I think that little part of the statute should
14 be charged since it's a current version of the statute. I
15 think that injury -- "including injury sustained as a result
16 of excess corporal punishment" --

17 THE COURT: Let me just do this. Let me go ahead --
18 and I've got a copy of the current statute. Let me just --
19 okay. I'll just read from the statute itself as opposed to
20 reading what I have here. And I'll just state that,
21 "Defendant is charged with homicide by child abuse. State
22 must prove each and every element of this offense beyond a
23 reasonable doubt," and then I'll read from the statute
24 section A; (A)(1), (A)(2), (B), (B)(1), (B)(2) --

25 MR. BROWN: I would say, Your Honor, just that --

1 THE COURT: Not (A) (2).

2 MR. BROWN: Right.

3 THE COURT: Not (A) (2), (A) (1) -- (A), (A) (1), and then
4 (B), (B) (1), (B) (2), and (2) (a).

5 MR. BROWN: That's correct.

6 THE COURT: Okay. That's what I'll do. And I won't
7 read what we have written in the charge. Is that
8 satisfactory to the State?

9 MR. BROWN: It is, Your Honor. Thank you.

10 THE COURT: How about from the Defense on that?

11 MS. BOLEN: That's fine, Your Honor.

12 THE COURT: All right. Let's do that.

13 MR. BROWN: And, Judge, the second exception here would
14 be just on page eight of the charge. This is a section with
15 regards to testimony of the children. I think it follows
16 directly after the section that's titled credibility of
17 witnesses generally.

18 THE COURT: Right.

19 MR. BROWN: Your Honor, it would be our position that
20 the credibility of witnesses section adequately covers
21 instructions to the jury on how they're to weigh evidence
22 and observe witnesses. Here's the -- the biggest problem I
23 guess I have with highlighting the fact that children have
24 testified. You know, I've done a number of child sex abuse
25 cases where we have children about this age testify and I

1 haven't ever seen this section charged. I think that the
2 problem I would have with it, Judge, is it may unfairly
3 question the credibility of the trial witnesses, or have the
4 jury thinking that there's a different standard for them in
5 evaluating the child witnesses. And I think that is a
6 decision for the Court to make, quite frankly. But, Your
7 Honor, when you decide competency and make a ruling on the
8 record in your discretion that they are competent, I think
9 Rule 601 at that point presumes them competent for purposes
10 of the jury's evaluation.

11 THE COURT: Right.

12 MR. BROWN: And so, I just -- I don't want this jury
13 thinking that there's a different standard for them when
14 they're about to determine the credibility of Child C
15 Child I [REDACTED] and [REDACTED]
16 [REDACTED] as opposed to any other witness they
17 heard.

17 THE COURT: Right. And I don't necessarily disagree
18 with you. What we do is, in coming up with the final
19 charge, we start from the very beginning of the case and
20 Lyon starts making a list every time something comes up that
21 could be applicable to a final charge. We make note of it,
22 and then typically we'll just pretty much include everything
23 in there to come up with a draft to give us something to
24 work with. And I really don't disagree with you on that,
25 but since children were in there that got on the list to

1 come up with a draft. Any big issue with taking that --
2 that out from the Defense?

3 MS. NELSON: We'd prefer that it stays, Your Honor.
4 There's also a special instruction in there for expert
5 witnesses informing the jury things they can consider from
6 experts. And -- and all the points that are made in this
7 instruction, I mean, it comes out of legal authority.
8 There's an Am Jr 2d trial cite for it and we don't see
9 anything inaccurate in it and think it would be helpful to
10 instruct the jury on with -- with that portion of the
11 Court's charge.

12 THE COURT: Okay. Let's come back to that and let me
13 see what else we've got, and then give me probably a few
14 minutes to kind of look at this and decide what I want to
15 do.

16 Anything else from the State?

17 MR. BROWN: Nothing else from the State other than
18 that, Your Honor.

19 THE COURT: Okay. And from the Defense?

20 MS. BOLEN: Very briefly, Your Honor. I've just got
21 one. On page four.

22 THE COURT: Is it about the hesitate to act on the
23 reasonable doubt or --

24 MS. BOLEN: Well, I think we'd already mentioned that
25 and we renew that, but I understand Your Honor's ruling on

1-- that.

2 THE COURT: Right.

3 MS. BOLEN: But we would ask, in paragraph two it talks
4 about "The-presumption of innocence is like a robe of
5 righteousness placed around the shoulders of the Defendant
6 which remains with the Defendant until --" we would ask that
7 that be changed to "unless."

8 THE COURT: Yeah, I remember I used to -- when I was
9 trying cases I always used to -- in defending people and I'd
10 always emphasize --

11 MS. BOLEN: That's right.

12 THE COURT: -- you know, the distinction between until
13 --

14 MS. BOLEN: Yes, sir.

15 THE COURT: -- which is something that is inevitable,
16 you know, that will happen in the future but we just don't
17 know when. And, of course, unless is -- yeah. And I don't
18 have a problem with that. And the State, you don't have an
19 issue with that?

20 MR. BROWN: We don't, Your Honor.

21 MS. BOLEN: That's all I had, Your Honor.

22 THE COURT: All right. Well, I appreciate your all's
23 cooperation with me on this charge. Let's go off the
24 record, take a little short recess, and let me just study on
25 this children issue and see how I want to handle it.

1 (Whereupon, a brief recess was held.)

2 THE COURT: Let's go back on the record. What I have
3 done concerning -- I've kind of compromised a little bit.
4 And I'm not going to single out children. But what I'm
5 going to do, in the section that's called testimony of
6 children here's what I'm going to do. Here's what I'm going
7 to charge. I'm going to charge -- and I'm not going to
8 refer to them as child or children. I'm going to put "As
9 with all witnesses, you may consider the witness's ability
10 to observe and remember facts, the witness's ability to
11 understand and answer questions, the witness's understanding
12 of the seriousness of appearing as a witness at a criminal
13 trial, whether the witness understood the questions, and
14 whether the witness has a good memory, period." So that
15 would encompass all the witnesses including the children.
16 So I'm not going to single out the children separately, but
17 of course -- and this would just be an extension of the
18 credibility of witness charge.

19 Any objection to that?

20 MR. BROWN: I think that would be fine, Your Honor.
21 We're okay with that.

22 THE COURT: And Defense?

23 MS. NELSON: And, Your Honor, we don't have any
24 objection to that. While you all were looking I was trying
25 to look as well and I don't see any --

1 THE COURT: Right.

2 MS. NELSON: -- South Carolina law on point. I did
3 find an ALR article that is -- it's kind of all over the
4 place.

5 THE COURT: Yeah.

6 MS. NELSON: There are courts that hold they should
7 only be given in sex offense cases, and it's discretionary,
8 and so --

9 THE COURT: So it's just going to -- it's going to
10 apply to all witnesses and we'll handle it in that fashion.

11 Anything else? Do you need any break before we start
12 into closing? I assume Defense will --

13 MR. STUMBO: We're ready to go, Your Honor.

14 THE COURT: -- take the opportunity to close at the
15 end, right?

16 MS. NELSON: Yes, sir. Your Honor, and --

17 THE COURT: Certainly. So if everybody's ready we'll
18 bring the jury in. I'll explain to them now we're at the
19 part of the trial where the closing arguments will be made,
20 charge on the law. And we're okay with the verdict form?
21 Pretty -- pretty standard.

22 MR. STUMBO: Yes, sir.

23 MS. NELSON: Yes, sir.

24 THE COURT: All right. If you'll bring the jury in,
25 please.

1 (Whereupon, the jury entered the courtroom at 10:40
2 a.m.)

3 THE COURT: Let the record reflect the jury is back in.
4 Good morning. Hope everybody is doing well. We're at the
5 stage the Defense has elected, which is their right, not to
6 put up any evidence in this case, so now the record is
7 closed and all of the evidence as been presented. And now
8 we're at the stage where the lawyers will make their closing
9 arguments to you. Their summation of what they believe the
10 evidence has been and what they believe the evidence has
11 shown to you. Once the attorneys make their closing
12 arguments then I will instruct you on the law applicable to
13 this case and the law that you are to use and consider in
14 your deliberations in this case. So I will ask that you
15 give Solicitor Stumbo and Ms. Nelson your undivided close
16 attention as they make their respective closing arguments.

17 MS. BOLEN: Your Honor, before we get to closing, I
18 just need to renew my motion for directed verdict, I think,
19 at this point.

20 THE COURT: Certainly. Certainly. So noted.

21 MR. BOLEN: Thank you.

22 MS. NELSON: Thank you, Your Honor.

23 THE COURT: So noted. Solicitor?

24 MR. STUMBO: Thank you, Your Honor. If it please the
25 Court.

1 CLOSING ARGUMENT

2 BY MR. STUMBO: September 30th, 2011, about 6:13 in the
3 evening over at Self Regional Hospital in Greenwood this
4 little girl right there took her first breaths in this
5 world. A healthy baby. Happy baby. A couple of days later
6 her momma, Melody, and her big sisters take her home.
7 August the 8th, 2012, less than 10 months -- or less than 11
8 months later, she was 10-months-old, ^{victim} [REDACTED] comes
9 back to Self Regional Hospital. This time though she's
10 barely breathing. Her brain is bleeding, swelling, the life
11 seeping out of her. I think one of the doctors testified
12 here 15 to 20 seconds of excessive violent force. Take that
13 happy baby, playing with her sisters the night before, and
14 had her dying on a hospital bed. The same excessive violent
15 force that her two big sisters, ^{Child C} [REDACTED] and ^{Child I} [REDACTED], heard
16 from inside of their bedroom door. Remember, the one that
17 was locked from the outside, and they told you about that on
18 the witness stand. They heard that excessive violent force
19 that Shawn White inflicted on their little sister. Because,
20 see, ladies and gentlemen, to Shawn White this little baby
21 here was just an inconvenience. Sure he liked Melody. He
22 was friends with her back in high school. She had a place
23 to stay. In exchange for a place to stay he would keep the
24 kids while Melody went to work trying to put food on the
25 table for them. Because she was an inconvenience he

1 silenced her, not only for that night. He was make her be
2 quiet. He didn't just silence her for that night. He
3 silenced her forever. As Mr. Brown stated in opening
4 statements, we're here this week, you're here this week, all
5 of us are gathered in this courtroom because she's not here.

6 Now, there are a couple legal theories. I want to go
7 ahead and get them out there right now. You're going to
8 hear the Judge tell you about the law in this case. He's
9 going to instruct you on the law. And Judge Hocker is the
10 Judge of the law in this case and if I say anything
11 different from him, I think he'll be consistent and you
12 listen to him. He's the Judge of the law and he's the Judge
13 of the facts. But there's two things I want you all to look
14 out for in Judge Hocker's charge. Two theories. One is
15 about this concept of beyond a reasonable doubt. You've
16 probably heard that term before. In a criminal case the
17 burden of proof that we have, the State has, is to prove to
18 you beyond a reasonable doubt the guilt of this Defendant.
19 Now, what is beyond -- proof beyond a reasonable doubt?
20 It's not a term that you use in every day experience.
21 You're going to hear the Judge say at least three times that
22 I know of, I think in his instructions, that the term beyond
23 a reasonable doubt, that kind of proof is the proof that
24 leaves you firmly convinced. So remember those two words;
25 firmly convinced, and he did what he's alleged to have done.

1 That Shawn White is guilty of the crime that he's alleged to
2 have committed. That's it. It's not a magical formula.
3 Sometimes beyond a reasonable doubt, you might think it's
4 like a mathematical equation or a scientific project in a
5 laboratory where you have an exact answer. That's not what
6 this is, folks. Beyond a reasonable doubt is when you're
7 firmly convinced, you have a firm belief and thought in your
8 head, after hearing all the evidence, that Shawn White is
9 the one that put this baby in the ground. That's it.

10 Now, circumstantial evidence. I want you to hone in on
11 this. The Judge is going to tell you about what
12 circumstantial evidence is. And, folks, this is a
13 circumstantial evidence case, as most homicide by child
14 abuse cases are. Very rarely do you have someone witness
15 someone abusing a child. The people in the room when that
16 happens, or anyplace where it happens, are the perpetrator
17 of the crime and the child. And the child's no longer here.
18 And even if she were, she was 10-months-old. She couldn't
19 tell us what happened. It's a circumstantial evidence case.
20 Now, what is circumstantial evidence? Now, best example
21 I've ever heard of this, say you wake up tomorrow morning
22 and the ground is completely wet. There's puddles on the
23 ground. And you remember sometime during the night you kind
24 of faintly hear, because you were half asleep, the thunder
25 and the hitting rain piddle-pattering on the roof as you're

1 sleeping. Now, direct evidence would be if you woke up,
2 looked out the window and saw the rain falling from the sky.
3 That's direct evidence it was raining. When you wake up in
4 the morning and there's puddles all over the ground and
5 everything's wet outside and your car's got beads of water
6 on them, and you kind of remember during the night hearing
7 the rain hitting the roof, are you any less firmly convinced
8 that it rained last night than if you were to have gotten up
9 and opened the -- pulled the blinds and seen the rain?
10 You're not. And that's why the Judge will tell you that
11 direct and circumstantial evidence there's no distinction
12 between the two as far as the weight that you may give it.
13 Circumstantial evidence is just as important and just as
14 strong an indicator a proof of a crime as direct evidence.
15 And I will submit to you, ladies and gentlemen, that's what
16 we have here. We can go over some of that evidence, and
17 it's the substantial circumstantial evidence we have in this
18 case of the Defendant's guilt.

19 Now, I'm going to ask you to do something else. To
20 keep your eye on the ball as your deliberating back there.
21 I know you've heard that term before. I grew up playing the
22 game of baseball all the way up through college, and if I've
23 heard the term keep your eye on the ball once, and I've
24 coached -- coached, too, and said those words many, many,
25 many times. Especially if it's a Little Leaguer playing --

1 you know, seven, eight-year-old kids playing baseball.
2 They're wanting to look over and momma and daddy in the
3 stands and thinking about what snack you're going to get
4 after the game, and you may have a hard time focusing on
5 that ball coming in and hit it. What I'm going to ask you
6 to do, folks, is just that. Keep your eye on the ball here.
7 Because Ms. Nelson and Ms. Bolen are fine attorneys. They
8 represent Shawn White, and it's their job here to get your
9 eye off the ball. And what are some of the ways they did
10 that in this case? They did it very well. They're very
11 good attorneys. Ms. Nelson in opening talked about how this
12 is all about taking a man's liberty. Well, what's the
13 purpose of that, for her to tell you that other than to
14 scare you? The Judge is not going to tell you that it's
15 your job here to decide what the sentence should be in this
16 case. Your job is solely to determine based on the facts
17 presented is he guilty. So that -- that was an attempt to
18 pull your eyes off the ball of what your job is here to say,
19 well, this is about taking a man's liberty away. She's
20 trying to scare you, folks, and trying to think that your
21 job is something different than it is. Keep your eye on the
22 ball.

23 What are some other ways? We heard testimony, this
24 consistent question of the crime scene investigators about,
25 well, there's some bugs and roaches in this house. We've

1 all seen the pictures and it's not the cleanest house in the
2 world. That kitchen was well kept. A couple of bowls of
3 half eaten cereal on the table that ^{Child C} [REDACTED] and ^{Child I} [REDACTED]
4 obviously were eating. We heard testimony about going to
5 the store and getting cereal for breakfast. But what other
6 reason to bring up that there are roaches in the house?
7 It's August in the state of South Carolina. I've lived here
8 my whole life. I don't know that there's a house around
9 that doesn't have some roaches and bugs around in the middle
10 of the summer when it's 90, 100 degrees outside. Why did
11 they bring it up? Well, maybe to get your eye off the ball.
12 They get you to look at Melody. Well, she must have been a
13 terrible mom, so you can't hold this man responsible for
14 beating a baby to death. Keep your eye on the ball, folks.
15 How about asking the girls, asking ^{Child C} [REDACTED] -- you saw
16 her sitting on the stand. Little eight-year-old ^{Child C} [REDACTED] and
17 asking her if that sound she heard hitting the floor, well,
18 that could have been the TV, couldn't it, ^{Child C} [REDACTED]? That
19 could have been -- could have been somebody knocking on the
20 door. Did you hear what she said when Mr. Brown got back up
21 and asked her what -- where did that sound come from. She
22 very clearly said it came from on the floor. So why would
23 they suggest TV or knocking on the -- you know, the knocking
24 on the door as being what they heard? Well, it's to maybe
25 divert from what they heard that night. It was a baby being

1 beaten on the floor to the point that her brain bleed and
2 swelled and killed her. Keep your eye on the ball.

3 How about Melody? We've already talked about that they
4 tried to disparage the condition of the house. Do you
5 remember listening to the 911 call? You all remember that?
6 That was -- seemed like an eternity ago. That was when we
7 first started the case. The first thing we heard was the
8 911 call that came that had Melody LaBounty's voice on it.
9 Did she sound like some cool calculated I just beat my baby
10 to death? Did that come across in her voice? It sounded
11 like to me a panicked mother that just realized my child is
12 not responding, and she knew as soon as she picked that baby
13 up there was something serious wrong. What about the fact
14 Melody never left ^{victim} [REDACTED]'s side? Is that important here?
15 She told police on the way out the door, call my dad. He
16 can come get my older girls. I'm going with my baby who's
17 not doing well. Never left her. Stayed at the hospital.
18 And that she told Shawn when he called her, I'm sitting here
19 watching my baby die. Does it sound like if she had a
20 guilty conscious, or she was the one that abused this
21 precious baby, she would have been the one there the whole
22 time? Did Shawn White ever come to the hospital? No. He
23 babysat these girls for a few months and lived in this
24 house, never once came to the hospital to check on the baby
25 to see how she was doing, see how she was. Why not? He's

1 the one that killed her. Running around trying to figure
2 how I'm going to get out of this. How am I going to get
3 away with it. What's my story going to be. Well, he did
4 give a story. And there again, this is another attempt --
5 one of his first attempts to get everybody's eye off the
6 ball that he did this. What did he say to Major Lightle?
7 He started putting it off on little ^{Child C} [REDACTED]. A six-year-old
8 girl. Well, ^{Child C} [REDACTED] used to pick her up and squeeze her real
9 tight. Talked about how she didn't like her baby sister.
10 Must have been her that did it. He must have realized that
11 that story seemed preposterous, so the next story he gives
12 is, well, last week, you know, when Melody was at -- in the
13 mountains, my brother came over -- my brother knocked her
14 off the porch and she got a goose egg on her head. That
15 must have been what happened. That's the only way I can
16 explain it. You've seen how high those steps are, folks.
17 Yeah, she wasn't doing good through the week, but by the end
18 of the week, the night before she died, she was playing with
19 her sisters on the floor, eating food. Melody had been able
20 to change her diet around a little bit and give her food
21 that night. But that's Shawn White's next story, because
22 he's got to come up with something.

23 Now, what did we hear in this case? I said -- telling
24 you to keep your eye on the ball. Well, what's the ball? I
25 know it was a long afternoon yesterday. You all heard a lot

1 of testimony from doctors. Five of them came here and gave
2 you a lot of medical terminology. I know that was probably
3 very difficult to wade through. But why did Mr. Brown and I
4 call doctor, after doctor, after doctor, after doctor, after
5 doctor? The reason is every single one of them reached the
6 same conclusion of how little ^{victim} [REDACTED] received these injuries.
7 Was it an accident? This story that Shawn gave about her
8 maybe falling off the steps? Is that plausible? You heard
9 their testimony. They all said that's impossible. This is
10 nonaccidental. This was inflicted by another human being on
11 this baby. I thank you for being patient yesterday and
12 listening to all those doctors. We called all five of them
13 for a very -- for a different reason. They all had a
14 different perspective on their evaluation of ^{victim} [REDACTED]. But
15 every one of their statements in their testimony were very
16 important. Because it takes his story and shows how
17 preposterous it is. Even Dr. Brooksbank said that she had
18 -- that ^{victim} [REDACTED] had a high level, elevated white blood cell
19 count. Do you remember what he said? He said that can be
20 brought on by maybe an infection. A lot of times when our
21 body is having an infection the white blood cell count goes
22 up. But he didn't find any infection. That also can be
23 caused by high stress in the body. What kind of stress do
24 you think is going on in that baby's body. That's why she
25 had an elevated white blood cell count. How about Dr. Troup

1 who did the surgery on her. He said that the brain swelling
2 was so severe that when he was able to get -- cut open --
3 you know, starting to relieve the pressure on her brain that
4 it just -- it mushrooms out it's so -- there's so much
5 pressure and so much blood on that brain. And he described
6 it as an extreme force. He said shake, or shake stop. He
7 said the strong acceleration and stopping, like when you're
8 in a car wreck, multiple times is what causes that severe
9 cerebral hematoma. And the eyes. How about Dr. Johnson
10 telling us about the eyes. This little girl's eyes had
11 multiple layered hemorrhaging behind the eye. And what does
12 that indicate? Mr. Brown asked him the question. Dr.
13 Johnson, if you get in a car wreck or fall off a balcony
14 from a couple stories up would you see this much blood in
15 different spots in different layers behind the eye, and he
16 said no, you'd see just a tiny spot. He said this is
17 completely indicative of a child being assaulted and abused
18 to death. Dr. Woodard, the pathologist. He was able to see
19 all the bruising on [REDACTED] ^{victim}. How did he describe it? Dr.
20 Woodard who did the autopsy in the case. How did he describe
21 in his medical opinion how this precious baby died. He said
22 it would be slammed on her back against a hard surface.
23 Doesn't that sound like what ^{Child I} [REDACTED] and ^{Child C} [REDACTED] heard from
24 inside the locked door? And the only people home were Shawn
25 and the baby's sister. And they testified to that. Who was

1 out there? Well, it was -- Shawn was out there. Who else
2 was out there? ^{victim} [REDACTED]. It wasn't Melody. Why? She wasn't
3 home from work yet. When she comes home she sees this baby
4 -- her baby laid in the Pack'n Play. Looks like she's
5 asleep. It's dark in the room. There may be the TV on.
6 She's glad she's asleep. I don't think there's anyone in the
7 room that's raised a baby that would want to just go and
8 wake a baby up in the middle of the night if they didn't
9 have any cause for concern. And she didn't.

10 What about Shawn's own statements. You all heard Major
11 Lightle give a summation of the exact words that came out of
12 Shawn White's mouth, and we have a written statement from
13 him as well that you'll have back in the jury room. Why
14 would he say that after that everything went to shit? Do
15 you all remember hearing that? What's the purpose of that
16 statement? And then he follows that up with "nobody thinks
17 to shake a baby to see if she's okay." Nobody would think
18 to do that. Doesn't that seem odd to you that he would
19 volunteer that statement to a SLED agent? Sounds like a man
20 with a guilty conscious. Now, what else did he say? It's
21 interesting. From his own mouth, now we have a defense that
22 centers around, well, there could be other times that this
23 happened by somebody else's hand, and not mine. I'm sure
24 these fine attorneys are going to get up and talk about,
25 well, Melody was with this child. You all can decide that

1 she did it. Well, Shawn's own words -- Shawn's own words to
2 the SLED agents, folks, were Melody would never harm her
3 children. He said she spoiled them rotten. They're a bunch
4 of -- they're a bunch of spoiled brats is what he said. She
5 wouldn't hurt those kids. So from his own mouth he's talked
6 about he was the one at the scene alone. He was the only
7 adult in the house until after 2:00 in the morning. And
8 even after Melody gets home, well, she wouldn't harm these
9 kids. We never heard any testimony from the girls and in
10 the time when they're awake with their mother that there was
11 anything out of the ordinary. Melody let ^{victim} [REDACTED] sleep a
12 little bit longer. At some point Melody said that she's
13 been sleeping too long, and when she goes and checks on her
14 the horror sets in. Shawn's own mouth, he eliminates Melody
15 as the person that could have done this. And, of course,
16 he's throwing out a six-year-old child, and, well, it's
17 probably my brother that came over last weekend. One thing
18 that he said that I thought was very interesting, folks.
19 Remember the testimony from Melody about how ^{victim} [REDACTED] would
20 sleep on her stomach when her rear end up in the air? That
21 that's normally the way she would sleep. That's the way she
22 liked to sleep. Well, isn't it interesting -- and normally
23 a child, I would imagine, you know, moves during the night
24 when they're conscious. I think everybody in our own
25 experience has seen a baby or a child sleep. Well, he lays

1 her down, by his own admission, on her back, in his
2 statement. And when Melody gets home, the one thing she
3 does say, and she testified to this under oath, when she
4 gets home and she peaks under the crib to see -- you know,
5 to check on ^{victim} [REDACTED], she's laying, she sees, on her back
6 asleep. Now, why do you think she had not turned over to
7 the front? I'll leave you to answer that question. By that
8 time he had already beaten her. Her brain was already
9 starting to swell. She was unresponsive. Just another
10 little piece of circumstantial evidence that adds up to a
11 lot. Laid her on her back and she never moved from her back.
12 He did pull a cover up on her the next morning before he
13 went out. Folks, there's substantial circumstantial
14 evidence in this case. I'll say this. In Ms. Nelson's
15 opening she talked about logic. Using your logic. Folks,
16 if after all -- you've heard all this testimony and observed
17 these witnesses, logic will lead you to believe one verdict
18 in this case and that's guilty. He did it. Only other
19 person they can put this off on is Melody. You saw her
20 testimony. Logic in this case, ladies and gentlemen, and
21 observation, which is your job. The Judge will tell you
22 that. You were able to observe the witnesses. You could
23 hear the 911 tape when Melody called in initially. Does
24 logic tell you here that she's the one that beat her baby to
25 death.

1 Folks, I know that our senses -- and I'm almost done.
2 I'm going to sit down and shut up here. But the senses that
3 we have are sight, are sound, hearing, are smells. You
4 know, you touch things. They're very closely tied to our
5 memory. You know what I'm talking about. If you hear a
6 sound, if you hear a song that you had at a certain point in
7 your life. It might be a happy point in your life and that
8 song will bring back those happy memories. Maybe even of a
9 romantic nature. Takes you back to a group of friends that
10 you used to hang out with and listen to a certain song
11 together. Sounds of that song now will bring back the
12 memory of when you heard it then. You can remember your
13 momma calling you when you were a child to dinner. The
14 happy sound. Oh, it's time to eat. It's time to go in and
15 eat. That's a happy sound. It brings back those good
16 memories. Just like when you heard your momma maybe call
17 for you and call your full name. You knew you were in
18 trouble. You know what I'm talking about. That brings back
19 maybe bad memories. Any time I smell -- and I talked about
20 baseball earlier. If I smell freshly cut grass in the
21 springtime after it's started growing and it's cut and you
22 can smell it really good after it's been cut, I can close my
23 eyes and I can feel myself standing in the outfield on the
24 baseball field. It just takes -- transports me back there.
25 Well, folks, that's important in this case. And why? You

1 heard from two little girls in this case and both
2 separately. They weren't in the courtroom at the same time
3 when they testified. I hope you all noticed that. And what
4 they heard inside of the door that Shawn White locked them
5 into, the night that they had ^{victim} in that bedroom. And
6 you heard them. Little ^{Child I} got off that stand and she
7 came down here (indicating). And anytime for the rest of
8 her life when she thinks about her baby sister that's the
9 sound she's going to hear. It's the sound that turned this
10 happy child into one fighting for her life on a hospital
11 bed. That's what Shawn White did to ^{victim}, folks.

12 The word verdict comes from two Latin words, verus
13 dictum, and it means to speak the truth. So your verdict is
14 literally something that speaks the truth of what really
15 happened. And so, I would ask you as the consciousness, you
16 as the jury, citizens from all walks of life in Abbeville
17 County who have come to this courtroom this week, there's 13
18 of you, to hear some of the most horrific things you're ever
19 going to have to hear. And I thank you for sitting here
20 this week and doing your jobs as jurors, because I know --
21 it's not lost on us what we've had to present to you this
22 week and how difficult that's been for everybody in this
23 room. But to speak the truth here, Shawn White is guilty.
24 He's the one that abused this baby to the point she died. I
25 would ask you to go back to the jury room, consider the

1 evidence you've seen, and logically come to the only
2 conclusion, the only verdict you can come to here. Guilty.
3 Thank you.

4 THE COURT: Defense ready for closing?

5 MS. NELSON: Yes, Your Honor.

6 THE COURT: Okay, Ms. Nelson.

7 MS. NELSON: I just need a second.

8 THE COURT: Sure. Take your time.

9 MS. NELSON: Thank you, Your Honor. May it please the
10 Court.

11 THE COURT: Yes, ma'am.

12 CLOSING ARGUMENT

13 BY MS. NELSON: Folks, I asked you at the beginning of
14 this case to please bring your reason and logic, and this --
15 again, this thing is so sad, nobody -- if any of us in this
16 courtroom could bring that happy little girl back I'm sure
17 any of us would do whatever we could to do that. But again,
18 that -- that picture at the beginning of Mr. Stumbo's talk
19 to you, contrasted with the picture of how ^{victim} [REDACTED] looked in
20 the hospital, that again is -- that's what I told you was
21 going to happen. That the government is going to ask you to
22 decide this case because that hurts to see that. I think --
23 I've watched all of you during this trial and I appreciate
24 how much attention you've given. That let's me know that I
25 believe you did come to this as best as you could trying to

1 have an open mind under really terrible circumstances.
2 Terrible facts you had to hear. And I appreciate you
3 listening to the witnesses and listening to us talk. And
4 I'm going to ask you to bear with me and continue doing that
5 while I talk to you about what I think are some of the
6 important things in this case. And I'm not trying to scare
7 you folks about your job. It's just that this is a big
8 responsibility. It's about somebody's future. And I'm just
9 -- I'm just asking, and was asking at the beginning of this
10 thing, that you give that the proper level of importance and
11 that you hold the State to its burden to prove this case to
12 you beyond a reasonable doubt. And that's why I'm asking.
13 Not to be scared, but just to be serious and to come to this
14 with your logic and your reason and not just your emotion
15 about that little girl.

16 I'd like to talk to you first about some of the medical
17 evidence in this case. I told you at the beginning that we
18 -- we don't dispute that this child was injured. She was.
19 And the government brought you in a parade of several
20 doctors who all -- who all were consistent in their opinion
21 about what happened. And we're not disputing that something
22 happened to that child. But there are some of the things
23 that -- in that medical testimony that I think are really
24 important here about the decision you have to make. And
25 those things are that those doctors also, the ones who

1 testified about the timeframe of this injury, they were
2 consistent, too. And that's really important here. Because
3 the time period we're talking about, when Shawn was the only
4 adult in the house, is -- is really about four hours.
5 Because there's -- it's undisputed that the kids were up and
6 playing until about 10:00 that night. You've heard that
7 from Shawn's statement. Ms. LaBounty told you in her
8 testimony that when she got home she had a brief
9 conversation with Shawn and that's what he told her then.
10 They were up until about 10:00. I let them stay up a little
11 bit late because they were having fun playing. That's what
12 the girls said, too. So we're talking about from about
13 10:00 p.m. until 2:00 a.m., and then Ms. LaBounty gets home,
14 and then for the next nine -- well, for the next four and a
15 half hours or so they're both there, and then for the next
16 four and a half or so hours after that it's just Ms.
17 LaBounty there with ^{victim} [REDACTED]. And the doctors talked about the
18 timeframe for when that injury occurred that it could have
19 been within minutes before she got to the hospital. You've
20 heard Dr. Brooksbank, the emergency room physician. And he
21 said I can't put a time on the bleed. He said that the
22 acute blood could have been there for only minutes up to
23 several hours. And he put it at 12 to 24 hours at the
24 outside. Dr. Troup, the pediatric neurosurgeon, he said a
25 couple different things about the timeframe. What -- and

1 you've got to rely on your memories for that, too. But what
2 -- what I had down was that he first said the acute blood
3 occurred within minutes to a few hours, but sometimes can
4 look bright for up to a day. Later on in his testimony he
5 talked about it maybe taking two to three hours to look like
6 that, and that at the very outside 36 hours. Two to three
7 hours, during that two to three hour timeframe, which is the
8 closest that -- in one of Dr. Troup's statements that was
9 the closest he put it. That was the time period after Shawn
10 had left for work. And Dr. Troup also said the same thing
11 Dr. Brooksbank said initially. It was within minutes
12 outside to about 24 to 36 hours. So you've got a lot of
13 doctors who have been qualified as experts in their fields
14 who cannot tell you with definitive accuracy when this
15 happened. And that is huge, folks. That's a big deal. It
16 leaves it where you just don't know. You don't know. And
17 when you -- when you work on your verdict you don't -- you
18 don't have to figure out what exactly happened. You don't
19 have to find the answer. What you have to find is whether
20 the State has given you adequate proof for you to conclude
21 that Shawn White is the guilty person. That's what you have
22 to find.

23 The doctors also talked about how quickly this injury
24 could have occurred. This is not something that would have
25 taken hours to accomplish. It could happen very quickly.

1 And that again means that you don't have any way of knowing
2 who it might have been because it could have happened so
3 fast. Dr. Henderson talked about up to 15 to 20 seconds at
4 the most. That video that Dr. Johnson showed you during his
5 testimony. He was the pediatric ophthalmologist. The video
6 you saw of the hemorrhaging to the eye. That video took
7 nine seconds. And we'll talk a little bit more about the
8 timeframe that happened, but this is something that could
9 have happened very quickly, and that's significant, too.

10 The other thing from the medical testimony is that the
11 only person that the doctors were able to rule out is
12 six-year-old Child C [REDACTED]. It was only a very brief amount of
13 time that she would have been in the house totally alone
14 with victim [REDACTED] and that was when Ms. LaBounty went across the
15 street to go get food because there wasn't any food for the
16 kids in the house. And we certainly never had any intention
17 of trying to say that a six-year-old child did this. But
18 she's the only person that the doctors were able to rule
19 out. So we're certainly not asking you to consider that she
20 could have done this. So from 10:00 p.m. on August 7th,
21 until almost 11:00 a.m. on August 8th. The doctors can't
22 tell you when that injury happened. It could have been any
23 time in that timeframe from within minutes all the way
24 outside of that 10:00 p.m. They can't rule out either of
25 the adults that were there during that timeframe. Part of

1 the time just Shawn, part of the time both of them, and then
2 part of the time just Ms. LaBounty. And we know that they
3 told you this could happen very quickly.

4 What about the investigation itself. It's interesting
5 to hear about people from special victim's units, and crime
6 scene investigation team. And what most of the evidence
7 you'll have back there with you are good old fashioned
8 photographs that we've had the technology for for a long,
9 long time. What you don't have are the very first
10 photographs that were taken when Officer Cabral got there
11 right before EMS did. And nobody seems to really be
12 interested in where those are. What happened to them. You
13 saw Chief Galloway testify about that and he's just I don't
14 know. I don't have them. I wasn't the investigating
15 officer. And maybe there wouldn't be anything in them that
16 would help us. But we don't know. We don't know what kind
17 of pills were in that cup next to the Pack'n Play because
18 they weren't analyzed. They weren't collected even. We
19 don't know about that donut pillow that was taken out of the
20 Pack'n Play that you heard the SLED agent, Ms. Hallman, talk
21 about. She said it was taken to be analyzed. But was it?
22 We don't know. We heard Dr. Troup testify that these
23 injuries could have come from even impact with a pillow. It
24 doesn't have to be on hard surface. It doesn't have to be a
25 lengthy repetitive thing that goes on for hours. It could

1 have been an impact on a surface as soft as a pillow. But
2 we don't know what happened to that pillow that was taken
3 out of the Pack'n Play. We also know that when the
4 investigation started that Agent Herlong talked to -- talked
5 to Shawn. He voluntarily talked to the police and stayed
6 there for several hours speaking to them. And we know she
7 talked to him. And then they really didn't get any new
8 information about any details about the case. Nothing else
9 that could possibly point to Shawn because then and the time
10 they arrest him about a month later. They just at some
11 point decided, well, he's the one we're going to arrest.
12 We're suspicious of him. We're going to arrest him.
13 Interviewed a lot of people. Didn't find out anything else
14 about any problem Shawn had ever had with these children, or
15 any admissions he had ever made about doing anything to
16 victim or any of the other girls. The testimony of the
17 little girls. They're adorable little girls. And what I ask
18 you to consider when you think about listening to children
19 -- I don't know if any of you have small children of your
20 own or have had small children. We don't really get to find
21 that out about you while we're doing the jury selection.
22 But if you've had small children or been around them you
23 know that they have very vivid imaginations. You know that
24 they're very suggestible to things that are put out there
25 for them. And I would ask you to please remember that at

Child I

1 the time this happened [REDACTED] was only four years old and
Child C
2 [REDACTED] was only six years old, and I think you at least
3 have to consider whether they really are remembering
4 something that they heard that night. Are they really
5 remembering that? Is it something they've been told about
6 and they now think they remember. Is it something they
7 talked about together afterwards and now -- you know,
8 memories can be formed by thinking back on something told
9 you to and then you think you actually had that memory in
10 your head, especially events from childhood. So I'd ask you
11 to strongly consider that they are very young children.

Child I

12 Children have trouble with time. You heard [REDACTED] when
13 she -- when Ms. Bolen asked her how long ago did you live in
14 Calhoun Falls. She said a long time ago. And when Ms.
15 Bolen said how long is that she didn't answer right away.
16 And then Ms. Bolen said, well, does that mean a couple of
Child I
17 years ago or a couple of months ago, and [REDACTED] said a
18 couple of months ago. So she just kind of grabbed on to the
19 last thing that had been said. And, of course, we know it's
20 been far more than a couple -- she hasn't lived in that
21 house since August of 2012 because she's been with her aunt
22 and then in foster care for a while. So it's up until very
23 recently that she now lives with her mother in Greenwood.
24 Children have trouble with timing. And that goes to their
25 testimony, too, because they talk about -- they talk about

1 hearing the banging sound. And it's interesting that they
2 use exactly the same language. I thought it was. It sound
3 to me like something that either they had talked about
4 together a lot, or other people had been talking to them
5 about, maybe in preparation for the trial. Maybe in visits
6 with their mother. Their language was very much the same
7 and their demonstration of the sound was very much the same.
8 Child C used her foot and Child I used her hand. But those
9 similarities really struck me that they both called it a
10 banging noise. And I think that's important for you to
11 consider when you're evaluating that testimony that came
12 from them. And when children have trouble with time that
13 makes us not know -- even if you -- even if you absolutely
14 believe everything they said and take it to be true, how do
15 you know when they heard that banging noise? Child C
16 admitted that if the TV had been on and it made noise then
17 it could have come from the television. And all you know is
18 they heard it sometime after they were put to bed at about
19 10:00. Their momma did come home after 10:00. So you don't
20 know when that happened. And Child I's testimony, she
21 first talks about hearing the noise and then later on she
22 says -- let me just make sure I get it right. Later on she
23 says Child C woke me up because she heard it. So did she
24 really hear it, or did Child C wake her up after Child C
25 heard something and then tells Child I about it and now

Child I

1 [REDACTED] thinks she remembers hearing it? That statement
2 would lead you to believe that those girls could have been
3 asleep when -- even before this noise occurred. And are
4 they trying to suggest to you that Shawn was so calculated
5 and so cold blooded that he locked those girls in their
6 bedroom just so he could go out and beat the baby? And then
7 he -- then he told this story about Chris as a way to cover
8 it up? See, he told Melody that story about Chris when she
9 got home from her trip. That wasn't something he made up as
10 a way to get out of something. It was the only thing he
11 could think of that could have caused what happened. Well,
12 I know she fell down the steps because my brother knocked
13 her off of them a couple of weeks ago. And when the SLED
14 agents talked to Chris White, Shawn's brother, Chris exactly
15 confirmed that that had happened. Melody told you when she
16 testified that Shawn told her about that when she got back.

17 So back to the girls. Even if you take all that to be
18 absolute accurate, that that is the very night that they
19 heard this noise, that both of them heard it, you don't know
20 when they heard it except that it was after they went to
21 bed.

22 The other thing is that, as I understood the State's
23 theory in opening, is that -- is that they're saying Shawn
24 did this because he got so frustrated because maybe he
25 wanted her to be quiet. Well, the girls tell you that they

Child C

1 hear the banging sound, and then [REDACTED] says she hears
2 ^{victim} [REDACTED] crying. She doesn't say that she hears ^{victim} [REDACTED] crying
3 before the banging sound. That she cries, and cries, and
4 cries and then all of a sudden there's this noise, and then
5 she cries some more and then that's it. So that doesn't fit
6 in with this idea that he got so frustrated by a crying baby
7 that he had this horrible violent reaction. ^{Child I} [REDACTED]
8 doesn't even testify of ^{victim} [REDACTED] crying at all. When she's
9 asked about it she says she didn't hear it.

10 Let's talk some about -- about some of the things you
11 learned from Ms. LaBounty. And that was that Shawn moved in
12 with her and the girls beginning of January 2012. So you've
13 got a seven month period there where you don't hear anything
14 from anybody about Shawn ever being abusive toward these
15 children in any way. None of them. Even Ms. LaBounty
16 herself, when she's interviewed by Lieutenant Herlong on
17 August 14th, after ^{victim} [REDACTED] has died, she still tells
18 Lieutenant Herlong, Shawn was great with my kids. The
19 Solicitor made a big point of how Shawn said Melody wouldn't
20 have hurt them. Well, of course, he didn't want to believe
21 Melody would hurt them. She didn't believe he would hurt
22 them either. She said Shawn's great with my kids. And how
23 do you know that she thought that. Well, she leaves on July
24 29th for a getaway to go see a friend. And she trusts Shawn
25 enough to leave the baby with him. She trusts him to take

1 care of that child. And not only that, the next day, July
2 30th, while Ms. LaBounty is still gone, her mother is tired
3 of the older three kids there, and what does she do? She
4 doesn't call Ms. LaBounty and say you've got to come home.
5 I've got -- the two, and four, and six-year-olds are --
6 they're wearing me out. You've got to come home. She just
7 takes them home to Shawn, because Ms. LaBounty's mother
8 trusts him, too, to take care of all the children.

9 When Melody gets back from that trip on, I believe, the
10 31st, that's when Shawn tells her about the accident that
11 happened with ^{victim} falling down the steps. So is he
12 creating that story thinking, oh, I'm going to beat ^{victim} a
13 week from now, so I'll come up with this story about her
14 falling down the steps? Of course not. And Ms. LaBounty
15 told you that she had a scratch on her nose and a bump on
16 her head. And that's what it was from, and Chris confirmed
17 that.

18 You hear that on the day of August 7th that Shawn was
19 working during the day. He left that morning to go to work
20 and that Ms. LaBounty was the one with the children that
21 whole day. Again, this -- I don't think anybody is
22 disputing that all the kids were fine up until that evening.
23 But this, again, was within that same timeframe that the
24 doctors give you for these injuries. That timeframe still
25 covers all of August 7th. Shawn got home sometime around

1 6:00 or 6:30, and then Ms. LaBounty leaves to go to work at
2 Pop A Top about 7:00 or 7:30. After closing up, that's when
3 she takes Andy Tiller home. She at some point smokes some
4 pot with him during the evening and gets back home to
5 Calhoun Falls about 2:00 in the morning. She -- when she
6 walks in the front door the Pack'n Play, you've seen in the
7 pictures, is right there. She's able to see ^{victim} [REDACTED] with the
8 light coming through the window. You heard her testify to
9 that. She's able to see her. She says she's on her back.
10 But don't forget the testimony that she, at some later point
11 in the middle of the night or the next morning, at some
12 later point she sees ^{victim} [REDACTED] turned on her side. She's gone
13 from her back to her side. Folks, if those catastrophic
14 injuries were there, that child wouldn't have been able to
15 do that. And Ms. LaBounty was asked about that. It was
16 something that she had talked to the SLED agents about and
17 she was asked about it when she testified and said yes, at
18 some point she was turned onto her side. She couldn't
19 remember exactly when. When she comes in she hears ^{victim} [REDACTED]
20 snoring, which she said was normal. She said she didn't see
21 anything wrong. And of course she didn't wake her up at
22 2:00 in the morning. I agree with Mr. Stumbo on that. You
23 don't want to wake up your baby when they're supposed to be
24 sleeping. But she doesn't just wake her up then. She waits
25 -- according to the story, she waits until almost 11:00 to

1 actually pick the child up. She testified that ^{victim} [REDACTED]'s
2 normal wake up time is between 6:00 and 7:00 a.m. That she
3 at least gets up and takes a bottle. When Ms. LaBounty
4 wakes Shawn up to go -- for him to go to work sometime
5 around 6:15, 6:30, he must leave pretty much immediately
6 after she wakes him up. That's what she testifies to, that
7 he's gone to work at 6:15 or 6:30. That's right around that
8 normal wake up time for ^{victim} [REDACTED]. But she doesn't -- she
9 doesn't appear to check on her then. She talks at some
10 point about putting her hand on her to see if she's too hot
11 or too cold and apparently doesn't see anything wrong then
12 either. The morning goes on and I believe she said that
13 around 8:00 in the morning that ^{Child C} [REDACTED] came and got in the
14 bed with her. There were different points in the night when
15 she moved from the couch in the livingroom into the -- into
16 the master bedroom. Sometime around 8:00 ^{Child C} [REDACTED] gets in
17 the bed. By that point it's an hour to two hours after
18 ^{victim} [REDACTED]'s normal wake up time and she doesn't pick her up then
19 either.

20 And one of the things she says in her testimony is that
21 ^{victim} [REDACTED] had been fussy with the teething. Well, don't you
22 wonder why 11:00 why your teething baby isn't fussy? That
23 seems -- that seems odd to me. After ^{Child C} [REDACTED] gets in the
24 bed it's not much longer before Ms. LaBounty has got to get
25 up because she's got to go get some food for the older

1 children. So she walks across the street with two of them.
2 That's when ^{Child C} [REDACTED] and ^{victim} [REDACTED] are left in the house, and
3 that's something that the SLED agents don't get told about.
4 Come back. They have their cereal. ^{victim} [REDACTED] is still asleep.
5 And Ms. LaBounty wants her to still sleep, so she sends the
6 other children outside onto the porch. So they're out of
7 the house. She sends them onto the porch to play out there
8 so that ^{victim} [REDACTED] can keep sleeping in the Pack'n Play. She
9 talks about that. And finally about -- about four to five
10 hours after ^{victim} [REDACTED]'s normal wake up time that's when she gets
11 picked up.

12 Folks, there were some things said about these
13 statements Shawn made. First of all, about saying Melody
14 wouldn't hurt her kids. And like I said, of course, he --
15 he also said they were best friends. He apparently he
16 didn't think that she could do something to harm the kids,
17 and she apparently didn't think that he could. So neither
18 of them ever accused the other. And I'm not standing here
19 accusing her today. I'm not in the business of accusing
20 people. I'll leave that for the government to do. What I'm
21 saying to you is that you just don't know. There is no way
22 that you can know. And that's -- that's the position I'm
23 taking. You've got a choice between two adults who were
24 there during the timeframe that the doctor said this could
25 happen, sometimes alone, sometimes both of them there. And

1 there's just no way you can know who the right person is. I
2 do -- I think you also have to consider what Ms. LaBounty's
3 lifestyle was like at the time. The drinking and smoking
4 pot at work, the house that's in disarray with roaches in
5 the Pack'n Play. She's obviously done things to turn that
6 around, and that's great. And she's been able to get her
7 children back after they were with their aunt and foster
8 care for about 15 and a half months. And that's -- that's
9 great that her lifestyle is better. But I think it is
10 important that you consider what it was like at the time
11 that this happened. You haven't heard anything like that
12 about Shawn. What you've heard is that he stayed there.
13 That he was willing to sleep on the couch in the livingroom
14 and help take care of these four children.

15 Mr. Stumbo wants to make something of the fact that
16 Shawn wasn't at the hospital in Greenville. Well, he had to
17 be taken -- when he went to the police department Chief
18 Galloway had to take him there. What if he didn't have a
19 way to get to Greenville? He told the SLED agent that when
20 he talked to Melody she hung up on him and hadn't talked to
21 him since. What if he thought Melody didn't want him there?
22 What if he thought that since he wasn't a family member,
23 he's not a family member, and this child was in intensive
24 care, what if he thought he couldn't see her? It's not
25 evidence of guilt that he wasn't at the hospital. It's not

1 evidence of guilt that he owns a horror movie that might
2 have been what he was watching that night when he told the
3 SLED agent he put a movie in and then dozed off on the
4 couch. A movie that might have had noises coming from it
5 that these girls thought was a banging on the floor. If we
6 all -- I don't even know if I should talk anymore about
7 that. Horror movies are such a part of our popular culture,
8 I don't -- I don't see how you can take ownership of one as
9 proof that anybody is a terrible person who could do
10 something awful to a baby. The last book I read was Carrie
11 by Stephen King. Pretty -- I finished that pretty recently.

12 Another thing to consider about Shawn -- and I know
13 this is taking a long time and I appreciate your listening
14 to me. I'm getting there. Shawn did voluntarily go with
15 Chief Galloway to Calhoun Falls Police Department on August
16 9th and he stayed there for several hours. He answered all
17 their questions. He answered everything they wanted to
18 know. He didn't conjure up any stories about anybody. He's
19 not -- he doesn't have medical training. He thought at the
20 time that maybe what was going on was because of that fall,
21 so he made sure he told him about it. After they talked to
22 him for -- and we don't know how long he was there before
23 Major Lightle got there, but she gets there about 8:15 and
24 he's there, and he stays talking to her for almost three
25 hours, and then after that he voluntarily writes a statement

1 for them. And he says I didn't do anything. I didn't hurt
2 her. And he gives the time line of what happened on August
3 7th and August 8th. He stays there and writes a written
4 statement. All of that voluntarily. Now, SLED doesn't
5 bring a videotape to videotape that. It's their policy not
6 to. So you didn't get to see what his demeanor was and what
7 the context was that he said some of these things. And SLED
8 doesn't want you to see it that way. They want to be able
9 to come in here and tell -- and emphasize the things they
10 think are important and minimize the things they think
11 aren't. So you don't know what the context of his statement
12 about "you don't think about shaking a baby to see if it's
13 okay." You don't know when in his statement that happened
14 or what the context was. And he's right. In the middle of
15 the night when a baby is sleeping, no, you don't think about
16 -- you don't think about shaking them or shaking on them to
17 see if they're okay when they're 10 months old.

18 After they talked to him they get some forensic
19 interviews of the girls. That process was described to you.
20 And just so you know, this is not a place where I can take a
21 child who I want to be interviewed. If there is a child
22 that is a witness in a case that -- the place these children
23 isn't open to me. That's a state agency that works in
24 cooperation with law enforcement. So that's where the
25 children were taken. And ^{Child C} first tells -- first tells

1 the forensic interviewer about the banging noise at the
2 second interview on August 20th, almost two weeks after the
3 incident happened while she's been staying with her aunt and
4 seeing her mother everyday. That's the first time the
5 banging noise comes up. So they know about that. And
6 Lieutenant Herlong interviews a number of people; Jennifer
7 Williams, Tina Gilbert, Kevin Kilgore, Chris White, Zach
8 Kilgore, Ms. Moss, Melody's mother. All these people are
9 interviewed and there's not one person who is interviewed --
10 and she tells you they're doing it because they're trying to
11 learn more about the circumstances, about these people that
12 are present. They don't find out one single thing negative
13 about Shawn White. They found out that the incident with
14 victim falling down the steps is confirmed. It's
15 corroborated. And that's all, after talking to all those
16 people. And then finally, after they arrest him a month
17 later on September 6th what does he say? Again he says I
18 didn't do this.

19 Solicitor Stumbo has already talked to you about direct
20 and circumstantial evidence. And direct evidence is --
21 there isn't any. He's certainly right about that. That's
22 the kind of evidence where if I -- if I see somebody walk up
23 and point a gun at someone and shoot them, I personally
24 witness that and I can testify about the facts of it and
25 what I saw, I could come in court and identify the person

1 that I believe did the shooting if they're in the courtroom.
2 That's direct evidence. Fingerprints, DNA evidence, things
3 like that are all direct evidence. You don't have any of
4 that. And what -- what Mr. Stumbo said to you about --
5 about hearing the rain and seeing things wet outside, that
6 is a great example of circumstantial evidence. I was going
7 to tell you something kind of similar when you come outside.
8 Your car's wet. The sidewalks got, you know, darker parts
9 where it looks like it's wet. The grass is wet. It's a
10 reasonable conclusion you draw from seeing that, that it
11 rained on your car. It's also reasonable to conclude from
12 that that my sprinkler system came on and got the ground and
13 my car wet before I walked out that morning. So
14 circumstantial evidence doesn't always lead to one single
15 conclusion. And it doesn't in this case. It leads you to I
16 don't know. What you've got is an injury that occurred
17 within a -- within this whole timeframe and you've got two
18 little girls talking about a banging noise. And that,
19 folks, that does not get you to Shawn beating ^{victim} [REDACTED] to
20 death. And Mr. Stumbo can stand up here and point at him
21 and say it over and over again, but you don't have proof
22 beyond a reasonable doubt that that's what happened. The
23 circumstantial evidence can lead you to more than one
24 conclusion, and you don't know.

25 The Judge is going to tell you that when the State does

1 rely on circumstantial evidence like this case, that all the
2 circumstances must be consistent and when taken together
3 point conclusively to the guilt of the accused beyond a
4 reasonable doubt. And if they merely portray the
5 Defendant's behavior as suspicious, the proof has failed.
6 And that's exactly what you have here. At best you can only
7 get suspicious.

8 Reasonable doubt, the last thing I'm going to talk
9 about. This is just a list of different stages you can be
10 at before getting to that highest level of proof which is
11 reasonable doubt. The Judge will tell you that you have to
12 be firmly convinced for the State to meet that burden. I've
13 heard an example given that I think is a good illustration
14 of reasonable doubt which is where you have some kind of
15 serious medical problem and you go to a doctor and they say
16 this is what needs to be done, and you aren't sure if that's
17 exactly the right course of action, so maybe you go get a
18 second opinion. I have a friend who fought cancer all last
19 year and she had -- the cancer was in her hip bone. She had
20 to have some pretty significant surgery to take that out
21 that was going to impact her activity for the rest of her
22 life. She went to three different places; Florida, New
23 York, and finally Houston, Texas at MB Anderson to get
24 exactly the right doctor that was going to do the procedure
25 in the way she thought was best for her. So she had some

1 reasonable doubt about what some of the other doctors wanted
2 to do.

3 MR. STUMBO: Your Honor, at this time I have had a
4 chance to look at this poster. I would object to this
5 characterization of the standard beyond a reasonable doubt.
6 I don't believe it accurately reflects the law.

7 THE COURT: I can't see it. Well, this is closing
8 argument and certainly the jury will be instructed to
9 consider the law as the Court gives it. I'll allow the
10 argument to continue.

11 MR. STUMBO: Thank you, Your Honor.

12 MS. NELSON: Thank you, Your Honor.

13 So, folks, you can go all the way from somebody being
14 proven not guilty -- like I'm sure you've heard about folks
15 on death row who have been exonerated or proven not guilty
16 when DNA evidence doesn't match. I can't do that for you.
17 I can't prove the negative. That Shawn was absolutely not
18 the one who did this to ^{victim} [REDACTED] and that Melody absolutely
19 was. I can't do that. Then you can go anywhere from it's
20 unlikely he's guilty, or he's probably not guilty, he may
21 not be guilty. You may not really know. You can even get
22 up here -- I suspect -- I suspect he might be guilty. I
23 think it's more likely him than Melody. Even if you think
24 his guilt was highly likely, even if you think that's --
25 that's most probably highly likely. Not just likely but

1 highly likely that it happened that way, none of those are
2 good enough. All of that is less than beyond a reasonable
3 doubt. You have to be firmly convinced that he is
4 definitely guilty beyond a reasonable doubt.

5 MR. STUMBO: I renew my objection to that statement,
6 Your Honor.

7 THE COURT: I understand.

8 MR. STUMBO: It's a misstatement of the law.

9 MS. NELSON: Just imagine if -- if this situation were
10 reversed and SLED had decided to arrest Melody instead. She
11 was the one sitting up at that table on trial, and the
12 evidence was exactly the same. You still wouldn't know.
13 You'd have no idea who was responsible. You wouldn't be in
14 a position to convict either one of them because you just
15 don't have sufficient proof in this case. And as sad or as
16 angry as all of us might be about what happened to ^{victim} [REDACTED],
17 you have to follow the law that the Judge gives you. You
18 have to require the government to prove to you that they
19 have got this right.

20 I promised you at the outset of this case that you
21 wouldn't have that proof and you don't. You've got some --
22 you've got some suggestions and some insinuations and maybe
23 you had some suspicions, but you don't have proof beyond a
24 reasonable doubt, because there's just no way in this case
25 to be convinced that they got it right when they charged

1 Shawn. That you folks, when you go back there, each one of
2 you is entitled to your own verdict. You're entitled to
3 express your opinions about this case. And if you go back
4 there and you follow your reason and work with passion, the
5 only outcome is that you have to find Shawn White not
6 guilty.

7 THE COURT: Mr. Foreman, and ladies and gentlemen of
8 the jury, we're going to take about a five minute break
9 before we proceed into the Court's final charge. So I'll
10 ask you to retire to the jury room. Again, remind you once
11 again, still not time to start your deliberations. Don't
12 discuss anything about this case, and we'll bring you out
13 shortly.

14 (Whereupon, the jury exits the courtroom at 11:50 a.m.)

15 THE COURT: Okay. We'll be in recess for just a few
16 moments. I felt like probably everybody needed a little
17 break before we go into the charge. We are going to --
18 before they are brought out, before the charge, we're going
19 to take lunch orders, feed them lunch, and try to keep them
20 as comfortable as possible. I commend both of the attorneys
21 for the excellent closing arguments. We'll be in recess
22 about 10 minutes.

23 (Whereupon, a recess was held.)

24 MR. STUMBO: Your Honor, just for the record, I would
25 renew the objection. Obviously I'm not moving for a

1 mistrial or anything of the sort. I understand the Court's
2 ruling. But for the record, and based on my -- my
3 objection, I would request that the posterboard that I
4 objected to, the page of that be torn out, folded up and
5 marked as a Court exhibit and put in the record in this case
6 for appellate purposes. And, Your Honor, in all candor, the
7 Court -- that is probably the second time in my entire
8 career that I've objected during an attorney's closing
9 argument, just to indicate to the Court how strongly I
10 object to the blatant misstatement of law.

11 There were a number of misstatements of fact in Ms.
12 Nelson's closing that I didn't object to. That's part of
13 the -- I mean, that happens. I understand. But to equate
14 the beyond a reasonable doubt standard to definitely guilty
15 is tantamount to me to just blatantly lying to this jury.
16 That's not the standard of law. And if it were the
17 standard, quite frankly, in a child homicide case we'd never
18 get a conviction based on having to prove these cases via
19 circumstantial evidence.

20 So I'm just going to sit down and shut up at this
21 point, Your Honor, but I would request that the Court make
22 that a Court's exhibit, and I do think that that needs to be
23 part of the record in this case.

24 THE COURT: Okay. And I have no -- if we could just do
25 that at some point in time after we conclude the trial,

1 we'll have it marked as a Court's exhibit. We don't need to
2 do it now. And in light of the fact that I charged in the
3 preliminary charge, and will charge once again that they are
4 to consider only the law as I instruct them, and I don't
5 have a problem with even adding an additional charge that
6 beyond a reasonable doubt is not a definitely guilty
7 standard, I'd be glad to include that, too, if the State
8 wants that addition.

9 MR. STUMBO: I believe that would be appropriate in
10 light of the way it was argued in closing, Judge.

11 THE COURT: All right, very good. If we bring the --
12 have they already ordered the lunch? I mean, are we good
13 there?

14 MADAME CLERK: Yes.

15 THE COURT: All right. Bring the jury out, please.

16 (Whereupon, the jury enters the courtroom at 12:13
17 p.m.)

18 THE COURT: Let the record reflect the jury is back in.
19 Mr. Foreman, and ladies and gentlemen of the jury, I will
20 now charge you on the law applicable to this case, and you
21 must consider the charge that I give you as a whole and not
22 focus on some portions of the charge to the exclusion of the
23 other portions. And the law that you are to consider and to
24 use in your deliberations in this case only comes from me
25 and from no other source or person.

1 I remind you, Mr. Foreman, and ladies and gentlemen of
2 the jury, that during this trial you and I have had certain
3 duties to perform. As a trial judge it is my responsibility
4 to preside over the trial of this case, and I also have the
5 duty to rule on the admissibility of the evidence offered
6 during the trial. You are to consider only the competent
7 evidence before you. If there was any testimony ordered
8 stricken from the record in this case -- and I don't believe
9 there was, but if there was during this trial, you must
10 disregard that testimony. You are to consider only the
11 testimony which has been presented from the witness stand.
12 Any exhibits which have been made a part of the record in
13 this case and any stipulations between counsel.

14 I have the additional duty to charge you the law
15 applicable to this case. As a presiding judge I am the sole
16 judge of the law of this case, as I mentioned earlier, and
17 it is your duty as jurors to accept and apply the law as I
18 now state it to you. If you already have any idea as to
19 what the law is, or what the law ought to be and it does not
20 agree with what I now tell you what the law is, you must
21 abandon this idea because you are sworn to accept the law
22 and apply the law exactly as I state it to you.

23 In every case tried in this court before a jury the
24 jury becomes the sole and exclusive judge of the facts in
25 the case. A trial judge cannot intimate, state, comment on

1 or make any statement to a trial jury about the facts in a
2 case. Since you, the jury, are the sole judge of the facts
3 in this case, you are not to infer from what I have said
4 during the progress of this trial in ruling upon the
5 admissibility of evidence or otherwise, or anything that I
6 say now during the course of this instruction to you, that I
7 have any opinion about the facts in this case. I do not
8 have an opinion. The law does not allow me to have an
9 opinion about the facts in this case. This is a matter
10 solely for you, the jury, to determine. As jurors it is
11 your duty to determine the affect, value, weight and truth
12 of the evidence presented during this trial.

13 The indictment, as previously stated to you, charges
14 the Defendant with homicide by child abuse. I remind you
15 the fact that the Defendant was arrested, charged and
16 indicted in this case is not evidence in this case and
17 cannot be considered by you as evidence of guilt in this
18 case, nor does it create any presumption or inference of
19 guilt. The indictment is simply the formal written
20 instrument or document which contains the charge made
21 against the Defendant. It is the formal document by which
22 this case is brought into this court.

23 Now, Mr. Foreman and ladies and gentlemen of the jury,
24 the Defendant has pled not guilty to this indictment and
25 that plea puts the burden on the State to prove the

1 Defendant guilty. A person charged with committing a
2 criminal offense in South Carolina is never required to
3 prove himself innocent. I charge you that it is an
4 important rule of law that the defendant in a criminal
5 trial, no matter what the seriousness of the charge may be,
6 will always be presumed to be innocent of the crime for
7 which the indictment was issued unless guilt has been proven
8 by evidence satisfying you of that guilt beyond a reasonable
9 doubt. This presumption of innocence does not end when you
10 begin your deliberations but it accompanies the Defendant
11 throughout the trial until you reach a verdict of guilt
12 based on the evidence satisfying you of that guilt beyond a
13 reasonable doubt. The presumption of innocence is like a
14 robe of righteousness placed about the shoulders of the
15 Defendant which remains with the Defendant unless it has
16 been stripped from the Defendant by evidence satisfying you
17 of the Defendant's guilt beyond a reasonable doubt. The
18 presumption of innocence is not mere legal theory. It is
19 not just a legal phrase. It is a substantial right to which
20 every defendant is entitled unless you, the jury, are
21 satisfied from the evidence of the Defendant's guilt beyond
22 a reasonable doubt.

23 The State has the burden of proving the Defendant
24 guilty beyond a reasonable doubt. Some of you may have
25 served as jurors in civil cases where you were told that it

1 is only necessary to prove that a fact is more likely true
2 than not true, such as by the greater weight or the
3 preponderance of the evidence. But in criminal cases the
4 State's proof must be more powerful than that. It must be
5 beyond a reasonable doubt. It is not, however, a definite
6 guilty standard. Proof beyond a reasonable doubt is prove
7 that leaves you firmly convinced of the Defendant's guilt.
8 There are very few things in this world that we know with
9 absolute certainty, and in criminal cases the law does not
10 require proof that overcomes every possible doubt. If,
11 based on your consideration of the evidence, you are firmly
12 convinced that the Defendant is guilty of the crime charged,
13 you must find the Defendant guilty. If on the other hand
14 you think there is a real possibility that the Defendant is
15 not guilty, you must give the Defendant the benefit of the
16 doubt and find him not guilty.

17 Now, Mr. Foreman and ladies and gentlemen of the jury,
18 there are two types of evidence which are generally
19 presented during a trial; direct evidence and circumstantial
20 evidence, and I believe this was argued to you by both the
21 attorneys. Direct evidence directly proves the existence of
22 a fact and does not require deduction. Circumstantial
23 evidence is prove of a chain of facts and circumstances
24 indicating the existence of a fact. Crimes may be proven by
25 circumstantial evidence. The law makes no distinction

1 between the weight or value to be given to either direct or
2 circumstantial evidence. However, to the extent the State
3 relies on circumstantial evidence, all of the circumstance
4 must be consistent with each other and when taken together
5 point conclusively to the guilt of the accused beyond a
6 reasonable doubt. If these circumstances merely portray the
7 Defendant's behavior as suspicious, the prove has failed.
8 The State has the burden of proving the Defendant guilty
9 beyond a reasonable doubt. This burden rests with the State
10 regardless of whether the State relies on direct evidence,
11 circumstantial evidence, or some combination of the two.

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

1 prejudice, or other motive in this case. You may also
2 consider the appearance and manner of a witness while on the
3 witness stand. As with all witnesses, you may consider the
4 witness's ability to observe and remember facts. The
5 witness's ability to understand and answer questions,
6 understand the seriousness of appearing as a witness at a
7 criminal trial, and whether the witness understood the
8 questions and whether the witness has a good memory.

9 Now, the rules of evidence ordinarily do not permit
10 witnesses to testify to opinions or conclusions. And I
11 think I told you this earlier. An exception to this rule
12 exists for witnesses we call expert witnesses. A witness
13 who, by education or experience, as become an expert in some
14 art, science, profession or calling may state an opinion as
15 to relevant and material matter in which the witness claims
16 to be an expert, and may also state the reasons for the
17 opinion. You should consider any expert opinion received in
18 evidence in this case and, like any other evidence, give it
19 the weight you think it deserves. If you decide that the
20 opinion of an expert witness is not based on sufficient
21 education or experience, or if you conclude that the reasons
22 given in support of the opinion are not sound, or that the
23 opinion is outweighed by other evidence, you may disregard
24 the opinion entirely. An expert witness's testimony is to
25 be given no greater weight than that of other witnesses

1 simply because the witness is an expert. Further, you're
2 not required to accept an expert's opinion even though it is
3 not contradicted.

4 Now, Mr. Foreman, ladies and gentlemen of this jury, I
5 instruct you and emphasize that the fact that the Defendant
6 did not testify is not a factor to be considered by you in
7 any way in your deliberation and in your consideration on
8 the question of the guilt or the innocence of the Defendant.
9 You must not be considered -- it must not be considered by
10 you in any manner whatsoever. A Defendant has the
11 constitutional right to remain silent, and the assertion of
12 this right must not be considered by you in your
13 deliberations. I repeat, under your oath, you are to draw
14 no conclusion whatsoever from the fact that the Defendant in
15 this case did not testify. The fact that this Defendant did
16 not testify should not even be discussed in the jury room.
17 The burden of proof, as I have stated to you, is on the
18 State. The Defendant is not required to prove his
19 innocence. The burden of proof remains on the State to
20 prove guilt beyond a reasonable doubt.

21 A statement alleged to have been made by the Defendant
22 has been admitted into evidence in this case. While the
23 Court has determined that the statement is admissible, I
24 instruct you that you make the ultimate decision of whether
25 or not the Defendant made the statement. If the Defendant

1 did make the statement, you must determine whether the
2 statement was made by the Defendant voluntarily and of his
3 own free will. This means that the statement was not caused
4 by pressure, force, fear, threats, coercion, or
5 intimidation, or by hope, or a promise of leniency, or a
6 reward of any kind. The State has the burden of proving
7 beyond a reasonable doubt that the statement was voluntary.
8 If you determine it was, you may give the statement any
9 further consideration that you deem proper. You must decide
10 what weight, if any, should be given to the statement. If
11 you determine the statement was not the free and voluntary
12 statement of the Defendant, you should consider the
13 statement at all.

14 Now, Mr. Foreman, and ladies and gentlemen of the jury,
15 the Defendant is charged with homicide by child abuse. That
16 is the offense he is charged with. The State must prove
17 beyond a reasonable doubt each and every element of this
18 offense. And I'll read to you the exact law. Homicide by
19 child abuse. "A person is guilty of homicide by child abuse
20 if the person causes the death of a child under the age of
21 11 while committing child abuse or neglect and the death
22 occurs under circumstances manifesting in extreme
23 indifference to human life." For purposes of this section
24 the following definitions apply. Child abuse or neglect
25 means an act or omission by any person which causes harm to

1 the child's physical health or welfare. Harm to a child's
2 health or welfare occurs when a person inflicts or allows to
3 be inflicted upon the child physical injury including
4 injuries sustained as a result of access corporal
5 punishment.

6 Mere presence at the scene is not sufficient to prove
7 someone guilty of a crime. A Defendant's present where a
8 crime -- presence where a crime is being committed, or mere
9 association with a person who commits a crime does not make
10 a defendant an accomplice, originator, an abettor of the
11 person committing the crime. The burden is on the State to
12 prove every element of the crime charged. If you find after
13 reviewing all the evidence that the State has proved that
14 the Defendant was only present at the scene of a crime and
15 that they have not proved beyond a reasonable doubt any
16 other participation in the crime, then you must find the
17 Defendant not guilty. The law is that prove of a person at
18 the scene of the crime is not sufficient to find someone
19 guilty.

20 Now, Mr. Foreman, and ladies and gentlemen of the jury,
21 there are two possible verdicts that you can reach in this
22 case. And I have -- we have prepared what's called a
23 verdict form, and on this verdict form it states "As to the
24 charge of homicide by child abuse, we, the Jury, find the
25 Defendant guilty or not guilty," and then it states, "I

1 certify this decision was the unanimous decision of the
2 Jury." You sign on the line "Foreperson" and it has already
3 been dated for you. You are to give no significance to the
4 order of guilty and not guilty on this verdict form.
5 There's no significance to the order whatsoever. I
6 emphasize with you that your verdict must be unanimous among
7 the 12 of you.

8 Now, what I'm going to do is to ask -- and don't start
9 your deliberations yet. Ask that you retire to the jury
10 room. I want to make sure that my jury charge has been
11 correct, and I'll discuss that with the attorneys. When the
12 Bailiff brings you all of the exhibits, the verdict form and
13 the indictment. And, Mr. Foreman, I'll also instruct you
14 that whenever you reach a verdict and you sign the verdict
15 form, you'll also need to sign the back of the indictment as
16 well. Okay? When the Bailiff brings you these documents,
17 at that time you will then be able to begin your
18 deliberations finally. Also at that time, Mr. Lusk, the
19 alternate, you will leave the jury room, and certainly you
20 will be able to come back here. I think you all have
21 ordered lunch, so you need to hang around to get your lunch.
22 And you're welcome to remain with us for as long as you
23 would like, or you would be free to go. Whatever is your
24 pleasure.. So once you receive the documentation then you
25 can begin your deliberations, Mr. Foreman. Okay?

1 So, if you'll retire to the jury room. Don't begin
2 your deliberations yet.

3 (Whereupon, the jury exits the courtroom at 12:32 p.m.)

4 THE COURT: From the State, any exceptions or
5 objections to the Court's charge?

6 MR. STUMBO: None from the State, Your Honor.

7 THE COURT: From the Defense?

8 MS. BOLEN: No, sir, Your Honor, from the Defense.

9 THE COURT: All right. Thank you very much. You want
10 to go ahead and take them to the other room where they'll
11 be, and then just -- and then once they get in that room
12 then take them the exhibits? So if you want to go ahead
13 and escort them to the other room, and then once they get in
14 there then we'll get the exhibits and verdict form to them.

15 MR. STUMBO: Do you want us to wait to --

16 THE COURT: Yeah. Let's just wait just a moment.

17 (Whereupon, jury begins deliberations at 12:37 p.m.)

18 SENTENCE OF THE COURT

19 THE COURT: I understand we have a verdict. Anything
20 we need to address before we bring the jury out and receive
21 the verdict?

22 MR. STUMBO: Nothing from the State, Your Honor.

23 THE COURT: Okay. What I'll ask the Foreman, if they
24 have reached a verdict and was it unanimous. I'll ask them
25 to hand the verdict form to you, hand it to me just for me

1 to review, then I'll hand it to the Clerk to publish it.

2 Does that suit you okay, Madam Clerk?

3 MADAM CLERK: That's fine.

4 THE COURT: All right. Bring the jury out, please.

5 (Whereupon, the jury enters the courtroom at 2:25 p.m.)

6 THE COURT: Let the record reflect the jury is back in.
7 Mr. Foreman, I understand from the Bailiff that the jury has
8 reached a verdict. Is that correct?

9 MR. FOREMAN: Yes, sir. We have.

10 THE COURT: Okay. And was that -- or is that, is the
11 verdict unanimous?

12 MR. FOREMAN: Yes, sir.

13 THE COURT: If you would hand the paperwork to the
14 Bailiff, please.

15 (Whereupon, the Foreman hands the verdict form to the
16 Bailiff.)

17 THE COURT: Madam Clerk, if you'll publish the verdict.

18 MADAM CLERK: The State of South Carolina, County of
19 Abbeville, case number 2013-GS-01-244, State of South
20 Carolina versus Shawn Patrick White. As to the charge of
21 homicide by child abuse, we, the Jury, find the Defendant
22 guilty. I certify this decision was a unanimous decision of
23 the jury. Jesse James, Foreperson, January 9th, 2014.

24 Mr. Foreman, ladies and gentlemen of the jury, is this
25 your verdict so say you all? Please signify by raising your

1 right hand.

2 (Whereupon, the jury panel raises their right hand.)

3 THE COURT: Thank you, Madam Clerk. You can have a
4 seat. Is there anything before we release the jury?
5 Anything from the State?

6 MR. STUMBO: Nothing from the State.

7 THE COURT: From the Defense?

8 MS. BOLEN: We'd just like the jury polled, Your Honor.
9 That's all.

10 THE COURT: All right. Individual polling, please,
11 Madam Clerk.

12 MADAM CLERK: David Wright, is this your verdict and is
13 it still your verdict?

14 MR. WRIGHT: Yes, ma'am.

15 MADAM CLERK: Tracy K. Morton, is this your verdict and
16 is it still your verdict?

17 MR. MORTON: Yes, ma'am.

18 MADAM CLERK: Stanley Ralph Hall, is this your verdict
19 and is it still your verdict?

20 MR. HALL: Yes, ma'am.

21 MADAM CLERK: James A. Hutchens, is this your verdict
22 and is it still your verdict?

23 MR. HUTCHENS: Yes, ma'am.

24 MADAM CLERK: Bertha M. Williams, is this your verdict
25 and is it still your verdict?

1 MS. WILLIAMS: Yes, ma'am.

2 MADAM CLERK: Philip D. Wigger, is this your verdict
3 and is it still your verdict?

4 MR. WIGGER: It is.

5 MADAM CLERK: Jesse James, is this your verdict and is
6 it still your verdict?

7 MR. JAMES: Yes, ma'am.

8 MADAM CLERK: Nakayla Davis, is this your verdict and
9 is it still your verdict?

10 MS. DAVIS: Yes.

11 MADAM CLERK: Jimmy Norman, is this your verdict and is
12 it still your verdict?

13 MR. NORMAN: Yes, ma'am.

14 MADAM CLERK: Marion Bowie, Jr., is this your verdict
15 and it's still your verdict?

16 MR. BOWIE: Yes.

17 MADAM CLERK: Jennifer Hannah, is this your verdict and
18 is it still your verdict?

19 MS. HANNAH: Yes, ma'am.

20 MADAM CLERK: Melissa M. Belcher, is this your verdict
21 and is it still your verdict?

22 MS. BELCHER: Yes, ma'am.

23 MADAM CLERK: Your Honor, the jury has been polled and
24 the verdict has been affirmed.

25 THE COURT: Okay. Thank you very much, Madam Clerk.

1 Ladies and gentlemen of the jury, I want to thank you
2 on behalf of the South Carolina Judicial System for your
3 jury service. As I've told you at the outset, and I'll just
4 remind you once again, the service on a jury is an extremely
5 important civic responsibility that we all have. It's a
6 very difficult responsibility but nonetheless a very
7 important one. And I do appreciate your service on this
8 jury. I would tell you that you are free to talk with
9 anyone about this case, if you so desire. I'm not
10 anticipating this happening, but if someone approaches you
11 and wants you to talk to them about this case and what went
12 on and your feelings about this case and you don't want to
13 do that and they continue to impress themselves on you --
14 and again, not suggesting that's going to happen. But if
15 that were to happen, then you need to immediately notify the
16 court. We certainly want to protect our jurors. But if you
17 feel like that you would like to talk to anybody about the
18 case, then you are certainly free to do so. Even though
19 this is Thursday and we have one more day, we have no
20 further court business, so you will be excused. What I'd
21 like to do is just shake the hands of the people on the
22 jury, so if you'll just come this way. And thank you very
23 much. You are excused.

24 (Whereupon, the jury was released at 2:35 p.m.)

25 THE COURT: If everybody would be at ease for just a

1 few minutes and let everybody collect their thoughts before
2 we go to the sentencing phase.

3 MR. STUMBO: Yes, sir.

4 MS. BOLEN: Thank you, Your Honor.

5 (Whereupon, there a brief recess was held.)

6 THE COURT: Okay. We're on the record for the
7 sentencing phase of this case. Solicitor, do you have a
8 sentencing sheet?

9 MR. STUMBO: I do, Your Honor. If I may approach.

10 THE COURT: Sure. Thank you. What we'll do is I'll
11 hear from the State first on the issue of sentencing.
12 Certainly give anyone that you wish to address the Court
13 concerning sentencing, and then I'll turn everything over to
14 the Defense. So, Solicitor.

15 MR. STUMBO: Thank you, Judge. I'll try to be brief.
16 We've been here four days this week. We've heard a lot of
17 evidence, and Your Honor has heard every bit of it that's
18 come in front of the court. Judge, I'll be honest with you,
19 as, I guess, the decision maker in this county and the
20 circuit on cases that might be death penalty eligible, I
21 think cases involving the murder of children obviously
22 should be default death penalty cases, and I plan to pursue
23 that throughout my term as Solicitor. With that being said,
24 in a case like this, I do believe the facts were such that
25 it fit more with the homicide by child abuse, but certainly

1 the way the girls describe what they heard. I don't know,
2 Judge, that it's not at least close to maybe malice of
3 forethought in the sense that there was such an extreme --
4 this is not like a child being squeezed to death. It sounds
5 like to be that there was a very violent assault on this
6 baby against the floor of the house. And that's -- there
7 again, do we know exactly how that happened? No, we don't.
8 If we did and we had a video camera in the room showing what
9 he did, we may be here on a death penalty case. That being
10 said, Your Honor, it's my position that the default sentence
11 in a case should be a life sentence. You kill a baby and
12 deny them a chance of carrying their life out before it
13 hardly even starts, then your life should be given in
14 exchange for that. And here, I believe if you come in and
15 take some responsibility -- you can start at life, and if
16 you come in and take responsibility for what you've done and
17 showed some remorse, then you may work backward and earn
18 some -- earn some good credit for that with the Judge. Your
19 Honor, it's our position in this case, Mr. Brown and I, my
20 victim advocate, everybody that's standing behind me here,
21 that a life sentence is appropriate in this case, and the
22 facts that we heard. [REDACTED] ^{victim} will never have the chance to be
23 here again. But not just her, ^{Child C} [REDACTED] and ^{Child I} [REDACTED] are going to
24 have to live, as I said, in the closing of those memories
25 and those sounds knowing that their little sister died

1 outside of their room the rest of their lives. And, Judge,
2 I know there's a lot that we didn't get into in the case
3 because we couldn't, and the rules are what they are. You
4 know, under prior bad acts case law, certainly we weren't
5 going to get into a lot of things that happened that weren't
6 directly connected with the assault that killed ^{victim} [REDACTED]. But
7 this individual here was -- this wasn't the first night that
8 something really bad had happened. There had been -- the
9 forensic interviews tell the story, Your Honor. ^{Child I} [REDACTED]
10 and ^{Child C} [REDACTED] gave a lot more detail in their forensic
11 interviews about their time with Shawn. And, Your Honor,
12 I'm not going to get into a lot of detail about that because
13 we're here about what he's charged with and what was put up
14 in front of the Court. But suffice it to say that I have
15 absolutely no problem in this case asking Your Honor to
16 sentence the man standing before you to life in the prison
17 system here in South Carolina.

18 I asked Melody if she wanted to speak, Your Honor. And
19 as you can tell probably from her testimony, Melody is very
20 quiet. She has a very kind of more meek personality. She
21 said that -- you know, she's obviously very torn up about
22 this, having to relive this this week, but, Your Honor, just
23 said that it was okay if I spoke to Your Honor on her
24 behalf. And this is something, there again, she's never
25 going to deal with again from her and her daughter's

1 perspective. And she has a good job now. She has the girls
2 in the house with her. And just from my observations with
3 us getting ready for this trial, Your Honor, I think that
4 Melody now really understands and appreciates her role as a
5 mother to these girls. And they're doing very well right
6 now. The girls are doing great, just from what I can tell,
7 Judge. And that makes me feel a lot better going forward
8 from this day.

9 Also, the SLED agents that are here. You know, Ms.
10 Lightle who's now going into the teaching profession, and
11 this is her last case that she thinks is going to be coming
12 to court. And Lieutenant Herlong did a fantastic job. They
13 said that they did not want to address Your Honor today, but
14 they feel -- there again, this is a team effort. And that's
15 the way I see prosecution is we work with the victim
16 advocacy groups and law enforcement. We'll all in this
17 together to make sure that we do these things professionally
18 and do them well. So we would ask, Your Honor, for a life
19 sentence in this case.

20 There is a prior record for Mr. White.

21 THE COURT: What is that, Solicitor?

22 MR. STUMBO: Your Honor, in 2002 Shawn White was
23 convicted of burglary in the third degree. 2004 he was
24 convicted of assault and -- no. Excuse me, Your Honor.
25 There was no disposition on the assault. No, there was.

1 I'm sorry. There was a conviction for assault and public
2 disorderly. It looks like a Highway Patrol case. Assault
3 and disorderly conduct, littering and open container. That
4 was one incident. 2005 Shawn Patrick White was convicted of
5 a petty larceny. That was a Calhoun Falls Police Department
6 case. And, Your Honor, in 2009, this was with the Greenwood
7 County Sheriff's Department, Mr. White was convicted of a
8 breach of the peace. It looks like a misdemeanor. A
9 Sheriff's Department case in 2009. So there is somewhat of
10 a criminal history.

11 Your Honor, on the burglary charge, this Defendant was
12 sentence to a YOA and given shock incarceration at that
13 time. And that's the extent of his convictions.

14 THE COURT: Okay. Thank you very much, Solicitor.

15 MR. STUMBO: Thank you, Judge.

16 THE COURT: Ms. Nelson, Ms. Bolen, I'll be glad to hear
17 from you all, and we'll allow anyone you would like to
18 address the Court.

19 MS. BOLEN: Thank you, Your Honor. I think I'll handle
20 the bulk of it, but Ms. Nelson may step in.

21 THE COURT: Sure.

22 MS. BOLEN: Just as a sort of preamble, I understand
23 there's very little that anyone could say about another
24 person to outweigh the tragedy of this case. The fact that
25 there's a deceased child. And I understand that. That to

1 talk about a person with that on the other side is very
2 difficult, but yet Shawn deserves that, to have his good
3 qualities brought out as well during this hearing.

4 We're asking Your Honor to consider less than a life
5 sentence. The statute provides for 20 years up to life.
6 And it is different from the murder statute, of course,
7 which is 30 years to life. And we'd ask for Your Honor to
8 show some mercy on him by not giving him the maximum life
9 sentence, and we're asking you not to -- not to punish him
10 for exercising his constitutional right to a trial, which is
11 what he did by going to trial. That shouldn't be held
12 against him.

13 And if I could just note that we were -- we were close
14 to working this case out in terms of a plea. We were
15 actually very close and just never quite got there. But
16 that is something that I thought Your Honor needed to know.
17 That this is not something where it was a trial state all
18 along. We worked very close to a plea, even as short as a
19 few weeks ago. We and Solicitor Brown and I talked with
20 Judge Addy about this case and he had given an indication
21 that he would be somewhere in the 20 to 25 year range on a
22 plea. We were discussing it with Shawn and he was hoping to
23 do something under Alford, as he understands. He
24 understood, you know, what the likelihood of a trial would
25 be. And given his understanding of the likelihood of what

1 would happen at trial, he was wanting to do something under
2 Alford. That ended up not working out. Judge Addy just
3 didn't feel comfortable with an Alford Plea. But I did want
4 Your Honor that we were -- we were close to having this case
5 resolved.

6 In terms of Shawn, Your Honor, as you've heard from
7 Solicitor Stumbo his criminal history is very, very minimal.
8 He is 31 years old now, and back when he was 18 he had a
9 burglary third degree for which he received a YOA. And
10 that's really the only serious charge on his record. The
11 others are simple assault and battery, public disorderly
12 conduct, petty larceny. There's certainly nothing of this
13 magnitude on his record. He does have three children of his
14 own. He's got a 12-year-old, a three-year-old and a
15 five-year-old. And to my knowledge, and in speaking with
16 him and his family, you know, he's never been investigated
17 by DSS with respect to those children. There's never been
18 any sort of issues with those children.

19 As Your Honor can see from the family that's here, and
20 that's been here all week for him, he does have a loving and
21 supportive family that love him and support him very, very
22 much. I think some of them may wish to address Your Honor
23 --

24 THE COURT: Sure.

25 MS. BOLEN: -- at the appropriate time. But they'll

1 continue to support him even while he's -- he's serving out
2 a sentence.

3 I was doing a little bit of research in terms of
4 sentencing on these cases, just kind of doing an informal
5 survey of where -- where these cases have fallen when they
6 go to trial, and my research revealed that really it's
7 anywhere from 20 up to the maximum, but there were, you
8 know, some 20 year sentences after trial. But one of the
9 things that struck me in reading some of the cases that came
10 before this one are that a judge had commented in one that a
11 person, you know, might have done a bad thing. It doesn't
12 make them a bad person. And I think that's -- you know,
13 that's a position we're in now. You know, obviously I don't
14 know exactly what happened. I was not there. But whatever
15 it was, it was not in accordance with how -- how he is and
16 the kind of person he is, and we're just asking that you
17 consider him mercifully and sentence him to less than the
18 maximum.

19 And I now will turn it over to Ms. Nelson and the
20 family and Shawn if they have anything they'd like to say.

21 THE COURT: Thank you very much, Ms. Bolen. Ms.
22 Nelson?

23 MS. NELSON: Your Honor, I don't have much to add.
24 I've enjoyed working with Shawn. My contact has been
25 limited. Ms. Bolen is the one who really has been there

1 working very hard on this case for over a year now and has
2 had the most contact with him. But I have enjoyed getting
3 to meet him. I feel like he's been very cooperative and
4 appreciative of what -- of the work that we did this week.
5 I think he -- I think he can tell that we cared about this
6 case as this trial was progressing and that it was important
7 to us and that we didn't considered him to be somebody to be
8 thrown away. And I'm happy to have gotten a chance to work
9 on it, Your Honor.

10 THE COURT: Thank you very much. Any of the family
11 members wish to address the Court? I'll be glad to hear
12 from any of them, or all of them.

13 MS. BOLEN: I do believe so, Your Honor.

14 MS. NELSON: I don't think everybody's going to, Your
15 Honor.

16 MS. BOLEN: I don't think everyone, Your Honor.

17 THE COURT: Come around, sir. If you'll just stand up
18 to the microphone and give us your name, please, sir.

19 MR. WHITE: Okay. I'm Mike White. I'm Shawn's uncle.

20 THE COURT: Yes.

21 MR. WHITE: I just want to speak on behalf of him and
22 basically let you know that as a Christian I've been praying
23 about this this week. And --

24 THE COURT: Good.

25 MR. WHITE: -- I know Shawn as a person. I know the

1 Court. I know we have to pull everything that we have. I
2 know he's a good father. I know that he's a good person.
3 I'm his uncle. I served as a youth pastor in a -- while he
4 was growing up. I know that he's like a typical young man,
5 male. He's going to have problems growing up. I have a
6 hard time and I respect the jury and the Court's decision.
7 I have a hard time comprehending what's taken place here
8 today. But I just want you to -- I just want to stress that
9 Shawn's a good person. He's a good hearted person, and his
10 heart is right. And I just want you to have mercy on him.
11 I'll continue to pray that God will just shed some light on
12 this situation. And, you know, I've done that this week.
13 And whatever God's will is, is going to happen, and you and
14 I both know that.

15 THE COURT: That's right.

16 MR. WHITE: But I just ask you to just take into
17 consideration that we love him. I'm not -- I'm not going to
18 condemn him or anyone else in the courtroom. But I will
19 tell you we love him because he is family and because we
20 know who he is. We know who he is from the inside. And I
21 know he's capable of making mistakes like you and I are.
22 But I would just ask that you take that into consideration.

23 THE COURT: All right. Thank you, Mr. White. Anybody
24 else?

25 MS. BOLEN: If I could just say, his parents and his

1 grandmother have been here all week --

2 THE COURT: Right. And I've observed that. I knew
3 that they were family. Didn't know exactly how they were
4 related, but I certainly recognized the fact that they were
5 family.

6 MS. BOLEN: And some other relatives and friends have
7 come in, I think, yesterday and today.

8 THE COURT: All right. Anything further? Does Mr.
9 White want to address the Court?

10 MR. WHITE: Your Honor, I'd just like to say that if
11 the shoe was on the other hand -- you know, if she was the
12 one under arrest for this with the same facts, I believe she
13 would be in the same position I am.

14 THE COURT: All right. I'm going to go back in
15 chambers for about 10 minutes, kind of sort through all this
16 and come back out shortly. So everybody be at ease.

17 MS. NELSON: Thank you, Your Honor.

18 MS. BOLEN: Thank you.

19 (Whereupon, a brief recess was taken.)

20 SENTENCE OF THE COURT

21 THE COURT: We're back on the record. And certainly
22 appreciate the comments made by the State, appreciate the
23 comments made by the Defense. And what a horrible case. I
24 mean, just what a horrible situation.

25 Mr. White, whatever sentence I impose, it's going to be

1 a life sentence for you based upon your age of 31. I'm
2 certainly taking into consideration that you have a very
3 minor prior record. But certainly I can't forget or
4 overlook three days of horrific evidence in this case.

5 Mr. White, the sentence of the Court is you'll be
6 confined to the State Department of Corrections for a period
7 of 40 years, be given credit for 491 days that you have
8 served since your arrest. Good luck to you, sir.

9 This adjourns this case.

10 (Whereupon, the proceeding was concluded at 3:06 p.m.)

11 - - - END OF TRANSCRIPT OF RECORD - - -

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Certificate of Reporter

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I, the undersigned, Tara T. Scott, Official Court Reporter for the Eighth Judicial Circuit of the State of South Carolina, do hereby certify that the foregoing is a true, accurate, and complete transcript of record of all the proceedings had and evidence introduced in the trial/hearing of the captioned case, relative to appeal, in the Circuit Court for Abbeville County, South Carolina, on the 6 9th day of January, 2014.

I do further certify that I am neither of kin, counsel, nor interest to any party hereto.

Tara T. Scott

Tara T. Scott, CVR
Circuit Court Reporter
Abbeville, South Carolina
June 27, 2014

THE STATE OF SOUTH CAROLINA

COUNTY OF ABBEVILLE

INDICTMENT FOR

HOMICIDE BY CHILD ABUSE

16-03-0085

At a Court of General Sessions, convened on the 26th day of July, 2013, the Grand Jurors of Abbeville County present upon their oath:

That Shawn Patrick White, in Abbeville County, between the dates of August 7, 2012 and August 8, 2012, did willfully and unlawfully commit the offense of homicide by child abuse by causing the death of [REDACTED], a child under the age of eleven, while committing child abuse or neglect, by an act or omission, and the death occurred under circumstances manifesting an extreme indifference to human life, in violation of Section 16-3-85, S.C. Code of Laws, 1976, as amended.

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


Assistant Solicitor

WITNESSES

Charity Herlong
State Law Enforcement Division

WARRANT NUMBER

2012A0110100125

William S. White

Foreman of the Grand Jury

Date: JUL 26 2013

TRUE BILL

VERDICT

Foreman

THE STATE OF SOUTH CAROLINA

COUNTY OF ABBEVILLE

COURT OF GENERAL SESSIONS

July Term, 2013

Indictment # 13GS01-0244

THE STATE

vs.

Shawn Patrick White

INDICTMENT FOR

HOMICIDE BY CHILD ABUSE

16-03-0085

CDR: 2356

TRUE COPY
BY *Shandal B. Boggs*
ABBEVILLE COUNTY CLERK OF COURT

STATE OF SOUTH CAROLINA

COUNTY OF

Abbeville

VS.

Shawn Patrick White

AKA:

Race: CAU Sex: M Age: 31

DOB: SS#:

Address:

City, State, Zip: Calhoun Falls, SC

DL#: SID#:

*CDL Yes ☐ No ☐ CMV Yes ☐ No ☐ Hazmat Yes ☐ No ☐In disposition of the said indictment comes now the Defendant who was
TO: Murder / Homicide by child abuse (20Y to Life)

IN THE COURT OF GENERAL SESSIONS

INDICTMENT/CASE#: 13GS01-0244

A/W#: 2012A0110100125

Date of Offense: 8/7/2012

S C Code § 16-03-0085(A)

CDR Code #: 2356

SENTENCE SHEET

☒ CONVICTED OF or ☐ PLEADS

in violation of § 16-03-0085(A) of the S C Code of Laws, bearing CDR Code # 2356

☐ NON-VIOLENT ☐ VIOLENT ☐ SERIOUS ☐ MOST SERIOUS ☐ Mandatory GPS(CSC ☐ §17-25-45
w/minor 1st or Lewd Act)The charge is: ☒ As Indicted, ☐ Lesser Included Offense, ☐ Defendant Waives Presentment to Grand Jury. (defendant's initials)The plea is: ☐ Without Negotiations or Recommendation, ☐ Negotiated Sentence, ☐ Recommendation by the State:ATTEST: W.M. Sikes 72105
Brown, E. Yates Solicitor SC Bar#

Defendant

Attorney for Defendant

SC Bar#

WHEREFORE, the Defendant is committed to the ☒ State Department of Corrections, ☐ County Detention Center,
for a determinate term of 40 days/months/years or ☐ under the Youthful Offender Act not to exceed _____ years
and/or to pay a fine of \$ _____; provided that upon the service of _____ days/months/years and/or payment
of \$ _____; plus costs and assessments as applicable*; the balance is suspended with probation for _____months/years and subject to South Carolina Department of Probation, Parole and Pardon Services standard conditions of
probation, which are incorporated by reference.☐ CONCURRENT or ☐ CONSECUTIVE to sentence on☒ The Defendant is to be given credit for time served pursuant to S C Code § 24-13-40 to be calculated and applied
by the State Department of Corrections. 491 DAYS CREDIT☐ The Defendant is to be placed on the Central Registry of Child Abuse and Neglect pursuant to S.C. Code §17-25-135.Pursuant to 18 U.S.C Section 922, it is unlawful for a person convicted of a violation of Section 16-25-20 or 16-25-65 (Criminal
Domestic Violence) to ship, transport, possess, or receive a firearm or ammunition.

SPECIAL CONDITIONS:

☐ RESTITUTION: ☐ Deferred ☐ Def. Waives Hearing ☐ Ordered

Total: \$ _____ plus 20% fee: \$ _____

Payment Terms: _____

☐ Set by SCDPPPS _____

Recipient: _____

*Fine:

§ 14-1-206 (Assessments 107.5 %)	\$	
§ 14-1-211(A)(1) (Conv. Surcharge)	\$100	\$ 100.00
§ 14-1-211(A)(2) (DUI Surcharge)	\$100	\$
§ 56-5-2995 (DUI Assessment)	\$12	\$
§ 56-1-286 (DUI Breath Test)	\$25	\$
Proviso 47.9 (Public Def/Prob)	\$500	\$
§ 14-1-212 (Law Enforce Funding)	\$25	\$ 25.00
§ 14-1-213 (Drug Court Surcharge)	\$150	\$
§ 50-21-114(BUI Breath Test Fee)	\$50	\$
§ 56-5-2942(J) (Vehicle Assessment)	\$40/ea	\$
Proviso 90.5 (SCCJA Surcharge)	\$5	\$ 5.00
3% to County (if paid in installments)	\$	\$ 3.90
TOTAL		\$ 133.90

PTUP _____ days/hours Public Service Employment

Obtain GED ☐

Attend Voc. Rehab or Job Corp. _____

May serve W/E beginning _____

Substance Abuse Counseling ☐Random Drug/Alcohol testing ☐Fine may be pd. in equal, consecutive weekly/monthly
pmts of \$ _____ beginning _____

\$ _____ paid to Public Defender Fund

Other: _____

☐ Appointed PD or appointed other counsel.
47.12 requires \$500 be paid to Clerk
during probation.

Clerk of Court/ Deputy Clerk

Court Reporter:

SCCA/217 (03/2011)

Presiding Judge

Judge Code:

Sentence Date:

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM ABBEVILLE COUNTY
Court of General Sessions

Donald B. Hocker, Circuit Court Judge

Appellate Case No. 2014-000197

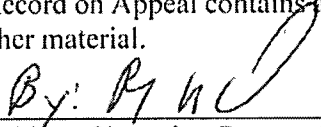
The State,.....Respondent,

v.

Shawn Patrick White,.....Appellant.

CERTIFICATE OF COUNSEL

The undersigned hereby certifies that the Record on Appeal contains all material proposed to be included by any of the parties and not any other material.

By: 
Kathleen Chewning Barnes, SC Bar No. 78854
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(803) 943-4529

Robert M. Dudek
Chief Appellate Defender
Post Office Box 11433
Columbia, South Carolina 29211
803-734-1343

Attorneys for Appellant Shawn Patrick White

April ¹³16, 2015

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM ABBEVILLE COUNTY
Court of General Sessions

Donald B. Hocker, Circuit Court Judge

Appellate Case No. 2014-000197

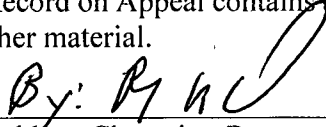
The State,.....Respondent,

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Attorneys for Appellant Shawn Patrick White

April ¹⁵16, 2015

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM ABBEVILLE COUNTY
Court of General Sessions

Donald B. Hocker, Circuit Court Judge

Appellate Case No. 2014-000197

RECEIVED

APR 16 2015

SC Court of Appeals

The
State,.....Respondent,

v.

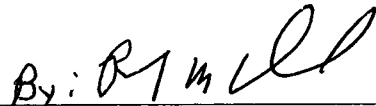
Shawn Patrick White,.....Appellant.

CERTIFICATE OF SERVICE

The undersigned hereby certifies that a copy of the Record on Appeal in the above referenced case has been served upon Salley W. Elliott, Esquire to the address listed below on this 16th day of April, 2015.

Rembert C. Dennis Building
1000 Assembly Street, Room 519
Columbia, South Carolina 29201

April 16th, 2015

By: 
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