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SC SUPREME COURT

STATE OF SOUTH CAROLINA
IN THE SUPREME COURT

Appeal from Greenville County

G. Edward Welmaker, Circuit Court Judge

Opinion No. 2015-UP-378 (S.C. Ct. App. filed 07/29/15)

11-GS-23-07262

THE STATE,

RESPONDENT,

V.

JAMES ALLEN JOHNSON,

PETITIONER

APPENDIX

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ATTORNEYS FOR RESPONDENT

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**THIS OPINION HAS NO PRECEDENTIAL VALUE. IT SHOULD NOT BE
CITED OR RELIED ON AS PRECEDENT IN ANY PROCEEDING
EXCEPT AS PROVIDED BY RULE 268(d)(2), SCACR.**

**THE STATE OF SOUTH CAROLINA
In The Court of Appeals**

The State, Respondent,

v.

James Allen Johnson, Appellant.

Appellate Case No. 2013-001314

Appeal From Greenville County
G. Edward Welmaker, Circuit Court Judge

Unpublished Opinion No. 2015-UP-378
Heard June 9, 2015 – Filed July 29, 2015

AFFIRMED

Appellate Defender David Alexander, of Columbia, for
Appellant.

Attorney General Alan McCrory Wilson, Assistant
Attorney General Mary Williams Leddon, and Staff
Attorney Susannah Rawl Cole, all of Columbia, and
Solicitor William Walter Wilkins, III, of Greenville, for
Respondent.

PER CURIAM: James Johnson appeals his conviction for homicide by child abuse, arguing the trial court erred in admitting his incriminating statement made to officers at the law enforcement center because it was the result of a two-phase interrogation in violation of *Miranda v. Arizona*, 384 U.S. 436 (1966), and *Missouri v. Seibert*, 542 U.S. 600 (2004). We affirm pursuant to Rule 220(b), SCACR, and the following authorities: *State v. Pagan*, 369 S.C. 201, 208, 631 S.E.2d 262, 265 (2006) ("The admission of evidence is within the discretion of the trial court and will not be reversed absent an abuse of discretion."); *id.* ("An abuse of discretion occurs when the conclusions of the trial court either lack evidentiary support or are controlled by an error of law."); *State v. Freiburger*, 366 S.C. 125, 134, 620 S.E.2d 737, 741 (2005) (holding an issue is not preserved for appeal where one ground is raised below and another ground is raised on appeal).

AFFIRMED.

SHORT, LOCKEMY, and MCDONALD, JJ., concur.

THE STATE OF SOUTH CAROLINA

IN THE COURT OF APPEALS

THE STATE,

RESPONDENT,

V.

JAMES ALLEN JOHNSON,

APPELLANT

APPELLATE CASE NO. 2013-001314

Appeal from Greenville County

G. Edward Welmaker, Circuit Court Judge

Opinion No. 2015-UP-378

PETITION FOR REHEARING

Appellant asks this Court to re-examine its opinion in this case and grant rehearing. Respectfully, this Court's opinion overlooks points that necessitate reversal of appellant's conviction.

The two parenthetical citations in the Court's opinion appear to indicate the reasons for affirmance were that the issue was not preserved for appeal and that the standard of review controlled. State v. Freiburger, 366 S.C. 125, 134, 620 S.E.2d 737, 741 (2005); State v. Pagan, 369 S.C. 201, 208, 631 S.E.2d 262, 265 (2006). The voluntariness of appellant's confession was raised to and ruled on by the trial judge. The trial judge conducted a full evidentiary hearing pursuant to Jackson v. Denno, 378 U.S. 368 (1964). Throughout the hearing, the court heard evidence related

to whether appellant was in custody and the giving and timing of warnings pursuant to Miranda v. Arizona, 384 U.S. 436 (1966). Appellant was not given Miranda warnings until after he made an incriminating statement and was in custody at the police station. R. 39, l. 23 – 40, l. 8.

Following the conclusion of testimony at the Denno hearing, and without hearing argument, the court recessed for lunch. R. 85, ll. 9 – 15. When the court returned from the lunch break, Judge Welmaker **immediately ruled** on the admissibility of the statements. R. 85, l. 18 – 86, l. 4. The trial judge held that after weighing the testimony, he found that appellant's statement was freely and voluntarily given. R. 85, l. 18 – 86, l. 4. The trial judge did not ask for argument from either the State or the defense before or after ruling. R. 85, l. 18 – 86, l. 4. Appellant renewed his objection to the statement during the trial and the renewed objection was denied. R. 360, ll. 16 – 21. R. 366, ll. 17 – 23. R. 373, ll. 14 – 20.

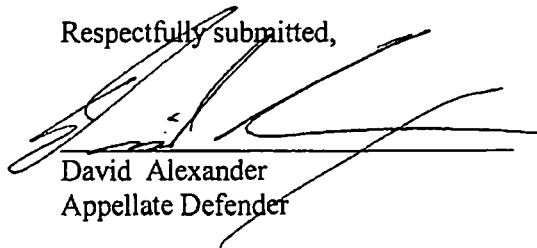
The voluntariness of appellant's confession necessarily implicated Miranda, Missouri v. Siebert, 542 U.S. 600 (2004), and State v. Navy, 386 S.C. 294, 688 S.E.2d 838 (2010). These are well-known, bedrock cases involving the voluntariness of confessions that were no doubt known to the experienced trial judge and implicated by the evidence. Nearly every Denno hearing deals with Miranda. Siebert and Navy are companion cases to Miranda. The trial judge did not feel argument was necessary to rule. Furthermore, the incentive created by the preservation decision in this case is for trial judges to rule without taking argument and therefore insulate themselves from reversal on appeal. A trial judge is presumed to know the law and this presumption should apply with greater force when the trial judge rules without taking argument on a legal issue.

As for the merits of the case, the standard of review does not control. Appellant's case bears such an incredible resemblance to Navy that the trial court made an error of law in admitting appellant's statement. In fact, the police conduct in appellant's case was even more egregious than Navy because appellant was intoxicated and mentally retarded. The police in Navy "began an

unwarned custodial interrogation designed to elicit incriminating information.” Id. at 303, 688 S.E.2d at 842. It was clear that appellant was in custody pursuant to State v. Evans, 354 S.C. 579, 583, 582 S.E.2d 407, 410 (2003). Two officers questioned Navy; three questioned appellant. Both men were picked up from their house by the police. Both men were confronted with contradictory evidence. Both sets of officers knew the results of an autopsy. Neither man received Miranda warnings until after they had confessed. Appellant’s mental retardation and intoxication left him even less capable of protecting himself from these police tactics than the defendant in Navy.

Even seven years after Seibert and five years after this Court’s opinion in Navy, the police in Greenville County were using a playbook the Courts had condemned. Respectfully, this Court overlooked the striking resemblance of this case to Navy. The trial judge ruled on the voluntariness of appellant’s statement. This Court should grant rehearing and reverse appellant’s conviction.

Respectfully submitted,

A handwritten signature in black ink, appearing to read "David Alexander", is written over a horizontal line. The signature is stylized with long, sweeping strokes.

David Alexander
Appellate Defender

This 12th day of August, 2015.

STATE OF SOUTH CAROLINA

IN THE COURT OF APPEALS

Appeal from Greenville County

G. Edward Welmaker, Circuit Court Judge

THE STATE,

RESPONDENT,

V.

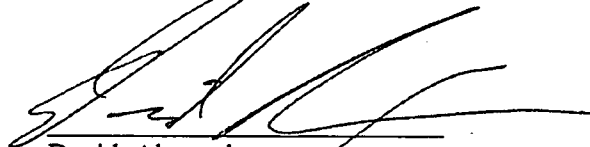
JAMES ALLEN JOHNSON,

APPELLANT

APPELLATE CASE NO. 2013-001314

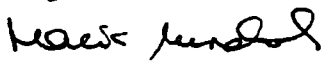
CERTIFICATE OF SERVICE

The undersigned attorney hereby certifies that a true copy of the Petition for Rehearing in the above-entitled case has been served upon Susannah Cole, Esquire, at 4446 Erskine Street, Columbia, SC 29206 and on Ms. Mary Williams Leddon, Esq., at PO Box 11549, Columbia, SC 29211-1549 this 12th day of August, 2015.


 David Alexander
 Appellate Defender

ATTORNEY FOR APPELLANT

SWORN TO BEFORE ME this 12th day
 of August, 2015.

 (L.S.)
 Notary Public for South Carolina

My Commission Expires: July 23, 2023

STATE OF SOUTH CAROLINA

IN THE COURT OF APPEALS

Appeal from Greenville County
G. Edward Welmaker, Circuit Court Judge

THE STATE,

Respondent,

vs.

JAMES ALLEN JOHNSON,

Appellant.

APPELLATE CASE NO. 2013-001314

Opinion No. 2015-UP-378

RETURN TO PETITION FOR REHEARING

On July 29, 2015, this Court affirmed Appellant's conviction for homicide by child abuse. Appellant submitted a Petition for Rehearing on August 12, 2015, arguing this Court overlooked or misapprehended several points. To the contrary, this Court properly affirmed Appellant's conviction for the reasons discussed below.

I.

In his Petition for Rehearing, Appellant contends that this Court misinterpreted the trial court's ruling following the Jackson v. Denno¹ hearing as failing to preserve the issue for review. Regarding this error preservation, Appellant offers the same arguments

¹ 378 U.S. 368 (1964)

presented in his Final Brief. Essentially, he argues the issue was preserved solely because the trial judge conducted and ruled upon a Jackson v. Denno hearing. At trial Appellant's counsel simply stated that a motion pursuant to Jackson v. Denno needed to be heard, without stating particular grounds for the hearing. In fact, the cross-examination and evidence Appellant presented at this hearing focused on his alleged gross intoxication on the day of questioning, indicating the basis for the hearing was to determine whether Appellant made a voluntary waiver of his Miranda² rights. However, Appellant did not articulate with any specificity the nature of his objection to the admission of the statement at trial, nor did Appellant request to be heard when the trial court ruled without argument. Moreover, the objections offered when the evidence was introduced during the case in chief provided no specific grounds, only referring nebulously back to the Jackson v. Denno hearing. Finally, no additional objection was made when the officer began relating the incriminating verbal portion of Appellant's statement. (Tr. p. 463-468.)

While a party need not use the exact name of a legal doctrine in the trial court in order to preserve it for appellate review, it must be clear that an argument has been made on such ground. State v. Dunbar, 356 S.C. 138, 587 S.E.2d 691 (2003). Trial counsel again failed to put on the record that Appellant's statements were inadmissible due to a violation of Miranda or Seibert.³ The trial court's general ruling clearly did not address this argument. Thus, the Court properly concluded the argument was not preserved for Appellate review.

II.

² 384 U.S. 436 (1966)

³ 542 U.S. 600 (2004)

Appellant also argues the Court overlooked the similarity of this case to State v. Navy, 386 S.C. 294, 688 S.E.2d 838 (2010) and State v. Evans, 354 S.C. 579, 582 S.E.2d 407 (2003), which he contends are “guiding precedent” applicable to his appeal.

However, inasmuch as the Appellant argues Navy and Evans control the merits of the appeal, he fails to acknowledge the distinction between those cases and the case before this Court.

In Navy, the accused provided a statement at the hospital on the day the child was hospitalized. A few days later, the accused was picked up from home and transported to the police station around 9:00 am. Navy gave his first oral statement at 9:50 am, a statement largely consistent with the first story he gave at the hospital. Officers then informed Navy the child died from suffocation and broken ribs. They followed this revelation with detailed questioning, “asking specifically how respondent had comforted the crying child.” Navy at 298, 688 S.E.2d at 840. As a result of the follow-up questions, officers elicited “that he had ‘popped’ the child on the back” and “that he may have ‘patted’ the child on its mouth to stop the crying.” Id at 299, 688 S.E.2d at 840. Only after this targeted questioning was Navy given Miranda warnings at 11:35 am. Navy then provided a written statement at 11:40 am. In this statement, officers continued asking questions targeted at eliciting further details about how Navy harmed the child. Police then consulted the pathologist with the details provided in Navy’s second statement. Id. Upon being told that Navy’s story could not have caused the child’s death because he would have had to hold his hand over the child’s mouth for at least a minute, officers returned for a third statement at 12:25 pm. Id. at 300, 688 S.E.2d at 840. In this third statement, officers asked specific questions about how long Navy had his hand over the child’s mouth and nose. Id. The Court found that evidence supported the trial court’s

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to have another agent, a female, come in to talk to Evans. Id. at 581, 582 S.E.2d at 409. The agent then interviewed Evans for an additional forty-five minutes to an hour, sympathizing with Evans on topics such as “female problems,” her deceased mother, and religion. Id. at 581-582, 582 S.E.2d at 409. Evans was escorted to the restroom by the female agent twice. Evans finally told the female agent that she started the fire in her home, at which point the original interviewing agents returned to the room, and Evans repeated the statement three more times before it was written on a “voluntary statement form.” Id. at 582, 582 S.E.2d at 409. Evans’ cousin’s three requests to see her during the interview were denied. Id. Significantly, at no point was Evans read her Miranda rights. Id.

Appellant’s case is distinguishable from Evans. While officers did escort Appellant to the restroom, it was because he was taken to the more convenient employee restroom which was in a controlled area. In such a case, it would be unreasonable for Appellant to expect that he would be allowed to roam freely in a restricted area of the police station. See Howes v. Fields, 132 S. Ct. 1181, 182 L. Ed. 2d 17 (2012) (respondent, an inmate in prison, was not allowed to leave conference room by himself to return to cell but under no circumstances could he have reasonably expected to roam freely). The evidence regarding the officers’ purpose in Appellant’s case is also much different. Here, the officer had a potential alternative suspect to Appellant, whereas in Evans, the agents were solely focused on the mother. The officer’s single sympathetic response was followed by Appellant’s confession in a brief time frame; there was no coordinated effort to elicit a confession. The officer’s short, “tell me what you’re talking about,” in no way compares to the Evans agent’s lengthy, far-ranging sympathetic discussion. In contrast to the several hours Evans was interviewed, Appellant was

interviewed for an hour and a half or two hours before giving his statement (less than half the time of Evans' interview). Further, while the interview was conducted in an office in the police station, this fact alone is not determinative. State v. Williams, 405 S.C. 263, 747 S.E.2d 194 (Ct. App. 2013), reh'g denied (Sept. 19, 2013). Finally, the officer here read Appellant his Miranda rights as soon as he realized he was making incriminating statements. The agents in Evans never attempted to Mirandize their suspect.

In sum, the police interview with Appellant did not constitute a custodial interrogation, and the police were under no obligation to give Appellant his Miranda warnings until Appellant's incriminating statements led police to place him in custody. Accordingly, even if this Court found the issue was preserved for review, the Court would find Navy and Evans distinguishable from the case at hand, and therefore non-controlling. This Court correctly found the trial court judge committed no reversible error and affirmed Appellant's conviction and sentence for homicide by child abuse.

CONCLUSION

This Court did not misapprehend or overlook any issues of fact or law. Therefore, Appellant's Petition for Rehearing should be denied.

Respectfully submitted,

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By:



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August 20, 2015

The South Carolina Court of Appeals

The State, Respondent,

v.

James Allen Johnson, Appellant.

Appellate Case No. 2013-001314

ORDER

After careful consideration of the petition for rehearing, the Court is unable to discover that any material fact or principle of law has been either overlooked or disregarded, and hence, there is no basis for granting a rehearing. Accordingly, the petition for rehearing is denied.

Paul G. Sports, Jr. J.

James E. ...
Stephanie P. McDonald.

Columbia, South Carolina

FILED

cc:

William Walter Wilkins, III, Esquire
Alan McCrory Wilson, Esquire
David Alexander, Esquire

December 16, 2015

Vol I of II

STATE OF SOUTH CAROLINA

In The Court of Appeals

RECEIVED

JAN 29 2016

APPEAL FROM GREENVILLE COUNTY

G. Edward Welmaker, Circuit Court Judge

SC SUPREME COURT

THE STATE,

RESPONDENT,

V.

JAMES ALLEN JOHNSON,

APPELLANT

APPELLATE CASE NO. 2013-001314

RECORD ON APPEAL

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STATE OF SOUTH CAROLINA
COUNTY OF GREENVILLE

IN THE COURT OF GENERAL SESSIONS

STATE OF SOUTH CAROLINA,

PLAINTIFF,

-VS-

JAMES JOHNSON,

DEFENDANT.

2011-GS-23-07262

JUNE 3, 2013

TRANSCRIPT OF RECORD

BEFORE:

THE HONORABLE G. EDWARD WELMAKER, JUDGE

APPEARANCES:

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ATTORNEY FOR THE STATE

DOROTHY MANIGAULT, ESQUIRE
ATTORNEY FOR THE DEFENDANT

DANETTE P. HANKS
CIRCUIT COURT REPORTER

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1 transcript of them. They can only put a certain amount of
2 calls in a time period on the CD. I, myself, have not
3 listened to all the calls. I think there are four that
4 might be potentially used in some reply or rebuttal,
5 depending on what the defense intends, but I have no idea
6 what they would intend to do.

7 THE COURT: Certainly, none of that would be
8 presented today?

9 MS. HODGE: No, sir.

10 THE COURT: So you'd have a chance to go over
11 that, Ms. Manigault. So your motion to continue the case
12 would be denied. But if you find something on those that I
13 need to revisit that, then I'll be glad to. I'll give you
14 a chance to -- whatever time you need during the trial, if
15 you need to review that, we'll take that, but I deny your
16 motion for continuance at this time.

17 MS. MANIGAULT: Thank you, Your Honor. The
18 remaining two motions are *Jackson v. Denno*. And, of
19 course, we have a competency hearing that we need to also
20 do. Dr. Frierson is here.

21 THE COURT: All right. Where do we stand on the
22 competency matter? Has he been evaluated?

23 MS. MANIGAULT: He has been evaluated, Your
24 Honor. We have a copy of the report and Dr. Frierson is
25 here.

1 THE COURT: This was through the State? The
2 evaluation was through the State?

3 MS. HODGE: Yes.

4 MS. MANIGAULT: Yes, sir. And we would like to
5 have his testimony as part of the record.

6 THE COURT: How many witnesses will there be in
7 the *Jackson Denno* hearing?

8 MS. HODGE: Your Honor, there will be three
9 officers.

10 THE COURT: Well, if Dr. Frierson is here, then
11 we can go ahead and take that one first and then we can
12 move on to the *Jackson Denno*.

13 MS. HODGE: Yes, sir.

14 THE COURT: All right. Do you want to call a
15 witness, Ms. Manigault, or -- in other words, the report
16 shows competency; is that right?

17 MS. HODGE: Yes, Your Honor.

18 MS. MANIGAULT: Yes, Your Honor.

19 THE COURT: You just want to amplify his report
20 by some testimony?

21 MS. MANIGAULT: Yes, sir.

22 THE COURT: If either of you want to call him,
23 I'll be glad to hear his testimony.

24 MS. HODGE: I believe it's a defense motion. The
25 Defendant is presumed competent under the law and, also,

1 there is a competency finding.

2 THE COURT: A report, right?

3 MS. HODGE: Yes, sir.

4 THE COURT: I'll be glad for you to supplement
5 it, Ms. Manigault.

6 MS. MANIGAULT: Thank you, Your Honor. I call
7 Dr. Frierson.

8 THE CLERK: Place your left hand on the bible and
9 raise your right.

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

12 THE WITNESS: I so affirm.

13 THE CLERK: Have a seat. Please state your name
14 for the record.

15 THE WITNESS: I'm Richard Lesesne Frierson.

16 DR. RICHARD FRIERSON,

17 BEING FIRST DULY SWORN, TESTIFIED AS FOLLOWS:

18 DIRECT EXAMINATION

19 BY MS. MANIGAULT:

20 Q. Dr. Frierson, how are you employed and where?

21 A. I'm employed by the University of South Carolina
22 School of Medicine. I am professor of Psychiatry. I also
23 provide contractual work on the part of the University to
24 the Department of Mental Health where I conduct competency
25 and criminal responsibility evaluations that are court

1 ordered.

2 Q. All right. And have you conducted criminal
3 evaluations before -- ever, before seeing James Allen
4 Johnson?

5 A. Yes.

6 Q. And how many competency evaluations have you
7 conducted?

8 A. I would be estimating; fifteen hundred.

9 Q. And how long you been doing this?

10 A. Since 1993.

11 Q. Al right. And you have testified in Court before?

12 A. Yes.

13 Q. And you've been qualified to do evaluations?

14 A. Yes.

15 Q. Did you conduct an evaluation on James Allen Johnson
16 on September 11, 2012?

17 A. Yes.

18 Q. And what was your finding for Mr. Johnson during that
19 evaluation?

20 A. Finding concerning?

21 Q. Concerning his condition to stand trial?

22 A. Okay. Yes, he was evaluated on September 11th with
23 someone from the Department of Disabilities and Special
24 Needs and we opined that Mr. Johnson is currently competent
25 to stand trail.

1 Q. And did you have an opportunity to review any of his
2 previous mental health counseling or records?

3 A. I did. We looked at his prior contacts with the
4 Greenville Mental Health Center, as well as some records
5 from the detention center where he is on medications for
6 depression. And we looked at school records.

7 Q. And at the time of your evaluation, was he on
8 medication at that time?

9 A. Yes.

10 Q. And what kind of medication was he on?

11 A. He was taking two medicines to treat a condition
12 called major depression, Celexa or Citalopram; it's an
13 antidepressant medication. And also another medication
14 called Trazodone, which is also an antidepressant
15 medication that's usually used to help people sleep.

16 Q. Okay. How was his response to you in evaluating him
17 or your questioning him? Was he cooperative, was he vague,
18 was he un-attentive?

19 A. He was very cooperative. Every occasion that I've
20 seen him, he appeared to try to give the best effort to
21 assist with the evaluation.

22 Q. In your evaluation, did he appear to understand the
23 questions you were asking him?

24 A. Yes.

25 Q. And to you, was he giving appropriate answers for

1 those kinds of questions?

2 A. Yes.

3 Q. Did he give you any information on his background or
4 history, family history?

5 A. Yes. But we also had spoken with his mother who
6 provided a social history about his childhood, those sorts
7 of things. But that was augmented with his self-report.

8 Q. And I think somewhere it's noted in the report that he
9 may be borderline mental retardation?

10 A. Actually, I believe he has intellectual disability or
11 mental retardation; not borderline, I think. All of his
12 prior measured IQs from his school years are below seventy,
13 which is a requirement for mental retardation. He has had
14 concurrent deficits in his adaptive functioning; his
15 ability to function like a normal person would. And has
16 been receiving disability for this since childhood. So his
17 ability to hold competitive employment and those sorts of
18 things, it's impaired by his intellectual functioning.

19 Q. And his intellectual impairment, would that hamper him
20 from knowing right from wrong?

21 A. Not in and of itself, no.

22 Q. So would there be anything that you discovered in his
23 social history, family history, combined with an
24 intellectual impairment, hamper him from understanding
25 right from wrong?

1 A. Well, I did not conduct a criminal responsibility
2 evaluation because I was not asked to by the Court. But
3 from a hypothetical situation, a hypothetical manner, I
4 don't believe that his intellectual functioning is so
5 impaired as that he would not know it's wrong to have
6 killed somebody or to have abused a child resulting in
7 death.

8 Q. So you believe that he has an understanding, in your
9 discussion, of the process that we're going through?

10 A. He has a basic understanding of courtroom procedures,
11 the roles of the court officers, the solicitor, the judge,
12 the jury, your role. He understands the potential outcome.
13 He understands that he is looking at a significant amount
14 of prison time if he is convicted. He understands some
15 issues related to admissibility of his statements. He was
16 able to give me rational reasons why he believes,
17 particularly his second statement, should not be admitted
18 into evidence, and wishes for you to fight for that, which
19 is actually more sophisticated than I would expect, given
20 his prior measured IQ.

21 Q. And have you had a chance to evaluate or interview Mr.
22 Johnson since September 11, 2012?

23 A. I saw him briefly today.

24 Q. And as a result of that interview, have you changed
25 your finding?

1 A. No. No, I have not. The findings are the same. His
2 depression is a little bit better, better treated, than
3 when I saw him in November because they increased his
4 medication at some point since November. But he, in my
5 opinion, remains competent to stand trial.

6 Q. All right. Thank you.

7 **CROSS-EXAMINATION**

8 **BY MS. HODGE:**

9 Q. Dr. Frierson, I think you listed in your report under
10 Axis II, that he's mild intellectual disability. That's
11 the lowest grade, if you will? There's mild, moderate,
12 severe ---

13 A. And profound.

14 Q. --- and profound?

15 A. Yeah. That's the -- like it says, the mildest form of
16 mental retardation. But he does -- he would be considered,
17 in the older terminology, as having mental retardation. We
18 now say intellectual disability pursuant to statute
19 changes. And actually now in DSM V, we're going to be
20 saying intellectual disability.

21 Q. But you were able to communicate with him, carry on
22 conversation in specific to courtroom process, procedure?

23 A. Yes.

24 Q. Did he have to be redirected multiple times or
25 anything broken down to bite-sized bits or was it fairly

1 fluid?

2 A. Well, I knew going into the evaluation his
3 intellectual background, and so I, accordingly, phrased my
4 questions with very simple terms that he could understand.
5 But he understands -- I mean, you know, very complicated
6 words he might miss. But, for example, he was able to use
7 words like prosecute. When I asked what's the job of the
8 solicitor, to prosecute, and define that. That's pretty
9 surprising given his intellectual functioning. But I think
10 he's capable of understanding.

11 Q. And people with mild intellectual disability, they can
12 be self-sufficient in ways? They can possibly live on
13 their own?

14 A. Well, there has to be some deficits in adaptive
15 functioning. In other words, there's certain things that
16 people with mild intellectual disability cannot do that a
17 normal person can; that's by definition. For example, he
18 has been told when he tried to work, he's been fired
19 because he was too slow. So he has a disability that
20 prevents him from maintaining competitive employment. I
21 mean, he might be able to go pick up trash somewhere, but
22 he's not going to be able to support himself with work.

23 Q. Right.

24 A. And so that is a deficit. Now, can he dress himself,
25 wash clothes, do some cooking? Yes. He needs assistance

1 in managing his money. That's something he cannot do.

2 Q. Okay. And you did not administer any IQ tests during
3 this evaluation? You were basing your findings on previous
4 IQ tests?

5 A. Yes. He's had numerous IQ tests done as a childhood
6 -- during his childhood. And I relied on those.

7 Q. Did you know how far he went in school and if he did
8 -- and you mentioned working. Did he tell you that he'd
9 worked anywhere or done anything like that?

10 A. Yes. If you'll bear with me. He attempted to work
11 cleaning trailers at a welding shop. And that's where he
12 was fired because he was told his work was too slow. He
13 left school, according to him, in the eleventh grade.

14 However, the last IEP we were provided from the Greenville
15 County School District was from 1998. He would have been
16 fourteen around that time. And I don't believe it was
17 eleventh grade. It doesn't really -- these records are
18 very confusing and I spent a lot of time looking at them,
19 but this was from a middle school.

20 Q. And that's what you were provided. So do you know or
21 do you have reason to believe there's nothing else out
22 there or you're just not ---

23 A. I have reason to believe there's nothing else out
24 there.

25 Q. Okay.

1 A. I don't -- you know, a lot of times special education
2 records are not kept for long periods of time. He said
3 eleventh grade. His mother also said he quit in the
4 eleventh grade, when he turned seventeen.

5 Q. Had he been involved with law enforcement before? Was
6 that something -- did y'all discuss that or did that come
7 up in the evaluation, that he had any prior brushes with
8 the law or any incarcerations or juvenile incarcerations?

9 A. Yes. I mean, he's had prior arrests, certainly.

10 Q. Prior?

11 A. Arrests.

12 Q. Okay.

13 A. For assault and battery in 2010; for petit larceny in
14 2007; for public disorderly conduct and possession of drug
15 paraphernalia in 2005.

16 Q. So prior involvement in the judicial system?

17 A. Yes.

18 Q. Thank you.

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

20 THE COURT: Any redirect?

21 MS. MANIGAULT: None, Your Honor.

22 THE COURT: Thank you, Dr. Frierson. You may
23 step down.

24 Does either side believe they might need him later?

25 Is he under subpoena to be here for the trial?

1 MS. HODGE: He's under subpoena to here for the
2 trial, but I'd ask that he be excused for the day.

3 THE COURT: Anything else either of you need from
4 him, you think?

5 MS. MANIGAULT: No, sir.

6 THE COURT: Thank you. You may be excused.

7 All right. Anything else on this issue?

8 MS. MANIGAULT: Nothing else on this issue, Your
9 Honor.

10 THE COURT: I'll try to review that report before
11 I issue -- if we could move to the *Jackson versus Denno*
12 now?

13 MS. HODGE: Yes, sir. Your Honor, there were --
14 according to the reports, there were four statements made
15 by the Defendant. I have one verbal statement at the time
16 of the incident when the first responding officers arrived
17 on the scene. That would be Deputy Mathias.

18 THE COURT: Come around and be sworn, please,
19 sir.

20 THE CLERK: Place your left hand on the bible and
21 raise your right.

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

24 THE WITNESS: I swear.

25 THE CLERK: Have a seat. Please state your name

1 for the record.

2 THE WITNESS: My name is Carl Mathias.

3 CARL MATHIAS,

4 BEING FIRST DULY SWORN, TESTIFIED AS FOLLOWS:

5 DIRECT EXAMINATION

6 BY MS. HODGE:

7 Q. Deputy Mathias, are you the resource officer at Blue
8 Ridge High School?

9 A. Yes, ma'am.

10 Q. And is that high school close in location to
11 Road.

12 A. It's Road, yes, ma'am, it is.

13 Q. And did you hear over the radio a call, an emergency
14 call, a 9-1-1 call for a pediatric child choking on May
15 25th, 2011?

16 A. Yes, ma'am.

17 Q. And did you respond to that call?

18 A. Yes, ma'am.

19 Q. And what capacity were you responding?

20 A. As a first responder. I was making sure that the
21 child was safe, if I needed to aid any first aid and to
22 secure the scene if there was a crime committed.

23 Q. And that was not your normal duty as the resource
24 officer?

25 A. No, ma'am.

1 Q. It's just you were close, and they ---

2 A. I was walking down the hall going out to my patrol
3 car, heard the call over the radio. Since it was so close,
4 and I didn't know if EMS was there, I felt it was my
5 responsibility to make sure that that child was okay.

6 Q. And when you -- did you arrive at the residence
7 shortly thereafter?

8 A. Yes, ma'am.

9 Q. And what did you do on arrival?

10 A. When I arrived I saw the EMT fastly walking down the
11 driveway with the child in his hand. And the child
12 appeared to be lifeless. And I met -- there were several
13 people out in the yard at the time and I met the mother of
14 the child. And the mother basically said that, you know,
15 she wanted to go to the hospital. I said, well, let's go
16 back inside because there's going to be a uniform patrol
17 deputy that's going to be on scene and he's going to be
18 leading this investigation. So we went inside. And this
19 young -- this gentleman was in the living room at the time.
20 And I asked the mother what happened? And she said, well,
21 my daughter was drinking tea and she choked and she
22 couldn't breathe. I didn't ask this gentleman any
23 questions. He just said, I don't know what happened. I
24 was in the bathroom. And I don't remember if he said he
25 was shaving or using the bathroom. And I said, well, where

1 did she throw up? And the mother showed me the spot on the
2 rug. And I got down to smell the spot that they said the
3 child threw up in. And I didn't smell sourness or anything
4 like that. And I thought that was rather suspicious.

5 Q. At this time, were you there to make any arrests or
6 take anyone into custody?

7 A. No, ma'am.

8 Q. And did you question the Defendant specifically or was
9 that just the only spontaneous statement he made?

10 A. I didn't even ask, I didn't even ask the Defendant a
11 question. He just verbally gave that response after I
12 asked the mom what had happened.

13 Q. So he spoke to you freely, voluntarily?

14 A. Yes, ma'am.

15 Q. You were dressed in uniform?

16 A. Yes, ma'am.

17 Q. Knowing you were a police officer?

18 A. Yes, ma'am.

19 Q. Did he say anything else to you while you were at the
20 house, any other statement?

21 A. No, not that I recall.

22 Q. Okay. And did you take him into custody or her into
23 custody after these statements were made?

24 A. No, ma'am.

25 MS. HODGE: And that would be all of my questions

1 as to this witness.

2 **CROSS-EXAMINATION**

3 **BY MS. MANIGAULT:**

4 Q. And you had no further contact with Mr. Johnson after
5 that initial contact on May 25th at the house?

6 A. No, ma'am.

7 Q. And you said he when -- he said, I don't know what
8 happened, I was in the bathroom?

9 A. That's right.

10 Q. And that's it?

11 A. That's right.

12 MS. MANIGAULT: No further questions?

13 MS. HODGE: Thank you. You can step down.

14 THE COURT: You may step down.

15 MS. HODGE: The State would call investigator
16 Autrey.

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

20 THE WITNESS: I swear.

21 THE CLERK: Come forward and have a seat and
22 state your name for the record, please.

23 THE WITNESS: Jennings Autrey.

24 **JENNINGS AUTREY,**

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

DIRECT EXAMINATION

BY MS. HODGE:

Q. Investigator Autrey, were you assisting Investigator, well now, Sergeant Chris Miller in the investigation of the death of Minor 1 ?

A. I was.

Q. And did you have occasion to respond to Greenville Memorial Hospital on May 25th, 2011?

A. I did.

Q. And what were you responding there for?

A. At the request of then Sergeant Jones, he asked me to respond due to the situation regarding Minor 1 and that there was some questions. I needed to respond basically to obtain her medical condition at that time. And I responded to the CAT Scan area.

Q. And at some point while you were at the hospital, were you asked to find the child's mother and the child's mother's boyfriend or ---

A. Well, what happened, I walked with the doctor, as well as Minor 1 and the nursing staff there, up to the PICU Unit. And then once I was there, the family showed up while I was waiting for additional investigators to arrive. And at that time, the Defendant, along with I believe one of the friends of the victim, the victim's mom had arrived and they waited in a separate waiting area and I spoke with

1 the victim's mother.

2 Q. And at this point, were you there to arrest either the
3 mother or the Defendant or anyone involved in this case?

4 A. No, ma'am.

5 Q. And when you -- did you ask to speak to the Defendant
6 during this time?

7 A. I did. I was there to obtain their personal
8 information. Then I spoke with him and asked him to tell
9 me what happened.

10 Q. At that time was he free to tell you he didn't want to
11 talk?

12 A. Absolutely, yes, ma'am.

13 Q. Were you -- did you identify yourself as a law
14 enforcement officer?

15 A. I did and I was wearing a gun and badge, as well.

16 Q. And did he agree to speak to you freely and
17 voluntarily?

18 A. He did.

19 Q. And what did he tell you at that point?

20 A. He said that he was using the restroom, he was in the
21 bathroom and he heard the victim's mother call for help and
22 told him to call 9-1-1. So he said he jumped up and ran to
23 the living room area and he called 9-1-1.

24 Q. Did he state that he didn't know anything else or see
25 anything else, something to that effect?

- 1 A. Correct. Correct. He said that he did not see
2 anything except for the victim lying on the floor and then
3 the mother doing CPR.
- 4 Q. So he denied any knowledge of how the child came to be
5 in the hospital?
- 6 A. Correct. Yes, ma'am.
- 7 Q. At that time, did you then make any arrest of them or
8 take custody of them?
- 9 A. I did not.
- 10 Q. Did you write that statement, have him write that
11 statement or did you write it?
- 12 A. I did not. It was completely verbal.
- 13 Q. And did you put it in a report?
- 14 A. I did. Yes, I did. It was in a supplemental.
- 15 Q. Thank you. As to the first statement that you talked
16 to the Defendant verbally at the hospital. Did you also
17 then -- were you also involved in a written statement taken
18 from the Defendant on June the 2nd, 2011?
- 19 A. I was.
- 20 Q. And tell me, was he in custody at that time?
- 21 A. When we first initially spoke with him, no, ma'am, he
22 was not. And then once we continued that at some point he
23 was.
- 24 Q. All right. So he had not been arrested?
- 25 A. He had not.

1 Q. He was not in custody, initially?

2 A. Had not.

3 Q. And where was this statement taken from?

4 A. It took place at the LEC, Law Enforcement Center, in
5 the CID Division, homicide office.

6 Q. And do you know how the Defendant got to the CID?

7 A. I believe he was driven there by two other deputies
8 from the sheriff's office.

9 Q. And were you present when he arrived?

10 A. I don't believe so. I believe they already had him
11 there; we responded, he was already there.

12 Q. And who was with you?

13 A. Investigator Miller. I'm sorry.

14 Q. That's all right. And once you and Investigator
15 Miller located him at the LEC, who did most of the talking?

16 A. Investigator Miller.

17 Q. Okay. So you're just there as a witness?

18 A. I was there as a witness, yes, ma'am.

19 Q. Okay. And while you were witnessing this interview at
20 the beginning, the Defendant was not in custody?

21 A. He was not.

22 Q. He was not handcuffed?

23 A. He was not.

24 Q. Was he free to say, I want to go. I don't want to
25 talk to y'all?

1 A. Yes, ma'am.

2 Q. Was there an arrest warrant in hand at this point?

3 A. No, ma'am.

4 Q. And was he advised of his *Miranda* rights at this
5 point?

6 A. At that point, no, ma'am.

7 Q. And what did he say -- well, let me back up one
8 question. Did he speak freely and voluntarily ---

9 A. He did.

10 Q. --- with Investigator Miller?

11 A. He did, yes, ma'am.

12 Q. All right. And what did he tell Investigator Miller
13 at this point?

14 A. Again, he started out about how he -- in the bathroom.
15 Again, the victim's mother yelled at him that Minor1 , the
16 victim, was not breathing and that he needed to call 9-1-1.
17 He went on to say he had never seen the mother be mean to
18 the victim or her sibling. When the topic of the victim's
19 biological father came up, he hinted that he did not like
20 him because he didn't want to be involved with the victim's
21 life. And then as it went on, we talked to Ann. And he
22 said that Ann had questions about calling 9-1-1 because
23 there was possibly some illegal substances in the residence
24 and she was scared that the kids -- the children would be
25 taken away.

1 Q. There was what in the residence?

2 A. There may have possibly been marijuana. I said
3 illegal substance. But marijuana.

4 Q. Oh, illegal substance, marijuana?

5 A. Yeah.

6 Q. Okay.

7 A. She was afraid the kids would be taken away. And then
8 he said that he called 9-1-1 and the victim's mother was
9 just sitting there crying. And that's ...

10 Q. All right. And how was his demeanor while he was
11 relaying this information?

12 A. At that time he was calm. Again, just talking at that
13 time.

14 Q. All right. And was somebody writing this down? Were
15 you taking notes?

16 A. At that time, no, when that happened.

17 Q. Okay. What happened to make things change? Did
18 something happen?

19 A. Well, once he started talking, he continued talking
20 about how he wanted the child to have help, he wanted to
21 have help, wanted peace. Then went back to the incident
22 location again, as far as the incident that had happened.

23 And he said that he never hurt Minor 1 , the victim, that he
24 knows of. He swore he never beat the girls, Minor 1 and
25 her sibling. He said he was not being truthful about

1 something. He said that he picked up Minor 1 , , the victim,
2 and saw that she was not breathing. He thought she was
3 sleeping. He wanted to be with her. He wanted everyone to
4 leave so he could have her. He then said accidents happen.
5 He said he wishes that she never went away. He then made
6 the statement that he threw a toy across the room and hit
7 her in the head and she started screaming. He said that he
8 picked her up and tried to calm her down. And that's when
9 he said he covered her mouth until she quit crying. He
10 then said that Ann was in the bed, that he made up the tea
11 story because he was scared.

12 Q. And did things change at this point in time?

13 A. They did. At that point in time, once he had made
14 that statement, he was read and explained his *Miranda*
15 rights and asked if he wished to have the statement
16 documented. He then did sign that Waiver of Rights form
17 and provided a sworn statement.

18 Q. And were you present during the Waiver of Rights form?

19 A. I was.

20 (WHEREUPON, Court Exhibit Number 1 marked for
21 identification.)

22 Q. I'm going to show you what's been marked Court's
23 Exhibit Number 1. Is this a copy of the Waiver of Rights
24 form the Defendant was advised of and then signed?

25 A. It is.

1 Q. And are you listed on this form as a witness?

2 A. I am.

3 Q. All right. Can you please tell the Court what rights
4 the Defendant was advised of at this time?

5 A. His *Miranda* rights, do you want me to read them now?

6 Q. Yes, please. Tell me what you told him.

7 A. It says, before we ask you any questions, you must
8 understand your rights. You have the right to remain
9 silent. Anything you say can be used against you in Court.
10 You have the right to talk to a lawyer for advice before we
11 ask you any questions and to have him with you during
12 questioning. If you have no money to pay a lawyer's fee,
13 the court will appoint one to represent you without cost if
14 you wish. If you decide to answer questions now without a
15 lawyer present, you will still have the right to stop
16 answering at any time. You also have the right to stop
17 answering any time until you talk to a lawyer. The next
18 section is the Waiver of Rights. It says, I've read the
19 statement of my rights and I understand what my rights are.
20 I am willing to make a statement and answer questions. I
21 do not want a lawyer at this time. I understand, though,
22 what I am doing. No promises or threats have been made to
23 me and no pressure or coercion of any kind has been used
24 against me. And coercion is circled because Investigator
25 Miller explained it to him. And it was circled so -- and

1 then initialed underneath it stating that Mr. Johnson
2 understood what coercion meant.

3 Q. All right. And did Mr. Johnson initial actually each
4 line of what his rights were?

5 A. He did.

6 Q. Did you or Investigator Miller ask him to read any of
7 these back to you or were they read to him?

8 A. I believe they were read to him. I don't recall
9 having him read them back.

10 Q. Okay. And what were his initials -- what purpose are
11 they for?

12 A. Basically saying that he understood what his rights
13 were, understanding each line, whether he read them out
14 loud or whether he read them to himself, but initialing
15 that he understood what they were.

16 Q. And did he ask any questions about, what does this all
17 mean, or I'm confused or state anything of that nature?

18 A. No, ma'am.

19 Q. Did he actually, by initialing, tell you that he did
20 understand what was going on and what his rights were?

21 A. Yes, ma'am.

22 Q. Did he sign the paper also acknowledging what his
23 rights were?

24 A. He did.

25 Q. Did he do this freely and voluntarily?

1 A. Yes, ma'am.

2 Q. Did anybody threaten him, force him, pressure him in
3 anyway to waive his rights?

4 A. No, ma'am.

5 Q. Was anything promised to him to get him to waive his
6 rights?

7 A. No, ma'am.

8 Q. Any mention of working out a bond or plea offer or
9 anything like that?

10 A. No, ma'am.

11 Q. Anything like, give you something to eat, something to
12 drink, cigarettes, anything like that?

13 A. No, ma'am.

14 Q. All right. Was anything withheld from him, such as a
15 bathroom break, or food or water, anything like that?

16 A. No, ma'am.

17 Q. In your opinion, did he freely, voluntarily,
18 knowingly, intelligently waive his rights?

19 A. Yes, ma'am.

20 Q. And did he then freely and voluntarily continue to
21 speak to Investigator Miller?

22 A. He did.

23 Q. And at that point what was his -- has his emotional
24 state charged?

25 A. It did a little bit. He was a little more emotional.

1 I think at some point he may have started crying a little
2 bit. So it did.

3 Q. And what did he go on to say after that?

4 A. I'll read his statement.

5 Q. Okay.

6 A. Basically, those additional particulars on the
7 statement, he provides his date of birth and his Social
8 Security Number. And he says, I understand all the
9 questions that Investigator Miller has asked me and I'm
10 giving this statement freely and voluntarily. I'm giving
11 Investigator J. Autrey permission to type my statement for
12 me. I am not under the influence of any drugs or alcohol.
13 I swear that I never beat them. I played with them all the
14 time. There is something that I haven't been truthful
15 about. I picked her up and I saw that she was not
16 breathing. I thought she was just asleep. I thought she
17 was asleep. I was trying to get her back. I just wanted
18 to be with her, the baby. The rest could leave if they
19 would just let me have her. I've been there for her if I
20 knew what I was doing. I was in the bathroom, but -- and
21 then he paused -- so I tried to be a daddy. I tried to
22 correct them when they were wrong so they would not turn
23 out like my sorry family. I tried to take care of her. No
24 matter what happens, I'm going to be the bad one and then
25 she can have her daughter back. Accidents happen. I

1 hadn't been on my medication in a while at all. I wish she
2 had never went away. I threw a toy across the room and it
3 hit her. It hit her in the forehead where there are all
4 the bruises. It was that day. If I didn't know she didn't
5 have a chance, I never would have thrown that toy. That's
6 what happened. I never would hurt a kid. I've helped
7 raise them. I don't deserve to live. I never should have
8 picked up that toy. That was the day before. I don't know
9 how those bruises got there. She started screaming. I was
10 just trying to calm her down. I kissed on her at first and
11 held her. She kept crying and screaming. I hadn't been on
12 my medication. People are going to hurt me. Ann and CO's.
13 I covered Minor 1 mouth until she quit crying. Ann was
14 in the bed when this happened. I then went and told Ann
15 that Minor 1 was not breathing. Ann came in the living
16 room and I told her there was a glass of tea there and I
17 guess Minor 1 drank it. I told Ann about the tea because I
18 was scared. I love them and I always will. I'm sorry for
19 the problems. I'm sorry for God creating me. I'm sorry
20 for all this. I've never been this kind of person. Please
21 forgive me in time.

22 Q. And on this statement that was typed by you ---

23 A. Uh-huh (affirmative).

24 Q. --- did you print out a copy for him?

25 A. I did.

1 Q. And did someone read the statement to him or was he
2 given the statement to read to himself.

3 A. It was read aloud and then he had a copy to follow
4 along.

5 Q. All right. And did he initial after -- or at the
6 beginning and the end of each paragraph?

7 A. He did.

8 Q. So there are at least one seventeen or eighteen of his
9 initials on this page?

10 A. Yes.

11 Q. All right. And then did he sign this statement at the
12 bottom as well?

13 A. He did.

14 Q. Was he given the opportunity to make any corrections
15 or changes?

16 A. Yes.

17 Q. Did he choose to do that?

18 A. No.

19 Q. Now, did he ever tell you or Investigator Miller that
20 he couldn't read?

21 A. No, ma'am.

22 Q. Did you talk about anything about his educational
23 background or anything like that?

24 A. At the beginning of the statement it says, I have a
25 twelfth grade education and I can read and write. And that

1 comes standard on every form, the education level is left
2 blank. So we ask them how far have you gone in school and
3 he told us the twelfth grade.

4 Q. And while he was giving his statement, and he and
5 Investigator Miller were talking, did you have any concerns
6 that he did not know what he was saying or what he was
7 doing?

8 A. No, ma'am.

9 Q. In this statement he mentions something about not
10 being on his medication. Did anyone ask what that was or
11 what that was in reference to?

12 A. No, ma'am.

13 Q. Did he appear to be under the influence of any type of
14 illegal substances?

15 A. No, ma'am.

16 Q. So in your opinion, he was speaking, communicating
17 well?

18 A. Yes, ma'am.

19 Q. He was able to keep his thoughts congruent with what
20 the questions were?

21 A. Yes, ma'am.

22 Q. He wasn't going off on tangents of irrelevant things?

23 A. No, ma'am.

24 Q. And after he made that statement, was he then
25 arrested?

1 A. He was, yes, ma'am.

2 Q. So he was not free to leave after he signed this
3 statement?

4 A. That is correct.

5 Q. Thank you. Please answer any of Ms. Manigault's
6 questions.

7 A. Yes, ma'am.

8 **CROSS-EXAMINATION**

9 **BY MS. MANIGAULT:**

10 Q. Did you ask him any questions about any of his
11 statements that he made to you after it was made? For
12 instance, no matter what happens, I'm going to be the bad
13 one. Then she can get her daughter back?

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

15 Q. Did you ask him to explain what that meant?

16 A. I did not, no, ma'am.

17 Q. And while you were sitting there, did anybody else ask
18 him to explain?

19 A. Not that I recall, no, ma'am.

20 Q. And I believe you said that he was already positioned
21 in the room when you got there?

22 A. He was at the office. I don't remember if he was
23 sitting in the exact chair that he sat through the whole
24 process, but he was already there.

25 Q. Okay. Did you have an opportunity to observe him walk

1 about, during this ---

2 A. He was sitting, he was sitting in a chair with no
3 restraints.

4 Q. Your testimony is that he did not appear to be
5 intoxicated. Did he smell of liquor or drugs?

6 A. No, ma'am.

7 Q. Was his eyes dilated? Was his speech slurred?

8 A. No, ma'am.

9 Q. Okay. So he talked very clearly to you. You could
10 understand?

11 A. Yes, ma'am.

12 Q. Was he asked anything that's not on this statement?

13 Did you ask him whether he was on drugs, legal or illegal?

14 A. Correct. As far as what goes on here, it says as far
15 as the -- are you under the influence of any drugs. And he
16 said he was not.

17 Q. Okay. That was asked of him. He wasn't told to read
18 it; right?

19 A. Correct, correct. Yeah.

20 Q. How long is this interview on June -- I believe this
21 is the June 2nd interview. How long did that interview
22 last?

23 A. I don't remember the exact time. I know it was -- the
24 waiver was signed, it was ten-o-two. Hour and a half, two
25 hours maybe.

1 Q. Hour and a half, two hours?

2 A. Yeah. Again, that's a guess or an estimate.

3 Q. That's fine. And did he ever ask to go to the
4 restroom?

5 A. I don't recall.

6 Q. Was he ever taken to the restroom?

7 A. I think he was. But again, without knowing, I don't
8 want to say yes or no.

9 Q. Did he ask for a cigarette break or ---

10 A. I don't believe so.

11 Q. Did he ask for water?

12 A. I don't remember if he asked or not. It was available
13 if he needed, so ...

14 Q. Did he ask for food or anything?

15 A. No, ma'am.

16 Q. All right. He was developed as a suspect when? Do
17 you know?

18 A. That, I do not know. No, ma'am. I won't go into
19 that.

20 Q. And when you interviewed him on June 2nd, was he a
21 suspect at that point?

22 A. He was a possible suspect at that time.

23 Q. Possible suspect, okay. And I believe you said that
24 you did not give a *Miranda* warning until after he'd made an
25 admission to you to ---

1 A. Well, again, once he made that admission the interview
2 was stopped and *Miranda* was then read to him and explained
3 to him. And then he again gave the second account.

4 Q. Okay. So *Miranda* was given after he said, accidents
5 happen and he threw a toy across the room?

6 A. I believe that's correct.

7 Q. And hit her in the head, you said?

8 A. I believe that's correct.

9 Q. Did he ever ask you for an attorney? Tell you that he
10 needed to talk with an attorney?

11 A. No, ma'am.

12 Q. Did you ever leave the room at all during the process
13 of this interview on June 2nd with the Defendant?

14 A. No, ma'am.

15 Q. Okay. So you stayed in the room the entire time?

16 A. I did, yes, ma'am.

17 Q. And you never heard him say that he needed an
18 attorney, he wanted to talk to an attorney?

19 A. No, ma'am.

20 Q. All right. Did you observe him slouching in the chair
21 or leaning over on the desk with his head down or anything
22 like that?

23 A. I believe he would lean over occasionally and put his
24 elbows on his knees. I don't remember any slouching or
25 lying on the desk or anything like that.

1 Q. Okay. So he was not trying to recline as if he was
2 trying to overcome a condition or anything like that?

3 A. I don't believe so, no, ma'am.

4 Q. And I believe you said you read the statement out
5 aloud or somebody did?

6 A. Uh-huh (affirmative).

7 Q. And he was given a copy to read along with you?

8 A. Correct. And then he initialed at the beginning and
9 end of each paragraph.

10 Q. And even before he signed the statement, did he ask
11 for an attorney or state he wanted to speak to an attorney?

12 A. No, ma'am.

13 Q. Did anybody jump up and hit the desk or beat the desk
14 and threaten him in the room?

15 A. No, ma'am.

16 Q. How large is the interview room?

17 A. It has six desks in it so you're probably talking
18 fifteen by twenty, maybe. It's a pretty good sized room.

19 Q. And you said that in your observation he was speaking
20 and communicating well in response to the questions?

21 A. Yes, ma'am.

22 Q. And he related to the questions and answered them
23 appropriately?

24 A. Yes, ma'am. Yes, ma'am.

25 Q. And I think you said you had no concerns that he

1 didn't understand what was going on?

2 A. No, ma'am.

3 Q. Thank you.

4 MS. HODGE: Thank you. You can step down.

5 And the State would call Sergeant Miller.

6 THE CLERK: Do you solemnly swear or affirm to
7 tell the truth, the whole truth and nothing but the truth,
8 so help you God?

9 THE WITNESS: I do.

10 THE CLERK: Please have a seat and state your
11 name for the record.

12 THE WITNESS: Christopher Miller.

13 CHRISTOPHER MILLER,

14 BEING FIRST DULY SWORN, TESTIFIED AS FOLLOWS:

15 DIRECT EXAMINATION

16 BY MS. HODGE:

17 Q. Investigator Miller, were you the lead detective -- or
18 excuse me -- investigator in a homicide by child abuse case
19 involving Minor 1 ?

20 A. I was.

21 Q. And on May the 25th of 2011, did you respond initially
22 to the scene?

23 A. I did.

24 Q. Which was Road?

25 A. Yes, that's correct.

1 Q. And was the Defendant or anyone present at the scene
2 when you arrived there?

3 A. No. I was advised that they had went to the hospital.

4 Q. Did you stay and then process the scene and go on to
5 the hospital as well?

6 A. I did.

7 Q. Once at the hospital, did you make contact with the
8 Defendant, Mr. Johnson?

9 A. I did eventually.

10 Q. Did some other things before that?

11 A. Right.

12 Q. Okay. And was he at the hospital in the waiting area?

13 A. He was.

14 Q. Did he agree to talk to you that night?

15 A. Yes. I asked him if he would come with me back to the
16 office and he agreed to ride with me and I took him back to
17 my office.

18 Q. At this point did you identify yourself as an
19 investigator, officer?

20 A. I did. And, of course, I was wearing my badge and a
21 gun.

22 Q. And explain to him what you wanted to talk about, the
23 condition of the child?

24 A. Yes.

25 Q. And that you'd been informed that only he and the

1 mother had been at home when this child went unresponsive?

2 A. That's correct.

3 Q. Along with a two and a half year old?

4 A. With the other sibling, yes.

5 Q. Okay. And did he agree to come with you to the law
6 enforcement center?

7 A. He did.

8 Q. Did he have any qualms or questions or ask you if he
9 had to go or, anything like that?

10 A. No, I went and advised him that he was not in custody
11 and that he did not have to go with me, but this was just,
12 you know, part of my investigation. That I needed to talk
13 to everyone that was there at the house.

14 Q. And had you already talked to the mother before
15 speaking to him?

16 A. Yes, because she was there when I walked into the
17 pediatric ICU unit. She was one -- other than the
18 investigator, she was one of the first people that I
19 encountered. He was not in that area at the time.

20 Q. And did he freely and voluntarily go with you in your
21 car to the law enforcement center?

22 A. He did.

23 Q. Did he appear to understand what all was going on and
24 where you were going?

25 A. Sure.

1 Q. Were y'all having any kind of small talk or anything
2 beforehand or ...

3 A. Not a lot.

4 Q. A fairly quiet ride?

5 A. Yeah. It was just -- I didn't talk about the case. I
6 just made small talk.

7 Q. Okay. And that was fine; y'all were able to have some
8 kind of communication during the ride over?

9 A. Yes.

10 Q. Did you feel it necessary to advise him of any *Miranda*
11 rights at this point?

12 A. No, because at this point in time I had no idea what
13 had happened. I mean, just other than there was a child on
14 life support.

15 Q. All right. So he was not in custody?

16 A. No, ma'am.

17 Q. He wasn't in anyway handcuffed or bound or anything
18 like that?

19 A. No, ma'am.

20 Q. He was free to tell you, no, I don't want to come with
21 you?

22 A. Yes. He did not have to -- I advised him that he did
23 not have to go.

24 Q. And he also was not going to be arrested or placed in
25 custody as a result of this interview or conversation?

1 A. That's correct.

2 Q. And where did you go once you got to the law
3 enforcement center?

4 A. We went back to my desk in the homicide section of the
5 investigations office.

6 Q. And what happened then?

7 A. I asked him to have a seat at my desk and then we
8 began to talk. And I asked him to give me a little
9 background about his and Ann, the mother's, relationship,
10 and he told me that. And then I asked him, you know, tell
11 me the days events of this day. And then after he verbally
12 gave me his account of that day and what led up to Minor 1
13 becoming unconscious, at that point, then I asked him could
14 I take a written statement and he agreed.

15 Q. All right. And so as he's talking to you, in your
16 opinion, is he telling you about the events of the day and
17 his relationship and that history freely and voluntarily,
18 knowingly, intelligently?

19 A. Yes. He's just sitting -- it's a casual conversation.
20 He's sitting in a chair. I always offer people water,
21 coffee. You need to go to the bathroom or anything, you
22 know, to make them comfortable.

23 Q. And then this two-page written statement dated -- to
24 be honest, I don't think it actually has a date on it. But
25 this two-page written statement would have been the one you

1 had prepared after speaking to him?

2 A. Yes, this is it.

3 Q. Okay. And during this time did he give you any
4 background about his education or things like that?

5 A. Yes. I always start my statements out with, I refer
6 to additional particulars and I'll state them to you. Then
7 I always ask birth days, Social Security, where they were
8 born, where they grew up, where they went to school. If
9 they're under the influence of any type of drugs or
10 alcohol. If they're aware of what they're saying. And
11 that they have given permission for me to type their
12 statement.

13 Q. All right. And did he state he was under the
14 influence of drugs or alcohol?

15 A. He said he was not.

16 Q. Did you have any concerns that he may be under the
17 influence of drugs or alcohol?

18 A. I did not smell any alcohol beverages or did not
19 detect any, you know, behavior that would be indicative of
20 being on drugs, or any dilated pupils or anything like
21 that.

22 Q. All right. And then did he talk about some kind of
23 schooling?

24 A. He did. Said that he had went to Berea High School.

25 Q. All right.

1 A. But graduated from R&E in Columbia.

2 Q. Okay. And do you ask him on this one, does this one
3 have the date -- the thing about how they went in school?
4 That one's different?

5 A. Yeah. That one's different.

6 Q. Okay. That's a suspect statement and this is a
7 witness statement?

8 A. Yes, that's correct.

9 Q. Okay. So he's being treated as a witness at this
10 point?

11 A. As a witness, yes.

12 Q. All right. And it's a two-page typed statement?

13 A. Correct.

14 Q. Okay. And did you read the statement back to him
15 after you had finished typing it?

16 A. I do. My procedure is to print a copy and let the
17 Defendant or the witness, whatever type statement it is,
18 let them look at it. And if there's any corrections that
19 need to be made as I'm reading it and they're reading at
20 the same time, they can let me know. And then I give them,
21 usually a red pen to circle any mistakes that -- maybe
22 typos or something that I've done. And he agreed to the
23 statement.

24 Q. Okay. He didn't make any corrections or do anything?
25 And did he sign this statement?

1 A. He did.

2 Q. Acknowledging that that was what he had said and the
3 basis of y'all's conversation?

4 A. That's correct.

5 Q. At this point did you feel any need to place him in
6 custody or arrest him?

7 A. No. Because at that time it was still -- it was too
8 early in the investigation to know exactly what had
9 happened to the child.

10 Q. All right. And was he free to leave the law
11 enforcement center?

12 A. Yes. In fact, I offered to give him a ride back to
13 the hospital, which he took me up on.

14 Q. Okay. So you drove him back to the hospital?

15 A. And dropped him off at the front.

16 Q. All right. Do you know about how long you guys spent
17 talking on this instance?

18 A. Probably talking, it was probably about an hour and a
19 half, two hours, somewhere in there.

20 Q. Okay.

21 A. With the ride and everything.

22 Q. Right. Okay. Did you then speak to him again anytime
23 during your investigation before June the 2nd of 2011?

24 A. No, I did not.

25 Q. And on June 2nd of 2011, did you ask someone to locate

1 him so you could talk to him again?

2 A. I did. I asked Deputy Jimmy Wilson who was cross-
3 training with us in the homicide unit at that time, and
4 Investigator Wayne Campbell, who was also a homicide
5 investigator, I asked them if they would try to locate Mr.
6 Johnson, as we'd been given a possible address by Ann, the
7 baby's mother. And that was Road, Lot
8 Number , and that's where they found him.

9 Q. All right. At this point, was he free to tell Deputy
10 Wilson and Investigator Campbell that he didn't want to
11 come and talk, and he didn't want a ride to the LEC,
12 anything like that?

13 A. Yes. He was advised again that we were still
14 conducting our investigation and we had some further
15 questions we would like to ask.

16 Q. And did he freely and voluntarily come down to the LEC
17 to talk to you again?

18 A. He did. He was not placed in handcuffs. He was not
19 given *Miranda* rights. He was just advised that it was just
20 another questioning, basically is all it was.

21 Q. All right. And do you have a recollection of what
22 time this might have been when you start speaking to Mr.
23 Johnson?

24 A. It was probably some time right before ten o'clock.
25 When we got back to the office he was with Investigator

1 Campbell and Deputy Wilson when I walked back into the
2 investigations office. And he was not in custody. He was
3 not bound to a chair. They were really just sitting around
4 casually talking when I walked in.

5 Q. And going into this meeting or this interview, did you
6 have intentions of arresting him at that point when you
7 walked into this conversation?

8 A. No, ma'am.

9 Q. Did you have a warrant already secured?

10 A. No.

11 Q. And did you engage Mr. Johnson again in conversation
12 about this incident?

13 A. I did. And, again, I took him back to my desk and had
14 him sit in the same chair, not restrained, just a casual
15 conversation is the way it started out.

16 Q. And was Investigator Autrey in the room as well?

17 A. He was.

18 Q. All right. And how about Investigator Campbell, did
19 he stay?

20 A. No, Investigator Campbell left. I believe he had
21 another call he had to go to or something. He had to
22 leave.

23 Q. Okay. And did Deputy Wilson stay?

24 A. He did.

25 Q. All right. So the four of y'all are in one room?

1 A. Yes. And the reason Deputy Wilson stayed, again, as I
2 said, he was cross-training, so basically I was training
3 him.

4 Q. All right. And tell us what happens at this point?

5 A. I advised him that we had spoken with Ann earlier and
6 that I just wanted to reiterate what he had told me in his
7 previous statement, that he was the one -- or that Ann was
8 the one in the room with the child when the child started
9 choking and that he was in the bathroom. And that's the
10 way the conversation started out. I advised him that we
11 had since received information that he was the one in the
12 den area with the child, and that the mom was the one that
13 was out of the room. And he first denied it, but then as
14 the conversation -- well, I asked him at that point in
15 time, after we'd been there a little while, did he need a
16 break? Did he need anything to drink, water, anything to
17 eat? And he said, no. But he did want to go to the
18 bathroom. So I took him to the bathroom or I escorted him
19 there. And then we came back, sat down and started talking
20 to him again. And I told him that there was things that
21 just didn't make sense, that I, you know, I needed the
22 truth to come out. And at that point in time, he dropped
23 his head and said he was not a bad person. And then he
24 started talking about that he'd got angry with Minor 1 and
25 he threw a toy and hit Minor 1 in the head with it and that

1 she began crying. And that he was afraid it was going to
2 wake Ann up and that he held her and he kissed her and
3 tried to get her to be quiet, but she wouldn't. So he said
4 that he held his hands over her nose and mouth to make her
5 be quiet, and then she became unresponsive. Well, at that
6 point in time, I ceased the interview. And I told him, I
7 said, we can't -- I need to read you your rights. And then
8 at that point in time I typed up a *Miranda* waiver form,
9 which is the Sheriff's Office standard form. And I read
10 the -- I went through the form with him and made sure that
11 he understood.

12 Q. All right. So Court's Exhibit Number 1 is a copy of
13 the Waiver of Rights Form that you went over with him?

14 A. That's correct.

15 Q. Okay. And can you tell the Court what rights you
16 advised him of?

17 A. Yes. Before we ask you any questions, you must
18 understand your rights. And what I do is I read that
19 sentence and I make sure that they understand each
20 sentence. Well, not read it. I don't just read the whole
21 thing and then ask them do they understand it. I read a
22 sentence at a time to make sure that they understand it.
23 And then I have them initial it. And then I read the next
24 sentence; you have the right to remain silent. To make
25 sure he understood it, he initialed it. Anything you say

1 can be used against you in court. Made sure he understood
2 it, initialed it. You have the right to talk to a lawyer
3 for advice before we ask you any questions. And have him
4 with you during questioning. He initiated it. If you have
5 no money to pay a lawyer's fee, the court will appoint one
6 to represent you without cost if you wish. He initialed
7 that sentence. If you decide to answer questions now
8 without a lawyer present, you still have the right to stop
9 answering at any time. You also have the right to stop
10 answering at any time until you talk to a lawyer. Made
11 sure he understood that and he initialed it. And then I
12 told him, I said, well if you wish to talk to me without a
13 lawyer present, I have to read you this bottom portion of
14 this form. I said, do you want an attorney at this time?
15 And he advised me, no. So I read, I have read this
16 statement of my rights and I understand what my rights are.
17 I'm willing to make a statement and answer questions. I do
18 not want a lawyer at this time. I understand and know what
19 I am doing. No promises or threats have been made to me
20 and no pressure or coercion of any kind has been used
21 against me. And I always stop and go back and explain what
22 coercion means. I advised him of that it's basically
23 trickery. No one's going to trick you into any self-
24 incrimination or saying anything that can be used against
25 you. And made sure that he understood that, and then he

1 initialed it.

2 Q. And he also signs it?

3 A. And then he signed.

4 Q. Okay. And you signed it as well?

5 A. That's correct.

6 Q. And it took about ten minutes to go through these
7 rights with him?

8 A. Yes.

9 Q. And after you advised him of those rights, did he --
10 well, let's go back. Did he freely and voluntarily waive
11 those rights?

12 A. He did.

13 Q. And did he, in your opinion, understand what his
14 rights were and that he had a right to have an attorney or
15 to stop talking?

16 A. Absolutely. He understood.

17 Q. And did you in any way force him, threaten him, do
18 anything to scare him into waiving his rights and talking
19 further?

20 A. No. I talked very calmly with him during the whole
21 process.

22 Q. And did you make him any kind of promises, any types
23 of, I'll make a leniency request for you or a bond request,
24 anything like that to get him to waive his rights and tell
25 you more?

1 A. No, ma'am.

2 Q. Withhold anything from him that he may have asked for?

3 Water, bathroom, cigarette, food?

4 A. No. I provided the bathroom and offered him drink and
5 food. He refused.

6 Q. So in your opinion, he freely, voluntarily, knowingly,
7 intelligently waived his rights to talk to you?

8 A. Yes, ma'am.

9 Q. All right. And then did he continue talking freely
10 and voluntarily?

11 A. He did.

12 Q. And you made mention that you talked to him really
13 nicely. Are there different investigative or interrogative
14 techniques used by police officers?

15 A. There are. There's sympathy, you know, you
16 understand, you know, sometimes as he said, that accidents
17 happen. And I told him I know that sometimes accidents
18 happen. And that we do things sometimes that we don't
19 intend to happen. Sometimes we lose our temper. And then,
20 you know, sometimes we just -- you know, I explained that I
21 have kids and, you know, that I know what it's like to have
22 a kid that's crying that just will not stop. And, you
23 know, and that I understood where he was -- why he was so
24 frustrated.

25 Q. And so that was the tactic that you took. You never

1 had to do the bad cop routine, I guess, is what I'm getting
2 at?

3 A. No. No one in the office that night had to use that
4 tactic.

5 Q. All right. And then did he go on to give you his --
6 the written statement, which was the one-page statement
7 dated -- is this one dated? I'm not sure it's dated. No,
8 this one. This one-page statement?

9 A. Yes.

10 Q. All right. And I believe you heard Investigator
11 Autrey just read that statement into the record. Was that
12 accurate?

13 A. That was accurate.

14 Q. Okay. After he gave the statement, was he given a
15 copy of it to take with him to have?

16 A. He was given a copy and then I did the same procedure
17 as I did with the previous statement. I gave him a copy
18 and I read it and had him read along as I was reading it
19 aloud to him.

20 Q. Okay. And at this point, during this statement, did
21 you have any concerns that he was under the influence of
22 drugs or alcohol or not knowing what he was doing at this
23 time because of that?

24 A. No.

25 Q. You made mention in here about not being on

1 medication. Did you stop and ask him what medication are
2 you talking about, anything like that?

3 A. No.

4 Q. And you were able to communicate with him pretty
5 clearly, fairly coherently?

6 A. Yes. And as he had the statement in front of him, I'm
7 reading and then as I'm reading each line to him, I had him
8 initial it, you know that he ---

9 Q. Each paragraph?

10 A. Each paragraph.

11 Q. And he never asked to have an attorney or to stop
12 questioning?

13 A. No, ma'am.

14 Q. Once you concluded the statement, did you then obtain
15 an arrest warrant for him?

16 A. I did.

17 Q. Did he continue to make some spontaneous statements to
18 you during the arrest process?

19 A. He did.

20 Q. What were those statements?

21 A. During the arrest procedure, he stated that he wished
22 that God had never created him, that he did not deserve to
23 live. And I asked him if he was suicidal and he stated
24 that he would never kill himself, but he knew that someone
25 in jail would kill him because of what he had done. He

1 said that he did not want people to be mean to him or not
2 like him because he was not a bad person. He was scared
3 that -- because I guess he's heard that, you know, and ---

4 Q. Rumored in jail?

5 A. Yeah. You know, if they found out that it had to do
6 with a baby that, you know, someone would try to harm him.

7 Q. And because of that, did he make a special request of
8 you that he be kept in isolation?

9 A. Yes, he did and I asked the jail to do that.

10 Q. So these statements are pertaining to his now
11 admission to committing this crime?

12 A. That's correct.

13 Q. And his fears of what's going to happen to him after
14 admitting to committing this crime?

15 A. Yes, ma'am.

16 Q. Were there any other statements -- any other time you
17 spoke to the Defendant or any other statements that we have
18 not discussed today?

19 A. No, ma'am.

20 Q. Okay. Thank you. Please answer any of Ms.

21 Manigault's questions.

22 **CROSS-EXAMINATION**

23 **BY MS. MANIGAULT:**

24 Q. Sergeant Miller, when was the death of the child ruled
25 a homicide?

- 1 A. It was ruled June the 2nd, is what I was advised by
2 the -- I got a call from the coroner's office.
- 3 Q. All right. So you were advised that it was a homicide
4 before you had him picked up? Before you had James Allen
5 Johnson picked up?
- 6 A. Yes.
- 7 Q. You knew that the coroner had made the decision, this
8 was a homicide?
- 9 A. Right.
- 10 Q. Now, when you first encountered him, did you see him
11 walking into the area or did you observe him walking at all
12 on June 2nd before you began your interview?
- 13 A. He was, like I said, he was already there with two
14 other deputies and they were just sitting around casually,
15 just talking when I arrived.
- 16 Q. Did you say that you moved to your desk, that he moved
17 -- did he ever walk towards your desk or ...
- 18 A. Yeah, they were in the area where the white collar
19 units work, which is a big open area.
- 20 Q. Yeah.
- 21 A. And like I said, they were sitting around in their
22 chairs and so I took him back to my office where my
23 computer's at.
- 24 Q. All right. And did you observe James Allen Johnson
25 stumbling or hesitating in his stride when he was walking

1 back to your office?

2 A. No, ma'am.

3 Q. Did he appear to not be steady on his feet or anything
4 like that?

5 A. No. He appeared fine to me.

6 Q. So when you began your interview process, did you
7 notice that he may have been dropping off into sleep or not
8 being -- paying attention to you or what you were saying?

9 A. No, ma'am.

10 Q. Did he ever rest his head on the desk or act like he
11 didn't feel well or was maybe ---

12 A. I'm sorry. I didn't to cut you off. The only point
13 was when he began the confession, he dropped his head and
14 told me he was not a bad person. And that was the only
15 time that I noticed -- and then he did it after that, but
16 not prior to that.

17 Q. But dropping his head while sitting in the chair, but
18 not necessarily laying his head on your desk?

19 A. No, ma'am.

20 Q. Okay. So when you observed him initially on May 25th
21 at the hospital and had some short conversation with him,
22 and then you observed again on June the 2nd at your office,
23 was there any change in his behavior or did he seem ---

24 A. He seemed more calm.

25 Q. More calm on which day?

1 A. June the 2nd.

2 Q. On June 2nd?

3 A. Than he was on May the 25th.

4 Q. All right. So you noticed on May 25th that he was
5 maybe not as calm as he was on June 2nd?

6 A. That's correct.

7 Q. All right. And you said you didn't smell no alcohol?

8 A. No, ma'am.

9 Q. Okay. And did he ask to go to the restroom or did you
10 advise him that he could go or ...

11 A. No, I always ask everyone to make sure that they're
12 taken care of and that they're comfortable.

13 Q. And he asked to go to the restroom after the interview
14 had started and y'all took a break?

15 A. No, the interview had already started and then I --
16 we'd been talking for about forty-five minutes to an hour
17 and then when he refused food, drink, I said, well, do you
18 want to go to the bathroom? And then he said he did.

19 Q. Okay. When he came back from the bathroom, did his
20 behavior change or his speech pattern change or anything
21 different?

22 A. No, ma'am.

23 Q. All right. So when you had him brought in, you said
24 that your investigation was continuing. So at that time,
25 was he a suspect?

1 A. He was a person of interest, just like the mother,
2 Ann, was.

3 Q. Okay. And a person of interest is different from a
4 suspect?

5 A. That's correct.

6 Q. Now, you testified that you gave a *Miranda* warning
7 after James Johnson said that he had hit the child in the
8 head with a toy?

9 A. Yes. Well, then he went into, you know, about she was
10 crying and that he put his hands over her face to keep her
11 quiet or try to make her be quiet. At that point in time,
12 I knew it was time to end -- to read him his rights. It
13 was time to end the interview and read him his rights.

14 Q. Okay. But before that you proceeded like you did on
15 the previous interview, that you were just talking to him
16 as a witness?

17 A. As a witness.

18 Q. But you had talked to Ann, Georgia Ann Sprouce,
19 several times prior to June the 2nd, correct?

20 A. Yes, ma'am.

21 Q. And she had changed her statement several times and
22 she had now changed her statement to say that James Johnson
23 was -- may be the perpetrator in this child's death?

24 A. She changed the statement that he was the one in the
25 room with the child instead of her. But at that time, I

1 still want to know who's telling the truth.

2 Q. So at that time, you still didn't know who was telling
3 the truth?

4 A. Yes. I mean, I'm still conducting my investigation to
5 try to determine exactly what happened.

6 Q. And I believe you said that, one point of -- that you
7 started your conversation was you wanted to know from him
8 who was in the room?

9 A. Yes.

10 Q. At what point. And did he ever tell you that he
11 wanted an attorney?

12 A. No, ma'am.

13 Q. Did he ever act like to you that he could not -- was
14 not reading along with you or could not understand anything
15 you were saying?

16 A. No. I made sure that he understood. That's why I had
17 him initial each paragraph and then each sentence on the
18 *Miranda* Warning.

19 Q. All right. So before he went to the restroom, he did
20 not ask for an attorney?

21 A. No, ma'am.

22 Q. And when he came back from the restroom and you
23 started giving him his *Miranda*, he did not want an
24 attorney?

25 A. No, ma'am.

1 Q. And you made sure he understood that and he initiated
2 it?

3 A. Yes, ma'am.

4 Q. Did you ask him what he meant by, no matter what
5 happens I'm going to be the bad one, then she can have her
6 daughter back. Did you ask him what that meant?

7 A. No.

8 Q. To explain that to you?

9 A. I didn't.

10 Q. And I believe you testified earlier -- I couldn't hear
11 some of the testimony because the Solicitor wasn't up here
12 at the mike -- but I believe you testified earlier that you
13 asked him specifically about drugs or alcohol when you read
14 this top part of the statement to him, ---

15 A. Yes.

16 Q. --- was he on any drugs or alcohol?

17 A. That's just a standard procedure that I do with all
18 statements.

19 Q. Okay. But you asked him that verbally?

20 A. Yes.

21 Q. You didn't just let him read it?

22 A. No, ma'am.

23 Q. Okay. And his response to you that he was not on any
24 drugs or alcohol?

25 A. That's correct.

1 Q. Whether prescription or otherwise?

2 A. That's correct.

3 MS. MANIGAULT: No further questions.

4 THE COURT: Any redirect.

5 MS. HODGE: No, sir.

6 THE COURT: All right. Thank you. You may step
7 down, officer.

8 MS. HODGE: That would be all the Defendant's
9 statements the State would intend to introduce.

10 THE COURT: Anything from the Defense?

11 MS. MANIGAULT: Yes, Your Honor. We call James
12 Johnson.

13 THE CLERK: Put your left hand on the bible and
14 raise your right.

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

17 THE WITNESS: Yes, I do.

18 THE CLERK: Have a seat and state your full name
19 for the record.

20 THE WITNESS: My name is James Johnson. James
21 Allen Johnson

22 JAMES ALLEN JOHNSON,

23 BEING FIRST DULY SWORN, TESTIFIED AS FOLLOWS:

24 DIRECT EXAMINATION

25 BY MS. MANIGAULT:

1 Q. Okay. Speak a little louder or sit close to the mike.

2 And, Mr. Johnson, you've heard the testimony of Sergeant

3 Chris Miller. Do you remember talking to Sergeant Miller?

4 A. The first time I remember. And I remember a little

5 bit in the other one, but I don't really remember the whole

6 thing.

7 Q. Okay. Do you remember when you met him at the

8 hospital and that they took -- they took a statement from

9 you. Do you remember that?

10 A. Yeah, I remember that.

11 Q. All right. Do you remember talking with him on June

12 the 2nd?

13 A. Not the whole thing, no.

14 Q. Not the whole time. Do you remember any officers --

15 how did you get to the law enforcement center?

16 A. Two deputies come to the house and told me I had to go

17 with them.

18 Q. Okay. Now, whose house were you at, at that point?

19 A. I was at Josh's house.

20 Q. Who is Josh?

21 A. My brother's neighbor.

22 Q. Okay. And who else was at the house when the officers

23 came to get you?

24 A. Josh's friends and his mother and step-father.

25 Q. Okay. Now, what kind of condition were you in when

1 they came to get you?

2 A. Me and Josh was in the room smoking -- I was smoking a
3 little bit of reefer, and I had some Xanaxes. I was taking
4 them that day. I'd already been passed out for several
5 hours. I woke up and I took me a couple more, because Josh
6 come in and said, I'm going to smoke a bowl. So I was
7 going to smoke a bowl with him. And his deputies came and
8 I told them, hold on a minute because I had to go back in
9 there. I still had the reefer in my pocket. I went back
10 in there and gave it -- and give it to Josh.

11 Q. And did you have anything else in your pocket?

12 A. I had a few Xanaxes left.

13 Q. And how many Xanaxes would you say that you'd taken
14 that day?

15 A. I'd say I probably took about ten.

16 Q. Okay. That was before the deputies came to get you?

17 A. I took three more when I went to the bathroom.

18 Q. When you went to the bathroom where?

19 A. While he was interrogating me.

20 Q. Okay. While you were at the detention center talking
21 to ---

22 A. Yes.

23 Q. --- Investigator Miller at that time ---

24 A. Yes, ma'am.

25 Q. --- when you went to the bathroom, you took three

1 Xanax pills?

2 A. Yes, ma'am.

3 Q. Now, could you understand what the investigator was
4 saying to you, Investigator Chris Miller, this gentleman?

5 On June 2nd did you understand that when he went over these
6 rights forms, the *Miranda*? He read you your rights. Do
7 you remember that?

8 A. Not really. I can't -- I don't really -- I remember
9 everything from the first statement, but I don't really
10 remember that much on the second one.

11 Q. Why don't you remember from the second one?

12 A. I remember him getting up saying, if she got back with
13 him, I don't know why you're still defending her, stuff
14 like that. And all we're trying to do is find out what
15 happened. That's about all. I don't remember much more
16 after that.

17 Q. Okay. Now, let me show you this rights form that is
18 dated June the 2nd, 2011. And it has your name at the top
19 of it. Can you read that? Is that your name, James
20 Johnson?

21 A. Yes, ma'am.

22 Q. Now, there's seven paragraphs where your initials
23 appear on the side. Is that your initial? Did you initial
24 that?

25 A. Yes, ma'am.

1 Q. This is your writing?

2 A. Yes, ma'am.

3 Q. Do you remember doing that?

4 A. No.

5 Q. Okay. On the bottom of the page it says, sign.

6 There's a word circled, coercion. Is that your initial
7 there?

8 A. Coercion?

9 Q. The word is coercion. Did you initial under that
10 word? Is that your initials?

11 A. That ain't my initials because it's not JAJ.

12 Q. So you didn't put your initial right there under the
13 word coercion?

14 A. I can't remember, ma'am, to be honest with you.

15 Q. Okay. On the line that says sign, there's a name,
16 James Johnson written. Did you write that?

17 A. It looks like my handwriting.

18 Q. Okay. Do you remember doing that?

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

20 Q. All right. Do you remember another officer being in
21 the room, Officer Autrey, along with Investigator Chris
22 Miller?

23 A. The one that was sitting up here, the skinny guy?

24 Q. Yes.

25 A. I remember him sitting beside a camera.

1 Q. Beside a camera?

2 A. Yes, ma'am.

3 Q. Okay. Were you under the impression that your
4 interview was being recorded?

5 A. I thought it was.

6 Q. Now, I'm going to show you the statement that they
7 have said was written on June 2nd, okay? That's a
8 statement and it has eighteen places where your initials
9 appear. Did you put those initials there?

10 A. Looks like my handwriting.

11 Q. On every spot? Look at every spot and tell me whether
12 you put it there?

13 A. Yeah, that looks like my handwriting.

14 Q. Okay. And at the bottom it has a place for signature.
15 And there's a name written James Johnson. Did you sign
16 that?

17 A. That's my handwriting.

18 Q. Okay. So did you read this statement? Was this read
19 to you?

20 A. I can't remember if it was. Alls I know is that's my
21 handwriting; that's the way I write.

22 Q. Okay. Do you remember the officer telling you that
23 you have the right to talk to a lawyer?

24 A. No, I don't remember.

25 Q. That you didn't have to talk with him. You had a

1 right to talk to a lawyer?

2 A. I can't remember that.

3 Q. Did you ever ask him for a lawyer?

4 A. I can't remember that either.

5 Q. Okay. You remember him telling you that if you didn't
6 have money for a lawyer, that he would make sure that one
7 was appointed for you; do you remember that?

8 A. (Negative nod.)

9 Q. Do you remember them saying to you anything you say
10 can be used against you in court?

11 A. No, I don't remember that. I remember everything from
12 the first statement that I made at his office, when he come
13 to the hospital. But I can't remember nothing after that
14 -- the house that day.

15 Q. All right. The first statement you made was on May
16 25th, 2011 from the hospital; is that correct?

17 A. Yes, ma'am. I had been up for several days, couldn't
18 sleep. So I'd been trying -- I'd been taking Benadryl and
19 Benadryl, all kind of stuff trying to sleep. But I'd been
20 worried about Minor1, that people was telling me she's
21 getting better, but I hear from other people that she's
22 not.

23 Q. Okay.

24 A. So I couldn't sleep.

25 Q. All right. On May 25th, were you taking Xanax on that

1 day?

2 A. No, ma'am, I wasn't.

3 Q. Were you smoking marijuana on that day?

4 A. Not then I wasn't.

5 Q. During that day, wasn't there some ---

6 A. Earlier that day we was all smoking weed.

7 Q. We was all smoking weed. Okay. That was at the house
8 where the incident happened to Minor 1 ?

9 A. Yes, ma'am.

10 Q. Okay. But you're saying that you took a bunch of
11 Xanax and smoked weed on June 2nd. So is that a reason for
12 you not remembering that you signed -- gave a statement?

13 A. Yes, ma'am. I got my check June 1st and I blew my
14 money on stuff -- I was trying to sleep and stuff. I
15 couldn't take it. My mama come over to my brother's house
16 and alls I was doing was crying and stuff. I couldn't
17 sleep.

18 Q. Okay. Let me ask you this. There is a part on this
19 statement that you said it looks like you signed it. It
20 says, no matter what happens I'm going to be the bad one.
21 Then she can have her daughter back. What did that mean?

22 A. That means everybody -- and nobody ever had really
23 liked me that much no way. I mean, I don't think any of --
24 anybody in her -- her friends or anybody really liked me
25 because I was younger. I don't know. I don't understand

1 it. I don't think they liked me.

2 Q. All right. Now, you're telling the Court today that
3 you had taken ten Xanax and smoking marijuana ---

4 A. Yes, ma'am.

5 Q. --- on June 2nd before the officers picked you up and
6 you went to the detention center?

7 A. Yes, ma'am.

8 Q. All right. Now, the officer has testified that he
9 asked you specifically were you on any drugs or medication
10 or have you drank any alcohol? And you told him, no.

11 A. I was scared that I would get in more trouble if I
12 told him I was on any drugs or anything.

13 Q. Okay. So there's a part on here that says that you
14 threw a toy and hit Minor¹ in the head. Do you remember
15 telling him that?

16 A. No, ma'am.

17 Q. Do you remember telling him that she started crying
18 and she started screaming and you tried to calm her down;
19 you remember that?

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

21 Q. You don't remember telling him she kept crying and
22 screaming so that you covered her mouth until she quit
23 crying?

24 A. No, ma'am.

25 Q. You don't remember any of that?

1 A. From what y'all have told me, that's it.

2 Q. All right. Do you remember telling the officer a
3 story that she got choked on tea?

4 A. I remember that story.

5 Q. And that that story was told to the officer on May
6 25th, 2011?

7 A. Yes, ma'am.

8 Q. Okay. So why would you tell the officer, I'm sorry
9 for the problems. Or did you tell them that?

10 A. I don't remember telling them that.

11 Q. Do you remember telling them, I'm sorry God created
12 me?

13 A. No, ma'am.

14 Q. Do you remember telling them I don't deserve to live?

15 A. I don't remember none of that.

16 Q. So the statement that was read, that you don't
17 remember making this statement?

18 A. I was happy with Ann. I was wanting to marry her. I
19 was going to try to help her get her divorce so I could
20 marry her and try to help her raise her kids.

21 Q. All right. Thank you.

22 **CROSS-EXAMINATION**

23 **BY MS. HODGE:**

24 Q. Mr. Johnson, when the police came to get you from
25 Josh's house after y'all had been smoking reefer and doing

1 Xanax, you knew you had some left in your pocket; is that
2 right?

3 A. (Affirmative nod.)

4 Q. Okay. And so you made the decision you shouldn't take
5 that to the police station, that would be bad?

6 A. I had a couple of the Xanaxes. I ain't take the weed
7 with me because I knew I couldn't get rid of it.

8 Q. Okay. So you knew that that -- it wouldn't be a smart
9 move to take the weed to take the police station, that
10 would be bad?

11 A. Yes, ma'am.

12 Q. But you could probably get away with taking the Xanax;
13 is that ---

14 A. (Affirmative nod.)

15 Q. Okay. All right. And you're saying that your
16 statement to the police, your first statement, you remember
17 all of that and that statement is what you're saying
18 happened in this case?

19 A. Yes, ma'am.

20 Q. Okay. So you're saying that you -- do you remember
21 talking to the firefighters when they came to the house and
22 everything, too?

23 A. I remember I got out -- I was in the bathroom. I come
24 in there. She was not breathing. Ann hollered at me
25 saying she's not breathing. I grabbed the cell phone and

1 she says, I don't know if we should call the police. We
2 can revive her ourselves. Because we got reefer in this
3 house. I don't want them to take my kids. I said, no, we
4 need to call the police because something may be bad wrong
5 that we can't fix ourselves. That's what I told her.

6 Q. Okay. And that's what you say you told the police,
7 that first statement. And you remember all of that?

8 A. Yes, ma'am.

9 Q. Saying all of that? Okay. But you don't remember
10 what was said when you were with Investigator Miller the
11 second time?

12 A. No, ma'am.

13 Q. That's your testimony? Okay. All right. Now, there
14 were some things you said to Investigator Miller before
15 this *Miranda* waiver. Do you remember those things? Things
16 about, again, stating you let the kids watch TV and you
17 went into the bathroom and Ann was hollering while you were
18 in the bathroom. Do you remember those statements?

19 A. I don't remember the second statement. About the only
20 thing I remember is them coming to pick me up and telling
21 me I had to come down here. I asked them if my brother
22 could bring me because I was getting ready to go -- my
23 brother was standing out in his yard and I was trying to --
24 I was going to ask him if he could take me. And they told
25 me, no, you've got to go with us. So I said, hold on a

- 1 minute. And I went back in ---
- 2 Q. And you went and got rid of the reefer ---
- 3 A. Yeah.
- 4 Q. --- and you came back and went with them?
- 5 A. Yeah.
- 6 Q. All right. But I guess my question is, do you
- 7 remember anything that you said to Investigator Miller
- 8 after you left Josh's house, any of those statements that
- 9 you made?
- 10 A. I remember riding down the road talking about how it's
- 11 cloudy. That's about it. And when I got there, I can't
- 12 remember much more after that.
- 13 Q. Okay. And then there was some mention of Investigator
- 14 Miller telling you that Ann got back with somebody?
- 15 A. Yeah, I remember that. That was right, that was
- 16 during my -- I was telling my statement again, my first
- 17 statement again. And he said, why you keep taking up for
- 18 her? She's done got back with him.
- 19 Q. Okay. So you remember that part of it?
- 20 A. Yeah.
- 21 Q. Okay.
- 22 A. And then I went to the bathroom.
- 23 Q. And then you went to the bathroom. And how long were
- 24 you in the bathroom?
- 25 A. Probably about five minutes.

1 Q. All right. And when you got out of the bathroom, then
2 you came back into the office area with Investigator
3 Miller, is that right when things started happening?

4 A. I started, started feeling really calm. Real, real,
5 real calm. And now I -- and then I just can't remember
6 what was said there. I couldn't remember it when I woke up
7 in the jail. I couldn't remember why I was there.

8 Q. You're saying your memory left you as soon you walked
9 out of the bathroom and went in the room with Investigator
10 Miller ---

11 A. I don't remember nothing from that -- from when I went
12 in there.

13 Q. Okay.

14 A. I don't remember it.

15 Q. Thank you.

16 THE COURT: Any redirect?

17 MS. MANIGAULT: No, Your Honor.

18 THE COURT: All right. Thank you, sir. You may
19 step down. Any other witnesses from the Defendant?

20 MS. MANIGAULT: Your Honor, just a short witness.
21 His brother Alex who observed him an hour before he was
22 arrested.

23 THE COURT: That'll be your last witness?

24 MS. MANIGAULT: Yes, sir.

25 THE COURT: All right. Bring him in

1 THE CLERK: Place your left hand on the bible and
2 raise your right.

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

5 THE WITNESS: Yes.

6 THE CLERK: Please have a seat. State your full
7 name for the record.

8 THE WITNESS: My name is Alex Lee Johnson.

9 ALEX LEE JOHNSON,

10 BEING FIRST DULY SWORN, TESTIFIED AS FOLLOWS:

11 DIRECT EXAMINATION

12 BY MS. MANIGAULT:

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

14 A. Thirty.

15 Q. Where do you live?

16 A. I live at Road, Lot Number .

17 Q. And how are you related to James Allen Johnson?

18 A. Younger brother. He's my younger brother.

19 Q. All right. On June 2nd, did you see your brother?

20 A. Yes.

21 Q. And whose house was he at when you saw him?

22 A. June the 2nd, that morning, I seen him, him and two

23 girls. I think it was Minor1 and another girl too, that

24 morning they come over to my neighbor's house.

25 Q. Who's your neighbor?

1 A. Josh.

2 Q. Josh what?

3 A. His last name is Tony. I mean, her husband's name

4 Tony and Sherry Stanton.

5 Q. Okay. And when you saw your brother at Josh's house,

6 what was he doing?

7 A. Him and Ann was over there and then I think that girl

8 that they was staying with come and picked them up later on

9 in a green Honda.

10 Q. Okay. What was he doing at Josh's house, anything?

11 A. I don't know. They was in the house. I wasn't over

12 there. I wasn't over there.

13 Q. All right. Did you see your brother before he got

14 taken to ---

15 A. He come over to my house later on that evening, he was

16 heavily intoxicated. I told him he couldn't come over --

17 come into my house right then. I told him to go the

18 neighbor's house and sleep it off.

19 Q. Okay. You keep mumbling and dropping off. He came

20 over to your house?

21 A. Yeah, he come over to my house about a hour before the

22 police come and got him.

23 Q. Okay. And what was his condition?

24 A. He was heavily intoxicated. He was staggering around,

25 falling around everywhere. Fell off my porch and

1 everything.

2 Q. Okay. Did you smell alcohol or anything on him?

3 A. I can't recall if I smelled alcohol, but I know he was
4 intoxicated.

5 Q. Okay. So did you know what he was taking? Did you
6 see him take anything?

7 A. I knowed for a fact he does drugs, illegal drugs,
8 smokes marijuana. I knowed that. So that's what I figured
9 he was doing.

10 Q. So you know for a fact he was smoking marijuana. Did
11 you know anything about the Xanax?

12 A. I know that he takes Xanaxes sometimes, from time-to-
13 time. I didn't know for a fact if he had any on him, but I
14 know he had -- that he smoked marijuana and stuff.

15 Q. Okay. So you said it was about an hour before the
16 police came to pick him up from the neighbor's house ---

17 A. Yeah.

18 Q. --- he was heavily intoxicated?

19 A. Yes.

20 Q. All right. Thanks. Have a seat.

21 THE COURT: Have a seat. She's got cross-
22 examination.

23 CROSS-EXAMINATION

24 BY MS. HODGE:

25 Q. It'll be quick. You won't have to stay too long.

1 A. All right.

2 Q. But that was one hour before the police came; is that
3 correct?

4 A. Yes.

5 Q. Okay. And how much time did you spend around him,
6 just enough to see him stagger and stumble?

7 A. I'd say I was out in the yard with him for a little
8 bit and then I told him I had to go. And he went to the
9 neighbor's.

10 Q. He went over to Josh's?

11 A. Yes.

12 Q. So you were not at Josh's ---

13 A. No, I wasn't at Josh's.

14 Q. --- when the police showed up?

15 A. No.

16 Q. Or any of that?

17 A. All I know, he called me when the Investigator -- when
18 he was down there at the Investigator Office.

19 Q. When he was down at the Investigator's Office, he
20 called you from ---

21 A. His cell phone. While they was arresting him, they
22 let him make a phone call on his phone.

23 Q. Okay.

24 A. He called me and told me he was being arrested.

25 Q. Okay.

1 A. And I said -- I asked him why was he down there at the
2 police department? Because by law he was supposed to have
3 his -- what do you call that? Legal guardian present
4 during questioning.

5 Q. How old is he?

6 A. He's only twenty-something. But he is not allowed to
7 live by himself or nothing.

8 Q. Okay. All right. But he called you from there and so
9 he was able to tell you that he'd gotten arrested and tell
10 you that he'd given a statement and that kind of stuff when
11 they questioned him?

12 A. No. He told me he was being arrested. He didn't know
13 why. That's all he told me. And then the investigator got
14 on the phone and said he'd been arrested.

15 Q. All right. Did he tell you he gave a statement or he
16 talked to them or anything like that?

17 A. No. The investigator didn't tell me nothing.

18 Q. Okay. How about your brother? Did he tell you
19 anything about ---

20 A. No.

21 Q. But he just told you that he was being arrested?

22 A. Yes.

23 Q. All right. And you understood that?

24 A. Yeah. I knowed -- when he told me he was being
25 arrested the investigator said, he's got to get off the

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1 phone; he's being arrested.

2 Q. Okay. All right. Thank you.

3 THE COURT: All right.

4 MS. MANIGAULT: We have no other witnesses, Your
5 Honor.

6 THE COURT: All right. Anything in reply from
7 the State?

8 MS. HODGE: No, Your Honor.

9 THE COURT: All right. Let's take a belated
10 lunch break. And if we can let's try to be back about five
11 till, and that'll be about twenty-five minutes for a quick
12 bite to eat and we'll be ready for them about three. I'll
13 weigh my notes and look over the report from Dr. Frierson
14 and be ready to start back then. Be back at five minutes
15 till three.

16 (WHEREUPON, the court stood at recess for a lunch
17 break.)

18 THE COURT: All right. I've reviewed my notes
19 and looked at the evidence on the *Jackson versus Denno*
20 hearing. Obviously, at this stage, it's based upon a
21 preponderance of the evidence. And weighing all the
22 testimony, what I've heard, I find the statement was freely
23 and voluntarily given, all the statements. And they will
24 be admissible. Of course, I'll instruct the jury that they
25 make the ultimate decision as to the value of any

1 statements that are given. But I believe that weighing all
2 the evidence I've heard that they were freely and
3 voluntarily made by Mr. Johnson in the course of the
4 investigation by the officers.

5 I have also had a chance to review my notes from Dr.
6 Frierson and reviewed his report in its entirety and read
7 it during our short lunch break. I believe his testimony
8 was totally consistent with what he said in his evaluation
9 of nearly a year ago. And I believe there is no evidence
10 that the Defendant's not competent to stand trial in this
11 case. So I'll endorse the testimony and the statement made
12 by Dr. Frierson.

13 All right. Any other matters we need to take care of
14 before our jury comes in?

15 MS. HODGE: Not from the State, Your Honor. We
16 do have a 9-1-1 call as our first witness. I just wanted
17 to make sure my tape was working.

18 THE COURT: All right. Do you want to do a trial
19 run before we bring them out.

20 MS. HODGE: Yeah. That'll be great. It always
21 messes up when they come out.

22 THE COURT: How long is it?

23 MS. HODGE: I think it's about six and a half
24 minutes.

25 THE COURT: Okay. Well, make sure it starts.

1 We're not going to ---

2 MS. HODGE: Right. No, no, exactly. If I can
3 just get it started. Thank you.

4 THE COURT: All right. Okay. If our jury's
5 ready, you can have them come in.

6 (WHEREUPON, the jury entered the open court at
7 approximately 3:05 P.M.)

8 THE COURT: Thank you very much, ladies and
9 gentlemen. We're now ready to proceed with the trial of
10 the case. The attorneys are going to make their opening
11 statement to you. I need to inform you that what the
12 lawyers have to say to you in their opening statement, what
13 they'll say to you later in their closing statement is not
14 evidence. The evidence is going to come from testimony
15 from the witness stand, from exhibits and other documents
16 that may be introduced. While this is not evidence, I urge
17 you to listen carefully as each of these attorneys address
18 you. I'm confident that each of them can give you a
19 valuable insight to help you as the case develops, to be
20 alert to evidentiary matters or others that may proceed
21 during the course of this trial.

22 Before they make their opening statements, I'm going
23 to have our clerk administer an oath to you. I hope you'll
24 listen carefully as this oath is given to you. It's a
25 time-honored oath. It's been in existence since well

1 before the foundation of our country where jurors such as
2 yourselves have taken the oath to try a case in the court
3 system of our country and our State of South Carolina. So
4 as the oath is administered, I urge you to weigh the words
5 carefully. I'm sure you'll fulfill that oath. After the
6 oath is administered then the opening statements will
7 begin.

8 You may swear the jury, madam clerk.

9 THE CLERK: Rise, please. Raise your right hand.
10 The correct response to the oath is, I will.

11 You shall well and truly try the case 2011-GS-23-7262,
12 State versus James Allen Johnson, indicted for homicide by
13 child abuse, and a true verdict render according to the law
14 and the evidence, so help you God.

15 (WHEREUPON, the jury was duly sworn.)

16 THE COURT: Solicitor, you may address the jury
17 in your opening statement.

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

20 **OPENING STATEMENT**

21 **BY MS. HODGE:**

22 Ladies and gentlemen, you've been selected on a case
23 that's going to talk about two things that people don't
24 like to talk about. The first is death. It's sad. It's
25 upsetting. We just don't want to talk about it. The

1 second is guilt. Guilt being the acceptance of
2 responsibility for one's bad acts. We don't like to talk
3 about that either. When it comes to death, we make up more
4 pleasant sounding terms, euphemisms. Aunt Suzie did not
5 die; she passed away. She's not buried; she's laid to
6 rest. She's not in a hole in the ground; she's in a
7 memorial garden. We try to make it more palatable.

8 Same thing goes for guilt. Nobody wants to talk about
9 their dirty, ugly deeds and they want to make it sound
10 better. They want to say, oh, that was an accident. I
11 didn't mean to do that. I made some really poor choices.
12 I just made a mistake. Finally, they want to shift blame.
13 It wasn't me; it was her. I didn't do that, but if I did
14 it was because they made me or I was on drugs or alcohol or
15 some other reason, so it's not my fault.

16 This case is about death. It's about the death of a
17 twenty-month old little baby girl. And it is about guilt.
18 It is about the Defendant's wrong, evil acts that caused
19 the death of this child. This child was vulnerable and
20 defenseless, waiting for somebody to take care of it
21 basically. And the Defendant acted intentionally and
22 maliciously, knowing full and well you don't hit kids, you
23 don't punch kids, you don't throw things at kids, you don't
24 beat kids, and you certainly don't suffocate them to death.

25 The evidence is going to show that the Defendant,

1 James Allen Johnson, did those things and that he caused
2 the death of Minor 1 . The evidence will show that
3 the Defendant met Minor 1 's mother, Ann Sprouce, Georgia
4 Ann Sprouce, but she goes by Ann. They met in early 2011
5 and that they -- within a day or two of meeting each other,
6 he moved into her apartment. She also had her two little
7 daughters living with her. She had an older daughter who
8 was two and a half; her name is Minor 2 . And then she had
9 Minor 1 who was about eighteen months old. And the
10 evidence will show that after some short period of time of
11 them living together, being boyfriend/girlfriend, the
12 mother, Ann, would leave the girls with him. She would go
13 off and do various things, leaving him alone to take care
14 of these girls.

15 The evidence is going to show that around May of 2011,
16 some three, four months later, they moved from that
17 apartment into a friend's house, a woman named Crystal
18 Inman. And that while at that house, again, the mother
19 continued to go off and leave the little girls with him
20 alone, sometimes one, sometimes both. And that about a
21 week before Minor 1 's death, there were some real
22 suspicious bruises popping up on her face and head. The
23 evidence will show that the mother did ask the Defendant,
24 what's going on with that because after I leave, when I
25 come back home, she's got these bruises. What's going on?

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1 And the evidence will show that he came up with a lot of
2 good excuses, that, oh, this little girl just falls a lot.
3 She falls and falls. It's not his fault. It's her own
4 fault. And then her sister, that two and a half year old,
5 boy she really -- she hits her with stuff. She hit her
6 with these beads. Yeah, that's what caused all that. So,
7 again, somebody else's fault. Or she fell off a step
8 because there's no lock on the door at this house. The
9 homeowner's fault. Lots of blame shifting.

10 The evidence will show that unfortunately the mom
11 didn't really do much with that information. In her heart
12 of hearts, I think she knew that he was abusing the little
13 girl and she just didn't really change anything about that.
14 She accepted what he gave her and she continued leaving the
15 girl in his care and custody until May 25th, 2011, when the
16 worst thing that could possibly happen, happened. He
17 killed her.

18 The evidence will show that on that day, around three-
19 twenty in the afternoon, 9-1-1 received a call about a
20 child choking. And that within five minutes or so, they're
21 on scene attempting to administer CPR and help. But the
22 EMS workers and firemen will tell you when we got the
23 there, the story of a child choking was not the case. They
24 came into an already dead, unresponsive, pulseless,
25 colorless child that had multiple bruising about her head

1 and face and on her body. And they will tell you that they
2 attempted CPR, immediately scooping her up, taking her to
3 the hospital. And that, you know, they did a great job.
4 They were able to get a pulse back on this child but it was
5 too late. She was kept on life support and she stayed that
6 way for about two days. When they finally took her off
7 life support, she was declared brain dead and died.

8 Now, during this time period, you've got about forty
9 hours, forty-five hours, police, social workers, doctors,
10 nurses, everyone's questioning the two people that had care
11 of this little girl; the mother and the Defendant. And the
12 EMS and firemen will tell you initially the Defendant
13 started off separating himself. I was in the bathroom. I
14 don't know how she got this way. And the mother will say,
15 because she will testify and you will hear from her, oh,
16 she choked on some tea, got sick, threw up and there she
17 is. Every medical person that came in contact with that
18 child knew that was not true. And then there were all the
19 bruises. How were those being explained? Not very well.
20 Through this time the mother and the Defendant, once they
21 reached the hospital where the child was, separated ways.
22 And I think the mother knew at that point the Defendant had
23 done something, but she just wasn't sure what and she
24 continued to maintain that, oh, I guess the child choked on
25 tea. Choked on tea. First, she stated, I was there with

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1 him and the child choked on tea. Then her story morphed.
2 Well, I was really washing dishes and he was in the room
3 with the little girl and I heard her choking, and then she
4 went unconscious. To finally, after the child was laid to
5 rest, like that euphemism, died, dead, after the mom had
6 been at the mortuary, she finally decided it was time to
7 come clean, to stop covering for him and to accept her
8 responsibility in this piece. Because she knew that the
9 child was being abused, she continued to let the child be
10 in his care. And she was scared and she didn't say at
11 first. But the fact is, she wasn't even in the room. She
12 was asleep in a back bedroom, again, giving him full care
13 of this child. And she was right. But she had been wrong,
14 she was getting ready to accept some consequences for that
15 and she was charged with homicide by child abuse, aiding
16 and abetting. And she is not on trial today. She pled
17 guilty to that charge. She will be here to testify, to
18 tell you why she said the things she said, and what
19 happened that day.

20 You will also hear medical evidence that's going to
21 come from the hospital. We have child abuse specialists
22 here in Greenville. You will hear from Dr. Mary Fran
23 Croswell. She will talk about all the multiple injuries
24 that this child had, how they were non-accidental, highly
25 suspicious. And then, also, you will hear from the

1 forensic pathologist who did the autopsy. And he's going
2 to tell you this child had over twenty bruises on her head
3 and body, and you're talking a body about this big. And
4 that she died from suffocation. Hand over mouth and nose
5 for an extended period of time causing her to have lack of
6 oxygen to the brain, traumatic brain injury, which caused
7 the swelling, shut down the central nervous system, put her
8 in cardiac arrest.

9 One key piece of evidence you'll hear from the medical
10 examiner and one thing that's common in child abuse cases
11 where suffocation or smothering happens, is there is a torn
12 frenulum in this little girl. And the frenulum is the
13 little piece of skin between your top lip and your jaw.
14 You also have one on the bottom. But the medical examiner
15 will tell you that's very key in his analysis of the manner
16 of death because that was pressure, extreme pressure placed
17 over the mouth, with someone struggling against it,
18 Minor 1 , and it tearing.

19 At the conclusion of the evidence the State feels
20 convinced that you will be able to find the Defendant
21 guilty of the charge of homicide by child abuse. I'm going
22 to apologize to you now because you're going to hear some
23 things and you're going to see some things that are not
24 pleasant. The truth about death and guilt, it's not
25 pretty. It's ugly. And it's a little disturbing. But the

1 State's not going to rename it, not going to re-
2 characterize the guilt, not going to give a euphemism for
3 anything or accept an excuse for anything. And you, the
4 jury, will be able to go back to your jury room and render
5 a verdict that speaks the truth in this case, which is the
6 truth of guilty. Thank you.

7 THE COURT: Ms. Manigault you may address the
8 jury in your opening statement.

9 MS. MANIGAULT: Thank you, Your Honor, may it
10 please the Court. Ms. Hodge.

11 **OPENING STATEMENT**

12 **BY MS. MANIGAULT:**

13 Ladies and gentlemen, again, my name is Dorothy
14 Manigault. The Court has given you general information
15 about the procedure and process in a jury trial. And the
16 Judge has already told you that he is -- you are the trier
17 of the facts and he's the Judge of the law. And one legal
18 premise that our system operates on is that a person is
19 presumed innocent until proven guilty with evidence
20 presented by the State of South Carolina in the County of
21 Greenville, the Solicitor's Office, this case, Ms. Hodge.
22 Witnesses come in to testify. The presumption of innocence
23 remains with an individual. All the evidence has to be
24 heard. The Judge has to charge the law in the case to
25 apply to the facts and the charge. And then he sends the

1 jury to the jury room with the evidence and you begin your
2 deliberation. That is the point when twelve jurors reach a
3 decision or an agreement one way or the other, for guilty
4 or not guilty. The presumption of innocence remains
5 throughout the entire trial. You'll hear the testimony of
6 various witnesses. You cannot and should not make a
7 conclusion until -- a decision until the entire trial is
8 concluded, until the Judge has given you the law and until
9 he has sent you to the jury room to deliberate.

10 The Solicitor mentioned something about shifting
11 blame. Well, anyone trying to lessen their involvement in
12 a charge, yes, they're going to be shifting blame. And you
13 may hear that from some of the State's own witnesses. So
14 the premise we want you to operate under is presumption of
15 innocence, reasonable doubt, the weight of the evidence.
16 The Judge will charge you on everything that you've heard
17 and ultimately tell you that the decision is yours as
18 twelve people to come to a verdict, an agreement. And he
19 will tell you at the end that that agreement must be
20 unanimous. So the Defense is asking you to please listen
21 very carefully to all the witnesses and we think that you
22 will make an appropriate decision at the end of the trial.
23 Thank you.

24 THE COURT: The State may call its first witness.

25 MS. HODGE: Thank you, Your Honor. The State

1 calls Renee Buford.

2 THE CLERK: Raise your right hand.

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

5 THE WITNESS: I will

6 THE CLERK: Please have a seat and then state
7 your full name for the record.

8 THE WITNESS: Rhonda Renee Buford.

9 RENEE BUFORD,

10 BEING FIRST DULY SWORN, TESTIFIED AS FOLLOWS:

11 DIRECT EXAMINATION

12 BY MS. HODGE:

13 Q. Ms. Buford, who are you employed by?

14 A. Greenville County Sheriff's Office.

15 Q. And how long have you been with them?

16 A. Eighteen years.

17 Q. And what are your duties with the Sheriff's Office?

18 A. I do 9-1-1 research and quality assurance for all of
19 our calls, radios and any incoming audio into our room.

20 Q. And so you were then working in that same capacity
21 back May 25th, 2011?

22 A. Yes, I was.

23 Q. And can you give us a brief overview of what happens
24 when a person calls into 9-1-1?

25 A. If a person calls 9-1-1 on a 9-1-1 line, it

1 immediately starts recording prior to the dispatcher
2 picking up. All of our calls are recorded simultaneously
3 and automatically. Everything that comes into our dispatch
4 center is recorded.

5 Q. And where does the call go from there? As you say, it
6 came in on a 9-1-1 line. What's the difference of the
7 different lines?

8 A. We have 9-1-1 lines and then we have what we call
9 seven-digit lines, which is your -- you know, you would
10 have to dial seven digits to get into the dispatch center.
11 We consider those our non-emergency lines. Those are
12 recorded. On the seven-digit, they start recording at the
13 time our dispatcher picks up. But our 9-1-1 starts
14 recording after the person hits the last 1. It immediately
15 starts recording at that time. And then all of the calls
16 are recorded and maintained on a recorder.

17 Q. And is that -- the upkeep of that equipment part of
18 your job responsibility and duties?

19 A. Yes, it is.

20 Q. And was the sheriff's office recording 9-1-1 calls
21 back in May 25th, 2011?

22 A. Yes, we were.

23 Q. There was a CD in here? I'm showing you State's
24 Number 1. There was a CD in this case.

25 A. Okay.

1 Q. Did you just come to Court a few moments ago and
2 listen to a copy of what was in State's Number 1?

3 A. Yes, I did.

4 Q. Okay. And what is that or what was inside of here?

5 A. It was a CDR. The disk in here and it had the case
6 number on it, along with my initials where I listened to it
7 and the date, today's date where I viewed it and verified
8 it corresponded with our CAD report of the incident itself.

9 Q. So is it a copy of the 9-1-1 call that was placed on
10 the date of this incident that we're here about?

11 A. Yes.

12 Q. All right. And the case number being 2011-74615?

13 A. Yes, it was.

14 Q. Okay. And were there any alterations or deletions or
15 anything amended in that recording?

16 A. No, there was not.

17 Q. So it's a true and accurate copy?

18 A. Yes, ma'am.

19 MS. HODGE: At this time, we'd move to admit
20 State's Number 1 into evidence.

21 THE COURT: Any objection?

22 MS. MANIGAULT: None, Your Honor.

23 THE COURT: Without objection State's Exhibit
24 Number 1 is admitted and may be published to the jury.

25 (WHEREUPON, State Exhibit Number 1 was admitted into

1 evidence.)

2 MS. HODGE: Thank you, Your Honor.

3 Q. And one other question, Ms. Buford. When does the
4 recording end? What happens to make the recorded call end?

5 A. Both parties hang up. If one party hangs up then it
6 continues to record. If the incoming call hangs up first,
7 our dispatcher, if they do not hang up, of course, it's
8 just the dispatcher being recorded. But if our dispatcher
9 hangs up, it continues to record the outside line until
10 that side of it is disconnected.

11 MS. HODGE: At this time we'd like to publish the
12 9-1-1 call.

13 (WHEREUPON, State Exhibit Number 1 was published for
14 the jury.)

15 Q. Is that the only 9-1-1 call that came in under this
16 case number to your knowledge?

17 A. Yes, ma'am.

18 Q. Thank you. Answer any of Ms. Manigault's questions.

19 MS. MANIGAULT: I don't have any questions, Your
20 Honor.

21 THE COURT: All right. Thank you. You may step
22 down.

23 MS. HODGE: May she be excused, Your Honor?

24 THE COURT: Without objection ---

25 MS. MANIGAULT: No objection.

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1 THE COURT: --- this witness may be excused.

2 MS. HODGE: The State calls Phillip Reynolds.

3 THE CLERK: Do you solemnly swear or affirm to
4 tell the truth, the whole truth and nothing but the truth,
5 so help you God?

6 THE WITNESS: I do.

7 THE CLERK: Please have a seat and then state
8 your name for the record.

9 THE WITNESS: Phillip Bradley Reynolds.

10 PHILLIP REYNOLDS,

11 BEING FIRST DULY SWORN, TESTIFIED AS FOLLOWS:

12 DIRECT EXAMINATION

13 BY MS. HODGE:

14 Q. Mr. Reynolds, who do you work for?

15 A. Lake Cunningham Fire Department.

16 Q. All right. And I'm just going to make sure you keep
17 your voice up. If you need to move the mike you can. But
18 we want to make sure this gentleman back here in the very
19 back and everyone can hear you back here, all right?

20 A. Yes, ma'am.

21 Q. Thank you. How long have you been with Lake
22 Cunningham Fire Department?

23 A. Five years.

24 Q. And is that your full-time job?

25 A. Yes, ma'am.

1 Q. So what are your duties and responsibilities there?

2 A. We run medical, fire and any type of rescue operations
3 in our district.

4 Q. Where are you located?

5 A. Greer, South Carolina, along Highway 101.

6 Q. And would Road be in your
7 jurisdiction or district?

8 A. Yes, ma'am.

9 Q. Tell me what type of training or certifications you
10 have for firefighting and emergency response?

11 A. We go through an extensive fire academy down in
12 Columbia or around the area. And it's about three hundred
13 hours basic firefighting techniques and things. We also
14 have our first responder. At the time, I was an EMT and
15 that was another three hundred and something hours of
16 classroom and practical work as well.

17 Q. All right. Did you have an occasion to respond to
18 service on May 25th, 2011 on Road?

19 A. Yes, ma'am.

20 Q. And why were you responding there?

21 A. We were dispatched to a choking call.

22 Q. What time did that call come in?

23 A. At three twenty-two is when we were dispatched.

24 Q. Is that afternoon or evening?

25 A. I'm sorry. Evening.

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1 Q. In daylight?

2 A. Yes, ma'am.

3 Q. Okay. Not three twenty-two in the morning or
4 anything?

5 A. P.M.

6 Q. P.M., okay. And what time did you guys get there?

7 A. Three twenty-six P.M., within ---

8 Q. So approximately four minutes, five minutes?

9 A. Three, yeah, four minutes.

10 Q. Who was with you that day?

11 A. Our driver was engineer Jerry Bonham and a fellow
12 firefighter, Matt Horne.

13 Q. And were y'all driving the fire truck or something
14 else?

15 A. Yes, ma'am, we were in our Engine two, Station two,
16 near Blue Ridge High School.

17 Q. And who was there when you arrived?

18 A. There was a car up the driveway with three other
19 children inside the vehicle and there was a woman -- I'm
20 not sure exactly who she was -- in the driveway, near the
21 car at the time we arrived on scene.

22 Q. And what did you do when you got there?

23 A. I got out and proceeded up the driveway while Matt
24 Horne retrieved the equipment out of the truck. As I
25 approached, she rounded the back corner and I saw the front

1 door, so I initially went to the front door to try to enter
2 the house, which was locked. As I knocked on the door, one
3 of the children in the car stated for me to use the back
4 door, that's how to get into the house. So I ran back down
5 the steps and rounded the corner, into the house. And I
6 kind of had to find my way around, because at that time
7 there was nobody kind of leading me. She had already went
8 in the house in front of me. And once I entered the room,
9 I saw the child laying on the floor.

10 Q. All right. Were there any other people in the room
11 with the child?

12 A. Yes. I noticed the mother was doing -- she was on the
13 phone and was doing chest compressions with the heel of her
14 palm. And the Defendant was doing mouth-to-mouth rescue
15 breathing on the child.

16 Q. Let me show you a couple of photographs. I'm going to
17 show you what's been marked as State's Number 2, Number 3,
18 and Number 4, and ask you if you recognize those pictures?

19 A. Yes, ma'am.

20 Q. Okay. What are those pictures of?

21 A. That's the -- what we refer to as the AB-corner. The
22 A-side of the house is towards the road, and the B-side is
23 directly to the left of the house. So that would be a
24 picture of the AB-corner.

25 Q. And that's Number 2?

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1 A. And this is the living room in which we entered and
2 found the child in the floor.

3 Q. Okay. That would be State's Number 3 and State's
4 Number 4?

5 A. Yes, ma'am.

6 Q. And are these true and accurate depictions of the
7 house and the room that you entered?

8 A. Yes, ma'am.

9 MS. HODGE: At this point we would move to admit
10 State's 2, 3, and 4.

11 THE COURT: Any objection?

12 MS. MANIGAULT: No objection, Your Honor.

13 THE COURT: Without objection, Exhibits 2 through
14 4 admitted and may be published.

15 (WHEREUPON, State Exhibit Numbers 2, 3 and 4 were
16 admitted into evidence.

17 MS. HODGE: Thank you, Your Honor.

18 Q. This is State's Number 2. I think this is working.
19 If you will, tell us where your truck -- if you can see or
20 if you need to move down, that's fine, too. Just make sure
21 you keep your voice up if you want to get down from the
22 seat. But where did the fire truck pull up or where did
23 you get out and then where did you go?

24 A. The road -- Fews Chapel Road actually ran more -- I
25 guess it would be down here. I mean, way down here. You

1 have to go up the driveway a good probably -- I'm not even
2 good at guesstimations. So, I mean, it was -- you have to
3 go up the driveway, which was over here. And it ran down
4 to the main road, which then was way down here. I would
5 guesstimate two hundred foot, I mean, three hundred foot
6 maybe. I'm not real good with guesstimations, so ...

7 Q. Okay. Which door did you attempt to go in first?

8 A. I attempted to go up the steps. The car would have
9 been back here. And there was kind of like another little
10 driveway back here. And then you've got this little pad
11 here. And when I first came up, I saw the woman, she kind
12 of rounded this back corner. But typically, when we try to
13 go to a house, we take the first door that we come to. And
14 that was -- I proceeded up the steps and tried to open the
15 door, which was locked. So then I kind of turned around.
16 And when I turned around, there was a child here. And he
17 told me to use the back door. So that's when I came down,
18 back and went to the back.

19 Q. And the layout of this house, can you give me a
20 description and what ...

21 A. When I entered the back of the house, it's kind of
22 vague. I know I entered in, I believe the -- it was this
23 front room is where the child was. But I know I came up
24 and went around a couple of corners and ended up finding
25 her on my own.

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1 Q. Okay. But there are several doors and different
2 doorways ---

3 A. Yes, ma'am.

4 Q. --- kind of chopped up?

5 A. Yes, ma'am.

6 Q. Okay. And I'm going to put up State's Number 3. And
7 I know there's a little bit of glare on here, but can you
8 show us who was where and ...

9 A. The mother was over here and the Defendant was here.
10 And the child's head was here and body was here. She was
11 laying on her back. And then that's all I saw in the room
12 at that time.

13 Q. All right. Now, it looks awfully bright in that room.
14 Was it that bright?

15 A. No, ma'am. It was -- there was a ceiling fan or a
16 light somewhere back here that we tried to get turned on
17 but it -- we couldn't get it to turn on, so ...

18 Q. All right. And what did you do? Once you went in and
19 found the child, what did you do next?

20 A. When I first walked through the door, we try to form a
21 general impression of what's going on with the child, with
22 anybody. I noticed they were already performing CPR, so
23 that was kind of, you know, I needed to make it quick and
24 in a hurry what I was going to do. When I got to her, I
25 went ahead and did a simple assessment. And when I

1 performed it I noticed that, you know, she had multiple
2 bruises on her body and in the forehead area. And then
3 after that, I started noticing the patient's -- the color.
4 She was losing color in the arms and chest and she was pale
5 colored. Her eyes were unresponsive to the light. I
6 looked and listened for a rise and fall of the chest just
7 by doing -- I put my ear down to her mouth. As I did a
8 head tilt, where I put my hand to her forehead and tilt
9 with two fingers on the chin to open up her airway to see
10 if I could hear or feel any air and there was none. At
11 that time, I checked her right brachial, which is in her
12 arm. And then I checked her femoral artery in her leg.
13 And then after that, I checked her carotid to find no
14 pulse. And so at that point, I deemed her in cardiac
15 arrest and notified dispatch.

16 Q. And had your partner come into the residence at that
17 point?

18 A. Matt had came in at that time and I told him that she
19 was in cardiac arrest. He initialized chest compressions
20 with the palm of the hand while we were setting up the BVM,
21 or bag valve mask to begin breathing for the patient.

22 Q. You stated that you immediately noticed the bruising
23 on the head. Did you document what it was that you saw?

24 A. Yes, ma'am. The bruises ranged from, as far as on the
25 head and body, the biggest ones I noticed were the multiple

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1 bruises on the face and forehead. They ranged from the
2 size of a pencil head to quarter-sizes plus. The two main
3 ones, one was in the center of the forehead and was similar
4 to the size of a half-dollar. And it was basically about
5 the center of the forehead here. The other one was over
6 the left eye and it was a little bit smaller but larger
7 than a quarter from what I could tell. But they were flesh
8 colored. There was hardly any color to them at all.

9 Q. Do you recall if the child had any clothing on at this
10 time?

11 A. The only thing the child had on was a diaper.

12 Q. Did you know if this was a boy or a girl or anything
13 like that at this point?

14 A. I did not. I mean, no, ma'am.

15 Q. Did you know a name or anything?

16 A. I asked and they told me her name was Minor¹, at the
17 time.

18 Q. And what -- did you ask any questions of the adults in
19 the room?

20 A. After they had got the bag valve mask assembled, I
21 started breathing for the patient. Matt then was doing
22 compressions and I was doing the breathing for the child.
23 And as that happened, the Defendant stated, you can't go to
24 the bathroom without watching your kids anymore. He stated
25 that the patient took a drink, choked and then vomiting

1 occurred and then Minor 1 went unresponsive. Closely,
2 after that time, the mother came in and asked if the child
3 was going to be okay. And, you know, we've been instructed
4 to just kind of stay away from that aspect of the things in
5 a case like this.

6 Q. So the Defendant is the one that made the statements
7 about how she came to be the way she was?

8 A. Yes, ma'am.

9 Q. All right. And then did he stick around and stay in
10 the room or what happened?

11 A. After that he -- I never saw him in the room again.
12 The mother either. After we came in and started chest
13 compressions and breathing for the child, that was the last
14 I seen of them.

15 Q. What can you tell us about their demeanor? First,
16 let's start with the Defendant and then go to the mother?

17 A. The Defendant was -- seemed to be a little fidgety at
18 the time. And then after everything kind of happened, you
19 know, I saw him walk by me. I thought he would still be in
20 the room, but then when I got up to leave, he was gone. I
21 mean, we were only there for minutes, it seemed like. So
22 -- and then the mother -- cases before that I've had, she's
23 been more -- I've had mothers before with pediatrics to be
24 clearly upset, and neither one at the time seemed to be
25 upset.

1 Q. Was it unusual to you how they were responding?

2 A. It was a flag.

3 Q. So what did you actually do for the child?

4 A. It's hard to tell right here, but there were some
5 towels laying in the living room area. I took those and
6 folded them and them under the child. A child, unlike an
7 adult, has a harder time maintaining their airway when you
8 do a head tilt chin lift. You have to have something
9 underneath the back just to kind of raise their back up
10 because their head's larger. You know, it's larger in
11 proportion to their body. So I folded the towels and set
12 them there. And I realized that that wasn't enough to
13 stabilize her airway. So there were some unused diapers
14 over here and I just took a couple more of those and placed
15 them under there and it made her airway just kind of fall
16 open to where it would stabilize on its own. At that time,
17 the airway was secured as far as that goes. And I started
18 to breath for the child. Matt was doing compressions. And
19 we got through maybe one round of two and thirty and the
20 paramedics walked in.

21 Q. And when you and/or Matt were giving the air -- were
22 doing the breathing, were you able to get air in?

23 A. Yes, ma'am. We had adequate rise and fall of the
24 chest. And I was able to move that and -- yes, ma'am.

25 Q. So did that signify anything to you about the airway?

1 A. After we were setting this up and before we started
2 breathing, with the choking, the first thing you want to do
3 before you start breathing for the child is to assess the
4 airway. When he said that she choked on a piece of ice or
5 the tea, I figured that I needed to go ahead and check for
6 that just to make sure if there was any vomiting that
7 occurred, like happened, that it was clear of that airway.
8 When I checked it, I saw no traces of vomit or any type of
9 residual.

10 Q. Now, did he say that there was ice or were you
11 assuming that from ---

12 A. I'm sorry. I assumed that.

13 Q. Okay. He did not say anything about ice?

14 A. I figured if it was iced tea, you know, there might be
15 a piece of ice or something like that, you know.

16 Q. Because liquid generally would not occlude an airway?
17 Unless you're in a pool or something like that?

18 A. Correct.

19 Q. All right. Did you notice any spillage or any ice or
20 anything around the child?

21 A. No, ma'am. The only thing I noticed, and you can't
22 even really see it here, there's like a spot somewhere over
23 in this area, but it was nowhere near the child. And I
24 mean it could -- I mean, I'm guessing that's where they
25 said she vomited. But, I mean, it was too far away from

1 the child for me to even really -- I was more focused on
2 her at the time.

3 Q. Okay. Your main focus is giving care?

4 A. Correct.

5 Q. Not investigating what happened?

6 A. Correct.

7 Q. All right. So EMS arrives and what happens then?

8 A. As we were finishing up that first round of
9 compressions and breathing for the child, the transport
10 unit got there with the QRV at about the same time. And
11 Paramedic Kay asked if the child was in cardiac arrest.
12 And, you know, I confirmed that she was in cardiac arrest
13 to him. And he stated, let's get the baby out of here.
14 You know, let's go, you know, as quick as we can. So
15 that's when I, you know, I picked her up, cradled her head
16 in my arm, you know, to try to just support her back. And
17 I tried to continue to do compressions as we went out the
18 door, even though we weren't breathing for the child. We
19 weren't wanting to try to stick around and, you know, bring
20 a stretcher in, all that other stuff. So I just figured
21 I'll stabilize her with my hands and my forearm, do
22 compressions as well as I can, get her in the back of the
23 ambulance where they can start better care for her. And at
24 that ---

25 Q. And as you -- go ahead.

1 A. No, go ahead.

2 Q. As you did that, did you see the Defendant or the
3 mother come back around?

4 A. No, ma'am. We went out the back door the way we came
5 in and I never saw them.

6 Q. And what did you do after you put the child in the
7 ambulance?

8 A. Well, we went to the ambulance and I laid the child
9 down and turned over care to the medics. They stated that
10 they needed to driver her to the hospital. And I
11 volunteered to drive them to the hospital. So I jumped in
12 the driver's seat and ...

13 Q. Did y'all head out?

14 A. Headed out.

15 Q. Straightaway?

16 A. Yes, ma'am.

17 Q. All right. Had any police officers arrived by the
18 time you were taking the child to the ambulance?

19 A. When we were leaving the resource officer from Blue
20 Ridge High School, which is not even two minutes down the
21 road from the residence, he was there and I briefly noticed
22 him. And I think there was another patrol car there as we
23 were leaving. And I'm not sure who that was.

24 Q. Did you speak to any police officers to tell them what
25 was going on?

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1 A. No, ma'am. I mean, we were really what they would
2 call load and go. You just grab the patient and pretty
3 much get them to the hospital as fast as you can.

4 Q. Let's talk about CPR techniques. You mentioned that
5 you observed the mother doing the heel to chest
6 compression?

7 A. Yes, ma'am.

8 Q. All right. And is that also the technique that you
9 guys used?

10 A. Yes, ma'am.

11 Q. And while you're doing CPR, you're also manipulating a
12 little bit of the face and head?

13 A. Correct.

14 Q. Any of the CPR techniques that you used, would they
15 have left any bruising or marking on this child?

16 A. No, ma'am.

17 Q. How about anything on the face or forehead?

18 A. No, ma'am.

19 Q. And what about her nose or mouth area?

20 A. No, ma'am.

21 Q. What about her back or her sides?

22 A. I actually never even checked her back. I mean, I put
23 my arm underneath her back, but, no, ma'am.

24 Q. And there is another -- there is another type of CPR,
25 but that was not the kind, the two-handed approach, y'all

1 ---

2 A. The two-handed method is for an infant and that's
3 basically when -- if you can imagine just wrapping your
4 hands around the back of the child and then your two --
5 both of your thumbs on top of the child's sternum. But
6 this child was one. She was more what we would classify as
7 a pediatric instead of an infant.

8 Q. And which hospital did you guys go to?

9 A. Greer Memorial Hospital.

10 Q. So the closest facility?

11 A. That was the closest facility and they just told me to
12 drive there, so ...

13 Q. You were just told to drive?

14 A. Yeah, I was just told to drive.

15 Q. You were just going where you were told?

16 A. Yes, ma'am.

17 Q. You were not providing any more care now. You were
18 the drive; is that right?

19 A. That's correct.

20 Q. Okay. And once y'all got to the hospital, did that
21 end your involvement in this case?

22 A. Yes, ma'am.

23 Q. Thank you. Please answer any of Ms. Manigault's
24 questions.

25 THE COURT: You may cross-examine the witness.

1 MS. MANIGAULT: Thank you, Your Honor.

2 CROSS-EXAMINATION

3 BY MS. MANIGAULT:

4 Q. You testified that a woman walked into the house in
5 front of you?

6 A. Yes, ma'am.

7 Q. Was that woman in the room while you were working on
8 the child? Do you know where she went?

9 A. No, ma'am. When I passed her in the house after I got
10 inside the house, but it was not the mother. I know that.
11 The mother was on the phone when I entered into the room
12 and I wasn't real sure who she was.

13 Q. And you stated that when you started working on the
14 child, that the mother and Mr. James Johnson stepped aside?

15 A. Yes, ma'am.

16 Q. And you believe that they left the room because he
17 walked past you?

18 A. Yes, ma'am. When he walked -- we were there for
19 approximately four or five minutes working on the child.

20 And when we first got there and started our initial
21 impression and started our CPR and everything, he walked by
22 us. And within the four minutes of that occurring, when I
23 grabbed the baby up and left, he was no longer in the room.
24 So ...

25 Q. Okay. And the mother wasn't in the room either?

1 A. No, ma'am.

2 Q. Now, did you ask any questions to Mr. Johnson?

3 A. No, ma'am. The information he gave me voluntarily.

4 Q. Voluntary statement. And did the mother ever say
5 anything to you about what happened to the child?

6 A. No. She just asked me if the child was going to be
7 okay.

8 Q. Now, you stated that when you went into the room, your
9 first general impressions were -- your observation was the
10 mother was doing heel compressions on the chest and ---

11 A. Correct. She was using the palm ---

12 Q. Palm?

13 A. Palm ---

14 Q. Palm.

15 A. --- heel technique where you use the palm of the hand.

16 Q. Okay. The palm of the hand. And Mr. Johnson was
17 doing mouth-to-mouth?

18 A. Yes, ma'am, that's correct.

19 Q. All right. Thank you.

20 MS. HODGE: I have no further questions.

21 THE COURT: All right. Thank you. You may step
22 down.

23 MS. HODGE: May he be excused, Your Honor?

24 THE COURT: Any objection?

25 MS. MANIGAULT: No objection.

1 THE COURT: Without objection this witness may be
2 excused. Thank you, sir.

3 MS. HODGE: The State calls Matt Horne.

4 THE COURT: This witness may be excused.

5 MS. HODGE: The State calls Phillip Reynolds.

6 THE CLERK: Do you solemnly swear or affirm to
7 tell the truth, the whole truth and nothing but the truth,
8 so help you God?

9 THE WITNESS: I do.

10 THE CLERK: Please have a seat and then state
11 your full name for the record.

12 THE WITNESS: Matthew Horne.

13 MATT HORNE,

14 BEING FIRST DULY SWORN, TESTIFIED AS FOLLOWS:

15 DIRECT EXAMINATION

16 BY MS. HODGE:

17 Q. Mr. Horne, who do you work for?

18 A. Lake Cunningham Fire Department.

19 Q. How long have you been with them?

20 A. This November will be four years.

21 Q. And is that your full-time job?

22 A. Yes, ma'am, it is.

23 Q. Are you also in the military?

24 A. Yes, ma'am. I'm in the South Carolina National Guard
25 as a firefighter also.

1 Q. And what type of training and certifications do you
2 have for your job?

3 A. I have right at three hundred hours of initial
4 training in fire first response, and motor vehicle
5 accidents through the South Carolina Fire Academy, various
6 leadership classes and aircraft rescue firefighting within
7 the military. And I'm a first responder.

8 Q. So were you employed in that same capacity back on May
9 25th, 2011?

10 A. Yes, ma'am, I was.

11 Q. And did you have an occasion to respond to
12 Road?

13 A. Yes, ma'am, I did.

14 Q. And were you with firefighter Phillip Reynolds at the
15 same time?

16 A. Yes, ma'am, I was.

17 Q. Did y'all ride in the same truck?

18 A. Yes, ma'am, we did.

19 Q. Tell us what you did and what you observed when you
20 arrived at this location?

21 A. Upon our initial arrival, we parked at the road. We
22 normally do that so that EMS can get their vehicles up in
23 the driveway if possible. I let Phillip go ahead, started
24 going to the house to start patient care and I'll grab the
25 medical bags, the oxygen and the suction device, which is

1 standard procedures on any cardiac arrest type call. And
2 with it being a choking, we assume the worst. That's why I
3 grabbed all the materials. I started up the driveway. And
4 noticed who I later found out was the mother. And she was
5 asking me if she'd be able to ride to the hospital with the
6 child. I told her we'd worry about that when EMS got here.
7 But more than likely it would be no problem. She'd just
8 have to ride in the front. I proceeded in the house at the
9 front door, which is unlocked at this time. I seen
10 Firefighter Reynolds inside. I asked him, I said, do you
11 have a cardiac arrest? He said, yes. At that time, I
12 began helping him with the CPR by doing chest compressions.

13 Q. When you entered the room and found Firefighter
14 Reynolds, did you see the Defendant in the room?

15 A. I do not recall seeing him, no, ma'am.

16 Q. And is that photograph behind you, State's Number 3,
17 is that the room that you entered?

18 A. Yes, ma'am.

19 Q. Was there a door that went straight into that room?

20 A. Yes, ma'am. I would say it was more back up this way.
21 It goes back out onto the front porch.

22 Q. Okay. If you need that.

23 A. All right.

24 Q. And you were bringing in the equipment?

25 A. Yes, ma'am.

1 Q. And where did you see the child to be and Firefighter
2 Reynolds?

3 A. Firefighter Reynolds and the child was down along this
4 area, like he said. The towels was initially somewhere in
5 this area. And then he'd done moved one of the towels over
6 to the child to elevate the child, to open the airway up
7 more, as I had got in there. And then I proceeded to hand
8 him the unused diapers because he said he needed more
9 elevation. And it was right there by where all of this
10 stuff was lying.

11 Q. Okay. And what did you notice about the child when
12 you got in there?

13 A. The first thing I noticed was all the bruising. I
14 mean, it was very apparent that it was nothing that had
15 just happened. There was some, like Firefighter Reynolds
16 just said, there was some large bruising that you could
17 tell that may have been there for a while. There was some
18 very faint bruising that was slightly smaller at the time,
19 that looked like it may be fresh. It hadn't started
20 coloring over yet. I'm not really sure what was going on.
21 I seen the child was completely naked, minus a diaper,
22 which I found kind of strange. And we couldn't figure out
23 really at the time what the choking had came from. So I
24 kind of tried to look around as I was doing my chest
25 compressions to see if I could see anything that maybe

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1 looked out of the ordinary. At the time, I really didn't
2 see anything that seemed out of the ordinary.

3 Q. Anything around where the child was lying that gave
4 you any clues as to what she might have been choking on
5 anything like that?

6 A. No, ma'am. I mean the only thing I seen was these two
7 cups right here as a possibility. But, I mean, from where
8 I was sitting doing the chest compressions, the cups did
9 not look wet, like having moisture on them where maybe ice
10 had kind of melted over time, and the cups had condensation
11 on it. I didn't see anything like that so I really didn't
12 pay the cups no attention.

13 Q. Were you able to ask either the mother or the
14 Defendant what happened or ---

15 A. No, ma'am. I only remember seeing the mother or who I
16 thought was the mother -- it may have been the other female
17 -- whenever I was coming up the driveway. Other than that,
18 I didn't see anybody until after the incident was over.

19 Q. All right. And so what was your part in the
20 resuscitation efforts?

21 A. I was considered secondary care giver. I was doing
22 the chest compressions on the child, while my partner,
23 Firefighter Reynolds, was doing the bag valve mask,
24 providing the oxygen to the lungs.

25 Q. And about how long do you think y'all were there?

1 A. I'd say somewhere between three to five minutes before
2 EMS's arrival.

3 Q. Is your firehouse located closer than where EMS would
4 be coming from?

5 A. Yes, ma'am. In relation to this incident -- we have a
6 station right behind Blue Ridge High School. And this
7 residence is two to three minutes from our station. And we
8 was in the station at the time.

9 Q. So you guys made it there before EMS. That wasn't
10 surprising that you made it before EMS?

11 A. No, ma'am.

12 Q. All right. Well, once they get on scene, what
13 happens?

14 A. The EMS got on scene. One of the paramedics was
15 driving what we consider a chase truck, which is a quick
16 response vehicle, it's just an F-150 with all the stuff
17 that's on the ambulance, minus the stretcher. And that
18 paramedic asked us if we had a cardiac arrest, once again.
19 We advised him, yes, we do. At this time, he told us,
20 well, let's take the patient and go because his transport
21 truck was also pulling into the driveway at the same time.
22 We loaded the patient into the back of the truck and then
23 one of the paramedics said, is there anybody else going
24 with us. I looked around because I was on the outside.
25 Firefighter Reynolds was securing the patient to the

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1 stretcher. I told him, I don't see anybody. They said,
2 let's go. Firefighter Reynolds climbed out of the
3 ambulance and I proceeded to back them out of the driveway
4 and they went to the hospital.

5 Q. Okay. And when you said you were asking if anybody
6 else was going to go, were you referring to other EMS
7 workers or were you referring to the people at the house?

8 A. Any other family members or anybody else at the
9 residence.

10 Q. So nobody was coming up to the ambulance trying to get
11 in, or ---

12 A. No, ma'am, which is completely untypical of any call
13 we go on. I mean, I've been on calls with grown people
14 have their spouse die and they're trying to go, fighting us
15 to get in the truck instead of it being nobody around.

16 Q. Did you see any children when you were coming in? Did
17 you notice that?

18 A. When I started going up the driveway, there was a
19 green Nissan Pathfinder had three smaller children in it.
20 I'd say the oldest one maybe being seven is what it looked
21 like to me. And there was a female out there with that car
22 and the children. But I don't know who the children were
23 or who the lady was with the car.

24 Q. Was there any small child in the room with the patient
25 at the time you entered?

1 A. No, ma'am, there was not at the time.

2 Q. And after loading the patient into the ambulance were
3 any police officers arriving?

4 A. I know the police officers got there. As far as time
5 lapse, I don't remember if they got there before the
6 ambulance left or after they left. I do recall them being
7 there, though.

8 Q. And what was your part once the child was placed in
9 the ambulance? What were your duties after that?

10 A. Pretty much my responsibility was just to go back
11 inside the residence, clean up all of our supplies, get all
12 of our stuff restocked on the truck in case we got another
13 call.

14 Q. And so you did go back inside the residence?

15 A. Yes, ma'am. I went back in to retrieve our medical
16 bag, our oxygen cylinder, any other supplies we may have
17 left laying around, got that stuff up. And then the EMS
18 chase truck that showed up, I drove his truck back to our
19 Station Two, because he rode in on the ambulance with the
20 other two paramedics.

21 Q. Now, let's talk about the CPR techniques again and
22 these bruises that you observed on the child. Is there, in
23 your opinion, any way you or Firefighter Reynolds placed
24 any of the bruises about the child's head or face while
25 doing CPR?

1 A. No, ma'am.

2 Q. How about anything on the chest or sides or back of
3 the child?

4 A. No, ma'am.

5 Q. How about anything inside of the child's mouth? Would
6 y'all have done any type of injury trying to do CPR?

7 A. No, ma'am.

8 Q. And once you drove that truck, chase truck, back to
9 y'all's firehouse, was that the end of your involvement in
10 this case?

11 A. Yes, ma'am, it was.

12 Q. And when you were back inside the house cleaning
13 things up, was any adult in the room with you or talking to
14 you, asking you questions or anything like that?

15 A. I remember speaking with one of the adults. Honestly,
16 I can't recall if it was inside the house or not. That's
17 when I found out that the child had supposedly choked on
18 some tea. And I looked in the cup with one of the officers
19 and we seen no ice. In one of the cups, I can't tell you
20 honestly which one of these two it was in this picture, but
21 we was told the blue cup beside the chair, and both of
22 those beside the chair are blue. Neither one of them had
23 any kind of ice in it. And one of them did have a little
24 bit of tea in it. But there was nowhere where you could
25 see that any had been spilled or anything of that nature.

1 Q. Well, did you see any vomit, spit up, anything like
2 that in the area?

3 A. I did not, no, ma'am.

4 Q. All right. Thank you. Answer any of Ms. Manigault's
5 questions, please?

6 A. Yes, ma'am.

7 MS. MANIGAULT: I don't have any questions, Your
8 Honor.

9 THE COURT: Thank you. You may step down. Any
10 objection to this witness being excused?

11 MS. MANIGAULT: None.

12 THE COURT: All right. Thank you, sir. You may
13 be excused.

14 MS. HODGE: The State would call Alex Kay.

15 THE CLERK: Mr. Kay, would you put your left hand
16 on the bible and raise your right.

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

19 THE WITNESS: I do.

20 THE CLERK: Please have a seat and state your
21 full name for the record.

22 THE WITNESS: Joseph Alexander Kay.

23 ALEX KAY,

24 BEING FIRST DULY SWORN, TESTIFIED AS FOLLOWS:

25 DIRECT EXAMINATION

1 BY MS. HODGE:

2 Q. I'm going to bring this up here in case you need it
3 during your questions, Mr. Kay.

4 A. Okay.

5 Q. Who do you work for?

6 A. Greenville County EMS.

7 Q. And how long have you been with them?

8 A. Twelve years.

9 Q. And is that your full-time job?

10 A. Yes.

11 Q. What types of training do you have to be a full-time
12 EMT?

13 A. I am a National Registered Paramedic through the
14 International Registry of Emergency Medical Technicians.
15 I'm a South Carolina Paramedic. I have advanced cardiac
16 life support, pediatric cardiac life support, pre-hospital
17 trauma life support. I'm a basic life support instructor,
18 so I'm a CPR instructor. Neonatal resuscitation, pediatric
19 emergency preparedness. I could probably go on for another
20 five minutes, but I think justifies it.

21 Q. That probably covers it for now.

22 A. Yeah.

23 Q. Thank you. And so were you employed in the same
24 capacity back on May 25th, 2011?

25 A. Yes.

1 Q. Had all those trainings and certifications at that
2 time?

3 A. Yes.

4 Q. All right. And were you called to respond to
5 Road?

6 A. I was.

7 Q. And how did that call come in?

8 A. It came in as a choking. I was on the quick response
9 vehicle, which is the chase vehicle that he referred to
10 previously. It has all the equipment that an ambulance has
11 on it, with the exception of it doesn't have the capability
12 to transport. Generally, they're put in outlying areas to
13 first respond and get a paramedic on scene quicker than an
14 ambulance could maybe respond. They're strategically
15 placed throughout the county to minimize the response
16 times.

17 Q. All right. And is this location off Fews Chapel Road,
18 is that in Greenville County?

19 A. Yes, ma'am.

20 Q. Okay. And what time did the call come to you guys?

21 A. We received the call at fifteen twenty, which is
22 three-twenty in the afternoon.

23 Q. And what time did you get on the scene?

24 A. I arrived on scene at fifteen twenty-nine, which would
25 be three twenty-nine, approximately eight minutes after I

1 was dispatched. I came from Gowansville Fire Department,
2 which is located on Highway 14, so it's a little bit
3 further, a little bit further away than Lake Cunningham
4 Fire Department, but it was the -- still, initially, I was
5 the closest paramedic to the scene.

6 Q. And who else was coming with the truck?

7 A. The ambulance crew was James Clardy, paramedic James
8 Clardy and paramedic Cory Trotter. And I believe they were
9 responding from Greer that day. So it's almost in the
10 middle from where we were responding to where they were
11 responding. It was basically like we were meeting in the
12 middle, Few's Chapel Road is.

13 Q. And what were each of y'all's duties or
14 responsibilities on this call?

15 A. I was the first response, so I was the first paramedic
16 on scene. Generally, I go in and assess the patient and
17 render aid and care until the ambulance arrives on scene.
18 And then at that point, I'll turn over care or, in this
19 case, I continued care and rode to the hospital.

20 Q. So tell us what happened and what you saw when you got
21 to the residence?

22 A. While en route, it was dispatched, like I said, as a
23 choking. As I was turning on Few's Chapel Road, it was
24 updated to a cardiac arrest. At that point, the fire
25 department had arrived on scene and radioed in that it was

1 a confirmed cardiac arrest. I pulled up. When I arrived,
2 I could actually pull in the driveway because I was in a
3 light duty pickup truck that has a camper shell on it. So
4 it's not as bulky as a fire truck or even an ambulance for
5 that matter. I could pull closer and get my equipment out.
6 Since there's only of me to carry the equipment, I try to
7 get as close as I can to get the most equipment in without
8 having to make more than one trip.

9 Q. I'm just putting up State's Number 2.

10 A. Sure.

11 Q. Is that -- where did you pull up to?

12 A. I pulled up -- I was -- there's a, like he said, there
13 was a driveway here. The driveway kind of -- Fews Chapel
14 Road would run back towards this way. The driveway was a
15 good two hundred yards. I pulled up as close as I could to
16 this -- maybe it's like a concrete slab area. I pulled up
17 as close as I could.

18 Q. What did you see when you pulled up, anything?

19 A. When I got out there were several people had gathered
20 over here. There were probably three or four people. I
21 asked where to go. Nobody seemed to respond. I ask again,
22 nobody -- I think one of them may have pointed towards the
23 door. Obviously, I knew it was through the door. I
24 entered through the door. There were several -- it was
25 almost like a maze inside that house. It was very dark.

1 There's a lot of trees, as you can see, covering it so it
2 was very shadowed. And I basically found the fire
3 department myself.

4 Q. Okay. So these people outside were not saying, hey,
5 come here?

6 A. No. No.

7 Q. And were they adults, children or were there ---

8 A. All I saw was adults and they were smoking cigarettes.
9 And I mean the only reason I remember that is because I have
10 asthma and triggers my asthma sometimes, so ...

11 Q. Okay. Did you see any children outside when you ---

12 A. I did not see any children.

13 Q. Okay. And where did you proceed to, which set of
14 steps or door?

15 A. I proceeded in the front way here. And like I said,
16 it was like a maze going through there. And I heard one of
17 the fireman state, we're back here. I entered -- when I
18 entered the room, I noticed it was dark. There was no
19 lighting hardly in there. The only thing that was -- this
20 is not an accurate depiction of the lighting. I think you
21 know there's some light that was coming in through the
22 room. They had said they tried to turn the lamp on but it
23 didn't work. But from what I could tell, and I asked, is
24 this a cardiac arrest. He said, yes. So I confirmed
25 cardiac arrest on the radio so the incoming unit would know

1 what to prepare for. I mean, I could hear their sirens in
2 the background so I knew they were close. And at that
3 point, they were doing good adequate CPR, doing chest
4 compressions. They already had a bag valve mask out and
5 was doing the BVM and doing -- giving supplemental oxygen.
6 And I checked real quick to make sure that was adequate,
7 there was good airflow. They were getting good ventilation
8 and they were doing it adequately, the chest compressions
9 correctly. And at that point, I made the decision to go
10 ahead and start towards the ambulance. Because you can't
11 really do a good assessment in the dark. There's just no
12 way.

13 Q. And did you notice anything? Did you actually take a
14 look over the child itself or was it not ---

15 A. I did. I glanced. The child was laying here. The
16 firemen were on either side doing -- rendering aid. I took
17 a quick look around. What I could see, I didn't really
18 make mental note of anything. I think he said that he
19 noticed the drinks. I didn't even notice any of that. And
20 I really didn't get much of a back story until the fire
21 department said, they said that she choked on tea. And at
22 that point, it was ---

23 Q. Did that line up with what you were ---

24 A. It didn't.

25 Q. The cardiac arrest and what you were seeing?

1 A. No, no, it did not.

2 Q. And do you remember about -- did you actually check
3 the pulse on the child?

4 A. I did. I did a quick check. I did a pulse check and
5 at that point there was no pulse, but they were doing
6 adequate CPR. And like I said, I made the ultimate
7 decision to go ahead and start towards the truck.

8 Q. Did you actually touch the body of the child?

9 A. I did.

10 Q. And was she clothed, didn't have any clothes on?

11 A. The only thing she had on was a diaper. She was pale,
12 from what I could tell from the dark. It was, like I said,
13 dark. But she was pale and she was also, what we call
14 diaphoretic, which is wet. Kind of -- she wasn't warm.
15 She was cool to the touch. Actually, I pulled my glove
16 back to get -- because sometimes the gloves will kind of
17 hinder you from getting a good sense. I pulled my glove
18 back from the palm of my hand and just touched it to her
19 body and she was cool to the touch.

20 Q. And did any of those adults that were outside ever
21 make it in that you're aware of?

22 A. I never saw anybody inside.

23 Q. Did you ever actually talk to any of them?

24 A. I did not.

25 Q. How about, how would you characterize their demeanor

1 or what you saw?

2 A. I've been on several cardiac arrests over the past
3 twelve years. I've been on several pediatric cardiac
4 arrests. And this, it threw up a flag because there wasn't
5 as much of emotion as there usually is. There's usually a
6 lot of people. It's chaos. I mean, it wasn't. It seemed
7 -- it didn't seem that way. Everybody was nonchalant about
8 it for the most part. I had to get -- I had to find my own
9 way in the house, if that tells you anything. Nobody made
10 an effort to even take me in the house, so ...

11 Q. All right. So you make that ultimate call, we need to
12 get up and get out?

13 A. I did, yes.

14 Q. And then what happened?

15 A. As I was -- as we were coming out, we met Paramedic
16 Clardy and Paramedic Trotter as they were coming in. And I
17 said, I just motioned just, let's just go to the truck.
18 Because that takes you to your environment. That's my
19 environment. That's my office. There's better lighting.
20 All the equipment's there. And we decided to go ahead and
21 initiate transport at that point. And when we got in the
22 light, we could -- and we were doing adequate chest
23 compressions in the ambulance, we could get a better feel
24 and better assessment of what was going on.

25 Q. Okay. So who got into the ambulance?

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1 A. Myself, Paramedic Clardy and Paramedic Trotter were in
2 the back. Firefighter Reynolds had taken -- and he was
3 carrying her. He put the child on the stretcher. And at
4 that point he said, do you need a driver? I said,
5 absolutely. Head towards Greer. So we started to head
6 towards Greer.

7 Q. And what did y'all do -- well, let me backup. Anybody
8 try to get in the ambulance?

9 A. No.

10 Q. Did y'all give opportunity for somebody to ride in
11 there?

12 A. Somebody, and I believe it was Paramedic Clardy said,
13 is anybody riding? Nobody said anything. Usually, there's
14 people trying to get in the ambulance, in the back before
15 we even take off, but that wasn't the case. Both doors
16 were open, the side door and the back door because they had
17 -- Paramedic Clardy had entered through the side door and I
18 had entered through the back door. So all the doors were
19 accessible to the ambulance, to the back of the ambulance,
20 but nobody -- I mean, there wasn't anybody that was trying
21 to fight her way in or fight his way in.

22 Q. Tell us what happened as you're leaving the scene and
23 heading to the hospital?

24 A. Made the decision to go to Greer because it was the
25 closest facility. And in a case like this, you want the

1 closest facility where definitive care, a physician
2 ultimately to take over. Greer was the closest. And as we
3 were doing chest compressions and starting, I guess, to
4 circulate blood, bruises started popping up all over this
5 child. I mean, all over the face. They were more defined
6 in the face. The forehead was very noticeable. On the
7 side of the cheek, there were obvious, obvious bruises.
8 Bruises on the legs. We even turned her over on her back
9 and noticed on her back that there were obvious bruises in
10 different stages of healing. They were different colors,
11 so ...

12 Q. All right. And would there be any reason for any of
13 your CPR techniques to have caused any of those injuries to
14 the child's head or face?

15 A. No. No, not that quick. Not at all, but not that
16 quick. The chest compressions that were being done were
17 being done by one hand, and they were being done with the
18 palm. And with a child, especially a twenty month old, you
19 have to be careful. And you want it to recoil, because you
20 want the heart to squeeze, you want that blood to squeeze
21 and circulate the blood. So you have to actually get a
22 feel for the depth of what you're doing to make sure you're
23 doing it adequately and that's what we're train for and
24 that's what we're trained on. We're train extensively on
25 that.

1 Q. Did you intubate this child?

2 A. I did not, no.

3 Q. Okay. Did another paramedic?

4 A. Paramedic Clardy did, and I was watching over.

5 Paramedic Clardy was the primary care giver, but me being
6 there first, I had taken an -- just kind of an overview of
7 the call. And there's always one person that kind of looks
8 at all different aspects of it to make sure you're not
9 missing anything. While other paramedics are doing
10 procedures, you're kind of making sure that you're not
11 missing anything. And that's basically what my job was, my
12 role was. I was a secondary provider, but I was making
13 sure nothing was being missed.

14 Q. And so you did observe Paramedic Clardy intubate the
15 child?

16 A. He did. He intubated the child correctly and did the
17 correct procedure, in the correct manner, the correct
18 depth. I mean, everything was, everything was textbook.

19 Q. And could intubating the child have caused a tear in
20 the child's frenulum?

21 A. There was not enough force. There was not -- he
22 didn't apply enough force to do that, no.

23 Q. How about the -- now, did you administer any meds or
24 give an IV to the child?

25 A. I did. I put what's called a intraosseous infusion,

1 which is a needle -- there's a needle that goes actually
2 directly in the bone, especially in infants and smaller
3 children, it's the best way and it's the easiest access for
4 an IV, to give medicine and fluid. I did -- I actually did
5 the intraosseous infusion and did it aseptic technique,
6 cleaned it and did the appropriate technique. It had good
7 flow. We were able to give medicine and fluid through it
8 and we gave medicine.

9 Q. And did she ever regain a pulse?

10 A. As we were pulling into Greer, we were pulling off of
11 South Buncombe onto the property of Greer Hospital and we
12 noticed on the monitor there was some complexes, which
13 means there's some electrical activity in the heart. We
14 checked the pulse and there was a pulse that correlated
15 with the monitor. So at that point, we had return of
16 spontaneous circulation, which means that the child was
17 actually circulating blood and had a pulse. So we had a
18 pulse. We notified dispatch that we had a pulse. But we
19 briefly talked about staying in Greer. And in the best
20 interest of the child at that time, that was the best
21 choice, is to get her in the ER so they could stabilize her
22 and, if needed, ship her to the children's hospital. But
23 we elected to stay in Greer.

24 Q. Was she able to keep that heartbeat on her own or was
25 there continued compressions and treatment?

1 A. We did -- we were bagging her with the BVM and we did
2 compressions for maybe another minute, just to kind of help
3 jumpstart the heart after we noticed that there was a
4 pulse. That's our protocol to do CPR for another two
5 minutes to make sure that it's still adequate. And it was.

6 Q. And by that time had y'all made it to the hospital?

7 A. We were back in the, in the bay at Greer.

8 Q. And at the hospital do you transfer care then over to
9 the physicians?

10 A. We did. We took her into the room at Greer. One of
11 the larger rooms. There were physicians in there, there
12 were respiratory therapists, nurses. And at that point we
13 -- Paramedic Clardy gave a full and detailed report of the
14 events and we turned over care.

15 Q. And did that end your involvement in this case?

16 A. We stayed for -- to clean up the truck for a few
17 minutes. At that time, they had called the helicopter to
18 actually come and transport the patient down to Greenville
19 Memorial. And we stayed and actually stayed and helped
20 them load the patient onto the helicopter. And that was
21 the end of my involvement, yes.

22 Q. Thank you. Answer any of Ms. Manigault's questions,
23 please.

24 CROSS-EXAMINATION

25 BY MS. MANIGAULT:

1 Q. When you arrived at the home, the firefighters were
2 the people doing the CPR and the chest compressions?

3 A. That is correct.

4 Q. So you did not witness the mother or James Johnson do
5 anything?

6 A. No, I did not.

7 Q. All right. Thank you.

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

9 THE COURT: Thank you, sir. You may step down.

10 MS. HODGE: May he be excused, Your Honor?

11 MS. MANIGAULT: No objection.

12 THE COURT: Without objection the witness may be
13 excused.

14 Ladies and gentlemen, let's take a short break now.
15 I'll let you go back to your jury room. I'll remind you
16 again, don't discuss the case. We'll take a little more
17 testimony this afternoon and try to leave in the next hour
18 or so at least. You may retired back to your jury room.

19 Everyone else, please remain seated.

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

22 THE COURT: Solicitor, how many more witnesses
23 did you intend to call or how many short ones or long ones?
24 I was just trying to work our schedule out.

25 MS. HODGE: I mean, I have three that could go

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1 today that are fairly short, that are probably as short or
2 a little bit shorter than what we've had.

3 THE COURT: Okay. Maybe we can get those three.
4 Dealing with EMS?

5 MS. HODGE: One more EMS, then two police
6 officers that are pretty short.

7 THE COURT: All right. We'll try to get that
8 much in today. Let's take a short break.

9 (WHEREUPON, the court stood at recess for a short
10 break.)

11 THE COURT: All right. Are you ready to proceed?

12 MS. HODGE: Yes, sir.

13 THE COURT: Have our jury come in if they're
14 ready.

15 (WHEREUPON, the jury entered the open court at
16 approximately 4:42 P.M.)

17 THE COURT: All right, Solicitor, you may call
18 your next witness.

19 MS. HODGE: Thank you, Your Honor. The State
20 calls James Clardy.

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

24 THE WITNESS: I will.

25 THE CLERK: Please have a seat and then state

1 your full name for the record.

2 THE WITNESS: James P. Clardy.

3 JAMES CLARDY,

4 BEING FIRST DULY SWORN, TESTIFIED AS FOLLOWS:

5 DIRECT EXAMINATION

6 BY MS. HODGE:

7 Q. Mr. Clardy, who do you work for?

8 A. I work for Greenville County EMS.

9 Q. How long have you been with them?

10 A. I've been with EMS for six years.

11 Q. And do you have any previous law enforcement

12 experience before that?

13 A. I do. I also have approximately thirteen years as a
14 firefighter and almost five years as a police officer in
15 Texas.

16 Q. And were you employed as just EMS -- was it just EMS
17 back on May 25th, 2011?

18 A. Yes, ma'am. Greenville County EMS was my full-time
19 job at that time.

20 Q. And did you also respond to the call at
21 Road?

22 A. I did.

23 Q. And what time did you get to the residence?

24 A. I believe our on-scene time was fifteen thirty-one or
25 three thirty-one P.M.

1 Q. Who were you with?

2 A. I was with -- Cory Trotter was my partner that day.

3 Q. And were y'all driving an ambulance?

4 A. We were driving the transport truck, the ambulance
5 that day.

6 Q. And when you arrived at thirteen thirty-one, or excuse
7 me, at three thirty-one, what did you see on arrival? What
8 were you doing?

9 A. I was driving the ambulance. We had -- en route we
10 had gotten the call as a choking call. We have on-board
11 computers in the truck, which gives us detailed
12 information. As our dispatch gets information, they place
13 that information in the computer. We got the information
14 there's a child choking. And then we were updated
15 somewhere during the transport that the child was choking
16 on tea, I believe is what the information said. Somewhere
17 shortly after that, as we're approaching Few's Chapel off of
18 Highway 14, we got updated information that said it was a
19 cardiac arrest, which was kind of surprising to me that it
20 went from a choking on tea to a cardiac arrest. That's not
21 normal for -- most of the time, if somebody chokes on a
22 liquid, the airway clears up. You know, it doesn't
23 normally lead to a cardiac arrest. As we approached Few's
24 Chappel, I noticed a fire truck sitting on the roadway.
25 The QRV or the quick response vehicle in the driveway. We

1 tried to get as close as we could. Kind of didn't now at
2 the time if we could make it up the driveway, if it was
3 wide enough, so we gave it a shot and pulled up right next
4 to the QRV.

5 Q. And did you notice people outside at the time that you
6 pulled up?

7 A. I only noticed one person outside. I noticed at the
8 time an unidentified white male, who became known to me
9 later as the Defendant, was standing in the driveway
10 smoking a cigarette and speaking on a cell phone. We
11 immediately -- we exited the vehicle, grabbed what would
12 have been a minimal amount of equipment for the ambulance
13 crew. Being that the QRV was on scene already, we knew
14 that he would have equipment already. I believe we grabbed
15 a heart monitor. I was unsure of whether the QRV would
16 have a heart monitor or just a regular AED. So we grabbed
17 the heart monitor and I immediately went towards the
18 residence. Noticed two doors, one towards the back side of
19 the residence and one towards the front. Did not know
20 which to go in. A lot of times, it's very confusing for us
21 to know. Some people use the front door. Some people use
22 the back door as the primary egress or entrance out of the
23 residence. As I passed the white male that was smoking the
24 cigarette, his back was to the residence. And I asked him,
25 I said, where are we going? I got a very flippant, hand in

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1 the air, with kind of four fingers extended, not giving me
2 like a specific direction, just a flippant motion towards
3 the house, which frustrated me. We were dealing with a
4 twenty-month-old in cardiac arrest and I wanted to get in
5 the house pretty quickly. I noticed the backdoor was open,
6 or at least there was -- I can't remember if there was a
7 screen, but I remember seeing that the back door looked
8 more open than the front door, so I went to the back door.

9 Q. And were you able to actually get inside of the house
10 or into the room where the patient was?

11 A. I did not make it into the room where the patient was.
12 I believe I made it through a kitchen area. The residence
13 was pretty dark. It was kind of hard to tell, you know,
14 not being familiar with the residence, kind of didn't know
15 where we were going. There was nobody there inside to
16 direct us. A lot of times when we walk into a house,
17 especially if there's multiple family members on scene or
18 if there's multiple cars in their driveway, a lot of people
19 stage people throughout a house to let us know kind of --
20 as if I walk into the kitchen there's one person who
21 directs me through what would be a dining room or directs
22 me further to a patient. There was nobody there to direct
23 us. I heard Alex Kay's voice and started walking towards
24 there and heard him say, let's just go to the truck. Let's
25 get her in the truck. I moved myself out of the way for

1 the fireman who was carrying the child and performing CPR
2 as he was walking, and for Alex, for Paramedic Kay to walk
3 by me, and then I proceeded behind them, out of the
4 residence.

5 Q. Did you ever see the mother of the child? To your
6 knowledge, did you see her when you came up or when you
7 went in the house?

8 A. I did not. I did not see any females present that I
9 recall seeing. Definitely didn't see anybody that I would
10 have identified as a mother. At the time, I didn't really
11 note that anybody appeared to be a parent at all, because
12 nobody seemed very concerned. You know, I recall seeing
13 some other people standing in a driveway that were kind of
14 further away from where I walked by. And then the
15 unidentified white male, later identified as the Defendant,
16 was standing there. But nobody made any -- there was
17 nobody that I could directly say, well, there's a parent.
18 They're the one running, yelling, screaming, crying.

19 Q. Did you actually administer care to the patient, to
20 the little girl?

21 A. I did. We placed the patient in the back of the
22 ambulance. One of the firefighters got in the back of the
23 ambulance carrying the patient. I entered the ambulance
24 from the side door. They entered through the back door.
25 We removed the seatbelts off the stretcher, laid the

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1 patient in a supine position on the stretcher and
2 immediately continued care via bag valve mask for
3 ventilations and CPR, one-handed CPR.

4 Q. Did you notice anything about the child and how she
5 presented?

6 A. I positioned myself in the back of the ambulance, in
7 what's called the captain's chair, which is the chair that
8 -- or the seat that sits directly at the head of a
9 stretcher. What I did note, as soon as I sat down and made
10 contact and looked at the patient, made an overall
11 assessment, was some very large bruises in various stages
12 of healing on the face. Some bruises on the torso.
13 Several bruises on the legs and arms. The bruising on the
14 face was, in my experience, not very consistent with a --
15 there are bruises that are consistent when children fall
16 down. And there are bruises that, you know, on children's
17 knees and stuff that I would think would be normal for a
18 twenty-month old, that, you know, could possibly learning
19 how to walk, could have fallen down. But the bruises on
20 the forehead were very inconsistent with the normal bruises
21 that a twenty-month old to me would have sustained. And
22 they were in various stages of healing. There were some
23 red bruises, some yellowing bruises, just different color
24 bruises along the head.

25 Q. Was the child clothed or have anything on?

1 A. No. The child was stripped down to simply a diaper.

2 Q. Did anyone attempt to get in the ambulance as you were
3 getting in or as y'all were leaving?

4 A. No, which I also found very odd that -- you know,
5 normally, even on adult patients, a lot of times people --
6 especially, you know, on pediatric patients, parents
7 especially come to the back of the truck and want to ride
8 in the back. And nobody came to the back of the truck. We
9 closed both back doors. The side door had been closed, I
10 believe, by one of the firefighters. And I opened the back
11 door up or I opened the side door up, stuck my head out,
12 looked at the firefighter and I said, is anybody riding
13 with us? And the firefighter, to my recollection looked
14 around and said, I don't guess. We closed the door and I
15 said we're out. We're leaving.

16 Q. And then did you -- as you said, you were in the
17 captain's chair, were you doing some type CPR things to the
18 child?

19 A. At the time I was providing bag valve ventilations and
20 preparing to intubate the patient. We had supplemental
21 oxygen hooked up. Paramedic Trotter was performing CPR,
22 performing compressions. Paramedic Kay was kind of
23 performing a support role, preparing to get the IO,
24 intraosseous IV, set up and getting intubation equipment
25 ready so that we could intubate the patient, secure the

1 airway.

2 Q. And when you intubate, do you make sure the airway is
3 clear, there's nothing blocking it or lodged in there?

4 A. We do. I would look -- to perform intubation, you
5 make visual, you know, you visualize the vocal cords, so
6 you're looking all the way down the airway into the vocal
7 cord area. And we had what's called Magill forceps set up.
8 Being that it had been a choking, we were prepared to clear
9 an airway had there been an obstruction. Everybody had
10 already said -- the firefighters and Paramedic Kay had
11 already said that we had good ventilations, that there was
12 chest rise and fall. There did not appear to be any type
13 of obstruction in the airway, but we were prepared to deal
14 with an obstruction. When we did the laryngoscopy and
15 looked directly into the vocal cords, there was nothing,
16 nothing present. The child had a clear airway.

17 Q. When you're intubating, do you use any amount of force
18 or pressure on the top of the mouth or the top lip that you
19 could have caused any injury the frenulum?

20 A. No. During intubation, all the -- the only part of
21 manipulation is you use the laryngoscope blade to move the
22 tongue out of the way of the way of the airway, and to open
23 the airway, manipulating the lower mandible or the lower
24 jaw.

25 Q. And were you successful in intubating?

1 A. We were. The first time we were successful in
2 intubating the patient. We had good clear lung sounds. We
3 had an increase in the SPO2 or oxygen saturation. And at
4 some point during the transport, it was quite a -- it was
5 rough ride from Fews Chapel to Greer. The roads are -- you
6 know, the roads aren't the greatest in the world and with a
7 firefighter driving sometimes, especially with a twenty-
8 month old in the back, the drive can get kind of rough. At
9 some point we did not see as much chest rise and fall. The
10 oxygen saturation had started to drop. We immediately
11 assessed the airway and noted that the tube had become
12 dislodged, or probably pulled up past the vocal cords. At
13 that time, we extubated, removed the ET tube or the
14 endotracheal tube, continued the BVM ventilations, and then
15 attempted one other time to intubate the child and noted
16 some edema or some swelling in the throat. And noted that
17 with the BVM we still had good chest rise and fall and we
18 were getting pretty close to Greer. So we just decided at
19 that point just to continue with the BVM ventilations,
20 which was maintaining the airway for the child at that
21 time.

22 Q. And you guys made it to Greer and transferred custody
23 of Minor 1 over to the doctors there?

24 A. We did. We noted some organized electrical complexes
25 on the monitor when we started going in. And anytime that

1 happens it's one of those things where you start feeling
2 for a pulse. You see what happens on the monitor and then
3 you want to start feeling for a pulse. Felt a pulse. Had
4 a very slow pulse at that time. So as we were pulling onto
5 the Greer campus, we continued CPR until we transferred
6 care over to the nurses and doctors at the facility.

7 Q. And I'm guessing you guys left before anybody that
8 would have been at the house. So there was no family
9 members or adults or anyone for this child at the hospital
10 when you arrived?

11 A. No. And we were at the hospital for some time.
12 Anytime there's a child involved, you kind of take a
13 personal -- you know, it brings a personal feel to us.
14 Most of us have children. So we weren't in any real big
15 hurry to leave and just get back into service and go run
16 another call. You kind of wanted to see what the outcome
17 was. Knowing that they were calling the helicopter and
18 knowing that we'd got a pulse back, it's very common to
19 lose a pulse again very rapidly after gaining one back. So
20 we kind of wanted to see the outcome. We were there long
21 enough for the helicopter to respond, the hospital staff to
22 stabilize the child, continue care and then we assisted in
23 transferring the patient from the ER out to the helicopter
24 pad and the helicopter. And no family was present at that
25 time that I saw.

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1 Q. And did that end your involvement with Minor 1 ?

2 A. At that time that ended our involvement.

3 Q. Thank you. Answer any of Ms. Manigault's questions,
4 please?

5 MS. MANIGAULT: I don't have any questions, Your
6 Honor.

7 THE COURT: All right. Thank you. You may step
8 down. Any objection to this witness being excused?

9 MS. MANIGAULT: None.

10 THE COURT: Officer Clardy, you may be excused.

11 MS. HODGE: The State calls Deputy Carl Mathias.

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

15 THE WITNESS: I swear.

16 THE CLERK: Please have a seat and state your
17 full name for the record.

18 THE WITNESS: Carl Mathias.

19 **CARL MATHIAS,**

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

21 **DIRECT EXAMINATION**

22 **BY MS. HODGE:**

23 Q. Deputy Mathias, who do you work for?

24 A. I work for the Greenville County Sheriff's Office?

25 Q. How long have you been with Greenville County

1 Sheriff's Office?

2 A. Thirteen years.

3 Q. What are your primary duties for the Sheriff's Office?

4 A. I'm the school resource officer at Blue Ridge High
5 School?

6 Q. And what duties does that entail?

7 A. I work from eight A.M. to four P.M., make sure that
8 the kids at Blue Ridge High School are safe.

9 Q. All right. Do you have -- is there more than one
10 resource officer or just you?

11 A. Just me.

12 Q. And is that high school located near
13 Road?

14 A. The address is Road.

15 Q. For the high school?

16 A. Yes, ma'am.

17 Q. Okay. So just down the road?

18 A. Yes, ma'am.

19 Q. And were you working at school on May 25th, 2011?

20 A. Yes, ma'am.

21 Q. And did you have a reason or an occasion to respond to
22 Road?

23 A. Yes, ma'am. We got a call. I was walking towards my
24 car in the back hallway of Blue Ridge, about fifteen
25 twenty-three, almost three thirty, that there was an

1 unconscious child at that address. So I felt that I needed
2 to go there if no one else is -- if I can get their first
3 to give the child first aid. So I arrived at about three
4 thirty-one.

5 Q. All right. And when you arrived, what did you see and
6 what did you do?

7 A. When I pulled up into the long driveway, I saw a
8 firefighter carrying out a -- what appeared to be a
9 lifeless child. And the firefighter looked at me, like,
10 you know, this is not good. And so I saw some people out
11 there. But I made contact with the mother. And she said
12 to me, can I go to the hospital? I said, no, we're just
13 going to wait until uniformed patrol gets here. And I'd
14 made sure that I had to secure the scene if there was a
15 crime. So I said, wait until uniform patrol gets there and
16 then we'll make that decision then.

17 Q, All right. And you saw some other people outside as
18 well; is that ---

19 A. Yes, ma'am. I saw, I believe, an elderly woman. I
20 saw a child, a younger child. But I was more focused on
21 the mother.

22 Q. Did you see the Defendant at the residence?

23 A. No, ma'am.

24 Q. What did you do then?

25 A. We walked inside and then I saw the Defendant sitting

1 on the sofa in the living room. And, you know, I asked the
2 mother what happened. And she said, well, my daughter was
3 drinking tea and she started choking and she threw up. And
4 I thought that was kind of odd. I didn't say anything to
5 the Defendant. I looked over at him, and the Defendant
6 just said, I don't know what happened. I was in the
7 bathroom. I don't remember if he was using the bathroom.
8 He was kind of -- he was a little arrogant. So I asked
9 them, I said, well, where did she throw up at? And there
10 was a little spot on the rug.

11 Q. Let me show you, I'm going to put State's Number 4 --
12 and there's a laser pointer right there for you. If you
13 can see -- I know this isn't the best. But if you can
14 recall or see in the picture, point out. So where were mom
15 and ---

16 A. They were sitting right here and there was a cup right
17 there. And I can't remember if it was -- where it was, but
18 it was on this rug, there was a wet spot there. And after
19 they said it's that wet spot there, I kneeled down to smell
20 it to see if I could smell anything sour. Because when a
21 child or anybody throws up it always smells, you know, like
22 a sour smell to it. And I didn't smell anything that was
23 sour. And I thought that was really, really odd that a
24 child would choke and become unconscious by drinking tea.
25 And then if that was throw-up, it just didn't, it just

1 didn't add up.

2 Q. And when the mother was telling you about the child
3 choking on the tea, was the Defendant present in the room
4 at that time?

5 A. Yes, ma'am.

6 Q. So he heard what she was saying?

7 A. Yes, ma'am.

8 Q. And he distanced himself from her?

9 A. It seemed like that. When he told me -- when I asked
10 her what had happened and I didn't ask him what happened,
11 it appeared to me that he was trying to separate himself
12 from the incident by saying, oh, I don't know what
13 happened. I was in the bathroom. So I thought that was
14 rather strange and suspicious.

15 Q. That was not in response to a question you had asked
16 him. That was a spontaneous statement?

17 A. Yes. Yes.

18 Q. And how about their demeanor, how would you describe
19 it?

20 A. They weren't emotional. For what happened to their
21 child, they weren't emotional at all. They were just
22 wondering when they could go to the hospital. That was
23 their big question. And I told them that when the uniform
24 patrol got there, he would make that decision, whether or
25 not they could go to the hospital.

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1 Q. Were you there in any type of investigative capacity
2 or were you trying to get statements or what was your role?

3 A. No, no. I was there just to give aid to the child if
4 the child needed aid, as well as if there was a crime
5 scene, I would secure it.

6 Q. Did a uniform officer then show up while you were
7 there?

8 A. Yes, ma'am. Deputy Azzara showed up a few minutes
9 after I got there. And I walked near the door where we
10 walked in and I briefed him of basically what I thought
11 happened.

12 Q. And did you get a good look at the child, other than I
13 know you said it was lifeless. But did you get to see any
14 -- up close?

15 A. I didn't see anything, no. No.

16 Q. And was Deputy Azzara going to be the lead officer on
17 the scene?

18 A. He was the lead, yes, ma'am. He would be the one to
19 determine whether or not there would be a crime and secure
20 it and contact CID.

21 Q. Did you notice -- when you said outside, did you see a
22 child?

23 A. I think it was a younger child.

24 Q. Did you attempt to talk to anybody else outside?

25 A. No, ma'am. No, ma'am.

1 Q. And did you stay around even after Deputy Azzara
2 showed up?

3 A. I stayed until Deputy Azzara made the determination
4 whether or not to allow the family to go to the hospital,
5 and then I left.

6 Q. Okay. Thank you. Please answer any of Ms.
7 Manigault's questions.

8 MS. MANIGAULT: Thank you.

9 **CROSS-EXAMINATION**

10 **BY MS. MANIGAULT:**

11 Q. You said you arrived at around three-thirty P.M.?

12 A. Yes, ma'am.

13 Q. Three thirty-one?

14 A. Yes, ma'am.

15 Q. And when you made it inside the house, the child ---

16 A. Was already gone.

17 Q. Was already gone?

18 A. Yes, ma'am.

19 Q. All right. But you did see the child being
20 transported by the firefighter to the ambulance?

21 A. I saw the firefighter carry the child -- he was
22 already out of the house and carrying -- actually walking
23 rather fast to the ambulance.

24 Q. All right. And you say you saw people outside. Do
25 you happen to recall about how many you saw outside?

- 1 A. I'm guessing four maybe.
- 2 Q. Okay. Or where they were standing?
- 3 A. Right where the mother was. It was close to the
- 4 mother.
- 5 Q. Close to the mother. Was she close to the house or
- 6 near the ambulance?
- 7 A. She was probably about fifty feet away from the house.
- 8 Q. And did the mother approach you, start a conversation
- 9 or you went to her?
- 10 A. She approached me and asked me when she could go to
- 11 the hospital.
- 12 Q. All right. And that's when you told her that she
- 13 could not go?
- 14 A. Correct.
- 15 Q. And when you went inside, you saw James Johnson
- 16 sitting on the couch?
- 17 A. Yes.
- 18 Q. All right. And did he make any indication to you that
- 19 he wanted to go to the hospital too?
- 20 A. No.
- 21 Q. You testified they were wondering when they could go
- 22 to the hospital. Who's the they?
- 23 A. I'm saying the mother. The mother was the one that
- 24 was -- the vocal person of trying to go to the hospital.
- 25 Q. Okay. So your earlier testimony was not the correct?

1 It was just the mother?

2 A. As best as I can recall.

3 Q. Okay. And you said that you did not ask Mr. Johnson
4 any questions, but he volunteered a statement to you that
5 he was in the bathroom?

6 A. Yes, ma'am.

7 Q. And that he didn't now what happened?

8 A. Correct.

9 Q. And did he say anything else to you after that?

10 A. I can't recall.

11 Q. Okay. Thank you.

12 MS. HODGE: No further questions.

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

15 MS. HODGE: And may he be excused?

16 MS. MANIGAULT: No objection.

17 THE COURT: Without objection this witness may be
18 excused.

19 MS. HODGE: Thank you. The State calls Deputy
20 Azzara.

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

24 THE WITNESS: I do.

25 THE CLERK: Please have a seat and then state

1 your full name for the record.

2 THE WITNESS: Kevin James Azzara.

3 KEVIN AZZARA,

4 BEING FIRST DULY SWORN, TESTIFIED AS FOLLOWS:

5 DIRECT EXAMINATION

6 BY MS. HODGE:

7 Q. Deputy Azzara, who do you work for?

8 A. I work for the Greenville County Sheriff's Office.

9 Q. How long have you been with the sheriff's office?

10 A. I've been with the sheriff's office five years.

11 Q. What are your duties with the sheriff's office?

12 A. Presently, I'm assigned as an investigator with vice
13 and narcotics. I investigate methamphetamine laboratories.

14 Q. And back on May 25th, 2011, what were your duties with
15 the sheriff's office?

16 A. At that time, I was in the uniform patrol division.
17 Our primary duties are to respond to calls for service.

18 Q. Were you working first shift, second shift?

19 A. We were on day shift.

20 Q. Day shift, all right. And what area of Greenville?

21 A. That day, I was working in the Taylors area. We refer
22 to it B-area number two.

23 Q. And did you receive a call for service at

24 Road?

1 A. I did.

2 Q. What was that call in reference to?

3 A. The call was in reference to a medical assist of a
4 child choking.

5 Q. Did the call come straight to the sheriff's office or
6 was it routed to the sheriff's office?

7 A. Generally, what happens is they go -- a medical call
8 will go to EMS first and then will be sent to us as well.

9 Q. And do you know what time you received the call for
10 service?

11 A. We believe the call for the sheriff's office came in a
12 three twenty-three in the afternoon.

13 Q. And so it was for medical assistance. Did you have
14 any more information than that?

15 A. Just that there was a child choking.

16 Q. And what time did you end up arriving at Few's Chapel
17 Road?

18 A. I arrived at three forty-four.

19 Q. And was there any ambulance or fire trucks there when
20 you arrived?

21 A. To the best of my recollection when I arrived, I
22 remember seeing a fire truck. The ambulance had already
23 let. And Deputy Mathias was on scene still.

24 Q. All right. Did you notice any other people, civilians
25 outside?

1 A. There were some people milling around. I remember
2 seeing some children there. It was kind of a frantic,
3 everybody rushing to their cars trying to get to the
4 hospital.

5 Q. All right. And there was a car that they were trying
6 to get in to leave?

7 A. I recall there being a vehicle there at that time.

8 Q. And how about the Defendant, do you recall seeing the
9 Defendant when you were there?

10 A. I did. After I spoke to Deputy Mathias about what was
11 going on, he brought me inside the house and put me in
12 contact with the child's mother and the Defendant, who at
13 the time, I asked them what happened. They said they were
14 in the living room and the child walked over to the table
15 where there was a glass of tea, took a drink of tea,
16 started choking, threw up and then that's when they called
17 9-1-1 and began CPR.

18 Q. All right. And who was doing the talking mostly?

19 A. The mother.

20 Q. And what was her name?

21 A. Georgia Ann Sprouce, I believe.

22 Q. Okay. And was the Defendant, Mr. Johnson, was he
23 saying anything to you at that time?

24 A. He didn't say too much. About the only thing he said
25 -- I remember him saying was that are we going to be in

1 trouble. I told him, well, if everything is like you said,
2 the child just choked on something that's out of your
3 control and that's what happened, then, no, of course,
4 you're not going to be in trouble.

5 Q. How about the mom, did she say anything else to you,
6 other than relaying the story about tea?

7 A. That's what she told me. She was very concerned about
8 wanting to go to the hospital. Being that the child had
9 already left and there was no reason to hold them there at
10 that time, I said, why don't you go to the hospital and be
11 with your child and make sure everything's okay there. And
12 generally, what our practice is, if a medical call comes in
13 and the victim has already left the scene via ambulance to
14 the hospital, if there's a further investigation to be
15 done, we would go to the hospital and do it there, if there
16 was a problem with the situation.

17 Q. So you were doing kind of a cursory, initial view, but
18 you didn't get a chance to actually see this child?

19 A. Right. I never saw the child. I never even got a
20 chance to talk to the people who rendered aid to the child,
21 because they had already left by the time I had arrived on
22 scene.

23 Q. So you had limited knowledge about her medical
24 condition?

25 A. Correct.

1 Q. And for a uniform patrol officer, that would not be a
2 case that you would then further investigate? It would be
3 something that you pass on to ---

4 A. No, I called and I briefed my sergeant and at that
5 point he said, well, stay there. And he was going to send
6 CID out. I don't know if he had talked to the people at
7 the hospital or not and gotten further information at that
8 point.

9 Q. How long do you think that you were at the house
10 speaking to the Defendant and to Ms. Sprouce?

11 A. Maybe about five, ten minutes, just enough to get the
12 version of events of what happened and say, okay, go ahead
13 and go to the hospital and see how their kid's doing.

14 Q. And did they leave as soon as you said they could go?

15 A. Yes.

16 Q. All right. And did someone from CID show up to the
17 house?

18 A. Yes.

19 Q. Okay. Who was that?

20 A. That was Investigator Miller.

21 Q. And did anyone else come to the house while you were
22 there?

23 A. I believe the coroner came eventually and a forensics
24 person came. I'm not sure who that was.

25 Q. Does the coroner generally come on child or pediatric

1 calls?

2 A. At that point, we thought we might have something
3 serious after speaking with the people at the hospital,
4 learning that there was other issues going on. So I
5 believe they just erred on the side of caution and sent
6 somebody out there to document the scene.

7 Q. Okay. But when you were speaking to the mother and
8 the Defendant, you had not spoken to medical personnel,
9 firefighters, EMS, nobody?

10 A. No.

11 Q. So you really were kind of in the dark about ---

12 A. Right. As I said, it was a hectic scene, as you can
13 imagine with something happening to a child. And I can't,
14 you know, blame the paramedics or firefighters for wanting
15 to get them -- get out of the scene and get to the hospital
16 as quickly as possible.

17 Q. Once Investigator Miller showed up on the scene, did
18 that scene transfer over to him?

19 A. Correct.

20 Q. And someone you said from forensics showed up while
21 you were there too?

22 A. Yeah. I believe that was Lendway, I want to say.

23 Yeah. Sergeant Lendway.

24 Q. And is that somebody that you called to come out to
25 the scene or is this something that Investigator Miller is

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1 now in charge of ---

2 A. I'm fairly sure it was Investigator Miller who called
3 him.

4 Q. And did you keep the house secure after the Defendant
5 and the mother left?

6 A. Yes.

7 Q. Any other adults or children come into the house that
8 you're aware of?

9 A. Not to my knowledge.

10 Q. Did you speak to any other witnesses in the case?

11 A. No.

12 Q. Did you ever talk to the Defendant or the mother again
13 with regard to this case?

14 A. No.

15 Q. So that ended your involvement?

16 A. Yes.

17 Q. Thank you. Answer any of Ms. Manigault's questions.

18 A. Yes, ma'am.

19 **CROSS-EXAMINATION**

20 **BY MS. MANIGAULT:**

21 Q. Deputy, you stated that when you went into the house,
22 the mother was talking to you and the Defendant was
23 present?

24 A. Yes.

25 Q. But all the comments or statements came from the

1 mother?

2 A. Correct.

3 Q. And you testified that she said they were in the
4 living room area and saw the child drink the tea?

5 A. Yes.

6 Q. Did she tell you who the they were? Was she talking
7 about herself and somebody else?

8 A. I was assuming she was talking about her and the
9 Defendant, since they were the only two standing there.

10 Q. Okay. So they were the only two there and they said
11 they both were in the living room area when they saw the
12 child -- when she saw the child drink the tea and choke?

13 A. Correct.

14 Q. You stated that you released them after about five or
15 ten minutes to go to the hospital?

16 A. Yes.

17 Q. All right. Thank you.

18 THE COURT: Any redirect?

19 MS. HODGE: No, Your Honor.

20 THE COURT: All right. Thank you, Officer. You
21 may step down.

22 THE COURT: Ladies and gentlemen, we've perhaps
23 reached a good time to break for the evening. I don't know
24 how long the next witness may take, but this will be a good
25 time to end our case for today. We have more testimony

1 obviously to be heard. There might be more exhibits to be
2 offered. I don't know that, but either way I remind you
3 again that you shouldn't be discussing the case, forming
4 any impressions about the case, doing any kind of research
5 about the case. Not listening to any news coverage about
6 the case. The high commitment you've made, ladies and
7 gentlemen, needs to be observed and that's for the
8 commitment that you're going to make a factual decision
9 about this case from what happens in this courtroom and not
10 from extraneous matters that you may hear about. Let your
11 family know that I've instructed you, you're not to talk
12 with them about it or if you're out with some friends
13 tonight. Again, you'll certainly be able to share your
14 experience with those, but while this case is in progress
15 is not the time to do that. I'm sure you'll fulfill the
16 commitment that you've made to both the State and to Mr.
17 Johnson concerning that.

18 We'll be ready to start back at nine o'clock in the
19 morning. I have some more matters I need to take care of
20 this afternoon. So this will be a good time for you to
21 leave. If you will be back in your jury room at nine
22 o'clock in the morning, we'll be ready to proceed then.
23 Have a good evening, ladies and gentlemen.

24 Everyone else, please remain seated.

25 (WHEREUPON, the jury exited the open court at

1 approximately 5:18 P.M.)

2 THE COURT: All right. We will be at ease until
3 nine o'clock in the morning.

4 MS. HODGE: Thank you, Your Honor.

5 (WHEREUPON, the court stood at recess in this case for
6 the day.)

7 **June 4, 2013**

8 THE COURT: There are no matters we take care of
9 before we start the trial?

10 MS. HODGE: I don't believe so, Your Honor.

11 THE COURT: All right.

12 MS. MANIGAULT: No, Your Honor.

13 THE COURT: Please bear in mind, too, the clock's
14 not working. I think some of the jurors have already
15 noticed that, looking at it.

16 (WHEREUPON, the jury entered the open court at
17 approximately 9:18 A.M.)

18 THE COURT: All right. Ladies and gentlemen,
19 we're now ready to start with the trial of the case.
20 Solicitor, you may call your next witness.

21 MS. HODGE: Thank you, Your Honor. The State
22 calls Crystal Inman.

23 THE CLERK: You may come forward and put your
24 left hand on the bible and raise your right.

25 Do you solemnly swear or affirm to tell the truth, the

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1 whole truth and nothing but the truth, so help you God?

2 THE WITNESS: Yes.

3 THE CLERK: Thank you. Please have a seat. And
4 then please state your name for the record.

5 THE WITNESS: Crystal Marie Inman.

6 CRYSTAL INMAN,

7 BEING FIRST DULY SWORN, TESTIFIED AS FOLLOWS:

8 DIRECT EXAMINATION

9 BY MS. HODGE:

10 Q. Ms. Inman, tell us a little bit about yourself. How
11 old are you?

12 A. Twenty-eight.

13 Q. Are you married?

14 A. Yes.

15 Q. And who's your husband?

16 A. Mark Inman.

17 Q. Do you have any children?

18 A. Yes, three.

19 Q. Okay. And I'm going to need you to speak up just a
20 little more and into the mike, okay?

21 A. Okay. Yes. I have three children.

22 Q. All right. How old are they?

23 A. Twelve, nine and five.

24 Q. Boys, girls?

25 A. Two boys and one girl.

- 1 Q. And are they in school today?
- 2 A. No.
- 3 Q. They're out of school already?
- 4 A. Yes, half-days so they didn't go today.
- 5 Q. Okay. But all of them are school-aged, I guess?
- 6 They're all in ---
- 7 A. All of them but my little girl. She don't start until
- 8 next year.
- 9 Q. Do you work currently?
- 10 A. No, ma'am.
- 11 Q. You stay at home with the kids?
- 12 A. Yes, ma'am.
- 13 Q. And have you worked before?
- 14 A. Yes.
- 15 Q. What kind of jobs have you done before?
- 16 A. Dunkin Donuts, mostly fast food.
- 17 Q. Okay. Have you lived in Greenville most of your life?
- 18 A. Yes, ma'am.
- 19 Q. And do you know the Defendant, Mr. Johnson?
- 20 A. Yes, ma'am.
- 21 Q. Tell us how you know him?
- 22 A. The first time I met him was at my friend Denise's
- 23 house. And that was about two and a half, three years ago.
- 24 Q. Did you go to school with him or anything?
- 25 A. No, ma'am.

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1 Q. And is Denise related to Ann Sprouce?

2 A. Yes, ma'am, that's her sister.

3 Q. Okay. Do you know Ann?

4 A. Yes.

5 Q. Were you and Ann friends growing up?

6 A. Childhood friends, yes, ma'am.

7 Q. And how long have you known her?

8 A. Ever since I was like nine years old. We was
9 childhood friends forever.

10 Q. All right. Back in May of 2011, where were you living
11 at the time?

12 A. Road.

13 Q. Was that a house y'all were renting or leasing or were
14 y'all buying it?

15 A. Yes, ma'am, we was renting it.

16 Q. Who all lived in that house when you first got there?

17 A. Me and my husband and my three kids.

18 Q. At some point did the Defendant ever come and stay
19 with you at that house?

20 A. Yes, ma'am.

21 Q. Tell us how that came to be?

22 A. Ann was living in an apartment on a White Horse Road
23 and her power had got turned off. And she asked me if they
24 could come stay and I told her, yeah.

25 Q. Had you been keeping up with Ann? I mean, as y'all

1 grew up, did y'all keep in touch?

2 A. For a while we didn't speak for three or four years.

3 And then when she got out of the Serenity House, when she

4 got her apartment, I got back in touch with her.

5 Q. Had she gone up to North Carolina or something during

6 some of that time?

7 A. Yes. That's when she was with Minor2 's daddy.

8 Q. Okay. And did she have her children with her when she

9 came to stay with you on Fews Chapel Road?

10 A. Yes, ma'am.

11 Q. Which children did she have?

12 A. Minor2 and Minor1 .

13 Q. Do you know how old Minor2 and Minor1 were at the

14 time?

15 A. Minor1 was one and Minor2 was two.

16 Q. So little?

17 A. Yes, ma'am.

18 Q. All right. And your daughter was how old at that

19 point?

20 A. Three.

21 Q. Were they close? Did they play together?

22 A. Oh, yes, especially her and Minor2 . They were

23 really close.

24 Q. Okay. I'm going to show you a few pictures and see if

25 you can tell us what these are pictures of. I'm showing

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1 you what's been marked State's Number 5 through State's 22.

2 If you would just look at them as a group for me and then

3 we'll go specifics with some questions.

4 A. (Reviews State's Exhibits 5 through 22).

5 Q. So what are these pictures of, just in general?

6 A. Pictures of the house and the living room and the

7 bedrooms that we slept in and the bathrooms, and just

8 outside of the house.

9 Q. An overview of the house?

10 A. Yes, ma'am.

11 Q. And is this how the house looked and the inside of the

12 house looked on May 25th of 2011?

13 A. Yes, ma'am.

14 Q. So it's true and accurate depictions of that house?

15 A. Yes, ma'am.

16 MS. HODGE: At this point, we would move to admit

17 State's 5 through 22.

18 THE COURT: Any objection?

19 MS. MANIGAULT: No objection, Your Honor. We've

20 reviewed them.

21 THE COURT: All right. Without objection

22 Exhibits 5 through 22 are admitted into evidence and may be

23 published to the jury.

24 (WHEREUPON, State Exhibit Numbers 5 through 22 were

25 admitted into evidence.)

1 MS. HODGE: Thank you, Your Honor.

2 Q. Crystal, I'm just going to put a few of them up there.

3 Actually, they'll come up behind you on this.

4 MS. HODGE: And I'm going to see if we can turn
5 off that one light, see if they'll show up a little better,
6 Madam Bailiff. That's a little bit better. Y'all think
7 that's a little bit better?

8 Q. All right. And what is this picture of? This is
9 State's Number 5, Crystal?

10 A. It's the picture of the outside of my house and the
11 driveway.

12 Q. All right. And where would you normally park your
13 car?

14 A. Normally, I would park in both spaces. But normally,
15 most of the time, I would park up -- you go behind where
16 these vehicles is sitting, near the back porch.

17 Q. Okay. And I'm going to let you -- this little dot you
18 can use to help you out. Just when you turn away, make
19 sure you speak loud enough. So let me show you State's
20 Number 6. What is that?

21 A. This was the back of the house. This is the section I
22 was talking about that I usually park right here. In this
23 section right here, near the back door.

24 Q. Okay. Would you pull up on the grass or gravel or
25 whatever that was?

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1 A. Yes, ma'am.

2 Q. Is that the door that y'all would normally go into?

3 A. Yes, ma'am.

4 Q. All right. Does this house have a lot of doors?

5 A. Yes, bunches.

6 Q. All right. Showing you State's Number 7. And what is
7 that showing?

8 A. When you went in the door, also, that we used all of
9 the time, that is what I fixed up as a playroom. It had a
10 TV and a futon where they would go play their games.

11 Q. Okay. And is that the futon?

12 A. Yes, ma'am.

13 Q. Okay. And I'm showing you State's Number 8. And is
14 that the same room and the TV over there?

15 A. Yes, ma'am. That's the same room and then the laundry
16 room right beside it.

17 Q. All right. And showing you State's Number 9. Where
18 is this picture taken from? Are you standing in that room
19 we just looked at?

20 A. Yes, ma'am. Looking straight out of that door, you
21 would go into the kitchen.

22 Q. Okay. And what is this over here on the side?

23 A. It is the steps that took you down to the basement.

24 Q. Okay. Was that door normally open like that?

25 A. No, ma'am. It was usually closed and locked. We had

- 1 a deadbolt at the top of the door because they was young
2 children.
- 3 Q. Okay. Are the steps pretty steep?
- 4 A. Yes, ma'am.
- 5 Q. And what's underneath there or down there?
- 6 A. When you first go down, it's like -- just like one
7 little bitty room. And then it turns to your right.
8 There's a door right there and then it was like a big --
9 looked like you could use for a living room with a big
10 fireplace and all that.
- 11 Q. Okay. Did anybody stay down there or live down there?
- 12 A. No, ma'am.
- 13 Q. And I'm going to go back a couple of pictures to
14 Number 6. Is there a door that goes into that downstairs
15 room?
- 16 A. Yes, ma'am.
- 17 Q. Is that the door right there?
- 18 A. Yes. Right there.
- 19 Q. All right. And State's Number 10. Is this the other
20 side of the kitchen?
- 21 A. Yes, ma'am.
- 22 Q. Okay. And are there -- is there something right
23 beyond this little table right here, this microwave table?
- 24 A. Yeah. That's the door that takes you into the living
25 room.

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1 Q. And I'm going to show you State's Number 11. Oops,
2 that one's sideways. What was this?

3 A. That was mine and my husband's room.

4 Q. And I see a bunch of blankets and stuff on your bed.
5 What were those for?

6 A. Most of the time, all three of my children still to
7 this day will sleep on the couch or make a pallet in the
8 floor. They ain't never really been the type to sleep in
9 their own room. So that was from the pallets that they had
10 slept in.

11 Q. And where would they put their -- make their pallets
12 in that house?

13 A. In the living room.

14 Q. All right. And showing you State's Number 12. Which
15 room was that?

16 A. That was the master bathroom in my bedroom.

17 Q. Did Ann or the Defendant or would the girls ever use
18 your bathroom?

19 A. Hardly ever. I recall the girls taking a bath a few
20 times in there, but other than that they would use the
21 other bathroom.

22 Q. There was another bathroom?

23 A. Yes, ma'am.

24 Q. Okay. And State's Number 13, this is still part of --
25 or you tell me.

1 A. Yeah. That's still part of my restroom, the master
2 bathroom.

3 Q. All right. And let me show you State's Number 14.
4 What is this showing?

5 A. That would be if you was coming out of my bedroom door
6 and it would take you straight down the hallway into the
7 other two bedrooms and the bathroom.

8 Q. Okay. And where in your home were the Defendant and
9 the girls and Ann staying?

10 A. You go straight down that hallway into the two back
11 bedrooms and that's where they was staying.

12 Q. All right. I'm showing you State's 15. What was
13 that?

14 A. That was the other restroom I was talking about, in
15 the hallway.

16 Q. Okay. Is it -- I'm showing you back on 14. Is it
17 straight ahead or off to the side?

18 A. To your right where the door's at.

19 Q. Okay. So that was in this bathroom, State's 15.

20 Okay. And I'm going to show you State's Number 16. What
21 was that?

22 A. That was the same restroom in the hallway.

23 Q. All right. And the restroom that primarily Ann and
24 the Defendant would use?

25 A. Yes. Yes, ma'am.

1 Q. All right. And State's Number 17.

2 A. And that was one of the bedrooms. That was the
3 bedroom Ann and the Defendant stayed in.

4 Q. All right. And there's a bunch of stuff on the floor
5 and around in here. What kind of stuff is that?

6 A. Crayons, toys and stuff that they had been playing
7 with earlier that day.

8 Q. All right. And who would be playing with that stuff?

9 A. Minor 2 and Minor 3 .

10 Q. And Minor 3 is your daughter?

11 A. Yes, ma'am.

12 Q. All right. And showing you State's Number 18.

13 A. That is the same bedroom that Ann and the Defendant
14 stayed in.

15 Q. Okay. And then I'll show you State's Number 19?

16 A. This was the bedroom that Minor 1 and Minor 2 stayed
17 in.

18 Q. Okay. Was that room connected to the room that is
19 shown in State's Number 17?

20 A. Yes, ma'am.

21 Q. Okay. Where was that bedroom that the girls stayed
22 in, the little girls.

23 A. Right there when you step up through the door. You
24 had to go through that room to get to the room where the
25 girls stayed.

- 1 Q. Okay. So there's a little step right here?
- 2 A. Yes, ma'am. It's step ups.
- 3 Q. Okay. And is this whole thing carpeted down here
- 4 though?
- 5 A. Yes, ma'am.
- 6 Q. All right. And was the room that they -- 19, was this
- 7 the room that their girls, Ann's girls, stayed in?
- 8 A. Yes, ma'am.
- 9 Q. Okay. Was that room also carpeted?
- 10 A. Yes.
- 11 Q. And then I'm showing you State's Number 20?
- 12 A. That was the living room.
- 13 Q. Okay. Where would this picture be taken from?
- 14 A. Standing in the door at the kitchen.
- 15 Q. Is that where the room you're talking about son's also
- 16 and daughter would make the pallets and sleep on?
- 17 A. Yes, ma'am.
- 18 Q. Okay. And how about State's 21?
- 19 A. That is also the living room. But in that view you
- 20 would be standing near the window, taking a picture towards
- 21 the kitchen.
- 22 Q. Okay. Did this room have a door also that went from
- 23 the outside into this room?
- 24 A. No.
- 25 Q. So you would have to enter through the kitchen ---

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1 A. Yes, ma'am.

2 Q. --- was the only way you could get into this room.

3 Okay. So everybody had their own places to be and stay
4 when they were living with you?

5 A. Yes, ma'am.

6 Q. Was the intention that they were going to actually
7 live with you or what was the arrangement originally?

8 A. No, ma'am. They was just going to stay for a little
9 while. She said she was either going to try to get their
10 power turned back on at the apartment or the Defendant got
11 a check or they was going to try to get a place to live
12 when he got his check.

13 Q. Okay. So this was a temporary arrangement?

14 A. Yes, ma'am.

15 Q. Okay. Now, back in May of 2011, were you working at
16 the time?

17 A. Yes, ma'am. I was working at Dunkin Donuts in
18 Travelers Rest.

19 Q. Did you work everyday or how did that go?

20 A. I would work every day but two days a week. I would
21 get two days a week off.

22 Q. Would you go early morning or evening or during the
23 day?

24 A. I was early. I had to be there at like four o'clock
25 in the morning most of the time.

1 Q. All right. How about your husband, did he work during
2 this time?

3 A. Yes, ma'am. He worked at Hawkin's Towing.

4 Q. And does he still work for them?

5 A. Yes, ma'am.

6 Q. Now, how about Ann, did she work at all during this
7 time?

8 A. No, ma'am.

9 Q. Or how about the Defendant, did he have a job or go to
10 work during this time?

11 A. No, ma'am.

12 Q. What would -- tell us what your normal type day was
13 when Ann and the Defendant were staying with you during
14 this couple week period?

15 A. We'd get up and get my kids ready. My husband would
16 take them to school. I would go to my mom's. My
17 grandmother lives with my mom. She takes care of her. So
18 I stayed at my mom's house a lot, helping them out, taking
19 them to the doctor or to the grocery store. And I would
20 stay there until almost time to get my boys. Then I would
21 leave and go get in the school line and then come home and
22 cook and clean.

23 Q. That was kind of the basic routine?

24 A. Uh-huh (affirmative). Yes, ma'am.

25 Q. And what about Ann and the Defendant, what would they

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1 be doing, do you know, while you were gone?

2 A. No, ma'am.

3 Q. Did they have a car, either of them?

4 A. No, ma'am.

5 Q. So would they be staying around your house mostly?

6 A. Yes.

7 Q. Did you observe Ann and the Defendant with the girls?

8 A. Yes.

9 Q. Did you see anything initially that gave you any
10 concern with either Ann or with the Defendant, with her
11 girls?

12 A. At the time, no, ma'am.

13 Q. In your opinion, did it appear that Ann or the
14 Defendant treated one or the other girls better or
15 differently than the other?

16 A. Yes, ma'am. I thought that Parker favored Minor 2 a
17 little more over than Minor 1 because him and Minor 1's
18 father ---

19 MS. MANIGAULT: Your Honor, I object to anything
20 -- conclusions that she's drawn.

21 THE COURT: All right. I sustain the objection.
22 She can certainly talk about her observations, but ...

23 MS. HODGE: All right.

24 Q. Did you notice -- and who is Parker? First of all,
25 who is Parker?

1 A. Him, right there.

2 Q. Okay. That's what you call him?

3 A. Yes, ma'am. I know him by Parker. That's what I've
4 always called him.

5 Q. You've never called him James or Allen or anything
6 like that?

7 A. No, ma'am.

8 Q. Okay. So when you just said Parker, I just wanted to
9 make sure who we were talking about. And you observed
10 Parker being -- treating Minor2 more favorably?

11 A. Yes, ma'am.

12 Q. Was there anything specific that you saw him do?

13 A. He would just baby her a lot more and pay more
14 attention to her than he would Minor1 .

15 Q. Okay. At this time, were the girls, Minor2 and
16 Min -- was that her nickname as well? Minor1 s nickname?

17 A. That's what I've always -- that's what I always called
18 her, Minor1 yes, ma'am.

19 Q. Were these girls still in diapers at the time?

20 A. Yes, ma'am.

21 Q. All right. Both of them?

22 A. Yes.

23 Q. Now, about Minor1 , was she able to walk during this
24 time?

25 A. Yes, ma'am.

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1 Q. And how about was she able to eat and drink on her
2 own?

3 A. Yes, ma'am.

4 Q. Did she appear to be a normal, healthy one-year-old?

5 A. Yes.

6 Q. Typical?

7 A. Uh-huh (affirmative).

8 Q. Okay. Did you ever see Ann hit either of the girls?

9 A. I've seen her discipline them and like put them in a
10 corner, but other than hitting them, no, ma'am.

11 Q. Spanking them or ---

12 A. Maybe a pop on the hand and put in a corner, you know,
13 that's all I've ever seen Ann do.

14 Q. All right. And how about the Defendant, did you ever
15 see him hit either of the girls?

16 A. Really, the same for the Defendant. I seen him
17 discipline them and put them in the corner and just pop
18 them on the hand.

19 Q. So there was nothing that you saw personally happen
20 that gave you concern or thought you needed to report or
21 talk about or anything like that?

22 A. No. No, ma'am.

23 Q. During the time that Ann and the Defendant and the
24 girls were staying with you, would there be a time or times
25 that Ann would go with you somewhere? Y'all would go do

1 random things?

2 A. Yes, ma'am. A couple of times she rode with me to my
3 mom's house and she would leave the girls there with the
4 Defendant.

5 Q. Okay. Do you have any idea how many times that was?

6 A. I recall maybe three at the most. Most of the time, I
7 would go by myself to my mom's and they would stay at home
8 because, of course, when I pick kids up there wouldn't be
9 enough room for everybody to ride.

10 Q. And when you and Ann returned from one of the times
11 that y'all had been gone, did you ever notice anything
12 unusual or suspicious regarding Minor 1

13 A. I noticed a bruise on her forehead that looked like a
14 beaded bruise across her head, yes, ma'am.

15 Q. Did you ask or inquire about that?

16 A. Yes, ma'am. I did ask the Defendant and he said that
17 Ann's daughter Minor 2 had hit Minor 1 in the head with a
18 beaded bracelet -- I mean, necklace. And at the time it
19 seemed like that's what happened because ---

20 MS. MANIGAULT: Your Honor, I object to any
21 conclusion she's drawn.

22 THE COURT: I sustain the objection.

23 Q. Okay. And that's what he told you?

24 A. Yes, ma'am.

25 Q. Minor 2 had hit her with the beaded necklace?

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1 A. Yes, ma'am.

2 Q. Was there a beaded necklace in the house?

3 A. Yes, ma'am.

4 Q. Okay. What kind of beaded necklace was it?

5 A. It was like a -- I don't know what they call a Mardi
6 Gras.

7 Q. Mardi Gras, the plastic?

8 A. A lot of beads around it. Yes, ma'am.

9 Q. Okay. And did you ever personally see Minor 2 hit
10 Minor 1 with a beaded necklace?

11 A. No, ma'am.

12 Q. Did you see -- and how -- can you give us a time frame
13 about when that bruising happened in relationship to when
14 Minor 1 died?

15 A. Two and a half, three weeks after that.

16 Q. And how about any other bruising on Minor 1. Did you
17 see anything else that gave you cause for concern?

18 A. Yes. A week maybe after that, I had seen a bruise
19 between her eyes on her head.

20 Q. And did you ask anyone about that?

21 A. Yes, ma'am. And they said that she fell on ---

22 MS. MANIGAULT: Your Honor, I object. There's no
23 establishment that the Defendant was present or said
24 anything.

25 THE COURT: I sustain the objection.

1 Q. Who did you ask and who answered your question?

2 A. I asked the Defendant and he said that she had fell
3 off the step-down in the back bedroom.

4 Q. Okay. And is that the step-down that we were showing
5 in State's Number 17? Is this what he was referring to?

6 A. Yes, ma'am.

7 Q. Okay. And do you know how long before Minor1 died
8 that you saw that bruise in the middle of her head?

9 A. I don't recall. It was maybe a week or so before
10 that.

11 Q. Did you think that you needed to tell anyone about
12 those couple of instances?

13 A. No, ma'am.

14 Q. Did you take it for what it was worth?

15 A. Yes, ma'am.

16 Q. For what you were told?

17 A. Yes, ma'am.

18 Q. Did you ever see Minor1 fall down that little step
19 back there?

20 A. No, ma'am.

21 Q. Were you ever told by the Defendant that she had
22 fallen down outside, on some steps outside?

23 A. No, ma'am.

24 Q. Were you ever told that she fell down outside on the
25 pavers leading up to the steps?

1 A. No, ma'am.

2 Q. Were you ever told anything else by the Defendant
3 about how she got her injuries?

4 A. No, ma'am.

5 Q. Okay. So let's go to talk about May the 25th of 2011.
6 Tell the jury what you were doing that day, what you recall
7 about that day?

8 A. My husband had got up and got my kids ready for
9 school. Me and the Defendant and kids got up around nine.
10 We fed the girls breakfast. And we -- I was going to
11 Mauldin to get a child support check for my oldest son and
12 I asked Ann if she wanted to ride with me, and she said,
13 yeah. So she went with me. And that was me and my
14 daughter and her two girls. The Defendant did ride with us
15 too, but we had dropped him off at a friend's house named
16 Josh in Travelers Rest. Went to Mauldin. And then after I
17 left Mauldin we come straight back, got the Defendant and
18 went home.

19 Q. Do you have any idea about what time you got home?

20 A. It was twelve-thirty or so, around -- sometime about
21 twelve-thirty.

22 Q. And what happened when you got back to the house?

23 A. Me and my daughter eat a sandwich and eat some lunch
24 and stuff and used the restroom and then I left to go get
25 my boys from school.

- 1 Q. And what school were they going to?
- 2 A. Heritage Elementary in Travelers Rest.
- 3 Q. So what time did you normally have to leave to go get
- 4 them?
- 5 A. Between one-fifteen or one-thirty because it was so
- 6 far from the house down to go get them, so I always left
- 7 early to get in the school line early.
- 8 Q. And when you left to go get them, did you take anybody
- 9 with you? Ann or the girls or the Defendant?
- 10 A. My daughter, Minor3 . That's the only one that went
- 11 with me.
- 12 Q. So who was left at the house when you went to go pick
- 13 your boys up?
- 14 A. Ann, the Defendant, and the two girls.
- 15 Q. Do you know or recall what they were doing when you
- 16 left?
- 17 A. I don't recall.
- 18 Q. Would the girls -- did you know the girls to take naps
- 19 or anything?
- 20 A. Yes, ma'am.
- 21 Q. Were they still doing that?
- 22 A. Uh-huh (affirmative).
- 23 Q. Did you know or remember if they ate with you and your
- 24 daughter lunch or anything like that?
- 25 A. I don't recall, really.

1 Q. When you were with Minor 1 that day, how was she?

2 A. She was fine. She was acting normal. I mean, she was
3 happy, laughing, playing. She was perfectly fine when she
4 was with me.

5 Q. So did you go pick up your boys from school?

6 A. Yes, ma'am.

7 Q. And where did you go after that?

8 A. I picked them up. I go pick one of my friends up,
9 too, during the day to pick her little girl up. And we
10 picked my children up and her little girl. And I took my
11 friend back home and then I went home.

12 Q. Do you have any idea what time it was when you got
13 back home?

14 A. Between three and three thirty.

15 Q. And what happened when you got home?

16 A. I pulled up in the driveway and Ann come running
17 outside saying that Minor 1 had got choked on tea.

18 MS. MANIGAULT: Your Honor, I object to anything

19 ---

20 THE COURT: I -- wait just a moment.

21 MS. MANIGAULT: I object to anything that Ann or
22 anybody told her when the Defendant was not present.

23 THE COURT: All right. I'll sustain.

24 Q. Don't tell us what Ann said to you but what did you
25 do?

1 A. I had went in the house and seen Minor 1 laying in the
2 floor. And her lips was already turning blue then. And I
3 had seen throw-up beside her. And the Defendant was in
4 there, bent over her doing CPR. And Ann was on the phone
5 with 9-1-1.

6 Q. And when you got there, they were already on the phone
7 with 9-1-1?

8 A. Yes, ma'am.

9 Q. And where was she? Where was Minor 1 ?

10 A. She was in the living room.

11 Q. Okay. I'm going to put up State's Number 20. Where
12 did you see Minor 1 and the Defendant when you came in?

13 A. Right there.

14 Q. And you said you noticed the throw up. Where was
15 that?

16 A. Like right beside her, in this area.

17 Q. Was it a lot? Did you notice a lot, a large amount or
18 a small?

19 A. It was a small amount.

20 Q. Do you remember what Minor 1 happened to be wearing
21 that day?

22 A. I think it was just a diaper when I returned back
23 home.

24 Q. Had she had clothes on earlier in the day when y'all
25 had gone down to Mauldin?

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1 A. Yes, ma'am. She had like a top dress thing on with a
2 green bow.

3 (WHEREUPON, State Exhibit Number 23 was marked for
4 identification.)

5 Q. Let me show you State's Number 23. What is this a
6 picture of?

7 A. This is a picture of the dress that Minor 1 had on
8 earlier that day.

9 Q. All right.

10 MS. HODGE: At this time we'd move to admit
11 State's Number 23 into evidence.

12 MS. MANIGAULT: No objection, Your Honor, we've
13 reviewed it.

14 THE COURT: All right. Without objection,
15 Exhibit 23 is admitted and may be published.

16 (WHEREUPON, State Exhibit Number 23 was admitted into
17 evidence.)

18 MS. HODGE: Thank you, Your Honor.

19 Q. This is the top that you recall her wearing earlier in
20 the day; is that correct?

21 A. Yes, ma'am.

22 Q. And I don't know if you can see it from there. I'm
23 going to take it down off the projector and show it to you.
24 Do you know -- when you saw her, when you left her earlier
25 in the day, did it have any of this around it, this stain

1 type thing on it?

2 A. I don't recall.

3 Q. All right. So once you come into the room and see
4 what's going on, what do you do?

5 A. I run outside to call my mother to come and pick my
6 kids up.

7 Q. Well, tell me about that. Had your children come into
8 the house with you?

9 A. No, ma'am. They stayed in the car.

10 Q. And did you tell them to stay in the car or ---

11 A. Yes, ma'am.

12 Q. Did you know that something was going on?

13 A. Yes, I did when I pulled up and she had come running
14 out.

15 Q. Okay. Now, Minor2 , do you remember seeing Minor2
16 at the house?.

17 A. No, ma'am. I don't recall seeing her when I went in.

18 Q. When do you recall seeing her?

19 A. After I had called my mother I had went down to the
20 basement. Because like I said, my kids was in the car. So
21 I went to the basement, opened the basement door in the
22 bottom and my kids got out and we was down there. And I do
23 recall Minor2 being down there, but I just can't remember
24 how she got down there.

25 Q. What was your mental state at this time?

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1 A. I was all to pieces. I was hysterical, just didn't
2 know what to do.

3 Q. And did your mom live close by?

4 A. Yes, ma'am.

5 Q. And, I'm sorry. Did you say why you had called her?

6 A. Yes, ma'am. To come pick up the kids.

7 Q. And where was she going to take the kids?

8 A. Back to her house.

9 Q. When you were there down in the basement, did the
10 police or ambulance or fire trucks, anything, show up?

11 A. Yes, ma'am. I remember the fire truck showing up
12 first and then the ambulance.

13 Q. Had your mom come to get the kids at this point or not
14 yet?

15 A. Yes, ma'am.

16 Q. Did she take them away, right away?

17 A. No, ma'am. She stayed maybe ten or fifteen minutes.

18 Q. Did she bring any other adult with her or was she by
19 herself?

20 A. It was her and her next door neighbor, Kelly.

21 Q. Okay. And where did she and Kelly and you mostly stay
22 during this time?

23 A. In the basement.

24 Q. Would you have gone outside at all?

25 A. I don't recall going outside.

1 Q. All right. What happened while you were down in the
2 basement?

3 A. Ann had come down to the basement, standing there.
4 She wasn't really saying much, wasn't really crying. And I
5 remember looking at her, telling her that she needed to be
6 upstairs with her child. And I recall the Defendant being
7 down there too, but he mostly just stayed by himself to the
8 side, like outside the basement door.

9 Q. Did he appear to be upset?

10 A. Not really.

11 Q. Did you ask Ann anything about what happened?

12 A. Yes, ma'am. And then that's when she told me that ---

13 Q. You don't have to tell me what she said, but the same
14 thing she said as she came out?

15 A. Yes, ma'am.

16 Q. And did you ask the Defendant about what had happened?

17 A. No.

18 Q. Tell us then what you saw happen next?

19 A. I remember them carrying Minor1 out and my mom was
20 still there at the time. And she was very upset when she
21 seen them carry Minor1 out.

22 Q. And would you children have seen that too or possibly
23 seen that?

24 A. Yes, ma'am, possibly.

25 Q. What about Minor2 ?

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1 A. Possibly. I don't really recall, but she might have.

2 Q. She was around the same area with your kids?

3 A. Yes, ma'am.

4 Q. Down in the basement area?

5 A. Yes.

6 Q. All right. So what happened then after they took Min
7 to the ambulance?

8 A. The police was there by the time and they spoke with
9 me briefly and spoke with Ann and the Defendant. And I
10 remember them telling her that she couldn't get in the
11 ambulance so we had to wait there for a little while. And
12 then when the police told her that it was fine to go, I
13 took them to the hospital.

14 Q. Had Minor2 and your children gone with your mom by
15 that time?

16 A. Yes, ma'am.

17 Q. So tell us about going to the hospital?

18 A. We got in the car and we was going to Greer Memorial.
19 There was really nothing going on in the car. Nobody was
20 really talking or anything.

21 Q. There was no discussion about what had happened or
22 anything like that?

23 A. No, ma'am.

24 Q. How about emotions, was there anything -- anybody
25 upset or ---

- 1 A. Yes, ma'am. Ann was crying.
- 2 Q. How about the Defendant?
- 3 A. I don't recall.
- 4 Q. Were they talking to each other?
- 5 A. No, ma'am.
- 6 Q. Did you ask anymore questions in the car?
- 7 A. No, ma'am.
- 8 Q. Which hospital did y'all go to?
- 9 A. Greer.
- 10 Q. And how long did y'all -- or what happened at Greer?
- 11 A. We got there and we was there maybe ten or fifteen
- 12 minutes and then they had informed us that they was
- 13 transferring her to Greenville Memorial.
- 14 Q. Did you also drive them to Greenville Memorial?
- 15 A. Yes, ma'am.
- 16 Q. And in the car was there any type conversation going
- 17 on?
- 18 A. No, ma'am.
- 19 Q. Nothing between you and Ann?
- 20 A. No, ma'am.
- 21 Q. Nothing between the Defendant and Ann?
- 22 A. No, ma'am.
- 23 Q. And do you have any idea what time you may have gotten
- 24 to Greenville Memorial?
- 25 A. I don't recall right now.

1 Q. What happened when you got to the hospital?

2 A. We went in and I went to the waiting room and as soon
3 as we got there, I remember the police already being there.
4 They took Ann back and talked to her, and then shortly
5 after they spoke with me and the Defendant. Me and him was
6 out in the big waiting room.

7 Q. Did they speak to y'all together or separately?

8 A. Separately.

9 Q. And at that point did you give a written statement of
10 any kind or was it just oral, just talking?

11 A. It was just talking.

12 Q. And did you see the Defendant speaking to police
13 officers at that time?

14 A. Yes.

15 Q. Were you and the Defendant talking to each other or
16 hanging out at all during this time in the waiting area?

17 A. No, ma'am.

18 Q. Any reason why not?

19 A. No. He was following me around, trying to talk to me,
20 but I really didn't say much to him. And I recall the
21 Defendant walking around talking about how Minor 1 would
22 always just fall and fall, all the time.

23 Q. He was saying that she would just fall and fall, all
24 the time?

25 A. Yes, ma'am.

1 Q. Did you ever see Ann again that night?

2 A. No, ma'am.

3 Q. She stayed back in the smaller, I guess, waiting area?

4 A. Yes, ma'am.

5 Q. That's where Minor1 was?

6 A. Yes.

7 Q. Did you get to go back and see Minor1 that night?

8 A. No, ma'am.

9 Q. Did the Defendant stay in the waiting area during that
10 time that night?

11 A. Yes.

12 Q. Did you leave the hospital at some point?

13 A. Yes, ma'am.

14 Q. Do you have any idea what time it was?

15 A. I'm not sure.

16 Q. Where did you go? What did you do?

17 A. I left and went to my mom's to pick the kids up. I

18 remember when I got there Minor2 was kind of upset,

19 asking for her Mom and crying and didn't, you know -- acted

20 like she didn't want to go to sleep. So I called Ann's

21 sister, Marie, to see if she would come and get Minor2 .

22 And at that time she told me to ---

23 MS. MANIGAULT: Your Honor, I object to anything
24 that anybody said.

25 MS. HODGE: Your Honor, this is not for the truth

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1 of the matter asserted. This is why the grandmother got
2 the child. It's a sequence of events.

3 THE COURT: All right. I'll allow the answer to
4 this question.

5 A. Okay. And Marie had told me then to take Minor2 to
6 her grandmother Tina at the hospital.

7 Q. And do you have any idea what time you're talking now?

8 A. Ten-thirty, eleven o'clock. It was pretty late.

9 Q. And so what did you do as a result of talking to
10 Marie?

11 A. I just got there and Tina and her husband was there
12 and I give her Minor2 . We really didn't speak long and
13 then we left.

14 Q. Okay. And was the Defendant still there when you got
15 there with Minor2 ?

16 A. Yes.

17 Q. Did you talk to him or did he try to talk to you?

18 A. No, I did not speak with him. But when me and my
19 husband was going towards the car, he was following us,
20 asking us if we could give him a ride. And my husband
21 said, no, and we left and went home.

22 Q. Did you ever see the Defendant again after that?

23 A. No.

24 Q. Is that the last communication you had with him?

25 A. Yes, ma'am.

1 Q. Now, he had been staying in your house. Did he ever
2 come and get his stuff from your house?

3 A. No.

4 Q. Was he allowed to come back to your house?

5 A. If he wanted to come get his stuff, yes, ma'am.

6 Q. Okay. Was he allowed to come back and stay at your
7 house?

8 A. No, ma'am.

9 Q. How about Ann, was she allowed to come back and stay
10 at your house?

11 A. No, ma'am.

12 Q. Did you let her come get her stuff?

13 A. Yes, ma'am.

14 Q. Did you talk to Ann much after this?

15 A. Not much. I went back to the hospital the day they
16 took Mino off of the machine. But I really didn't speak
17 with her much. She was with Minor¹ daddy, Mark. And
18 Mark had asked me if Ann could come back to the house and
19 stay and I told him, no. And he said, well, can she come
20 get her stuff? And I told him yes.

21 Q. Was this pretty upsetting for you?

22 A. Yes, ma'am.

23 Q. Now, the person that you say you call Parker, James
24 Johnson, is he present in the courtroom today?

25 A. Yes, ma'am.

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1 Q. Okay. And can you identify him for the jury?

2 A. Yes, ma'am. He's sitting right there.

3 Q. Sitting at the Defense table?

4 A. Yes, ma'am.

5 Q. In the purple shirt?

6 A. Yes, ma'am.

7 Q. Thank you. Please answer any of Ms. Manigault's
8 questions.

9 **CROSS-EXAMINATION**

10 **BY MS. MANIGAULT:**

11 Q. Ms. Inman, were you aware that Ann told Parker not to
12 go back to your house?

13 A. No, ma'am.

14 Q. Now, at the -- when the ambulance came, you were
15 there?

16 A. Yes, ma'am.

17 Q. And you were there when the fire responders came?

18 A. Yes, ma'am.

19 Q. So you got back to the house before they got there?

20 A. Yes, ma'am.

21 Q. And you stated that you heard the police tell Ann that
22 she could not go in the ambulance?

23 A. Yes, ma'am.

24 Q. She had to wait there?

25 A. Yes.

1 Q. Now, you said you were down in the basement. Was the
2 basement door that was seen in one of the State's Exhibit,
3 was that unlocked and open?

4 A. Yes, ma'am.

5 Q. Okay. And did you come into the house through the
6 basement door?

7 A. No.

8 Q. All right. You came into the house through the back
9 door?

10 A. Yes, ma'am.

11 Q. And how many steps up? How many steps at the back
12 door?

13 A. Three.

14 Q. Three. And how many steps -- is there a front
15 entrance?

16 A. Yes.

17 Q. Okay. And when you entered that front entrance, how
18 many steps is that?

19 A. In the front, maybe seven.

20 Q. Seven. And that front door, when you open into the
21 house, what room would you step into?

22 A. Through the front, you would step into the kitchen.

23 Q. You would step into the kitchen?

24 A. Yes, ma'am.

25 Q. And when you go in the back door, what room would you

1 step into?

2 A. The game room where the futon and stuff was at.

3 Q. All right. And the game room with the futon and a

4 picture showed the laundry room?

5 A. Yes.

6 Q. How far was the kitchen from that room?

7 A. You turn right, go through the door and it takes you

8 straight into the kitchen.

9 Q. So the front door from the back door is like halfway
10 through the house?

11 A. Yes.

12 Q. Now, you said that when you entered you saw -- when
13 you went into the living room area after you had gotten
14 into the house, you saw Ann and, you called him Parker ---

15 A. Yes, ma'am.

16 Q. --- into the living area? They were in the living
17 area?

18 A. Yes, ma'am.

19 Q. They were in the area where Minor 1 , that's what you
20 called the baby.

21 A. Yes, ma'am.

22 Q. And Minor 1 was lying on the floor; is that right?

23 A. Yes, ma'am.

24 Q. And who was doing CPR?

25 A. The Defendant.

1 Q. Okay. Did you observe how he was doing? Did he have
2 his hands closed, open, one hand, two hands?

3 A. I don't -- because when I see it, I was just so upset,
4 that's when I run outside.

5 Q. Okay. And you testified that there was some throw-up
6 next to Minor1 . How large would you say the throw-up spot
7 was? Was it the size of a grapefruit or the size of an
8 orange?

9 A. It was about this big on the carpet.

10 Q. About a little bigger than a grapefruit?

11 A. Yes, ma'am.

12 Q. Okay. And you are pretty sure that was throw-up?

13 A. Yes, ma'am.

14 Q. And when you entered the living, Parker was doing CPR.
15 And what was Ann doing?

16 A. She was standing beside him on the phone with 9-1-1
17 trying to direct him to what to do.

18 Q. All right. And how long did you stay to observe that?
19 Minutes, seconds?

20 A. Just a few seconds.

21 Q. A few seconds?

22 A. Yes, ma'am.

23 Q. And when you left the room you went where?

24 A. I went outside in the front yard to call my mother.

25 Q. Were there any other adults outside in the front yard

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1 when you went out there?

2 A. No, ma'am.

3 Q. Now, you said Ann came down to the basement. Did she
4 come down to the basement while the fire responders and/or
5 EMS was still there?

6 A. Yes, ma'am.

7 Q. And do you recall how long she stayed down in the
8 basement?

9 A. Probably five or ten minutes.

10 Q. Okay. And I believe you testified that Parker came
11 down to the basement also?

12 A. Yes, ma'am.

13 Q. How long did he stay in the basement?

14 A. I really don't recall.

15 Q. You don't recall. All right. When Ann came to the
16 basement, how was she acting?

17 A. She was barely crying. I mean, she wasn't all upset
18 like I would have been if that would have been my child
19 laying there.

20 Q. And you said you told Ann to go back upstairs with her
21 child?

22 A. Yes, ma'am.

23 Q. And when you told her that, did she go back upstairs?

24 A. Yes, ma'am.

25 Q. I believe you said you saw the fire responder carry

1 Minor 1 out?

2 A. Yes, ma'am.

3 Q. Were you still in the basement or were you outside at
4 that point?

5 A. I was standing at the basement door.

6 Q. Okay. So did he come through the back door or the
7 front?

8 A. The back door.

9 Q. So the fire responder came out the back door?

10 A. Yes, ma'am.

11 Q. All right. You said that there was no conservation in
12 the car on your way to Greenville Hospital?

13 A. No, ma'am.

14 Q. All right.

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

16 THE COURT: Any redirect?

17 MS. HODGE: No, sir.

18 THE COURT: Thank you. You may step down, Ms.

19 Inman.

20 MS. HODGE: May she be excused, Your Honor?

21 THE COURT: Any objection?

22 MS. MANIGAULT: None, Your Honor.

23 THE COURT: All right. Without objection the
24 witness may be excused from the subpoena.

25 MS. HODGE: The State calls Doug Smith.

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

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

5 THE WITNESS: Yes.

6 THE CLERK: Please have a seat and state your
7 full name for the record.

8 THE WITNESS: Douglas Smith.

9 DOUGLAS SMITH,

10 BEING FIRST DULY SWORN, TESTIFIED AS FOLLOWS:

11 DIRECT EXAMINATION

12 BY MS. HODGE:

13 Q. Mr. Smith, were you previously employed with the
14 forensic division of the Department of Public Safety back
15 in May of 2011?

16 A. Yes.

17 Q. And how long were you a forensic officer?

18 A. Just a little under eight years.

19 Q. Okay. What were your duties with forensics?

20 A. Typically, locate, collect and preserve physical
21 evidence related to a crime scene.

22 Q. Okay. I'm going to ask you to speak up or push that
23 microphone up just a little bit. I'm having a hard time
24 hearing you.

25 A. Is that better?

1 Q. Much better. Thank you. All right. And so were you
2 called to take some photographs in this case that we're
3 here on today, the State versus James Johnson?

4 A. Yes.

5 Q. All right. And what were you asked to do?

6 A. Just document through digital still images any visible
7 injuries to the Defendant. I'm sorry, to the victim.

8 Q. To the victim? All right. And who was the victim, do
9 you remember?

10 A. Minor 1 was the name I was provided.

11 Q. Where did you go?

12 A. Greenville Memorial Hospital, PEDS Unit, that's PEDS
13 ICU.

14 Q. Do you know what time you arrived there?

15 A. About seven o'clock P.M.

16 Q. And tell us what you did while you were there?

17 A. I spoke briefly with an investigator Hoover. He
18 requested just digital still images of the victim. I
19 obtained a consent to photograph from who I was advised was
20 the victim's mother. I went in and secured as many digital
21 images I possibly could. They were still -- the victim was
22 on a respirator and was still being attended to by a nurse.
23 So I tried to be as least obtrusive as possible.

24 Q. Would a nurse or a doctor have assisted you in being
25 able to take these pictures?

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1 A. Typically, yes, they do. But due to the age and the
2 nature of this, being on a respirator, we didn't move the
3 baby at all. I took pictures around what they were doing.

4 Q. All right. Let me show you ...

5 MS. HODGE: I'm sorry. I haven't had these
6 marked yet.

7 (WHEREUPON, State Exhibit Numbers 24 through 33 were
8 marked for identification.)

9 Q. All right. I show you what's been marked State's
10 Number 24 through 33. If you can identify those as a group
11 for me, just in general what those are.

12 A. These would be digital still images that I obtained on
13 May 25th, 2011 from Greenville Memorial, Room Number 5619.

14 Q. And the child is Minor 1 ?

15 A. Yes.

16 Q. Are these true and accurate representations of how she
17 looked at that date and time?

18 A. Yes.

19 MS. HODGE: At this time we'd move to admit
20 State's 24 through 33.

21 THE COURT: Any objection?

22 MS. MANIGAULT: Yes, sir. Brief sidebar?

23 THE COURT: Yes, ma'am.

24 (WHEREUPON, Ms. Hodge and Ms. Manigault approached the
25 bar.)

1 MS. HODGE: Your Honor, after our discussion at
2 sidebar the State moves to admit States Number 28, 29, 30,
3 31, 32, and 33.

4 THE COURT: Did you want Exhibit 24?

5 MS. HODGE: Oh, I'm sorry.

6 THE COURT: That's all right.

7 MS. HODGE: 24. That's the room number.

8 MS. MANIGAULT: Okay.

9 MS. HODGE: And Number 24.

10 THE COURT: Any objection to those exhibits?

11 MS. MANIGAULT: No objection, Your Honor. At the
12 sidebar, I objected to the pictures and the Court has
13 addressed that issue.

14 THE COURT: All right. Those have been excluded?

15 MS. MANIGAULT: Yes, sir.

16 THE COURT: All right. You may proceed.

17 Exhibits 28 through 33 and Exhibit 24 admitted.

18 MS. HODGE: Yes, sir.

19 (WHEREUPON, State Exhibit Number 24 and State Exhibit
20 Numbers 28 through 33 were admitted into evidence.)

21 Q. I'm showing, Mr. Smith, what's been marked as State's
22 Number 4 [verbatim]. What is the significance of that
23 picture?

24 A. That would be the room number of the PEDS ICU Unit.

25 Q. Is that ---

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1 A. That is the room number in which I was called to
2 respond to.

3 Q. And I show you State's Number 28. What's the
4 significance of this photograph?

5 A. To show the bruising to the forehead and the bridge
6 and the eyes, the bridge of the nose and the eyes.

7 Q. I'm showing you State's Number 29.

8 A. To elaborate on the bruising to the forehead. It's a
9 little bit of swelling to the forehead, the bridge of the
10 nose, around the eyes as well.

11 Q. And is there something here?

12 A. Yeah. Additional bruising on the chest.

13 Q. Was your job to do overall pictures as much as you
14 could without moving ---

15 A. Correct. Take overall pictures, take closeup pictures
16 with and without scale, which is just a little L-ruler to
17 show the size of the bruise. You take a closeup of a
18 bruise, it could be this big. If you don't put a scale
19 next to it, it could look this big. You get the best
20 representation you possibly can of the sheer size of it.
21 In this case you take overall pictures on top, all sides
22 and to scale as many of the injuries as you possibly can.

23 Q. I'm showing you State's Number 30. What's the
24 significance on this picture?

25 A. Light bruising on the right flank of the victim.

- 1 Q. And is that here?
- 2 A. Yes. The right flank would be the side of the rib
- 3 cage.
- 4 Q. Is there anything down here?
- 5 A. Redness to the sides of the legs.
- 6 Q. State's Number 31?
- 7 A. Additional bruising to the opposite side on the left
- 8 flank, a little bit lower than the right side.
- 9 Q. State's Number 32?
- 10 A. That would be redness on the outside of the right
- 11 knee.
- 12 Q. And State's Number 33?
- 13 A. That was redness that I was advised potentially could
- 14 be from fire ant bites to the back side of the left leg,
- 15 just right around the back side of the thigh.
- 16 Q. Did you remove the child's diaper at all ---
- 17 A. No, I did not.
- 18 Q. --- to take any photographs?
- 19 A. No, I did not.
- 20 Q. Or take any pictures of the back?
- 21 A. No.
- 22 Q. How about on the inside of the child's mouth?
- 23 A. No.
- 24 Q. Were you able to photograph any ---
- 25 A. No. With the respirator on, no pictures were taken.

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Tina Rollins - Direct Examination by Ms. Hodge

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1 The only extremities that were moved were the legs. We did
2 not want to interfere with the respirator at all.

3 Q. Was that the only duty you were asked to perform in
4 this case?

5 A. Yes.

6 Q. Thank you. Please answer any defense questions.

7 MS. MANIGAULT: I don't have any, Your Honor.

8 Thank you.

9 THE COURT: Thank you. You may step down.

10 THE WITNESS: Thank you.

11 MS. HODGE: May he be excused, Your Honor.

12 MS. MANIGAULT: No objection.

13 THE COURT: Without objection. Thank you. You
14 may be excused.

15 MS. HODGE: The State would call Tina Rollins.

16 THE CLERK: Put your left hand -- raise your
17 right.

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

20 THE WITNESS: Yes.

21 THE CLERK: Would you please have a seat and
22 state your full name for the record.

23 THE WITNESS: Tina Ann Rollins.

24 TINA ROLLINS,

25 BEING FIRST DULY SWORN, TESTIFIED AS FOLLOWS:

1 DIRECT EXAMINATION

2 BY MS. HODGE:

3 Q. Ms. Rollins, tell us a little bit about yourself. How
4 old are you?

5 A. I'm fifty-one.

6 Q. And are you currently married?

7 A. No, ma'am. I live with my boyfriend.

8 Q. And how long have you been with your boyfriend?

9 A. Seven years.

10 Q. Do you have any children?

11 A. I have five girls.

12 Q. And what are their ages and names?

13 A. Ann is 32; Marie is 31; Denise is 26; Heather is 20;
14 and A. is 15.

15 Q. And how about grandchildren?

16 A. I have three grandchildren.

17 Q. And what are their names?

18 A. I have one that we call him little Minor4 ; he's
19 seven. And then I have Minor2 , she'll be five in July.
20 And then I had Minor1 .

21 Q. And were all those children your daughter Ann's
22 children?

23 A. Yes, ma'am.

24 Q. And Ann is Ann Sprouce; is that correct?

25 A. Yes, ma'am.

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1 Q. What was her maiden name?

2 A. Sprouce.

3 Q. That's her name. Did she get married?

4 A. Yes. She married Mark Carter.

5 Q. But she didn't take his last name?

6 A. No, she kept Sprouce.

7 Q. She kept Sprouce, okay. And are you currently working
8 anywhere?

9 A. No, ma'am. I'm disabled.

10 Q. Do you take care of Minor 2 ?

11 A. Yes, ma'am.

12 Q. And what kind of work have you done in the past?

13 A. I've worked as a nursing assistant. I was head
14 bookkeeper for Winn Dixie. And my last job, I was
15 assistant manager for Walmart.

16 Q. And when did you become disabled?

17 A. In 2006 or '07.

18 Q. Not that long ago?

19 A. No, ma'am.

20 Q. All right. Do you know the Defendant in this case?

21 A. Yes, ma'am.

22 Q. And how do you know him?

23 A. I had met him through my daughter Ann. I had seen him
24 at her apartment.

25 Q. Did you know what kind of relationship they had? Was

1 it friends or more than friends?

2 A. She had told me they were boyfriend and girlfriend.

3 Q. Do you know about when they may have started dating?

4 A. I believe it was somewhere around 2011.

5 Q. All right. In the beginning, middle, end, do you have
6 any idea?

7 A. I'm going to say the beginning or maybe the last of
8 December. I'm not sure about the date.

9 Q. How long did they date?

10 A. Not that -- up until that happened.

11 Q. Until Minor 1 died?

12 A. Yes, ma'am.

13 Q. Now, how many times do you think you met the
14 Defendant?

15 A. Maybe a handful. I would just go over there to pick
16 up the children and I would leave. Usually, I didn't stay.

17 Q. And where would you go and pick the children up?
18 Where was this?

19 A. Her apartment on Whitehorse Road.

20 Q. Whitehorse Road?

21 A. Yes, ma'am.

22 Q. All right. I'm going to ask you to make sure you
23 speak up too. You may want to get into that microphone a
24 little bit. And you said you'd pick up the children. Was
25 that something you normally did?

1 A. Yeah. I picked up Minor2 really more than I'd pick
2 up Minor1 . But I did go over there and pick them -- would
3 pick the children up from the home.

4 Q. And what would you do with them?

5 A. That was something I had always done.

6 Q. Okay. Helping out Ann?

7 A. Uh-huh (affirmative).

8 Q. Would you take them to spend the night with you or
9 just ---

10 A. Usually, she spent the weekends with me.

11 Q. So mostly Minor2 or Minor2 and Minor1 ?

12 A. I'd pick up Minor1 some, but it was mostly Minor2
13 that would always want to go. She'd be jumping up and
14 down, want to go with grandma.

15 Q. Okay. And did you ever do any visiting in the home
16 with Ann and the Defendant?

17 A. No, not really. I wouldn't stay no longer than five
18 or ten minutes, mainly just picking up and dropping off.

19 Q. All right. Whenever you would get Minor1 , did you
20 ever notice any unusual bruises or anything that gave you
21 cause for concern?

22 A. No. I had picked up Minor2 one time and I had asked
23 my daughter, because she had a bruise on her, and she said
24 that she ---

25 MS. MANIGAULT: Your Honor, I object to any

- 1 discussion about ---
- 2 THE COURT: Sustain the objection.
- 3 Q. You observed a bruise on Minor2 , is what you're
- 4 saying?
- 5 A. Uh-huh (affirmative).
- 6 Q. And you did ask Ann about it?
- 7 A. Yeah. Parker was there, too, at the time.
- 8 Q. Okay. Without saying what they told you, after you
- 9 talked with them, did you feel the need to call anybody or
- 10 report any ---
- 11 A. No. What she had said seemed pretty logical if you
- 12 knew Minor2 .
- 13 Q. Okay. All right. Something that didn't raise a red
- 14 flag to you?
- 15 A. No.
- 16 Q. But how about Minor1 , anything on Minor1 ?
- 17 A. No. The last time I took Minor2 home I asked where
- 18 Minor1 was and they said she was sleeping. So I didn't
- 19 bother her.
- 20 Q. When was the last time you saw Minor1 before she
- 21 died?
- 22 A. The weekend of Easter.
- 23 Q. And was Easter in April that year?
- 24 A. Yes, ma'am.
- 25 Q. So would it be fair to say a month, six weeks,

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1 something like that before she died?

2 A. Yes, ma'am.

3 Q. At some point did Ann move from that apartment on
4 Whitehorse Road?

5 A. Yes, ma'am, she did. I later learned that she had
6 moved in with Crystal.

7 Q. Were you keeping in touch with Ann on a regular basis?

8 A. I was up until the Defendant moved in. And then her
9 phone got turned off and she didn't have a way to call me.

10 Q. And did you -- other than Easter, after Easter, did
11 you ever go over or go visit?

12 A. No, ma'am, because shortly after that is when they let
13 the apartment.

14 Q. Did you have any idea when they left the apartment at
15 the time they left, where they had gone?

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

17 Q. And you were out of contact with Ann during this time?

18 A. Yes, ma'am.

19 Q. Did you know Crystal?

20 A. Yes, ma'am. I've known her and her family for all my
21 life, really.

22 Q. Did you know where Crystal lived at that time?

23 A. No, ma'am.

24 Q. Do you recall May the 25th, 2011?

25 A. Yes, ma'am.

1 Q. Tell me what you recall about that day?

2 A. I was standing in my kitchen getting ready to cook
3 dinner and my daughter Marie called and she told me that
4 Minor1 had choked on tea and I needed to go to the
5 hospital.

6 Q. Do you remember what time of day that was?

7 A. It had to have been between four-thirty and a quarter
8 till five because my boyfriend always got home about five-
9 thirty and I always had dinner ready when he walked in the
10 door.

11 Q. Okay. Were you in the midst of getting dinner ready?

12 A. Yes, ma'am. I had the potatoes going and the pork
13 chops ready to go in the pan.

14 Q. And what did you do when you got that call?

15 A. I immediately shut everything off.

16 Q. Did you ask anything of your daughter Marie about

17 BMinor2 or was it just that comment ---

18 A. I think it was just that conversation. Best I can
19 recall, it was just that conversation about Minor1 and we
20 ended it because she was getting to the hospital herself.

21 Q. And what happened then?

22 A. Joe came home and we left and went to the hospital.

23 Q. And tell me what happened when you got there?

24 A. When I got there, we was in the waiting room and the
25 Defendant was in there. And my ex-husband, Ann's father,

1 her uncle, her aunt, Marie was there. They was just all
2 kind of sitting around wondering, you know, what happened.
3 And we was going over this story with Ann choking -- you
4 know, saying the baby choked on tea. And they wouldn't let
5 me go back because they were still talking to Ann. And
6 when I first got there, they were still talking to Crystal
7 and ---

8 Q. Did you ever try and ask the Defendant what happened?

9 A. I never spoke to him.

10 Q. Did he ever come up to you to try to talk to you ---

11 A. No, ma'am.

12 Q. --- or explain anything or ---

13 A. No, ma'am.

14 Q. --- console?

15 A. No, ma'am.

16 Q. And when you got there, Ann was not out in the waiting
17 area so you couldn't talk to her?

18 A. No. Uh-uh (negative).

19 Q. And you were not allowed to go see Minor 1 ; is that
20 what you're saying?

21 A. No, ma'am. They wouldn't let anybody go back at that
22 time.

23 Q. All right. Where was Minor 2 ?

24 A. Minor 2 , I was told, was at -- Crystal had said after
25 she got done talking with the detective that Crystal's

1 mother had her. So I didn't have to worry about her
2 because she was with her mother.

3 Q. Okay. She with Crystal's mom?

4 A. Yes, ma'am.

5 Q. All right. Now, at some point did you get Minor2
6 that night?

7 A. Yes, ma'am. Crystal had called and said -- had called
8 my daughter Marie and said that she couldn't do anything
9 with Minor2 , she was crying. And she thought it would be
10 best if she just brought her to her. And Marie had to work
11 the next morning so I told them to bring her to me.

12 Q. And where were you when you -- when you said, bring
13 her to me, where were you?

14 A. I was at the hospital.

15 Q. Okay. And what time did -- or did you eventually get
16 to -- get custody of Minor2 or get a hold of Minor2
17 that night?

18 A. Yes, ma'am. Crystal brought her to me. It was late.
19 Like she said, it was about ten thirty, eleven o'clock or
20 so before I got Minor2 .

21 Q. And when you got her, what did you do?

22 A. I held her real close. And we left the hospital
23 eventually and took her home.

24 Q. And was she awake, asleep, how was she?

25 A. She was still awake but she was groggy. You could

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1 tell she was tired. She was dirty. You could tell she'd
2 been outside playing.

3 Q. And did she got to sleep in the car?

4 A. Yes. She went to sleep on the way home.

5 Q. Eleven o'clock, is that late for a two and a half year
6 old?

7 A. Oh, yeah. That's late for me.

8 Q. So tell me about getting her home. What did you do
9 when you got home?

10 A. When I got her home, I washed her off because it was
11 so late, I just -- I didn't want to give her a bath. So I,
12 like she was groggy anyway. And I just washed her off and
13 we went -- I laid down with her.

14 Q. Where did she sleep that night?

15 A. She slept with me.

16 Q. And is there a reason that she slept with you?

17 A. She was crying. She said Minor 1 was sick. She asked
18 for her mother.

19 MS. MANIGAULT: Your Honor, I'm going to object
20 to anything the child has said. There was no established
21 that my client was present during this conversation.

22 MS. HODGE: Your Honor, we may need to take a --
23 I wanted to be heard on a legal argument.

24 THE COURT: All right. Ladies and gentlemen,
25 we'll take a legal matter up now. It might be time for a

1 break for you anyhow. I'm going to ask you to go back to
2 your jury room. Let me remind you again while you're back
3 there, you shouldn't be discussing the case.

4 Sometimes when you're back in the jury room you may
5 find that you need something from the clerk's office, from
6 the bailiffs, later, a legal question. I'm going to
7 appoint Mr. Thomas as the foreperson of the jury.

8 Sometimes when matters come up, someone may need to call
9 and check on a child, whatever it may be, the foreperson
10 will just be the liaison with the Court, the one to contact
11 the bailiff and write out whatever the need is. It may be
12 a cup of coffee or a thermostat adjustment, whatever, I
13 don't know what it is. But whatever the juror needs, then
14 that foreperson will just write out the need, give it to
15 the bailiffs and we'll try to take care of that need.

16 Ultimately, what the foreperson will do will be the one who
17 will facilitate the discussion when the case is concluded
18 and all the evidence is in and I've instructed you on the
19 law, then the foreperson will be the one who will make sure
20 every juror has his and her say into the view of the facts
21 and on behalf of the jury, write out the verdict form. So
22 we've already designated seats for the two alternates so
23 they know where they're going to be sitting. The
24 foreperson will occupy the seat on the front row closest to
25 the witness stand here. So the rest of you, as you come

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1 and go, you may want to sit on the front row, the back row,
2 the left side or the right side. That's certainly all
3 right. We'll take care of this matter. You take a short
4 break. We'll hopefully call you back in just a few
5 moments. You may retire to your jury room.

6 (WHEREUPON, the jury exited the open court at
7 approximately 10:31 A.M.)

8 THE COURT: All right. I gather from the last
9 question the State intends to elicit some testimony from
10 Minor 2 ?

11 MS. HODGE: That's correct, Your Honor.

12 THE COURT: What is it?

13 MS. HODGE: The State would intend to ask Ms.
14 Rollins about a statement that Minor 2 made. The State
15 contends that this is excited utterance, exception to
16 hearsay. There is a case, South Carolina versus -- or the
17 State versus Sims. And I apologize, I don't have a copy of
18 the case but I can give your clerk a cite. It's 348 SC 16.
19 It's a Supreme Court case from 2002. And, Your Honor, as
20 the Court obviously knows, the basis for this hearsay
21 exception is that a person is under the stress of a
22 startling event, that the statements that they make are a
23 result of non-reflection, not having the opportunity to sit
24 and think through and deduce and they're less likely to be
25 fabrications. So they do have that trustworthiness, that

1 indicia of reliability.

2 In this case the child is two and a half years old. I
3 submit to the Court and, again, based on *State versus Sims*
4 that she didn't have the development ability, cognitive
5 abilities to be creating, deducing and fabricating things.
6 That she was making statements that were spontaneous, that
7 were due to her being under the stress of this traumatic
8 event. Courts have held that even though significant
9 lapses in time occur between the event and the statement,
10 that does not throw the statement out just because of
11 length of time. There are cases -- not South Carolina, but
12 I do have numerous cases from other states where Courts
13 have looked at even days later a child's statement being
14 admissible as an excited utterance.

15 Your Honor, there's nothing I can imagine more
16 traumatic than a child, who the evidence shows, was in the
17 room at the time of this incident occurring, watching her
18 baby sister be hit, be suffocated, be struggling against
19 that, then to spontaneous vomit and die, then to have mom
20 and boyfriend panicking, to have firemen, EMS, policemen,
21 to then be swooped away to a non-relative, to a friend's
22 house and then to only be able to really feel comfortable
23 enough to disclose when she's finally in the presence of
24 the trusted caretaker, who the grandmother and Minor2
25 obviously had a very close bond. So it's the State's

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1 contention it's her statement, which we had not actually
2 gotten to the statement that I was expecting the witness to
3 talk about, which that -- so I can give you the context of
4 that statement.

5 THE COURT: Well, why don't you make a proffer
6 now.

7 MS. HODGE: Yes, sir.

8 THE COURT: If you'll just ask the questions and
9 then we'll get the answer.

10 MS. HODGE: Yes, sir.

11 Q. Ms. Rollins, after you put Minor2 to bed, I believe
12 you've already stated in your testimony that she was crying
13 and you were sleeping with her. The next morning, what
14 happened when you woke up?

15 A. My daughter Amber had got on the bus to go on to
16 school. And I told her we would pick her up from school on
17 our way to the hospital and stuff, because I had to take
18 Minor2 back to the Julie Valentine Center. And I was --
19 got -- Minor2 had got up and she was eating breakfast and
20 I was going through my daily -- trying to go through my
21 daily routine best I could. And I went to give Minor2 a
22 bath and after the bath, I'm standing there drying her off
23 and Minor2 says to me, Minor1 choked on tea. She does
24 her hands in the motion of drinking tea. And she says, tea
25 all over Minor1 And then she says, Parker did this,

1 covered her nose and mouth. And then she said, boom, boom,
2 boom. I immediately got her dressed. We went and picked
3 up my daughter. I never said a word. I have never said a
4 word to anybody, other than the detectives at the hospital,
5 of what that child said to me, and the lady over at the
6 Julie Valentine Center.

7 Q. Were you asking Minor2 what happened?

8 A. We were not discussing nothing, except what we were
9 doing that day. I told her we were going to pick up Amber
10 from school. And I was explaining to her that we were
11 going by the hospital to check on Minor1. And we were
12 going back to the Julie Valentine Center. But I didn't
13 tell her Julie Valentine Center. What I told her was we
14 were going to see Nicole. She had took up with a lady
15 named Nicole from over there.

16 Q. Okay. So this was not a questioning or interrogating
17 or ---

18 A. I never questioned the child, no, ma'am.

19 Q. It's a statement that she made to you. And this was
20 the next morning after she had been through this event
21 during the day, at the other lady's house at night,
22 practically asleep when you got her, but upset. And then
23 this is the next morning, the first opportunity that she's
24 awake and y'all are actually communicating?

25 A. Yes, ma'am.

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1 Q. And did you attempt to ask her any more questions
2 after ---

3 A. No, ma'am. I didn't ask her because I really didn't
4 want to know the answers.

5 MS. HODGE: Thank you, Your Honor. That would be
6 what we would intend to elicit from this witness.

7 THE COURT: Are there any examination you want to
8 make of this witness just as to these statements?

9 MS. MANIGAULT: No, sir.

10 THE COURT: Obviously, I'll allow you to cross-
11 examine?

12 MS. MANIGAULT: I have an argument though.

13 THE COURT: Be glad to hear from you, Ms.
14 Manigault.

15 MS. MANIGAULT: May it please the Court, Your
16 Honor. The excited utterance exception, I do not believe
17 that this statement would fit into that. And the reason
18 being that the incident happening to Minor 1 happened
19 around three P.M. or maybe four on May 25th, 2011. And
20 that the testimony of Ms. Rollins says that she did not
21 talk to her about the events. That's what she offers to
22 the Court. And Minor 1 [verbatim] gives this alleged
23 utterance to her the following morning on the 26th, while
24 she's preparing her and has told her that they're going to
25 the hospital.

1 Your Honor, the issue is this, is that the child is
2 two and a half years old. They took the child to the
3 Valentine Center for an interview twice. The two and a
4 half year old, Minor 2 , never confirmed anything that was
5 testified here today. The interviewer asked Minor 2 what
6 is boom, boom, boom. She did not respond, did not answer
7 the question. She was not -- it is my opinion that she
8 cannot qualify as a witness to know the difference between
9 right and wrong. She does not talk that well. In the
10 interview, you have to struggle to understand what she's
11 saying. So the fact that grandmother is saying she said,
12 boom, boom, boom. She said, Minor 1 choked on tea. She
13 said Parker then held her nose. The child never said any
14 of that in the Valentine Center interview. And her name is
15 not on the witness list so I'm assuming that they didn't
16 plan to call her. I'm also assuming that they didn't plan
17 to try to introduce that Valentine -- Julie Valentine
18 Center interview, because we're going to object to that on
19 various reasons. So, Your Honor, I don't believe that this
20 fits within the excited utterance exception.

21 THE COURT: Was her scheduled appointment at
22 Julie Valentine that morning relating to this or some other
23 incident?

24 MS. HODGE: Actually, I think Ms. Rollins is a
25 little bit confused on the timing. She made this

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1 statement, this utterance in the morning following the
2 event. When Ms. Rollins went to the hospital, like she was
3 planning, she told the police at the hospital what the
4 child had told her. At that point, they made an
5 appointment to send her. So the utterance was first. Then
6 they set up an official interview for the child, which
7 those are not -- she's a witness to a case, those are not
8 admissible under the statute anyway. They were an attempt
9 to learn more information. So those appointments were
10 after the statement was made. But I do believe that it
11 does fall under the excited utterance exception.

12 And as I said, there are many, many other cases in
13 other states that have elongated time periods. *State*
14 *versus Sims* said approximately twelve hours had elapsed in
15 this case, and explained that even statements after
16 extended periods of time can be considered excited
17 utterance as long as they're made under continuing stress.
18 The court pointed out stress from a startling event lasting
19 a longer amount of time than would be likely to occur if
20 the child had been an adult. And then they cited a Utah
21 case in the South Carolina case, *State versus Cude*, C-U-D-
22 E, excitement generally last longer in children and
23 fabrication is less likely. The South Carolina Court went
24 on to say that because of the child's age and the severity
25 of the event, the court determined those factors in favor

1 of the State. And the statement was admitted as an excited
2 utterance.

3 MS. MANIGAULT: Your Honor, may I make a comment?
4 Your question was, was she taken to the Julie Valentine
5 Center as it related to this case to try to get some more
6 information about what she said. The answer is yes.

7 THE COURT: All right. I thought I heard the
8 testimony that during the bath ---

9 MS. MANIGAULT: Yes, sir.

10 THE COURT: --- they already had a scheduled
11 appointment at Julie Valentine and that was what confused
12 me. But that was not the case.

13 All right. Let's take a short break and I'll make a
14 decision. Ms. Rollins, you can step down while we take a
15 break. You're not to discuss your testimony with anyone
16 while we're taking the break. We'll take about a ten-
17 minute break and we'll be ready to proceed.

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

20 THE COURT: Okay. I have reviewed the case you
21 cited, Solicitor, as well as some other cases, *State v.*
22 *Washington, Latimer*, and others. Weighing the factors of
23 whether the statement is related and was under stress and
24 whether it was caused by the stress, I find, weighing the
25 equities and certainly in light of *Crawford* and its

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1 prodigy, I believe the statement should not be allowed in
2 this case. In light of the other factors that may have
3 been in play in this with the time lag of hearing other
4 people's conversations going back and forth, I'm not sure
5 under the totality of circumstances this would be credible
6 as required under the law. So I will not allow the
7 statement to be in under the Rules of Evidence 803(2).

8 Anything else?

9 Ms. Rollins, you may come back around. I want to
10 remind you, you're still under oath.

11 MS. HODGE: So that she's clear on your ruling,
12 Your Honor, ---

13 THE COURT: Right.

14 MS. HODGE: I'm just going to make sure she's
15 clear on your ruling.

16 THE COURT: All right. If our jury's ready you
17 can have them come back in.

18 (WHEREUPON, the jury entered the open court at
19 approximately 11:21 A.M.)

20 THE COURT: All right. Solicitor, you may
21 continue your examination of the witness.

22 MS. HODGE: Thank you, Your Honor.

23 Q. Ms. Rollins, I think when we broke you were stating
24 that you had given a bath to Minor2 that next morning?

25 A. Yes, ma'am.

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1 Q. And don't say anything that Minor 2 said, but you and
2 Minor 2 had a conversation?

3 A. Yes, ma'am.

4 Q. Did you attempt in anyway to question Minor 2 about
5 anything?

6 A. No, ma'am.

7 Q. And after you gave her a bath, what did y'all do?

8 A. We left and went and picked up my daughter at school
9 and proceeded on to the hospital.

10 Q. And tell me about what happened when you got to the
11 hospital?

12 A. I got to go back to see the baby.

13 Q. Was that the first time you had gotten to see her?

14 A. No, ma'am. The detectives had came and got me the
15 night on the 25th and let me go back for just a moment.

16 Q. All right. So when you went to the hospital the next
17 day, on the 26th, you got to go back there?

18 A. Yes, ma'am.

19 Q. And was anybody else back there when you went?

20 A. Ann and Mark was back there. Minor 1 daddy.

21 Q. And who is Mark?

22 A. Minor 1 s daddy.

23 Q. Okay. And were there police officers still around and
24 at the hospital during this time?

25 A. Yes, ma'am. Detective Chris Miller and Detective

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1 Autrey, I believe that's his name, they were both still
2 there.

3 Q. Okay. Did they -- either one of them attempt to speak
4 to you about this case?

5 A. I spoke them.

6 Q. You spoke to them?

7 A. Yes, ma'am.

8 Q. All right. And, again, without saying anything
9 Minor2 said, did you approach them about something that
10 was said to you by Minor2 ?

11 A. Yes, ma'am, I did.

12 Q. Okay. And you gave them that information?

13 A. Yes, ma'am. I gave them a statement?

14 Q. All right. And was that a written a statement?

15 A. I believe, yes, ma'am, it was.

16 Q. Okay. And where was that taken?

17 A. It was taken in the hospital in one of the little
18 rooms that they had set up there, I guess for questioning
19 and stuff.

20 Q. All right. And as a result of talking to police and
21 telling them what you did, did you have to do anything
22 after you left the hospital that day?

23 A. Yes, ma'am. We took Minor2 to see -- over to the
24 Julie Valentine Center.

25 Q. And that was at the request of a police officer?

1 A. Yes, ma'am.

2 Q. And did anybody go with you over there?

3 A. Me, Minor2 , Amber and Joe, all went, because I was
4 not able to drive.

5 Q. Okay. And were you able to be with Minor2 while she
6 was over there or was that separate?

7 A. No, ma'am. It was totally separate. They wouldn't
8 allow me to go back and hear anything that she said.

9 Q. Okay. And about how long did y'all stay there?

10 A. We was there a good bit because they broke for lunch
11 and I don't know what time it was. I don't recall the
12 times. But I do remember Joe went out and got us some
13 lunch.

14 Q. Now, during this time, did you actually have custody
15 of Minor2 , had you been given ---

16 A. Not at that time, I did not. They had just give me
17 like, I guess like what you call temporary custody.

18 Q. Okay. DSS was involved?

19 A. Yes, ma'am. DSS was involved.

20 Q. So there was an official transfer of temporary custody
21 of Minor2 to you?

22 A. Yes, ma'am.

23 Q. Okay. And then after finishing up at Julie Valentine
24 Center that day, did you have to go back again with

25 Minor2 ?

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1 A. Yes, ma'am. We went back several -- on several
2 different occasions.

3 Q. Did you ever get to speak to Ann or get any
4 information -- without telling me what she said, did you
5 ever question Ann about what happened to Minor 1 What did
6 you say? You can tell me what you said.

7 A. The very first night on the 25th when it happened and
8 the detectives let me go back momentarily, my daughter met
9 me at the door of Minor 1 room. I did not give that
10 child a motherly hug. I hugged her. Do you want me to say
11 what I actually said?

12 Q. Sure?

13 A. I said, what the hell happened? Because I knew they
14 were lying.

15 MS. MANIGAULT: Your Honor, I'm going to object.

16 THE COURT: I sustain the objection as to the ---

17 Q. You were not being a supportive ---

18 A. No, ma'am, I was not.

19 Q. --- mom.

20 A. No, ma'am.

21 Q. You were angry?

22 A. Yes, ma'am, I was.

23 Q. That is the first time you had seen Ann since Easter?

24 A. Yes.

25 Q. Or had you seen Ann before?

1 A. No, I hadn't seen her after that because that's when
2 she moved to Crystal's and I didn't see her.

3 Q. Now, did Minor2 eventually come into your full
4 custody?

5 A. Yes, ma'am, she did.

6 Q. All right. During the time that Minor1 was still in
7 the hospital -- well, tell me this. When did Minor1 die?

8 A. They took her off life support on the 27th.

9 Q. And during that time was Ann still out and about?

10 A. Yes, ma'am.

11 Q. Where was she staying? Did you know where she was
12 staying then?

13 A. After they took Minor1 off life support, Ann was to
14 stay with her aunt, Joyce Sprouce.

15 Q. Did you see Ann anymore after that?

16 A. She came to the house two or three times with Mark
17 Gore. He brought her there to see Minor2 because she had
18 to have supervised visitation. She could not be left alone
19 with Minor2.

20 Q. And then at some point did Ann get arrested?

21 A. Yes, ma'am.

22 Q. Okay. And do you know where she was when she got
23 arrested?

24 A. She was at Candy's. Her friend Candy's house.

25 Q. Is that in Greenville or ---

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1 A. Well, at the time, I thought it was in Travelers Rest,
2 but it was actually somewhere toward Greenwood, Laurens.

3 Q. And did you ever see the Defendant again after that
4 brief time in the hospital the first night?

5 A. No, ma'am.

6 Q. Did he ever come to you or try to talk to you or
7 anything like that after all this incident?

8 A. No, ma'am.

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

11 THE COURT: You may cross-examine the witness.

12 MS. MANIGAULT: Your Honor, I don't have any
13 questions. Thank you.

14 THE COURT: All right. Thank you, ma'am. You
15 may step down.

16 MS. HODGE: May she be excused from her subpoena?

17 THE COURT: Any objection.

18 MS. MANIGAULT: None.

19 THE COURT: Without objection, the witness may be
20 excused.

21 MS. HODGE: Thank you, Your Honor. The State
22 would call Georgia Ann Sprouce.

23 THE CLERK: Place your left hand on the bible and
24 raise your right.

25 Do you solemnly swear or affirm to tell the truth, the

1 whole truth and nothing but the truth, so help you God?

2 THE WITNESS: Yes, ma'am.

3 THE CLERK: Okay. Come forward and have a seat
4 and then state your full name for the record.

5 THE WITNESS: Georgia Ann Sprouce.

6 GEORGIA ANN SPROUCE,

7 BEING FIRST DULY SWORN, TESTIFIED AS FOLLOWS:

8 DIRECT EXAMINATION

9 BY MS. HODGE:

10 Q. Ms. Sprouce, tell us a little bit about yourself. How
11 old are you?

12 A. I'm thirty-two.

13 Q. All right. And are you currently living at the
14 detention center?

15 A. Yes, ma'am.

16 Q. And are you in there on charges resulting from this
17 case?

18 A. Yes, ma'am.

19 Q. Homicide by child abuse, aiding and abetting and
20 accessory after the fact?

21 A. Yes, ma'am.

22 Q. Are you currently legally married?

23 A. Yes, ma'am.

24 Q. To who?

25 A. Mark Carter.

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- 1 Q. All right. And have you been separated from him?
- 2 A. Yes, ma'am. We've been separated now for about a good
- 3 two, three years.
- 4 Q. Okay. And do you have any children?
- 5 A. Yes, ma'am.
- 6 Q. Tell me who your children are?
- 7 A. I have three children. The deceased, which is Minor 1
- 8 . She would have been three years old this year.
- 9 My oldest daughter is four. Her name is Minor 2
- 10 And my son, Minor 4 , who is eight.
- 11 Q. All right. And Minor 2 , that's your child
- 12 with your husband that you're still legally married to,
- 13 Mark Carter?
- 14 A. Yes, ma'am.
- 15 Q. Okay. And where is your son? Where does he live?
- 16 A. He lives in Hendersonville with his grandparents.
- 17 Q. Is his dad from up there?
- 18 A. Yes, ma'am.
- 19 Q. Did you ever marry his dad?
- 20 A. No, ma'am.
- 21 Q. Did you ever -- you were still married to Minor 2 's
- 22 dad, so you did not marry Minor 1 's dad?
- 23 A. No, ma'am.
- 24 Q. All right. Where did you grow up?
- 25 A. I grew up in Blue Ridge. It's outside of Greer. It's

1 a small town. I went to school there at elementary school

2 and continued to go to school at Blue Ridge Middle.

3 Q. And did you go to high school?

4 A. No, ma'am.

5 Q. Why didn't you go to high school?

6 A. Oh, by the time I had finished eighth grade in middle
7 school, I was already to the point where I was on drugs and
8 I was having to maintain taking care of my other two
9 sisters, which was a little hard. And so the drugs took
10 over my capability of even going to school.

11 Q. All right. Who are your parents?

12 A. My parents is Tina Rollins and my dad is Thomas
13 Sprouce.

14 Q. How about -- you said you would take care of your two
15 sisters. Are you the oldest?

16 A. Yes, ma'am.

17 Q. Who are your sisters?

18 A. Marie Sprouce and Denise Sprouce.

19 Q. And how much younger than you are they?

20 A. Me and Marie's about maybe a year apart. Me and
21 Denise, she was born in '86. So I'd say she was -- we're
22 probably about maybe seven years apart.

23 Q. And did your parents divorce?

24 A. Yes, ma'am.

25 Q. And who did y'all live with?

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1 A. We lived with my father and his mother and my aunt.

2 Q. And were you a primary caretaker once your parents
3 divorced?

4 A. My grandma and my aunt took care of us up until I was
5 thirteen years old. And my grandma passed away. So,
6 therefore, it left me with me and my daddy and my other two
7 sisters. And sometimes, you know, my aunt would help what
8 she could. But she was working third shift so there wasn't
9 much she could do. And the rest of the time, you know, I
10 was left to either clothe them, bathe them, you know,
11 whatever just that had to be done. Cooked, washed their
12 clothes.

13 Q. So you dropped out of school?

14 A. Yes, ma'am.

15 Q. Okay. And how old were you when you stopped going to
16 school?

17 A. I was sixteen years old when I dropped out of school.

18 Q. Did you take up working somewhere?

19 A. No, not at that time I did not.

20 Q. Did you just live in the home still?

21 A. Yes, I did until I met this guy. He was twenty-nine.

22 I moved in with him, and continued to live there with him,

23 I guess, for about a year and a half. And after that, I

24 moved back in with my daddy to where I stayed there, I

25 guess, for about another year and a half with my dad. And

1 moved in with my mother.

2 Q. Have you ever worked anywhere in your life?

3 A. Yes, ma'am. I've worked at Arby's and Gaddy's. I've
4 worked at Sonapress. I've worked at Spinx. I've worked at
5 numerous places.

6 Q. Tell me about meeting your son's father as far as, you
7 know, when in your life was this or how old were you when
8 you had your first child, your son?

9 A. When I first had my son, I was twenty-four.

10 Q. And were you living in Greenville then?

11 A. No, ma'am. I was living in North Carolina,
12 Hendersonville.

13 Q. And how about when you had Minor2 , how old were you
14 and where were you at that point?

15 A. I had Minor2 four years after I had my son. So
16 about 2008, I would think. I was living in North Carolina
17 still.

18 Q. And is that when you and Minor2 's dad got married?

19 A. Yes, ma'am.

20 Q. Is he from up there?

21 A. Yes, ma'am.

22 Q. What about Minor1 , tell us about when -- how old you
23 were, where you were, when you had her?

24 A. I was living down here. I had moved to North Carolina
25 for probably a good nine months. And then I moved back

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1 from up there to back down here. And I was living with my
2 sister Denise and her husband whenever I gave birth to
3 Minor 1 .

4 Q. Now, when you gave birth to Minor 1 , was there DSS
5 involvement?

6 A. Yes, ma'am.

7 Q. And tell us about that?

8 A. DSS got involved because Minor 1 tested positive for
9 marijuana. And so they automatically stepped in and took
10 Minor 1 from me, straight from the hospital. And about a
11 week later I went to court and was -- had to have Minor 2
12 took from me. October the 14th is whenever I got accepted
13 into Serenity Place and I done that whole nine months.

14 Q. Okay. Well, let's back up a little bit, okay? So the
15 reason DSS came in and took Minor 2 and Minor 1 was
16 because Minor 1 tested positive for marijuana?

17 A. Uh-huh (affirmative).

18 Q. Were you smoking marijuana while you were pregnant?

19 A. Yes, ma'am.

20 Q. And that's how she tested positive?

21 A. Yes, ma'am.

22 Q. And you were the sole caretaker or custodian of
23 Minor 2 at that time, too?

24 A. Yes, ma'am.

25 Q. And DSS took custody of her as well at that time.

1 What were you required to do by DSS?

2 A. I was required to go to Serenity Place, finish
3 Serenity Place, which I did. I graduated in nine months.

4 Q. Well, tell us what Serenity Place is. Some people
5 might not know what that is.

6 A. It's a place for mothers and for kids that are young.
7 But it's basically for mothers who are on drugs. And ---

8 Q. I'm sorry. So Serenity Place is a drug rehab place?

9 A. Yes, ma'am.

10 Q. And it allows you to have your children, as well,
11 there?

12 A. Yes, ma'am.

13 Q. Do you live there?

14 A. Yes. You live there until your time's up. It's, you
15 know, like I said, a six to nine-month program. After you
16 finish, they help you get into housing, they give you
17 Section 8. You attend NA meetings.

18 Q. Okay. During this time you stayed cleaned? You
19 weren't doing any drugs?

20 A. Yes, ma'am.

21 Q. Is it a strict program?

22 A. Yes, ma'am.

23 Q. Do they drug test you a lot?

24 A. Yes.

25 Q. Okay. I'm going to step back a minute. When DSS

1 became involved and took the girls, was there ever an
2 indication that you were being physically abusive to the
3 girls?

4 A. No, ma'am.

5 Q. It was because of the drugs?

6 A. It was -- every time that I've had my kids took, it's
7 been because of drugs. It's never been because of physical
8 abuse, nothing.

9 Q. And during this time does a DSS caseworker or a
10 treatment worker, somebody keep up with you while you're in
11 Serenity Place?

12 A. Yes, ma'am. Each time that I've had a DSS case, it
13 has been -- I've had it open for two years each time I've
14 had one. And each two years that I've had my DSS cases, I
15 have cleaned off, you know, all my years with them of not
16 no physical abuse, no bruises, no -- barely even a cut or a
17 scrape.

18 Q. So it's more you having a problem with drugs, not
19 being able to take proper care or supervision or protection
20 of your kids?

21 A. Yes, ma'am.

22 Q. Okay. And when DSS is involved they meet with you and
23 they look at your kids; is that right?

24 A. Yes, ma'am, they do. They meet with you once a month,
25 if not twice a month. It just depends on how, you know,

1 how involved they are with you. My caseworker or Minor 1's
2 case met with me at least twice a month, if not three times
3 a month.

4 Q. And at the same time you were living inside of a
5 facility, a treatment facility?

6 A. Yes, ma'am.

7 Q. And where are your children when you're in the
8 facility? What are they doing?

9 A. While you're doing -- attending group therapy and
10 things like that, they are at a daycare, which is inside
11 the facility. So you know where they're at at all times.
12 If, you know, if a kid goes to crying and you think it's
13 yours, you're more than welcome to get up and go check on
14 that kid.

15 Q. So it's located actually where you would be?

16 A. Yes, ma'am.

17 Q. Okay. Now, you said you graduated from there?

18 A. Yes, ma'am, I did.

19 Q. So what do you have to do to graduate?

20 A. In order to graduate you have to attend so many NA
21 meetings because one weekend we get, you know, a choice to
22 go home. The next weekend we get a choice to go to an NA
23 meeting or stay there. I went to every NA meeting I could
24 possibly go to. That was my major thing. I loved my NA
25 meetings. They were -- they kept me clean. They kept me

1 from snapping, you know. They kept me from having too much
2 stress, because I had a lot of stress just because, you
3 know, I had an apartment when I got out.

4 Q. All right. Well, let's start there. Let's talk about
5 when you graduated? When did you graduate? Do you
6 remember the day, the year?

7 A. Graduated 2010.

8 Q. Do you remember what month in 2010?

9 A. The beginning of June, I believe.

10 Q. Okay. While you were in Serenity Place, did your mom
11 come over and see you?

12 A. Yes, ma'am.

13 Q. Okay. So you were on good terms with your family?

14 A. Uh-huh (affirmative).

15 Q. And then when you graduated in June, Junish, 2010,
16 where did you move to?

17 A. I moved to Gressett Landing Apartments on Whitehorse
18 Road.

19 Q. Okay. And was that through the help of Serenity
20 Place?

21 A. Yes, ma'am. I got Section 8 through Serenity Place.

22 Q. Okay. So that's government type housing?

23 A. Yes, ma'am.

24 Q. All right. And who moved into the apartment with you
25 when you first graduated?

1 A. First it was just me and my two kids.

2 Q. Okay. And Minor 2 and Minor 1

3 A. Yes, ma'am.

4 Q. All right. And so how old were they at that time?

5 A. Minor 2 was about a year and a half old. Minor 1 was
6 about ten months.

7 Q. All right. At some point while you were in your
8 apartment, did you meet the Defendant?

9 A. Yes, ma'am.

10 Q. All right. Tell us about that?

11 A. I met the Defendant through my sister Denise. I had
12 gotten a telephone call from her one night and she stated
13 that the Defendant had ---

14 MS. MANIGAULT: Your Honor, we object to anything
15 her sister said.

16 THE COURT: Sustain the objection.

17 Q. So you met him through your sister Denise?

18 A. Yes, ma'am.

19 Q. You and Denise had some phone conversation?

20 A. Yes, ma'am.

21 Q. And as a result of that phone conversation did you
22 meet the Defendant in person?

23 A. Yes, ma'am.

24 Q. Okay.

25 A. The very next day I met the Defendant in person.

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1 Q. Okay. Where did you meet him?

2 A. I met him at my sister's and her boyfriend's house.

3 Q. And tell us what happened from meeting him?

4 A. I met him there. Me and my friend, Tasha, we left
5 from there, took him back to my apartment. Me and Tasha
6 had planned on taking him back home the next day and we did
7 not.

8 Q. Okay. At this point would you say y'all were
9 boyfriend/girlfriend, or what was the relationship?

10 A. At this point, yeah.

11 Q. Okay. So within about a day of meeting him, he stayed
12 at your apartment and just continued to stay?

13 A. Yes, ma'am.

14 Q. And who was Tasha?

15 A. Tasha is a friend of mine that I met at Serenity
16 Place. She did not graduate, but she wanted to continue to
17 go to NA meetings and she needed a place to stay and I told
18 her that she could come and stay with me. And me and her
19 continued to do our NA meetings together. We chaired some
20 NA meetings together. And then that's when I met the co-
21 defendant and I went downhill.

22 Q. Now, before meeting him, had you been dabbling in some
23 drugs?

24 A. Yes, ma'am, I had.

25 Q. But you were still attempting to go to these meetings?

1 A. Yes, ma'am.

2 Q. So how long do you think you stayed clean once you got
3 out of Serenity Place?

4 A. Once I got out of Serenity Place, I stayed a year
5 clean and then I relapsed.

6 Q. And so tell us -- now, did you know any of -- did you
7 know the Defendant before you ever met him?

8 A. No, ma'am. No, ma'am.

9 Q. So just meeting him ---

10 A. Yes, ma'am.

11 Q. --- did y'all hit it off kind of off-the-bat?

12 A. Yes, ma'am.

13 Q. And the girls were living with you and he was now
14 staying with you, too?

15 A. Yes, ma'am.

16 Q. Okay. Were you holding down a job anywhere at this
17 point?

18 A. No, ma'am.

19 Q. And how about him, was he working anywhere?

20 A. No, ma'am.

21 Q. So how were you guys -- well, did you have a car?

22 A. No, ma'am.

23 Q. How were you guys living?

24 A. I was getting FI, which is family independence. I was
25 also getting child support from Minor 1's daddy and

1 Minor 2 's daddy. And I had -- you know, my Section 8 paid
2 for my rent. My light bill, I got like a twenty-nine
3 dollar check every month to cover what part of it I
4 couldn't cover.

5 Q. And how about the Defendant, how was he supporting
6 himself or contributing to the house?

7 A. As far as I knew, he had a disability check.

8 Q. Now, when -- how long did you and the Defendant and
9 the girls live in that apartment on Whitehorse Road?

10 A. We lived there for about two months, I would say.

11 Q. During the time that he started living with you, were
12 there times that you would ever leave him alone with the
13 girls while you went and did something?

14 A. Yes, ma'am.

15 Q. How often do you think that would happen?

16 A. I left him one time with the kids because I had went
17 to a funeral with a friend of mine. And I had left the
18 kids there with him for about a week.

19 Q. And when you came back from that did you have any
20 worries or suspicions about ---

21 A. No, ma'am.

22 Q. --- Minor 1 or anything happening to her?

23 A. No, ma'am.

24 Q. Okay. And after that time that you left him with the
25 kids, did you then continue to leave and do things?

1 A. Yes, ma'am.

2 Q. All right. What kind of things would you go and do?

3 A. After I left my apartment and moved in with Crystal,
4 there were times I would leave one of the kids, if not both
5 of the kids with him, and go with Crystal to pick up her
6 kids from school.

7 Q. All right. And tell me -- so you guys left the
8 apartment at some point?

9 A. Yes, ma'am.

10 Q. And why did you leave the apartment and where did you
11 go?

12 A. Parker and my neighbor, I guess you would say, had
13 gotten into a physical altercation due to the fact of
14 Parker slapping my daughter in the back.

15 Q. And what did you do from that point? Did you decide
16 to move or ---

17 A. From that point, we had decided to stay, but then
18 Crystal showed up and I didn't -- you know, she had offered
19 us to come stay with her. And I was not sure because, you
20 know, what had happened. I was really, you know, scared
21 from that point on to even be in the apartment complex. So
22 I left and moved in with Krystal and her husband Mark
23 Inman.

24 Q. All right. Who all was living at their house at that
25 time?

1 A. At the time it was me, Crystal, the co-defendant and
2 Mark Inman and Crystal's four kids -- three kids, I mean,
3 and my two kids.

4 Q. Okay. So was the house big enough for everybody to
5 have a place to stay?

6 A. Yes, ma'am.

7 Q. Was it your intention to stay in there or to stay at
8 her house forever?

9 A. No, it was my intentions to get a trailer that her dad
10 had -- you know, that was in behind her dad. And her dad
11 had said something about it being empty. So we were going
12 to try to rent it. And we had went and talked to her dad
13 about it. And her dad had, you know, said that he would
14 talk to the landlord about it and let us know.

15 Q. So this was just kind of a temporary resting spot?

16 A. Yes, ma'am.

17 Q. But you ended up staying there for how long?

18 A. We wound up staying there for two months.

19 Q. And while you were staying there -- I think you just
20 answered this question, but there were times that you would
21 go off with Crystal to pick up the kids from school or
22 whatnot and leave the Defendant with your girls?

23 A. Yes, ma'am.

24 Q. Was there any time while y'all were at Crystal's that
25 you came back from leaving him with the kids that you

1 noticed anything on Minor1 that gave you any cause for
2 concern?

3 A. Yes, ma'am. There was a bruise on her forehead that
4 looked like she had been hit with something. And I asked
5 him, you know, what happened. And every time I would ask
6 him what happened, he would repeatedly tell me that either
7 she fell or one of the other kids had hit her.

8 Q. Was there specifically one on the side of her head
9 that you noticed?

10 A. Yes, ma'am.

11 Q. Do you remember asking the Defendant about where that
12 came from?

13 A. Yes, ma'am. And supposedly, it came from a beaded
14 necklace, a Mardi Gras necklace.

15 Q. Okay. And who did he supposedly say did that?

16 A. He said that Minor2 did that.

17 Q. When you were with your children, did you ever see
18 Minor2 hit Minor1 with a beaded necklace in the head?

19 A. No.

20 Q. Now, they were children. Would they get in arguments?

21 A. Oh, yeah. I mean, children do. Yeah, they all the
22 time tried to take each other's toy, but ...

23 Q. But did you ever see anything like beating on the head
24 or anything like that of Minor1 by Minor2 ?

25 A. No.

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1 Q. Okay. What about by any of Crystal's kids?

2 A. No.

3 Q. Was there another time that you had come home after
4 leaving the Defendant with Minor 1 that she had something
5 more in the middle of her head?

6 A. Yes, ma'am.

7 Q. Okay. And did you ask about it?

8 A. (Witness crying).

9 Q. Would you like some water?

10 A. Yes, please.

11 Q. Okay. So did you ask about a bruise that you saw in
12 the middle of her forehead?

13 A. Yes, ma'am. And he said that she supposedly fell down
14 trying to come out of the bedroom.

15 Q. Did he ever at any time tell you that she had fallen
16 down outside?

17 A. Yeah. There was one occasion where she had fell down
18 the steps and hit the stepping stone.

19 Q. Did you see that happen?

20 A. No, ma'am.

21 Q. Did you see a mark on her?

22 A. Yes, ma'am.

23 Q. And was that -- who told you that she fell down out
24 there?

25 A. He did.

1 Q. Okay. You weren't with her when that happened?

2 A. No, ma'am, I was not with her.

3 Q. How close in time to Minor1's death did these
4 injuries start showing up?

5 A. Within a week's time.

6 Q. When he would tell you that she fell or Minor2 hit
7 her, what did you do about that?

8 A. I kind of brushed it off because, you know, nine times
9 out of ten, yeah, she is clumsy. So I figured that she did
10 fall.

11 Q. What about the thing with the beaded necklace, did you
12 really believe that?

13 A. In a way, no, I didn't.

14 Q. After these several bruises on her head started
15 appearing, was there another time that you would have left
16 him to take the care of the girls or left him alone?

17 A. Yes, ma'am.

18 Q. Before we get there, tell me about Minor1. Was she
19 still in diapers?

20 A. Yes, ma'am.

21 Q. And was Minor2 still in diapers?

22 A. Yes.

23 Q. Were you trying to potty train her at that point?

24 A. She had started learning from Crystal's little girl.
25 She would, you know, want to sit on the toilet.

1 Q. And can you tell me if Minor 1 was able to eat food on
2 her own?

3 A. Yes, ma'am.

4 Q. Was she eating solid food, not just baby food?

5 A. Yes, ma'am.

6 Q. And how about, was she able to drink out of a cup or a
7 sippy cup?

8 A. She was able to drink out of a sippy cup. And then
9 sometimes she would try to drink out of the big cup.

10 Q. All right. She wasn't on the bottle or anything
11 anymore?

12 A. No.

13 Q. Was she walking at this time?

14 A. Yes, ma'am.

15 Q. Was she able to get around pretty good?

16 A. Yes.

17 Q. Did she have any serious health problems or any type
18 of special needs?

19 A. No. The only thing was that she was born with a heart
20 murmur. That was it. But she was cleared from her
21 cardiologist.

22 Q. All right. And had she been cleared from her
23 cardiologist for a long time?

24 A. Yes, ma'am. She was cleared from him right before we
25 left Serenity Place

1 Q. All right. So otherwise she was just a normal,
2 average one-year-old little girl?

3 A. Yes, ma'am.

4 Q. Now, was the Defendant ever allowed to discipline the
5 girls?

6 A. He was to a certain extent. But the one thing I did
7 not allow was him standing them in the corner and making
8 them stand on their tippy toes. When he would do that, I
9 would make them get out of the corner.

10 Q. Okay. So that was the discipline that you were aware
11 of?

12 A. Yes.

13 Q. And did you ever personally witness him hit Minor 1 ?

14 A. I witnessed it once. When we were at a neighbor's
15 house where he violently popped her on her hand.

16 Q. Did you ever see him hit her in the head or face?

17 A. No, ma'am.

18 Q. What about in the back or the bottom?

19 A. No.

20 Q. And when you disciplined her, what would you do?

21 A. I popped her on her hand or I barely popped her on her
22 butt, but that was it.

23 Q. Would this be over the diapers or under the diapers?

24 A. It would be over the diaper.

25 Q. Did you ever hit her in the face?

1 A. No, ma'am.

2 Q. Or in the body?

3 A. No, ma'am.

4 Q. Did you ever pinch her ears or do anything like that?

5 A. No.

6 Q. Did you observe the Defendant to treat one of your
7 daughters better than the other daughter?

8 A. Yes, ma'am.

9 Q. And which ---

10 A. He would always treat Minor2 better than he did
11 Minor1 . Minor2 was his pick over Minor1 . When Minor1
12 would go to crawl up in the chair with me and him, he would
13 push her away. He never wanted her to come close.

14 Q. Did that bother you?

15 A. Yeah.

16 Q. When Minor1 died and they took her to the hospital,
17 did she have some bites on her, do you know?

18 A. Yes, ma'am. They were from ant bites where she had
19 sit on that ant hill outside of Crystal's house.

20 Q. Now, were you out there and saw that happen?

21 A. No, ma'am.

22 Q. Okay. Who had her when the ant bites happened?

23 A. He did.

24 Q. Where would you have been?

25 A. I was in the house at that time.

1 Q. And how did you know she had ant bites?

2 A. He come in saying that she had sat on an ant hill.

3 And, you know, he started telling me to take her diaper off

4 because he had believed that some had crawled up in her

5 diaper. So I took her diaper off and made sure that there

6 wasn't none up in, you know, her private areas, and there

7 was not.

8 Q. How long before she died did that happen?

9 A. I want to say three or four days.

10 Q. Is this in the same time frame that you're seeing some

11 of these random bruises popping up as well?

12 A. Yes, ma'am.

13 Q. Let's talk about May 25th, 2011. I want you to tell

14 me what you remember getting up from that morning and we'll

15 go forward.

16 A. I got up that morning around nine o'clock. Crystal

17 had to go to Mauldin to pick up her oldest boy, Adrian's

18 child support money from his father. We left, I would say,

19 probably around nine-thirty, ten o'clock that morning. We

20 dropped ---

21 Q. Who is we, tell me about who all ---

22 A. Me and Crystal. It was me, Crystal, my two girls, her

23 little girl, Minor³, the co-defendant and it was her uncle.

24 We had dropped her uncle off at his daughter's house. And

25 then we dropped the Defendant off at his friend's house.

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1 And then me, Crystal, my two kids and her daughter left and
2 wet to Mauldin to pick up her son's child support.

3 Q. And what did you do after that?

4 A. After that, when we came back, we stopped by the
5 Defendant's friend's house and picked him up from there
6 and went back to Crystal's. And when we got back to
7 Crystal's house, I fed Minor1 a and Minor2 a peanut butter
8 sandwich and Crystal fed Minor3 a peanut butter sandwich.
9 Crystal had asked me to go with her that day to pick up
10 Andrew and Jonathan, and I told her no, because I was too
11 high and I was tired.

12 Q. Okay. And so what happened next?

13 A. So after Minor2 and Minor1 eat, I laid them down to
14 take a nap because they were both fussy from the long car
15 ride all day. So I laid them down and I had told, you
16 know, him that I was going to lay down. I laid down. He
17 laid in the bed beside me, got up when the girls got up and
18 took them into the living room. Minor2 was the first one
19 awake. And she always banged on the door when she woke up,
20 so that's how we knew she was up. So he got her and
21 Minor1 and I started to get up and he told me, no, to
22 continue to sleep that he would watch them. So I continued
23 to sleep and let him watch them. I can remember Minor2
24 coming into the room and trying to wake me up. And I
25 wouldn't get up, because normally when she come in there to

1 wake me up, it was, you know, just to be woke up. And,
2 like I said, I was high and I was tired. So I just kind
3 of, you know, nudged her off. About maybe thirty minutes
4 after she came in to wake me up, he come in to wake me up
5 and tell me that my little girl wasn't breathing.

6 Q. Did you wake right up?

7 A. Yes, ma'am.

8 Q. So what did you do when he said that?

9 A. When he told me that she wasn't breathing, I jumped up
10 off the bed and took off running into the living room to
11 where she was at. By the time I reached the living room,
12 she was already turning purple around the lips.

13 Q. Was she -- where was she?

14 A. She was laying in the living room floor on Crystal's
15 rug.

16 Q. Do you remember if she had any clothes on at that
17 time?

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

19 Q. Do you remember taking -- did she have clothes on when
20 she laid down for a nap?

21 A. Yes, ma'am.

22 (WHEREUPON, State Exhibit Numbers 34 and 35 were
23 marked for identification.)

24 Q. Ms. Sprouce, do you remember -- I'm showing you
25 State's Number 34 and 35. Do you remember if she was

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1 wearing either of those items of clothing?

2 A. Uh-uh (negative).

3 Q. You don't recall? And were those -- would that have
4 been her top, with the little green bow around it?

5 A. No.

6 Q. You don't remember? Okay. All right. And do you
7 recall if those shorts were her shorts?

8 A. Yeah.

9 Q. Those were her shorts?

10 A. Uh-huh (affirmative.)

11 Q. Okay. Do you remember her shorts being on over her
12 diaper?

13 A. No, ma'am.

14 Q. Did you remove anything of her clothing when you
15 walked in there?

16 A. No, ma'am.

17 Q. So tell us what -- what did you do when you got in
18 there?

19 A. When I got in there, I proceeded to give her CPR
20 because she was not breathing.

21 Q. Was she making any kind of sounds?

22 A. No.

23 Q. What was the Defendant doing?

24 A. Nothing. Not a thing.

25 Q. Did you think that you needed to call for help at some

1 point?

2 A. Yes, ma'am.

3 Q. And how did that -- tell me about that. How did that
4 happen?

5 A. I had asked him to call 9-1-1 and he had called 9-1-1
6 the first time. We got disconnected the first time. And
7 the second time, before we went to call 9-1-1, he said, no,
8 because he had to hide the pot.

9 Q. Okay. Was there some pot in the house?

10 A. Yes, ma'am.

11 Q. And whose pot was it?

12 A. It was Crystal's.

13 Q. Okay. Had you been smoking that pot?

14 A. Yes, ma'am.

15 Q. Had the Defendant been smoking it that day, too?

16 A. Yes, ma'am.

17 Q. So he said he needed to clean it up. Did you see him
18 do anything?

19 A. No.

20 Q. Where was it normally kept?

21 A. It was normally kept in Crystal's living room in a
22 night stand drawer.

23 Q. And did you see him move anything from that night
24 stand drawer?

25 A. I was busy giving Minor 1 mouth-to-mouth. I wasn't

1 even paying him no attention.

2 Q. Did she have anything on her face or anything on her
3 as far as any kind of throw-up or any kind of brown stuff?

4 A. No. When I started to give her mouth-to-mouth, I
5 heard a noise. When I heard that noise, I rolled her over
6 on her back to pat her on her back. A little bit came up
7 on my pants and on the rug. I thought since that had come
8 up she was going to breathe.

9 Q. Did the Defendant tell you how she got to be that way?

10 A. Yes, ma'am.

11 Q. What did he say?

12 A. He told me that she choked on tea.

13 Q. Did you ask a lot of questions at this point?

14 A. At this point I asked him how did she, you know, how
15 did she get like that? He said that she choked on tea. At
16 that point, I did not care. I was just wanting her to
17 breathe.

18 Q. When you said you were doing CPR, what were you doing?

19 A. Mouth-to-mouth and chest compressions.

20 Q. Had you been taught that at Serenity Place or
21 somewhere else?

22 A. I had been taught that previous to having my son, who
23 was premature. And I had to learn that through having him.

24 Q. And how -- what kind of compressions were you doing on
25 her chest?

1 A. Kind of like this right here.

2 Q. With your fingertips in the middle?

3 A. Yeah.

4 Q. Were you trying to breathe into her mouth too?

5 A. Yes, ma'am.

6 Q. Did you notice the bruising and stuff on her face and
7 head at that time?

8 A. (No verbal response.)

9 Q. Did you ever open her mouth or see any injury inside
10 her mouth?

11 A. No, ma'am.

12 Q. How did you do the mouth-to-mouth?

13 A. I just opened up her mouth, you know, to where I could
14 fit my mouth over her mouth long enough for me to get air
15 into her lungs.

16 Q. And what was -- I guess what was the Defendant doing
17 while you were doing that?

18 A. The Defendant was trying to scream over the top of the
19 9-1-1 operator to where I could not hear her. I asked him
20 several times to shut the F up. And he would not shut up.
21 He just continued to holler over the top of her that we had
22 already did that. We had already did that.

23 Q. Okay. So at some point you were able ---

24 A. Yes, ma'am.

25 Q. Somebody called back to 9-1-1?

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1 A. Yes, ma'am.

2 Q. And who talked to the 9-1-1 operator?

3 A. I did.

4 Q. Was it on the speaker phone or was it ---

5 A. Yes, ma'am.

6 Q. So the Defendant could hear what they were saying and
7 what you were saying?

8 A. Yes, ma'am.

9 Q. And was there -- before you got on the phone with
10 9-1-1 was there some discussion of what to tell them?

11 A. Yes, ma'am.

12 Q. Okay. Tell me about that.

13 A. He had told me to tell them that she choked on tea or
14 else I would be thought of as a bad mother.

15 Q. Did you believe that?

16 A. Yes, ma'am.

17 Q. And why did you believe that?

18 A. Because I was stupid, for one. For two, I was scared.
19 I had never been in trouble before. So I didn't know
20 anything about this. I didn't ...

21 Q. As you were doing CPR, what's happening? Is Minor 1
22 doing anything?

23 A. No.

24 Q. How about Minor 2 , where's Minor 2 ?

25 A. Minor 2 's standing over the top of me, looking at me.

1 Q. Did the ambulance or a fire truck or somebody finally
2 show up?

3 A. Yes.

4 Q. Were you trying to do CPR the whole time until they
5 showed up?

6 A. Yes, ma'am.

7 Q. What did you do once they showed up?

8 A. Once they showed up, I allowed him to take over.

9 Q. What did the Defendant do?

10 A. I don't even remember.

11 Q. Did you and he have any more conversations after that?

12 A. No, ma'am.

13 Q. Did they take Minor 1 in the ambulance?

14 A. They took Minor 1 straight to Greer hospital me where
15 me, Crystal and the Defendant had met with them at Greer
16 Hospital. That gave me a chance to tell her bye as they
17 airlifted her to Greenville.

18 Q. Well, let's back up just a little bit, all right?

19 Once the firemen and the ambulance people get there and
20 they're trying to help Minor 1, are you having any
21 conversations with the Defendant?

22 A. No, ma'am.

23 Q. Are you asking him anymore questions about how she got
24 that way?

25 A. No, ma'am.

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1 Q. Are you telling the ambulance or the firemen what he
2 told you?

3 A. Yes, ma'am.

4 Q. About how she got that way?

5 A. Yes, ma'am.

6 Q. At some point did you tell them that he was actually
7 in the bathroom?

8 A. Yes, ma'am.

9 Q. Well, why did you say that?

10 A. Because at one point, he did leave and go into the
11 bathroom.

12 Q. One point before they got there?

13 A. Yes, ma'am.

14 Q. And once they took Minor 1 , were you allowed to leave
15 the house?

16 A. No, ma'am, I was not.

17 Q. Did you have to talk to some police officers?

18 A. Yes, ma'am.

19 Q. Did you tell them the same story that he told you?

20 A. Yes, ma'am.

21 Q. But you were stating that you, in fact, were in the
22 room?

23 A. Yes, ma'am.

24 Q. Okay. Why were you saying that?

25 A. Because I was scared. I mean, I had another little

1 girl that was standing there watching everything and I was
2 terrified.

3 Q. In the car ride to the hospital, who all's going to
4 the hospital?

5 A. Me, Crystal and the Defendant.

6 Q. Are y'all having any conversation in the car?

7 A. No, ma'am.

8 Q. Did you try to ask him anymore questions about what
9 happened?

10 A. No, ma'am.

11 Q. Did he try to tell you anything else?

12 A. No, ma'am.

13 Q. And you guys go to Greer?

14 A. Yes, ma'am.

15 Q. And you don't stay at Greer very long?

16 A. No, ma'am. We stayed there for probably five or ten
17 minutes.

18 Q. And then she got transferred; is that correct?

19 A. Yes, ma'am. She got transferred to Greenville.

20 Q. Were there any police officers at the Greer Hospital
21 that were trying to ask any questions or talk to you?

22 A. No, ma'am.

23 Q. When you go to Greenville, how do you get to
24 Greenville Hospital?

25 A. Crystal.

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1 Q. How about in the car, what's going on in the car?

2 A. Nothing. I'm not talking to nobody but Crystal.

3 Q. Okay. And what are y'all talking about?

4 A. Just that I wish I had been there.

5 Q. Is he trying to talk to you; are you trying to talk to
6 him?

7 A. He tried to talk to me, I believe, on one other
8 occasion before we got to the hospital or he tried to touch
9 me on my shoulder. And I told him not to touch me and I
10 was not talking to him.

11 Q. So when you get to the hospital, tell us what happens?

12 A. When we get to the hospital they automatically
13 separate me and him both. They put me into a little room,
14 I guess, which they would call the family conference room.
15 And while they worked on Minor 1 and, you know, got her
16 situated in her room, I was not able to see my daughter
17 until after I gave a statement.

18 Q. Do you remember who you talked to at the hospital?

19 A. No.

20 Q. But it was a police officer?

21 A. I do not remember anybody other than Chris Miller and
22 Detective Jennings.

23 Q. And Detective Jennings, did you talk to him and give
24 him a statement or was it investigator Miller?

25 A. I gave Investigator Miller one. And if I'm not

- 1 mistaken, I believe I did give Jennings one. I can't
2 remember. There were so many that day.
- 3 Q. Were a lot of people asking you what happened?
- 4 A. Yes, ma'am.
- 5 Q. Doctors asking what happened?
- 6 A. Doctors, DSS workers, police, investigators.
- 7 Q. And did you maintain this story about seeing her choke
8 on tea?
- 9 A. Yes, ma'am, I did.
- 10 Q. And at some point did you start to change that story?
- 11 A. Yes, ma'am, I did.
- 12 Q. Tell us about that?
- 13 A. The second day, I changed my story to being in the
14 kitchen when it happened. The last day that I was
15 questioned, I finally told that I was not in the room when
16 it happened, that I was actually asleep when it happened.
- 17 Q. Why did you change your story and say you were in the
18 kitchen when it happened?
- 19 A. I can't even answer that because I don't even know
20 myself. I guess I was just scared that they would somehow
21 find out the truth. And ...
- 22 Q. And what was the truth?
- 23 A. The truth was that I was laying in the bed asleep when
24 all of this happened?
- 25 Q. That you'd basically sloughed your kids off for him to

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1 watch?

2 A. Yes, ma'am.

3 Q. And that Minor 1 had some suspicious bruises before in
4 his care?

5 A. Yes, ma'am.

6 Q. Was any of that going through your head at the time?

7 A. At the time, a lot of things were going through my
8 head. A lot.

9 Q. You thought it'd be best to say you were actually
10 right there?

11 A. Yeah.

12 Q. And what made you finally tell the truth about being
13 asleep?

14 A. Finally, the day that I told the truth was the day
15 that Detective Miller and Detective Jennings picked me up
16 from the mortuary.

17 Q. From where?

18 A. The mortuary.

19 Q. The mortuary. Did that play into why you told them
20 about being asleep?

21 A. Yes, ma'am.

22 Q. And was that the truth?

23 A. Yes, ma'am.

24 Q. How did you feel after you told them that?

25 A. I felt like a weight had been lifted, like I had just

1 finally told the truth and that she was finally free to go
2 and be in heaven.

3 Q. Now, Ann, you have plead homicide by child abuse,
4 aiding and abetting; is that correct?

5 A. Yes, ma'am.

6 Q. And that's what you were charged with; is that
7 correct?

8 A. Yes, ma'am.

9 Q. You were also charged with accessory after the fact
10 and that case hasn't been disposed of yet; is that correct?

11 A. Yes, ma'am.

12 Q. And you have been promised nothing in regard to any
13 type sentence that you would receive?

14 A. Nothing at all. Nothing at all.

15 Q. And you could possibly get anywhere from ten to twenty
16 years; is that right?

17 A. Yes, ma'am, it is.

18 Q. Has the State -- anyone with my office promised you
19 any type of sentence?

20 A. No, ma'am.

21 Q. Ann, did you put your hand over Minor 1's mouth and
22 suffocate her?

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

24 Q. Did you hit her in the head or the face?

25 A. No, ma'am.

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1 Q. Did you ever hit her about the body?

2 A. No.

3 Q. Pinch her ears?

4 A. No.

5 Q. Grab her ribs?

6 A. No, ma'am.

7 Q. Leave bruises on her upper buttocks or back?

8 A. No, ma'am.

9 Q. Now, is the person that you left in charge of Minor 1
10 that day while you were sleeping on May 25th, is he present
11 in Court today?

12 A. Yes, ma'am.

13 Q. And is that the person you know as Parker?

14 A. Yes, ma'am.

15 Q. James Allen Johnson?

16 A. Yes, ma'am.

17 Q. And identify him for the jury, please?

18 A. (Indicating.)

19 Q. The man sitting at the Defense table with the purple
20 shirt?

21 A. Yes, ma'am.

22 Q. Have you and Mr. Johnson had any communication after?

23 A. No, ma'am.

24 Q. Even after that very first ---

25 A. No.

1 Q. --- car ride or anything?

2 A. No, ma'am.

3 Q. Thank you. Answer any of Ms. Manigault's questions,
4 please.

5 **CROSS-EXAMINATION**

6 **BY MS. MANIGAULT:**

7 Q. Ms. Spruce, wasn't there a finding made against you
8 by Family Court on September the 18th, 2009 for physical
9 neglect and physical abuse of your two children?

10 A. No, ma'am. That was only for drug use.

11 Q. The finding was, if I presented the court order, you
12 would dispute the court order?

13 A. Yes, ma'am.

14 Q. All right. And was there a finding made on March 20,
15 2012 for physical abuse of Minor 1 , substantial risk for
16 Minor 2 and central registry for child abuse?

17 A. No, ma'am. That was just drug related.

18 Q. That finding was not made against you?

19 A. No, ma'am.

20 Q. All right. On March 20, 2012 did you arrived from the
21 detention center in a police car with James Allen Johnson
22 to Family Court?

23 A. Yes. We rode in the van together, yes, ma'am.

24 Q. So you did have contact with him, other than what you
25 told the Solicitor?

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1 A. She knows about that, too.

2 Q. Okay. But you just you didn't have any further
3 contact with him?

4 A. Well, I meant, other than riding in the van, yes,
5 ma'am.

6 Q. Did y'all have a conversation while you were riding in
7 the van?

8 A. He told me that he was sorry for what he did.

9 Q. And you told him that you were in this situation
10 because of him ---

11 A. No, ma'am.

12 Q. --- or because of yourself?

13 A. No, ma'am.

14 Q. You didn't tell him that it was your fault, what
15 happened to the baby?

16 A. No, ma'am.

17 Q. All right. On the 25th of May you said that you were
18 too high and tired. What were you high from?

19 A. Marijuana.

20 Q. Okay. Where did you get the marijuana from?

21 A. My friend.

22 Q. Who's your friend?

23 A. Crystal.

24 Q. What's her last name?

25 A. Inman.

- 1 Q. And that's where you were staying?
- 2 A. Yes, ma'am.
- 3 Q. All right. And so how much marijuana had y'all smoked
- 4 that day?
- 5 A. We had been smoking -- probably five bowls.
- 6 Q. What's that?
- 7 A. Like a pipe, weed pipe.
- 8 Q. Oh, okay. And so you smoked five different times?
- 9 A. Uh-huh (affirmative).
- 10 Q. Did you take anything else? Did you take any pills or
- 11 anything?
- 12 A. No, ma'am.
- 13 Q. Any other kind of drugs?
- 14 A. No, ma'am.
- 15 Q. Okay. And when you talked with the police officers on
- 16 the 25th, you told them that you hadn't had any drugs;
- 17 isn't that correct?
- 18 A. No.
- 19 Q. You told investigator Miller, you told Officer Autrey
- 20 that you had not done any drugs?
- 21 A. Not that I can remember.
- 22 Q. You didn't tell them that?
- 23 A. Not that I can remember.
- 24 Q. Okay. Now, when you gave a statement on the 25th, you
- 25 told Officer -- Investigator Miller and Sergeant T.W. Jones

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1 that you were in the room when Minor 1 choked on tea; is
2 that right?

3 A. Yes, ma'am.

4 Q. You were in the room with Minor 1 by yourself. Is
5 that what you told them?

6 A. No, ma'am. I did not tell them I was in there by
7 myself.

8 Q. Who else was in there?

9 A. I told them the co-defendant was in there as well.

10 Q. Who?

11 A. The Defendant.

12 Q. Okay. On your statement dated May 25th, you told them
13 that the Defendant was in the room?

14 A. From my understanding, yes, ma'am.

15 Q. Okay. And at any point did you tell them that you had
16 been in the kitchen. This is your first statement. Did
17 you tell them that you were in the kitchen that day?

18 A. No, the first statement I did not. That was the
19 second statement.

20 Q. Okay. The next statement you told them that you were
21 -- the first statement you said you were in the living room
22 with Minor 1 when she choked on tea?

23 A. Yes, ma'am.

24 Q. And you tried to raise her arms up; is that right?

25 A. Yes, ma'am.

1 Q. The next time you talked to them, you told them that
2 you were in the kitchen?

3 A. Yes, ma'am.

4 Q. And the next time you talked to them, you told them
5 that you were in the bedroom ---

6 A. Yes, ma'am.

7 Q. --- sleeping? So you've changed your statements about
8 three or four times talking to the investigators; is that
9 correct?

10 A. Yes, ma'am, I did.

11 Q. All right. I'm going to show you a statement that's
12 dated May 25th. It has a signature that says Ann Sprouce,
13 to see whether that's your signature?

14 A. Yes, ma'am, it is.

15 Q. Okay. Would you take just a couple of moments to
16 review that statement.

17 A. (Reviews document.)

18 Q. And this was the statement that you gave on that day?

19 A. Yes, ma'am.

20 Q. Did they review your statement with you before you
21 signed it?

22 A. Not that I can remember.

23 Q. They didn't review your statement. So you signed it
24 without reading it or it being read to you?

25 A. I can't remember.

1 Q. Okay. All right. In your statement you said that
2 Crystal went to take her uncle to pay a water bill at about
3 eleven clock. That was in here; right?

4 A. Yes, ma'am.

5 Q. And said, after we dropped her uncle off at his
6 daughter's house, we dropped James off at his friend
7 Josh's; is that right?

8 A. Yes, ma'am.

9 Q. You went to Mauldin; is that right?

10 A. Yes, ma'am.

11 Q. All right. So all of that part of the first part of
12 the day is true?

13 A. Yes, ma'am.

14 Q. Okay. So when were y'all smoking the marijuana, where
15 in here?

16 A. We had been up all day smoking marijuana, ma'am.

17 Q. Okay. So you were smoking marijuana before eleven
18 o'clock in the morning?

19 A. Yes, ma'am.

20 Q. And had you smoked marijuana the previous day,
21 evening?

22 A. Yes, ma'am.

23 Q. Okay. And Crystal Inman was smoking marijuana with
24 you?

25 A. Yes, ma'am.

1 Q. All right. You said, then we went home and fed the
2 kids a peanut butter sandwich. We laid them down to take a
3 nap. That's the two girls?

4 A. Yes, ma'am.

5 Q. Your daughters?

6 A. Yes, ma'am.

7 Q. When they got up around three or three-thirty, they
8 were in the living room playing. Who was that?

9 A. My two girls.

10 Q. Minor 1 and Minor 2 ?

11 A. Yes, ma'am.

12 Q. All right. And you said, Minor 1 walked over to the
13 coffee table and grabbed my tea. Was that in your
14 statement?

15 A. Yes, ma'am.

16 Q. That's what you told the officers?

17 A. (Affirmative nod.)

18 Q. This is on May 25th?

19 A. (Affirmative nod.)

20 Q. She opened her mouth and turned the plastic cup up and
21 started drinking. Is that in your statement?

22 A. Yes, ma'am.

23 Q. That's what you told them?

24 A. (Affirmative nod.)

25 Q. Then she got choked and set the cup on the table.

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1 That's what you told them; right?

2 A. (Affirmative nod.)

3 Q. All right. The cup was pink and plastic. And then
4 you talk about one of the officers picked the cup up when
5 they arrived. It says, I raised her arms up and she kept
6 choking. That's what you said; is that right?

7 A. (Affirmative nod.)

8 Q. I need a yes or a no?

9 A. Yes.

10 Q. All right. And then you talk about how you were
11 taught to do CPR, that you raised her arm and patted her on
12 the back; is that right?

13 A. (Affirmative nod.)

14 Q. Is that a yes or a no?

15 A. Yes, ma'am.

16 Q. You said she threw up some of the tea and some phlegm
17 came out?

18 A. Yes, ma'am.

19 Q. I let her stay on my arm a minute and I realized she
20 wasn't breathing. That's what you said?

21 A. (Affirmative nod.)

22 Q. Then I laid her on the floor. I was trying to give
23 her CPR. That's what you said; is that right?

24 A. Yes, ma'am.

25 Q. I yelled for James. Is this James?

1 A. Yes, ma'am.

2 Q. Who was on the toilet when I realized she wasn't
3 breathing. That's what you told the officers in this
4 statement?

5 A. Yes, ma'am.

6 Q. He came in there and brought the phone. So in this
7 statement, you told the police that James, Parker, was in
8 the bathroom?

9 A. Yes, ma'am.

10 Q. And you had to yell for him to come in the room; is
11 that right?

12 A. Yes, ma'am.

13 Q. He dialed 9-1-1. That's what you said in this first
14 statement?

15 A. The first time that we called 9-1-1, yes, ma'am, he
16 was the one that dialed 9-1-1.

17 Q. Okay. And you talked to the lady and she was telling
18 you how to do CPR. But before you called 9-1-1, you were
19 already doing CPR; is that correct?

20 A. Yes, ma'am.

21 Q. And what was James doing?

22 A. To my recollection, I don't even know.

23 Q. Okay. So he wasn't doing -- helping you with CPR?

24 A. No, ma'am.

25 Q. Okay. Did he help you with CPR when you got on the

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1 phone with the 9-1-1 operator?

2 A. Yes, ma'am.

3 Q. So he was helping you at that point?

4 A. Yes.

5 Q. Okay. Did you have to tell him what to do and how to
6 do it?

7 A. Yes, ma'am.

8 Q. All right. And you said, I was giving her chest
9 compressions, mouth-to-mouth. So you had to manipulate her
10 mouth to open it; correct?

11 A. Yes, ma'am.

12 Q. And the chest compressions were done how?

13 A. With my fingertips.

14 Q. Use that book to show me, that Bible right there, to
15 show me how you did the fingertip compression?

16 A. Like this. (Demonstrating.)

17 Q. Hold it up so the jury can see how you did it.

18 A. (Witness complied.)

19 Q. Okay. In one of these statements you said that you
20 hit her in the back several times?

21 A. Yes, ma'am. I do remember that.

22 Q. Okay. And you hit her as hard as you could?

23 A. No, ma'am.

24 Q. Okay. What were you doing hitting her in the back?

25 A. I was trying -- because when she started choking up

1 the stuff I would just barely hit her so that way she could
2 get whatever was in there up.

3 Q. Okay. Was she standing, laying in your arms or what?

4 A. I had her laying over my arm, yes, ma'am.

5 Q. Okay. All right. Then you said she was gasping for
6 air. You just testified that she was -- you came in the
7 room and she was doing that?

8 A. Yeah. When I came into the room, she was blue.

9 Q. Okay. But in this statement, you said she was gasping
10 for air; is that right?

11 A. Okay. When I gave her CPR, that's whenever she
12 started sounding like she was going to throw something up,
13 so I hit her on the -- patted her on the back to see if I
14 could get it to come up. At that time, when I couldn't get
15 it to come up, and I laid her back down on the floor, it
16 sounded like she was trying to gasp for air, like the last
17 breath that she took.

18 Q. Okay. Did you tell the lady on the 9-1-1 tape that?

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

20 Q. Okay. You said you then turned her on her side. I
21 continued to do CPR until the ambulance got there and they
22 took over. James and I switched back and forth doing CPR
23 as we were on the phone with EMS; correct?

24 A. Yes, ma'am.

25 Q. All right. And you told them that Minor 1 fell down

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1 the steps, the front steps of the house that Sunday?

2 A. Yes, ma'am. That's what he had told me.

3 Q. And that's what you told the officers? This is your
4 statement.

5 A. Uh-huh (affirmative).

6 Q. And you told them that she hit her head on a cement
7 block?

8 A. Yes, ma'am.

9 Q. And she had a bruise over -- on her forehead and on
10 the eye from that fall?

11 A. Yes, ma'am.

12 Q. And you talk about the necklace. You told them on
13 Tuesday Minor2 hit her with a toy car on both sides of
14 her forehead?

15 A. That I don't remember.

16 Q. Did you get to see your statement?

17 A. Yes, ma'am.

18 Q. You saw it in here?

19 A. Yes, ma'am.

20 Q. And you signed this statement, right?

21 A. (No verbal response.)

22 Q. So you told them that Minor2 had hit her with a toy
23 car on both sides of her forehead? They were in the
24 playroom and by the time I got there, she had hit her
25 twice. You don't remember saying that?

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

2 Q. Then you talk about Minor 1 having bite marks on her
3 left arm and some fire ant bites. Did you see how she got
4 the bite marks, other than the fire ant bite marks?

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

6 Q. All right. Did she have some other bite marks on her
7 body?

8 A. Not that I knew of, no, ma'am.

9 Q. She didn't have any bite marks on her upper shoulder,
10 the back part?

11 A. Not that I knew of, no, ma'am.

12 Q. You didn't ever bite her ---

13 A. No, ma'am.

14 Q. --- trying to teach her a lesson about biting ---

15 A. No, ma'am.

16 Q. --- Minor 2 ?

17 A. No, ma'am.

18 Q. You never did that?

19 A. Nope.

20 Q. All right. Now, you have testified to the Court that
21 you noticed bruises about a week before May 25th?

22 A. Yes, ma'am.

23 Q. Okay. So would that include the time that you related
24 to them that she fell down the front steps?

25 A. Yes, ma'am.

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1 Q. I think you also stated that you didn't beat your
2 children, you didn't spank them?

3 A. No, ma'am, I did not say I didn't spank them.

4 Q. Okay. What did you say?

5 A. I said that I popped her on the diaper and I popped
6 them on the hand.

7 Q. On the hand?

8 A. Yes, ma'am.

9 Q. All right. And did you use the corner or time out?

10 A. Yes, ma'am. They were use to time out.

11 Q. I believe you said your oldest child, who is Minor 4 ,
12 is eight year olds, lives in North Carolina with his
13 grandparents?

14 A. Yes, ma'am.

15 Q. And who has custody of Minor 2 at this point?

16 A. At this point my mother does.

17 Q. And that's Ms. Tina Rollins?

18 A. Yes, ma'am.

19 Q. You met James Johnson through your sister Denise; is
20 that right?

21 A. Yes, ma'am.

22 Q. And you met him one day and you took him home
23 immediately with you that day?

24 A. Yes, ma'am.

25 Q. And he stayed with you from that day forward?

1 A. Yes, ma'am.

2 Q. And you considered -- I think you told the Solicitor
3 that you considered yourself boyfriend and girlfriend after
4 the first day?

5 A. Yes, ma'am.

6 Q. All right. Do you recall telling the police that you
7 had stated you were clean, that you hadn't done any drugs
8 that day or, you know, for a while since because you were
9 clean and you were still going to NA meetings?

10 A. No, ma'am, I do not recall that.

11 Q. You don't recall that?

12 A. I remember telling them that I had been a year clean
13 and then I relapsed. Yes, ma'am, I did.

14 Q. Okay. That was during the second or third interview,
15 because it wasn't the first one?

16 A. It was the second or third one. I can't recall.

17 Q. Okay. So you had told them that you were clean and
18 then you had to come back and tell them that you had lied
19 to them because you had done drugs that day?

20 A. Yes, ma'am.

21 Q. And had done drugs previously?

22 A. (Affirmative nod.)

23 Q. You had lived with Crystal Inman, you say, about two
24 months?

25 A. Yes, ma'am.

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1 Q. All right. Now, you stated that you noticed bruises
2 showing up on Minor 1 on her head and face. You don't
3 recall telling them that Minor 2 hit her with the two toy
4 trucks on both sides?

5 A. No, ma'am. I don't recall.

6 Q. But you noticed bruises on Minor 1, but you still left
7 her to be taken care of by James Johnson?

8 A. Yes, ma'am. Because every time I asked him he said
9 that either she fell or one of the kids had hit her.

10 Q. Okay. How many times did you violently pop Minor 1 or
11 Minor 2 on their hands?

12 A. I never violently popped them on their hands.

13 Q. Okay. Did you violently pop them on the backside ---

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

15 Q. --- on the diaper?

16 A. No, ma'am.

17 Q. So you're telling the Court and this jury that the
18 bruises on her does not come from you at all?

19 A. No, ma'am.

20 Q. Do you remember telling Investigator Miller that
21 Minor 1 would sit in Parker's lap, but wouldn't sit there
22 for a long period of time. He would kiss on her. Do you
23 remember saying that?

24 A. No, ma'am.

25 Q. When your mother Tina Rollins picked up Minor 2, did

1 she always take Minor1 with her?

2 A. No, ma'am.

3 Q. Okay. Was she showing favoritism to Minor2 ?

4 A. No, ma'am. She just couldn't handle both of them at
5 one time.

6 Q. Well, how long was she picking up Minor2 by herself?

7 A. Minor2 and Minor1 both got the same amount of time
8 with my mother.

9 Q. Okay. Do you remember telling one of the officers,
10 either Autry or Miller, that you were outside with Minor1
11 when she got the ant bites?

12 A. No, ma'am, I do not recall that one.

13 Q. You don't recall that. But in that same statement you
14 did say that you were the one that removed the diaper and
15 cleaned the ants off?

16 A. Yes, ma'am.

17 Q. Okay. Weren't you the person that suggested not
18 calling 9-1-1 right away so you could clear up the
19 marijuana?

20 A. No, ma'am, I was not.

21 Q. Weren't you afraid that DSS would take your kids
22 again?

23 A. No. The only reason why I was afraid that they would
24 take them again is because of what had happened, not
25 because of the marijuana.

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1 Q. Okay. But the first time they took your kids was
2 because of marijuana; is that right?

3 A. Yes, ma'am.

4 Q. And the second time was because of marijuana,
5 according to your statement?

6 A. Yes, ma'am.

7 Q. So when were you at the mortuary, you said -- was that
8 June 2nd?

9 A. Yes, ma'am.

10 Q. And so the officers picked you up at the mortuary and
11 took you to the hospital or to the detention center?

12 A. No, they brought me down here to the detention center.

13 Q. And that's when you gave them the statement -- the
14 portion of the statement that you testified to today?

15 A. Yes, ma'am.

16 Q. And in that statement you're saying that you were
17 asleep?

18 A. Yes, ma'am.

19 Q. In the bedroom?

20 A. Yes, ma'am.

21 Q. And James, Parker, is the one that came in the room to
22 wake you up?

23 A. Yes, ma'am.

24 Q. All right. Do you recall telling the officers at any
25 time that the two -- one of the girls had come to the door

1 and knocked on the door to wake you up?

2 A. I had told them that I remembered Minor 2 coming in
3 to the room and trying to wake me up. Yes, ma'am.

4 Q. Okay. You do remember telling them that?

5 A. Yes, ma'am.

6 Q. Now, you're saying that you had -- about thirty
7 minutes after Minor 2 had tried to wake you up, that's
8 when Parker came in; is that what you're saying?

9 A. That is my time recollection. I mean, I didn't have a
10 clock so ...

11 Q. Okay. So how long had you been sleeping?

12 A. I can't really say. There was not no clock so I can't
13 really tell.

14 Q. Okay. But you insist today that you were sleeping?

15 A. Yes, ma'am.

16 Q. Did you ever tell the officers, as you testified
17 today, that the Defendant had laid down in the bed beside
18 you?

19 A. Yes, ma'am.

20 Q. Okay. And when you got into the room, according to
21 today's testimony, Minor 1 had on no clothing?

22 A. None.

23 Q. But when you gave the first statement, she had on
24 clothing?

25 A. That I do not recall.

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1 Q. When you gave any of the previous three or four
2 statements, was there any testimony that Minor 1 was
3 standing in front of the Defendant?

4 A. There was one occasion, yes, ma'am.

5 Q. Okay. There was one occasion when you said that?

6 A. Yes, ma'am.

7 Q. All right. And she was standing close to him or not
8 close?

9 A. Not close.

10 Q. Okay. And who did you ride with when you went to the
11 Greer Hospital?

12 A. I rode with Crystal Inman.

13 Q. Okay. And ---

14 A. And the Defendant.

15 Q. And did Crystal Inman then take you to the Greenville
16 Hospital?

17 A. Yes, ma'am.

18 Q. All right. Today you're saying that you told the
19 police in the first three or four statements those stories
20 about the baby choking on ice because you were stupid?

21 A. Yes, ma'am, and because I was scared.

22 Q. You were scared?

23 A. Yes, ma'am.

24 Q. And that you just didn't know about anything. So I
25 don't understand why you would tell them that if it's not

1 the truth?

2 A. Because I did not know what had happened until they
3 had done the autopsy and then I was informed on what had
4 happened.

5 Q. So you were trying to cover for yourself?

6 A. I don't understand what you're ---

7 Q. You were trying to cover any involvement that you had?

8 A. I had no involvement in that.

9 Q. Okay. These are your children?

10 A. Yes, ma'am.

11 Q. And wouldn't it have been much better if you'd told
12 the officer, Investigator Miller or Autrey, that you just
13 didn't know what happened from the very beginning?

14 A. Yes, ma'am.

15 Q. Okay. So you just lied the whole -- three days ---

16 A. Yes, ma'am.

17 Q. --- while your daughter's lying in the hospital you're
18 lying?

19 A. Yes.

20 Q. So you were more concerned about yourself than ---

21 A. No, ma'am.

22 Q. --- about your daughter?

23 A. I was scared for my other child.

24 Q. You were concerned for your other child?

25 A. Yes, ma'am.

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1 Q. What does that mean?

2 A. I was scared of losing her altogether. I was scared
3 that DSS would step in and take her and I would never see
4 her again.

5 Q. But you'd been involved with DSS at least three
6 different times; is that correct?

7 A. Yes, ma'am.

8 Q. DSS in North Carolina for your son, Minor 4 ? DSS in
9 South Carolina twice for your two girls?

10 A. (Affirmative nod.)

11 Q. But I believe you said that y'all -- when you went to
12 the Greenville Hospital that you and Parker or James
13 Johnson was immediately separated into different rooms?

14 A. Yes, ma'am.

15 Q. And out of the four stories that you told the police
16 officers, the one that you're attesting to is the one
17 you're telling today?

18 A. Yes, ma'am.

19 Q. Thank you.

20 THE COURT: Any redirect?

21 MS. HODGE: Yes, sir.

22 REDIRECT EXAMINATION

23 BY MS. HODGE:

24 Q. Ann, you talked to firemen and EMS on the 25th; is
25 that right?

1 A. Yes, ma'am.

2 Q. And then you had to talk to police when you got to the
3 hospital; is that correct?

4 A. Yes, ma'am.

5 Q. And you're trying to be as cooperative as possible; is
6 that right?

7 A. Yes, ma'am.

8 Q. Are you scared about what's going on?

9 A. Yes, ma'am.

10 Q. What could potentially happen to you and to Minor2 ?

11 A. Yes, ma'am.

12 Q. And so you're talking and you're telling them this
13 story about the tea?

14 A. Yes, ma'am.

15 Q. And then the whole while Minor1 s still in the
16 hospital and being treated and on life support?

17 A. Yes, ma'am.

18 Q. And then the next day the officers want to talk to you
19 again. And you're still trying to be cooperative; is that
20 right?

21 A. Yeah.

22 Q. And you're telling them a lot of things?

23 A. There was a lot of things going through my head at
24 that time. But I couldn't not get them to stop so I could
25 just ---

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1 Q. They weren't letting up on you, were they?

2 A. No.

3 Q. They wanted to know because this just wasn't making
4 sense; is that right?

5 A. Yes, ma'am.

6 Q. So they were coming to you constantly wanting to know,
7 are you sure about this? What about this?

8 A. Yes, ma'am.

9 Q. Would that be fair to say? And you kept talking?

10 A. Yes, ma'am.

11 Q. And you kept telling your story and it kept growing?

12 A. Yes, ma'am.

13 Q. And then Ms. Manigault asked you some things and you
14 said, I don't remember that. I don't remember that. Could
15 there be things that you said that at that point that were
16 lies that you just don't remember?

17 A. There could be. Possibly, yes, ma'am.

18 Q. And so the second day they're back on you wanting to
19 know what happened?

20 A. Yes, ma'am.

21 Q. At this point you start talking about that, yes, in
22 fact, you had used again?

23 A. Yes, ma'am.

24 Q. Now, it would have been bad had they showed up and
25 known you had been using right away with this incident with

- 1 Minor1 ; is that right?
- 2 A. Yes, ma'am.
- 3 Q. That would look bad for you?
- 4 A. Yes, ma'am.
- 5 Q. That probably would have got Minor2 taken?
- 6 A. Yes, ma'am.
- 7 Q. So they're still on you, they're still talking, you're
- 8 still trying to be cooperative?
- 9 A. Yes.
- 10 Q. And you're starting to tell some truth now?
- 11 A. Yes, ma'am.
- 12 Q. Starting to let your guard down some?
- 13 A. Yes, ma'am.
- 14 Q. And then by the third day, which is the 27th now,
- 15 you're talking to Investigator Miller again?
- 16 A. Yes, ma'am.
- 17 Q. And you start removing yourself a little bit from
- 18 knowing what's going on?
- 19 A. Yes, ma'am.
- 20 Q. Is he pressing you with medical information? Telling
- 21 you these things aren't making sense?
- 22 A. He started telling me that some stuff didn't add up to
- 23 prove my story. And the more he told me that, the more I
- 24 started letting my guard down and started to tell the
- 25 truth. Yes, ma'am.

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1 Q. And then Minor 1 was pronounced dead?

2 A. Yes.

3 Q. And had to be buried or go to the mortuary? And they
4 came in and actually got you from the mortuary?

5 A. Yes, ma'am, they did.

6 Q. What was burning in you to tell them at that time?

7 A. I wanted to tell the truth. I wanted to quit
8 dragging, not myself, but her through the mud. I mean, it
9 was bad enough that I had lost her, but I was letting
10 something take a hold of me that shouldn't have. And I
11 should have started being honest from the get-go and I know
12 that.

13 Q. Now, let's talk about this van ride. I think we
14 established once you and the Defendant kind of got out of
15 the car at that hospital that first day, no more talking?

16 A. No more talking

17 Q. No more getting together?

18 A. No more getting together until ---

19 Q. Well, now you were in a van that you had no control
20 over what van you were in?

21 A. No, ma'am, sure did not.

22 Q. And going to Family Court?

23 A. Yes, ma'am.

24 Q. For your hearing in regard to Minor 2 ?

25 A. Yes, ma'am.

1 Q. And that was some time over the last year? In the
2 last year?

3 A. Yes, ma'am.

4 Q. Did you have any idea who else would be in that van?

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

6 Q. Had there been any communications about trying to get
7 in the same car to ride to court together?

8 A. No, ma'am, there was not.

9 Q. And in that van ride did you speak to the Defendant?

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

11 Q. Did he speak to you?

12 A. He kept taunting me with telling everybody in the back
13 van that he was sitting with, I guess, all guys, because
14 that's, you know ---

15 Q. They kept you separate, the girls from the guys?

16 A. Yeah. They kept us separate from the guys. And he
17 kept telling them how good our sex life was and how good I
18 was in bed and how I was the best he had ever had. And
19 things ---

20 Q. And all these things you could hear?

21 A. Yeah. Yes, ma'am.

22 Q. And then did he say something to you about Minor 1 ?

23 A. He told me on the way back when it was just me and him
24 in the van, he had told me that he was sorry for what he
25 had did. That he did not mean to and kept on with dumb

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1 stuff like, you know, he was sorry and that he hoped I
2 would forgive him and so on and so on.

3 Q. And what was the -- was -- the court case about
4 Minor 2 's custody?

5 A. It was about Minor 2 's custody and a little bit about
6 ---

7 Q. Minor 1 's death?

8 A. Yes, ma'am.

9 Q. All right. And he's not the biological dad of
10 Minor 1 ?

11 A. No, ma'am.

12 Q. Who is the biological dad?

13 A. The biological dad of Minor 1 is Mark Gore.

14 Q. And did the Defendant like Mark Gore?

15 A. No, ma'am.

16 Q. Did they have some issues with each other?

17 A. Yes, ma'am.

18 Q. And that is a result -- he didn't know Mark Gore until
19 he met you?

20 A. Yes, ma'am.

21 Q. And knew that Mark was Minor 1 's daddy?

22 A. Yes, ma'am.

23 Q. And he and Mark didn't get along?

24 A. No, ma'am.

25 Q. And you never told in any of your statements that

1 Minor 1 choked on a piece of ice, did you?

2 A. No, ma'am.

3 Q. You told tea?

4 A. Tea.

5 MS. MANIGAULT: Your Honor, I object. This is
6 going further than ---

7 MS. HODGE: I believe Ms. Manigault asked about
8 the ice.

9 THE COURT: Overruled.

10 MS. MANIGAULT: No, I did not.

11 MS. HODGE: I'm sorry.

12 Q. Ms. Manigault gave you a statement that you said the
13 child choked on ice?

14 A. Yes, ma'am.

15 Q. Is that true? Did you ever say ice?

16 A. No, ma'am.

17 Q. It was always tea?

18 A. Tea.

19 Q. And tea was something that y'all drank?

20 A. Yes, ma'am.

21 Q. Thank you, Ms. Sprouce.

22 A. You're welcome.

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

24 THE WITNESS: Thank you.

25 THE COURT: Mr. Foreman, ladies and gentlemen,

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1 this would be a good time for us to take a lunch break.
2 I'll ask, again, remind you while you're out for lunch, out
3 and about, not to discuss the case. Don't let anyone
4 discuss the case with you. The case is still in progress.
5 Of course, there's more testimony to be heard. Have a good
6 lunch and if you'll be back at two fifteen, we'll be ready
7 to start at that time.

8 Everyone else, please remain seated while the jury
9 departs.

10 (WHEREUPON, the jury exited the open court at
11 approximately 12:55 P.M.)

12 THE COURT: All right. We'll be at ease until
13 two fifteen.

14 (WHEREUPON, the court stood at recess for a lunch
15 break.)

16 THE COURT: Are you ready to proceed Solicitor?

17 MS. HODGE: Yes, sir.

18 THE COURT: All right. If our jury's ready have
19 them come in, Ms. Fryer.

20 (WHEREUPON, the jury entered the open court at
21 approximately 2:26 P.M.)

22 THE COURT: Solicitor, you may call your next
23 witness.

24 MS. HODGE: Thank you, Your Honor. The State
25 calls Dr. Croswell.

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

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

5 THE WITNESS: I do.

6 THE CLERK: Please have a seat and state your
7 full name for the record.

8 THE WITNESS: My name is Mary Fran Ratchford
9 Croswell.

10 MARY FRAN CROSWELL, MD,

11 BEING FIRST DULY SWORN, TESTIFIED AS FOLLOWS:

12 DIRECT EXAMINATION

13 BY MS. HODGE:

14 Q. Dr. Croswell, what kind of a physician are you?

15 A. I am a child abuse pediatrician.

16 Q. And where are you currently employed?

17 A. I'm employed by the Greenville Health System.

18 Q. How long have you been with them?

19 A. I have been employed there since 2006.

20 Q. Please tell us about your educational background?

21 A. I received my undergraduate degree from Wake Forest
22 University. I received my medical degree from University
23 of Louisville.

24 Q. And what type of specific medical training or
25 pediatric training do you have?

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1 A. I did a pediatric residency at the Greenville Health
2 System. And then have done further studies in the field of
3 child abuse.

4 Q. All right. And are you board certified in pediatrics?

5 A. Yes, I am.

6 Q. Is there a sub-section of that for child abuse
7 pediatrics?

8 A. I'm double board certified in general pediatrics and
9 child abuse pediatrics.

10 Q. And approximately how many patients do you believe
11 that you've examined or treated in your career?

12 A. Several thousand.

13 Q. And in your specialized field of child abuse
14 pediatrics, does that deal with physical abuse and sexual
15 abuse also or just one or the other?

16 A. It deals with all sorts of child maltreatment.

17 Q. Does that include neglect as well?

18 A. It does.

19 Q. And how many years have you been practicing in the
20 specialty of child abuse pediatrics?

21 A. Six years.

22 Q. And how many physical abuse exams do you think you've
23 conducted on children over those years?

24 A. I would estimate about sixty physical abuse
25 examinations a year for the past six years; so over three

1 hundred.

2 Q. Are you part of the hospital system that's also called
3 their forensic pediatric area?

4 A. I am employed within the division of forensic
5 pediatrics child abuse and neglect.

6 Q. All right. And what does that division do? What's
7 its main purpose?

8 A. We are consulted on any cases where there is concern
9 of some form of child maltreatment, physical abuse, sexual
10 abuse or physical neglect.

11 Q. And are you called in to examine people that come into
12 the ER or to doctors' offices? What does it entail?

13 A. We have both an inpatient and outpatient role. When a
14 child is admitted to the hospital with injuries concerning
15 for physical abuse, we are consulted to help determine the
16 work-up that's needed to assess for non-accidental trauma
17 versus some other form or a medical condition that would
18 mimic child abuse. In the outpatient setting, we receive
19 referrals from law enforcement, Department of Social
20 Services, other physicians, for concerns that we can do in
21 the outpatient setting at the Julie Valentine Center.

22 Q. So do you conduct some of your work or your exams at
23 the Julie Valentine Center?

24 A. Correct. All of my outpatient assessments are done at
25 the Julie Valentine Center.

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1 Q. And that's a contract basis with the hospital system?

2 A. Correct.

3 Q. Okay. And when you're called in for concerns of
4 possible child abuse, what percentage of those cases do you
5 actually say, this is child abuse, this is not?

6 A. So, you know, all of the cases that are referred to me
7 are suspected child abuse cases. And only about sixty-five
8 percent of those cases do I say that it's indicated for
9 abuse. Approximately twenty-five percent of those it's
10 indeterminate, being that you can't tell based on the
11 physical exam or the evaluation that I have done alone.
12 And then about ten percent attribute to some other medical
13 condition that can mimic abuse.

14 Q. And so if any child presents to the hospital system in
15 Greenville County, you and/or who else would be in charge
16 of coming to assess that?

17 A. I have one partner, Dr. Nancy Henderson, and we take
18 turns being on call. And so it would be one of the two of
19 us.

20 Q. Have you taught any seminars or conferences related to
21 child physical abuse or sexual abuse or maltreatment?

22 A. Yes, I have. I've spoken at both local and state-wide
23 conferences on child abuse.

24 Q. And are you a member of any associations that deal
25 with child abuse?

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1 A. Yes, I am.

2 Q. What are those?

3 A. I am a member of the American Academy of Pediatrics
4 Section on Child Abuse. I'm a member of the American
5 Professional Society on the Abuse of Children. I'm a
6 member of the Helfer Society, which is a honorary society
7 for child abuse pediatricians. I am a member of a state-
8 wide network of child abuse providers called the South
9 Carolina Child Advocacy Medical Response System.

10 Q. All right. And have you ever been qualified in Court
11 as an expert in the area of pediatrics or child abuse
12 pediatrics?

13 A. Yes. I have been qualified as both.

14 Q. And how many times?

15 A. I would estimate twenty-five times.

16 Q. In what courts?

17 A. In both Family and Criminal Courts in South Carolina.

18 Q. Thank you.

19 MS. HODGE: At this time, Your Honor, the State
20 would move to admit Dr. Croswell as an expert in pediatrics
21 with a specialty in child abuse pediatrics.

22 THE COURT: Any voir dire of this witness or any
23 objection?

24 MS. MANIGAULT: None, Your Honor. No objections.

25 THE COURT: Thank you. Ladies and gentlemen, let

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1 me just explain to you briefly. Normally a person who
2 comes and testifies in court, they can't give their
3 opinion. They can testify to what they saw or heard or
4 smelled or other matters that they observed. But there is
5 an exception to that rule when someone, because of their
6 qualification or by education or experience or otherwise,
7 is permitted to give an opinion in that field of expertise
8 and to give the reason for that opinion. The fact that a
9 witness is qualified as an expert and can give an opinion,
10 that doesn't mean that you must accept the opinion as
11 evidence. Like all other evidence, you treat it and use it
12 the way that you see fit.

13 You may proceed, Solicitor.

14 MS. HODGE: thank you, Your Honor.

15 Q. Dr. Croswell, were you called to examine a child named
16 Minor 1 back on May 26th, 2011?

17 A. Yes, I was.

18 Q. All right. And how old was this child?

19 A. She was twenty months old at the time.

20 Q. What was the purpose of your examination?

21 A. There were concerns for non-accidental trauma based on
22 her presentation to the hospital. So I was consulted to
23 help evaluate for any injuries and to guide the medical
24 assessment for non-accidental trauma.

25 Q. Non-accidental trauma. And where was she when you

1 conducted your examination?

2 A. She was a patient in the pediatric intensive care unit
3 at the Children's Hospital of the Greenville Health System.

4 Q. And what was her condition at that time?

5 A. She was critical.

6 Q. Had you been given a little bit of background
7 information from the physicians in regard to how she
8 presented and what the treatment plan was already?

9 A. Yes. I had received a phone call from one of the
10 pediatric residents who helped manage her care while she
11 was in the PICU. And they had advised me of their concerns
12 and her current status at the time.

13 Q. So what was your first step in this case?

14 A. Anytime I receive a consult, I try to review any
15 available information that I have leading up to the
16 presentation to the hospital. So I reviewed the ER visit,
17 had reviewed the laboratory studies that had already been
18 done, the radiologic studies that had already been done,
19 and any observations by any other medical team members.

20 Q. Do you attempt to get a history also from the care
21 giver?

22 A. Yes. So after reviewing all records I speak to the
23 care giver. In this particular case, it was her mother,
24 father and her maternal grandmother.

25 Q. And who was the mother?

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1 A. I don't have the names. I just have mother.

2 Q. Would Georgia Ann Sprouce be possible?

3 A. That would be possible.

4 Q. Okay. And do you have a name for the dad that you
5 spoke to?

6 A. No, I do not.

7 Q. But it was biological dad?

8 A. It was biological dad.

9 Q. And the grandmother was paternal or maternal?

10 A. Maternal.

11 Q. The mother's mother. All right. Tell me what you did
12 next?

13 A. So after -- from the care givers I take an extensive
14 medical history to include their past medical history, any
15 medical condition she may have had, any previous
16 hospitalizations or surgeries. I take a detailed
17 developmental history, family history and social history
18 prior to doing my physical examination.

19 Q. Tell us about the past medical history that you took
20 into consideration from Minor 1 ?

21 A. So her mother described that after Minor 1 had been
22 born that physicians in the newborn nursery had heard a
23 heart murmur. And she had a -- and she was evaluated
24 further by a cardiologist. Based on that information, I
25 was able to review the medical records from that time and

1 she had had a slow heart rate in the newborn nursery and
2 they had done an extensive work up, which was negative for
3 any cardiac or heart condition. She had followed up with a
4 cardiologist when she was three weeks old and released from
5 the care of cardiology at that time.

6 Q. Did she have any other significant medical history
7 that you found important to check into?

8 A. No.

9 Q. How about developmental history?

10 A. They described her as a normal toddler. She was able
11 -- she was walking independently and was trying to run.
12 There were no concerns from a developmental standpoint.

13 Q. All right. How about did you know if she was eating,
14 drinking, doing those types of basic activities?

15 A. Yes. They had described her eating a peanut butter
16 sandwich and a pop tart earlier in the day, drinking from a
17 sippy cup, as well.

18 Q. And then did you obtain a family history?

19 A. Yes, I did.

20 Q. And what did you learn about that?

21 A. There was no family member that was diagnosed with any
22 specific bleeding disorder, but mother did describe that
23 she bruised easily and had heavy menstrual cycles and had
24 been diagnosed with borderline anemia previously.

25 Q. And that was as to the mother, not the child?

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1 A. To the mother, correct.

2 Q. And how about the child, was there any testing or
3 further examinations conducted to see if the child had any
4 type of bleeding disorder or bruised easily?

5 A. Yes. Based on -- the child had some initial
6 laboratory studies due to the bruising that she presented
7 with, to look for any underlying bleeding disorder.
8 Because of the history that mom provided, I recommended
9 additional tests to look for a not uncommon medical
10 condition that can cause easy bruising, that is a genetic
11 condition. And so those laboratory studies were ordered
12 based on that history.

13 Q. And what was the result of that?

14 A. Those were normal.

15 Q. She was normal. So she did not have some special
16 disorder that made her bruise easy?

17 A. Correct.

18 Q. And then I believe you said you obtained a social
19 history?

20 A. Yes.

21 Q. Okay. And what was that and why is that important?

22 A. A social history is just trying to understand a little
23 bit about the child's living conditions and her living
24 environment to assess for risk factors, assess for other
25 children in the home that could potentially be at risk.

1 Q. Was there anything of significance that you found in
2 your social history?

3 A. That they had currently been -- they had been living
4 in their current residence just for a couple of weeks.
5 There had been prior involvement with Department of Social
6 Services. There had been -- Minor 1 had tested positive
7 for marijuana when she was born and was in foster care for
8 a few weeks to a month after she was born. The police had
9 been involved the previous week with the family due to one
10 of the children being found -- the two-year-old sister
11 being found walking outside the home alone. They denied
12 any other law enforcement involvement with the family.

13 Q. So what was your next step after you obtained the
14 pertinent information from the care givers and medical
15 records?

16 A. At that point, I did a physical examination on
17 Minor 1 .

18 Q. What did your physical exam consist of? What exactly
19 is it that you are able to do?

20 A. It is a head-to-toe physical exam looking at all parts
21 of her body.

22 Q. Did she have some life support equipment, a ventilator
23 or things, hooked up to her?

24 A. Yes, she did.

25 Q. Were you able to remove any of that stuff?

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1 A. No, I was not.

2 Q. So tell us what you did? And, actually, let me bring
3 this up. This might assist you and the jury.

4 (WHEREUPON, State Exhibit Number 36 was marked for
5 identification.)

6 Q. I'm showing you State's Number 36. Do you recognize
7 this?

8 A. Yes, I do.

9 Q. Okay. What is that?

10 A. It is a body diagram with the skin findings that I
11 documented during my physical exam on Minor 1 .

12 Q. Okay. And is this a copy of your original?

13 A. Yes, it is.

14 Q. All right. Is this a true and accurate copy?

15 A. Yes, it is.

16 MS. HODGE: At this time, we would move to admit
17 State's Number 36.

18 MS. MANIGAULT: Your Honor, there's no objection.
19 We have reviewed it.

20 THE COURT: All right. Without objection Exhibit
21 36 is admitted and may be published to the jury.

22 (WHEREUPON, State Exhibit Number 36 was admitted into
23 evidence.)

24 MS. HODGE: Thank you, Your Honor.

25 Q. All right. Dr. Croswell, I'm going to put this up

1 here. Is the laser pointer still up there? Do you see --
2 yes, right underneath your file I think there's a laser
3 pointer.

4 A. Okay.

5 MS. HODGE: If you could hit one of those lights
6 and see if we can get just a little ... Thank you.

7 Q. And I'll move it as need be.

8 A. Okay.

9 Q. So if you would go through your physical examination
10 and then point to anything on State's 36 that assists.

11 A. So just kind of general, overall assessment. The
12 patient was intubated, which means she had a breathing tube
13 in her mouth. She was unresponsive to stimuli, which
14 implies severe neurologic injury. On her head and neck
15 examination, her pupils, which are the black part of the
16 eye, were fixed and dilated, which means -- again,
17 indicates neurologic injury. The sclera, which are the
18 white parts of the eye, were clear and white. Using a
19 basic ophthalmoscope, which is a piece of equipment to look
20 in the backs of the eyes, I was not able to appreciate any
21 hemorrhages or bleeding in the backs of the eyes at that
22 time. Her ears, the internal part of the ears were normal.
23 On the left ear, which I guess is going to be right here,
24 she had a one and a half centimeter by point six centimeter
25 bruise along the medial part of the lateral ear. So the

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1 medial part would be the inside of the ear facing the
2 skull. And she also had visible, you know, bruise on the
3 external portion of the ear. I was not able to examine her
4 mouth because she was intubated and had these pieces of
5 tape on either side keeping the tube in place. Didn't want
6 to disrupt that. Her neck appeared normal. Her heart was
7 beating regularly with no murmur appreciated, which is just
8 additional heart sounds. Her lungs were clear. Her
9 stomach, up here, normal. Her genital area also appeared
10 normal. Her extremities, she was able -- I was able to
11 move them through the full range of motion passively. And
12 then the skin. So I will start on the forehead up here.
13 There were five bruises. The first was a two by two
14 centimeter bruise on the right forehead. And then there
15 were three very small bruises in a linear pattern right
16 there. And then on this lateral -- left lateral part of
17 her forehead, she had a one and a half by one centimeter
18 bruise. Above the nose in between the eyebrows there was a
19 two by one point seven five centimeter red/purple bruise.
20 In the left infraorbital space, which is the space below
21 the eye, there was a one and a half by point five
22 centimeter bruise. And then -- excuse me. I think that
23 was the left. And then the right she also had a bruise in
24 that space that was two and a half centimeter by point five
25 centimeter. As well as one small one lateral to that that

1 measured one centimeter. And then this tape that I pointed
2 to earlier was covering some of her skin. So I was unable
3 to visualize the skin under those areas. Underneath the
4 right tape, there was a bruise that extended below there
5 for about point five centimeters. In her right upper
6 quadrant of her abdomen, she had a point five by point
7 seven centimeter bruise. And then on her right flank here,
8 she had a two by point seven five centimeter bruise. On
9 her left arm right here -- excuse me. This is the one I --
10 right here she had an oval shaped bruise with central
11 clearing, consistent with a bite mark, which measured three
12 and a half centimeters by two centimeters. On the back
13 here, she had a cluster of four circular bruises measuring
14 from point five to one point five centimeters in diameter.
15 On her buttocks, on her left buttock here, there was a six
16 centimeter by point five centimeter purple bruise and there
17 was a one centimeter by one and a half centimeter bruise
18 underneath that. On her -- the backs of her thighs there
19 were multiple small red papules or bumps, and that was
20 indicated by these little dots here. And then we have this
21 one and a half by point five centimeter purple bruise on
22 the left ear. On the left interior upper arm here there
23 was a one and a half centimeter bruise. And on the -- I
24 think we need to go up to see the top photos.
25 Q. Okay.

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1 A. On the chest wall -- I'm sorry. Let's see. On the
2 chest wall, I think those have already been described. On
3 the right lower leg, there were extensive areas down here
4 of ecchymotic bruises, which just means large bruises.
5 Those were around the site of an intraosseous line, which
6 is something that the hospital would have put into her to
7 try to gain access for fluids in an emergency situation.

8 (WHEREUPON, State Exhibit Numbers 37, 38 and 39 were
9 marked for identification.)

10 Q. Let me show you what's previously been admitted as
11 State's 28, 29, 30, 31, 32 and 33. Is that how you recall
12 Minor 1 looking when you did your examination?

13 A. Yes.

14 Q. I show you State's Number 37, 38 and 39. Tell us what
15 State's 37 and 38 are showing; 37 and 38?

16 A. 37 is showing a red bruise on her right ear, on the
17 part that's exposed on the outside. On the Exhibit Number
18 38, it appears that this is the back part of the ear of the
19 left ear.

20 Q. Okay. Right ear, left ear?

21 A. Uh-huh (affirmative). Correct.

22 Q. And did you observe those injuries when you were doing
23 your examination?

24 A. Yes.

25 Q. And then State's Number 39, what is that showing?

1 A. It shows her buttocks with the red bumps that are
2 consistent with the ant bites, as well as a bruise over her
3 buttocks.

4 Q. And the diaper has been taken off to take that
5 photograph or pulled down?

6 A. Correct. Yes.

7 Q. And are these true and accurate representations of the
8 injuries you saw on her?

9 A. Yes, they are.

10 MS. HODGE: At this time, we'd move to admit 37,
11 38 and 39.

12 THE COURT: Any objection?

13 MS. MANIGAULT: No objection, Your Honor. We've
14 reviewed them.

15 THE COURT: Without objection 37, 38 and 39 are
16 admitted and may be published.

17 (WHEREUPON, State Exhibit Numbers 37, 38 and 39 were
18 admitted into evidence.)

19 MS. HODGE: Thank you, Your Honor.

20 Q. I'm going to show you State's Number 37, which, again,
21 not the best glare in here. But which ear is that and
22 where is the injury?

23 A. This is the bruises noted on the right ear. And,
24 again, it's hard to see in the overhead projection. But
25 this kind of darker area that's represented on the screen

1 appeared to be a bruise during the examination.

2 Q. All right. And then State's Number 38?

3 A. To orient you, this is the tape from the breathing
4 tube. So her mouth is up here. This is her left ear that
5 is now folded forwards. And, again, you can see this area
6 that is a bruise.

7 Q. What did these ear bruises signify to you?

8 A. When considering bruising in children, there are
9 certain sites and locations of bruising that we know are
10 commonly associated with accidental injury. So, commonly
11 on children you see bruises on the fronts of their lower
12 legs. In toddlers, you can see bruising commonly on the
13 forehead because of the nature of their daily activity.
14 Bruising on the ear is very atypical for accidental injury,
15 and always raises red flags for an abusive injury. So
16 these two bruises in particular were very concerning to me.

17 Q. And I'm going to show you State's Number 39. What's
18 the injury there? And what significance does that have to
19 you?

20 A. So, again, this is -- to orient you, the legs and the
21 feet are going up that direction. Her trunk is bent at the
22 hip. And so these are her buttocks and this is her right
23 buttock. And in this area right here, there was a linear,
24 kind of oval shaped bruise over the buttock area. Again,
25 the buttocks typically are -- they're soft tissue, they're

1 fatty tissue and typically can absorb a lot of force
2 without leaving any signs of injuries. So bruising on the
3 buttocks is uncommonly seen in accidental injury, but much
4 more commonly seen in an inflicted injury.

5 Q. Let's continue on this same route with State's Number
6 28. What injuries -- are there any specific, not the
7 totality here, but specific injuries that again are red
8 flags for you for non-accidental trauma?

9 A. When evaluating for non-accidental trauma, you know,
10 we look at bruises in isolation. We look at bruises
11 collectively. So, you know, in total she has numerous
12 bruises of her face. Taking them in isolation, as I
13 mentioned before, we've done studies on well children and
14 we know that well children in normal everyday play can
15 sustain bruising to the forehead. It's the other soft
16 tissue areas of the face that are less commonly associated
17 with accidental bruising. So bruising over the cheeks,
18 over the nasal bridge were of more concern for non-
19 accidental trauma.

20 Q. And how about to the State's Number 30 to the side
21 here, is that usual, unusual?

22 A. So this appeared -- so this is her head, her arm and
23 this is her right side. There were a series of bruises --
24 not connection, but kind of in a patterned appearance that
25 were concerning for a hand print or fingertip print

1 injuries.

2 Q. Is that common in non-accidental trauma cases?

3 A. Yes.

4 Q. And how about State's Number 31? Can you see that?

5 A. Again, these were bruises over her abdomen or her
6 stomach. Abdominal bruising, again, is not
7 characteristically associated with accidental injuries.
8 Most common bruises that occur in accidental injuries are
9 over a bony prominence. In the stomach, there's -- it's
10 very difficult to get that compression of the vessels to
11 the point that they actually break and bleed causing a
12 bruise in this area. So bruising over the abdomen is of
13 significant concern for inflicted trauma unless there's
14 known accidental trauma to have been able to cause that
15 injury.

16 Q. Were you given sufficient previous history to explain
17 all these various bruises?

18 A. The only bruises -- the explanations that were
19 provided were for the forehead bruises. I was told that
20 the child had fallen going up some stairs a week prior.

21 Q. So none of these other on the body, abdomen, other
22 facial ones?

23 A. There was no mechanism provided to explain that
24 bruising.

25 Q. Did you make a diagnosis of the child at this point as

1 far as -- I'm guessing your diagnosis is whether to
2 indicate for abuse or non-abuse. Is that ...

3 A. Well, at this point in time we were still gathering a
4 lot of information. And so I had heightened concern for
5 the possibility of non-accidental trauma due to the number
6 and location of her bruises and wanted further assessment
7 into any possible medical explanation that may explain it,
8 specifically the studies that were referred to previously.

9 Q. The blood disorder studies?

10 A. Right.

11 Q. All right. And were you -- I think you've already
12 answered this, but were you able to do an examination
13 internally of her mouth?

14 A. No, I was not.

15 Q. And if you had been able to do that and if you would
16 have learned that upper frenulum had been torn, would that
17 also weigh into your findings or your impressions?

18 A. It would have added further support to the possibility
19 of non-accidental trauma.

20 Q. And what does that signify to you, a torn frenulum?

21 A. It implies some type of blunt force trauma to the
22 mouth, either from a punch or from some type of forceful
23 application, suffocation type of injury.

24 Q. Now, is -- it's been talked about, this child's
25 prognosis. What was the child's prognosis at this point?

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1 A. It was very poor.

2 Q. And was she able to live off of any of the machines?

3 A. No, she was not.

4 Q. In your history did you get any information that
5 possibly another child inflicted any of these injuries on
6 her?

7 A. Yes, I did. The mother had said that some of the
8 bruising on the forehead was due to the two-year-old sister
9 hitting her with some beads on her forehead.

10 Q. In your opinion, could a two-year-old have used
11 plastic beads to inflict these linear bruises that we're
12 showing here in State's 29?

13 A. I think it would be very atypical and unusual for it
14 to be caused by a two-year-old.

15 Q. Did you have a total count or number of bruises; were
16 you able to come up with that?

17 A. There were approximately twenty-eight bruises that I
18 counted on her body.

19 Q. And what were your recommendations at the conclusion
20 of this, your initial exam?

21 A. Based on some information provided to me by the
22 maternal grandmother about something her two-year-old
23 sibling had said, I recommended that the two-year-old
24 sibling have a forensic interview to provide further
25 history.

1 Q. I'm going to stop you right there. What does that
2 mean? What is a forensic interview and what does that ---

3 A. A forensic interview is a way that children can be
4 interviewed by law enforcement in a very child-friendly way
5 and in a child-friendly location at the child advocacy
6 center. It's to gather as much information and details as
7 age appropriately as a child can provide about a situation
8 that they may have observed.

9 Q. So you made a recommendation to law enforcement that
10 the sister be interviewed at the Julie Valentine Center,
11 the child advocacy center?

12 A. Correct.

13 Q. Okay. I'm sorry. Go ahead with your next one.

14 A. I made recommendations on the specific blood test for
15 von Willebrand's antigen and ristocetin cofactor, which is
16 the labs to assess for the bleeding disorder. And then
17 recommended a hair strand drug test due to the previous
18 history of drug abuse in the family.

19 Q. Once you made those recommendations, what was your
20 next step in this case?

21 A. I returned the following day to reevaluate the child.
22 And at that point, she had already been declared brain
23 dead. So I did not do a further physical examination on
24 her. Did make some recommendations on having law
25 enforcement assess the types of cardiopulmonary

1 resuscitation efforts that were given to see if any of
2 those could account for any of the bruising, which would be
3 atypical if done correctly. But just wanted to make sure
4 that we had considered all possibilities.

5 Q. All right. And if firefighters and EMS providers had
6 done CPR as they were supposed to, would you have seen --
7 or would you expect to have seen any forehead bruising?

8 A. I would not expect to see.

9 Q. A torn frenulum?

10 A. Would not expect to see.

11 Q. Bruising about the torso, the abdomen, the flanks?

12 A. Would be very atypical.

13 Q. Did you have another part in this case, a small part
14 in this case?

15 A. Yes, I did. The two-year-old sibling did have a
16 forensic interview. And based on some concerns of law
17 enforcement, I did do a medical assessment on the two-year-
18 old sibling as well.

19 Q. Okay. And did that end your involvement in this case?

20 A. Yes, it did.

21 Q. Thank you. Please answer any of Ms. Manigault's
22 questions.

23 **CROSS-EXAMINATION**

24 **BY MS. MANIGAULT:**

25 Q. Dr. Croswell, I know you said that if CPR was

1 administered correctly there would not be any bruising?

2 A. Correct.

3 Q. And were you informed that the mother had done CPR as
4 well as EMS and the firefighters?

5 A. Correct. I was.

6 Q. You noted that there were twenty-eight bruises on the
7 body?

8 A. Correct.

9 Q. From your assessment for concerns, was it your
10 conclusions that all twenty-eight bruising was caused by
11 non-accidental injury?

12 A. No, I could not make that conclusion.

13 Q. All right. Thank you.

14 **REDIRECT EXAMINATION**

15 **BY MS. HODGE:**

16 Q. Dr. Croswell, did the mother -- did you ask the mother
17 how she performed CPR?

18 A. Yes, I did.

19 Q. And what did she tell you or show you?

20 A. She -- from my medical report I quote. She
21 demonstrated how she gave CPR using her fingertips and
22 pushing in the patient's right upper quadrant below the
23 costal margin, which is below the rib cage, still in the
24 stomach area. Once in contact with the 9-1-1 operator she
25 was told to use the heel of her hand over the patient's

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1 sternum, which is the breast bone here. She said she gave
2 rescue breaths and that she and James would switch off
3 performing CPR in the same manner.

4 Q. Any of the injuries that you noted on Minor 1 give you
5 cause for concern that mom may have put them there doing
6 her CPR efforts?

7 A. I think there was the one bruise that was located in
8 the right upper quadrant that I think could be related to
9 CPR administered inappropriately due to the force
10 application in that area.

11 Q. Just that one?

12 A. Just that one.

13 Q. Thank you.

14 THE COURT: All right. Thank you, Doctor. You
15 may step down. Any objection to the witness being excused?

16 MS. MANIGAULT: None, Your Honor.

17 MS. HODGE: No, sir.

18 THE COURT: All right. Thank you. You may be
19 excused.

20 MS. HODGE: The State calls Investigator Jennings
21 Autrey.

22 THE CLERK: Raise your right hand.

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

25 THE WITNESS: I do.

1 THE CLERK: Please have a seat and then state
2 your full name for the record.

3 THE WITNESS: Jennings Autrey.

4 JENNINGS AUTREY,

5 BEING FIRST DULY SWORN, TESTIFIED AS FOLLOWS:

6 DIRECT EXAMINATION

7 BY MS. HODGE:

8 Q. Investigator Autrey, who do you work for?

9 A. The Greenville County Sheriff's Office.

10 Q. And how long have you been with them?

11 A. Six years.

12 Q. What are your primary duties today with the sheriff's
13 office?

14 A. Currently, I'm a sergeant with the administrative
15 services division. I'm over the public affairs office as a
16 sergeant, as well as our accreditation process.

17 Q. And what other duties or responsibilities did you have
18 with the sheriff's office prior to that?

19 A. I was a white collar investigator at the time.

20 Q. Okay. And how did you have an occasion to become
21 involved in a homicide by child abuse case?

22 A. I showed an interest in working with Investigator
23 Miller and I was on call that week so Sergeant Jones asked
24 me to respond to the hospital on this day.

25 Q. To assist Investigator Miller?

1 A. That's correct.

2 Q. And when did you get the call and what did you do?

3 A. It was shortly -- right around the time I was getting
4 off of work. I think it was probably between four and four
5 thirty. Sergeant Jones called me and ask me to respond to
6 the CAT Scan area of Greenville Memorial Hospital due to a
7 twenty-month-old being transported there. My job there was
8 to determine, I guess a little bit, the -- oh, the medical
9 condition of her at that point in time.

10 Q. Was it questionable what her medical condition was up
11 until then?

12 A. It was, yes, ma'am.

13 Q. And who was this child that you were ---

14 A. It was Minor 1

15 Q. Tell us what happened when you got to the hospital?

16 A. Once I arrived and met with Dr. Seigler and the
17 nursing staff there in the CAT Scan area, some tests were
18 conducted. We then walked with Minor 1 -- she was on a
19 stretcher -- up to the PICU unit, the PEDS, and that's when
20 I was awaiting for additional investigators to respond that
21 the mother and the defendant and one of the friends ---

22 Q. And I'm going to ask you to keep your voice up.

23 A. Okay. I apologize.

24 Q. You kind of dropped off towards the end of that.

25 A. Sorry about that.

1 Q. Thank you. So when you got there, the mother,
2 Defendant and other family members were not there yet?

3 A. Correct. Correct.

4 Q. All right. And was that part of your task also to
5 locate them or ...

6 A. Well, again, my primary goal was there to determine
7 the medical condition and to report to Investigator Miller.
8 And while I was waiting on them to arrive, they came
9 walking down the hallway. So at that point in time the
10 Defendant and the friend, I believe it was Crystal, were
11 asked to wait in the waiting area. And then I was able to
12 speak briefly and gather some preliminary information from
13 the mother.

14 Q. Okay. Was that Ann Sprouce?

15 A. It was, yes, ma'am.

16 Q. And was the male the Defendant, James Johnson?

17 A. Yes. He was there as well. He and Crystal were asked
18 to wait in the waiting area.

19 Q. Okay. And did you take a statement from the mother at
20 this point?

21 A. There was no written statement. It was basically a
22 gathering of preliminary information. Her asking, hey,
23 what happened? And she gave me a brief synopsis of what
24 happened and why they were at the hospital.

25 Q. And based on what she told you, what did you do next?

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1 A. I then spoke with Investigator Hoover who had arrived
2 at that time. And I then also informed Investigator Miller
3 of what had happened at that point.

4 Q. And what was the child's condition? What were you
5 being told at that time?

6 A. She was on a breathing machine and she was laying in a
7 hospital bed.

8 Q. Did they think that she might recover or no?

9 A. At that time, no, ma'am.

10 Q. All right. So after speaking to Ms. Sprouce, did she
11 stay back in the area, away from where the Defendant and
12 Crystal were?

13 A. Yes, ma'am. I believe so, yes, ma'am.

14 Q. And is anybody allowed to go back in the PICU Unit?

15 A. At that time, no one was allowed to go back there. I
16 think immediate family, and that's hospital rules, so
17 that's ---

18 Q. That wasn't because of the police?

19 A. No, correct.

20 Q. That was just the hospital's policy?

21 A. Correct. I believe so, yes, ma'am.

22 Q. And there's a larger waiting area?

23 A. Yes, ma'am.

24 Q. And that's where the Defendant and Crystal were?

25 A. Yes, ma'am.

1 Q. All right. So what did you do after speaking to the
2 mother?

3 A. Well, I then spoke with the Defendant and gathered
4 some information from him. And then I asked him again to
5 explain to me what happened and again why they were there.

6 Q. All right. At this point was the mother or the
7 Defendant, were they even considered as suspects in this
8 case?

9 A. No, ma'am. This was just very early on in the stage
10 of the investigation and we were trying to figure out what
11 was going on.

12 Q. And was the Defendant free to tell you he didn't want
13 to talk to you or he didn't have anything to say?

14 A. Yes, ma'am. Absolutely.

15 Q. Did he understand that you were a law enforcement
16 officer?

17 A. Yes, ma'am, he did. I was wearing a gun and badge,
18 so, yes, ma'am.

19 Q. Did you identify yourself also as with the sheriff's
20 office?

21 A. I did. I did. Uh-huh (affirmative).

22 Q. All right. And were you able to communicate with him,
23 talk to him?

24 A. Absolutely. Yes, ma'am.

25 Q. So he knowingly, freely, voluntarily spoke to you?

1 A. Yes, ma'am. He did.

2 Q. What did he tell you at this point about what happened
3 to the child?

4 A. At that time he said that he was in the restroom when
5 he heard Ann, the mother, holler for him to call 9-1-1. So
6 he said he jumped up and ran to the living room and did as
7 she had asked. He said that he did not see anything except
8 for Minor 1, the victim, lying on the floor. And Ann, the
9 mother, doing CPR.

10 Q. So he told you he was in the bathroom and he didn't
11 see anything?

12 A. Correct.

13 Q. All right. What was his demeanor while he was talking
14 to you?

15 A. He didn't show a whole lot of emotion. At that time,
16 he was relatively calm and so he would carry on a
17 conversation.

18 Q. And you were able to talk intelligently to him?

19 A. Absolutely. Yes, ma'am.

20 Q. Didn't have a problem communicating?

21 A. No.

22 Q. He understood what you were asking about?

23 A. Yes, ma'am.

24 Q. And you ---

25 A. He seemed to, yes, ma'am.

1 Q. Okay. And you understood what he was telling you
2 about the scenario?

3 A. Yes, ma'am.

4 Q. And once you finished talking to him, was he free to
5 go?

6 A. Yes, ma'am, he was.

7 Q. And do you know where he went?

8 A. That, I do not know. I don't know where he went to.

9 Q. All right. Did you take a written statement at this
10 time or was this just oral?

11 A. No, ma'am. That was all verbal.

12 Q. What did you do next?

13 A. I then -- I spoke with Crystal and asked her what she
14 knew of the incident. She said that she was not home at
15 the time. She went to go pick her children up from school.
16 And when she arrived back home Ann came out and told her
17 that the victim was not breathing. And then EMS showed up
18 and they went to the hospital.

19 Q. Okay. And did you take a written statement from her?

20 A. I did not.

21 Q. Was she considered a suspect or anything at this
22 point?

23 A. Again, it was a preliminary investigation so we were
24 just trying to figured out what was going on.

25 Q. But she was not in the home at the time that it

1 happened according to her?

2 A. Correct.

3 Q. All right. And did you talk to any other people that
4 could potentially be witnesses?

5 A. While I was at the hospital I received two phone calls
6 or the hospital received two phone calls at the desk area
7 there where the nurses gather in the PICU. One was from --
8 -

9 Q. Without saying what they said, just who did you get
10 the calls from?

11 A. One was from, her name was Mary Sutherland, said
12 someone who was well acquainted with Minor 1's family. And
13 then a Phillip Reynolds with Lake Cunningham Fire
14 Department, I believe, and he responded to the scene.

15 Q. You spoke with both of them ---

16 A. Both of them by telephone. By telephone.

17 Q. Did either one of those need to come and talk to you
18 to give you a statement?

19 A. At that time, no. I took their information to where
20 if we needed to speak with them later to gather more
21 information we could do so.

22 Q. And how about anyone else? Did you talk to anyone
23 else at the hospital that night?

24 A. I spoke with Ann's sister and the mother in the
25 waiting room and they provided me with their phone numbers

1 in the event we needed to speak with them as well.

2 Q. So you're pretty much doing preliminary work right
3 now?

4 A. Correct, yes, ma'am.

5 Q. Okay. And then you report all of your findings back
6 to Investigator Miller?

7 A. Investigator Miller. Yes, ma'am, that's correct.

8 Q. And did that end your involvement on that day, May
9 25th?

10 A. It did, yes, ma'am.

11 Q. So tell us, what was your next step in this case?

12 A. The next step was May 26th, 2011 about three-thirty, I
13 responded back to the hospital at the request of
14 Investigator Miller, where I made my way to the PEDS Unit
15 again, critical care to where some of the Minor1 s family
16 were gathered at that time.

17 Q. And what did you do while you were there?

18 A. While I was standing there talking with Investigator
19 Miller and another investigator, Ms. Sprouce came up to us,
20 Georgia Ann Sprouce, and said that she needed to talk with
21 Investigator Miller. And then she motioned for all of us
22 to accompany them to a little small family waiting area.

23 Q. Was the Defendant at the hospital that day?

24 A. No, he was not. No, ma'am.

25 Q. And did you and Investigator Miller go and speak to

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1 Ms. Sprouce at that time?

2 A. We did, yes, ma'am.

3 Q. And was this a statement, like a formal statement, or
4 what was this?

5 A. Again, we asked -- she said she wanted to talk to us
6 so we went in there. And it was audio recorded, the
7 conversation that we had at that time. And, again, it was
8 just telling us the events of what had happened.

9 Q. At this point, was it different from what she had she
10 had said to you ---

11 A. It was.

12 Q. --- earlier?

13 A. It was. It was a little bit.

14 Q. And how had it changed?

15 A. I believe initially when I spoke with her the first
16 day, she had said that -- I think she was -- hang on one
17 second. I think she said that she was with Minor 1 in the
18 living room area. And the second time we spoke with her,
19 she said that she was in the kitchen area when this
20 happened.

21 Q. And after -- how long did that statement go on? How
22 long did she talk to y'all?

23 A. Maybe between thirty minutes and an hour. I'm not
24 real sure as far as how long that took place.

25 Q. And was she considered a suspect at this point or ---

1 A. No, ma'am.

2 Q. --- was she still free to go.

3 A. She was free to leave. Yes, ma'am. She was free to
4 leave at any time.

5 Q. Talking to y'all freely and voluntarily?

6 A. Correct.

7 Q. What else did you do in this case that day.

8 A. After that, I spoke with Minor 1's grandmother, Tina
9 Rollins.

10 Q. All right. And were you instructed to talk to her
11 about something or did you just see her and want to get a
12 statement from her?

13 A. I don't remember exactly how I came about talking to
14 her. I know she was at the hospital and it may have been
15 something Investigator Miller had asked me to do. Again,
16 because I was trying to help him out with this case.

17 Q. Okay. Keep your voice up for me.

18 A. All right.

19 Q. So you took a statement from ---

20 A. Tina ---

21 Q. --- the grandmother?

22 A. Yes. Tina Rollins, correct.

23 Q. All right. Was anybody else present when you were
24 talking to her?

25 A. I don't believe so. I think it was just she and I and

1 then we went to a smaller room and she spoke with me there.

2 Q. And after talking to her, did you advise Investigator
3 Miller what she had told you in her statement?

4 A. I did. I did.

5 Q. And then was there anyone else that you talked to on
6 that day?

7 A. I also spoke with Mark Gore, who is Minor 1's
8 biological father.

9 Q. And did he place himself there at the time?

10 A. No, he had said he was not at the incident location,
11 no, ma'am.

12 Q. Okay. Was he involved frequently in the child's life
13 or do you know?

14 A. I don't know. I'll have to go back and look at this
15 and see. I don't believe he was.

16 Q. The child did not live with him?

17 A. Correct. Correct.

18 Q. All right. After speaking with Mr. Gore, the child's
19 dad, what else, if anything, did you do on May 26th?

20 A. After I spoke with both those individuals, both
21 interviews were recorded and I provided that information to
22 Investigator Miller and that was all I did on the 26th.

23 Q. Okay. And what was your next step in this case?

24 A. The next day on the 27th, I responded to the Julie
25 Valentine Center. I think it was Investigator Miller who

1 had told me that a forensic interview was going to be done
2 with Minor 2 and so that was my job for that day. And
3 that was about eleven thirty that morning.

4 Q. All right. And how old was Minor 2 at the time, do
5 you know?

6 A. I believe she was about two. Two, two and a half,
7 somewhere around there.

8 Q. And what was your purpose in going to Julie Valentine
9 Center. Were you actually going to speak to the child?

10 A. No, I was not. I was just going to, I guess, just be
11 a witness and view on a monitor separate from where they
12 were actually doing the interview.

13 Q. Is that a -- if you know, is that a common practice
14 with children, victims or witnesses, to have them
15 interviewed at Julie Valentine Center?

16 A. Yes, ma'am.

17 Q. So you or Investigator Miller would not typically try
18 to talk to a two and a half year old?

19 A. No.

20 Q. A two year old?

21 A. No.

22 Q. And did you stay and observe the whole interview?

23 A. I did. I did.

24 Q. And at the conclusion of that, what, if anything, did
25 you do?

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1 A. At the conclusion of the interview, I believe Ms.
2 Rollins and one of the nurses took Minor 2 to the
3 bathroom. And, again, additional bruising on Minor 2 was
4 brought up.

5 MS. MANIGAULT: Your Honor, ---

6 Q. Don't say anything about that.

7 A. I'm sorry. My apologizes.

8 MS. MANIGAULT: --- I'm going to object to that
9 testimony.

10 THE COURT: I sustain the objection.

11 MS. MANIGAULT: May we sidebar?

12 THE COURT: Yes.

13 (WHEREUPON, Ms. Hodge and Ms. Manigault approached the
14 bar.)

15 Q. Investigator Autrey, after you finished up over at
16 Julie Valentine, what was your next step in this case?

17 A. The next step again is report the findings from that
18 day's events to Investigator Miller.

19 Q. And did that conclude your work on this case on that
20 date? I think you're talking about May the 27th now?

21 A. That's correct, yes, ma'am.

22 Q. Okay. When was the next time that you assisted on
23 this case?

24 A. Would have been June 2nd.

25 Q. And what did you do on June 2nd?

1 A. Myself and Investigator Miller and another deputy

2 responded to the actual incident location and met with

3 Crystal Inman where a statement was obtained from her.

4 Q. Okay. And that was a formal statement at this time?

5 A. Correct.

6 Q. You had previously spoken to her orally but now you're
7 doing a written statement?

8 A. Correct.

9 Q. And once that statement was obtained, what did you do?

10 A. We then located the mother, Georgia Ann Sprouce, and

11 she was located at, I think it was Wood Mortuary in Greer.

12 And we met with her and ask her if she'd be willing to come

13 to the law enforcement center and speak with us and she

14 voluntarily came with us.

15 Q. Was she free to tell you she didn't want to come? She
16 could have said no?

17 A. She was.

18 Q. All right. She was not under arrest or anything?

19 A. She was not. She was not.

20 Q. At this time was she considered a suspect?

21 A. No, ma'am. Again, there were still some parts of the
22 story that didn't add up and we were trying to, again,
23 obtain further information.

24 Q. All right. And did she come ride with you to ---

25 A. She did.

1 Q. --- the law enforcement center?

2 A. She did.

3 Q. And then did she speak freely, voluntarily to you and
4 Investigator Miller?

5 A. She did.

6 Q. Was there anyone else in the room with her when she
7 was talking to y'all?

8 A. There was -- at the law enforcement center there was
9 myself, Investigator Miller and then Deputy Jimmy Wilson
10 who was cross-training at that time.

11 Q. And at this point did she give another statement?

12 A. She did.

13 Q. Did her statement change from her previous two
14 statements?

15 A. It did. It did.

16 Q. And at this time, what had changed?

17 A. She then said that she was actually sleeping in the
18 bedroom and then the Defendant came and woke her up and
19 said that the victim was not breathing.

20 Q. What was her -- how was she acting? What was her
21 demeanor during this time?

22 A. She was calm at first. And then as she began to give
23 the account she became more emotional, several outburst of
24 crying. And then she was very emotional.

25 Q. Did she get confronted with the possibility or the

1 thought that she might be the person that did this or was
2 it still left very open?

3 A. It was still open. Again, saying that basically some
4 of the, I guess, the facts or the accounts not adding up.
5 And she was being told that you need to tell us the truth
6 of what happened.

7 Q. Just pressing her for whatever the truth is?

8 A. Correct. The truth, yes, ma'am.

9 Q. Was she placed under arrest after that interview?

10 A. She was not. She was actually taken back to the
11 mortuary by myself and Investigator Miller.

12 Q. Now, what y'all's next step?

13 A. We'd been told that the Defendant had been located by
14 an Investigator and Deputy Wilson and that he was willing
15 to come speak with us at the law enforcement center. So
16 myself and Investigator Miller responded back to the law
17 enforcement center to speak with him.

18 Q. And do you have any idea what time of day we're
19 talking about now?

20 A. I'm not sure. It's getting towards the late
21 afternoon, evening time by that point.

22 Q. All right. Did you personally go to the residence to
23 locate the Defendant?

24 A. I did not.

25 Q. Did you transport the Defendant?

1 A. I did not.

2 Q. Did you and Investigator Miller just go to the law
3 enforcement center?

4 A. We did. We met them there and he was already there.

5 Q. The Defendant was already there?

6 A. The Defendant, yes, and the other deputies were
7 already there.

8 Q. Okay. And was he at that time under arrest?

9 A. No, he was not.

10 Q. Was he going to be placed under arrest?

11 A. No, he was not.

12 Q. Had a warrant been secured for him?

13 A. No, ma'am.

14 Q. So was he free to say, hey, I don't want to go, or I
15 don't want to talk to y'all?

16 A. Yes, ma'am.

17 Q. Y'all couldn't have done anything about that?

18 A. No.

19 Q. And when you encountered him at the law enforcement
20 center, did he appear to understand who y'all were and
21 where he was?

22 A. Yes. Yes, he did.

23 Q. Understand what you wanted to talk to him about?

24 A. Yes, ma'am.

25 Q. Okay. Who was taking the lead during discussions with

1 the Defendant at this point in time?

2 A. Investigator Miller.

3 Q. So you're basically a witness?

4 A. I'm there as a witness, yes, ma'am.

5 Q. And in your opinion was the Defendant there freely and
6 voluntarily?

7 A. Yes, ma'am.

8 Q. Did he ever ask to leave?

9 A. No, ma'am.

10 Q. Did he ever say I don't want talk. I want to go?

11 A. No, ma'am.

12 Q. And was he able to communicate with Investigator
13 Miller as well?

14 A. Yes, he was.

15 Q. Able to talk to each other?

16 A. Yes, ma'am.

17 Q. Did he answer questions presented to him directly?

18 A. He did.

19 Q. And they were in response to what was asked?

20 A. Yes, they were.

21 Q. Did he appear to you to be under the influence of any
22 drugs or alcohol?

23 A. He did not.

24 Q. As part of your law enforcement background, do you
25 typically come into contact -- or have you come into

1 contact with people who are under the influence of drugs or
2 alcohol?

3 A. Yes, ma'am.

4 Q. All right. And did he appear to have any of those
5 symptoms or signs?

6 A. No, ma'am. No, ma'am, he did not.

7 Q. All right. Did he freely, voluntarily, knowingly
8 agree to talk to y'all?

9 A. Yes, ma'am.

10 Q. So what happened? What did he start saying?

11 A. We started talking as far as -- kind of going back to
12 the incident as far as on May 25th. Talked about how they
13 got up that morning. And then as the day progressed, they
14 said they ate lunch, fixed them some lunch and then they
15 were in the room watching television. And then he said
16 while he was in the bathroom, the victim's mother, Ann,
17 yelled at him and said that the victim was not breathing
18 and that he needed to call 9-1-1.

19 Q. And that was essentially the same story or close to
20 the same story you had previously heard?

21 A. Correct.

22 Q. All right. And so he was maintaining that at first?

23 A. Yes. At first.

24 Q. And what happened next?

25 A. He started talking about how he had never seen the

1 mother be mean to the children. The topic of the
2 biological father of Minor 1 came up. He had said that he
3 didn't like him very much because he didn't want to be part
4 of his daughter's life. He said they had argued about
5 calling 9-1-1 regarding the possible marijuana being in the
6 house. And he said that he then said, hey, we're going to
7 call 9-1-1. Then he started talking about how he wanted
8 the child to have help, to have help and peace.

9 Q. Did things start changing at that point?

10 A. They did. They did. His demeanor changed a little
11 bit and he became a little more emotional, kind of -- he
12 wasn't crying or anything, but he's -- I want to say he was
13 a little more serious. Kind of was sitting, had his elbows
14 on his knees and was talking to us.

15 Q. All right. And at this ---

16 MS. MANIGAULT: Excuse me, Your Honor.

17 THE COURT: Yes, ma'am.

18 MS. MANIGAULT: I would take this opportunity at
19 this point to renew my objection ---

20 THE COURT: All right. Your objection is noted
21 for the record.

22 MS. MANIGAULT: Thank you.

23 Q. Prior to him saying about he wanted the child to have
24 peace, had he maintained or said anything that Ann somehow
25 inflicted any of these injuries on this child? Did he ever

1 tell y'all that?

2 A. Again, as I said, he argued with her about calling 9-
3 1-1. He said that the marijuana was in the ashtrays and
4 Ann didn't want to call 9-1-1 because she was afraid the
5 children were going to be taken away.

6 Q. I guess my question is, did he ever tell you or did
7 you ever hear him telling Investigator Miller, Ann put
8 those bruises on that child or Ann caused that child to be
9 unconscious?

10 A. Uh-uh (negative). No.

11 Q. Anything specifically pointing to Ann's conduct ---

12 A. Not that I recall.

13 Q. --- causing anything?

14 A. Not that I recall, no, ma'am.

15 Q. All right. And I'm sorry.

16 A. No, go ahead.

17 Q. And so when things start changing what happens? What
18 does he say?

19 A. He then said that he never hurt the victim that he
20 knows of. He swore that he never beat the girls. He would
21 play with them a lot. Then he said he wasn't being
22 truthful about something. He said he picked the victim up
23 and saw that she was not breathing and thought she was just
24 sleeping. He said that he wanted to be with her and he
25 wanted everyone to leave so he could have her. Then he

1 said, accidents happen. He said he wishes that she had
2 never went away. He then made a statement that he threw a
3 toy across the room and hit the victim in the head and she
4 started crying. The Defendant said that he then picked her
5 up, tried to calm her down. And he covered her mouth until
6 she quit crying. He then said that Ann was in the bed, so
7 he made up the tea story because he was scared.

8 Q. What happened with this interview at that point?

9 A. At that point in time, Investigator Miller stopped the
10 interview. Parker was then read and explained his *Miranda*
11 rights and asked if he wished to have his statement
12 documented. He did sign that Waiver of Rights and then he
13 did provide us with a sworn, written statement.

14 (WHEREUPON, State Exhibit Numbers 40 and 41 were
15 marked for identification.)

16 Q. I'm going to show you what's been marked as State's
17 Number 40. What is that?

18 A. It says, Your Rights at the top. It says Waiver of
19 Rights at the bottom. So it's explaining the rights, then
20 it's the Waiver of Rights if he chooses to speak with
21 investigators or law enforcement.

22 Q. Okay. And whose Waiver of Rights Statement is this?

23 A. It says James Allen Johnson, the Defendant.

24 Q. And were you present when the Waiver of Rights was
25 brought out ---

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1 A. I was.

2 Q. --- and he was informed of that?

3 A. I was.

4 Q. And tell us what exactly he was informed of, what
5 rights?

6 A. It says before we ask you any questions, you must
7 understand your rights. You have the right to remain
8 silent. Anything you say can be used against you in court.
9 You have the right to talk to a lawyer for advice before we
10 ask you any questions, to have him with you during
11 questioning. If you have no money to pay a lawyer's fee,
12 the court will appoint one to represent you without cost if
13 you wish. If you decide to answer questions now without a
14 lawyer present, you will still have the right to stop
15 answering at any time. You also have the right to stop
16 answering at any time until you talk to a lawyer.

17 Q. And how -- did he appear to understand what his rights
18 were?

19 A. He did. And he actually initialed before each
20 sentence.

21 Q. Were you, again, just observing this?

22 A. Yes.

23 Q. Were you reading him the rights at all?

24 A. No, ma'am.

25 Q. Who was doing that?

1 A. Investigator Miller was reading it.

2 Q. And during this, did Investigator Miller stop after
3 every line and ask him to initial if he understood?

4 A. I don't recall exactly the process as far as if it was
5 done, I believe it was, to where he would pause and say,
6 hey, do you understand? And he would say, yes. And I
7 don't know if the initials took place then or if it took at
8 the end, but there was a pause as far as, do you understand
9 what's being read?

10 Q. And was there any discussion about his educational
11 background or any schooling or work or anything like that?

12 A. After the rights were done, then as far as on the
13 statement there is a section discussing the education
14 level.

15 Q. And after he initialed that he understood what his
16 rights were, did he then go on, on that form to waive his
17 rights?

18 A. He did.

19 Q. And what does that part state?

20 A. It says, I have read this statement of my rights and
21 understand what my rights are. I am willing to make a
22 statement and answer questions. I do not want a lawyer at
23 this time. I understand and know what I am doing. No
24 promises or threats have been made to me and no pressure or
25 coercion of any kind has been used against me.

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1 Q. And is coercion circled on there?

2 A. It is. And it is also initialed.

3 Q. Do you know why that was circled?

4 A. It was described to him and explained to him as far as
5 what coercion meant, by Investigator Miller. And then if
6 he understood it, then he initialed it.

7 Q. And did he sign that form acknowledging he wanted to
8 waive his rights?

9 A. He did.

10 Q. And about how long did it take for Investigator Miller
11 to go over his rights with him?

12 A. About ten minutes.

13 Q. And did he freely and voluntarily sign that form?

14 A. He did.

15 Q. Did he get promised anything if he would sign that
16 form, such as a low bond or just anything, a recommendation
17 to the solicitor?

18 A. No, ma'am.

19 Q. Was he threatened in any way that he'd better waive
20 those rights and talk?

21 A. No. No, ma'am.

22 Q. Was he -- was anything withheld from him that he may
23 have requested, such as food, water, bathroom break,
24 cigarettes?

25 A. No, ma'am. Nothing. Nothing.

1 Q. And did he then again freely, knowingly, voluntarily
2 say he wanted to give up those rights and continue talking?

3 A. Yes, ma'am, he did.

4 Q. And did he continue talking?

5 A. He did.

6 Q. And was this part of the conversation then taken down,
7 written down?

8 A. It was. It was typed and he again gave permission for
9 me to type it while Investigator Miller spoke with him.

10 Q. Okay. And on State's Number 40, is this the original
11 Waiver of Rights Form?

12 A. I believe so, yes, ma'am.

13 Q. Okay. Is there any alterations, deletion, admission
14 that you're aware of on here?

15 A. No, ma'am.

16 Q. Okay.

17 MS. HODGE: At this point we would move to admit
18 State's Number 40 into evidence.

19 MS. MANIGAULT: Subject to my previous objections
20 in the Jackson Denno Hearing.

21 THE COURT: All right. Subject to objection,
22 Exhibit 40 is admitted.

23 MS. MANIGAULT: Thank you.

24 (WHEREUPON, State Exhibit Number 40 was admitted into
25 evidence.)

1 Q. And I'm going to show you State's Number 41.

2 A. Uh-huh (affirmative).

3 Q. All right. And tell me what this is. Just in general
4 what is it?

5 A. It is a Suspect Statement Form.

6 Q. Okay. Is that different from a Witness Statement
7 Form?

8 A. It is.

9 Q. And what does the Suspect Statement Form have on the
10 top of it?

11 A. It says, basically it says, I, James Allen Johnson, do
12 hereby give freely and voluntarily this statement to
13 Investigator C.T. Miller and Investigator J. Autrey, who
14 have identified themselves to me to be deputies of the
15 Greenville County Sheriff's Office, Greenville, South
16 Carolina. I've been advised I do not have to make this or
17 any other statement and that I -- and that what I say can
18 be used against me in a court of law. I've been advised
19 that I have the right to counsel with an attorney of my
20 choice, that if I am financially unable to obtain an
21 attorney, the court will appoint an attorney to represent
22 me. I've not been threatened or promised any reward to
23 make this statement.

24 Q. And was that top portion of the statement read to him
25 as well before taking the statement?

1 A. Yes.

2 Q. When going over his Waiver of Rights Form, did he ever
3 ask to have an attorney?

4 A. No, ma'am.

5 Q. Did he ever say, I think I better stop. I think I
6 want a lawyer?

7 A. No, ma'am.

8 Q. Anything even remotely close to that?

9 A. No, ma'am.

10 Q. Okay. Just kept talking?

11 A. Yes, ma'am.

12 Q. All right. And how was his demeanor at this point?

13 A. Again, still he was -- I mean, he was alert. He was
14 talking to us again. It's not a whole, whole lot of
15 emotion. Again, just kind of sitting there, leaning
16 forward a little bit on his knees -- elbows on his knees,
17 talking to us.

18 Q. All right. And what did he go on to tell you after he
19 agreed to keep talking and after he waived his rights?

20 A. His statement is, it starts out as additional
21 particulars on Statement E. It says, my date of birth is
22 . It has his Social Security Number. I
23 understand all the questions that Investigator Miller has
24 asked me. And I'm giving this statement free and voluntary
25 and I'm giving Investigator J. Autrey permission to type my

1 statement for me. I am not under the influence of any
2 drugs or alcohol. I swear that I never beat them. I
3 played with them all the time. There's something that I
4 haven't been truthful about. I picked her up and I saw
5 that she was not breathing. I thought she was just asleep.
6 I thought she was asleep. I was trying to get her back. I
7 just wanted to be with her, the baby. The rest could leave
8 if they would just let me have her. I've been there for
9 her if I knew what I was doing. I was in the bathroom but
10 -- and pauses -- I tried to be a daddy. I tried to correct
11 them when they were wrong so they wouldn't turn out like my
12 sorry family. I tried to take care of her. No matter what
13 happens, I'm going to be the bad one, then she can have her
14 daughter back. Accidents happen. There was a pause. I
15 haven't been on medication in a while at all. I wish she
16 hadn't never went away. I threw a toy across the room and
17 it hit her. It hit her in the forehead where there are all
18 the bruises. It was that day. If I didn't know she didn't
19 have a chance, I never would have thrown that toy. That's
20 what happened. I never would hurt a kid. I've helped
21 raise them. I don't deserve to live. I never should have
22 picked up that toy. That was the day before. I don't know
23 how those bruises got there. She started screaming. I was
24 just trying to calm her down. I kissed on her at first and
25 held her. She kept crying and screaming. I hadn't been on

1 my medication. People are going to hurt me. Ann and CO's.
2 I covered Minor 1 mouth until she quit crying. Ann was
3 in the bed when this happened. I then went and told Ann
4 that Minor 1 was not breathing. Ann came in the living
5 room and I told her that there was a glass of tea there and
6 I guess Minor 1 drank it. I told Ann about the tea because
7 I was scared. I love them and always will. I'm sorry for
8 the problems. I'm sorry for God creating me. I'm sorry
9 for all of this. I've never been this kind of person
10 before. Please forgive me in time.

11 Q. And did he have an opportunity to -- are you typing
12 exactly the words he's saying?

13 A. Yes. As he's talking, I'm typing away; that's
14 correct.

15 Q. And did you print this statement out for him to
16 review?

17 A. I did.

18 Q. And was the statement gone over with him once it was
19 printed out?

20 A. It was. And then he initialed the beginning and end
21 of each paragraph showing that no changes were added to the
22 beginning, no changes were added at the end, that that's
23 what he said.

24 Q. All right. And he didn't make any corrections about
25 anything?

1 A. No, ma'am.

2 Q. All right. And did he sign the statement?

3 A. He did.

4 Q. And did you and Investigator Miller also sign the
5 statement?

6 A. We did.

7 Q. And what are you signing, in what capacity are you
8 signing?

9 A. I'm signing as a witness saying that I was there as
10 this statement was taken and that it is true.

11 Q. All right. Was he provided a copy of that statement
12 also?

13 A. He was.

14 Q. In there I believe he made a comment that he hadn't
15 been on his medication in a while, or medication in a
16 while. Do you know what medicine he was talking about?

17 A. I had no idea.

18 Q. Was there something about his mental condition that
19 gave you cause for concern?

20 A. No, ma'am, not at all.

21 Q. Able to communicate and talk to him?

22 A. He was able to communicate with us. I mean, yes,
23 ma'am. He sat there and conversed.

24 Q. Okay. About how long did this statement process last?

25 A. I figure maybe an hour, hour and a half. I don't

1 recall exactly. I think it was about an hour, hour and a
2 half.

3 Q. And was his mental state, physical condition, mental
4 condition, the same as it was when you had talked to him, I
5 guess, almost a week before this, when you talked to him at
6 the hospital?

7 A. It was, yes, ma'am. He was a little more emotional,
8 but as far as being able to carry on a conversation, tell
9 us what happened, it was the same.

10 Q. All right. Once the Defendant gave his statement, was
11 he free to leave?

12 A. No, ma'am. He was not.

13 Q. All right. What happened then?

14 A. Investigator Miller responded to the judge's office
15 and obtained an arrest warrant. The Defendant was then
16 served with that warrant and then walked over to the
17 detention center.

18 Q. And were you the person that actually served the
19 warrant on him?

20 A. Yes. Yes, I was.

21 Q. And so once he got to the law enforcement center that
22 night and gave his statement, that was it?

23 A. That's correct.

24 Q. He was under arrest?

25 A. Correct.

1 Q. And he was booked ---

2 A. Yes.

3 Q. --- into the detention center?

4 A. Correct.

5 Q. And did that end your involvement in this case?

6 A. It did. It did.

7 Q. Let me do one housekeeping matter. The Defendant's
8 statement, State's Number 41, is this the original
9 statement by the Defendant?

10 A. Yes, it is.

11 Q. All right. Do you know if there's any alterations or
12 additions or deletions from this one?

13 A. To my knowledge, no, there's not.

14 MS. HODGE: At this time we would move to admit
15 State's Number 41.

16 THE COURT: Subject to the objection.

17 MS. MANIGAULT: Thank you.

18 (WHEREUPON, State Exhibit Number 41 was admitted into
19 evidence.)

20 MS. HODGE: Thank you.

21 Q. Thank you, Investigator. Please answer any of Ms.
22 Manigault's questions.

23 CROSS-EXAMINATION

24 BY MS. MANIGAULT:

25 Q. I believe you said that you picked up -- you met with

1 the Defendant at the LEC in ---

2 A. Correct.

3 Q. --- late afternoon?

4 A. I don't remember exactly what time it was. Towards
5 the evening. So, yes, ma'am.

6 Q. Was the evening -- do you still have a copy of the
7 rights form before you?

8 A. I do. I do.

9 Q. The time on it says twenty-two-oh-two.

10 A. Correct.

11 Q. What does that mean?

12 A. That's ten-oh-two.

13 Q. Ten-oh-two?

14 A. Correct.

15 Q. So at that point, how long had you been with the
16 Defendant? That's ten-oh-two P.M.?

17 A. Correct. Yes, ma'am. Yes, ma'am. I don't recall how
18 long we had been there at that point. I mean, you're
19 looking at maybe an hour, hour and a half maybe.

20 Q. Maybe an hour?

21 A. Hour, hour and a half. I'm not real sure because I
22 don't recall what time we got there.

23 Q. So you'd been there an hour, hour and a half before
24 the rights form was read to him?

25 A. I believe so. Yes, ma'am.

1 Q. I believe your testimony regarding Ann Sprouce, you
2 said you had talked to her maybe twice?

3 A. I believe that's correct.

4 Q. On the 25th and then on June 2nd.

5 A. I believe I talked to her the 25th, gathered that
6 initial information ---

7 Q. Right.

8 A. --- and then she wanted to speak with all of us on the
9 26th, so I responded back about three thirty on that day.
10 So that's twice. And then we spoke with June 2nd. So
11 three.

12 Q. Okay. So three times?

13 A. Correct.

14 Q. However, the first time she was saying that James
15 Johnson was in the bathroom?

16 A. I believe so. That's correct.

17 Q. And she was in the room with the two girls?

18 A. Correct.

19 Q. The second time she was saying that she was in the
20 kitchen?

21 A. Correct.

22 Q. And James was in the room with the two girls?

23 A. I believe so. That's correct.

24 Q. And the third time she was saying that she was in the
25 bed?

1 A. Correct.

2 Q. And that James was in the room with the two girls?

3 A. Correct.

4 Q. Now, the first two times you spoke with her was at the
5 hospital?

6 A. Yes, ma'am.

7 Q. And then the last time was at LEC?

8 A. Correct.

9 Q. Law Enforcement Center?

10 A. Yes, ma'am.

11 Q. All right. When you spoke with James Johnson, did you
12 speak with him on the 25th, the first day the child was ---

13 A. Yes, ma'am. Gathering that preliminary information;
14 yes, ma'am.

15 Q. All right. And at that point, he told you that he was
16 in the bathroom ---

17 A. I believe so.

18 Q. --- and Ann was in the room with the girls?

19 A. I believe that's what he said. (Reviews notes.)

20 Yeah. That's correct.

21 Q. All right. Was it your initial interview on the 25th
22 with the Defendant or was it the interview on June 2nd when
23 you observed the Defendant talking with Investigator
24 Miller, that he told you that there was an argument about
25 calling 9-1-1 before the marijuana was moved?

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1 A. Let me see. (Reviews notes.) It was on the 2nd.

2 Q. It was June 2nd?

3 A. I believe so, yes, ma'am. Yes.

4 Q. So Mr. Johnson's information to you was that he wanted
5 to call 9-1-1 but Ann Sprouce wanted to wait because of the
6 marijuana?

7 A. Correct.

8 Q. All right. So in the LEC -- law enforcement interview
9 on June 2nd ---

10 A. Uh-huh (affirmative).

11 Q. --- along with Investigator Miller ---

12 A. Uh-huh (affirmative).

13 Q. --- does the Defendant in anyway appear to be sleepy
14 or was he slurring his words?

15 A. No, ma'am.

16 Q. Did you smell any alcohol about his person?

17 A. I did not smell any alcoholic beverage or anything
18 coming from his person, no, ma'am.

19 Q. Did his eyes appear to be dilated?

20 A. No, ma'am.

21 Q. Within this one hour to hour and a half or a little
22 more, did he ask to go to the restroom?

23 A. I don't believe he asked. I think Investigator Miller
24 actually offered, gave him the opportunity to go.

25 Q. So Mr. Johnson actually took a break at the suggestion

1 of Investigator Miller?

2 A. I believe that's how it occurred.

3 Q. And he went to the bathroom?

4 A. Yes, ma'am.

5 Q. And do you recall how long he stayed in the bathroom?

6 A. I don't. But Investigator Miller was with him when he
7 went.

8 Q. All right. The area where you were questioning him or
9 where he was being questioned, and you were typing ---

10 A. Yes, ma'am.

11 Q. --- how large is that area?

12 A. It's the homicide office. There's six investigators
13 that work back there, so you've got an eighteen feet wide
14 by about maybe eighteen, nineteen, twenty feet long.

15 Q. Okay.

16 A. So a pretty decent area.

17 Q. And while you were in that area, it was you,
18 Investigator Miller, Wilson and James Johnson?

19 A. I believe that's correct. Yes, ma'am. The four of
20 us.

21 Q. In the immediate area for questioning?

22 A. Yes, the four of us.

23 Q. When you met with James Johnson at the law enforcement
24 center, was he then a suspect?

25 A. He was a person of interest, maybe a possible suspect.

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1 But, again, he did not have to come speak with us. He was
2 free to leave at that time.

3 Q. He was a person of interest or maybe a possible
4 suspect?

5 A. Yes, ma'am. Again, there is ---

6 Q. All right. And did you ---

7 A. --- determine what was happening.

8 Q. Excuse me?

9 A. We were still trying to figure out what was going on.

10 Q. All right. And did you give him his *Miranda* warnings
11 or the rights when you started your interview with him?

12 A. The initial part, no, ma'am.

13 Q. So as you testified earlier, it was about an hour,
14 hour and a half before his *Miranda* rights were read to him?

15 A. I believe so, yes, ma'am.

16 Q. And when I say *Miranda* rights or your rights, you're
17 talking about the right to remain silent?

18 A. Correct.

19 Q. Whatever you say can be used against you in court?

20 A. Uh-huh (affirmative).

21 Q. You have the right to a lawyer. If you can't afford a
22 lawyer, one will be appointed.

23 A. Uh-huh (affirmative).

24 Q. If you decide that you want a lawyer during the
25 questioning, you can stop at any time? So you never did

1 read those rights to him -- or you didn't read the rights
2 to him in the beginning?

3 A. Correct.

4 Q. All right. And so after you talked with him an hour
5 and a half, then the rights were read?

6 A. Correct.

7 Q. All right. Did -- I may have asked you this, but did
8 James Johnson ask for an attorney?

9 A. No, ma'am.

10 Q. All right. Did he ever indicate to you that he didn't
11 want to talk to you anymore?

12 A. No, ma'am.

13 Q. You said he communicated?

14 A. Uh-huh (affirmative).

15 Q. Was he giving answer appropriate to the questions
16 asked?

17 A. Yes, ma'am.

18 Q. And you said he made the statement to you, accidents
19 happen?

20 A. Yes, ma'am.

21 Q. Did you ask him for an explanation of that statement?

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

23 Q. I believe you read in the statement that you said he
24 initialed and signed ---

25 A. Uh-huh (affirmative).

1 Q. --- one of the paragraphs started out with, I was in
2 the bathroom, but -- and then you said there was a pause.
3 Did you ask him about that statement? The part about, I
4 was in the bathroom?

5 A. I did not. No, ma'am, I didn't.

6 Q. And I believe you already answered the Solicitor, when
7 he talked about medication you didn't ask him about the
8 medication he was supposed to be on or off?

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

10 Q. All right. You said his emotional state changed. He
11 became a little more emotional with some questionings?

12 A. Correct. Yes.

13 Q. Did you have any concerns at all about James Johnson's
14 demeanor or appearance when you were talking to him?

15 A. No, ma'am.

16 Q. And the Solicitor asked you did his questioning or
17 answering remain the same as from May 25th to June the 2nd?

18 A. Right.

19 Q. His demeanor to you was about the same?

20 A. Yes, ma'am, it was.

21 Q. On May 25th had Ann Sprouce or the Defendant tell you
22 that they had been smoking marijuana that day?

23 A. I don't believe so. I don't recall at all.

24 Q. Did Ann Sprouce or the Defendant tell you they were
25 smoking marijuana the day before?

- 1 A. I don't recall. I don't think so.
- 2 Q. So there was no mention of drug uses by either Ann
- 3 Sprouce or James Johnson?
- 4 A. No, not that I remember.
- 5 Q. And I believe you said that your interview with Ann
- 6 Sprouce was taped, audio?
- 7 A. The one I believe is the 26th, maybe.
- 8 Q. On the 26th?
- 9 A. It was the second day I was at the hospital.
- 10 Q. Okay. 26th?
- 11 A. Yeah. I believe that's the one I'd spoken of.
- 12 Q. And was her on June 2nd taped?
- 13 A. Let me see. I don't recall off the top of my head on
- 14 that one.
- 15 Q. Did you tape anybody else's interview?
- 16 A. Yes, ma'am. It was Tina Rollins, I believe. And then
- 17 Mark Gore because I was in there by myself doing --
- 18 speaking with them.
- 19 Q. Okay. And when James Johnson was being interviewed on
- 20 June the 2nd, was his interview taped?
- 21 A. No, ma'am.
- 22 Q. All right. Thank you.
- 23 THE COURT: Any redirect?
- 24 MS. HODGE: Yes, sir.

25

REDIRECT EXAMINATION

1 BY MS. HODGE:

2 Q. The only change in demeanor or emotion that you saw in
3 the Defendant was when he started confessing what he had
4 done?

5 A. Yes, ma'am, leaned forward.

6 Q. He became more solemn, solemnner?

7 A. Yeah, solemn. A little more emotional. He may have
8 cried. I don't know. Because he was kind of leaning
9 forward.

10 Q. I'm ---

11 A. And he may have -- he just leaned forward, kind of
12 started just talking to us, putting his knees on his elbows
13 and he began talking.

14 Q. All right. And the audio taping of the discussion
15 with Ann at the hospital ---

16 A. Uh-huh (affirmative).

17 Q. --- when she said, y'all come here.

18 A. Right.

19 Q. Is that something that you did?

20 A. Yes.

21 Q. Did she know you were doing that?

22 A. I don't remember if she did or not. I don't think so.
23 I believe it was in my shirt pocket. But it was something
24 that we just kind of did.

25 Q. Was that a thing that y'all planned to do or did you

1 think, I think I should do this?

2 A. No, ma'am. I just went ahead and just started
3 recording it ---

4 Q. So that was your choice on your own to do that?

5 A. Yes.

6 Q. And you audio taped the two other statements of Tina
7 Rollins and Mark Gore because you were by yourself?

8 A. Yes. Correct. Correct.

9 Q. Now, the interview with Ann at the LEC, Investigator
10 Miller was in charge of that interview?

11 A. Yes, ma'am.

12 Q. When y'all got her from the mortuary?

13 A. Yes.

14 Q. Did he tell you or advise you to tape or not tape?

15 A. I don't recall. I don't believe so. I'll look back
16 through here and see because I don't recall off the top of
17 my head on that one. I don't believe so.

18 Q. And there were you present and Deputy Wilson was
19 present ---

20 A. Correct.

21 Q. --- as well as Investigator Miller?

22 A. That's correct.

23 Q. So the three of y'all?

24 A. Yes.

25 Q. All right. And the same thing for the Defendant's

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1 statement on June 2nd, there were three of y'all present?

2 A. There were three of us, correct.

3 Q. All right. Thank you.

4 MS. HODGE: That's all from this witness.

5 THE COURT: Thank you. You may step down.

6 Mr. Foreman, ladies and gentlemen, let's take a break.

7 If you'll go back to your jury room. I remind you again

8 not to discuss the case. We'll take a short break and be

9 ready to proceed with the next witness in just a few

10 moments.

11 I'd ask that everyone else please remain seated while

12 the jury departs.

13 (WHEREUPON, the jury exited the open court at

14 approximately 3:56 P.M.)

15 THE COURT: All right. Let's take a short break.

16 (WHEREUPON, the court stood at recess for a short

17 break.)

18 THE COURT: All right. If our jury's ready have

19 them come in.

20 (WHEREUPON, the jury entered the open court at

21 approximately 4:22 P.M.)

22 THE COURT: The State may call its next witness.

23 MS. HODGE: Thank you, Your Honor. The State

24 calls Investigator Chris Miller.

25 THE CLERK: Raise your right hand.

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

3 THE WITNESS: I do.

4 THE CLERK: Please have a seat and state your
5 full name.

6 THE WITNESS: Christopher Todd Miller.

7 CHRISTOPHER TODD MILLER,

8 BEING FIRST DULY SWORN, TESTIFIED AS FOLLOWS:

9 DIRECT EXAMINATION

10 BY MS. HODGE:

11 Q. I'm sorry. Sergeant Miller, who do you work for?

12 A. Greenville County Sheriff's Office.

13 Q. How long have you been with them?

14 A. I've been with the Sheriff's Office since 1999, but I
15 have a total of eighteen years of law enforcement
16 experience.

17 Q. And what are your current duties or responsibilities
18 with the Sheriff's Office?

19 A. I'm a supervisor in the criminal investigations
20 division. My job is to supervise employees, assess their
21 investigation, assign investigations, approve their
22 reports. I also keep up with their time cards,
23 inspections, evaluations, just general supervisory duties.

24 Q. What areas are you over?

25 A. I'm over auto theft and juvenile investigations and

1 also the victim witness advocates.

2 Q. Before you were promoted to this capacity, what did
3 you do?

4 A. I was a homicide investigator for seven years.

5 Q. And was that with the sheriff's office?

6 A. Yes. All with the sheriff's office.

7 Q. And what kind of training or educational background do
8 you have for a homicide investigation and now further on to
9 being sergeant?

10 A. I've been to the University of Louisville homicide
11 school. I've been to the University of Tennessee for a DNA
12 and evidence recognition. Also blood spatter analysis.

13 I've been to the -- I've been to Fox Valley Technical
14 College in St. Louis, Missouri, for child murder
15 investigations. And, also, I've been to numerous
16 supervisor schools and leadership schools.

17 Q. Back on May the 25th, 2011, were you assigned to the
18 case involving Minor 1 ?

19 A. Yes, I was the on-call homicide investigator. There's
20 six of us and we rotate every six weeks, so I was on call
21 that week.

22 Q. And what time did you receive a call to become
23 involved in this case?

24 A. It was around four twenty P.M., four thirty P.M., in
25 the afternoon.

1 Q. And what were you told at that time?

2 A. I was told that there was an unconscious child that
3 was twenty months old and that the preliminary
4 investigation was that she had choked on some tea.

5 Q. Were you updated as to what her condition was or her
6 prognosis at that point?

7 A. That she was unresponsive and that she had been taken
8 to the Greer Memorial Hospital by an ambulance.

9 Q. And what did you do?

10 A. I then, of course, responded. And at that time I was
11 advised that the coroner's office was already there at the
12 scene, so that prompted me to contact one of the
13 investigators in homicide and ask them to obtain a search
14 warrant. Because I was also advised that the parents or
15 the mother and the people there at the residence were no
16 longer there. So there was only a deputy on the scene. So
17 I asked Investigator Bailey to obtain a search warrant so I
18 could investigate the scene.

19 Q. All right. And what time do you believe you got to
20 the scene?

21 A. It was probably about a twenty, twenty-five minute
22 drive from the law enforcement center all the way out there
23 to Few's Chapel Road.

24 Q. And what did you do? What did you observe when you
25 got there?

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1 A. When I got there, Coroner Cain was there. She was
2 outside in the driveway and she came up to me and briefed
3 me as to what was going on. And that the child had now
4 been airlifted to Greenville Memorial Hospital. There was
5 also a uniform patrol deputy car there, which was Deputy
6 Azzara.

7 Q. Would a coroner come out to a scene of a child choking
8 normally?

9 A. No. That, you know, prompted a little bit of
10 suspicion on my part, just the fact that she was there,
11 which she said that due to the fact that the child was ---

12 MS. MANIGAULT: Your Honor, we object to anything
13 that the coroner said because ---

14 THE COURT: Sustained.

15 Q. Do coroners normally show up on your crime scenes
16 unless there's a dead person or a soon-to-be dead person?

17 A. No. Only in those circumstances.

18 Q. Okay. And did you then speak to Deputy Azzara?

19 A. I did.

20 Q. Okay. Did you get a little bit of background
21 information?

22 A. Yes. He went into the fact that he had spoken with
23 the boyfriend, which was Mr. Johnson, and he had spoken
24 with Georgia Ann Sprouce, who he identified as the mother,
25 and said that they had told him that she had -- Minor 1

1 , the victim, had choked on tea. And then I asked
2 him why he let the mother and father or the mother and
3 boyfriend go. Because our protocol would be to secure that
4 scene and to separate any witnesses and then call for an
5 investigator.

6 Q. So in your opinion, that was not a good call on his
7 part?

8 A. That was not a good call at all.

9 Q. To let them leave and be together?

10 A. No. That is not our protocol.

11 Q. All right. After speaking to him and learning that
12 information, what did you do?

13 A. At that point in time, I contacted our dispatchers to
14 have a forensics technician respond to process the scene
15 for me.

16 Q. And do you and forensics work together processing a
17 scene?

18 A. Yes. What we will do is I'll wait for forensics and
19 if the coroner's office is not there, I'll -- all three
20 agencies walk through at the same time. So the coroner,
21 forensics people and then myself will walk through the
22 scene all at one time so we can all make sure that we don't
23 disturb anything. You know, as little as possible.
24 Because you don't want too many people going into a crime
25 scene.

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- 1 Q. Walking through your crime scene?
- 2 A. Right.
- 3 Q. All right. And who responded from forensics?
- 4 A. That would have been Sergeant Lendway, who was
- 5 Lieutenant Lendway at this time.
- 6 Q. All right. And what did you guys do as you walked
- 7 through?
- 8 A. As we're walking -- we do initial walk-through just,
- 9 you know, looking to see a review of the house and then
- 10 I'll, you know, point out things of interest and then
- 11 Sergeant Lendway at the time would point out some things
- 12 that he saw. And then he would begin -- after that, he
- 13 would start taking digital images of the house.
- 14 Q. All right. Did you have a lot of information to go on
- 15 as to where your scene was, where the actual crime scene
- 16 may have been?
- 17 A. I had no idea because there was no one there but
- 18 Deputy Azzara and Coroner Cain.
- 19 Q. And I think -- you've obviously sat through the case
- 20 and you've seen some of the State's pictures that were
- 21 introduced through Ms. Inman of the incident location, the
- 22 house; is that correct?
- 23 A. That's correct.
- 24 Q. Okay. And those pictures were taken by now Lieutenant
- 25 Lendway?

1 A. Yes, ma'am.

2 Q. All right. I'm going to show you just a few
3 additional, State's Number 34 through 46. And what are
4 these pictures showing? How are they different from what's
5 been presented already?

6 A. These are children's clothing.

7 Q. All right. That's State's Number 34?

8 A. Uh-huh (affirmative).

9 Q. And then State's Number -- and do they have something
10 signifying that law enforcement's now become involved?

11 A. Yes. These are placards that forensics use to
12 identify evidence.

13 Q. Okay.

14 A. And this also is an article of children's clothing.

15 Q. All right. And then State's Number 35?

16 A. Yes. Yes.

17 Q. That's State's Number 35.

18 A. Uh-huh (affirmative).

19 Q. All right. And then let's see, 42, 43, 44, 45, 46.

20 A. This is the living room and these are the placards,
21 which is State's 35, right here, which is an article of
22 clothing. And then there's another article of clothing.
23 And then "A" is where the suspected vomit was located.

24 Q. Okay. So you were informed that there was some
25 possible vomiting?

1 A. Well, actually, Sergeant Lendway or Lieutenant Lendway
2 and I found that ourselves.

3 Q. And documented that?

4 A. Documented that.

5 Q. Okay. And 43 showing that a little closer?

6 A. Yes.

7 Q. And then 44 is showing -- what's that?

8 A. That is a towel. It looks like it was folded up and
9 placed there, beside a diaper.

10 Q. Okay. And then 45?

11 A. These are three different -- there's two plastic cups
12 and a glass on the end table.

13 Q. Were you informed anything about the significance of
14 that or were you just guessing that that might be involved?

15 A. We were told that tea was involved and so we felt it
16 necessary to document that.

17 Q. Okay. And then State's 46?

18 A. It's just an overview of those cups, which they're
19 empty.

20 Q. Did you notice any areas on the carpet that you could
21 attribute to any type of drink being spilled or any ice
22 being on the floor or anything like that?

23 A. No. The only liquid spot was that one that I did find
24 there on the rug.

25 Q. All right. And are these photographs true and

1 accurate representations of how the scene looked once the
2 placards were added?

3 A. That's correct.

4 MS. HODGE: At this point we would move to admit
5 34 through 46.

6 THE COURT: Any objection?

7 MS. HODGE: 34 and 35. Okay. We must have
8 skipped some numbers. Oh, we did. Okay. Sorry. 42, 43,
9 44, 45, 46.

10 THE COURT: 42 through 46?

11 MS. MANIGAULT: Yes, sir.

12 THE COURT: And 34 and 35?

13 MS. MANIGAULT: Yes, sir. We reviewed that.

14 THE COURT: Without objection.

15 MS. MANIGAULT: Without objection.

16 THE COURT: They are admitted and may be
17 published.

18 MS. HODGE: Thank you.

19 (WHEREUPON, State Exhibit Numbers 34 and 35 were
20 admitted into evidence.)

21 (WHEREUPON, State Exhibit Numbers 42, 43, 44, 45 and
22 46 were marked and admitted into evidence.)

23 Q. Let me show you State's Number 35 and then we'll go to
24 34. State's 35. Can you see that?

25 MS. HODGE: Can you turn that one light off

1 again, Madam Bailiff.

2 Q. And what did you identify that to be?

3 A. That is an article of children's clothing. The best I
4 can see. It's kind of a bad view of it.

5 Q. Right. With all this technology, that's what it looks
6 like on the screen. Okay. And then State's Number 34,
7 which was the item that was significant to you in that one?

8 A. That was an article of children's clothing that also
9 had a suspected liquid on it.

10 Q. Okay. And did State's 35 or item G listed here, did
11 that have some suspected fluid or something on it?

12 A. It did.

13 Q. And were those items collected?

14 A. They were collected by Lieutenant Lendway.

15 Q. Okay. All right. So as I'm opening this up, tell us
16 -- about how long did you stay on the scene there?

17 A. I arrived at probably right around five o'clock,
18 somewhere in that time, because I left at four thirty and
19 the traffic was bad. So I left at -- I made a note that I
20 left at six fifty-eight P.M. So, I would have been there
21 about an hour and a half.

22 Q. Were there any other items of potential evidence that
23 you were able to find or anything else of interest in the
24 residence when you and Lendway were walking around?

25 A. Just the most significant were the clothing and the

1 cups, to our limited knowledge of what had taken place.

2 And then I also had the diaper collected, which is a
3 typical thing we do with babies and young children.

4 Sometimes you can do testing on the contents and find out
5 if there's some type of substance present that may have
6 killed the child.

7 Q. Did that ever happen? Did you ever have the diaper
8 tested for anything?

9 A. No, I had no reason to.

10 Q. And that would be something that you would do towards
11 the end of your investigation, as far as requesting certain
12 tests be done on certain items?

13 A. That's correct.

14 (WHEREUPON, State Exhibit Number 47 was marked for
15 identification.)

16 Q. I'm showing you what's been marked as State's Number
17 47. Is this the item that was portrayed in photograph G?

18 A. Yes, it is.

19 Q. Okay. And is it in substantially the same condition
20 as when it was collected?

21 A. It is.

22 Q. Photographed?

23 A. Uh-huh (affirmative).

24 Q. Okay. Is there some type of substance on the left
25 sleeve?

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1 A. There's still a brown tint to it.

2 Q. Okay. And did you ever ask for anything on this to be
3 tested or looked at?

4 A. No, I did not.

5 Q. Was there anything, in your opinion during your
6 investigation, that led you to believe you needed to test
7 anything on this?

8 A. No, I did not.

9 Q. And did it have that brownish substance when it was
10 collected?

11 A. Yes.

12 Q. Okay.

13 MS. HODGE: We would move to admit State's Number
14 47.

15 MS. MANIGAULT: No objection, Your Honor.

16 THE COURT: Without objection, Exhibit 47 is
17 admitted, and may be shown to the jury.

18 (WHEREUPON, State Exhibit Number 47 was admitted into
19 evidence.)

20 (WHEREUPON, State Exhibit Number 48 was marked for
21 identification.)

22 Q. State's Number 34 is on the projector, on the
23 overhead. And I'm going to show you what's been marked as
24 State's Number 48. Are these the little -- the bottoms
25 depicted in that picture.

1 A. That was of the bottoms. Yes, ma'am.

2 Q. And did they have those brown-type stains on them when
3 you saw them?

4 A. They did, and they still contain them.

5 Q. Okay. And these are in the same condition as when
6 they were collected, substantially?

7 A. That's correct.

8 MS. HODGE: We would move to admit State's Number
9 48.

10 MS. MANIGAULT: No objection, Your Honor.

11 THE COURT: Without objection. It may be shown
12 to the jury.

13 (WHEREUPON, State Exhibit Number 48 was admitted into
14 evidence.)

15 Q. Once you finished up at the incident location, where
16 did you go, what did you do?

17 A. Well, I had also asked for additional investigators to
18 assist me since I was in Greer and the victim had been
19 transported to the Greenville Memorial Hospital. So
20 Investigator Devin Hoover was on call as a backup to me.
21 So I called him and asked him to respond to the Greenville
22 Memorial Hospital. And then I called Sergeant Jones, who
23 was our Sergeant in homicide at the time, and asked him --
24 or advised him of what was going on. And then he, in turn,
25 asked Investigator Autrey, now Sergeant Autrey, to respond

1 to the hospital, as well.

2 Q. All right. And did they locate the mother and
3 boyfriend and/or any witnesses at the hospital?

4 A. Yes.

5 Q. Okay.

6 A. And they were reporting back to me while I was on
7 scene.

8 Q. While you were on scene?

9 A. Yes.

10 Q. And then you'd go on to the hospital yourself?

11 A. Right.

12 Q. And who did you speak to or what did you do when you
13 were at the hospital?

14 A. When I first arrived at the hospital, I passed the
15 family in the waiting area and I observed some, who I
16 assumed were family members. And then I also spoke with
17 Sergeant Jones just briefly, who was taking a statement
18 from Georgia Ann Sprouce at the time. And then I spoke
19 with Investigator Hoover and Investigator Autrey.

20 Q. All right. And Sergeant Jones was talking to the
21 mother, Ann Sprouce. Was she separated, away from other
22 people?

23 A. They were separated. There was a small, what they
24 call family waiting room there in the Pediatrics ICU, you
25 know, right there close to the room. And it's a fairly

1 small room with a computer in it and a few chairs. That's
2 where he was at, taking her statement.

3 Q. Did you sit in or observe or have anything to do with
4 that statement?

5 A. I went in there briefly after going into the room and
6 looking at Minor1 .

7 Q. So you actually did a look-over of the child yourself?

8 A. I did. And I spoke with doctors and I looked at
9 Minor1 , and then I went into the family room area and
10 spoke to Sergeant Jones. And then I spoke with Ms. Sprouce
11 because Sergeant Jones had wanted me to read over the
12 statement they had taken so far to see if there was
13 anything from the scene that he was not being advised of.

14 Q. So you had some information that he didn't have and he
15 was wanting you to come in and make sure everything was
16 answered to the best of the ability at that point?

17 A. That's correct.

18 Q. And was Ms. Sprouce free to leave or to not talk to
19 you at this point in time?

20 A. Yes. She was not in custody.

21 Q. Was she a suspect of anything at the time?

22 A. No, this is just preliminary investigation at this
23 point.

24 Q. All right. And based on what she said in her
25 statement as far as who may have been at the home when the

1 child came to be in this condition, what did you do?

2 A. At that point I went to locate the boyfriend, who I
3 was told was Mr. Johnson. And I was able to locate him.
4 And then I told him that I would like to speak to him. And
5 would he be willing to talk to me and give me a statement,
6 because we were conducting our preliminary investigation
7 and that we have to talk to everybody that's involved or,
8 you know, all family members, anyone who was there.

9 Q. All right. Was he free to tell you he did not want to
10 come or he did not want to talk to you?

11 A. Yeah. I advised him that he didn't have to, but it
12 would be very helpful in the investigation and I identified
13 myself. I was wearing my badge and gun and also handed him
14 one of my cards.

15 Q. And did he agree to come and talk to you?

16 A. He did.

17 Q. And did he appear to understand who you were and what
18 you wanted to talk about?

19 A. Yes. And I advised him that I could give him a ride
20 and he agreed to ride with me.

21 Q. So he rode in your car. Is it a police car or an
22 unmarked car?

23 A. I have an unmarked Impala that just looks like a
24 normal car.

25 Q. Did he have to be handcuffed or anything like this at

1 this point or to ride with you or anything like that?

2 A. No. He was not in custody.

3 Q. Were you treating him as a suspect or as a witness at
4 this point?

5 A. He was a witness.

6 Q. So did he then come to the law enforcement center
7 with you freely and voluntarily?

8 A. Yes, ma'am.

9 Q. Did he appear to be under the influence of any drugs
10 or alcohol while you were talking to him?

11 A. No. He appeared fine on the way there. We didn't
12 talk about the case on the way there. We just made small
13 talk. And then I took him up to my office and had him sit
14 down at a chair at my desk and -- where we just casually
15 sat and talked.

16 Q. Did you feel the need to advise him of any *Miranda*
17 rights or anything like that at this time?

18 A. No. The only time that that would apply is when
19 they're in custody, and he was not in custody.

20 Q. Was he free to tell you that he wanted to go, he was
21 finished talking, that kind of stuff?

22 A. Yes.

23 Q. All right. Did he ever say anything like that during
24 this evening or this conversation?

25 A. No. He stayed and spoke with me and then gave me a

1 written statement.

2 Q. How long do you think you and Mr. Johnson spoke on May
3 the 25th?

4 A. We left the hospital somewhere around nine P.M. And I
5 returned him to Greenville Memorial Hospital and let him
6 out in the front about ten thirty, I believe it was.

7 Q. So you were with him for about an hour and a half.
8 You were able to, again, talk to him, have a free-flow
9 exchange of information?

10 A. Yes.

11 Q. He was understanding the questions you were
12 presenting?

13 A. Yes. He understood.

14 Q. And you understood what he was saying back to you?

15 A. Correct.

16 Q. And then he gave you ---

17 (WHEREUPON, State Exhibit Number 49 was marked for
18 identification.)

19 Q. I want to show you what's been marked as State's
20 Number 49. Do you recognize that?

21 A. I do.

22 Q. Okay.

23 A. That is his original statement that he gave to me on
24 the 25th of May, 2011.

25 Q. All right. And are there any alterations, deletions

1 or any amendments to that?

2 A. No, there are not.

3 Q. It's substantially in the same condition as when you
4 took it from him on the 25th?

5 A. It's in the exact condition, other than the sticker.

6 Q. Other than the State's evidence sticker on there.

7 Okay.

8 MS. HODGE: And at this point, we would move to
9 admit State's Number 49 into evidence.

10 THE COURT: Any objection?

11 MS. MANIGAULT: No objection, Your Honor.

12 THE COURT: All right. Without objection,
13 Exhibit 49 is admitted into evidence and may be published.

14 MS. HODGE: Thank you, Your Honor.

15 (WHEREUPON, State Exhibit Number 49 was admitted into
16 evidence.)

17 Q. So what was Mr. Johnson telling you about this
18 incident back on May the 25th?

19 A. Well, I started asking about the day's events, you
20 know, what time he got up in the morning, what he did. He
21 advised me that he got up about six A.M. like every
22 morning, turned on the cartoons for the kids. Went into
23 the kitchen, made a pot of tea. Fed the kids. Changed
24 their diapers, took them outside to play. And then we put
25 them down for a nap. And he said on this day that he put

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1 them down for a nap and the older sibling, Minor 2. , got up
2 before Minor 1 did. And then they were watching TV and
3 then he had to go into the bathroom. And he said while he
4 was in the bathroom that Ann hollered and said that Mino
5 , which is Minor 1 , was not breathing. And he said he
6 came out and found Minor 1 unresponsive and Ann doing CPR.

7 Q. Okay. Did he actually say that there were other
8 people still at the house in this statement?

9 A. Just Minor 2 and Ann and Minor 1 .

10 Q. Okay. I would direct you to the middle of the -- are
11 you reading from his statement or from your supplemental?

12 A. I'm reading from the statement.

13 Q. Okay.

14 A. I'm just skipping around on it.

15 Q. Okay. Well, why don't you go ahead and read it as it
16 is, word-for-word?

17 A. Okay. Today I got up at six A.M. like we do every
18 morning. I cut on the cartoons for the kids. I went in
19 the kitchen and made a pot of tea. I fixed the kids some
20 peanut butter and jelly sandwiches. After that, I changed
21 their diapers again and then took them outside to play. I
22 put Minor 1 , Minor 1 down on the ground by the sand. And
23 while I was getting Minor 2 , Minor 1 got into an ant pile.
24 I brought the kids back inside the house and wiped off the
25 ants and Ann changed Minor 1 diaper. I then laid both of

1 them down in separate rooms. Minor 2 always hits on Mino
2 and takes stuff from her, keeping her up. I did not
3 let them go outside anymore. When Minor 1 woke up, I made
4 some chicken patties and I gave Minor 1 some of the
5 chicken. Minor 2 stayed asleep until about one thirty.
6 Minor 2 got up and I played with both of them and
7 Crystal's daughter Minor 3 . She is three and a half years
8 old. I let them watch more TV and I went into the
9 bathroom. Ann hollered at me while I was in the bathroom
10 saying that Minor 1 was not breathing. I went into the
11 living room and I saw Minor 1 in the floor on her back.
12 Ann was trying to do CPR. Ann told me to help her by
13 holding her head up. I was calling the ambulance as she
14 was doing it, telling them how to get there and trying to
15 help Ann at the same time. I didn't know what else to do
16 but call the ambulance. I also tried to do CPR on Minor 1
17 and Ann was telling me how to do it. When I gave her
18 breaths, the tea came back up and the ambulance and police
19 arrived and took over. Ann said that Minor 1 choked on the
20 tea and after that, she went unconscious.

21 Q. All right. So he didn't tell you anything about going
22 to his friend Josh's house in this statement, on this day?

23 A. No.

24 Q. In his sequence of events of the incident. He didn't
25 tell you anything about Crystal and Minor 3 actually being

1 gone when this incident occurred?

2 A. No, he did not.

3 Q. Okay. He, in fact, places Minor3 at the residence and
4 he's allegedly taking care of her at the same time?

5 A. That's correct.

6 Q. He didn't tell you anything about anybody smoking any
7 marijuana or doing anything like that?

8 A. No, he did not.

9 Q. All right. And then in the next paragraph, what does
10 he go on to say?

11 A. Since we have been living with Crystal, which is
12 Crystal Inman, Minor2 has gotten meaner and will not
13 mind. She sticks her tongue out and won't do what she's
14 supposed to do. I don't believe in punishing kids. I
15 believe that you should talk to them and maybe put them in
16 the corner. Minor2 and Minor3 were fighting two days ago
17 and Minor1 got in the middle. And Minor1 hit her head on
18 the corner of the door and then fell down the drop-off to
19 the next room, right on her face. The bruises did not pop
20 up until the next morning. Ann and I have sat Minor3 down
21 and told her not to be mean to Minor1 , but she's not our
22 kid, so there ain't much I can do. Minor2 is mean to Min
23 also. The kids have these Mardi Gras beads and
24 Minor2 hit Minor1 with it. It was broken and pink with
25 little round balls. Minor2 hit her head -- hit her in

1 the forehead with it and we took it away, hoping that she
2 would not find it again, but she did. We got it back and
3 Ann threw it away. Ann got anything like the beads and
4 necklaces and threw them away so they will not hurt each
5 other anymore. Minor 1 has fell on some rocks in the back
6 yard before, too. Minor 1 also ate a sucker today, about
7 an hour before this happened. I am trying to think of
8 anything else.

9 Q. So in this paragraph, he's saying that Minor 2 and/or
10 Minor 3 hit Minor 1 ?

11 A. Yes.

12 Q. Accounting for these bruises on the head. Are you
13 asking him specifically about where all these bruises came
14 from?

15 A. Yes.

16 Q. Okay. So he's attributing them to other children?

17 A. That's correct.

18 Q. And then he's also attributing them to the child
19 falling at various time?

20 A. Yes. That's correct.

21 Q. Okay. Did he ever say when you asked about the
22 bruises that Ann put them there herself?

23 A. No, never.

24 Q. All right. How about the next paragraph.

25 A. The next paragraph says, I tried my best to save my

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1 future daughter and I can't handle losing something that I
2 love so much. I told Ann that it was our fault, what
3 happened to Minor 1 , because cups were made for kitchens
4 and not the living room. There was some heart-shaped toys
5 in the floor, like a heart-shaped bracelet at one time. I
6 don't know if she choked on that or not. I was in the
7 bathroom when this happened and I wish I could have been
8 there -- had been in there at the time to save her. Mino
9 1 is a fussy baby and so is Minor 2 . Minor 2 is
10 fussier than Minor 1 . Minor 1 will clean up her toys, but
11 Minor 2 will be over there whining. Minor 1 fusses about
12 wanting a drink or a toy but not her diaper because we have
13 it changed before she has to cry. Sometimes Ann will pop
14 Minor 1 on the hand if she will not mind. I have hit Min
15 1 on the hand when she will not go to sleep, but that is
16 all that we will do to them.

17 Q. All right. And so he's offering up some other
18 explanation here about the choking with some other bead or
19 something?

20 A. Yes.

21 Q. And then he talks about Minor 1 being fussy. Is that
22 something that was asked or is that something that was
23 volunteered?

24 A. That's something I asked him about.

25 Q. Okay. And he said that she was fussy, and Minor 2 ,

1 as well?

2 A. Yes.

3 Q. Why is that something that you ask about in cases like
4 this?

5 A. With child death investigation and possible abuse, a
6 lot of times a fussy child, the fact that they are fussy is
7 the reason for their abuse. People lose their minds, they
8 lose control.

9 Q. Lose their temper, get irritated?

10 A. Lose their temper, yes.

11 Q. And then on to the next paragraph.

12 A. The only thing I can remember was last Friday the cops
13 came to the door saying that Minor2 had been outside and
14 running around. I was in the bathroom shaving and did not
15 know that she had gotten out. I was looking for Minor2
16 before the cops got there. I think she unlocked the bottom
17 lock on the door. Minor1 was still napping at the time.
18 The cops came in and checked the house for food and stuff.
19 They told me that it better not happen again, letting the
20 kids get outside without an adult.

21 Q. So on this incident he's describing -- he's also in
22 the bathroom when ---

23 A. He's in the bathroom again.

24 Q. All right. And then the final paragraph or -- yes,
25 final paragraph?

1 A. I did not do anything to cause Minor 1 to go
2 unconscious today. I did not hit her or shake her or cause
3 what happened to her. I was in the bathroom when Ann told
4 me that Minor 1 was not breathing. Ann is a good mother
5 and she would not do anything to hurt her either. I would
6 kill anyone that tried to hurt Ann's kids. I was hollering
7 and screaming at EMS because they were saying that they
8 could not understand what I was saying. This statement is
9 true and I understand that if I do not tell the truth to
10 you, I could be criminally charged. I swear to God that
11 I'm not hiding anything from you and I plan on building a
12 swing set and taking care of my babies. End of statement.

13 Q. Now, these were not his children?

14 A. No.

15 Q. These were Ann's kids, not his babies?

16 A. That's correct.

17 Q. Okay. And he indicates in here again that Ann did not
18 do anything?

19 A. Yes, he did.

20 Q. Okay. So once you typed that statement out, he had a
21 chance to read over it, make any corrections he wanted to?

22 A. Yes. I print a copy for the witness or defendant,
23 whoever I take a statement from. I print a copy for them
24 and also print a copy for myself and I will read it and let
25 them read as I'm reading. And let them make any

1 corrections. I usually will give them a red pen and tell
2 them to circle any typos or anything that they see that
3 they didn't tell me, you know. Whatever changes they want
4 to make, I let them make that change. So it will be their
5 statement.

6 Q. And once you concluded that process, did you, I think
7 you mentioned you drove him back to the hospital?

8 A. I did.

9 Q. At that point, was he a suspect or had you intentions
10 of arresting him at this point?

11 A. No, I did not.

12 Q. Are you still gathering information for your
13 investigation?

14 A. Still in the gathering stage.

15 Q. All right. So what was your next step?

16 A. My next step was -- I was still on call at this time,
17 so I had other calls to answer. And so I -- on the 27th of
18 May, I went back to the hospital and I met with Ann again,
19 and also Coroner Cain and Investigator Laura Jones, who was
20 in homicide at the time, also were there. And we spoke to
21 Ann Sprouce again and I typed a statement on the hospital
22 computer, which was inside the family waiting room.

23 Q. All right. And during this conversation did some of
24 her story change?

25 A. Yes. And I talked to her first, before typing the

1 statement, and that was the reason for typing the statement
2 was because her story was changing. And it went from her
3 being in the room when Minor 1 started choking to now she
4 was in the kitchen. And that Mr. Johnson was in the living
5 room with the children when Minor 1 started choking.

6 Q. At this point was she becoming a suspect? Were you
7 getting concerned about her?

8 A. I was definitely starting to get concerned. She was
9 becoming a person of interest at that time.

10 Q. And how about the Defendant?

11 A. The Defendant, I had not talked to him again until
12 June the 2nd.

13 Q. All right. So you talked to him on the first night,
14 but the rest of the time you're speaking to Ann; for the
15 other times you were talking to a witness on the case, it
16 was Ann?

17 A. That's correct.

18 Q. And she gave you three or four statements?

19 A. She gave the first statement, she gave the recorded
20 statement to Investigator Autrey, and then she gave this
21 written statement. On the 27th, there was three different
22 statements from Ann.

23 Q. All right. When was the child pronounced dead?

24 A. On the 27th.

25 Q. Was this statement that you are talking about, typing

1 up Ann's statement, was that before or after the child had
2 been pronounced dead?

3 A. That was before.

4 Q. And do you know what time it was that they ended up
5 taking the child off life support.

6 A. I'll have to refer back to my report right quick.

7 Q. Was it about eleven in the morning?

8 A. It was, because I got there first thing. It was like
9 eight thirty, nine o'clock is when I first got to the
10 hospital.

11 Q. Had you been apprised of what was happening medically
12 with her as far as where this case was likely to end up or
13 what kind of was going to be the end result?

14 A. Yes. I knew when I went to the hospital on the 27th
15 that Minor 1 was going to be taken off life support.

16 Q. All right. And once she was taken off life support --
17 do you have to request or is an autopsy automatically done
18 on any child that's deceased?

19 A. Any child that's deceased. Anybody that is young. I
20 mean, you know, even age thirty-five, they would conduct an
21 autopsy on them.

22 Q. All right. Okay. And do you know when the autopsy
23 was scheduled for?

24 A. It was scheduled for the next day on the 28th.

25 Q. All right. Do you attend autopsies?

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1 A. I do. Especially in cases such as this.

2 Q. Did you attend this one?

3 A. I did.

4 Q. And when you're at the autopsy -- Dr. Michael Ward
5 performed this autopsy?

6 A. He did.

7 Q. Are you able to ask him questions and get his opinion
8 and start to form a little more evidence in your case?

9 A. Yes. He will talk to us as he's actually conducting
10 an autopsy. He will show us his findings as he's actually
11 doing the autopsy.

12 Q. So helpful for you to know where to go from that
13 point?

14 A. And sometimes we even assist as we're standing there,
15 to do things to help. So ...

16 Q. All right. So once you had learned of the autopsy
17 results, what did you do?

18 A. Once I learned of the autopsy results, I ---

19 Q. Well, let me back up. Did he rule this case a
20 homicide?

21 A. His preliminary findings were that it was a homicide.
22 And that Minor¹ died from suffocation.

23 Q. Okay. So now that you have that medical information,
24 what was your next step?

25 A. My next step was to continue with the investigation

1 and to try to determine, through all the statements that
2 were taken, exactly, you know, what is going on. My --
3 excuse me for just a second. On June the 2nd is when I
4 asked Investigator Autrey and also Deputy Wilson, who was
5 cross-training with me. I was training him in homicide. I
6 asked them to go with me to Crystal Inman's house. Since
7 she'd been talked to the first night, I felt it was
8 important since it was her house that we get a statement
9 from her, see if she had any additional information.

10 Q. All right. And is that what you did?

11 A. Yes.

12 Q. The three of y'all went there?

13 A. We did. And I actually took the written statement.

14 Q. And took a written statement from her. Okay. And I
15 don't know if it's your voice as well or the microphone,
16 but it's dropping off just a tiny bit ---

17 A. Sorry.

18 Q. --- at the end. That's okay. And I know we're
19 getting tired, ears and mouths. So you took a statement
20 from Crystal. You talked to her and you got a written
21 statement?

22 A. Yes.

23 Q. And at that point, did she direct you to -- well, was
24 Ann at her house? Was Ann still living at her house?

25 A. No, not at that time. She said she had asked her to

1 leave.

2 Q. All right. How about the Defendant, was he still at
3 Crystal's house?

4 A. No, he was asked to leave, as well.

5 Q. And there were no arrest warrants or anything out for
6 Ann or the Defendant at this time?

7 A. No, there were not.

8 Q. And did you attempt to locate Ann then and take
9 another statement from her?

10 A. Yes. Because right after we interviewed Ms. Inman is,
11 I believe, when I got a call from Coroner Cain advising me
12 that Dr. Ward had ---

13 MS. MANIGAULT: Your Honor, I'm going to object
14 to anything that the coroner or Dr. Ward said or anybody
15 else.

16 THE COURT: I sustain the objection.

17 Q. You got a call from Coroner Cain and based on the
18 information you obtained from her, what did you do?

19 A. Then we began to look for Georgia Ann Sprouce again.

20 Q. All right. And does the coroner also get the autopsy
21 results?

22 A. Yes.

23 Q. Okay. Is that part of a separate investigation that
24 they kind of conduct like a parallel investigation; is that
25 accurate?

1 A. That's correct.

2 Q. Okay. So they're apprised of certain things the same
3 as you are?

4 A. Yes.

5 Q. And do y'all share information periodically?

6 A. Yeah, we always do.

7 Q. So after you talked to Coroner Cain, you decided you'd
8 speak to Ann again; is that correct?

9 A. That's correct.

10 Q. Okay. And did you do that?

11 A. Yes. We began looking for her. Went to a location
12 where we were told she was staying with a relative. We
13 were advised that she was at the Woods Mortuary in Greer,
14 so that's where we responded to and found her there.

15 Q. Was anybody with her at the time?

16 A. The biological father, Mark Gore, was there.

17 Q. And did you ask her to come speak to you at the LEC?

18 A. I did. And she agreed to come voluntarily. She was
19 told again, you know, there was no arrest warrants. It was
20 just we needed to continue with the investigation and that
21 we needed some more information.

22 Q. And tell us about what happened at that point?

23 A. At that point, we gave her a ride in my vehicle again.

24 And it was Investigator Autrey, Deputy Wilson and myself

25 and we went back to the law enforcement center and used

1 Sergeant Jones' office to conduct the interview. And we
2 talked to her again and I advised her of the results from
3 the autopsy. And told her I was -- you know, some of this
4 is just not making sense. We need the truth. And that's
5 when she changed her statement again.

6 Q. All right. What was her demeanor during this
7 interview?

8 A. She was very -- she was crying, upset. She was --
9 seemed to be more truthful than the other interviews.

10 Q. And did she finally tell you the truth or what she
11 said was the truth?

12 A. What she said was the truth was that she was asleep
13 and that she had been smoking marijuana and that she -- the
14 reason she didn't tell us that she was asleep when she
15 awakened by Mr. Johnson saying that Mr. Minor¹ was not
16 breathing, was because of her prior dealings with DSS and
17 that she didn't want to lose her child. And that she was
18 just scared.

19 Q. Did you press her and ask her if she was, in fact, the
20 person that had injured, put all these bruises and/or
21 killed Minor¹ ?

22 A. Absolutely. I pressed her pretty hard.

23 Q. And how did she respond?

24 A. She responded by -- she was crying, you know, begging
25 and pleading with me, you know, to believe her, that she

1 would never hurt her child and that ---

2 MS. MANIGAULT: Your Honor, I object to anything
3 that he's saying that Ann Sprouce has said. She's
4 testified already.

5 THE COURT: I sustain the objection.

6 Q. So as a result of your speaking to her, pressing her,
7 did you, in fact, charge her that night?

8 A. No, I did not.

9 Q. When she gave you this third version of her events,
10 being asleep, what did you want to do at that point?

11 A. At that point, I felt that it was necessary to talk to
12 Mr. Johnson again.

13 Q. And you had not talked to him since the first night;
14 is that correct?

15 A. That's correct.

16 Q. Okay. All right. And so how did things end with Ann;
17 was she free to go?

18 A. Yes, she was. In fact, we gave her a ride back to the
19 mortuary.

20 Q. And was there something, you know, we'll be in touch
21 or how do you leave that?

22 A. I did. I told her that I would be back in touch, that
23 we were going to speak to Mr. Johnson again.

24 Q. All right. And what did you do at that point?

25 A. At that point I asked Deputy Wilson and Investigator

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1 Wynn Campbell, who is also a homicide investigator, to go
2 to the location where we were told we could possibly find
3 Mr. Johnson, and that's where they found him.

4 Q. And where was that, do you know?

5 A. That was on Pine Log Ford Road, I believe.

6 Road, Lot Number . And that's in Greenville
7 County.

8 Q. Okay. So you were not personally involved in getting
9 him to the law enforcement center?

10 A. No, ma'am.

11 Q. Okay. Investigator Campbell and Deputy Wilson?

12 A. Yes.

13 Q. And they went to that residence, is that your
14 understanding?

15 A. That's correct.

16 Q. And when did you finally meet up with the Defendant or
17 see him in person?

18 A. After we dropped Ms. Sprouce off at the mortuary, we
19 drove back to the law enforcement center and Investigator
20 Campbell and Deputy Wilson were already there with Mr.
21 Johnson.

22 Q. Was Mr. Johnson in custody at this point?

23 A. No. They were sitting around in the chair -- we have
24 -- investigators have chairs like those and they were just
25 sitting in the chairs, sitting around talking when I walked

- 1 in.
- 2 Q. And did you introduce yourself again?
- 3 A. I did.
- 4 Q. Did he recognize you?
- 5 A. He knew who I was.
- 6 Q. Remembered talking to you from before?
- 7 A. I believe so.
- 8 Q. All right. And in your opinion was he there talking
- 9 to you freely and voluntarily?
- 10 A. Yes, he was advised that it was just, again, we needed
- 11 more information.
- 12 Q. Were you able to communicate with him well on this
- 13 night?
- 14 A. Yes.
- 15 Q. All right. Do you have any idea what time it was that
- 16 we're talking now?
- 17 A. It was probably somewhere around eight, eight thirty.
- 18 Because it was in the later -- it was in the evening and it
- 19 wasn't quite dark yet, but it was starting to get dark.
- 20 Q. Okay. Have any problem understanding him or him
- 21 understanding you ---
- 22 A. No.
- 23 Q. --- as far as questions and answers went?
- 24 A. No.
- 25 Q. Did you have to repeat yourself a bunch of times?

1 A. Not at all.

2 Q. Did you have to redirect any of your questioning?

3 A. No, ma'am.

4 Q. And were his answers in response to what you were
5 asking?

6 A. Yes. They were clear and concise.

7 Q. Did he appear to be under the influence of any drugs
8 or alcohol while you were talking to him this time?

9 A. No, I didn't notice the smell of an alcoholic beverage
10 emanating from his body or dilated pupils that would be
11 consistent with someone using drugs. I didn't notice any
12 of that, bloodshot eyes or any of that.

13 Q. Slurred speech?

14 A. No slurred speech.

15 Q. Unsteady on his feet, anything like that? Did you
16 have an opportunity to see him stand or walk?

17 A. Yes. Because where they were originally at was in the
18 area where all the white collar crime investigators are.
19 And that's the big open area of the criminal investigations
20 division. My office was actually in the back and we had to
21 go all the way to the back of the office and through a
22 door. So he was able to walk just fine.

23 Q. And did he ever tell you, no, I don't think so. I
24 think I want to go or I don't think I have anything else to
25 say, anything like that?

1 A. Never.

2 Q. Never wanted to terminate the interview or stop
3 talking?

4 A. Not at all.

5 Q. And so in your opinion, he was talking to you freely,
6 voluntarily ---

7 A. Yes.

8 Q. --- knowingly?

9 A. He's not handcuffed. He's not strapped to a chair or
10 anything. He's just sitting there and we're talking
11 casually.

12 Q. Was he in the same state of mind, frame of mind, as he
13 was when you met with him back on May 25th?

14 A. Yes.

15 Q. Any marked differences between that first interview
16 you had with him for about an hour and a half and then this
17 interview?

18 A. He seemed a little less nervous than -- to me, than he
19 did the first time.

20 Q. A little bit more calm than he did the first time?

21 A. More calm. Yes.

22 Q. Okay. All right. And so what were y'all talking
23 about? Tell us what you said and what he said?

24 A. Well, I advised him that we needed to go back over
25 what he had told me the first time and the events of the

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1 day. And then I advised him that we had spoken with Ann
2 again and that there were some things we needed to clear
3 up. And some things, again, weren't adding up. And he
4 maintained his story that he had nothing to do with Minor 1
5 choking and he was in the bathroom. And the same story
6 about, you know, Ann was in the room with her when this
7 happened. She hollered for him. And we also talked a
8 little bit about the victim's father, Mark Gore. I asked
9 him about his relationship with him. And he said he didn't
10 like Mark Gore. He talked about since they'd lived with
11 Crystal Inman, that he felt that Georgia Ann had not been
12 as affectionate as she had been in the past. And he felt,
13 you know, like he wasn't getting the attention that he
14 needed. And so we continued to talk and it was pretty much
15 the same conversation. And we probably talked about an
16 hour. And the way I do things, when I'm interviewing
17 somebody, it's always trying to make them comfortable. Ask
18 them, do they need any water, do they need coffee, do they
19 need anything to eat. We're provided a credit card in the
20 homicide unit so if we need to buy food for someone, we
21 will, you know. He refused anything to drink; he refused
22 food. So I said, well, you know, would you like to go to
23 the bathroom and he said he would. So I took him to the
24 bathroom. And that's the upstairs -- I took him to the
25 upstairs employee bathroom because the only public restroom

1 is downstairs and it's a long walk, so I just took him to
2 the employee bathroom.

3 Q. All right. Do you have to have a key card or
4 something to get in that one?

5 A. No, but it's -- the only -- you can't just let the
6 public go in there. You have to go in there with them. We
7 don't let anyone ---

8 Q. That's your policy?

9 A. That's our policy.

10 Q. Okay. So did you enter into the man's bathroom with
11 him?

12 A. I did.

13 Q. All right. And are there urinals or stalls or what?

14 A. There's two urinals and one stall and he used one of
15 the urinals.

16 Q. And did you observe him the whole time in the
17 bathroom?

18 A. I was in there with him. I didn't, you know, sit
19 there and stare. I was in there with him. And I could
20 observe his movements.

21 Q. Okay. All right. And did he do anything unusual in
22 the bathroom that gave you cause for concern?

23 A. No.

24 Q. And after using the bathroom, did y'all go back to the
25 interview room or to the area, your office?

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1 A. We went back to my office, yes.

2 Q. All right. And what happened at this point?

3 A. Went back to my desk, and I'd started talking to him
4 about being truthful. And was he being truthful about
5 being in the room with the victim when she went
6 unconscious. And, you know, I advised him of my findings
7 earlier in the day after talking with Ann. And that is
8 when Mr. Johnson started bending over in his chair and just
9 did like that -- just did like that, and just, you know, it
10 was like he was just -- I could tell he was sad. He was
11 sobbing a little bit. And he says that accidents happen
12 sometimes. And I told him that I understood. And I was
13 trying to be ---

14 Q. Can you speak in the microphone?

15 A. Yeah. I'm sorry. But I was -- he told me that
16 accidents happen sometimes. And I told him that I know
17 accidents happen sometimes. And I was being sympathetic
18 with him. I said, you know, sometimes things do happen
19 that, you know, we may not mean to happen, you know. Tell
20 me what you're talking about. And after pausing Mr.
21 Johnson stated that he got angry at Minor 1 and that he
22 threw a toy across the room and hit her in the head with
23 it. And he said that he tried to make her stop crying and
24 that she wouldn't. And that he was afraid he was going to
25 wake Ann up or she was going to wake Ann up so he held his

1 hand over the victim's mouth until she stopped crying. And
2 that's when he said that she stopped breathing. And I got
3 him to demonstrate what he was talking about.

4 Q. At that point, you got him to demonstrate?

5 A. Yes.

6 Q. And what did he show you?

7 A. And then he showed me that he held his hands over her
8 nose and mouth and then I said, okay, that --- at that
9 point in time, I stopped the interview. And that's when I
10 knew -- at that point in time, he became in custody and
11 that's when I read him his -- when I printed up the *Miranda*
12 Warning Form and then I read him his rights.

13 Q. All right. And I believe that was already admitted
14 into evidence, State's Number 40. Tell us how you advised
15 him of his rights? What's your normal procedure?

16 A. My normal procedure is once I print out the form, even
17 though I know their name, I ask them their name, their
18 first, middle and last name, their date of birth and their
19 Social Security Number. And there's not a place for that
20 so I write it in there. I document the date and the time
21 and the case number, and when I start. And I started this
22 rights advisement at ten-oh-two, which the form says
23 twenty-two-oh-two, which that's military time for ten-oh-
24 two, P.M. And I have it where -- he was sitting like right
25 here at my desk. And I had it here, letting him read as I

1 was reading it to him. And then I go over each sentence.
2 Before we ask you any questions, you must understand your
3 rights. I made sure that he understood that. Then I had
4 him put his initials in. And then I read the next
5 sentence, doing the same until we get to the bottom of
6 where it's his choice whether to waive his rights to talk
7 or not. And then I explain to him that if he wants to talk
8 to me without an attorney present, that I must read this
9 bottom portion to him. And then if he wishes to talk, that
10 that would be at the time he would sign the form. So the
11 bottom portion of this form reads, I have read this
12 statement of my rights and I understand what my rights are.
13 I'm willing to make a statement and answer questions. I do
14 not want an attorney at this time. I understand what my
15 rights -- I understand and know what I'm doing. No
16 pressure or threats have been made to me and no coercion of
17 any kind has been used against me. And I circle coercion,
18 because some people don't know what that word means, and I
19 advise them that that means there's no trickery, there's
20 no, you know, we're not going to get them to self-
21 incriminate themselves by using some kind of, you know,
22 dirty tactics or whatever you want to call it. And make
23 sure they understand that. And then I had him initial it.
24 Q. Okay. And so did he initial each line saying he
25 understood the rights that you'd advised him of?

1 A. He did.

2 Q. And then he signed the form saying that he wanted to
3 talk to you knowing that he didn't have to?

4 A. Yes.

5 Q. And knowing that he could have a lawyer if he wanted
6 to?

7 A. Yes.

8 Q. Did he ever ask you at any time to stop talking?

9 A. No.

10 Q. I don't want to talk anymore, I'm done?

11 A. No.

12 Q. After you advised him of his rights, he never asked to
13 stop?

14 A. No, he did not.

15 Q. Okay. How about did he ask to have an attorney
16 present?

17 A. He never asked for an attorney.

18 Q. Did he give any kind of even just, equivocal, maybe I
19 should have a lawyer or what do you think, anything like
20 that?

21 A. No, ma'am.

22 Q. No mention of that?

23 A. No mention at all.

24 Q. And he wanted to talk to you freely and voluntarily?

25 A. He did.

1 Q. And did the conversation continue as it had been for
2 the previous hour and a half?

3 A. It did.

4 Q. And at that point did you ask him to go back over a
5 portion of the story or how did that go?

6 A. I did. We began a suspect defendant's statement at
7 this time. And he was read his rights again, which is at
8 the top portion. I believe Investigator Autrey read it. I
9 believe it's up here. We went over that again. And asked
10 him again, you know, was he doing this, you know, not under
11 the influence of any drugs or alcohol. He said he was not.
12 He gave permission for Investigator Autrey to type his
13 statement. And that he was giving it to us freely. And
14 then he began talking about -- would you like me to read
15 it?

16 Q. I think it's already read into evidence.

17 A. Okay.

18 Q. So I don't know that we need to necessarily ---

19 A. But he began through the day and then got to the part
20 where he admitted to holding his hands over Minor 1's mouth
21 until she stopped breathing.

22 Q. Okay. Did you ever ask him or did you go back to the
23 first statement and ever say, man, you told me these things
24 at first. And now you're telling me this. Did you ever go
25 like comparison?

- 1 A. Not at this point.
- 2 Q. Or you just are asking him to tell you?
- 3 A. I'm asking him to give us a truthful statement this
4 time.
- 5 Q. Okay. All right. And once he gave that statement,
6 finished typing it up, he had an opportunity to read over
7 it? You went over it with him?
- 8 A. Went over each sentence, had him initial at the
9 beginning and ending of each paragraph, knowing that he
10 understood before I had him sign it.
- 11 Q. And did he make any changes or corrections to that?
- 12 A. He did not.
- 13 Q. And during this time, is he still alert, talking to
14 you, y'all are able to communicate?
- 15 A. Yes.
- 16 Q. Anything change about his mental state or affect from
17 that point forward?
- 18 A. He was upset.
- 19 Q. Was he more upset, saying ---
- 20 A. He was more upset. Like I said, he'd been sobbing and
21 appeared to be remorseful.
- 22 Q. And at that point did you take him into custody right
23 there?
- 24 A. He was in custody at that point.
- 25 Q. Right. He was not free to leave?

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1 A. He was not free to leave.

2 Q. All right.

3 A. He wasn't handcuffed, but he was not free to leave.

4 Q. All right. Did you obtain a warrant for his arrest?

5 A. Yes. I walked over to the night magistrate and

6 obtained a warrant for his arrest.

7 Q. All right. And did you then serve it on him?

8 A. Yes. Actually, Investigator Autrey did.

9 Q. And when you do that, they do come into your physical
10 custody; is that right?

11 A. Yes. He was handcuffed at that point in time and then
12 taken over to the detention center.

13 Q. All right. The detention center located next to the
14 law enforcement center offices?

15 A. Yes. It's a walk from my office.

16 Q. Okay. Was he making any statements to you during the
17 arrest process and/or the booking process?

18 A. He did. He continued to say things during the rest
19 of the procedures, about wishing that God had never created
20 him, that he did not deserve to live. I asked him if he
21 was suicidal and he stated that he would never kill
22 himself, but he knew that someone in jail will kill him
23 because of what he'd done. He said that he did not want
24 people to be mean to him or not to like him because he was
25 not a bad person.

1 Q. As far as him being placed in any certain location in
2 the detention center upon booking, did he ask you for some
3 specific place?

4 A. He did. He asked to be placed in isolation, which I
5 advised the detention center that he should be watched for
6 possible suicidal thoughts.

7 Q. All right. But why did he ask to be put in isolation?

8 A. Well, he again was afraid that people would find out
9 what he was there for and he was afraid they might hurt
10 him.

11 Q. So he was asking for a little protection?

12 A. Yes.

13 Q. Once you booked him into the detention center, did
14 that end your involvement on this date with your
15 investigation?

16 A. It did on this date.

17 Q. And what was the next step?

18 A. The next step was to deal with Georgia Ann Sprouce,
19 which I obtained a warrant for her on June the 7th for
20 homicide by child abuse, aiding and abetting, and also for
21 after the fact.

22 Q. Accessory after?

23 A. Accessory after the fact.

24 Q. And did you personally serve those warrants or were
25 you present when the warrants were served on her?

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1 A. Deputy Hawkins from the -- Craig Hawkins from the
2 warrant division, he actually located Ms. Sprouce and
3 served the warrants on her.

4 Q. And when was she arrested?

5 A. On June the 8th of 2011.

6 Q. So about five days later?

7 A. That's correct.

8 Q. Did you ever attempt to interview her again after she
9 was arrested?

10 A. I did not.

11 Q. And once she was arrested, did that end your
12 investigation in this case?

13 A. It did.

14 Q. Thank you. Let me make sure all my exhibits are moved
15 in.

16 MS. HODGE: Madam Court Reporter, am I ---

17 MADAM COURT REPORTER: You've got them all.

18 MS. HODGE: Okay.

19 Q. Please answer any of Ms. Manigault's questions.

20 A. Yes, ma'am.

21 THE COURT: You may cross-examine the witness.

22 MS. MANIGAULT: Thank you, Your Honor.

23 **CROSS-EXAMINATION**

24 **BY MS. MANIGAULT:**

25 Q. Sergeant Miller, you did a -- what you call a report

1 on your June 2nd interview with James Johnson?

2 A. Yes, ma'am.

3 Q. And do you have a copy of your report up there?

4 A. I do. Let me locate it. I have two from June the
5 2nd.

6 Q. You got it?

7 A. Yes, ma'am.

8 Q. I want to ask you to look at page two, the last
9 paragraph and then read over to page three, the first
10 paragraph in that page. Just review it to yourself.

11 A. I have two from June the 2nd. One was where we went
12 and talked to Ms. Sprouce. And then the other one is where
13 we went and located Mr. Johnson.

14 Q. Okay. This is what I'm talking about with Mr.
15 Johnson. It says James Johnson. Have you got that one?

16 A. Okay, yeah. I've got that one right here.

17 Q. Okay. If you would review the last paragraph on page
18 two and the first paragraph on page three to yourself.

19 A. (Reviewing document.) Okay.

20 Q. Okay. And then actually go back to page two and
21 review the paragraph before that starts with, I then asked,
22 which would be the second paragraph on that page.

23 A. Okay.

24 Q. All right. Did James Johnson tell you on June 2nd
25 that Ann was biting both children?

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1 A. Yes, he did.

2 Q. All right. And so the response to the question did
3 she cause any of the marks on the children that you
4 answered no, would that be an accurate answer?

5 A. I had no evidence at that time that the child had been
6 bitten.

7 Q. Okay. This is on June 2nd. And you went to the
8 autopsy?

9 A. I went to the autopsy, yes, I did.

10 Q. And was there any mention of bites on the child's
11 shoulders, back or any part -- teeth marks?

12 A. Not that I recall. There could have been, but not
13 that I recall.

14 Q. All right. But Mr. Johnson did tell you about that on
15 June 2nd?

16 A. Yes, ma'am.

17 Q. All right. And up in the first paragraph, the last
18 four lines, please start with Ann said.

19 A. Yes.

20 Q. Have you read those four lines?

21 A. Hold on just one second. Yes.

22 Q. Okay. And Mr. Johnson did tell you that he had
23 forgotten to tell you that they had dropped him off at his
24 friend's house that same day?

25 A. Yes, he told me that in this statement.

1 Q. Okay. That he'd forgotten that in the first
2 statement?

3 A. Yes, ma'am.

4 Q. Now, was there anywhere in the statement -- you just
5 testified that Mr. Johnson got up and -- well, strike that.
6 You testified that Mr. Johnson demonstrated by holding his
7 hand over his nose and mouth?

8 A. No, not over his. He just showed me how he had his
9 hands.

10 Q. Okay. What were you talking about then?

11 A. He showed me that he had his hands over Minor 1's nose
12 and mouth like this.

13 Q. Okay. And in your report does it say where she was
14 lying down or standing up or sitting in his lap or anything
15 like that?

16 A. It just says that he picked her up and tried to make
17 her stop crying.

18 Q. Okay. So you don't put necessarily everything in your
19 report that you testify to?

20 A. Not always.

21 Q. All right. Now, I believe you testified that you
22 talked to both Ms. Spruce and Mr. Johnson on the 25th at
23 the hospital, when you arrived?

24 A. No, I did not talk -- well, yes, eventually I went and
25 found him and took him to my office.

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1 Q. And that statement is in that you read to the court's
2 hearing. And he was a witness, victim, suspect, what was
3 he on the 25th?

4 A. The 25th he was just a witness.

5 Q. All right. When you talked to him on June 2nd, what
6 was he at that point? Was he a suspect?

7 A. He was a person of interest, just as Ms. Sprouce was.

8 Q. Okay. Now, on June 2nd when -- you talked to Ms.
9 Sprouce first that day; correct?

10 A. Correct.

11 Q. And then you talked to him, to Mr. Johnson?

12 A. Correct.

13 Q. All right. And were you giving him information that
14 Ms. Sprouce had told you during that interview?

15 A. Eventually.

16 Q. Okay. And when did the coroner rule that the death
17 was homicide, what date?

18 A. That was June the 2nd.

19 Q. June 2nd?

20 A. Yes.

21 Q. Well, your previous testimony said May 28th, when the
22 autopsy was done?

23 A. That was preliminary. He'll do a preliminary but then
24 he'll -- when Dr. Ward does his report, it becomes final,
25 he does his final report.

1 Q. Okay. So he did a preliminary finding that the case
2 was a homicide?

3 A. Correct.

4 Q. All right. And you knew that, the preliminary finding
5 because attended the autopsy?

6 A. I knew it was a preliminary finding. But I -- there's
7 other things they have to do before they can give a final
8 ---

9 Q. I understand that. But you knew it was a preliminary
10 finding, is the question?

11 A. Correct.

12 Q. All right. Then you picked up Mr. Johnson as a person
13 of interest, not a suspect?

14 A. Correct.

15 Q. All right. And you talked to him about an hour, hour
16 and a half; correct?

17 A. Yes.

18 Q. All right. You said that you picked him up and you
19 started talking to him maybe eight or eight thirty at the
20 law enforcement center?

21 A. Yes. Investigator Campbell and Deputy Wilson picked
22 him up on Pine Log Ford Road and then I came to the office
23 and that's when I met with him.

24 Q. Okay. Your initial contact was between eight and
25 eight thirty?

1 A. Yes, ma'am.

2 Q. All right. And I don't know the State's Exhibit, but
3 the exhibit where the State has entered for -- rights form.
4 This says June the 2nd. That's the rights form that you
5 used for James Johnson?

6 A. Yes, ma'am.

7 Q. And the time listed on that is twenty-two-oh-two.
8 What does that mean?

9 A. That is ten-oh-two P.M.

10 Q. Okay. So you -- so that verifies you had talked to
11 him between an hour and two hours before you advised him of
12 his rights?

13 A. That's correct.

14 Q. Now, at what point did you offer to take Mr. Johnson
15 -- allow him to use the restroom?

16 A. We're probably been talking about an hour, hour and a
17 half.

18 Q. And I think you testified that you accompanied him
19 into the men's room?

20 A. That's correct.

21 Q. When you came back from the men's room, you took him
22 back to your office; correct?

23 A. Yes, ma'am.

24 Q. What's the size of your office space?

25 A. There's six investigators that were in that office.

1 It has its own door. There's six hatches that we use for
2 desk so if you can imagine that. It's not a very large
3 room, but we were the only officers there at the time.

4 Q. So when you testified that you walked him back to your
5 office, you're talking about you walked him back to an area
6 of that space?

7 A. Yes, ma'am.

8 Q. Okay. So it was not a separate room?

9 A. It is its own -- well, it's -- it has a door that
10 separates it from the rest of the investigations division.

11 Q. Okay. So that room still holds six people?

12 A. Yes.

13 Q. Okay. Got you. Thank you. And when you went back in
14 to talk with him, he gave you additional information and
15 you stopped the interview?

16 A. That's correct.

17 Q. And you were telling the Court that is the point where
18 he became a suspect?

19 A. That is the point where I knew he was in custody.

20 Q. Okay. And you testified earlier on the May 25th day
21 he went voluntarily?

22 A. Yes, ma'am.

23 Q. Came voluntarily with you. Was there any indication
24 on June 2nd that he did not come voluntarily with you -- to
25 you with the other officers?

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1 A. No. Their statements to me were that he came free and
2 voluntarily and they advised him that he did not have to
3 come.

4 Q. Okay. Now, did you notice -- was there any indication
5 that Mr. Johnson was taking anything, drugs, legal or
6 illegal?

7 A. No, as I stated before I didn't notice anything.

8 Q. And you've already testified that you smelled no
9 alcohol?

10 A. That's correct.

11 Q. You testified that he was calmer than he was on May
12 25th? Is that accurate or am I wrong?

13 A. Yes. At first, he was. He was more calm.

14 Q. He was calmer. But did Mr. Johnson ask you for an
15 attorney?

16 A. No, ma'am.

17 Q. He never stopped you during the two and a half hours
18 to tell you that he needed -- he wanted an attorney?

19 A. No, ma'am.

20 Q. All right. I believe you testified that after you had
21 given him his rights, he continued to want to talk with
22 you?

23 A. Yes, ma'am.

24 Q. And he continued to talk with you for how long after
25 that?

1 A. Probably another hour or so. It took that long to
2 type the statement.

3 Q. All right. So that makes it about three and a half
4 hours?

5 A. Yes.

6 Q. And he never asked to go to the restroom or something
7 to drink until you invited him to go?

8 A. No, he did not. That's just standard procedure that I
9 always follow.

10 Q. Right. I understand that. Now, on State's Exhibit
11 Number -- I think it's 41.

12 A. Yes, ma'am.

13 Q. On 41, you took a statement and he says -- the third
14 paragraph says, I was in the bathroom, but --- did you ask
15 him -- did you try to have him clarify what he was saying
16 by I was in the bathroom?

17 A. I believe he told me that he was using the bathroom.

18 Q. Okay.

19 A. When he said he was in the bathroom.

20 Q. All right. The next statement down says, accidents
21 happen. Did you ask him to explain that?

22 A. That's when I told him, I said -- again, I said, I
23 know accidents happen. And then that's when we asked him
24 to tell us what he's speaking of. And that's when he began
25 to tell us again about what he meant by it.

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1 Q. Okay. And in here it says, I would never hurt a kid.

2 The next line. The one line.

3 A. Yes.

4 Q. All right. At that time, were you aware of how long
5 the parties were together -- had been together?

6 A. I knew they'd only been together a short time.

7 Q. Okay. There is a line, circled coercion on the rights
8 form, which was number 40. Did you circle that or did Mr.
9 Johnson circle that?

10 A. I circled it, pointed out that word.

11 Q. And why did you circle that?

12 A. So I make sure that everyone understands what coercion
13 means.

14 Q. Okay. And why would you have to explain to anyone
15 about trickery. Do the police try to trick somebody ---

16 A. No. I want them to know that that's not what I'm
17 about. I explain to them that I will not try to trick them
18 into anything, that I just want their version of what
19 happened and their statement.

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

21 THE COURT: Any redirect?

22 MS. HODGE: No, Your Honor.

23 THE COURT: All right. Thank you, officer. You
24 may step down.

25 Mr. Foreman, ladies and gentlemen, I think you've

1 worked enough today. We're going to take an evening break.
2 I remind you again the importance of maintaining the purity
3 of the process. I don't know if there's going to be any
4 news coverage or folks wanting to talk to you about this
5 case. Remember while the case is in progress, you're not
6 to be influenced. You're not to listen to any news or read
7 any newspapers. Let your family or loved ones retain any
8 of that that you might think would be of interest, but
9 you're going to make a decision on what you hear inside
10 this room, not on the airwaves or through any other source.
11 That's the commitment you've made to these parties. I know
12 you'll fulfill that commitment.

13 Let's be ready to start back at nine o'clock in the
14 morning. Everyone be here and we'll be ready to proceed
15 with our next witness. I hope you have a good evening.
16 See you back tomorrow.

17 (WHEREUPON, the jury exited the open court at
18 approximately 5:43 P.M.)

19 THE COURT: All right. We'll be at ease until
20 nine o'clock in the morning.

21 (WHEREUPON, the court stood at recess in this case for
22 the day.)

23 **June 5, 2013**

24 THE COURT: Is everybody ready to proceed?

25 MS. HODGE: Yes, sir.

1 MS. MANIGAULT: Yes, sir.

2 THE COURT: If our jury's ready you can have them
3 come in.

4 (WHEREUPON, the jury entered the open court at
5 approximately 9:08 A.M.)

6 THE COURT: Good morning, ladies and gentlemen.

7 We are now ready to proceed with the trial of the case.

8 Solicitor, you may call your next witness.

9 MS. HODGE: Thank you, Your Honor. The State
10 calls Dr. Michael Ward.

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

14 THE WITNESS: I do.

15 THE CLERK: Please have a seat. State your name
16 for the record.

17 THE WITNESS: Michael Eugene Ward.

18 MICHAEL EUGENE WARD, M.D.,

19 BEING FIRST DULY SWORN, TESTIFIED AS FOLLOWS:

20 DIRECT EXAMINATION

21 BY MS. HODGE:

22 Q. Dr. Ward, what's your profession?

23 A. I'm a physician and a forensic pathologist and I'm
24 employed as the Chief Medical Examiner for Greenville
25 County.

1 Q. All right. And can you give us your educational
2 background and prior work history?

3 A. I received my Bachelor's Degree in Biology from the
4 University of Alabama. I have a Master's Degree in
5 Forensic Science from the University of Alabama in
6 Birmingham. I received my Medical Degree from the
7 University of South Alabama in Mobile. I did a four-year
8 Anatomic Pathology Residency at the Medical University of
9 South Carolina in Charleston. And a one-year Fellowship in
10 Forensic Pathology at the University of New Mexico in
11 Albuquerque. I'm Board Certified by the American Board of
12 Pathology in both Anatomic and Forensic Pathology. I
13 worked two years as an Associate Medical Investigator in
14 Albuquerque following my Fellowship. And I've been here in
15 Greenville as the Chief Medical Examiner for eighteen
16 years.

17 Q. What are your primary duties as Chief Medical
18 Examiner?

19 A. My responsibilities are to investigate deaths that
20 occur in Greenville County to determine cause and manner of
21 death.

22 Q. And how do you go about doing that?

23 A. Using medical background, we generally do what we call
24 an autopsy, which is a detailed physical examination
25 performed on someone who has passed away. Following the

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1 autopsy and gathering that information, along with
2 historical information, we determine the cause of death.

3 And through investigation, the manner of death.

4 Q. How many autopsies do you think you've performed in
5 your career?

6 A. Well over five thousand.

7 Q. Have you been qualified in courts of law here in South
8 Carolina or any other States in regard to forensic
9 pathology?

10 A. Yes, I have.

11 Q. And approximately how many times have you been
12 qualified as an expert?

13 A. Over a hundred times.

14 Q. All right.

15 MS. HODGE: At this time, we would move to admit
16 Dr. Ward as an expert in forensic pathology.

17 THE COURT: Any voir dire or any objection?

18 MS. MANIGAULT: None, Your Honor.

19 THE COURT: All right. Without objection, he'll
20 be treated as an expert in forensic pathology.

21 MS. HODGE: Thank you, Your Honor.

22 THE COURT: You may proceed.

23 MS. HODGE: Thank you, Your Honor.

24 Q. Dr. Ward, did you conduct an autopsy on May the 28th,
25 2011?

1 A. Yes, I did.

2 Q. And who was the victim in that case?

3 A. The autopsy was performed on Minor 1

4 Q. And how old was Minor 1 ?

5 A. She was twenty months of age at the time of autopsy.

6 Q. Tell the jury what your normal process in conducting
7 an autopsy and then we'll go specific to Minor 1 .

8 A. The normal process is to perform an external
9 examination, which is to look at the body as it's received
10 in the autopsy facility, document any findings that are
11 present on the outside of the body that may represent
12 natural disease, congenital abnormality in the case of a
13 child like this or any trauma. We diagram that on paper,
14 as well as photographically. After the external
15 examination, we perform an internal examination, which is
16 basically a dissection of the head, thorax and abdomen.
17 And in this case, the back. Again, looking for any natural
18 disease that may be present, but mostly to document any
19 injuries that are present on the inside of the body that
20 may correspond to injuries on the outer surface of the
21 body.

22 Q. And those -- the findings from those two types of
23 exams, the external and the internal, play into your
24 determination of what the cause and manner of death is for
25 the child?

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1 A. That is correct.

2 Q. And did you prepare a diagram in the case involving

3 Minor 1 ?

4 A. I did.

5 Q. Do you have it with you?

6 A. I do. There is a diagram that is four views, front

7 back, right and left side. And then there is a diagram

8 that is four views of the head, so front, back, left and

9 right sides.

10 Q. All right. And these are the originals that you made

11 during the autopsy or near in time to the autopsy?

12 A. Yes, they are.

13 Q. Any alterations, deletions, admissions from these

14 pages since you've conducted the autopsy?

15 A. No, ma'am.

16 (WHEREUPON, State Exhibit Numbers 50 and 51 were

17 marked for identification.)

18 Q. And State's Number 51 is the diagram of the body and

19 State's Number 50 is the diagram of the head?

20 A. That is correct.

21 MS. HODGE: At this time, we moved to admit

22 State's 50 and 51.

23 THE COURT: Any objection?

24 MS. MANIGAULT: None, Your Honor.

25 THE COURT: Without objection, Exhibits 50 and 51

1 are admitted and may be published.

2 (WHEREUPON, State Exhibit Numbers 50 and 51 were
3 admitted into evidence.)

4 MS. HODGE: Thank you.

5 Q. Okay. So now walk us through, please, Dr. Ward, what
6 you did in regard to Minor 1 . And if you would
7 like to tell me which diagram I should put up first, that
8 would ...

9 A. I would begin with the head diagram.

10 Q. Head diagram, State's Number 50.

11 MS. HODGE: Madam Bailiff, can you turn off one
12 little light, please? Thank you.

13 A. State's Exhibit 50 is a diagram showing four views of
14 the head. On the diagram is documented various injuries
15 that were present on Minor 1 . Beginning on the right side
16 of her face, there are two separate, yet distinct areas of
17 bruising overlying the zygomatic part of the cheekbone here
18 on the right side. A bruise here and a bruise here. On
19 the left side are two separate areas of bruising within the
20 region of the left temple. On the forehead, on the right
21 side of the forehead was a patterned injury consisting of a
22 bruise with a skip space, a bruise with a skip space.
23 Here, which was one point four inches in length and here,
24 which was one inch in length. This is an area of pattern
25 bruising looking like -- it looked like a beaded pattern,

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1 if you will, such that the object that caused this was
2 circular, then a skip, circular and a skip. Much like a
3 beaded necklace, if you would. On the central forehead,
4 just above the bridge of the nose, is a almost one inch in
5 length contusion, and a separate contusion is present right
6 in the middle of the forehead. Here at the inner portion
7 of the left eye is a bruise that extends from here down
8 beneath the left eyelid, one inch in length. And it's a
9 little bit difficult to see; there's a bruise, just above
10 the right lip on the skin portion above the lip. And then
11 also a bruise involving the lip portion of the very central
12 portion of the lip. What is not diagramed is on the inside
13 of the mouth. On the mucosa or the inner surface of the
14 lip, where if I press my lip against my teeth, that part
15 would impact my teeth, there was an area of bruising
16 involving the central portion of the lip, just below this
17 area, but in an area that would correspond to the
18 underlying two front teeth. Also present on the inside of
19 the mouth involving the upper lip is an anatomical
20 structure we call the frenulum. And the frenulum is this
21 little piece of tissue that attaches the lip to the upper
22 gum. It's in the very midline of your lip. The frenulum
23 on Minor 1 of the upper portion of her lip was torn. So
24 the tissue was torn and there was a small amount of
25 hemorrhage within the mucosa of the inside of her mouth.

1 After the external examination is performed and documented
2 and photograph, then we proceed to the internal
3 examination. Would you like to go there?

4 Q. Let me stop you as far as speaking about the bruising
5 of the lip and the torn frenulum. Do you also take
6 photographs during your autopsy?

7 A. Yes, I do.

8 Q. And do you take photographs of everything you do or --
9 as far as the entire autopsy procedure or just certain
10 pertinent parts?

11 A. On children, specifically, we photograph the total
12 body surface, so front, back, left and right sides. And
13 then we focus in on any injuries that we may find. So all
14 of these injuries would have been separately documented, as
15 were the injuries to the inside of the mouth..

16 (WHEREUPON, State Exhibit Number 52 was marked for
17 identification.)

18 Q. I'm showing you what's been marked State's Number 52.
19 What is that a photograph of?

20 A. It's a photograph of Minor1 . It has her distinct and
21 unique autopsy number A-11-212. And it is a photograph of
22 the upper inside of the upper lip showing the contusion or
23 the bruising of the mucosa and the torn frenulum.

24 Q. And that's a true and accurate representation of how
25 she looked at the time you took this photo?

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1 A. It is. .

2 MS. HODGE: We would move to admit State's Number
3 52?

4 MS. MANIGAULT: There's no objection, Your Honor.

5 THE COURT: Without objection. It may be
6 admitted and published.

7 (WHEREUPON, State Exhibit Number 52 was admitted into
8 evidence.)

9 Q. If you'll just tell us again which portions of her
10 mouth we're talking about and what ---

11 A. So for orientation, here are the eyes. This is a tag
12 that we use to demonstrate her autopsy number, the nose.
13 And this is the oral cavity. This is the upper lip, which
14 has been everted so that we're now looking at the inside of
15 the upper lip. Here are the two maxillary incisors or the
16 two front teeth. Here's an area of hemorrhage or bleeding
17 into the mucosa of the upper lip. And you can see that
18 this would correspond directly with the teeth beneath. And
19 right here is the frenulum. And this frenulum, although it
20 doesn't show it very well in a black and white photograph,
21 this frenulum is torn and there's hemorrhage right there
22 within the mucosa of the mouth within the region of the
23 frenulum.

24 Q. Would that tearing of the frenulum cause bleeding
25 inside the mouth?

1 A. Both this one and the tearing of the frenulum would
2 cause bleeding, yes.

3 Q. What does the tearing of the frenulum signify to you
4 during your autopsy?

5 A. That there was pressure placed against the upper lip,
6 basically covering the mouth, with pressure placed here,
7 causing bruising of the lip and then an upward displacement
8 of that pressure as this tissue is moved upward, tearing
9 the frenulum. So basically, pressure over the mouth. Not
10 just downward pressure, but pressure that ends up also
11 moving -- exerting itself upward, causing that tissue to
12 shift upward and to tear.

13 Q. Does it take a certain amount of force to do that?

14 A. Yes, it would. It would certainly take a fair amount
15 of pressure, holding the mouth closed, over the mouth and
16 then shifting or shoving the upper lip upward.

17 Q. And is that an injury that you have seen in your
18 experience with any type of CPR, resuscitation techniques?

19 A. Not with CPR, no, ma'am.

20 Q. All right. Let's go back to your -- I guess, did you
21 finish with State's Number 50, the head diagram? Have we
22 completed that?

23 A. That's all the external diagrams.. There's a
24 description of the internal injuries if you're ready to do
25 that.

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1 Q. Sure.

2 A. As part of the autopsy, not only do we do the external
3 examination, but we also perform an internal examination.

4 A performance of the internal examination of the head
5 basically involves an incision to the posterior portion of
6 the scalp here, with reflection of the skin forward. So
7 basically, we end up looking at the undersurface of the
8 scalp. When we looked at the undersurface of Minor 1's
9 scalp, within this region here and along the front, there
10 was a continuation of this beaded type injury that were not
11 visible externally but were visible internally. So there
12 were five separate and distinct patterned contusions of the
13 undersurface of the skin, much like these that were present
14 in this direction here, on the undersurface of the scalp.

15 Q. Did Minor 1 have hair covering the top of her scalp?

16 A. Yes, she did.

17 Q. Did you take photographs of the injuries underlying
18 the scalp?

19 A. Yes, we did.

20 (WHEREUPON, State Exhibit Numbers 53 and 54 were
21 marked for identification.)

22 Q. I show you State's Number 53 first. What is that?

23 A. State's Exhibit 53 is a photograph of the right side
24 of Minor 1's head, with her hair slightly pulled up,
25 showing the previously described contusions of the right

1 forehead.

2 Q. And then what is State's Number 54?

3 A. State's Exhibit 54 is a photograph of the undersurface
4 of the scalp, the frontal scalp, showing the multiple
5 beaded injuries to the scalp itself.

6 Q. And are these true and accurate representations of how
7 she looked at the time of autopsy, aside from the fact that
8 they're black and white like the other photographs?

9 A. They are, yes.

10 MS. HODGE: At this time, we'd move to admit
11 State's 53 and 54.

12 THE COURT: Any objection?

13 MS. MANIGAULT: None, Your Honor.

14 THE COURT: Without objection. It may be
15 published.

16 (WHEREUPON, State Exhibit Numbers 53 and 54 were
17 admitted into evidence.)

18 Q. State's Number 53. This is -- go ahead.

19 A. I'm sorry. This is a photograph of the right side of
20 the head of Minor1. Again, her unique autopsy number.

21 Her right eye, eyebrow, and basically the hairline here.

22 An area of bruising here. And, again, you don't represent

23 -- it's not represented well in this photograph, but there

24 was a beaded type pattern of injury through this region

25 here. But, again, there's a lack of injury that we see up

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1 within the hairline that will be demonstrated on the
2 reflection of the scalp.

3 Q. And I'm showing you State's 54?

4 MS. HODGE: What's with this glare here? Let me
5 try turning out one more light, Madam Bailiff.

6 Q. Okay. Well, I'll walk around and show the jury, if
7 you want to just ---

8 A. For orientation, this is the top of the head with the
9 scalp removed. This is the junction of the scalp with the
10 underlying skull.

11 Q. Right.

12 A. And this is the scalp that has been reflected forward.
13 So this is the scalp edge. And beneath the scalp now is
14 the nose and the eyes. And what you'll see when it's
15 demonstrated to you, is that going through the scalp here
16 are at least five separate and distinct areas of contusion
17 in a beaded-like pattern, where there's a bruise, skip
18 space, bruise, skip space, bruise. Again, traversing
19 across the scalp in this fashion.

20 MS. HODGE: Madam Bailiff, if you would turn on
21 the lights, I'm just going to pass the exhibit.

22 Q. If you would, please, continue on Dr. Ward?

23 A. The next step in this process would be to remove the
24 skull cap, basically the bones that cover the skull, in an
25 effort to view and retrieve the brain. There was no trauma

1 to the -- what we call the calvarium, or to the skull. And
2 once we looked at the underlying brain there was a swelling
3 of the brain, which is called cerebral edema. The brain's
4 response to any type of injury is to become swollen.
5 Minor 1's brain was swollen such that instead of having the
6 normal pattern of gyri and sulci, which are prominent
7 places and -- are hills and valleys, if you will, across
8 the surface of the brain, hers were all flat because it had
9 swollen so much that it had forced her brain stem down into
10 the foramen magnum, which is called herniation. So
11 basically Minor 1's brain responded to injury in such a way
12 that it eventually forced her brain down into the canal
13 where her spinal cord goes. We were able to demonstrate
14 that. There was no other trauma to the brain, there was no
15 contusion, there was no blood around the brain. So this
16 was best described as an anoxic brain injury, which
17 basically means her brain went without oxygen for a period
18 of time such that it subsequently became damaged, swollen,
19 and died.
20 Q. And what would cause -- what are some causes of that?
21 A. The most likely cause of that, given the injuries that
22 we have to the mouth region, is that she was suffocated.
23 That an object, most likely a hand, was placed over the
24 mouth and nose, obstructing the airway, unable to breathe,
25 lack of oxygen, subsequent brain injury. Anoxic brain

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1 injuries, the brain is not getting enough oxygen and it
2 swells and dies.

3 Q. Is there any certain length of time it takes for that
4 to occur?

5 A. Minutes. So this airway would have to be occluded for
6 at least a minute. We can -- adults can hold their breath
7 for a fairly long period of time. Children need more
8 oxygen than adults do so they can't do that as long. But
9 it would require at least a minute to two minutes of
10 obstruction of her airway prior to development of some sort
11 of cardiac arrhythmia, which would result also in loss of
12 oxygen to the brain.

13 Q. And the brain swelling you said, pressing down on the
14 brain stem, is that what sets cardiac arrest in motion or
15 how does that happen?

16 A. The cardiac arrest also occurs from lack of oxygen to
17 the brain. The brain has certain centers that control our
18 level of functioning, that control our arousal, our
19 interaction with society. But it also controls other areas
20 like breathing and heart rate. When those areas are
21 damaged because of lack of oxygen, then the central nervous
22 system control of your heart rate is lost and you can
23 develop a rhythm that no longer appropriately functions.
24 There was establishment of that cardiac rhythm back by
25 resuscitative personnel such that when she got to the

1 hospital she had a cardiac rhythm, but she did not have
2 brain functioning. She was brain dead.

3 Q. Okay. And what was the next thing you did in the
4 autopsy after examining the brain?

5 A. After looking at the region of the head, we progressed
6 down to the thorax and abdomen and the upper and lower
7 extremities, which is demonstrated in the following
8 diagram.

9 Q. I'm putting up State's 51.

10 MS. HODGE: We may need that one light off.

11 Q. And I can move it, Dr. Ward, if I need to move it,
12 left to right?

13 A. That's fine. State's Exhibit 51, again is the body
14 diagram of Minor 1. It shows certain pertinent details,
15 has her height and weight, eye color and things of that
16 nature. But it also shows injuries to the thorax and
17 abdomen and the extremities. The first one is an area of
18 bruising to the central portion of the chest, just to the
19 right of midline. There's an area of patterned bruising to
20 the right back near the side. One, two, three, four
21 separate contusions. There's an area of contusion to the
22 right buttock, to the back of the right leg, to the back of
23 the left hand, and to the left side here, and the left side
24 here. Three separate areas of bruising. There's a very
25 interesting area of bruising to the left upper arm, which

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1 are two opposing semicircular bruises, here -- sorry, my
2 hands are shaking -- here and here. These patterned -- and
3 basically, what we do is we look for injuries that a
4 twenty-month-old child may very likely have. And then we
5 look for injuries that children should not have and
6 generally do not have. And injuries that are present in
7 what looks like a pattern. And this looks like a pattern
8 injury here of one, two, three, four. And a pattern injury
9 to the left side, one, two three, which would be very
10 consistent with fingertips, as they grasp the side of the
11 child. These fingers leaving bruising in the skin of the
12 child. We dissected the thorax and abdomen, looking at the
13 lungs, the heart and the organs of the abdomen. There was
14 no trauma to the underlying visceral organs. There was no
15 trauma to the heart or the lungs. There was no direct
16 trauma to the brain. Again, indicating that this death was
17 that of suffocation, lack of oxygen to the brain, caused by
18 obstruction of her airway, not from blunt trauma.

19 Q. Now, people pick up their children a lot like this?

20 A. They do.

21 Q. So would you -- is that something you normally see or
22 does it take more force or pressure to leave those
23 fingertip type bruises?

24 A. This is not in the normal course of an event. This is
25 picking a child up, grasping it, squeezing them very hard

1 to leave distinct bruises in this fashion.

2 Q. And you commented on the interesting two semicircular
3 bruises on the arm, on the back of the arm. What are those
4 consistent with?

5 A. They are most consistent with a bite mark, where
6 someone has -- I'm having difficulty with the -- has bit or
7 bitten -- bit the back of her arm.

8 Q. And could you determine whether that would be adult-
9 sized, child-sized; is there a way to tell?

10 A. The width between this point and this point is more
11 narrow than we would expect to see with an adult. And it's
12 more consistent with a child.

13 Q. At the top, I think you said there were particulars
14 about her size and her height and weight. How big was
15 Minor 1 ? How tall and how much did she weigh?

16 A. She was twenty-three inches in length and weighed
17 twenty-nine pounds.

18 Q. So about two feet?

19 A. Correct.

20 Q. Is that about average size?

21 A. I think -- it was, yes.

22 Q. Okay. And tell us what your next step was then?

23 A. Well, following this is the dissection of the visceral
24 organs. We take sections of tissue, submit them for
25 microscopic examination, which is done several days after

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1 the autopsy. And then we also submit blood for
2 toxicological analysis.

3 Q. Was there anything in your lab work, blood work that
4 was unusual or that gave you any cause for concern
5 regarding any of her any injuries, her cause of death?

6 A. Actually, in this case, there was a survival interval
7 so that she lived in the hospital for a period of time. So
8 we did not do toxicology on her blood because it was no
9 longer the blood that was present at the time when she was
10 injured. So it would not reflect what was happening at the
11 time that she was injured. The microscopic examination
12 demonstrated the changes within the brain that are
13 consistent with lack of oxygen. Basically, the cells of
14 the brain had started to die in a pattern that is
15 consistent with lack of oxygen. The only other significant
16 microscopic finding is that we can't see this on this
17 diagram but there are multiple little pinpoint areas of
18 scab on the skin of the buttocks and the upper legs. There
19 was a history of ant bites. And so we took a section of
20 the skin within this region and, in deed, the microscopic
21 changes were consistent with that of a previous ant bite.
22 So we felt confident that that was indeed what those were.
23 Other than that, there were no other significant findings
24 at autopsy.

25 Q. Is there some type of blood disease or disorder that

1 causes people to bruise more easily? And is that anything

2 Minor 1 had?

3 A. Certainly there are hematological disorders that cause
4 easy bleeding. There was certainly no indication of that
5 at autopsy and no history of that prior to the trauma that
6 she received that day.

7 Q. So we've talked about the microscopic exam and is that
8 your final portion of the autopsy?

9 A. Yes, it is.

10 Q. And upon completing your autopsy, all portions of your
11 exam, did you then determine a manner of death?

12 A. The manner of death, yes, I did.

13 Q. And what was that?

14 A. The cause of death in this case was anoxic brain
15 injury due to suffocation. And the manner of death would
16 be homicide.

17 Q. What other manners of death do you have a choice of at
18 autopsy?

19 A. We have choice of natural, so that she would have died
20 as a result of some sort of natural disease process. We
21 have suicide, so that any injuries that she had were as a
22 result of intentional injury suffered at her own hand.
23 Accident, which, of course, is something that is
24 unforeseeable. Undetermined, which basically means we're
25 not sure what happened and we don't know why she came to

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1 have those injuries or came to be dead. And, of course,
2 homicide, which are dying as a result of injuries inflicted
3 by the hand of another.

4 Q. Would it have been medically possible for Minor 1 to
5 have presented in this condition if she had taken a sip of
6 tea and choked and vomited?

7 A. Absolutely not.

8 Q. What happens to, if you can tell us, what happens to
9 the body when it starts to -- or when lack of oxygen
10 happens, the brain starts to swell, they go into cardiac
11 arrest. What happens to your body involuntarily?

12 A. Following this suffocation episode, Minor 1 would have
13 been unresponsive, unconscious and over a period of time,
14 her brain would have begun to swell, causing her to develop
15 a cardiac arrhythmia and begin to die. She may have become
16 -- as the brain begins to swell, she may have become
17 nauseated. She may have vomited. She may have coughed up,
18 spit up some type of fluid which was in the lungs. But she
19 basically would have been unresponsive, progressing to this
20 cerebral edema, an abnormal heart rate. But, again,
21 frequently these individuals have nausea and vomiting.

22 Q. I show you what's previously been entered as State's
23 Number 43. And due to the injuries that she had in her
24 mouth, I think we discussed she possibly could have been
25 bleeding as a result of those injuries, or would have been

1 bleeding in her mouth?

2 A. Very likely, yes.

3 Q. And if something was being placed over her nose and
4 mouth, where would the blood have gone?

5 A. Inside her mouth and down her throat.

6 Q. Down her throat, okay. And State's Number 43, a
7 picture of a piece of carpet at the house. There's a stain
8 type thing on there. Are you able to tell whether or not
9 there may be a mixture of blood in that stain?

10 A. State's Exhibit 43 is a photograph of the carpet with
11 a little placard that says "A". And it's centered around a
12 reddish brown stain on the carpet. This could very well be
13 consistent with blood tinged material that could easily be
14 vomituous material or spit-up.

15 Q. And that is something that possibly could have
16 happened after the hand was taken away from Minor 1's mouth
17 and she starts dying basically?

18 A. Absolutely.

19 Q. And I'm going to show you State's Number 48. If these
20 were a pair of shorts that Minor 1 had been wearing that
21 day, is it possible that some of the item or the
22 discoloration on here is that same type thing?

23 A. Yes. There's a reddish brown discoloration to the
24 left front portion of the garment, extending from the waist
25 down to the hem, which again is very consistent with

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1 possibly being blood.

2 Q. Okay. And then some on the other side, a little bit
3 towards the bottom, is that the same type ---

4 A. Yes.

5 Q. All right. And let me show you State's Number 47, a
6 shirt. If this was the shirt that Minor 1 had been
7 wearing, is there anything on this shirt that could
8 possibly go along with any type of bodily functions that
9 might happen once she is starting to die?

10 A. There's certainly a brownish discoloration to the left
11 upper portion of the garment, extending onto the sleeve,
12 which could very well be vomitous type material mixed with
13 a little bit of blood.

14 Q. Thank you. Dr. Ward, in your opinion, would Minor 1
15 have struggled against this? This hand over nose and
16 mouth?

17 A. Yes, I think she would.

18 Q. Was she a normal, otherwise healthy, twenty-month-old
19 child?

20 A. Yes, she was.

21 Q. Mobile and I guess able to walk, talk, eat, those kind
22 of things as far as your record shows?

23 A. As far as the records show and from findings at
24 autopsy, there would be no reason why she would not be a
25 normal acting, functioning twenty-month-old child.

1 Q. What would typically happen to a child if they -- or
2 anyone if they took a sip of a drink and started choking?
3 What's the normal body response?

4 A. They would cough and potentially -- basically, there's
5 a gag response that if a foreign object or foreign
6 substance goes not down the esophagus but into the trachea,
7 which is what we consider to be choking on food, then
8 there's a gag response were we cough it up, it clears out
9 of our airway and we move on without any problem. It
10 happens probably to most of us on a reasonably consistent
11 basis.

12 Q. Again, there were be no way that that would cause the
13 injuries that you saw to her brain and certainly all these
14 numerous bruises to her body?

15 A. Absolutely not.

16 Q. Thank you. Please answer any of Ms. Manigault's
17 questions.

18 MS. MANIGAULT: Your Honor, we don't have any
19 questions.

20 THE COURT: All right. Thank you, Doctor. You
21 may step down.

22 MS. HODGE: Your Honor, may he be excused?

23 THE COURT: Without objection the Doctor may be
24 excused.

25 THE WITNESS: Thank you.

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1 MS. HODGE: Your Honor, the State rests.

2 THE COURT: Mr. Foreman, ladies and gentlemen, we
3 need to take up some legal matters now and I need to do
4 some scheduling for our next trial that's going to start,
5 and talk to the other attorneys. So we'll take a short --
6 well, I don't know how short it will be, but it will be a
7 break. We won't keep you waiting. But if you'll go back
8 to your jury room now. Again, I remind you not to discuss
9 the case. You haven't heard everything that you need to
10 hear. And certainly the charge has not been given to you.
11 We'll call you back just as soon as we finish with these
12 administrative and legal matters.

13 Everyone else, please remain seated while the jury
14 departs.

15 (WHEREUPON, the jury exited the open court at
16 approximately 9:45 A.M.)

17 THE COURT: Are there any things we need to take
18 care of before I have an opportunity to talk with Mr.
19 Johnson and discuss with him his rights?

20 MS. MANIGAULT: Your Honor, the Defense would
21 move for a directed verdict in that the State has not
22 proved the elements of the crime as charged.

23 THE COURT: Well, as you know, at this stage I
24 have to view all the evidence in the light most favorable
25 to the State, any evidence that reasonably tends to prove

1 the guilt, either circumstantial or otherwise, which a jury
2 could logically and fairly deduce his guilt. I find
3 there's not a total failure of evidence and I respectfully
4 deny your motion, Ms. Manigault.

5 MS. MANIGAULT: Thank you, Your Honor.

6 THE COURT: Any other matters?

7 MS. MANIGAULT: The other issue is my client has
8 informed me that he intends to testify and the Court may
9 want to question him about that.

10 THE COURT: All right. I'll be glad to talk with
11 him about that. Are there any impeachable offense the
12 State would have?

13 MS. HODGE: No, Your Honor.

14 THE COURT: All right. Ms. Manigault, if you
15 would and Mr. Johnson come forward, please.

16 (WHEREUPON, Ms. Manigault and the Defendant approached
17 the bar.)

18 THE COURT: And, Mr. Johnson, if you'd just stand
19 there at the microphone with your attorney. If you would,
20 please, raise your right hand.

21 (WHEREUPON, the Defendant's right hand was raised.)

22 THE COURT: Do you swear or affirm the testimony
23 you're about to give me will be the truth, the whole truth,
24 and nothing but the truth so help you God?

25 THE DEFENDANT: Yes, sir.

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1 THE COURT: Mr. Johnson, we've reached the stage
2 of the trial where I need to explain to you certain rights
3 that you enjoy. And as I go through these rights, if you
4 have any questions, please ask your lawyer to interrupt me.
5 I want to make sure you understand the rights that you
6 have. I'm confident you've talked with your attorney
7 already about this, but I need to be satisfied in my own
8 mind that you understand the rights that you have.

9 We're at the stage of the trial where you could
10 present a defense. The Constitution of South Carolina, the
11 Constitution of the United States of America says that no
12 person can be compelled in any case to be a witness against
13 himself. This means that you can't be required to testify.
14 The State can't call you as a witness. You have a right to
15 testify in your own behalf, but nobody can make you
16 testify. It's a personal right that you enjoy. Nobody can
17 waive this right except you.

18 Now, if you decide to testify, you'll be subject to
19 the same rules that govern any other witness. You can be
20 examined and cross-examined on any relevant issue in the
21 case. In addition, if you have any convictions for
22 dishonesty or false statements or crimes that are
23 punishable by imprisonment for more than a year and the
24 Court determines that the probative value of admitting this
25 outweighs any prejudicial effect to you, the Solicitor

1 would be able to introduce your record to attack your
2 credibility. The State has indicated they don't have any
3 prior records for which they would attempt to introduce to
4 challenge your credibility on that. But, again, they have
5 the full right to cross-examine you about the relevant
6 facts of the case.

7 Now, Mr. Johnson, if you decide to testify, that
8 decision on your part must be freely and voluntarily and
9 intelligently made by you with the knowledge of what I've
10 explained to you of your rights under the Fifth Amendment
11 and the State Constitution to testify, that you don't have
12 to. You also need to be aware of the consequences of your
13 decision to testify, that you'll be subject to cross-
14 examination by the State.

15 You may make the choice not to testify. If you make
16 that decision, I'm going to tell the jury they can't give
17 that any consideration whatsoever, that you chose not to
18 testify. That's your Constitutional right. You can
19 exercise it if you wish. I'll instruct the jury that
20 they're not to bring it up in the jury room, there would be
21 no prejudice to you because you decided not to testify.

22 Whether to testify or not testify is left entirely up
23 to you. You can talk with your attorney, with family and
24 friends and others, but the final decision is yours and
25 yours alone to make.

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1 Do you understand what I've discussed with you, Mr.
2 Johnson?

3 THE DEFENDANT: A little bit of it.

4 THE COURT: Are there any things that I can
5 further explain to you?

6 THE DEFENDANT: I really don't understand what
7 you're talking about, about testify. I mean ---

8 THE COURT: Well, in other words, you testified
9 earlier here in our preliminary matters. You'd be -- come
10 up here to this witness chair, you'd be sworn in. Your
11 lawyer could ask you questions. You could answer those
12 questions. The State's attorney will have a chance to
13 cross-examine you and ask you questions about relevant
14 matters about the case.

15 That's one of your choices to offer your testimony and
16 let the jury hear what you have to say through your lawyer
17 asking you questions. They'll also hear what you have to
18 say through the State's asking you questions as well.

19 Your other choice is to not testify, not be sworn in.
20 The jury wouldn't know that you've testified earlier. That
21 would not be brought up to the jury. If you chose not to
22 testify, I'm going to tell them that they can't hold that
23 against you in any way. That's your right to not testify.
24 Do you understand that?

25 THE DEFENDANT: (Affirmative nod.) Yes, sir.

1 THE COURT: Anything else you need for me to
2 explain to you? I'm going to give you a chance to talk
3 with your lawyer as we take a break. I'll be glad to try
4 to answer anything you have now. Do you have any
5 questions?

6 THE DEFENDANT: No, sir. Nothing right now.

7 THE COURT: All right, sir. If you'll return to
8 your seat with your attorney, please.

9 All right. We'll take a short break to let you talk
10 further with your client. Let me know when you're ready
11 and if there's any other witnesses that are going to be
12 testifying. If not, then we'll certainly need to talk
13 about a verdict form and any charges that specifically need
14 to be made. We'll take a short break.

15 I need to talk with Ms. Bentley and Mr. Chambers about
16 the next case.

17 (WHEREUPON, the court stood at recess for a short
18 break.)

19 THE COURT: All right. Is the Defense ready to
20 proceed?

21 MS. MANIGAULT: Yes, sir.

22 THE COURT: Is your client going to testify?

23 MS. MANIGAULT: Yes, sir.

24 THE COURT: All right. Let's have our jury come
25 in if they're ready.

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1 (WHEREUPON, the jury entered the open court at
2 approximately 10:28 A.M.)

3 THE COURT: Ms. Manigault, the Defense may call
4 its first witness.

5 MS. MANIGAULT: Thank you, Your Honor. The
6 Defense would call James Allen Johnson, Your Honor.

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

9 THE CLERK: Will you put your left hand on the
10 bible and raise your right hand.

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

13 THE WITNESS: I do.

14 THE CLERK: Have a seat. State your full name
15 for the record.

16 THE WITNESS: My name is James Allen Johnson.

17 JAMES ALLEN JOHNSON,

18 BEING FIRST DULY SWORN, TESTIFIED AS FOLLOWS:

19 DIRECT EXAMINATION

20 BY MS. MANIGAULT:

21 Q. And how old are you, Mr. Johnson?

22 A. Twenty-eight years old.

23 Q. And how far did you go in school?

24 A. Eleventh grade.

25 Q. And was that in Greenville County?

- 1 A. Yes, ma'am.
- 2 Q. Were you born in Greenville County?
- 3 A. Yes, ma'am.
- 4 Q. Have you lived in Greenville County most of your life?
- 5 A. Yes, ma'am.
- 6 Q. Are your parents living?
- 7 A. Yes, ma'am.
- 8 Q. All right. Do you have any siblings, brothers or
- 9 sisters?
- 10 A. Yes, ma'am.
- 11 Q. What do you have?
- 12 A. I've got three brothers and two sisters.
- 13 Q. And are you the oldest or youngest or in the middle?
- 14 A. I'm the second child.
- 15 Q. Second child. What kind of grades did you make in
- 16 school?
- 17 A. I can't remember.
- 18 Q. Were you in special classes?
- 19 A. Yes, ma'am.
- 20 Q. Were you in special classes all through elementary
- 21 school?
- 22 A. Yes, ma'am.
- 23 Q. And were you in special classes in high school when
- 24 you went there?
- 25 A. Yes, ma'am.

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1 Q. Were you considered a slow learner?

2 A. Yes, ma'am.

3 Q. Have you ever worked?

4 A. I worked at a Waffle House once and once at a welding
5 shop.

6 Q. Okay. Could you hold those jobs?

7 A. No, ma'am. I had the job at the Waffle House for a
8 week and I had a job at the welding shop for about two
9 weeks.

10 Q. And why couldn't you hold those jobs?

11 A. Because I was slow. And at the restaurant because I
12 couldn't remember the orders or read to write them down.
13 So I got fired from that one. And then the welding shop I
14 got fired because I was not fast as the rest -- everybody
15 else.

16 Q. Were you raised by your mother ---

17 A. Yes, ma'am.

18 Q. --- and father?

19 A. Not my father. My mother.

20 Q. Were you always in the custody of your mother?

21 A. Yes, ma'am. Not always, I mean, they took me when I
22 was young.

23 Q. Who took you?

24 A. DSS did.

25 Q. Okay. And how long did you stay away from your

1 mother?

2 A. I think -- two years I think.

3 Q. But you eventually ended up back with your mother?

4 A. My mama fought and got me back.

5 Q. All right. Now, how long have you known Georgia Ann
6 Sprouce?

7 A. I've known her, I guess, four months. Her sister
8 Denise introduced me to her.

9 Q. All right. And did you live with Georgia Ann Sprouce?

10 A. I was supposed to just come over the weekend and she
11 was supposed to bring me back, but when I got there, I
12 guess we hit it off and she didn't want me to go back.

13 Q. So you stayed with her from the first date ---

14 A. Yes, ma'am.

15 Q. --- through the four months? All right. When you
16 were living with -- well, what did you call her?

17 A. I called her baby.

18 Q. Baby, okay. When you were living with Georgia Ann
19 Sprouce, what -- did she have children living with her?

20 A. Yes, ma'am.

21 Q. And who were the children?

22 A. Minor 2 and Minor 1 .

23 Q. All right. And did you babysit any for her, the
24 children?

25 A. Yes, ma'am. Yes, ma'am, I did.

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1 Q. Did you babysit often?

2 A. I babysitted, I babysitted one time while she went to
3 a funeral for like a week. And then I babysitted a lot for
4 her when she was at Crystal's a lot. I mean, even when we
5 lived in the apartments, I watched the kids. I got up in
6 the mornings with them. She would be so tired and stuff so
7 I just let her sleep a little bit. Because I loved Ann and
8 I didn't want her to be upset or anything. I wanted her to
9 be happy.

10 Q. Now, what kind of income did you have?

11 A. I draw SSI.

12 Q. SSI. And how much money did you get per month?

13 A. I get about seven hundred dollars a month. It's not
14 in my name, though. I had to have a payee.

15 Q. That's fine. Now, when you were living with Georgia
16 Ann Sprouce, were you getting that seven hundred dollars a
17 month?

18 A. I was getting it but not -- I wasn't getting it all at
19 one time.

20 Q. Okay. But you did have an income when you lived with
21 her?

22 A. Yes, ma'am.

23 Q. And did Georgia Ann have an income?

24 A. She was getting child support from Minor 1's father
25 and Minor 2's daddy was sending her some money.

1 Q. And were you giving her money also?

2 A. I gave her -- a couple of times I gave her some money
3 when I got it. First month I was there, I didn't have no
4 money.

5 Q. All right.

6 A. Because I paid -- before I met her, right before I met
7 her, I paid on my trailer I was trying to -- it wasn't
8 livable. I was trying to pay it off. That way I could
9 begin to start working on it and have my brother help me.

10 Q. Okay. Now, where were you living before you started
11 living with Georgia Ann?

12 A. I was living right beside my brother, Josh's house ---

13 Q. Okay. Josh?

14 A. --- because I had no power or nothing.

15 Q. So you had no power at your trailer?

16 A. Yes, ma'am.

17 Q. So you were living with Josh?

18 A. (Affirmative nod.)

19 Q. Now, back to May 25th of 2011. Tell us the events of
20 that day. What happened when you got up that morning and
21 go on from there?

22 A. That morning when I woke up everybody was in the bed
23 and everything. I woke up. We had all got up. Minor3 and
24 Minor2 and Minor1 , we was all in the -- I turned on the
25 cartoons. We went in there. We made them a -- they ate

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1 peanut butter sandwiches that morning. And then we went --
2 later on we went, we went outside. I took them outside
3 that morning before I ever went to Josh's that morning.
4 And Minor 2 was on the porch. Minor 2 wouldn't climb
5 down the steps by herself. So I already had Minor 1 out
6 there in the yard where they were playing at out there.
7 And she must have crawled over into an ant mound.

8 Q. Okay. Minor 1 is Minor 1 ?

9 A. Yes, ma'am.

10 Q. Go ahead.

11 A. And Minor 2, I went and got Minor 2 and when I got
12 back to Minor 1 she was crying, screaming like something --
13 she was on fire or something. And I looked and I saw ants
14 all over her. And I picked her up right then and took her
15 in. I dust off what I could and took her in and told Ann.
16 And Ann took her diaper off and changed it cleaned her up.

17 Q. All right. Now, after that incident did y'all stay
18 home or that's when you left home?

19 A. Well, we was there a little bit longer. She calmed
20 down. Not much -- it wasn't, I'd say about two or three
21 minutes later, she was good. She wasn't crying no more or
22 nothing. She wasn't hurting. And then we left. They took
23 me to Josh's, my friend where I was staying at before I got
24 with Ann. I went over there to get a memory card for my
25 cell phone because I'd been taking pictures and stuff of

- 1 the kids and stuff and I wanted to be able to save them on
2 my phone because it was about full.
- 3 Q. Okay.
- 4 A. All right. And then they went to, I guess, to get
5 some child support for her oldest son?
- 6 Q. Child support money?
- 7 A. Yes, ma'am.
- 8 Q. Okay.
- 9 A. And then they come back and picked me up. We went to
10 the house. Like I say, me, Crystal and Ann was there. All
11 right. Crystal had left a little bit -- not long after we
12 got there to go -- I don't know where she went. I think
13 she went to -- I can't remember her name -- her friend's
14 house, to take her to go get her little girl and their
15 kids.
- 16 Q. Okay. Now, did you have a car?
- 17 A. No, ma'am.
- 18 Q. Did Ann have a car?
- 19 A. I've never had a license.
- 20 Q. You never had a license?
- 21 A. No, ma'am.
- 22 Q. So you depended -- when you were living with Crystal
23 you depended -- y'all depended on Crystal for rides back
24 and forth?
- 25 A. Yes, ma'am.

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1 Q. All right. So when Crystal left, that left you, Ann
2 and who at the house?

3 A. Me and Ann and Minor 2 and Minor 1 .

4 Q. Okay. The four of you were there?

5 A. (Affirmative nod.)

6 Q. All right. So what happened after Crystal left and
7 y'all stayed at the house?

8 A. Well, we laid the kids down for their nap. And when
9 they got back up, we fed them -- cooked some chicken
10 nuggets. And I ate some with them, too, and they ate. And
11 then put them in the living room to play. They was playing
12 in there, had the TV on. And I went to the bathroom. When
13 I come back out of the bathroom -- I was in the bathroom.
14 She hollered at me saying, she's not breathing. Come in
15 here. I went in there. I dialed -- she asked me -- I
16 asked her, I'm calling the ambulance because we may not be
17 able to help her. She looks like -- she's already
18 discolored already when I got in there. And then I called
19 the ambulance while she was hiding Crystal's reefer and her
20 bowl. She was hiding it.

21 Q. You said you were in the bathroom and she called.
22 Who's she? Who called you out of the bathroom?

23 A. Ann.

24 Q. Okay. You were in the bathroom and Ann and the
25 children were in the living room?

1 A. Yes, ma'am.

2 Q. When you went in the living room you said that --

3 where was Minor 1 at that point?

4 A. She was in front of that -- the red chair. The red
5 chair in there. She was laying in front of it on her back.

6 Q. On her back?

7 A. Yes, ma'am. On the rug.

8 Q. And what was Ann doing when you came in and saw

9 Minor 1 laying on the floor?

10 A. She was, she was trying to do CPR on her. And I tried
11 to her do CPR and I called 9-1-1 and I put it on speaker
12 phone because I did not know the address, so Ann could tell
13 them the address and Ann could hear what they was saying
14 too. Because I wasn't -- I didn't know how to do it. I've
15 never done CPR in my life.

16 Q. So you didn't know how to do CPR?

17 A. No, ma'am.

18 Q. But at some point, you tried to help?

19 A. Yes, ma'am. I tried as soon as I got in there.

20 Q. And what did you do? What were you trying to do?

21 A. I was doing my hands like this on her chest.

22 (Demonstrating.) And breathing in her mouth. And then I
23 stopped and then Ann would do the same thing. And they was
24 telling us to tilt her head back, see if she was breathing.
25 Ann said that she was breathing a little bit, but I don't

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- 1 think she ever was breathing.
- 2 Q. So you demonstrated that you did your hands like this?
- 3 A. Yes, ma'am.
- 4 Q. And where was that on ---
- 5 A. Right here. (Indicating.)
- 6 Q. On the chest area?
- 7 A. Yes, ma'am.
- 8 Q. So you did -- you were double-handed CPR?
- 9 A. (Affirmative nod.)
- 10 Q. And while you were doing that, what was Ann doing?
- 11 A. She was talking with them on the phone, too. See, the
- 12 first time the phone hung up because my -- I ain't had good
- 13 service on my phone. And then I called back and I had it
- 14 on speaker phone again.
- 15 Q. So you were in here when the State played the 9-1-1
- 16 tape?
- 17 A. Yes, ma'am.
- 18 Q. And you heard that? And that's -- you heard your
- 19 voice on the tape, what you were saying?
- 20 A. Yes, ma'am.
- 21 Q. And so when you were talking to them, you and Ann were
- 22 still trying to do CPR?
- 23 A. Yes, ma'am.
- 24 Q. All right. Now, how long were you gone in the
- 25 bathroom before Ann yelled for you to come?

- 1 A. I was probably in there two or three minutes.
- 2 Q. All right. Do you go to the bathroom often?
- 3 A. Yes, ma'am.
- 4 Q. Do you have a bladder problem?
- 5 A. I just go to the bathroom a lot. I don't know why. I
- 6 always have. Ever since I was little I've always went to
- 7 the bathroom a lot.
- 8 Q. When you were doing the CPR, what -- how long did it
- 9 take for the firefighters to get there? Do you have any
- 10 idea?
- 11 A. No, I can't remember. Everything was happening so
- 12 fast. I was worrying about her real bad. I didn't want
- 13 nothing bad to happen to her because I loved her.
- 14 Q. Okay. You're talking about Minor 1 ?
- 15 A. Yes, ma'am.
- 16 Q. All right. You said that when you were on the phone
- 17 trying to call 9-1-1 Ann was trying to hide some reefer?
- 18 A. Yes, ma'am.
- 19 Q. That's marijuana?
- 20 A. (Affirmative nod.)
- 21 Q. Had y'all been smoking marijuana that morning?
- 22 A. Yes, ma'am.
- 23 Q. Did y'all smoke marijuana the night before?
- 24 A. Yes, ma'am. We smoked marijuana everyday.
- 25 Q. Y'all were smoking marijuana everyday?

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1 A. Yes, ma'am.

2 Q. And was Ann participating in that?

3 A. Yes, ma'am.

4 Q. Was Ann doing it too?

5 A. Yes, ma'am.

6 Q. Okay. What about Crystal?

7 A. Yes, ma'am.

8 Q. Whose reefer was it?

9 A. It was Crystal's. At the time, we had bought some for
10 that too.

11 Q. Okay. So you had bought some too and Crystal had
12 bought some?

13 A. Yes, ma'am.

14 Q. All right. Were you talking pills? Were you popping
15 any pills?

16 A. Not then.

17 Q. Not then? But do you pop pills?

18 A. We was taking pills a couple days before that.

19 Q. What kind of pills?

20 A. Valiums.

21 Q. Valiums. Anything else?

22 A. That's about it.

23 Q. Okay. Now, why did Ann feel it necessary to hide the
24 reefer?

25 A. Because she said she didn't want to lose her girls.

1 She said, at first she said, we can revive her ourself. I
2 said, it don't look like we're going to be able to help
3 her. So we need to call the ambulance, because I don't
4 want where we can't save her.

5 Q. And so you say you called the ambulance?

6 A. Yes, ma'am, I did.

7 Q. So how long -- can you tell me how long Minor 1 was on
8 the floor before y'all decided to call the ambulance?

9 A. She was on the floor maybe a couple of minutes,
10 because I was trying -- we was trying to do CPR on her.
11 And then I said, it's not working, so we called. We called
12 the ambulance. I called 9-1-1.

13 Q. All right. Now, when the firefighters got there
14 first, then EMS got there; is that correct?

15 A. Yes, ma'am.

16 Q. All right. Did you tell the firefighter or EMS
17 personnel what had happened?

18 A. Ann told them what had happened.

19 Q. Okay. And what did Ann tell them happened?

20 A. She told them that she got choked on tea.

21 Q. Okay. Did Ann tell them that she was in the living
22 room with Minor 1 when she got choked on tea?

23 A. Yes, ma'am.

24 Q. And where did she tell them that you were?

25 A. She told them I was in the bathroom.

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1 Q. Now, when EMS left, did y'all try to go with them to
2 the hospital?

3 A. No, ma'am. We was in the -- they asked her if she
4 would like to ride with them and she said that she's going
5 to ride with Crystal, follow the ambulance. So we followed
6 the ambulance in Crystal's car.

7 Q. Did one of the officers tell y'all that you couldn't
8 leave?

9 A. (Witness pauses).

10 Q. That y'all had to wait for somebody else.

11 A. We asked if we could go to the hospital and stuff. He
12 said go ahead. We can catch up with you later.

13 Q. Okay. Now, when you went to the hospital, on the way
14 to the hospital, did you and Crystal talk about anything?

15 A. Me and Ann was talking about she's a baby girl and
16 she's young, she's strong, strong like her mama and stuff.
17 We talked about that, but not much after that. I put my
18 hand on her shoulder, to tell her it's going to be okay.
19 She's going to be okay. And she pushed me away, pushed my
20 hand away.

21 Q. All right. Now, when you got to the hospital, you
22 waited in the waiting area?

23 A. Yes, ma'am. The big waiting area.

24 Q. All right. And Ann left you at that point; correct?

25 A. She was there for a few minutes but then they called

1 her back to another area.

2 Q. All right. And do you remember talking to any police
3 officers at the hospital?

4 A. I remember talking to him because he come up to me
5 while I was talking to Ann's biological father.

6 Q. And that's Sergeant Chris Miller?

7 A. Yes, ma'am.

8 Q. This man right here at the table?

9 A. (Affirmative nod.)

10 Q. Okay. You talked to him?

11 A. Yes, ma'am.

12 Q. And did you go with him to the law enforcement center?

13 A. Yes, ma'am, I did.

14 Q. And he -- what did he tell you?

15 A. First I was -- it was a little bit of small talk. He
16 was talking about he had a bulletin board with this guy
17 that killed his mom on mother's day. I remember just like
18 it was -- it's in the back of my memory like it was just
19 yesterday. And then after that, he asked me what had
20 happened that day. And then that's when I told him.

21 Q. And what did you tell him -- that was on May 25th.
22 What did you tell him happened?

23 A. I told him we woke up that morning and we fed the kids
24 and I took them out for a little while and let them play.
25 And Minor 1 got bit by ants. So I brought them back in.

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1 And took her clothes off and her mama cleaned her up, then
2 we laid them down for their nap. But before that, before
3 we laid them down for their nap, we brought them back. I
4 mean, we got ready, laid her down for her nap and then we
5 come ...

6 Q. Okay. Now, do you know how long you stayed with
7 Investigator Miller at that time, Sergeant Miller at this
8 time. Do you know how long you stayed there?

9 A. I don't -- probably a couple of hours.

10 Q. Okay. All right. I'm going to show you ---

11 A. Maybe an hour.

12 Q. Okay.

13 A. Not long.

14 Q. All right. I'm going to show you these two pieces of
15 paper and it's State's Exhibit 49. It's two pages and it
16 says victim/witness statement. The date of it is 5/25/11.
17 And I'm going to ask you, is that your signature right
18 there?

19 A. Yes, ma'am.

20 Q. And is that your signature on this second page?

21 A. Yes, ma'am.

22 Q. And the only person that was in the room at the time
23 was Investigator Miller, for this?

24 A. Yes, ma'am.

25 Q. So you did give him this statement; is that correct?

1 A. Yes, ma'am, I did.

2 Q. Now, were you able to see Minor 1 while you were at
3 the hospital?

4 A. No, ma'am.

5 Q. Okay.

6 A. Well, when we was at Greer Hospital I seen her for a
7 brief minute. When I asked how she was doing, they said
8 she's doing all right. She was breathing on her on. She'd
9 done got her color back and everything.

10 Q. All right. Now, on June the 2nd, you talked with
11 Investigator Miller correct and another investigator by the
12 name of Autrey. And I'm going to show you State's Exhibit
13 Number 40 that says, Your Rights. I'm going to ask you to
14 look at that and tell me, is that your signature?

15 A. That's my handwriting, yes, it is. I don't remember
16 writing it.

17 Q. Okay. That's fine. And these initials that are on
18 each paragraph, did you initial those?

19 A. That looks like my handwriting. I still don't
20 remember doing that, no.

21 Q. Okay. And there's a word circled at the bottom. And
22 the word is coercion. And it has initials under that word.
23 Is that your initial?

24 A. Yes, ma'am.

25 Q. It is? Okay. Now, on your rights form. This is June

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1 the 2nd. On your rights form, there are some rights

2 outlined. Did you read these?

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

4 Q. Okay. Did Investigator Miller or Investigator Autrey
5 read them to you?

6 A. I don't remember if they did.

7 Q. You don't remember? All right. You don't remember
8 they said to you that anything you say can be used against
9 you in Court?

10 A. No, ma'am. I was on a lot of medicine. I'd been
11 worried about her. Nobody would tell me what was going on
12 with her. So I been trying to -- my mama said I needed to
13 get some rest. I told her I could not rest. I couldn't
14 sleep.

15 Q. Okay. All right. On this form it says, you have a
16 right to talk to an attorney for advice before we ask you
17 any questions. Do you remember them telling you that?

18 A. No, ma'am.

19 Q. All right. Did you ever ask them for an attorney?

20 A. I don't remember.

21 Q. You don't remember? Okay. Well, let's deal with that
22 since you don't remember. Why wouldn't you remember? What
23 were you taking?

24 A. I took a lot of football Xanaxes and I took some
25 Benadryls because they were not working, trying ---

1 Q. What's a football Xanax?

2 A. It's a one milligram Xanax?

3 Q. And that was on June 2nd?

4 A. Yes, ma'am.

5 Q. And how many had you taken?

6 A. I'd been taking them all day that day.

7 Q. All right.

8 A. And I was supposed to ride with Josh to go pick his
9 girlfriend up in -- I can't remember what county it was,
10 but I got messed up and Josh said, no, I couldn't ride.

11 Q. Okay. Don't tell me what Josh said. So what time did
12 you start taking these pills?

13 A. I'd say about seven o'clock that morning.

14 Q. And you continued until what time?

15 A. I passed out for about, I don't know how many hours.

16 Q. Okay.

17 A. I remember waking up, I'd say about twenty minutes
18 before them people come to the house.

19 Q. What people?

20 A. The people that brought me in here.

21 Q. Police officers?

22 A. Yes, ma'am.

23 Q. Okay. And so you were passed out and you woke up
24 about twenty minutes before they got there. All right.

25 And did you tell them that you were taking drugs -- pills

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1 that day?

2 A. No, ma'am. I was afraid that I would get in trouble.

3 Q. Okay. Did you have reefer on you, too?

4 A. Yes, ma'am. I did.

5 Q. Okay. So what happened to the marijuana you had on
6 you?

7 A. I gave it to Josh.

8 Q. Okay. In front of the police?

9 A. No, ma'am. They was standing outside and I was --
10 they told me, I said, well, I'll get my brother to bring
11 me. They said, no, you got to ride with us now. They said
12 that they -- I didn't have to go with them, that's not the
13 truth because they told me I had to go with them.

14 Q. Okay. So you went back in the house, gave your
15 reefer, your marijuana to Josh?

16 A. Yeah.

17 Q. And then went and rode with the two officers?

18 A. Yes, ma'am.

19 Q. Okay. Now, do you have any idea the time you got
20 there with them?

21 A. The time I got there? I have no idea.

22 Q. Okay. All right. So when you got -- they took you to
23 the law enforcement center; is that correct?

24 A. (Affirmative nod.)

25 Q. And when you got to the law enforcement center, did

1 you then meet up with Investigator Miller at some point?

2 A. At some point, I reckon.

3 Q. Right. And then another investigator that has
4 testified earlier, Autrey?

5 A. I remember bits and pieces of that. I remember him
6 sitting on the opposite side of the desk. And the other
7 one was standing right -- sitting right beside a camera, a
8 big camera like they had in here, sort of.

9 Q. Okay. So were you under the impression that your
10 interview was being recorded?

11 A. Yes, ma'am.

12 Q. Okay. But you've heard testimony that it was not?

13 A. Yes, ma'am.

14 Q. All right. Now, when you started talking with them,
15 what did you tell Investigator Miller?

16 A. (Witness pauses).

17 Q. Was he asking you about what happened? Did he tell
18 you anything, what Georgia Ann said? What did you tell
19 him?

20 A. He asked me what happened and I began to tell him what
21 I told them the first time.

22 Q. Right.

23 A. And then he said, I wish you would just tell us the
24 truth. She done got back with him. I don't know why
25 you're trying to take up for her.

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1 Q. Okay. Who's got back with who?

2 A. Ann got back with Minor1 i's father.

3 Q. Okay. And so Investigator Miller told you that Ann
4 had gotten back with Mark Gore, Minor1 s father. And he
5 didn't know why you were trying to take up for her?

6 A. Right.

7 Q. Then what else happened after that?

8 A. I really don't remember much. I remember bits and
9 pieces.

10 Q. Okay. Now, I'm going to show you State's Exhibit 41.

11 Is that your signature on two different lines?

12 A. That looks like my handwriting, yes, ma'am. That is
13 my handwriting.

14 Q. Okay. And on this form it has initials at the
15 beginning of the paragraph and at the end of the paragraph.
16 Are those your initials?

17 A. Yes, ma'am.

18 Q. So this statement is dated -- it's not dated, but this
19 is the statement they said they collected from you on June
20 the 2nd.

21 A. Yes, ma'am.

22 Q. All right. And you're saying that you don't remember
23 telling them this?

24 A. I don't remember nothing. I don't remember them
25 taking me to the police department over there to take my

1 pictures or nothing. I don't remember.

2 Q. Okay. On this statement it says, accidents happen.

3 Do you recall telling them that? Accidents happen?

4 A. No, I don't remember it.

5 Q. Okay. Then it says, I never would hurt a kid.

6 Remember telling them that?

7 A. Yes, ma'am.

8 Q. Okay. It says, I was in the bathroom. And there's

9 pauses, I mean dots. Do you remember telling that?

10 A. I don't remember that.

11 Q. Now, on this statement did you read the top part of

12 the statement, the first six lines that talks about getting

13 a lawyer. Did you read that?

14 A. No, ma'am, I can't read that well.

15 Q. Okay. Did ---

16 A. I can barely read.

17 Q. Okay. Did the investigator read it to you?

18 A. I have no clue.

19 Q. You have no clue? All right. Did you tell the

20 investigator that you were on Xanax and whatever else you

21 were popping that day?

22 A. No, ma'am. I was afraid that I would be in more

23 trouble.

24 Q. Okay. Now, this statement says, I am not under the

25 influence of any drugs or alcohol. And you put your

Vol II of II

STATE OF SOUTH CAROLINA

In The Court of Appeals

APPEAL FROM GREENVILLE COUNTY

G. Edward Welmaker, Circuit Court Judge

RECEIVED

JAN 29 2016

SC SUPREME COURT

THE STATE,

RESPONDENT,

V.

JAMES ALLEN JOHNSON,

APPELLANT

APPELLATE CASE NO. 2013-001314

RECORD ON APPEAL

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

3 A. Yes, ma'am.

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

6 A. Yes, ma'am.

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

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

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

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

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

19 A. I have no clue.

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

22 A. (Negative nod.)

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

24 A. I don't.

25 Q. You don't remember that either?

- 1 A. The only bruises that was on her is that one right
2 there and the little beaded one looking. The rest of them
3 bruises was not on her.
- 4 Q. Okay. So where did she get the beaded-looking bruises
5 from?
- 6 A. Got it from her sister with a beaded necklace.
- 7 Q. Okay. Minor2 ?
- 8 A. Yes, ma'am.
- 9 Q. Okay. And you said Minor2 hit her with the beaded
10 necklace?
- 11 A. Yes, ma'am. They used to fight over toys all the
12 time.
- 13 Q. There was some testimony that Minor2 hit Minor1
14 with a little toy car or truck or something. Did you know
15 anything about that?
- 16 A. I don't remember that right there.
- 17 Q. Okay. On your statement it says she started
18 screaming. I was just trying to calm her down? What does
19 that mean?
- 20 A. Again, I don't remember that statement at all.
- 21 Q. All right. So you're saying that the part where you
22 said she kept crying. I hadn't been on my medication.
23 People are going to hurt me. Ann and her CO's. I don't
24 know what that means. You didn't say any of that? Do you
25 recall saying that?

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

2 Q. Okay. It says I covered Minor 1 mouth until she
3 quit crying.

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

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

6 A. (Negative nod.)

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

10 A. Yes, ma'am.

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

13 A. No, ma'am.

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

16 A. Defending her.

17 Q. Defending her. Who's her?

18 A. Ann.

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

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

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

1 So why did you think she was pregnant?

2 A. Because she's ---

3 Q. Did she tell you she was pregnant?

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

5 Q. She might be?

6 A. (Affirmative nod.)

7 Q. So when did she tell you that?

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

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

12 A. I have no clue.

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

15 A. No, ma'am.

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

19 A. No, ma'am.

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

23 A. (Negative nod.)

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

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1 Did you cause those?

2 A. No, ma'am.

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

5 A. (Negative nod.)

6 Q. Any part of her body?

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

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

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

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

16 A. Yes, ma'am.

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

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

21 Q. All right.

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

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

24 MS. HODGE: Thank you, Your Honor.

25 CROSS-EXAMINATION

1 BY MS. HODGE:

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

7 A. Yes, ma'am.

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

11 A. Yes, ma'am.

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

14 A. I loved them.

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

17 A. Yes, ma'am.

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

20 A. Yes, ma'am.

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

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

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

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1 mean to them, was she?

2 A. No, not that I know of. One time she told me that

3 Minor 2 y -- I mean, Minor 1 had bitten Minor 2 and she bit

4 her back just to let her know, and that's it. I didn't

5 think nothing of it because ---

6 Q. Okay. So that's -- and she old told you that. You

7 didn't see her do it?

8 A. No, ma'am.

9 Q. You never saw her grab up Minor 1 and squeeze her real

10 tight by the rib cage?

11 A. No, ma'am.

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

13 A. (Negative nod.)

14 Q. You never saw her hit her with a beaded necklace on

15 the head?

16 A. No, ma'am.

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

18 A. No, ma'am.

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

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

21 Q. All right. And had you seen that, you would have told

22 Investigator Miller that on May 25th, wouldn't you?

23 A. Yes, ma'am.

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

25 A. Yes, ma'am.

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

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

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

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

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

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

10 A. Yes, ma'am.

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

13 A. Yes, ma'am.

14 Q. And where did you get the Xanax?

15 A. A friend.

16 Q. What friend?

17 A. My buddy Josh's friend.

18 Q. What's his name?

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

21 Q. How did you get the drugs?

22 A. Josh got them for me.

23 Q. And how did you pay Josh?

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

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

1 the government and you bought ---

2 A. A little bit of it.

3 Q. --- and you bought pills?

4 A. I paid Josh and them rent too because I was kicked out
5 of Crystal's house. I didn't have nowhere to go.

6 Q. Okay. And you were kicked out of Crystals house that
7 night; right? May 25th?

8 A. Yes, ma'am.

9 Q. And she ceased having any communication with you?

10 A. They told me at the hospital not to come back up
11 there.

12 Q. All right. And Ann also ceased communication with you
13 May 25th?

14 A. Yes, ma'am.

15 Q. That was it, y'all were done?

16 A. Yes, ma'am.

17 Q. There was no talking about getting back together,
18 nothing like that?

19 A. No, ma'am.

20 Q. You weren't -- you didn't even come to Minor 1
21 funeral, did you?

22 A. Nobody told me that she died. My brother tried to
23 tell me and I didn't believe him. But that he heard, he
24 overheard them talking about it.

25 Q. Well, tell me this, did you ever pick up that phone

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

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

5 Q. Ann's step-daddy?

6 A. Her ex-step-daddy.

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

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

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

12 A. Yes, ma'am.

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

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

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

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

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

23 A. Yeah.

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

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

7 Q. Okay. So that's why you didn't follow-up at all with
8 Minor 1, this child, this sweet little baby angel, that was
9 basically dead the last time you saw her, you didn't
10 follow-up with anybody on that?

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

14 Q. In the hospital?

15 A. Yes. She looked normal again.

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

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

22 Q. Okay. All right.

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

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

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1 A. Never called me or nothing, no.

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

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

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

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

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

12 A. Yes, ma'am.

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

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

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

18 A. Yes, ma'am.

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

20 A. (Affirmative nod.)

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

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

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

7 Q. So you started taking pills?

8 A. Yes, ma'am.

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

11 A. I wasn't driving or nothing.

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

14 A. No, my brother was there.

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

17 A. No.

18 Q. And then you're smoking pot?

19 A. Yes, ma'am.

20 Q. In front of those kids?

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

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

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James Allen Johnson - Cross Examination by Ms. Hodge

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

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

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

8 Q. Okay. How much do you weigh?

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

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

13 A. Yes, ma'am.

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

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

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

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

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

24 A. I mean, anybody should know that.

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

1 power, or the willpower, whatever, the knowledge to say,

2 excuse me, officer. And give that to Josh?

3 A. To Josh.

4 Q. Okay. And then you kept some pills in your pocket or

5 you didn't have any more pills?

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

7 had.

8 Q. Okay. And so you didn't think you needed to take the

9 pills out of your pocket before going to the police

10 station?

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

12 Q. You could get away with that basically?

13 A. Yes, ma'am.

14 Q. All right. And your testimony is then you ride to the

15 police station, but you don't remember riding to the police

16 station?

17 A. I remember bits and pieces of it. I don't really

18 remember the whole night. I remember them telling me I had

19 to go with them. I looked over. I said my brother's right

20 there. My brother was out there in his yard.

21 Q. Hadn't your brother already told you to go away or get

22 gone or something, though?

23 A. Earlier that day, yeah. He told me that I was messed

24 up, I couldn't be around the kids.

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

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

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

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

9 A. Yes, ma'am.

10 Q. You remember that?

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

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

17 A. Yes, ma'am.

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

22 A. The same man was there.

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

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

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

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

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

9 A. And took pills.

10 Q. You remember that?

11 A. Because I had the pills before I went to the bathroom
12 and I -- I'm being honest with you, ma'am. I had nothing
13 to do with what happened to Minor 1 . I loved her. I loved
14 Minor 2 . I wanted to be -- Ann even told me herself that
15 I treated them better than their own fathers did.

16 Q. Uh-huh (affirmative).

17 A. I loved them kids.

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

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

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1 Q. So you remember that?

2 A. Yes, ma'am.

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

5 A. I don't remember ---

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

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

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

12 A. Yeah. It would be serious, but I did not do it.
13 Since day one ---

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

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

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

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

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

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

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

25 A. No, I did not do it.

1 Q. Let's talk about the biological dad. You didn't like

2 Make Gore, did you?

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

4 Q. Y'all had some words?

5 A. He talked to me on the phone like -- I paid for the

6 diapers that she had, Minor2 . I needed the diapers for

7 Minor2 , too. Because I'd been watching -- I was watching

8 them kids by myself.

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

11 A. Yes, ma'am.

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

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

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

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

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

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

24 Q. And he never did ---

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

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

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

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

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

9 A. Yeah.

10 Q. And when you got ---

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

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

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

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

19 A. No, he didn't.

20 Q. So he was not. ---

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

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

25 A. No, ma'am.

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

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- 1 Q. Okay. So he just wanted to talk to Ann and not
2 Minor 1 . And I'm trying to see if it was -- didn't you
3 tell Investigator Miller that since y'all moved over to
4 Crystal's house that Ann just wasn't being as affectionate
5 towards you anymore; is that right?
- 6 A. May have.
- 7 Q. Was that accurate? Would that be a fair thing to say,
8 that she was not ---
- 9 A. She acted a little bit different. I mean, she was --
10 I guess she was -- I don't know, trying to be closer to
11 Crystal. I don't know. Because they hadn't been around
12 each other in so long.
- 13 Q. You didn't know the fact that she wasn't being as
14 affectionate to you anymore?
- 15 A. She wasn't being like she used to be.
- 16 Q. Like she used to be. All right. Okay. And ---
- 17 A. She used to get mad at me because I would move away
18 from her so I could sit by myself a little bit.
- 19 Q. So you pushed them away so you could be by yourself a
20 little bit; is that right?
- 21 A. No, Ann. I'm talking about Ann ---
- 22 Q. You would push Ann away?
- 23 A. No, that's what I'm trying to say. Is Ann used to get
24 mad at me if I would go sit on the love seat instead of
25 right beside her always. She wanted me always right there.

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

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

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

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

9 A. We was there about two months.

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

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

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

23 A. Yes, ma'am.

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

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James Allen Johnson - Cross Examination by Ms. Hodge

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1 A. No, ma'am.

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

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

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

7 A. No, ma'am.

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

10 A. No, ma'am.

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

13 A. I can't remember his name.

14 Q. Did he go by Kenny?

15 A. I think so.

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

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

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

22 A. A little bit, yeah.

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

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

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

5 A. (Affirmative nod.)

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

7 A. Me, Ann and the girls.

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

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

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

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

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

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

24 Q. Do those look bad to you?

25 A. Yes, ma'am.

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

2 A. Brings tears to my eyes.

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

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

7 A. No, she was not.

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

11 A. No, 'ma'am.

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

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

16 Q. You were planning on going somewhere?

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

18 Q. Okay.

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

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

22 A. Huh?

23 Q. Did you ever tell anybody ---

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

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

- 1 A. We was going to go ---
- 2 Q. Ann was up because y'all were going somewhere. Did
- 3 you ever tell anybody that?
- 4 A. Not as I know of.
- 5 Q. And so your testimony is Minor1 i's fine. She has none
- 6 of that stuff on her, happy and playing?
- 7 A. She had a few bruises, but she didn't have real big
- 8 bruises; she didn't have those. She had the little beaded
- 9 one and the one right there.
- 10 Q. And that's it?
- 11 A. That's all I saw when I saw her.
- 12 Q. And you heard the testimony that she had over twenty-
- 13 five bruises, and you're telling us ---
- 14 A. Yes, ma'am.
- 15 Q. --- you saw two that you knew of and you could
- 16 explain?
- 17 A. Yes, ma'am.
- 18 Q. All right. And so your testimony is that you go to
- 19 the bathroom, she's fine but two bruises; is that correct?
- 20 A. Yes, ma'am.
- 21 Q. All right. And in you're in the bathroom for how
- 22 long?
- 23 A. Two or three minutes.
- 24 Q. Two or three minutes. What are you doing in the
- 25 bathroom?

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- 1 A. Using the bathroom, taking a dump.
- 2 Q. A number two?
- 3 A. Yes, ma'am.
- 4 Q. Whatever you want to call it? All right. And then
- 5 you come out to hearing somebody yelling?
- 6 A. Ann. I heard Ann yelling. She was saying, she's not
- 7 breathing. The baby's not breathing. And so I run in
- 8 there with my cell phone. I was the only one that had a
- 9 cell phone.
- 10 Q. You're the only one that had a phone. Ann didn't have
- 11 a phone; right?
- 12 A. Ann did have a phone, but her phone got cut off.
- 13 Q. So she didn't have a working phone?
- 14 A. No, ma'am.
- 15 Q. You're the only one ---
- 16 A. She could use my phone anytime she wanted to. I let
- 17 her use it anytime.
- 18 Q. Did you have it in the bathroom with you?
- 19 A. She used it several times calling Mark.
- 20 Q. Did you have it in the bathroom with you?
- 21 A. Yes, ma'am, I did because I was using it. I had been
- 22 using it.
- 23 Q. Okay. Were you talking to somebody?
- 24 A. Before I went in there, I was.
- 25 Q. Who was that?

1 A. My buddy?

2 Q. What buddy?

3 A. I was talking to Josh again.

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

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

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

10 A. No, ma'am.

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

13 A. Yes, ma'am.

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

17 A. Yes, ma'am.

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

24 A. Right there.

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

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1 drawer?

2 A. Yes, ma'am.

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

5 A. Yes, ma'am.

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

8 A. I don't. She does.

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

10 A. I was trying.

11 Q. But she knew how to do CPR?

12 A. Yes, ma'am.

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

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

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

22 A. (Affirmative nod.)

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

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

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

4 A. No, I did not do that.

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

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

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

9 A. Yes, ma'am.

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

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

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

15 A. (No verbal response.)

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

18 A. Yes, ma'am.

19 Q. Okay.

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

21 THE COURT: Any objection?

22 MS. MANIGAULT: No objection, Your Honor.

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

25 (WHEREUPON, State Exhibit Number 55 was admitted into

1 evidence.)

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

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

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

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

9 A. She had clothes on then.

10 Q. She had these little clothes on?

11 A. And we took them off of her.

12 Q. Who took them off?

13 A. Me and Ann did.

14 Q. You and Ann did?

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

16 Q. What was on it?

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

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

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

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

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

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

1 talking about taking her clothes off ---

2 A. No, ma'am.

3 Q. --- or cleaning up throw up? So y'all got her cleaned
4 up or somebody got her cleaned up and clothes off?

5 A. Yes, ma'am.

6 Q. All right. And so when the EMS people and the firemen
7 get there, she doesn't have the clothes on. She's got a
8 diaper on?

9 A. Yes, ma'am.

10 Q. And she doesn't have any throw-up on her anywhere?

11 A. No, ma'am.

12 Q. And she really never got to breathing again; did she?

13 A. Not there. I think the paramedics got her back,
14 though.

15 Q. Right. But when you were there at the house ---

16 A. We were breathing into her the whole time until they
17 got there.

18 Q. You were able to get air going in?

19 A. We was blowing air in and it was filling up, but it
20 looked like her belly was just ---

21 Q. Going up and down?

22 A. Blowing up, and that's it.

23 Q. Okay. So there wasn't anything like sticking in there
24 when you tried to blow?

25 A. If you saw her belly, it looked like it was just --

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

4 Q. She'd make a noise?

5 A. Yeah. A noise.

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

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

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

10 A. Yes, ma'am.

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

14 A. I don't know.

15 Q. You don't remember that either?

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

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

19 A. Yeah.

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

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

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

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

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

10 Q. Do you have a temper at all?

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

12 Q. Do you have a temper in general?

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

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

17 A. If somebody attacks me or something.

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

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

22 Q. You never put your hands on anybody?

23 A. Unless the put their hands on me.

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

25 A. Yes, ma'am.

1 Q. Even family members?

2 A. Defending myself.

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

5 A. Yes, ma'am.

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

7 A. Yes, ma'am.

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

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

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

13 A. Huh?

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

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

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

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

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

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

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

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

3 I got tattoos.

4 Q. So you're trying to put a little something that's not

5 you in front of the jury, because you do have a tattoo, but

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

7 A. Everybody's got tattoos.

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

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

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

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

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

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

14 trying ---

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

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

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

18 probably more like punched this child in the face?

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

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

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

22 A. Yes, ma'am.

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

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

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

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James Allen Johnson - Cross Examination by Ms. Hodge

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

2 You've just never seen a jury?

3 A. No, I ain't never seen no jury. The only thing I've

4 had besides that assault is simple possession.

5 Q. Assault?

6 A. Simple possession.

7 Q. And assault and battery?

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

9 assault.

10 Q. Assault?

11 A. Yeah.

12 Q. So we're back to -- the truth is you're not being

13 completely truthful about yourself and what happened here?

14 A. I'm being honest with you. I've never put my hands on

15 any kids. I've never whooped a kid, but pop them on their

16 hand when they was wrong.

17 Q. But you did ---

18 A. Just to let them know.

19 Q. You did hit Minor 1 ?

20 A. No, I did not.

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

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

23 Q. And she did struggle against you, because she was not

24 going to go down that like that. She was going to

25 struggle.

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Alex Johnson - Direct Examination by Ms. Manigault

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

2 Q. And you did freak out?

3 A. No, I didn't.

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

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

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

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

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

11 THE COURT: Any redirect?

12 MS. MANIGAULT: None, Your Honor.

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

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

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

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

21 THE WITNESS: Yes, ma'am.

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

24 THE WITNESS: Alex Johnson.

25 **ALEX JOHNSON,**

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Alex Johnson - Direct Examination by Ms. Manigault

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

2 **DIRECT EXAMINATION**

3 **BY MS. MANIGAULT:**

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

5 A. Thirty.

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

7 A. Yes.

8 Q. And how do you know him?

9 A. He's my younger brother.

10 Q. He's your younger brother?

11 A. Yes.

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

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

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

17 A. All right.

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

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

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

23 A. Yes.

24 Q. What kind of condition was he in?

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

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

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

5 A. Yes.

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

7 A. Yes.

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

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

10 Q. Is Josh right next door to you?

11 A. Yes.

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

14 A. They came later on that evening.

15 Q. Okay.

16 A. I left and went to the store.

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

18 What was he high on?

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

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

23 A. Yes.

24 Q. And have you known him to take anything other than
25 Xanax or pills that he doesn't have a prescription for?

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Alex Johnson - Cross Examination by Ms. Hodge

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

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

5 A. Yep.

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

8 A. He was pretty messed up.

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

11 A. He fell off my porch.

12 Q. He fell off of your porch?

13 A. Yes.

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

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

18 Q. Okay. All right. Thank you.

19 **CROSS-EXAMINATION**

20 **BY MS. HODGE:**

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

23 A. Yes.

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

25 A. Yeah.

1 Q. You're just making assumptions?

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

4 Q. He's always done that?

5 A. Yes.

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

9 A. No, I wasn't there.

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

12 A. No, I was at the store.

13 Q. Okay. Thank you.

14 THE COURT: Any redirect?

15 MS. MANIGAULT: None, Your Honor.

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

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

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

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

24 THE WITNESS: Yes.

25 THE CLERK: Please have a seat. Please state

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Mandy Burdette - Direct Examination by Ms. Manigault

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1 your name for the record.

2 THE WITNESS: Mandy Marie Burnette.

3 MANDY BURNETTE,

4 BEING FIRST DULY SWORN, TESTIFIED AS FOLLOWS:

5 DIRECT EXAMINATION

6 BY MS. MANIGAULT:

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

9 A. I'm thirty.

10 Q. Okay. And where do you live?

11 A. I live in Travelers Rest.

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

13 A. Yes, ma'am.

14 Q. And how long have you known him?

15 A. About five or six years.

16 Q. And do you have children?

17 A. I do.

18 Q. And how many children do you have?

19 A. I have two.

20 Q. Two?

21 A. Uh-huh (affirmative).

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

23 A. Yes, ma'am.

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

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

3 Q. I didn't hear you.

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

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

6 A. Yes, ma'am.

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

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

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

11 A. Yes, ma'am.

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

14 A. Yes, ma'am.

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

17 A. No, ma'am.

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

20 A. No, ma'am.

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

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

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Mandy Burdette - Direct Examination by Ms. Manigault

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1 Q. Right.

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

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

6 A. Yeah. At least, yeah.

7 Q. All right. Thank you.

8 **CROSS-EXAMINATION**

9 **BY MS. HODGE:**

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

11 A. It's Burnette now.

12 Q. Burnette now?

13 A. Yeah.

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

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

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

19 A. Oh, yeah. Yeah.

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

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

1 Q. During that week?

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

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

5 A. Not at my house, no.

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

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

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

12 A. Yes, ma'am.

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

15 A. Oh, yes.

16 Q. Okay.

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

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

21 A. Yes, ma'am.

22 Q. --- before he got arrested?

23 A. Yeah.

24 Q. Okay. Thank you.

25 THE COURT: Any redirect?

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1 MS. MANIGAULT: None, Your Honor.

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

3 You may call your next witness.

4 MS. MANIGAULT: Defense rest, Your Honor.

5 THE COURT: Anything in reply from the State?

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

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

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

13 THE WITNESS: I do.

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

16 THE WITNESS: Jim Wilson.

17 JIM WILSON,

18 BEING FIRST DULY SWORN, TESTIFIED AS FOLLOWS:

19 DIRECT EXAMINATION

20 BY MS. HODGE:

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

23 A. I do.

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

25 A. I did.

1 Q. How long were you with them?

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

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

8 A. I was.

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

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

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

16 A. Is that better?

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

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

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

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

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

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

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

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

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

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

21 A. No.

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

24 A. Correct.

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

1 A. No. It was an unmarked car.

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

4 A. No.

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

7 A. Correct, yes.

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

11 A. Yes.

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

13 A. Yes.

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

16 A. Yes.

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

20 A. Yes.

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

23 A. Yes.

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

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1 A. Yes.

2 Q. People under the influence of meth?

3 A. Yes.

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

6 A. No.

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

9 A. Yes.

10 Q. And he agreed?

11 A. Yes, ma'am.

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

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

16 Q. Did he stay awake in the car?

17 A. Yes.

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

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

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

1 kind of basic conversation?

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

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

7 A. No.

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

9 A. Yes, ma'am.

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

12 A. That's correct.

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

15 A. That's correct.

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

17 A. Yes, ma'am.

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

20 A. I did.

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

23 A. I did.

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

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

2 A. Yeah. I heard both phases.

3 Q. Okay. Initial talking about what he was saying

4 happened in the case? And then was there a bathroom break?

5 A. There was.

6 Q. And then did the Defendant come back from the bathroom

7 and continue talking to Investigator Miller?

8 A. That's correct.

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

10 A. That's correct.

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

12 confessions?

13 A. He did. I don't remember word-for-word what he said,

14 but I do remember him saying he really needs to tell the

15 truth and get this off his heart. You know, something

16 along that line. He wanted to tell the truth.

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

18 A. No.

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

20 reefer?

21 A. No.

22 Q. He had his wits about him and understood what was

23 going on?

24 A. That's correct.

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

1 did tell the truth or what happened?

2 A. Yes.

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

5 A. No, ma'am.

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

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

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

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

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

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

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

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

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

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

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

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

1 human life.

2 THE COURT: All right. I'll study that briefly.

3 I'm not inclined to believe that would be a lesser

4 included.

5 Any other requests for charge from either of you?

6 I'll basically give my standard charge about intoxication.

7 I'll charge that, intoxications, relating to intoxication.

8 There's enough evidence related to that. The statement,

9 I'll let the jury know that they have the ultimate decision
10 about the value of the statement that was given. I'll

11 obviously charge reasonable doubt, burden of proof,

12 credibility, those kind of things in the statute that he's

13 charged under (A)(1), or is that part of the statute?

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

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

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

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

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

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

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

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

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

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

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1 your motion.

2 MS. MANIGAULT: Thank you, Your Honor.

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

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

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

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

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

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

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

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

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

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

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

1 MS. MANIGAULT: Yes, sir.

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

7 MS. MANIGAULT: Yes, air.

8 THE COURT: All right. Have our jury come in.

9 (WHEREUPON, the jury entered the open court at
10 approximately 12:41 P.M.)

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

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

1 please the Court. Ms. Hodge.

2 **CLOSING ARGUMENT**

3 **BY MS. MANIGAULT:**

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

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

1 presented by the State to you.

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

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

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

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

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

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

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

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

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

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

12 **CLOSING ARGUMENT**

13 **BY MS. HODGE:**

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

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1 trying to say Ann is squeaky clean in this or she didn't
2 have anything to do with it? Well, she did. She gave,
3 basically a stranger from the get-go, care and custody of
4 her two little babies, baby girls. And the evidence that
5 the State has presented is the Defendant is the person that
6 has administered all of the blows to this child. Even by
7 his own testimony he had sole custody and care practically
8 all the time of this little girl, Minor1 . Minor2 was
9 there too, but we're talking about Minor1 . How do we
10 know then, through the evidence in this case, that the
11 Defendant is the one that did these acts. Well, I've got a
12 couple pieces of evidence I want you to take back to the
13 jury room and look at and listen in your deliberations.
14 The 9-1-1 call. It might have been a little hard to hear
15 in here initially, but you'll be able to listen to it as
16 many times as you want. But what I want you to listen to
17 is the very first two to three seconds before the operators
18 pick up the phone. You'll recall Ms. Buford, our first
19 witness who worked at the 9-1-1 recording area, says when a
20 call comes in, before the operator answers, they're
21 recording what's being said. So it's fairly faint, but I
22 want you guys to listen to it and you decide if you hear
23 what I heard. And what I heard was Ann asking the
24 Defendant, what do I say? Because ladies and gentlemen,
25 she wasn't in there and she didn't know how the child got

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

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

25 But she places herself there in the beginning because

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

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

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

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

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

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

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

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

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

1 So he started coming clean and he had the appropriate.
2 emotions for it, starting saying, people aren't going to
3 like me. People are going to think bad about me. Why
4 would he say all of that stuff if he didn't do it? There's
5 no reason. There's nothing that makes sense for him to
6 admit to this crime. Because supposedly Ann might be
7 pregnant with this child? Doesn't make sense, no. And
8 he'd even been told by the police, she's back with this
9 other man now. So it's not like they were going to get
10 back together and he was protecting her and they were going
11 to be a good little family. No. It was over. It was done
12 and I think he finally had that release he needed to have
13 and told the truth.

14 So ladies and gentlemen, I ask you to look at the
15 evidence, the evidence regarding Minor 1's death and the
16 ugly truth about her death, and have a verdict that speaks
17 the truth. A truth of guilty against this Defendant for
18 homicide by child abuse. Thank you.

19 **CHARGE**

20 **BY THE COURT:**

21 Mr. Foreman, ladies and gentlemen, it's now my
22 responsibility to instruct you on the law of the case. Let
23 me remind you, the fact that this indictment that I hold
24 charges the Defendant with homicide by child abuse, the
25 fact that he's been arrested, that he was charged and that

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

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

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

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

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

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

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

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

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

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

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

7 consider only the competent evidence that is before you.

8 Any objection that was made and sustained to any evidence

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

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

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

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

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

14 this case.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

19 THE COURT: From the Defense?

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

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

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

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

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

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

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

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

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

12 THE JUROR: Yes.

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

14 THE JUROR: No, I have until tomorrow.

15 THE COURT: So you're good?

16 THE JUROR: Yes.

17 THE COURT: Thank you very much.

18 THE JUROR: Thank you.

19 THE COURT: You can return back.

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

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

25 THE BAILIFF: The food is here, Judge.

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

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

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

14 THE BAILIFF: Yeah.

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

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

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

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

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

9 THE JURORS: Okay.

10 THE COURT: Thank you very much.

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

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

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

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

20 THE COURT: Anything from the Defense?

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

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

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

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

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

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

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

1 THE JUROR: We have, Your Honor.

2 THE COURT: Is it a unanimous verdict?

3 THE JUROR: It is.

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

6 Madam Clerk, you may publish the verdict.

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

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

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

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

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

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

20 THE COURT: From the Defense?

21 MS. MANIGAULT: Nothing from the Defense.

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

State of South Carolina -vs- James Johnson (2011-GS-23-07262)
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1 to the case. You paid attention and I appreciate that so
2 much. You've been a treat for me to work with. You've
3 been good judges of the facts and I appreciate so much your
4 willingness to serve this week. We have another trial now
5 in progress so we've already selected twelve people with an
6 alternate to serve on that jury. I don't know what we may
7 have for the rest of the week, but just out of a world of
8 precaution, I'm going to ask you, if you would, to call
9 back tonight after six o'clock. There'll be an instruction
10 for you on the answering machine as to whether you need to
11 call back or to come back later this week. Thank you for
12 your service again. I hope that when you get the next
13 summons for jury service -- you may remember from Monday
14 that I told you every three years you don't have to serve.
15 You'll get an exemption. I hope you'll waive that
16 exemption and serve again. I'm confident if you ever find
17 yourself not sitting in a jury box, but sitting at one of
18 those tables for whatever civil action or a criminal charge
19 against you, you'll want good, solid, sound, conscientious
20 jurors such as yourself to serve in that jury box for you.
21 You're excused at this time. If you would, call back
22 tonight after six o'clock. You can go with the bailiff
23 now. You're certainly welcome to stay if you wish.

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

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

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

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

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

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

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

17 Is the sentencing sheet prepared?

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

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

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

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

State of South Carolina -vs- James Johnson (2011-GS-23-07262)
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1 obviously you've been here through the whole trial. You
2 see what a horrific, sad, senseless case this is. She was
3 really just a baby and, Your Honor, the evidence showed,
4 the State believes, the Defendant brutally abused this
5 child and killed this child, and clearly showed no
6 acceptance of responsibility by forcing the case to trial,
7 which I know we're not asking you to punish him for going
8 to trial. But there was overwhelming evidence of his
9 guilt. He refused to accept that responsibility and
10 acknowledge that guilt. I don't think he should be given a
11 benefit for non-acceptance. The State originally offered
12 thirty-five years on the case. He declined that plea
13 offer.

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

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

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

24 THE COURT: Excuse me?

25 MS. CULBERTSON: Tina Marie Culbertson.

1 THE COURT: All right, Ms. Culbertson.

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

9 THE COURT: Thank you, Ms. Culbertson.

10 MS. HODGE: Thank you.

11 THE COURT: Anything else from the State?

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

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

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1 like to address me.

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

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

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

4 THE COURT: Thank you, Ms. Manigault.

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

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

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

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

13 THE COURT: Yes, ma'am.

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

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

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

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1 MS. HODGE: Yes, Your Honor.

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

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

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

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

1 the best.

2 MS. HODGE: Thank you, Your Honor.

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

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

7

8 [END OF REQUESTED TRANSCRIPT OF RECORD]

9

WITNESSES

DOCKET NO. 2011-GS-23-
KBF

007262

The State of South Carolina

C. T. Miller

Paul
County of Greenville

Greenville County Sheriffs Office

6/2/2011

COURT OF GENERAL SESSIONS
September

TERM 2011 *cm*

THE STATE

vs.

ARREST WARRANT NUMBER
1433991

JAMES ALLEN JOHNSON

ACTION OF GRAND JURY

TRUE BILL

Bobby L. Davis
FOREMAN GRAND JURY

Foreperson of Grand Jury

VERDICT

Margaret
Indictment for

2356

HOMICIDE BY CHILD ABUSE

VIOLATION § 16-03-0085(A)(1)

Guilty

[Signature]
Foreperson of Petit Jury

Date: JUNE 5, 2013

550
STATE OF SOUTH CAROLINA)
COUNTY OF GREENVILLE)

INDICTMENT FOR
HOMICIDE BY CHILD ABUSE

At a Court of General Sessions, convened on

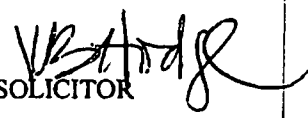
SEP 13 2011

the Grand Jurors of Greenville

County present upon their oath:

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

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


SOLICITOR

STATE OF SOUTH CAROLINA
COUNTY OF GREENVILLE

2011-074615

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

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

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

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

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

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

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

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

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

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

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

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

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



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

WITNESS:

C.T. Miller
J. Autrey *10/20/2011

X James Johnson

I HAVE RECEIVED A COPY OF THIS STATEMENT

X James Johnson

Sworn before me this _____ day of _____ 20 _____

NOTARY PUBLIC FOR SOUTH CAROLINA

600.

Case Number 1111000076115

74615

James Allen Johnson

YOUR RIGHTS

DOB

SSA

Sheriffs Office

Greenville, S.C.

Date 06/02/2011

Time 2202

X Before we ask you any questions, you must understand your rights.

JA

X You have the right to remain silent.

JA

X Anything you say can be used against you in court.

JA

X You have the right to talk to a lawyer for advice before we ask you any questions and to have him with you during questioning.

JA

X If you have no money to pay a lawyer's fee, the court will appoint one to represent you without cost if you wish.

X If you decide to answer questions now without a lawyer present, you will still have the right to stop answering at any time. You also have the right to stop answering at any time until you talk to a lawyer.

WAIVER OF RIGHTS

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

JA

Signed JAMES JOHNSON

Witness CJ Miller

Witness J. [Signature] 7/10/2011

Time 2212

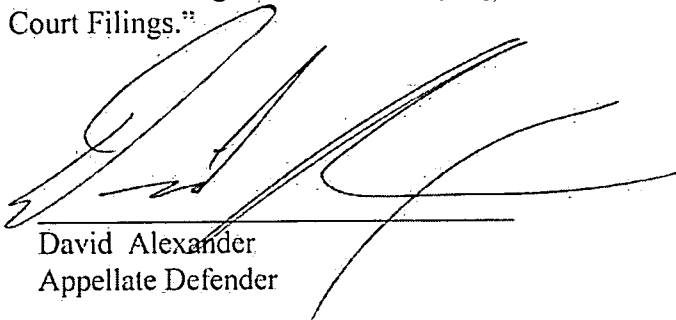
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PERCUT 800-531-6888	COURT'S
	EXHIBIT NO. 1
	IDENTIFICATION/EVIDENCE
	DXT.# 11-7262
DATE: 6-3-11	

CERTIFICATE OF COUNSEL FOR APPELLANT

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

September 18th, 2014

A handwritten signature in black ink, appearing to read 'David Alexander', is written over a horizontal line. The signature is stylized with long, sweeping strokes.

David Alexander
Appellate Defender

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

ATTORNEY FOR APPELLANT

RECEIVED

JAN 29 2016

SC SUPREME COURT

STATE OF SOUTH CAROLINA

IN THE COURT OF APPEALS

Appeal from Greenville County

G. Edward Welmaker, Circuit Court Judge

THE STATE,

RESPONDENT,

V.

JAMES ALLEN JOHNSON,

APPELLANT

APPELLATE CASE NO. 2013-001314

FINAL BRIEF OF APPELLANT

DAVID ALEXANDER
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(803) 734-1343

ATTORNEY FOR APPELLANT

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STATEMENT OF ISSUE ON APPEAL

Did the admission of a statement spawned from a two-phase interrogation of a mentally retarded suspect who did not receive Miranda¹ warnings until after he made incriminating statements violate state law, the Fifth Amendment, Miranda, and Missouri v. Seibert?²

¹ Miranda v. Arizona, 384 U.S. 436 (1966).

² Missouri v. Seibert, 542 U.S. 600 (2004).

STATEMENT OF THE CASE

On September 13, 2011, a Greenville County grand jury indicted appellant for homicide by child abuse. On June 3, 2013, appellant was tried before the Honorable G. Edward Welmaker and a jury. R. 1. Kris Hodge represented the State. R. 1. Dorothy Manigault represented appellant. R. 1. The jury convicted appellant. R. 588, ll. 4 – 10. Judge Welmaker sentenced appellant to sixty-two years' imprisonment. R. 595, l. 23 – 596, l. 1. After timely filing and service of the notice of appeal, this appeal follows.

ARGUMENT

The admission of a statement spawned from a two-phase interrogation of a mentally retarded suspect who did not receive Miranda warnings until after he made incriminating statements violated state law, the Fifth Amendment, Miranda, and Missouri v. Seibert.

Introduction

In this case, the police interrogated a mentally retarded suspect using, as the solicitor candidly identified it, the “two phase” interrogation tactic condemned by the United States Supreme Court in Missouri v. Seibert and the South Carolina Supreme Court in State v. Navy.³ Appellant James Allen Johnson (“Johnson”) is mentally retarded. R. 12, ll. 8 – 18. The State prosecuted him for the death of his girlfriend’s child (“Minor”). At the time of Minor’s injuries, both Johnson and his girlfriend, Georgia Ann Sprouse (“Sprouse”) were at home with Minor. R. 485, ll. 1 – 5. Both Johnson and Sprouse initially told police that Johnson was in the bathroom when Minor choked on tea and stopped breathing. R. 485, ll. 6 – 20. R. 156, l. 24 – 157, l. 10.

After the pathologist ruled Minor’s death a homicide, Sprouse, who had a long history with DSS, changed her story to incriminate Johnson. R. 456, ll. 3 – 12. R. 419, ll. 10 -18. R. 305, ll. 5 – 14. The police brought Johnson to the station and three officers questioned him for an indeterminate amount of time, no shorter than one and a half hours, and possibly for as long as four or five hours. R. 374, ll. 15 – 25. R. 441, ll. 10 – 13. R. 550, l. 23 – 551, l. 3. Johnson then admitted suffocating the child. R. 427, l. 20 – 428, l. 3.

³ The solicitor asked one of the police officers present at the interrogation, “Did you hear the Defendant telling Investigator Miller basically what happened in this case? **Two phases?** I guess, **two phases?** Did you hear him give a statement?” R. 554, l. 24 – 555, l. 1 (emphasis added). The officer responded, “Yeah. I heard **both phases.**” R. 555, l. 2 (emphasis added).

Only after this admission, and for the first time, the police read Johnson his Miranda warnings. R. 428, ll. 7 – 12. They continued questioning him, using the information they had already obtained to draft a written statement for Johnson to sign. R. 431, ll. 4 – 15. Johnson misspelled his own name on the statement. R. 599 - 600. He and his brother testified that he was heavily intoxicated that day. R. 68, ll. 2 – 15. R. 81, l. 19 – 82, l. 1. Johnson said he did not remember giving the statement. R. 67, ll. 11 – 13.

Relevant Facts

Appellant Johnson⁴ was twenty-eight years old at the time of trial. R. 477, ll. 21 – 22. The court held a Blair hearing before the trial began regarding Johnson's mental competency. Dr. Richard Frierson testified that Johnson is mentally retarded. R. 12, ll. 8 – 18. Johnson's IQ is below seventy. R. 12, ll. 8 – 18. The doctor found that Johnson's ability to use the word "prosecute" was "pretty surprising given his intellectual functioning." R. 15, ll. 2 – 10. Dr. Frierson stated that Johnson's retardation prevented him from maintaining competitive employment and speculated that "he might be able to go pick up trash somewhere, but he's not going to be able to support himself with work." R. 15, ll. 11 – 22. Johnson took two medications for major depression. R. 11, ll. 10 – 15. Johnson has never had a driver's license. R. 484, ll. 18 – 21. Dr. Frierson opined Johnson was competent to stand trial.

Co-defendant Sprouse was Minor's mother. R. 247, ll. 6 – 10. She was thirty-two years old at the time of trial. R. 246, ll. 10 – 12. She had three children by three different fathers. R. 246, l. 22 – 247, l. 23. She was charged in this case with homicide by child

⁴ Some of the witnesses refer to Johnson by the nickname, "Parker." R. 188, ll. 2 – 7.

abuse, aiding and abetting, and accessory after the fact.⁵ R. 246, ll. 19 – 21. From her testimony, it was apparent that Sprouse had a long history with DSS, with “at least three different” investigations. R. 305, ll. 5 – 14. Minor was taken from Sprouse immediately when Minor was born because she tested positive for marijuana. R. 251, ll. 4 – 21. Sprouse also testified that “every time that I’ve had my kids took” and “[e]ach time that I’ve had a DSS case” it involved her drug addiction. R. 253, ll. 5 – 21. Sprouse eventually got Minor and her other daughter back after spending nine months at a drug rehabilitation facility. R. 252, ll. 1 – 17.

Sprouse met Johnson through her sister. R. 256, l. 17 – 18. The same day she met Johnson, she invited him to move in with her and they began a romantic relationship. R. 257, ll. 1 – 13. Sprouse depended upon government assistance and child support. R. 258, l. 23 – 259, l. 4. She was abusing drugs before she met Johnson. R. 257, ll. 22 – 24. She knew that Johnson received a disability check because of his mental retardation. R. 259, ll. 5 – 7. R. 481, ll. 10 – 14. Because of Johnson’s retardation, he had to have a payee for his disability payments. R. 481, ll. 10 – 14. Johnson’s brother testified that Johnson is not allowed to live by himself. R. 84, ll. 5 – 7.

At the end of April 2011, Johnson, Sprouse, and Sprouse’s daughters moved in with Sprouse’s friend, Crystal Inman (“Inman”). R. 524, ll. 3 – 23. Inman was married and had three children. R. 173, ll. 15 – 174, l. 8. Inman and Sprouse had been “childhood friends forever.” R. 175, ll. 5 – 9. Inman never noticed Sprouse or Johnson hitting the children other than “a pop on the hand and put in a corner.” R. 189, ll. 8 – 18.

⁵ The Department of Corrections website reflects that Sprouse received a fourteen year sentence shortly after Johnson’s trial ended.

May 25, 2011: Minor is Taken to the Hospital

On the afternoon of May 25, 2011, Inman asked Sprouse to ride with her to pick up her children from school, but Sprouse declined because she “was too high and [she] was tired.” R. 269, ll. 3 – 11. Sprouse and Johnson were home alone with Minor and Sprouse’s other daughter (“Sister”). R. 485, ll. 1 – 5. Minor was approximately one-and-a-half years old and Sister was approximately two-and-a-half years old. R. 247, ll. 6 – 10.

Sprouse gave several different versions of what happened to Minor that afternoon, but she told the first police officer who arrived at the scene that Minor “was drinking tea and she started choking and she threw up.” R. 156, l. 24 – 157, l. 10. The police found a spot on the rug that they suspected was vomit. R. 392, l. 19 – 393, l. 4. Johnson told the same police officer, “I don’t know what happened. I was in the bathroom.” R. 157, ll. 5 – 7. Johnson was the one who called 911. R. 490, ll. 7 – 12.

Johnson testified that the children were playing in the living room when he went to the bathroom. R. 485, ll. 6 – 20. While he was in the bathroom, Sprouse yelled to him that Minor was not breathing. R. 485, ll. 6 – 20. When Johnson got to the living room, he saw that Minor was “already discolored.” R. 485, ll. 6 – 20. Sprouse, Johnson, and Inman had been smoking marijuana that morning and Sprouse originally wanted to attempt to revive Minor themselves because she was afraid that if they called 911, the authorities would find the marijuana and she would lose her children. R. 488, l. 16 – 490, l. 12. Johnson called 911 while Sprouse hid the marijuana. R. 488, ll. 16 – 20. A firefighter was the first to arrive and saw Sprouse performing chest compressions and Johnson “doing mouth-to-mouth rescue breathing on the child.” R. 104, ll. 10 – 15. Emergency personnel took Minor to the hospital. R. 114, ll. 6 – 16.

The Medical Evidence

The paramedics were able to regain a pulse. R. 152, l. 22 – 153, l. 10. At the hospital, Minor was placed on a ventilator. R. 324, ll. 22 – 24. Tragically, Minor suffered a “severe neurologic injury.” R. 326, ll. 9 – 14. Minor was taken off life-support on May 27, 2011, and died. R. 244, ll. 6 – 8.

Dr. Mary Fran Croswell, who said she was “a child abuse pediatrician,” examined Minor while she was on life-support. R. 324, ll. 13 – 17. She testified that the child had multiple bruises on her body. R. 326, l. 9 – 331, l. 6. Dr. Croswell opined that the location of some of the bruises raised “red flags for an abusive injury.” R. 331, ll. 7 – 16.

The pathologist who performed the autopsy, Dr. Michael Ward, also found numerous bruises. R. 452, l. 5 – 453, l. 25. Despite the bruises, the autopsy revealed “no trauma” to any of the child’s internal organs. R. 463, ll. 11 – 18. The pathologist opined that the child died of lack of oxygen to the brain. R. 460, ll. 1 - 19. There was no direct trauma to the brain. R. 460, ll. 1 - 19.

One specific injury inside the child’s mouth led the pathologist to conclude that she had been suffocated. The “frenulum” is the “little piece of tissue that attaches the lip to the upper gum. It’s in the very midline of your lip.” R. 453, ll. 20 – 22. Minor’s frenulum on the upper portion of her lip was torn. R. 453, ll. 22 – 24. The pathologist also saw “a small amount of hemorrhage within the mucosa of the inside of her mouth.” R. 453, ll. 23 – 25. The torn frenulum signified to the pathologist that the child had been smothered with “pressure placed against the upper lip, basically covering the mouth.” R. 456, ll. 3 – 12. The pathologist also said it would have been medically impossible for the child to have died from choking on tea and vomiting. R. 467, ll. 4 – 7.

The pathologist stated that a torn frenulum was not an injury he had seen caused by CPR. R. 456, ll. 17 – 19. Even though Dr. Croswell was not able to examine the child's frenulum, she still opined that it would have been caused by "some type of blunt force trauma" or a "suffocation type of injury." R. 334, ll. 20 – 23. Dr. Croswell also stated that she "would not expect to see" a torn frenulum from CPR. R. 337, ll. 5 – 10. In addition to the CPR performed by Sprouse and Johnson, the firefighter who was the first to respond to the scene checked Minor's airway and tried to hear or feel whether she was breathing. R. 108, ll. 6 – 15. The firefighters initially used a bag valve mask to help Minor breathe. R. 108, ll. 16 – 21.

The first paramedic to testify said that, in the moving ambulance, his partner "intubated the child correctly and did the correct procedure, in the correct manner, the correct depth. I mean, everything was, **everything was textbook.**" R. 139, ll. 14 – 18 (emphasis added). When asked if intubating the child could have caused a tear in the frenulum, the first paramedic stated, "There was not enough force. There was not – he didn't apply enough force to do that, no." R. 139, ll. 19 – 22. However, the paramedic who actually intubated the child testified that the first intubation came loose and "probably pulled up past the vocal cords." R. 152, ll. 1 – 21. They removed the tube, continued alternate ventilation, and then "attempted one other time to intubate the child and noted some edema or some swelling in the throat." R. 152, ll. 12 – 16. They abandoned their second attempt to intubate the child. R. 152, ll. 12 – 21. He said it was "a rough ride" to the hospital. R. 152, ll. 3 – 5. "The roads are – you know, the roads aren't the greatest in the world and with a firefighter driving sometimes, especially with a twenty-month old in the back, the drive can get kind of rough." R. 152, ll. 5 – 8. This paramedic also claimed that intubation could not

have caused any injury to the frenulum. R. 151, ll. 17 – 24. At the hospital, ventilation tubes were inserted into Minor's airway. R. 324, ll. 22 – 24.

Sprouse's Changing Story

Sprouse gave three versions of what happened to Minor. Sprouse told the first police officer who arrived at the scene that Minor "was drinking tea and she started choking and she threw up." R. 156, l. 24 – 193, l. 10. She told another deputy at the scene that "the child walked over to the table where there was a glass of tea, took a drink of tea, started choking, threw up" and then they called 911. R. 165, ll. 8 – 17. This deputy released Sprouse and Johnson from the scene and they went to the hospital. R. 167, ll. 9 – 15. She again told an investigator at the hospital that the child choked on tea and gave a written statement. R. 280, ll. 7 – 9. In her statement, she described the cup from which the child drank, described Minor throwing up and holding her until Sprouse realized Minor was not breathing, and described yelling for Johnson who was on the toilet. R. 290, l. 12 – 292, l. 16.

The next day, Sprouse changed her story. R. 280, ll. 10 – 16. This interview also took place at the hospital. R. 392, ll. 15 – 22. She told the police that she was in the kitchen when the child began choking. R. 287, l. 15 – 288, l. 3. She also now placed Johnson in the room with Minor when she started choking instead of in the bathroom. R. 412, l. 23 – 413, l. 5.

Between Sprouse's second and third versions, the child died and the autopsy was performed. R. 413, ll. 23 – 24. R. 414, l. 22 – 418, l. 14. Christopher Miller ("Miller") was the lead investigator on the case. R. 42, ll. 17 – 20. He attended the autopsy on May 28 and

learned the pathologist's preliminary finding that Minor's death was a homicide resulting from suffocation. R. 414, l. 22 – 415, l. 22.

On June 2, Investigator Miller and two other officers located Sprouse at the mortuary and took her to the law enforcement center for questioning. R. 418, ll. 10 – 419, l. 5. They told Sprouse the results of the autopsy and that her story was “just not making sense.” R. 419, ll. 1 – 5. Investigator Miller told Sprouse, “We need the truth,” and “pressed her pretty hard.” R. 419, l. 4. R. 419, ll. 19 – 22. Sprouse then spun her third version of events—that she had been asleep from smoking marijuana and was awakened by Johnson who told her that Minor was not breathing. R. 419, ll. 10 – 18. Sprouse used this third version as her trial testimony. R. 269, ll. 3 – 270, l. 15. The police gave her a ride back to the mortuary. R. 420, ll. 16 – 19.

Jackson v. Denno Hearing: The June 2, 2011, Interrogation of Johnson

The police witnesses were vague about the timeline of events surrounding the interrogation of Johnson on June 2. What is known for certain is that at 10:02 PM, Johnson signed a Miranda waiver. R. 600. What is not known is how long Johnson was interrogated before the police read him his rights.

During the Denno hearing, Investigator Miller told Judge Welmaker that he started speaking to Johnson “probably some time right before ten o’clock.” R. 50, l. 21 – 51, l. 4. However, Johnson was already at the station when Investigator Miller returned from the mortuary. R. 60, ll. 10 – 23. He described Johnson as making incriminating statements after returning from a bathroom break and once these statements were made, Investigator Miller read him his rights. R. 52, l. 4 – 53, l. 11. During cross-examination at the Denno

hearing, Investigator Miller allowed "about forty-five minutes to an hour" of "talking" before the bathroom break. R. 62, ll. 13 – 18.

Before the bathroom break, Investigator Miller confronted Johnson with Sprouse's statement from earlier in the day. R. 52, ll. 4 – 13. Investigator Miller escorted Johnson to the bathroom. R. 52, l. 4 – 53, l. 11. When they returned, Investigator Miller told Johnson "that there was things that just didn't make sense, that I, you know, I needed the truth to come out." R. 52, ll. 20 – 22. He used the "sympathy" technique to question Johnson. R. 56, l. 12 – 57, l. 4. He told Johnson that "sometimes accidents happen" and "that we do things sometimes that we don't intend to happen." R. 56, l. 12 – 57, l. 4. "Sometimes we lose our temper." R. 56, l. 12 – 57, l. 4. "I explained that I have kids and, you know, that I know what it's like to have a kid that's crying that just will not stop. And, you know, and that I understood where he was—why he was so frustrated." R. 56, l. 12 – 57, l. 4.

Johnson then supposedly told the three policemen in the room that he threw a toy at Minor's head which caused her to cry. R. 52, l. 4 – 53, l. 11. Minor would not stop crying and fearing that it would awaken Sprouse, Johnson told the policemen that "he held his hands over her nose and mouth to make her be quiet, and then she became unresponsive." R. 52, l. 4 – 53, l. 11. Investigator Miller then read Johnson his rights. R. 52, l. 4 – 53, l. 11. The policemen typed up a statement and had Johnson initial and sign it. R. 53, l. 5 – 57, l. 19. R. 599 - 600. He was then placed under arrest and taken to jail. R. 58, l. 14 – 59, l. 21.

The other officer present during the interrogation was Investigator Jennings Autrey ("Autrey"). R. 25, ll. 15 – 19. Investigator Autrey confirmed that Johnson was already at the station when he and Investigator Miller returned from dropping Sprouse off at the mortuary. R. 26, ll. 3 – 13. During the Denno hearing Investigator Autrey guessed the

entire interview lasted an hour and a half to two hours. R. 38, l. 20 – 39, l. 2. He conceded that Johnson “was a possible suspect at that time.” R. 39, ll. 20 – 22. Investigator Autrey confirmed that Johnson did not receive Miranda warnings until after making incriminating statements. R. 39, l. 23 – 40, l. 8. During his trial testimony, Investigator Autrey guessed they had been with Johnson for an “[h]our, hour and a half” before Miranda warnings were given. R. 374, ll. 15 – 25.

During trial, the State called Deputy Jim Wilson (“Wilson”) as a reply witness.⁶ R. 549, ll. 2 – 7. He was present during the questioning of Sprouse at the law enforcement center on June 2. R. 418, l. 22 – 419, l. 5. Investigator Miller took Sprouse back to the mortuary and asked Deputy Wilson to fetch Johnson and bring him to the law enforcement center. R. 420, l. 16 – 421, l. 12. Investigator Miller testified that he dropped Sprouse off at the mortuary in Greer and then drove straight back to the law enforcement center in Greenville. R. 421, ll. 16 – 21. Investigator Miller said that Deputy Wilson was already back at the law enforcement center with Johnson when he returned from the mortuary. R. 521, ll. 16 – 21.

Deputy Wilson was not certain about the exact time he picked up Johnson, but recalled several important details: “It was daytime. I don’t remember. It wasn’t early morning, **wasn’t late, late afternoon either, that I remember.**” R. 550, l. 23 – 551, l. 3 (emphasis added). Deputy Wilson’s memory that it was not “late, late afternoon” when he picked up Johnson is consistent with Investigator Miller dropping Sprouse off at a mortuary during what was likely regular business hours. No witness testified that Sprouse was at the

⁶ Interestingly, the State did not call Deputy Wilson during the Denno hearing. He was called as a reply witness to refute Johnson’s testimony that he was intoxicated the night of June 2.

mortuary after hours for a visitation or any other reason. If Deputy Wilson is correct, that means that Johnson likely arrived at the law enforcement center sometime not "late, late afternoon" between 4:00 PM and 6:00 PM. That meant that Johnson could have been questioned as much as five or six hours before he was given Miranda warnings at 10:02 PM.

The Rulings at Trial

During the pre-trial Denno hearing, which was held after the Blair hearing where the trial judge learned Johnson was mentally retarded, the State offered the testimony of Investigators Miller and Autrey, but not Deputy Wilson. Johnson and his brother, Alex Johnson, also testified. Johnson testified that he did not remember giving the statement on June 2. R. 67, ll. 11- 13. According to Johnson, two deputies came to his house and told him he "had to go with them." R. 67, ll. 14 – 17. That day, Johnson smoked marijuana and took approximately ten Xanaxes. R. 68, ll. 2 – 15. He took three Xanaxes with him to the police station and took them during his trip to the bathroom. R. 68, l. 16 – 69, l. 2. Johnson admitted that the handwriting on the Miranda waiver and the statement were his, but could not remember giving the statement. R. 69, l. 3 – 71, l. 10.

Johnson's brother testified that he saw Johnson approximately an hour before the police took him and Johnson "was heavily intoxicated. He was staggering around, falling around everywhere. Fell off my porch and everything." R. 81, l. 19 – 82, l. 1. The brother expressed disbelief that the police would interrogate his retarded brother without his legal guardian present. R. 84, ll. 1 – 4. The brother stated that Johnson is "only twenty-something. But he is not allowed to live by hisself or nothing." R. 84, ll. 5 – 7.

Following the conclusion of testimony at the Denno hearing, and without hearing argument, the court recessed for lunch. R. 85, ll. 9 – 15. When the court returned from the

lunch break, Judge Welmaker immediately ruled on the admissibility of the statements. R. 85, l. 18 – 86, l. 4. The trial judge held that after weighing the testimony, he found that Johnson's statement was freely and voluntarily given. R. 85, l. 18 – 86, l. 4. The trial judge did not ask for argument from either the State or the defense before or after ruling. R. 85, l. 18 – 86, l. 4. Johnson renewed his objection to the statement during the trial and the renewed objection was denied. R. 360, ll. 16 – 21. R. 366, ll. 17 – 23. R. 373, ll. 14 – 20.

Discussion

In Missouri v. Siebert, 542 U.S. 600 (2004), the United States Supreme Court condemned a deliberate practice used in police departments throughout the country meant to circumvent Miranda. Siebert at 610-12 and n.2. The Court cited the Police Law Institute's manual which instructed officers to use a "two-stage interrogation" and not give Miranda warnings until after arrestees have confessed. Id. at 610. The Court listed multiple sources advising officers on how to obtain confessions and then curing the failure to give Miranda warnings. Id. at 610 n.2.

The Court called this practice "question-first" and rejected the notion that the subsequent giving of Miranda warnings could transmute these confessions into admissible evidence. Id. at 610-13. "By any objective measure . . . it is likely that if the interrogators employ the technique of withholding warnings until after interrogation succeeds in eliciting a confession, the warnings will be ineffective in preparing the suspect for successive interrogation, close in time and similar in content." Id. at 613. "After all, the reason that question-first is catching on is as obvious as its manifest purpose, which is to get a confession the suspect would not make if he understood his rights at the outset." Id. "Upon hearing warnings only in the aftermath of interrogation

and just after making a confession, a suspect would hardly think he had a genuine right to remain silent, let alone persist in so believing once the police began to lead him over the same ground again.” Id.

The police in Siebert were surprisingly honest and admitted they were deliberately using the two-phase question-first strategy. Id. at 605-05. While the police made no such honest admission in this case, Siebert recognized that such admissions are unnecessary: “Because the intent of the officer will rarely be as candidly admitted as it was here (even as it is likely to determine the conduct of the interrogation), the focus is on facts apart from intent that show the question-first tactic at work.” Id. at 617 n.6.

The facts cited in Siebert showing the police strategy are present in this case. In Siebert, the Court emphasized the following:

The unwarned interrogation was conducted in the station house, and the questioning was systematic, exhaustive, and managed with psychological skill. When the police were finished there was little, if anything, of incriminating potential left unsaid. The warned phase of questioning proceeded after a pause of only 15 to 20 minutes, in the same place as the unwarned segment.

Id. at 616. The police referred back to the unwarned statements after giving Miranda warnings. Id. The pre-Miranda questioning only lasted “30 to 40 minutes.” Id. at 604-05. Only one officer questioned Siebert. Id.

In this case, three officers interrogated Johnson. R. 51, l. 23 – 52, l. 3. Investigator Miller admitted using the subtle tactic of sympathy to interrogate Johnson. R. 56, l. 12 – 57, l. 4. The police confronted Johnson with Sprouse’s contention that he was alone in the room with Minor when she stopped breathing. R. 52, ll. 4 – 16. The police knew the findings from the autopsy. R. 414, l. 22 – 415, l. 22. If Investigators

Miller and Autrey are to be believed, the pre-Miranda interrogation lasted approximately two hours.⁷ R. 441, ll. 10 – 13. R. 374, ll. 15 – 25. However, if Deputy Wilson's testimony is to be believed that it "wasn't late, late afternoon" when he brought Johnson to the law enforcement center, then it is possible that the pre-Miranda interrogation lasted for more than three or four hours. R. 550, l. 23 – 551, l. 3. Deputy Wilson's testimony is consistent with the fact that Investigator Miller dropped Sprouse off at a place of business—the mortuary—and then returned directly to the station house where Johnson and Deputy Wilson were waiting. R. 356, l. 9 – 357, l. 7. Finally, unlike Siebert, Johnson is mentally retarded. The facts of this case demonstrate that the three officers used "question-first" and Johnson's statements should be suppressed under Seibert.

Johnson Was In Custody

Miranda conditions "the admissibility at trial of any custodial confession on warning a suspect of his rights: failure to give the prescribed warnings and obtain a waiver of rights before custodial questioning generally requires exclusion of any statements obtained." Seibert at 608. Since Siebert prevents the late Miranda warnings from curing the earlier failure to warn, the State will doubtless attempt to argue that Johnson was not "in custody" when he made his incriminating statements. The State will find ample support for this position among the officers' words, but little support in their deeds.

The talismanic invocation of the words "You're under arrest" does not determine whether is a suspect is in custody and should receive Miranda warnings. "To determine whether a suspect is in custody, the trial court must examine the totality of the

⁷ It should be remembered that during his direct testimony at the Denno hearing, Investigator Miller told Judge Welmaker he did not start talking to Johnson until "probably some time right before ten o'clock." R. 50, l. 21 – 51, l. 4.

circumstances, which include factors such as the place, purpose, and length of interrogation, as well as whether the suspect was free to leave the place of questioning.” State v. Evans, 354 S.C. 579, 583, 582 S.E.2d 407, 410 (2003). “The custodial determination is an objective analysis based on whether a reasonable person would have concluded that he was in police custody.” Id.

In Evans, the defendant made her own way to the police station accompanied by her relatives. Id. at 581, 582 S.E.2d at 408-09. Two police officers took the defendant “into a back office to take her statement.” Id. The police knew that the deadly fire they were investigating started with an accelerant. Id. at n.2. The police told the defendant they did not believe her explanations for the fire. Id. at 581, 582 S.E.2d at 409. The two policemen left the room and sent in a female SLED agent, who used a sympathy tactic. Id. The two women were in the room for forty-five minutes. Id. The SLED agent followed the defendant to the bathroom and waited outside the door. Id.

The Evans Court found that the defendant was in custody even though she was not formally arrested until shortly after making the statement. Id. at 584, 582 S.E.2d at 410. When analyzing whether the defendant was free to leave, the Court emphasized that the SLED agent accompanied her to the restroom and waited outside the door. Id. In this case, Investigator Miller did not wait outside the bathroom door like the SLED agent in Evans, but followed Johnson inside the bathroom. R. 426, ll. 3 – 20. The Evans Court emphasized that the interview took place in a back office and that it lasted three hours. Id. Here, the interrogation was in a back office by three officers, not one, and lasted at least three hours—and perhaps as many as six hours. Finally, the Evans Court found that the police’s purpose was important and used the fact that they challenged the defendant’s story and switched

officers to divine the officers' intent. Id. Here, Johnson was a suspect and was confronted by Sprouse's statement. R. 427, ll. 2 – 13. Unlike Evans, Johnson was brought to the police station by two officers. No one was with the mentally retarded suspect, which shocked Johnson's brother. Johnson had no driver's license. Johnson was not free to leave and was in custody.

This case's facts eerily resemble State v. Navy, 386 S.C. 294, 688 S.E.2d 838 (2010). Navy also concerns a Seibert two-phase interrogation. Kenneth Navy was convicted of suffocating his two year old son. Id. at 296, 688 S.E.2d at 838. EMS responded to Navy's house and found him giving the child CPR. Id. at 297, 688 S.E.2d at 838. Navy gave an unsatisfactory statement to the police at the hospital that night. Id. The police subsequently met with the pathologist who told them that the child died from suffocation. Id.

With this knowledge in hand, the police took Navy from his house to the police station. Id. He was not formally under arrest. He gave a statement that was not incriminating. Id. at 298, 688 S.E.2d at 839. Questioning continued and police confronted Navy with information from the autopsy. Id. at 298, 688 S.E.2d at 839-40. The Court found that "[a]t this juncture, the nature of the interrogation and respondent's status changed, and what had begun as a voluntary question and answer session matured into custodial interrogation." Id. Without giving Miranda warnings, the police ultimately obtained a confession from Navy which they memorialized after having him sign a Miranda waiver. The Court ruled these statements violated Seibert and were inadmissible. Id. at 301-04, 688 S.E.2d at 841-43.

The police conduct in this case exceeds the transgressions of Navy. All of the factors cited by Navy were present. They “began an unwarned custodial interrogation designed to elicit incriminating information.” Id. at 303, 688 S.E.2d at 842. Two officers questioned Navy; three questioned Johnson. Both men were picked up from their house by the police. Both men were confronted with contradictory evidence. Both sets of officers knew the results of an autopsy. Neither man received Miranda warnings until after they had confessed. Unlike Navy, though, Johnson is mentally retarded and even less capable of protecting himself from these police tactics.

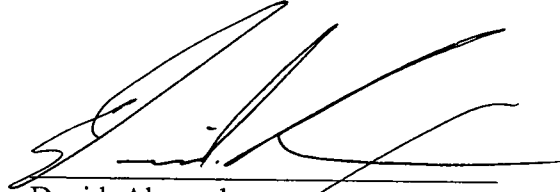
Even seven years after Seibert and five years after this Court’s opinion in Navy,⁸ the police in Greenville County were using a playbook the Courts had condemned. As in these cases, the Court should focus on the actions of these officers and ignore their many conclusory recitations that Johnson was free to leave. The refusal to give Miranda warnings in this case requires suppression of Johnson’s statement. This case must be reversed.

⁸ State v. Navy, 370 S.C. 398, 653 S.E.2d 549 (Ct. App. 2006). This Court’s holding that Navy was in custody and that Seibert applied was affirmed by the Supreme Court.

CONCLUSION

For the foregoing reasons, appellant's conviction must be reversed and this case remanded for a new trial.

Respectfully submitted,

A handwritten signature in black ink, appearing to read 'David Alexander', written over a horizontal line.

David Alexander
Appellate Defender

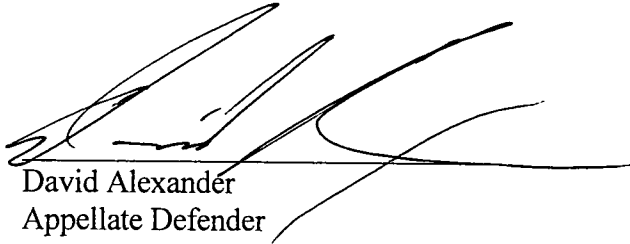
ATTORNEY FOR APPELLANT

This 3rd day of October, 2014.

CERTIFICATE OF COUNSEL FOR APPELLANT

The undersigned certifies that to the best of my ability the Final Brief complies with Rule 211(b), SCACR, and the April 15, 2014 order from the South Carolina Supreme Court entitled "Revised Order Concerning Personal Identifying Information and Other Sensitive Information in Appellate Court Filings."

October 3rd, 2014



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STATE OF SOUTH CAROLINA
IN THE COURT OF APPEALS

Appeal from Greenville County
G. Edward Welmaker, Circuit Court Judge

THE STATE,

RESPONDENT,

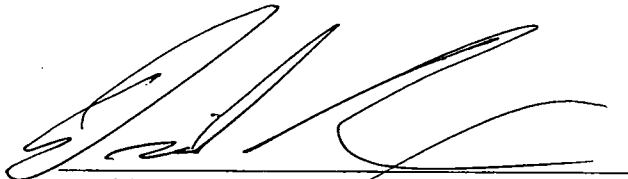
V.

JAMES ALLEN JOHNSON,

APPELLANT

CERTIFICATE OF SERVICE

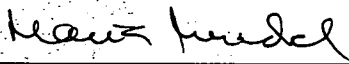
The undersigned attorney hereby certifies that a true copy of the Final Brief of Appellant in the above referenced case has been served upon Mary S. Williams, Esquire, at Rembert Dennis Building, 1000 Assembly Street, Room 519, Columbia, SC 29201, this 3rd day of October, 2014.



David Alexander
Appellate Defender

ATTORNEY FOR APPELLANT

SUBSCRIBED AND SWORN TO before me
this 3rd day of October, 2014.

 (L.S.)

Notary Public for South Carolina
My Commission Expires: July 3, 2023.

RECEIVED

JAN 20 2018

STATE OF SOUTH CAROLINA
IN THE COURT OF APPEALS

SC SUPREME COURT

Appeal from Greenville County
The Honorable G. Edward Welmaker, Circuit Court Judge

Appellate Case No. 2013-001314

THE STATE,

Respondent,

v.

JAMES ALLEN JOHNSON,

Appellant.

FINAL BRIEF OF RESPONDENT

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STATEMENT OF ISSUES ON APPEAL

The question of whether Appellant's statement was the result of a two-phase interrogation in violation of Miranda v. Arizona and Missouri v. Seibert was not raised to and ruled upon by the trial court and therefore is not preserved for review. If the question had been raised, evidence would support a finding that the trial judge properly admitted the voluntary confession where Appellant was not subjected to custodial interrogation prior to his incriminating statement, and Miranda rights were promptly given as soon as incriminating information was volunteered.

STATEMENT OF THE CASE

Appellant James Allen Johnson was indicted for homicide by child abuse (2011-GS-23-07262). He proceeded to a jury trial on June 3, 2013, before the Honorable G. Edward Welmaker. On June 5, 2013, the jury found Appellant guilty as indicted. (R. p. 588.) Appellant was sentenced by Judge Welmaker to imprisonment for a term of sixty-two years. (R. p. 595.) This appeal follows.

STATEMENT OF FACTS

On May 25, 2011, Emergency Services received a call stating that someone was choking. (R. p. 102.) A team of firefighters were the first responders to the scene. (R. p. 103.) When the firefighters arrived, there was a child lying on the floor, twenty-month old Victim. (R. p. 104.) The child's mother was doing chest compressions with the heel of her palm and Appellant was performing mouth-to-mouth rescue breathing on the child. (R. p. 104.) The firefighters immediately noticed bruising on the child's body and forehead. (R. p. 104, p. 122.) The child was pale, not breathing, and without a pulse. (R. p. 104.) They assembled a bag valve mask and started breathing for the child as well as performing chest compressions. (R. p. 109.) Appellant told the firefighters, "you can't go to the bathroom without watching your kids anymore," claiming the child had taken a drink, choked, and then vomited. (R. p. 109-110.) James Clardy, an EMS operator, also noted that the child had some very large bruises in various stages of healing on her face, bruises on the torso, and bruises on her legs and arms. (R. p. 149.) Responders noted that cardiac arrest was not normally an outcome for a child choking on tea. (R. pp. 134-135; p. 145.) Once the ambulance arrived, the responders moved the child to the ambulance and departed for the hospital. (R. p. 114; pp. 124-125; pp. 136-137.) The paramedics made the decision to take the child to the hospital in Greer because it was the closest facility. (R. p. 137-138.) The child was subsequently transferred by helicopter to Greenville Memorial Hospital. (R. p. 141.)

Dr. Mary Croswell, an expert in pediatrics with a specialty in child abuse, examined Victim while she was hospitalized and described in detail the bruises on Victim's body, a total of twenty-eight bruises. (R. p. 335.) Victim had suffered five bruises on her forehead. (R. p. 327.) She was also bruised in the abdominal area, with one

bruise consistent with a bite mark. (R. p. 328.) Victim had a cluster of four bruises on her back and two bruises on her buttock. (R. p. 328.) Her arm was bruised and there was extensive bruising on her legs. (R. pp. 328-329.) Victim further had a bruise on her ear. (R. p. 328.) The bruising to Victim's ear, buttock, cheeks, nasal bridge, and abdomen was noted as atypical for accidental injury. (R. pp. 331-333.) Dr. Crosswell further opined that the explanation given for the Victim's forehead bruises, that her two-year-old half-sister had hit her with Mardi Gras beads, was "atypical and unusual." (R. p. 335.) When Dr. Crosswell saw Victim the following day, Victim had been declared brain dead. (R. p. 336.)

The child was taken off life support on May 27, 2011, and died. (R. p. 244.) Dr. Michael Ward performed the autopsy on Victim. (R. pp. 449-450.) Dr. Ward testified as to the extensive bruises the child suffered. (R. pp. 452-453; pp. 457-459; pp. 462-464.) Dr. Ward also noted a torn frenulum inside the child's mouth, an injury indicating pressure had been applied to the mouth. (R. pp. 454-456.) Dr. Ward opined the cause of Victim's death was suffocation. (R. p. 460.) Dr. Ward elaborated that an object, most likely a hand, was placed over the mouth and nose, obstructing the airway which eventually caused an anoxic brain injury. (R. p. 460-461.) Dr. Ward explained the airway would have to be occluded for at least a minute for this injury and cardiac arrhythmia to occur. (R. p. 461.) It would be medically impossible for Victim to present in her condition if she took a sip of tea, choked and vomited. (R. p. 467; p. 470.) Dr. Ward noted that vomiting or spitting up fluid from the lungs is common when someone is suffocated, and in Victim's case she may have spit up blood from the torn frenulum in

her mouth.¹ (R. pp. 467-468.) Dr. Ward's final conclusion was the cause of death was anoxic brain injury due to suffocation, and the manner of death was homicide. (R. p. 466.)

The Victim's mother, Georgia Ann Sprouse ("Sprouse"), gave several different accounts of what happened. (R. p. 413.) Sprouse admitted giving investigators three different accounts of the events leading to Victim's hospitalization. (R. pp. 279-281.) Sprouse initially claimed her daughter choked while drinking a glass of tea. (R. p. 280.) Sprouse told Officer Carl Mathias ("Mathias") that her daughter was drinking tea, started choking, and threw up. (R. p. 157.) Sprouse also told Officer Kevin Azzara that the Victim walked to a table where there was a glass of tea, took a drink, and started choking. (R. p. 165.) Sprouse maintained that story while at the hospital, telling doctors, DSS workers, and law enforcement officers that Victim choked on tea. (R. p. 280.) In this initial version of events, Sprouse placed Appellant in the bathroom when Victim began choking. (R. p. 277; p. 375.) Sprouse's story changed slightly the following days, May 26-27. (R. p. 280; p. 348-349.) Sprouse amended her story to say she was in the kitchen at the time Victim allegedly started choking on the tea. (R. p. 280; pp. 287-288; pp. 348-349; p. 413.) Sprouse also claimed Appellant was in the living room with Victim at the time she allegedly started choking on the tea. (R. p. 413.) On June 2, Sprouse was confronted by investigators who stated that Sprouse's story was not making sense and that she needed to tell the truth. (R. p. 356, p. 419.) Sprouse told the investigators that on the day of the incident, she smoked marijuana and went to sleep. (R. pp. 353-356; p.

¹ It was also noted that Victim had worn an outfit with a green bow earlier in the day, Victim was wearing only a diaper when paramedics arrived. (R. p. 135; pp. 196-196.) The clothing was later found in the home and was stained. (R. p. 392-395; p. 397-398.) There was also a small stain on the carpeting. (R. p. 157-158; 196.)

419.) She was then awoken by Appellant who told her that Victim was not breathing. (R. pp. 353-356; p. 419.) Following her statement, officers gave Sprouse a ride back to the mortuary. (R. p. 420.) Sprouse testified at trial that this third account of the events of May 25th was in fact the truth. (R. pp. 269-275, pp. 279-281.) Sprouse also claimed that the story about choking on tea was Appellant's. (R. p. 273; p. 275.) Sprouse was ultimately arrested for homicide by child abuse and accessory after the fact. (R. p. 434.)

Appellant also spun a variety of tales for law enforcement. Mathias arrived on scene as a first responder on May 25. He arrived as the child was being moved to the ambulance. (R. p. 156.) Mathias encountered Sprouse in the front yard and came inside with her. Appellant was in the living room. When Mathias asked Sprouse what happened, Appellant volunteered that he was in the bathroom and did not know what had happened. Sprouse explained that Victim had choked on tea. (R. pp. 19-21; pp. 156-158.)

Later that day, Investigator Jennings Autrey ("Autrey") and Investigator Christopher Miller ("Miller") proceeded to the hospital for an update on Victim's medical condition. (R. p. 23; p. 341.) They spoke with Appellant and the others present to collect personal information and get a preliminary understanding of the events. (R. p. 24; pp. 344-348; 401.) When Autrey asked Appellant what happened, Appellant replied that he was in the bathroom and heard Sprouse call for help and tell him to call 9-1-1. (R. p. 24; pp. 344-346.) Appellant stated he then saw Victim lying on the floor with Sprouse attempting CPR. (R. p. 25; p. 345.) At the hospital, Appellant agreed to ride with Miller to the law enforcement center. (R. pp. 401-402.) He was not in custody and was being treated as a witness. (R. pp. p. 45; p. 48; pp. 401-402; p. 439.) Appellant spoke casually with Miller in his office and ultimately provided a statement. (R. pp. 402-404.) Appellant maintained that he went to the bathroom, leaving Sprouse, Victim, and two other children

in the living room. He then heard Sprouse yelling that Victim was not breathing. Appellant stated that when he came out of the bathroom, Victim was on her back and Sprouse was attempting CPR. Appellant claimed Sprouse told him Victim choked on tea, and while he performed CPR on Victim tea came up. (R. pp. 404-406.) In this statement, Appellant also explained the bruises on Victim's face as the result of falls and being struck with Mardi Gras beads by her half-sister. (R. p. 407-408.) In response to additional questions from Miller, Appellant also stated that both children were fussy and that there were also toys in the room which Victim could have choked on. (R. pp. 408-409.) Appellant also noted an incident a week earlier in which law enforcement came to the house because Victim's half-sister was outside unsupervised. Appellant claimed to have been in the bathroom during this incident as well. (R. p. 410.) After providing the statement, Miller drove Appellant back to the hospital. (R. p. 49; p. 412.) The interview lasted around an hour and a half to two hours including the ride. (R. p. 49.)

Appellant next spoke to police a week later, on June 2. (R. p. 25.) Two deputies transported Appellant to the law enforcement center, and Autrey and Miller met Appellant there. (R. p. 26; p. 356-357; pp. 420-421.) Officers advised Appellant that they were "interviewing everybody that was associated with the case,"² and he did not have to come with them.³ (R. p. 443; pp. 550-551.) Miller testified that Appellant was not in custody at this time. (R. pp. 421-422.) Appellant appeared to recognize Miller from their previous conversation. (R. p. 422.) Appellant was present freely and voluntarily and was advised that he was there because the police needed more information to determine what

² The same day Miller also obtained additional statements from Crystal Inman, the woman Appellant and Sprouse lived with at the time, and Sprouse. (R. p. 416-p.420.)

³ Appellant claimed police said he had to go with them. Appellant testified that his brother was in the yard when this occurred and could have given him a ride, but officers insisted he come with them. (R. pp. 516-517.) However, Appellant's brother denied that he was present when police arrived, stating he was at the store at the time. (R. p. 544.)

happened. (R. p. 422.) Appellant did not appear to be under the influence of drugs or alcohol at the time of the interview, and Appellant himself denied any drug use at the time. (R. pp. 35-36; p. 38; p. 358-359; p. 369; p. 423; p. 431; p. 443.) Officers did not notice any smell of alcohol on Appellant's breath, nor did they notice the dilated pupils or bloodshot eyes that would indicate drug use. (R. p. 377, p. 423; p. 443.) Appellant was not slurring his speech nor was he unsteady on his feet. (R. p. 377; p. 423.)

The initial conversation was casual. (R. p. 51; p. 424.) Officers informed Appellant that Sprouse now claimed Appellant was the one in the den with the child at the time of the incident. (R. p. 52; p. 425.) Appellant repeated his prior story, calmly relating that he was in the bathroom when he heard Sprouse's cries for help. (R. p. 27-28; p. 359; p. 425.) Appellant and Miller talked for a while about his dislike for Victim's father. (R. p. 425.) After an hour, Miller asked Appellant if he would like anything to eat or drink. (R. p. 425.) Appellant refused Miller's offer. (R. p. 425.) Miller asked Appellant if he would like to use the restroom, and Appellant replied that he would. (R. p. 425.) Miller testified that the only public restroom is downstairs and is a long walk, so he took Appellant to the employee restroom. (R. p. 425-426.) Miller accompanied Appellant to the employee restroom because it is not open to the public. (R. p. 426.) As a policy, non-employees are not allowed to go to the employee restroom unescorted. (R. p. 426.)

After returning from the bathroom, Miller asked Appellant if he was being truthful. (R. p. 427.) Appellant "continued talking about how he wanted the child to have help, he wanted to help, wanted peace." (R. p. 28; p. 360.) Appellant then bent over in his chair and started sobbing. (R. p. 427.) Appellant stated, "accidents happen. He said he wishes that she never went away." (R. p. 29; p. 362; p. 426.) Miller asked Appellant, "Tell me what you're talking about." (R. p. 427.) Appellant then told Investigator Miller

that he got angry at Victim and threw a toy across the room at her. (R. p. 29; p. 362; p. 427.) Appellant then stated that he tried to get Victim to stop crying but she would not. (R. p. 427.) Appellant told Miller he was afraid the crying was going to wake Sprouse so he held his hand over the victim's mouth until she stopped crying. (R. pp. 427-428.) Appellant stated when she stopped crying is when Victim stopped breathing. (R. p. 428.) Appellant then demonstrated covering the victim's mouth and nose. (R. p. 428.) Upon this admission, Appellant confessed Sprouse was in bed at the time, and he made up the story about Victim choking on tea because he was scared. (R. p. 29; p. 362.)

Miller testified that at this point, Applicant was no longer free to leave, and Miller read Applicant his Miranda rights. (R. pp. 29-32; p. 53; pp. 362-368; p. 428.) Approximately one and a half hours had passed prior to Appellant's admission and rights warning. (R. p. 38; pp. 371-372; p. 374; p. 422; p. 431; p. 440.) Miller followed his normal procedure for advising Appellant of his rights. (R. p. 428.) Miller advised Appellant of each line, one at a time, and that it was his choice to waive his rights or not. (R. p. 53; p. 429.) Appellant initialed each line on the form saying he understood the rights he had been advised of. (R. p. 429; R. p. 600, Court's Exhibit 1.) Appellant then signed the waiver of rights form saying that he wished to talk to investigators even though he didn't have to. (R. p. 430.) Conversation resumed. (R. p. 431.) Investigators then began drafting a suspect defendant's statement. (R. p. 431.) Appellant was read his rights again. (R. p. 431.) Appellant then provided a written statement. (R. p. 33; pp. 368-370.)

Appellant gave Autrey permission to type his statement. (R. p. 431.) In his statement, Appellant went through the events of the day, including his confession to holding his hands over Victim's mouth until she stopped breathing. (R. p. 431.) After

Appellant's statement was typed, and Appellant had an opportunity to read over it. (R. p. 432.) Appellant initialed at the beginning and end of each paragraph before signing the statement. (R. p. 432.) Miller estimated that it took an additional hour to complete the written statement. (R. p. 444.) Appellant was in custody at this point. (R. p. 432.) Following this statement, a warrant was obtained for Appellant's arrest. (R. p. 372; p. 433.) During arrest and booking, Appellant "continued to say things...about wishing God had never created him, that he did not deserve to live...that he would never kill himself, but he knew someone in jail would kill him because of what he'd done. ..." (R. p. 433.)

Appellant recalled speaking with Miller on May 25 and recalled giving a statement that day. (R. pp. 492-494; p. 506-507.) However, Appellant maintained he could not remember the entire interaction with officers on June 2. (R. p. 67; pp. 494-495.) Appellant claimed that on June 2, before officers came to pick him up, he "was smoking a little bit of reefer, and I had some Xanaxes." (R. p. 68; pp. 495-496.) Appellant claimed to have taken about ten Xanax before police arrived and to have taken three more while in the bathroom at the police station.⁴ (R. pp. 68-69.) Appellant seemed to remember certain things about the interview (e.g., leaving marijuana at his friend's house before going to the police station, the ride to the police station, being told that Sprouse had resumed a relationship with someone else, going to the bathroom) but was consistently hazy on receiving Miranda warnings and providing incriminating details. (R. pp. 69-72; pp. 74-75; pp. 78-79; pp. 494-495; p. 497-503; 519-519.) Appellant speculated that if he had said such incriminating things he must have done so to defend Sprouse since she could be pregnant with his child. (R. p. 503-504.)

⁴ Miller accompanied Appellant to the restroom but noted no unusual actions. (R. p. 426.)

Before the jury, Appellant reverted to his original story. Appellant testified that he was in the bathroom for two to three minutes when Sprouse called out for help, and he emerged to find Victim laying in the living room, already discolored. (R. p. 485-486; p. 488.) Appellant testified he called 9-1-1 and attempted to help with CPR. (R. pp. 486-487.) Appellant also reported that at the time he and Sprouse smoked marijuana on a daily basis, and Sprouse was hiding marijuana while he called 9-1-1. (R. p. 485; pp. 488-489.)

In addition to statements given to police, Appellant and Sprouse were placed together for transport from prison to Family Court on one occasion. During that transport, after the court appearance, Appellant told Sprouse, "he was sorry for what he had did. That he did not mean to... he was sorry and that he hoped [she] would forgive him and so on and so on." (R. pp. 310-311.)

The State also presented evidence from Crystal Inman, the woman they lived with at the time, who felt Appellant favored Victim's older half-sister. (R. p. 187-188.) She recalled Appellant at the hospital saying that Victim would "just fall and fall, all the time." (R. p. 203.) Sprouse described a series of bruises Victim sustained while in Appellant's care which Appellant attributed to various incidents – being hit by her 2-year-old sister, falling on a stepping stone or tripping in a bedroom. Sprouse also believed Appellant tended to favor Victim's older half-sister. (R. p. 267.) Sprouse revealed that Appellant did not get along with Victim's father. (R. p. 311.)

ARGUMENT

The question of whether Appellant's statement was the result of a two-phase interrogation in violation of Miranda v. Arizona and Missouri v. Seibert was not raised to and ruled upon by the trial court and therefore is not preserved for review. If the question had been raised, evidence would support a finding that the trial judge properly admitted the voluntary confession where Appellant was not subjected to custodial interrogation prior to his incriminating statement, and Miranda rights were promptly given as soon as incriminating information was volunteered.

Appellant contends the trial judge erred in admitting his incriminating statements to officers at the law enforcement center. Appellant asserts that since Appellant did not receive Miranda warnings until after he made incriminating statements, his statement was obtained as part of a two-phase interrogation in violation of Miranda and Missouri v. Seibert. First, Appellant's argument was not raised to and ruled upon by the trial judge and is therefore not preserved for appellate review. Second, Appellant was not in custody at the time he made the incriminating statements, nor was Appellant subjected to an interrogation. The trial judge committed no error in admitting Appellant's statements. Appellant's conviction should be affirmed.

A. The issue is not preserved for appellate review as the argument presented on appeal was neither raised to nor ruled upon by the trial court.

Appellant failed to preserve his argument for appellate review. Regarding admissibility of statements, Appellant simply stated that a motion pursuant to Jackson v. Denno, 378 U.S. 368, 84 S. Ct. 1774, 12 L. Ed. 2d 908 (1964), needed to be heard.⁵ Witnesses were called to testify as to the circumstances surrounding Appellant's various statements:

- Appellant's unsolicited statement to Deputy Mathias at the home on May 25.

⁵ It may be noted that testimony by psychiatrist Dr. Richard Frierson was offered as part of a competency hearing, a matter framed for the court as separate from the Jackson, 378 U.S. 368 hearing. (R. pp. 7-8.)

- Appellant's verbal statement to Investigator Autrey at the hospital on May 25.
- Appellant's written statement taken the evening of May 25 by Investigator Miller.
- Appellant's statements taken on June 2.

(R. pp. 18-86.) The cross-examination and evidence Appellant presented at this hearing focused on his alleged gross intoxication on June 2. (R. p. 61; pp. 66-85.) After the State and Appellant presented witnesses, no arguments were made. The trial court found:

All right. I've reviewed my notes and looked at the evidence on the Jackson, 378 U.S. 368 hearing. Obviously at this stage it's based upon a preponderance of the evidence. In weighing all the testimony, what I've heard, I find the statement was freely and voluntarily given, all the statements. And they will be admissible. Of course, I'll instruct the jury that they make the ultimate decision as to the value of any statements that are given. But I believe that weighing all the evidence I've heard that they were freely and voluntarily made by Mr. Johnson in the course of the investigation by the officers.

(R. pp. 85-86.) Again, no arguments or exceptions were made following this pronouncement.

When the incriminating portions of the June 2 statements were admitted at trial, Appellant's only objections were:

- "I would take this opportunity at this point to renew my objection ---" (R. p. 360, lines 18-19.) (Objection made when Autrey began relating the incriminating portion of Appellant's oral statement on June 2.)
- "Subject to my previous objections in the *Jackson Denno* hearing." (R. p. 366, lines 19-20.) (Objection made when written statement taken June 2 was offered.)

Neither of these objections clarified the matter.

Appellant failed to articulate with any specificity the nature of his objection to the admission of the statement at trial; therefore Appellant's argument is not preserved for appellate review. If any argument could be inferred from the testimony presented at the Jackson, 378 U.S. 368 hearing, it would seem to be that the incriminating portion of his June 2 statement was involuntary because he was grossly intoxicated. The trial court cannot be left to guess what argument that a defendant is making; neither can a defendant claim to have raised every foreseeable argument regarding admissibility of statements by virtue of a request for a Jackson, 378 U.S. 368 hearing. While a party need not use the exact name of a legal doctrine in the trial court in order to preserve it for appellate review, it must be clear that an argument has been made on such ground. State v. Dunbar, 356 S.C. 138, 587 S.E.2d 691 (2003). Here, Appellant made no argument as to the basis for suppression of his statements. Moreover, the objections that were offered when the evidence was introduced provided no specific grounds, only referring nebulously back to the Jackson, 378 U.S. 368 hearing. Finally, no objection was made when Miller began relating the incriminating verbal portion of the June 2 statement. (R. p. 427-432.)

The ground raised in support of a claim of error on appeal must be the same ground offered in support of the objection at trial. State v. Smith, 337 S.C. 27, 34, 522 S.E.2d 598, 601 (1999); State v. Russell, 345 S.C. 128, 546 S.E.2d 202 (Ct. App. 2001). A party cannot argue one ground below then argue another on appeal. State v. Hudgins, 319 S.C. 233, 237, 460 S.E.2d 388, 390-391 (1995) overruled by State v. Collins, 329 S.C. 23, 495 S.E.2d 202 (1998). Trial counsel failed to put on the record that Appellant's statements were inadmissible due to a violation of Miranda or Seibert. The trial court's general ruling clearly did not address this argument. State v. Clute, 324 S.C. 584, 480

S.E.2d 85 (Ct. App. 1996) overruled by State v. Aleksey, 343 S.C. 20, 538 S.E.2d 248 (2000)(issue not preserved where appellant failed to request a specific ruling).

For all these reasons, the argument advanced on appeal was not raised and ruled on below and therefore was not preserved for review by this court. State v. Freiburger, 366 S.C. 125, 134, 620 S.E.2d 737, 741 (2005).

B. Had the argument been raised to the trial court, evidence supports a finding that the statements were admissible. Appellant was not subject to custodial interrogation prior to volunteering incriminating information, and Miranda rights were read immediately thereafter.

Even if this Court finds that the issue of whether Appellant's statements were admitted in violation of Miranda or Seibert to be preserved, evidence would support a finding of admissibility by the trial court. Appellant was not in custody nor were the statements made as a result of an interrogation. Appellant's statements were made voluntarily to police as part of their investigation, Appellant was under no obligation to speak with the police, and his freedom of action was not restrained. Under the totality of the circumstances, a reasonable person in Appellant's position would believe he was free to leave at any time. Therefore, Appellant was not in custody for Miranda purposes, and the officers were allowed to speak with him without reading him his constitutional rights. Seibert mandates that officers may not conduct a custodial interrogation before providing Miranda warnings and then re-elicite the same information after providing warnings. Seibert does not require police to anticipate when, during the course of a non-custodial interview, the interviewee may suddenly change course and blurt something incriminating.

In criminal cases, appellate courts suit to review errors of law only. State v. Baccus, 367 S.C. 41, 48, 625 S.E.2d 216, 220 (2006). The reviewing court is bound by

the trial court's factual findings unless they are clearly erroneous. State v. Quattlebaum, 338 S.C. 441, 452, 527 S.E.2d 105, 111 (2000). The appellate court does not re-evaluate the facts based on its own view of the preponderance of the evidence, but instead, simply determines whether the trial judge's ruling is supported by any evidence. State v. Wilson, 345 S.C. 1, 6, 545 S.E.2d 827 (2001) A.E.2d 827, 829 (2001).

The admission or exclusion of evidence rests on the sound discretion of the trial judge and will not be reversed absent an abuse of discretion. State v. Gaster, 349 S.C. 545, 557, 564 S.E.2d 87, 93 (2002). "An abuse of discretion occurs when the conclusions of the trial court either lack evidentiary support or are controlled by an error of law." State v. McDonald, 343 S.C. 319, 325, 540 S.E.2d 464, 467 (2000). "A trial judge has considerable latitude in ruling on the admissibility of evidence and his rulings will not be disturbed absent a showing of probable prejudice." State v. Kelley, 319 S.C. 173, 176, 460 S.E.2d 368, 370 (1995); see also State v. Navy, 386 S.C. 294, 301, 688 S.E.2d 838, 841 (2010)(stating appellate courts must uphold the trial court's findings regarding whether a defendant was in custody when statements were made if the trial judge's ruling is supported by the record).

Under Miranda v. Arizona, 384 U.S. 436, 444, 86 S. Ct. 1602, 16 L. Ed. 2d 694 (1966), prior to custodial interrogation, a suspect must be warned he has a right to remain silent, any of his statements may be used against him, and he has a right to an attorney. However, these requirements only apply to situations involving custodial interrogation and were not intended to interfere with the traditional function of law enforcement officers in investigating crimes. Id. at 477. "Miranda warnings are required for official interrogations only when a suspect 'has been taken into custody or otherwise deprived of his freedom of action in any significant way.'" State v. Easler, 327 S.C. 121, 127, 489

S.E.2d 617, 621 (1997)(quoting Miranda, 384 U.S. at 444). Thus, custodial interrogations are made up of two key components- custody and interrogation. State v. Whitner, 380 S.C. 513, 518, 670 S.E.2d 655, 658 (Ct. App. 2008).

“To determine whether a suspect is in custody, the trial court must examine the totality of the circumstances, which include factors such as the place, purpose, and length of interrogation, as well as whether the suspect was free to leave the place of questioning.” State v. Evans, 354 S.C. 579, 583, 582 S.E.2d 407, 410 (2003). The appropriate inquiry involves objectively viewing the circumstances to determine whether a reasonable person in the suspect’s position would have understood himself to be in custody. Easler, 327 S.C. at 128.

Appellant was also not subjected to the “interrogation” prong of the custodial interrogation. “Interrogation can be either express questioning or its functional equivalent and includes words or actions on the part of the police (other than those normally attendant to arrest and custody) the police should know are reasonably likely to illicit an incriminating response.” Id.; see Rhode Island v. Innis, 446 U.S. 291, 301, 100 S. Ct. 1682, 64 L. Ed. 2d 297 (1980)(“[T]he term ‘interrogation’ under Miranda refers not only to express questioning, but also to any words or actions on the part of the police . . . that the police should know are reasonably likely to elicit an incriminating response.”) The requirement for Miranda warnings does not apply to voluntary statements which are not the product of interrogation. State v. Sprouse, 325 S.C. 275, 282, 478 S.E.2d 871, 875 (Ct. App. 1996). “Volunteered statements of any kind are not barred by the Fifth Amendment[.]” Miranda, 384 U.S. at 478.

In the case sub judice, examining the totality of the circumstances, Appellant was not subjected to custodial interrogation at the law enforcement center. On June 2,

Appellant was asked to come speak with law enforcement as police were interviewing everyone associated with the case.⁶ Appellant agreed. He was offered the option of riding with someone else or riding with officers, and he volunteered to ride with officers. Appellant asked about a ride home afterward, and Wilson promised a return ride home as well.⁷ (R. p. 551.) Wilson was not tasked with arresting Appellant or taking him into custody. At the time of the interview, Appellant was as much a witness as a potential suspect. (R. pp. 63-64.) Appellant was expressly advised that the purpose of the interview was to get more information, "that it was just another questioning." (R. p. 50; p. 422.) Appellant was at no point threatened with arrest nor were references made to consequences if he was not forthright. During the interview, Appellant initially repeated his original version of events to officers. There is no evidence that officers challenged him during this rendition.

Even when officers informed him of Sprouse's most recent statement, there is no evidence that officers did so in a manner so as to suggest disbelief in Appellant's version of events. Miller's question asking whether Appellant was telling the truth about being in the room could just as easily elicited a response that Appellant saw Sprouse do something to the child. This question is indicative that Appellant was being treated as a witness – merely asking Appellant if he was present in no way implicates a belief that he was a criminal actor. However, Appellant leaned over in his chair and started sobbing. Appellant then stated that "accidents happen sometimes." (R. p. 427.) Investigator Miller said, "tell me what you're talking about." (R. p. 427.) At this point Appellant gave

⁶ Inman and Sprouse had also been interviewed on June 2. They were not in custody and no arrests were made.

⁷ As noted previously, Appellant claimed he had been ordered to come with police when his brother could have taken him. (R. pp. 516-517.) However, Appellant's brother denied that he was present when police arrived, stating he was at the store at the time. (R. p. 544.)

Investigator Miller a lengthy account of the events leading up to Victim's death and his role in it. Appellant's incriminating statement was given, not in response to an interrogation, but as a voluntary statement to police when clarifying the events of the day and what happened to Victim. There is no evidence that officers engaged in complete and detailed questions regarding the incriminating information before providing Miranda warnings. The only testimony is that Miller asked Appellant to "tell [him] more what [he's] talking about" (which appears to have led to Appellant rendering a narrative) and asked for a demonstration of how Appellant covered Victim's mouth before halting the interview and reading Miranda rights. (R. pp. 427-428.) Appellant volunteered his statement to police, which is not barred by the Fifth Amendment.

Appellant was not handcuffed or restrained in any way. Appellant could have ceased the interview with police at any time. Miller testified that Appellant elected to talk to police freely and voluntarily. Seeing as Appellant was free to go and volunteered to answer police questions to aid in the investigation, it is clear that Appellant was not in custody.

Appellant points to the solicitor's questioning of Wilson about "two phases" of the interview as damning evidence that a Seibert two-phase tactic was employed. (R. pp. 554-555.) The "two phases" referred to by Wilson were (1) the portion of the interview where the Appellant maintained his innocence and (2) the portion of the interview where Appellant gave an inculpatory statement. In contrast, the two phase tactic deplored in Seibert involves inculpatory statements in both phases – an unwarned inculpatory statement followed by a warned inculpatory statement.

Moreover, the circumstances of June 2 closely mirror those of May 25, a circumstance Appellant does not argue to be an unconstitutional encounter. In both

encounters, Appellant was picked up from his location by law enforcement and transported to the law enforcement center. No one accompanied Appellant on either occasion. On both occasions, Appellant spoke to Miller in the same office for the same amount of time, about an hour and a half. Miller described the June 2 interview as "pretty much the same conversation [as before]." (R. p. 425.) On May 25, Appellant was given a ride back to the hospital. Based on his own prior experience, it would seem that Appellant would have no reason to believe he was in custody. See State v. Jones, 153 N.C. App. 358, 570 S.E.2d 128 (2002)(facts supporting finding 16 year-old boy with mild mental retardation was not in custody included that he voluntarily accompanied police, was interviewed in a comfortable office, was not restrained in any way, and had been interviewed four days before and allowed to leave).

Appellant would liken his case to Evans, 354 S.C. 579. In Evans, 354 S.C. 579, after an extensive three-hour unwarned interview in which agents repeatedly told Evans they did not believe her various explanations, Evans was reduced to sobbing, asking agents "to get her some help." Evans, 354 S.C. 579. At that point agents "determined that the interview was bearing fruit" and decided to have another agent, a female, come in to talk to Evans, 354 S.C. at 582. The agent then interviewed Evans for an additional forty-five minutes to an hour, sympathizing with Evans on topics such as "female problems," her deceased mother, and religion. Id. at 581-582. Evans was escorted to the restroom by the female agent twice. Evans finally told the female agent that she started the fire in her home, at which point the original interviewing agents returned to the room, and Evans repeated the statement three more times before it was written on a "voluntary statement form." Id. at 582. Evans' cousin's three requests to see Evans, 354 S.C. 579 during the interview were denied. Id.

Appellant's case is distinguishable from Evans. While officers did escort Appellant to the restroom, it was because he was taken to the more convenient employee restroom which was in a controlled area. In such a case, it would be unreasonable for Appellant to expect that he would be allowed to roam freely in a restricted area of the police station. See Howes v. Fields, 132 S. Ct. 1181, 182 L. Ed. 2d 17 (2012)(respondent, an inmate in prison, was not allowed to leave conference room by himself to return to cell but under no circumstances could he have reasonably expected to roam freely). The evidence regarding the officers' purpose in Appellant's case is also much different. Miller's single sympathetic response was followed by Appellant's confession after a much shorter time frame; there was no coordinated effort to elicit a confession. Miller's short, sympathetic, "tell me what you're talking about," in no way compares to the Evans agent's lengthy, far-ranging sympathetic discussion. In contrast to the several hours Evans was interviewed, Appellant was interviewed for an hour and a half or two hours before giving his statement (less than half the time of Evans' interview). Further, while the interview was conducted in an office in the police station, this fact alone is not determinative. State v. Williams, 405 S.C. 263, 747 S.E.2d 194 (Ct. App. 2013), reh'g denied (Sept. 19, 2013).

Appellant would also have his case paralleled with Navy, 386 S.C. 294. In Navy, 386 S.C. 294, the accused provided a statement at the hospital on the day the child was hospitalized. A few days later, the accused was picked up from home and transported to the police station around 9:00 am. Navy gave his first oral statement at 9:50 am, a statement largely consistent with the first story he gave at the hospital. Officers then proceeded to inform Navy that the child died from suffocation and broken ribs. They followed this revelation with detailed questioning, "asking specifically how respondent

had comforted the crying child.” Navy, 386 S.C. 294. As a result of the follow-up questions, officers elicited “that he had ‘popped’ the child on the back” and “that he may have ‘patted’ the child on its mouth to stop the crying.” Id. at 298-299. Only after this targeted questioning was Navy given Miranda warnings at 11:35 am. Navy then provided a written statement at 11:40 am. In this statement, officers continued asking questions targeted at eliciting further details about how Navy harmed the child. Police then consulted the pathologist with the details provided in Navy’s second statement. Upon being told that Navy’s story could not have caused the child’s death as he would have had to hold his hand over the child’s mouth for at least a minute, officers returned for a third statement at 12:25 pm. In this third statement, officers asked specific questions about how long Navy had his hand over the child’s mouth and nose. The Court found that evidence supported the trial court’s ruling that the first statement was admissible. In suppressing the second and third statements, the Court found:

The officers began the questioning of respondent with knowledge that the child had been suffocated and with the intention of eliciting a confession. After respondent’s first oral statement, the officers “sprang” the suffocation/healing rib fractures information on respondent, and began an unwarned custodial interrogation designed to elicit incriminating information, that is, questioning designed to have respondent admit to having hit the child and to having smothered him. ”

Navy, 386 S.C. 294.

Where officers in Navy, 386 S.C. 294 conducted questioning aimed at a confession, the officers here did not. Though aware of the autopsy findings, there is no evidence that these findings were shared with Appellant. Further, where in Navy, 386 S.C. 294 officers followed the “sprung” information of how the child died with follow up questions regarding Navy’s conduct, in the present case officers Appellant responded to

information that Sprouse now claimed he was in the room by "bending over in his chair" and "sobbing a little bit" and the words, "accidents happen sometimes." (R. p. 427.) When Miller asked what he meant by that, Appellant told his story.⁸ There is no evidence of ongoing, pointed questions which would indicate interrogation in this case as there was in Navy, 386 S.C. 294. Miller ceased the interview and provided Miranda rights as soon as Appellant appeared to incriminate himself (R. p. 53); in contrast, the officers in Navy, 386 S.C. 294 continued to press Navy about his actions even after he made an admission which could incriminate him and pressed him on his conduct before Mirandizing him. Navy's encounter also lasted much longer than Appellant's.

Where Appellant paints Miller's sympathetic response as an interrogation tactic, Miller's single sympathetic response to Appellant's doleful expression that "accidents happen sometimes," is more human than tactical. (R. p. 427.) The testimony actually differentiates Miller's sympathetic response to Appellant's disconsolation from even simple interrogation tactics such as "good cop, bad cop," let alone more sophisticated interrogation methods. (R. p. 56, line 12 – p. 57, line 4.) Talking to someone "really nicely" and having a sympathetic response to a show of emotion are not tactical maneuvers; rather this is how we would expect law enforcement professionals to speak to witnesses or any other civilian they encounter. Appellant's experience certainly did not amount to a coercive, police-dominated encounter.

Finally, while evidence was presented that Appellant has an intellectual disability (R.p. 12, p. 14), there was no evidence that this disability made him unable to comprehend the circumstances of the interview. Certainly there has been no blanket rule

⁸ In Appellant's trial testimony, it appears that blame being placed on Appellant would come as no "sprung" surprise. Appellant testified that in the time period after May 25, "Everybody was blaming me for what happened," and Sprouse refused to communicate with him. (R. p. 510; p. 512.)

indicating that persons with intellectual disabilities are incapable of understanding whether they are in custody, and no showing was made that this defendant specifically had any such deficit of understanding. Indeed, the psychiatrist who found Appellant competent to stand trial noted Appellant's basic understanding of the court and particularly his ability to give "rational reasons why he believes, particularly his second statement, should not be admitted into evidence." (R. p. 13.) There is no evidence that officers should have been objectively aware of any disability. There is no evidence that Appellant had difficulty conversing with officers, and he represented to them that he had a 12th grade education and could read and write. (R. p. 599, State's Exhibit 41.) In fact, Appellant's argument seemed to be that he understood his situation on May 25, but was hampered by his illicit drug use, not his intellectual disability, on June 2.

In sum, the police interview with Appellant did not constitute a custodial interrogation, and the police were under no obligation to give Appellant his Miranda warnings until Appellant's incriminating statements led police to place him in custody. Accordingly, Appellant's conviction and sentence should be affirmed.

CONCLUSION

For all the foregoing reasons, it is respectfully submitted that the judgment and conviction of the lower court be affirmed.

Respectfully submitted,

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October 22, 2014

STATE OF SOUTH CAROLINA

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The Honorable G. Edward Welmaker, Circuit Court Judge

Appellate Case No. 2013-001314

THE STATE,

Respondent,

v.

JAMES ALLEN JOHNSON,

Appellant.

CERTIFICATE OF COUNSEL

The undersigned certifies that this Final Brief of Respondent complies with Rule 211(b), SCACR, and the April 15, 2014, order from the South Carolina Supreme Court entitled "Revised Order Concerning Personal Identifying Information and Other Sensitive Information in Appellate Court Filings."

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PROOF OF SERVICE

I, Ellen DuBois, certify that I have served the within Final Brief of Respondent, with proof of service, on Appellant by depositing two copies of the same in the United States mail, postage prepaid, addressed to:

David Alexander, Esquire
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I further certify that all parties required by Rule to be served have been served.

This 22nd day of October, 2014.



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