

STATE OF SOUTH CAROLINA
IN THE SUPREME COURT

Certiorari to Greenville County
C. Victor Pyle, Jr., Circuit Court Judge

Opinion No. 2010-UP-141 (S.C. Ct. App. filed 2/22/2010)
04-GS-23-08143.

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S.C. SUPREME COURT

THE STATE,

RESPONDENT,

V.

MARQUES HUDSON,

PETITIONER

APPENDIX

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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.

Marques A. Hudson,

Appellant.

Appeal From Greenville County
C. Victor Pyle, Jr., Circuit Court Judge

Unpublished Opinion No. 2010-UP-141
Submitted December 1, 2009 – Filed February 22, 2010

AFFIRMED

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PER CURIAM: Marques A. Hudson (Hudson) appeals his conviction for infliction of great bodily injury upon a child. On appeal, Hudson argues the trial court erred in (1) refusing to charge the jury on assault and battery of a high and aggravated nature (ABHAN) as a lesser included offense of infliction of great bodily injury upon a child, (2) allowing the pediatric ophthalmologist to testify as to what the medical team wanted to believe in determining the cause of the victim's injuries, and (3) failing to follow the requisite procedures pursuant to a Batson challenge. We affirm.¹

FACTS

On October 12, 2003, the Greenville County Emergency Medical Services (EMS) responded to an emergency at Hudson's apartment in Greenville, South Carolina. The victim, a sixteen-month-old female, was found unresponsive and was transported to Greenville Memorial Hospital in critical condition. On November 16, 2004, Hudson was indicted for infliction of great bodily injury upon a child pursuant to section 16-3-95 of the South Carolina Code (2007).

At trial, several physicians testified as expert witnesses for the State. The physicians concluded the victim's injuries were inconsistent with Hudson's account of the events. In reaching this conclusion, the physicians noted bruising on the victim's forehead, chest, back, thighs, numerous retinal hemorrhages, ~~an acute subdural hemorrhage, and injury to the victim's~~ pancreas. Dr. Allison Jones, a pediatric emergency room physician at Greenville Memorial Hospital, concluded the victim could not have been injured so seriously based on Hudson's account. Dr. Robert Seigler (Dr. Seigler), the medical director of the pediatric intensive care unit at Greenville Memorial Hospital, testified the injury to the victim's pancreas resulted from "a pretty firm hit" and the subdural hemorrhage and retinal hemorrhages required massive force. According to Dr. Seigler, subdural hemorrhages

¹ We decide this case without oral argument pursuant to Rule 215, SCACR.

normally result from high speed motor vehicle accidents or a large animal kicking a person in the head. Dr. Seigler also noted retinal hemorrhages are not usually seen even in severe car accidents.

Additionally, Dr. Seigler testified that a sixteen-month-old victim could suffer subdural and retinal hemorrhages from shaking alone but acknowledged a medical debate exists on whether shaking alone or shaking in conjunction with throwing causes these injuries. In sum, Dr. Seigler concluded the subdural and retinal hemorrhages were inconsistent with a bathtub and stairwell fall but acknowledged the possibility that some of the forehead bruising could have resulted from such events.

Dr. Anthony Johnson (Dr. Johnson), a pediatric ophthalmologist, also concluded the retinal hemorrhages were non-accidental and required a great deal of force. To support his conclusion, Dr. Johnson cited to an article that examined three-hundred and sixty children who suffered injuries on stairs. He expressly noted that some significant bruising did occur in the children in the study but none of the children sustained retinal hemorrhages.

After the State's presentation of evidence, Hudson testified. In explaining the cause of the victim's injuries, Hudson testified the victim slipped in the bathtub and hit her head on the soap dish while he was washing her. Hudson testified that after the victim hit her head, she entered the water face down. Hudson further testified that in the process of contacting EMS from a neighbor's telephone, he slipped on a blanket and tumbled down the stairwell while holding the victim. After closing arguments, the trial court charged the jury with infliction of great bodily injury upon a child.

The jury found Hudson guilty of infliction of great bodily injury upon a child, and the trial court sentenced him to fifteen years in prison. This appeal followed.

STANDARD OF REVIEW

In criminal cases, the appellate court sits to review errors of law only. State v. Martucci, 380 S.C. 232, 246, 669 S.E.2d 598, 605-06 (Ct. App.

2008). This court is bound by the trial court's factual findings unless they are clearly erroneous. State v. Baccus, 367 S.C. 41, 48, 625 S.E.2d 216, 220 (2006). This court does not reevaluate the facts based on its own view of the preponderance of the evidence but simply determines whether the trial judge's ruling is supported by any evidence. State v. Moore, 374 S.C. 468, 473-74, 649 S.E.2d 84, 86 (Ct. App. 2007).

LAW/ANALYSIS

A. Jury Charge

Hudson argues the trial court erred in refusing to charge the jury on ABHAN because it is a lesser included offense of infliction of great bodily injury upon a child. We disagree.

The question of whether ABHAN is a lesser included offense of infliction of great bodily injury upon a child is a novel question of law. Under the elements test, "[t]he lesser offense is included in the greater only if each of its elements is always a necessary element of the greater offense." State v. Easler, 327 S.C. 121, 134, 489 S.E.2d 617, 624 (1997). Therefore, our inquiry is limited to whether the elements of ABHAN are always necessary elements of infliction of great bodily injury upon a child.

South Carolina courts have interpreted ABHAN as "an unlawful act of violent injury accompanied by circumstances of aggravation." State v. Geiger, 370 S.C. 600, 605, 635 S.E.2d, 669, 672 (Ct. App. 2006). Circumstances of aggravation include: the use of a deadly weapon, intent to commit a felony, infliction of serious bodily injury, great disparity in the ages or physical conditions of the parties, difference in gender, taking indecent liberties or familiarities with a female, purposeful infliction of shame and disgrace, and resistance to lawful authority. Id. at 605-06, 635 S.E.2d at 672.

Section 16-3-95 defines infliction of great bodily injury upon a child as follows:

(A) It is unlawful to inflict great bodily injury upon a child. A person who violates this subsection is guilty

of a felony and, upon conviction, must be imprisoned not more than twenty years.

(B) It is unlawful for a child's parent or guardian, person with whom the child's parent or guardian is cohabitating, or any other person responsible for a child's welfare as defined in Section 63-7-20 knowingly to allow another person to inflict great bodily injury upon a child. A person who violates this subsection is guilty of a felony and, upon conviction, must be imprisoned not more than five years.

(C) For purposes of this section, "great bodily injury" means bodily injury which creates a substantial risk of death or which causes serious or permanent disfigurement, or protracted loss or impairment of the function of any bodily member or organ.

(D) This section may not be construed to prohibit corporal punishment or physical discipline which is administered by a parent or person in *loco parentis* in a manner which does not cause great bodily injury upon a child.

(E) This section does not apply to traffic accidents unless the accident was caused by the driver's reckless disregard for the safety of others.

Hudson argues section 16-3-95² implicitly includes circumstances of aggravation such as serious bodily injury, difference in ages, and difference in sizes.

² Counsel for Hudson and the State cited to the pre-amended version of section 16-3-95. See S.C. Code Ann. §16-3-95 (Supp. 2007). The amended version of this statute currently references section 63-7-20 instead of section 20-7-490(3); however, the amended version preserves the substantive law of section 16-3-95.

In Knox v. State, 340 S.C. 81, 530 S.E.2d 887 (2000), overruled on other grounds by State v. Gentry, 363 S.C. 93, 610 S.E.2d 494 (2005), our supreme court held that ABHAN is not a lesser included offense of second degree lynching. In holding ABHAN was not a lesser included offense of second degree lynching, the Knox court stated, "Since there are other circumstances of aggravation to establish ABHAN that are not included in the definition of second degree lynching, ABHAN is not a lesser included offense." 340 S.C. at 85, 610 S.E.2d at 889. Moreover, in State v. Easler, our supreme court concluded ABHAN is not a lesser included offense of felony DUI for double jeopardy purposes because each circumstance of aggravation for ABHAN is not always a necessary element of felony DUI. Easler, 327 S.C. at 134, 489 S.E.2d at 624.

Regardless of whether circumstances of aggravation are present in this case, Hudson's argument is without merit. Our inquiry is premised on whether the lesser included offense is always a necessary element of the greater offense. A circumstance of aggravation is a necessary element of ABHAN not included in the greater offense of infliction of great bodily injury upon a child. Therefore, ABHAN is not a lesser included offense of infliction of great bodily injury upon a child.

B. Pediatric Ophthalmologist's Testimony

Hudson contends the trial court erred in allowing Dr. Johnson to testify as to what the medical team would like to find in regard to head injury patients. We conclude Hudson's argument is not preserved for review.

At trial, Dr. Johnson testified, "Every time a head injury patient is evaluated and cared for the team would like nothing more than to find some other explanation other than a non-accidental injury. None of the team wants to find that, and therefore, all of the ---." Hudson's counsel objected and stated, "Your Honor, I object to this doctor speaking for the team---." The trial court sustained Hudson's objection.

On appeal, Hudson argues Dr. Johnson's testimony did not qualify as scientific or technical knowledge pursuant to Rule 702, SCRE, and Dr.

Johnson lacked the personal knowledge required for a witness pursuant to Rule 602, SCRE. Furthermore, Hudson contends Dr. Johnson's testimony was hearsay in violation of Rule 802, SCRE, and was prejudicial in violation of Rule 403, SCRE.

A contemporaneous objection is required to preserve an issue relating to the admissibility of evidence. State v. Wannamaker, 346 S.C. 495, 499, 552 S.E.2d 284, 286 (2001). The objection should be addressed to the trial court in a sufficiently specific manner that brings attention to the exact error. State v. Johnson, 363 S.C. 53, 58, 609 S.E.2d 520, 523 (2005). Rule 103(a)(1), SCRE, states that a party must state the specific ground of objection if the specific ground is not apparent from the context. See State v. Sweet, 374 S.C. 1, 6, 647 S.E.2d 202, 205 (2007).

Hudson's contemporaneous objection was limited solely to the issue of Dr. Johnson's role in speaking on behalf of the medical team. As a result, Hudson's arguments regarding Rule 702, 602, and 403, SCRE, were neither raised to nor ruled upon by the trial court at the time of Hudson's objection. Accordingly, Hudson's arguments on those grounds are not preserved for appellate review. Nicholson v. Nicholson, 378 S.C. 523, 537, 663 S.E.2d 74, 81 (Ct. App. 2008) ("It is axiomatic that an issue cannot be raised for the first time on appeal, but must have been raised to and ruled upon by the trial judge to be preserved for appellate review.") (citation omitted).

Even though we find Hudson's counsel did not specifically object based on Rule 802, SCRE, his hearsay objection was specific enough from the context. Sweet, 374 S.C. at 6, 647 S.E.2d at 205 ("[A]n objection must be sufficiently specific to inform the trial court of the point being urged by the objector.") Nevertheless, we conclude Hudson's hearsay argument is not preserved for review.

Where an objection is sustained but objecting counsel does not move to strike the evidence, the issue is not preserved for appellate review. Martucci, 380 S.C. at 259, 669 S.E.2d at 612-13. Furthermore, if counsel does not request a curative instruction or mistrial after an objection has been sustained, counsel received what he asked for and cannot be heard to complain on appeal. McKissick v. J.F. Cleckley & Co., 325 S.C. 327, 350, 479 S.E.2d 67,

79 (Ct. App. 1996). An examination of the record reveals Hudson's counsel neither moved to strike the testimony nor requested a curative instruction or moved for a mistrial after the objection was sustained. As a result, Hudson's hearsay argument is not preserved.

C. Batson Challenge

Hudson also contends the trial court erred in not following the procedure for a Batson challenge after defense counsel objected to the exclusion of an African-American lawyer. We conclude this issue is not preserved for review.

After the State struck an African-American lawyer, no African-American jurors remained in the jury pool. The State's proffered reason for striking the African-American lawyer was based on the lawyer's "great deal of criminal defense work." However, Hudson argues two white lawyers were still seated on the jury, which proves the State struck the other juror solely on the basis of race in violation of Batson v. Kentucky, 476 U.S. 79 (1986).³

We decline to reach the merits of Hudson's Batson challenge. Hudson's counsel did not make a contemporaneous objection to the trial court's procedure once the judge inquired into the state's reason for striking the African-American lawyer. State v. Johnson, 363 S.C. at 58, 609 S.E.2d at 523 (2005) (holding to preserve an issue for review there must be a contemporaneous objection that is ruled upon by the trial court). It is clear from the record that Hudson's counsel objected to the selection of the jury after the jury was sworn. As a result, Hudson's failure to state a timely objection bars appellate review. See State v. Edwards, 374 S.C. 543, 649 S.E.2d 112 (Ct. App. 2007) overruled on other grounds by State v. Edwards, 384 S.C. 504, 682 S.E.2d 820 (2009). ("In order to raise and preserve a Batson issue, the opposing party must move for the hearing after the jury is selected but before it is sworn.")

³ In Batson, the United States Supreme Court held the Equal Protection Clause of the United States Constitution prohibits a prosecutor from challenging potential jurors solely on the basis of race. Batson, 476 U.S. at 89.

CONCLUSION

Accordingly, the trial court's decision is

AFFIRMED.

WILLIAMS, PIEPER, and LOCKEMY, JJ., concur.

THE STATE OF SOUTH CAROLINA
IN THE COURT OF APPEALS

THE STATE,

RESPONDENT,

V.

MARQUES HUDSON,

APPELLANT

Appeal from Greenville County

C. Victor Pyle, Jr., Circuit Court Judge

Opinion No. 2010-UP-141

PETITION FOR REHEARING

The Court of Appeals affirmed the above named appellant's conviction and sentence on February 22, 2010. In support of this petition for rehearing, which is being submitted on today's date pursuant to Rules 221 and 224 of the South Carolina Appellate Court Rules, appellant submits the following:

Hudson appealed three issues where he believed the trial court erred: (1) in not charging the jury on assault and battery of a high and aggravated nature as a lesser included offense of infliction of great bodily injury upon a child; (2) in allowing the pediatric ophthalmologist to testify as to what the medical team wanted to believe; (3) in not following the procedure for a *Batson* issue after defense counsel objected when the only black person was struck from the jury.

The Court of Appeals held: (1) that ABHAN was not a lesser included offense of the infliction of great bodily injury upon a child because the elements test was not met where ABHAN required a circumstance of aggravation and infliction of great bodily injury upon a child did not; (2) that Issue Two was not preserved for review because the judge sustained the objection and counsel did not move to strike or ask for a curative instruction or a mistrial; (3) that Issue Three related to the *Batson* issue was not preserved for review because defense counsel did not make a contemporaneous objection. Hudson was found guilty of infliction of great bodily injury upon a child. He was sentenced to fifteen years.

The Court of Appeals misapprehended the issues as the infliction of great bodily injury to a child includes circumstances of aggravation because “great bodily injury” includes violent injury because the definition requires substantial risk of death, or serious or permanent disfigurement. For Issue Two, defense counsel did object to the doctor’s testimony as hearsay which the Court of Appeals said was “specific enough from the context”, but the Court concluded nevertheless that the argument was not preserved for review. However, the judge did not actually sustain defense counsel’s objection. The judge said: “Let’s move on to what specifically he did. I think you’ve gone far enough.” ROA 181, ll. 14 – 15. On Issue Three, the trial judge erred because he swore the jury before allowing counsel to object to jury selection, but the Court of Appeals ruled it was not preserved.

Issue One concerned the trial court refusing to charge the jury on ABHAN as a lesser included offense of the infliction of great bodily injury upon a child. Hudson was keeping his two children ages four years and seven months as well as his wife’s niece who was sixteen months old at the time of the incident while his wife was at work. ROA p. 250, lines 2 – 11; p. 220, lines 7 – 23; p. 221, lines 1 – 25; p. 222, lines 1 – 25; p. 223, lines 1 – 20.

Hudson testified that the niece, Rushanti, pulled the wires on his stereo surround sound system several times during the day. He said that he finally hit her with a belt on three different occasions during the day when she pulled the wires. However, he said that he just popped her with it as he had learned how hard it could be when he had used the belt on his daughter another time. ROA p. 228, lines 1 – 25; p. 229, lines 1 – 25; p. 230, lines 1 – 25; p. 231, lines 1 – 25; p. 232, lines 1 – 25; p. 233, lines 1 – 25; p. 234, lines 1 – 25; p. 235, lines 1 – 24.

Hudson said that he then tried to give her a bath because she had a really bad diaper. She resisted the bath so he decided to wait a while. He then put his two children to bed. He said that Rushanti had fallen asleep on the sofa so he tried to give her a bath again. She woke up and started crying and kept trying to stand up. He said that she fell on her face in the tub. He picked her up and realized that she was limp and not responding. He then tried to give her CPR but still no response. He then decided to call 911 but had to go to a neighbor's to use the telephone. While he was carrying Rushanti, he fell down the stairs on the way to call 911. He finally reached the neighbor's and she called 911 for him. ROA p. 236, lines 1 – 25; p. 237, lines 1 – 25; p. 238, lines 1 – 25; p. 239, lines 1 – 25; p. 240, lines 1 – 25; p. 241, lines 1 – 25; p. 242, lines 1 – 25; p. 243, lines 1 – 25.

At trial, the pediatric intensive care doctor, Dr. Robert Seigler, who treated the injured child testified that her injuries included bruises on her legs, back and stomach. She also suffered a subdural hemorrhage, retinal hemorrhage and injury to her pancreas. He said these kinds of injuries required massive force. He did not agree with Hudson's explanation as to the cause of the injuries. ROA p. 104, lines 23 – 25; p. 105, lines 1 – 25; p. 106, lines 1 – 25; p. 107, lines 1 – 25; p. 108, lines 1 – 25; p. 109, lines 1 – 25; p. 110, lines 1 – 25; p. 111, lines 1 – 25; p. 112, lines 1 – 25; p. 113, lines 1 – 22.; p. 117, lines 8 – 25; p. 118, lines 1 – 19.

The investigator, Wayne Campbell, told the court that he talked with Hudson at the hospital the night of the incident. He said that Hudson was willing to cooperate and do anything the investigator asked him to do. ROA p. 136, lines 13 – 25; p. 137, lines 1 – 4. Investigator Campbell said that he read the Miranda rights to Hudson because it appeared that Hudson might have been the only person with the child at the time of the injuries. ROA p. 138, lines 1 – 25; p. 139, lines 1 – 4.

Defense counsel requested the court to charge assault and battery of a high and aggravated nature (ABHAN) as a lesser included crime because the crime of infliction of great bodily harm upon a child included all of the elements of ABHAN. ROA p. 171, lines 10 – 25. The State argued that ABHAN contained elements not included in the infliction of great bodily injury to a child. However, defense counsel stated that the test was that the greater crime must contain all of the elements of the lesser but that the greater could include more elements than the lesser. ROA p. 172, lines 1 – 25.

Defense counsel explained that ABHAN was appropriate in this case because the jury could find that Hudson caused some of the bruises and injuries by hitting the child with the belt but did not cause the brain and retinal hemorrhage. Therefore, the jury could find him guilty only of ABHAN. The judge replied that the doctor said that the brain damage could only have occurred by shaking the baby. ROA p. 179, lines 1 – 25. Defense counsel argued that the doctor did not testify that the injury could have only occurred by shaking the baby but that the solicitor said that in his opening statement. The solicitor then replied that he believed that Dr. Seigler specifically testified to that. The judge said that he remembered the doctor saying the injury required massive force. ROA p. 174, lines 1 – 9. Defense counsel objected again after the judge charged the jury. ROA p. 308, lines 22 – 25.

The judge stated that there must be evidence that only the lesser crime was committed. Defense counsel said that Hudson said in his statement that he struck the child with a belt which was evidence of ABHAN. ROA p. 174, lines 18 – 25. The judge denied the request for the lesser included crime of ABHAN.

The law to be charged to the jury is determined by the evidence presented at trial. State v. Reese, 359 S.C. 260, 597 S.E.2d 169 (Ct. App. 2004). There was sufficient evidence presented at trial that this was an ABHAN.

S.C. Code Section 16-3-95 defines infliction or allowing the infliction of great bodily injury upon a child. It is as follows:

(A) It is unlawful to inflict great bodily injury upon a child. A person who violates this subsection is guilty of a felony and upon conviction must be imprisoned not more than twenty years.

(B) It is unlawful for a child's parent or guardian, person with whom the child's parent or guardian is cohabitating, or any other person responsible for a child's welfare as defined in Section 20-7-490(3) knowingly to allow another person to inflict great bodily injury upon a child. A person who violates this subsection is guilty of a felony and upon conviction must be imprisoned not more than five years.

(C) For purposes of this section, "great bodily injury" means bodily injury which creates a substantial risk of death or which causes serious or permanent disfigurement, or protracted loss or impairment of the function of any bodily member organ.

(D) This section may not be construed to prohibit corporal punishment or physical discipline which is administered by a parent or person in *loco parentis* in a manner which does not cause great bodily injury upon a child.

(E) This section does not apply to traffic accidents unless the accident was caused by the driver's reckless disregard for the safety of others.

ABHAN is defined as an unlawful act of violent injury to the person of another, accompanied by circumstances of aggravation, such as the use of a deadly weapon, the infliction of serious bodily injury, the intent to commit a felony, the great disparity between the ages and physical conditions of the parties, a difference in sexes, indecent liberties or familiarities with a female, the purposeful infliction of shame and disgrace, resistance to lawful authority, and others. State v. Jones, 133 S.C. 167, 130 S.E. 747 (1925). ABHAN is the unlawful act of violent injury to another accompanied by circumstances of aggravation. State v. Primus, 349 S.C. 576, 580, 564 S.E.2d 103, 105 (2002); Dempsey v. State, 363 S.C. 365, 610 S.E.2d 812 (2005); State v. Geiger, 370 S.C. 600, 635 S.E.2d 669 (Ct. App. 2006).

The test for determining if a crime is a lesser included offense of another crime is whether the greater of the two offenses includes all of the elements of the lesser offense. If the lesser includes an element which is not included in the greater offense, then the lesser offense is not included in the greater offense. State v. Lacoste, 347 S.C. 153, 553 S.E.2d 464 (Ct. App. 2001); State v. Gosnell, 341 S.C. 627, 535 S.E.2d 453 (Ct. App. 2000).

The trial judge is to charge the jury on a lesser included offense if there is any evidence from which it could be inferred the lesser, rather than the greater, offense was committed. State v. Reese, *supra*. When the evidence is susceptible of the inference that the defendant is guilty of only the lesser included offense, the trial judge must charge the lesser offense so the jury can choose between the lesser and the greater. State v. Rucker, 319 S.C. 95, 459 S.E.2d 858 (Ct. App. 1995) citing State v. Lambright, 279 S.C. 535, 309 S.E.2d 7 (1983). The presence of evidence to sustain conviction for crime of a lesser degree determines whether it should be submitted to jury, and mere contention that jury might accept state's evidence in part and might reject it in part will not suffice. State v. Funchess, 267 S.C. 427, 229 S.E.2d 331 (1976).

The infliction of great bodily injury upon a child contains all of the elements included in ABHAN. These include the infliction of violent injury and circumstances of aggravation such as serious bodily injury, difference in age, difference in size. The definition of ABHAN does not state that all of the circumstances of aggravation are required but states circumstances of aggravation “such as” which means that only some of the aggravators as listed are needed. There is a reasonable probability that the jury or at least one juror would have reasonably believed that the child sustained the brain and retinal hemorrhages from the fall down the stairs rather than from appellant’s wrong doing.

The doctors’ testimony did not limit the cause of hemorrhages to shaking the baby. When asked what some of the ways were for that amount of force to be exerted on a child, Dr. Seigler replied that there was debate in the medical literature but that the most commonly accepted theory was that these children were violently shaken. He continued to state that there were some who feel that the shaking alone does not cause these injuries. ROA p. 120, lines 19 – 25; p. 121, lines 1 – 4.

The pediatric ophthalmologist, Dr. Anthony Johnson, testified that there were several possibilities that could cause non-accidental hemorrhages. These included CPR, seizures, bleeding tendency, meningitis, metabolic disorders, and fragile blood vessels. ROA p. 192, lines 12 – 25; p. 193, lines 1 – 21; p. 204, lines 21 -25; p. 205, lines 1 – 21.

The South Carolina Supreme Court in State v. Primus, 349 S.C. 576, 564 S.E. 2d 103 (2002), ruled that ABHAN was a lesser included offense of criminal sexual conduct first degree even though the two offenses did not mechanistically fall under the traditional elements test. This demonstrates that the court has taken a flexible approach to the test for a lesser included offense.

There was sufficient evidence for the probability that the jury would have found Hudson guilty of just the ABHAN. The judge was in error not to have granted the request and charged the jury on ABHAN.

Issue Two involved the trial court allowing the pediatric ophthalmologist to testify as to what the medical team desired to believe. During the testimony of the pediatric ophthalmologist, Dr. Anthony Johnson, he explained that when a child enters the hospital through the emergency room with life threatening issues, a team of medical personnel becomes involved. He testified that he was only a tiny part of that team. He then said:

And every time that a head injury patient is evaluated and cared for, the Team would like nothing more than to find some other explanation other than a non-accidental injury. None of the Team wants to find that and, therefore, all of the

ROA p. 180, lines 13 – 25; p. 181, lines 1 – 15.

Defense counsel objected to the doctor speaking for the Team. The judge said that he had gone far enough and that they needed to move on.

Rule 702 of SCRE provides that a witness qualified as an expert can testify in the form of an opinion to scientific, technical, or other specialized knowledge if it will assist the trier of fact to understand the evidence or to determine a fact in issue. Dr. Johnson was testifying as an expert and this testimony did not qualify as scientific or technical knowledge. ROA p. 179, lines 1 – 14.

Dr. Johnson was testifying as to what other people believed. This violated Rule 602 of the SCRE which provides that a witness may not testify to matter unless evidence is introduced sufficient to support a finding that the witness has personal knowledge of the matter. Dr. Johnson could not know what the other Team members believed.

The testimony was also hearsay in violation of Rule 802, SCRE. Hearsay is a statement other than one made by the declarant while testifying at the trial of hearing, offered in evidence to

prove the truth of the matter asserted. Rule 801(C), SCRE. Hearsay is not admissible except as provided through an exception in the Rules of Evidence or as prescribed by the South Carolina Supreme Court. Hearsay is inadmissible except as provided by statute, the Rules of Evidence, or other court rule. State v. LaCoste, 347 S.C. 153, 553 S.E.2d 464 (Ct. App. 2001). The doctor's testimony was hearsay although it was not a specific statement because he was testifying as though the Team members had actually said this. He was basically stating what he had heard the other Team members say at some point.

The doctor's testimony was prejudicial to Hudson in violation of Rule 403, SCRE. Rule 403 provides that relevant evidence may be excluded if its probative value is substantially outweighed by the danger of unfair prejudice, confusion of the issues, or misleading the jury, or by consideration of undue delay, waste of time, or needless presentation of cumulative evidence. Hudson was prejudiced because this was testimony from an expert doctor who would likely be seen as a leader of a team of medical personnel. By the doctor indicating that the Team never wanted to believe that injuries were non-accidental, there was reasonable probability that the jurors would have believed that the Team thought Hudson was a bad person and was guilty.

Relevant evidence may be excluded where its probative value is substantially outweighed by the danger of unfair prejudice. State v. Alexander, 303 S.C. 377, 401 S.E.2d 146 (1991).

Issue Three involved the trial court not following the procedure for a *Batson* issue after defense counsel objected when the only black person was struck from the jury. Immediately after the last juror was selected, the judge told the clerk to swear the jury before the judge asked the state and defense if they had any issues with the jury selection. The clerk did swear the jury. ROA p. 21, lines 1 -- 21. The jury then exited the court room. ROA p. 22, lines 1- 12.

At that point, the judge recognized defense counsel. Counsel objected to the selection of the jury because there were no black people on the jury. He argued that a black lawyer was struck when two other lawyers were seated on the jury. The result was that there were no black people on the jury. ROA p. 22, lines 13 – 18.

The judge said that the jury had been sworn and counsel's motion was too late. The judge then asked the State what their reason was for striking the black lawyer. The Solicitor said that that lawyer engages in a great deal of criminal defense work and he did not want someone like that on the jury. The judge said that was a race neutral reason for striking the juror. He told defense counsel that he would have denied his motion even if it had not been too late. ROA p. 22, lines 19 – 25; p. 23, lines 1 – 7.

Appellate courts are bound by the trial court's factual finding unless they are clearly erroneous. State v. Edwards, 374 S.C. 543, 649 S.E.2d 112 (Ct. App. 2007). This standard of review however, is premised on the trial court following the mandated procedure for a *Batson* hearing. State v. Cochran, 369 S.C. 308, 631 S.E.2d 294 (Ct. App. 2006). In Batson v. Kentucky, 476 U.S. 79 (1986), the United State Supreme Court held that the Equal Protection Clause forbids the State from challenging potential jurors solely on account of their race. In State v. Rayfield, 369 S.C. 106, 631 S.E.2d 244 (2006), the Supreme Court ruled that both the State and defendants are prohibited from discriminatorily exercising a peremptory challenge of a prospective juror.

In State v. Rayfield, *supra*, the Supreme Court described the purpose of *Batson* as being to protect the defendant's right to a fair trial by a jury of the defendant's peers, protect each venire person's right not to be excluded from jury service for discriminatory reasons, and preserve public confidence in the fairness of the system of justice by seeking to eradicate discrimination in the jury selection process.

In Purkett v. Elem, 514 U.S. 765 (1995), the Supreme Court announced: Under our *Batson* jurisprudence, once the opponent of a peremptory challenge has made out a prima facie case of racial discrimination (step one), the burden shifts to the proponent of the strike to come forward with a race-neutral explanation (step two). If a race-neutral explanation is tendered, the trial court must then decide (step three) whether the opponent of the strike has proved purposeful racial discrimination. State v. Cochran, *supra*, citing Purkett v. Elem, 514 U.S. 765 (1995). Where the assignment of error is the failure to follow the *Batson* hearing procedure, the Court of Appeals must answer a question of law and the standard of review is plenary. State v. Cochran, *supra*.

At step three of a *Batson* challenge to the use of peremptory challenges, the opponent of the strike must show the reason offered, though facially race-neutral, was actually mere pretext to engage in purposeful racial discrimination. State v. Cochran, 369 S.C. 308, 631 S.E. 2d 294 (Ct. App. 2006); State v. Edwards, 374 S.C. 543, 649 S.E.2d 112 (Ct. App. 2007).

Following a *Batson* challenge to the use of peremptory challenges, unless a discriminatory intent is inherent in the explanation provided by the proponent of the strike, the reason offered will be deemed race neutral and the trial court must proceed to the third step of the *Batson* process and decide whether the opponent of the strike has proved purposeful racial discrimination. State v. Cochran, *supra*. The opponent of a peremptory strike carries the ultimate burden of showing purposeful discrimination and must demonstrate the pretextual nature of the stated reason or the strike; this burden is generally established by showing similarly situated members of another race were seated on the jury. *Id.*; State v. Evins, 373 S.C. 404, 645 S.E.2d 904 (2007).

The explanation for the strike need not be clear, reasonably specific, or legitimate, and instead, it only needs to be race-neutral. State v. Edwards, *supra*, citing State v. Easler, 322 S.C. 333, 471 S.E.2d 745 (Ct. App. 1996). The reason is not required to be persuasive or plausible and

may even be silly or superstitious. State v. Edwards, *supra*, citing Purkett v. Elem, *supra*, and State v. Casey, 325 S.C. 447, 481 S.E.2d 169 (Ct. App. 1997).

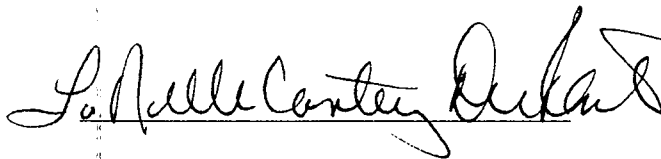
The trial court in Hudson's case did not follow the *Batson* procedure as outlined by the United States Supreme Court in Purkett and which the South Carolina Court of Appeals followed in State v. Cochran, *supra*. The judge merely said that the reason for the strike was racially neutral. He did not hold a hearing.

The judge also denied defense counsel the opportunity to make a timely motion. The judge immediately had the jury sworn after the last juror was selected before he asked counsel if they had any problems with the jury. This was prejudicial to Hudson and to his counsel.

The judge was wrong to go forward with the selected jury without following the *Batson* procedure and without providing counsel the opportunity to make a timely objection and motion to the selection of the jury.

THEREFORE, we respectfully ask the Court of Appeals to reconsider its ruling.

Respectfully submitted,

A handwritten signature in black ink, reading "LaNelle Cantey DuRant". The signature is written in a cursive, flowing style. The first name "LaNelle" is written with a capital 'L' and a capital 'N'. The last name "DuRant" is written with a capital 'D' and a capital 'R'. There is a long, sweeping horizontal line extending from the end of the signature to the right.

LaNelle Cantey DuRant
Appellate Defender

This 8th day of March, 2010.

STATE OF SOUTH CAROLINA
IN THE COURT OF APPEALS

Appeal from Greenville County
C. Victor Pyle, Jr., Circuit Court Judge

THE STATE,

RESPONDENT,

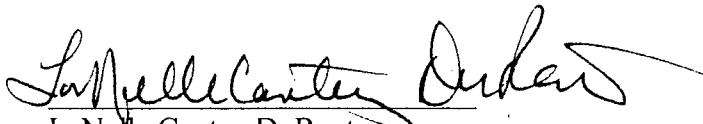
V.

MARQUES HUDSON,

APPELLANT

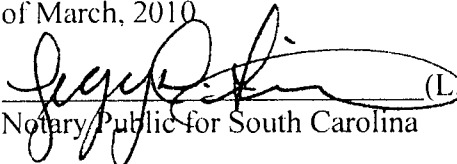
CERTIFICATE OF SERVICE

The undersigned attorney hereby certifies that a true copy of the Petition for Rehearing in the above-entitled case has been served upon Julie M. Thames, Esquire, at Rembert Dennis Building, Room 519, 1000 Assembly Street, Columbia, SC 29201; and upon Marques Hudson, Lieber Correctional Institution, PO. Box 205, Ridgeville, SC 29472, this 8th day of March, 2010.


LaNelle Cantey DuRant
Appellate Defender

ATTORNEY FOR APPELLANT

SWORN TO BEFORE ME this 8th day
of March, 2010.

 (L.S.)
Notary Public for South Carolina

My Commission Expires: December 4, 2017.

STATE OF SOUTH CAROLINA

IN THE COURT OF APPEALS

Appeal From Greenville County
C. Victor Pyle, Jr., Circuit Court Judge

THE STATE,

Respondent,

vs.

MARQUES A. HUDSON,

Appellant.

RETURN TO PETITION FOR REHEARING

The Appellant Marques Hudson asks this Court to reconsider its Opinion filed February 22, 2010, affirming the Petitioner's convictions and sentences. The Petitioner asserts the Court misapprehended the issues in that ABHAN should have been charged as a lesser included offense to infliction of great bodily injury upon a child, and that the Court mistakenly found the remaining two issues were not preserved for review.

The Respondent submits the Court did not overlook anything and that Petitioner's convictions and sentences were properly affirmed. The Respondent submits the Court correctly found ABHAN is not a lesser included offense of infliction of great bodily injury upon a child when the elements of ABHAN are not all included in the offense of infliction of great bodily injury upon a child. Further, the Court correctly found the two remaining issues were not properly preserved for review.

The Respondent submits that the offense of ABHAN does not qualify as a lesser included offense to infliction of great bodily injury upon a child because the offense of

infliction of great bodily injury upon a child does not contain the elements of ABHAN. Carving out another exception to the elements test is not warranted in this case. Moreover, as the trial judge found, even if ABHAN were to be construed as a lesser included offense, a jury charge on ABHAN would not have been warranted in this case as the evidence clearly demonstrated that Hudson was not “only guilty” of ABHAN.

The test for determining when an offense is a lesser included offense of another offense is whether the greater of the two offenses includes all the elements of the lesser offense. State v. Elliott, 346 S.C. 603, 606, 552 S.E.2d 727, 728 (2001). If the lesser offense contains an element which is not included in the greater offense, it is not a lesser included offense of the greater offense. Id.; see Blockburger v. United States, 284 U.S. 299, 52 S. Ct. 180, 76 L.Ed. 306 (1932) (the test to determine whether there are two offenses or only one is whether each provision requires proof of an additional fact which the other does not). A lesser offense is included in the greater only if each of its elements is always a necessary element of the greater offense. State v. Easler, 327 S. C. 121, 489 S.E.2d 617 (1997). While a few anomalies have been recognized, the courts generally adhere to use of the traditional elements test. State v. Elliott, at 607, 552 S.E.2d at 729.

A charge on a lesser included offense is only required when the evidence warrants such an instruction. State v. Mitchell, 362 S.C. 289, 608 S.E.2d 140 (2005). The circuit court does not err in refusing to charge a lesser included offense unless there is testimony tending to show that the defendant is only guilty of the lesser included offense. Id. (internal citations omitted).

Section 16-3-95 of the South Carolina Code provides in pertinent part:

(A) It is unlawful to inflict great bodily injury upon a child. S.C. Code Ann. § 16-3-95 (2000).

(C) For purposes of this section, "great bodily injury" means bodily injury which creates a substantial risk of death or which causes serious or permanent disfigurement, or protracted loss or impairment of the function of any bodily member or organ.

(D) This section may not be construed to prohibit corporal punishment or physical discipline which is administered by a parent or person in *loco parentis* in a manner which does not cause great bodily injury upon a child.

South Carolina Code Ann. § 16-3-95 (2000).

Assault and battery of a high and aggravated nature (ABHAN) is an unlawful act of violent injury to the person of another, accompanied by circumstances of aggravation, such as the use of deadly weapon, the infliction of serious bodily injury, the intent to commit a felony, a great disparity between the ages and physical condition of the parties, a difference in the sexes, the taking of indecent liberties with female, the purposeful infliction of shame and disgrace, or resistance of lawful authority. State v. Sprouse, 325 S.C. 275, 478 S.E.2d 871 (1996).

Hudson concedes that an exception would have to be made in order for ABHAN to be considered a lesser included offense to Section 16-3-95. He is asking the Court to carve out another exception to the traditional elements test and find that the elements of ABHAN are all contained in infliction of great bodily injury on a child. However, the elements necessary to prove ABHAN are not found in Section 16-3-95.

The Respondent first submits that "violent injury" and "great bodily injury" are simply not the same. Section 16-3-95(C) defines "great bodily injury" as "bodily injury which creates a substantial risk of death or which causes serious or permanent disfigurement, or protracted

loss or impairment of the function of any bodily member or organ.” South Carolina case law demonstrates that the term “violent injury” does not necessarily import serious injury. See State v. Germany, 211 S.C. 297, 44 S.E.2d 840 (1947). See also State v. LaCoste, 347 S.C. 153, 553 S.E.2d 464 (Ct. App. 2001) (assault and battery has also been defined as any touching of the person of an individual in a rude or angry manner, without justification (internal citations omitted)). The element of “violent injury” required to prove ABHAN is not an element of Section 16-3-95, thus, ABHAN fails the elements test.

Second, the Respondent submits that “circumstances of aggravation” is not an element of Section 16-3-95. While Hudson argues that the disparity in ages and physical conditions between a child and an adult is a circumstance of aggravation, the other circumstances of aggravation are not included, thus, it does not qualify as a lesser included offense.

While a case prosecuted for a violation of Section 16-3-95 will necessarily include circumstances of aggravation such as disparity in ages and physical conditions and serious bodily injury, not all of the circumstances of aggravation are elements of Section 16-3-95, but are matters of fact that *might* be presented. Thus, because not all of the circumstances of aggravation are always part of Section 16-3-95, ABHAN is not a lesser included offense of Section 16-3-95. See State v. Primus, 349 S.C. 576, 564 S.E.2d 103 (2002) (employing the traditional elements test, ABHAN is not a lesser included offense of first degree CSC; however, the Court found an exception was proper because ABHAN had been consistently found to be a lesser included offense to CSC in the past); Knox v. State, 340 S.C. 81, 530 S.E.2d 887 (2000) (even though second degree lynching includes two circumstances of aggravation that may establish ABHAN, ABHAN is not lesser included offense because there

are other circumstances of aggravation that are not included in second degree lynching); State v. Easler, 327 S.C. 121, 489 S.E.2d 617 (1997) (because each circumstance of aggravation for ABHAN is not always a necessary element of felony DUI, ABHAN is not a lesser included offense of felony driving under the influence).

Thus, the Respondent submits that because all of the circumstances of aggravation are not enumerated elements of Section 16-3-95, ABHAN is not a lesser included offense. Thus, the Respondent submits that ABHAN fails the same elements test and the trial judge properly refused to charge ABHAN. In addition, while the courts have carved out exceptions based on historical precedent as discussed below, no such situation exists in the case at bar.

The Elliott Court found ABHAN to be a lesser included offense to assault with intent to commit criminal sexual conduct (ACSC). “To the extent that the elements of ABHAN and ACSC do not meet the elements test, we recognize this situation presents an anomaly in the law, akin to manslaughter and murder. . . . Nevertheless, we find compelling reasons not to abandon our longstanding inclusion of ABHAN as a lesser included offense of attempted sexual battery crimes.” State v. Elliott, at 729, 346 S.E.2d at 607. Likewise, in State v. Primus, 349 S.C. 576, 564 S.E.2d 103 (2002), the Supreme Court found that under the traditional elements test, ABHAN is not a lesser included offense of first degree criminal sexual conduct (CSC). However, the Court found that, “In order to have a uniform approach to CSC and ABHAN offenses, we likewise hold ABHAN is a lesser included offense of first degree CSC.” Id., at 581, 564 S.E.2d at 106.

The Respondent submits that another exception to the elements test is not warranted in this case. There is no history of treating ABHAN as a lesser included offense to infliction

of great bodily injury upon a child. The statute is relatively new, as it was created in 2000. There have been no published cases addressing this statute. Thus, there is no history of treating ABHAN as a lesser included offense. In addition, the Act, No. 261, specifically relates Section 16-3-95 to homicide by child abuse and creates a felony offense for inflicting great bodily injury upon a child.

The Respondent further submits that Hudson is asking the Court to return to the “same conduct” test that was abandoned in State v. Easler, at 131, 489 S.E.2d at 623. In 1990, in Grady v. Corbin, 495 U.S. 508, 110 S. Ct. 2084, 109 L.Ed.2d 548 (1990), the United States Supreme Court expanded the Blockburger analysis, holding that even if two offenses do not have the same elements, double jeopardy “bars a subsequent prosecution if, to establish an essential element of an offense charged in that prosecution, the government will prove conduct that constitutes an offense for which the defendant has already been prosecuted.” The South Carolina Supreme Court adopted the “same conduct” test in State v. Grampus, 288 S.C. 395, 343 S.E.2d 26 (1986)(the Court anticipated the holding in Grady and relied on dictum in Illinois v. Vitale, 447 U.S. 410, 100 S. Ct. 2260, 65 L.Ed. 2d (1980)).

As stated, this test was abandoned and the Easler Court found that the only remaining test for determining a double jeopardy violation was the Blockburger test. The Respondent submits that because the test for determining whether an offense is a lesser included offense to another offense derives from the Blockburger “same elements” test, it is the correct test and, contrary to Hudson’s argument, the trial court need not engage in a factual analysis to determine whether the conduct complained of can be factually compared to other offenses.

Further, the trial judge clearly indicated that he did not believe there was any evidence

presented to support ABHAN even if it were a lesser included offense. Thus, the Respondent submits that even if the Court decides to carve out another exception to the elements test, the charge would not have been appropriate in this case. As the trial judge noted, there was no evidence that Hudson committed anything other than the charged offense. Hudson admitted that the child was fine when he took over the responsibility for caring for her. He did say that he thought maybe she had a cold because she was not as playful as usual, but he also stated that she was playful. (R. p.231). Doctor Johnson testified that while the injury to the victim could have occurred up to forty-eight hours prior to her admittance to the hospital, he also testified that the injury was so traumatic that it would have been noticeable immediately. He testified that the injuries to the brain and the retinal hemorrhages all occurred simultaneously. (R. pp.210-213). Thus, Hudson's implication that she had suffered the head injury prior to Hudson taking over caring for her is not plausible. The trial judge stated that he did not hear any evidence that any other incident caused the major injury to the child and that a charge on a lesser included offense was not warranted.

Hudson argues that the doctors' testimony did not limit the cause of retinal hemorrhages to shaking the baby and that other possible causes existed. The Respondent submits that this assertion is erroneous. The doctors testified that there are some instances where other causes could result in the types of injuries seen in the victim but they ruled out other potential causes in this case. Dr. Johnson specifically testified that other causes such as meningitis, a bleeding disorder, or a metabolic disorder were ruled out and that the alleged fall down the stairs could not have caused the injuries to victim. (R. pp.204-208). Dr. Seigler testified that he did not believe that a fall in the bathtub or a fall down the stairs could have

caused the injuries to the victim. (R. pp.117-119). Dr. Seigler also testified that there was no evidence of external injuries to the victim's skull that would cause the intra cranial bleeding, thus, the only conclusion left was a violent shaking. (R. p.121).

Further, the Respondent submits that a jury charge on ABHAN was not appropriate in this situation when Hudson failed to admit to any illegal conduct. His theory appeared to be that the injuries were accidental as a result of the victim falling in the bathtub and also from the fall down the stairs. He also seemed to imply that perhaps the injuries occurred before he assumed responsibility for the victim. While he admitted to beating her with a belt, the beating did not cause the injuries to the victim. Hudson did not dispute that the victim suffered the devastating head injuries, he disputed that his actions cause the injuries. See State v. Cude, 265 S.C. 313, 218 S.E.2d 240 (1975) (an instruction on a lesser included offense is proper only when the charged greater offense requires that the jury find a disputed factual element which is not a requisite for conviction of the lesser included offense).

Moreover, Section 16-3-95(D) *infra* specifically provides that corporal punishment does not qualify as an offense under the statute. Defense counsel's argument at trial was that if the jury believed Hudson only whipped the child with a belt and did not cause the head and brain injuries and the pancreatitis, the jury could find him guilty of ABHAN as a lesser included offense. The Respondent submits that the statute covers the situation defense counsel put forth and that if the jury believed that he merely disciplined the sixteen month old child with a belt, they would have reached a not guilty verdict.

Thus, the Respondent submits the Court correctly found that ABHAN is not a lesser included offense of infliction of great bodily injury upon a child. The legislature could have

drafted the statute to mirror the language of ABHAN if they intended for it to be a lesser included offense. They did not. They included the offense in the chapter with homicide by child abuse and related the two offenses. There is no history of ABHAN being treated by the courts as a lesser included offense. The Respondent submits that another exception to the elements test should not be created in this instance and that too many exceptions will eventually swallow the rule. In addition, even if the Court were to change its ruling and find ABHAN is a lesser included offense, the Respondent submits that such an instruction was not warranted in this case where the evidence did not support anything less than what was charged.

As to **Issue Two**, the Respondent submits the Court correctly found this issue is not preserved for review. The objection to the testimony was essentially sustained when the trial judge instructed the solicitor to move on, no further testimony in this regard was elicited, and defense counsel requested neither a curative instruction nor a mistrial.

A motion to strike is necessary where a question is answered before an objection thereto has been interposed, even though the objection is sustained. State v. Wingo, 304 S.C. 173, 403 S.E.2d 322 (1991); See also State v. McFadden, 318 S.C. 404, 458 S.E.2d 61 (1996) (Defendant in sexual assault prosecution failed to preserve for appeal his objection to police officer's testimony about victim's statements to officer, where defendant did not move to strike the testimony after trial court sustained his objection to it).

Dr. Johnson, a pediatric ophthalmologist, explained how he became involved in treating the victim. He was describing how the team of medical personnel deals with a serious head injury. (R. pp.179-181). He testified: "And every time that a head injury patient is

evaluated and cared for the team would like nothing more than to find some other explanation other than a non-accidental injury. None of the team wants to find that and, therefore, all of the" (R. p.181, lines 7-11). Defense counsel objected, "Your, Honor, I object to this doctor speaking for the team." (R. p.181, lines 12-13). The trial judge stated, "Let's move on to what specifically he did. I think you've gone far enough." (R. p.181, lines 14-15). There was no further objection, no request for a curative instruction and no request for a mistrial.

The Respondent submits this issue is simply not preserved for review. Hudson argues that the doctor's answer violated Rule 702, SCRE, because the answer did not qualify as scientific or technical knowledge. He also argues that the answer violated Rule 602, SCRE, because Dr. Johnson could not know what the rest of the team believed. Hudson argues the testimony was hearsay in violation of Rule 802, SCRE. Lastly, he argues that the testimony violated Rule 403, SCRE, because it was more prejudicial than probative.

Unfortunately, none of these arguments were made at trial, thus, they are not preserved for review.

In addition, the Respondent submits that if the Court changes its ruling and determines that this issue is preserved for review, no prejudice can be shown. Dr. Johnson merely stated that the team would rather find an accidental cause for the injuries than an intentional cause. It is hard to imagine a scenario where anyone would prefer an intentional cause over an accidental one. Hudson's argument that the statement made the jury believe that the team believed Hudson was a bad person is speculative and convoluted.

With regard to **Issue Three**, the Respondent submits the Court correctly found that

defense counsel did not object to the procedure regarding the Batson motion and therefore, this issue is not preserved for review. Furthermore, the Respondent submits that the trial judge, even though he told defense counsel that his Batson motion came too late, heard the solicitor's reason for the strike in question and determined that the reason was race neutral and that even if defense counsel had made the motion in a timely fashion, he would have denied it.

The general rule of issue preservation states that if an issue was not raised and ruled upon below, it will not be considered for the first time on appeal. State v. Dunbar, 356 S.C. 138, 587 S.E.2d 691 (2003). Imposing this preservation requirement on the appellant is meant to enable the lower court to rule properly after it has considered all relevant facts, law, and arguments. Ion v. Town of Mt. Pleasant, 338 S.C. 406, 422, 526 S.E.2d 716, 724 (2000); see also Ellie, Inc. v. Miccichi, 358 S.C. 78, 103, 594 S.E.2d 485, 498 (Ct. App.2004) ("Without an initial ruling by the trial court, a reviewing court simply would not be able to evaluate whether the trial court committed error.").

A hearing held pursuant to Batson v. Kentucky, 479 U.S. 79, 106 S. Ct. 1712, 90 L.Ed.2d 69 (1986) is trifurcated. In State v. Rayfield, 369 S.C. 106, 631 S.E.2d 244 (2006) our Supreme Court reiterated the proper procedure for conducting a Batson hearing originally set forth in State v. Adams, 322 S.C. 114, 470 S.E.2d 366 (1996) (citing Purkett v. Elem, 514 U.S. 765, 115 S. Ct. 1769, 131 L.Ed.2d 834 (1995)). First, when one party strikes a member of a cognizable racial group, the circuit court must hold a Batson hearing if the opposing party requests one. State v. Shuler, 344 S.C. 604, 545 S.E.2d 805 (2001). In order to raise and preserve a Batson issue, the opposing party must move for the hearing after the jury is selected

but before it is sworn. State v. Jones, 293 S.C. 54, 358 S.E.2d 701 (1987).

Hudson argues, “Immediately after the last juror was selected, the judge told the clerk to swear the jury before the judge asked the state and defense if they had any issues with the jury selection.” (App.Brief.p.11). The Respondent submits this is erroneous in two ways. First, the judge never did ask the attorneys if they had any issues with the jury selection. Second, it is true that after the last juror was selected, the Clerk stated: “Please take a seat in the jury box,” and the next line of the transcript is the trial judge saying: “Swear the jury, please.” (R. p.21). However, there is no indication that this occurred “immediately” in time. It is entirely possible that it took several moments for the juror to make his way to the jury box. No objection to the jury selection process was made.

After the jury was sworn and excused from the courtroom, the judge recognized defense counsel, who then objected to the selection of the jury. His objection was that three attorneys were called as potential jurors but only the black attorney was struck by the State. The trial judge told defense counsel that his motion was made too late as the jury had already been sworn. He then asked the solicitor what his reason was for striking the potential juror. The solicitor responded that the lawyer did a great deal of criminal defense work. The trial judge stated that the solicitor’s reason was race neutral and that even if trial counsel had objected in a timely manner, he would have denied the motion. (R. pp.22-23). Defense counsel did not object to the trial court’s procedure and did not request the trial judge to follow the procedures in Batson. (R. p.22). Thus, this issue is not preserved for review.

The Respondent can find no case that requires the judge to inquire whether there is a Batson issue. This responsibility is on counsel. Defense counsel in this case failed to raise

the issue in a timely manner. In addition, when he did raise the issue, he made no objection to the procedure, or lack thereof, by the trial judge.

Finally, the Respondent submits no prejudice can be found as the trial judge listened to the reason for the motion and determined the reason to be race neutral. The lawyer was struck because he was a criminal defense attorney, which is a race neutral reason. Thus, Hudson can show no prejudice.

The Respondent submits the Court correctly found ABHAN is not a lesser included offense to infliction of great bodily injury upon a child and therefore, the trial court did not err in refusing to charge the jury on ABHAN. The Respondent further submits the Court correctly found the issues with regard to testimony of the pediatric ophthalmologist and the Batson issue were not preserved for review.

The Respondent respectfully submits that the Petition for Rehearing should be denied.

Respectfully submitted,

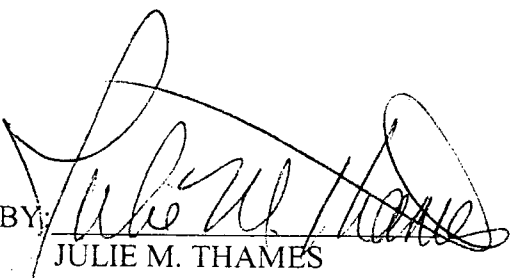
HENRY DARGAN McMASTER
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ATTORNEYS FOR RESPONDENT

March 18, 2010.

STATE OF SOUTH CAROLINA

IN THE COURT OF APPEALS

Appeal From Greenville County
C. Victor Pyle, Jr. Circuit Court Judge

THE STATE

Respondent,

v.

MARQUES A. HUDSON,

Appellant.

CERTIFICATE OF SERVICE

The undersigned hereby certifies that a true copy of the **Return To Petition For Rehearing** has been served upon the applicant by mailing two (2) copies in the United States mail, postage prepaid, addressed to:

LaNelle C. DuRant, Esquire
Division of Appellate Defense
P.O. Box 11589
Columbia, SC 29211-1589

This 18th day of March, 2010.


NORMA BIGBEE
FOR RESPONDENT

The South Carolina Court of Appeals

The State,

Respondent,

v.

Marques A. Hudson,

Appellant.

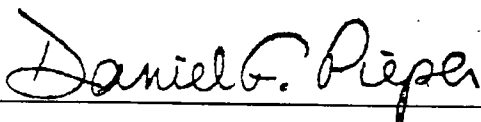
The Honorable C. Victor Pyle, Jr.
Greenville County
Trial Court Case No. 2004-GS-23-08143

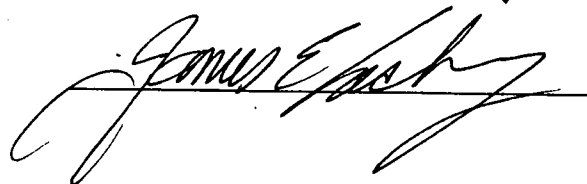
ORDER DENYING PETITION FOR REHEARING

PER CURIAM: After a 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.

It is, therefore, ordered that the Petition for Rehearing be denied.

 J. Williams

 J. Pieper

 J. Lockemy

cc: Appellate Defender LaNelle C. DuRant
Attorney General Henry Dargan McMaster
Chief Deputy Attorney General John W. McIntosh
Assistant Deputy Attorney General Salley W. Elliott
Assistant Attorney General Julie M. Thames
Robert Mills Ariail, Esquire

STATE OF SOUTH CAROLINA

In The Court of Appeals

APPEAL FROM GREENVILLE COUNTY

C. Victor Pyle, Jr., Circuit Court Judge

RECEIVED

MAY 24 2010

S.C. SUPREME COURT

THE STATE,

RESPONDENT,

V.

A.
MARQUES HUDSON,

APPELLANT

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-)
)
 MARQUES A. HUDSON,)
)
 DEFENDANT.)
 _____)

2004-GS-23-8143

TRANSCRIPT OF RECORD

OCTOBER 8 - 10, 2007
GREENVILLE, SOUTH CAROLINA

B E F O R E:

THE HONORABLE C. VICTOR PYLE, JR.

A P P E A R A N C E S:

ATTORNEY FOR PLAINTIFF:

BRYNA SEAY, ASSISTANT SOLICITOR

ATTORNEY FOR DEFENDANT:

RICHARD WARDER, ESQUIRE

SUSAN W. HUDGINS
CIRCUIT COURT REPORTER

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1 **THE COURT:** THANK YOU. BE SEATED.

2 (WHEREUPON THE ATTORNEYS REVIEWED THE JURY LIST)

3 **THE COURT:** ALL RIGHT. COUNSEL, ANYTHING BEFORE I
4 BRING THE PANEL OF JURORS UP?

5 **MR. WARDER:** YOUR HONOR, I WAS LOOKING OVER THE LIST.
6 I MAY HAVE SOME STRIKES FOR CAUSE ON THE LIST. YOUR HONOR,
7 BY WAY OF BACKGROUND, THIS CASE WILL INVOLVE WHAT'S CALLED
8 SHAKEN BABY SYNDROME. I KNOW YOUR HONOR IS FAMILIAR. THERE
9 WILL BE A NUMBER OF MEDICAL PEOPLE TO TESTIFY.

10 OF COURSE, MY CONCERN IS PEOPLE THAT HAVE BEEN IN THE
11 MEDICAL FIELD AND HAVE A PREFORMED BELIEF AS TO -- TO THAT
12 SYNDROME AND ITS EFFECTS OR SOME RELATIONSHIP WITH THE
13 DOCTORS. THERE'S A NUMBER OF JURORS THAT WORKED AT THE
14 HOSPITAL SYSTEM. AND I THINK PART OF THE DOCTORS ARE
15 EMPLOYED THERE AT THE HOSPITAL SYSTEM. THEY WORK IN THE
16 EMERGENCY ROOM AND THINGS LIKE THAT. AND I WOULD MOVE TO
17 STRIKE THOSE FOR CAUSE.

18 **THE COURT:** I DON'T THINK THE FACT THAT THEY WORK FOR
19 THE HOSPITAL OR THAT THEY'RE PHYSICIANS OR NURSES WOULD
20 AUTOMATICALLY DISQUALIFY THEM. I THINK IF THEY CAN SAY THAT
21 THEY -- IF THEY HAVE ANY OPINION THEY CAN SET IT ASIDE AND
22 BE A FAIR JUROR, THEN I THINK I'D HAVE TO QUALIFY THEM. I
23 CAN'T AUTOMATICALLY JUST DISQUALIFY A DOCTOR OR A NURSE OR
24 ...

25 **MR. WARDER:** WELL, OR OTHER TECHNICIANS THAT WORK THERE

1 THAT WOULD WORK UNDER OR WORK FOR OR WORK WITH THAT DOCTOR.

2 THE COURT: WHAT'S THE POSITION OF THE STATE?

3 MS. SEAY: YOUR HONOR, I DON'T BELIEVE THAT THEY SHOULD
4 AUTOMATICALLY BE EXCLUDED FOR CAUSE EITHER. I THINK THAT IF
5 THEY ARE QUESTIONED BY THE COURT AS TO WHETHER THEY CAN GIVE
6 A FAIR AND IMPARTIAL ASSESSMENT AND VERDICT IN THIS CASE,
7 THEN THEY WOULD BE QUALIFIED.

8 THE COURT: WHO SPECIFICALLY DO YOU HAVE REFERENCE TO?

9 MR. WARDER: WELL, I HAD JUST A MINUTE AND 94 WAS THE
10 FIRST ONE THAT COME UP, WHICH WAS THE THIRD JUROR ON THE
11 LIST THAT -- IN THAT PARTICULAR CASE THAT JUROR WORKS FOR
12 THE GREENVILLE HOSPITAL SYSTEM.

13 THE COURT: WHAT IS CNA?

14 MR. WARDER: CERTIFIED NURSING ASSISTANT IS WHAT I
15 BELIEVE THAT TO BE, TO INDICATE.

16 THE COURT: WELL, I WOULD WANT TO KNOW WHAT DEPARTMENT
17 SHE WORKS IN, WHETHER OR NOT SHE HAS ANY CONNECTION WITH
18 THIS CASE.

19 MR. WARDER: YES, SIR. I DON'T KNOW THAT EITHER.

20 THE COURT: AND I WOULD CERTAINLY ASK THAT.

21 MR. WARDER: AND THERE WAS A NUMBER OF HOSPITAL PEOPLE.
22 AND IF WE HAD JUST A MINUTE OR TWO I COULD GO DOWN THE LIST

23 ---

24 THE COURT: THAT'D BE -- GO AHEAD.

25 MR. WARDER: --- AND IDENTIFY THOSE ---

1 **THE COURT:** SURE. THAT'S FINE.

2 (PAUSE)

3 **MR. WARDER:** YOUR HONOR, IN -- AFTER GOING DOWN THE
4 LIST I WOULD HAVE TWO JURORS THAT I WOULD ---

5 **THE COURT:** ALL RIGHT.

6 **MR. WARDER:** --- THINK SHOULD BE STRICKEN FOR CAUSE.
7 ONE OF THEM WE SPOKE ABOUT, WHICH WAS THE THIRD ONE ON THE
8 LIST, JUROR NUMBER 94 ---

9 **THE COURT:** RIGHT.

10 **MR. WARDER:** --- BECAUSE OF THE HOSPITAL SYSTEM. AND
11 THE OTHER ONE WOULD BE JUROR NUMBER 20 ON OUR LIST. IT'S
12 JUROR NUMBER 105. AND THE PROSECUTING AGENCY IN THIS IS THE
13 GREENVILLE COUNTY SHERIFF'S DEPARTMENT. AND HER HUSBAND IS
14 EMPLOYED WITH THE GREENVILLE COUNTY SHERIFF'S OFFICE.

15 **THE COURT:** ALL RIGHT. I WOULD NOT DISQUALIFY THEM
16 BECAUSE OF THOSE EMPLOYMENTS. I WILL ASK THE QUESTIONS, IF
17 THEY COULD BE A FAIR JUROR.

18 **MR. WARDER:** OKAY. AND IN THAT REGARD, YOUR HONOR, I
19 WOULD ASK THAT YOU QUESTION THE GENERAL PANEL AS TO THE --
20 THEIR INVOLVEMENT IN THE HEALTHCARE SYSTEM, WHETHER ANY OF
21 THEM HAD BEEN EMPLOYED IN THE HEALTHCARE SYSTEM OR THEIR
22 SPOUSES IN THE HEALTHCARE ---

23 **THE COURT:** I WILL.

24 **MR. WARDER:** --- SYSTEM.

25 **THE COURT:** I'LL ASK THAT.

1 MR. WARDER: OKAY. AND THAT WILL BE ALL THE SPECIAL
2 VOIR DIRE I HAVE. THEY COVERED LAW ENFORCEMENT, I THINK,
3 ---

4 THE COURT: I DO.

5 MR. WARDER: BUT I'D ASK YOU TO ASK QUESTIONS ON THAT.

6 THE COURT: I DO. ALL RIGHT. BRING OUR PANEL UP,
7 PLEASE.

8 (PAUSE)

9 THE COURT: MR. WARDER, NUMBER 20, AUDREY MAXWELL, I
10 SEE THAT HER HUSBAND IS AN INVESTIGATOR WITH THE GREENVILLE
11 COUNTY SHERIFF'S OFFICE. AND SINCE THE SHERIFF'S OFFICE IS
12 PROSECUTING THIS CASE, I WOULD NOT PUT HER ON THIS CASE. SO
13 WE WILL TAKE HER OFF THE PANEL.

14 MR. WARDER: YES, SIR.

15 THE COURT: ALL RIGHT.

16 (PAUSE)

17 (WHEREUPON THE JURY PANEL ENTERED THE COURTROOM AT
18 10:56 AM)

19 THE COURT: LADIES AND GENTLEMEN, AT THIS TIME WE WILL
20 SELECT A JURY IN THE CASE OF THE STATE AGAINST MARQUES A.
21 HUDSON. MR. HUDSON, WOULD YOU STAND UP, TURN AROUND AND
22 FACE THE JURY PANEL FOR ME, PLEASE, SIR? THANK YOU. YOU
23 CAN BE SEATED.

24 HE IS INDICTED FOR CHILD ABUSE WITH GREAT BODILY HARM.
25 THE INDICTMENT ALLEGES THAT ON OR ABOUT THE 12TH DAY OF

1 OCTOBER, 2003 HE INFLICTED GREAT BODILY INJURY UPON A CHILD,
2 -----

3 NOW POTENTIAL WITNESSES IN THIS CASE WILL BE KEVIN
4 CROSBY WITH THE GREENVILLE COUNTY EMS, DEPUTY CRAIG HAWKINS,
5 INVESTIGATOR WAYNE CAMPBELL, INVESTIGATOR SANDY SIMPSON,
6 INVESTIGATOR MELISSA MCKINNEY, INVESTIGATOR CHERYL
7 CROMARTIE. THESE ARE ALL WITH THE GREENVILLE COUNTY
8 SHERIFF'S OFFICE.

9 DR. ALLISON JONES, WHO IS WITH GREENVILLE MEMORIAL
10 HOSPITAL IN THE PEDIATRIC EMERGENCY ROOM, MELISSA TRYLING,
11 WHO IS A REGISTERED NURSE WITH THE GREENVILLE MEMORIAL
12 HOSPITAL, DR. ROBERT SEIGLER, WHO IS WITH THE GREENVILLE
13 MEMORIAL HOSPITAL PEDIATRIC INTENSIVE CARE UNIT, DR. ANTHONY
14 JOHNSON, WHO IS A PEDIATRIC OPHTHALMOLOGIST WITH THE JERVEY
15 EYE GROUP, LYCRETTA SMITH, CARRIE SMITH AND BARBARA SMITH.

16 NOW I WOULD INQUIRE AT THIS TIME IF ANY MEMBER OF THE
17 JURY PANEL IS RELATED BY BLOOD OR MARRIAGE OR CONNECTED BY
18 EMPLOYMENT WITH ANY POTENTIAL WITNESS IN THIS CASE OR WITH
19 THE DEFENDANT, ARE YOU SENSIBLE OR AWARE OF ANY BIAS OR ANY
20 PREJUDICE WITH RESPECT TO THE DEFENDANT, TO THE STATE OR TO
21 THE SUBJECT MATTER OF THE CASE, THAT BEING AN ALLEGED CHILD
22 ABUSE RESULTING IN GREAT BODILY INJURY, OR DO YOU KNOW ANY
23 REASON WHY YOU COULD NOT GIVE THIS DEFENDANT AND THE STATE A
24 FAIR AND IMPARTIAL TRIAL BASED ON THE LAW AND EVIDENCE TO BE
25 PRESENTED? IF SO, WOULD YOU PLEASE STAND AND GIVE ME YOUR

1 NAME? YES.

2 JUROR: HOLLEY LeBLANC.

3 THE COURT: YOUR NAME, PLEASE.

4 MS. LeBLANC: HOLLEY LeBLANC.

5 THE COURT: MS. LeBLANC. ALL RIGHT.

6 MS. LeBLANC: MY REASON?

7 THE COURT: YES.

8 MS. LeBLANC: OKAY. AS A MEDICAL SOCIAL WORKER I'VE
9 WORKED WITH SUSPECTED CASES OF CHILD ABUSE.

10 THE COURT: WOULD THAT IN ANY WAY INTERFERE WITH YOUR
11 ABILITY TO BE A FAIR AND IMPARTIAL JUROR ON THIS CASE?

12 MS. LeBLANC: I HAVE CONCERNS THAT IT WOULD.

13 THE COURT: ALL RIGHT. THANK YOU. I APPRECIATE YOU
14 TELLING ME THAT. AND WE WOULD NOT PUT YOU ON THIS CASE. I
15 APPRECIATE YOU TELLING ME THAT.

16 MR. WARDER: WHAT NUMBER WAS THAT?

17 THE COURT: NUMBER 12. AND YOUR NAME, PLEASE, MA'AM?

18 JUROR: MARY LOU STONER.

19 THE COURT: MS. STONER?

20 MS. STONER: UM-HUM (AFFIRMATIVE).

21 THE COURT: YES, MA'AM.

22 MS. STONER: WORK WITH CHILDREN IN THE GREENVILLE
23 COUNTY LIBRARY SYSTEM FOR TWENTY YEARS.

24 THE COURT: ALL RIGHT.

25 MS. STONER: AND KEEPING THEM SAFE IS A MAJOR PART OF

1 IT.

2 THE COURT: WOULD THAT FACT IN ANY WAY INTERFERE WITH
3 YOUR ABILITY TO BE A FAIR AND IMPARTIAL JUROR ON THIS CASE?

4 MS. STONER: YES.

5 THE COURT: I APPRECIATE YOU TELLING ME THAT, MS.
6 STONER. WE WOULD NOT PUT YOU ON THIS CASE. NUMBER 19.

7 DO I HAVE ANY MEMBER OF THE PANEL WHO HAS ANY
8 CONNECTION, FAMILY, BUSINESS, SOCIAL OR OTHERWISE WITH BOB
9 ARIAIL, THE SOLICITOR, OR ANY MEMBER OF HIS STAFF OR WITH
10 LAW ENFORCEMENT, WHETHER THAT BE FEDERAL, STATE, COUNTY OR
11 MUNICIPAL? IF SO, WOULD YOU PLEASE STAND AND GIVE ME YOUR
12 NAME? ALL RIGHT. MR. CARPENTER?

13 MR. CARPENTER: THIS IS JUST GREENVILLE COUNTY?

14 THE COURT: YES. NO, NO, I MEAN, DO YOU HAVE ANY
15 CONNECTION TO ANY ---

16 MR. CARPENTER: MY BROTHER IS A DEPUTY IN ANDERSON.

17 THE COURT: ALL RIGHT. WOULD THAT FACT IN ANY WAY
18 INTERFERE WITH YOUR ABILITY TO BE A FAIR AND IMPARTIAL JUROR
19 ON THIS CASE?

20 MR. CARPENTER: NO.

21 THE COURT: THANK YOU, SIR. YOUR NAME, PLEASE?

22 JUROR: AUDREY MAXWELL.

23 THE COURT: YES.

24 MS. MAXWELL: MY HUSBAND IS EMPLOYED WITH THE
25 GREENVILLE COUNTY SHERIFF'S OFFICE.

1 **THE COURT:** ALL RIGHT. MS. MAXWELL, AND BECAUSE HE IS
2 EMPLOYED BY THE SHERIFF'S OFFICE AND THEY ARE HANDLING THIS
3 CASE, I WOULD NOT PUT YOU ON THE CASE. I APPRECIATE YOU
4 TELLING ME THAT. MR. CARPENTER?

5 **MR. CARPENTER:** MY BROTHER'S WIFE IS A PROBATION OR
6 PAROLE OFFICER HERE IN GREENVILLE.

7 **THE COURT:** OKAY. AGAIN, I WOULD ASK YOU IF THAT WOULD
8 IN ANY WAY INTERFERE WITH YOUR ABILITY TO BE A FAIR AND
9 IMPARTIAL JUROR?

10 **MR. CARPENTER:** NO.

11 **THE COURT:** THANK YOU. MR. CARPENTER IS QUALIFIED.

12 **MR. WARDER:** WHAT'S THE NUMBER OF THAT?

13 **THE COURT:** MR. CARPENTER?

14 **MR. WARDER:** YES, SIR. I COULDN'T HEAR THE LAST NAME.

15 **THE COURT:** CARPENTER.

16 **MR. WARDER:** THANK YOU.

17 **THE COURT:** JAMES CARPENTER. DO I HAVE ANY MEMBER OF
18 THE -- OF THE PANEL, ANY MEMBER OF YOUR FAMILY WHO HAS BEEN
19 THE VICTIM OF A VIOLENT CRIME, THAT WOULD INCLUDE THE
20 ALLEGATIONS OF THE TYPE CASE THAT WE'RE TRYING INVOLVING
21 CHILD ABUSE? WOULD ANYONE RESPOND TO THAT QUESTION?

22 (NO RESPONSE)

23 **THE COURT:** DO I HAVE ANY MEMBER OF THE PANEL, OTHER
24 THAN THOSE WHO HAVE RESPONDED, WHO ARE INVOLVED OR HAVE BEEN
25 INVOLVED IN THE HEALTHCARE SYSTEM? IF SO, WOULD YOU PLEASE

1 STAND AND GIVE ME YOUR NAME? YOUR NAME, PLEASE, MA'AM?

2 JUROR: CARLA FISHER.

3 THE COURT: MS. FISHER?

4 MS. FISHER: I'M AN OPHTHALMIC TECHNICIAN.

5 THE COURT: WOULD THAT IN ANY WAY INTERFERE WITH YOUR
6 ABILITY TO BE A FAIR AND IMPARTIAL JUROR ON THIS CASE?

7 MS. FISHER: NO, SIR.

8 THE COURT: THANK YOU, MA'AM. YOU'RE QUALIFIED.

9 JUROR: NANCY LOWDERMILK. MEDICAL TECHNOLOGIST.

10 THE COURT: YOUR NAME, PLEASE, MA'AM?

11 MS. LOWDERMILK: NANCY LOWDERMILK.

12 THE COURT: ALL RIGHT, MS. LOWDERMILK?

13 MS. LOWDERMILK: MEDICAL TECHNOLOGIST, ST. FRANCIS
14 HOSPITAL.

15 THE COURT: ALL RIGHT. WOULD THAT FACT IN ANY WAY
16 INTERFERE WITH YOUR ABILITY TO BE A FAIR AND IMPARTIAL JUROR
17 ON THIS CASE?

18 MS. LOWDERMILK: NO, SIR.

19 THE COURT: THANK YOU, MS. LOWDERMILK. YOUR NAME,
20 PLEASE, MA'AM?

21 JUROR: DONNA LEMAY. I WORK WITH THE GREENVILLE
22 HOSPITAL SYSTEM AS A NURSING ASSISTANT.

23 THE COURT: WHAT DEPARTMENT DO YOU WORK IN?

24 MS. LEMAY: I GO INTO THE COTTAGES AT BRUSHY CREEK.

25 THE COURT: ALL RIGHT. AND WHAT KIND OF WORK DO YOU DO

1 WITH THE HOSPITAL?

2 MS. LEMAY: NURSING ASSISTANT.

3 THE COURT: ALL RIGHT. WOULD THAT FACT IN ANY WAY
4 INTERFERE WITH YOUR ABILITY TO BE A FAIR AND IMPARTIAL JUROR
5 ON THIS CASE?

6 MS. LEMAY: NO.

7 THE COURT: AND YOUR NAME AGAIN, PLEASE, MA'AM?

8 MS. LEMAY: DONNA LEMAY.

9 THE COURT: THANK YOU, MS. LEMAY. ALL RIGHT. ANY
10 OTHER QUESTIONS, COUNSEL, THAT I'VE OVERLOOKED?

11 MS. SEAY: NOTHING FURTHER FROM THE STATE.

12 MR. WARDER: NOTHING FROM THE DEFENSE, YOUR HONOR.

13 THE COURT: LADIES AND GENTLEMEN, WHEN YOUR NAME IS
14 CALLED I'LL ASK THAT YOU PLEASE COME FORWARD TO THIS PODIUM
15 UP FRONT, TURN AROUND AND FACE COUNSEL AND AWAIT FURTHER
16 INSTRUCTIONS. STRIKES ARE FIVE FOR THE STATE, FIVE FOR THE
17 DEFENSE.

18 MADAME CLERK: JUROR NUMBER 182, JAMES C. PORTER, III.
19 WHAT SAYS THE STATE?

20 MS. SEAY: PLEASE PRESENT THIS JUROR.

21 MADAME CLERK: WHAT SAYS THE DEFENSE?

22 MR. WARDER: PLEASE SWEAR THE JUROR.

23 MADAME CLERK: PLEASE TAKE A SEAT IN THE JURY BOX.

24 JUROR NUMBER 161, DEBORAH T. TERRY. WHAT SAYS THE STATE?

25 MS. SEAY: PLEASE PRESENT THE JUROR.

1 MADAME CLERK: WHAT SAYS THE DEFENSE?

2 MR. WARDER: PLEASE SWEAR THE JUROR.

3 MADAME CLERK: PLEASE TAKE A SEAT IN THE JURY BOX.

4 JUROR NUMBER 94, DONNA L. LEMAY. WHAT SAYS THE STATE?

5 MS. SEAY: PLEASE PRESENT HER.

6 MADAME CLERK: WHAT SAYS THE DEFENSE?

7 MR. WARDER: PLEASE EXCUSE THE JUROR FROM THE TRIAL OF
8 THIS MATTER.

9 MADAME CLERK: YOU'RE EXCUSED FROM THIS CASE. PLEASE
10 HAVE A SEAT. JUROR NUMBER 23, KRISTINA S. CAMPBELL. WHAT
11 SAYS THE STATE?

12 MS. SEAY: PLEASE PRESENT HER.

13 MADAME CLERK: WHAT SAYS THE DEFENSE?

14 MR. WARDER: PLEASE SWEAR THE JUROR.

15 MADAME CLERK: PLEASE HAVE A SEAT IN THE JURY BOX.

16 JUROR NUMBER 99, NANCY L. LOWDERMILK. WHAT SAYS THE STATE?

17 MS. SEAY: PLEASE PRESENT HER.

18 MADAME CLERK: WHAT SAYS THE DEFENSE?

19 MR. WARDER: PLEASE EXCUSE THE JUROR FROM THE TRIAL OF
20 THIS MATTER.

21 MADAME CLERK: YOU'RE EXCUSED FROM THIS CASE. PLEASE
22 HAVE A SEAT. JUROR NUMBER 140, GARY N. RICHARDSON. WHAT
23 SAYS THE STATE?

24 MS. SEAY: PLEASE EXCUSE HIM FROM THIS CASE.

25 MADAME CLERK: YOU'RE EXCUSED FROM THIS CASE. PLEASE

1 HAVE A SEAT. JUROR NUMBER 78, SANDRA F. HYDER. WHAT SAYS
2 THE STATE?

3 MS. SEAY: PLEASE PRESENT HER.

4 MADAME CLERK: WHAT SAYS THE DEFENSE?

5 MR. WARDER: PLEASE EXCUSE THE JUROR FROM THE TRIAL OF
6 THIS MATTER.

7 MADAME CLERK: YOU'RE EXCUSED FROM THIS CASE. PLEASE
8 HAVE A SEAT. JUROR NUMBER 46, JAMES A. DUCKETT. WHAT SAYS
9 THE STATE?

10 MS. SEAY: PLEASE EXCUSE MR. DUCKETT FROM THIS CASE.

11 MADAME CLERK: YOU'RE EXCUSED FROM THIS CASE. JUROR
12 NUMBER 51, MAUREEN A. FORBES. WHAT SAYS THE STATE?

13 MS. SEAY: PLEASE PRESENT THIS JUROR.

14 MADAME CLERK: WHAT SAYS THE DEFENSE?

15 MR. WARDER: PLEASE SWEAR THE JUROR.

16 MADAME CLERK: PLEASE HAVE A SEAT IN THE JURY BOX.
17 JUROR NUMBER 100, MARGARET M. LUKE. WHAT SAYS THE STATE?

18 MS. SEAY: PLEASE PRESENT HER.

19 MADAME CLERK: WHAT SAYS THE DEFENSE?

20 MR. WARDER: PLEASE SWEAR THE JUROR.

21 MADAME CLERK: PLEASE TAKE A SEAT IN THE JURY BOX.
22 JUROR NUMBER 183, JAMES C. ROBINSON, JR. WHAT SAYS THE
23 STATE?

24 MS. SEAY: PLEASE PRESENT HIM.

25 MADAME CLERK: WHAT SAYS THE DEFENSE?

1 **MR. WARDER:** PLEASE EXCUSE THE JUROR FROM THE TRIAL OF
2 THIS MATTER.

3 **MADAME CLERK:** YOU'RE EXCUSED IN THIS CASE. PLEASE
4 HAVE A SEAT. JUROR NUMBER 49, CARLA M. FISHER. WHAT SAYS
5 THE STATE?

6 **MS. SEAY:** PLEASE PRESENT HER.

7 **MADAME CLERK:** WHAT SAYS THE DEFENSE?

8 **MR. WARDER:** PLEASE EXCUSE THE JUROR FROM THE TRIAL OF
9 THIS MATTER.

10 **MADAME CLERK:** YOU'RE EXCUSED IN THIS CASE. JUROR
11 NUMBER 136, JANICE H. REVIS. WHAT SAYS THE STATE?

12 **MS. SEAY:** PLEASE PRESENT HER.

13 **MADAME CLERK:** DEFENSE?

14 **MR. WARDER:** PLEASE SWEAR THE JUROR.

15 **MADAME CLERK:** TAKE A SEAT IN THE JURY BOX. JUROR
16 NUMBER 25, JAMES GORDON CARPENTER. WHAT SAYS THE STATE?

17 **MS. SEAY:** PLEASE PRESENT HIM.

18 **MADAME CLERK:** DEFENSE?

19 **MR. WARDER:** PLEASE SWEAR THE JUROR.

20 **MADAME CLERK:** PLEASE TAKE A SEAT IN THE JURY BOX.

21 JUROR NUMBER 36, TINA M. COLLINS. WHAT SAYS THE STATE?

22 **MS. SEAY:** PLEASE EXCUSE HER FROM THIS CASE.

23 **MADAME CLERK:** YOU'RE EXCUSED FROM THIS CASE. JUROR
24 NUMBER 34, JILL RUSHFORTH COKER. WHAT SAYS THE STATE?

25 **MS. SEAY:** PLEASE PRESENT HER.

1 MADAME CLERK: DEFENSE?

2 MR. WARDER: PLEASE SWEAR THE JUROR.

3 MADAME CLERK: PLEASE TAKE A SEAT IN THE JURY BOX.

4 THE COURT: MS. COKER, TAKE THAT FIRST SEAT AND SERVE
5 AS FOREPERSON FOR ME, PLEASE, MA'AM.

6 MADAME CLERK: JUROR NUMBER 179, ROGER A. DAVIS. WHAT
7 SAYS THE STATE?

8 MS. SEAY: PLEASE PRESENT HIM.

9 MADAME CLERK: DEFENSE?

10 MR. WARDER: PLEASE SWEAR THE JUROR.

11 MADAME CLERK: PLEASE TAKE A SEAT IN THE JURY BOX.
12 JUROR NUMBER 19, KATHRYN T. BROWN. WHAT SAYS THE STATE?

13 MS. SEAY: PLEASE PRESENT HER.

14 MADAME CLERK: DEFENSE?

15 MR. WARDER: PLEASE SWEAR THE JUROR.

16 MADAME CLERK: PLEASE TAKE A SEAT IN THE JURY BOX.
17 JUROR NUMBER 98, JAMES A. LOVING. WHAT SAYS THE STATE?

18 MS. SEAY: PLEASE PRESENT HIM.

19 MADAME CLERK: DEFENSE?

20 MR. WARDER: PLEASE SWEAR THE JUROR.

21 MADAME CLERK: PLEASE TAKE A SEAT IN THE JURY BOX.
22 JUROR NUMBER 177, REGINA L. WOOD. WHAT SAYS THE STATE?

23 MS. SEAY: PLEASE PRESENT HER.

24 MADAME CLERK: DEFENSE?

25 MR. WARDER: PLEASE SWEAR THE JUROR.

1 **MADAME CLERK:** PLEASE TAKE A SEAT IN THE JURY BOX.

2 **THE COURT:** AND ONE ALTERNATE, ONE FOR THE STATE, TWO
3 FOR THE DEFENSE.

4 **MADAME CLERK:** JUROR NUMBER 14, CHARLES R. BLACKSTON.
5 WHAT SAYS THE STATE?

6 **MS. SEAY:** PLEASE EXCUSE HIM FROM THIS CASE.

7 **MADAME CLERK:** YOU'RE EXCUSED IN THIS CASE. JUROR
8 NUMBER 33, RONALD M. COGGINS. WHAT SAYS THE STATE?

9 **MS. SEAY:** PLEASE PRESENT HIM.

10 **MADAME CLERK:** WHAT SAYS THE DEFENSE?

11 **MR. WARDER:** PLEASE SWEAR THE JUROR.

12 **MADAME CLERK:** PLEASE TAKE A SEAT IN THE JURY BOX.

13 **THE COURT:** SWEAR THE JURY, PLEASE.

14 **MADAME CLERK:** PLEASE STAND AND RAISE YOUR RIGHT HAND
15 FOR THE OATH IN THIS CASE. AND YOUR RESPONSE SHOULD BE, I
16 WILL. YOU SHALL WELL AND TRULY TRY CASE NUMBER 2004-GS-23-
17 8143, STATE VERSUS MARQUES A. HUDSON, INDICTED FOR CHILD
18 ABUSE WITH GREAT BODILY INJURY AND A TRUE VERDICT RENDERED
19 ACCORDING TO THE LAW AND THE EVIDENCE SO HELP YOU GOD.

20 **THE JURY:** I WILL.

21 **MADAME CLERK:** PLEASE BE SEATED.

22 **THE COURT:** LADIES AND GENTLEMEN, I'LL GIVE YOU A SHORT
23 RECESS BEFORE WE START. WHILE ON RECESS DO NOT TALK ABOUT
24 THIS CASE. YOU DON'T KNOW ANYMORE ABOUT THIS CASE OTHER
25 THAN WHAT I TOLD YOU A MOMENT AGO.

1 BUT I NEED TO INSTRUCT YOU THAT FROM THIS POINT ON YOU
2 DON'T TALK ABOUT THIS CASE, YOU DON'T BEGIN DISCUSSING THE
3 FACTS OF THE CASE UNTIL YOU'VE HEARD ALL OF THE TESTIMONY TO
4 BE PRESENTED, THE ARGUMENTS BY THE ATTORNEYS AND MY CHARGE
5 ON THE LAW. SO IF YOU'LL BE AT EASE, FOLLOW THE BAILIFF,
6 WE'LL START SHORTLY. THANK YOU.

7 (WHEREUPON THE JURY EXITED THE COURTROOM AT 11:18 AM)

8 **THE COURT:** AND I NEED THE BALANCE OF THE PANEL TO
9 REPORT BACK DOWNSTAIRS TO THE JURY ASSEMBLY ROOM. THANK YOU
10 VERY MUCH.

11 (WHEREUPON THE BALANCE OF THE JURY PANEL EXITED THE
12 COURTROOM AT 11:19 AM)

13 **THE COURT:** ALL RIGHT. MR. WARDER?

14 **MR. WARDER:** YOUR HONOR, IF IT PLEASES THE COURT, WE
15 WOULD OBJECT TO THE SELECTION OF THE JURY. THE ONLY BLACK
16 LAWYER THAT WAS CALLED WAS STRUCK FROM THE PANEL. TWO OTHER
17 LAWYERS WERE SEATED. AND THE RESULT IS THAT THE JURY MAKEUP
18 IS WITHOUT ANY BLACKS ON IT.

19 **THE COURT:** I BELIEVE THE ONLY AFRICAN AMERICAN CALLED
20 WAS JAMES DUCKETT, WHO IS ---

21 **MR. WARDER:** YES, SIR.

22 **THE COURT:** --- AN AFRICAN AMERICAN LAWYER. MR.
23 WARDER, ACTUALLY THE JURY'S BEEN SWORN AND YOUR MOTION COMES
24 TOO LATE. WHAT WAS YOUR REASON FOR STRIKING MR. DUCKETT,
25 SOLICITOR?

1 **MS. SEAY:** JUST STRICTLY THAT HE ENGAGES IN A GREAT
2 DEAL OF CRIMINAL DEFENSE WORK. AND I DIDN'T FEEL THAT THAT
3 WAS SOMEONE THAT I WANTED ON THIS JURY.

4 **THE COURT:** MR. WARDER, THAT'S A RACE NEUTRAL REASON
5 FOR STRIKING A JUROR. AND EVEN IF YOUR MOTION DIDN'T COME
6 TOO LATE, I WOULD HAVE TO DENY THAT MOTION. ALL RIGHT. ANY
7 OTHER MATTERS BEFORE WE START?

8 **MS. SEAY:** YOUR HONOR, A COUPLE OF THINGS FROM THE
9 STATE, IF IT PLEASES THE COURT. AT THE APPROPRIATE TIME WE
10 WILL NEED TO CONDUCT A JACKSON V. DENNO HEARING REGARDING A
11 WRITTEN STATEMENT THAT THE DEFENDANT GAVE IN THIS CASE AS
12 WELL AS AN ORAL STATEMENT. AND ---

13 **THE COURT:** ALL RIGHT. WE NEED TO GO AHEAD AND DO THAT
14 NOW?

15 **MS. SEAY:** YES, SIR. AND I HAVE ONE OTHER MATTER THAT
16 I WANTED TO BRING TO THE COURT'S ATTENTION SO THAT WE COULD
17 POSSIBLY DEAL WITH THIS ISSUE. WE HAVE SUBPOENAED DR.
18 ALLISON JONES. SHE APPEARS ON THE WITNESS LIST. SHE'S A
19 PEDIATRIC EMERGENCY ROOM DOCTOR.

20 I HAVE HAD GREAT DIFFICULTY TRYING TO CONTACT HER FOR
21 MANY WEEKS NOW. THE HOSPITAL SYSTEM WOULD EMAIL HER FOR ME.
22 THEY WOULD TAKE MESSAGES FROM ME. THEY WOULD NOT GIVE ME
23 HER TELEPHONE NUMBER. I WENT OVER TO THE HOSPITAL ON A
24 COUPLE OF OCCASIONS TO TRY TO SPEAK WITH HER WITHOUT
25 SUCCESS.

1 WE FINALLY RESORTED TO HAVING HER SERVED BY LEGAL
2 PROCESS, WHICH WAS DONE ABOUT 7:00 LAST NIGHT WHILE SHE WAS
3 WORKING. SHE HAS LEFT ME A MESSAGE THIS MORNING AS WELL AS
4 A MESSAGE ON MY INVESTIGATOR'S VOICEMAIL THAT SHE IS NOT
5 COMING TO COURT.

6 THE COURT: WELL, SHE IS GOING TO COME TO COURT. WOULD
7 YOU ISSUE A BENCH WARRANT AND GET HER IN?

8 MS. SEAY: YES, SIR. AND I'D LIKE TO GO AHEAD AND TAKE
9 CARE OF THAT SO THAT HOPEFULLY WE CAN GET HER HERE ---

10 THE COURT: SURE.

11 MS. SEAY: --- AND MAKE HER A PART OF THIS CASE AS I
12 HAD ENVISIONED.

13 THE COURT: THAT'S FINE.

14 MS. SEAY: OKAY. THANK YOU. SHOULD I JUST LET THE
15 DEPUTIES KNOW?

16 THE COURT: I GUESS PROBABLY THE BEST THING WOULD BE A
17 RULE TO SHOW CAUSE WHY SHE SHOULD NOT BE HELD IN CONTEMPT OF
18 COURT.

19 MS. SEAY: OKAY.

20 THE COURT: SURE.

21 MS. SEAY: AND IF YOU WOULD GRANT ME A FEW MINUTES TO
22 PREPARE ---

23 THE COURT: I WILL.

24 MS. SEAY: --- THE PAPERWORK FOR THAT, I'LL BE GLAD TO
25 GO TO MY OFFICE AND DO THAT.

1 THE COURT: I'LL DO THAT. YES.

2 MS. SEAY: SHALL I TAKE CARE OF THAT NOW?

3 THE COURT: YES.

4 MS. SEAY: OKAY.

5 (WHEREUPON COURT WAS IN RECESS AT 11:22 AM)

6 MS. SEAY: YOUR HONOR, I WOULD ASK THAT THE SHERIFF'S
7 OFFICE BE ALLOWED TO ---

8 THE COURT: YES.

9 MS. SEAY: --- DELIVER THIS.

10 THE COURT: THEY'VE ARRANGED, IF YOU'LL ---

11 MS. SEAY: OKAY. I REGRET TO TAKE SUCH ACTION, YOUR
12 HONOR.

13 THE COURT: THAT'S ALL RIGHT.

14 MS. SEAY: THANK YOU.

15 THE COURT: ALL RIGHT. NOW HOW LONG DO YOU THINK IT'LL
16 TAKE TO DO YOUR JACKSON/DENNO? I SEE IT'S TWENTY TIL
17 TWELVE. WILL IT BE SHORT?

18 MS. SEAY: I WOULD SAY NO MORE THAN TWENTY OR THIRTY
19 MINUTES. I'LL HAVE TWO WITNESSES.

20 THE COURT: I GUESS MY QUESTION IS WHETHER WE OUGHT TO
21 LET THE JURY GO, DO YOUR MOTION, AND THEN START ...

22 MS. SEAY: THAT'S ---

23 MR. WARDER: THAT'D PROBABLY BE THE BEST WAY TO DO
24 BECAUSE IF IT TOOK THIRTY MINUTES IT'D BE ---

25 THE COURT: YEAH. OKAY. BRING THE JURY IN.

1 (WHEREUPON THE JURY ENTERED THE COURTROOM AT 11:43 AM)

2 THE COURT: LADIES AND GENTLEMEN, THERE ARE SOME
3 MATTERS I NEED TO TAKE UP THAT DO NOT INVOLVE YOU. AND SO
4 INSOFAR AS YOU'RE CONCERNED I'M GOING TO LET YOU GO TO
5 LUNCH. AND WE'LL PICK BACK UP AFTER LUNCH WITH THE
6 TESTIMONY.

7 DURING THE LUNCH RECESS DO NOT TALK ABOUT THIS CASE
8 AMONG YOURSELVES OR WITH ANYONE ELSE. . IF ANYBODY CONTACTS
9 YOU AND TRIES TO TALK TO YOU ABOUT THIS CASE, GET THEIR
10 NAMES AND ADDRESSES AND REPORT THAT TO ME.

11 I ASK THAT YOU KEEP YOUR BADGES ON DURING THE LUNCH
12 RECESS. I ASK THAT YOU DO THAT SO THAT EVERYONE INVOLVED
13 WITH THIS CASE WILL KNOW THAT YOU ARE A JUROR ON THIS CASE
14 AND IT WOULD BE HIGHLY IMPROPER FOR THEM TO DISCUSS THIS
15 CASE IN YOUR PRESENCE. SO PLEASE KEEP YOUR BADGES ON DURING
16 THE LUNCH RECESS.

17 I'LL ASK THAT YOU BE BACK IN YOUR JURY ROOM AT TWO PM,
18 TWO PM. THANK YOU VERY MUCH. YOU'RE EXCUSED.

19 (WHEREUPON THE JURY EXITED THE COURTROOM AT 11:45 AM)

20 THE COURT: ALL RIGHT. SOLICITOR, YOU MAY PROCEED.

21 MS. SEAY: THANK YOU, YOUR HONOR. MAY IT PLEASE THE
22 COURT? THE STATE CALLS INVESTIGATOR WAYNE CAMPBELL.

23 WAYNE CAMPBELL, BEING
24 DULY SWORN TESTIFIED AS FOLLOWS:

25 MADAME CLERK: THANK YOU. PLEASE BE SEATED. STATE

1 YOUR NAME FOR THE RECORD.

2 MR. CAMPBELL: WAYNE TAYLOR CAMPBELL.

3 DIRECT EXAMINATION BY MS. SEAY:

4 Q. INVESTIGATOR CAMPBELL, WHERE ARE YOU EMPLOYED?

5 A. GREENVILLE COUNTY SHERIFF'S OFFICE.

6 Q. HOW LONG HAVE YOU BEEN EMPLOYED THERE?

7 A. ALMOST SIX YEARS NOW.

8 Q. AND CAN YOU BRIEFLY TELL US WHAT YOUR TRAINING AND
9 EDUCATION IS TO BE EMPLOYED AS A LAW ENFORCEMENT OFFICER?

10 A. I'M A CERTIFIED LAW ENFORCEMENT OFFICER THROUGH THE
11 STATE OF SOUTH CAROLINA. I'VE ALSO HAD TRAINING IN CHILD
12 ABUSE CASES, CLASSES AS WELL AS HOMICIDE CLASSES.

13 Q. WERE YOU CERTIFIED TO PERFORM YOUR DUTIES BACK IN
14 OCTOBER OF 2003?

15 A. CORRECT.

16 Q. LET ME DIRECT YOUR ATTENTION TO OCTOBER 12TH AND
17 OCTOBER 13TH OF 2003. WERE YOU ON DUTY AT THAT TIME?

18 A. I WAS TO WORK LATER ON OCTOBER 13TH. BUT ON OCTOBER
19 12TH, NO.

20 Q. AND ON OCTOBER 13TH DID YOU HAVE OCCASION TO HAVE A
21 CONVERSATION WITH MARQUES HUDSON?

22 A. YES, MA'AM.

23 Q. BRIEFLY EXPLAIN HOW YOU CAME IN CONTACT WITH HIM.

24 A. SERGEANT TOMMY McCONNELL OF THE GREENVILLE COUNTY
25 SHERIFF'S OFFICE CALLED ME AT HOME BECAUSE I WAS THE ON-CALL

1 JUVENILE INVESTIGATOR AND REQUESTED ME TO COME TO THE
2 GREENVILLE MEMORIAL HOSPITAL. AND THIS WAS DURING THE EARLY
3 MORNING HOURS OF MONDAY, OCTOBER 13TH. AND I RESPONDED AND
4 MET HIM AT THE EMERGENCY ROOM ENTRANCE.

5 Q. AND AT THAT TIME DID IT COME TO YOUR ATTENTION THAT
6 MARQUES HUDSON WAS THERE AT THE HOSPITAL ALSO?

7 A. THAT'S CORRECT.

8 Q. WHAT WAS YOUR UNDERSTANDING OF WHY HE WAS THERE?

9 A. MY UNDERSTANDING WAS IS HE WAS KEEPING THE CHILD AND
10 THAT THEY HAD, PER MR. HUDSON, HAD FALLEN DOWN THE STAIRWELL
11 AND THAT HE WAS AT THE HOSPITAL AS WELL AS
12 THE VICTIM.

13 Q. DID YOU HAVE A CONVERSATION AT THE HOSPITAL WITH MR.
14 HUDSON ABOUT HOW THIS CHILD HAD BEEN INJURED?

15 A. NO, MA'AM. I HAD A BRIEF CONVERSATION JUST ASKING HIM
16 TO COME DOWN TO THE LAW ENFORCEMENT CENTER AND SPEAK WITH
17 ME.

18 Q. WHAT WAS HIS RESPONSE?

19 A. HE WAS VERY AGREEABLE.

20 Q. DID HE HAVE A WAY TO GET THERE OR DID YOU PROVIDE
21 TRANSPORTATION?

22 A. I ASKED IF HE WOULD RIDE WITH DEPUTY HAWKINS, THAT HE
23 WAS NOT UNDER ARREST, THAT DEPUTY HAWKINS COULD GIVE HIM A
24 RIDE. AND HE ACCEPTED.

25 Q. AND SO DID YOU THEN BOTH MEET AT THE LAW ENFORCEMENT

1 CENTER?

2 A. THAT'S CORRECT.

3 Q. OKAY. WHERE DID YOU GO TO TALK WITH HIM?

4 A. THE YOUTH'S SERVICES OFFICE, WHICH USED TO BE LOCATED
5 IN THE BASEMENT OF THE LAW ENFORCEMENT CENTER.

6 Q. APPROXIMATELY WHAT TIME DID THIS TAKE PLACE?

7 A. SOMEWHERE AROUND 6:30 THAT ---

8 Q. WHO ---

9 A. --- MORNING.

10 Q. EXCUSE ME. WHO WAS PRESENT WHEN YOU WERE TALKING WITH
11 MR. HUDSON?

12 A. TO BEGIN WITH IT WAS MR. HUDSON AND MYSELF. AND LATER
13 SOME OF MY CO-WORKERS CAME IN. AND THAT WOULD BE
14 INVESTIGATOR SIMPSON AND INVESTIGATOR McKINNEY.

15 Q. WERE YOU ABLE TO OBSERVE THE DEFENDANT DURING THIS TIME
16 IN ORDER TO ESTABLISH WHETHER HE APPEARED TO BE UNDER THE
17 INFLUENCE OF ANYTHING SUCH AS ALCOHOL OR DRUGS?

18 A. YES, I DID.

19 Q. AND WHAT WERE YOUR OBSERVATIONS?

20 A. HE WAS UNDER THE INFLUENCE OF NEITHER.

21 Q. DID HE, IN YOUR OBSERVATION, HAVE ANY PHYSICAL OR
22 MENTAL DISABILITIES THAT WOULD HAVE IMPAIRED HIS ABILITY TO
23 UNDERSTAND WHAT WAS GOING ON?

24 A. NONE.

25 Q. DID YOU INQUIRE FROM HIM AS TO HIS EDUCATIONAL

1 BACKGROUND?

2 A. STATED THAT HE HAD COMPLETED THE ELEVENTH GRADE AND
3 THAT HE COULD READ AND WRITE.

4 Q. AND DID YOU CONFIRM THAT HE COULD READ AND WRITE?

5 A. YES, I DID.

6 Q. WAS MR. HUDSON, DURING THE TIME THAT YOU MET WITH HIM
7 THERE IN THE YOUTH SERVICES OFFICE, WAS HE RETAINED IN ANY
8 WAY DURING THIS TIME?

9 A. NO, HE WAS NOT.

10 Q. WAS HE TOLD THAT HE COULD LEAVE AT ANY TIME THAT HE
11 WISHED? WAS HE FREE TO LEAVE?

12 A. HE WAS FREE TO LEAVE AT ANY TIME.

13 Q. DID YOU TELL HIM WHAT THE REASON FOR HIS BEING THERE --
14 WHAT IT WAS YOU WANTED TO TALK TO HIM ABOUT?

15 A. THAT WAS EXPLAINED AT THE HOSPITAL, THAT I WANTED TO
16 FIND OUT FURTHER ABOUT WHAT HAD HAPPENED AT THE APARTMENT.

17 MS. SEAY: YOUR HONOR, I WOULD ASK THAT THIS DOCUMENT
18 BE MARKED FOR IDENTIFICATION PURPOSES FOR PURPOSES OF THIS
19 HEARING.

20 THE COURT: OKAY.

21 (WHEREUPON STATE'S EXHIBIT 1 WAS MARKED FOR
22 IDENTIFICATION)

23 Q. INVESTIGATOR CAMPBELL, I'LL SHOW YOU WHAT'S STATE'S
24 EXHIBIT 1 FOR IDENTIFICATION PURPOSES. DO YOU RECOGNIZE
25 THIS DOCUMENT?

1 A. YES, MA'AM, I DO.

2 Q. OKAY. CAN YOU TELL US WHAT THAT IS?

3 A. THIS IS A FORM THAT WE USED IN JUVENILE WHEN WE READ
4 SOMEONE THEIR MIRANDA WARNING. AND IT ALSO HAS THE WAIVER
5 AT THE BOTTOM.

6 Q. AND IS THAT THE DOCUMENT THAT YOU USED IN YOUR
7 CONVERSATION WITH MR. HUDSON?

8 A. IT IS.

9 Q. PLEASE EXPLAIN HOW YOU WENT ABOUT TALKING TO HIM.

10 A. USUALLY WHAT I DO IS I START TALKING ABOUT SOMETHING
11 ELSE AND THEN MAKE SURE THEY KNOW WHY THEY'RE IN MY OFFICE.
12 AND EVEN THOUGH HE HAD NOT BEEN CHARGED, I EXPLAINED TO HIM
13 THAT SINCE HE WAS THE ONLY PERSON IN THE APARTMENT AT THE
14 TIME OF THE INJURIES WHEN THEY OCCURRED THAT I WAS GOING TO
15 READ HIM HIS MIRANDA WARNING. SO I READ THE FIRST PART OF
16 THE WARNING WHICH SAYS YOUR RIGHTS, EXPLAINED IT TO HIM.

17 Q. WOULD YOU PLEASE READ WHAT IT IS THAT YOU READ TO HIM
18 ON THAT DAY?

19 A. BEFORE WE ASK YOU ANY QUESTIONS YOU MUST UNDERSTAND
20 YOUR RIGHTS. YOU HAVE THE RIGHT TO REMAIN SILENT. ANYTHING
21 YOU SAY COULD BE USED AGAINST YOU IN COURT.

22 YOU HAVE THE RIGHT TO TALK TO A LAWYER FOR ADVICE
23 BEFORE WE ASK YOU ANY QUESTIONS AND TO HAVE HIM WITH YOU
24 DURING QUESTIONING. IF YOU HAVE NO MONEY TO PAY A LAWYER'S
25 FEE THE COURT WILL APPOINT ONE TO REPRESENT YOU WITHOUT COST

1 IF YOU WISH.

2 IF YOU DECIDE TO ANSWER QUESTIONS NOW WITHOUT A LAWYER
3 PRESENT YOU WILL STILL HAVE THE RIGHT TO STOP ANSWERING AT
4 ANY TIME. YOU ALSO HAVE THE RIGHT TO STOP ANSWERING AT ANY
5 TIME UNTIL YOU TALK TO A LAWYER.

6 Q. WHAT DID YOU DO NEXT?

7 A. NEXT I ASKED HIM IF HE UNDERSTOOD THAT AND MADE SURE
8 THAT HE UNDERSTOOD WHAT I'D JUST READ. THEN THERE'S A
9 SECTION THAT SAYS WAIVER OF YOUR RIGHTS. AFTER STATING THAT
10 HE UNDERSTOOD HE SAID HE WOULD TALK WITH ME. AND I HAD HIM
11 READ THE NEXT PARAGRAPH OR THE WAIVER OF RIGHTS PARAGRAPH.

12 Q. LET ME DRAW YOUR ATTENTION TO THE LAST PARAGRAPH OF THE
13 RIGHTS PORTION. WHOSE INITIALS ARE THOSE THAT APPEAR THERE?

14 A. THOSE ARE MR. HUDSON'S.

15 Q. OKAY. AND DID HE, IN FACT, INITIAL THAT FOR WHAT
16 PURPOSE?

17 A. I ASKED HIM TO INITIAL THE WAIVER OF RIGHTS WHERE HE
18 HAD READ, BUT THAT IS WHERE HE INITIALED.

19 Q. OKAY. AFTER YOU GAVE HIM THE RIGHTS THAT YOU JUST
20 DESCRIBED DID HE APPEAR TO UNDERSTAND WHAT YOU WERE SAYING?

21 A. HE DID.

22 Q. AND WHAT DID YOU DO NEXT?

23 A. A LOT OF PEOPLE SAY THAT THEY CAN READ AND WRITE WHEN
24 THEY CANNOT. SO I HAVE THEM READ THE WAIVER OF RIGHTS
25 SECTION. SO I HAD HIM READ THE FEW LINES THAT BASICALLY

1 WAIVE HIS RIGHTS.

2 Q. AND SPECIFICALLY WHAT DID HE READ TO YOU?

3 A. I HAVE READ THE STATEMENT OF MY RIGHTS AND UNDERSTAND
4 WHAT MY RIGHTS ARE. I AM WILLING TO MAKE A STATEMENT AND
5 ANSWER QUESTIONS. I DO NOT WANT A LAWYER AT THIS TIME. I
6 UNDERSTAND AND KNOW WHAT I AM DOING. NO PROMISES OR THREATS
7 HAVE BEEN MADE TO ME AND NO PRESSURE OR COERCION OF ANY KIND
8 HAS BEEN USED AGAINST ME. AND ONCE I DO THAT I BASICALLY GO
9 OVER IT AND ASK THEM -- MAKE SURE THAT THEY -- THEY'RE DOING
10 IT BECAUSE THEY WANT TO DO IT.

11 Q. DID HE AT ANY TIME EXPRESS ANY RESERVATIONS OR DESIRE
12 NOT TO TALK WITH YOU OR TO SIGN THE FORM?

13 A. HE WANTED TO HELP. SO, THEREFORE, HE WILLINGLY SIGNED
14 THE FORM.

15 Q. IS THAT WHAT HE TOLD YOU?

16 A. HE SAID HE AGREED TO TALK.

17 Q. DID YOU OR ANYONE IN YOUR PRESENCE PROMISE HIM ANYTHING
18 IN EXCHANGE FOR TALKING WITH YOU ABOUT THIS CASE?

19 A. NO.

20 Q. DID YOU OR ANYONE IN YOUR PRESENCE THREATEN HIM IN ANY
21 WAY TO GAIN HIS COOPERATION?

22 A. NO.

23 Q. I'LL DIRECT YOUR ATTENTION TO THE BOTTOM LEFT HAND
24 PORTION OF THIS DOCUMENT. IS THAT YOUR SIGNATURE AS A
25 WITNESS?

1 A. IT IS.

2 Q. AND THE TIME LISTED, 06:33, WHAT DOES THAT INDICATE?

3 A. THAT INDICATES ONCE THE MIRANDA WARNING HAS BEEN
4 COMPLETED, THAT'S THE TIME OF COMPLETION.

5 Q. AFTER YOU COMPLETED THAT WHAT DID YOU DO NEXT?

6 A. WHAT I USUALLY DO IS JUST INTERVIEW THE DEFENDANT, IN
7 THIS CASE, MR. HUDSON. WE TALKED ABOUT WHAT HAD HAPPENED,
8 WENT OVER IT. I TOLD HIM I WANTED TO GET A WRITTEN
9 STATEMENT FROM HIM OF HIS SIDE OF WHAT HAD HAPPENED. SO TO
10 DO THAT I NEED TO MAKE SURE THAT I UNDERSTAND COMPLETELY
11 WHAT HE IS TELLING ME. SO WE DISCUSSED THAT FOR
12 APPROXIMATELY AN HOUR OR A LITTLE BETTER BEFORE I STARTED
13 TYPING HIS STATEMENT.

14 Q. DURING THIS HOUR DID ANY OF THE CIRCUMSTANCES THAT
15 WE'VE PREVIOUSLY TALKED ABOUT CHANGE? IN OTHER WORDS, WAS
16 HE RESTRAINED AT ANY POINT? DID ANYONE THREATEN HIM OR
17 PROMISE HIM AN EXCHANGE FOR HIS COOPERATION?

18 A. NO.

19 Q. SO PROCEED TO TELL US WHAT YOU DID.

20 A. ONCE WE HAD DISCUSSED IT AND I FELT COMFORTABLE TRYING
21 TO TYPE HIS STATEMENT, I STARTED FILLING OUT THE TOP PORTION
22 OF THE STATEMENT FORM. AND AS I STARTED TYPING THE TOP LINE
23 OF THE STATEMENT HE BASICALLY STOPPED ME AND SAID, THIS IS
24 TAKING TOO LONG.

25 THE COURT: NOW I'M NOT INTERESTED IN THE CONTENTS OF

1 THE STATEMENT AT THIS TIME.

2 MS. SEAY: YES, SIR, I UNDERSTAND.

3 THE COURT: OKAY.

4 MS. SEAY: THIS JUST GOES TO HOW THE STATEMENT WAS
5 PREPARED.

6 THE COURT: ALL RIGHT.

7 A. HE STOPPED ME WHILE I WAS TYPING AND TOLD ME THAT IT
8 WAS TAKING ME TOO LONG AND THAT HE COULD DO IT QUICKER. SO
9 I GOT UP FROM MY CHAIR AND TOLD HIM IF HE COULD TYPE IT THAT
10 HE NEEDED TO TYPE WHAT BASICALLY WE HAD JUST DISCUSSED. HE
11 SAT DOWN AND TYPED HIS OWN STATEMENT OUT.

12 Q. AND WAS THIS DONE AT A TYPEWRITER OR COMPUTER OR
13 OTHERWISE?

14 A. IT'S A COMPUTER.

15 Q. OKAY. AND DID HE TYPE THIS ENTIRE STATEMENT ON HIS
16 OWN?

17 A. YES, HE DID. I MIGHT HAVE ASKED HIM TO INCLUDE CERTAIN
18 THINGS THAT WE HAD DISCUSSED, BUT HE TYPED IT.

19 Q. OKAY. DID YOU INSTRUCT HIM ABOUT THE MIRANDA WARNING
20 THAT ALSO APPEARS AT THE TOP OF THAT STATEMENT?

21 A. NO, I DID NOT.

22 Q. AT THE CONCLUSION OF HIS PREPARATION OF THE STATEMENT
23 WHAT DID YOU DO?

24 A. ONCE HE HAD TYPED IT I READ OVER IT. I ASKED HIM TO
25 READ OVER IT AGAIN. WE PRINTED A COPY OF IT OFF. HE SIGNED

1 IT TO BE THE TRUTH. AND THEN I SIGNED IT AS A WITNESS AND
2 HAD INVESTIGATOR SIMPSON TO ALSO WITNESS IT.

3 Q. DID YOU GIVE HIM A COPY OF HIS STATEMENT?

4 A. HE GOT A COPY OF IT.

5 Q. AND I'LL DIRECT YOUR ATTENTION TO ---

6 MS. SEAY: EXCUSE ME, YOUR HONOR. I NEED TO ASK THAT
7 THIS BE MARKED AS IDENTIFICATION NUMBER 2 FOR PURPOSES OF
8 THE HEARING.

9 (WHEREUPON STATE'S EXHIBIT 2 WAS MARKED FOR
10 IDENTIFICATION)

11 Q. THIS IS STATE'S EXHIBIT 2 FOR IDENTIFICATION, THE
12 STATEMENT. DO YOU RECOGNIZE THIS?

13 A. I DO.

14 Q. OKAY. IS THIS THE ORIGINAL STATEMENT THAT YOU WERE
15 TALKING ABOUT THAT YOU OBTAINED?

16 A. THAT'S THE ORIGINAL.

17 Q. OKAY. AND I'LL DIRECT YOUR ATTENTION DOWN TO THE
18 BOTTOM RIGHT HAND CORNER. THERE'S SOMETHING CROSSED OUT
19 THERE. CAN YOU EXPLAIN THAT?

20 A. I ALWAYS HAVE THEM PRINT ON TOP LINE AND SIGN ON THIS
21 SECOND LINE. IN THIS CASE HE SIGNED ON THE TOP LINE AND
22 STARTED SIGNING THIS SECOND LINE, STOPPED, MARKED THROUGH IT
23 AND THEN PRINTED HIS NAME ON THE SECOND LINE.

24 Q. DID MR. HUDSON EVER ASK FOR ANYTHING DURING THIS
25 PROCESS THAT HE WAS DENIED? FOR EXAMPLE, TO USE THE

1 RESTROOM OR TO GET A DRINK OF WATER OR ANYTHING OF THAT
2 NATURE?

3 A. NEVER ASKED FOR ANYTHING.

4 Q. AND DID HE APPEAR RATIONAL AND TO UNDERSTAND WHAT WAS
5 GOING ON DURING THIS ENTIRE PROCESS?

6 A. HE DID.

7 Q. AT THE CONCLUSION OF THIS INTERVIEW DID HE TELL YOU
8 ANYTHING ELSE ABOUT THE SITUATION WITH THIS CHILD?

9 A. HE MADE A REMARK WHICH HE HAD TOLD ME THAT ON AN
10 EARLIER OCCASION THAT THIS CHILD HAD FALLEN DOWN THE STAIRS
11 AT THAT APARTMENT, BUT SHE DIDN'T GET HURT ON THAT OCCASION,
12 COULDN'T GIVE ME A DATE OR TIME WHEN THAT OCCURRED.

13 Q. OKAY. AND DID YOU DOCUMENT THAT IN YOUR REPORT?

14 A. I DID.

15 MS. SEAY: YOUR HONOR, THOSE ARE ALL THE QUESTIONS I
16 HAVE FOR HIS INVESTIGATOR.

17 THE COURT: ALL RIGHT. MR. WARDER?

18 **CROSS EXAMINATION BY MR. WARDER:**

19 Q. DID MR. HUDSON DISCUSS WITH YOU WHETHER HE NEEDED AN
20 ATTORNEY?

21 A. I READ OVER HIS RIGHTS, AN ATTORNEY WAS NOT BROUGHT UP.
22 HE WAS WILLING TO COOPERATE.

23 Q. HE DIDN'T ASK YOU THE QUESTION OF WHETHER OR NOT HE
24 NEEDED AN ATTORNEY?

25 A. NO, SIR, NOT THAT I REMEMBER.

1 Q. DID YOU TELL HIM THAT IF YOU DIDN'T MAKE A STATEMENT
2 YOU'D HAVE TO ARREST HIM?

3 A. NO, SIR.

4 Q. DID YOU TELL HIM YOU WERE GOING TO ARREST HIM IF HE
5 DIDN'T MAKE A STATEMENT?

6 A. NO, SIR.

7 Q. DID YOU RECORD OR VIDEO TAPE THIS IN ANY MEANS?

8 A. NO, SIR.

9 Q. IS THERE ANY REASON YOU DIDN'T?

10 A. WE, AS A GENERAL PRACTICE, DO NOT VIDEO OR RECORD ANY
11 INTERVIEWS.

12 Q. YOU WOULD AGREE WITH ME THAT WOULD SHOW EXACTLY WHAT
13 HAPPENED IF YOU WOULD DO THAT?

14 A. IT WOULD SHOW, BUT WE DON'T DO IT.

15 Q. AND YOU SAY THAT HE TYPED THIS STATEMENT?

16 A. YES, SIR, HE DID.

17 Q. CAN YOU TELL ME AT WHAT POINT HE STARTED TYPING ON IT?

18 A. AFTER I FINISHED THE FIRST LINE.

19 Q. THE FIRST LINE OF THE BODY?

20 A. OF THE BODY, THAT'S CORRECT. WHEN I FINISHED -- THE
21 LAST THING I TYPED WAS CAMPBELL, PERIOD.

22 Q. ARE YOU TALKING ABOUT THE LINE THAT SAID I'VE BEEN
23 ADVISED OF MY MIRANDA WARNINGS AND FREELY GIVE THIS
24 STATEMENT TO INVESTIGATOR CAMPBELL OR YOU TALKING ABOUT THE
25 LINE THAT SAYS ON SUNDAY EVENING, OCTOBER 12TH, 2003 I TOOK

1 -- AND THAT ENDS UP

2 A. IT'S THE LINE THAT GOES CAMPBELL, PERIOD. THE FIRST
3 LINE. IT STARTS WITH I AND ENDS WITH CAMPBELL, PERIOD.

4 IT'S THE FIRST LINE. NOW I'D ADVISED HIM TO PUT THE SUNDAY
5 EVENING, OCTOBER 12TH ON THERE, BUT I DID NOT TYPE IT.

6 Q. BUT THIS IS THE DOCUMENT HE TYPED ACCORDING TO YOU?

7 A. THIS IS THE ORIGINAL PRINTOUT OF THE DOCUMENT HE TYPED.

8 Q. OKAY. AND THAT'S BEEN MARKED AS STATE'S EXHIBIT ...

9 A. 2, I THINK.

10 Q. 2?

11 A. 2.

12 Q. THANK YOU.

13 **THE COURT:** THANK YOU. STEP DOWN.

14 **MS. SEAY:** THE STATE CALLS INVESTIGATOR SANDY SIMPSON.

15 **SANDY SIMPSON, BEING DULY**

16 **SWORN TESTIFIED AS FOLLOWS:**

17 **MADAME CLERK:** THANK YOU. PLEASE BE SEATED. STATE

18 YOUR NAME FOR THE RECORD.

19 **MR. SIMPSON:** SANDY SIMPSON.

20 **DIRECT EXAMINATION BY MS. SEAY:**

21 Q. INVESTIGATOR SIMPSON, WHERE ARE YOU EMPLOYED?

22 A. THE GREENVILLE COUNTY SHERIFF'S OFFICE.

23 Q. HOW LONG HAVE YOU BEEN SO EMPLOYED?

24 A. TWENTY-FIVE YEARS.

25 Q. WHAT ARE YOUR GENERAL DUTIES WITH THE SHERIFF'S OFFICE?

1 A. I'M A JUVENILE INVESTIGATOR.

2 Q. AND DO YOU HAVE THE REQUISITE TRAINING AND
3 CERTIFICATION TO PERFORM THE LAW ENFORCEMENT DUTIES IN SOUTH
4 CAROLINA?

5 A. YES, MA'AM.

6 Q. WERE YOU WORKING ON OCTOBER 13TH OF 2003?

7 A. YES, MA'AM.

8 Q. ON THAT DATE DID YOU HAVE OCCASION TO BE PRESENT WHEN
9 INVESTIGATOR WAYNE CAMPBELL WAS TAKING A STATEMENT FROM
10 MARQUES HUDSON?

11 A. YES, MA'AM.

12 Q. OKAY. WHERE WERE YOU?

13 A. WE WERE IN THE JUVENILE OFFICE. I WAS SITTING AT MY
14 DESK.

15 Q. AND THAT'S AT THE LAW ENFORCEMENT CENTER?

16 A. YES, MA'AM.

17 Q. APPROXIMATELY WHAT TIME WAS THAT?

18 A. I WANT TO SAY AROUND 6:45, 7:00, SOMETHING LIKE THAT,
19 JUST GUESSING.

20 Q. AM?

21 A. AM.

22 Q. WHO ELSE WAS PRESENT AT THAT TIME?

23 A. INVESTIGATOR CAMPBELL WAS THERE, THE DEFENDANT, MR.
24 HUDSON WAS THERE. AND I DON'T KNOW OF ANYONE ELSE.

25 Q. WAS MR. HUDSON RESTRAINED IN ANY WAY WHILE HE WAS IN

1 YOUR PRESENCE?

2 A. NO, MA'AM.

3 Q. IN YOUR EXPERIENCE OF DEALING -- I ASSUME YOU HAVE
4 EXPERIENCE DEALING WITH PEOPLE WHO HAVE BEEN UNDER THE
5 INFLUENCE OF ALCOHOL AND/OR DRUGS?

6 A. YES, MA'AM.

7 Q. IN YOUR EXPERIENCE DID HE APPEAR TO BE UNDER THE
8 INFLUENCE OF ANY ALCOHOL OR DRUGS AT THE TIME?

9 A. NO, MA'AM.

10 Q. DID HE APPEAR TO UNDERSTAND WHAT WAS GOING ON IN THAT
11 ROOM?

12 A. YES, MA'AM.

13 Q. IN THE TIME PERIOD THAT YOU WERE PRESENT DID ANYONE,
14 INCLUDING YOURSELF, OR ANYONE IN YOUR PRESENCE, THREATEN MR.
15 HUDSON IN ANY WAY TO GAIN HIS COOPERATION?

16 A. NO, MA'AM.

17 Q. AND ESSENTIALLY THE SAME QUESTION, DID ANYONE PROMISE
18 HIM ANYTHING FOR HIS COOPERATION?

19 A. NO, MA'AM.

20 Q. DID YOU HAVE OCCASION TO WITNESS THIS STATEMENT THAT
21 MR. HUDSON PROVIDED?

22 A. I DID.

23 Q. THIS IS STATE'S EXHIBIT NUMBER 2 FOR IDENTIFICATION
24 PURPOSES. DO YOU RECOGNIZE THIS ONE?

25 A. YES, MA'AM. THAT IS MY SIGNATURE.

1 Q. OKAY.

2 A. AS A WITNESS.

3 Q. OKAY. DID YOU OBSERVE INVESTIGATOR CAMPBELL GIVING MR.
4 HUDSON A COPY OF HIS STATEMENT?

5 A. YES, MA'AM, I DID.

6 Q. OKAY. AND WERE YOU AWARE OF WHO ACTUALLY PREPARED THIS
7 TYPED STATEMENT?

8 A. INITIALLY INVESTIGATOR CAMPBELL WAS GOING TO TYPE IT,
9 BUT MR. HUDSON STATED TO MR. CAMPBELL THAT HE WAS TOO SLOW
10 ON THE COMPUTER AND HE COULD TYPE IT FASTER. SO HE SAT DOWN
11 AND TYPED HIS OWN STATEMENT.

12 Q. OKAY. DO YOU KNOW WHAT HAPPENED TO MR. HUDSON AFTER
13 THIS STATEMENT WAS PROVIDED? WAS HE FREE TO GO? DID HE
14 LEAVE TO YOUR KNOWLEDGE?

15 A. TO THE BEST OF MY KNOWLEDGE AT THAT POINT INVESTIGATOR
16 MCKINNEY AND MYSELF ESCORTED HIM TO HIS APARTMENT.

17 Q. DURING THIS TIME WAS HE UNDER ARREST?

18 A. NO, MA'AM.

19 MS. SEAY: THOSE ARE ALL THE QUESTIONS I HAVE FOR THIS
20 INVESTIGATOR.

21 THE COURT: ALL RIGHT. MR. WARDER?

22 **CROSS EXAMINATION BY MR. WARDER:**

23 Q. DO YOU REMEMBER AT WHAT POINT THE DEFENDANT TOOK OVER
24 AND TYPED HIS OWN STATEMENT?

25 A. IT WASN'T TOO LONG TIL MR. CAMPBELL SAT DOWN, THEN HE

1 STATED THAT IT WAS TOO SLOW TYPING, THAT HE'D RATHER TYPE IT
2 AND GET IT OVER WITH. SO HE, MR. HUDSON, TYPED IT. IT WAS
3 JUST MAYBE A MINUTE OR SO LESS.

4 Q. HOW LONG DID IT TAKE MR. HUDSON TO TYPE IT?

5 A. I DON'T KNOW.

6 Q. FIVE MINUTES? TEN MINUTES?

7 A. IT'S GOOD NUMBERS.

8 Q. THANK YOU.

9 **THE COURT:** THANK YOU. STEP DOWN.

10 **MS. SEAY:** WE HAVE NO FURTHER WITNESSES AS TO THIS
11 ISSUE.

12 **THE COURT:** ALL RIGHT. MR. WARDER, DOES YOUR CLIENT
13 WISH TO TAKE THE STAND SOLELY FOR THE PURPOSE OF CONTESTING
14 THE VOLUNTARINESS OF THE STATEMENT?

15 **MR. WARDER:** YES, HE DOES.

16 **THE COURT:** ALL RIGHT.

17 **MARQUES HUDSON, BEING**
18 DULY SWORN TESTIFIED AS FOLLOWS:

19 **MADAME CLERK:** THANK YOU. PLEASE BE SEATED. STATE
20 YOUR NAME FOR THE RECORD.

21 **MR. HUDSON:** MARQUES ANTONIO HUDSON.

22 **DIRECT EXAMINATION BY MR. WARDER:**

23 Q. MR. HUDSON, WE'RE HERE TO TALK ABOUT A STATEMENT THAT
24 WAS GIVEN IN THE EARLY MORNING HOURS OF OCTOBER 13TH, 2003.
25 DO YOU REMEMBER GIVING THAT STATEMENT?

1 A. YES, I DO.

2 Q. OKAY. AND WHERE DID YOU GIVE THIS STATEMENT AT?

3 A. I GAVE MY FINAL STATEMENT AT THE LAW ENFORCEMENT
4 CENTER.

5 Q. OKAY. AND YOU WERE TAKEN DOWN TO THE LAW ENFORCEMENT
6 CENTER BY THE SHERIFF'S OFFICE?

7 A. YES, SIR.

8 Q. OKAY. AND YOU WERE TAKEN IN ON THE BOTTOM FLOOR AND
9 PUT IN AN OFFICE?

10 A. YES, SIR.

11 Q. OKAY. WAS ANYBODY IN THAT OFFICE WHEN THEY PUT YOU IN
12 THERE?

13 A. WHEN I CAME INTO THE OFFICE THE ONLY PERSON THAT WAS IN
14 THERE WAS INVESTIGATOR CAMPBELL. HE WAS ALREADY THERE
15 WAITING ON ME.

16 Q. OKAY. TELL US WHAT HAPPENED WHEN YOU GOT THERE.

17 A. WHEN I GOT THERE THERE WERE TWO DEPUTIES THAT CAME IN.
18 THEY ESCORTED ME IN TO MR. CAMPBELL, INTRODUCED US AGAIN,
19 AND I SAT DOWN. AND MR. CAMPBELL ASKED ME TO, EXCUSE ME,
20 INVESTIGATOR CAMPBELL ASKED ME TO GIVE HIM A MINUTE WHILE HE
21 GOT PREPARED. AND SO THEN I DID.

22 AND I -- I DO BELIEVE I ASKED HIM TWO QUESTIONS. ONE
23 THAT THERE WAS A PICTURE ON THE WALL THAT WAS A DRAWING OF A
24 DEPUTY. AND I JUST ASKED HIM WHAT WAS THE -- WHAT WAS THE
25 REASON WHY THAT PICTURE WAS ALL OVER THE SHERIFF'S OFFICE.

1 AND HE REPLIED THAT THAT WAS A FALLEN SOLDIER OR FALLEN
2 OFFICER.

3 AND THE SECOND QUESTION I ASKED HIM WAS DID I NEED A
4 ATTORNEY, DO I NEED AN ATTORNEY PRESENT OR ANYTHING LIKE
5 THAT. AND HE REPLIED THAT, NO, I DON'T, UNLESS I FEEL LIKE
6 I DO. BUT -- AND IF I DO, THEN I WOULD HAVE TO BE PLACED
7 UNDER ARREST AND HOLD, AND THEY WOULD APPOINT AN ATTORNEY
8 FOR ME.

9 AND HE ASKED ME, SO WHAT DO I WANT TO DO? AND I
10 REPLIED THAT -- I REPLIED THAT HE KNOWS MORE ABOUT THE
11 SITUATION THAN I DO. SO, THEREFORE, WHATEVER HE SEES BEST.
12 AND THEN HE PROCEEDED TO TAKE MY STATEMENT.

13 Q. HE DID TELL YOU IF YOU EXERCISE YOUR RIGHT TO ASK FOR
14 AN ATTORNEY THAT YOU'D BE ARRESTED?

15 A. THAT'S CORRECT.

16 Q. OKAY. THE OFFICERS HAVE TESTIFIED THEY TYPED TOO SLOW
17 SO YOU TYPED THE STATEMENT. IS THAT TRUE?

18 A. NO, SIR.

19 Q. DID YOU TYPE ANY PART OF THAT STATEMENT?

20 A. NO, SIR. NONE AT ALL.

21 Q. TELL US THE LEVEL OF YOUR TYPING SKILL?

22 A. THE LEVEL OF MY TYPING SKILLS, I BELIEVE THE
23 TERMINOLOGY IS A PECKER. I'M A ONE FINGER TYPER. ONE
24 FINGER AT A TIME. I DON'T -- I'M NOT ...

25 Q. YOU DON'T PUT YOUR HANDS ON THE KEYBOARD? YOU TYPE

1 LIKE ...

2 A. YES, SIR.

3 Q. AND DID YOU TYPE THIS STATEMENT?

4 A. NO, SIR. NONE AT ALL.

5 Q. HAVE YOU REVIEWED THE STATEMENT?

6 A. YES, SIR. AT THE PREVIOUS TIME I BASICALLY SKIM READ
7 IT, SKIMMED THROUGH IT.

8 Q. DOES IT CONTAIN ERRORS?

9 A. IT -- A FEW ERRORS THAT I HAVE NOTICED RECENTLY GOING
10 OVER IT. AS FAR AS THE POSITIONING OF MY HANDS, WHERE I WAS
11 AT THE TIME WHEN I WAS GIVING HER A BATH, HOW I WAS GIVING
12 HER A BATH. AND I DO BELIEVE THAT WOULD BE ALL.

13 Q. AND WAS THIS -- STRIKE THAT. WAS THIS STATEMENT GIVEN
14 AS A RESULT OF THE THREAT THAT YOU'D BE ARRESTED IF YOU
15 DIDN'T GIVE A STATEMENT?

16 A. NO, SIR, IT WASN'T. I WAS WILLING TO GIVE THE
17 STATEMENT.

18 MR. WARDER: THAT'S ALL THE QUESTIONS I HAVE.

19 THE COURT: ALL RIGHT. SOLICITOR.

20 CROSS EXAMINATION BY MS. SEAY:

21 Q. MR. HUDSON, INVESTIGATOR CAMPBELL WAS PRESENT IN THE
22 ROOM WITH YOU AT THE TIME YOU SIGNED THIS WAIVER OF RIGHTS,
23 CORRECT?

24 A. CORRECT.

25 Q. OKAY. AND HE PROVIDED YOU WITH -- I'M GOING TO SHOW

1 YOU STATE'S EXHIBIT NUMBER 1. DO YOU RECOGNIZE THAT?

2 A. YES, I DO.

3 Q. OKAY. AND CAN YOU TELL ME WHAT THIS SAYS AT THE VERY
4 TOP? RIGHT HERE.

5 A. YOUR RIGHTS.

6 Q. OKAY. AND HE, IN FACT, READ YOU ALL OF THESE RIGHTS,
7 ISN'T THAT RIGHT?

8 A. NO, MA'AM.

9 Q. OKAY. DID YOU READ THESE RIGHTS TO YOURSELF?

10 A. NO, MA'AM. HE BASICALLY GAVE ME A RUN-DOWN OF IT.

11 Q. OKAY. DID HE TELL YOU THAT BEFORE WE ASK YOU ANY
12 QUESTIONS YOU MUST UNDERSTAND YOUR RIGHTS?

13 A. NO, MA'AM.

14 Q. DID HE TELL YOU THAT YOU HAVE THE RIGHT TO REMAIN
15 SILENT?

16 A. NO, MA'AM.

17 Q. DID HE TELL YOU THAT ANYTHING YOU SAY CAN BE USED
18 AGAINST YOU IN COURT?

19 A. NO, MA'AM.

20 Q. DID HE TELL YOU YOU HAVE THE RIGHT TO TALK TO A LAWYER
21 FOR ADVICE BEFORE WE ASK YOU ANY QUESTIONS AND TO HAVE HIM
22 WITH YOU DURING QUESTIONING?

23 A. NO, MA'AM.

24 Q. IF YOU HAVE NO MONEY TO PAY A LAWYER'S FEE THE COURT
25 WILL APPOINT ONE TO REPRESENT YOU WITHOUT COST IF YOU WISH?

1 A. NO, MA'AM.

2 Q. DID HE TELL YOU IF YOU DECIDE TO ANSWER QUESTIONS NOW
3 WITHOUT A LAWYER PRESENT YOU WILL STILL HAVE THE RIGHT TO
4 STOP ANSWERING AT ANY TIME?

5 A. NO, MA'AM.

6 Q. YOU ALSO HAVE THE RIGHT TO STOP ANSWERING AT ANY TIME
7 UNTIL YOU TALK TO A LAWYER?

8 A. NO, MA'AM.

9 Q. HE DIDN'T TELL YOU ANY OF THOSE THINGS?

10 A. NO, MA'AM.

11 Q. THAT'S YOUR TESTIMONY?

12 A. YES, MA'AM.

13 Q. OKAY. WHOSE INITIALS ARE THOSE AT THE END OF THAT
14 SENTENCE?

15 A. I CAN'T MAKE OUT THE FIRST PART, BUT THE LAST PART IS
16 AN "H".

17 Q. OKAY. IS IT POSSIBLE THOSE ARE YOUR INITIALS?

18 A. NO, MA'AM.

19 Q. IT ISN'T POSSIBLE AT ALL?

20 A. NO, MA'AM.

21 Q. ALL RIGHT. MOVING ALONG TO THIS WAIVER OF RIGHTS. DID
22 HE READ THIS TO YOU?

23 A. NO, MA'AM.

24 Q. DID YOU READ IT TO YOURSELF?

25 A. NO, MA'AM.

1 Q. WHOSE SIGNATURE IS THAT?

2 A. THAT WOULD BE MY SIGNATURE RIGHT THERE.

3 Q. ALL RIGHT. SO YOU SIGNED THIS WITHOUT READING IT?

4 A. YES, MA'AM.

5 Q. YOU SIGNED IT WITHOUT HIM GOING OVER THESE RIGHTS WITH
6 YOU? THAT'S YOUR TESTIMONY?

7 A. YES, MA'AM.

8 Q. OKAY. AND YOU HAVE AN ELEVENTH GRADE EDUCATION, IS
9 THAT CORRECT?

10 A. YES, MA'AM.

11 Q. YOU ARE NOW TWENTY-EIGHT YEARS OLD?

12 A. YES, MA'AM.

13 Q. YOU WERE TWENTY-FOUR YEARS OLD AT THE TIME?

14 A. YES, MA'AM.

15 Q. AND WHERE WERE YOU WORKING THEN?

16 A. I WAS UNEMPLOYED.

17 Q. HAD YOU HAD EMPLOYMENT PRIOR TO THAT?

18 A. YES, MA'AM.

19 Q. TELL ME WHERE YOU WORKED.

20 A. I WORKED FOR BELL CARPET AND FURNITURE.

21 Q. WHAT DID YOU DO?

22 A. I WAS A ASSISTANT WAREHOUSE MANAGER.

23 Q. ASSISTANT WAREHOUSE MANAGER?

24 A. YES, MA'AM.

25 Q. OKAY. WHAT WERE YOUR DUTIES AS ASSISTANT WAREHOUSE

1 MANAGER?

2 A. MY BASIC DUTIES WERE TO SCHEDULE THE DELIVERIES AND AS
3 FAR AS ALL OF THE RETURNS, ALL OF THE OUTBOUND FURNITURE,
4 CARPET, THINGS LIKE THAT, THE NATURES THAT THEY SOLD IN THE
5 STORE.

6 Q. SO DUTIES THAT WOULD REQUIRE A GOOD BIT OF ATTENTION TO
7 DETAIL, YOU WOULD AGREE?

8 A. NO, MA'AM.

9 Q. IT WOULDN'T?

10 A. NO. I HAD OTHER PEOPLE TO DO THAT FOR ME.

11 Q. OKAY. ALL RIGHT. SO AFTER YOU SIGNED THIS WITHOUT
12 READING IT THEN WE HAVE THE STATEMENT. DO YOU RECOGNIZE
13 THIS?

14 A. YES, MA'AM, I DO.

15 Q. OKAY. AND ISN'T IT TRUE THAT YOU TOLD INVESTIGATOR
16 CAMPBELL THAT HE WAS THE PECKER ON THE TYPEWRITER AND THAT
17 HE SHOULD MOVE AND LET YOU TYPE IT? ISN'T THAT HOW IT
18 HAPPENED?

19 A. NO, MA'AM.

20 Q. IN FACT, WHOSE INITIALS APPEAR DOWN HERE AT THE END OF
21 THIS STATEMENT?

22 A. THAT WOULD BE MY INITIALS.

23 Q. OKAY. WHY DID YOU INITIAL RIGHT THERE?

24 A. I DID NOT INITIAL THAT.

25 Q. YOU DIDN'T WRITE THOSE INITIALS?

1 A. NO, MA'AM.

2 Q. WHO DID?

3 A. THOSE ARE NOT MY -- THAT'S NOT MY HANDWRITING.

4 Q. OKAY.. WHO WAS PRESENT IN THE ROOM WHEN THIS STATEMENT
5 WAS TAKEN?

6 A. WHEN THIS STATEMENT WAS TAKEN THE ONLY PERSON THAT WAS
7 IN THE ROOM WAS INVESTIGATOR CAMPBELL.

8 Q. OKAY. DID YOU SEE HIM WRITE THOSE INITIALS?

9 A. NO, MA'AM.

10 Q. ALL RIGHT. SO THEN I WILL POINT YOUR -- DIRECT YOUR
11 ATTENTION TO; I HAVE READ THE ABOVE STATEMENT OF ONE PAGE
12 AND IT IS TRUE, AND THIS IS IN BOLD, AND CORRECT AS BEST I
13 RECALL. IS THAT YOUR SIGNATURE THAT APPEARS UNDERNEATH?

14 A. YES, MA'AM, IT IS.

15 Q. AND YOU SIGNED THERE?

16 A. YES, MA'AM.

17 Q. I HAVE RECEIVED A COPY OF THIS STATEMENT. YOU STARTED
18 SIGNING THERE AND THEN ALSO PRINTED YOUR NAME, ISN'T THAT
19 CORRECT?

20 A. THAT'S CORRECT.

21 Q. AND YOU WERE GIVEN A COPY OF THIS.

22 A. I DO NOT REMEMBER AT THIS TIME.

23 Q. YOU SIGNED THAT YOU RECEIVED ONE.

24 A. I SIGNED IT, BUT I DON'T REMEMBER IF I RECEIVED A COPY.

25 Q. AND THE TRUTH IS THAT YOU GAVE THIS STATEMENT AT THE

1 TIME AND YOU NEVER ASKED FOR A LAWYER, DID YOU?

2 A. I ASKED THE QUESTION -- I ASKED THE QUESTION IF I
3 NEEDED ONE.

4 Q. DID YOU EVER TELL INVESTIGATOR CAMPBELL OR INVESTIGATOR
5 SIMPSON, WHEN HE WAS IN THE ROOM, I WANT A LAWYER?

6 A. NO, MA'AM.

7 Q. OKAY. AND YOU GAVE THIS STATEMENT WILLINGLY. THAT'S
8 WHAT YOU JUST SAID A MOMENT AGO.

9 A. YES, MA'AM.

10 Q. YOU SIGNED IT. YOU RECEIVED A COPY OF IT AND YOU
11 SIGNED FOR A COPY, ISN'T THAT RIGHT?

12 A. I SIGNED IT. I DON'T RECALL IF I RECEIVED A COPY.

13 Q. OKAY. YOU WERE NOT RESTRAINED DURING THIS PROCESS, YOU
14 WEREN'T IN HANDCUFFS OR IN SHACKLES.

15 A. NO, MA'AM.

16 Q. YOU WERE NOT IN CUSTODY. YOU WERE NOT UNDER ARREST.

17 A. TO MY UNDERSTANDING, NO, MA'AM.

18 Q. OKAY. AND YOU GAVE THIS INFORMATION AND YOU SIGNED AS
19 IT BEING TRUE.

20 A. YES, MA'AM.

21 Q. OKAY. THANK YOU. THOSE ARE ALL THE QUESTIONS I HAVE.

22 THE COURT: ANYTHING ELSE, MR. WARDER?

23 MR. WARDER: WE HAVE NOTHING FURTHER, YOUR HONOR.

24 THE COURT: THANK YOU. STEP DOWN. ANYTHING ELSE, MR.
25 WARDER?

1 **MR. WARDER:** NO, SIR. WE DON'T HAVE ANY ADDITIONAL
2 TESTIMONY.

3 **THE COURT:** I FIND THAT THE STATE HAS SHOWN BY THE
4 GREATER WEIGHT OF THE EVIDENCE THAT THE DEFENDANT WAS
5 PROPERLY ADVISED OF HIS CONSTITUTIONAL RIGHTS UNDER MIRANDA.
6 BEING ADVISED OF THOSE RIGHTS HE THEREAFTER GAVE A
7 STATEMENT, THAT THE STATEMENT WAS FREELY AND VOLUNTARILY
8 MADE AFTER WAIVING HIS CONSTITUTIONAL RIGHTS, THAT THE
9 STATEMENT WAS NOT THE RESULT OF ANY COERCIVE POLICE TACTICS,
10 AND UNDER THE TOTALITY OF THE CIRCUMSTANCES IT WAS FREELY
11 AND VOLUNTARILY GIVEN AND, THEREFORE, WOULD BE ADMITTED AND
12 THE ISSUE OF VOLUNTARINESS WOULD BE AN ISSUE FOR THE JURY.
13 ALL RIGHT.

14 NOW I DON'T KNOW WHAT TIME THE DEPUTY WILL REPORT BACK
15 CONCERNING DR. JONES. MR. WARDER, YOU DON'T HAVE TO BE
16 PRESENT WHEN I HANDLE THAT MATTER. YOU'RE CERTAINLY WELCOME
17 TO BE PRESENT. I SUPPOSE, SOLICITOR, WHAT YOU NEED TO DO IS
18 BOTH OF YOU GIVE YOUR CELL NUMBERS TO THE CLERK AND SHE IN
19 TURN CAN CALL ME WHEN THE DOCTOR APPEARS. ALSO, SUSAN, IF
20 YOU'LL BE WHERE WE CAN CONTACT YOU. OTHERWISE, WE'LL START
21 BACK AT TWO PM. ALL RIGHT. ANYTHING ELSE BEFORE WE RECESS?

22 **MR. WARDER:** NOTHING FROM THE DEFENDANT, YOUR HONOR.

23 **MS. SEAY:** NOTHING FURTHER AT THIS TIME.

24 **THE COURT:** ALL RIGHT. THEN I'LL JUST WAIT TO HEAR
25 FROM YOU.

1 (WHEREUPON COURT WAS IN RECESS AT 12:20 PM)

2 THE COURT: ALL RIGHT. ANYTHING BEFORE WE BRING THE
3 JURY?

4 MS. SEAY: NOTHING, YOUR HONOR.

5 THE COURT: YOU WANT TO MAKE BRIEF OPENING STATEMENTS.
6 OKAY. BRING OUR JURY.

7 MS. SEAY: YOUR HONOR, THE VICTIM AND HER GUARDIANS ARE
8 GOING TO BE COMING IN. IS THAT OKAY FOR THEM TO GO AHEAD
9 AND DO THAT BEFORE WE BEGIN?

10 THE COURT: EXCUSE ME?

11 MS. SEAY: THE VICTIM AND HER GUARDIANS ---

12 THE COURT: SURE.

13 MS. SEAY: OKAY.

14 (WHEREUPON THE JURY ENTERED THE COURTROOM AT 2:08 PM)

15 (WHEREUPON THE VICTIM STARTED CRYING)

16 MS. SEAY: SHE'S THE VICTIM, YOUR HONOR.

17 THE COURT: THAT'S THE VICTIM? ALL RIGHT. SOLICITOR,
18 BRIEF OPENING STATEMENT. SOLICITOR, ---

19 MS. SEAY: YES, SIR.

20 THE COURT: --- BRIEF OPENING STATEMENT.

21 (WHEREUPON THE VICTIM WAS TAKEN OUT OF THE COURTROOM)

22 MS. SEAY: MAY IT PLEASE THE COURT, YOUR HONOR? MADAME
23 FORELADY, LADIES AND GENTLEMEN OF THE JURY, EVERY CHILD THAT
24 COMES INTO THIS WORLD IS BORN WITH CERTAIN RIGHTS, RIGHTS
25 THAT INCLUDE BEING LOVED, BEING NURTURED, CARED FOR, FED,

1 CLOTHED, GIVEN AN EDUCATION. NO CHILD, NO MATTER WHAT
2 CIRCUMSTANCE, DESERVES TO BE BEATEN AND ABUSED. THERE IS
3 SIMPLY NO REASON THAT OUR SOCIETY SHOULD TOLERATE THAT UNDER
4 ANY CIRCUMSTANCES.

5 AND ON JUNE THE 4TH, 2002 LITTLE *child* WHO'S
6 NOW HAD TO LEAVE THE COURTROOM, CAME INTO THIS WORLD WITH
7 THOSE SAME RIGHTS. SHE WAS BORN TO PARENTS WHO WERE UNABLE
8 TO PROPERLY CARE FOR HER. AND SHE WAS GIVEN TO THE PRIMARY
9 CUSTODY OF HER PATERNAL GRANDMOTHER, CARRIE SMITH, WHO IS
10 SEATED HERE ON THE FRONT ROW. MS. SMITH HAS BEEN CARING FOR
11 *child* FOR THE MAJORITY OF HER LIFE WITH THE EXCEPTION OF
12 THE FIRST FEW WEEKS OF HER LIFE.

13 IN OCTOBER OF 2003 WHEN *child* WAS A SIXTEEN MONTH
14 OLD BABY HER AUNT, LYCRETTA SMITH, WHO IS MS. SMITH'S
15 DAUGHTER, CAME TO GET *child* TO TAKE HER HOME TO KEEP HER
16 THAT NIGHT, IT WAS A WEEKEND NIGHT, SO THAT SHE COULD PLAY
17 WITH HER LITTLE COUSINS WHO WERE THERE, LYCRETTA'S TWO SMALL
18 CHILDREN. MARQUES HUDSON ALSO LIVED IN THIS HOUSEHOLD. HE
19 WAS LYCRETTA'S BOYFRIEND AND THE FATHER OF HER CHILDREN.

20 WELL, EVERYTHING WAS FINE AND *child* WAS FINE. SHE
21 WAS A NORMAL SIXTEEN MONTH OLD CHILD WHO COULD WALK, WHO
22 COULD SAY SIMPLE WORDS THAT BABIES SAY, WHO COULD WAVE BYE
23 BYE, WHO COULD PLAY PATTY CAKE, WHO COULD EAT. AND BY ALL
24 ACCOUNTS SHE WAS PERFECT, A PERFECTLY BEAUTIFUL LITTLE GIRL.

25 LYCRETTA SMITH LEFT FOR WORK AT ABOUT 4:00 THAT DAY.

1 SOME TERRIBLE THINGS HAPPENED. AND *child* MADE SOME VERY
2 GRAVE MISTAKES. AND THIS IS BY THE DEFENDANT'S OWN
3 ADMISSION, WHICH YOU WILL HEAR AS PART OF THE EVIDENCE IN
4 THIS CASE.

5 *child* MESSED WITH HIS STEREO WIRES. AND THAT BUGGED
6 HIM. AND BY HIS OWN ADMISSION HE WILL TELL YOU THROUGH HIS
7 STATEMENT THAT HE POPPED THAT CHILD, THAT SIXTEEN MONTH OLD
8 BABY ON THE BACK WITH A BELT. AND HE'S GOING TO TELL YOU
9 THROUGH HIS STATEMENT THAT HE DID THAT ON TWO OR MORE TIMES.

10 WELL, THINGS ESCALATED. SHE CONTINUED TO MESS WITH THE
11 WIRES. SHE CONTINUED TO AGGRAVATE HIM. MIND YOU, HE HAS
12 TWO OTHER SMALL CHILDREN IN HIS CARE AT THAT TIME, HIS OWN
13 FOUR YEAR OLD AND SEVEN MONTH OLD. *child* THEN HAS A
14 DIRTY DIAPER, WHICH HE HAS TO GO CHANGE, WHICH IS A BIG
15 MESS, WHICH THEN, ACCORDING TO HIS STATEMENT, HE STILL
16 SMELLS. SO HE'S GOING TO GO GIVE HER A BATH.

17 WELL, SHE WASN'T COOPERATIVE. SHE WAS CRYING. AND SHE
18 DIDN'T WANT TO SIT DOWN IN THE WATER. SO AGAIN, BY HIS OWN
19 ADMISSION, HE BEAT A SIXTEEN MONTH OLD ON THE BACK WITH A
20 BELT. THE STATE IS GOING TO PRESENT PHOTOGRAPHS IN THIS
21 CASE AND TESTIMONY IN THIS CASE THAT SHOW WHAT KIND OF MARKS
22 WERE LEFT ON THIS CHILD AS A RESULT OF THESE BEATINGS.

23 UNFORTUNATELY, THE SITUATION DID NOT STOP THERE. IT'S
24 THE STATE'S POSITION THAT THE EVIDENCE IS GOING TO SHOW THAT
25 THE DEFENDANT'S IRRITATION AND OUTRAGE JUST GOT WORSE. IT

1 JUST ESCALATED TO THE POINT WHERE AT SOME POINT IN TIME
2 DURING THIS EVENING MARQUES HUDSON SHOOK *child* SO HARD,
3 SO VIOLENTLY, SO SEVERELY THAT SHE HAD A SUBDURAL HEMORRHAGE
4 OF HER BRAIN, SEVERE BRAIN DAMAGE, RETINAL HEMORRHAGING OF
5 HER EYES AND, OF COURSE, THE NUMEROUS BRUISES ALL OVER HER
6 BODY THAT WE'VE ALREADY TOLD YOU ABOUT, AND PANCREATITIS
7 FROM A SEVERE BLOW OF SOME SORT TO HER ABDOMEN, THIS LITTLE
8 SIXTEEN MONTH OLD.

9 AND SO WHEN THIS CHILD WENT LIMP AND UNCONSCIOUS
10 MARQUES HUDSON, WE BELIEVE, PUT HER IN THE BATHTUB TO TRY TO
11 REVIVE HER. AND WHEN HE WASN'T ABLE TO HE PROCEEDED TO
12 CONCOCT A SERIES OF ACCIDENTS TO TELL, TO EXPLAIN WHAT HAD
13 HAPPENED TO THIS BABY.

14 NOW THE PROBLEM THERE IS THAT THE EVIDENCE IN THIS
15 CASE, LADIES AND GENTLEMEN, IS GOING TO BE FROM MEDICAL
16 EXPERTS WHO TREATED THIS CHILD, THIS CHILD WHO ALMOST DIED
17 BY THE WAY. AND THEY'RE GOING TO EXPLAIN TO YOU HOW THE
18 INJURIES THAT THIS BABY SUFFERED WERE INTENTIONAL, THEY WERE
19 SEVERE, THEY WERE NOT BY A SERIES OF ACCIDENTS AS THE
20 DEFENDANT WANTS YOU TO BELIEVE.

21 THIS BABY WAS IN THE PEDIATRIC INTENSIVE CARE UNIT FOR
22 OVER A MONTH. SHE THEN SPENT ANOTHER MONTH AT ROGER C.
23 PEACE REHABILITATING. SHE WENT HOME, THE TESTIMONY WILL BE,
24 THAT SHE COULD NOT WALK, SHE COULD NOT TALK, SHE COULD NOT
25 FEED HERSELF, SHE HAD CONSTANT CARE.

1 AND, LADIES AND GENTLEMEN, SHE'S NOW FIVE YEARS OLD.
2 AND YOU'LL HEAR TESTIMONY FROM HER GRANDMOTHER, MS. SMITH,
3 WHO STILL IS HER LEGAL GUARDIAN, THAT *child* HAS THE
4 MENTAL CAPABILITIES OF APPROXIMATELY A TWO OR THREE YEAR
5 OLD. SHE CAN STRING A FEW WORDS TOGETHER. SHE'S NOT POTTY
6 TRAINED, PROBABLY NEVER WILL BE. SHE HAS PARALYSIS ON HER
7 LEFT SIDE. SHE WEARS A BRACE ON HER LEG. SHE'S ALMOST
8 COMPLETELY BLIND FROM THE SEVERE SHAKING THAT DAMAGED HER
9 RETINAS.

10 MARQUES HUDSON IS CHARGED WITH INFLICTION OF GREAT
11 BODILY INJURY TO A CHILD. THE STATE MUST PROVE TO YOU THAT
12 HE INFLICTED GREAT BODILY INJURY WHICH CREATED A SUBSTANTIAL
13 RISK OF DEATH OR WHICH CAUSED SERIOUS OR PERMANENT
14 DISFIGUREMENT OR PROTRACTED LOSS OR IMPAIRMENT OF THE
15 FUNCTION OF ANY BODILY MEMBER OR ORGAN.

16 LADIES AND GENTLEMEN, I SUBMIT TO YOU THE EVIDENCE IN
17 THIS CASE WILL BE CLEAR THAT THIS CHILD SUFFERED GREAT
18 BODILY INJURY AT THE HANDS OF THIS MAN AND THAT WHEN YOU
19 FINISH HEARING THE EVIDENCE IN THIS CASE THERE WILL ONLY BE
20 ONE VERDICT THAT WILL SPEAK THE TRUTH AND SERVE JUSTICE IN
21 THIS CASE. THANK YOU.

22 **THE COURT:** MR. WARDER.

23 **MR. WARDER:** THANK YOU, YOUR HONOR. LADIES AND
24 GENTLEMEN, THE ONE THING THAT'S CONCOCTED IN THIS CASE IS
25 THE STATE'S THEORY THAT MY CLIENT SHOOK THIS INFANT. IT'S

1 UNSUPPORTED BY ANY EYEWITNESS. CONTRARY TO WHAT THE
2 SOLICITOR TRIED TO MAKE YOU BELIEVE, TO LEAD YOU, IT'S NOT
3 WHAT'S IN MARQUES' STATEMENT. IT'S NEVER SAID. IT'S GIVEN
4 AS AN EXPLANATION BY SOME DOCTORS FOR A CONDITION THEY
5 FOUND. NOW THOSE DOCTORS WILL BE HERE AND YOU WILL HEAR
6 THEIR TESTIMONY.

7 THE FACTS WILL SHOW THAT MY CLIENT WAS LEFT WITH THE
8 YOUNG CHILD AND HIS TWO CHILDREN WHEN HIS WIFE WENT TO WORK
9 AT CHARTER COMMUNICATIONS, THAT OVER THE COURSE OF THE
10 EVENING SHE MESSED HER DIAPER, HE CHANGED THAT DIAPER, CARED
11 FOR THE KIDS.

12 WHEN HE GOT EVERYTHING QUIET THERE WAS STILL A SMELL ON
13 THE CHILD. HE TOOK THE CHILD UP TO HAVE A BATH AND THE
14 CHILD RESISTED, SQUIRMED, GOT EXCITED IN THE WATER. SO HE
15 TOOK HER BACK DOWNSTAIRS WITH HIS CHILD TO PLAY, THAT AGAIN
16 AFTER HE GOT HIS CHILD READY FOR BED HE TOOK *child* UP TO
17 THE BATHTUB, SHE WAS ASLEEP, HE PUT HER IN THE TUB, STARTED
18 WASHING HER FRONT AND HER BACK. SHE WOKE UP, AGAIN, AFRAID
19 OF THE WATER OR EXCITED AND SHE FELL AND SHE HIT THE SIDE OF
20 THE TUB.

21 SHE WAS BLEEDING ON HIS -- OUT OF HER LIP. MY CLIENT
22 BECOMING EXCITED AND PANICKED BECAUSE SHE WASN'T COMING BACK
23 OR UNCONSCIOUS, THAT SHE APPEARED TO BE UNCONSCIOUS. HE RAN
24 DOWN THE HALL, TRIPPED OVER A BED SPREAD AND FELL DOWN THE
25 STAIRS, GOT UP, WENT TO THE NEXT DOOR, ASKED FOR HELP AT

1 APARTMENT 21, THEY CALLED THE EMS, HE WENT TO APARTMENT 24,
2 THERE WAS A NURSE THERE AND SOUGHT IMMEDIATE CARE.

3 NOW THE ISSUE IN THIS CASE IS NOT DID THE CHILD GET
4 HURT WHILE SHE WAS WITH MY CLIENT. THE ISSUE IS WAS SHE
5 INTENTIONALLY AND WILLFULLY INJURED BY THE CONDUCT OF MY
6 CHILD [SIC], NOT DID SOME ACCIDENT HAPPEN WHILE SHE WAS IN
7 HIS CUSTODY. AND THAT'S THE DIFFERENCE. THAT'S WHAT THIS
8 CASE IS ABOUT.

9 AND THE STATE HAS TO PROVE BEYOND A REASONABLE DOUBT
10 THAT THIS CHILD WAS INJURED WILLFULLY, INTENTIONALLY BY MY
11 CLIENT. AND THAT'S WHAT THIS TRIAL IS ABOUT. WE THINK THE
12 EVIDENCE WILL SHOW THAT SHE WAS IN MY CLIENT'S CUSTODY WHEN
13 THE INJURY MANIFESTED ITSELF.

14 WE ASK YOU TO LISTEN CAREFULLY TO THE TESTIMONY. WE
15 WILL BE ABLE TO SPEAK AGAIN IN ARGUMENT FORM AT THE END OF
16 THE CASE. BUT I ASK YOU TO KEEP AN OPEN MIND UNTIL YOU'VE
17 HEARD EVERYTHING. IN CRIMINAL CASES THE STATE GOES FIRST.
18 THEY PRESENT ALL OF THEIR EVIDENCE BEFORE WE CAN PRESENT
19 ANY.

20 AND IT'S IMPORTANT THAT YOU KEEP AN OPEN MIND UNTIL
21 YOU'VE HEARD EVERYTHING SO THAT THERE CAN BE A FAIR TRIAL.
22 THERE ARE STATISTICS THAT INDICATE THAT JURORS LIKE ALL
23 PEOPLE TEND TO MAKE UP THEIR MIND ON A PROPOSITION EARLY ON.
24 AND IF JURORS EVER MAKE UP THEIR MIND ONCE, THEY SELDOM, IF
25 EVER, CHANGE IT.

1 SO I ASK YOU DURING THE COURSE OF THIS TRIAL IF YOU
2 FIND YOURSELF DECIDING, REACHING A VERDICT BEFORE IT'S OVER
3 WITH THAT YOU CONSCIOUSLY RESIST THAT AND YOU CONSCIOUSLY
4 KEEP AN OPEN MIND UNTIL YOU'VE HEARD ALL OF THE EVIDENCE,
5 EVERYTHING AND YOU'VE HEARD -- KEEP AN OPEN MIND UNTIL THE
6 VERY END REGARDING ALL OF THE LAW THAT HIS HONOR WILL CHARGE
7 YOU.

8 AFTER YOU'VE HEARD ALL OF THE EVIDENCE AND ALL OF THE
9 LAW THAT SHOULD APPLY, THAT WILL BE THE FIRST TIME THAT YOU
10 WILL BE IN A POSITION TO FAIRLY DECIDE THIS CASE ON BOTH THE
11 EVIDENCE AND THE LAW. AND THAT'S WHAT WE'RE ASKING YOU FOR.
12 WE'RE ASKING YOU FOR A FAIR TRIAL WHERE YOU LISTEN TO
13 EVERYTHING. THANK YOU VERY MUCH.

14 **THE COURT:** ALL RIGHT, SOLICITOR.

15 **MS. SEAY:** YOUR HONOR, THE STATE CALLS KEVIN CROSBY.

16 **FRANCIS KEVIN CROSBY,**
17 BEING DULY SWORN TESTIFIED AS FOLLOWS:

18 **MADAME CLERK:** THANK YOU. PLEASE BE SEATED. STATE
19 YOUR NAME FOR THE RECORD.

20 **MR. CROSBY:** FRANCIS KEVIN CROSBY.

21 **DIRECT EXAMINATION BY MS. SEAY:**

22 Q. MR. CROSBY, WHERE ARE YOU EMPLOYED?

23 A. EMPLOYED PART-TIME AT THIS TIME WITH GREENVILLE COUNTY
24 EMS, FULL-TIME WITH THE SOUTH GREENVILLE FIRE DEPARTMENT.

25 Q. AND ARE YOU CURRENTLY EMPLOYED WITH BOTH EMS AND THE

1 FIRE DEPARTMENT?

2 A. YES.

3 Q. HOW LONG HAVE YOU BEEN EMPLOYED WITH EMS AND THE FIRE
4 DEPARTMENT?

5 A. THE FIRE DEPARTMENT FULL-TIME FOR ONE YEAR, BETWEEN EMS
6 A TOTAL OF -- IT WAS MAY OF 2003 WHEN I STARTED GREENVILLE
7 COUNTY EMS. BEEN AT EMS A TOTAL OF SIX YEARS.

8 Q. WOULD YOU PLEASE DESCRIBE YOUR EDUCATION AND TRAINING
9 TO PERFORM YOUR DUTIES?

10 A. A NATIONAL REGISTRY CERTIFIED PARAMEDIC ALONG WITH ALL
11 THE OTHER CERTIFICATION CLASSES IN CARDIAC AND PEDIATRIC
12 CARE AND A CERTIFIED STATE FIRE FIGHTER.

13 Q. AND WHAT ARE YOUR GENERAL DUTIES AS -- AND I WANT TO
14 FOCUS ON YOUR EMS WORK. WHAT ARE YOUR GENERAL DUTIES AS AN
15 EMS EMPLOYEE?

16 A. WE RESPOND TO ALL TYPES OF EMERGENCIES, PERFORM PATIENT
17 CARE AND DOCUMENTATION.

18 Q. AND YOU WERE, I BELIEVE YOU'VE ALREADY STATED, WORKING
19 FOR EMS BACK IN OCTOBER OF 2003?

20 A. THAT'S CORRECT.

21 Q. I DIRECT YOUR ATTENTION TO OCTOBER 12TH OF THAT YEAR.
22 DID YOU RECEIVE A CALL TO 2900 EAST NORTH STREET, APARTMENT
23 21 IN GREENVILLE COUNTY?

24 A. YES.

25 Q. WHAT WAS THE NATURE OF THAT CALL?

1 A. I BELIEVE IT COME OUT AS A FALL OR WHAT I BELIEVE IT
2 WAS. I'M NOT A HUNDRED PERCENT SURE WHAT THE DISPATCH
3 SIGNAL WAS.

4 Q. WHAT TIME DID YOU RECEIVE THE CALL?

5 A. IF I CAN REFER TO MY CALL HERE. IT COME INTO EMS AT
6 23:37:25.

7 Q. AND THAT WOULD BE WHAT TIME?

8 A. THAT WOULD BE 11:37 THAT NIGHT.

9 Q. 11:37 PM? AND DID YOU THEN GO TO THAT LOCATION?

10 A. YES.

11 Q. WHO DID YOU, IF ANYBODY, COME IN CONTACT WITH WHEN YOU
12 ARRIVED?

13 A. WE ARRIVED BEHIND THE FIRE DEPARTMENT. WE WAS MET AT
14 THE TRUCK BY MARQUES HUDSON HOLDING THE CHILD IN HIS ARMS.
15 IT WAS A LIMP CHILD. FROM THERE WE TOOK THE CHILD INTO THE
16 AMBULANCE.

17 Q. WHAT WAS HER CONDITION?

18 A. SHE WAS UNRESPONSIVE TO ANY TYPE OF STIMULI WHEN WE GOT
19 THERE. SHE WOULDN'T RESPOND AT ALL. SHE HAD A LITTLE BLOOD
20 AROUND THE MOUTH. AND WE COULDN'T GET HER AROUSED AT ALL.

21 Q. DID YOU NOTE ANYTHING ELSE ABOUT HER?

22 A. INITIALLY, NO. ONCE WE GOT HER IN THE TRUCK, OTHER
23 THAN HER NOT BEING UNRESPONSIVE, WE EXPOSED THE CHILD AS WE
24 DO IN ANY TYPE OF UNCONSCIOUS PATIENT, NOTICED SOME REDNESS
25 AND SOME BRUISING JUST BELOW THE NIPPLE LINES ON THE CHEST

1 AND THEN THE BLOOD ON THE UPPER LIP.

2 Q. WHAT DID YOU DO AS FAR AS TREATING HER?

3 A. WE PUT HER ON THE OXYGEN, ATTEMPTED TO AROUSE HER BY
4 RUBBING A PEN UP HER FOOT, PINCHING ON HER SHOULDER. FROM
5 THERE WE ATTEMPTED MULTIPLE TIMES TO ESTABLISH IV ACCESS ON
6 THE WAY TO THE HOSPITAL, PUT HER ON OUR CARDIAC MONITOR TO
7 MONITOR HER HEART RHYTHM. AND THAT WAS ALL THAT WE WAS ABLE
8 TO DO.

9 Q. HOW WOULD YOU CHARACTERIZE HER CONDITION AT THAT TIME?

10 A. CRITICAL. VERY CRITICAL.

11 Q. AND WHERE DID YOU TAKE HER?

12 A. WE TOOK HER TO THE GREENVILLE MEMORIAL PEDIATRIC ER.

13 Q. MR. CROSBY, THOSE ARE ALL THE QUESTIONS I HAVE. PLEASE
14 ANSWER ANY MR. WARDER MIGHT HAVE.

15 THE COURT: MR. WARDER.

16 MR. WARDER: THANK YOU, YOUR HONOR.

17 **CROSS EXAMINATION BY MR. WARDER:**

18 Q. SIR, DID YOU SEE MARQUES HUDSON THAT NIGHT?

19 A. YES, WE DID. HE MET US AT THE AMBULANCE.

20 Q. OKAY. AND WHERE DID YOU FIRST SEE HIM?

21 A. WHERE DID I FIRST SEE HIM?

22 Q. YES, SIR.

23 A. I PULLED IN BEHIND GREENVILLE CITY FIRE DEPARTMENT.

24 AND HE MET -- WE SEEN HIM AT THE FRONT OF THE FIRE TRUCK

25 TALKING TO THE FIRE PERSONNEL. AND THEY REFERRED HIM BACK

1 TO US.

2 Q. OKAY. AND THE CHILD WAS ...

3 A. IN HIS ARMS.

4 Q. OKAY. WHAT DID YOU NOTICE ABOUT HIS -- DID HE SEEM TO
5 BE EXCITED, CALM?

6 A. HE APPEARED TO BE EXCITED. HE WAS RUNNING AROUND. HE
7 RAN UP TO US. APPEARED TO BE VERY EXCITED.

8 Q. RAN TO YOU?

9 A. YEAH.

10 Q. OKAY. WHEN HE RAN TO YOU, YOU TOOK THE CHILD
11 OBVIOUSLY?

12 A. YES, WE DID.

13 Q. OKAY. AND DID YOU PUT IT ON A GURNEY OR ANYTHING LIKE
14 THAT OR DID YOU JUST HOLD IT?

15 A. WE PUT IT ON OUR STRETCHER.

16 Q. OKAY. WOULD THAT BE AN ADULT SIZE STRETCHER?

17 A. YES.

18 Q. OKAY. AND I GUESS THERE'S A RACK TO HOLD THEM IN THE
19 EMS TRUCK, IS THAT RIGHT?

20 A. WE HAVE WHAT'S CALLED A PITY-MATE, YES.

21 Q. OKAY. AND THEN YOU PUT THE STRETCHER IN THE TRUCK AND
22 IT GOES AND KIND OF HOLDS IT DOWN SO IT DON'T MOVE?

23 A. YES.

24 Q. AND WHAT DID MARQUES DO WHILE YOU WERE DOING THAT?

25 A. HE HANDED US THE CHILD. WE, I MEAN, HE STOOD AT THE

1 BACK OF THE AMBULANCE. ONCE WE INITIATED CARE WE ASKED HIM
2 WHAT HAPPENED AS WE DO ON ALL CALLS. ONCE WE GOT A STORY
3 FROM HIM, HE STATED TO US HE NEEDED TO GO CHECK ON HIS OTHER
4 KIDS.

5 HE LEFT THE AMBULANCE AT THAT TIME. AND WE CLOSED THE
6 BACK DOORS UP AND CONTINUED CARE. I DID NOT SEE HIM AGAIN
7 UNTIL WE WAS GETTING READY TO GO EN ROUTE TO THE HOSPITAL.
8 HE OPENED THE BACK DOORS UP TO CLIMB UP IN THE BACK OF THE
9 TRUCK AND WE REFERRED HIM TO THE FRONT SEAT OF THE
10 AMBULANCE.

11 Q. OKAY. DID HE GET IN THE FRONT SEAT OF THE AMBULANCE
12 AND RIDE TO THE HOSPITAL WITH YOU?

13 A. YES, HE DID.

14 Q. NOW YOU TOLD US THAT YOU ASKED MARQUES WHAT HAPPENED.

15 A. ONE OF US DID, YES. I DON'T RECALL WHO ASKED THE
16 QUESTION, BUT I BELIEVE IT WAS MY PARTNER AT THAT TIME THAT
17 ASKED.

18 Q. OKAY. BUT YOU WERE STANDING RIGHT WITH YOUR PARTNER?

19 A. YES.

20 Q. AND YOU COULD HEAR THE RESPONSE THAT MARQUES GAVE HIM?

21 A. YES.

22 Q. CAN YOU TELL THE JURY THE RESPONSE MARQUES GAVE YOU
23 WHEN YOU ASKED HIM WHAT HAPPENED?

24 A. HE STATED HE WAS GIVING THE CHILD A BATH, THE CHILD
25 FELL IN THE BATHTUB STRIKING HER FACE ON THE TUB FLOOR,

1 WHICH IS WHERE HE SAID THAT THE BUSTED LIP COME FROM, SAID
2 SHE DID NOT RESPOND AT ALL. SO HE PICKED HER UP AND WENT TO
3 RUN OUTSIDE TO GO NEXT DOOR TO CALL FOR HELP, HE MISSED THE
4 FIRST STEP AND FELL DOWN THE STEPS.

5 Q. DID HE TELL YOU ANYTHING ABOUT THE CHILD'S BREATHING?

6 A. WE ASKED ABOUT CONGESTION. LATER ON, I BELIEVE, HE
7 SAID SOMETHING ABOUT A POSSIBLE SINUS INFECTION.

8 Q. OKAY. DID YOU LISTEN TO THE SOUNDS OF THE AIRWAYS, I
9 GUESS, IN THE EMERGENCY TREATMENT WHEN YOU WERE PUTTING HER
10 IN?

11 A. YES, SIR.

12 Q. DID IT SOUND LIKE SHE HAD HAD CONGESTION OR SOME
13 BREATHING PROBLEM?

14 A. PER MY PARTNER'S REPORT -- I DID NOT ACTIVELY LISTEN TO
15 THE SOUNDS. MY PARTNER DID. AND I BELIEVE HE REPORTED THAT
16 THERE WERE CONGESTION NOTED THERE.

17 Q. CAN THIS CONGESTION -- CAN WATER OR FLUID THAT MIGHT
18 GET INTO THE AIRWAYS FROM A BATHTUB, DO THEY SOUND THE SAME
19 OR DO THEY SOUND DIFFERENT?

20 A. THEY CAN SOUND DIFFERENT.

21 Q. OKAY. AND IS ONE LOUDER THAN THE OTHER OR HOW DO THEY
22 SOUND DIFFERENT?

23 A. IT ALL DEPENDS ON THE DEPTH AND QUALITY OF THEIR
24 BREATHING.

25 Q. OKAY. NOW YOU DID ADMINISTER OXYGEN TO THE CHILD,

1 DIDN'T YOU?

2 A. YES.

3 Q. AND I TAKE IT YOU DID THAT AS A RESULT OF ONE OF THOSE
4 BLOOD GAS CHECKS, IS THAT RIGHT?

5 A. IT'S OXYGEN SATURATION, YES.

6 Q. OKAY. THAT CHECKS THE AMOUNT OF OXYGEN IN THE BLOOD?
7 AND WHEN YOU GAVE HER OXYGEN DID THE LEVEL OF HER BLOOD COME
8 UP?

9 A. YES.

10 Q. DID IT COME TO WHAT WOULD BE NORMAL OR ABOVE NORMAL?

11 A. IT COME UP TO, I BELIEVE IT WAS NINETY-NINE PERCENT,
12 WHICH IS BEST IS A HUNDRED.

13 Q. OKAY. WHAT WOULD A NORMAL PERSON -- WHAT WOULD ---

14 A. EVERYBODY'S NORMAL, WHICH IS GOING TO BE DIFFERENT.

15 Q. OKAY. SO EVERYBODY WOULDN'T HAVE A NINETY-NINE -- THAT
16 MIGHT BE HIGHER THAN SOME OF US ---

17 A. YES.

18 Q. --- WOULD HAVE?

19 A. IT COULD BE -- EVERYBODY'S IS GOING TO BE DIFFERENT.
20 SO ...

21 Q. NOW ON THE WAY BACK DID YOU RIDE IN THE BACK OF THE
22 EMERGENCY VEHICLE OR DID YOU RIDE UP FRONT?

23 A. I WAS OFF -- I WAS IN THE BACK.

24 Q. OKAY. WERE THERE ONLY TWO OF YOU THERE IN THAT
25 EMERGENCY VEHICLE?

1 A. THERE WAS TWO OF US IN THE BACK. AND WE HAD A QRV, A
2 QUICK RESPONSE VEHICLE, THAT RESPONDED THAT DROVE US IN.

3 A. OKAY. NOW IT'S MY UNDERSTANDING THAT WHEN THOSE
4 OCCASIONS THAT THERE ARE MORE THAN TWO PEOPLE IN AN
5 AMBULANCE THAT YOU DIVIDE UP THE DUTIES, IS THAT RIGHT?

6 A. YES.

7 Q. WHAT SET OF DUTIES DID YOU TAKE IN THE TRANSPORT?

8 A. I WAS ATTEMPTING IV ACCESS.

9 Q. OKAY. YOU WERE ATTEMPTING TO DO AN IV?

10 A. UM-HUM (AFFIRMATIVE).

11 Q. AND WHEN YOU SAY YOU WERE ATTEMPTING TO DO AN IV I
12 ENVISION YOU LOOKING FOR A VEIN OR SOMETHING LIKE THAT. IS
13 THAT WHAT YOU'RE DOING?

14 A. YES.

15 Q. DID YOU FIND A VEIN AND WERE YOU SUCCESSFUL TO GET AN
16 IV?

17 A. NO. WE MADE MULTIPLE ATTEMPTS AND WITHOUT SUCCESS ON
18 STARTING ONE.

19 Q. OKAY. NOW TRANSPORTS ARE MADE IN DIFFERENT CODES.
20 THERE'S A CODE ONE AND CODE TWO OR CODE THREE, IS THAT
21 RIGHT?

22 A. YES.

23 Q. AND THE DIFFERENCE IN THE CODE REALLY REFERS TO THE
24 EQUIPMENT THAT YOU RUN ON A TRANSPORT?

25 A. CODE ONE IS A NON-EMERGENCY TRANSPORT. THERE'S NO

1 LIGHTS AND SIRENS. AND THREE WOULD BE LIGHTS AND SIRENS
2 RESPONSE.

3 Q. OKAY. WHAT'S CODE TWO AND THREE?

4 A. CODE TWO IS NO LONGER RUN. IT'S LIGHTS ONLY.

5 Q. OKAY. AND A CODE THREE IS THEN SIRENS AND LIGHTS BOTH?

6 A. YES.

7 Q. IT'S MY UNDERSTANDING THIS WAS A CODE THREE TRANSPORT,
8 IS THAT RIGHT?

9 A. YES.

10 Q. DID IT START OFF AS A CODE THREE OR WAS IT ALWAYS A
11 CODE THREE?

12 A. THE FULL CALL RESPONDING TO THE SCENE WAS CODE THREE
13 AND FROM THE SCENE WAS CODE THREE, CODE THREE TO THE
14 HOSPITAL.

15 Q. OKAY. WHAT HOSPITAL DID YOU GO TO?

16 A. GREENVILLE MEMORIAL PED'S ER.

17 Q. OKAY. AND HOW LONG WOULD THAT TRANSPORT HAVE BEEN IN
18 MINUTES?

19 A. IF I CAN LOOK AT HERE.

20 Q. SURE.

21 A. LOOKS LIKE IT WAS ELEVEN MINUTES AND TWO SECONDS, I
22 BELIEVE.

23 Q. OKAY. COULD YOU SEE MARQUES ON THAT TRANSPORT ALL THE
24 WAY?

25 A. NO, I COULD NOT.

1 Q. IS THERE A ---

2 A. THERE IS A HOLE IN THE FRONT OF THE AMBULANCE THAT WE
3 CAN LOOK THROUGH, BUT WITH IT DARK AND WE WERE CONCERNED
4 WITH PATIENT CARE.

5 Q. I GUESS IT WOULD BE DARK IN THE FRONT. YOU WOULD RUN
6 LIGHTS OF ---

7 A. YES.

8 Q. --- SOME KIND IN THE BACK, WOULDN'T YOU?

9 A. (AFFIRMATIVE NOD).

10 Q. DID MARQUES INQUIRE FREQUENTLY ABOUT HOW THE CHILD WAS
11 DOING AND WHAT WAS GOING ON?

12 A. I'M NOT SURE.

13 Q. OKAY. I THANK YOU VERY MUCH.

14 THE COURT: ANY REDIRECT?

15 MS. SEAY: NO, SIR, YOUR HONOR. MAY MR. CROSBY BE
16 EXCUSED AT THIS TIME?

17 THE COURT: ANY OBJECTION?

18 MR. WARDER: NO, YOUR HONOR. NO OBJECTION.

19 THE COURT: THANK YOU. YOU'RE EXCUSED.

20 MS. SEAY: THE STATE CALLS DEPUTY CRAIG HAWKINS.

21 CRAIG HAWKINS, BEING DULY
22 SWORN TESTIFIED AS FOLLOWS:

23 MADAME CLERK: STATE YOUR NAME FOR THE RECORD.

24 MR. HAWKINS: DEPUTY CRAIG ALAN HAWKINS.

25 **DIRECT EXAMINATION BY MS. SEAY:**

1 Q. DEPUTY HAWKINS, WHERE ARE YOU EMPLOYED?

2 A. I'M EMPLOYED WITH THE GREENVILLE COUNTY SHERIFF'S
3 OFFICE.

4 Q. HOW LONG HAVE YOU BEEN EMPLOYED THERE?

5 A. JUST OVER SEVEN YEARS.

6 Q. WOULD YOU TELL US WHAT YOUR EDUCATION AND TRAINING IS
7 TO PERFORM YOUR DUTIES?

8 A. I'M A CERTIFIED DEPUTY SHERIFF WITH THE GREENVILLE
9 COUNTY SHERIFF'S OFFICE. I'M CURRENTLY IN THE WARRANTS
10 DIVISION.

11 Q. AND YOU'RE DULY CERTIFIED TO PERFORM THE DUTIES OF A
12 LAW ENFORCEMENT OFFICER IN SOUTH CAROLINA?

13 A. THAT IS CORRECT.

14 Q. WHAT ARE YOUR BASIC DUTIES?

15 A. AT THE TIME OF THIS INCIDENT I WAS A ROAD OFFICER. I
16 ANSWERED CALLS FOR SERVICE. NOW, LIKE I SAID, I'M A
17 WARRANTS OFFICER.

18 Q. LET'S FOCUS ON WHAT YOU DID AT THE TIME OF THIS
19 INCIDENT BACK IN OCTOBER OF 2003. YOU WERE ON THE ROAD AND
20 YOU ANSWERED CALLS.

21 A. THAT'S CORRECT.

22 Q. DID YOU GET A CALL TO RESPOND TO GREENVILLE MEMORIAL
23 HOSPITAL EMERGENCY ROOM?

24 A. I DID.

25 Q. ABOUT WHAT TIME WAS THAT?

1 A. IT WAS ABOUT 12:42 AM.

2 Q. WHAT WAS THE NATURE OF THE CALL?

3 A. IT WAS POSSIBLE CHILD ABUSE CASE.

4 Q. WHEN YOU GOT THERE WHO DID YOU TALK WITH?

5 A. WHEN I ARRIVED ON THE SCENE I MET THE NURSES WHO WERE
6 WORKING ON *child* AND THEY STOPPED ME FIRST TO SHOW ME
7 WHAT VISIBLE INJURIES THEY HAD FOUND. THEY POINTED OUT THE
8 BRUISES ON THE FOREHEAD, THE CHEST AREA, THE LEFT LEG, HER
9 BOTTOM AND HER BACK, WHICH HAD -- HER BACK WAS THE MOST
10 DISTINCTIVE, WHICH HAD THREE POSSIBLE WHIP MARKS ON IT.

11 Q. AND AFTER YOU OBSERVED HER INJURIES WHAT DID YOU DO?

12 A. I THEN -- I SPOKE WITH EMS TO SEE IF MR. HUDSON HAD
13 SAID ANYTHING TO THEM. ALL THEY STATED WAS HE TOLD THEM ---

14 MR. WARDER: OBJECTION TO WHAT THEY SAID, YOUR HONOR.

15 THE COURT: DON'T TELL US WHAT THEY SAID.

16 A. OKAY. I FOUND MR. HUDSON AND PULLED HIM ASIDE AND
17 STARTED ASKING HIM WHAT HAD HAPPENED. HE STATED TO ME THAT
18 THE CHILD -- HE ATTEMPTED TO GIVE THE CHILD A BATH AND THE
19 CHILD JUST WOULD NOT STOP CRYING OR SCREAMING. SO HE LAID
20 THE CHILD BACK DOWN TO GO TO SLEEP.

21 HE THEN TOLD ME THAT HE WENT BACK TO GET THE CHILD
22 WHILE IT WAS STILL ASLEEP, WHILE *child* WAS STILL ASLEEP,
23 AND TRIED TO GIVE HIM A BATH -- GIVE HER A BATH AGAIN AT
24 WHICH TIME SHE FELL FACE FIRST IN THE TUB. HE THEN TOLD ME
25 HE PICKED THE CHILD UP, ATTEMPTED TO GO DOWN THE STEPS AND

1 TRIPPED AND FELL DOWN A FLIGHT OF STEPS. AND THAT WAS ALL I
2 ASKED HIM AT THAT TIME.

3 Q. DID YOU SAY ANYTHING TO HIM ABOUT WHAT HE HAD SAID?

4 A. YES. I TOLD HIM THAT THE MARKS ON ---

5 MR. WARDER: OBJECTION.

6 THE COURT: WHAT'S YOUR OBJECTION?

7 MR. WARDER: YOUR HONOR, IT'S OPINION TESTIMONY AND
8 WHAT HE SAID -- THE OPINION HE SAID ---

9 THE COURT: WHAT'S THE RELEVANCE OF WHAT HE SAID TO THE
10 DEFENDANT?

11 MS. SEAY: HE ASKED HIM FURTHER ABOUT THE MARKS ON THE
12 CHILD AND THE DEFENDANT RESPONDS FURTHER.

13 THE COURT: GO AHEAD. OVERRULED. GO AHEAD.

14 A. I THEN ASKED HIM THAT THE MARKS ON THE CHILD THAT I SAW
15 DID NOT FIT THAT SOMEONE HAD FALLEN DOWN ---

16 MR. WARDER: OBJECTION TO THAT.

17 THE COURT: NO. OVERRULED. GO AHEAD.

18 A. THE MARKS DIDN'T MATCH SOMEBODY THAT FELL DOWN A FLIGHT
19 OF STEPS. MR. HUDSON THEN TOLD ME THAT THE CHILD HAD GOTTEN
20 INTO SOME STEREO EQUIPMENT, HAD GOTTEN IN SOME WIRES AND HE
21 HAD GOTTEN UPSET AND SPANKED THE CHILD ON THE BOTTOM WITH
22 HIS HAND. AND HE THEN STATED THAT HE PICKED UP A BELT AND
23 WHIPPED THE CHILD.

24 Q. WERE YOU ABLE TO OBSERVE MR. HUDSON'S PHYSICAL
25 APPEARANCE WHILE YOU WERE TALKING WITH HIM?

1 A. AS FAR AS HIS Demeanor OR ...

2 Q. HIS PHYSICAL APPEARANCE. DID HE APPEAR TO BE INJURED
3 IN ANY WAY?

4 A. NO. I EVEN -- I DID CHECK FOR SOME TYPE OF RUG BURNS
5 ON HIS ARMS AND LEGS. AND I DID NOT SEE ANY.

6 Q. WHAT WAS HIS Demeanor OR EMOTIONAL AFFECT ---

7 A. HE WAS EXCITED.

8 Q. --- WHILE YOU WERE SPEAKING WITH HIM?

9 A. HE WAS EXCITED AT THE TIME.

10 Q. DID YOU THEN OFFER HIM TRANSPORTATION TO THE LAW
11 ENFORCEMENT CENTER ---

12 A. I DID.

13 Q. --- THAT NIGHT?

14 A. PER INVESTIGATOR CAMPBELL, I GUESS THAT HE HAD SPOKEN
15 WITH MR. HUDSON, AND I WAS ASKED TO GIVE MR. HUDSON A RIDE
16 DOWN TO THE LAW ENFORCEMENT CENTER.

17 Q. AND WAS HE IN ANY KIND OF CUSTODY AT THE TIME THAT ---

18 A. NO, MA'AM.

19 Q. --- YOU DID THAT?

20 A. NO, MA'AM.

21 Q. HE WAS -- WAS HE RESTRAINED IN ANY WAY ---

22 A. NO, MA'AM.

23 Q. --- WHEN YOU TRANSPORTED HIM?

24 A. (NEGATIVE NOD).

25 Q. THOSE ARE ALL THE QUESTIONS I HAVE, DEPUTY. PLEASE

1 ANSWER ANY MR. WARDER HAS.

2 CROSS EXAMINATION BY MR. WARDER:

3 Q. YOU SAID YOU OBSERVED SOME BRUISES, IS THAT RIGHT?

4 A. THAT'S RIGHT, SIR.

5 Q. WHERE WERE THE BRUISES YOU OBSERVED?

6 A. ON THE FOREHEAD, THE CHEST AREA. I REMEMBER THE BUSTED
7 UPPER LIP. LOWER LEG, LOWER LEFT LEG, THE -- HER BOTTOM AND
8 HER BACK.

9 Q. TELL ME ABOUT THE BRUISE ON THE FOREHEAD. WAS IT --
10 WHAT COLOR WAS IT?

11 A. IT WAS JUST -- IT WAS JUST VERY LIGHT. I JUST REMEMBER
12 HAVING THE BRUISE POINTED OUT TO ME.

13 Q. WELL, TELL ME WHAT WAS POINTED OUT, WHAT IT LOOKED
14 LIKE. YOU SAID IT WAS A LIGHT -- A LIGHT SPOT POINTED OUT
15 TO YOU?

16 A. ALL I CAN SAY, WHEN I WALKED UP THE NURSES SAID, LOOK
17 AT THE BRUISE MARKS.

18 Q. OKAY. I'M NOT INTERESTED IN WHAT THEY SAID. I'M
19 INTERESTED IN WHAT YOU OBSERVED, YOUR PERSONAL OBSERVATION,
20 IF YOU SAW THESE THINGS.

21 A. I DID.

22 Q. OKAY. YOU SAW A LIGHT SPOT ON THE HEAD. WHAT ELSE DID
23 YOU SEE?

24 A. A BUSTED UPPER LIP OR SPLIT LIP.

25 Q. OKAY. WAS IT BLEEDING WHEN YOU SAW IT OR ---

- 1 A. YES, SIR.
- 2 Q. --- HAD IT BEEN CLEANED UP?
- 3 A. YES, SIR.
- 4 Q. IT WAS STILL BLEEDING?
- 5 A. YES, SIR.
- 6 Q. OKAY. WHAT ELSE DID YOU SEE?
- 7 A. SOME BRUISE TO THE CHEST AREA RIGHT IN HERE.
- 8 Q. TELL ME ---
- 9 A. JUST BRUISING.
- 10 Q. --- ABOUT THAT. WHAT DID THE BRUISE LOOK LIKE?
- 11 A. JUST -- IT LOOKED LIKE A BRUISE.
- 12 Q. OKAY. BLACK?
- 13 A. I WOULDN'T -- IT WAS VERY LIGHT. IT WASN'T DARK.
- 14 Q. WELL, THIS IS A DARK SKINNED CHILD.
- 15 A. UM-HUM (AFFIRMATIVE).
- 16 Q. SO IT'S OF THE NEGRO OR THE BLACK RACE, IS THAT RIGHT?
- 17 A. YES, SIR.
- 18 Q. THIS CHILD WAS -- WAS IT LIGHT COMPLETED OR WAS IT
- 19 DARK COMPLETED?
- 20 A. I THINK SHE WAS -- I'D HAVE TO SEE HER AGAIN, BUT AT
- 21 THE TIME I THINK SHE WAS LIGHT ENOUGH TO WHERE I COULD SEE
- 22 SOME BRUISING.
- 23 Q. OKAY. AND THE BRUISE YOU SAW, WAS IT DISCOLORED WITH
- 24 BLOOD?
- 25 A. NOT THAT I RECALL.

1 Q. OKAY. WOULD IT HAVE HAD THAT BLUE CHARACTERISTIC?

2 A. DARKER CHARACTERISTIC THAN HER NORMAL SKIN.

3 Q. OKAY. SO IT WAS AN AREA THAT WAS DARKER THAN WHAT THE
4 SURROUNDING SKIN WAS, IS THAT RIGHT?

5 A. YES, SIR.

6 Q. OKAY. WHAT OTHER MARKS DID YOU OBSERVE?

7 A. THE ONES THAT REALLY STAND OUT IN MY MIND WERE THE ONES
8 ON HER BACK.

9 Q. OKAY. TELL ME ABOUT THAT.

10 A. IT JUST LOOKED LIKE THREE WHIP MARKS.

11 Q. THREE ---

12 A. YES, SIR.

13 Q. --- WHIP MARKS? HOW LONG?

14 A. PROBABLY FOUR OR FIVE INCHES.

15 Q. FOUR OR FIVE INCHES?

16 A. YES, SIR.

17 Q. OKAY. WERE THEY CLOSE TOGETHER, FAR APART?

18 A. I WOULD HAVE TO SAY THEY WERE PROBABLY AN INCH.

19 Q. THREE ---

20 A. I DIDN'T MEASURE THEM. I JUST KNOW I SAW THREE MARKS.

21 Q. THREE AN INCH APART, IS THAT ---

22 A. THAT'S WHAT I WOULD ---

23 Q. --- WHAT YOU'RE TELLING ME THAT YOU OBSERVED?

24 A. --- GUESS AT SAYING.

25 Q. OKAY. AND WHAT COLORATION DID YOU NOTICE ABOUT THAT?

1 A. DARK ENOUGH TO WHERE I COULD SEE THEM.

2 Q. ANY INDICATION OF BLOOD OR ANYTHING IN THEM?

3 A. I DON'T KNOW, SIR.

4 Q. NONE OF THEM BROKE THE SKIN, DID THEY?

5 A. I DID NOT SEE BLOOD COMING OUT OF THEM.

6 Q. OKAY. ANYTHING ELSE YOU NOTICED?

7 A. NO, SIR.

8 Q. YOU TRANSPORTED MR. HUDSON FROM THE HOSPITAL TO WHERE?

9 A. TO THE LAW ENFORCEMENT -- I THINK I JUST MET ONE OF THE
10 INVESTIGATORS DOWN AT THE LAW ENFORCEMENT CENTER.

11 Q. OKAY. AND YOU TOLD US HE WAS EXCITED?

12 A. YES, SIR.

13 Q. DID YOU HAVE A CONVERSATION WITH HIM ON THE WAY DOWN?

14 A. I DO NOT RECALL.

15 Q. WHEN YOU GOT DOWN THERE DID YOU STAY AND DID YOU HAVE
16 CONVERSATION WITH HIM DOWN THERE?

17 A. NO, SIR. I TURNED HIM OVER TO INVESTIGATORS.

18 Q. WAS HE PLACED IN HANDCUFFS FOR THIS TRANSPORT OR ---

19 A. NO, SIR.

20 Q. RIDE IN THE FRONT OR THE BACK?

21 A. BACK.

22 Q. AND THAT WASN'T -- WAS THAT AN EMERGENCY TRANSPORT OR
23 WAS IT -- WITH THE LIGHTS GOING OR WAS IT ---

24 A. NO, SIR, JUST A REGULAR TRANSPORT. NO LIGHTS, SIREN.

25 Q. AND WHEN HE GOT THERE WAS HE FREE TO LEAVE?

1 A. YES, SIR, AS FAR AS I KNEW. I WAS ASKED BY
2 INVESTIGATOR CAMPBELL.

3 Q. WELL, WAS HE WILLING, WAS HE GOING 'CAUSE HE WANTED TO
4 GO DOWN AND EXPLAIN?

5 A. I WAS JUST ASKED TO GIVE HIM A RIDE, SIR. THAT'S ALL I
6 -- AND HE DIDN'T SAY ANYTHING. HE JUST GOT IN MY CAR AND WE
7 TOOK A RIDE DOWN TO THE LAW ENFORCEMENT CENTER.

8 Q. DID MARQUES OPEN THE DOOR AND GET IN BY HIMSELF?

9 A. I WOULD THINK I'D OPEN THE DOOR FOR HIM.

10 Q. OKAY. HE WILLINGLY GOT IN?

11 A. YES, SIR.

12 Q. TRYING TO COOPERATE.

13 A. UM-HUM (AFFIRMATIVE).

14 Q. THANK YOU.

15 THE COURT: ANY REDIRECT?

16 MS. SEAY: NO, SIR. MAY THIS DEPUTY BE EXCUSED?

17 THE COURT: YES. ANY OBJECTION, MR. WARDER?

18 MR. WARDER: NO, YOUR HONOR.

19 THE COURT: THANK YOU. YOU'RE EXCUSED.

20 MS. SEAY: THE STATE CALLS DR. ALLISON JONES.

21 ALLISON JONES, M. D.,

22 BEING DULY SWORN TESTIFIED AS FOLLOWS:

23 MADAME CLERK: STATE YOUR NAME FOR THE RECORD.

24 DR. JONES: ALLISON MARIA JONES.

25 DIRECT EXAMINATION BY MS. SEAY:

1 Q. DR. JONES, HOW ARE YOU EMPLOYED?

2 A. AS A PEDIATRIC EMERGENCY ROOM PHYSICIAN.

3 Q. AND WHERE ARE YOU EMPLOYED?

4 A. AT GREENVILLE MEMORIAL HOSPITAL.

5 Q. HOW LONG HAVE YOU BEEN WORKING THERE?

6 A. SINCE 1994.

7 Q. DO YOU HAVE ANY PREVIOUS MEDICAL EXPERIENCE PRIOR TO
8 THAT?

9 A. WELL, I DID MY RESIDENCY IN GREENVILLE. I WORKED IN
10 EAST TENNESSEE CHILDREN'S HOSPITAL EMERGENCY ROOM IN
11 KNOXVILLE, TENNESSEE FROM '92 TO '94.

12 Q. WOULD YOU BRIEFLY DESCRIBE YOUR EDUCATION AND YOUR
13 TRAINING?

14 A. I HAVE A DEGREE IN BIOLOGY FROM THE COLLEGE OF
15 CHARLESTON AND MEDICAL DEGREE FROM THE MEDICAL UNIVERSITY OF
16 SOUTH CAROLINA IN CHARLESTON, GRADUATED MEDICAL SCHOOL IN
17 1989. AND I FINISHED -- I DID A PEDIATRIC'S RESIDENCY AT
18 GREENVILLE MEMORIAL FROM '89 TO '92.

19 Q. AND DURING YOUR EXPERIENCE THERE IS IT FAIR TO SAY THAT
20 YOU'VE SEEN A GOOD NUMBER OF CHILDREN IN YOUR WORK?

21 A. YES.

22 Q. HAVE YOU TESTIFIED IN COURT BEFORE?

23 A. YES, I HAVE.

24 Q. IN THE STATE OF SOUTH CAROLINA?

25 A. YES.

1 Q. HAVE YOU TESTIFIED IN THE FAMILY COURT?

2 A. YES.

3 Q. HAVE YOU TESTIFIED IN THE COURT OF GENERAL SESSIONS?

4 A. YES.

5 Q. AND HAVE YOU PREVIOUSLY BEEN QUALIFIED AS AN EXPERT IN
6 YOUR FIELD?

7 A. YES, I HAVE.

8 MS. SEAY: YOUR HONOR, ---

9 Q. LET ME ASK YOU, APPROXIMATELY HOW MANY TIMES HAVE YOU
10 BEEN QUALIFIED AS AN EXPERT IN YOUR FIELD?

11 A. AT LEAST FIVE THAT I'VE TESTIFIED IN COURT. I DON'T
12 KNOW -- I CAN'T GIVE YOU AN EXACT NUMBER.

13 MS. SEAY: YOUR HONOR, I'D OFFER HER AS AN EXPERT IN
14 PEDIATRICS.

15 THE COURT: ANY VOIR DIRE?

16 MR. WARDER: NO, YOUR HONOR.

17 THE COURT: SHE'S QUALIFIED. PROCEED.

18 Q. DR. JONES, WHAT SHIFT WERE YOU WORKING ON OCTOBER 12TH
19 OF 2003?

20 A. I WORK THE NIGHT SHIFT. SO I COME IN AT SEVEN PM AND
21 LEAVE AT SEVEN AM.

22 Q. DURING YOUR SHIFT DID YOU HAVE OCCASION TO SEE A CHILD
23 NAMED ?

24 A. YES, I DID.

25 Q. HOW DID YOU COME ABOUT SEEING HER?

1 A. SHE CAME IN THE MORNING OF OCTOBER THE 13TH
2 UNRESPONSIVE AND LOOKING PRETTY BRUISED AND BATTERED. THE
3 STORY THAT WAS GIVEN TO US FROM THE PATERNAL AUNT'S
4 BOYFRIEND WAS THAT HE HAD BEEN GIVING THE CHILD A BATH
5 AROUND 11:30 THAT EVENING AND THAT SHE HAD -- HIS DIRECT
6 WORDS TO ME WAS THAT SHE HAD GONE BALLISTIC IN THE BATHTUB
7 AND THAT SHE HAD SLIPPED AND FALLEN UNDER THE WATER AND THAT
8 HE TRIED TO PICK -- WHEN HE PICKED HER UP THAT SHE WAS
9 UNRESPONSIVE.

10 AND HE PUT HIS FINGERS IN HER MOUTH TO SEE IF MAYBE SHE
11 HAD MAYBE GOTTEN SOMETHING IN HER MOUTH, AND SHE HADN'T,
12 THAT HE HAD THEN PICKED HER UP OUT OF THE BATHTUB AND TAKEN
13 HER TO -- HE NEEDED TO MAKE A PHONE CALL TO CALL 911,
14 APPARENTLY DIDN'T HAVE A PHONE IN HIS HOME, AND SAID THAT AS
15 HE WENT DOWN THE STAIRS HE FELL WITH HER, CALLED 911 AND EMS
16 BROUGHT HER IN. SO SHE GOT THERE PROBABLY A LITTLE AFTER, I
17 THINK THE NURSE'S NOTE SAYS SHE GOT THERE ABOUT TEN AFTER
18 MIDNIGHT ON THE MORNING OF THE 13TH.

19 Q. AND WAS SHE BROUGHT IN BY EMS?

20 A. YES.

21 Q. DID HE TELL YOU -- WELL, LET ME BACK UP AND ASK YOU
22 FIRST, WOULD YOU DESCRIBE IN DETAIL THE INJURIES THAT YOU
23 NOTED ON RUSHANTI?

24 A. WELL, SHE HAD SOME BRUISING TO HER FOREHEAD AREA ON THE
25 RIGHT SIDE AND SOME -- SEVERAL BRUISES AND MARKS ACROSS HER

1 CHEST AND HER BACK. AND THEN SHE ALSO HAD SOME BRUISING
2 ACROSS BOTH OF HER THIGHS. SHE WAS UNRESPONSIVE. SHE
3 DIDN'T HAVE ANY PURPOSEFUL MOVEMENTS, BUT SHE DID HAVE WHAT
4 WE CALL POSTURING, PULLING HER ARMS AND LEGS IN TOWARD HER
5 BODY, WHICH TYPICALLY INDICATES EITHER SEIZURE ACTIVITY OR A
6 HEAD INJURY.

7 Q. HOW WOULD YOU DESCRIBE HER CONDITION AT THAT TIME?

8 A. SHE'S CRITICALLY ILL.

9 Q. WHAT WERE YOUR IMMEDIATE CONCERNS AS FAR AS TREATING
10 HER?

11 A. OUR TYPICAL APPROACH TO ANY PERSON WHO COMES IN IN THAT
12 SITUATION IS TO MAKE SURE THAT THEY'RE BREATHING NORMALLY,
13 THAT THEIR CIRCULATION IS INTACT AND THAT THEY HAVE A DECENT
14 AIRWAY. SHE DID HAVE A NORMAL PULSE FOR HER AGE. AND SHE
15 WAS BREATHING ON HER OWN. SHE WAS PLACED ON MONITORS THAT
16 INDICATED THAT HER OXYGEN SATURATION WAS OKAY.

17 SHE DIDN'T RESPOND TO US PUTTING IVs AND STICKING HER
18 AND DOING THE THINGS THAT WE NEED TO DO TO ESTABLISH A
19 CIRCULATORY SYSTEM AND MAKE SURE THAT WE HAVE ACCESS FOR
20 MEDICATIONS. SHE DIDN'T OPEN HER EYES TO US CALLING HER.
21 SHE WAS BASICALLY -- BASICALLY COULDN'T GET ANY RESPONSE
22 FROM HER.

23 Q. YOU DESCRIBED SOME INJURIES THAT YOU SAID WERE BRUISING
24 AND THAT TYPE THING. DID YOU GATHER ANY FURTHER INFORMATION
25 ABOUT HOW THOSE INJURIES WERE RECEIVED?

1 A. WELL, THE STORY WAS THAT SHE'D FALLEN IN THE BATHTUB
2 AND THAT THEN HIS ATTEMPT TO REMOVE HER FROM THE HOME SO HE
3 COULD GET TO A TELEPHONE WAS THAT THEY HAD FALLEN DOWN THE
4 STAIRS. THERE WERE SOME BRUISES -- THE BRUISES ACROSS HER
5 THIGHS HAD SOME STREAKS OR LINEARITY TO THEM, WHICH LOOKED
6 MORE LIKE HAND PRINTS TO ME AT THE TIME.

7 THERE WERE ALSO SOME BRUISES ON HER BACK THAT HAD A
8 SPECIFIC PATTERN TO THEM. THEY LOOKED LIKE STRAP OR WHIP
9 MARKS. AND HE TOLD ME THAT THOSE SPECIFICALLY HE HAD
10 INFLICTED BECAUSE SHE HAD BEEN -- HER BEHAVIOR HAD BEEN BAD
11 IN THE TUB EARLIER. HE HAD TWO OTHER CHILDREN THAT WERE
12 ALSO IN THE BATHTUB WITH HER AND THAT HE HAD WHIPPED HER AND
13 THAT'S WHERE THE BRUISES ON HER BACK HAD COME FROM.

14 Q. DR. JONES, IN YOUR TRAINING AND YOUR EDUCATION AND YOUR
15 EXPERIENCE DO YOU HAVE AN OPINION ABOUT WHETHER *child* S
16 INJURIES WERE CONSISTENT WITH WHAT MR. HUDSON SAID HAPPENED?

17 A. IN MY OPINION, NO. THE INJURIES WERE EXCESSIVE FOR THE
18 HISTORY THAT WAS GIVEN.

19 Q. THANK YOU. PLEASE ANSWER ANY QUESTIONS THAT MR. WARDER
20 MIGHT HAVE.

21 THE COURT: MR. WARDER.

22 CROSS EXAMINATION BY MR. WARDER:

23 Q. DOCTOR, DID YOU SEE *child* JUST ON THAT NIGHT OR DID
24 YOU STAY AS HER PHYSICIAN OVER HER HOSPITALIZATION?

25 A. NO, JUST THAT EVENING OR THAT MORNING.

1 Q. OKAY. THE INJURIES YOU SAW, THE BRUISING, HOW OLD WAS
2 THAT BRUISING?

3 A. I DON'T RECALL THAT. I DON'T HAVE, YOU KNOW, IT SAYS
4 THAT -- MY NOTES SAY THAT THE BRUISES WERE REDDISH IN COLOR,
5 WHICH TYPICALLY ARE EARLY BRUISES, LESS THAN TWENTY-FOUR
6 HOURS.

7 Q. OKAY. WOULD -- REDDISH IN COLOR, WOULD THAT BE A LIGHT
8 BRUISE OR WOULD IT BE DARKER THAN THE SKIN COLOR?

9 A. DEPENDS ON THE DEPTH OF THE BRUISE.

10 Q. THE BRUISES YOU OBSERVED THAT NIGHT?

11 A. I CAN'T ANSWER THAT QUESTION. ALL I HAVE IS THAT THEY
12 WERE REDDISH IN COLOR.

13 Q. THE CHILD WAS UNRESPONSIVE?

14 A. YES.

15 Q. WHAT WAS CAUSING THAT?

16 A. WELL, AS IT -- AS HER TESTING WENT ON -- SHE HAD A CT
17 OF HER HEAD THAT INDICATED THAT SHE HAD A RIGHT SUBDURAL
18 HEMATOMA, WHICH IS BLOOD AROUND THE BRAIN. AND THAT IS
19 TYPICALLY THE REASON FOR OBSTINATION OR NOT BEING
20 RESPONSIVE.

21 Q. OKAY. COULD YOU TELL HOW OLD THAT WAS?

22 A. NO. RADIOLOGISTS AND THE NEUROSURGEONS ARE MORE
23 QUALIFIED TO ANSWER THAT QUESTION.

24 Q. ARE YOU TRAINED IN THAT AREA?

25 A. I'M NOT TRAINED SPECIFICALLY IN READING X-RAYS AND CTs.

1 Q. YOU TOLD US THAT IT WAS YOUR PROFESSIONAL OPINION THAT
2 THE FALL AS DESCRIBED BY MY CLIENT DIDN'T CONTRIBUTE TO THE
3 INJURIES.

4 A. I FELT THAT -- I THINK THAT THE BRUISING AND THE
5 INJURIES WERE EXCESSIVE FOR THAT HISTORY.

6 Q. OKAY. CAN YOU TELL US WHAT INJURY YOU FELT WAS
7 EXCESSIVE?

8 A. WELL, I THINK THAT THE -- MY NOTES INDICATE THAT THE
9 BRUISES WERE MORE CONSISTENT WITH HAND PRINTS ACROSS HER
10 LEGS.

11 Q. OKAY. LET'S TALK ABOUT THAT THEN.

12 A. UM-HUM (AFFIRMATIVE).

13 Q. ON THE FRONT SIDE OR THE BACK SIDE OF HER LEGS?

14 A. ON THE FRONT AND LATERAL SIDES OF HER LEGS.

15 Q. OKAY. AS I STAND HERE, THE FRONT LATERAL -- THE FRONT
16 WOULD BE THIS, THE LATERAL WOULD BE THE OUTSIDE OR THE
17 INSIDE?

18 A. THE OUTSIDE.

19 Q. OKAY. SO THE BRUISES WERE ON THE FRONT AND ON THE
20 OUTSIDE OF HER LEG?

21 A. OF BOTH LEGS, YES.

22 Q. OKAY. AND DID YOU TELL ME THAT THOSE WERE CONSISTENT
23 WITH HAND PRINTS?

24 A. THAT'S WHAT I THOUGHT THEY LOOKED LIKE AT THE TIME,
25 YES.

1 Q. LIKE GRIPPING?

2 A. PERHAPS.

3 Q. SO IT LOOKED LIKE THE CHILD HAD BEEN GRIPPED OR
4 SQUEEZED THERE?

5 A. SURE.

6 Q. OKAY. IS THAT CONSISTENT WITH FALLING AND GRABBING OR
7 HOLDING ONTO THE CHILD?

8 A. NOT IN MY OPINION.

9 Q. OKAY. SO YOU WOULDN'T THINK THAT SOMEBODY WOULD GRIP
10 OR CLUTCH OR SQUEEZE SOMEBODY FALLING DOWN THE STAIRS?

11 A. NOT IN A SYMMETRICAL WAY ACROSS THE THIGHS.

12 Q. OKAY. WHAT POSITION WOULD THE CHILD BE IN FOR THAT --
13 THOSE HAND PRINTS THE WAY YOU SAW THEM?

14 A. I DON'T RECALL WHETHER -- HOW MANY PRINTS WERE THERE,
15 HOW MANY STREAKS WERE THERE. IT COULD BE EITHER WAY.

16 Q. ANY OTHER MARK YOU FELT WAS INCONSISTENT?

17 A. INCONSISTENT WITH HAVING -- IF THE INJURIES HAD BEEN
18 SUSTAINED FROM A FALL?

19 Q. NO. I THOUGHT THAT THE SET OF FACTS YOU WERE GIVEN AND
20 YOUR OPINION WAS RENDERED ON WAS A SET OF FACTS THAT THE
21 CHILD WAS PUT IN THE BATHTUB AND THAT THE CHILD HAD HAD SOME
22 SORT OF FIT AND STOOD UP AND FELL OVER AND HIT ITS HEAD,
23 THAT THE CHILD HAD THEN BEEN PICKED UP, MAYBE SOME ACT OF
24 RESUSCITATION HAD BEEN ATTEMPTED ON THE CHILD. THE CHILD
25 HAD THEN BEEN ATTEMPTED TO BE CARRIED DOWN THE STAIRS AND

1 THAT THE PERSON THAT HAD CUSTODY FELL WITH THE CHILD DOWN A
2 FLIGHT OF STAIRS. WAS THAT THE SET OF FACTS THAT WE WERE
3 TALKING ABOUT?

4 A. RIGHT.

5 Q. OKAY. AND YOU TOLD THE SOLICITOR IN RESPONSE TO HER
6 QUESTIONS THAT YOU FELT THE INJURIES DIDN'T COME FROM THOSE
7 EVENTS AS DESCRIBED IN THAT BRIEF DESCRIPTION, IS THAT
8 RIGHT?

9 A. RIGHT.

10 Q. AND I'M TRYING TO DECIDE WHAT INJURIES YOU THINK GAVE
11 YOU REASON TO FORM THAT OPINION.

12 A. WELL, I THOUGHT THAT THE LEVEL OF OBSTINATION, THE FACT
13 THAT SHE HAD BRUISES THAT WERE SYMMETRICAL ACROSS HER
14 THIGHS, SHE HAD WHIP MARKS ACROSS HER BACK AT FIFTEEN MONTHS
15 OLD, THAT IT WAS MORE LIKELY THAT THESE WERE NOT ACCIDENTAL
16 TRAUMA BRUISES.

17 Q. OKAY. SO WHIPPING -- AND I THOUGHT THAT THAT WAS ON
18 HER BACK OR ON HER BUTTOCKS OR WHERE WERE THEY AT SO WE ALL
19 ---

20 A. ON HER BACK.

21 Q. OKAY. AND IT WAS KIND OF AN AREA OF THE BACK THAT'S UP
22 WITH OUR SHOULDER BLADES AND THEN THERE'S AN AREA OF THE
23 BACK THAT'S KIND OF DOWN AT OUR RIB CAGE. AND THEN I TAKE
24 IT THERE'S OUR BUTTOCKS, THAT AREA. WHICH ONE OF THOSE
25 THREE AREAS AS I DESCRIBED IN SOME POOR FASHION, I'M SURE,

1 WERE THE MARKS IN?

2 A. I REALLY CAN'T ANSWER THAT. ACCORDING TO THIS I HAVE
3 THAT SHE'S GOT THESE MARKS ACROSS HER BACK ---

4 Q. OKAY.

5 A. TWO LINEAR MARKS. I DON'T KNOW SPECIFICALLY WHERE ON
6 HER BACK THEY WERE.

7 Q. COULD YOU DETERMINE WHETHER OR NOT THE MARKS WERE
8 OLDER, NEWER OR ABOUT THE SAME AGE AS THE HAND PRINTS ON THE
9 THIGHS?

10 A. THEY WERE DIFFERENT TYPES OF BRUISES, BUT THEY ALL
11 LOOKED CONSISTENT WITH ABOUT THE SAME TIME.

12 Q. OKAY. NOW THERE'S A WAY THAT YOU GRADE BRUISING, ISN'T
13 THERE? I MEAN, THERE'S A SCALE THAT DOCTORS USE THAT IF A
14 BRUISE HAS SUCH A COLOR THAT IT'S ABOUT SO OLD AND THEY CAN
15 TELL ...

16 A. YOU CAN MAKE SOME GENERAL ASSESSMENTS. REDDISH BRUISES
17 ARE TYPICALLY EARLY. BLUISH BRUISES ARE TYPICAL --
18 TYPICALLY MID AT SOME POINT. AND THE YELLOW, BROWNISH
19 BRUISES THAT YOU GET ARE AS THE BRUISE DISSIPATES OR THE
20 BODY'S TAKING CARE OF IT.

21 Q. OKAY. NOW SO THAT I HAVE -- WE HAVE NONE OF THE
22 YELLOWISH BRUISE, IS THAT RIGHT?

23 A. RIGHT.

24 Q. AND WE HAVE NONE OF THE BLUISH BRUISE ON THE CHILD?

25 A. RIGHT.

1 Q. AND WE HAVE WHAT YOU DESCRIBE IS REDDISH BRUISE?

2 A. YES.

3 Q. OKAY. WITH THE REDDISH BRUISE, THE REDDISH THAT YOU'VE
4 SEEN, WOULD THAT DEVELOP INTO THE BLUISH BRUISE? IS THAT AN
5 EARLY STAGE OR MIGHT IT JUST BE THAT THE DEGREE OF IT WAS
6 WHAT WOULD CAUSE REDNESS AND NO MORE?

7 A. WELL, BRUISES TYPICALLY FOLLOW SOME TYPE AS THEY'RE
8 ORGANIZING AND THE BODY'S GETTING RID OF THEM, THERE'S
9 TYPICALLY A COLOR CHANGE THROUGHOUT THE COURSE OF THE
10 BRUISE.

11 Q. OKAY. DID YOU OBSERVE THESE BRUISES AT ANY LATER DATE
12 TO SEE WHAT COLOR CHANGES THERE WAS?

13 A. NO.

14 Q. DID YOU NOTICE ANYTHING ON THE CHEST IN THE AREA I
15 WOULD DESCRIBE AS BELOW THE NIPPLE LINE, KIND OF THAT AREA
16 OF THE CHEST?

17 A. I'M LOOKING FOR SPECIFICALLY WHERE I HAVE REFERENCE TO
18 THAT. I JUST HAVE RED BRUISING NOTED TO CHEST AND ABDOMEN.

19 Q. OKAY. IF SOMEBODY TRIES TO REVIVE A CHILD DO THEY USE
20 THE SAME TYPE OF CPR THAT WOULD BE USED WITH AN ADULT? DO
21 YOU DEPRESS THE CHEST AND ...

22 A. YES.

23 Q. WILL THAT LEAVE MARKS OR COLORATION CONSISTENT WITH
24 WHAT YOU SAW?

25 A. WE DO A FAIR NUMBER OF RESUSCITATION AND WE DON'T

1 TYPICALLY HAVE BRUISING. YOU KNOW, I DON'T RECALL THERE
2 BEING ANY HISTORY THAT THERE WAS A RESUSCITATION ATTEMPT
3 OTHER THAN THE FINGER SWEEP OF THE MOUTH.

4 Q. HOW BOUT THE BACK? IF YOU PATTED OR COMPRESSED THE
5 BACK TO TRY AND REVIVE, WOULD THAT CAUSE MARKS CONSISTENT
6 WITH WHAT YOU SAW?

7 A. NOT THE WHIP MARKS ON HER BACK THAT HE SAID HE HAD DONE
8 HIMSELF.

9 Q. THE WHIP MARKS STAND OUT. AND I WANT TO TALK ABOUT
10 THAT. WAS THE ONE WHIP MARK THAT -- ONE OF THOSE WHIP
11 LOOKING MARKS THAT WAS DIFFERENT FROM THE OTHERS OR WERE
12 THEY ALL THREE THE SAME?

13 A. I DON'T HAVE ANYTHING SPECIFICALLY WRITTEN ABOUT
14 WHETHER THEY WERE DIFFERENT THAN ANY OTHER.

15 Q. DOCTORS GIVE OPINIONS USUALLY TO WHAT WE CALL A
16 REASONABLE MEDICAL CERTAINTY.

17 A. RIGHT.

18 Q. ARE YOU FAMILIAR WITH THAT?

19 A. UM-HUM (AFFIRMATIVE).

20 Q. ARE YOU SAYING TO A REASONABLE MEDICAL CERTAINTY THESE
21 INJURIES COULDN'T HAPPEN AS DESCRIBED OR ARE YOU JUST SAYING
22 I DIDN'T THINK IT HAPPENED THAT WAY?

23 A. IN MY OPINION TO A REASONABLE MEDICAL CERTAINTY I DON'T
24 THINK THE BRUISES HAPPENED THAT WAY.

25 Q. THANK YOU.

1 THE COURT: ANY REDIRECT?

2 MS. SEAY: NO, SIR, YOUR HONOR. MAY DR. JONES BE
3 EXCUSED AT THIS TIME?

4 THE COURT: TAKE THE JURY OUT FOR A RECESS AT THIS
5 TIME. YOU CAN STEP DOWN, DOCTOR.

6 (WHEREUPON THE JURY EXITED THE COURTROOM AT 3:04 PM)

7 **THE COURT:** OKAY, MR. WARDER, I'M GOING TO ADDRESS THIS
8 OTHER MATTER I HAVE RIGHT NOW. SO I'LL GIVE YOU AND YOUR
9 DEFENDANT A RECESS.

10 (WHEREUPON THE DEFENDANT EXITED THE COURTROOM AT 3:05
11 PM)

12 THE COURT: ALL RIGHT. MR. WARDER, YOU'RE WELCOME TO
13 STAY OR YOU CAN BE AT EASE FOR A FEW MINUTES.

14 MR. WARDER: YES, SIR.

15 (WHEREUPON COURT WAS IN RECESS AT 3:05 PM TO HANDLE
16 CONTEMPT HEARING)

17 THE COURT: OKAY. BRING THE JURY.

18 (WHEREUPON THE JURY ENTERED THE COURTROOM AT 3:16 PM)

19 THE COURT: ALL RIGHT. SOLICITOR, NEXT WITNESS.

20 MS. SEAY: THE STATE CALLS MELISSA TRYLING.

21 MELISSA TRYLING, BEING

22 DULY SWORN TESTIFIED AS FOLLOWS:

23 **MADAME CLERK:** STATE YOUR NAME FOR THE RECORD.

24 MS. TRYLING: MELISSA KATHLEEN TRYLING.

25 DIRECT EXAMINATION BY MS. SEAY:

1 Q. MS. TRYLING, WHERE ARE YOU EMPLOYED?

2 A. GREENVILLE MEMORIAL HOSPITAL.

3 Q. WHAT'S YOUR OCCUPATION THERE?

4 A. I'M A REGISTERED NURSE.

5 Q. HOW LONG HAVE YOU BEEN WORKING THERE?

6 A. I'VE BEEN WITH THE GREENVILLE HOSPITAL SYSTEM SINCE
7 SEPTEMBER OF 1997, IN THE EMERGENCY DEPARTMENT SINCE JANUARY
8 OF 2003.

9 Q. WOULD YOU PLEASE DESCRIBE YOUR EDUCATION AND YOUR
10 TRAINING TO PERFORM YOUR DUTIES?

11 A. I HAVE A BACHELORS OF SCIENCE IN NURSING, WHICH I
12 GRADUATED WITH IN 2000. I AM A EMERGENCY ROOM NURSE. I
13 HAVE BEEN TRAINED IN TRAUMA CARE, WHICH IS RECERTIFIED EVERY
14 FOUR YEARS. I AM ALSO A FORENSICS NURSE AT THIS TIME.

15 Q. WERE YOU WORKING ON THE EVENING OF OCTOBER 12TH OVER
16 AND INTO OCTOBER 13TH?

17 A. YES, MA'AM.

18 Q. DID YOU HAVE OCCASION ON THAT DATE TO SEE MARQUES
19 HUDSON?

20 A. YES, MA'AM.

21 Q. WHAT WERE THE CIRCUMSTANCES?

22 A. MR. HUDSON WAS BROUGHT BACK -- I WAS WORKING IN
23 INTERMEDIATE CARE THAT EVENING. HE WAS BROUGHT BACK FROM X-
24 RAY TO ONE OF MY ROOMS, ROOM NUMBER 16 WHERE HE WAS PLACED
25 TO CONTINUE HIS OBSERVATION OR CONTINUE HIS EVALUATION.

1 Q. WHAT WAS HE BEING OBSERVED FOR?

2 A. HE HAD STATED THAT HE HAD FALLEN DOWN APPROXIMATELY
3 FIFTEEN OR SO STEPS. HE -- WHEN HE ORIGINALLY -- MAY I
4 REFER TO MY CHART?

5 Q. YES.

6 A. WHEN HE ORIGINALLY CAME IN THROUGH TRIAGE HE HAD
7 COMPLAINED OF FALLING DOWN APPROXIMATELY FIFTEEN PLUS STEPS.
8 HE WAS COMPLAINING OF LEFT LOWER BACK PAIN, RIGHT SHOULDER
9 PAIN, HAD A TINGLING IN HIS LEFT FOOT AND NECK STIFFNESS.

10 Q. DID YOU EXAMINE HIM?

11 A. YES, I DID.

12 Q. WHAT WERE THE RESULTS OF YOUR EXAM?

13 A. I FOUND NO EVIDENCE OF TRAUMA.

14 Q. DID HE HAVE ANY BROKEN BONES?

15 A. NO, MA'AM.

16 Q. DID HE HAVE ANY BRUISES?

17 A. NO, MA'AM.

18 Q. DID HE HAVE ANY LACERATIONS?

19 A. NO, MA'AM.

20 Q. DID HE HAVE ANY ABRASIONS?

21 A. NO, MA'AM.

22 Q. DID HE HAVE ANY INTERNAL INJURIES?

23 A. NOT THAT I COULD DETERMINE. THERE WAS -- ACTUALLY WHEN
24 MR. HUDSON CAME TO MY AREA HE'D SAID -- HE'D STATED THAT HE
25 HAD ALREADY HAD IBUPROFEN AND HE HAD NO COMPLAINTS WHEN HE

1 CAME TO MY AREA.

2 Q. SO WHAT DID YOU DOCUMENT ABOUT YOUR EXAMINATION OF HIM?

3 A. HIS EXAMINATION WAS COMPLETELY NORMAL. THERE WAS NO
4 EVIDENCE OF TRAUMA. AND I DOCUMENTED A NURSING DIAGNOSIS OF
5 ALTERATION AND COMFORT, WHICH A NURSING DIAGNOSIS FALLS IN
6 ORDER OF SEVERITY, OBVIOUSLY THE MOST SEVERE BEING
7 INEFFECTIVE AIRWAY CLEARANCE. MOVING ON DOWN THE ABSOLUTE
8 LOWEST SEVERITY IS ALTERATION OF COMFORT BECAUSE THAT JUST
9 MEANS THERE'S NO LACERATIONS, NO BRUISING, NO RISK FOR
10 INFECTION, NO ALTERATION IN COPING MECHANISM.

11 Q. SO HOW WAS HE TREATED FOR AN ALTERATION IN COMFORT?

12 A. HE WAS GIVEN IBUPROFEN PRIOR TO HIS ARRIVAL IN MY AREA.
13 AND THE ONLY THING THAT WE DID WAS GIVE HIM DISCHARGE
14 INSTRUCTIONS TO RETURN IF HE FELT LIKE HE NEEDED TO.

15 Q. DO YOU RECALL WHAT HIS EMOTIONAL AFFECT OR DEMEANOR WAS
16 AT THE TIME THAT YOU EXAMINED HIM?

17 A. IT WAS -- THERE WAS NOTHING OUTSTANDING ABOUT HIS
18 AFFECT. HE CAME IN, SAT DOWN ON A STRETCHER, SAID, I'M
19 FINE. AND WHEN HE WAS DISCHARGED HE SAID, THANK YOU, AND
20 WALKED OUT.

21 Q. AND YOU DID NOT SEE *child* AS PART OF YOUR
22 DUTIES, IS THAT CORRECT?

23 A. NO, MA'AM, I DID NOT.

24 Q. THOSE ARE ALL THE QUESTIONS I HAVE. PLEASE ANSWER ANY
25 THAT MR. WARDER MIGHT HAVE FOR YOU.

1 THE COURT: MR. WARDER.

2 CROSS EXAMINATION BY MR. WARDER:

3 Q. WHAT WAS IT -- WHAT WAS THE TIME YOU SAW MR. HUDSON?

4 A. HE CAME BACK TO MY AREA AFTER HIS X-RAYS AT 3:00 IN THE
5 MORNING.

6 Q. OKAY. THERE WERE X-RAYS TAKEN BEFORE YOU SAW HIM?

7 A. HE CAME DIRECTLY TO ME FROM X-RAY.

8 Q. OKAY. AND THAT WAS AT THREE AM?

9 A. YES, SIR.

10 Q. OKAY. AND HOW LONG DID YOU -- WERE YOU WITH HIM?

11 A. I HAD HIM, ACCORDING TO MY CHART, ONE HOUR AND TWENTY-
12 FIVE MINUTES.

13 Q. ONE HOUR AND TWENTY-FIVE MINUTES?

14 A. YES, SIR.

15 Q. WHAT DID YOU DO FOR AN HOUR AND TWENTY-FIVE MINUTES TO
16 SOMEBODY THAT YOU COULD FIND NOTHING TO TREAT OR ---

17 A. SINCE HE -- I'M SORRY.

18 Q. WHAT DID YOU DO FOR AN HOUR AND TWENTY-FIVE MINUTES IF
19 YOU DIDN'T SEE ANY INJURIES?

20 A. SINCE HE CAME DIRECTLY FROM X-RAY WE WAITED FOR THE
21 RADIOLOGIST TO VERIFY THAT THERE WERE NO INJURIES NOTED ON
22 THE X-RAY. THE DOCTOR REEVALUATED HIM AT 3:50 TO DISCUSS
23 PLAN OF CARE. THE DOCTOR THEN WROTE DISCHARGE INSTRUCTIONS
24 AND THE TIME ELAPSED. AND THE NEXT THIRTY-FIVE MINUTES WAS
25 THE DOCTOR WRITING INSTRUCTIONS AND GIVING THEM TO ME.

1 Q. OKAY. SO WHAT REALLY HAPPENED WAS HE GOT OUT OF X-RAY
2 AND CAME AND SAT IN YOUR AREA FOR NEARLY AN HOUR?

3 A. YES, SIR.

4 Q. AND YOU WEREN'T TREATING HIM FOR ANYTHING?

5 A. THERE WAS NOTHING TO TREAT AT THAT TIME.

6 Q. HE WASN'T COMPLAINING ABOUT ANYTHING TO YOU, WAS HE?

7 A. NO, SIR.

8 Q. YOU JUST KIND OF WATCHED HIM AS HE SAT AND WAITED FOR
9 THE DOCTOR?

10 A. YES, SIR.

11 Q. THANK YOU.

12 THE COURT: ANY REDIRECT?

13 MS. SEAY: JUST BRIEFLY.

14 REDIRECT EXAMINATION BY MS. SEAY:

15 Q. I WANT TO CLARIFY, MS. TRYLING. HE SAID YOU JUST SAT
16 AND WATCHED HIM. NOW YOU TESTIFIED THAT YOU EXAMINED HIM
17 DURING THIS TIME PERIOD. DID ---

18 A. I ---

19 Q. --- YOU EXAMINE HIM?

20 A. I EXAMINED HIM AT 3:00 WHEN HE CAME BACK. AND THEN WE
21 WAITED FOR FURTHER INSTRUCTIONS FROM THE DOCTOR, WHICH THERE
22 -- IF THERE'S NOTHING TO TREAT, THERE'S NOTHING MORE THAT I
23 CAN DO UNTIL WE HAVE DISCHARGE INSTRUCTIONS.

24 Q. THANK YOU.

25 THE COURT: THANK YOU. STEP DOWN.

1 MS. SEAY: AND MAY SHE BE EXCUSED ---

2 THE COURT: ANY OBJECTION ---

3 MS. SEAY: --- IF SHE DESIRES?

4 THE COURT: --- EXCUSING THIS WITNESS?

5 MR. WARDER: NO, YOUR HONOR.

6 **THE COURT:** THANK YOU, MA'AM. YOU'RE EXCUSED. ALL
7 RIGHT, SOLICITOR.

8 MS. SEAY: THE STATE CALLS DR. ROBERT SEIGLER.

9 ROBERT SEIGLER, M. D.,

10 BEING DULY SWORN TESTIFIED AS FOLLOWS:

11 MADAME CLERK: STATE YOUR NAME FOR THE RECORD.

12 DR. SEIGLER: ROBERT SEIGLER.

13 DIRECT EXAMINATION BY MS. SEAY:

14 Q. DR. SEIGLER, WHERE ARE YOU CURRENTLY EMPLOYED?

15 A. I'M THE MEDICAL DIRECTOR OF THE PEDIATRIC INTENSIVE
16 CARE UNIT AT THE GREENVILLE MEMORIAL HOSPITAL.

17 Q. HOW LONG HAVE YOU BEEN IN THAT POSITION?

18 A. SINCE 1991.

19 Q. PRIOR TO THAT WHAT IS YOUR MEDICAL EXPERIENCE?

20 A. FOR FIVE YEARS BEFORE THAT I WAS IN PRIVATE PRACTICE,
21 GENERAL PEDIATRICS AND THAT FOLLOWED BY TRAINING IN
22 PEDIATRICS.

23 Q. AND WOULD YOU PLEASE DESCRIBE WHAT YOUR EDUCATION AND
24 TRAINING IN YOUR FIELD IS?

25 A. I GRADUATED FROM THE MEDICAL SCHOOL IN CHARLESTON IN

1 1982 AND THEN DID A THREE YEAR RESIDENCY IN PEDIATRICS AND
2 THEN DID A ONE YEAR FELLOWSHIP IN PEDIATRIC INTENSIVE CARE.

3 Q. DO YOU, IN ADDITION TO YOUR DUTIES, HAVE CONTINUING
4 EDUCATION THAT IS REQUIRED AS PART OF YOUR PRACTICE?

5 A. YES. THERE ARE SEVERAL FORMS OF CONTINUING EDUCATION.
6 WE HAVE TO TAKE AND PASS A BOARD EXAMINATION EVERY SEVEN
7 YEARS. AND I'VE REPEATED THAT. I'VE TAKEN THAT EXAM THREE
8 TIMES AND PASSED IT THREE TIMES. AND THEN WE HAVE TO HAVE A
9 CERTAIN NUMBER OF CONTINUING MEDICAL EDUCATION CREDITS EVERY
10 TWO YEARS TO MAINTAIN A LICENSE TO PRACTICE MEDICINE IN THE
11 STATE.

12 Q. WHAT ARE YOUR BOARD CERTIFICATIONS?

13 A. I'M CERTIFIED IN GENERAL PEDIATRICS AND PEDIATRIC
14 INTENSIVE CARE.

15 Q. WOULD YOU INDICATE WHETHER YOU ARE FAMILIAR WITH THE
16 CURRENT MEDICAL LITERATURE THAT INVOLVES YOUR PRACTICE AS
17 WELL?

18 A. YES, I'M FAMILIAR, MAYBE NOT WITH ABSOLUTELY ALL OF IT,
19 BUT THE MAJORITY OF IT.

20 Q. CAN YOU GIVE US AN IDEA OF JUST WHAT YOUR DUTIES ARE AS
21 A PEDIATRIC INTENSIVE CARE DOCTOR?

22 A. I HAVE PRIMARY RESPONSIBILITIES OF PROVIDING COVERAGE
23 IN THE PEDIATRIC INTENSIVE CARE UNIT AT GREENVILLE MEMORIAL
24 HOSPITAL AND PROVIDE THAT COVERAGE ON A ROTATING BASIS WITH
25 THREE OF MY COLLEAGUES. IN ADDITION TO THAT WE HAVE SOME

1 RESPONSIBILITIES OUTSIDE OF THE ICU, BUT THE PRIMARY
2 RESPONSIBILITY IS IN THE PEDIATRIC ICU.

3 Q. IN YOUR EXPERIENCE HAVE YOU DIAGNOSED AND TREATED
4 CHILDREN WHO HAVE BEEN VICTIMS OF CHILD ABUSE?

5 A. YES.

6 Q. CAN YOU GIVE AN ESTIMATE AS TO THE NUMBER OF CASES YOU
7 MAY HAVE DEALT WITH?

8 A. I WOULD SAY PROBABLY A HUNDRED, MAYBE TWO HUNDRED OVER
9 TWENTY YEARS.

10 Q. I'M SORRY, I DIDN'T HEAR -- WHAT ---

11 A. I WOULD GUESS BETWEEN ONE AND TWO HUNDRED OVER TWENTY
12 YEARS.

13 Q. AND, DR. SEIGLER, HAVE YOU TESTIFIED IN THE COURTS OF
14 SOUTH CAROLINA BEFORE TODAY?

15 A. YES.

16 Q. WHAT COURTS HAVE YOU TESTIFIED IN?

17 A. I DON'T KNOW THE NAMES OF THE COURTS. FAMILY COURT,
18 CRIMINAL COURT.

19 Q. AND HAVE YOU TESTIFIED IN COUNTIES OTHER THAN
20 GREENVILLE?

21 A. YES.

22 Q. DO YOU KNOW APPROXIMATELY HOW MANY TIMES YOU'VE
23 TESTIFIED?

24 A. PROBABLY AVERAGE TWO OR THREE TIMES A YEAR OVER THE
25 LAST TWENTY YEARS.

1 Q. AND HAVE YOU PREVIOUSLY BEEN QUALIFIED AS AN EXPERT IN
2 ANY OF THOSE COURTS?

3 A. YES.

4 Q. DO YOU KNOW ABOUT HOW MANY TIMES?

5 A. ABOUT THE SAME NUMBER OF TIMES.

6 Q. OKAY.

7 MS. SEAY: YOUR HONOR, I'M GOING TO OFFER DR. ROBERT
8 SEIGLER AS AN EXPERT IN PEDIATRIC INTENSIVE CARE.

9 THE COURT: MR. WARDER, ANY VOIR DIRE TESTIMONY ---

10 MR. WARDER: NO, YOUR HONOR.

11 THE COURT: --- AS TO HIS EXPERTISE?

12 THE COURT: HE'S QUALIFIED. PROCEED.

13 MS. SEAY: THANK YOU.

14 Q. DR. SEIGLER, I'D LIKE TO DRAW YOUR ATTENTION TO OCTOBER
15 12TH AND 13TH OF 2003. DID YOU HAVE OCCASION TO SEE A
16 PATIENT NAMED *Child* SMITH?

17 A. YES.

18 Q. CAN YOU PLEASE EXPLAIN HOW YOU CAME TO SEE HER?

19 A. I WAS ON CALL FOR THE PEDIATRIC ICU AT THE TIME THE
20 PATIENT CAME INTO THE EMERGENCY ROOM AND WAS CALLED TO THE
21 EMERGENCY ROOM TO ASSIST IN STABILIZING THE CHILD AND THEN
22 TRANSPORTING THE PATIENT UP TO THE PEDIATRIC ICU AND
23 PROVIDING FURTHER CARE IN THE ICU.

24 Q. WHAT WAS HER CONDITION AT THAT TIME THAT YOU INITIALLY
25 BECAME INVOLVED?

1 A. CRITICAL. SHE WAS -- I FIRST SAW HER IN THE EMERGENCY
2 ROOM. AND VERY SHORTLY AFTER I ARRIVED IN CONJUNCTION WITH
3 THE EMERGENCY ROOM PHYSICIAN WE DETERMINED THAT SHE HAD A
4 SIGNIFICANT ALTERATION IN HER MENTAL STATUS, SEVERE ENOUGH
5 TO -- FOR US TO PLACE HER ON A BREATHING MACHINE, PUT A TUBE
6 INTO HER WINDPIPE AND PUT HER ON A BREATHING MACHINE.

7 SHE HAD NOT ACTUALLY QUIT BREATHING, BUT THAT'S A
8 STANDARD INTERVENTION THAT WE PERFORM IF SOMEONE HAS --
9 APPEARS TO HAVE SUFFERED A SEVERE BRAIN INJURY. WE DID THAT
10 IN THE EMERGENCY ROOM. AND THEN AFTER SOME OTHER
11 STABILIZING ISSUES IN THE EMERGENCY ROOM WE TOOK HER UP TO
12 THE PEDIATRIC ICU.

13 Q. DID YOU OBSERVE EXTERNAL INJURIES ON THIS BABY?

14 A. YES.

15 Q. CAN YOU DESCRIBE THOSE?

16 A. WELL, SHE HAD NUMEROUS BRUISES. DO WE HAVE THE CHART?
17 THIS MIGHT TAKE A MINUTE.

18 **THE COURT:** LET'S GIVE THE JURY A SHORT RECESS WHILE
19 THE DOCTOR'S LOCATING THAT. TAKE THE JURY OUT PLEASE.

20 (WHEREUPON THE JURY EXITED THE COURTROOM AT 3:30 PM)

21 **THE COURT:** OKAY. WE'LL TAKE -- YES.

22 **MS. SEAY:** IF I MAY, WHILE THEY'RE ON BREAK, COULD I GO
23 AHEAD AND ASK THE CLERK TO MARK THESE PHOTOGRAPHS FOR ---

24 **THE COURT:** CERTAINLY.

25 **MS. SEAY:** --- US?

1 THE COURT: SURE.

2 MS. SEAY: WE INTEND TO INTRODUCE THEM SHORTLY.

3 THE COURT: OKAY. WE'LL TAKE A SHORT RECESS.

4 (WHEREUPON COURT WAS IN RECESS AT 3:31 PM)

5 (WHEREUPON STATE'S EXHIBITS 3 - 21 WERE MARKED FOR
6 IDENTIFICATION)

7 THE COURT: MR. WARDER SEEN THE PHOTOGRAPHS?

8 MS. SEAY: YES, SIR.

9 THE COURT: ANY OBJECTION TO THE PHOTOGRAPHS, MR.
10 WARDER?

11 MR. WARDER: I THINK THEY'RE THE SAME ONES I HAVE.

12 MS. SEAY: YES.

13 MR. WARDER: NO OBJECTION.

14 THE COURT: SO THEY'RE IN WITHOUT OBJECTION?

15 MR. WARDER: (AFFIRMATIVE NOD).

16 (WHEREUPON STATE'S EXHIBITS 3 - 21 WERE ENTERED INTO
17 EVIDENCE)

18 THE COURT: ALL RIGHT. BRING OUR JURY PLEASE.

19 (WHEREUPON THE JURY ENTERED THE COURTROOM AT 3:39 PM)

20 THE COURT: OKAY, SOLICITOR.

21 MS. SEAY: THANK YOU, YOUR HONOR.

22 DIRECT EXAMINATION CONTINUED BY MS. SEAY:

23 Q. DR. SEIGLER, YOU WERE GOING TO FIND THE RECORDS THERE
24 IN ORDER TO EXPLAIN THE EXTERNAL INJURIES THAT YOU SAW ON

25

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1 A. I NOTED TEN BRUISES. THERE WAS ONE ON THE RIGHT THIGH,
2 WHICH ACTUALLY CONSISTED OF THREE SEPARATE LINEAR STRIPES.
3 AND I NOTED THE MEASUREMENT. ONE WAS FORTY-FIVE
4 MILLIMETERS, THE SECOND, FORTY-FIVE MILLIMETERS, AND THE
5 THIRD, THIRTY-FIVE MILLIMETERS. THEY APPEARED TO BE RED TO
6 PURPLE AND APPEARED TO BE FAIRLY RECENT.

7 THE SECOND WAS A BRUISE ON THE LEFT THIGH, WHICH AGAIN
8 WAS ACTUALLY TWO SMALL SEPARATE LESIONS. ONE MEASURED ABOUT
9 TWENTY-FIVE BY TEN MILLIMETERS, THE OTHER TEN BY TEN
10 MILLIMETERS. THE THIRD WAS IN THE LEFT UPPER QUADRANT OF
11 THE ABDOMEN. IT APPEARED TO BE A SCRATCH. IT MEASURED
12 ABOUT FIFTY-FIVE MILLIMETERS LONG.

13 THERE WAS ONE OF THE XIPHOID AREA, THAT'S THE BREAST
14 BONE THAT WAS RED IN NATURE THAT MEASURED ABOUT TWENTY-FIVE
15 CENTIMETERS, TWENTY-FIVE MILLIMETERS BY FORTY MILLIMETERS
16 AND DID NOT HAVE A PARTICULAR SHAPE TO IT. THE FIFTH WAS
17 ON THE MID PORTION OF THE UPPER LIP. AND THAT WAS A RED
18 LESION ON THE MID PART OF THE UPPER LIP. THE SIXTH WAS ON
19 THE FOREHEAD. AND THAT WAS IN THE MIDDLE PART OF THE
20 FOREHEAD THAT MEASURED ABOUT THIRTY-FIVE MILLIMETERS BY
21 FIFTEEN MILLIMETERS.

22 THE SEVENTH WAS A RED LESION THAT WAS IN THE MIDDLE OF
23 THE BACK EXTENDING FROM FLANK TO FLANK, IN OTHER WORDS,
24 RUNNING ACROSS FROM SIDE TO SIDE ACROSS THE BACK. IT
25 MEASURED ABOUT SIXTY-FIVE MILLIMETERS IN LENGTH. AND I

1 WROTE IT APPEARS TO HAVE A PATTERN OF A CHAIN.

2 THE EIGHTH WAS ON THE RIGHT UPPER BACK THAT WAS RED AND
3 HAD NO PARTICULAR PATTERN. THE NINTH WAS A RED LESION ON
4 THE BACK SIDE OF THE RIGHT SHOULDER. AND THE TENTH WAS A
5 RED LESION ON THE -- OVER THE LEFT UPPER BACK.

6 Q. AND THOSE WERE HER EXTERNAL INJURIES?

7 A. THAT'S CORRECT.

8 Q. DR. SEIGLER, I WANT TO SHOW YOU STATE'S EXHIBITS 3
9 THROUGH 21 AND ASK IF YOU RECOGNIZE THESE PHOTOGRAPHS?

10 A. YES. THOSE WERE OF THE PATIENT THAT WE'RE TALKING
11 ABOUT.

12 Q. OKAY. AND ARE THESE PHOTOGRAPHS ACCURATE DEPICTIONS OF
13 THE INJURIES YOU OBSERVED BACK IN OCTOBER OF 2003?

14 A. YES.

15 Q. DO THEY APPEAR TO HAVE BEEN ALTERED IN ANY WAY?

16 A. NOT AS FAR AS I CAN TELL.

17 Q. OKAY. DOCTOR, WHAT I'D LIKE TO DO IS PROJECT THESE
18 PHOTOGRAPHS SO THAT YOU CAN BETTER EXPLAIN WHAT YOU WERE
19 JUST DESCRIBING TO THE JURY. THAT'S STATE'S EXHIBIT 4.

20 A. WELL, THE TAPE COVERS THE BRUISE ON HER UPPER LIP. I
21 DON'T THINK WE CAN SEE THAT. AND THE LESION ON HER
22 FOREHEAD, ON THE UPPER PART OF THE FOREHEAD SLIGHTLY --
23 SLIGHTLY TO HER RIGHT OF THE MIDLINE. AND I WROTE THAT IT
24 APPEARS TO HAVE A CENTRAL INDENTATION THAT APPEARED TO BE
25 TENDER TO TOUCH. THIS IS ABOUT THIRTY-FIVE MILLIMETERS,

1 WHICH IS ABOUT AN INCH AND A HALF BY FIFTEEN MILLIMETERS
2 WHICH IS ABOUT A HALF AN INCH.

3 Q. AND STATE'S EXHIBIT 5, IS THAT ESSENTIALLY TO SCALE OF
4 WHAT YOU WERE JUST DESCRIBING?

5 A. YES.

6 Q. STATE'S EXHIBIT 7, WHICH INJURY DOES THIS DEPICT?

7 A. THIS WOULD BE THE THIRD ONE THAT I DESCRIBED, THE LEFT
8 UPPER QUADRANT OF THE ABDOMEN, I'M SORRY, THE LEFT UPPER
9 QUADRANT OF THE ABDOMEN WAS A SCRATCH. I THINK THAT THIS
10 PHOTOGRAPH WAS MADE AFTER I DICTATED THIS NOTE. AND WHAT WE
11 SEE HERE IN THE MID UPPER PORTION OF THE ABDOMEN WAS NOT
12 APPARENT AT MY INITIAL EXAM.

13 Q. NOW THAT IT IS APPARENT DO YOU HAVE AN OPINION BASED ON
14 YOUR TRAINING AND EXPERIENCE AS TO WHAT TYPE OF MECHANISM
15 WOULD CAUSE SUCH BRUISE?

16 A. MOST LIKELY IT WOULD BE SOME FORM OF BLUNT TRAUMA.

17 Q. STATE'S EXHIBIT 6 IS, I BELIEVE, THAT SAME INJURY WITH
18 THE SCALING THERE TO SHOW THE SIZE, IS THAT RIGHT?

19 A. YES.

20 Q. STATE'S EXHIBIT 8.

21 A. THIS IS THE FIRST BRUISE THAT I DESCRIBED THAT HAS
22 ACTUALLY THREE LINEAR STRIPES ON THE OUTER PART OF THE UPPER
23 RIGHT THIGH. THE ONE CLOSEST TO THE ABDOMEN WAS NEARLY TWO
24 INCHES LONG. THE MIDDLE ONE WAS NEARLY TWO INCHES LONG.

25 AND THE ONE CLOSEST TO THE KNEE WAS A LITTLE BIT

1 SHORTER THAN THAT, ABOUT ONE AND A HALF INCHES LONG. AND IT
2 APPEARS TO BE WHAT WE CALL A PATTERN BRUISE MEANING THE
3 BRUISE TAKES ON THE PATTERN OF THE OBJECT THAT CAME INTO
4 CONTACT WITH THE SKIN. IN THIS CASE, BASED ON MY
5 EXPERIENCE, I THINK THIS IS MOST LIKELY REPRESENTATIVE OF
6 FINGERS GRIPPING THE THIGH VERY TIGHTLY.

7 Q. STATE'S EXHIBIT 9, WHICH AREA IS THIS?

8 A. THIS IS THE -- THIS IS THE SECOND LESION THAT I
9 DESCRIBED. THIS IS THE UPPER PORTION OF THE LEFT THIGH.
10 AND I DESCRIBED TWO LESIONS WHICH MEASURE -- THE FIRST ONE
11 MEASURES ROUGHLY AN INCH BY A HALF AN INCH. AND THE SECOND
12 ONE MEASURED ROUGHLY A HALF AN INCH BY A HALF AN INCH.

13 Q. DO YOU HAVE AN OPINION AS TO THE MECHANISM OF THIS
14 PATTERN TYPE BRUISE?

15 A. THIS HAD -- I DID NOT WRITE IT IN MY NOTES. AND I
16 THINK IT HAS SOME CHARACTERISTICS OF A PATTERN INJURY, BUT
17 LESS SO THAN THE ONE ON THE RIGHT THIGH.

18 Q. AND I BELIEVE THIS IS A DEPICTION OF THAT SAME INJURY
19 TO SCALE?

20 A. THAT'S CORRECT.

21 Q. STATE'S EXHIBIT 11, WILL YOU DETERMINE WHAT AREA THAT
22 IS?

23 A. AGAIN, I DON'T THINK I RECORDED THIS PARTICULAR LESION
24 IN MY INITIAL DOCUMENTATION. THIS LOOKS LIKE THIS IS THE
25 LEFT -- THE OUTER ASPECT OF THE LEFT UPPER THIGH.

1 Q. STATE'S EXHIBIT 12.

2 A. IT'S HARD FOR ME TO TELL WHAT PART OF THE BODY THAT IS.

3 Q. LET ME START WITH STATE'S EXHIBIT 13.

4 A. THIS IS A VIEW OF THE LEFT SIDE OF HER FLANK AND LEFT

5 BACK. THE TENTH LESION I DESCRIBED WAS AN ERYTHEMATOUS

6 AMORPHOUS LESION OVER THE LEFT SCAPULA. THE SCAPULA IS THE

7 SHOULDER BLADE. AND WHEN I EXAMINED HER IT WAS BASICALLY

8 JUST A RED BRUISE THAT DID NOT REFLECT ANY PARTICULAR

9 PATTERN.

10 Q. STATE'S EXHIBIT 14.

11 A. THIS IS A DIFFERENT VIEW OF THE SAME BRUISE.

12 Q. STATE'S EXHIBIT 15.

13 A. THIS IS THE SEVENTH LESION THAT I DESCRIBED. IT WAS

14 RED IN COLOR, IS A PATTERN INJURY ABOUT SIXTY-FIVE

15 MILLIMETERS LONG, WHICH IS ABOUT TWO AND A HALF INCHES LONG.

16 AND I PUT IN MY NOTE THAT IT APPEARED -- THAT IT APPEARS TO

17 HAVE A PATTERN OF A CHAIN RUNNING FROM SIDE TO SIDE ACROSS

18 HER BACK PERPENDICULAR TO THE SPINAL CORD.

19 Q. AND MAYBE JUST A DIFFERENT ANGLE OF THAT SAME INJURY.

20 A. AGAIN, IT'S HARD TO TELL EXACTLY. WE'RE LOOKING AT HER

21 BACK. IT'S HARD TO TELL WHAT'S UP AND WHAT'S DOWN HERE, BUT

22 THAT'S, I BELIEVE, A DIFFERENT VIEW OF THE SAME INJURY. IN

23 THIS -- THE WAY YOU HAVE IT SHOWN THERE IT'S RUNNING FROM

24 THE TOP OF THE SCREEN TO THE BOTTOM OF THE SCREEN, WHICH IS

25 RUNNING ACROSS HER BACK FROM SIDE TO SIDE.

1 Q. AND STATE'S EXHIBIT 19, I THINK, IS A FULL PICTURE OF
2 HER BACK, IS THAT CORRECT?

3 A. AND AGAIN, WE'RE LOOKING AT HER BACK. AND WE'RE
4 LOOKING AT THE SAME INJURY. AND WE'RE ROUGHLY ON HER RIGHT
5 FLANK AGAIN RUNNING FROM SIDE TO SIDE ACROSS HER BACK. AND
6 THEN IN THE RIGHT UPPER PORTION YOU CAN BEGIN TO SEE THE
7 BRUISE THAT WAS -- I DESCRIBED AS BEING ON THE UPPER -- THE
8 RIGHT UPPER BACK A RED BRUISE WITHOUT A PARTICULAR PATTERN
9 IN THE UPPER PORTION OF THE RIGHT SIDE OF HER BACK.

10 Q. AND DID WE GENERALLY ADDRESS EVERYTHING THAT YOU HAD
11 NOTED, DOCTOR?

12 A. I BELIEVE YOU COVERED MOST OF THE BRUISES I'VE
13 DESCRIBED.

14 Q. DOES STATE'S EXHIBIT 3 ACCURATELY REFLECT THE CONDITION
15 OF *child* WHEN SHE WAS SEEN AT THE HOSPITAL?

16 A. AGAIN, I'M NOT SURE EXACTLY WHEN THIS PHOTOGRAPH WAS
17 MADE. IT -- SHE'S NOT ON A BREATHING MACHINE HERE. IT
18 COULD HAVE BEEN MADE IN THE EMERGENCY ROOM PRIOR TO MY
19 ARRIVAL. I THINK FOR A BRIEF PERIOD OF TIME IN THE
20 INTENSIVE CARE UNIT WE HAD TAKEN HER OFF THE VENTILATOR, THE
21 BREATHING MACHINE, BUT VERY SHORTLY THEREAFTER PUT HER BACK
22 ON.

23 WHAT YOU SEE HERE IS A TUBE THAT GOES THROUGH HER NOSE
24 INTO HER STOMACH TO DECOMPRESS HER STOMACH. SOMEONE'S
25 HOLDING AN OXYGEN MASK IN HER FACE. SHE HAS VARIOUS LEADS

1 HOOKED UP TO MEASURE HER HEART RATE AND RESPIRATORY RATE.
2 AND AS BEST YOU CAN TELL FROM A SINGLE PHOTOGRAPH SHE HAS A
3 SIGNIFICANT ALTERATION IN HER MENTAL STATUS.

4 Q. DR. SEIGLER, GOING BACK TO THE EXTERNAL INJURIES THAT
5 WE JUST LOOKED AT AND THAT YOU EXPLAINED IN YOUR EDUCATION
6 AND TRAINING AND EXPERIENCE DO YOU HAVE AN OPINION ABOUT
7 WHETHER THOSE INJURIES WERE ACCIDENTALLY INFLICTED?

8 A. WELL, YES. WHEN GIVEN THE FACT THAT SHE HAD THESE
9 BRUISES AND IN ADDITION TO THAT SHE HAD BLEEDING AROUND HER
10 BRAIN, SHE HAD BLEEDING IN THE BACK OF BOTH EYES, SHE HAD AN
11 INJURY TO ONE OF HER INTERNAL ORGANS CALLED THE PANCREAS AND
12 SHE HAD A SEVERE BRAIN INJURY. ALL OF THOSE THINGS PUT
13 TOGETHER WOULD REFLECT INJURY OR TRAUMA. AND IN THIS
14 SITUATION IN MY OPINION IT WOULD NOT BE ACCIDENTAL TRAUMA.

15 Q. DOCTOR, THE EXTERNAL INJURIES, JUST THOSE THAT WE JUST
16 SAW, WOULD THOSE HAVE BEEN PAINFUL FOR A SIXTEEN MONTH OLD
17 BABY TO RECEIVE?

18 A. I BELIEVE SO. THEY'RE BRUISES. BRUISES HURT.

19 Q. AGAIN, YOU JUST ALLUDED TO SOME OF THE OTHER INJURIES
20 THAT SHE HAD THAT WERE NOT VISIBLE. CAN YOU DESCRIBE WHAT
21 WAS DIAGNOSED IN TERMS OF HER NON-VISIBLE INJURIES AND WHAT
22 EACH ONE ENTAILS?

23 A. EARLIER ON IN THE EMERGENCY ROOM DID A CAT SCAN OF HER
24 BRAIN. AND IT SHOWED BLEEDING, FRESH BLEEDING BETWEEN THE
25 BRAIN AND THE SKULL. IN ADDITION WE REPEATED THE CAT SCAN

1 SEVERAL TIMES OVER THE NEXT TWENTY-FOUR TO FORTY-EIGHT
2 HOURS. I THINK SHE ACTUALLY HAD FOUR CAT SCANS WITHIN THE
3 FIRST TWENTY-FOUR TO FORTY-EIGHT HOURS.

4 AND PROGRESSIVELY THERE WAS BRAIN SWELLING IN ADDITION
5 TO THE BLEEDING. WE SEE BRAIN SWELLING AS A SIDE EFFECT OF
6 A SEVERE BRAIN INJURY. SHE HAD BLEEDING IN THE BACK OF BOTH
7 OF HER EYES. WE CALL THAT RETINAL HEMORRHAGES. AND THAT'S
8 A REFLECTION OF SEVERE INJURY.

9 SHE HAD AN -- WE DID AN ABDOMINAL CAT SCAN THAT WAS
10 NORMAL. SHE DID NOT HAVE ANY BLEEDING IN HER ABDOMEN, BUT
11 WE CHECKED -- IN ADDITION TO MANY THINGS THAT WE CHECKED ONE
12 OF THE ABNORMALITIES THAT WE FOUND WAS AN ELEVATED AMYLASE
13 AND LIPASE. THOSE ARE ENZYMES THAT CHECK ON THE PANCREAS.
14 AND BOTH OF THOSE WERE ELEVATED. AND A SITUATION LIKE THIS
15 THOSE ENZYMES ARE ELEVATED AS A RESULT OF INJURY TO THE
16 PANCREAS.

17 Q. DO YOU HAVE AN OPINION ABOUT THIS PHOTOGRAPH THAT WE'VE
18 ALREADY LOOKED AT, STATE'S EXHIBIT 7, AND WHETHER THAT
19 BRUISE IS IN ANY WAY RELATED TO THE PANCREAS INJURY?

20 A. I WOULD SAY MOST LIKELY IT IS BECAUSE THAT BRUISE SITS
21 DIRECTLY OVER THE PANCREAS.

22 Q. DO YOU HAVE AN OPINION ABOUT WHAT KIND OF FORCE WOULD
23 BE REQUIRED TO INFLICT SUCH AN INJURY ON A CHILD THIS AGE,
24 THIS SIZE?

25 A. WELL, SHE HAS MULTIPLE INJURIES. THE FORCE REQUIRED TO

1 INFLICT THE BRUISES WOULD BE MORE THAN A TAP, A PRETTY FIRM
2 HIT. THE FORCE TO INFLICT THE PANCREATITIS, WE SEE THAT
3 AFTER -- FREQUENTLY AFTER AUTOMOBILE ACCIDENTS. IF THE
4 CHILD IS WEARING A SEATBELT AND NOT A SHOULDER BELT, WE'LL
5 SEE PANCREATITIS AFTER THAT. IT REQUIRES A PRETTY
6 SIGNIFICANT AMOUNT OF FORCE.

7 ON THE OTHER HAND, TO PRODUCE THE BLEEDING ON THE
8 BRAIN, THE SUBDURAL HEMORRHAGE, AND THE BLEEDING IN HER
9 EYES, THE RETINAL HEMORRHAGES, REQUIRES MASSIVE FORCE. WE
10 RARELY SEE RETINAL HEMORRHAGES TO THIS DEGREE EVEN IN A
11 CHILD WHO'S BEEN IN A SEVERE CAR WRECK.

12 Q. WOULD YOU PLEASE FURTHER DESCRIBE THE INTERNAL BRAIN
13 INJURIES IN TERMS OF THE MECHANISM OF THAT KIND OF INJURY?
14 IS IT AN IMPACT? IS IT SOMETHING ELSE? CAN YOU DESCRIBE
15 HOW THAT HAPPENS?

16 A. WELL, THE BLEEDING THAT SHE HAD IS CALLED AN ACUTE
17 SUBDURAL HEMORRHAGE. AND THAT TAKES PLACE IN THE LAYERS OF
18 TISSUE THAT COVER THE BRAIN, THE LAYERS OF TISSUE BETWEEN
19 THE BRAIN AND THE SKULL. THERE ARE BLOOD VESSELS RUNNING
20 THROUGH THOSE TISSUES. WHEN THERE'S A SIGNIFICANT FORCE
21 THOSE BLOOD VESSELS CAN BE TORN AND BLEED. THAT'S THE CASE
22 HERE.

23 WE SEE THAT TYPE OF INJURY IN CHILDREN WHO HAVE HAD
24 OTHER TRAUMA, FOR EXAMPLE, HIGH SPEED MOTOR VEHICLE
25 ACCIDENTS, BEING KICKED IN THE HEAD BY A LARGE ANIMAL, THOSE

1 TYPE THINGS. BUT WE DO NOT USUALLY SEE THE RETINAL
2 HEMORRHAGES EVEN IN THE HIGH SPEED MOTOR VEHICLE ACCIDENTS
3 THAT PRODUCE ACUTE SUBDURAL HEMORRHAGES. WE DON'T USUALLY
4 SEE THE RETINAL HEMORRHAGES. AND WHEN WE DO THEY'RE VERY
5 TINY, LITTLE RETINAL HEMORRHAGES. THEY ARE NOT NEARLY TO
6 THE DEGREE THAT WE SEE HERE.

7 Q. CAN YOU DESCRIBE THE DEGREE OF RETINAL HEMORRHAGES THAT
8 WE'RE SEEING HERE?

9 A. WELL, I'D HAVE TO RELY ON THE OPHTHALMOLOGIST'S
10 DESCRIPTION FOR THAT. BUT THEY ARE RETINAL HEMORRHAGES THAT
11 EXTEND BOTH Laterally -- THESE ARE HEMORRHAGES IN THE BACK
12 OF THE EYE. THE FARTHER THEY GO OUT FROM THE MIDDLE OF THE
13 BACK OF THE EYE THE MORE CONSISTENT THEY ARE WITH NON-
14 ACCIDENTAL TRAUMA. AND HERS EXTENDED VERY FAR OUT TOWARD
15 THE PERIPHERY.

16 IN ADDITION, THERE ARE MULTIPLE LAYERS OF TISSUE TO THE
17 BACK OF THE EYE. AND THE MORE LAYERS THAT ARE INVOLVED THE
18 MORE LIKELY THESE RETINAL HEMORRHAGES ARE TO BE CONSISTENT
19 WITH A NON-ACCIDENT TYPE OF AN INJURY. AND HERS -- HER
20 RETINAL HEMORRHAGES WERE BOTH. THEY EXTENDED FAIRLY FAR OUT
21 TOWARD THE PERIPHERY AND THEY WERE PRETTY MUCH INVOLVING ALL
22 LAYERS OF TISSUE IN THE BACK OF THE EYE.

23 Q. WOULD THESE INJURIES, THE SUBDURAL DAMAGE TO THE BRAIN
24 AND THE RETINAL HEMORRHAGES, WOULD THAT HAVE BEEN A PAINFUL
25 EXPERIENCE FOR A SIXTEEN MONTH OLD?

1 A. POSSIBLY. ALTHOUGH SHE PROBABLY WOULD HAVE LOST
2 CONSCIOUSNESS VERY QUICKLY. THE AMERICAN ACADEMY OF
3 PEDIATRICS HAS A POLICY STATEMENT ON THESE TYPE INJURIES
4 WHICH SAYS, TO PARAPHRASE, THAT THE -- THAT A NON-MEDICAL
5 OBSERVER WHO WOULD WITNESS AN EVENT LIKE THIS WOULD
6 IMMEDIATELY RECOGNIZE IT AS BEING HARMFUL TO THE CHILD.
7 MOST PEOPLE INVOLVED WITH THIS TYPE OF MEDICINE FEEL LIKE
8 THESE CHILDREN LOSE CONSCIOUSNESS PRETTY QUICKLY.

9 Q. AND WHEN THAT HAPPENS WOULD YOU EXPECT OTHER SYMPTOMS
10 TO BEGIN ANY TIME IN THE CLOSE RANGE OF THE TIME PERIOD
11 THERE?

12 A. SHE SURELY WOULD HAVE HAD SOME SYMPTOMS. THEY CAN
13 VARY. SOME CHILDREN CAN JUST BE IRRITABLE AND FUSSY, NOT
14 WANT TO EAT, COULD HAVE VOMITING. OTHER CHILDREN WILL QUIT
15 BREATHING AND DIE IMMEDIATELY. SOME CHILDREN HAVE SEIZURES.
16 SOME CHILDREN WILL LAPSE QUICKLY INTO A COMA. THERE ARE A
17 VARIETY OF SYMPTOMS THAT WE CAN SEE WITH THIS TYPE OF AN
18 INJURY.

19 I DIDN'T SEE HER UNTIL ABOUT APPROXIMATELY TWO HOURS
20 AFTER -- ONE TO TWO HOURS AFTER SHE WAS ADMITTED TO THE
21 EMERGENCY ROOM. THEN SHE HAD MANY OF THOSE SYMPTOMS WHEN I
22 SAW HER.

23 Q. DID HER CONDITION, DURING THE TIME THAT SHE WAS AT
24 GREENVILLE MEMORIAL HOSPITAL PEDIATRIC INTENSIVE CARE UNIT,
25 DID IT REMAIN THE SAME OR DID IT CHANGE?

1 A. IT CHANGED. SHE DETERIORATED OVER THE NEXT FEW DAYS AS
2 IS TYPICAL WITH THIS TYPE OF A CASE. WHEN THE BRAIN IS
3 BADLY INJURED IT TENDS TO SWELL. AND THAT SWELLING TENDS TO
4 GET WORSE OVER THE FIRST TWO TO THREE DAYS AFTER -- AFTER
5 ADMISSION. AND THAT'S WHAT HAPPENED HERE.

6 SHE WAS REASONABLY STABLE WHEN WE ADMITTED HER TO THE
7 INTENSIVE CARE UNIT, BUT OVER THE NEXT TWELVE TO TWENTY-FOUR
8 HOURS HER CONDITION DETERIORATED. WE REPEATED THE CAT SCAN
9 SEVERAL TIMES.

10 WE HAD THE NEUROSURGEON PLACE A PRESSURE MONITOR INTO
11 HER BRAIN SO THAT WE COULD DIRECTLY MEASURE THE PRESSURE
12 AROUND HER BRAIN. AND THAT ALLOWS US TO MORE ACCURATELY
13 TAILOR OUR TREATMENT IN EFFORTS TO SHRINK THE BRAIN
14 SWELLING. WE DID THAT.

15 AND I THINK THAT PRESSURE MONITOR STAYED IN FOR ABOUT
16 TEN TO TWELVE DAYS, WHICH IS A REFLECTION THAT SHE CONTINUED
17 TO HAVE BRAIN SWELLING OVER -- MORE THAN A WEEK, WHICH IS A
18 REFLECTION, AGAIN, OF A SEVERE BRAIN INJURY.

19 Q. AND DID YOU CONVEY THIS INFORMATION TO HER FAMILY, THAT
20 THIS WAS A POTENTIALLY LIFE THREATENING ISSUE?

21 A. YES, I DID. I INDICATED TO THE FAMILY EARLY ON, I
22 THINK THAT FIRST NIGHT, THAT I DIDN'T SEE ANYTHING THAT
23 LOOKED IMMEDIATELY LIFE THREATENING, WHICH MEANS THAT I
24 DIDN'T THINK SHE WAS GOING TO DIE WITHIN THE NEXT HOUR OR
25 TWO, BUT THAT THINGS COULD BECOME LIFE THREATENING. AND AS

1 I JUST DESCRIBED, THEY DID OVER THE NEXT FEW DAYS. THERE
2 WAS A CONCERN AMONGST ME AND MY PARTNERS THAT SHE MIGHT NOT
3 SURVIVE THOSE FIRST FEW DAYS.

4 Q. DID YOU REQUEST FURTHER ATTENTION FOR *child* IN
5 REGARDS TO HER RETINAL HEMORRHAGES?

6 A. YES. WE ASKED THE PEDIATRIC OPHTHALMOLOGIST TO LOOK AT
7 HER EYES.

8 Q. DOCTOR, I WANT TO SHOW YOU STATE'S EXHIBIT NUMBER 2,
9 WHICH IS FOR IDENTIFICATION PURPOSES AND ASK IF YOU
10 RECOGNIZE THIS?

11 A. YES.

12 Q. AND HAVE YOU HAD AN OPPORTUNITY TO REVIEW THAT
13 STATEMENT?

14 A. I'VE READ THROUGH IT ONE TIME.

15 Q. DO YOU HAVE AN OPINION ABOUT THAT STATEMENT AND WHETHER
16 ---

17 **MR. WARDER:** YOUR HONOR, ---

18 Q. --- THESE INJURIES ---

19 **THE COURT:** HOLD ON, HOLD ON.

20 **MR. WARDER:** I HAVE AN OBJECTION, THAT IT'S NOT IN
21 EVIDENCE.

22 **THE COURT:** HE'S TESTIFIED HE'S READ IT. AND SO FAR
23 IT'S OKAY, OKAY? ALL RIGHT. FINISH YOUR QUESTION THOUGH,
24 SOLICITOR.

25 Q. DR. SEIGLER, DO YOU HAVE AN OPINION AS TO WHETHER THE

1 INJURIES TO THIS CHILD'S HEAD COULD HAVE RESULTED FROM, SAY,
2 FALLING FORWARD INTO A BATHTUB?

3 A. WELL, IT WOULD BE POSSIBLE FOR HER TO HAVE SUSTAINED
4 THE BRUISE ON HER FOREHEAD BY FALLING FORWARD WHILE SHE WAS
5 IN THE BATHTUB AND STRIKING THE WALL OR THE SIDE OF THE
6 BATHTUB. IT WOULD NOT BE POSSIBLE FOR HER TO HAVE THE
7 BLEEDING AROUND HER BRAIN OR THE SEVERE BRAIN INJURY OR THE
8 BLEEDING IN HER EYES FROM THE SAME TYPE OF AN INJURY,
9 FALLING IN THE BATHTUB.

10 Q. BASED ON YOUR EDUCATION, EXPERIENCE, TRAINING DO YOU
11 HAVE AN OPINION AS TO WHETHER ANY OF THESE INJURIES THAT
12 RUSHANTI SUSTAINED COULD HAVE RESULTED FROM A FALL DOWN
13 FIFTEEN STEPS OR SO?

14 A. AGAIN, I THINK SOME OF THE BRUISES POSSIBLY COULD HAVE.
15 WE KNOW -- WELL, SOME OF THE BRUISES COULD HAVE. THE SEVERE
16 BRAIN INJURY; I DO NOT THINK COULD HAVE COME FROM THAT. THE
17 RETINAL HEMORRHAGES, I DO NOT THINK COULD HAVE COME FROM
18 THAT. AND THE SUBDURAL HEMORRHAGE, I DO NOT THINK COULD
19 HAVE COME FROM THAT.

20 WE KNOW FROM AT LEAST ONE STUDY IN THE LITERATURE THAT
21 WE READ, THERE WAS ONE STUDY OF ABOUT THREE HUNDRED AND
22 SIXTY OR SO CHILDREN WHO CAME TO AN EMERGENCY ROOM AND THEY
23 ALL FALLEN DOWN STAIRS, THEY HAD BUMPS AND BRUISES, AND A
24 FEW OF THEM HAD LACERATIONS, BUT NONE OF THEM HAD A
25 SIGNIFICANT INJURY TO OR AROUND THEIR BRAIN. NONE OF THEM

1 REQUIRED ADMISSION TO THE INTENSIVE CARE UNIT. AND NONE OF
2 THEM HAD LONG TERM NEUROLOGICAL PROBLEMS.

3 Q. AS FAR AS SOME OF THOSE PATTERN BRUISES THAT YOU
4 DESCRIBED FOR US EARLIER, ARE THOSE CONSISTENT WITH A FALL
5 DOWN FIFTEEN OR SO STEPS, CARPETED?

6 A. WELL, I GUESS ALL I CAN SAY IS WHAT I WROTE IN THE
7 CHART, THAT THE MOST IMPRESSIVE PATTERN BRUISE TO ME WAS THE
8 ONE THAT RAN ACROSS HER BACK THAT I PUT IN THE CHART, LOOKS
9 LIKE IT HAD AN APPEARANCE FROM A CHAIN OR SOMETHING SIMILAR
10 TO THAT. I DON'T -- I CAN'T THINK OF A SCENARIO THAT WOULD
11 -- WHERE FALLING DOWN THE STAIRS WOULD CREATE THAT UNLESS
12 THERE WAS A CHAIN LAYING ACROSS THE STEPS AND SHE JUST
13 HAPPENED TO FALL DIRECTLY ON IT.

14 THE OTHER PATTERN BRUISE WAS THE -- WHAT APPEARED TO BE
15 A GRIP TYPE OF A BRUISE ON HER RIGHT THIGH. AGAIN, I GUESS
16 IF SOMEBODY WAS TUMBLING DOWN THE STAIRS WITH HER AND
17 HAPPENED TO GRAB HER BY THE RIGHT THIGH, THAT WOULD BE A
18 POSSIBILITY. THE BRUISES ARE -- CONCEIVABLY SOME OF THOSE
19 COULD COME FROM FALLING DOWN THE STAIRS. THE OTHER INJURIES
20 ARE NOT.

21 Q. WHAT DOES YOUR TRAINING AND EXPERIENCE TELL YOU ABOUT
22 THE PROGNOSIS OF A CHILD WHO HAS THESE SEVERE BRAIN INJURIES
23 AND EYE INJURIES?

24 A. WELL, WE KNOW THAT THE VAST MAJORITY OF THOSE CHILDREN
25 ARE GOING TO HAVE SOME TYPE OF NEURODEVELOPMENTAL DELAY. IT

1 MIGHT BE MILD. IT COULD BE SCHOOL PROBLEMS. IT COULD BE
2 BEHAVIOR OR PERSONALITY PROBLEMS. BUT UNFORTUNATELY MANY OF
3 THOSE CHILDREN HAVE MORE SEVERE PROBLEMS.

4 THEY HAVE SEIZURES FOR THE REST OF THEIR LIVES. SOME
5 OF THEM CAN'T SEE BECAUSE OF THE EYE INJURIES. SOME OF THEM
6 ARE NEVER ABLE TO DO ANYTHING MEANINGFUL. THEY CAN'T WALK,
7 THEY CAN'T TALK. THEIR NEURODEVELOPMENTAL PROGRESS IS
8 STOPPED AT THE POINT WHEN THEY'RE INJURED.

9 AND SO IT'S BASICALLY -- IT'S A SPECTRUM. WE CAN SEE
10 ANYTHING FROM MILD TO SEVERE, LONG TERM PROBLEMS. AND THAT
11 DEGREE -- THAT DEPENDS ON THE DEGREE OF SEVERITY OF THE
12 INITIAL INJURY.

13 Q. AND IN YOUR OPINION THE DEGREE -- SEVERITY OF THE
14 INJURIES THAT RUSHANTI HAD, WHAT KIND OF FORCE WAS USED TO
15 INFLECT THOSE INJURIES?

16 A. THESE WERE SEVERE INJURIES. THERE'S NO QUESTION ABOUT
17 THAT. THIS WAS -- I WOULD CHARACTERIZE IT AS BEING MASSIVE
18 FORCE.

19 Q. DR. SEIGLER, BASED ON YOUR EXPERIENCE, YOUR TRAINING,
20 EDUCATION AND YOUR KNOWLEDGE OF THE MEDICAL LITERATURE, WHAT
21 ARE SOME OF THE WAYS THAT THAT AMOUNT OF FORCE CAN BE
22 EXERTED ON A SIXTEEN MONTH OLD CHILD TO PRODUCE THESE KINDS
23 OF INJURIES?

24 A. WELL, THERE'S CERTAINLY SOME DEBATE IN THE MEDICAL
25 LITERATURE. THE MOST COMMONLY ACCEPTED THEORY IS THAT THESE

1 CHILDREN ARE SHAKEN, VIOLENTLY SHAKEN. AND MANY OF THEM ARE
2 THEN THROWN DOWN OR TOSSED DOWN. THERE ARE SOME WHO FEEL
3 THAT THE SHAKING ALONE DOES NOT CAUSE THESE INJURIES AT ALL.
4 I DON'T AGREE WITH THAT.

5 IN MY EXPERIENCE I'VE SEEN MANY CHILDREN WHO I FEEL
6 THAT THE SHAKING ALONE DOES CAUSE THESE INJURIES. PROBABLY
7 MANY OF THESE CHILDREN ARE SHAKEN AND THEN THROWN DOWN. IN
8 THIS SITUATION SHE DID NOT HAVE ANY EVIDENCE ON HER CAT SCAN
9 OF A SKULL FRACTURE OR OF ANY BRUISING OR BLEEDING BETWEEN
10 THE SKIN AND THE SKULL.

11 WHAT WE TYPICALLY SEE IN CHILDREN WHO ARE INVOLVED IN
12 HIGH SPEED MOTOR VEHICLE ACCIDENTS IS WE MIGHT SEE ACUTE
13 SUBDURAL HEMORRHAGE SIMILAR TO WHAT SHE HAD, BUT THEY HAVE
14 BRUISING AND BLEEDING TO THE SKIN AND UNDER THE SKIN AND
15 SKULL FRACTURES. AND THAT REFLECTS A BLUNT OBJECT STRIKING
16 THE HEAD, PUSHING THE SKULL INWARD WHICH THEN TEARS THE
17 VEINS AND CAUSES THE SUBDURAL HEMORRHAGE.

18 WE DIDN'T SEE THAT IN THIS CASE. WE HAVE NO EVIDENCE
19 IN THIS CASE BASED ON THE CAT SCANS THAT WE DID THAT THERE
20 WAS ANY EXTERNAL FORCE PRESSING ON THE SKIN AND THE SKULL
21 THAT WOULD THEN CAUSE THE INTRA CRANIAL BLEED. THE ONLY
22 THING LEFT IS A VIOLENT SHAKING.

23 Q. AND DID YOU HAVE ANY HISTORY GIVEN TO YOU WHATSOEVER
24 THAT THIS CHILD HAD BEEN INVOLVED IN SOME SORT OF A TERRIBLE
25 CAR ACCIDENT OR A HIGH FALL OR AN ACCIDENT WITH AN ANIMAL OR

1 ANY OF THOSE KINDS OF THINGS YOU TALKED ABOUT?

2 A. NO. NO AUTOMOBILE ACCIDENT. AT SOME POINT, I CAN'T
3 REMEMBER WHEN, IT CAME TO MY ATTENTION THAT THERE WAS A
4 POSSIBILITY THE CHILD MIGHT HAVE FALLEN DOWN THE STAIRS.

5 BUT A FALL DOWN THE STAIRS INVOLVES AN INITIAL FALL OF
6 POSSIBLY A FEW FEET, TWO, THREE, MAYBE FOUR FEET UNTIL THE
7 CHILD HITS THE FIRST STEP. THEY DON'T FALL FROM THE TOP
8 STEP TO THE BOTTOM. THEY FALL FROM THE TOP STEP TO THE
9 THIRD OR FOURTH STEP FROM THE TOP. THAT FALL IS USUALLY A
10 FEW FEET. AND WE KNOW, AGAIN, FROM SEVERAL STUDIES IN THE
11 MEDICAL LITERATURE THAT FALLS FROM A FEW FEET DO NOT PRODUCE
12 THE INJURIES THAT THIS CHILD HAD.

13 Q. THANK YOU, DR. SEIGLER. MR. WARDER MAY HAVE SOME
14 QUESTIONS FOR YOU.

15 THE COURT: MR. WARDER.

16 **CROSS EXAMINATION BY MR. WARDER:**

17 Q. DOCTOR, FROM YOUR TESTIMONY I TAKE IT IT WOULD BE FAIR
18 TO SAY THAT THERE'S SOME DEBATE IN THE MEDICAL LITERATURE
19 ABOUT EXACTLY WHAT FORCE IT TAKES TO CAUSE THESE INJURIES.

20 A. I DON'T THINK THERE'S DEBATE ABOUT THE FACT THAT IT
21 REQUIRES EXTREME FORCE. THE DEBATE, TO MY UNDERSTANDING, IS
22 -- AND THIS IS, I WOULD SAY, A MINORITY OF PEOPLE FEEL THAT
23 SHAKING ALONE CANNOT CAUSE THESE INJURIES. THE MAJORITY OF
24 PEOPLE FEEL THAT IT CAN.

25 SO I DON'T THINK THERE'S A DEBATE ABOUT THE DEGREE OF

1 FORCE. THIS IS MASSIVE FORCE. THE DEBATE IS EXACTLY WHAT
2 NATURE -- EXACTLY WHAT MECHANISM DOES THAT FORCE TAKE. IS
3 IT A SHAKE ALONE OR IS IT A SHAKE AND TOSS?

4 Q. NOW WE DON'T PROVE SCIENTIFIC FACTS BY SIMPLY COUNTING
5 UP THE NUMBER OF ADVOCATES FOR EACH POSITION, DO WE? IN THE
6 SCIENTIFIC MANNER.

7 A. WELL, IN THE WORLD THAT I LIVE AND PRACTICE IN, THE WAY
8 WE PRACTICE MEDICINE, I WOULD NOT AGREE WITH THAT. A LOT OF
9 WHAT WE DO IS BASED ON OPINION AND EXPERIENCE.

10 Q. IF POPULAR OPINION WAS THE WAY THAT SCIENCE WAS DERIVED
11 THAT WE MIGHT HAVE ALWAYS THOUGHT THE WORLD WAS FLAT. WOULD
12 YOU AGREE WITH THAT? CERTAINLY WHEN THE FIRST HYPOTHESIS
13 THAT IT WAS ROUND WAS OUT, THAT WAS CERTAINLY THE MINORITY
14 OF PEOPLE THAT THOUGHT THAT.

15 A. WELL, I WOULDN'T SAY POPULAR OPINION, BUT A LARGE
16 DEGREE OF WHAT I DO DAY IN AND DAY OUT IS BASED ON OPINION
17 BECAUSE THE MEDICAL LITERATURE IS NOT ALWAYS CONSISTENT. IT
18 INVOLVES SOME INTERPRETATION.

19 AND SO THERE'S A GREAT DEAL OF OPINION IN TERMS OF WHAT
20 IS THE BEST THING FOR ME TO DO FOR THIS PATIENT. A GREAT
21 DEAL OF IT IS INTERPRETATION OF CONFLICTING INFORMATION AND
22 THEN MAKING AN EDUCATED OPINION AS TO WHAT'S THE BEST COURSE
23 OF ACTION.

24 Q. A SUBDURAL HEMORRHAGE CERTAINLY MEANS A HEMORRHAGE
25 BELOW THE DURAL LAYER COVERING THE BRAIN, IS THAT RIGHT?

1 A. THAT'S RIGHT.

2 Q. AND IT'S MY UNDERSTANDING THAT THE DURAL LAYER IS KIND
3 OF A PROTECTIVE BAG THAT'S KIND OF SEALED OVER THE BRAIN, IS
4 THAT RIGHT?

5 A. IT'S A LAYER OF TISSUE BETWEEN THE BRAIN AND THE SKULL
6 THAT IS NORMALLY NOT OPEN TO THE OUTSIDE WORLD.

7 Q. OKAY. AND THERE'S ACTUALLY A SPACE BETWEEN THE DURAL
8 LAYER OF COVERING AND WHAT I WOULD CALL BRAIN MATER. I'M
9 NOT SURE WHAT THE SCIENTIFIC PART OF THE BRAIN IS. IS THAT
10 CORRECT?

11 A. THAT'S CORRECT. THERE'S A THIN LAYER OF FLUID THERE.

12 Q. AND A SUBDURAL HEMORRHAGE IS WHEN SOMEHOW BLOOD SEEPS
13 INTO THAT LAYER?

14 A. YES.

15 Q. OKAY. NOW IF SOMEBODY HAS A SUBDURAL HEMORRHAGE AT
16 SOME POINT IN THE PAST THERE'S SOMETIMES THE BODY WILL CLOT
17 AND SEAL IT OFF, IS THAT RIGHT?

18 A. THAT WOULD BE THE TYPICAL SCENARIO FOR A SUBDURAL
19 HEMORRHAGE FOR IT TO CLOT AND STOP BLEEDING. IT CAN BECOME
20 LARGE ENOUGH FOR THE NEUROSURGEONS TO NEED TO TAKE IT OUT.
21 THAT WAS NOT THE CASE HERE.

22 Q. CAN PRIOR SUBDURAL HEMORRHAGES THAT EXISTED, CAN SOME
23 SLIGHT TRAUMA CAUSE THEM TO RE-BLEED?

24 A. THEY CAN RE-BLEED.

25 Q. AND SO SOME PRIOR INJURY COULD RE-BLEED AND ACTUALLY

1 HAVE A MORE SEVERE CIRCUMSTANCE THE SECOND TIME THAN THE
2 FIRST TIME?

3 A. WHEN THEY RE-BLEED THEY CAN HAVE SYMPTOMS JUST LIKE YOU
4 WOULD HAVE SYMPTOMS THE FIRST TIME IT BLED.

5 Q. IT'S MY UNDERSTANDING THAT PART OF THE MECHANISM OF THE
6 BODY IS THAT IT ABSORBS THE BLOOD OVER A PERIOD OF TIME.
7 THE BODY HAS A MECHANISM THAT WILL ABSORB AND REMOVE THE
8 BLOOD FROM THE AREA LIKE THE DURAL AREA.

9 A. THE BLOOD DOES OVER TIME DEGRADE. AND WHETHER IT
10 COMPLETELY GOES AWAY OR NOT WILL DEPEND ON HOW LARGE THE
11 INITIAL SUBDURAL HEMORRHAGE WAS. IT MIGHT -- THE BLOOD
12 MIGHT GO AWAY, BUT THERE MIGHT STILL BE AN ABNORMAL FLUID
13 COLLECTION THERE OF ALL BLOODY AND PROTEINACEOUS MATERIAL.
14 MIGHT NOT -- THE BLOOD WILL GO AWAY, BUT THE FLUID
15 COLLECTION MIGHT NOT.

16 Q. YOU HAVE NO WAY OF KNOWING FROM YOUR TREATMENT WHETHER
17 OR NOT THIS CHILD EVER HAD ANY KIND OF SUBDURAL EVENT PRIOR
18 TO THE LAST ONE, DO YOU?

19 A. THAT'S CORRECT.

20 Q. SO THIS COULD HAVE BEEN A RE-BLEED OF SOME OLD INJURY
21 AS WELL AS A NEW INJURY?

22 A. I NEED A MINUTE TO LOOK AT THE CHART. I THINK WE DID
23 AN MRI. NO, I DON'T THINK WE DID AN MRI. THERE WAS NO
24 EVIDENCE ON THE CAT SCAN OF OLD BLOOD. THERE WAS DEFINITELY
25 EVIDENCE ON THE CAT SCAN OF FRESH BLOOD. NO EVIDENCE OF OLD

1 BLOOD.

2 Q. THEN IN SOME CASES THE BODY WOULD HAVE ABSORBED THE OLD
3 BLOOD?

4 A. THAT'S POSSIBLE.

5 Q. OKAY. NOW A SUBDURAL HEMORRHAGE DOES MOST OF ITS
6 DAMAGE OR A LOT OF ITS DAMAGE BECAUSE IT INCREASES PRESSURE
7 IN THE BRAIN, IS THAT CORRECT, MY UNDERSTANDING OF THAT?

8 A. THAT'S -- IN GENERAL TERMS THAT'S CORRECT. IT CAUSES
9 AN ABNORMAL SPACE OCCUPYING BLOOD CLOT THAT THEN PRESSES ON
10 THE BRAIN. AND THAT CAN CAUSE ABNORMAL, SOMETIMES
11 CATASTROPHIC BRAIN DYSFUNCTION.

12 Q. AND THERE'S A DIFFERENT RATE OF HOW FAST IT -- THE
13 PRESSURE BUILDS AND IT CAUSES ON THE BRAIN DEPENDING, I
14 GUESS, ON THE DEGREE OR MAGNITUDE OF THE SUBDURAL HEMORRHAGE
15 ITSELF.

16 A. IT WOULD DEPEND ON THE -- IT WOULD DEPEND ON THE DEGREE
17 AND HOW LARGE THE HEMORRHAGE IS. BUT IT WOULD ALSO DEPEND
18 ON THE DIRECT INJURY TO THE BRAIN ITSELF FROM THE TRAUMA
19 UNRELATED TO THE BLOOD CLOT.

20 Q. OKAY. AM I CORRECT THAT THE PERIOD OF TIME THAT IS
21 BETWEEN THE INJURY AND ITS MANIFESTATION IS CALLED THE LUCID
22 INTERVAL? IS THAT RIGHT? OR LUCID PERIOD?

23 A. NOT WITH AN ACUTE SUBDURAL HEMORRHAGE. I THINK YOU'RE
24 TALKING ABOUT AN EPIDURAL HEMORRHAGE. MOST PEOPLE FEEL LIKE
25 WITH THIS TYPE OF AN INJURY THAT THERE WOULD BE IMMEDIATELY

1 SYMPTOMS OF SOME SORT. AN EPIDURAL HEMORRHAGE CLASSICALLY
2 HAS A LUCID INTERVAL, SUBDURAL HEMORRHAGE DOES NOT.

3 Q. OKAY. CAN YOU TELL AT WHAT TIME THIS OCCURRED?

4 A. SPECIFICALLY, NO. THE BLEEDING ON THE CAT SCAN
5 APPEARED TO BE WHAT WE CALL ACUTE, WHICH MEANS IT WAS IN THE
6 NEIGHBORHOOD OF A FEW HOURS TO POSSIBLY A DAY OR TWO OLD.
7 WE DON'T HAVE A TOOL THAT WOULD ALLOW US TO MEASURE EXACTLY
8 WHEN THE BLEEDING STARTED.

9 Q. BUT IT'S FAIR TO SAY TO A REASONABLE MEDICAL CERTAINTY
10 THAT IT WAS IN THAT PERIOD YOU JUST GAVE US, FROM A FEW
11 HOURS TO NO MORE THAN FORTY-EIGHT? WOULD THAT BE FAIR?

12 A. THAT WOULD BE FAIR.

13 Q. THANK YOU, DOCTOR.

14 THE COURT: ANY REDIRECT?

15 MS. SEAY: MAY I HAVE JUST A MOMENT, YOUR HONOR?

16 (PAUSE)

17 **REDIRECT EXAMINATION BY MS. SEAY:**

18 Q. DR. SEIGLER, ARE RETINAL HEMORRHAGES READILY APPARENT
19 SHORTLY AFTER THEY'RE INFLICTED?

20 A. YES.

21 Q. DO YOU HAVE AN OPINION ABOUT WHETHER THE RETINAL
22 HEMORRHAGES AND THE SUBDURAL HEMATOMA WERE INFLICTED IN ONE
23 EVENT IN THIS CASE?

24 A. I WOULD SAY ALMOST CERTAINLY AT THE SAME EVENT.

25 Q. THANK YOU.

1 THE COURT: CAN WE EXCUSE DR. SEIGLER?

2 MS. SEAY: YES, SIR.

3 MR. WARDER: YES.

4 THE COURT: THANK YOU, DOCTOR. ALL RIGHT. WOULD
5 COUNSEL APPROACH JUST A MINUTE, PLEASE?

6 (WHEREUPON A BENCH CONFERENCE WAS HELD OFF THE RECORD
7 IN THE PRESENCE OF THE JURY, BUT OUT OF THEIR HEARING)

8 THE COURT: ALL RIGHT. LADIES AND GENTLEMEN, WE'VE
9 REACHED A POINT WHERE WE WILL RECESS FOR THE EVENING. WE'LL
10 PICK BACK UP TOMORROW MORNING AT 9:00.

11 NOW WHEN YOU LEAVE, PLEASE REMEMBER, DO NOT TALK ABOUT
12 THIS CASE AMONG YOURSELVES OR WITH ANYONE ELSE, THIS
13 INCLUDES EVEN MEMBERS OF YOUR OWN FAMILY. YOU CAN TELL
14 FAMILY MEMBERS THAT YOU'RE SERVING ON THIS CASE, WHAT KIND
15 OF CASE IT IS, BUT DON'T DISCUSS THE FACTS OF THE CASE WITH
16 THEM, OR AS I SAID, ANYONE ELSE.

17 IF ANYBODY CONTACTS YOU AND TRIES TO TALK TO YOU ABOUT
18 THIS CASE, GET THEIR NAMES AND ADDRESSES AND REPORT THAT TO
19 ME. PLEASE KEEP YOUR BADGES ON. HAVE THEM ON WHEN YOU COME
20 BACK IN THE MORNING.

21 UNDER THE OATH YOU TOOK IN THIS CASE YOU SWORE TO TRY
22 THIS CASE BASED ONLY AND SOLELY ON THE TESTIMONY AND
23 EVIDENCE PRESENTED IN THIS COURTROOM. I DON'T KNOW IF
24 THERE'LL BE ANY MEDIA COVERAGE CONCERNING THIS TRIAL, BUT
25 SHOULD THERE BE ANY, IT WOULD BE A VIOLATION OF YOUR OATH

1 FOR YOU TO CONSIDER ANY MEDIA COVERAGE. SO IF THERE IS ANY,
2 IGNORE IT. AND WITH THAT, I'LL ASK YOU TO BE BACK IN YOUR
3 JURY ROOM AT 9:00 IN THE MORNING. 9:00. THANK YOU.

4 (WHEREUPON THE JURY EXITED THE COURTROOM AT 4:31 PM)

5 **THE COURT:** OKAY. SEE YOU BACK AT 9:00 IN THE MORNING.

6 (WHEREUPON COURT WAS IN RECESS AT 4:32 PM)

7 **TUESDAY, OCTOBER 9, 2007:**

8 **THE COURT:** YOU READY TO GO?

9 **MS. SEAY:** YES, SIR.

10 **THE COURT:** ALL RIGHT. BRING OUR JURY.

11 (WHEREUPON THE JURY ENTERED THE COURTROOM AT 9:10 AM)

12 **THE COURT:** GOOD MORNING. ALL RIGHT. SOLICITOR, YOU
13 MAY PROCEED.

14 **MS. SEAY:** THANK YOU, YOUR HONOR. MAY IT PLEASE THE
15 COURT? THE STATE CALLS INVESTIGATOR WAYNE CAMPBELL.

16 **WAYNE CAMPBELL, BEING**
17 DULY SWORN TESTIFIED AS FOLLOWS:

18 **MADAME CLERK:** STATE YOUR NAME FOR THE RECORD.

19 **MR. CAMPBELL:** WAYNE TAYLOR CAMPBELL.

20 **DIRECT EXAMINATION BY MS. SEAY:**

21 Q. INVESTIGATOR CAMPBELL, WHERE ARE YOU EMPLOYED?

22 A. GREENVILLE COUNTY SHERIFF'S OFFICE.

23 Q. HOW LONG HAVE YOU BEEN EMPLOYED AT THE SHERIFF'S
24 OFFICE?

25 A. APPROXIMATELY SIX YEARS.

1 Q. PRIOR TO -- WELL, WHAT'S YOUR OCCUPATION AT THE
2 SHERIFF'S OFFICE?

3 A. AT THE PRESENT TIME I'M A ROBBERY INVESTIGATOR.

4 Q. WHAT'S YOUR PREVIOUS EXPERIENCE WITHIN THE SHERIFF'S
5 OFFICE?

6 A. FOR FOUR YEARS OR APPROXIMATELY FOUR YEARS I WAS A
7 JUVENILE INVESTIGATOR.

8 Q. OKAY. AND PRIOR TO THAT WHAT WAS YOUR OCCUPATION?

9 A. I WAS A UNIFORM PATROL OFFICER FOR A YEAR. AND BEFORE
10 THAT I WORKED FOR THE GREENVILLE COUNTY FORENSICS DIVISION.

11 Q. AND WHAT DID YOU DO AS AN EMPLOYEE OF THE GREENVILLE
12 COUNTY FORENSICS DIVISION?

13 A. I WENT OUT TO CRIME SCENES, DOCUMENTED THEM AND
14 PROCESSED FOR EVIDENCE.

15 Q. COULD YOU PULL THAT MICROPHONE UP JUST A LITTLE BIT?
16 I'M HAVING JUST A LITTLE BIT OF TROUBLE HEARING YOU BACK
17 HERE. THANK YOU. AS AN INVESTIGATOR NOW WITH THE SHERIFF'S
18 OFFICE WOULD YOU TELL ME WHAT YOUR EDUCATION AND TRAINING
19 CERTIFICATIONS ARE, PLEASE?

20 A. I'M A CERTIFIED LAW ENFORCEMENT OFFICER IN THE STATE OF
21 SOUTH CAROLINA. I'VE HAD VARIOUS CLASSES ON CHILD ABUSE
22 INVESTIGATION AS WELL AS GENERAL INVESTIGATIONS.

23 Q. BRIEFLY DESCRIBE WHAT YOUR DUTIES ARE ON A DAY TO DAY
24 BASIS AS AN INVESTIGATOR.

25 A. AS AN INVESTIGATOR WE'RE ASSIGNED CASES BY A SERGEANT.

1 AND ONCE WE GET THE CASES ASSIGNED TO US, THEN WE INTERVIEW
2 VICTIMS, WITNESSES, POTENTIAL SUSPECTS, LOOK AT THE EVIDENCE
3 THAT MIGHT BE THERE AND SEE IF THERE'S ENOUGH PROBABLE CAUSE
4 TO MAKE A CHARGE IN THAT PARTICULAR CASE.

5 Q. AND IS THAT THE TYPE CAPACITY YOU WERE WORKING IN BACK
6 IN OCTOBER OF 2003?

7 A. AS A JUVENILE INVESTIGATOR, CORRECT.

8 Q. AND AS A JUVENILE INVESTIGATOR WERE YOUR DUTIES
9 BASICALLY THE SAME? HOW DID THEY DIFFER IF THEY WEREN'T THE
10 SAME?

11 A. THEY WERE BASICALLY THE SAME. WE INVESTIGATE CHILD
12 ABUSE/NEGLECT CASES AS WELL AS DEALING WITH JUVENILE
13 OFFENDERS, WHICH IS SOMEONE SIXTEEN YEARS OF AGE OR YOUNGER
14 THAT HAD COMMITTED A CRIME AND RUN AWAY, WHICH WAS A STATUS
15 OFFENSE.

16 Q. OKAY. AND BACK ON OCTOBER THE 13TH, 2003 DID YOU HAVE
17 AN OCCASION TO BECOME INVOLVED IN THE CASE THAT WE'RE HERE
18 IN COURT ABOUT?

19 A. THAT'S CORRECT.

20 Q. HOW DID YOU BECOME INVOLVED?

21 A. I WAS THE ON CALL JUVENILE INVESTIGATOR FOR THAT
22 PARTICULAR WEEK. AND ON EARLY MONDAY MORNING OF OCTOBER
23 13TH SERGEANT TOMMY McCONNELL, WHO IS EMPLOYED WITH THE
24 SHERIFF'S OFFICE, CALLED ME AND NOTIFIED ME THAT THEY HAD A
25 SMALL CHILD AT THE EMERGENCY ROOM THAT HAD BAD INJURIES.

1 Q. DID YOU RESPOND TO THE EMERGENCY ROOM AS PART OF YOUR
2 JOB?

3 A. ON THAT MORNING, I RESPONDED.

4 Q. WHEN YOU DID, WHAT DID YOU DO?

5 A. I MET WITH DEPUTY HAWKINS, SERGEANT McCONNELL IN THE
6 PARKING LOT OF THE EMERGENCY ROOM TO GET A BRIEF GENERAL
7 OVERVIEW OF WHAT WAS GOING ON, WHO WAS AT THE HOSPITAL AND
8 SORT OF TO FIGURE OUT WHERE I NEEDED TO START.

9 Q. OKAY. WHAT DID YOU DO NEXT?

10 A. AFTER SPEAKING WITH THE TWO DEPUTIES I WENT INSIDE AND
11 TALKED TO DR. ALLISON JONES, WHO WAS THE PEDIATRIC EMERGENCY
12 ROOM DOCTOR THAT NIGHT.

13 Q. AND WERE YOU PRESENT WHEN SHE TESTIFIED YESTERDAY?

14 A. I WAS.

15 Q. AND IS THAT WHO YOU MET WITH?

16 A. CORRECT.

17 Q. WERE YOU ABLE TO GATHER ANY INFORMATION, WITHOUT SAYING
18 WHAT SHE SAID, WERE YOU ABLE TO GATHER INFORMATION FROM HER
19 ABOUT THE VICTIM'S INJURIES?

20 A. THAT'S CORRECT.

21 Q. WHO ELSE WAS PRESENT AT THAT TIME?

22 A. DO YOU MEAN AT THE HOSPITAL?

23 Q. UM-HUM (AFFIRMATIVE).

24 A. FROM MY UNDERSTANDING I WAS TOLD THAT ---

25 MR. WARDER: OBJECTION, YOUR HONOR.

1 THE COURT: YES, SIR, NOT WHAT YOU WERE TOLD.

2 A. OKAY.

3 Q. WAS MARQUES HUDSON THERE?

4 A. AT THAT TIME I WAS NOT AWARE THAT HE WAS THERE.

5 Q. OKAY. DID YOU AT SOME POINT BECOME AWARE THAT HE WAS
6 THERE?

7 A. LATER -- A LITTLE BIT LATER IN THE MORNING, I WAS
8 AWARE.

9 Q. OKAY. DID YOU EVER SEE HIM?

10 A. YES, I DID.

11 Q. DID YOU HAVE ANY INTERACTION WITH HIM AT THAT TIME?

12 A. LATER IN THE MORNING I -- AT THE HOSPITAL, I SPOKE WITH
13 HIM BRIEFLY.

14 Q. OKAY. ALL RIGHT. THAT WAS LATER IN THE MORNING. SO
15 LET'S BACK UP. AT WHAT POINT DID YOU GO SEE THE VICTIM?

16 A. AFTER SPEAKING WITH DR. JONES IN THE PEDIATRIC
17 EMERGENCY ROOM SHE TOLD ME THAT THE CHILD HAD BEEN
18 TRANSFERRED TO THE FLOOR, THE PEDIATRIC INTENSIVE CARE UNIT.
19 SO I WENT UP TO THAT PARTICULAR UNIT AND MET WITH A NURSE
20 THERE WHO SHOWED ME WHERE *child* WAS LOCATED.

21 Q. AND DID YOU GO AND SEE *child*

22 A. I DID. I WENT IN THE ROOM. AND MS. CARRIE SMITH,
23 WHICH I INTRODUCED MYSELF AND SHE INTRODUCED HERSELF AS
24 BEING THE GRANDMOTHER. WE BRIEFLY TALKED FOR A MINUTE. A
25 NURSE STILL THERE, AND SHE PROCEEDED TO SHOW ME THE

1 INJURIES, THE EXTERNAL INJURIES THAT WERE ON *child*

2 Q. ALL RIGHT. AND MS. CARRIE SMITH, WHO'S SEATED HERE IN
3 THE FRONT ROW, IS THIS THE GRANDMOTHER THAT WAS PRESENT WITH
4 HER?

5 A. THAT'S CORRECT.

6 Q. OKAY. AND, IF YOU WOULD, DESCRIBE WHAT *child* LOOKED
7 LIKE. DID SHE HAVE ANY MEDICAL SUPPORT SYSTEMS IN PLACE AT
8 THAT TIME? JUST DESCRIBE WHAT YOU SAW.

9 A. SHE HAD WIRES, TUBES RUNNING FROM HER ORIFICES, OXYGEN
10 MASK ON. YOU REALLY COULDN'T SEE HER THAT WELL BECAUSE OF
11 ALL THE EQUIPMENT THAT WAS ATTACHED TO HER.

12 Q. WHAT SIZE CHILD WAS SHE IN YOUR OBSERVATION?

13 A. SHE WAS A VERY SMALL CHILD. SHE WAS PROBABLY A LITTLE
14 BIT SMALLER THAN THE AVERAGE SIXTEEN MONTH OLD BECAUSE I
15 ESTIMATED HER AGE BETWEEN TWELVE MONTHS AND EIGHTEEN MONTHS.

16 Q. WHAT KIND OF BED WAS SHE IN OR A STRETCHER OR WHATEVER?

17 A. IT APPEARED TO BE A REGULAR SIZE HOSPITAL BED.

18 Q. YOU STATED THAT THE NURSE POINTED OUT HER EXTERNAL
19 INJURIES. CAN YOU DESCRIBE WHAT YOU OBSERVED AS FAR AS HER
20 EXTERNAL INJURIES, PLEASE?

21 A. ON HER FOREHEAD SHE HAD A BRUISE, WHICH WAS PRETTY MUCH
22 ABOVE THE BRIDGE OF THE NOSE. HER CHEST, SHE HAD SOME
23 REDDISH SPOTS ON HER CHEST AND ABDOMEN AREA. HER RIGHT LEG,
24 SHE HAD FOUR NARROW BRUISES. HER LEFT LEG HAD SOME
25 BRUISING. AND WHEN SHE WAS ROLLED OVER HER BACK HAD AT

1 LEAST TWO BRUISES THAT I COULD SEE. AND ONE BRUISE THAT
2 STOOD OUT HAD DOTS, LIKE A LINE OF DOTS IN IT.

3 Q. DID IT APPEAR TO BE A PATTERN OF SOME SORT?

4 A. YES, IT DID.

5 Q. INVESTIGATOR, WERE YOU PRESENT IN COURT YESTERDAY WHEN
6 THESE PHOTOGRAPHS WERE ADMITTED INTO EVIDENCE AND PROJECTED?

7 A. I WAS.

8 Q. OKAY. WOULD YOU TAKE A LOOK AT THESE AND TELL ME IF
9 THOSE ACCURATELY REPRESENT THE INJURIES THAT YOU OBSERVED
10 WHEN YOU SAW THIS LITTLE GIRL?

11 A. THEY DO. BUT THE INJURY TO THE RIGHT LEG, THE
12 BRUISING, WAS A LITTLE MORE PRONOUNCED THAN WHAT THESE
13 PHOTOGRAPHS ARE SHOWING.

14 Q. ARE YOU SAYING THAT THEY LOOKED DIFFERENT TO YOU IN
15 PERSON THAN IN THE PHOTOGRAPHS?

16 A. THEY WERE MORE VISIBLE IN PERSON THAN THESE
17 PHOTOGRAPHS.

18 Q. YOU SAID THAT MS. SMITH WAS THERE IN THE ROOM WITH
19 *child* WHAT WAS MS. SMITH'S DEMEANOR OR EMOTIONAL STATE
20 AT THAT TIME?

21 A. MS. SMITH WAS NOT CRYING, BUT SHE WAS VERY CONCERNED.
22 YOU COULD TELL BY HER FACIAL EXPRESSIONS AS WELL AS WHAT SHE
23 WAS SAYING BECAUSE SHE DIDN'T KNOW THE EXTENT OF THE
24 INJURIES TO THE CHILD.

25 Q. WHAT DID YOU DO AFTER YOU VISITED WITH *child* AND

1 OBSERVED HER INJURIES?

2 A. STEVE WATKINS, WHO IS THE AFTER HOURS WORKER WITH THE
3 DEPARTMENT OF SOCIAL SERVICES WAS NOTIFIED. AND *child*
4 WAS TAKEN INTO EMERGENCY PROTECTIVE CUSTODY.

5 Q. WHAT IS EMERGENCY PROTECTIVE CUSTODY?

6 A. IT CAN ONLY BE DONE BY A LAW ENFORCEMENT OFFICER. AND
7 IT'S WHERE WE HAVE PROBABLE CAUSE TO BELIEVE THAT THROUGH AN
8 ACT OF CHILD ABUSE OR NEGLECT THAT A CHILD'S HEALTH,
9 PHYSICAL SAFETY IS IN EMINENT AND -- EMINENT OR --
10 SUBSTANTIAL OR EMINENT DANGER. AND AT THAT POINT IN TIME
11 YOU CAN'T GO TO FAMILY COURT AND GET A COURT ORDER TO TAKE
12 THE CHILD.

13 Q. DID YOU SEE ANYONE ELSE WHILE YOU WERE THERE AT THE
14 HOSPITAL THE 13TH?

15 A. YES, I DID. I TALKED WITH MR. HUDSON'S FIANCÉ,
16 LYCRETTA SMITH. I CHECKED HER TWO SMALL CHILDREN FOR
17 INJURIES TO SEE IF THEY HAD ANY SIGNS OF ABUSE OR NEGLECT.
18 I TALKED WITH BARBARA HUDSON, WHO IS MARQUES HUDSON'S
19 MOTHER. AND THEN I BRIEFLY SPOKE WITH MARQUES HUDSON.

20 Q. ALL RIGHT. WHEN YOU BRIEFLY SPOKE WITH MARQUES HUDSON
21 WHERE WERE YOU?

22 A. WE WERE ON THE -- IN THE WAITING AREA. THEY HAVE A
23 ROOM RIGHT ACROSS THE HALL FROM IT WHICH IS LIKE A SMALLER
24 WAITING ROOM OR A ROOM WITH A LITTLE MORE PRIVACY IN IT.
25 AND I SPOKE WITH HIM BRIEFLY THERE.

1 Q. WHEN YOU TALKED TO HIM WHAT WAS HIS EMOTIONAL AFFECT?

2 A. AT THAT POINT IN TIME HE WAS -- DIDN'T APPEAR TO BE
3 VERY UPSET. AND HE WAS WILLING TO DO ANYTHING THAT I ASKED
4 HIM TO DO.

5 Q. DID YOU OBSERVE HIS PHYSICAL CONDITION?

6 A. I BRIEFLY GLANCED AT HIM.

7 Q. DID HE APPEAR TO HAVE ANY VISIBLE INJURIES?

8 A. NONE THAT I READILY OBSERVED.

9 Q. DID YOU ASK MR. HUDSON IF HE WOULD VOLUNTARILY COME TO
10 THE LAW ENFORCEMENT CENTER AND TALK TO YOU ABOUT WHAT HAD
11 HAPPENED TO *child?*

12 A. I DID.

13 Q. OKAY. DID HE HAVE TRANSPORTATION?

14 A. AFTER TALKING TO HIM, HE AGREED. AND DEPUTY CRAIG
15 HAWKINS TRANSPORTED HIM DOWN TO THE LAW ENFORCEMENT CENTER.

16 Q. AND WAS THAT DEPUTY HAWKINS THAT TESTIFIED YESTERDAY?

17 A. THAT'S CORRECT.

18 Q. DID YOU MEET HIM DOWN AT THE LAW ENFORCEMENT CENTER?

19 A. I DID.

20 Q. WHERE DID Y'ALL MEET?

21 A. WE MET AT THE YOUTH SERVICES OFFICE, WHICH IS IN THE
22 BASEMENT OF THE LAW ENFORCEMENT CENTER.

23 Q. WHO WAS PRESENT IN THE YOUTH SERVICES OFFICE WHEN YOU
24 MET WITH MARQUES HUDSON?

25 A. WHEN HE WAS BROUGHT TO THE OFFICE HE WAS NOT UNDER

1 ARREST. SO I HAD ALL THE OTHER DEPUTIES, DEPUTY HAWKINS TO
2 GO AHEAD AND LEAVE. AND I INTERVIEWED MARQUES HUDSON BY
3 MYSELF.

4 Q. ALL RIGHT. YOU JUST STATED THAT HE WAS NOT UNDER
5 ARREST. WAS HE PHYSICALLY RESTRAINED IN ANY WAY SUCH AS
6 WITH HANDCUFFS, SHACKLES OR ANYTHING OF THAT NATURE?

7 A. HE WAS NOT RESTRAINED WITH ANYTHING.

8 Q. DID YOU ALL STAND UP, SIT DOWN OR HOW DID YOU GO ABOUT
9 THE MEETING?

10 A. WE WERE SITTING AT MY DESK.

11 Q. OKAY. APPROXIMATELY WHAT TIME WAS THAT GETTING TO BE?

12 A. IT WAS AROUND 6:30, APPROXIMATELY 6:30 THAT MONDAY
13 MORNING.

14 Q. THAT MORNING?

15 A. CORRECT.

16 Q. 'CAUSE *child* HAD BEEN BROUGHT IN AROUND MIDNIGHT
17 THAT NIGHT, IS THAT CORRECT?

18 A. MY UNDERSTANDING, IT WAS AROUND MIDNIGHT.

19 Q. OKAY. WHAT DID YOU DO TO BEGIN YOUR INTERVIEW WITH MR.
20 HUDSON?

21 A. I READ HIM A MIRANDA WARNING FOR THE SIMPLE REASON
22 THROUGH PREVIOUS INTERVIEWS IT APPEARED THAT HE MIGHT BE THE
23 ONLY PERSON THAT WAS WITH THE CHILD AT THE TIME OF THE
24 INJURIES.

25 Q. WHY DID YOU THINK IT WAS IMPORTANT TO READ HIM HIS

1 MIRANDA WARNING IN LIGHT OF THE FACT THAT HE WAS THE ONLY
2 PERSON WITH HER?

3 A. WELL, I DIDN'T KNOW HOW THE INJURIES HAD OCCURRED AT
4 THAT POINT IN TIME.

5 Q. ALL RIGHT. WOULD YOU TAKE A LOOK AT STATE'S EXHIBIT 1
6 FOR IDENTIFICATION PURPOSES? WHAT IS THAT?

7 A. THIS IS A FORM THAT WE USE TO ADVISE SOMEONE OF THEIR
8 MIRANDA WARNING. AND IT ALSO HAS A WAIVER AT THE BOTTOM OF
9 IT.

10 Q. AND IS THAT FORM THE STANDARD FORM THAT YOUR OFFICE
11 USES IN ALL CASES FOR CONDUCTING AN INTERVIEW?

12 A. IT IS.

13 Q. PLEASE EXPLAIN THE PROCESS THAT YOU WENT THROUGH WITH
14 MR. HUDSON.

15 A. ONCE WE WERE SITTING IN MY OFFICE I TYPED UP -- PUT THE
16 DATE AND THE TIME AND THE CASE NUMBER ON THIS PARTICULAR
17 FORM. I READ THE TOP PART FOR HIM. AND I ALWAYS ASK IF
18 THEY CAN READ AND WRITE. AND AS A WAY OF SHOWING THAT THEY
19 CAN READ OR WRITE I HAVE THEM TO READ THE WAIVER OF RIGHTS
20 FORM. AND I ALSO EXPLAIN THAT TOO.

21 Q. OKAY. WOULD YOU PLEASE READ SPECIFICALLY WHAT YOU READ
22 TO MARQUES HUDSON?

23 A. BEFORE WE ASK YOU ANY QUESTIONS YOU MUST UNDERSTAND
24 YOUR RIGHTS. YOU HAVE THE RIGHT TO REMAIN SILENT. ANYTHING
25 YOU SAY CAN BE USED AGAINST YOU IN COURT. YOU HAVE THE

1 RIGHT TO TALK TO A LAWYER FOR ADVICE BEFORE WE ASK YOU ANY
2 QUESTIONS AND TO HAVE HIM WITH YOU DURING QUESTIONING:

3 IF YOU HAVE NO MONEY TO PAY A LAWYER'S FEE THE COURT
4 WILL APPOINT ONE TO REPRESENT YOU WITHOUT COST IF YOU WISH.
5 IF YOU DECIDE TO ANSWER QUESTIONS NOW WITHOUT A LAWYER
6 PRESENT YOU WILL STILL HAVE THE RIGHT TO STOP ANSWERING AT
7 ANY TIME. YOU ALSO HAVE THE RIGHT TO STOP ANSWERING AT ANY
8 TIME UNTIL YOU TALK TO A LAWYER.

9 Q. AND THAT IS WHAT YOU READ TO MARQUES HUDSON AT THE
10 BEGINNING OF THIS MEETING?

11 A. THAT'S CORRECT.

12 Q. OKAY. DID HE APPEAR TO UNDERSTAND WHAT YOU WERE SAYING
13 TO HIM?

14 A. HE DID.

15 Q. IN YOUR EXPERIENCE AS A CRIME SCENE INVESTIGATOR AND AS
16 A SHERIFF'S OFFICE INVESTIGATOR HAVE YOU HAD OCCASION TO
17 COME IN CONTACT WITH PEOPLE WHO ARE UNDER THE INFLUENCE OF
18 DRUGS, ALCOHOL OR BOTH?

19 A. MANY TIMES.

20 Q. DID IT APPEAR TO YOU THAT MR. HUDSON WAS UNDER THE
21 INFLUENCE OF ANYTHING AT THAT TIME?

22 A. NO, HE DID NOT.

23 Q. OKAY. DID HE ASK YOU ANY QUESTIONS ABOUT WHAT YOU HAD
24 JUST READ TO HIM?

25 A. NO, HE DID NOT.

1 Q. WHAT DID YOU DO AFTER YOU READ THAT PORTION TO HIM?

2 A. HE WAS WILLING TO COOPERATE. SO I ASKED HIM TO READ
3 THE WAIVER PART, WHICH IS AT THE BOTTOM OF THE FORM. AND HE
4 READ IT.

5 Q. DID YOU ASK HIM TO INITIAL ANYTHING IN THAT FIRST
6 PORTION?

7 A. NOT IN THE FIRST PORTION. BUT AS A STANDARD PRACTICE I
8 HAVE PEOPLE INITIAL THE -- WHERE THEY HAVE READ THE WAIVER
9 OF RIGHTS PART.

10 Q. OKAY.

11 A. I GET THEM TO INITIAL THE BOTTOM OF THAT TO SHOW THAT
12 THEY HAD READ IT.

13 Q. OKAY. EXPLAIN WHAT YOU DID THEN AS FAR AS THE WAIVER
14 OF RIGHTS.

15 A. WELL, AFTER HE READ IT AND AGREED TO TALK WITH ME
16 WITHOUT AN ATTORNEY, HE SIGNED, AND THEN I WITNESSED IT.

17 Q. DID HE READ THE WAIVER OF RIGHTS OR DID YOU?

18 A. OH, HE READ THE WAIVER OF RIGHTS.

19 Q. DID HE READ IT OUT LOUD TO YOU OR TO HIMSELF?

20 A. WELL, TO KNOW WHETHER SOMEBODY CAN READ OR WRITE I HAVE
21 TO GET THEM TO READ IT ALOUD.

22 Q. DID HE HAVE ANY DIFFICULTY READING THAT TO YOU?

23 A. NONE.

24 Q. DID HE PLACE HIS INITIALS SOMEWHERE ON THIS PIECE OF
25 PAPER?

1 A. HE DID. HE INITIALED UNDERNEATH A SECTION THAT I HAD
2 READ THE TOP PORTION.

3 Q. OKAY. AND I BELIEVE YOU ALREADY STATED, DID HE THEN
4 SIGN THIS FORM?

5 A. HE DID.

6 Q. DID YOU PLACE YOUR SIGNATURE AS A WITNESS ON THE FORM?

7 A. THAT'S CORRECT.

8 Q. AND I'LL DIRECT YOUR ATTENTION TO THE BOTTOM WHERE IT
9 SAYS TIME. WHAT DOES THAT REPRESENT?

10 A. THAT WAS THE TIME WHEN WE HAD FINISHED DISCUSSING THE
11 MIRANDA WARNING, WHICH IS APPROXIMATELY 6:33 AM.

12 Q. OKAY. DURING THIS TIME THAT YOU WERE EXPLAINING WHAT
13 HIS RIGHTS WERE AND HE WAS READING THE WAIVER OF RIGHTS TO
14 YOU AND THE FORM WAS BEING SIGNED AND INITIALED AND SO FORTH
15 DID YOU THREATEN MARQUES HUDSON IN ANY WAY TO OBTAIN HIS
16 COOPERATION?

17 A. NO.

18 Q. DID ANYONE IN YOUR PRESENCE OR TO YOUR KNOWLEDGE
19 THREATEN HIM IN ANY WAY TO OBTAIN HIS COOPERATION?

20 A. NO.

21 Q. DID YOU PROMISE MARQUES HUDSON ANYTHING IN EXCHANGE FOR
22 COOPERATING WITH YOU?

23 A. NO.

24 Q. DID ANYONE ELSE IN YOUR PRESENCE OR TO YOUR KNOWLEDGE
25 DO THAT?

1 A. NO.

2 Q. DURING THIS PROCESS, JUST AN EXPLANATION OF HIS RIGHTS
3 AND THE COMPLETION OF THE FORM, DID MARQUES HUDSON EVER SAY,
4 I DO NOT WANT TO TALK TO YOU ANYMORE?

5 A. HE WAS VERY COOPERATIVE.

6 Q. DID HE EVER SAY ---

7 A. NO.

8 Q. --- I WANT A LAWYER?

9 A. HE NEVER SAID IT.

10 Q. WHAT DID YOU DO AFTER YOU COMPLETED THE WAIVER OF
11 RIGHTS?

12 A. WE STARTED DISCUSSING WHAT HAD HAPPENED ON SUNDAY
13 EVENING, OCTOBER 12TH. AND WHAT I LIKE TO DO IS TALK TO
14 SOMEONE WHEN I'M DOING AN INTERVIEW, GET A GOOD FEEL OF WHAT
15 THEY SAID HAPPENED. THAT WAY WHEN I PUT IT IN WRITING I CAN
16 TRY TO USE THEIR WORDAGE AND NOT MY OWN. SO TRY TO GET A
17 GOOD UNDERSTANDING SO THAT I CAN TYPE IT.

18 Q. OKAY. IS THAT YOUR GENERAL PROCEDURE FOR HOW YOU TAKE
19 A STATEMENT?

20 A. THAT'S RIGHT.

21 Q. AND DID YOU DO THAT IN THIS CASE?

22 A. IN THIS CASE WE DISCUSSED IT, GOT THE GENERAL IDEA OF
23 WHAT WAS GOING ON. AND I PULLED UP THE FORM THAT WE TYPE A
24 STATEMENT ON FOR A POSSIBLE SUSPECT. AND WHILE I WAS TYPING
25 THE NAME, CASE NUMBER AND GENERAL INFORMATION HE MADE A

1 REMARK THAT I TYPE SLOWLY. AND THEN AFTER I TYPED THE FIRST
2 LINE ON THIS STATEMENT HE TOLD ME THAT HE COULD TYPE IT. SO
3 I ALLOWED HIM TO TYPE HIS STATEMENT.

4 Q. DO YOU TYPE SLOWLY?

5 A. YES, I DO.

6 Q. AND WHEN HE TOLD YOU THAT HE WOULD TYPE IT DID YOU FIND
7 THAT UNUSUAL IN YOUR EXPERIENCE?

8 A. IT'S VERY UNUSUAL.

9 Q. I MEAN, HAS THAT EVER HAPPENED TO YOU BEFORE?

10 A. MAYBE ONCE, BUT IT'S VERY UNLIKELY.

11 Q. DID HE TYPE IT AT A TYPEWRITER OR DID YOU HAVE A
12 COMPUTER AT YOUR DESK OR SOMETHING ELSE?

13 A. HE TYPED IT ON A PC. WE HAVE DESK -- A COMPUTER ON THE
14 DESK TOP THAT HE TYPED IT AT.

15 Q. I'LL DIRECT YOUR ATTENTION TO STATE'S EXHIBIT NUMBER 2
16 FOR IDENTIFICATION PURPOSES. WHAT IS THAT?

17 A. THIS IS THE STATEMENT. ONCE IT HAD BEEN PRINTED OUT IT
18 WAS SIGNED. AND THIS IS THE ORIGINAL.

19 Q. IS A STANDARD FORM SUCH AS WHAT WE WERE TALKING ABOUT
20 WITH THE RIGHTS AND THE WAIVER FORM BEING WHAT YOUR OFFICE
21 USES, IS THIS A STANDARD STATEMENT FORM AS WELL?

22 A. IT IS.

23 Q. AND DOES THAT APPEAR ON YOUR COMPUTER ON YOUR DESK?

24 A. IT DOES.

25 Q. OKAY. SO YOU SAY THAT HE SAT DOWN AND THEN TYPED HIS

1 STATEMENT. DID YOU TELL HIM WHAT TO TYPE?

2 A. THE ONLY THING THAT I TOLD HIM THAT I NEEDED WAS THE
3 DATE OF -- WHEN THIS OCCURRED. AND THEN I READ THROUGH IT
4 AND I HAD HIM TO GO INTO A LITTLE MORE DETAIL IN CERTAIN
5 AREAS. BUT AS FAR AS TELLING HIM WHAT TO TYPE, OTHER THAN
6 THE DATE, THAT WAS IT.

7 Q. SO IS IT FAIR TO SAY THAT WHAT IS CONTAINED IN THE BODY
8 OF THIS STATEMENT IS WHAT MARQUES HUDSON PUT INTO IT?

9 A. THAT'S CORRECT.

10 Q. THOSE WERE HIS WORDS?

11 A. THESE ARE HIS WORDS.

12 Q. WHAT APPEARS AT THE VERY TOP OF THE STATEMENT FORM,
13 INVESTIGATOR?

14 A. AT THE VERY TOP YOU'VE GOT THE CASE NUMBER, THE NAME OF
15 THE PERSON GIVING THE STATEMENT, THE PERSON -- THE NAME OF
16 THE PERSON TAKING THIS STATEMENT. AND THEN IT AGAIN GOES
17 INTO SOME TYPE OF MIRANDA WARNING. THEN IT GOES INTO THE
18 AGE OF THE PERSON GIVING THE STATEMENT, THEIR ADDRESS AND
19 THEIR LEVEL OF EDUCATION.

20 Q. OKAY. AND HOW OLD DID YOU DETERMINE MARQUES HUDSON TO
21 BE?

22 A. TWENTY-FOUR YEARS OF AGE.

23 Q. AND WHERE DID HE RESIDE?

24 A. GREENVILLE, SOUTH
25 CAROLINA.

1 Q. AND IS THAT IN OUR COUNTY OF GREENVILLE COUNTY?

2 A. CORRECT.

3 Q. AND WHAT TYPE EDUCATION DID HE INDICATE THAT HE HAD?

4 A. SAID HE HAD COMPLETED THE ELEVENTH GRADE.

5 Q. DID HE VERIFY THAT HE COULD READ AND WRITE?

6 A. WHEN WE DID THE MIRANDA WARNINGS HE READ THE WAIVER.

7 SO I KNEW HE COULD READ.

8 Q. AFTER THE COMPLETION OF THE STATEMENT WHAT DID YOU DO?

9 A. UPON COMPLETION OF THE STATEMENT, AFTER HE HAD TYPED
10 THE STATEMENT I READ OVER IT, I HAD HIM TO EXPAND ON SOME OF
11 THE THINGS THAT WE HAD TALKED ABOUT. AND THEN AFTER THAT I
12 PRINTED IT OFF. HE READ IT AGAIN, MADE SURE EVERYTHING WAS
13 RIGHT. HE SIGNED. I HAD HIM INITIAL THE BOTTOM OF IT TO
14 SHOW THAT THAT WAS THE END OF HIS STATEMENT. HE SIGNED THE
15 TOP LINE AND STARTED SIGNING THE BOTTOM LINE. AND I ASKED
16 HIM TO PRINT ON THAT LINE. SO HE MARKED IT OUT. AND THEN I
17 WITNESSED IT AND INVESTIGATOR SIMPSON WITNESSED THE
18 STATEMENT.

19 Q. DID YOU PROVIDE HIM A COPY OF HIS STATEMENT?

20 A. HE WAS.

21 Q. IN FACT, I'LL DIRECT YOUR ATTENTION TO THE VERY BOTTOM
22 OF THE RIGHT HAND CORNER. DOES IT INDICATE THAT HE SIGNED
23 THAT HE RECEIVED A COPY?

24 A. YES, HE DID.

25 Q. OKAY. DID YOU TELL HIM WHEN HE READ OVER IT AND YOU

1 READ OVER IT, DID YOU TELL HIM THAT THERE -- CORRECTIONS
2 COULD BE MADE IF THERE WAS ANYTHING THAT HE WANTED TO
3 CORRECT, ADD, DELETE, WHATEVER? DID YOU TELL HIM THAT?

4 A. I DID.

5 Q. DID YOU TELL HIM THAT HE SHOULD INCLUDE EVERYTHING
6 PERTINENT TO THIS MATTER IN THIS STATEMENT?

7 A. I TOLD HIM THIS WAS HIS CHANCE TO GET WHAT HAPPENED PUT
8 DOWN ON PAPER, THAT EVERYTHING NEEDED TO BE STATED.

9 Q. DURING THE PROCESS OF THIS STATEMENT BEING DONE, OF HIM
10 TYPING THE STATEMENT AND Y'ALL GOING THROUGH THIS PROCESS,
11 WHO ELSE WAS IN THE OFFICE AT THAT TIME?

12 A. INVESTIGATOR SIMPSON HAD COME INTO THE OFFICE AS WE
13 WERE BEGINNING. AND INVESTIGATOR MCKINNEY CAME IN AT THE
14 END OF TAKING THE STATEMENT.

15 Q. WAS IT APPROXIMATELY AROUND THE TIME THEY WOULD BE
16 COMING TO WORK THAT MORNING?

17 A. THAT'S CORRECT.

18 Q. DID YOU THREATEN MARQUES HUDSON DURING THE PROCESS OF
19 THIS STATEMENT THAT HE HAD TO GIVE THIS STATEMENT OR
20 SOMETHING BAD MIGHT HAPPEN TO HIM?

21 A. NO, I NEVER THREATENED HIM.

22 Q. DID ANYBODY IN YOUR PRESENCE OR TO YOUR KNOWLEDGE
23 THREATEN HIM IN ANY WAY?

24 A. NO.

25 Q. DID YOU PROMISE HIM ANYTHING IN EXCHANGE FOR GIVING

1 THIS STATEMENT?

2 A. NO, MA'AM.

3 Q. DID ANYONE IN YOUR PRESENCE OR TO YOUR KNOWLEDGE
4 PROMISE HIM ANYTHING?

5 A. NO.

6 Q. WAS THERE ANY ISSUE IN TERMS OF HIM BEING DENIED
7 ANYTHING HE NEEDED SUCH AS TO GO TO THE RESTROOM OR GET A
8 DRINK OF WATER?

9 A. NO.

10 Q. DURING THE GIVING OF THIS STATEMENT DID MARQUES HUDSON
11 EVER SAY, I WANT TO STOP, I DON'T WANT TO TALK TO YOU
12 ANYMORE?

13 A. NO, HE DID NOT.

14 Q. DURING THIS PROCESS OF GIVING THIS STATEMENT DID HE
15 EVER SAY, I WANT A LAWYER NOW?

16 A. NO.

17 MS. SEAY: YOUR HONOR, AT THIS TIME I WOULD ASK THAT
18 STATE'S EXHIBITS 1 AND 2 FOR IDENTIFICATION PURPOSES BE
19 ADMITTED INTO EVIDENCE.

20 THE COURT: ALL RIGHT.

21 MR. WARDER: (AFFIRMATIVE NOD).

22 (WHEREUPON STATE'S EXHIBITS 1 AND 2 WERE ADMITTED INTO
23 EVIDENCE)

24 Q. DURING THE INTERVIEW OR AROUND THE TIME OF THE
25 INTERVIEW DID MARQUES HUDSON MAKE ANY OTHER COMMENTS TO YOU?

1 A. HE MADE A COMMENT DURING THE INTERVIEW THAT ON ANOTHER
2 OCCASION THAT *child* WHILE AT HIS APARTMENT, HAD FALLEN
3 DOWN SOME STAIRS BEFORE BUT THAT SHE WAS NOT INJURED DURING
4 THAT FALL.

5 Q. WAS THAT SOMETHING HE INCLUDED IN HIS WRITTEN
6 STATEMENT?

7 A. NO, IT WAS NOT.

8 Q. DID YOU INCLUDE IT IN YOUR REPORT?

9 A. I DID.

10 Q. WHEN YOU COMPLETED THE WAIVER OF RIGHTS AND THE
11 STATEMENT OF MARQUES HUDSON DID HE LEAVE? WAS HE FREE TO
12 LEAVE?

13 A. HE WAS FREE TO LEAVE AT ANY TIME. WE -- BASICALLY I
14 ASKED HIM ABOUT GOING OUT TO HIS APARTMENT TO TAKE A LOOK
15 AROUND TO SEE -- SINCE THAT WAS SUPPOSEDLY WHERE THE
16 INCIDENT OCCURRED, TO TAKE A LOOK AT THE APARTMENT. HE WAS
17 VERY AGREEABLE. WE WERE DISCUSSING WHETHER TO DO A CONSENT
18 TO SEARCH OR A SEARCH WARRANT. HE TOLD US WE DIDN'T NEED A
19 SEARCH WARRANT, THAT HE'D BE MORE THAN WELCOME TO LET
20 DEPUTIES COME OUT TO HIS HOUSE TO LOOK AROUND.

21 Q. OKAY.

22 A. SO SINCE I HAD A SUBPOENA TO BE IN FAMILY COURT THAT
23 PARTICULAR MONDAY MORNING I ASKED MASTER DEPUTY SIMPSON AND
24 INVESTIGATOR MCKINNEY TO GIVE MR. HUDSON A RIDE TO THE
25 APARTMENT THERE ON EAST NORTH STREET SO THAT A CONSENT TO

1 SEARCH COULD BE CARRIED OUT.

2 Q. OKAY. DID YOU EVER GO TO THE APARTMENT YOURSELF?

3 A. I DID NOT.

4 Q. OKAY. AT SOME POINT ON THAT SAME DAY DID YOU HAVE AN
5 OPPORTUNITY TO MEET WITH *child* PARENTS?

6 A. LATER THAT DAY AFTER LUNCH I MET WITH *child*
7 PARENTS AT THE HOSPITAL.

8 Q. WHAT WERE THEIR NAMES?

9 A. RUBIN SMITH, AND I THINK IT'S RAKEISHA JONES.

10 Q. OKAY. AND MR. SMITH IS CARRIE SMITH'S SON, IS THAT
11 CORRECT?

12 A. THAT'S WHAT I UNDERSTAND.

13 Q. ALL RIGHT. DO YOU KNOW WHETHER THEY HAD MUCH
14 INVOLVEMENT IN *child's* IPBRINGING OR DAILY CARE?

15 A. MY UNDERSTANDING, THE GRANDMOTHERS WERE THE ONES THAT
16 WERE RAISING THIS CHILD AND THE PARENTS HAD VERY LITTLE
17 CONTACT.

18 Q. WHAT ELSE, IF ANYTHING, DID YOU LEARN THAT DAY ABOUT
19 *Child's* CONDITION, MEDICAL CONDITION?

20 A. I TALKED WITH THE HOSPITAL SOCIAL WORKER SINCE I'D
21 TAKEN THE CHILD INTO EMERGENCY PROTECTIVE CUSTODY. AT THE
22 FAMILY COURT HEARING I LIKE TO HAVE SOME WRITTEN
23 DOCUMENTATION WHEN THERE'S PHYSICAL INJURIES TO A CHILD SO
24 THAT IF THE FAMILY COURT JUDGE ASKS THAT I CAN PRODUCE THAT
25 AS EVIDENCE. AND SO I WAS PRESENTED SOMETHING IN WRITING TO

1 THE EFFECT OF THE EXTENT OF THE INJURIES.

2 Q. OKAY. DID YOU ACTUALLY MEET WITH ANY OF THE DOCTORS TO
3 GET AN UPDATE ON HER CONDITION?

4 A. NOT ON MONDAY. ON TUESDAY AFTERNOON I MET WITH DR.
5 MICHAEL AVANT, WHO IS A DOCTOR IN THE PEDIATRIC INTENSIVE
6 CARE UNIT.

7 Q. BASED ON WHAT HE TOLD YOU DID YOU OBTAIN A WARRANT FOR
8 MR. HUDSON?

9 A. I DID.

10 Q. DID YOU OBTAIN WRITTEN STATEMENTS FROM LYCRETTA SMITH?

11 A. I DID.

12 Q. OR A WRITTEN STATEMENT FROM LYCRETTA SMITH?

13 A. I DID.

14 Q. AND DID YOU OBTAIN A WRITTEN STATEMENT FROM CARRIE
15 SMITH?

16 A. I DID.

17 Q. DID YOU DO ANYTHING FURTHER IN REGARD TO THIS CASE AT
18 THAT TIME?

19 A. NO, I DID NOT.

20 Q. THOSE ARE ALL THE QUESTIONS I HAVE, INVESTIGATOR
21 CAMPBELL. PLEASE ANSWER ANY THAT MR. WARDER MIGHT HAVE.

22 THE COURT: MR. WARDER.

23 MR. WARDER: THANK YOU, YOUR HONOR.

24 **CROSS EXAMINATION BY MR. WARDER:**

25 Q. INVESTIGATOR CAMPBELL, DID YOU GO TO COLLEGE OR OTHER

1 SCHOOL AFTER HIGH SCHOOL?

2 A. YES, SIR, I DID.

3 Q. WHERE DID YOU GO TO COLLEGE AT?

4 A. I GRADUATED GREENVILLE TECHNICAL COLLEGE WITH AN
5 ASSOCIATES DEGREE IN CRIMINAL JUSTICE. I HAVE A BACHELORS
6 DEGREE FROM PRESBYTERIAN COLLEGE IN CLINTON, SOUTH CAROLINA.

7 Q. WHAT WAS YOUR MAJOR DOWN AT PRESBYTERIAN?

8 A. BUSINESS ADMINISTRATION.

9 Q. AND THAT WAS A FOUR YEAR DEGREE?

10 A. THAT'S CORRECT.

11 Q. NOW MARQUES HUDSON WAS COMPLETELY COOPERATIVE
12 THROUGHOUT THIS WHOLE PROCESS?

13 A. YES, SIR, HE WAS.

14 Q. VOLUNTEERED TO TALK TO YOU, GIVE YOU A STATEMENT AND
15 TAKE YOU TO HIS HOUSE?

16 A. THAT'S CORRECT.

17 Q. YOU TOLD US ABOUT HIM TYPING THE STATEMENT. DID HE
18 TYPE WITH ALL OF HIS HANDS OR ONE FINGER?

19 A. I USUALLY TYPE WITH THE FINGERS. HE WAS USING MORE
20 THAN ONE OR TWO FINGERS.

21 Q. OKAY. DID HE TYPE FASTER THAN YOU?

22 A. PROBABLY.

23 Q. PROBABLY WOULD SUGGEST THAT YOU'RE NOT SURE. DID HE
24 TYPE THE SAME SPEED AS YOU DID?

25 A. THE THING IS IS WHEN I'M TYPING A STATEMENT I'M TRYING

1 TO REMEMBER WHAT WAS DISCUSSED AND TRY TO PUT IT IN THE
2 WORDAGE THAT WE HAD -- THAT HE HAD TALKED TO ME IN. NOW
3 WHEN YOU'RE TYPING IT AND IT'S COMING FROM YOUR THOUGHTS,
4 YOU CAN TYPE FASTER. NOW AS FAR AS THE ABILITY, WHO CAN
5 TYPE THE FASTEST? I HAVE NO IDEA.

6 Q. HOW LONG DID IT TAKE TO TAKE THIS STATEMENT?

7 A. AS FAR AS THE FULL INTERVIEW, TYPING THE STATEMENT OUT
8 BEGINNING TO END?

9 Q. YES, SIR.

10 A. PROBABLY HOUR AND A HALF.

11 Q. HOW LONG DID IT TAKE TO TYPE THIS STATEMENT OF THAT
12 HOUR AND A HALF?

13 A. HAVE NO IDEA.

14 Q. THANK YOU. OH, ONE THING. YOU SAID -- TOLD US ABOUT
15 CHECKING THE OTHER CHILDREN OF MARQUES HUDSON AND MS. SMITH.
16 WHEN DID YOU DO THAT?

17 A. I DID IT AT THE HOSPITAL AFTER TALKING WITH LYCRETTA
18 SMITH.

19 Q. OKAY. AND THE QUESTION WAS WHEN DID YOU DO THAT?

20 A. IT WAS EARLY THAT MORNING AT THE HOSPITAL.

21 Q. EARLY THE MONDAY MORNING, IS THAT RIGHT?

22 A. THAT MONDAY MORNING, YES.

23 Q. OKAY. THERE WASN'T ANY MARKS OR ANYTHING ON ANY OF HIS
24 CHILDREN?

25 A. NONE THAT WERE VISIBLE, NO, SIR.

1 Q. ANY REASON TO BELIEVE THERE WERE ANY THAT WEREN'T
2 VISIBLE?

3 A. I HAVE -- ALL I CAN SAY IS THERE WERE NOTHING VISIBLE
4 ON THE CHILDREN.

5 Q. THANK YOU.

6 THE COURT: THANK YOU. STEP DOWN. OKAY.

7 MS. SEAY: YOUR HONOR, THE STATE CALLS CARRIE SMITH.

8 CARRIE SMITH, BEING DULY
9 SWORN TESTIFIED AS FOLLOWS:

10 MADAME CLERK: STATE YOUR NAME FOR THE RECORD.

11 MS. SMITH: CARRIE SMITH.

12 **DIRECT EXAMINATION BY MS. SEAY:**

13 Q. MS. SMITH, WOULD YOU STATE YOUR NAME ONE MORE TIME SO I
14 CAN MAKE SURE EVERYBODY BACK HERE CAN HEAR YOU?

15 A. CARRIE SMITH.

16 Q. THANK YOU. MS. SMITH, DO YOU MIND IF I ASK HOW OLD YOU
17 ARE?

18 A. NO. I'M FIFTY-NINE YEARS OLD.

19 Q. AND WHERE DO YOU LIVE?

20 A. I LIVE IN BELTON.

21 Q. YOU LIVE IN GREENVILLE COUNTY?

22 A. ANDERSON COUNTY.

23 Q. ARE YOU CURRENTLY EMPLOYED?

24 A. NO. I'M DISABLED.

25 Q. WHAT'S THE NATURE OF YOUR DISABILITY?

1 A. I HAVE CHRONIC BACK PAIN.

2 Q. AND DID YOU SAY AT SOME POINT YOU HAD A DEGENERATIVE
3 DISK ---

4 A. DEGENERATIVE DISK IN MY BACK, UH-HUH (AFFIRMATIVE).

5 Q. WHAT DID YOU DO BEFORE YOU BECAME DISABLED?

6 A. I WORKED AT TARRINGTON COMPANY.

7 Q. WHAT IS THAT?

8 A. AS A MACHINE OPERATOR.

9 Q. HOW LONG DID YOU WORK THERE?

10 A. TWELVE YEARS.

11 Q. DID YOU HAVE EMPLOYMENT PRIOR TO THAT?

12 A. YES. I WORKED AT THE BELTON CORPORATION WHERE THEY
13 MAKE ELECTRIC BLANKETS.

14 Q. OKAY. HOW LONG DID YOU WORK THERE?

15 A. EIGHTEEN YEARS.

16 Q. ARE YOU MARRIED?

17 A. NO. I'M A WIDOW.

18 Q. WHEN DID YOU BECOME A WIDOW?

19 A. IT'LL BE FOUR YEARS ...

20 Q. IN 2003?

21 A. YES.

22 Q. DO YOU REMEMBER THE DATE?

23 A. DECEMBER THE 8TH, I THINK. DECEMBER THE 8TH.

24 Q. DECEMBER OF 2003?

25 A. UM-HUM (AFFIRMATIVE).

1 Q. SO SHORTLY AFTER THIS HAPPENED?

2 A. YES.

3 Q. YOU HAVE CHILDREN, OBVIOUSLY. WOULD YOU TELL US THEIR
4 NAMES AND AGES?

5 A. I HAVE A SON, ANDRE, THIRTY-NINE YEARS OLD, ANOTHER
6 SON, RODNEY, WHO IS THIRTY-SIX YEARS OLD, A DAUGHTER,
7 LYCRETTA, WHO IS TWENTY-EIGHT YEARS OLD, AND A SON, RUBIN
8 SMITH, WHO IS TWENTY-SIX YEARS OLD.

9 Q. AND HOW MANY GRANDCHILDREN DO YOU HAVE?

10 A. I HAVE EIGHT GRANDCHILDREN.

11 Q. WOULD YOU NAME THEM?

12 A. KAYLA, SERGIO, CALEP, RUSHANTI, LAZANE, MAKIAH AND MJ.

13 Q. OKAY. I WON'T ASK YOU TO NAME ALL THEIR BIRTHDAYS. SO
14 YOU'RE *child*'S PATERNAL GRANDMOTHER?

15 A. YES.

16 Q. AND WHEN WAS SHE BORN?

17 A. SHE WAS BORN

18 Q. AND SHE IS THE CHILD OF YOUR SON, RUBIN, IS THAT RIGHT?

19 A. MY YOUNGEST SON, RUBIN, YES.

20 Q. AND WHO IS *child's* MOTHER?

21 A. RAKEISHA JONES.

22 Q. WERE THEY MARRIED AT THE TIME THAT *child* WAS BORN?

23 A. NO, THEY'VE NEVER BEEN MARRIED.

24 Q. DID YOU HAVE THE OPPORTUNITY TO BECOME INVOLVED IN
25 HELPING TO RAISE *child* WHEN SHE WAS VERY YOUNG?

1 A. YES, I DID.

2 Q. APPROXIMATELY HOW OLD WAS SHE WHEN YOU STARTED CARING
3 FOR HER?

4 A. PROBABLY FROM TWO MONTHS UP, TWO WEEKS, I MEAN, I TOOK
5 CARE OF HER.

6 Q. SO ABOUT TWO WEEKS?

7 A. UM-HUM (AFFIRMATIVE).

8 Q. DID SHE LIVE IN YOUR HOME?

9 A. OFF AND ON SHE DID.

10 Q. WHERE WOULD SHE BE WHEN SHE WASN'T WITH YOU?

11 A. WITH HER OTHER GRANDMOTHER.

12 Q. THAT BEING HER MOTHER'S MOTHER?

13 A. UH-HUH (AFFIRMATIVE).

14 Q. FROM THE TIME THAT SHE WAS BORN UP UNTIL THE TIME THAT
15 THIS HAPPENED WHEN SHE WAS ABOUT SIXTEEN MONTHS OLD WHAT
16 KIND OF BABY WAS SHE?

17 A. SHE WAS A VERY PRETTY BABY, VERY ACTIVE BABY AND HAD NO
18 PROBLEMS.

19 Q. DID YOU TAKE HER TO THE PEDIATRICIAN ON A REGULAR BASIS
20 TO GET HER ---

21 A. I DID.

22 Q. --- VACCINATIONS AND THAT KIND OF THING?

23 A. I DID.

24 Q. SHE HAD REGULAR CHECK-UPS?

25 A. YES.

1 Q. WERE THERE EVER ANY PROBLEMS WITH HER DEVELOPMENTALLY
2 OR ANYTHING LIKE THAT?

3 A. NO.

4 Q. DID SHE EVER VISIT IN YOUR DAUGHTER, LYCRETTA'S HOME,
5 DURING THE TIME THAT YOU WERE CARING FOR HER?

6 A. YES, SHE DID.

7 Q. ABOUT HOW MANY TIMES WOULD YOU SAY?

8 A. WELL, TO STAY ALL NIGHT MAYBE THREE OR FOUR TIMES.

9 Q. WHO LIVED IN YOUR DAUGHTER, LYCRETTA'S HOME; DO YOU
10 KNOW?

11 A. YES. LYCRETTA, MARQUES HUDSON, AND AT THAT TIME,
12 MAKIAH AND LAZANE.

13 Q. AND THEY WERE PRETTY YOUNG AT THAT TIME AS WELL, THOSE
14 CHILDREN, ---

15 A. YES.

16 Q. --- CORRECT? ALL RIGHT. LET ME DIRECT YOUR ATTENTION
17 TO OCTOBER OF 2003. CAN YOU DESCRIBE APPROXIMATELY HOW MUCH
18 *child* WEIGHED AT THAT TIME?

19 A. I WOULD SAY BETWEEN TWENTY AND TWENTY-FIVE POUNDS.

20 Q. OKAY. DO YOU HAVE ANY IDEA HOW TALL SHE WAS OR
21 ANYTHING LIKE THAT?

22 A. NO, I DON'T.

23 Q. OKAY. WAS SHE WALKING?

24 A. YES, SHE WAS WALKING.

25 Q. WAS SHE ABLE TO FEED HERSELF AT ALL AT THAT TIME?

1 A. YES.

2 Q. COULD SHE PLAY AND RUN?

3 A. PLAY, RUN AND ALL. DO EVERYTHING A NORMAL CHILD WOULD
4 DO AT THAT AGE.

5 Q. WAS SHE ABLE TO SAY ANY WORDS?

6 A. YES.

7 Q. DO YOU RECALL WHAT SHE COULD SAY?

8 A. SHE COULD SAY MAMA. SHE COULD SAY SOME -- A GOOD MANY
9 WORDS AT THAT TIME.

10 Q. WHAT DID SHE CALL YOU?

11 A. MAMA.

12 Q. HAS SHE ALWAYS CALLED YOU MAMA?

13 A. YES.

14 Q. DO YOU KNOW MARQUES HUDSON AT ALL?

15 A. YES, I KNOW HIM. WELL, AS FAR AS DATING MY DAUGHTER,
16 THAT'S ALL I KNOW HIM.

17 Q. OKAY. LET'S GO BACK TO OCTOBER THE 11TH, 2003. THAT
18 WAS A SATURDAY, I BELIEVE.

19 A. YES.

20 Q. *child* WAS WITH YOU.

21 A. YES.

22 Q. WAS SHE GOING TO GO VISIT LYCRETTA THAT DAY?

23 A. YES.

24 Q. WOULD YOU DESCRIBE HOW THAT CAME ABOUT?

25 A. LYCRETTA AND ONE OF HER FRIENDS CAME TO MY HOUSE. AND

1 *child* WANTED -- SHE WANTED TO TAKE RUSHANTI TO PLAY WITH
2 HER CHILDREN. AND I GAVE HER A BATH AND WASHED HER HAIR AND
3 DRESSED HER. AND SHE DID, SHE TOOK HER WITH HER TO SPEND
4 THE NIGHT WITH HER CHILDREN.

5 Q. WHAT TIME OF DAY WAS IT THAT YOU GAVE HER A BATH AND
6 WASHED HER HAIR AND DRESSED HER?

7 A. ABOUT 4:00 IN THE EVENING.

8 Q. SO ABOUT 4:00 THAT AFTERNOON IS WHEN YOU DID ALL THIS?

9 A. YES.

10 Q. DID YOU NOTICE ANYTHING UNUSUAL ABOUT *child's*
11 PHYSICAL CONDITION AT THAT TIME?

12 A. NO.

13 Q. WAS SHE IN GOOD HEALTH AT THAT TIME?

14 A. YES.

15 Q. HAD SHE HAD ANY PROBLEMS AROUND THAT TIME?

16 A. NO.

17 Q. DID SHE HAVE ANY MARKS ON HER BODY?

18 A. NO.

19 Q. ABOUT WHAT TIME DID SHE LEAVE TO GO TO YOUR DAUGHTER'S
20 HOUSE?

21 A. SHE LEFT AROUND 5:00.

22 Q. WHEN WAS SHE SUPPOSED TO COME HOME?

23 A. SHE WAS SUPPOSED TO COME HOME THAT SUNDAY.

24 Q. THE NEXT DAY?

25 A. YEAH, THE NEXT DAY.

1 Q. AND WHEN DID YOU NEXT HEAR ANYTHING ABOUT *child*

2 A. NEXT I HEARD ABOUT *child* WAS ABOUT LATE THAT NIGHT,
3 MAYBE 11:30 OR SOMETHING. MY DAUGHTER, LYCRETTA, CALLED ME
4 TELLING ME *child* WAS AT THE HOSPITAL.

5 Q. WHERE WERE YOU WHEN YOU GOT THAT CALL?

6 A. I WAS ON MY WAY COMING FROM NORTH ATLANTA FROM CHURCH.

7 Q. ABOUT WHAT TIME WAS THAT?

8 A. IT WAS ABOUT 11:30.

9 Q. HAD YOU GONE TO A LATE CHURCH SERVICE?

10 A. I WENT TO A SINGING, YES.

11 Q. OKAY. AND WHEN LYCRETTA CALLED YOU AND TOLD YOU THIS
12 WHAT DID YOU DO?

13 A. I WENT STRAIGHT FROM COMING DOWN THE HIGHWAY TO THE
14 HOSPITAL TO GREENVILLE MEMORIAL.

15 Q. WHEN YOU GOT THERE WHAT DID YOU FIND OUT?

16 A. I FOUND OUT THAT *child* WAS LAYING THERE UNCONSCIOUS.
17 AND I DIDN'T KNOW WHAT HAD HAPPENED AT THE TIME.

18 Q. WHAT DID YOU -- WHAT DID YOU NOTICE ABOUT HER,
19 ANYTHING?

20 A. I NOTICED SHE HAD BRUISES AND SHE WAS JUST
21 UNRESPONSIVE. AND I WANTED TO KNOW WHAT HAPPENED. I WAS
22 TOLD THAT HE HAD -- MARQUES HAD FELL DOWN THE STEPS WITH
23 HER. BUT I NOTICED THE BRUISES AND ALL ON HER BODY.

24 Q. WERE YOU UPSET?

25 A. YES. I WAS VERY SHOCKED OF IT.

- 1 Q. WHO ELSE WAS THERE WHEN YOU GOT THERE?
- 2 A. LYCRETTA, MY DAUGHTER, AND HER TWO CHILDREN.
- 3 Q. DID YOU SEE MARQUES HUDSON WHEN YOU WERE THERE?
- 4 A. YES, I DID.
- 5 Q. DID YOU NOTICE ANYTHING ABOUT HIM?
- 6 A. NO, I DIDN'T.
- 7 Q. DID HE APPEAR TO BE HURT IN ANY WAY?
- 8 A. NO.
- 9 Q. HOW WAS HE ACTING?
- 10 A. I MEAN, HE ACTED LIKE HE WAS A LITTLE UPSET, BUT I
- 11 DIDN'T SEE ANYTHING ELSE FROM HIM.
- 12 Q. FROM THAT TIME ON DID YOU SEE *child* OFTEN?
- 13 A. OFF AND ON, YES, AS THEY WAS WORKING WITH HER.
- 14 Q. OKAY. AND DID THINGS GET BETTER FOR HER?
- 15 A. NO, THEY DIDN'T. THEY GOT WORSE FOR HER. ON THE
- 16 SECOND NIGHT AROUND MIDNIGHT I GOT A CALL FROM THE DOCTOR
- 17 TELLING ME THAT *child* HAD TAKEN WORSE, HER BRAIN'S
- 18 BEGINNING TO SWELL. AND I THINK SATURDAY WE WERE TOLD THAT
- 19 THE DOCTOR WAS OUT OF ALL OPTIONS. THEY DIDN'T KNOW WHAT TO
- 20 DO. IT WASN'T -- SHE JUST GOT WORSE AT THE TIME.
- 21 Q. WERE YOU AFRAID THAT SHE MIGHT NOT MAKE IT?
- 22 A. YES. I WAS AFRAID THAT SHE WOULDN'T MAKE IT. BUT AS I
- 23 TOLD THE OTHER GRANDMAMA, I TOLD, SHE'S GOING TO MAKE IT.
- 24 SHE'S IN GOD'S HAND. AND THAT'S THE WAY I LEFT IT ALL
- 25 THROUGH THE TIME.

1 Q. DID YOU STAY WITH HER THE WHOLE TIME?

2 A. YES, I -- MOST OF THE TIME I WAS THERE EVERY DAY AND
3 NIGHT.

4 Q. YOU STAYED EVERY NIGHT ALSO?

5 A. YES.

6 Q. ABOUT HOW LONG WAS SHE AT THE PEDIATRIC INTENSIVE CARE
7 UNIT?

8 A. SHE WAS THERE FOUR WEEKS.

9 Q. AND THEN DURING THAT TIME DID SHE IMPROVE A LITTLE BIT?

10 A. AS TIME WENT ON SHE BEGAN TO IMPROVE. IN ABOUT TWO
11 WEEKS TIME, SHE BEGAN TO.

12 Q. AND WHEN SHE LEFT THE PEDIATRIC INTENSIVE CARE UNIT
13 WHERE DID SHE GO?

14 A. SHE WENT TO ROGER C. PEACE.

15 Q. AND WAS THAT FOR HER TO HAVE REHABILITATION?

16 A. YES.

17 Q. AND SO THAT WOULD HAVE BEEN AROUND TOWARDS THE END OF
18 NOVEMBER?

19 A. YES.

20 Q. DID YOU GO TO ROGER C. PEACE TO SEE HER?

21 A. YES. I SPENT THE NIGHT THERE WITH HER.

22 Q. EVERY DAY ---

23 A. DAY AND NIGHT. ME AND THE OTHER GRANDMAMA TOOK TIMES
24 IN THE MONTH.

25 Q. AND DID SHE SEEM TO MAKE SOME IMPROVEMENT DURING HER

1 REHABILITATION?

2 A. AS TIME WENT ON SHE MADE SOME IMPROVEMENT.

3 Q. WHAT KINDS OF THINGS DID THEY HAVE TO DO FOR HER TO TRY
4 TO HELP HER REHABILITATE?

5 A. THEY HAD TO TRY TO HELP HER TO WALK, HAD TO DO THERAPY
6 ON HER TO TRY TO HELP HER WALK, TALK, EAT, USING HANDS AND
7 EVERYTHING. SHE HAD TO LEARN HOW TO DO ALL OVER AGAIN,
8 WHICH SHE'S NOT DOING NOW, BUT -- AND SHE'S STILL IN THERAPY
9 TODAY.

10 Q. OKAY. AND ARE YOU NOW HER LEGAL CUSTODIAN?

11 A. YES, I AM.

12 Q. OKAY. SO SHE'S BEEN IN YOUR CARE THIS WHOLE TIME?

13 A. YES.

14 Q. WHEN SHE CAME HOME FROM ROGER C. PEACE DID SHE GO TO
15 YOUR HOME?

16 A. YES.

17 Q. WHAT KIND OF SPECIAL ARRANGEMENTS HAD TO BE MADE WHEN
18 SHE CAME HOME WITH YOU FOR HER CARE?

19 A. I HAVE TO HAVE -- WELL, SHE COULDN'T WALK. SO I HAD TO
20 HAVE THERAPISTS HELP COMING IN TO HELP WITH HER WALKING AND
21 TALKING, LEARNING HOW TO FEED HER AND EVERYTHING ALL OVER
22 AGAIN.

23 Q. AND SHE JUST TURNED FIVE IN JUNE, IS THAT RIGHT?

24 A. YES.

25 Q. LET'S TALK ABOUT HER CURRENT CONDITION. WHAT KINDS OF

1 THINGS IS SHE ABLE TO DO NOW?

2 A. SHE'S ABLE TO SAY A FEW WORDS. SHE'S ABLE TO WALK, BUT
3 NOT GOOD. SHE'S HAVING TO WEAR A BRACE ON HER LEFT LEG.
4 SHE CANNOT USE HER LEFT HAND OR ARM AT ALL. SHE GOES TO A
5 SPECIAL SCHOOL. AND ---

6 Q. LET ME STOP YOU THERE 'CAUSE I WANTED TO ASK YOU -- YOU
7 SAID SHE COULD SAY A FEW WORDS. WHAT ARE SOME OF THE WORDS
8 SHE CAN SAY?

9 A. SHE CAN SAY EAT, MAMA, NO. BUT SHE'S NOT ABLE TO MAKE
10 REAL SENTENCE -- CARRY ON A CONVERSATION OR NOTHING.

11 Q. SHE CANNOT MAKE A SENTENCE?

12 A. SHE CAN SAY SOME WORDS, BUT NOT A FULL SENTENCE.

13 Q. AND YOU SAID SHE WEARS A BRACE ON HER LEG. DO YOU HAVE
14 TO TAKE HER TO A DOCTOR CONCERNING HER ORTHOPAEDIC ISSUES?

15 A. I HAVE TO TAKE HER TO COLUMBIA TO A DOCTOR FOR HER LEG.
16 I HAVE TO TAKE HER -- SHE HAS SEIZURES. I HAVE TO TAKE HER
17 TO GREENVILLE CHILDREN'S HOSPITAL FOR THAT.

18 Q. DOES SHE SEE A NEUROLOGIST BECAUSE OF HER SEIZURES?

19 A. YEAH, DR. BLUME. SHE SEES HIM.

20 Q. DOES SHE HAVE TO TAKE MEDICATION FOR THAT?

21 A. YES. SHE'S ON MEDICATION THREE TIMES A DAY.

22 Q. DOES THE DOCTOR SAY SHE'LL HAVE TO TAKE THAT FOREVER?

23 A. WELL, RIGHT NOW HE'S -- YES, HE'S SAYING SHE WON'T EVER
24 BE ABLE TO STAY BY HERSELF.

25 Q. IS THAT BECAUSE OF THE RISK OF HAVING A SEIZURE?

1 A. HAVING A SEIZURE, NOT SEEING GOOD.

2 Q. OKAY. SO DO YOU STILL TAKE HER TO A DOCTOR BECAUSE OF
3 HER VISION?

4 A. YES. I TAKE HER TO DR. JOHNSON.

5 Q. AND IS SHE POTTY TRAINED NOW?

6 A. NO, SHE'S NOT.

7 Q. SO YOU HAVE TO CHANGE HER DIAPERS?

8 A. YES.

9 Q. WHAT ABOUT -- YOU SAID SHE GOES TO A SPECIAL SCHOOL.
10 DO THEY MAKE -- DO THEY HAVE SPECIAL ARRANGEMENTS FOR HER
11 THERE BECAUSE OF HER LIMITATIONS OR PROBLEMS?

12 A. YES. AND SHE HAVE TO WEAR A HELMET AT SCHOOL TO KEEP
13 -- HER FALLING. SHE WEARS THAT LITTLE HELMET ON HER HEAD.

14 Q. DOES SHE HAVE SOME BALANCE PROBLEMS?

15 A. YES, SHE DO. SHE HAVE PROBLEMS WHERE SHE MIGHT -- LIKE
16 THIS MORNING, SHE FELL FLAT IN THE FLOOR. AND THE LEAST
17 LITTLE NOISE, IT KNOCKS HER OFF BALANCE.

18 Q. WHEN YOU'VE TAKEN HER TO THE DOCTORS AND THE ONES
19 WHO'VE BEEN CARING FOR HER, DO THEY THINK THAT SHE'LL EVER
20 BE ABLE TO DO REGULAR ACTIVITIES OR LIVE A REGULAR LIFE?

21 MR. WARDER: I ---

22 A. NO.

23 MR. WARDER: --- OBJECT TO ---

24 THE COURT: I SUSTAIN THE OBJECTION TO THE FORM OF THAT
25 QUESTION.

1 Q. DO YOU HAVE SOMEONE WHO HELPS YOU WITH HER CARE FROM
2 TIME TO TIME?

3 A. YES. HER DADDY HELPS ME A LOT WITH HER AND THE OTHER
4 GRANDMAMA SOME.

5 Q. DOES SHE HAVE TO HAVE SOMEONE WITH HER AT ALL TIMES?

6 A. YES.

7 Q. MS. SMITH, ON OCTOBER 11TH WHEN YOU HAD *child* BEFORE
8 SHE WENT OVER TO MARQUES AND LYCRETTA'S HOME DID SHE HAVE
9 ANY OF THE KINDS OF INJURIES AND CONDITIONS THAT SHE HAS
10 NOW?

11 A. NO, SHE DIDN'T.

12 Q. THANK YOU. MR. WARDER MAY HAVE SOME QUESTIONS HE WANTS
13 TO ASK YOU.

14 THE COURT: MR. WARDER.

15 **CROSS EXAMINATION BY MR. WARDER:**

16 Q. MS. SMITH, IS IT JUST YOU AND *child* C] THAT LIVE
17 TOGETHER?

18 A. ME AND WHO?

19 Q. IN YOUR HOME, IS IT JUST YOU AND *child*

20 A. *child* YES.

21 Q. NO ONE ELSE LIVES THERE TO HELP YOU?

22 A. NO.

23 Q. AND WAS THAT THE SAME CONDITION AS IT WAS WHEN THIS
24 INCIDENT HAPPENED BACK IN OCTOBER OF 2003? WAS SHE LIVING
25 WITH YOU THEN?

- 1 A. ME AND HER FATHER WAS THERE THEN.
- 2 Q. HER FATHER WAS THERE THEN TO HELP YOU?
- 3 A. YES.
- 4 Q. OKAY. AND JUST THE THREE OF YOU?
- 5 A. YES.
- 6 Q. NOW YOU TOLD US THAT SHE LEFT ON SATURDAY AFTERNOON AND
- 7 YOUR DAUGHTER CAME WITH A FRIEND. WHO WAS THAT FRIEND?
- 8 A. I DON'T REMEMBER WHO HER FRIEND WAS.
- 9 Q. WELL, THAT SATURDAY NIGHT WHERE DID *child* SPEND THE
- 10 NIGHT?
- 11 A. SHE WENT HOME WITH MY DAUGHTER.
- 12 Q. SHE SPENT THE NIGHT THERE?
- 13 A. I DON'T KNOW. I DON'T LIVE WITH -- I DIDN'T LIVE WITH
- 14 MY DAUGHTER.
- 15 Q. IN THREE YEARS YOU HAVEN'T DONE ANYTHING TO LEARN WHERE
- 16 SHE WAS AT?
- 17 A. WELL, I KNEW SHE WENT WITH MY DAUGHTER. AND THAT'S
- 18 WHERE SHE WAS SUPPOSED TO BE AT.
- 19 Q. OKAY. AND YOU TOLD US YOU BECAME HER LEGAL GUARDIAN.
- 20 WHEN DID YOU DO THAT?
- 21 A. WHEN SHE COME OUT OF THE HOSPITAL.
- 22 Q. OKAY. WHO'D BEEN THE LEGAL GUARDIAN BEFORE THAT?
- 23 A. HER MOTHER HAD HER.
- 24 Q. BUT SHE'D BEEN LIVING WITH YOU INSTEAD OF THE MOTHER?
- 25 A. I'D HELP TAKE CARE OF HER, YES.

1 Q. NOW -- THANK YOU. THAT'D BE ALL THE QUESTIONS I'D
2 HAVE.

3 THE COURT: THANK YOU. YOU CAN STEP DOWN.

4 MS. SEAY: YOUR HONOR, MAY I REQUEST JUST ABOUT A FIVE
5 MINUTE RECESS?

6 THE COURT: SURE. WE CAN TAKE A RECESS NOW.

7 MS. SEAY: THANK YOU.

8 THE COURT: TAKE THE JURY OUT, PLEASE.

9 (WHEREUPON THE JURY EXITED THE COURTROOM AT 10:08 AM)

10 (WHEREUPON COURT WAS IN RECESS AT 10:09 AM)

11 MADAME CLERK: DO YOU SOLEMNLY SWEAR OR AFFIRM TO TELL
12 THE TRUTH, THE WHOLE TRUTH AND NOTHING BUT THE TRUTH SO HELP
13 YOU GOD?

14 MR. HUDSON: YES, I DO.

15 MADAME CLERK: THANK YOU.

16 THE COURT: YOU CAN SIT DOWN, MR. HUDSON. MR. HUDSON,
17 I UNDERSTAND THAT THE STATE HAS ONE MORE WITNESS TO PRESENT
18 AND THEN THEY WILL CONCLUDE THEIR CASE. AND THEN IT WILL
19 BECOME TIME FOR YOU TO PRESENT YOUR SIDE OF THE CASE. YOU
20 DON'T HAVE TO TESTIFY. YOU DON'T HAVE TO PRESENT ANY OTHER
21 WITNESSES. THAT'S BECAUSE THE BURDEN IS ALWAYS ON THE STATE
22 TO PROVE YOU GUILTY BEYOND A REASONABLE DOUBT. DO YOU
23 UNDERSTAND THAT RIGHT?

24 MR. HUDSON: YES, SIR.

25 THE COURT: YOU HAVE ABSOLUTELY NO OBLIGATION IN THIS

1 CASE. YOU UNDERSTAND THAT?

2 MR. HUDSON: YES, SIR.

3 THE COURT: WITH THAT UNDERSTANDING, NOW I TELL YOU
4 THAT YOU HAVE A PERFECT RIGHT TO TAKE THE STAND AND TESTIFY
5 AND TELL THE JURY YOUR SIDE OF THE STORY. OKAY?

6 MR. HUDSON: YES, SIR.

7 THE COURT: NOW AT THIS POINT DO YOU KNOW WHETHER OR
8 NOT YOU WILL TAKE THE STAND AND TESTIFY IN YOUR OWN DEFENSE
9 OR OTHERWISE PRESENT TESTIMONY?

10 MR. HUDSON: NO, SIR, NOT AT THIS TIME.

11 THE COURT: YOU DON'T KNOW THAT? ALL RIGHT. HAS MR.
12 WARDER PUT ANY PRESSURE ON YOU ONE WAY OR THE OTHER EITHER
13 TO TESTIFY OR NOT TO TESTIFY?

14 MR. HUDSON: NO, SIR.

15 THE COURT: AND SO THE DECISION THAT YOU MAKE, WHETHER
16 YOU WILL OR WILL NOT TESTIFY, IS A DECISION YOU YOURSELF
17 WILL MAKE?

18 MR. HUDSON: YES, SIR.

19 THE COURT: ARE YOU UNDER THE INFLUENCE OF ANY ALCOHOL,
20 DRUG OR ANY OTHER SUBSTANCE RIGHT AT THIS MOMENT?

21 MR. HUDSON: NO, SIR.

22 THE COURT: YOU'RE SOBER?

23 MR. HUDSON: YES, SIR.

24 THE COURT: YOU KNOW WHAT YOU'RE DOING?

25 MR. HUDSON: YES, SIR.

1 **THE COURT:** AND YOU ALONE WILL MAKE THE DETERMINATION
2 WHETHER YOU WILL OR WILL NOT TESTIFY OR OTHERWISE PRESENT
3 TESTIMONY, IS THAT RIGHT?

4 **MR. HUDSON:** YES, SIR.

5 **THE COURT:** OKAY. THANK YOU VERY MUCH. ALL RIGHT.
6 LET'S BE AT EASE THEN UNTIL THE DOCTOR ARRIVES.

7 (WHEREUPON COURT WAS IN RECESS AT 10:24 AM)

8 (WHEREUPON STATE'S EXHIBITS 22 - 29 WERE MARKED FOR
9 IDENTIFICATION)

10 **THE COURT:** ALL RIGHT. YOU WANT TO DISCUSS CHARGES, IS
11 THAT CORRECT?

12 **MR. WARDER:** YES, SIR. YOUR HONOR, I WOULD ASK THE
13 COURT TO SPECIFICALLY CHARGE AS A LESSER INCLUDED CRIME,
14 ASSAULT AND BATTERY OF A HIGH AND AGGRAVATED NATURE. I
15 THINK THE CHARGE INFLICTION OR ALLOWING INFLICTION OF A
16 GREAT BODILY HARM UPON A CHILD WOULD INCLUDE ALL OF THE
17 ELEMENTS OF ASSAULT AND BATTERY OF A HIGH AND AGGRAVATED
18 NATURE AND THAT, THEREFORE, IT WOULD BE PROPER TO CHARGE IT.

19 **THE COURT:** SOLICITOR?

20 **MS. SEAY:** YOUR HONOR, I DISAGREE BECAUSE AS I
21 UNDERSTAND THE TEST BOTH OF THESE OFFENSES CONTAIN ELEMENTS
22 WHICH THE OTHER DOES NOT, WHICH WOULD MEAN THAT ASSAULT AND
23 BATTERY OF A HIGH AND AGGRAVATED NATURE WOULD NOT BE A
24 LESSER INCLUDED OFFENSE.

25 GREAT BODILY INJURY TO A CHILD SPECIFICALLY REQUIRES

1 GREAT BODILY INJURY, AND IT REQUIRES THAT THE VICTIM BE A
2 CHILD. ASSAULT AND BATTERY OF A HIGH AND AGGRAVATED NATURE
3 REQUIRES AN ASSAULT AND BATTERY UPON ANY PERSON WITH CERTAIN
4 AGGRAVATING CIRCUMSTANCES TO INCLUDE SERIOUS BODILY INJURY,
5 DISPARITY IN SIZE, DISPARITY IN PHYSICAL CONDITION, USE OF A
6 DEADLY WEAPON. SO I THINK BOTH OFFENSES INCLUDE ELEMENTS
7 THAT THE OTHER DOES NOT.

8 THE COURT: HOW ABOUT THAT, MR. WARDER?

9 MR. WARDER: WELL, IT'S MY UNDERSTANDING THAT THE
10 GREATER COULD INCLUDE ELEMENTS THAT ARE NOT INCLUDED IN THE
11 LESSER. AN EXAMPLE MIGHT BE FOR -- THAT ARMED ROBBERY WOULD
12 INCLUDE THE LESSER INCLUDED OF ROBBERY, OF COMMON LAW
13 ROBBERY. THE FACT THAT COMMON LAW ROBBERY DOESN'T REQUIRE A
14 WEAPON DOESN'T MEAN IT'S NOT PROPER.

15 WHAT YOU LOOK AT, IT SEEMS TO ME, IS YOU LOOK AT THE
16 GREATER AND YOU SAY THE LESSER CAN'T INCLUDE AN ELEMENT
17 THAT'S NOT IN THE GREATER, BUT IF THE GREATER INCLUDES THE
18 ELEMENTS, THE FACT THAT THE LESSER DOESN'T INCLUDE THAT
19 ELEMENT STILL MAKES THE CHARGING OF IT PROPER.

20 ASSAULT AND BATTERY OF A HIGH AND AGGRAVATED NATURE
21 WOULD BE A PROPER CHARGE BECAUSE IT COULD INCLUDE
22 AGGRAVATION THAT WASN'T AS AN ELEMENT THAT DIDN'T CREATE
23 SERIOUS BODILY, I MEAN, DIDN'T CREATE GREAT BODILY INJURY,
24 IT ONLY CREATED SERIOUS BODILY INJURY, YET ONE OF THE
25 AGGRAVATING FACTORS COULD BE THE DIFFERENCE IN AGE AND SIZE.

1 SO THE LESSER IS INCLUDED WITHIN THE GREATER. AND IT'S
2 PROPER TO CHARGE IT EVEN THOUGH ...

3 MS. SEAY: THE GREAT BODILY INJURY STATUTE DOES NOT
4 SPECIFICALLY STATE THAT AN ASSAULT AND BATTERY IS EVEN
5 REQUIRED.

6 MR. WARDER: INTENTIONAL CONDUCT. IT WOULD BE HARD TO
7 IMAGINE HOW IT POSSIBLY COULD OCCUR WITHOUT AN ASSAULT.

8 (PAUSE)

9 THE COURT: MR. WARDER, CITE TO ME THE TESTIMONY IN
10 THIS CASE THAT TENDS TO SHOW THAT THIS DEFENDANT IS ONLY
11 GUILTY OF ASSAULT AND BATTERY OF A HIGH AND AGGRAVATED
12 NATURE, IS ONLY GUILTY OF THAT OFFENSE.

13 MR. WARDER: YOUR HONOR, IF THE JURY WAS TO CONCLUDE
14 THAT MY CLIENT HIT THE CHILDREN WITH A BELT AS IS IN HIS
15 STATEMENT, BUT DID NOT INTENTIONALLY PRODUCE THE INJURY THAT
16 CAUSED THE HEMATOMA OR THE BLOOD CLOT IN THE HEAD AND THE
17 EYE DAMAGE, IF THEY WERE TO CONCLUDE HE EITHER DIDN'T DO
18 THAT OR THAT WAS ACCIDENTAL, THEN I SUBMIT TO YOU ASSAULT
19 AND BATTERY UNDER THAT INTERPRETATION OF THE FACTS WOULD BE
20 INCOMPLETELY PROPER.

21 THE COURT: WELL, IT SEEMS TO ME AT THIS POINT THE ONLY
22 TESTIMONY IN THE CASE SHOWS THAT IF HE'S GUILTY AT ALL THAT
23 HE'S GUILTY OF THE CRIME AS CHARGED BECAUSE THE TESTIMONY IS
24 THAT THE CHILD SUFFERED SERIOUS BRAIN DAMAGE AND THAT IT
25 COULD ONLY OCCUR BY SHAKING THE BABY.

1 **MR. WARDER:** I DON'T BELIEVE THERE'S ANY TESTIMONY IT
2 COULD ONLY OCCUR SHAKING THE BABY OUTSIDE OF THE SOLICITOR'S
3 OPENING STATEMENT.

4 **MS. SEAY:** I DISAGREE. I BELIEVE DR. SEIGLER
5 SPECIFICALLY TESTIFIED TO THAT.

6 **MR. WARDER:** HE TESTIFIED IT WOULD TAKE A SEVERE
7 IMPACT. DID NOT SAY SHAKEN BABY. NEVER SAID SHAKEN BABY.

8 **MS. SEAY:** MASSIVE FORCE IS ONE QUOTE I HAVE FROM HIM.
9 (PAUSE)

10 **THE COURT:** MR. WARDER, I'M READING FROM AN OLD CASE,
11 STATE V. FUNGESS, WHICH IS AN OCTOBER 23, 1976 CASE, I DON'T
12 HAVE THE CITATION, WHERE THE COURT HELD THAT THE PRESENCE OF
13 EVIDENCE TO SUSTAIN THE CRIME OF THE LESSER DEGREE
14 DETERMINES WHETHER OR NOT IT SHOULD BE SUBMITTED.

15 **MS. SEAY:** AND, YOUR HONOR, I BELIEVE THAT THAT IS
16 STILL THE CONTROLLING LAW. AND I'LL BE GLAD TO GO FIND
17 SOMETHING MORE CURRENT IF YOU'D LIKE FOR ME TO.

18 **THE COURT:** ALL RIGHT. MR. WARDER, A CHARGE ON THE
19 LESSER INCLUDED OFFENSE IS NECESSARY ONLY WHEN THERE IS
20 EVIDENCE THAT ONLY THE LESSER CRIME WAS COMMITTED. NOW TELL
21 ME WHERE THE EVIDENCE IS THAT ONLY ASSAULT AND BATTERY OF A
22 HIGH AND AGGRAVATED NATURE WAS COMMITTED.

23 **MR. WARDER:** CONTAINED IN THE STATEMENT IS -- MY
24 CLIENT, IS THAT HE STRUCK THE CHILD WITH A BELT. THAT WOULD
25 BE EVIDENCE, I THINK, OF ASSAULT AND BATTERY OF A HIGH AND

1 AGGRAVATED NATURE. HE SAYS HE COMPLETELY THEN ACCIDENTALLY
2 FELL DOWN THE STAIRS. IF BELIEVED -- THAT TESTIMONY'S
3 BELIEVED BY A JURY, THAT'S ASSAULT AND BATTERY OF A HIGH AND
4 AGGRAVATED NATURE.

5 THE COURT: I DISAGREE WITH YOU, MR. WARDER. I WOULD
6 DECLINE TO CHARGE ASSAULT AND BATTERY OF A HIGH AND
7 AGGRAVATED NATURE, BUT YOU'RE PROTECTED.

8 MR. WARDER: YES, SIR. I JUST -- I WANTED TO GET THAT
9 RULING AS EARLY -- BECAUSE WE WERE GOING TO USE IT IN THE
10 DECISION OF ---

11 THE COURT: I UNDERSTAND. I UNDERSTAND. ALL RIGHT.
12 HAVE YOU HEARD ANYTHING FROM YOUR DOCTOR?

13 MS. SEAY: NO, SIR, BUT I'LL CHECK IN THE HALL. HE
14 SHOULD BE HERE ANY MINUTE.

15 (WHEREUPON COURT WAS IN RECESS AT 11:43 AM)

16 MS. SEAY: WE'RE READY TO PROCEED, YOUR HONOR.

17 THE COURT: OKAY. BRING OUR JURY.

18 (WHEREUPON THE JURY ENTERED THE COURTROOM AT 11:50 AM)

19 THE COURT: OKAY, SOLICITOR.

20 MS. SEAY: THANK YOU, YOUR HONOR. MAY IT PLEASE THE
21 COURT? THE STATE CALLS DR. ANTHONY JOHNSON.

22 ANTHONY JOHNSON, M. D.,
23 BEING DULY SWORN TESTIFIED AS FOLLOWS:

24 MADAME CLERK: STATE YOUR NAME FOR THE RECORD.

25 DR. JOHNSON: ANTHONY PETE JOHNSON.

1 DIRECT EXAMINATION BY MS. SEAY:

2 Q. DR. JOHNSON, WOULD YOU STATE YOUR NAME ONE MORE TIME?

3 I WANT TO MAKE SURE WE CAN HEAR YOU BACK HERE.

4 A. ANTHONY PETE JOHNSON.

5 Q. YOU'RE FINE. YOU CAN EVEN JUST BACK UP JUST A LITTLE

6 BIT. DR. JOHNSON, WHAT'S YOUR OCCUPATION?

7 A. PEDIATRIC OPHTHALMOLOGIST HERE IN GREENVILLE AT JERVEY

8 EYE GROUP.

9 Q. HOW LONG HAVE YOU BEEN EMPLOYED IN THAT CAPACITY?

10 A. I'VE BEEN A PEDIATRIC OPHTHALMOLOGIST HERE IN

11 GREENVILLE SINCE 1986.

12 Q. WOULD YOU PLEASE DESCRIBE YOUR EDUCATION AND TRAINING?

13 A. I WENT TO TEXAS TECH UNIVERSITY WITH A MAJOR IN

14 CHEMISTRY AND STARTED MEDICAL SCHOOL IN AUGUST 1977 AT THE

15 UNIVERSITY OF TEXAS IN SAN ANTONIO WHERE I GRADUATED IN

16 1981. SUBSEQUENT TO THAT I CAME TO GREENVILLE AND DID A

17 GENERAL SURGERY INTERNSHIP AT THE OLD GREENVILLE GENERAL

18 HOSPITAL FOLLOWED BY AN OPHTHALMOLOGY RESIDENCY AT TULANE IN

19 NEW ORLEANS, WHICH I COMPLETED IN 1985 AND THEN COMPLETED MY

20 TRAINING IN 1986 SPENDING A YEAR AT SCOTTISH RITE CHILDREN'S

21 HOSPITAL IN ATLANTA DOING PEDIATRIC OPHTHALMOLOGY.

22 Q. AND WHAT WAS YOUR WORK EXPERIENCE AFTER THAT?

23 A. I'VE BEEN IN FULL-TIME PRACTICE HERE IN GREENVILLE IN

24 PRIVATE PRACTICE AS A PEDIATRIC OPHTHALMOLOGIST SINCE JUNE

25 1986.

1 Q. OKAY. WHAT ARE YOUR CURRENT HOSPITAL APPOINTMENTS?

2 A. I HAVE PRIVILEGES AT GREENVILLE HOSPITAL SYSTEM, ST.
3 FRANCIS AND COURTESY PRIVILEGES AT THE SHRINER'S CHILDREN'S
4 HOSPITAL.

5 Q. OKAY. DO YOU HAVE ANY PARTICULAR CERTIFICATIONS IN
6 YOUR FIELD?

7 A. THERE ARE NO SUB-SPECIALTY CERTIFICATIONS IN
8 OPHTHALMOLOGY, BUT I AM BOARD CERTIFIED IN OPHTHALMOLOGY,
9 WHICH I RECEIVED IN 1987 AND WAS RECERTIFIED IN 2006.

10 Q. ARE YOU A MEMBER OF PROFESSIONAL ORGANIZATIONS RELATING
11 TO YOUR CAREER?

12 A. YES, MA'AM. I'M A MEMBER OF THE AMERICAN ACADEMY OF
13 OPHTHALMOLOGY, THE AMERICAN COLLEGE OF SURGEONS, THE
14 AMERICAN ASSOCIATION FOR PEDIATRIC OPHTHALMOLOGY AND
15 STRABISMUS, THE AMERICAN ACADEMY OF PEDIATRICS AND THEN
16 SEVERAL OF THE STATE AND LOCAL ORGANIZATIONS INCLUDING THE
17 GREENVILLE COUNTY MEDICAL SOCIETY.

18 Q. AND DURING YOUR CAREER HAVE YOU PUBLISHED ANY WORKS OR
19 PRESENTED AT ANY PROFESSIONAL GATHERINGS AS PART OF YOUR
20 PRACTICE?

21 A. DURING MY YEARS OF RESIDENCY AND EARLY PRACTICE I HAD
22 SEVERAL PUBLICATIONS AND HAVE PRESENTED TO SEVERAL GROUPS,
23 BUT THAT HAS BECOME LESS AND LESS FREQUENT AS I HAVE HAD
24 LESS AND LESS TIME TO DO THAT DURING MY PRACTICE.

25 Q. IS IT YOUR HABIT TO REMAIN KNOWLEDGEABLE ABOUT THE

1 CURRENT LITERATURE IN YOUR FIELD?

2 A. IT IS. I PROBABLY AVERAGE ABOUT THIRTY TO FORTY YEARS,
3 I'M SORRY, HOURS OF CONTINUING EDUCATION EACH YEAR. AND
4 THAT'S ALSO ONE OF THE REQUIREMENTS FOR RECERTIFICATION IN
5 OPHTHALMOLOGY.

6 Q. AS PART OF YOUR DUTIES AS A PEDIATRIC OPHTHALMOLOGIST
7 CAN YOU JUST BRIEFLY GIVE US A RUNDOWN OF WHAT A TYPICAL DAY
8 OR WEEK WORK WOULD BE LIKE FOR YOU?

9 A. I TYPICALLY SEE BETWEEN FORTY AND FIFTY PATIENTS IN THE
10 OFFICE ON A FULL DAY IN THE OFFICE. THE MORNING I SPEND
11 SEEING ESTABLISHED PATIENTS. IN THE AFTERNOON I SEE
12 ANYWHERE FROM TEN TO FIFTEEN NEW CONSULTATIONS AND SCATTERED
13 DURING THE WEEK VISITS TO THE HOSPITAL IF I'M CALLED TO SEE
14 CONSULTATIONS THAT PERTAIN TO PEDIATRIC OPHTHALMOLOGY.

15 Q. IN YOUR EXPERIENCE HAVE YOU DIAGNOSED AND TREATED
16 CHILDREN WHO HAVE BEEN VICTIMS OF INTENTIONAL ABUSE?

17 A. YES, I HAVE. AND AS THE ONLY PEDIATRIC OPHTHALMOLOGY
18 IN GREENVILLE UNTIL TWO YEARS AGO I HAVE BEEN INVOLVED IN
19 SEVERAL CASES OF ABUSIVE HEAD TRAUMA. AND IN THE LAST TEN
20 YEARS I HAVE SEEN PROBABLY BETWEEN SIXTY-FIVE AND SEVENTY
21 PATIENTS THAT HAVE HAD THAT DIAGNOSIS.

22 Q. OKAY. HAVE YOU TESTIFIED IN THE COURTS OF SOUTH
23 CAROLINA BEFORE?

24 A. YES, MA'AM, I HAVE.

25 Q. DO YOU KNOW WHICH ONES OR APPROXIMATELY HOW MANY TIMES?

1 A. I'VE TESTIFIED IN SEVERAL DIFFERENT FAMILY COURTS.
2 I'VE TESTIFIED IN COUNTY COURT TWO OR THREE TIMES I CAN
3 REMEMBER. PROBABLY A TOTAL OF FIFTEEN TIMES.

4 Q. AND HAVE YOU EVER BEEN QUALIFIED AS AN EXPERT IN YOUR
5 FIELD WHEN YOU'VE TESTIFIED IN COURT?

6 A. YES, MA'AM, I HAVE.

7 Q. APPROXIMATELY HOW MANY TIMES?

8 A. PROBABLY A DOZEN TIMES.

9 MS. SEAY: YOUR HONOR, I WOULD OFFER DR. ANTHONY
10 JOHNSON AS AN EXPERT IN PEDIATRIC OPHTHALMOLOGY.

11 THE COURT: ANY VOIR DIRE?

12 MR. WARDER: NO, YOUR HONOR.

13 THE COURT: HE'S QUALIFIED. PROCEED.

14 MS. SEAY: THANK YOU, YOUR HONOR.

15 Q. DR. JOHNSON, I'D LIKE TO DIRECT YOUR ATTENTION TO
16 OCTOBER 2003. I ASSUME YOU WERE WORKING IN YOUR CURRENT
17 CAPACITY AT THAT TIME?

18 A. YES, I WAS.

19 Q. DID YOU HAVE OCCASION TO EXAMINE *child* AT THAT
20 TIME?

21 A. I DID, WHEN SHE WAS IN THE PEDIATRIC INTENSIVE CARE
22 UNIT.

23 Q. OKAY. HOW DID YOU BECOME INVOLVED?

24 A. I WOULD LIKE TO START THAT ANSWER BY JUST EXPLAINING
25 HOW THE TEAM WORKS INVOLVED WITH A SERIOUS HEAD INJURY. I

1 THINK THAT THE COURT HAS HEARD FROM OTHER DOCTORS AND
2 PERHAPS HAS A FEELING OF HOW THAT WORKS, BUT IN ORDER TO
3 BEST UNDERSTAND WHAT MY FINDINGS WERE I'D LIKE TO JUST MAKE
4 A FEW COMMENTS ABOUT THAT, IF I MAY.

5 FIRST OF ALL, ---

6 **MR. WARDER:** I OBJECT TO THIS TESTIMONY, YOUR HONOR.
7 CERTAINLY THE DOCTOR CAN ANSWER QUESTIONS ABOUT -- BUT I'M
8 NOT SURE THAT -- AND I OBJECT TO HIS POSTURE OF DECIDING HE
9 -- WHAT HE WANTS TO EXPLAIN. I THINK HE JUST ANSWERS THE
10 QUESTIONS.

11 **THE COURT:** NO, I -- HE'S ENTITLED TO DO THAT.
12 OVERRULED. GO AHEAD.

13 A. WHEN A CHILD IS IN THE HOSPITAL THROUGH THE EMERGENCY
14 ROOM, USUALLY OFTEN BY WAY OF EMS, THE INITIAL CHARGE OF THE
15 DOCTORS IS TO IDENTIFY WHAT THE PROBLEM IS TO, IN MANY
16 CASES, USE LIFE SAVING TECHNIQUES TO TRY TO TAKE CARE OF THE
17 CHILD AND ULTIMATELY TO HAVE TO EXPLAIN WHAT THEY HAD FOUND.
18 WHEN WE'RE DEALING WITH CHILDREN, OF COURSE, WE'RE RELYING
19 ON THE HISTORY OF THE FAMILY. AND THE HISTORY IS JUST AS
20 IMPORTANT AS THE EXAMINATION AND ALL OF THE LABORATORY AND
21 X-RAY INFORMATION AS WELL.

22 AND BY THE TIME I BECOME INVOLVED IN ONE OF THESE CASES
23 IT'S USUALLY TWO TO FIVE OR SIX DAYS INTO THE
24 HOSPITALIZATION AND THERE'S ALREADY BEEN A LOT OF
25 INFORMATION THAT'S BEEN OBTAINED. AND THE TEAM, AS THEY

1 TAKE CARE OF, AND I'M ONLY A TINY PART OF THAT TEAM, THE
2 TEAM THAT'S IN CHARGE OF THE PRIMARY RESPONSIBILITY OF THE
3 OVERALL CARE OF THE CHILD AND THEN WHATEVER SUB-SPECIALISTS,
4 LIKE MYSELF, THAT BECOME INVOLVED, INCORPORATES NOT ONLY THE
5 PHYSICIANS, IT ALSO INCLUDES THE NURSING STAFF AND SOMETIMES
6 INVESTIGATORS AND DIFFERENT INDIVIDUALS.

7 AND EVERY TIME THAT A HEAD INJURY PATIENT IS EVALUATED
8 AND CARED FOR THE TEAM WOULD LIKE NOTHING MORE THAN TO FIND
9 SOME OTHER EXPLANATION OTHER THAN A NON-ACCIDENTAL INJURY.
10 NONE OF THE TEAM WANTS TO FIND THAT AND, THEREFORE, ALL OF
11 THE ---

12 MR. WARDER: YOUR HONOR, I OBJECT TO THIS DOCTOR
13 SPEAKING FOR THE TEAM ---

14 THE COURT: LET'S MOVE ON TO WHAT SPECIFICALLY HE DID.
15 I THINK YOU'VE GONE FAR ENOUGH.

16 A. AND, THEREFORE, AS A RESULT OF THAT WHEN I GET INVOLVED
17 AND WHEN I GOT INVOLVED THAT MORNING WHEN I EXAMINED
18 *child* I I KNEW THAT THERE WAS INTRA CRANIAL HEMORRHAGE WAS
19 -- I UNDERSTOOD THAT THERE HAD BEEN SOME TYPE OF ACCIDENTAL
20 FALL ON STAIRS. AND I WAS ASKED IF THERE WERE ANY RETINAL
21 HEMORRHAGES. AND THE FINDINGS OF RETINAL HEMORRHAGES IN
22 PATIENTS WITH HEAD INJURIES IS MANY TIMES MORE COMMONLY
23 FOUND IN PATIENTS WITH NON-ACCIDENTAL INJURIES THAN WITH
24 ACCIDENTAL HEAD TRAUMA. SO IT HELPS ---

25 Q. DOCTOR, IS THAT BASED ON YOUR EXPERIENCE, YOUR

1 EDUCATION? WHAT IS THAT BASED ON?

2 A. WELL, THAT'S BEEN CONFIRMED BY MY EXPERIENCE, BUT
3 THAT'S BEEN WRITTEN IN MANY JOURNAL ARTICLES. IN FACT,
4 THERE HAVE BEEN SO MANY ARTICLES PUBLISHED COMPARING NON-
5 ACCIDENTAL TO ACCIDENTAL HEAD TRAUMA PATIENTS AND THE
6 FINDINGS THAT YOU'D HAVE DIFFICULTY GETTING ANOTHER ONE
7 PUBLISHED AT THIS POINT.

8 SO THERE'S A LOT KNOWN ABOUT THOSE TWO DIFFERENT GROUPS
9 OF PATIENTS. THEY HAVE A HEAD INJURY. WAS IT DUE TO AN
10 ACCIDENTAL INJURY OR WAS IT DUE TO AN INFLICTED INJURY? AND
11 THOSE TWO PATIENT GROUPS ARE COMPLETELY DIFFERENT. AND
12 THAT'S BEEN SUBSTANTIATED IN A NUMBER OF ARTICLES.

13 Q. MAY I STOP YOU AND ASK YOU TO JUST BRIEFLY EXPLAIN,
14 WHILE WE'RE AT THIS POINT, WHAT IS A RETINAL HEMORRHAGE?

15 A. YES. THE RETINA IS THE PORTION OF OUR EYE MUCH LIKE
16 THE FILM IN THE CAMERA. IT'S IN THE BACK PART OF THE EYE.
17 IT'S A VERY DELICATE TISSUE. IF YOU CAN IMAGINE WET TOILET
18 TISSUE THAT'S MULTIPLE LAYERS THICK AND MAKE THAT ABOUT TEN
19 LAYERS THICK, BUT MICROSCOPICALLY THIN, WHICH IS WHAT THE
20 RETINA IS.

21 IT'S MADE UP OF MANY DIFFERENT LAYERS OF CELLS AND
22 NERVE FIBERS. IT'S VERY EASILY DAMAGED. AND IT'S GOT A
23 NUMBER OF BLOOD VESSELS IN IT. AND IF ANY KIND OF FORCE IS
24 APPLIED TO IT, OFTEN THE BLOOD VESSELS WILL BREAK AND YOU
25 CAN HAVE EITHER HEMORRHAGE UNDERNEATH THE RETINA, WHICH

1 WOULD BE CALLED A SUB-RETINAL HEMORRHAGE, WITHIN THE
2 SANDWICH, IF YOU WANT TO CALL IT A SANDWICH, OF THE RETINA
3 OR IN THE MOST SUPERFICIAL LAYER, WHICH IS CALLED THE NERVE
4 FIBER LAYER.

5 AND THEN YOU CAN ALSO HAVE HEMORRHAGES THAT ARE
6 ACTUALLY IN FRONT OF THE RETINA. AND THEN THE MAJORITY OF
7 THE SPACE OF THE GLOBE IS FILLED UP BY A CLEAR JELLY
8 MATERIAL CALLED VITREOUS. AND THE HEMORRHAGE CAN ALSO BE
9 INVOLVED AND BREAK OUT INTO THE VITREOUS SPACE AS WELL. SO
10 THOSE ARE ALL THE DIFFERENT PLACES.

11 AND THEN IF YOU COULD ---

12 Q. SO IS IT ACCURATE TO SAY THAT A RETINAL HEMORRHAGE IS
13 NOT JUST A STATIC THING, IT HAS MANY DIFFERENT DEGREES OR
14 VARIATIONS?

15 A. YES. IN FACT, I THINK A WAY THAT I THINK ABOUT THAT,
16 ESPECIALLY IF I'M TRYING TO DESCRIBE THIS TO SOMEONE, IF --
17 AN EXAMPLE WOULD BE IF THERE WERE -- IF I WERE A WITNESS TO
18 A CAR ACCIDENT AND MY STORY TELLING WAS SIMPLY THAT THIS CAR
19 HAD FOUR WHEELS, THAT WOULDN'T GIVE ANYONE VERY MUCH OF A
20 DESCRIPTION OF HOW TO FIGURE OUT, YOU KNOW, WHAT THIS
21 VEHICLE IS AND HOW TO IDENTIFY THAT VEHICLE.

22 LIKEWISE, WHEN DESCRIBING RETINAL HEMORRHAGES IT'S VERY
23 IMPORTANT TO DESCRIBE THE DIFFERENT LAYERS WHERE THE RETINAL
24 HEMORRHAGES OCCUR. IT'S IMPORTANT TO EXPLAIN HOW MANY, IF
25 YOU CAN COUNT THEM, OR HOW FEW, IF THERE ARE ONLY ONE OR

1 TWO.

2 IT'S ALSO IMPORTANT TO DESCRIBE HOW FAR OUT THROUGHOUT
3 THE PERIPHERAL PART OF THE RETINA, NOT JUST THE CENTRAL PART
4 OF THE RETINA, WHICH IS WHERE OUR PERFECT VISION IS, BUT ALL
5 THROUGHOUT THE PERIPHERAL RETINA, WHICH IS AN AREA THAT IS
6 -- HAS CLEARLY BEEN SHOWN TO BE MOSTLY IDENTIFIED WHEN THE
7 RETINAL HEMORRHAGES ARE THERE WITH NON-ACCIDENTAL INJURIES.

8 Q. WHAT IS THE FUNCTION OF THE RETINA?

9 A. THE FUNCTION OF THE RETINA IS TO RECEIVE THE LIGHT RAYS
10 AND TO TURN THEM INTO AN ELECTRICAL SIGNAL SO THAT THE
11 ELECTRICAL SIGNAL CAN THEN BE TRANSMITTED BACK TO THE PART
12 OF THE BRAIN THAT INTERPRETS OUR VISION.

13 Q. WHAT DID YOUR EXAM OF *child* INVOLVE? HOW DID YOU GO
14 ABOUT EXAMINING HER THAT DAY?

15 A. SHE WAS IN THE PEDIATRIC INTENSIVE CARE UNIT ON THE
16 VENTILATOR WITH THE BREATHING TUBE AND SO FORTH VENTILATING
17 HER LUNGS. AND PRIOR TO MY ARRIVAL I HAD ASKED THE NURSES
18 TO PUT DILATING DROPS IN HER EYES SO I COULD GET A GOOD LOOK
19 AT THE INSIDE OF HER EYES. AND IF I MAY, I'LL JUST READ MY
20 NOTES SINCE THIS WAS A FEW YEARS AGO. IS THAT ---

21 Q. IS THIS YOUR FINDING FROM HER EXAM?

22 A. YES, MA'AM.

23 Q. OKAY.

24 A. A SIXTEEN MONTH OLD AND ASKED TO RULE OUT RETINAL
25 HEMORRHAGES. THE PTT AND BLEEDING TIMES WERE NORMAL. THOSE

1 ARE STUDIES TO EVALUATE OUR CLOTTING SYSTEM. AND ONE OF THE
2 CLOTTING STUDIES WAS SLIGHTLY ELEVATED.

3 ON THE EXAMINATION I WROTE THE FOLLOWING: THE PATIENT
4 WAS DILATED WITH DILATING DROPS. PATIENT WAS ON THE
5 VENTILATOR. THE EXTERNAL EXAMINATION REVEALED THAT THE
6 EYELIDS, THE SURFACE MEMBRANE OF THE EYE, THE CORNEA AND THE
7 LENS WERE ALL NORMAL IN BOTH EYES.

8 THE EXAMINATION OF THE RETINA REVEALED PRERETINAL AND
9 INTRA RETINAL HEMORRHAGES IN BOTH EYES THAT WERE TOO
10 NUMEROUS TO COUNT INVOLVING ALL LAYERS OF THE RETINA AND
11 EXTENDING TO THE MID-PERIPHERAL PORTION OF THE RETINA.

12 THE MACULA, THAT'S THE CENTRAL PART OF OUR VISION, WAS
13 SPARED OF BLOOD IN BOTH EYES. THE OPTIC NERVE REVEALED NO
14 SWELLING IN EITHER EYE.

15 AND I WILL CONTINUE ON WITH MY IMPRESSION. THE OCULAR
16 FINDINGS OF BLOOD IN ALL LAYERS OF THE RETINA EXTENDING AT
17 LEAST TO THE MID-PERIPHERAL RETINA COMBINED WITH INTRA
18 CRANIAL HEMORRHAGE STRONGLY SUGGESTIVE OF NON-ACCIDENTAL
19 HEAD TRAUMA AND MUST BE INVESTIGATED AS SUCH. DO NOT FEEL
20 THAT THE SLIGHT ELEVATION OF THE PT, THAT'S THE LAB VALUE
21 FOR PART OF THE CLOTTING STUDY, DO NOT FEEL THAT THE SLIGHT
22 ELEVATION OF THE PT IS A CONTRIBUTING FACTOR IN LIGHT OF THE
23 OVERALL CLINICAL PICTURE.

24 Q. NOW CAN YOU EXPLAIN WHAT THAT MEANS?

25 A. YES. GOING BACK TO MY DESCRIPTION A MINUTE AGO ABOUT

1 RETINAL HEMORRHAGES. I'VE DESCRIBED THAT THERE WERE RETINAL
2 HEMORRHAGES IN BOTH EYES. THERE WERE TOO MANY TO COUNT.
3 THEY WERE INVOLVING ALL LAYERS OF THE RETINA INCLUDING A
4 PRERETINAL HEMORRHAGE IN FRONT OF THE RETINA AND IT EXTENDED
5 OUT AS FAR OUT AS I COULD SEE, WHICH IS THE MID-PERIPHERAL
6 PART OF THE RETINA.

7 Q. SO ON A SCALE OF NOT VERY SEVERE TO VERY SEVERE HOW
8 WOULD YOU CHARACTERIZE RUSHANTI'S RETINAL HEMORRHAGES?

9 A. I'D SAY ON A SCALE OF ONE TO TEN WITH TEN BEING THE
10 WORST I'VE EVER SEEN AND ONE BEING NO HEMORRHAGE AT ALL, IT
11 WAS AN EIGHT.

12 Q. OKAY. DID YOU TAKE PHOTOGRAPHS OF HER HEMORRHAGES?

13 A. I HAD A RETINAL PHOTOGRAPHER TAKE PHOTOGRAPHS OF HER
14 RETINAL HEMORRHAGES.

15 Q. OKAY. I'D LIKE TO SHOW YOU SOME EXHIBITS THAT HAVE
16 BEEN MARKED FOR IDENTIFICATION PURPOSES. THIS WILL BE
17 STATE'S NUMBER 23, 29, 28, 27, 26, 24 AND 25. AND DO YOU
18 RECOGNIZE THOSE?

19 A. YES. I DO RECOGNIZE THESE PHOTOGRAPHS.

20 Q. OKAY. AND ARE THOSE THE PHOTOGRAPHS THAT WERE TAKEN OF
21 *child* : EYES?

22 A. THEY ARE.

23 Q. ARE THEY AN ACCURATE DEPICTION OF WHAT YOU OBSERVED
24 THAT DAY?

25 A. YES, THEY ARE AN ACCURATE DEPICTION OF ---

1 Q. HAVE THEY ---

2 A. --- MY CLINICAL EXAM.

3 Q. --- BEEN ALTERED IN ANY WAY?

4 A. THEY HAVE NOT BEEN ALTERED.

5 Q. OKAY. I WANT TO SHOW YOU STATE'S EXHIBIT NUMBER 22 FOR
6 IDENTIFICATION PURPOSES. DO YOU RECOGNIZE THIS?

7 A. YES. THAT'S A PICTURE OF A NORMAL CHILD'S RETINA WITH
8 NO HEMORRHAGE.

9 Q. OKAY.

10 MS. SEAY: YOUR HONOR, I WOULD ASK THAT THESE BE
11 ADMITTED INTO EVIDENCE.

12 THE COURT: ANY OBJECTIONS, MR. WARDER?

13 MR. WARDER: NO, YOUR HONOR.

14 THE COURT: WITHOUT OBJECTION.

15 (WHEREUPON STATE'S EXHIBITS 22 - 29 WERE ENTERED INTO
16 EVIDENCE)

17 Q. DR. JOHNSON, WOULD IT ASSIST YOU IN EXPLAINING YOUR
18 FINDINGS IF I PROJECTED THESE PHOTOGRAPHS ON THE BIG SCREEN?

19 A. I CAN -- IF I CAN REACH IT I CAN POINT OUT THE
20 DIFFERENT TYPES OF HEMORRHAGES.

21 Q. DR. JOHNSON, I'M HAVING TROUBLE FINDING THE LASER
22 POINTER. SO WE MAY HAVE TO DO THE BEST WE CAN. THIS IS
23 STATE'S EXHIBIT 22. CAN YOU DESCRIBE WHAT THIS REPRESENTS?

24 A. YES. THIS IS A PICTURE OF A NORMAL CHILD'S RETINA. TO
25 THE FAR LEFT IN THE MIDDLE OF THE SCREEN THAT LOOKS LIKE

1 IT'S A VERY BRIGHT AREA IS THE OPTIC NERVE WHERE ALL THE
2 BLOOD VESSELS -- WHERE ALL THE BLOOD VESSELS ENTER THE EYE.
3 RIGHT IN THE VERY CENTER THAT LOOKS LIKE A BULLS EYE IS THE
4 MACULA. THAT'S THE AREA OF OUR CENTRAL VISION. AND YOU CAN
5 SEE THAT NUMEROUS OTHER BLOOD VESSELS ARE COURSING THROUGH
6 IN A CHARACTERISTIC PATTERN REPRESENTED BY THIS SLIDE.

7 Q. OKAY. THIS IS STATE'S EXHIBIT 26. AND IS THAT THE
8 CORRECT ORIENTATION OR DO I NEED TO MOVE OR TURN IT?

9 A. THAT'S CORRECT.

10 Q. OKAY.

11 A. THIS PHOTOGRAPH IS CENTERED ON THE OPTIC NERVE. YOU
12 CAN SEE THE WHITISH, YELLOW, ROUND STRUCTURE LIKE WE SAW IN
13 THE PREVIOUS SLIDE AND ALL THE MULTIPLE AREAS OF BLOOD. YOU
14 CAN SEE THE ONE THAT'S JUST BELOW THE OPTIC NERVE, THE WHITE
15 AREA THERE DOWN AT YOUR 8:00 THAT'S PRERETINAL BLOOD. IN
16 OTHER WORDS, IT BLOCKS YOUR VIEW OF THE RETINA COMPLETELY.
17 IT'S BRIGHT RED AND IT COMPLETELY BLOCKS THE VIEW.

18 IF YOU NOTICE OVER TO THE LEFT OF THE OPTIC NERVE
19 THERE'S SOME MUCH SMALLER HEMORRHAGES THAT ARE MORE IN THE
20 SHAPE OF A FLAME. IN FACT, THEY'RE CALLED FLAME SHAPED
21 HEMORRHAGES BECAUSE THEY'RE IN THE -- THEY'RE IN THE NERVE
22 FIBER LAYER, THE MOST SUPERFICIAL LAYER.

23 AND THEN THE LARGER AREAS OF HEMORRHAGE UP IN THE ONE,
24 TWO AND 3:00 AREA THAT YOU SEE, THERE ARE FIVE OR SIX OF
25 THOSE THAT ALMOST LOOK LIKE A BLISTER THAT'S COMING UP

1 TOWARDS YOU WITH BLOOD WITHIN THEM. THOSE ARE HEMORRHAGES
2 THAT ARE WITHIN THE RETINA OR ALSO CALLED INTRA RETINAL
3 HEMORRHAGES.

4 SO YOU CAN SEE THAT THIS DEPICTION IS ONLY -- PROBABLY
5 ABOUT TEN PERCENT OF THE SURFACE AREA OF THE RETINA, BUT
6 IT'S CENTERED ON THE OPTIC NERVE. AND IF WE HAD OTHER
7 INDIVIDUAL PICTURES THAT WOULD MAKE UP ALL OF THE SURFACE
8 AREA OF *child's* RETINA IT WOULD TAKE PROBABLY ABOUT EIGHT
9 OR NINE MORE PROJECTIONS THAT WOULD SURROUND THIS ONE.

10 Q. DR. JOHNSON, IS THERE SOMETHING THAT MEDICALLY ACCOUNTS
11 FOR THE COLOR OF THIS OVERALL BEING A WHITISH COLOR AS
12 OPPOSED TO THAT NORMAL PHOTO THAT WE JUST LOOKED AT?

13 A. YES. THIS RETINA IS -- WHERE THE HEMORRHAGES ARE NOT
14 PRESENT BUT OTHERWISE WHAT WOULD BE NORMAL RETINA TISSUE IS
15 SWOLLEN AND HAS EXTRA FLUID IN IT. THAT'S WHY IT DOESN'T
16 HAVE THAT NICE REDDISH, GLISTENING APPEARANCE WE SAW IN THE
17 PREVIOUS SLIDE.

18 Q. THANK YOU. THIS IS STATE'S EXHIBIT 24.

19 A. THIS PHOTOGRAPH IS A SIMILAR ORIENTATION, BUT IT'S A
20 LITTLE BIT OFF CENTER FROM THE OPTIC NERVE. BUT IT GIVES US
21 A BETTER LOOK AT THOSE INTRA RETINAL HEMORRHAGES THAT WERE
22 UP IN THE TWO AND 3:00 POSITION ON THE PREVIOUS ONE.

23 YOU CAN SEE ONE AT THE VERY TOP OF THE SCREEN THAT WE
24 COULDN'T SEE ON THE LAST PHOTOGRAPH AND ALSO ONE UP AT THE
25 TOP, 11:00 POSITION THAT WE COULDN'T SEE ON THE LAST

1 PROJECTION. BUT OTHERWISE, THIS IS JUST OFF CENTER FROM
2 WHERE THE PREVIOUS SLIDE THAT WE SPENT TIME REVIEWING.

3 Q. THIS IS STATE'S EXHIBIT 29.

4 A. THIS IS THE OTHER EYE. AND YOU CAN SEE THAT DOWN
5 TOWARD THE BOTTOM OF THE SLIDE THERE'S A BROAD AREA OF
6 PRERETINAL HEMORRHAGE THAT OBSCURES THE COMPLETE VIEW OF THE
7 RETINA. THE BRIGHTEST AREA THERE IS THE OPTIC NERVE. AND
8 THEN YOU CAN SEE JUST TO THE LEFT AND TOUCHING THE OPTIC
9 NERVE IS ALSO A PRERETINAL HEMORRHAGE.

10 AND THEN YOU SEE THOSE OTHER BLISTER LIKE HEMORRHAGES
11 THAT ARE ABOVE THE OPTIC NERVE. THEY'RE FROM -- OVER WHERE
12 I'M LOOKING I SEE FIVE OR SIX OF THOSE. AND THEY HAVE KIND
13 OF A GLISTENING APPEARANCE WHERE IT'S BUBBLED UP TOWARDS
14 YOU, BUT THAT'S DUE TO THE HEMORRHAGE THAT'S WITHIN THE
15 RETINA.

16 TO THE RIGHT -- THERE TO THE RIGHT OF THE OPTIC NERVE
17 YOU CAN SEE TWO OR THREE OF THOSE FLAME SHAPED HEMORRHAGES
18 THAT ARE MUCH LESS DRAMATIC, BUT THEY TAKE THE SHAPE OF THE
19 NERVE FIBER LAYER WHERE THEY ARE.

20 Q. THIS IS STATE'S EXHIBIT 28.

21 A. THIS IS ANOTHER VIEW. THIS TIME -- IF YOU'LL ROTATE
22 THAT A HUNDRED AND EIGHTY DEGREES. THIS TIME YOU CAN SEE
23 IT'S A LITTLE DIFFERENT ORIENTATION, BUT YOU CAN SEE THAT
24 THERE ARE ALSO SEVERAL OF THE BLISTER LIKE INTRA RETINAL
25 HEMORRHAGES THERE. THERE'S ONE PRERETINAL HEMORRHAGE JUST

1 ABOVE THE OPTIC NERVE THERE THAT OBSCURES THE VIEW OF THE
2 RETINA.

3 YOU CAN ALSO SEE THE COLOR DIFFERENCE IN THIS RETINA
4 COMPARED TO THE VERY FIRST ONE, THE NORMAL ONE, WITHOUT ANY
5 HEMORRHAGE. YOU CAN SEE THAT IT JUST DOESN'T HAVE THAT
6 GLISTENING, REDDISH, HEALTHY, VASCULAR APPEARANCE.

7 Q. STATE'S EXHIBIT 25.

8 A. THIS SHOWS SOMETHING SIMILAR TO ONE OF THE PREVIOUS
9 ONES. I THINK IT'S JUST A LITTLE BIT OFF CENTER FROM IT,
10 BUT STILL IT SHOWS BOTH THE PRERETINAL HEMORRHAGE DOWN BELOW
11 AND THE INTRA RETINAL HEMORRHAGES UP ABOVE AND A FEW FLAME
12 SHAPED HEMORRHAGES TO THE LEFT OF THE OPTIC NERVE.

13 Q. THIS IS 27.

14 A. IF YOU'LL ROTATE THAT A HUNDRED AND EIGHTY DEGREES.
15 YOU CAN SEE THIS ONE GIVES A FAIRLY CHARACTERISTIC
16 APPEARANCE WHEN THE BLOOD IS JUST IN FRONT OF THE RETINA.
17 AND AS A RESULT OF GRAVITY YOU CAN SEE THAT IT'S LAYERED
18 OUT. SO IF YOU JUST ROTATE JUST A FRACTION SO IT TRULY IS
19 LEVEL. THERE, IF YOU'LL ROTATE THAT A LITTLE BIT.

20 THAT'S THE -- THAT WOULD BE THE ORIENTATION WHEN THE
21 PHOTOGRAPH WAS TAKEN. SO YOU CAN SEE THAT IT'S LAYERED OUT
22 THERE WITH RESPECT TO GRAVITY. AND THEN YOU ALSO SEE A VERY
23 GOOD EXAMPLE OF THE INTRA RETINAL HEMORRHAGE UP THERE AT
24 10:00 JUST CLOSE TO THE EDGE OF THE SLIDE THAT GIVES THE
25 IMPRESSION THAT IT'S JUST COMING UP OUT OF THE SLIDE TOWARDS

1 YOU. THAT'S DUE TO THE BLOOD WITHIN THE SUBSTANCE OF THE
2 RETINA.

3 Q. OKAY. AND FINALLY, THIS IS NUMBER 23.

4 A. THIS HAS MORE EXAMPLES OF THE FLAME SHAPED HEMORRHAGES.
5 YOU SEE THE SMALLER ONES. WE HAVEN'T SEEN QUITE AS MANY OF
6 THOSE. AND OVER TO THE FAR RIGHT JUST UNDERNEATH THE BLOOD
7 VESSEL, JUST -- YOU CAN SEE SORT OF A DARKER, MORE LESS
8 BRIGHT RED, MORE OF A BROWNISH RED. THAT'S CHARACTERISTIC
9 OF THE BLOOD BEING UNDERNEATH THE RETINA 'CAUSE YOU'RE
10 ACTUALLY HAVING TO SEE THE BLOOD THROUGH THE WHOLE DISTANCE
11 OF THE THICKNESS OF THE RETINA.

12 SO WE'VE SEEN EXAMPLES OF SUBRETINAL HEMORRHAGE, INTRA
13 RETINAL HEMORRHAGE, PRERETINAL HEMORRHAGE AND THE FLAME
14 SHAPED HEMORRHAGES THAT ARE IN THE NERVE FIBER LAYER.

15 Q. THANK YOU. DR. JOHNSON, CAN YOU EXPLAIN HOW A PERSON
16 GETS RETINAL HEMORRHAGES?

17 A. YOU MEAN JUST RETINAL HEMORRHAGES WITHOUT ANY RESPECT
18 TO ANYTHING ELSE KNOWN ABOUT THE PATIENT OR HOW RETINAL
19 HEMORRHAGES WOULD OCCUR IF THERE WAS ACCIDENTAL OR NON-
20 ACCIDENTAL TRAUMA OR WHAT DO YOU MEAN?

21 Q. WELL, LET'S FOCUS ON THIS CASE IN THE NON-ACCIDENTAL
22 SENSE THAT YOU'VE STATED THAT YOU SUSPECTED IN THIS
23 SITUATION. CAN YOU EXPLAIN WHY THAT WOULD BE SO AND HOW
24 THIS WOULD HAVE HAPPENED?

25 A. WHAT WE'D LIKE TO DO IS TO USE SCIENCE AND EVERYTHING

1 THAT WE DO KNOW ABOUT A NUMBER OF CASES NOW THAT HAVE BEEN
2 ANALYZED AND PUBLISHED AND USE THAT TO THE BEST OF OUR
3 ABILITY TO DETERMINE WHAT WE DON'T KNOW FOR SURE. AND
4 THAT'S WHAT HAPPENS IN A SITUATION AND MEDICAL SCIENCE LIKE
5 THIS BECAUSE WE CAN'T DO THE PERFECT EXPERIMENT IN TERMS OF
6 RESEARCH.

7 OBVIOUSLY TO DO THE PERFECT EXPERIMENT YOU WOULD HAVE
8 TO TAKE SMALL CHILDREN AND HAVE A MEASURED AMOUNT OF
9 INFLECTED INJURY AND LOOK AND SEE WHAT DOES THAT CAUSE.
10 WHAT DOES IT CAUSE IN RELATION TO BRAIN INJURY? WHAT DOES
11 IT CAUSE IN RELATION TO INTRA CRANIAL BLEEDING AND THE
12 RETINAL BLEEDING? AND SO WE CAN'T DO THAT.

13 BUT WHAT WE BEST UNDERSTAND AFTER ALL THE DIFFERENT
14 POSSIBILITIES HAVE BEEN EXAMINED, NOT BY ME, BUT BY PEOPLE
15 MUCH SMARTER THAN I AM THAT DO ALL THE RESEARCH WITH THIS IS
16 THAT IN THESE NON-ACCIDENTAL OR INFLECTED INJURY SITUATIONS
17 AS MUCH SPECULATION AS THERE'S BEEN THAT IT MIGHT BE RELATED
18 TO CPR. IT MIGHT BE RELATED TO SEIZURES. IT MIGHT BE
19 RELATED TO INCREASED INTRA CRANIAL PRESSURE. IT MIGHT BE
20 RELATED TO A BLEEDING TENDENCY. IT MIGHT BE RELATED TO ANY
21 NUMBER OF THINGS.

22 THESE HAVE ALL BEEN LOOKED AT IN VARIOUS DIFFERENT
23 PUBLICATIONS. AND THE BEST EXPLANATION FOR THE RETINAL
24 BLEEDING IS THE FACT THAT THE VITREOUS, THE JELLY LIKE
25 SUBSTANCE, WHICH IS ABOUT THE SAME CONSISTENCY AS TABLE

1 JELL-O AND FILLS THE MAJORITY OF THE CONTENTS OF THE GLOBE,
2 THE EYEBALL, IS IN DIRECT CONTACT WITH THE RETINA. AND IT
3 HAS STRONGER ATTACHMENTS OVER BLOOD VESSELS. AND IT ALSO
4 HAS A VERY STRONG ATTACHMENT AROUND THE MACULA, THAT BULLS
5 EYE AREA WHERE OUR PERFECT VISION IS. IT'S NOT IN THE
6 CENTER OF THE BULLS EYE, BUT AROUND THE BULLS EYE.

7 AND THE OTHER PLACE THAT'S VERY FIRMLY ATTACHED IS OUT
8 IN THE FAR PERIPHERAL PART OF THE RETINA. AND ANY TIME A
9 SIGNIFICANT FORCE IS APPLIED AND THERE'S A DIFFERENCE IN THE
10 WEIGHT OF THIS TISSUE, THE VITREOUS, GOOEY JELLY, AND THE
11 VERY FRAGILE RETINA, ANY KIND OF FORCE WHETHER IT'S A TO AND
12 FRO SHAKING TYPE FORCE, WHETHER IT'S A FORCE OF DECELERATION
13 SUCH AS YOU'RE IN A HIGH SPEED AUTOMOBILE ACCIDENT, YOU'RE
14 NOT RESTRAINED AND YOU GO FLYING THROUGH THE WINDSHIELD AND
15 YOU GO FROM SEVENTY MILES AN HOUR TO ZERO MILES AN HOUR
16 INSTANTLY, THAT TYPE OF FORCE IS SUBJECTED TO THE ENTIRE
17 BODY MASS, WHETHER IT'S THE BRAIN OR THE VITREOUS OR THE
18 RETINAS.

19 SO ANY TIME THAT TYPE FORCE HAPPENS THERE'S A SHEERING
20 EFFECT WHERE THOSE ATTACHMENTS TO THIS VERY FRAGILE RETINAL
21 TISSUE EITHER CAUSES THE TISSUE -- AND YOU THINK ABOUT THE
22 RETINA LIKE A TEN LAYER SANDWICH WHERE IT FRAGMENTS THOSE
23 INTERNAL STRUCTURES SO THAT BLOOD OCCURS WITHIN THE RETINA,
24 THE INTRA RETINA HEMORRHAGE OR IF IT'S ON THE SURFACE OF THE
25 RETINA AND IT TEARS THE VESSEL ON THE SURFACE AND CAUSES A

1 PRERETINAL HEMORRHAGE OR A FLAME SHAPED HEMORRHAGE OR IF IT
2 ACTUALLY DISRUPTS THE BLOOD SUPPLY UNDERNEATH THE RETINA AND
3 CAUSES A SUBRETINAL HEMORRHAGE.

4 SO THE BEST UNDERSTANDING IS THAT THE RETINAL
5 HEMORRHAGES ARE NOT RELATED TO ANY OF THE OTHER FACTORS.
6 AND AS YOU CAN IMAGINE IN A VERY SEVERELY INJURED CHILD YOU
7 CAN'T JUST TAKE AWAY ALL THE FACTORS, BUT YOU HAVE TO PUT
8 ALL THE FACTORS TOGETHER AND COME UP WITH THE BEST
9 EXPLANATION IN THAT PARTICULAR CHILD ABOUT WHAT CAUSED THE
10 INJURY.

11 Q. OKAY. WHAT IS THE RESULT TO A PERSON'S VISION WHEN
12 THEY HAVE RETINAL HEMORRHAGES SUCH AS WHAT *child* HAD?

13 A. WELL, THE RETINAL HEMORRHAGES ALMOST ALWAYS RESOLVE.
14 AND I THINK THAT'S A VERY FORTUNATE THING. THE RETINAL
15 HEMORRHAGES CAN OCCASIONALLY RESOLVE AND LEAVE SOME SCAR
16 TISSUE IN THAT CRITICAL AREA OF OUR CENTRAL VISION. BUT
17 THANK GOODNESS THAT'S USUALLY NOT THE CASE.

18 WHAT USUALLY IS THE CAUSE FOR THE PERMANENT VISUAL
19 DISABILITY IS THE BRAIN INJURY BECAUSE ALL OF THE
20 INFORMATION THAT'S GATHERED BY THE EYES AND IS TRANSMITTED
21 BY THE OPTIC NERVES BACK TO THE BRAIN HAS TO COURSE ALL THE
22 WAY FROM THE FRONT OF THE BRAIN TO THE BACK OF THE BRAIN
23 WHERE THIS IS INTERPRETED.

24 AND ANYWHERE ALONG THE WAY, WHATEVER THIS FORCE WAS THE
25 CHILD IS SUBJECTED TO, THE SAME FORCE CAUSED DISRUPTIVE

1 EVENTS TO OCCUR ANYWHERE ALONG WHERE THAT MESSAGE IS BEING
2 TRANSMITTED. AND THAT'S CALLED A CENTRAL VISUAL IMPAIRMENT.
3 SO THE MOST COMMON CAUSE OF LONG TERM AND PERMANENT INJURY
4 TO VISION IS DUE TO THE WAY THE BRAIN IS DAMAGED.

5 THE SECOND MOST COMMON IS TO HAVE DAMAGE TO THE OPTIC
6 NERVES THEMSELVES. AND THE BEST EXPLANATION FOR THAT IS AS
7 THE OPTIC NERVES LEAVE THE GLOBE ITSELF AND START THEIR
8 JOURNEY TOWARD THE BRAIN THEY ACTUALLY GO THROUGH A VERY
9 TINY BONY OPENING TO ENTER THE VAULT WHERE THE BRAIN IS.
10 AND THE OPTIC NERVE IS VERY -- IT'S VERY TIGHTLY ATTACHED TO
11 THAT OPENING.

12 AND WITH WHATEVER THIS FORCE IS THAT THE OPTIC NERVE IS
13 SUBJECTED TO, THEY FREQUENTLY HAVE BLEEDING INTO THE OPTIC
14 NERVE AND DAMAGE TO THE OPTIC NERVE THAT IS NOT VISIBLE LIKE
15 WE LOOKED AT ON THE SLIDE. WE'RE NOT SEEING THE PART OF THE
16 OPTIC NERVE ONCE IT LEAVES THE EYE. WE'RE SEEING THE PART
17 OF THE OPTIC NERVE INSIDE THE EYE IN THAT CASE. AND OVER
18 TIME IF THE OPTIC NERVE IS DAMAGED IT BECOMES PALE. AND A
19 MEDICAL TERM FOR THAT IS ATROPHY. IT'S JUST AN INDICATION
20 OF LONG TERM DAMAGE TO THE OPTIC NERVE.

21 Q. AND HAVE YOU SEEN THAT IN *child*

22 A. AND IN *child's* CASE, SHE INITIALLY HAD, AND I'VE
23 SEEN HER A NUMBER OF TIMES SINCE SHE WAS DISCHARGED FROM THE
24 HOSPITAL, FOR THE FIRST YEAR OR TWO SHE DIDN'T HAVE ANY
25 EVIDENCE OF DAMAGE TO THE OPTIC NERVES AND IS OFTEN THE CASE

1 DEPENDING UPON THE INJURY AND HOW THAT TRANSPIRES. THE
2 OPTIC NERVE INJURY MAY NOT SHOW UP WITH ATROPHY FOR A NUMBER
3 OF MONTHS. AND I'VE SEEN HER MOST RECENTLY JUST IN THE PAST
4 MONTH. AND SHE'S CLEARLY GOT OPTIC NERVE ATROPHY IN BOTH
5 EYES AND ALSO HAS THE CENTRAL VISUAL IMPAIRMENT AS WELL.

6 Q. I WANT TO COME BACK TO THAT IN A FEW MINUTES IF THAT'S
7 OKAY. INITIALLY HOW IS THIS TREATED?

8 A. WHEN THE CHILD IS IN THE PEDIATRIC INTENSIVE CARE UNIT?

9 Q. YES.

10 A. THE ONLY THING THAT WE CAN DO TO DEAL WITH THE RETINAL
11 HEMORRHAGES IS TO LET THEM ABSORB ON THEIR OWN. SO WE'RE
12 JUST RELYING ON THE BODY'S ABILITY TO HEAL ITSELF IN TERMS
13 OF THE RETINAL HEMORRHAGES.

14 AT THAT POINT IN TIME WE DON'T HAVE ANY IDEA OF THE
15 EXTENT OF THE INJURY AS THESE NERVE FIBERS TRAVEL FROM THE
16 EYE BACK TO THE BACK PART OF THE BRAIN. THAT ONLY BECOMES
17 MORE OBVIOUS OVER THE NEXT SEVERAL MONTHS AND YEARS IN TERMS
18 OF WHAT'S THE PERMANENCY OF THE INJURY. AND UNFORTUNATELY
19 THERE'S NOT ANYTHING THAT CAN BE DONE TO REPAIR THAT EITHER.

20 MUCH LIKE IN A STROKE PATIENT, WE ALL PROBABLY HAVE
21 FAMILY MEMBERS THAT HAVE ENDURED STROKES IN THEIR LATER
22 YEARS. AND SOME OF THEM WHEN YOU FIRST VISIT THEM THEY
23 CAN'T TALK. AND YOU SEE THEM SIX MONTHS LATER AND THEY SEEM
24 LIKE THEY'RE DOING FINE. OTHERS HAVE HAD A STROKE, THEY
25 COULDN'T TALK, AND THEY STILL CAN'T TALK. AND WE DON'T HAVE

1 ANY WAY OF AFFECTING THE WAY THE BRAIN HEALS ITSELF.

2 Q. SO -- IT'S CORRECT TO SAY THEN THAT THERE ARE NO
3 CORRECTIVE MEASURES TO HELP IMPROVE HER VISION?

4 A. THERE ARE NO -- THERE ARE NO MEASURES THAT WE CAN
5 UTILIZE TO HELP DECREASE THE AMOUNT OF DAMAGE WHEN THE
6 INJURY IS FRESH. AND OVER TIME WE JUST HAVE TO DO THE BEST
7 WE CAN WITH WHAT WE'RE LEFT WITH.

8 IN OTHER WORDS, IF YOUR QUESTION IS WILL GLASSES HELP
9 THIS OR WILL EYE MUSCLE SURGERY HELP THIS OR WILL ANY OTHER
10 KIND OF INTERVENTION HELP THIS, THE ANSWER IS THAT NOTHING
11 REALLY CHANGES THE WAY THE RETINA AND THE OPTIC NERVE AND
12 THE BRAIN WORK TOGETHER IN TERMS OF FORMING THESE IMAGES.

13 Q. SO DOES THAT MEAN THAT SHE HAS NOT BEEN PRESCRIBED
14 GLASSES OR ANYTHING OF THAT NATURE BECAUSE IT WOULD NOT BE
15 HELPFUL?

16 A. RIGHT.

17 Q. CAN YOU TELL US WHAT HER CURRENT CONDITION IS?

18 A. I LAST SAW *child* ON SEPTEMBER THE 20TH. AND SHE WAS
19 IN WITH HER GRANDMOTHER. AND HER GRANDMOTHER MENTIONED THAT
20 THEY HAD NOT BEEN DOING THE PATCHING -- SHE'S DEVELOPING
21 BETTER VISION IN ONE EYE THAN THE OTHER. SO WE'RE TRYING TO
22 GET THE VISION TO AT LEAST DEVELOP EQUALLY EVEN THOUGH IT'S
23 LIMITED IN BOTH EYES. AND SHE SHARED THAT THEY WEREN'T
24 REALLY ABLE TO DO THAT VERY WELL.

25 SHE'S MENTIONED IN HER HISTORY THAT SHE'S STILL

1 NOTICING SOME MISALIGNMENT OF THE EYES AND A PREFERENCE FOR
2 A GAZE TO THE RIGHT LIKE I'M DOING RIGHT NOW. I'M GAZING --
3 MY FACE IS TURNED TO THE LEFT, BUT I'M GAZING TO THE RIGHT.

4 *Child* WAS UNABLE TO DO MORE THAN JUST STRING
5 TOGETHER A FEW WORDS. SHE WAS UNABLE TO ACTUALLY READ THE
6 CHART AND PROVE WHAT HER VISION IS AT THIS POINT. AND JUST
7 LIKE WE CAN MEASURE ON A ONE DAY OLD, YOU CAN MEASURE IF
8 SOMEONE IS NEARSIGHTED OR FARSIGHTED OR HAS ASTIGMATISM OR
9 HAS A NEED FOR CORRECTION.

10 *Child* IS JUST A LITTLE BIT FARSIGHTED, WHICH IS
11 NORMAL FOR HER AGE, HAS A LITTLE BIT OF ASTIGMATISM, WHICH
12 SOUNDS LIKE A BAD WORD, BUT IT'S NOT. IT'S JUST A SECONDARY
13 MEASUREMENT SORT OF LIKE OUR SHOE SIZE. IF WE THINK ABOUT
14 OUR SHOE OR OUR FOOT BEING LARGE, I THINK ABOUT BEING LONG.
15 BUT THERE'S ALSO ANOTHER MEASUREMENT, THE WIDTH. THAT'S A
16 SECONDARY MEASUREMENT. THAT'S VERY SIMILAR TO ASTIGMATISM.
17 IT JUST SOUNDS LIKE A MEAN WORD. BUT AGAIN, *Child* HAS A
18 SMALL AMOUNT OF ASTIGMATISM, WHICH IS ESSENTIALLY EQUAL IN
19 BOTH EYES.

20 SHE DOES HAVE A STRONG PREFERENCE FOR A GAZE TO HER
21 RIGHT. AND THE BEST EXPLANATION FOR THAT IS WE KNOW THAT
22 THE FRONT PART OF OUR BRAIN CONTROLS OUR GAZE CENTER. IN
23 OTHER WORDS, IF YOU'RE ASKED TO GAZE TO YOUR LEFT, WELL,
24 YOU'RE THINKING LOOK LEFT. YOU'RE NOT THINKING ABOUT WHAT
25 PART OF YOUR BRAIN TO PUT IN MOTION. BUT THAT'S WHERE OUR

1 GAZE CENTER IS.

2 AND WHEN THE GAZE CENTER IS DAMAGED THE TENDENCY FOR
3 THE GAZE IS TO BE IN THE DIRECTION OF THE SIDE OF DAMAGE.
4 AND WE KNOW BASED UPON HER CT SCANS AND SO FORTH THAT THE
5 AREA IN THE FRONT RIGHT PART OF HER BRAIN WOULD EXPLAIN WHY
6 SHE PREFERS GAZE TO HER RIGHT.

7 IN ADDITION, SHE ALSO HAS A TENDENCY FOR MISALIGNMENT
8 FOR THE EYES TO BE DIVERGENT, NOT BE PARALLEL, BUT TO BE
9 DIVERGENT. AND THAT'S DUE TO A LIMITATION IN HER ABILITY OF
10 HER LEFT EYE TO TURN OUTWARD. AND THERE'S ALSO A SLIGHT
11 LIMITATION FOR HER RIGHT EYE TO TURN INWARD. AND,
12 THEREFORE, THE COMBINATION OF THOSE TWO OR THE BALANCING OF
13 THOSE TWO IS SUCH THAT INSTEAD OF HER EYES BEING STRAIGHT,
14 THEY'RE SOMEWHAT DIVERGENT. AND THAT'S BEEN THE SAME NOW
15 FOR THE LAST SEVERAL VISITS THAT I'VE SEEN *child*

16 EXAMINATION OF THE OPTIC NERVE AND RETINA REVEALS ALL
17 THE HEMORRHAGES HAVE LONG SINCE RESOLVED. THERE'S BEEN NO
18 RESIDUAL SCAR TISSUE WHERE YOU SAW ALL OF THOSE AREAS OF
19 BRIGHT RED BLOOD. BUT SHE DOES HAVE OBVIOUS CHANGE IN HER
20 OPTIC NERVES IN BOTH EYES WHERE THE OPTIC NERVES ARE JUST
21 NOT AS HEALTHY AS THEY ONCE WERE.

22 UNFORTUNATELY, WE CAN'T JUST LOOK AT THE OPTIC NERVE
23 AND BASED UPON LOOKING UNHEALTHY CAN WE PREDICT WHAT THE
24 VISUAL FUNCTION IS GOING TO BE. BUT BASED UPON MY
25 PROFESSIONAL EXPERIENCE AND OBSERVATION, AND I HAVE TO DO

1 THIS ALL THE TIME FOR CHILDREN FOR THE SCHOOL DISTRICT AND
2 SO FORTH, BASED UPON MY PROFESSIONAL JUDGMENT HER VISION IS
3 PROBABLY IN THE TWENTY-ONE HUNDRED TO TWENTY-TWO HUNDRED
4 RANGE FOR HER BETTER SEEING RIGHT EYE. AND BETWEEN TWENTY-
5 TWO HUNDRED AND TWENTY-FOUR HUNDRED IN HER LEFT EYE.

6 NOW WHAT DOES THAT MEAN? WE ALL KNOW WHAT 20/20 MEANS.
7 WE HEAR THAT TERMINOLOGY AND WE THINK, WELL, GEE, THAT'S
8 WHAT EVERYBODY IS. WELL, THOSE SOUND LIKE SOME PRETTY LARGE
9 NUMBERS. AND I DON'T MEAN TO MINIMIZE THE LIMITATION FOR
10 *child* WITH THOSE NUMBERS, BUT YOU CAN HAVE VISION LIKE
11 THAT AND YOU'RE NOT GOING TO RUN INTO DOORS. YOU'RE GOING
12 TO BE ABLE TO GET AROUND AND DO THINGS.

13 BUT TO PUT IT IN PERSPECTIVE, AT LEAST IN OUR STATE,
14 VISUAL ACUITY FOR DRIVING, FOR INSTANCE, HAS TO BE 20/40 OR
15 BETTER WITH BEST CORRECTION IN PLACE. SO IN *child's* CASE
16 THE DECREASE IN HER VISION IS DUE TO THE OPTIC NERVES AND
17 THE CENTRAL VISUAL IMPAIRMENT BASED ON THE DAMAGE AS THE
18 VISUAL PATHWAYS COURSE BACK TO THE BACK PART OF HER BRAIN.

19 Q. IS THERE ANY CHANCE THAT THIS WOULD IMPROVE ---

20 **THE COURT:** SOLICITOR, HOW MUCH LONGER ARE YOU GOING TO
21 BE?

22 **MS. SEAY:** JUST A FEW MORE MINUTES..

23 **THE COURT:** MR. WARDER'S GOT TO CROSS EXAMINE. LET'S
24 TAKE A RECESS SO I CAN GET AN ORDER IN FOR LUNCH FOR THE
25 JURY, AND THEN WE'LL PICK BACK UP.

1 MS. SEAY: OKAY.

2 THE COURT: ALL RIGHT. TAKE THE JURY OUT AND GIVE THEM
3 A -- YOU CAN STEP DOWN FOR A MINUTE, DOCTOR.

4 A. THANK YOU.

5 (WHEREUPON THE JURY EXITED THE COURTROOM AT 12:36 PM)

6 THE COURT: ALL RIGHT. DOES ANYONE NEED A SHORT BREAK
7 WHILE WE'RE DOING THIS? RESTROOM BREAK?

8 MS. SEAY: I'LL STEP OUT.

9 THE COURT: OKAY. MR. HUDSON, DO YOU NEED A SHORT
10 BREAK?

11 MR. HUDSON: (NEGATIVE NOD).

12 (WHEREUPON COURT WAS IN RECESS AT 12:36 PM)

13 THE COURT: YEAH, COME ON BACK AROUND. OKAY. BRING
14 THE JURY AS SOON AS YOU CAN.

15 (WHEREUPON THE JURY ENTERED THE COURTROOM AT 12:47 PM)

16 THE COURT: ALL RIGHT. SOLICITOR, YOU MAY CONTINUE.

17 MS. SEAY: THANK YOU, YOUR HONOR.

18 DIRECT EXAMINATION BY MS. SEAY CONTINUED:

19 Q. DR. JOHNSON, I BELIEVE THAT WE WERE TALKING ABOUT
20 WHETHER YOU WOULD EXPECT *child* 'S CONDITION TO IMPROVE
21 WITH TIME, IS THAT CORRECT?

22 A. YES. I DO NOT REALLY ANTICIPATE ANY REAL CHANGE IN HER
23 VISUAL FUNCTION. I FEEL THAT SHE'S PROBABLY REACHED HER
24 MAXIMUM IMPROVEMENT AT THIS POINT.

25 Q. AND THERE WOULD, I GUESS, BE A LOT OF WAYS THAT THAT

1 WOULD LIMIT HER THROUGHOUT HER LIFE. DO YOU AGREE WITH
2 THAT?

3 A. WITH DECREASED VISUAL FUNCTION, YES, THERE ARE MANY
4 THINGS THAT THE MAJORITY OF US ANTICIPATE DOING AND ENJOY
5 DOING THAT SHE WON'T BE ABLE TO DO.

6 Q. WHEN YOU EXAMINED HER THIS LAST TIME, I THINK YOU GAVE
7 A DATE WHEN THAT WAS, SOMETIME FAIRLY RECENTLY?

8 A. SEPTEMBER 20TH.

9 Q. OTHER THAN THE EYE EXAMINATION WHAT OTHER OBSERVATIONS
10 DID YOU HAVE ABOUT HER GENERAL FUNCTIONING?

11 A. SHE WAS VERY PLEASANT. SHE WAS JUST SMILING AND
12 ENJOYING BEING THERE WITH HER GRANDMOTHER. AND SHE DID HAVE
13 A BRACE ON ONE OF HER LEGS AND WAS HAVING A FAIR AMOUNT OF
14 DIFFICULTY JUST GETTING AROUND ON HER OWN, BUT NEVERTHELESS
15 WAS VERY HAPPY TO TRY AND WAS FULL OF ENERGY AND EFFORT.

16 AND AS I MENTIONED BEFORE, SHE WAS -- FOR HER AGE, FOR
17 ALMOST FIVE AND A HALF YEARS OLD SHE WAS VERY LIMITED IN HER
18 SPEECH SKILLS IN THAT SHE COULD PUT TOGETHER TWO AND THREE
19 WORDS, BUT SHE WAS HAVING TROUBLE PUTTING TOGETHER ANYTHING
20 THAT WAS MEANINGFUL BEYOND THAT.

21 AND, THEREFORE, UNLIKE OTHER CHILDREN THAT ARE THIS AGE
22 WHERE YOU CAN ACTUALLY GET THEM TO READ THE PICTURE CHARTS
23 OR SOMETIMES NOT THE LETTER CHARTS, BUT YOU CAN GET AN IDEA
24 OF WHAT THEIR VISION IS JUST BY ALLOWING THEM TO READ THE
25 CHARTS, SHE WAS UNABLE TO DO THAT. NOT ONLY LIMITED BY HER

1 VISION, BUT SHE WAS LIMITED BY HER ABILITY TO DESCRIBE THAT.

2 Q. WHEN YOU SEE RETINAL HEMORRHAGES IN A PATIENT WHAT
3 COMES TO MIND?

4 A. WHEN I SEE RETINAL HEMORRHAGES IN A TODDLER OR YOUNGER,
5 UP TO AGE THREE, CERTAINLY WITH ANYBODY IT'S OF CONCERN, BUT
6 WHEN I SEE IT IN AGE THREE OR LESS IT MUST BE EXPLAINED.
7 THOSE DON'T JUST HAPPEN.

8 IN MOST OF THOSE SITUATIONS WHEN I'M INVOLVED, AS I
9 MENTIONED EARLIER, IT'S USUALLY IN THE SETTING OF THE
10 HOSPITAL WHERE THERE'S A TEAM OF OTHER DOCTORS THAT ARE
11 INVOLVED. IF IT IS AN ABUSIVE SITUATION THEY HAVE USUALLY
12 IDENTIFIED THAT AND THEY HAVE THEIR CHILD ABUSE TEAM ALREADY
13 INVOLVED AND DOING FURTHER INVESTIGATION.

14 AND AS I MENTIONED AT THE VERY BEGINNING, AS PHYSICIANS
15 WE ARE ALWAYS LOOKING FOR SOME OTHER EXPLANATION TO EXPLAIN
16 THAT. BUT THEY MUST BE EXPLAINED. WE CAN'T JUST DISMISS
17 THEM. IT'S NOT LIKE HAVING A BRUISE ON YOUR LEG WHEN YOU'RE
18 THREE YEARS OLD AND YOU SAY, WELL, WE JUST MUST HAVE BUMPED
19 OURSELVES INTO SOMETHING. THEY DON'T JUST HAPPEN. THEY'RE
20 FOR A REASON.

21 Q. OKAY. WHAT ARE SOME OF THE MECHANISMS THAT CAUSE
22 RETINAL HEMORRHAGES?

23 A. WELL, SEVERE ACCIDENTAL INJURIES, AS I MENTIONED, BEING
24 EJECTED FROM AN AUTOMOBILE IS ONE THAT YOU WOULD EXPECT TO
25 POTENTIALLY SEE RETINAL HEMORRHAGES ALONG WITH SEVERE BRAIN

1 INJURY, BUT THERE ARE ANY NUMBER.

2 IF YOU JUST LOOKED UP IN A TEXTBOOK AND SAID, YOU KNOW,
3 WHAT CAUSES RETINAL HEMORRHAGES, ANY NUMBER OF THINGS ARE
4 LISTED WHICH IN A CASE LIKE THIS, AND WE'RE ACTUALLY
5 APPLYING THIS TO A PARTICULAR PATIENT WITH A LOT OF THINGS
6 KNOWN ABOUT HER, THEN OBVIOUSLY SOME OF THOSE THINGS
7 WOULDN'T BE VERY MEANINGFUL.

8 BUT THAT LIST WOULD INCLUDE, BUT NOT BE LIMITED TO
9 THINGS LIKE MENINGITIS, A BLEEDING DISORDER, METABOLIC
10 DISORDERS, WHICH IS JUST A LARGE GROUP OF PROBLEMS THAT
11 THANK GOODNESS WE DON'T USUALLY HAVE TO DEAL WITH, BUT WE
12 NEED TO BE AWARE OF THEM. AND THE PARTICULAR ONE THAT HAS
13 BEEN IDENTIFIED WITH FRAGILE BLOOD VESSELS IS GLUTARIC
14 ACIDURIA. IT'S AN ABNORMAL, I MEAN, AN ACID METABOLISM
15 PROBLEM. AND IT RESULTS IN FRAGILE BLOOD VESSELS.

16 AND THERE ARE, YOU KNOW, OF COURSE, AS I SAID, THE
17 SEVERE ACCIDENTAL CAUSES THAT CAN RESULT IN RETINAL
18 HEMORRHAGES. AND OTHER MEDICAL PROBLEMS SUCH AS SICKLE CELL
19 ANEMIA, LEUKEMIA, ANYTHING THAT HAS TO DO WITH OUR
20 CIRCULATION SYSTEM OR ANYTHING THAT HAS TO DO WITH OUR
21 CLOTTING SYSTEM CAN ALSO CAUSE RETINAL HEMORRHAGES.

22 BUT AS WE LOOK AT THE AGE OF THE CHILD AND THE OTHER
23 ASSOCIATED FINDINGS NOT ONLY ON EXAM, BUT WITH THE OTHER
24 DIAGNOSTIC STUDIES, THE SCANS AND BLOOD TESTS AND SO FORTH
25 WE CAN BEGIN TO NARROW THAT FOCUS DOWN QUITE A BIT.

1 Q. AND IN THIS CASE WITH YOUR WORK ON THE TEAM THAT WAS
2 TREATING *Child* WERE ALL OF THOSE THINGS THAT YOU
3 MENTIONED, WERE THEY ALL ABLE TO BE RULED OUT IN HER
4 SITUATION?

5 A. YES. AT THE TIME WHEN I FIRST SAW HER, AS I RECALL, I
6 THINK SHE WAS ADMITTED AROUND MIDNIGHT, WHICH WOULD HAVE
7 BEEN AROUND MIDNIGHT, ONE AM, SOMETHING LIKE THAT ON THE
8 13TH, NO, ON THE 12TH, I BELIEVE, I SAW HER ON THE EARLY
9 MORNING OF THE 14TH. SO, YOU KNOW, WE WERE A DAY AND A HALF
10 OR SO INTO HER HOSPITALIZATION.

11 AND JUST IN THE EMERGENCY DEPARTMENT THEY DO A NUMBER
12 -- THEY HAVE THE RESULTS NECESSARILY, BUT THEY DO A NUMBER
13 OF LAB STUDIES AND HAVE TO WAIT FOR THE RESULTS OF THOSE TO
14 BE PRESENT. AND A LOT OF THOSE ARE PRESENT PRETTY
15 INSTANTANEOUSLY.

16 BUT THEY HAVE A PRETTY -- A PRETTY CONSISTENT APPROACH
17 EVERY TIME THEY'RE SUSPECTING THIS SO THAT THEY CAN HAVE
18 THAT INFORMATION. AND I ALWAYS LOOK TO SEE, YOU KNOW, WAS
19 THE BLOOD COUNT DONE? WAS THE PLATELET COUNT DONE? WHAT
20 WERE THOSE NUMBERS? I LOOK TO SEE IS THERE A CLOTTING STUDY
21 ABNORMALITY?

22 AS YOU NOTICED WHEN I READ MY REPORT THAT THERE WAS AN
23 ABNORMALITY IN ONE OF THE THREE CLOTTING STUDIES, WHICH WAS
24 A VERY SUBTLE ABNORMALITY AND WHICH I ALSO COMMENTED IN MY
25 ASSESSMENT THAT I DIDN'T THINK THAT THAT REALLY CONTRIBUTED

1 TO HER OVERALL CLINICAL PICTURE. BUT I LOOK AT THOSE
2 THINGS. I'M HOPING ---

3 Q. AS TO SOMETHING THAT MAY HAVE CAUSED ---

4 A. RIGHT. I'M HOPING THERE'S SOME OTHER EXPLANATION.

5 Q. OKAY. I'D LIKE FOR YOU TO LOOK AT STATE'S EXHIBIT
6 NUMBER 2, PLEASE. AND DO YOU RECOGNIZE THIS?

7 A. YES, I DO RECOGNIZE THIS.

8 Q. OKAY. AND, I BELIEVE, HAVE YOU NOT HAD AN OPPORTUNITY
9 TO REVIEW THIS STATEMENT THAT ---

10 A. YES, I HAVE.

11 Q. --- MR. HUDSON GAVE?

12 A. YES, I HAVE.

13 Q. ALL RIGHT. I'D LIKE TO ASK YOU IF ANY OF THE THINGS
14 THAT ARE DESCRIBED IN THAT STATEMENT WOULD, IN YOUR OPINION,
15 HAVE CAUSED THE SEVERE RETINAL HEMORRHAGING THAT RUSHANTI
16 SUSTAINED?

17 A. NO. THERE'S NOTHING THAT I SEE IN THIS STATEMENT THAT
18 WOULD EXPLAIN THE CLINICAL PICTURE THAT I SAW.

19 Q. WHAT ABOUT HITTING HER HEAD IN THE TUB? COULD THAT
20 HAVE CAUSED THESE?

21 A. NO.

22 Q. WHAT ABOUT FALLING DOWN A FLIGHT OF STAIRS? COULD THAT
23 HAVE CAUSED THESE?

24 A. IN MY OPINION, I DON'T THINK THAT THAT WOULD HAVE
25 CAUSED WHAT WE'VE SEEN WITH THE RETINAL HEMORRHAGES. AND IN

1 REVIEWING THIS AND MY PREPARATION REVIEWING AN ARTICLE OF
2 SOME THREE HUNDRED SIXTY PATIENTS EVALUATED IN THE
3 CHILDREN'S HOSPITAL IN PHILADELPHIA THAT ALL HAD STAIR
4 INJURIES RANGING IN AGE FROM VERY YOUNG TO FOUR OR FIVE
5 YEARS OLD, THERE WERE SOME SIGNIFICANT BRUISES AND DIFFERENT
6 SOFT TISSUE INJURIES, BUT OVERALL NONE OF THEM SUSTAINED
7 ANYTHING THAT HAD ANY PERMANENT AND LASTING NEUROLOGICAL
8 DEFICIT. NONE OF THEM HAD RETINAL HEMORRHAGES. NONE OF
9 THEM HAD SOME OF THE PICTURE THAT WE'RE SEEING FOR *child*.
10 THEY LOOKED AT PATIENTS THAT HAD FALLEN THREE OR FOUR
11 STEPS TO, YOU KNOW, MULTIPLE STEPS. AND THEY CATEGORIZED
12 THIS AFTER THEY REVIEWED IT THAT FALLING DOWN STEPS IS MUCH
13 DIFFERENT THAN FALLING FROM WHERE THE STEPS STARTED ALL THE
14 WAY TO THE BOTTOM IN ONE SINGLE FALL AND IT'S JUST A WHOLE
15 BUNCH OF VERY SMALL FALLS GOING DOWN THE STEPS. SO BASED ON
16 THAT AND BASED ON THE CLINICAL FINDINGS THAT I SEE, I DON'T
17 THINK THAT EXPLAINS THIS ADEQUATELY.

18 Q. OKAY. BASED ON YOUR TRAINING AND YOUR EDUCATION AND
19 YOUR EXPERIENCE IN THIS FIELD DO YOU HAVE AN OPINION AS TO
20 WHETHER HER RETINAL HEMORRHAGES WERE ACCIDENTAL OR
21 INTENTIONALLY INFLICTED?

22 A. MY PROFESSIONAL OPINION IS THAT THEY WERE NOT
23 ACCIDENTAL AND THAT THEY WERE INFLICTED INJURIES.

24 Q. DO YOU HAVE AN OPINION AS TO THE TYPE OR AMOUNT OF
25 FORCE THAT WOULD BE REQUIRED TO INFLICT THE KINDS OF RETINAL

1 HEMORRHAGES YOU SAW IN RUSHANTI?

2 A. THAT'S A VERY DIFFICULT QUESTION BECAUSE OBVIOUSLY
3 NOBODY HAS DONE THAT PERFECT EXPERIMENT. BUT KNOWING THAT
4 THE STATUS OF CHILDREN GROWING UP ENTAILS A NUMBER OF FALLS,
5 SOME MAJOR, SOME MINOR, SOME IN BETWEEN. AND RARELY DO WE
6 EVER SEE RETINAL HEMORRHAGES.

7 MY PROFESSIONAL OPINION IS THIS REQUIRED A GREAT DEAL
8 OF FORCE. AND THAT'S WHY I DON'T FEEL LIKE THAT THERE'S
9 ADEQUATE EXPLANATION IN THIS STATEMENT TO RESULT IN THE
10 DAMAGE THAT SHE SUSTAINED.

11 Q. THANK YOU, DR. JOHNSON. PLEASE ANSWER ANY QUESTIONS
12 THAT MR. WARDER MAY HAVE FOR YOU.

13 THE COURT: MR. WARDER.

14 **CROSS EXAMINATION BY MR. WARDER:**

15 Q. DR. JOHNSON, JUST TO KIND OF FINISH UP WITH WHERE
16 YOU'RE AT, IF YOU WAS -- OR WE ASSUME THAT THE CHILD WAS
17 BEING HELD WITH -- BY AN ADULT WHICH WOULD BE SOME DISTANCE
18 OFF OF THE FLOOR AT THE TIME IT FIRST WENT DOWN THE STEPS
19 WOULD THAT CHILD FALLING WITH THE WEIGHT OF AN ADULT, COULD
20 THAT CAUSE RETINAL HEMORRHAGING?

21 A. I DON'T FEEL THAT THAT WOULD ACTUALLY EXPLAIN THE
22 FINDINGS FOR *child*

23 Q. OKAY. AND IN THE STUDY THAT HAD THREE HUNDRED AND
24 SIXTY CHILDREN IN IT WAS THAT A FACTOR THEY CONSIDERED? DID
25 THEY CONSIDER CASES THAT THE CHILD STARTED FALLING WITH THE

1 ADULT WITH THE ADDED HEIGHT OF THE ADULT BETWEEN HITTING THE
2 FIRST STEP ---

3 A. YES, SIR. TEN OF THOSE CHILDREN ACTUALLY WERE IN THE
4 ARMS OF AN ADULT WHEN THEY FELL.

5 Q. WERE THEIR INJURIES MORE SEVERE OR LESS SEVERE?

6 A. THEIR INJURIES WERE CONSISTENT WITH THE REST OF THEM.
7 AND NONE OF THOSE SUSTAINED ANY KIND OF PERMANENT
8 NEUROLOGICAL DEFICIT.

9 Q. NOW THE RETINAL HEMORRHAGING, IT WAS A DAY AND A HALF
10 AFTER THE ADMISSION THAT YOU SAW THE CHILD?

11 A. LET ME DOUBLE CHECK THAT. I SAW *child* IN THE EARLY
12 MORNING OF THE 14TH. YES, SIR. AS BEST I CAN TELL IT'S
13 ABOUT THIRTY HOURS AFTER THE EVENT.

14 Q. OKAY. THIRTY HOURS AFTER THE ADMISSION. OKAY. CAN
15 YOU TELL US WHEN THE EVENT HAPPENED? WHAT TIME THE EVENT
16 HAPPENED?

17 A. BASED ON THE RETINAL HEMORRHAGES ---

18 Q. YES, SIR.

19 A. --- CAN I TELL YOU THE TIMING OF THIS? NO, SIR.

20 THERE'S NOT A SHRED OF EVIDENCE THAT HELPS US TIME RETINAL
21 HEMORRHAGES.

22 Q. OKAY. COULD IT HAVE HAPPENED ANYWHERE BETWEEN TWO AND
23 FORTY-EIGHT HOURS BEFORE THAT?

24 A. YES, SIR.

25 Q. OKAY. COULD IT HAVE HAPPENED LONGER THAN FORTY-EIGHT

1 HOURS AHEAD OF THAT?

2 A. WELL, TYPICALLY YOU DO BEGIN TO SEE AT LEAST SOME
3 CHANGES. SO WHEN I SAID THAT YOU CAN'T TIME THEM I'M
4 TALKING ABOUT FROM MINUTE TO MINUTE OR HOUR TO HOUR. BUT
5 THEY BEGIN TO CHANGE CHARACTERISTICS. AND YOU CAN BEGIN TO
6 COMPARE. AND IF -- OBVIOUSLY THE PERFECT ANSWER HERE WOULD
7 BE IF SOMEONE HAD EXAMINED HER RETINA AT SOME OTHER POINT IN
8 TIME AND NOT SEEN ANYTHING FOLLOWED BY THIS EXAMINATION
9 WHICH I DIDN'T EXAMINE HER PRIOR TO THIS.

10 Q. SO YOU WOULD AGREE WITH ME IT COULD HAVE HAPPENED
11 ANYWHERE FROM TWO TO FORTY-EIGHT HOURS AHEAD OF THAT?

12 A. YES, SIR.

13 Q. NOW DID ---

14 A. NOW CAN I QUALIFY THAT?

15 Q. SURE.

16 A. THAT'S BASED ON WHAT THE RETINAL HEMORRHAGES LOOKED
17 LIKE. NOW BASED ON THE AMOUNT OF FORCE, AND I'M NOT THE
18 NEUROSURGEON AND I'M NOT THE PEDIATRIC INTENSIVE CARE
19 DOCTOR, BUT THIS AMOUNT OF FORCE CAUSES SUDDEN CHANGE IN OUR
20 BRAIN FUNCTION.

21 SO BASED ON THE REST OF THE HISTORY, WHICH I WASN'T IN
22 THE MIDDLE OF DEALING WITH THAT IN THE EMERGENCY DEPARTMENT
23 AND HOW THAT OTHER INVESTIGATION REVEALED THAT TO HAPPEN, I
24 THINK THAT TELLS US. BUT IF YOU'RE JUST OUT OF, YOU KNOW,
25 JUST BY ITSELF ASKING ME IF I CAN TELL YOU EXACTLY WHAT HOUR

1 THE RETINAL HEMORRHAGES HAPPENED? NO, SIR. BUT IN THE
2 CONTEXT OF THE OVERALL PICTURE, I THINK THE CLINICAL PICTURE
3 TELLS US A BETTER -- A BETTER TIME-LINE OF WHEN ALL THIS
4 HAPPENED.

5 Q. WELL, I ASK YOU THAT BECAUSE WE'VE HAD THE DOCTOR, HEAD
6 OF PEDIATRICS TO TESTIFY. AND HE FIXED THE INJURY BETWEEN
7 TWO AND FORTY-EIGHT HOURS FROM WHEN HE SAW THE CHILD. AND I
8 WAS ASKING IF YOU'RE CONSISTENT WITH THAT OR IF YOU'RE
9 SAYING THAT'S SOMETHING DIFFERENT THAN THE PREVIOUS
10 TESTIMONY.

11 A. OKAY. BASED ON MY FINDINGS THOSE RETINAL HEMORRHAGES
12 COULD HAVE BEEN BETWEEN TWO AND FORTY-EIGHT HOURS OLD. YES,
13 SIR.

14 Q. NOW DO ALL THESE HAPPEN AT ONE TIME OR DO THE
15 HEMORRHAGES HAPPEN AT DIFFERENT POINTS IN TIME? IN OTHER
16 WORDS, DOES ONE RUPTURE AND THEN LATER OR IS IT A SINGLE
17 EVENT WHERE THEY ALL RUPTURED AT ONCE?

18 A. I THINK THAT'S A GREAT QUESTION. AND MY PROFESSIONAL
19 OPINION IS THAT IT ALL HAPPENS BASICALLY WHEN THE EVENT
20 OCCURS. NOW THE REASON THAT IT'S NOT A CLEAR CUT ANSWER,
21 AND I KEEP SOUNDING LIKE A BROKEN RECORD, BUT BECAUSE THE
22 PERFECT EXPERIMENT CAN'T BE DONE.

23 WHAT HAPPENS IS THESE CHILDREN OFTEN ARE IN A LIFE OR
24 DEATH SITUATION. THEY PRESENT TO THE EMERGENCY DEPARTMENT
25 OFTEN WITH NO HISTORY OF EVEN A HEAD INJURY. AND THEY'RE

1 NOT BREATHING. AND THE STRUGGLE IS TO KEEP THEM ALIVE. SO
2 THEY MIGHT HAVE CPR. THEY MIGHT HAVE BLOOD PRODUCTS GIVEN.
3 THEY MIGHT HAVE ANY NUMBER OF THINGS HAPPEN.

4 AND ONLY WHEN THE CHILD IS MORE STABLE AND NOW IT'S
5 SEVERAL HOURS LATER THE QUESTION IS GOING TO COME UP, WELL,
6 NOW WE JUST DOCUMENTED WHATEVER THE FINDING IS, WHETHER IT'S
7 A RETINAL HEMORRHAGE OR WHETHER IT'S A BROKEN BONE THAT WE
8 WEREN'T LOOKING FOR OR WHATEVER IT IS. THEN THE QUESTION
9 IS, WELL, WHEN DID THAT REALLY HAPPEN? COULD THAT HAVE EVEN
10 HAPPENED IN THE HOSPITAL?

11 BUT THEY DON'T JUST HAPPEN. THE RETINAL HEMORRHAGES
12 DON'T JUST HAPPEN. SO I WASN'T THERE WHEN THE FORCE TOOK
13 PLACE, BUT MY STRONG PROFESSIONAL OPINION IS THAT THERE WAS
14 ONE EXPLANATION FOR ALL OF THIS THAT HAPPENED.

15 Q. OKAY.

16 A. AND BASED ON THIS DESCRIPTION I DON'T THINK THAT
17 DESCRIBES IT.

18 Q. MY QUESTION REALLY WAS THAT AFTER THE EVENT, WHETHER IT
19 BE ONE EVENT, DO ALL THE HEMORRHAGES SHOW UP AFTER THAT
20 EVENT OR DO THEY -- IMMEDIATELY OR ARE THEY SOME THAT BECOME
21 MORE VISIBLE OVER THE PASSAGE OF TIME?

22 A. MY PROFESSIONAL OPINION IS THEY ALL HAPPEN IN A VERY
23 SHORT PERIOD OF TIME AT THE SAME TIME.

24 Q. DO THEY -- ARE THEY TEARS OR SOME KIND OF DETERIORATION
25 OF THE LITTLE BLOOD VESSEL AND THAT'S WHAT MAKES ---

1 A. YES.

2 Q. --- IS THAT RIGHT?

3 A. YES, SIR.

4 Q. AND WOULD ALL THE TEARS IN THE LITTLE BLOOD VESSELS BE
5 AT EXACTLY THE SAME SIZE OR WOULD SOME TEAR BIGGER THAN THE
6 OTHERS?

7 A. SOME WOULD BE DIFFERENT SIZE PROBABLY BECAUSE OF
8 DIFFERENT STRUCTURES WHETHER IT'S WITHIN THE SANDWICH OF THE
9 RETINA, WHETHER IT'S UNDER THE RETINA, WHETHER IT'S ON TOP
10 OF THE RETINA. I THINK THAT THOSE SHEERING FORCES THAT
11 HAPPEN BY WHATEVER IS CAUSING THE FORCE, THOSE SHEERING
12 FORCES ARE DIFFERENT IN DIFFERENT PARTS OF THE EYE AND
13 DIFFERENT PARTS OF THE BRAIN. AND ALL THOSE STRUCTURES AND
14 TISSUES DON'T NECESSARILY EXPERIENCE THE SAME FORCES.

15 Q. AND MY ASSUMPTION WOULD BE THAT THE THING THAT STOPS
16 THE LITTLE PLACE IN THE EYE FROM CONTINUING TO GROW IS THAT
17 THE BLOOD NATURALLY CLOTS AND SEALS OFF THAT LITTLE VESSEL
18 AND IT STOPS LEAKING EVENTUALLY, IS THAT TRUE?

19 A. I THINK THAT'S A GOOD -- A GOOD EXPLANATION FOR WHY THE
20 BLEEDING STOPS.

21 Q. AND DEPENDING ON THE SIZE OF THE TEAR OF THOSE LITTLE
22 BLOOD VESSELS THAT WOULD AFFECT HOW LONG IT TOOK IT TO CLOT
23 IN SOME DEGREE. IS THAT -- IS THAT A CORRECT ASSUMPTION?

24 A. I DON'T THINK THAT'S A CORRECT ASSUMPTION.

25 Q. OKAY. WOULD THEY ALL STOP BLEEDING AT THE SAME INSTANT

1 OR WOULD THEY STOP BLEEDING AND GROWING AT DIFFERENT
2 INSTANCES?

3 A. NO, THEY WOULD BE DIFFERENT.

4 Q. OKAY. IF IT ISN'T THE AMOUNT OF TIME IT WOULD TAKE TO
5 CLOT WHAT CAUSES THEM TO STOP AT DIFFERENT TIMES?

6 A. THE AMOUNT OF FLOW THAT'S OCCURRING. THE MORE THE
7 FLOW, THE LARGER THE VESSEL, THE LARGER THE DEFECT IN THE
8 VESSEL REQUIRES LONGER FOR THE PLATELETS TO AGGREGATE AND
9 FOR THE WHOLE CLOTTING PROCESS TO COMPLETE ITSELF.

10 SO IF IT'S A TINY LITTLE CAPILLARY IT CAN -- IT'S LIKE
11 PUTTING YOUR FINGER IN THE DAM WHEN THE DAM IS LEAKING
12 WATER. IF IT'S A LITTLE BITTY -- IF IT'S A LITTLE BITTY
13 FLOW AREA AND JUST TAKES ONE FINGER TO PLUG IT UP, THEN IT
14 DOESN'T TAKE MUCH TO STOP THE LEAK.

15 IF IT TAKES, YOU KNOW, SEVERAL PATCHES, IF YOU WILL, TO
16 STOP THE DAM FROM LEAKING, THEN THE MORE IT'S GOING TO LEAK.
17 THE MORE THAT'S GOING TO ESCAPE UNTIL THE LEAKING IS
18 STOPPED.

19 Q. AND THE ONES THAT WERE THE BIGGEST AND IT TOOK THE
20 LONGEST WOULD HAVE BEEN THE ONES THAT APPEAR THE BIGGEST IN
21 THE PHOTOGRAPH. IS THAT ---

22 A. THAT'S NOT TRUE EITHER BECAUSE EVEN THOUGH THOSE
23 PHOTOGRAPHS ARE ONLY IN ONE PLAIN, THERE'S A DEPTH, THERE'S
24 A THICKNESS TO THIS. AND A COUPLE OF THOSE THAT LOOKED
25 LARGER DON'T NECESSARILY HAVE A LARGER VOLUME OF BLOOD

1 BECAUSE THEY MAY BE VERY THIN AND JUST BETWEEN TWO LAYERS,
2 BUT IT'S SPREAD OUT.

3 SOME OF THOSE THAT LOOKED LIKE THEY WERE LITTLE
4 BLISTERS, PROBABLY EVEN THOUGH THE SIZE OF THE BLISTER AS WE
5 LOOKED AT IT WAS NOT AS BIG AS ONE OF THE PRERETINAL
6 HEMORRHAGES, IT PROBABLY HAD AS MUCH BLOOD IN IT AS ONE THAT
7 WAS MUCH LARGER.

8 Q. HOW LONG DOES IT TAKE THE VESSELS TO CLOT, FOR THE
9 BLISTERS TO STOP GROWING?

10 A. NOBODY'S MEASURED THAT. BUT THE CLOTTING -- IF YOU CUT
11 YOUR ARM, I MEAN, I THINK WE CAN LOOK AT OTHER CLOTTING
12 AREAS AND HAVE TO EXTRAPOLATE FROM THAT. IT DOESN'T TAKE
13 LONG FOR THE CLOTTING SYSTEM TO WORK. SO THE BLEEDING TIME
14 IS A VERY SHORT PERIOD OF TIME.

15 Q. AND DOES THE REABSORPTION THEN IMMEDIATELY START OF THE
16 BLOOD OR THE ABSORPTION AS SOON AS THE CLOTTING OCCURS?

17 A. I THINK THE REABSORPTION DOES START, BUT IT'S VERY
18 CLEAR THAT THESE HEMORRHAGES CAN LAST ANYWHERE FROM A FEW
19 DAYS TO SEVERAL WEEKS. AND IF IT GETS INTO THAT CLEAR
20 VITREOUS SPACE SOMETIMES IT JUST CONTINUES TO LAST AND YOU
21 ACTUALLY HAVE TO REMOVE IT. SO BASED ON THE LOCATION OF THE
22 HEMORRHAGE, BASED ON THE APPARENT INITIAL SIZE IS NO
23 PREDICTION AT ALL AS FAR AS HOW THEY'RE GOING TO REABSORB.

24 Q. YOU SHOWED US PHOTOGRAPHS THAT HAD TAKEN ON A GRAY CAST
25 ON THE MATERIAL.

1 A. YES, SIR.

2 Q. HOW LONG DOES THAT TAKE FOR THAT GRAY CAST TO OCCUR?

3 A. THE SWELLING OF THOSE RETINAL FIBERS DOESN'T TAKE LONG
4 AT ALL ESPECIALLY IN THE SETTING OF DECREASED OXYGEN AND AN
5 INSULT THAT SHE PROBABLY SUSTAINED RELATED TO HER BREATHING.

6 Q. OKAY. SO IS DECREASED OXYGEN ENOUGH TO MAKE A CHANGE
7 COLOR WITHOUT THE ABSENCE OF SOME OTHER BLEEDING IN THE EYE?

8 A. IF IT'S FOR A LONG ENOUGH PERIOD OF TIME AND IF THE
9 OXYGEN -- THE AMOUNT OF OXYGEN OR BLOOD STREAM GETS LOW
10 ENOUGH. PROBABLY THREE OR FOUR MINUTES WILL DO THAT.

11 Q. SO YOU CAN HAVE THE GRAY COLOR ISSUE WE SAW IN A CHILD
12 THAT HAD NO RETINAL BLEEDING, IS THAT CORRECT?

13 A. THAT IS CORRECT. BUT WE HAVE TO EXPLAIN BOTH.

14 Q. PARDON ME?

15 A. BUT WE HAVE TO EXPLAIN BOTH. SHE HAD BOTH.

16 Q. DID THEY OCCUR AT BOTH THE SAME TIME?

17 A. THEY OCCURRED AS A RESULT OF THE SAME EVENT.

18 Q. HOW DO YOU KNOW THE CHILD WASN'T IN TWO EVENTS? HOW DO
19 YOU DETERMINE THAT?

20 A. I CAN'T DETERMINE THAT BASED ON THE RETINAL
21 HEMORRHAGES.

22 Q. IF A CHILD IS SUBJECT TO TRAUMA TWICE BEFORE SHE GOES
23 TO THE HOSPITAL CAN YOU TELL THAT?

24 A. SOMETIMES IF THEY HAVE INTRA CRANIAL HEMORRHAGE THE
25 RADIOLOGIST CAN TELL -- THEY CAN AGE OLDER BLOOD COMPARED TO

1 FRESHER BLOOD. AND SOMETIMES IF THERE HAD BEEN A WEEK OR
2 TWO WITH RETINAL HEMORRHAGES YOU CAN TELL OLDER BLOOD FROM
3 NEWER BLOOD. BUT AS FAR AS BEING ABLE TO DEFINE THAT TO THE
4 DAY OR SO I WOULD HAVE DIFFICULTY DOING THAT. BUT IF THERE
5 ARE TWO EVENTS WE KNOW AT LEAST ONE OF THEM CAUSED SEVERE
6 HEMORRHAGE AND SEVERE -- A SEVERE PROBLEM FOR HER BRAIN.

7 Q. COULD THE BRAIN BE CAUSED BY AN EVENT SEPARATE FROM THE
8 EVENT THAT CAUSED THE RETINAL HEMORRHAGES?

9 A. YOU KNOW, I THINK THE ANSWER TO THAT IS THAT ANYTHING'S
10 POSSIBLE, BUT GIVEN THE CONSTELLATION OF FINDINGS WE SEE
11 WITH HER AND DEFERRING TO OTHER TEAM MEMBERS, I'M NOT THE
12 EXPERT ON THE GLOBAL PICTURE, BUT I HAVE TROUBLE EXPLAINING
13 WHAT I SEE WITH HER WITH WHAT'S BEEN OFFERED. AND TO JUST
14 ARBITRARILY CHOOSE AN ENTIRELY DIFFERENT TIME-LINE THAT'S
15 BEEN PROPOSED, I CAN'T SEE HOW THAT FITS HER CLINICAL
16 PICTURE.

17 Q. THANK YOU.

18 A. YOU'RE WELCOME.

19 THE COURT: ANY REDIRECT?

20 MS. SEAY: NOTHING FURTHER. AND MAY DR. JOHNSON BE
21 EXCUSED ---

22 THE COURT: ANY OBJECTION EXCUSING ---

23 MS. SEAY: --- IF HE DESIRES?

24 THE COURT: --- THE DOCTOR?

25 MR. WARDER: NO, YOUR HONOR.

1 **THE COURT:** THANK YOU, DOCTOR. YOU'RE EXCUSED.

2 **DR. JOHNSON:** THANK YOU.

3 **THE COURT:** ALL RIGHT, SOLICITOR.

4 **MS. SEAY:** THE STATE RESTS AT THIS TIME.

5 **THE COURT:** OKAY. TAKE THE JURY OUT, PLEASE.

6 (WHEREUPON THE JURY EXITED THE COURTROOM AT 1:13 PM)

7 **THE COURT:** ANY MOTIONS, MR. WARDER?

8 **MR. WARDER:** YES, YOUR HONOR. I WOULD MOVE FOR A
9 DIRECTED VERDICT. YOUR HONOR, THE CRIME IN WHICH MY
10 CLIENT'S BEEN CHARGED REQUIRES THAT HE INTENTIONALLY INFLICT
11 GREAT BODILY INJURY. THERE'S SIMPLY NO EVIDENCE THAT HE
12 INTENTIONALLY INFLICTED AN INJURY. SOME EVIDENCE THAT HE
13 ACCIDENTALLY FELL DOWN SOME STAIRS. AND THE EXPERTS SAY
14 THAT THAT WOULD BE INSUFFICIENT TO CAUSE THE INJURIES THEY
15 SAW. THERE'S SIMPLY NO EVIDENCE THAT HE IN ANY WAY ...

16 **THE COURT:** MR. WARDER, THERE'S CIRCUMSTANTIAL EVIDENCE
17 THAT SHE SUFFERED BRAIN INJURY BECAUSE OF SHAKING. YOUR
18 MOTION'S DENIED. ALL RIGHT. NOW WILL YOU HAVE SOME
19 TESTIMONY AND EVIDENCE, MR. WARDER?

20 **MR. WARDER:** YES, YOUR HONOR, I WILL.

21 **THE COURT:** ALL RIGHT. DO WE KNOW AT THIS TIME IF YOUR
22 CLIENT IS GOING TO TESTIFY?

23 **MR. WARDER:** YES, HE IS.

24 **THE COURT:** OKAY. ALL RIGHT. BRING THE JURY, PLEASE.

25 (WHEREUPON THE JURY ENTERED THE COURTROOM AT 1:16 PM)

220

24 Q. NOW DRAWING YOUR ATTENTION BACK TO 2003 AND OCTOBER
25 12TH. I BELIEVE THAT WAS A SATURDAY?

1 A. YES, SIR.

2 Q. AND THAT SATURDAY DID YOU HAVE AN OCCASION TO GO TO
3 YOUR MOTHER'S HOUSE?

4 A. YES.

5 Q. WHO WENT WITH YOU?

6 A. ME AND A FRIEND OF MINE, GRETTLER.

7 Q. OKAY. WHO WAS THAT FRIEND?

8 A. SHE AND I WERE CO-WORKERS.

9 Q. WHAT HAPPENED WHEN YOU GOT TO YOUR MOTHER'S HOUSE?

10 A. I WENT -- WE WENT TO MY MOTHER'S HOUSE TO PICK UP MY
11 CHILDREN. WE GOT THERE. MY MOTHER WAS THERE AND SO WAS
12 *child* MY NIECE. AND GRETTLER, THIS IS THE FIRST TIME
13 GRETTLER HAD SEEN HER. SO SHE WAS HAVING A FIT BECAUSE IT
14 WAS A BABY AND IT WAS A GIRL.

15 MY BROTHER CALLED ME AND WANTED ME TO COME AND PICK HIM
16 UP, ONE OF MY OLDER BROTHERS, TO TAKE HIM SOMEWHERE. SO I
17 WAS GETTING READY TO GO TO TAKE HIM -- WE WENT TO TAKE HIM
18 SOMEWHERE. AND GRETTLER WAS SAYING THAT SHE WANTED TO KEEP
19 MY NIECE. SO MY MAMA GAVE HER A BATH WHILE WE WERE GONE.
20 WE CAME BACK AND WE PICKED UP ALL THE CHILDREN AND WE LEFT.

21 Q. OKAY. NOW YOUR NIECE IS WHO?

22 A. *child*

23 Q. *child?*

24 A. *child*

25 Q. OKAY. THE YOUNG CHILD THAT WAS INJURED?

1 A. YES.

2 Q. OKAY. AND WHERE DOES SHE GO AFTER YOU LEAVE YOUR
3 MOTHER'S?

4 A. WE GO BACK TO MY HOUSE, AND WE COME HERE TO GREENVILLE.
5 AND WE STAY AT MY HOUSE FOR A WHILE. SHE STAYS AT MY HOUSE
6 FOR A WHILE. SHE LEAVES MY HOUSE WITH GRETTLER AND GOES TO
7 GRETTLER'S HOUSE.

8 Q. OKAY. WHAT TIME DID SHE LEAVE YOUR HOUSE AND GO TO
9 GRETTLER'S HOUSE?

10 A. THEY LEFT AROUND 6:30.

11 Q. OKAY. NOW WHAT DID YOU DO AND WHAT HAPPENED WITH --
12 DID YOUR CHILDREN THEN STAY THERE THE REST OF THE NIGHT?

13 A. NO. THEY WENT TO BARBARA'S HOUSE.

14 Q. OKAY. TO MS. HUDSON'S HOUSE?

15 A. YES.

16 Q. AND DID THEY SPEND THE NIGHT WITH MS. HUDSON?

17 A. YES.

18 Q. OKAY. AND *(child)*] STAYED -- DID SHE SPEND ANY
19 OF THE NIGHT WITH YOU?

20 A. NO. SHE STAYED WITH GRETTLER.

21 Q. OKAY. WHEN'S THE NEXT TIME YOU SEEN YOUR CHILDREN?

22 A. THE NEXT MORNING WHEN MARQUES -- HE WENT TO PICK UP ALL
23 THE CHILDREN. HE WENT PICKED UP *child* FROM GRETTLER'S
24 HOUSE. HE WENT TO PICK UP OUR TWO KIDS FROM HIS MOTHER'S
25 HOUSE. THEN HE BROUGHT THEM HOME.

1 Q. OKAY. SO WHAT TIME WAS THAT?

2 A. THAT WAS AROUND TEN, 10:30.

3 Q. OKAY. ALL THE CHILDREN COME BACK TO YOUR HOUSE. WHAT
4 THEN HAPPENED?

5 A. I'M COOKING. I'VE GOT TO GO TO WORK THAT DAY. SO I
6 COOK. I TAKE MY SHOWER. I GET READY TO GO TO WORK. AND I
7 LEAVE AROUND FOUR.

8 Q. OKAY. ANYTHING DIFFERENT THAT DAY?

9 A. NO.

10 Q. ANYTHING DIFFERENT WITH *child*

11 A. SHE WAS PLAYING, BUT NOT AS MUCH AS SHE NORMALLY PLAYS.
12 SHE WAS REALLY CONGESTED. SHE -- I DON'T KNOW IF SHE HAD A
13 COLD OR A SINUS INFECTION OR SOMETHING, BUT SHE WAS REALLY
14 CONGESTED. BUT SHE PLAYED, BUT NOT NORMALLY LIKE SHE
15 NORMALLY PLAYS.

16 Q. OKAY. WHAT'S THE NEXT THING THAT HAPPENED THAT DAY?

17 A. I LEFT. I WENT TO WORK. I WORKED MOST OF MY SHIFT. I
18 RECEIVED A PHONE CALL ABOUT 11:45. THERE WAS AN EMS WORKER
19 ON THE LINE. AND HE WAS SAYING SOMETHING HAPPENED AT MY
20 HOUSE, THAT I NEEDED TO COME HOME.

21 Q. OKAY. DID YOU THEN TALK TO YOUR HUSBAND?

22 A. YES.

23 Q. HOW LONG WAS THAT?

24 A. I TALKED TO HIM FOR ABOUT -- ABOUT TWO MINUTES. AND
25 THEN THE EMS WORKER GOT BACK ON THE LINE. AND HE WAS

1 SAYING, YOU KNOW, HOW LONG IS IT GOING TO TAKE YOU TO GET
2 HERE? WHERE ARE YOU COMING FROM? AND THEN I TOLD HIM I
3 COULD BE THERE IN TEN MINUTES. AND THEN HE HUNG UP.

4 Q. OKAY. DID YOU GO TO YOUR HOUSE OR DID YOU GO TO THE
5 HOSPITAL?

6 A. I WENT HOME.

7 Q. OKAY. AND DID YOU LATER GO TO THE HOSPITAL?

8 A. YES.

9 Q. OKAY. WHEN YOU GOT HER HOME WHO WAS THERE?

10 A. WHEN I GOT THERE MY TWO CHILDREN WERE THERE AND OUR
11 NEIGHBORS, SHE WAS HOME WITH THE CHILDREN.

12 Q. OKAY. AND WHAT TIME DID YOU ARRIVE AT THE HOSPITAL?

13 A. I GOT TO THE HOSPITAL ABOUT 12:15, MAYBE, SOMETHING
14 LIKE THAT, AROUND 12:15.

15 Q. THANK YOU. IF YOU'D ANSWER ANY QUESTIONS THE SOLICITOR
16 MIGHT HAVE.

17 THE COURT: SOLICITOR.

18 CROSS EXAMINATION BY MS. SEAY:

19 Q. MS. SMITH, DO YOU RECALL GIVING A STATEMENT TO
20 INVESTIGATOR WAYNE CAMPBELL ON OCTOBER 15TH, 2003?

21 A. YES.

22 Q. AND I BELIEVE THAT HAPPENED AT THE LAW ENFORCEMENT
23 CENTER, IS THAT CORRECT?

24 A. THAT'S CORRECT.

25 Q. DID YOU TELL HIM THAT *child* WENT HOME WITH SOMEONE

- 1 NAMED GRETTLER?
- 2 A. NO.
- 3 Q. YOU DIDN'T?
- 4 A. NO, I DID NOT.
- 5 Q. DOES IT APPEAR IN THIS STATEMENT THAT YOU GAVE HIM?
- 6 A. NO.
- 7 Q. THIS STATEMENT YOU SIGNED AND SAID IS TRUE AND CORRECT
- 8 AS BEST I RECALL?
- 9 A. YES.
- 10 Q. BUT YOU DIDN'T INCLUDE THAT?
- 11 A. NO.
- 12 Q. OKAY. DO YOU RECALL TELLING INVESTIGATOR CAMPBELL THAT
- 13 MARQUES GETS UPSET WHEN SOMEONE MESSES WITH HIS STEREO
- 14 SURROUND SOUND SYSTEM?
- 15 A. YES.
- 16 Q. AND THAT'S, IN FACT, TRUE, ISN'T IT?
- 17 A. YES.
- 18 Q. THE BOTTOM LINE IS THAT *Child*: WAS FINE WHEN YOU
- 19 PICKED HER UP FROM YOUR MOTHER ON SATURDAY AT ABOUT 4:00,
- 20 ISN'T THAT RIGHT?
- 21 A. YES.
- 22 Q. AND WHEN YOU LEFT FOR WORK THE NEXT DAY AROUND 4:00
- 23 RUSHANTI WAS FINE, WASN'T SHE?
- 24 A. YES.
- 25 Q. AND BETWEEN THE TIME YOU LEFT FOR WORK AT 4:00 AND YOU

1 GOT THE CALL AT ELEVEN WHATEVER SHE WAS IN THE CARE OF
2 MARQUES HUDSON, ISN'T THAT RIGHT?

3 A. THAT'S CORRECT.

4 Q. THANK YOU. THAT'S ALL I HAVE.

5 REDIRECT EXAMINATION BY MR. WARDER:

6 Q. THE SOLICITOR'S ASKED YOU ABOUT THE STATEMENT. IS
7 THERE ANY REASON THAT WASN'T IN THE STATEMENT?

8 A. I DID NOT PUT THAT IN MY STATEMENT. WHEN I WENT TO THE
9 LAW ENFORCEMENT CENTER, ME AND MY MOTHER WENT AT THE SAME
10 TIME. SHE WAS AWARE THAT *child* HAD SPENT THE NIGHT WITH
11 GRETTE. AND SHE SAID SHE DIDN'T SAY ANYTHING ABOUT IT
12 BECAUSE SHE DID NOT WANT TO GET MY FRIEND IN TROUBLE.

13 Q. OKAY. YOUR MOTHER DIDN'T SAY ANYTHING ABOUT IT?

14 A. NO.

15 Q. DID SHE TALK TO YOU ABOUT THAT?

16 A. THAT'S EXACTLY WHAT SHE TOLD ME.

17 Q. OKAY.

18 THE COURT: THANK YOU. STEP DOWN.

19 MR. WARDER: YOUR HONOR, I'D CALL MY CLIENT ---

20 THE COURT: ALL RIGHT.

21 MR. WARDER: --- AS THE NEXT WITNESS.

22 MARQUES HUDSON, BEING
23 DULY SWORN TESTIFIED AS FOLLOWS:

24 MADAME CLERK: STATE YOUR NAME FOR THE RECORD.

25 MR. HUDSON: MY NAME IS MARQUES ANTONIO HUDSON.

1 DIRECT EXAMINATION BY MR. WARDER:

2 Q. MR. HUDSON, YOU'VE BEEN HERE IN THE COURTROOM AND HEARD
3 PEOPLE TALK ABOUT YOU FOR ABOUT A DAY AND A HALF NOW.

4 A. YES, SIR.

5 Q. TELL THE JURY A LITTLE BIT ABOUT YOURSELF. HOW OLD ARE
6 YOU?

7 A. I'M TWENTY-EIGHT YEARS OLD.

8 Q. WHERE DO YOU LIVE AT?

9 A. I LIVE AT MY MOTHER'S HOUSE AT
10 IN GREER, SOUTH CAROLINA.

11 Q. WHO LIVES WITH YOU?

12 A. MY MOTHER LIVES WITH ME. MY WIFE LIVES WITH ME. AND
13 MY THREE CHILDREN LIVES WITH ME.

14 Q. YOU EMPLOYED, SIR? ARE YOU EMPLOYED?

15 A. YES, SIR, I AM.

16 Q. WHERE DO YOU WORK AT?

17 A. I WORK FOR ANDERSON HARDWOOD FLOORING COMPANY.

18 Q. WHAT DO YOU DO WITH THEM?

19 A. LOAD TRUCKS.

20 Q. DID YOU GO TO SCHOOL?

21 A. YES, SIR, I DID.

22 Q. HOW FAR DID YOU GO IN SCHOOL?

23 A. ELEVENTH GRADE.

24 Q. DO YOU HAVE ANY FORMAL EDUCATION SINCE THEN?

25 A. NO, SIR, I HAVEN'T.

1 Q. PEOPLE HAVE TALKED A LOT ABOUT WHAT HAPPENED THE
2 WEEKEND OF THE 12TH AND THE 13TH OF OCTOBER. CAN YOU TELL
3 US WHAT HAPPENED THAT WEEKEND?

4 A. I SURE CAN. ON THAT WEEKEND, THAT SATURDAY, AS I
5 RECALL, ME AND GRETTLER'S HUSBAND, THEN HUSBAND, RICHARD, WE
6 WERE SITTING AT HOME WATCHING TV WHEN MY WIFE AND HER
7 FRIEND, GRETTLER, CAME HOME. AND THEY CAME HOME WITH OUR TWO
8 KIDS AND *child*

9 WHEN SHE CAME IN I ASKED HER AS TO WHY, YOU KNOW, SHE
10 BROUGHT ALL THOSE KIDS -- ALL THE KIDS BACK TO THE HOUSE
11 BECAUSE I WANTED TO SPEND TIME WITH HER. AND SHE SAID, IT'S
12 FINE BECAUSE GRETTLER WANTED TO KEEP HER, SHE ASKED CARRIE
13 SMITH IF SHE COULD KEEP HER, AND SHE SAID THAT THAT WAS
14 FINE.

15 SO I SAID, OKAY, I'LL SEE WHAT I CAN DO AS FAR AS MY
16 GRANDMOTHER KEEPING OUR KIDS OR, EXCUSE ME, MY MOTHER
17 KEEPING OUR KIDS THAT NIGHT. AND I CALLED MY MOTHER AND SHE
18 DID AS WELL.

19 THEN I THINK RICHARD AND GRETTLER STAYED PROBABLY, MAYBE
20 AN HOUR OR SO. WE WERE WATCHING A FOOTBALL GAME. AND ---

21 Q. YOUR VOICE IS DROPPING JUST A LITTLE AND I'M HAVING A
22 LITTLE TROUBLE HEARING YOU.

23 A. I THINK RICHARD AND GRETTLER STAYED PROBABLY LIKE AN
24 HOUR OR SO AFTER THAT. AND THEN THEY DECIDED THEY WERE
25 GOING TO GO HOME BECAUSE WE WERE WATCHING A GAME AND IT WAS

1 PRETTY -- PRETTY CLOSE TO THE END AND THE SCORE WAS PRETTY
2 -- GETTING PRETTY CLOSE TO FINAL. SO THEN THEY WENT HOME
3 AND THEY TOOK *child* WITH THEM.

4 I WAS THE ONE WHO PACKED UP HER STUFF. AND I GAVE
5 RICHARD MY SON'S CARRIER SO HE COULD TRANSPORT HER TO THE
6 HOUSE, TO THAT -- GRETTLER'S HOUSE.

7 Q. DID YOU AND YOUR WIFE STAY AT HOME THAT NIGHT?

8 A. YES, SIR, WE DID.

9 Q. OKAY. YOU HAD A NIGHT WITH NO CHILDREN?

10 A. YES, SIR, WE DID.

11 Q. WHAT TIME DID YOU RISE THE NEXT DAY?

12 A. I ARISED THE NEXT DAY, I BELIEVE IT WAS, AROUND 9:00 TO
13 A PHONE CALL FROM GRETTLER STATING THAT -- NO, I AROSE AT
14 9:00 THAT MORNING TO LYCRETTA TELLING ME THAT GRETTLER HAD TO
15 BE AT WORK AT ELEVEN -- EITHER 10:30 OR 11:00 OR SOMETHING
16 LIKE THAT. AND SHE HAD TO GO GET THE KIDS. AND I TOLD HER,
17 NO, THAT WOULD BE FINE, I WOULD GO GET THEM. SHE COULD STAY
18 AT HOME AND SHE COULD GET SOME REST 'CAUSE SHE HAS TO WORK.

19 Q. YOU GOT HER BROTHER? YOU WENT AND PICK UP ---

20 A. *child*

21 Q. OKAY.

22 A. I WENT TO GRETTLER'S HOUSE AND PICKED UP *child* AND
23 FROM ---

24 Q. OKAY. THAT WAS AT HER BROTHER'S HOUSE.

25 A. NO, AT GRETTLER'S HOUSE.

1 Q. OKAY. YOU WENT TO GRETTLER'S HOUSE, PICKED UP *child*
2 [SIC]?

3 *child*

4 Q. OKAY. THEN WHAT DID YOU DO?

5 A. FROM THERE I PICKED HER UP, AND I GOT ALL HER STUFF,
6 AND WE WENT TO MY MOTHER'S HOUSE. WE WENT DIRECTLY TO MY
7 MOTHER'S HOUSE AND WE PICKED UP MY CHILDREN. FROM THERE, I
8 THINK WE STAYED PROBABLY AT MY MOTHER'S HOUSE TEN -- TEN OR
9 FIFTEEN MINUTES. AND THEN WE LEFT AND WENT HOME FROM THERE.

10 Q. OKAY. WHAT TIME DID YOU GET BACK TO YOUR HOUSE?

11 A. I PROBABLY GOT BACK TO MY HOUSE PROBABLY AROUND 10:30
12 OR 11:00 THAT MORNING. SOMEWHERE BETWEEN 10:30 AND ELEVEN.

13 Q. AFTER YOU RETURNED TO YOUR HOUSE, WHAT THEN HAPPENED?
14 WHAT DID YOU DO?

15 A. WHEN I RETURNED HOME, MY WIFE, SHE WAS STILL IN THE
16 BED. SHE WAS STILL SLEEPING. I THEN -- GOING -- I CAN'T
17 REMEMBER EXACTLY AS TO WHEN I CAME INTO THE HOUSE AS TO WHAT
18 I WAS DOING. BUT JUST FROM MEMORY, THOUGHTS, IF I'M NOT
19 MISTAKEN, I FIXED THE KIDS BREAKFAST BECAUSE I DO REMEMBER
20 FEEDING THE KIDS, SITTING THEM DOWN AT THE TABLE AND ON THE
21 FLOOR AND FEEDING MY SON AND FEEDING *child*.

22 Q. OKAY. WHAT TIME DID YOUR WIFE HAVE TO GO TO WORK?

23 A. SHE HAD TO GO TO WORK AROUND 2:00.

24 Q. BETWEEN THE TIME THE CHILDREN GOT BACK AND 3:00 DID
25 EITHER ONE OF YOU HAVE PRIMARY RESPONSIBILITY FOR WATCHING

1 AND CARING FOR THEM?

2 A. PRIMARY? THAT WOULD BE -- NO, FOR JUST ONE PERSON. WE
3 BOTH HAD -- WE BOTH SHARED THE RESPONSIBILITY.

4 Q. OKAY. ANYTHING UNUSUAL HAPPEN THAT DAY BEFORE YOUR
5 WIFE WENT TO WORK?

6 A. NOTHING REALLY UNUSUAL. WE KIND OF LOOKED A' *child*
7 AND KIND OF DECIDED THAT SHE WAS SICK AND WE MAYBE NEEDED TO
8 GET HER SOME MEDICINE AT SOME POINT IN THE DAY OR TRY TO
9 FIGURE OUT SOMETHING ABOUT CARING FOR HER BECAUSE SHE WAS
10 ACTING A LITTLE DIFFERENT. SHE WASN'T AS PLAYFUL. SHE WAS
11 PLAYFUL, BUT SHE WASN'T AS PLAYFUL AS SHE NORMALLY IS.

12 AND MY DAUGHTER HAS A TENDENCY TO MAKE PEOPLE PLAY WITH
13 THEM. SO -- AND FOR HER NOT TO RESPOND AS WELL AS SHE DID,
14 I FIGURED IT WAS JUST MAYBE SHE WAS SICK OR SHE HAD A COLD
15 OR SOMETHING LIKE THAT.

16 Q. NOW THE SOLICITOR -- WE'VE TALKED ABOUT THE STEREO. DO
17 YOU HAVE A STEREO IN YOUR HOUSE?

18 A. YES, SIR, I DO.

19 Q. WAS THERE ANY INCIDENT WITH THE STEREO?

20 A. YES, SIR, THERE WAS. THERE WAS -- I RECALL THREE
21 INCIDENTS WITH THE STEREO THAT DAY.

22 Q. TELL US ABOUT IT.

23 A. THAT DAY, THE -- AS FAR AS REGARDING THE STEREO, I HAVE
24 A -- I HAD A SURROUND SOUND UNIT. I STILL HAVE IT TO THIS
25 DAY. IT'S IN MY MOTHER'S HOUSE. AND I HAD IT MOUNTED TO

1 THE WALL. AND THE CENTER SPEAKER WAS MOUNTED DIRECTLY OVER
2 THE TV, BUT IT WAS DOUBLE SIDED TAPED TO THE WALL. AND ALL
3 THE SPEAKER WIRES RAN DOWN THE WALL AND ACROSS THE FLOOR.

4 I HAD A FORTY -- I BELIEVE IT'S A FORTY-EIGHT INCH
5 FLOOR MODEL TV WITH THE SURROUND SOUND UNIT AND A VCR
6 SITTING DIRECTLY ON TOP OF IT. IT'S NOT IN AN ENTERTAINMENT
7 UNIT OR ANYTHING LIKE THAT.

8 *child* -- ON NUMEROUS OCCASIONS I'VE COME HOME AND MY
9 DAUGHTER HAS TOLD ME THAT *child* PULLED THE WIRES UP TO
10 THE SURROUND SOUND UNIT AND PULLED THE TAPE OFF THE WIRES.
11 SO I ACTUALLY WENT A STEP FURTHER AND STARTED TUCKING THE
12 WIRES THIS TIME TO -- INTO THE CARPET AND TAPING ALL THE
13 WIRES DOWN, JUST KIND OF CHILD-PROOFING THE HOUSE AS FAR AS
14 THOSE WIRES ARE CONCERNED. BUT THE WIRES WERE STILL EXPOSED
15 BEHIND THE TELEVISION AND THE WIRES RUNNING UP THE WALL.

16 SO *child* KEPT GETTING BEHIND THE TELEVISION. SHE
17 GOT BEHIND THE TELEVISION ONCE. AND WHEN SHE GOT BEHIND THE
18 TELEVISION ONCE MY DAUGHTER TOLD ME, OOH, -- DADA;

19 *child*'S BEHIND THE TELEVISION, AND SHE'S BACK THERE
20 PULLING ON THE WIRES. AND I CAME OUT THERE AND I TOLD

21 *child*, NO. AND I SAT HER DOWN IN FRONT OF THE COUCH WITH
22 MY DAUGHTER BACK OVER THERE PLAYING BECAUSE THEY HAD TOYS
23 OUT THAT THEY WERE PLAYING WITH IN THE LIVINGROOM.

24 THEN I WENT BACK INTO THE KITCHEN AND I WAS EATING
25 'CAUSE MY WIFE HAD COOKED EARLIER THAT DAY. AND I WAS

1 SITTING THERE. AND THEN MY DAUGHTER SAYS IT TO ME AGAIN,
2 OOH, *child's* BEHIND THE TELEVISION AGAIN, DADA. SO THEN
3 I COME BACK OUT. AND WHEN I COME BACK OUT SHE'S BEHIND THE
4 TELEVISION AND SHE'S STANDING THERE LOOKING AT ME. AND I
5 TOLD HER, NO.

6 THEN I PROCEEDED TO GET A BELT BECAUSE I DIDN'T WANT TO
7 HIT HER WITH MY HAND. I GOT A BELT. I STRETCHED IT OUT. I
8 ONLY USED ONE END. I TURNED HER AROUND, AND I POPPED HER ON
9 THE BACK.

10 Q. OKAY. YOU POPPED HER ON HER BACK WITH A BELT. WAS IT
11 YOUR BELT?

12 A. YES, SIR, IT WAS.

13 Q. HOW WIDE WAS IT?

14 A. IT WAS VERY SIMILAR TO THE ONE THAT I HAVE ON. IT IS
15 EXACTLY IDENTICAL TO THE ONE THAT I HAVE ON TODAY, IF YOU
16 WOULD LIKE TO SEE.

17 Q. COULD YOU TELL US HOW WIDE IT IS, ABOUT?

18 A. (INDICATED WITH HIS FINGERS).

19 Q. OKAY.

20 A. ABOUT THAT WIDE.

21 Q. DID YOU USE THE WHOLE BELT OR HOW DID ---

22 A. NO, SIR, I DIDN'T. ON A PREVIOUS OCCASION I SPANKED MY
23 DAUGHTER AND I REALIZED HOW HARD THAT WAS AND THAT THAT WAS
24 TOO MUCH FORCE. SO, THEREFORE, I -- ANYTIME AFTER THAT I
25 WOULD TAKE THE BELT, BUT I WOULD NOT FOLD IT. I WOULD USE

1 ONE END OF IT. THE OPEN END WITH THE HOLES IN IT, I'D TAKE
2 THAT END AND I WOULD USE THAT END TO SPANK WITH, PROBABLY,
3 MAYBE THAT MUCH OF IT.

4 Q. OKAY. SO YOU'D HOLD THAT MUCH OF THE BELT TO HIT HER?

5 A. YES, SIR.

6 Q. IS THAT WHAT YOU DID THAT DAY TO *child?*

7 A. YES, SIR.

8 Q. AND YOU HIT HER ONE TIME?

9 A. THAT WAS THE FIRST TIME. YES, SIR.

10 Q. DID THERE COME AN OCCASION YOU HIT HER AGAIN?

11 A. YES, SIR, THERE WAS. THE THIRD TIME I WAS IN THE
12 KITCHEN, I WAS ACTUALLY CLEANING UP WHERE I WAS EATING. AND
13 I WAS ACTUALLY LOOKING THROUGH THE WANT ADS. THEN WHEN I
14 HEARD A SPEAKER -- I HEARD A NOISE IN THE LIVINGROOM. AND
15 MY DAUGHTER TOLD ME, OOH, DADA, SHE'S BACK BEHIND THE
16 TELEVISION AGAIN.

17 SO THEN I COME BACK IN THE LIVINGROOM, AND I NOTICED
18 THAT THE SPEAKER HAD BEEN REMOVED FROM THE WALL AND THE
19 SURROUND SOUND UNIT HAD BEEN PULLED OFF THE TOP OF THE
20 TELEVISION. SO THEN I PULLED HER FROM BEHIND THE TELEVISION
21 AGAIN, AND I TOLD HER, NO. AND I PULLED THE BELT OUT AGAIN.
22 AND I SPANKED HER EXACTLY THE SAME WAY AGAIN. AND I TOLD
23 HER, NO. AND I SAT HER DOWN IN THE LIVINGROOM. SHE MAYBE
24 CRIED FOR MAYBE LIKE TEN TO FIFTEEN SECONDS. AND THEN
25 EVERYTHING WAS BACK TO NORMAL.

1 Q. OKAY. SO YOU HIT HER THE SECOND TIME. SHE CRIED FOR,
2 YOU SAID, TEN TO FIFTEEN SECONDS?

3 A. YES, SIR.

4 Q. AND THEN GOT DISTRACTED WITH SOMETHING ELSE?

5 A. WELL, I JUST BASICALLY -- I STARTED PUTTING THE
6 SURROUND SOUND BACK UP ON THE TELEVISION. I JUST PUT THE
7 SPEAKER ON TOP OF THE TELEVISION. AND I GRABBED THE WANT
8 AD, AND I CAME INTO THE LIVINGROOM SO I COULD BETTER
9 SUPERVISE WHAT WAS GOING ON.

10 Q. WHAT HAPPENED THE REST OF THE DAY?

11 A. AS FAR AS THE REST OF THE DAY, THEY PLAYED. WE WATCHED
12 A LITTLE TELEVISION. I BELIEVE THEY WATCHED A MOVIE,
13 MONSTER'S, INC., IF I'M NOT MISTAKEN. THEY PLAYED -- PLAYED
14 UP UNTIL PROBABLY, I WANT TO SAY AROUND EIGHTISH OR SO.

15 Q. EIGHT PM?

16 A. YES, SIR.

17 Q. OKAY.

18 A. AROUND EIGHT PM OR SO. AND THEN I STARTED ANY LAST
19 MINUTE MEALS OR ANYTHING LIKE THAT, IF THEY WANTED ANYTHING.
20 AND I STARTED FIXING LIKE -- I THINK WE HAD CHICKEN AND
21 MACARONI AND CHEESE AND CORN THAT DAY. SO I FIXED MY
22 DAUGHTER SOME CHICKEN. AND I WAS FEEDING *child* CORN.
23 AND I ALSO HAD A BOTTLE FOR MY SON. AND I WAS FEEDING HIM
24 AS WELL. FED *child* CORN.

25 MY SON, I ENDED UP CHANGING HIS DIAPER 'CAUSE HE WAS AN

1 INFANT AT THE TIME. SO HE FREQUENTLY USED THE RESTROOM.
2 AND I JUST -- TRYING TO KEEP HIM DRY AND KEEP HIM CLEAN,
3 THINGS LIKE THAT.

4 FROM THAT POINT ON I WENT BACK INTO THE KITCHEN. AND I
5 WAS IN THE KITCHEN. I THINK I WAS LOOKING AT A MAGAZINE
6 WHEN I HEARD MY DAUGHTER SAID, OOH, DADA, *child* STINKS.
7 SO I COME INTO THE LIVINGROOM AND I SMELL IT. AND I SMELL
8 -- I SMELL THE DIAPER. AND I LOOK INTO THE REAR OF HER
9 DIAPER. I CHECKED HER DIAPER.

10 AND THEN I PROCEED TO TAKE HER UPSTAIRS. I TOLD -- I
11 HAD MAKIAH SIT DOWN WITH HER BROTHER ON THE LIVINGROOM
12 FLOOR. AND I WAS GOING TO TAKE *child* UP AND GIVE HER --
13 GO AHEAD AND GIVE HER HER BATH SO I COULD JUST GO AHEAD AND
14 START THE WHOLE CHAIN OF PROCESS AND GIVING ALL THREE THEIR
15 BATH.

16 WELL, I TOOK HER UPSTAIRS. AS I STARTED RUNNING THE
17 WATER SHE -- SHE MORE OR LESS KIND OF RESISTED TO THE FACT
18 OF GETTING CLOSER TO THE TUB. ONCE I GOT HER UNDRESSED, I
19 GOT HER CLEAN, I WIPED HER DOWN. I PUT HER IN THE TUB.
20 THEN SHE STARTED SQUIRMING AND SHE STARTED HOLLERING.

21 THEN I BASICALLY TRIED TO GIVE HER A BATH PROBABLY LIKE
22 FOUR, FIVE MORE SECONDS. AND THEN I JUST, OKAY, WELL, WE'LL
23 GIVE IT A BREAK, AND I'LL TRY AGAIN LATER.

24 SO THEN I PUT HER DIAPER BACK ON. AND I PUT A FRESH
25 DIAPER BACK ON HER SINCE I HAD ALREADY WIPED HER DOWN. YOU

1 COULD STILL SMELL THE ODOR ON HER FROM WHERE SHE HAD HER
2 BOWEL MOVEMENT. SO I PUT HER DIAPER BACK ON. I PUT JUST
3 THE TOP HALF OF HER SHIRT, THE SUIT THAT SHE HAD ON. I TOOK
4 HER BACK DOWNSTAIRS.

5 AND THEN I TOOK MY DAUGHTER UPSTAIRS, I GAVE HER HER
6 BATH, SENT HER BACK DOWNSTAIRS. AS I GOT MY SON READY TO
7 TAKE HIS BATH, THEN I SENT MY DAUGHTER TO BED. AT THAT TIME
8 WHEN I SENT MY DAUGHTER TO BED I NOTICED *child* ON THE
9 COUCH. SHE WAS LAYING THERE, AS IN FROM A PARENT'S POINT OF
10 VIEW, LOOKING SLEEPY, LIKE SHE WAS GOING TO GO TO SLEEP.

11 SO I WENT AHEAD AND I TOOK MY DAUGHTER UPSTAIRS. I PUT
12 MY DAUGHTER IN THE BED, GOT HER SQUARED AWAY. AND AS I CAME
13 BACK DOWNSTAIRS I NOTICED *child* SLEEPING. THEN I WENT
14 AHEAD AND I TOOK MY SON, I GAVE HIM HIS BATH. AND I PUT HIM
15 IN THE BED ALSO.

16 SO THEN I COME BACK AND I GET *child* .. I RUN THE
17 WATER, FILL THE TUB UP PROBABLY TWO, THREE INCHES OF WATER
18 JUST TO SEE IF I COULD JUST GET HER IN THERE BECAUSE SHE WAS
19 ASLEEP AND I KNEW THAT I COULDN'T PUT HER IN THE WATER WITH
20 HER BEING ASLEEP LIKE THAT.

21 SO I PUT HER IN THE WATER. AND THEN AS I SAT HER IN
22 THE WATER I WAS WASHING HER, WASHING THE TOP PART OF HER.
23 AND THEN I STARTED LEANING HER FORWARD TO WASH THE -- LIKE
24 THROW WATER ONTO THE BACK, ONTO HER BACK 'CAUSE I ALREADY
25 HAD SOAP -- IT WAS KIND OF SOAPY WATER. SO I ALREADY KIND

1 OF HAD IT TO WHERE I WANT IT TO START TRYING TO WASH HER
2 OFF, WHEN SHE WOKE UP.

3 WHEN SHE WOKE UP SHE -- IT WAS PROBABLY IN TWO SECONDS.
4 AND IT WAS KIND OF A -- JUST, JUST START CRYING, START
5 WHINING. THEN SHE STARTED -- SHE STARTED GOING. THEN SHE
6 STARTED TRYING TO STAND UP. I WAS TRYING TO GET HER TO SIT
7 DOWN. SHE WENT AHEAD -- I WENT AHEAD AND LET HER STOOD UP
8 SO I COULD GO AHEAD AND I COULD JUST WASH HER BOTTOM, WASH
9 HER LEGS, THINGS LIKE THAT.

10 WELL, SHE STARTED TRYING TO TURN AROUND. AND AS SHE
11 WAS TRYING TO TURN AROUND, I WAS TRYING TO STRAIGHTEN HER
12 BACK UP. AND I HAD A TOWEL -- I HAD A WASH RAG IN MY HAND.
13 SO I WENT TO SIT THE WASH RAG DOWN. AND AS I SAT THE WASH
14 RAG DOWN SHE SLIPPED IN THE TUB, I ASSUME, AND FELL. AND
15 WHEN I TURNED AROUND AND I LOOKED, I NOTICED HER HIT THE
16 SOAP DISH AND SHE FELL FLAT IN THE WATER.

17 Q. OKAY. SHE FELL IN THE WATER FACE DOWN?

18 A. YES. IT WAS MORE OR LESS FACE DOWN. SHE WAS -- SHE
19 WAS CHEST TOWARDS THE TUB. AND HER FACE WAS MORE -- IT WAS
20 FACE DOWN, BUT IT WAS TURNED TO THE SIDE. IT WAS TURNED
21 AWAY FROM ME.

22 Q. OKAY. WHAT DID YOU THEN DO AFTER YOU SAW HER FALL FACE
23 DOWN IN THE TUB?

24 A. WELL, AFTER I SAW HER FALL FACE DOWN IN THE TUB I WAS
25 MORE OR LESS -- I WAS THINKING THAT SHE WAS GOING TO GET UP

1 OR SHE WAS GOING TO RESPOND. SO IT WASN'T A BRIEF REACTION
2 TO JUST GRAB HER. SO I JUST GOT UP.

3 AND AS I GOT UP TO REACH OVER IN THE TUB AND I PICKED
4 HER UP I GOT AN EERIE FEELING FROM THE WAY THAT I PICKED HER
5 UP. SHE WASN'T -- SHE WASN'T AS IF YOU WERE HOLDING YOUR
6 BABY AND YOUR BABY IS LIKE MOVING AROUND. SHE WAS MORE LIMP
7 AND REMINDED ME OF A PREVIOUS INCIDENT IN MY LIFE THAT I
8 HAD.

9 AND WHEN I NOTICED THAT I KIND OF FREAKED OUT. AND I
10 ROLLED HER OVER INTO MY ARMS. AND I SAT DOWN ON THE TOILET,
11 AND I ---

12 Q. NOW WHEN YOU SAID IT REMINDED YOU OF A PREVIOUS
13 INCIDENT, YOU WERE AROUND A FELLOW THAT HAD STARTED TO DROWN
14 AND YOU HAD TO RESCUE HIM.

15 A. YES, SIR. HE -- HE WENT UNCONSCIOUS. AND HE DOVE INTO
16 A POOL AND KNOCKED HIS HEAD ON THE BOTTOM OF THE POOL. AND
17 HE WENT UNCONSCIOUS. THEN I NOTICED IT. AND I HAD TO PULL
18 HIM OUT OF THE WATER AND REVIVE HIM.

19 Q. OKAY. AND YOU THOUGHT OF THAT INCIDENT BECAUSE OF
20 THIS?

21 A. YES, SIR, FROM WHEN I ROLLED -- WHEN I ROLLED THAT
22 GENTLEMAN OVER, AND I LOOKED INTO HIS EYES, AND I NOTICED HE
23 WAS UNCONSCIOUS WHEN I WENT TO PULL HIM UP, JUST HOW LIMP HE
24 WAS AND TRYING TO GET HIM OUT OF THE POOL.

25 Q. WAS THERE SOMETHING SIMILAR ABOUT THE EYES ON ...

1 A. WELL, I NOTICED THAT HER EYES -- HER EYES WASN'T AS
2 WIDE OPEN, BUT THERE WAS A CRACK IN HER EYE. AND I SAW THE
3 -- THE WHITES IN HER EYE, KIND OF JUST A LITTLE PART OF IT.

4 AND AT THAT POINT I STARTED THINKING, WELL, MAYBE IT
5 MIGHT BE WATER. SO I STUCK -- I STUCK MY FINGER INTO HER
6 AIRWAY AND JUST INTO HER MOUTH JUST TO OPEN HER MOUTH AND
7 OPEN HER TONGUE TO SEE IF ANY WATER OR ANYTHING LIKE THAT
8 WOULD COME OUT.

9 AND I STARTED PATTING HER ON THE BACK. AND I FLIPPED
10 HER BACK OVER. AND WITH ME STICKING MY FINGER JUST RIGHT
11 HERE I DIDN'T FEEL ANY AIR. AND FROM NOT FEELING ANY AIR --
12 FROM NOT FEELING ANY AIR COMING OUT HER AIRWAY I ASSUMED
13 THAT SHE WASN'T BREATHING. AND THEN ...

14 Q. SO WHAT DID YOU DO WHEN YOU DECIDED THAT SHE MIGHT NOT
15 BE BREATHING?

16 A. I THEN SLIPPED HER ON -- I HAD HER IN MY ARM AND I HAD
17 HER ACROSS MY LEG. I THEN HOLD HER HEAD. I WAS TRYING TO
18 MASH ON HER CHEST TO SEE IF I COULD GET IT MOVING OR FEEL --
19 IF I COULD FEEL IT MOVING. AND I COULDN'T FEEL IT MOVING.
20 SO THEN I STARTED TAPPING HER ON HER CHEST LIKE IN TWO,
21 INTERVALS OF JUST TWO, LIKE THAT JUST TO SEE IF I COULD GET
22 ANY KIND OF RESPONSE OUT OF HER. AND THEN I NOTICED THAT I
23 DIDN'T.

24 Q. WERE YOU ABLE TO GET A RESPONSE?

25 A. NO, SIR.

1 Q. AND THE RHYTHM THAT YOU WERE PUSHING ON HER CHEST, WHAT
2 WAS THAT FROM?

3 A. THAT WAS FROM -- I WAS A CERTIFIED LIFE GUARD. AND
4 THAT WAS FROM JUST A CPR MOTION THAT I REMEMBER BECAUSE OF
5 THAT INCIDENT.

6 Q. SO YOU WERE TRYING TO GIVE HER THE SAME KIND OF CPR
7 THAT YOU WOULD HAVE GAVE AN ADULT?

8 A. YES, SIR.

9 Q. AND YOU PRESSED IN WHAT AREA?

10 A. IT WAS MORE OR LESS THE LOWER PART OF THE CHEST PLATE,
11 MORE OF THE RIB CAGE BECAUSE THE HEART IS NOT DIRECTLY WHERE
12 EVERYBODY SAYS THE PLEDGE OF ALLEGIANCE. THE HEART IS -- I
13 KNOW THAT THE HEART, FOR A FACT, THAT THE HEART IS HERE JUST
14 FROM MY TRAINING.

15 Q. DID SHE SOUND LIKE SHE WAS CHOKING OR ANYTHING?

16 A. NO, SIR.

17 Q. DID SHE COME AROUND OR RESPOND AT ALL?

18 A. NO, SIR, NOT AT ALL.

19 Q. WHAT DID YOU THEN DO?

20 A. I THEN STARTED TRYING TO FIGURE OUT AS TO WHAT I NEED
21 TO DO NEXT. AND MY NEXT THOUGHT WAS TO CALL 911. I DID NOT
22 HAVE A PHONE IN THE HOUSE AT THE TIME.

23 Q. AND YOU DIDN'T HAVE A TELEPHONE?

24 A. NO, SIR.

25 Q. WHAT DID YOU DO?

1 A. SO I STARTED TO GO TO MY NEXT DOOR NEIGHBOR'S HOUSE.

2 Q. DID YOU TAKE THE CHILD WITH YOU WHEN YOU STARTED ---

3 A. YES, SIR. I HAD HER IN MY ARMS. AND I DARTED OUT THE
4 BATHROOM DOOR. AND WHEN I CAME OUT OF THE BATHROOM DOOR TO
5 THE CORNER OF THE STAIRWELL THERE WAS A MICKEY MOUSE BLANKET
6 COMFORTER THAT WAS SITTING AT THE TOP OF THE STAIRS WHERE WE
7 HAD WASHED CLOTHES, I THINK, EITHER EARLIER SATURDAY. AND
8 THE COMFORTERS JUST HADN'T BEEN PUT AWAY. AND THERE WAS, I
9 THINK, A BAG OF TOYS ALSO THAT WAS SITTING THERE.

10 AS I WENT TO GO DOWN THE STAIRS I CAUGHT THE BLANKET.
11 AND ALL I REMEMBER IS JUST HITTING THE STAIRS AND JUST
12 ROLLING DOWN THE STAIRS AND JUST ENDED UP ON THE FOYER. I
13 THINK IT'S CALLED THE FOYER, RIGHT THERE BEHIND THE DOOR,
14 THE FRONT DOOR IS WHERE THE STAIRCASE ENDED. IT'S PROBABLY
15 A SPACE OF THREE FEET FROM THE STAIRCASE TO THE DOOR TO
16 ALLOW THE DOOR TO SWING COMPLETELY OPEN.

17 Q. OKAY. WHEN YOU SAY YOU ENDED UP THERE, DID THE CHILD
18 END UP THERE TOO?

19 A. YES, SIR. SHE WAS STILL IN MY ARMS. SHE WAS -- AS WE
20 WERE LAYING IN THE FLOOR SHE WAS IN MY ARM LAYING ON MY ARM.
21 AND SHE WAS -- HER FACE WAS TOWARDS ME. AND I HAD TO TAKE A
22 MINUTE BECAUSE I HIT MY HEAD TO REALIZE -- TO GET MY
23 THOUGHTS BACK TOGETHER.

24 AND THEN I GOT UP. I LOOKED AT IT -- I TURNED AROUND
25 AND I LOOKED AT IT. AND I SEEN BLOOD OUT OF -- COMING OUT

1 OF HER MOUTH. AND WHAT MADE ME LOOK WAS BECAUSE I NOTICED A
2 BREATHING SOUND. AND IT WAS -- IT WAS KIND OF LIKE A FAINT
3 WHEEZING, BUT IT WAS A -- IT WAS LIKE TWO DEEP BREATHS. I
4 WISH I COULD DO IT LOUDER TO EXPLAIN MYSELF, BUT ...

5 I THEN ---

6 Q. WHAT DID YOU DO THEN?

7 A. I THEN PICKED HER UP AND I TOOK HER OVER TO THE
8 LIVINGROOM FLOOR. AND THEN I LAID HER ON THE SIDE TO SEE IF
9 THERE WAS STILL ANY WATER OR ANYTHING LIKE THAT BECAUSE I
10 COULD STILL HEAR THE BREATHING. AND IT JUST WASN'T RIGHT.

11 Q. WAS SHE BLEEDING ANYWHERE THEN?

12 A. SHE WAS -- SHE WAS. SHE WAS BLEEDING IN HER MOUTH.
13 YES, SIR.

14 Q. OKAY. WAS THERE A NOTICEABLE CUT ON HER MOUTH?

15 A. NO, SIR. I DID NOT NOTICE A CUT.

16 Q. OKAY. WHAT HAPPENED AFTER YOU LAID HER IN THE FLOOR?

17 A. WHEN I LAID HER IN THE FLOOR I THEN JUMPED UP AND I
18 WENT TO THE DOOR. AND I GOT READY TO OPEN THE DOOR. AND AS
19 I WAS GETTING -- I WAS GOING TO KNOCK ON MY NEXT DOOR
20 NEIGHBOR'S DOOR WHEN SHE OPENED THE DOOR.

21 WHEN SHE OPENED THE DOOR I JUST TOLD HER THAT I NEEDED
22 HER TO CALL 911, I HAD AN ACCIDENT, AND MY BABY'S NOT
23 BREATHING, AND JUST CALL 911. AND SHE WAS LIKE, WAS IT --
24 WHAT HAPPENED? DID Y'ALL FALL? AND I SAID, JUST PLEASE
25 CALL 911.

1 THEN I RAN BACK INSIDE. AND THEN SHE THEN CAME OVER TO
2 MY HOUSE. SHE CAME IN THE HOUSE AND SHE HAD 911 ON THE
3 PHONE. AS SHE HAD 911 ON THE PHONE I TOLD HER AS FAR AS
4 WHAT I SEEN TO RELAY TO 911 AS TO -- FAR AS HER CONDITION SO
5 THEY CAN GET THE PROPER RESPONSE OUT.

6 Q. WHAT DID YOU THEN DO?

7 A. I THEN -- WE THEN WENT OUTSIDE BECAUSE I WAS MORE OR
8 LESS IN A HURRY FOR EMS TO GET THERE. WE STOOD OUTSIDE. AS
9 I CAME OUTSIDE ANOTHER FRIEND -- ANOTHER NEIGHBOR OF MINE
10 THAT WAS A RESIDENTIAL NURSE AT GREENVILLE MEMORIAL, SHE
11 PULLED UP.

12 WHEN SHE PULLED UP SHE CAME OVER AND SHE WANTED TO KNOW
13 WHAT HAPPENED. AND I TOLD HER WE HAD AN ACCIDENT. AND SHE
14 STARTED TO ASSIST ME WITH TAKING CARE OF HER.

15 Q. WHAT DID SHE DO TO ASSIST YOU?

16 A. WELL, SHE -- BASICALLY SHE TOOK HER OUT OF MY ARMS.
17 SHE TOLD ME YOU'VE GOT TO HOLD HER, HOLD HER STILL BECAUSE I
18 WAS NERVOUS AND I WAS TRYING -- I WAS CALLING HER NAME TO
19 SEE IF I COULD GET -- GET HER TO OPEN HER EYES OR MOVE HER
20 HAND OR ANYTHING.

21 THEN WHEN SHE -- SHE TOOK HER, THE NEIGHBOR WENT INTO
22 HER HOUSE AND SHE GRABBED A TOWEL. WHEN SHE CAME BACK I
23 TOOK THE TOWEL, AND I TOOK HER BACK. I TOOK *child* BACK.
24 AND I HAD HER WRAPPED UP IN THE TOWEL.

25 THEN PROBABLY THREE MINUTES LATER THE FIRE DEPARTMENT

1 SHOWED UP. AND AS I HEARD THEM COMING DOWN THE ROAD I
2 STARTED RUNNING DOWN TOWARDS THE ENTRANCE OF THE PARKING LOT
3 TO MEET THEM AT THE ROAD. WHEN THEY ARRIVED, SHORTLY AFTER
4 THAT EMS ARRIVED. AND THEN WHEN EMS ARRIVED, THEY TOOK
5 OVER.

6 Q. AFTER EMS ARRIVED WHAT DID YOU DO?

7 A. AFTER EMS ARRIVED THEY ASKED ME WHAT HAPPENED. AND I
8 JUST -- I GAVE THEM A GENERAL DESCRIPTION OF -- AS TO WHAT
9 HAPPENED. THEN THEY ASKED -- THEY ASKED A LOT OF
10 INFORMATION THAT I DID NOT KNOW AS FAR AS ALLERGIES, WHAT IS
11 SHE ALLERGIC TO, ANY KIND OF MEDICATION OR ANYTHING LIKE --
12 ANYTHING LIKE THAT.

13 SO THEN I HAD MY NEIGHBOR COME DOWN AND SHE MET ME HALF
14 WAY. AND I HAD HER TO CALL MY WIFE AT WORK AND TO TRY TO
15 GET SOME INFORMATION AND THINGS LIKE THAT, YOU KNOW, AS FAR
16 AS HER HISTORY, HER MEDICAL CONDITION OR ANYTHING LIKE THAT
17 BECAUSE TO MY KNOWLEDGE THERE WERE NONE. AND THEY SAID THAT
18 THEY NEEDED THIS INFORMATION BEFORE THEY COULD TREAT HER.

19 SO THEN THEY GOT MY WIFE ON THE PHONE. AND WHILE THEY
20 WERE TALKING TO MY WIFE I WENT UP AND I TALKED TO MY NEXT
21 DOOR NEIGHBOR, THE ONE THAT WAS THE NURSE. AND HER ROOMMATE
22 CAME OUT AS WELL. AND THEY AGREED THAT THEY WOULD WATCH MY
23 CHILDREN SO I COULD GO TO THE HOSPITAL WITH *child*

24 Q. OKAY. DID YOU GET IN THE AMBULANCE AND GO TO THE
25 HOSPITAL?

1 A. YES, SIR. I WENT BACK DOWN AND THE FIREMEN TOLD ME TO
2 GET IN THE BACK OF THE AMBULANCE WITH *child* THEN HE
3 OPENED THE DOOR AND THEY ASKED ME TO GET INTO THE FRONT.

4 Q. THEY SAID IN OPENING STATEMENT THAT YOU WERE SOME KIND
5 OF MONSTER AND YOU SHOOK THE CHILD.

6 A. NO, SIR.

7 Q. YOU BEAT THE CHILD.

8 A. NO, SIR. NO, SIR, NOT AT ALL.

9 Q. THE DOCTORS SAID THAT THE INJURIES FROM THE FALL
10 COULDN'T HURT THE CHILD. IS THERE ANYTHING ELSE?

11 A. NO, SIR. I -- AS TO MY RESPONSIBILITY AS TO WHAT
12 HAPPENED, I -- I HONESTLY DON'T KNOW.

13 Q. THIS IS YOUR TRIAL TODAY. IS THERE -- WHY AREN'T THERE
14 ANY WITNESSES OUT OF THE HOUSE?

15 A. THERE WERE NO WITNESSES.

16 Q. WAS THERE ANYBODY THERE WITH YOU?

17 A. I WAS THE ONLY PERSON HOME AT THE TIME WITH MY
18 CHILDREN.

19 Q. HOW ARE WE GOING TO PROVE YOUR INNOCENCE?

20 MS. SEAY: OBJECTION.

21 A. I DON'T KNOW, SIR.

22 THE COURT: I SUSTAIN THE OBJECTION. INSTRUCT THE JURY
23 TO DISREGARD THE COMMENT BY MR. WARDER.

24 Q. ALL THE INJURIES THAT WENT TO THE -- THAT THE DOCTORS
25 HAVE TALKED ABOUT, DO YOU KNOW ANYTHING ELSE THAT WOULD HAVE

1 CAUSED THEM THAN WHAT YOU'VE TOLD US?

2 A. NO, SIR.

3 Q. DID YOU INTENTIONALLY DO ANYTHING TO HURT THAT CHILD?

4 A. NEVER. NO, SIR. NO, SIR.

5 Q. IF THE CHILD WASN'T HURT IN THE FALL DOWN THE STAIRS DO
6 YOU KNOW ANY OTHER EXPLANATION?

7 A. NO, SIR.

8 Q. WAS THERE ANYBODY THAT CAME IN AND LEFT WITH THE CHILD
9 OR DID ANYTHING WITH THE CHILD?

10 A. NO, SIR.

11 Q. HAVE YOU TOLD THIS JURY EVERYTHING YOU KNOW THAT
12 HAPPENED TO THAT CHILD?

13 A. YES, I HAVE. YES, SIR.

14 Q. IS THERE ANYTHING YOU CAN TELL THAT WOULD EXPLAIN IT?
15 ANYTHING ELSE THAT I HAVEN'T ASKED?

16 A. NO, SIR. IT WAS LATER POINTED OUT TO ME LATER DURING
17 MY INTERVIEW WITH MR. CAMPBELL AS WE WERE GOING THROUGH MY
18 STATEMENT THAT HE THEN EXPLAINED TO ME THE INJURIES AS WE
19 WERE GOING THROUGH MY STATEMENT, WELL, THAT COULD HAVE
20 CAUSED THAT, THAT COULD HAVE CAUSED THIS. AND THAT WAS WHEN
21 I LEARNED OF THE INJURIES TO HER.

22 Q. DO YOU KNOW OF ANY OTHER INJURIES?

23 A. NO, SIR.

24 Q. THANK YOU. YOU ANSWER ANY QUESTIONS THE SOLICITOR
25 MIGHT HAVE.

1 **THE COURT:** ALL RIGHT. WE'LL TAKE A RECESS BEFORE SHE
2 CROSS EXAMINES. TAKE THE JURY OUT.

3 (WHEREUPON THE JURY EXITED THE COURTROOM AT 1:55 PM)

4 **THE COURT:** YOU CAN STEP DOWN NOW. ALL RIGHT. I
5 UNDERSTAND LUNCH IS HERE FOR THE JURY. SO WE'LL TAKE A
6 RECESS. DO EITHER OF YOU WANT TO GO OUT OR ---

7 **MS. SEAY:** I JUST WILL GO BACK TO MY OFFICE, IF THAT'S
8 OKAY.

9 **THE COURT:** ALL RIGHT. WELL, HOW ABOUT JUST BE READY
10 TO START BACK SAY AT 2:30. THAT'LL GIVE THE JURY TIME.

11 **MR. WARDER:** OKAY.

12 **THE COURT:** OKAY? THANK YOU.

13 (WHEREUPON COURT WAS IN RECESS AT 1:56 PM)

14 **THE COURT:** OKAY. BRING OUR JURY, PLEASE.

15 (WHEREUPON THE JURY ENTERED THE COURTROOM AT 2:37 PM)

16 **THE COURT:** ALL RIGHT. COME BACK AROUND, MR. HUDSON.
17 YOU'RE STILL UNDER OATH. ALL RIGHT. SOLICITOR, YOU MAY
18 PROCEED.

19 **MS. SEAY:** THANK YOU, YOUR HONOR.

20 **CROSS EXAMINATION BY MS. SEAY:**

21 Q. MR. HUDSON, JUST A COUPLE OF THINGS BEFORE WE GET
22 STARTED. I NOTICED THAT YOU REFERRED TO LYCRETTA AS YOUR
23 WIFE A COUPLE OF TIMES. WHEN DID Y'ALL GET MARRIED?

24 A. WE DIDN'T ACTUALLY HAVE A CEREMONY. WE'VE APPLIED FOR
25 THE MARRIAGE LICENSE AND CONSIDERING THAT WE'VE BEEN LIVING

1 SO -- LIVING TOGETHER FOR THE PAST, I'M SAY, SEVEN YEARS.

2 BUT ---

3 Q. SO YOU'VE APPLIED FOR A MARRIAGE LICENSE? WHEN DID YOU
4 DO THAT?

5 A. WE APPLIED FOR THAT, AS A MATTER OF FACT, ONE YEAR.

6 Q. A YEAR AGO?

7 A. YES, MA'AM.

8 Q. BUT YOU'VE NEVER FOLLOWED THROUGH WITH WHATEVER YOU
9 NEED TO DO TO BE MARRIED?

10 A. NO, MA'AM, 'CAUSE WE'RE WAITING ON THE OUTCOME OF THIS.

11 Q. BECAUSE WHAT?

12 A. WE'RE WAITING ON THE OUTCOME WITH THE TRIAL.

13 Q. NOW ONE OTHER THING I WANTED TO FIND OUT FOR YOU --
14 FROM YOU IS HOW TALL ARE YOU?

15 A. I WAS TOLD YESTERDAY 6 FOOT 1.

16 Q. OKAY. AND HOW MUCH DO YOU WEIGH?

17 A. TWO HUNDRED AND FORTY, NO, TWO HUNDRED AND FORTY-SIX
18 POUNDS, FORTY-EIGHT, SOMEWHERE IN THERE.

19 Q. AND HAS THAT BEEN PRETTY CONSISTENT FOR YOU OVER THE
20 LAST FEW YEARS, YOUR HEIGHT AND WEIGHT?

21 A. YES, MA'AM.

22 Q. I KNOW YOUR HEIGHT HAS, BUT YOUR WEIGHT, HAS THAT BEEN
23 PRETTY ---

24 A. YES, MA'AM.

25 Q. OKAY. SO YOU'RE SORT OF A BIG FELLOW?

1 A. YES, MA'AM.

2 Q. I WANT TO GO BACK TO THE PORTION OF YOUR TESTIMONY
3 WHERE YOU WERE TALKING ABOUT LYCRETTA AND GRETTLER CAME IN
4 AND THEY BROUGHT *child* AND YOUR TWO CHILDREN, MAKIAH AND
5 LAZANE, ---

6 A. THAT'S CORRECT.

7 Q. --- IS THAT RIGHT? OKAY. AND AT THIS TIME THAT --
8 *child* I WOULD HAVE BEEN SIXTEEN MONTHS OLD, MAKIAH WOULD
9 HAVE BEEN FOUR YEARS OLD, AND LAZANE WOULD HAVE BEEN SEVEN
10 MONTHS OLD?

11 A. THAT'S CORRECT.

12 Q. ALL RIGHT. AND THEY CAME IN WITH THOSE CHILDREN AND
13 YOU SAID, WHY DID Y'ALL BRING THOSE CHILDREN HOME? WERE YOU
14 HAPPY TO HAVE THOSE CHILDREN THERE AT THAT TIME?

15 A. YES, I'M ALWAYS HAPPY TO SEE THEM. WE HAD -- BUT WE
16 HAD MADE PLANS THAT NIGHT. AND I WAS JUST WONDERING AS FAR
17 AS OUR PLANS, WHAT WE WERE GOING TO DO.

18 Q. SO ---

19 A. AS FAR AS THAT. AND SHE EXPLAINED ---

20 Q. WHAT WERE YOUR PLANS FOR THE EVENING?

21 A. IT WAS JUST ME AND HER JUST TO SPEND SOME TIME
22 TOGETHER.

23 Q. OKAY. SO Y'ALL MANAGED TO ACCOMPLISH THAT. YOU GOT
24 RUSHANTI OFF WITH GRETTLER SUPPOSEDLY AND THE OTHER TWO TO
25 YOUR MAMA?

1 A. YES.

2 Q. OKAY.

3 A. YES, MA'AM. THAT'S CORRECT.

4 Q. ALL RIGHT. AND THE NEXT MORNING YOU WENT AND GOT ALL
5 THE KIDS AND BROUGHT THEM HOME. AND LYCRETTA HAD TO BE AT
6 WORK AROUND 4:00, ISN'T THAT RIGHT?

7 A. I'M THINKING TWO, MAYBE FOUR. YES, MA'AM.

8 Q. DID YOU GET MUCH SLEEP THE NIGHT BEFORE?

9 A. YES, MA'AM.

10 Q. OKAY. DID YOU USE ALCOHOL OR DRUGS THE NIGHT BEFORE?

11 A. NO, MA'AM.

12 Q. OKAY.

13 A. WE DIDN'T HAVE ANY IN THE HOUSE AT THE TIME.

14 Q. OKAY. DID YOU GO OUT AND USE ANY?

15 A. NO, MA'AM. WE STAYED AT HOME AND COOKED DINNER.

16 Q. WHERE WERE YOU WORKING DURING THIS TIME?

17 A. AT THAT TIME I WAS LAID OFF. SO I WAS AT HOME. I WAS
18 JUST -- I CHOSE TO BE THE STAY AT HOME DAD OR ACTUALLY WE
19 BOTH AGREED THAT I SHOULD BE THE STAY AT HOME -- STAY AT
20 HOME PARENT.

21 Q. OKAY. SO YOU WEREN'T WORKING DURING THIS TIME? HOW
22 LONG HAD YOU NOT BEEN WORKING?

23 A. I HAD NOT BEEN WORKING SINCE FEBRUARY OF '02.

24 Q. FEBRUARY OF ---

25 A. OF ---

1 Q. --- '02?

2 A. --- '03. '03. I'M SORRY.

3 Q. OF '03 AND WE'RE IN OCTOBER OF '03.

4 A. THAT'S CORRECT.

5 Q. OKAY. SO QUITE A FEW MONTHS?

6 A. YES, MA'AM.

7 Q. AND YOUR WIFE, OR YOU CALL HER YOUR WIFE. YOUR ...

8 A. FIANCÉ.

9 Q. FIANCÉ, LYCRETTA, SHE WORKED REGULARLY?

10 A. THAT'S CORRECT.

11 Q. EVERY DAY?

12 MR. WARDER: YOUR HONOR, I'M HAVING TROUBLE HEARING.

13 COULD WE ADJUST THE MICROPHONE FOR ---

14 THE COURT: SURE.

15 MR. WARDER: --- MY CLIENT JUST A LITTLE BIT?

16 THE COURT: PULL IN A LITTLE CLOSER.

17 A. CAN YOU HEAR ME?

18 MR. WARDER: PULL IT UP TOWARDS YOUR MOUTH ---

19 THE COURT: I CAN TURN IT UP A LITTLE BIT HERE. TRY

20 NOW.

21 A. HOW 'BOUT THAT?

22 MR. WARDER: THAT'S BETTER.

23 THE COURT: ALL RIGHT.

24 Q. ALL RIGHT. SO LYCRETTA IS THE SOLE BREAD WINNER FOR

25 THE FAMILY DURING THIS TIME PERIOD, RIGHT?

1 A. IN A SENSE, YES, MA'AM. WE HAD SAVINGS SAVED UP FROM
2 WHEN I GOT LAID OFF. WE HAD -- I HAD A VERY NICE SEVERANCE
3 PACKAGE.

4 Q. OKAY. AT SOME POINT SOME MONTHS INTO YOUR LAYOFF AND
5 YOU'RE NOT WORKING WERE THERE TIMES WHEN BUDGETING WAS A
6 LITTLE MORE DIFFICULT THAN OTHER TIMES?

7 A. NOT REALLY, NO, MA'AM, BECAUSE WE ALWAYS HAD SAVINGS.
8 AND WHEN WE DECIDED NOT TO -- THERE WAS OTHER TIMES THAT MY
9 MOM STEPPED IN AND SHE WAS MORE THAN WILLING TO ---

10 Q. YOUR MOM HELPED YOU OUT FINANCIALLY?

11 A. UM-HUM (AFFIRMATIVE). SHE MORE THAN WILLINGLY WANTED
12 TO INSTEAD OF US TAKING AWAY FROM THE SAVINGS.

13 Q. AND Y'ALL -- AND RIGHT NOW YOU AND LYCRETTA AND Y'ALL'S
14 KIDS ARE LIVING WITH YOUR MOM, RIGHT?

15 A. THAT'S CORRECT.

16 Q. OKAY. AND SO THIS DAY, THIS PARTICULAR DAY YOU WENT
17 AND PICKED UP ALL THE CHILDREN AFTER Y'ALL HAD SPENT THE
18 NIGHT ALONE AND HAD A NICE EVENING TOGETHER. YOU WENT AND
19 PICKED UP ALL THREE CHILDREN. AND SHE HAD TO LEAVE, YOU
20 THINK, ABOUT TWO.

21 A. I CAN'T RECALL ---

22 Q. OKAY.

23 A. --- EXACTLY. I CAN'T -- IT WAS SO LONG AGO. I DON'T
24 REMEMBER.

25 Q. OKAY. AND SO SHE WAS GOING TO BE GONE FROM TWO UNTIL

1 WHAT TIME WOULD SHE GET OFF?

2 A. I CAN'T RECALL. I DON'T REMEMBER. IT WAS -- LIKE I
3 SAID, IT WAS SO LONG AGO.

4 Q. OKAY.

5 A. I'M THINKING ONE, 2:00 IN THE MORNING.

6 Q. ALL RIGHT. SO POTENTIALLY YOU WERE GOING TO BE WITH
7 THESE THREE CHILDREN AS THE CARETAKER FOR TWELVE HOURS,
8 POTENTIALLY, ACCORDING TO YOUR TIME-FRAME THERE?

9 A. POTENTIALLY, YES, MA'AM.

10 Q. OKAY. AND WHAT WE KNOW IS THAT DURING THIS TIME THAT
11 *child* WHO'S NOT YOUR CHILD, DOESN'T BELONG TO YOU,
12 RIGHT?

13 A. NO, MA'AM.

14 Q. STARTED PULLING ON YOUR SPEAKER CORDS. AND THAT -- DID
15 THAT BOTHER YOU?

16 A. NO. TO ANSWER YOUR QUESTION, NO, IT DIDN'T. WE'RE
17 TALKING ABOUT MAYBE A HUNDRED AND FIFTY DOLLAR SURROUND
18 SOUND THAT I GOT AT A CLEARANCE. IT DIDN'T BOTHER ME. IT
19 WAS THE FACT THAT SHE WAS IN ELECTRICAL WIRES. ANYTHING AS
20 FAR AS -- YOU TALKING ABOUT ELECTRICAL OR CHEMICALS OR
21 ANYTHING LIKE THAT, YES. I WOULD THINK THAT ANY PARENT
22 WOULD BE BOTHERED BY THAT.

23 Q. SO SHE CONTINUES TO MESS WITH THESE WIRES WHILE YOU'RE
24 TRYING TO EAT AND LOOK AT WANT ADS AND LOOK AT A MAGAZINE
25 AND DO OTHER THINGS, CORRECT?

1 A. CORRECT.

2 Q. AND, I MEAN, I THINK WE CAN ALL AGREE THAT A FOUR YEAR
3 OLD, A SIXTEEN MONTH OLD AND A SEVEN MONTH OLD ARE A BIG
4 HANDFUL FOR ONE PERSON, CAN'T WE?

5 A. YES, MA'AM. I GUESS WE CAN.

6 Q. IT'S A LOT TO KEEP UP WITH. YOU'VE GOT TO CHANGE
7 DIAPERS. YOU'VE GOT TO MAKE SURE THEY'RE NOT PUTTING STUFF
8 IN THEIR MOUTH. YOU'VE GOT TO FIX THEM SOMETHING TO EAT.
9 YOU'VE GOT TO FIX THEM SOMETHING TO DRINK. YOU'VE GOT TO DO
10 NAPS. YOU'VE GOT TO DO BATHS. IT'S A BIG UNDERTAKING,
11 ISN'T IT?

12 A. (AFFIRMATIVE NOD).

13 Q. ALL RIGHT.

14 A. YES, MA'AM.

15 Q. SO DURING THIS TIME *child* MESSES WITH THE SPEAKER
16 CORD, AND ACCORDING TO YOUR STATEMENT, YOU PICKED UP YOUR
17 BELT FROM THE FLOOR AND POPPED HER ON THE BACK ONCE. NOW
18 YOU'VE PROBABLY ALREADY SEEN THESE PHOTOS THAT WE'VE HAD IN
19 COURT. ALL RIGHT. HERE'S A GOOD PHOTO, A COUPLE OF GOOD
20 PHOTOS OF THE BACK. SHOW ME WHICH OF THOSE MARKS YOU PUT ON
21 HER WHEN YOU POPPED HER THAT TIME ON THE BACK.

22 A. TO BE HONEST WITH YOU, I CAN'T.

23 Q. WHY NOT?

24 A. I CAN'T.

25 Q. YOU SAID YOU POPPED HER ON THE BACK WITH THE BELT.

- 1 A. YES, MA'AM, I DID.
- 2 Q. SO WHICH MARK DID YOU LEAVE?
- 3 A. I DO NOT KNOW THE ANSWER TO THAT QUESTION.
- 4 Q. OKAY. COULD IT HAVE BEEN ANY OF THOSE MARKS?
- 5 A. YES, MA'AM.
- 6 Q. IT COULD HAVE?
- 7 A. YES, MA'AM.
- 8 Q. OKAY. SO THAT WAS A PRETTY GOOD POP, WASN'T IT?
- 9 A. I ASSUME SO.
- 10 Q. ALL RIGHT. ACCORDING TO YOUR OWN TESTIMONY AND YOUR
- 11 OWN STATEMENT YOUR DAUGHTER CALLED YOU BACK IN AND TOLD YOU
- 12 THAT *child* WAS MESSING WITH THE CORDS AGAIN. I WENT TO
- 13 THE LIVINGROOM AND POPPED HER ON THE BACK WITH MY BELT. SO
- 14 THAT'S A SECOND TIME. SO DO YOU KNOW WHAT YOU DID THE
- 15 SECOND TIME IF I SHOW YOU THIS PICTURE?
- 16 A. NO, MA'AM.
- 17 Q. WHY NOT?
- 18 A. AT THE TIME -- AT THE TIME I DIDN'T LOOK. I DIDN'T --
- 19 I DIDN'T EXAMINE HER BACK TO SEE IF THERE WAS ANY MARKS OR
- 20 ANYTHING LIKE THAT.
- 21 Q. SO IT'S ENTIRELY POSSIBLE THAT YOU INFLICTED THESE
- 22 MARKS WITH THOSE BEATINGS ON THE BACK, ISN'T IT?
- 23 A. NO, MA'AM. I DID NOT BEAT HER.
- 24 Q. OKAY. LET'S USE THE WORD, POPPED HER, THAT YOU USED.
- 25 IT'S POSSIBLE THAT YOU INFLICTED THESE MARKS WHEN YOU POPPED

1 HER ON THE BACK, ISN'T IT?

2 A. YES, MA'AM.

3 Q. OKAY. AND YOU AGREE THAT THOSE ARE PRETTY HARD POPS TO
4 HAVE LEFT A MARK LIKE THAT, DON'T YOU?

5 A. YES, MA'AM.

6 Q. ALL RIGHT. SO AS WE MOVE ON INTO THIS THING, SHE'S
7 AGGRAVATED YOU ENOUGH WITH THE STEREO WIRES THAT YOU HAVE
8 POPPED HER HARD ENOUGH TO INFLICT A MARK LIKE THAT. SHE
9 THEN HAS A DIRTY DIAPER. AND YOU WERE ALREADY BUSY FEEDING
10 YOUR SON WHEN YOU SMELL THIS. SO I DON'T GUESS THAT WAS A
11 CONVENIENT TIME TO HAVE TO CHANGE A DIAPER, WAS IT?

12 A. YES, MA'AM, IT WAS. HAVING THREE CHILDREN -- AFTER
13 HAVING MY FIRST CHILD I'VE LEARNED THAT YOU HAVE TO JUST
14 EXPECT THE UNEXPECTED. AND YOU HAVE TO ---

15 Q. THAT'S TRUE.

16 A. --- YOU HAVE TO DEAL WITH IT AS IT COMES.

17 Q. THAT'S TRUE. SO YOU SMELLED THIS DIRTY DIAPER AND YOU
18 GO AND YOU CHANGE HER DIAPER, BUT THEN YOU SAY I COULD STILL
19 SMELL THE ODOR ON HER. SO YOU WERE GOING TO GO GIVE HER A
20 BATH. AND YOU TAKE HER UPSTAIRS AND YOU PUT HER IN THE
21 WATER AND SHE STARTS SCREAMING AND HOLLERING. NOW WAS THAT
22 IRRITATING TO YOU?

23 A. NO, MA'AM.

24 Q. NONE OF THIS WAS IRRITATING TO YOU?

25 A. NO, MA'AM.

1 Q. OKAY. SO SHE'S STILL CRYING AND SHE WOULDN'T SIT DOWN.
2 SO YOU SAY, I POPPED HER ON THE BUTT ONCE WITH MY HAND. HOW
3 DID YOU POP HER ON THE BUTT?

4 A. (INDICATED BY TAPPING TWO FINGERS ON THE TABLE).

5 Q. JUST LIKE THAT?

6 A. YES, MA'AM. I HAVE VERY BIG HANDS. MY HANDS, PROBABLY
7 COMPARED TO THE SIZE OF YOUR HANDS, ARE THREE TIMES THE SIZE
8 OF YOURS. PROBABLY COMPARED TO THIS GENTLEMAN'S HANDS,
9 TWICE THE SIZE OF HIS. IF I SWING ENOUGH FORCE, I ALREADY
10 KNOW THAT'S -- THAT'S TOO MUCH. THAT'S EXCESSIVE.

11 Q. BUT YOU'RE STRONG ENOUGH AND BIG ENOUGH THAT YOU COULD
12 USE FORCE ON SOMEBODY THAT COULD BE EXCESSIVE. IS THAT WHAT
13 YOU'RE SAYING?

14 A. YES, MA'AM.

15 Q. ALL RIGHT. SO YOU POPPED HER ON THE BUTT BECAUSE SHE
16 WON'T SIT DOWN IN THE WATER, SHE'S NOT COOPERATING. THEN
17 YOU SAY BECAUSE SHE WAS CRYING AND MY SON STARTED CRYING
18 DOWNSTAIRS. SO YOU'VE GOT ALL THESE KIDS CRYING AND THIS
19 ONE WON'T COOPERATE WITH THE BATH. AND WE'VE STILL GOT ONE
20 UNACCOUNTED FOR. I DON'T KNOW WHAT THE OTHER ONE WAS DOING.

21 SO YOU GRAB A TOWEL, YOU DRY HER OFF, *child* OFF, AND
22 YOU WENT DOWNSTAIRS. I GOT MY SON TAKEN CARE OF AND PUT MY
23 DAUGHTER TO BED. *child* HAD FALLEN ASLEEP ON THE COUCH.
24 SO I WENT UPSTAIRS AND PUT MY SON TO BED. WHEN I NOTICED
25 THAT SHE WAS STILL ASLEEP I PICKED HER UP AND RAN ANOTHER

1 TUB OF WATER. NOW THE TRUTH IS THAT SHE WASN'T ASLEEP, WAS
2 SHE?

3 A. YES, SHE WAS.

4 Q. SHE WAS UNCONSCIOUS.

5 A. NO, SHE WASN'T.

6 Q. AND YOU TOOK HER UPSTAIRS TO GIVE HER ANOTHER BATH
7 BECAUSE YOU REALIZED YOU HAD HURT HER SO BAD THAT SHE WAS
8 UNCONSCIOUS AND YOU KNEW THAT YOU'D BETTER TRY TO FIGURE OUT
9 HOW TO REVIVE HER. ISN'T THAT HOW IT HAPPENED?

10 A. NO, MA'AM. NOWHERE NEAR.

11 Q. OKAY, THEN. SO YOU TAKE A SLEEPING CHILD UP TO A
12 BATHTUB AND YOU'RE GOING TO GIVE A SLEEPING CHILD A BATH AT
13 11:30 AT NIGHT. IS THAT WHAT YOU'RE TRYING TO MAKE THIS
14 JURY BELIEVE?

15 A. YES, MA'AM.

16 Q. OKAY. SO IS IT THEN -- IS IT THEN THAT YOU PUNCH HER
17 IN THE STOMACH?

18 A. NO, MA'AM. I WOULD NEVER HIT HER. I WOULD NEVER HIT
19 ANY CHILD.

20 Q. IS IT THEN THAT YOU STOMP HER TO GIVE HER PANCREATITIS?
21 IS THAT WHEN IT HAPPENED?

22 A. NO, MA'AM. NEVER.

23 Q. WELL, WHEN DID IT HAPPEN?

24 A. IT NEVER DID.

25 Q. SHE'S ON YOUR WATCH ---

1 A. YES, MA'AM.

2 Q. --- THIS ENTIRE TIME.

3 A. YES, MA'AM.

4 Q. AND YOU'VE HEARD WHAT THE TESTIMONY IS. YOU'VE HEARD
5 WHAT HER INJURIES ARE. AND YOU'RE EXPECTING US TO BELIEVE
6 THAT THAT NEVER HAPPENED?

7 A. YES, MA'AM.

8 Q. OKAY. NOW I WANT TO GET TO THIS FALL DOWN THE STAIRS.
9 YOU'VE SAID THAT AFTER THIS WHOLE THING IN THE BATHTUB WHERE
10 YOU TAKE A SLEEPING CHILD TO TRY TO GIVE HER A BATH AND SHE
11 FREAKS OUT AND HITS HER HEAD THAT YOU'RE THEN TRYING TO GO
12 DOWNSTAIRS WITH HER AND YOU TRIP AND FALL. AND YOU SAID
13 JUST A FEW MINUTES AGO THAT SHE -- Y'ALL ROLLED DOWN THE
14 STAIRS AND SHE WAS STILL IN YOUR ARMS.

15 A. YES, MA'AM.

16 Q. AND THAT'S HOW IT HAPPENED?

17 A. YES, MA'AM.

18 Q. ALL RIGHT. AND YOU'RE A BIG GUY. AND SO YOU GOT HER
19 CRADLED AND PROTECTED IN YOUR ARMS, AND THAT'S HOW Y'ALL
20 LAND AT THE BOTTOM OF THE STAIRS.

21 A. NO, MA'AM. SHE WASN'T ---

22 Q. THAT'S WHAT YOU JUST SAID.

23 A. WHEN WE LANDED AT THE BOTTOM OF THE STAIRS I SAID THAT
24 WHEN I LANDED ON THE FLOOR SHE WAS LAYING ON MY ARM, AND I
25 WAS LAYING FLAT ON MY BACK.

1 Q. OKAY. SO SHE WAS IN THE PROTECTION ZONE OF YOU THROUGH
2 THIS FALL DOWN THE STAIRS, CORRECT?

3 A. AT SOME POINT, YES, MA'AM.

4 Q. AND SHE SUSTAINED A SUBDURAL HEMATOMA, RETINAL
5 HEMORRHAGES, PANCREATITIS AND YOU WERE UNHURT?

6 A. NO, MA'AM. I WAS HURT.

7 Q. REALLY?

8 A. YES, MA'AM.

9 Q. WHAT WAS WRONG WITH YOU?

10 A. AT THE TIME I HAD A HEADACHE. I HAD A SERIOUS
11 HEADACHE. MY LOWER BACK WAS KILLING ME. AND I DID HAVE
12 SHOULDER PAIN. AND I THINK I ALSO HURT MY FOOT, IF I'M NOT
13 MISTAKEN.

14 Q. WELL, YOU DIDN'T HAVE ANY BRUISES, CORRECT?

15 A. FROM WHAT I'M HEARING TODAY, NO, MA'AM.

16 Q. YOU DIDN'T HAVE ANY CUTS, DID YOU?

17 A. NOT THAT I RECALL.

18 Q. YOU DIDN'T HAVE ANY ABRASIONS, DID YOU?

19 A. YES, MA'AM, I DID.

20 Q. YOU HEARD THE TESTIMONY YOU WERE EXAMINED THOROUGHLY.

21 A. NO, I WAS NOT.

22 Q. REALLY?

23 A. YES, MA'AM.

24 Q. DID YOU BRING THAT TO SOMEONE'S ATTENTION?

25 A. NO, MA'AM.

1 Q. OKAY. SO IN ANY EVENT LET'S SAY THAT WE ACCEPT THAT
2 YOU HAD SOME DISCOMFORT. WAS ANY OF YOUR DISCOMFORT LIFE
3 THREATENING?

4 A. NO, MA'AM.

5 Q. DID YOU HAVE TO BE PLACED ON A LIFE SUPPORT SYSTEM?

6 A. NO, MA'AM.

7 Q. OKAY. YOU GO AND HAVE EMS CALLED, AND THEY COME AND
8 THEY TAKE OVER THE CASE FOR RUSHANTI. AND Y'ALL GET TO THE
9 HOSPITAL. AND WE KNOW FROM THE TESTIMONY WHAT HAPPENS
10 THERE, THAT SHE'S TREATED AND YOU'RE TREATED AND EXAMINED
11 AND THAT AT SOME POINT THE LAW ENFORCEMENT OFFICERS WANT TO
12 TALK TO YOU, RIGHT?

13 A. CORRECT.

14 Q. AND YOU AGREE TO GO AND TALK WITH INVESTIGATOR CAMPBELL
15 AT THE LAW ENFORCEMENT CENTER.

16 A. YES, MA'AM.

17 Q. OKAY. YOU TELL HIM WHAT YOU SAY HAPPENED. FIRST OF
18 ALL LET ME SAY -- DO THIS, LOOK AT STATE'S EXHIBIT 1. AND
19 THAT'S THE RIGHTS FORM THAT YOU SIGNED, RIGHT?

20 A. YES, MA'AM.

21 Q. OKAY. AND HE EXPLAINED ALL OF THIS TO YOU AND YOU
22 SIGNED IT, CORRECT?

23 A. NO, MA'AM. HE DID NOT EXPLAIN EXACTLY AS TO WHAT I WAS
24 SIGNING. HE GAVE ME A GENERAL IDEA FROM ME LOOKING AT IT
25 AND MY RIGHTS. HE TOLD ME, HE SAID, THIS IS BASICALLY WHAT

1 WE DISCUSSED ABOUT YOU NOT HAVING AN ATTORNEY. I JUST NEED
2 YOU TO SIGN HERE THAT YOU DO NOT WANT ONE PRESENT.

3 Q. OKAY. DID YOU SAY, SIR, I WANT AN ATTORNEY?

4 A. NO. NO, MA'AM. MY QUESTION WAS TO HIM, TO
5 INVESTIGATOR CAMPBELL, WAS DO HE FEEL LIKE I NEED AN
6 ATTORNEY PRESENT? DO I -- MY QUESTION WAS, DO I NEED AN
7 ATTORNEY? AND HIS REPLY WAS, DO I FEEL THAT I NEED ONE
8 PRESENT? AND I SAID, WELL, I DON'T KNOW. YOU KNOW MORE
9 ABOUT THIS THAN I DO.

10 AND HIS REPLY WAS THAT IF I NEED AN ATTORNEY, THEN HE
11 WOULD HAVE TO GO AHEAD AND CHARGE ME. BUT HE DIDN'T FEEL
12 ANY REASON AS TO WHY HE SHOULD GO AHEAD AND CHARGE ME OR
13 ANYTHING LIKE THAT. SO HE DIDN'T FEEL I NEED ONE.

14 Q. OKAY. SO YOU HAVE AN ELEVENTH GRADE EDUCATION.

15 A. YES, MA'AM.

16 Q. AND YOU HAVE MAINTAINED GAINFUL EMPLOYMENT AT VARIOUS
17 TIMES DURING YOUR LIFE.

18 A. YES, MA'AM.

19 Q. AND YOU KNOW WHAT THIS FORM SAID. AND IT'S A RIGHTS
20 FORM THAT SAYS, BEFORE WE ASK YOU ANY QUESTIONS YOU MUST
21 UNDERSTAND YOUR RIGHTS. YOU HAVE THE RIGHT TO REMAIN
22 SILENT. ANYTHING YOU SAY CAN BE USED AGAINST YOU IN COURT.
23 YOU HAVE THE RIGHT TO TALK TO A LAWYER FOR ADVICE BEFORE WE
24 ASK YOU ANY QUESTIONS AND TO HAVE HIM WITH YOU DURING
25 QUESTIONING.

1 IF YOU HAVE NO MONEY TO PAY A LAWYER'S FEE THE COURT
2 WILL APPOINT ONE TO REPRESENT YOU WITHOUT COST IF YOU WISH.
3 IF YOU DECIDE TO ANSWER QUESTIONS NOW WITHOUT A LAWYER
4 PRESENT YOU WILL STILL HAVE THE RIGHT TO STOP ANSWERING AT
5 ANY TIME. YOU ALSO HAVE THE RIGHT TO STOP ANSWERING AT ANY
6 TIME UNTIL YOU TALK TO A LAWYER. AND YOU PUT YOUR INITIALS
7 RIGHT THERE.

8 A. THOSE ARE NOT MY INITIALS.

9 Q. WHOSE INITIALS ARE THEY?

10 A. I CAN'T MAKE OUT THE FIRST LETTER, BUT THE SECOND
11 LETTER IS A "H", BUT THAT IS NOT MY HANDWRITING.

12 Q. OKAY. SO YOU DENY PUTTING YOUR INITIALS THERE?

13 A. YES, MA'AM.

14 Q. OKAY. AND YOU JUST SKIMMED THIS KNOWING THAT WAYNE
15 CAMPBELL TOLD YOU YOU'RE THE SUSPECT IN THIS CASE BECAUSE
16 THIS TERRIBLE STUFF HAPPENED TO THIS CHILD ON YOUR WATCH.

17 A. NO, MA'AM. I WAS NEVER TOLD THAT I WAS A SUSPECT.

18 Q. HE TOLD YOU WHAT YOU WERE GOING THERE TO TALK TO HIM
19 ABOUT, DID HE NOT?

20 A. HE JUST TOLD ME THAT HE WANTED TO JUST FIND OUT WHAT
21 HAPPENED.

22 Q. AND YOU READ THIS WAIVER OF RIGHTS. ACCORDING TO WHAT
23 INVESTIGATOR CAMPBELL HAS TESTIFIED TO YOU READ THAT OUT
24 LOUD AND THEN YOU SIGNED IT.

25 A. NO, MA'AM. NO, MA'AM, I DID NOT READ IT, BUT I DID

1 SIGN IT. I'M THE TYPE OF PERSON THAT I BELIEVE A PERSON IN
2 A PROFESSIONAL EMPLOYMENT, SUCH AS YOURSELF, IF YOU WERE TO
3 GIVE ME A PIECE OF PAPER IN THAT LENGTH, A BUNCH OF PAPERS
4 AND YOU SAY THIS IS WHAT IT IS, I WOULD JUST LOOK AT THE
5 TOP, AND I'LL SIGN IT.

6 Q. OKAY. YOU'RE AT THE LAW ENFORCEMENT CENTER BECAUSE A
7 SIXTEEN MONTH OLD BABY HAS BEEN CRITICALLY INJURED. YOU'RE
8 THERE TO TALK ABOUT WHAT HAPPENED TO HER. AND YOU DIDN'T
9 THINK IT WAS IMPORTANT ENOUGH TO READ THIS BEFORE YOU SIGNED
10 IT?

11 A. NO, MA'AM. I BELIEVED HIS WORD.

12 Q. OKAY. MOVING ALONG. IS THIS THE STATEMENT THAT YOU
13 TYPED?

14 A. NO, MA'AM.

15 Q. STATE'S EXHIBIT 2 IS NOT THE STATEMENT THAT YOU TYPED?

16 A. NO, MA'AM. I DID NOT TYPE THAT STATEMENT.

17 Q. REALLY?

18 A. NO, MA'AM. THE ONLY PART OF THAT PAPER THAT I TOUCHED
19 WAS MY SIGNATURE AT THE BOTTOM.

20 Q. ALL RIGHT. YOU HEARD INVESTIGATOR CAMPBELL'S
21 TESTIMONY.

22 A. I SURE DID.

23 Q. AND YOU'RE TELLING THIS JURY THAT HE TOLD THEM
24 SOMETHING THAT WAS UNTRUE BECAUSE YOU TYPED THIS?

25 MR. WARDER: YOUR HONOR, ---

1 A. HE TOLD THEM ---

2 MR. WARDER: --- IF IT PLEASE THE COURT, I WOULD OBJECT
3 TO THAT. THE QUESTION VIOLATES THE SOUTH CAROLINA RULE
4 AGAINST PITTING THE WITNESSES.

5 THE COURT: NO. I'LL ALLOW THAT. GO AHEAD.

6 A. TO ANSWER YOUR QUESTION, YES, HE DID TELL THEM
7 SOMETHING THAT WAS NOT TRUE. I DID NOT TYPE THAT STATEMENT.

8 Q. OKAY.

9 A. HE TOLD THEM THAT I DID. I DID NOT TYPE THAT
10 STATEMENT. NOWHERE NEAR A COMPUTER.

11 Q. OKAY. DID YOU GIVE HIM THE INFORMATION THAT WENT INTO
12 THE STATEMENT?

13 A. YES, MA'AM, I DID. I TOLD HIM AS TO WHAT HAPPENED.
14 AND HE TOOK NOTES SO FAR AS TO WHAT I WAS SAYING. AND THEN
15 HE LATER TYPED IT HISSELF.

16 Q. OKAY. AND HE THEN GAVE IT TO YOU AND SAID, READ THIS,
17 AND IF THERE'S ANYTHING THAT NEEDS TO BE CORRECTED OR
18 CHANGED LET ME KNOW, RIGHT?

19 A. HE TOLD ME -- HE THEN HANDED ME THE PIECE OF PAPER,
20 TOLD ME TO -- JUST READ OVER THIS. THIS IS BASICALLY YOUR
21 STATEMENT. AND THIS IS EVERYTHING THAT WE TALKED ABOUT. I
22 GOT EVERYTHING IN THERE. SO I THEN SKIMMED OVER IT.

23 Q. YOU SKIMMED IT?

24 A. YES, MA'AM.

25 Q. OKAY. THIS IS YOUR OFFICIAL STATEMENT TO LAW

1 ENFORCEMENT WHEN A SIXTEEN MONTH OLD BABY IS CRITICALLY
2 INJURED ON YOUR WATCH AND YOU SKIMMED IT.

3 A. YES, MA'AM.

4 Q. YOU DID NOT FEEL THAT IT WAS IMPORTANT ENOUGH FOR YOU
5 TO VERIFY THAT THIS IS WHAT YOU HAD TOLD HIM?

6 A. I HAD NO REASON TO BELIEVE I WOULD BE SITTING HERE
7 TODAY.

8 Q. AND THEN I HAVE READ -- YOU CERTIFIED THIS, I HAVE READ
9 THE ABOVE STATEMENT OF ONE PAGE AND IT IS TRUE AND CORRECT
10 AS BEST I RECALL. AND YOU SIGNED THAT.

11 A. YES, MA'AM.

12 Q. YOU FURTHER THEN PRINTED YOUR NAME HERE AS HAVING
13 RECEIVED A COPY OF THE STATEMENT.

14 A. YES, MA'AM.

15 Q. OKAY. NOW THIS WAS YOUR OPPORTUNITY TO INCLUDE
16 ANYTHING AND EVERYTHING THAT WAS PERTINENT TO WHAT HAPPENED
17 TO *child*, WASN'T IT?

18 A. AT THAT TIME.

19 Q. EVERYTHING AND ANYTHING THAT WAS PERTINENT TO WHAT HAD
20 HAPPENED TO *child* THAT WAS YOUR OPPORTUNITY TO GIVE THAT
21 INFORMATION, WASN'T IT?

22 A. YES, MA'AM.

23 Q. OKAY. BUT YOU DIDN'T -- YOU DIDN'T THINK THAT IT WAS
24 IMPORTANT UNTIL TODAY TO TELL THAT *child* SPENT THE NIGHT
25 WITH SOMEBODY NAMED GRETTE THE NIGHT BEFORE?

1 A. ACTUALLY THAT WAS TOLD.

2 Q. WHY ISN'T IT IN THIS STATEMENT THAT YOU TYPED?

3 A. HE DID NOT PUT IT IN THERE, AND I DID NOT TYPE THAT
4 STATEMENT.

5 Q. WELL, DO YOU KNOW WHY LYCRETTA WAS ALSO NOT INCLINED TO
6 PUT IT IN HER STATEMENT EITHER?

7 A. NO, MA'AM, I DO NOT.

8 Q. OKAY.

9 A. I WAS NOT -- I WAS NOT PRESENT ON THAT DAY.

10 Q. OKAY. THE EVENING THAT YOU WERE WITH *child* DID SHE
11 EAT?

12 A. YES, MA'AM.

13 Q. YOU SAID YOU FED THE CHILDREN.

14 A. SHE ATE TWICE. SHE ATE FROM MY PLATE. I FED HER WHEN
15 I ATE. AND THEN I ATE AGAIN ALSO BECAUSE I DIDN'T GET
16 ENOUGH BECAUSE I SHARED MY PLATE. AND THEN LATER ON I FED
17 HER SOME CORN.

18 Q. AND HOW WAS HER APPETITE?

19 A. NOT TOO GOOD. IT WASN'T TOO GOOD. THAT'S WHY I FED
20 HER SOME CORN. SHE DID NOT EAT GOOD ENOUGH. SHE DID EAT,
21 BUT NOT -- NOT LIKE A CHILD SHOULD, IN MY OPINION.

22 Q. WELL, AND -- YOU DIDN'T PUT THAT IN YOUR STATEMENT
23 EITHER. DID YOU?

24 A. I DID NOT TYPE THAT STATEMENT. AND, YES, MR. --
25 INVESTIGATOR CAMPBELL WAS AWARE OF THAT. 'CAUSE HE WAS

1 AWARE OF WHAT I -- WHAT WE HAD FOR DINNER. I DO RECALL THE
2 CONVERSATION OF WHAT WE HAD FOR DINNER AND AS TO WHAT I FED
3 HER.

4 Q. AND YOU ALSO STATED IN YOUR TESTIMONY A FEW MINUTES AGO
5 THAT *child* WAS NOT ACTING RIGHT, SHE WASN'T AS PLAYFUL AS
6 NORMAL. BUT YOU DIDN'T INCLUDE THAT IN YOUR STATEMENT
7 EITHER.

8 A. I DID NOT FIGURE I'D BE HERE TODAY AND I'D HAVE TO
9 JUSTIFY EVERY REASON FOR EVERYTHING THAT HAPPENED THAT DAY
10 OR EVERY CAUSE, EVERYTHING -- EVERY ACTION THAT HAPPENED
11 THAT DAY.

12 Q. YOU, IN YOUR INCREASING IRRITATION WITH THOSE CHILDREN
13 THAT NIGHT, THAT AFTERNOON AND THAT NIGHT, TOOK IT OUT ON
14 *child*, DIDN'T YOU?

15 A. NO, MA'AM.

16 Q. YOU KICKED HER OR PUNCHED HER. I'M NOT SURE WHICH.
17 WHICH IS IT?

18 A. NEITHER.

19 Q. YOU BEAT HER BY YOUR OWN ADMISSION WITH A BELT ON HER
20 BACK.

21 A. THAT'S NOT MY ADMISSION. MY ADMISSION IS THAT I POPPED
22 HER.

23 Q. YOU POPPED HER ON THE BACK, A SIXTEEN MONTH OLD ---

24 A. YES, MA'AM.

25 Q. --- BABY ON THE BACK WITH A BELT ON AT LEAST THREE

1 OCCASIONS?

2 A. TWO OCCASIONS.

3 Q. AND AT SOME POINT BETWEEN LAZANE CRYING AND MAKIAH
4 COMING IN EVERY TWO SECONDS TO TELL YOU THAT RUSHANTI WAS
5 MESSING WITH THE STEREO WIRES AND *child* GETTING A DIRTY
6 DIAPER THAT YOU HAD TO GO CHANGE AND THAT IT STILL SMELLED,
7 SO YOU WERE GOING TO HAVE TO GO GIVE HER A BATH AND TAKE
8 CARE OF IT, AND YOU'VE GOT THESE -- ALL THESE OTHER THINGS
9 GOING ON. IT JUST ESCALATED TO THE POINT WHERE YOU JUST
10 WERE ENRAGED AND YOU SHOOK THAT CHILD TO THE POINT OF
11 UNCONSCIOUSNESS. THAT'S WHAT HAPPENED, ISN'T IT?

12 A. NO, MA'AM. I LOVE CHILDREN TOO MUCH.

13 Q. THEN YOU LAID HER DOWN ON THE SOFA WHILE YOU WERE
14 TRYING TO FIGURE OUT WHAT TO DO BECAUSE YOU REALIZED THAT
15 SHE WAS HURT AND SHE WAS HURT BAD. THAT'S WHAT HAPPENED.

16 A. NO, MA'AM.

17 Q. AND THAT'S WHEN YOU PICKED HER UP AND YOU TOOK HER
18 UPSTAIRS TO TRY TO GIVE A SLEEPING CHILD A BATH BECAUSE YOU
19 NEED TO REVIVE HER. AND YOU THEN CONCOCTED THIS STORY ABOUT
20 FALLING DOWN STAIRS FROM TRIPPING ON A COMFORTER TO ACCOUNT
21 FOR WHATEVER YOU KNEW YOU HAD DONE TO HER THAT WAS GOING TO
22 COME IN QUESTION. THAT'S WHAT HAPPENED.

23 A. NO, MA'AM. NEVER.

24 Q. I DON'T HAVE ANY FURTHER QUESTIONS.

25 THE COURT: ALL RIGHT. REDIRECT.

1 REDIRECT EXAMINATION BY MR. WARDER:

2 Q. YOU TOLD US YOU HAD AN ELEVENTH GRADE EDUCATION, IS
3 THAT RIGHT?

4 A. THAT'S CORRECT.

5 Q. ARE YOU FAMILIAR WITH WHAT A SEMICOLON IS?

6 A. NO, SIR.

7 Q. IT'S A PUNCTUATION MARK. DO YOU KNOW HOW TO CORRECTLY
8 USE IT?

9 A. NO, SIR.

10 Q. HAVE YOU EVER TYPED A SEMICOLON IN ANYTHING?

11 A. NO, SIR.

12 Q. THE SOLICITOR SUGGESTS THAT YOU SHOOK THE CHILD AT SOME
13 POINT. DID YOU EVER SHAKE THE CHILD?

14 A. NO, SIR. NEVER.

15 Q. THE SOLICITOR SUGGESTS THAT YOU LOST YOUR TEMPER, GOT
16 MAD AND SHOOK IT AT SOME POINT. SHE KEPT SAYING THAT. DID
17 YOU EVER DO THAT?

18 A. NO, SIR.

19 Q. DID YOU EVER LOSE YOUR TEMPER WITH THE CHILD?

20 A. NO, SIR.

21 Q. THE SOLICITOR SUGGESTS THAT YOU PUNCHED THE CHILD. DID
22 YOU EVER DO THAT?

23 A. NO, SIR. I WOULD NEVER DO ANYTHING LIKE THAT.

24 Q. THE SOLICITOR SUGGESTS THAT YOU STOMPED THE CHILD. DID
25 YOU EVER DO THAT?

1 A. NO, I DID NOT.

2 Q. THE OFFICER TESTIFIED THAT HE TALKED TO YOU AN HOUR AND
3 A HALF. IN THAT HOUR AND A HALF IS ALL THE CONVERSATION YOU
4 HAD WITH THE OFFICER REFLECTED IN THE STATEMENT?

5 A. NO IT'S NOT. AND THAT CONVERSATION WAS ACTUALLY LONGER
6 THAN THAT.

7 Q. WHO DECIDED WHICH PARTS OF THE CONVERSATION WENT IN THE
8 STATEMENT AND WHICH PARTS DIDN'T?

9 A. INVESTIGATOR CAMPBELL.

10 Q. AND JUST SO WE'RE CLEAR, WHO TYPED THE STATEMENT?

11 A. INVESTIGATOR CAMPBELL.

12 Q. THE SOLICITOR SUGGESTS THAT THE DIRTY DIAPER MIGHT HAVE
13 BEEN SOMETHING THAT MADE YOU MAD. DID THAT MAKE YOU MAD?

14 A. NO, SIR. I DEAL WITH DIRTY DIAPERS ALL DAY AND TIL
15 THIS DAY.

16 Q. AT THE TIME THIS HAPPENED YOUR WIFE WAS, THE SOLICITOR
17 ELICITS, WAS WORKING, IS THAT RIGHT? YOUR WIFE WAS WORKING
18 AND MAKING THE MONEY FOR THE FAMILY.

19 A. YES, SIR.

20 Q. WHILE SHE WAS HOLDING A JOB DOWN WHO WAS THE PRIMARY
21 CARETAKER FOR THE CHILDREN?

22 A. I WAS.

23 Q. THE SOLICITOR SUGGESTS THAT YOU MIGHT HAVE TO WATCH
24 YOUR CHILDREN FOR AS LONG AS TWELVE HOURS THAT PROCEEDED --
25 THAT MADE YOU MAD. DID THAT MAKE YOU MAD?

1 A. NO, SIR. I WATCH MY CHILDREN TWENTY-FOUR HOURS A DAY.

2 Q. THE SOLICITOR SUGGESTS THAT YOU WERE HAVING MONEY
3 PROBLEMS, THAT SOMEHOW THAT MADE YOU MAD.

4 A. NO, SIR, NOT AT ALL.

5 Q. ALL OF THE THINGS THAT THE SOLICITOR SUGGESTED TO YOU
6 THAT YOU DID TO THE CHILDREN, ALL THE SHAKING, KICKING,
7 PUNCHING, DID ANY OF THAT OCCUR THAT NIGHT?

8 A. NO, SIR. THAT WOULD NEVER HAPPEN. NEVER.

9 Q. THANK YOU.

10 THE COURT: ANY RECROSS?

11 MS. SEAY: I HAVE NOTHING FURTHER.

12 THE COURT: THANK YOU. STEP DOWN.

13 MR. WARDER: YOUR HONOR, IF IT WOULD PLEASE THE COURT,
14 THE DEFENSE WOULD REST AT THIS TIME.

15 THE COURT: ALL RIGHT. ANYTHING IN REPLY, SOLICITOR?

16 MS. SEAY: NO, SIR.

17 THE COURT: OKAY. TAKE THE JURY OUT.

18 (WHEREUPON THE JURY EXITED THE COURTROOM AT 3:13 PM)

19 THE COURT: ALL RIGHT. ANY OTHER MOTIONS, MR. WARDER?

20 MR. WARDER: NO, SIR. I'D RENEW MY MOTION THAT THERE'S
21 NO EVIDENCE THAT MY CLIENT INTENTIONALLY DONE ANYTHING TO
22 INJURE THE CHILD.

23 THE COURT: AND I'D HAVE TO DENY YOUR MOTION.

24 MR. WARDER: YES, SIR.

25 THE COURT: ALL RIGHT. IT'S 3:15. AND IT'S TOO LATE

1 IN THE DAY TO ARGUE AND CHARGE ON THIS KIND OF CASE. SO I
2 INTEND TO START BACK AT 9:00 IN THE MORNING. CAN YOU GIVE
3 ME SOME IDEA ABOUT HOW LONG YOU THINK IT'S GOING TO TAKE TO
4 TALK TO THE JURY?

5 MR. WARDER: HOW LONG WE'RE GOING TO ARGUE?

6 THE COURT: YEAH. AND I'M NOT -- I'M NOT TRYING TO
7 LIMIT YOU. I JUST WANT ---

8 MR. WARDER: I UNDERSTAND.

9 THE COURT: --- TO GET SOME IDEA OF WHEN I'LL START OUR
10 OTHER TRIAL.

11 MR. WARDER: YOUR HONOR, I FEEL THAT MY ARGUMENT IS
12 USUALLY IN THE TWENTY TO THIRTY MINUTE RANGE.

13 THE COURT: THAT'S FINE.

14 MR. WARDER: I PLAN NOT TO -- AND I DON'T SEE AT THIS
15 TIME THAT I WOULD ARGUE ---

16 THE COURT: THAT'S FINE. SOLICITOR, YOU'LL WAIVE
17 OPENING ARGUMENT?

18 MS. SEAY: YES, SIR, ON THE LAW, I WILL, AND WOULD
19 ANTICIPATE THIRTY TO FORTY-FIVE MINUTES.

20 THE COURT: OKAY. THAT'S FINE. ALL RIGHT. BRING THE
21 JURY BACK, PLEASE.

22 (WHEREUPON THE JURY ENTERED THE COURTROOM AT 3:18 PM)

23 THE COURT: LADIES AND GENTLEMEN, THE TESTIMONY IN THIS
24 CASE IS COMPLETE. AND WHAT WE HAVE REMAINING IS THE FINAL
25 ARGUMENTS BY THE ATTORNEYS AND THEN MY CHARGE ON THE LAW.

1 IF WE DID THAT THIS AFTERNOON IT WOULD BE TOO LATE FOR YOU
2 TO BEGIN DELIBERATING ON THE CASE. SO WE WILL RECESS AT
3 THIS TIME. WE'LL PICK BACK UP TOMORROW MORNING AT 9:00. AT
4 THAT TIME WE'LL HAVE THE CLOSING ARGUMENTS BY THE ATTORNEYS
5 AND THEN MY CHARGE ON THE LAW.

6 WHEN YOU LEAVE, PLEASE REMEMBER, DO NOT TALK ABOUT THIS
7 CASE AMONG YOURSELVES OR WITH ANYONE ELSE INCLUDING EVEN
8 MEMBERS OF YOUR OWN FAMILY. IF ANYBODY CONTACTS YOU AND
9 TRIES TO TALK TO YOU ABOUT THE CASE GET THEIR NAMES AND
10 ADDRESSES, REPORT THAT TO ME.

11 IGNORE ALL MEDIA COVERAGE, IF ANY, ABOUT THIS CASE.
12 AND PLEASE KEEP YOUR BADGES ON. HAVE THEM ON WHEN YOU COME
13 BACK IN THE MORNING. AND I'LL ASK THAT YOU BE BACK TOMORROW
14 MORNING AT 9:00, 9:00 IN THE MORNING. THANK YOU.

15 (WHEREUPON THE JURY EXITED THE COURTROOM AT 3:19 PM)

16 **THE COURT:** ALL RIGHT. SEE YOU IN THE MORNING.

17 (WHEREUPON COURT WAS IN RECESS AT 3:20 PM)

18 **WEDNESDAY, OCTOBER 10, 2007:**

19 **THE COURT:** GOOD MORNING. BE SEATED, PLEASE. ALL
20 RIGHT. MR. WARDER, YOU READY TO TALK TO THE JURY AS SOON AS
21 WE GET YOUR CLIENT?

22 **MR. WARDER:** YES, SIR.

23 (WHEREUPON THE DEFENDANT ENTERED THE COURTROOM)

24 **THE COURT:** OKAY. BRING OUR JURY.

25 (WHEREUPON THE JURY ENTERED THE COURTROOM AT 9:05 AM)

1 THE COURT: GOOD MORNING.

2 THE JURY: GOOD MORNING.

3 THE COURT: ALL RIGHT. MR. WARDER, YOU MAY PROCEED.

4 MR. WARDER: LADIES AND GENTLEMEN, I WANT TO THANK YOU
5 FOR PAYING ATTENTION AND LISTENING CLOSELY IN THIS CASE.
6 IT'S AN IMPORTANT CASE. WE HAVE THESE TRIALS BECAUSE IT'S
7 THE ONLY WAY A CITIZEN CAN SETTLE A DISPUTE WITH THE
8 GOVERNMENT IN A CRIMINAL CASE. THESE CASES COME UP FOR
9 RESOLUTION -- THIS HAS BEEN SINCE 2003. WE'RE TRYING A CASE
10 THAT'S ESSENTIALLY FOUR YEARS OLD THIS MONTH.

11 I REPRESENT A TWENTY-EIGHT YEAR OLD FATHER OF THREE
12 THAT'S ACCUSED OF INJURING HIS WIFE'S NIECE WHEN THAT CHILD
13 SPENT THE NIGHT THERE. THE POLICE TELL YOU THAT THEY
14 CHECKED HIS CHILDREN AND THERE WASN'T ANY MARK ON THEM AND
15 THAT THEY THINK, THEY CLAIM AND THEY ALLEGE THAT WE HURT THE
16 OTHER ONE.

17 THE SOLICITOR SUGGESTED IN HER QUESTIONING YESTERDAY
18 THAT THE MOTIVES MUST HAVE BEEN THAT THE CHILD PULLED ON THE
19 SPEAKER WIRES OR HAD A DIRTY DIAPER OR THAT HE WAS HAVING
20 MONEY PROBLEMS OR THAT HE WAS -- FELT OVERWORKED WITH THREE
21 CHILDREN INSTEAD OF TWO. AND I SUBMIT TO YOU THAT NONE OF
22 THEM WOULD COUNT FOR INTENTIONAL INJURY. THOSE ARE NOT
23 REASONS. A DIRTY DIAPER ON A THIRD CHILD IS NO DIRTY --
24 DIFFERENT THAN A DIRTY DIAPER ON YOUR CHILD OR ANOTHER CHILD
25 YOU'RE WITH. PEOPLE THAT HAVE CUSTODY OF SMALL CHILDREN

1 CHANGE DIRTY DIAPERS ALL THE TIME.

2 MY CLIENT WAS THE PRIMARY CARETAKER RIGHT THEN. HIS
3 WIFE HAD A JOB AT CHARTER. AND HE WAS OUT OF WORK. AND SO
4 HE HAD ASSUMED THE ROLE OF PRIMARY CARETAKER FOR THE
5 CHILDREN. SO THAT'S THE POSTURE THE CASE STARTS OUT IN.

6 AND THEN WE HEAR FROM THE SOLICITOR FROM OPENING
7 STATEMENT TO QUESTIONING YESTERDAY THIS THEORY THAT MY
8 CLIENT DID MORE THAN FALL DOWN THE STAIRS. THEY SAY HE
9 SHOOK -- THE DOCTORS DON'T TALK A LOT ABOUT SHAKING IT, THE
10 SOLICITOR DOES.

11 IN FACT, YOU REMEMBER THE QUESTIONS YESTERDAY, THEY
12 WERE NOT QUESTIONS DESIGNED TO GET ANSWERS IN AN ACCUSATORY
13 MANNER, SHE WOULD HAVE APPROACHED MY CLIENT AND SAY, AND YOU
14 TOOK THE BABY AND YOU SHOOK THE BABY AND THEN BECAUSE -- HE
15 WOULD SAY, NO, MA'AM. AND SHE WOULD SAY, AND THEN YOU
16 KICKED AND THEN YOU PUNCHED. THE QUESTION'S NOT DESIGNED TO
17 GET ANYTHING BUT GET THIS THEORY BEFORE YOU SO THAT YOU WILL
18 BE CONFUSED WITH WHAT'S EVIDENCE AND WHAT'S NOT.

19 HIS HONOR WILL TELL YOU THAT THE THINGS ATTORNEYS SAY,
20 THE QUESTIONS THEMSELVES ARE NOT EVIDENCE. EVIDENCE IS THE
21 TESTIMONY FROM WITNESSES ON THE WITNESS STAND AS TO THEIR
22 PERSONAL OBSERVATION. A LONG ACCUSATORY QUESTION FOLLOWED
23 BY A NO IS NOT EVIDENCE OF ANYTHING.

24 AND I TELL YOU THAT SO THAT -- SO THAT YOU'LL KNOW JUST
25 BECAUSE SOMETHING'S MENTIONED IN THE COURTROOM, JUST BECAUSE

1 SOMETHING'S MENTIONED BY THE SOLICITOR, IT'S NOT EVIDENCE.

2 THE EVIDENCE IS WHAT THE WITNESSES HAVE TESTIFIED TO.

3 NOW WHAT DID THE DOCTOR SAY? AND I THINK THAT HAD SOME
4 REAL IMPORTANCE. AND WE TALKED TO THE DOCTORS ABOUT HOW
5 THIS COULD BE -- AND BOTH DOCTORS REFERRED TO A STUDY THAT
6 HAD THREE HUNDRED AND SIXTY PEOPLE OR CHILDREN THAT FELL
7 DOWN STAIRS. THE PEDIATRIC DOCTOR REFERRED TO IT AND THE
8 EYE DOCTOR REFERRED TO IT. AND I DON'T KNOW WHETHER THAT'S
9 THE STATE OF SCIENCE IN THIS MEDICINE OR NOT. AND I DON'T
10 KNOW WHAT THE SAMPLE AND HOW IT WAS GOTTEN STUDIED.

11 BUT I'D ASK YOU IN PROVING SOMETHING BEYOND A
12 REASONABLE DOUBT AND IS A STUDY OF THREE HUNDRED AND SIXTY
13 PROOF? I MEAN, WHAT HAPPENS TO THE FOUR HUNDRED, FOR THE
14 FOUR HUNDRED AND FIFTY, FOR THE FIVE HUNDRED? YOU KNOW,
15 STUDIES OR RANDOM STATISTICAL STUDIES ARE ONLY AS VALID AS
16 THE SAMPLE THAT'S PUT IN THEM. AND THEY'RE NOT SCIENCE. IN
17 OTHER WORDS, JUST BECAUSE MORE PEOPLE BELIEVE A RESULT
18 HAPPENS, THERE'S STILL RESULTS THAT HAPPEN OUT OF IT.

19 BUT THE DOCTORS DID SAY THAT THERE'S A CONCEPT IF
20 THERE'S AN OLD INJURY THAT A NEW FORCE OF NOT VERY SEVERE
21 CAN CAUSE WHAT THEY CALL A RE-BLEED. AND A RE-BLEED IS
22 SIMPLY WHEN AN OLD INJURY THAT'S PARTLY HEALED UP IS PUT
23 BACK INTO BLEEDING AGAIN. AND THEY COULDN'T EXCLUDE THAT
24 FROM THIS CASE.

25 WHEN THE DOCTOR SAID, I THINK WE DID A CAT SCAN, AND I

1 TOLD HIM TO GO AHEAD AND LOOK THROUGH THAT MONSTROUS PILE OF
2 PAPERS BECAUSE WE WANTED TO GET AT IT, AND THEN HE SAID,
3 WELL, WE DIDN'T DO ONE. WHAT HE TOLD YOU IS THERE'S
4 REASONABLE DOUBT. BUT IT'S MORE THAN THAT. IT'S MORE THAN
5 THAT.

6 WE ASKED HIM TO TELL US ABOUT A LUCID INTERVAL. AND A
7 LUCID INTERVAL IS WHERE THE INJURY OCCURS AND THE CHILD IS
8 LUCID UNTIL AT SOME LATER TIME. HE SAID, WELL, TWO TO
9 FORTY-EIGHT HOURS. SO THE INJURY THAT CAUSED THE BLEEDING
10 COULD BE -- HAD HAPPENED AT SOME TIME TWO TO FORTY-EIGHT
11 HOURS EARLIER. BUT WHEN THE EYE DOCTOR'S UP THERE AND WE
12 SAID, CAN YOU TELL WHEN THESE INJURIES HAPPENED? AND HE
13 FINALLY ADOPTED TWO TO FORTY-EIGHT HOURS.

14 THESE CASES ARE NOT DECIDED SURELY BY THE MAN WHOEVER'S
15 HOLDING THE CHILD AT THE TIME THE PRESSURE GETS HIGH ENOUGH
16 IN THE BRAIN FOR THE CHILD TO GO UNCONSCIOUS, HAVE A FIT,
17 WHATEVER, AS BEING THE GUILTY PERSON. SURELY THERE'S MORE
18 TO IT THAN WE JUST LOOK AND DECIDE WHO HAD THE CHILD AT THAT
19 TIME.

20 AND THAT BRINGS OUT THE QUESTIONING, IT'S ON YOUR
21 WATCH. YOU KNOW, THAT PHRASE GOT POPULAR WHEN THE
22 POLITICIANS WANTED TO BLAME THE SITTING PRESIDENT FOR
23 EVERYTHING THAT HAPPENED IN THE COUNTRY. AND SO IT HAPPENED
24 ON HIS WATCH, YOU KNOW. IT'S TRICKLED DOWN. THEY WANT YOU
25 TO CONVICT BECAUSE IT HAPPENED ON MARQUES' WATCH. MARQUES

1 HAD THE CHILD, HE MUST BE THE ONE. AND HE'S SURELY THE ONE
2 BECAUSE HE SAYS TO YOU THE CHILD PULLED ON THE SPEAKER WIRES
3 AND I POPPED IT WITH A BELT. AND HE SAYS WHEN THE CHILD
4 FELL AND EITHER PASSED OUT, WENT UNCONSCIOUS, WHATEVER
5 HAPPENED IN THE BATHTUB AND THE CHILD APPEARED NOT TO BE, I
6 RAN AND FELL DOWN THE STEPS.

7 EVERYBODY SAYS IN THEIR STUDY OF THREE HUNDRED AND
8 SIXTY PEOPLE, AND IT WASN'T THAT FALL DOWN THE STAIRS THAT
9 THAT WOULDN'T CAUSE THESE INJURIES. COULD THEY HAVE THEN
10 HAPPENED SOMEPLACE ELSE SOMETIME BEFORE? OF COURSE, THEY
11 COULD HAPPEN ANY PLACE IN FORTY-EIGHT HOURS.

12 NOW THAT'S -- I GUESS YOU COULD SAY, WHERE WAS THE
13 CHILD IN FORTY-EIGHT HOURS? AND THAT'S KIND OF INTERESTING
14 TOO. WE KNOW IT WAS WITH THE GRANDMOTHER. SUPPOSED TO BE
15 PICKED UP ON SATURDAY AFTERNOON. I THINK IT WAS ABOUT 4:30,
16 4:30 OR 5:30 ON SATURDAY AFTERNOON, IT WAS PICKED UP BY
17 MARQUES' WIFE AND HER FRIEND.

18 NOW IF YOU'LL THINK BACK TO WHEN THE GRANDMOTHER SMITH
19 WAS ON THE STAND. I ASKED HER, I SAID, WHERE DID THE CHILD
20 SPEND SATURDAY NIGHT? AND AT THE TIME IT DIDN'T SEEM TOO
21 IMPORTANT. SHE SAID, I DON'T KNOW. I SAID, SURELY IN THREE
22 AND A HALF YEARS YOU'VE FOUND OUT. I DON'T KNOW.

23 HER DAUGHTER TAKES THE STAND, MY CLIENT'S WIFE, AND
24 SAYS, YEAH, SHE SAID DON'T MENTION IT BECAUSE WE DIDN'T WANT
25 TO GET THIS OTHER GIRL IN TROUBLE THAT KEPT THE CHILD.

1 WELL, IF THE GRANDMOTHER IS NOT WANTING TO GET THE OTHER
2 GIRL IN TRIAL [SIC], WHAT SHE THINKS THE OTHER GIRL KNOWS,
3 THEN WHAT'S THE GRANDMOTHER KNOW THAT SHE DOESN'T WANT TO
4 ADMIT WHERE THE CHILD WAS.

5 WE LEARNED FROM MY CLIENT AND HIS WIFE THAT THE CHILD
6 STAYED WITH A FRIEND OF THE WIFE, THAT THEY PICKED IT UP AT
7 ABOUT 10:00. AND SO -- AND IT WAS WITH MY CLIENT FROM 10:00
8 SUNDAY MORNING UNTIL THE TIME THAT THE SWELLING GOT BAD
9 ENOUGH IN THE BRAIN THAT THE CHILD APPARENTLY LOST
10 CONSCIOUSNESS.

11 NOW WHAT HAPPENED EVERY PLACE ELSE? MY CLIENT WAS ONLY
12 WITH THE CHILD FROM TEN THAT MORNING. HE TOLD EVERYTHING
13 THAT HE KNEW ABOUT IT. AND I SUBMIT TO YOU THAT IT'S HIGHLY
14 POSSIBLE THAT SOMETHING HAPPENED TO IT PRIOR TO THAT OR THAT
15 IT'S HIGHLY POSSIBLE THAT THERE WAS AN INJURY THAT STARTED
16 RE-BLEEDING ON THE FALL DOWN THE STAIRS.

17 BUT -- AND IF YOU THINK BACK AND REMEMBER THE DOCTOR'S
18 TESTIMONY, HE SAID THAT SOMETIMES THE RE-BLEED COULD BE MORE
19 SEVERE THAN THE FIRST BLEED, THAT THE BODY HAD THIS BUILT IN
20 CLOTTING MECHANISM AND THE BODY HAS A WAY OF DISSOLVING OLD
21 BLOOD.

22 AND SO WE HAVE KIND OF A FORTY-EIGHT HOUR WINDOW OF THE
23 INJURY. AND EVERYBODY POINTS TO MY CLIENT BECAUSE IT WAS ON
24 HIS WATCH AND HE ADMITTED FALLING DOWN THE STAIRS.

25 NOW I GUESS I WANT TO TALK TO YOU A LITTLE BIT ABOUT

1 THE STATEMENT THAT WAS MADE IN THIS CASE. I FIND IT
2 AMAZING. THE OFFICER SAYS THAT FOR THE FIRST TIME IN HIS
3 LIFE THAT THIS HAPPENED THAT INDEED SOMEBODY SAID AFTER
4 THEY'D TAKEN HIM DOWN THERE AND SOMEBODY SAID, YOU'RE NOT A
5 VERY FAST TYPER. AND THE OFFICER SAID, HE SAID THIS AFTER
6 HE'D JUST FILLED IN THE TOP, THE LINES IN THE TOP, MY CLIENT
7 SAID, YOU'RE A SLOW TYPER, LET ME TAKE OVER.

8 AND THE OFFICER DOWN THERE GETS UP FROM HIS TYPEWRITER,
9 MARCHES OVER TO THE CHAIR, MY CLIENT MARCHES OVER, SITS DOWN
10 BEHIND THE TYPEWRITER AND TYPES A STATEMENT WITH THE OFFICER
11 ONLY SAYING TO HIM HE REMEMBERED THAT HE TOLD MY CLIENT TO
12 PUT IN THE DATE. OUT ROLLS THE STATEMENT TYPED BY MY CLIENT
13 THAT HAS AN ELEVENTH GRADE EDUCATION IN PERFECT GRAMMAR,
14 ORGANIZED PERFECTLY CHRONOLOGICALLY, USES TWO SEMICOLONS IN
15 PUNCTUATION. I SUBMIT TO YOU NOT MANY PEOPLE USE
16 SEMICOLONS, NOT MANY PEOPLE KNOW WHEN THE PROPER
17 PRONUNCIATION -- A PROPER WAY TO PUNCTUATE THE PHRASE. HE
18 SEPARATES THOSE TWO INDEPENDENT CLAUSES PERFECTLY WITH THE
19 CORRECT PUNCTUATION.

20 NOW INCIDENTALLY THE OFFICER HAS A MUCH HIGHER
21 EDUCATION. HE'S GOT FOUR YEARS OF PRESBYTERIAN COLLEGE, HAS
22 GOT TWO YEARS AT TECH AND BEEN WRITING REPORTS FOR YEARS ON
23 THE POLICE FORCE. AND THERE'S A DISPUTE ABOUT WHO TYPED IT.
24 MY CLIENT SAYS, I DIDN'T DO THAT. I DON'T KNOW WHAT A
25 SEMICOLON IS.

1 WHICH VERSION IS IT? WHICH VERSION'S THE MOST
2 PROBABLE? WHY WOULD THE OFFICER LIE ABOUT THAT? BECAUSE
3 THEY'VE GOT SOMETHING IN THE STATEMENT AND THEY WANT TO
4 MARRY MY CLIENT TO IT. AND THAT'S HOW THEY DO IT. HE
5 GRABBED THE TYPEWRITER AND SPELLED HIS OWN WORDS. WHY DID
6 IT TAKE AN HOUR AND A HALF? HOUR AND A HALF IS WHAT THEY
7 SAID IT TOOK THE STATEMENT. YOU CAN TALK AND READ THAT
8 STATEMENT IN THREE MINUTES.

9 WHAT WENT ON FOR AN HOUR AND A HALF? THEY TALKED TO MY
10 CLIENT ABOUT ALL KINDS OF THINGS. THEY PUT IN THE STATEMENT
11 WHAT THEY THOUGHT WAS IMPORTANT. AND THEY TYPED IT OUT. HE
12 SIGNED IT. AND NOW THEY JUST DISTORTED IT A LITTLE BIT TO
13 MAKE IT SEEM DIFFERENT.

14 LOOK AT THE STATEMENT, READ THE STATEMENT. DOWN IN THE
15 BODY, TWO LITTLE SEMICOLONS COMPLETELY PERFECTLY PUT IN. DO
16 YOU BELIEVE THAT MY CLIENT'S ELEVEN YEARS IN GRAMMAR SCHOOL
17 AND HIS EXPERIENCE ON HIS MANUAL LABOR JOBS, DO YOU THINK
18 THAT'S WHERE HE GOT THAT? DO YOU THINK HE DID IT?

19 YOU KNOW, WHY THEY SAY IT HAPPENED ON OUR WATCH IS THEY
20 WANT TO SHIFT THE BURDEN. THEY WANT TO TRY AND MAKE YOU
21 FORGET ABOUT THE PRESUMPTION OF INNOCENCE, FORGET ABOUT WHO
22 HAS TO PROVE THE CASE AND WHO HAS TO PROVE EACH AND EVERY
23 ALLEGATION.

24 YOU KNOW WHAT JURIES DO IS IF THEY'RE FOLLOWING THEIR
25 INSTRUCTIONS AND IF THEY'RE DOING WHAT HIS HONOR TELLS THEM

1 AND THEY'RE DOING THE RIGHT THING, WHAT THEY'RE TRYING TO DO
2 IS MEASURE OR WEIGH THE EVIDENCE. AND THEY'RE TRYING TO
3 MEASURE IT AND SAY AFTER ALL THIS EVIDENCE DOES THERE STILL
4 EXIST A REASONABLE DOUBT? YOU DON'T DECIDE WHO'S RIGHT AND
5 WRONG, WHO'S GOOD AND BAD, WHO'S CAREFUL, NOT CAREFUL, WHO'S
6 HONEST AND NOT HONEST.

7 WHAT YOU DECIDE IS AFTER YOU FIRST DECIDE WHAT IS THE
8 BELIEVABLE, CREDIBLE EVIDENCE, AND THEN YOU TAKE WHATEVER
9 YOU FIND THE BELIEVABLE, CREDIBLE EVIDENCE TO BE AND YOU
10 WEIGH IT. AND YOU SAY AFTER I PUT ALL THE BELIEVABLE,
11 CREDIBLE EVIDENCE IN THIS PILE DOES THERE STILL EXIST ANY
12 REASONABLE DOUBT?

13 REASONABLE DOUBT HAS BEEN DEFINED A LOT OF WAYS. AND
14 HIS HONOR WILL DEFINE IT FOR YOU TODAY. HE'LL DEFINE IT
15 UNDER A STANDARD THAT LAWYERS SOMETIMES SAY IS THE VICTOR
16 VERSUS NEBRASKA STANDARD, WHICH WOULD SAY IS THERE ANY REAL
17 POSSIBILITY THAT THE DEFENDANT IS INNOCENT? IF IT'S A REAL
18 POSSIBILITY, NOT AN IMAGINED POSSIBILITY, BUT A REAL
19 POSSIBILITY, THEN THE STATE'S FAILED. AND THE ONLY PROPER
20 VERDICT WOULD BE THE VERDICT OF NOT GUILTY.

21 SO IN THIS CASE I ASK YOU TO LOOK AT THE EVIDENCE OF
22 THE CONDUCT OF MY CLIENT. AND I SAY THAT BECAUSE IT'S A
23 LITTLE HARD TO FOCUS BECAUSE WE HAVE A CHILD THAT'S HURT,
24 REALLY HURT. BUT I SUBMIT TO YOU THERE'S REAL REASONABLE
25 DOUBT AS TO WHAT INJURIES CAUSED THE HEMATOMA, THE RETINAL

1 HEMORRHAGING.

2 AND I SUBMIT TO YOU THOSE ARE NOT ATTRIBUTABLE TO
3 ANYTHING THAT MY CLIENT DID UNLESS THIS IS THE THREE HUNDRED
4 AND SIXTY-FIRST CASE AND IT DOESN'T FIT THE MODEL UNLESS
5 IT'S DIFFERENT FROM THE OTHER THREE HUNDRED AND SIXTY OR
6 MAYBE IT'S THE FIVE HUNDREDTH ONE AND IT AIN'T OFFERED IN
7 THE STUDY.

8 IN THIS CASE MY CLIENT IS PRESUMED INNOCENT. AND I
9 THINK THAT'S THE STARTING POINT WHEN YOU GO BACK THERE AND
10 YOU SAY, WE BELIEVE THIS FELLOW IS PRESUMED TO BE INNOCENT.
11 LET'S LOOK AT THE CREDIBLE, BELIEVABLE EVIDENCE AND THEN
12 LET'S WEIGH IT AND SEE IF THERE EXISTS THIS REAL
13 POSSIBILITY.

14 THE SOUTH CAROLINA SUPREME COURT HAS TALKED ABOUT THE
15 KIND OF DOUBT THAT MUST EXIST. AND OUR SUPREME COURT HAS
16 SAID IT'S THE KIND OF DOUBT THAT WOULD MAKE ONE HESITATE TO
17 ACT. I SUBMIT TO YOU THAT A CONSCIOUS JUROR SEEKING THE
18 TRUTH IN THIS CASE WOULD BOTH HESITATE TO ACT AND WOULD SAY,
19 THERE EXISTS A REAL POSSIBILITY THAT THIS DEFENDANT IS NOT
20 GUILTY. I ASK YOU TO RETURN IN THIS CASE THE FAIR, THE
21 CORRECT AND THE PROPER VERDICT, THE VERDICT OF NOT GUILTY.
22 THANK YOU VERY MUCH.

23 THE COURT: SOLICITOR.

24 MS. SEAY: THANK YOU, YOUR HONOR. MAY IT PLEASE THE
25 COURT?

1 MADAME FORELADY, LADIES AND GENTLEMEN OF THE JURY, WHEN
2 I FIRST STOOD BEFORE YOU I TOLD YOU THAT CHILDREN ARE AMONG
3 THE MOST HELPLESS AMONG US IN OUR SOCIETY. AND AS A PEOPLE,
4 AS A NATION, AS A STATE, AS A COMMUNITY, AS THE COMMUNITY OF
5 GREENVILLE, SOUTH CAROLINA WE HAVE DECIDED THAT WE CANNOT
6 AND WILL NOT CONDONE AND TOLERATE ABUSE OF CHILDREN. THAT
7 IS WHY WE HAVE LAWS IN PLACE TO PROTECT THEM.

8 WHAT WE HAVE IN THIS CASE ARE A NUMBER OF FACTS THAT
9 ARE UNCONTROVERTED. WE KNOW THAT *child* SMITH AT SIXTEEN
10 MONTHS OF AGE WAS LIVING WITH HER GRANDMOTHER, CARRIE SMITH,
11 AND THAT SHE WASHED HER AT ABOUT 4:00 THAT AFTERNOON, GAVE
12 HER A BATH, WASHED HER HAIR.

13 AND WE KNOW FROM LISTENING TO MS. SMITH THAT *child*
14 WAS IN PERFECTLY GOOD CONDITION. SHE WAS A NORMAL,
15 BEAUTIFUL CHILD WITH NO HEALTH ISSUES WHATSOEVER. SHE COULD
16 SAY A FEW WORDS. SHE COULD WALK. SHE COULD RUN. SHE COULD
17 PLAY.

18 AND WE KNOW, AND IT'S UNCONTROVERTED BY ANY OF THE
19 TESTIMONY THAT WE HEARD YESTERDAY, THAT HER DAUGHTER,
20 LYCRETTA, WHO YOU HEARD FROM YESTERDAY, PICKED *child* UP
21 TO TAKE HER TO HER HOME WHERE WE KNOW SHE LIVED WITH MARQUES
22 HUDSON AND THEIR TWO SMALL CHILDREN. WE KNOW THAT SHE
23 SPENDS THE NIGHT AND THE NEXT DAY LYCRETTA SMITH HAS TO GO
24 TO WORK AND THERE SOMEWHERE BETWEEN 2:00 AND 4:00 TESTIFIED
25 TO THAT SHE HAS TO GO TO WORK AT CHARTER COMMUNICATIONS.

1 AND WHEN SHE DOES IT IS UNCONTROVERTED THAT SHE LEAVES
2 *child* SIXTEEN MONTHS OLD, AND HER TWO CHILDREN, MAKIAH,
3 FOUR YEARS OLD, AND LAZANE, SEVEN MONTHS OLD, WITH MARQUES
4 HUDSON AND NO ONE ELSE IN THAT APARTMENT.

5 WE NEXT KNOW THAT *child* : AT ABOUT 11:45 OR MIDNIGHT
6 OR SO THAT EVENING ENDS UP BY EMS COMING TO GREENVILLE
7 MEMORIAL HOSPITAL IN CRITICAL CONDITION WITH LIFE
8 THREATENING INJURIES. YOU HEARD FROM THE EMS DRIVER, MR.
9 CROSBY. HE SAW THIS CHILD'S VISIBLE INJURIES. HE SAW WHAT
10 A CRITICAL STATE SHE WAS IN. SHE WAS COMPLETELY
11 UNRESPONSIVE. THEY COULDN'T STICK HER WITH SOMETHING AND
12 GET A RESPONSE OUT OF HER. SHE WAS UNCONSCIOUS, LIMP.

13 YOU HEARD FROM DEPUTY HAWKINS WITH THE SHERIFF'S OFFICE
14 WHO WAS THE FIRST OFFICER THAT WENT OVER THERE TO THE
15 HOSPITAL. HE SAW THIS CHILD'S INJURIES.

16 HE SAID TO MARQUES HUDSON THAT, YOU KNOW, WHAT I'M
17 FINDING OUT THAT'S WRONG WITH THIS CHILD IS NOT MATCHING UP
18 WITH WHAT YOU TOLD ME ABOUT THIS FALL DOWN THE STAIRS AT
19 WHICH TIME MARQUES SAYS, OH, WELL, I DID -- SHE WAS MESSING
20 WITH MY STEREO WIRES, SO I DID POP HER WITH A BELT ON THE
21 BACK. HE DECIDES TO GO AHEAD AND TELL THAT PART. OBVIOUSLY
22 THOSE MARKS ARE THERE FOR THE WHOLE WORLD TO SEE AND HE'S
23 GOING TO BE QUESTIONED ABOUT IT. SO THE STORY BEGINS TO
24 UNFOLD.

25 DR. ALLISON JONES NEXT SEES THE CHILD. AND SHE

1 TESTIFIED AND TOLD YOU THIS CHILD WAS CRITICALLY ILL,
2 SEVERELY INJURED, UNRESPONSIVE. SHE TOLD YOU WHAT ALL HAD
3 TO BE DONE FOR THE CHILD. SHE SAW THE MARKS. SHE HEARD THE
4 STORY OF THE FALL. AND SHE SAID IN HER EXPERT OPINION, SHE
5 WAS QUALIFIED AS AN EXPERT IN PEDIATRICS AND HAS SEEN
6 NUMBERS OF CHILDREN DURING HER PRACTICE, THOSE INJURIES ARE
7 NOT ACCIDENTAL. THAT WAS HER OPINION.

8 INVESTIGATOR CAMPBELL WENT OVER THERE THE NEXT DAY.
9 AND YOU HEARD FROM HIM. HE SAW HER INJURIES. HE DESCRIBED
10 THEM TO YOU. HE'S OBVIOUSLY CONCERNED. HE'S GOTTEN
11 INFORMATION FROM THE MEDICAL PROFESSIONALS THAT THESE ARE
12 LIKELY NOT ACCIDENTAL INJURIES. AND A LAY PERSON WITHOUT
13 ANY MEDICAL TRAINING CAN LOOK AT THESE PHOTOGRAPHS AND SEE
14 THESE ARE INFLECTED INJURIES. AND YOU'LL HAVE THESE
15 PHOTOGRAPHS TO LOOK AT IN THE JURY ROOM 'CAUSE THEY'RE IN
16 EVIDENCE.

17 IN ADDITION, ALL OF THESE PEOPLE THAT WE JUST TALKED
18 ABOUT, THE EMS DRIVER, THE FIRST DEPUTY ON THE SCENE, DR.
19 ALLISON JONES, INVESTIGATOR CAMPBELL AND THE NURSE, MELISSA
20 TRYING, THAT TESTIFIED BEFORE YOU, WHO ACTUALLY EXAMINED
21 MARQUES HUDSON, TOLD YOU MARQUES HUDSON WAS IN PERFECT
22 CONDITION. THE NURSE HAD ACTUALLY PERFORMED A MEDICAL EXAM
23 BECAUSE OF HIS COMPLAINTS OF HIS BACK HURT OR HIS SHOULDER
24 HURT OR SOMETHING LIKE THAT. THAT WAS WHAT HE WAS CONCERNED
25 ABOUT, WAS DEVELOPING HIS STORY TO SUPPORT WHAT HORRIBLE

1 THINGS HE HAD JUST DONE. THAT WAS HIS CONCERN.

2 BUT THEY EXAMINED HIM. AND SHE DIDN'T KNOW HIM. AND
3 SHE DIDN'T EVEN GET TO SEE THIS VICTIM. SO SHE DIDN'T KNOW
4 WHAT WAS GOING ON.

5 BUT SHE EXAMINED HIM. AND SHE CAME IN HERE AND TOLD
6 YOU THAT BASED ON HER RECORDS THERE WAS NOT A SCRATCH, NOT
7 AN ABRASION, NOT A LACERATION, NOT A BRUISE, NOT A BROKEN
8 BONE. THERE WAS EVEN A CHEST X-RAY DONE. THERE WAS NOTHING
9 WRONG WITH HIM. SHE NOTED THE DIAGNOSIS WAS HE HAD AN
10 ALTERATION IN COMFORT AND WAS PRESCRIBED MOTRIN AFTER THIS
11 TERRIBLE, TERRIBLE EVENT THAT LEFT THIS SIXTEEN MONTH OLD
12 BABY ON LIFE SUPPORT.

13 THE STATE PRESENTED A NUMBER OF DOCTORS WHO WERE
14 INVOLVED IN THE TREATMENT OF *child*. THE FIRST ONE YOU
15 HEARD FROM WAS DR. ALLISON JONES. WE'VE TALKED A LITTLE BIT
16 ABOUT WHAT SHE SAID. SHE WAS THE -- THE KIND OF THE GO-TO
17 PERSON THERE AT THE EMERGENCY ROOM WHEN THIS THING FIRST
18 HAPPENED. IT BECAME APPARENT, OBVIOUSLY, THAT THIS CHILD
19 HAD CRITICAL INJURIES AND NEEDED CRITICAL CARE.

20 SHE WAS THEN TRANSFERRED TO THE PEDIATRIC INTENSIVE
21 CARE UNIT. YOU HEARD FROM DR. ROBERT SEIGLER ON THE STAND,
22 THE DIRECTOR OF THE PEDIATRIC INTENSIVE CARE UNIT AT
23 GREENVILLE MEMORIAL HOSPITAL WHO TREATS HUNDREDS OF CHILDREN
24 EVERY YEAR AS PART OF HIS CAREER, A PROFESSION HE'S CHOSEN,
25 TO TREAT CHILDREN. AND HE IS EXCEPTIONALLY EDUCATED,

1 TRAINED AND QUALIFIED TO DO WHAT HE DOES. AND ALL OF THAT
2 WAS LAID OUT HERE FOR YOU SO THAT YOU WOULD KNOW WHAT THE
3 BASIS IS FOR HIM TO DO WHAT HE DOES AND TO GIVE THE OPINIONS
4 THAT HE GIVES ABOUT DIAGNOSIS OF -- DIAGNOSES OF CHILDREN.

5 HE TOLD YOU THAT HE'S DEALT WITH A COUPLE OF HUNDRED
6 CHILD ABUSE VICTIMS DURING HIS TWENTY YEAR CAREER. HE HAS
7 SEEN CHILD ABUSE. BUT, YOU KNOW, IT OCCURS TO ME THAT HE
8 DID NOT KNOW *child* WHEN SHE CAME THROUGH THAT DOOR,
9 NOR DID HE KNOW MARQUES HUDSON WHEN HE CAME THROUGH THAT
10 DOOR. HE HAD NO REASON TO COME IN HERE AND TESTIFY THE WAY
11 HE DID OTHER THAN SCIENTIFIC FACT, MEDICAL FACT.

12 THE JUDGE IS GOING TO TELL YOU WHEN HE GIVES YOU THE
13 CHARGE ON THE LAW AFTER THE CONCLUSION OF OUR COMMENTS TO
14 YOU THAT YOU CAN CONSIDER THE BIAS OR PREJUDICE OF ANY
15 WITNESS WHO TESTIFIES. YOU CAN CONSIDER WHY MIGHT THIS
16 PERSON TESTIFY THE WAY THEY DID? DID THEY HAVE SOMETHING,
17 SOME AXE TO GRIND AGAINST SOMEBODY? DID THEY HAVE SOMEBODY
18 TO REWARD? YOU KNOW, THESE DOCTORS WERE SIMPLY HERE TO TELL
19 YOU WHAT THE MEDICAL FACTS WERE IN THIS CASE.

20 AND WHAT HE TOLD YOU WAS THAT *child* HAD A LONG LIST
21 OF INJURIES, A BRUISE ON HER FOREHEAD, A BRUISE ON HER
22 CHEST, A LARGE BRUISE ON HER ABDOMEN, TWO BRUISES -- BRUISES
23 ON BOTH OUTER PARTS OF HER THIGHS, BOTH IN A PATTERN -- GRIP
24 TYPE PATTERN, HE DESCRIBED, ON HER BACK MARKS THAT RESEMBLED
25 STRAP MARKS AND ALSO TWO MARKS THAT RESEMBLED A DOT PATTERN

1 THAT IS BY SOME IMPLEMENT THAT WE DON'T KNOW WHAT THAT IS.

2 AND YOU'LL HAVE THOSE PICTURES TO LOOK AT. SHE ALSO
3 HAD A BUSTED LIP. SHE HAD A BRUISE ON HER SHOULDER. AND
4 THAT WAS JUST ALL OF WHAT YOU COULD SEE WHEN YOU LOOKED AT
5 THIS LITTLE BABY WHO WEIGHED SOMEWHERE AROUND TWENTY-FIVE
6 POUNDS.

7 BUT THEN INSIDE THAT LITTLE BODY SHE HAD A SUBDURAL
8 HEMORRHAGE IN HER BRAIN, RETINAL HEMORRHAGES IN HER EYES
9 THAT DR. JOHNSON DESCRIBED AS TOO NUMEROUS TO COUNT AND
10 PANCREATITIS, WHICH DR. SEIGLER SAID THE BRUISE THERE ON THE
11 ABDOMEN THAT YOU CAN SEE ON THE PHOTO DIRECTLY OVERLIES THE
12 PANCREAS AND CAME FROM A SEVERE BLUNT FORCE TRAUMA OF SOME
13 SORT WHETHER THAT BE A PUNCH, A KICK, A STOMP, BLUNT FORCE
14 TRAUMA.

15 HE TESTIFIED UNEQUIVOCALLY, HE DID NOT WAIVER, THESE
16 INJURIES WERE INTENTIONALLY INFLICTED. THEY WERE NOT
17 ACCIDENTAL. THEY DID NOT COME FROM HER HITTING HER HEAD IN
18 THE BATHTUB, ALTHOUGH HE SAID, YES, SHE COULD HAVE SUSTAINED
19 THAT LITTLE BRUISE, BUT SHE DIDN'T GET A SUBDURAL HEMATOMA
20 OR RETINAL HEMORRHAGES FROM HITTING HER HEAD IN THE BATHTUB.

21 NONE OF THESE INJURIES HAPPENED THE WAY MARQUES HUDSON
22 SAID THEY DID. HE WAS UNEQUIVOCAL IN HIS TESTIMONY ABOUT
23 THAT. AND THAT IS NOT BASED ON ONE ARTICLE OF A STUDY OF
24 THREE HUNDRED AND EIGHTY-TWO CHILDREN FALLING DOWN STAIRS OR
25 HOWEVER MANY NUMBER IT WAS FALLING DOWN STAIRS AND

1 SUSTAINING CERTAIN THINGS AND NOT SUSTAINING CERTAIN THINGS.

2 THAT IS ONE PIECE OF LITERATURE THAT HE CITED IN
3 SUPPORT OF HIS OPINION, BUT HE ALSO STRESSED THAT HIS
4 OPINION IS BASED ON THE TOTALITY OF THE CIRCUMSTANCES OF
5 EVERY CASE. YOU OBVIOUSLY AREN'T A VERY GOOD DOCTOR IF YOU
6 JUST GO LOOK IT UP IN THE MEDICAL LITERATURE TO MAKE YOUR
7 DIAGNOSIS. YOU'RE OBVIOUSLY GOING TO TAKE INTO ACCOUNT ALL
8 OF THE VARIOUS THINGS THAT COME INTO PLAY WHEN YOU'RE TRYING
9 TO TREAT A CHILD.

10 DR. ANTHONY JOHNSON TESTIFIED ABOUT THE FACT THAT THESE
11 RETINAL HEMORRHAGES ARE SOMETHING THAT HAPPEN ONLY IN VERY
12 EXTREME CIRCUMSTANCES. AND HE NAMED SOME CIRCUMSTANCES THAT
13 MIGHT CAUSE THOSE KINDS OF INJURIES WHERE YOU'RE --
14 BASICALLY THE BLOOD VESSELS IN YOUR RETINA ARE SO
15 TRAUMATIZED THAT THEY BURST AND THEY HEMORRHAGE; SEVERE CAR
16 ACCIDENTS, SERIOUS FALLS FROM GREAT HEIGHTS, SHAKING,
17 ACCELERATION AND DECELERATION OF A CHILD'S BRAIN WITHIN ITS
18 HEAD, MASSIVE, SEVERE FORCE.

19 AND HE HAD PHOTOGRAPHS WHICH HAVE BEEN ENTERED INTO
20 EVIDENCE WHICH YOU'LL BE ABLE TO LOOK AT FOR YOURSELVES.
21 AND YOU CAN SEE ALL OF THOSE HEMORRHAGES. AND YOU CAN SEE
22 WHAT HE WAS DESCRIBING ABOUT HOW THE OPTIC NERVE HAS NOW
23 BEEN DAMAGED.

24 AND HIS OPINION WAS THAT THESE SYMPTOMS HAPPEN WHEN THE
25 EVENT OCCURS, THAT IT'S NOT SOMETHING SEPARATE FROM THIS

1 SUBDURAL HEMATOMA IN THE BRAIN. HE EXPLAINED TO YOU HOW THE
2 CONNECTIONS ARE MADE. AND I'M NOT A DOCTOR. SO I'M SORT OF
3 DOING IT IN MY OWN LAY PERSON WAY.

4 BUT HE KIND OF TRIED TO EXPLAIN TO YOU HOW THE
5 CONNECTION IS MADE BETWEEN THE BRAIN AND THE EYES AND THE
6 MESSAGES THAT WE SEND AND THAT HE BELIEVED THAT THE EVENT
7 HAPPENED AT THE SAME TIME. WHATEVER IT WAS, THE SHAKING,
8 TOOK PLACE AND SO DID THE SUBDURAL HEMATOMA AND SO DID THE
9 RETINAL HEMORRHAGES.

10 AND I WANT TO ADDRESS ALSO THAT THE DEFENSE HAS BROUGHT
11 IN THE IDEA THAT SOMEHOW *child* WAS INJURED TWO DAYS
12 BEFORE HER INJURIES ACTUALLY MANIFESTED THEMSELVES, SHE WAS
13 INJURED AND THEN SOMETHING STARTED RE-BLEEDING. WELL, THAT
14 IS JUST NOT PLAUSIBLE, LADIES AND GENTLEMEN. YOUR COMMON
15 SENSE TELLS YOU THAT THAT IS NOT PLAUSIBLE BECAUSE BOTH OF
16 THESE DOCTORS TOLD US THAT WITH THE SEVERE INJURIES SHE HAD
17 SHE WOULD HAVE HAD SYMPTOMS IMMEDIATELY.

18 DR. SEIGLER TESTIFIED. I LOOKED UP MY NOTE ON WHAT HE
19 SAID ON CROSS EXAMINATION, YOU RELY ON YOUR MEMORY OF WHAT
20 YOU HEARD, BUT HE SAID THERE WAS NO EVIDENCE OF OLD BLOOD ON
21 THE CAT SCAN. THERE WAS NO OLD INJURY TO RE-BLEED. THERE
22 WAS NO LUCID INTERVAL.

23 THIS CHILD DIDN'T GET INJURED AND THEN HAVE A LUCID
24 INTERVAL AND JUST WALK AROUND AND ACT OKAY BEFORE SHE JUST
25 EVENTUALLY WENT UNCONSCIOUS BECAUSE WITH THE KIND OF ACUTE

1 DAMAGE SHE SUSTAINED THERE WOULD HAVE BEEN NO LUCID
2 INTERVAL. HE SAID SHE WOULD HAVE IMMEDIATELY GONE LIMP AND
3 UNCONSCIOUS. THAT'S WHAT HE SAID.

4 THESE ARE THINGS THAT ARE BROUGHT TO YOU TO TRY TO
5 SUPPORT THE FINAL THING THAT MR. WARDER BROUGHT TO YOU WHICH
6 IS, YOU KNOW, THIS REASONABLE DOUBT. THAT'S -- THAT'S JUST
7 A REASONABLE DOUBT WHEN YOU HEAR THAT. WELL, IS THAT
8 REASONABLE BASED ON THE MEDICAL EVIDENCE AND THE TESTIMONY
9 IN THIS CASE? NO, IT IS NOT REASONABLE.

10 THE DEFENDANT'S STATEMENT AND HIS TESTIMONY ARE VERY
11 TELLING IN THIS CASE. AND YOU CAN READ THIS IN ITS ENTIRETY
12 WHEN YOU GET IN THE JURY ROOM. AND YOU'RE GOING TO READ
13 THAT *child* WAS MESSING WITH HIS STEREO WIRES AND THAT HE
14 PICKED UP HIS BELT FROM THE FLOOR AND POPPED HER ON THE BACK
15 ONCE. AND YOU SAW THE MARKS THAT WERE LEFT ON THIS CHILD'S
16 BACK, THIS SIXTEEN MONTH OLD. SHE DID IT AGAIN. HE PICKED
17 UP HIS BELT FROM THE FLOOR AND POPPED HER ON THE BACK WITH
18 THE BELT. YOU'LL SEE THE MARKS.

19 SO HE SITS DOWN AND STARTS EATING AND THERE'S A BAD
20 SMELL. AND HE CAN TELL THAT *child's* HAD A DIRTY DIAPER,
21 IT'S COMING FROM HER DIAPER. SO HE'S GOT TO GET UP AND
22 CHANGE THAT. HE SAYS HE'S GOING TO GIVE HER A BATH. HE
23 TAKES HER TO GIVE HER A BATH. SHE'S UNCOOPERATIVE. THAT IS
24 JUST IRRITATING.

25 YOU CAN SEE WHEN YOU READ THIS STATEMENT THIS WHOLE

1 SITUATION ESCALATING FURTHER AND FURTHER. AND HE'S THERE
2 WITH THREE SMALL CHILDREN WHO WERE DEMANDING BECAUSE THEY'RE
3 SMALL CHILDREN. THEY HAVE NEEDS ONLY ADULTS CAN MEET.

4 SO SUPPOSEDLY HE TAKES HER AND LAYS HER DOWN, AND SHE
5 GOES TO SLEEP. AND HE THEN DECIDES AT 11:30 AT NIGHT RATHER
6 THAN LETTING A SLEEPING BABY LIE TO GO GIVE HER A BATH. AND
7 THAT IS WHEN SHE SUPPOSEDLY FALLS AND HITS HER HEAD IN THE
8 TUB AND, OH, MY GOSH, HE'S GOT TO DO SOMETHING. SO HE
9 STARTS TO RUN DOWN THE STAIRS, BUT HE TRIPS ON THE
10 COMFORTER, AND THEY FALL DOWN THE STAIRS. AND SHE'S ON LIFE
11 SUPPORT, AND HE DOESN'T HAVE A NICK ON HIM.

12 THIS DOESN'T MAKE SENSE. IT DOESN'T MAKE SENSE TO
13 COMMON SENSE, AND IT DOESN'T MAKE SENSE MEDICALLY. YOU CAN
14 READ IT FOR YOURSELF. AND THE STATE HAS TO PROVE THE
15 ELEMENTS OF THE CRIME, THAT THE DEFENDANT COMMITTED THE
16 OFFENSE OF GREAT BODILY INJURY TO A CHILD. WE DON'T HAVE TO
17 PROVE WHY HE DID IT. THAT'S NOT ANYTHING WE HAVE TO PROVE,
18 MOTIVE.

19 BUT I SUBMIT TO YOU THAT WHY HE DID IT IS CONTAINED
20 RIGHT HERE IN HIS STATEMENT. IT WAS JUST ALL TOO MUCH FOR
21 HIM. THIS IS NOT HIS KID, AND SHE KEEPS MESSING WITH HIS
22 STUFF, AND THEN SHE'S GOT A DIRTY DIAPER, AND THEN SHE WON'T
23 COOPERATE WITH THE BATH. AND IT JUST ESCALATED.

24 AND I DON'T KNOW WHAT HE DID TO HER FIRST. I DON'T
25 KNOW IF HE PUNCHED HER FIRST AND CAUSED HER TO GO

1 UNCONSCIOUS OR BARELY UNCONSCIOUS AND THAT'S WHEN SHE'S
2 LAYING ON THE SOFA KIND OF ACTING LIKE SHE'S ASLEEP AND HE
3 DECIDES TO GO TRY TO REVIVE HER OR WHEN HE SHAKES HER, BUT
4 IT HAPPENED AND IT HAPPENED SOMETIME DURING THIS TIME
5 PERIOD, LADIES AND GENTLEMEN.

6 AND HE FREAKED OUT. THOSE ARE THE WORDS THAT HE USED
7 ON THE STAND YESTERDAY. HE SAID, I FREAKED OUT TRYING TO
8 FIGURE OUT WHAT TO DO. OH YEAH, HE DID FREAK OUT TRYING TO
9 FIGURE OUT WHAT TO DO BECAUSE HE KNEW HE HAD BADLY HURT THIS
10 BABY. HE HAD DONE IT. AND WHAT WAS HE GOING TO DO?

11 WELL, INSTEAD OF JUST TELLING THE TRUTH, GETTING HELP
12 FOR THE CHILD HE MAKES UP THIS STORY. SO THE DOCTORS HAVE
13 TO SORT THROUGH THIS BOGUS STORY IN TRYING TO TREAT THE
14 CHILD INSTEAD OF HAVING AN ACCURATE HISTORY OF WHAT HAPPENED
15 SO THEY COULD MAYBE GIVE HER THE PROPER HELP SHE NEEDED.

16 IN ADDITION, WHEN MR. HUDSON MEETS WITH INVESTIGATOR
17 CAMPBELL TO TALK ABOUT WHAT HAPPENED AND TO GIVE A
18 STATEMENT, YOU KNOW, INVESTIGATOR CAMPBELL TESTIFIED AND HE
19 TOLD YOU THE PROCESS THAT THEY GO THROUGH ABOUT THE READING
20 OF THE RIGHTS FORM, WHICH TELL HIM WHAT ALL HIS RIGHTS ARE
21 AND ASKED HIM IF HE WANTS TO WAIVE HIS RIGHTS AND, OH YES,
22 HE WAS COOPERATIVE. INVESTIGATOR CAMPBELL TESTIFIED HE WAS
23 NOTHING BUT COOPERATIVE.

24 HE ADMITS ON THE STAND SIGNING THIS, BUT THEN WANTS TO
25 SAY, WELL, I DIDN'T PUT MY INITIALS RIGHT THERE, AND I

1 DIDN'T REALLY READ THIS, I JUST SCANNED IT. LADIES AND
2 GENTLEMEN, LET'S BE REAL HERE. THIS IS AN EDUCATED MAN.
3 THEY WANT TO TALK ABOUT HOW HE DOESN'T KNOW WHAT A SEMICOLON
4 IS, BUT YOU HEARD THIS MAN ON THE STAND. AND YOU HEARD WHAT
5 KIND OF GAINFUL EMPLOYMENT HE'S HELD. AND YOU HEARD HIM
6 SPEAK, YOU HEARD HIM ANSWER QUESTIONS FROM HIS ATTORNEY AND
7 FROM ME. THIS IS AN EDUCATED MAN. THIS IS NO DUMMY.

8 BUT HE WANTS YOU TO BELIEVE THAT HE HAS BEEN TAKEN TO
9 THE LAW ENFORCEMENT CENTER AND BEEN TOLD BY INVESTIGATOR
10 CAMPBELL, I'M TALKING TO YOU BECAUSE THIS CHILD, *child*
11 HAS BEEN VERY SEVERELY INJURED, SHE WAS WITH YOU, I NEED TO
12 KNOW WHAT HAPPENED. AND AS A PRECAUTION, ALTHOUGH YOU'RE
13 NOT UNDER ARREST AT THIS TIME, I'M GOING TO READ YOU YOUR
14 RIGHTS. DO YOU JUST SKIM THAT? DO YOU JUST TAKE SOMEBODY'S
15 WORD FOR IT AND JUST SIGN IT? NO. NO.

16 SO THEN WE COME TO THE STATEMENT, WHICH NOW HE WANTS TO
17 SAY INVESTIGATOR CAMPBELL HAS LIED UNDER OATH AND TOLD YOU
18 THAT MARQUES HUDSON TYPED IT AND MARQUES HUDSON SAYS, NO,
19 NO, NO, IT DIDN'T HAPPEN THAT WAY. WELL, WHAT IS -- WHAT IS
20 HE SO AFRAID OF ABOUT THIS STATEMENT? IN THIS STATEMENT HE
21 ADMITS POPPING *child* ON THE BACK SEVERAL TIMES, WHICH HE
22 ADMITTED ON THE STAND, OKAY. SO THAT'S TRUE. HE TELLS
23 ABOUT THE FALL IN THE BATHTUB AND THE FALL DOWN THE STAIRS,
24 WHICH HE ADMITTED ON THE STAND IS TRUE. SO WHAT'S -- WHAT'S
25 THE POINT?

1 WELL, THE POINT IS NOW HE AND HIS WIFE, WHO HE ADMITTED
2 IS NOT HIS WIFE, REALLY, HAVE DECIDED THAT THERE IS THIS
3 FRIEND NAMED GRETTE WHO TOOK *child* OVER TO SPEND THE
4 NIGHT AT HER HOUSE ON SATURDAY NIGHT. SO ALL OF THESE
5 TERRIBLE THINGS MUST HAVE HAPPENED THERE.

6 WELL, YOU KNOW, IT IS AN INTERESTING FACT THAT LYCRETTA
7 SAT RIGHT HERE AND ADMITTED THAT SHE DIDN'T BOTHER TO
8 INCLUDE THAT IN HER STATEMENT. WHEN SHE HAD AN OPPORTUNITY
9 TO TELL EVERYTHING PERTINENT ABOUT HER NIECE, WHO HAD BEEN
10 SEVERELY INJURED, SHE DIDN'T INCLUDE ANYTHING ABOUT ANYBODY
11 TAKING *child* TO THEIR HOUSE NOR DID MARQUES HUDSON
12 INCLUDE IT IN HIS STATEMENT. THIS IS AN AFTER-EFFECT. THIS
13 IS AN AFTER-EFFECT BECAUSE YOU CANNOT GET AROUND THE
14 SCIENTIFIC MEDICAL FACTS IN THIS CASE AND THAT IS THAT SHE
15 WAS INJURED WHILE SHE WAS WITH MARQUES HUDSON.

16 YOU HAD A CHANCE TO OBSERVE HIM. YOU HAD A CHANCE TO
17 OBSERVE HIS DEMEANOR, HIS EMOTIONAL AFFECT, HIS
18 INTELLIGENCE. THOSE ARE ALL THINGS FOR YOU TO ASSESS AS YOU
19 ASSESS THE EVIDENCE AND THE TESTIMONY IN THIS CASE, WHEN YOU
20 PUT IT ALL TOGETHER IN AN EFFORT TO REACH THE TRUTH OF WHAT
21 HAPPENED HERE.

22 YOU KNOW, I STARTED OFF WITH TALKING TO MR. HUDSON
23 YESTERDAY ABOUT THIS THING WHEN THEY -- I NOTICED THEY WERE
24 CALLING, HE AND LYCRETTA SMITH WERE CALLING EACH OTHER
25 HUSBAND AND WIFE. AND I WAS UNAWARE THAT THEY WERE MARRIED.

1 AND SO I ASKED HIM, LET'S JUST GET THIS STRAIGHT. YOU KNOW,
2 I DIDN'T KNOW THAT YOU AND LYCRETTA WERE MARRIED. WHEN DID
3 Y'ALL GET MARRIED? WELL, WE'RE NOT REALLY MARRIED. WE
4 APPLIED FOR A MARRIAGE LICENSE, BUT WE'RE NOT REALLY
5 MARRIED.

6 SO WHAT WAS THE PURPOSE OF ALL THAT? DID HE THINK IT
7 WOULD JUST SOUND BETTER TO YOU IF THEY CALLED THEMSELVES
8 HUSBAND AND WIFE? WHAT WAS, I MEAN, IT WAS JUST A LITTLE --
9 LITTLE HALF-TRUTH, WOULDN'T MATTER. IT WOULD BE OKAY. AND
10 I SAID, WELL, WHAT -- WHY HAVEN'T YOU GOTTEN MARRIED? WE'RE
11 WAITING TO SEE HOW THIS TURNS OUT, MEANING WAITING TO SEE
12 HOW THIS TRIAL TURNS OUT.

13 WELL, GUESS WHAT? *child* DIDN'T GET TO WAIT TO
14 SEE HOW ANYTHING TURNED OUT. IT WAS OVER FOR HER THAT
15 NIGHT. AND SHE WILL BE THIS WAY FOR THE REST OF HER LIFE
16 DUE TO HIS ACTIONS BARRING SOME MEDICAL MIRACLE THAT WE
17 DON'T KNOW ABOUT NOW THAT MAY HAPPEN IN THE FUTURE THAT MAY
18 BE ABLE TO HELP THIS CHILD.

19 BUT HE IS TOO MUCH OF A COWARD TO EVEN LOOK AT THE
20 PICTURE OF THE MARKS HE LEFT ON HER. HE CANNOT EVEN LOOK AT
21 THOSE PICTURES. I ASKED HIM TO SHOW ME THE MARKS HE LEFT
22 WITH THOSE POPS HE WAS TALKING ABOUT HE GAVE HER ON HER BACK
23 WITH THE BELT. HE WOULDN'T LOOK AT THEM. HE CAN'T BRING
24 HIMSELF TO LOOK AT THEM. HE CAN'T BRING HIMSELF TO ADMIT IT
25 TO HIMSELF, MUCH LESS TO YOU. HE'S NOT GOING TO DO IT.

1 JUST A COWARD. A SIX FOOT ONE INCH MAN, TWO HUNDRED AND
2 FORTY-SIX POUNDS DOING THIS TO A SIXTEEN MONTH OLD, TWENTY-
3 FIVE POUND BABY.

4 HE POINTED OUT HOW LARGE HIS HANDS WERE, HOW MUCH
5 STRENGTH HE HAD AND THAT HE KNEW THAT BECAUSE HE HAD OVER-
6 DISCIPLINED HIS OWN CHILD ONE TIME. DEMONSTRATED WHEN I --
7 WHEN ASKED TO DEMONSTRATE HOW HE POPPED THE CHILD, (TAPPED
8 TWO FINGERS ON THE TABLE).

9 I JUST WANT YOU ALL TO CONSIDER IN YOUR DELIBERATIONS
10 HOW MUCH MEANNESS DOES IT TAKE FOR A MAN HIS SIZE AND HIS
11 STATURE TO POMMEL A SIXTEEN MONTH OLD BABY? HOW MUCH
12 MEANNESS IS THAT?

13 AND THEN LOOK AT WHAT HE'S DONE TO HER. YOU'VE HEARD
14 THE TESTIMONY. SHE WAS A NORMAL CHILD. SHE NOW HAS
15 DIFFICULTY WALKING WITH A BRACE. SHE CAN SAY ABOUT THREE OR
16 FOUR WORDS, NO, MAMA. GOES TO A SPECIAL SCHOOL WHERE SHE
17 HAS TO WEAR A HELMET TO EVEN BE ALLOWED TO PLAY IN CASE SHE
18 INJURES HERSELF. SEIZURES, MEDICATIONS THREE TIMES A DAY
19 FOR THE REST OF HER LIFE. HER VISION IS PERMANENTLY
20 DAMAGED. YOU HEARD DR. JOHNSON TALK ABOUT REALLY NO
21 CORRECTION FOR IT.

22 SHE'S SO DEVASTATED THAT SHE COULDN'T REMAIN IN THIS
23 COURTROOM FOR YOU ALL TO SEE HER. SHE HAD TO LEAVE. HE
24 GETS TO STAY. YOU GET TO LOOK AT HIM THIS WHOLE TIME. YOU
25 GET TO HEAR HIM SPEAK TO YOU. AND SHE COULDN'T DO THAT. SO

CHARGE OF THE JURY

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1 YOU HAD TO HEAR FROM THE PEOPLE WHO COULD SPEAK FOR HER. I
2 AM ASKING YOU TO HOLD HIM RESPONSIBLE FOR THAT.

3 **THE COURT:** NOW NO ONE IS ALLOWED IN OUR OUT OF THE
4 COURTROOM DURING MY CHARGE. SO IF ANYONE NEEDS TO LEAVE,
5 NOW IS THE TIME TO DO IT.

6 LADIES AND GENTLEMEN, THE DEFENDANT IN THIS CASE IS
7 CHARGED WITH GREAT BODILY INJURY TO A CHILD. THIS IS A
8 STATUTORY OFFENSE. AND SECTION 16-3-95 OF OUR CODE OF LAWS
9 PROVIDES IN PART AS FOLLOWS; IT IS UNLAWFUL TO INFLICT
10 GREAT BODILY INJURY UPON A CHILD. A PERSON WHO VIOLATES
11 THIS SECTION IS GUILTY OF A FELONY AND MUST BE PUNISHED.
12 THIS SECTION MAY NOT BE CONSTRUED TO PROHIBIT CORPORAL
13 PUNISHMENT OR PHYSICAL DISCIPLINE WHICH IS ADMINISTERED BY A
14 PERSON OR A PERSON *IN LOCO PARENTIS* IN A MANNER WHICH DOES
15 NOT CAUSE GREAT BODILY INJURY UPON A CHILD.

16 LADIES AND GENTLEMEN, GREAT BODILY INJURY MEANS BODILY
17 INJURY WHICH CREATES A SUBSTANTIAL RISK OF DEATH OR WHICH
18 CAUSES SERIOUS OR PERMANENT DISFIGUREMENT OR POTENTIAL LOSS
19 OR IMPAIRMENT OF THE FUNCTION OF ANY BODILY MEMBER OR ORGAN.

20 SO, LADIES AND GENTLEMEN, THE ELEMENTS OF THIS OFFENSE
21 WHICH THE STATE MUST PROVE BEYOND A REASONABLE DOUBT ARE
22 FIRST OF ALL AN INJURY INFLICTED UPON A CHILD. AND SECONDLY
23 THAT THE INJURY SUSTAINED CONSTITUTED GREAT BODILY INJURY AS
24 I HAVE DEFINED THAT TERM TO YOU. THAT IS THAT IT CREATED A
25 SUBSTANTIAL RISK OF DEATH OR CAUSED SERIOUS OR PERMANENT

1 DISFIGUREMENT OR POTENTIAL LOSS OR IMPAIRMENT OF THE
2 FUNCTION OF ANY BODILY MEMBER OR ORGAN.

3 NOW, LADIES AND GENTLEMEN, AS JURORS IN THIS CASE YOU
4 HAVE A FUNCTION OR A RESPONSIBILITY THAT IS ENTIRELY
5 SEPARATE AND DISTINCT FROM MY FUNCTION AS THE TRIAL JUDGE.
6 THE CONSTITUTION OF OUR STATE DOES NOT ALLOW ME TO CHARGE
7 YOU ON THE FACTS OF THIS CASE OR TO DISCUSS THE FACTS WITH
8 YOU OR IN ANY WAY OR MANNER LET YOU KNOW WHAT MY PERSONAL
9 FEELINGS, IF ANY, ARE ABOUT THIS CASE. THAT'S BECAUSE YOU
10 AND YOU ALONE ARE THE JUDGES OF THE FACTS.

11 THEREFORE, IF DURING THE COURSE OF THIS TRIAL OR IF
12 DURING THE COURSE OF MY CHARGE YOU HAVE A FEELING OR YOU
13 HAVE BEEN LEFT WITH THE IMPRESSION THAT I HAVE A PERSONAL
14 FEELING ABOUT THIS CASE ONE WAY OR ANOTHER, THEN YOU
15 DISREGARD THAT FEELING OR THAT IMPRESSION.

16 NOW IT'S YOUR DUTY AND YOUR DUTY ALONE TO WEIGH THE
17 TESTIMONY AND EVIDENCE PRESENTED IN THIS CASE AND TO PASS
18 UPON THE CREDIBILITY OR THE BELIEVABILITY OF THE WITNESSES
19 YOU HEARD TESTIFY. IN THIS CONNECTION YOU HAVE A RIGHT TO
20 BELIEVE ALL THAT A WITNESS TOLD YOU OR YOU CAN DISBELIEVE
21 ALL THAT A WITNESS TOLD YOU.

22 YOU CAN BELIEVE A PART OF WHAT A WITNESS TOLD YOU AND
23 DISBELIEVE A PART OF WHAT A WITNESS TOLD YOU. YOU CAN
24 BELIEVE ONE WITNESS AS AGAINST SEVERAL OR YOU CAN BELIEVE
25 SEVERAL AS AGAINST ONE. YOU ALSO HAVE THE RIGHT TO TAKE

1 INTO CONSIDERATION ANY BIAS OR PREJUDICE OR INTEREST YOU
2 FEEL A WITNESS IN THE CASE MIGHT HAVE.

3 LADIES AND GENTLEMEN, WITH RESPECT TO WITNESSES, OUR
4 RULES OF EVIDENCE ORDINARILY DO NOT PERMIT THEM TO TESTIFY
5 AS TO OPINIONS OR TO CONCLUSIONS. HOWEVER, AN EXCEPTION TO
6 THIS RULE EXISTS AS TO THOSE WHOM WE CALL EXPERT WITNESSES.
7 WITNESSES WHO BY EDUCATION AND/OR EXPERIENCE HAVE BECOME
8 EXPERT IN SOME ART, SCIENCE, PROFESSION OR CALLING MAY STATE
9 AN OPINION AS TO RELEVANT AND MATERIAL MATTER IN WHICH THEY
10 PROFESS TO BE EXPERT AND MAY ALSO STATE THEIR REASONS FOR
11 THEIR OPINIONS.

12 NOW YOU SHOULD CONSIDER ALL EXPERT OPINIONS RECEIVED IN
13 EVIDENCE IN THIS CASE AND GIVE THEM SUCH WEIGHT AS YOU THINK
14 THEY DESERVE. IF YOU SHOULD DECIDE THAT THE OPINION OF AN
15 EXPERT WITNESS IS NOT BASED UPON SUFFICIENT EDUCATION AND/OR
16 EXPERIENCE OR IF YOU SHOULD CONCLUDE THAT THE REASONS GIVEN
17 IN SUPPORT OF THAT OPINION ARE NOT SOUND OR THAT THE OPINION
18 IS OUTWEIGHED BY OTHER EVIDENCE, THEN YOU MAY DISREGARD THE
19 OPINION IN ITS ENTIRETY. AN EXPERT'S TESTIMONY IS TO BE
20 GIVEN NO GREATER WEIGHT THAN THAT OF OTHER WITNESSES SIMPLY
21 BECAUSE THAT PERSON HAS BEEN DECLARED TO BE AN EXPERT.

22 NOW, LADIES AND GENTLEMEN, I AM THE JUDGE OF THE LAW IN
23 THIS CASE. AND IT IS MY DUTY TO CHARGE YOU THE LAW THAT
24 APPLIES TO THE FACTS. IT IS NOT A QUESTION OF WHAT YOU FEEL
25 THE LAW MIGHT BE OR WHAT IT SHOULD BE. IT IS NOT

1 NECESSARILY WHAT THE LAWYERS MAY HAVE TOLD YOU IT IS BECAUSE
2 UNDER YOUR OATH YOU ARE REQUIRED TO TAKE THE LAW AS I GIVE
3 IT TO YOU, APPLY THAT LAW TO THE FACTS AS YOU DETERMINE
4 THOSE FACTS TO BE AND TO WRITE YOUR VERDICT ACCORDINGLY.

5 IT IS ALSO MY DUTY TO SEE THAT THIS TRIAL IS CONDUCTED
6 ACCORDING TO THE RULES OF COURT AND THE RULES OF EVIDENCE
7 THAT APPLY TO THE ADMISSIBILITY OF TESTIMONY AND THE
8 EVIDENCE AS I UNDERSTAND THOSE RULES TO BE AND, THEREFORE,
9 YOU ARE NOT TO CONSIDER IN ANY WAY OR MANNER TESTIMONY OR
10 EVIDENCE THAT WAS RULED OUT BY ME AS BEING NOT ADMISSIBLE.

11 IN THIS CASE AS IN ALL CRIMINAL CASES THIS DEFENDANT
12 COMES INTO THIS COURTROOM PRESUMED TO BE INNOCENT. AND THIS
13 PRESUMPTION CONTINUES AND CARRIES THROUGH THE ENTIRE TRIAL
14 UNTIL AND UNLESS IT IS REMOVED BY EVIDENCE THAT SATISFIES
15 YOU OF HIS GUILT BEYOND A REASONABLE DOUBT. THE BURDEN IS
16 ON THE STATE IN THIS CASE TO PROVE THIS DEFENDANT GUILTY AND
17 TO PROVE EACH AND EVERY ELEMENT OF THE OFFENSE WITH WHICH HE
18 IS CHARGED BEYOND A REASONABLE DOUBT.

19 NOW, LADIES AND GENTLEMEN, SOME OF YOU MAY HAVE IN THE
20 PAST SERVED AS JURORS ON CIVIL CASES. AND IF SO YOU WERE
21 MOST LIKELY TOLD THAT IT WAS ONLY NECESSARY TO PROVE THAT A
22 FACT WAS MORE LIKELY TRUE THAN NOT TRUE, BUT IN CRIMINAL
23 CASES THE STATE'S PROOF MUST BE MORE POWERFUL. AS I'VE TOLD
24 YOU, IT MUST BE BEYOND A REASONABLE DOUBT.

25 NOW PROOF BEYOND A REASONABLE DOUBT IS PROOF THAT

1 LEAVES YOU FIRMLY CONVINCED OF THIS DEFENDANT'S GUILT.
2 THERE ARE VERY FEW THINGS IN THIS WORLD THAT WE KNOW WITH
3 ABSOLUTE CERTAINTY. AND IN CRIMINAL CASES OUR LAW DOES NOT
4 REQUIRE PROOF THAT OVERCOMES EVERY POSSIBLE DOUBT.

5 IF, BASED ON YOUR CONSIDERATION OF THE TESTIMONY IN
6 THIS -- EVIDENCE IN THIS CASE, YOU ARE FIRMLY CONVINCED THAT
7 THIS DEFENDANT IS GUILTY, THEN YOU MUST FIND HIM GUILTY.
8 IF, ON THE OTHER HAND, YOU THINK THERE IS A REAL POSSIBILITY
9 THAT HE IS NOT GUILTY, THEN YOU MUST RESOLVE THAT DOUBT IN
10 HIS FAVOR AND FIND HIM NOT GUILTY.

11 LADIES AND GENTLEMEN, IN THE TRIAL OF A CASE THE STATE
12 CAN RELY ON DIRECT EVIDENCE, ON CIRCUMSTANTIAL EVIDENCE OR
13 ON A COMBINATION OF THE TWO. NOW DIRECT EVIDENCE PROVES THE
14 EXISTENCE OF A DISPUTED FACT BY USING ONE OR MORE OF OUR
15 FIVE SENSES WITHOUT THE AID OF ANY INFERENCES. FOR EXAMPLE,
16 THE TESTIMONY OF A PERSON WHO ASSERTS OR CLAIMS TO HAVE
17 ACTUAL KNOWLEDGE OF A FACT, IN OTHER WORDS, AN EYE-WITNESS,
18 THAT IS DIRECT EVIDENCE.

19 CIRCUMSTANTIAL EVIDENCE, ON THE OTHER HAND, IS WHERE
20 CERTAIN FACTS KNOWN THROUGH USING ONE OF OUR FIVE SENSES
21 PRODUCES A LOGICAL INFERENCE THAT OTHER FACTS EXISTS WITHOUT
22 DIRECTLY PROVING THOSE FACTS. CIRCUMSTANTIAL EVIDENCE IS
23 PROOF OF A CHAIN OF FACTS AND CIRCUMSTANCES INDICATING THE
24 EXISTENCE OF A FACT.

25 NOW, AS I'VE SAID, THE STATE MAY RELY ON EITHER OR BOTH

1 OF THIS TYPE EVIDENCE, DIRECT OR CIRCUMSTANTIAL, BUT NEITHER
2 IS INFERIOR TO THE OTHER. THE ONE IS AS GOOD AS THE OTHER
3 IF EQUALLY CONVINCING TO YOU, THE JURY. THEY'RE EACH
4 ENTITLED TO THE SAME WEIGHT.

5 NOW YOU SHOULD WEIGH ALL OF THE EVIDENCE IN THIS CASE.
6 AND AFTER DOING SO IF YOU'RE NOT CONVINCED OF THIS
7 DEFENDANT'S GUILT BEYOND A REASONABLE DOUBT, THEN YOU MUST
8 RESOLVE THAT IN HIS FAVOR AND FIND HIM NOT GUILTY.

9 LADIES AND GENTLEMEN, NO STATEMENT MADE BY A DEFENDANT
10 MAY BE CONSIDERED UNLESS YOU FIND BEYOND A REASONABLE DOUBT
11 THAT THE STATEMENT UNDER THE TOTALITY OF THE CIRCUMSTANCES
12 WAS FREELY AND VOLUNTARILY GIVEN AND IF GIVEN WHILE THE
13 DEFENDANT WAS IN CUSTODY, THAT IT WAS GIVEN AFTER AN
14 EXPLANATION OF HIS MIRANDA RIGHTS, WHICH MUST HAVE BEEN
15 UNDERSTOOD BY HIM.

16 IN OTHER WORDS, I CHARGE YOU THAT A STATEMENT OF A
17 DEFENDANT CANNOT BE CONSIDERED AGAINST HIM UNLESS HE WAS
18 FIRST ADVISED OF HIS RIGHT TO REMAIN SILENT, OF HIS RIGHT TO
19 COUNSEL, AND OF THE FACT THAT ANY STATEMENT MADE BY HIM
20 COULD BE USED AGAINST HIM, ALL OF WHICH MUST HAVE BEEN
21 UNDERSTOOD BY HIM.

22 A STATEMENT CANNOT BE CONSIDERED AGAINST A DEFENDANT IF
23 IT WAS MADE THROUGH FORCE, OR FEAR, OR UNDER DURESS OR
24 COMPULSION OF ANY KIND OR IF IT WAS INDUCED BY ANY PROMISE
25 OF LENIENCY OR A REWARD OF ANY KIND.

CHARGE OF THE JURY

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1 NOW THE STATEMENT ADMITTED IN EVIDENCE IN THIS CASE
2 MUST BE DISREGARDED BY YOU AND NOT CONSIDERED AGAINST THIS
3 DEFENDANT UNLESS THE STATE HAS SATISFIED YOU BEYOND A
4 REASONABLE DOUBT THAT IT WAS ACTUALLY MADE AND SIGNED BY
5 HIM.

6 AND EVEN IF YOU FIND THAT IT WAS MADE AND SIGNED BY
7 HIM, IT STILL MUST BE DISREGARDED BY YOU AND NOT CONSIDERED
8 AGAINST HIM UNLESS THE STATE HAS ALSO SATISFIED YOU THAT IT
9 WAS NOT EXTORTED BY FORCE, OR FEAR OR INDUCED BY PROMISE,
10 BUT THAT IT WAS FREE AND VOLUNTARY IN EVERY RESPECT. AND,
11 OF COURSE, IN ORDER TO CONSTITUTE ANY EVIDENCE THE STATEMENT
12 MUST BE BELIEVED BY YOU, THE JURY.

13 LADIES AND GENTLEMEN, UNDER THE OATH YOU TOOK IN THIS
14 CASE YOU SWORE TO TRY THIS CASE BASED ONLY AND SOLELY ON THE
15 TESTIMONY AND EVIDENCE PRESENTED IN THIS COURTROOM. I TELL
16 YOU THAT IT IS YOUR DUTY TO LAY ASIDE ALL OUTSIDE OPINIONS,
17 BIAS, PREJUDICE OR SYMPATHY YOU MAY HAVE IN REACHING YOUR
18 VERDICT. THE WORD VERDICT, LADIES AND GENTLEMEN, IS TAKEN
19 FROM THE LATIN WORD, *VEREDICTO*. IT MEANS TO SPEAK THE
20 TRUTH.

21 YOU HAVE NO FRIENDS TO REWARD OR ENEMIES TO PUNISH IN
22 THIS CASE. I CHARGE YOU TO ABIDE BY YOUR OATH AND RETURN A
23 VERDICT THAT SPEAKS THE TRUTH.

24 NOW, YOU'LL HAVE IN THE JURY ROOM WITH YOU THE
25 INDICTMENT IN THIS CASE. THIS INDICTMENT DOES NOT

1 CONSTITUTE EVIDENCE. IT SIMPLY SETS FORTH THE ALLEGATIONS
2 BY THE STATE. THIS INDICTMENT IS THE LEGAL DOCUMENT THAT
3 BRINGS THIS CASE INTO COURT AND PRESENTS IT TO YOU FOR YOUR
4 DETERMINATION.

5 LADIES AND GENTLEMEN, THERE ARE ONE OF TWO POSSIBLE
6 VERDICTS IN THIS CASE, GUILTY OR NOT GUILTY. AND WHATEVER
7 THAT VERDICT IS, IT MUST BE UNANIMOUS. THAT IS, ALL TWELVE
8 OF YOU MUST AGREE.

9 MADAME FOREMAN, WHATEVER THE UNANIMOUS VERDICT OF THE
10 JURY IS, GUILTY OR NOT GUILTY, YOU'LL FIND A PLACE ON THE
11 BACK OF THE INDICTMENT WHERE IT SAYS VERDICT. PLEASE WRITE
12 OUT THAT VERDICT IN THE SPACE PROVIDED. AND THEN SIGN YOUR
13 NAME ON THE LINE WHERE IT SAYS FOREPERSON OF THE PETIT JURY.

14 LADIES AND GENTLEMEN, AT THIS TIME I'M REQUIRED TO
15 SUSPEND AND GO OVER MY CHARGE WITH THE LAWYERS. I NEED YOU
16 TO GO INTO YOUR JURY ROOM, BUT DON'T BEGIN DELIBERATING
17 UNTIL I SEND WORD IN FOR YOU TO DO SO. THANK YOU.

18 (WHEREUPON THE JURY EXITED THE COURTROOM AT 10:14 AM)

19 **THE COURT:** ANYTHING FURTHER FROM THE STATE?

20 **MS. SEAY:** NOTHING FURTHER FROM THE STATE.

21 **THE COURT:** ANYTHING FURTHER FROM THE DEFENSE?

22 **MR. WARDER:** YOUR HONOR, I HAD PREVIOUSLY MADE A MOTION
23 TO CHARGE ASSAULT AND BATTERY OF A HIGH AND AGGRAVATED
24 NATURE. I UNDERSTAND THAT'S BEEN RULED ON. I WANT TO
25 PRESERVE MY RECORD. AND SO I WOULD RENEW THAT MOTION AND

VERDICT OF THE JURY

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1 MAKE IT, YOUR HONOR.

2 THE COURT: AND YOU'RE PRESERVED.

3 MR. WARDER: THANK YOU.

4 THE COURT: THANK YOU. ALL RIGHT. WHAT EXHIBITS DO WE
5 HAVE?

6 (WHEREUPON THE EXHIBITS IN EVIDENCE WERE GATHERED)

7 THE COURT: OKAY. ALL RIGHT. WOULD YOU TELL THEM TO
8 BEGIN DELIBERATING?

9 THE BAILIFF: YES, SIR.

10 THE COURT: AND BRING MY ALTERNATE IN, WHO IS MS.
11 COGGINS. OKAY. ALL RIGHT, THANK YOU. FOLKS, IF YOU'LL BE
12 AT EASE.

13 (WHEREUPON THE JURY BEGAN DELIBERATING AT 10:16 AM)

14 (WHEREUPON THE ALTERNATE ENTERED THE COURTROOM)

15 THE COURT: SINCE OUR TWELVE JURORS HAVE MADE IT
16 THROUGH THIS CASE, THIS WILL CONCLUDE YOUR SERVICE ON THIS
17 CASE. AND WHAT I NEED FOR YOU TO DO, WE CAN GIVE YOU THE
18 REST OF TODAY OFF, BUT WE NEED YOU BACK PROBABLY SOMETIME
19 TOMORROW. SO JUST CALL IN THE NUMBER THAT WAS GIVEN TO YOU
20 ON MONDAY. CALL IN AFTER SIX PM TODAY.

21 MS. COGGINS: OKAY. THANK YOU.

22 THE COURT: THANK YOU VERY MUCH. APPRECIATE IT.

23 (WHEREUPON COURT WAS IN RECESS AT 10:18 AM)

24 THE COURT: ALL RIGHT. BRING THE JURY.

25 (WHEREUPON THE JURY ENTERED THE COURTROOM AT 12:03 PM)

1 **THE COURT:** MADAME FOREMAN, IF YOU'VE REACHED A VERDICT
2 WILL YOU HAND IT TO THE BAILIFF, PLEASE, MA'AM.

3 **MADAME FOREMAN:** YES, YOUR HONOR, WE'VE REACHED A
4 VERDICT.

5 **THE COURT:** OKAY. WOULD YOU PLEASE PUBLISH THE
6 VERDICT?

7 **MADAME CLERK:** YOUR HONOR, INDICTMENT NUMBER 2004-GS-
8 23-8143, STATE VERSUS MARQUES A. HUDSON, INDICTED FOR CHILD
9 ABUSE WITH GREAT BODILY INJURY. WE, THE JURY, FIND THE
10 DEFENDANT GUILTY AS CHARGED, SIGNED, JILL R. COKER, OCTOBER
11 10TH, 2007. IF YOU ALL AGREE WITH THIS VERDICT PLEASE
12 SIGNIFY BY RAISING YOUR RIGHT HAND.

13 (WHEREUPON ALL JURORS RAISED THEIR RIGHT HAND)

14 **THE COURT:** ANYTHING FURTHER FROM THE STATE?

15 **MS. SEAY:** NO, SIR.

16 **THE COURT:** FROM THE DEFENSE?

17 **MR. WARDER:** NO, YOUR HONOR.

18 **THE COURT:** THANK YOU, LADIES AND GENTLEMEN, FOR YOUR
19 SERVICE ON THIS CASE. AND INSOFAR AS YOU'RE CONCERNED,
20 THANK YOU FOR YOUR SERVICE THIS WEEK. WE HAVE A PANEL
21 COMING BACK TOMORROW FOR ANOTHER CASE, BUT WE CAN LET YOU
22 HAVE THE REST OF THE WEEK OFF.

23 I HOPE YOU'VE ENJOYED YOUR SERVICE THIS WEEK. JURY
24 SERVICE IS A VERY IMPORTANT SERVICE. I HOPE YOU UNDERSTAND
25 THAT. I'VE ENJOYED WORKING WITH YOU. AT THIS TIME I'LL

1 NEED FOR YOU TO REPORT BACK TO THE JURY ASSEMBLY ROOM. AND
2 I THINK JUDY WILL HAVE A VOUCHER TO GIVE TO YOU FOR YOUR
3 SERVICE THIS WEEK. THANK YOU SO MUCH. YOU'RE FREE TO GO.

4 (WHEREUPON THE JURY EXITED THE COURTROOM AT 12:04 PM)

5 **THE COURT:** ANY MOTIONS, MR. WARDER?

6 **MR. WARDER:** YOUR HONOR, I'D MOVE FOR A NEW TRIAL BASED
7 UPON YOUR HONOR'S FAILURE TO CHARGE ABHAN.

8 **THE COURT:** AND YOUR MOTION'S DENIED. ANY PRIOR
9 RECORD, SOLICITOR?

10 **MS. SEAY:** BRIEFLY, YOUR HONOR. 1998, SIMPLE ASSAULT
11 AND BATTERY, 1999, FRAUDULENT CHECK, AND IN 2006, HABITUAL
12 TRAFFIC OFFENDER, TWO COUNTS.

13 **THE COURT:** MR. WARDER, ANYTHING FURTHER?

14 **MR. WARDER:** YOUR HONOR, YOU'VE LISTENED TO THE
15 TESTIMONY IN THE CASE. THE JURY'S RETURNED ITS VERDICT.
16 WHAT MY CLIENT HAS BEEN CONVICTED OF IS OUT OF CHARACTER FOR
17 HIM. HE'S A FATHER OF THREE CHILDREN. HE'S A GOOD FATHER,
18 DEVOTED. I DON'T KNOW, I GUESS WHEN YOU TRY TO EXPLAIN THE
19 UNEXPLAINABLE, IT'S HARD. THE SOLICITOR IN HER CLOSING
20 ARGUMENT SAID THAT IT WAS THE STRESS OF THE DAY AND THE
21 STRESS OF THE PROBLEM OVERCAME HIM. I DON'T KNOW WHAT A
22 SUITABLE EXPLANATION IS. I KNOW IT'S A TRAGIC EVENT, TRAGIC
23 FOR THE CHILD, TRAGIC FOR MY CLIENT AND HIS FAMILY. YOUR
24 HONOR, I ASK YOU TO BE AS LENIENT AS YOU CAN UNDER THAT SET
25 OF FACTS.

1 **THE COURT:** MR. HUDSON, ANYTHING YOU'D LIKE TO SAY,
2 SIR?

3 **MR. HUDSON:** YOUR HONOR, THIS IS NOT A CRIME THAT I
4 COMMITTED. IT'S NOT THE TIME THAT I'M WORRIED ABOUT, IT'S
5 THE LABEL. IT'S THE ONLY REASON THAT I BROUGHT THIS TO
6 TRIAL. THAT'S WHY I DIDN'T TAKE ANYTHING. IT'S THE LABEL.
7 I DIDN'T DO THIS. I AM NOT A MAN OF THAT CHARACTER. I
8 SWEAR, I WOULD NEVER HARM A CHILD.

9 **THE COURT:** ANYTHING FURTHER ---

10 **MR. HUDSON:** I'M ---

11 **THE COURT:** --- FROM THE STATE?

12 **MR. HUDSON:** --- TRULY -- I'M SORRY FOR HOW SHE IS NOW.
13 I REALLY AM. I WISHED I COULD HAVE DONE MORE. I WISHED
14 THERE WAS SOMETHING ELSE I COULD DO. I WOULD TRADE MY PLACE
15 IN A HEARTBEAT. I REALLY WOULD. CARRIE, YOU KNOW ME. YOU
16 KNOW MY HEART. YOU DO KNOW MY HEART.

17 **THE COURT:** ANYTHING FURTHER FROM THE STATE?

18 **MS. SEAY:** SIMPLY, YOUR HONOR, THAT IN LIGHT OF THE
19 LIFE-LONG DEBILITATING INJURIES THAT THE VICTIM MUST ENDURE
20 THAT A MAXIMUM SENTENCE WOULD CERTAINLY NOT BE INAPPROPRIATE
21 UNDER THE CIRCUMSTANCES.

22 **THE COURT:** ALL RIGHT. MR. HUDSON, THE SENTENCE OF THE
23 COURT IS YOU BE COMMITTED TO THE DEPARTMENT OF CORRECTIONS
24 FOR A PERIOD OF FIFTEEN YEARS.

25 **MS. SEAY:** THANK YOU, YOUR HONOR.

1

(HEARING ENDED AT 12:09 PM)

2

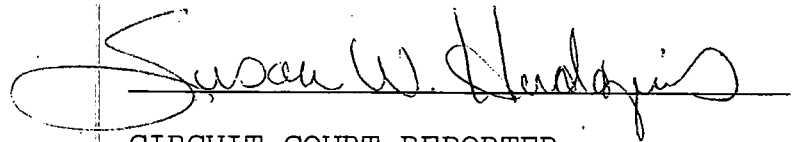
(END OF REQUESTED TRANSCRIPT OF RECORD)

1 CERTIFICATE OF REPORTER

2 I, THE UNDERSIGNED, SUSAN W. HUDGINS, OFFICIAL COURT
3 REPORTER FOR THE THIRTEENTH JUDICIAL CIRCUIT OF THE STATE OF
4 SOUTH CAROLINA, DO HEREBY CERTIFY THAT THE FOREGOING IS A
5 TRUE, ACCURATE, AND COMPLETE TRANSCRIPT OF RECORD OF ALL THE
6 PROCEEDINGS HAD AND EVIDENCE INTRODUCED IN THE TRIAL/HEARING
7 OF THE CAPTIONED CASE, RELATIVE TO APPEAL, IN THE CIRCUIT
8 COURT FOR GREENVILLE COUNTY, SOUTH CAROLINA, ON THE 8TH -
9 10TH DAY OF OCTOBER 2007.

10 I DO FURTHER CERTIFY THAT I AM NEITHER OF KIN, COUNSEL,
11 NOR INTEREST TO ANY PARTY HERETO.

12 FEBRUARY 12, 2008

13
14 
15

CIRCUIT COURT REPORTER

WITNESSES

W. T. CAMPBELL

Smith

GCSO

10/15/03

5
B

ARREST WARRANT NUMBER

H-360910

ACTION OF GRAND JURY

TRUE BILL

Judge H. McBrath

FOREMAN GRAND JURY

Foreperson of Grand Jury

VERDICT

*We the jury find the
defendant guilty as charged.*

Jim R. Coker *October 10, 2007*
Foreperson of Petit Jury Date:

DOCKET NO. 2004-GS-23-
DRW 008143

The State of South Carolina

County of Greenville

COURT OF GENERAL SESSIONS

NOVEMBER TERM 2004

GUILTY THE STATE
vs.

MARQUES A. HUDSON

Indictment for

CHILD ABUSE WITH GREAT BODILY INJURY

VIOLATION § 16-3-95

94

Certified Copy
B. Wickens
Clerk of Court C.P. & G.S.
Greenville County, SC
Dated *4-4-08*

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STATE OF SOUTH CAROLINA)
)
COUNTY OF GREENVILLE)

INDICTMENT FOR
CHILD ABUSE WITH GREAT BODILY INJURY

At a Court of General Sessions, convened on NOVEMBER 16, 2004 the

Grand Jurors of Greenville County present upon their oath:

That MARQUES A. HUDSON did in Greenville County, on or about the 12th day of October, 2003,
inflict great bodily injury upon a child, to wit This is in violation of §16-3-95 of South Carolina
Code of Laws (2000) as amended.

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

David Ruben
SOLICITOR

Voir Dire

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Case No.: 2004-65-23-8143

Date: 10/8/07 - 10/10/07

Plaintiff/State: State

Judge: C. Victor Pyle

Court/County: Greenville

Attorney: Bryna Seay

Defendant: Marques A. Hudson

Attorney: Richard Wender

Court Reporter: Susan Hudgins

Juror #	Name	Race	Sex	Court	Strikes		Accept
					Plaintiff	Defendant	
182	James Porter	W	M				✓
161	Deborah Jerry	W	F				✓
94	Donna Lemay	W	F			X	
23	Kristina Campbell	W	F				✓
99	Nancy Loudermill	W	F			X	
140	Darry Richardson	W	M		X		
78	Sandra Hyder	W	F			X	
46	James Duckett	B	M		X		
51	Maureen Forbes	W	F				✓
100	Margaret Luke	W	F				✓
183	James Robinson	W	M			X	
49	Carla Fisher	W	F			X	
136	Janice Reis	W	F				✓
25	James Carpenter	W	M				✓
36	Dina Collins	W	F		X		
34	Jill Coker	W	F				✓

*For the Court column, please indicate who made the motion to strike the juror "for cause" with a "C" for Court, "P" for Plaintiff, or "D" for Defense.

Voir Dire

318

Case No.: 2004-GS-23-8143

Date: 10/8/07 - 10/10/07

Plaintiff/State: State

Defendant: Marques A. Hudson

Court Reporter: Susan Hudgins

Judge: C. Victor Pyle

Court/County: Greeneville

Attorney: Brynna Seay

Attorney: Richard Warden

Juror #	Name	Race	Sex	Strikes			Accept
				Court	Plaintiff	Defendant	
179	Roger Davis	W	M				✓
19	Kathryn Brown	W	F				✓
98	James Loring	W	M				✓
177	Regina Wood	W	F				✓
14	Charles Blackston	W	M		X		
33	Ronald Coggins	W	M				✓
93	Holley Leblanc	W	F	X			
156	Mary Stoner	W	F	X			
105	Audrey Maxwell	W	F	X			

*For the Court column, please indicate who made the motion to strike the juror "for cause" with a "C" for Court, "P" for Plaintiff, or "D" for Defense.

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 August 13, 2007, order from the South Carolina Supreme Court entitled "Interim Guidance Regarding Personal Data Identifiers and Other Sensitive Information in Appellate Court Filings."

November 21st, 2008

A handwritten signature in black ink, reading "LaNelle C. DuRant". The signature is fluid and cursive, with a long horizontal flourish extending to the right.

LaNelle C. DuRant
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

STATE OF SOUTH CAROLINA
IN THE COURT OF APPEALS

Appeal from Greenville County

C. Victor Pyle, Jr., Circuit Court Judge

THE STATE,

V.

MARQUES HUDSON,

APPELLANT

FINAL BRIEF OF APPELLANT

LANELLE C. DURANT
Appellate Defender

South Carolina Commission on Indigent Defense
Division of Appellate Defense
PO Box 11589
Columbia, S. C. 29211-1589
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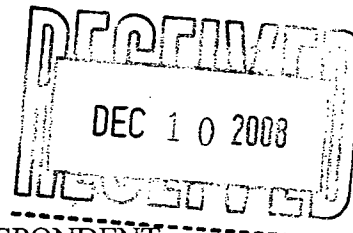
ATTORNEY FOR APPELLANT

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RESPONDENT,

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STATEMENT OF ISSUES ON APPEAL

1. Did the trial court err in not charging the jury on assault and battery of a high and aggravated nature as a lesser included offense of infliction of great bodily injury upon a child?
2. Did the trial court err in allowing the pediatric ophthalmologist to testify as to what the medical team wanted to believe?
3. Did the trial court err in not following the procedure for a *Batson* issue after defense counsel objected when the only black person was struck from the jury?

STATEMENT OF THE CASE

On November 16, 2004, the Greenville County Grand Jury indicted Marques A. Hudson on the charge of inflicting great bodily injury upon a child. On October 8-10, 2007, Hudson proceeded to trial before the Honorable C. Victor Pyle, Jr. and a jury. The jury returned a verdict of guilty as charged. Judge Pyle sentenced Hudson to fifteen years in prison. Hudson through his attorney filed a notice of appeal on October 12, 2007. This appeal follows.

ARGUMENT

1.

The trial court erred in not charging the jury on assault and battery of a high and aggravated nature as a lesser included offense of infliction of great bodily injury upon a child.

Hudson was keeping his two children ages four years and seven months and his wife's niece who was sixteen months old at the time of the incident while his wife was at work. ROA p. 250, lines 2 – 11; p. 220, lines 7 – 23; p. 221, lines 1 – 25; p. 222, lines 1 – 25; p. 223, lines 1 – 20. Hudson testified that the niece, Rushanti, pulled the wires on his stereo surround sound system several times during the day. He said that he finally hit her with a belt on three different occasions during the day when she pulled the wires. However, he said that he just popped her with it as he had learned how hard it could be when he had used the belt on his daughter another time. ROA p. 228, lines 1 – 25; p. 229, lines 1 – 25; p. 230, lines 1 – 25; p. 231, lines 1 – 25; p. 232, lines 1 – 25; p. 233, lines 1 – 25; p. 234, lines 1 – 25; p. 235, lines 1 – 24.

Hudson said that he then tried to give her a bath because she had a really bad diaper. She resisted the bath so he decided to wait a while. He then put his two children to bed. He said that Rushanti had fallen asleep on the sofa so he tried to give her a bath again. She woke up and started crying and kept trying to stand up. He said that she fell on her face in the tub. He picked her up and realized that she was limp and not responding. He then tried to give her CPR but still no response. He then decided to call 911 but had to go to a neighbor's to use the telephone. While he was carrying Rushanti, he fell down the stairs on the way to call 911. He finally reached the neighbor's and she called 911 for him. ROA p.

236, lines 1 – 25; p. 237, lines 1 – 25; p. 238, lines 1 – 25; p. 239, lines 1 – 25; p. 240, lines 1 – 25; p. 241, lines 1 – 25; p. 242, lines 1 – 25; p. 243, lines 1 – 25.

At trial, the pediatric intensive care doctor , Dr. Robert Seigler, who treated the injured child testified that her injuries included bruises on her legs, back and stomach. She also suffered a subdural hemorrhage, retinal hemorrhage and injury to her pancreas. He said these kinds of injuries required massive force. He did not agree with Hudson's explanation as to the cause of the injuries. ROA p. 104, lines 23 – 25; p. 105, lines 1 – 25; p. 106, lines 1 – 25; p. 107, lines 1 – 25; p. 108, lines 1 – 25; p. 109, lines 1 – 25; P. 110, lines 1 – 25; p. 111, lines 1 – 25; p. 112, lines 1 – 25; p. 113, lines 1 – 22.; p. 117, lines 8 – 25; p. 118, lines 1 – 19.

The investigator, Wayne Campbell, told the court that he talked with Hudson at the hospital the night of the incident. He said that Hudson was willing to cooperate and do anything the investigator asked him to do. ROA p. 136, lines 13 – 25; p. 137, lines 1 – 4. Investigator Campbell said that he read the Miranda rights to Hudson because it appeared that Hudson might have been the only person with the child at the time of the injuries. ROA p. 138, lines 1 – 25; p. 139, lines 1 – 4.

Defense counsel requested the court to charge assault and battery of a high and aggravated nature (ABHAN) as a lesser included crime because the crime of infliction of great bodily harm upon a child included all of the elements of ABHAN. ROA p. 171, lines 10 – 25. The State argued that ABHAN contained elements not included in the infliction of great bodily injury to a child. However, defense counsel stated that the test was that the greater crime must contain all of the elements of the lesser but that the greater could include more elements than the lesser. ROA p. 172, lines 1 – 25.

Defense counsel explained that ABHAN was appropriate in this case because the jury could find that Hudson caused some of the bruises and injuries by hitting the child with the belt but did not cause the brain and retinal hemorrhage. Therefore, the jury could find him guilty only of ABHAN. The judge replied that the doctor said that the brain damage could only have occurred by shaking the baby. ROA p. 179, lines 1 – 25. Defense counsel argued that the doctor did not testify that the injury could have only occurred by shaking the baby but that the solicitor said that in his opening statement. The solicitor then replied that he believed that Dr. Seigler specifically testified to that. The judge said that he remembered the doctor saying the injury required massive force. ROA p. 174, lines 1 – 9. Defense counsel objected again after the judge charged the jury. ROA p. 308, lines 22 -25.

The judge stated that there must be evidence that only the lesser crime was committed. Defense counsel said that Hudson said in his statement that he struck the child with a belt which was evidence of ABHAN. ROA p. 174, lines 18 – 25. The judge denied the request for the lesser included crime of ABHAN.

To warrant reversal, a trial judge's refusal to give a requested jury charge must be both erroneous and prejudicial. State v. Reese, 359 S.C. 260, 597 S.E.2d 169 (Ct. App. 2004). The law to be charged to the jury is determined by the evidence presented at trial.

Id.

S.C. Code Section 16-3-95 defines infliction or allowing the infliction of great bodily injury upon a child. It is as follows:

(A) It is unlawful to inflict great bodily injury upon a child. A person who violates this subsection is guilty of a felony and upon conviction must be imprisoned not more than twenty years.

(B) It is unlawful for a child's parent or guardian, person with whom the child's parent or guardian is cohabitating, or any other person responsible for a child's welfare as defined in Section 20-7-490(3) knowingly to allow another person to inflict great bodily injury upon a child. A person who violates this subsection is guilty of a felony and upon conviction must be imprisoned not more than five years.

(C) For purposes of this section, "great bodily injury" means bodily injury which creates a substantial risk of death or which causes serious or permanent disfigurement, or protracted loss or impairment of the function of any bodily member organ.

(D) This section may not be construed to prohibit corporal punishment or physical discipline which is administered by a parent or person in *loco parentis* in a manner which does not cause great bodily injury upon a child.

(E) This section does not apply to traffic accidents unless the accident was caused by the driver's reckless disregard for the safety of others.

ABHAN is defined as an unlawful act of violent injury to the person of another, accompanied by circumstances of aggravation, such as the use of a deadly weapon, the infliction of serious bodily injury, the intent to commit a felony, the great disparity between the ages and physical conditions of the parties, a difference in sexes, indecent liberties or familiarities with a female, the purposeful infliction of shame and disgrace, resistance to lawful authority, and others. State v. Jones, 133 S.C. 167, 130 S.E. 747 (1925). ABHAN is the unlawful act of violent injury to another accompanied by circumstances of aggravation. State v. Primus, 349 S.C. 576, 580, 564 S.E.2d 103, 105 (2002); Dempsey v. State, 363 S.C. 365, 610 S.E.2d 812 (2005); State v. Geiger, 370 S.C. 600, 635 S.E.2d 669 (Ct. App. 2006).

The test for determining if a crime is a lesser included offense of another crime is whether the greater of the two offenses includes all of the elements of the lesser offense. If

the lesser includes an element which is not included in the greater offense, then the lesser offense is not included in the greater offense. State v. Lacoste, 347 S.C. 153, 553 S.E.2d 464 (Ct. App. 2001); State v. Gosnell, 341 S.C. 627, 535 S.E.2d 453 (Ct. App. 2000).

The trial judge is to charge the jury on a lesser included offense if there is any evidence from which it could be inferred the lesser, rather than the greater, offense was committed. State v. Reese, *supra*. When the evidence is susceptible of the inference that the defendant is guilty of only the lesser included offense, the trial judge must charge the lesser offense so the jury can choose between the lesser and the greater. State v. Rucker, 319 S.C. 95, 459 S.E.2d 858 (Ct. App. 1995) citing State v. Lambright, 279 S.C. 535, 309 S.E.2d 7 (1983). The presence of evidence to sustain conviction for crime of a lesser degree determines whether it should be submitted to jury, and mere contention that jury might accept state's evidence in part and might reject it in part will not suffice. State v. Funchess, 267 S.C. 427, 229 S.E.2d 331 (1976).

The infliction of great bodily injury upon a child contains all of the elements included in ABHAN. These include the infliction of violent injury and circumstances of aggravation such as serious bodily injury, difference in age, difference in size. The definition of ABHAN does not state that all of the circumstances of aggravation are required but states circumstances of aggravation "such as" which means that only some of the aggravators as listed are needed. There is a reasonable probability that the jury or at least one juror would have believed that the child sustained the brain and retinal hemorrhages from the fall down the stairs.

The doctors' testimony did not limit the cause of hemorrhages to shaking the baby. When asked what some of the ways were for that amount of force to be exerted on a child,

Dr. Seigler replied that there was debate in the medical literature but that the most commonly accepted theory was that these children were violently shaken. He continued to state that there were some who feel that the shaking alone does not cause these injuries. ROA p. 120, lines 19 – 25; p. 121, lines 1 – 4.

The pediatric ophthalmologist, Dr. Anthony Johnson, testified that there were several possibilities that could cause non-accidental hemorrhages. These included CPR, seizures, bleeding tendency, meningitis, metabolic disorders, and fragile blood vessels. ROA p. 192, lines 12 – 25; p. 193, lines 1 – 21; p. 204, lines 21 -25; p. 205, lines 1 – 21.

The South Carolina Supreme Court in State v. Primus, 349 S.C. 576, 564 S.E. 2d 103 (2002), ruled that ABHAN was a lesser included offense of criminal sexual conduct first degree even though the two offenses failed the traditional elements test. This demonstrates that the court has taken a flexible approach to the test for a lesser included offense.

There was sufficient evidence for the probability that the jury would have found Hudson guilty of just the ABHAN. The judge was in error not to have granted the request and charged the jury on ABHAN.

The trial court erred in allowing the pediatric ophthalmologist to testify as to what the medical team desired to believe.

During the testimony of the pediatric ophthalmologist, Dr. Anthony Johnson, he explained that when a child enters the hospital through the emergency room with life threatening issues, a team of medical personnel become involved. He testified that he was only a tiny part of that team. He then said:

And every time that a head injury patient is evaluated and cared for, the Team would like nothing more than to find some other explanation other than a non-accidental injury. None of the Team wants to find that and, therefore, all of the

....

ROA p. 180, lines 13 – 25; p. 181, lines 1 – 15.

Defense counsel objected to the doctor speaking for the Team. The judge said that he had gone far enough and that they needed to move on.

Rule 702 of SCRE provides that a witness qualified as an expert can testify in the form of an opinion to scientific, technical, or other specialized knowledge if it will assist the trier of fact to understand the evidence or to determine a fact in issue. Dr. Johnson was testifying as an expert and this testimony did not qualify as scientific or technical knowledge. ROA p. 179, lines 1 – 14.

Dr. Johnson was testifying as to what other people believed. This violated Rule 602 of the SCRE which provides that a witness may not testify to matter unless evidence is introduced sufficient to support a finding that the witness has personal knowledge of the matter. Dr. Johnson could not know what the other Team members believed.

The testimony was also hearsay in violation of Rule 802, SCRE. Hearsay is a statement other than one made by the declarant while testifying at the trial of hearing, offered in evidence to prove the truth of the matter asserted. Rule 801(C), SCRE. Hearsay is not admissible except as provided through an exception in the Rules of Evidence or as prescribed by the South Carolina Supreme Court. Hearsay is inadmissible except as provided by statute, the Rules of Evidence, or other court rule. State v. LaCoste, 347 S.C. 153, 553 S.E.2d 464 (Ct. App. 2001). The doctor's testimony was hearsay although it was not a specific statement because he was testifying as though the Team members had actually said this. He was basically stating what he had heard the other Team members say at some point.

The doctor's testimony was prejudicial to Hudson in violation of Rule 403, SCRE. Rule 403 provides that relevant evidence may be excluded if its probative value is substantially outweighed by the danger of unfair prejudice, confusion of the issues, or misleading the jury, or by consideration of undue delay, waste of time, or needless presentation of cumulative evidence. Hudson was prejudiced because this was testimony from an expert doctor who would likely be seen as a leader of a team of medical personnel. By the doctor indicating that the Team never wanted to believe that injuries were non-accidental, there was reasonable probability that the jurors would have believed that the Team thought Hudson was a bad person and was guilty.

Relevant evidence may be excluded where its probative value is substantially outweighed by the danger of unfair prejudice. State v. Alexander, 303 S.C. 377, 401 S.E.2d 146 (1991).

The trial court erred in not following the procedure for a *Batson* issue after defense counsel objected when the only black person was struck from the jury.

Immediately after the last juror was selected, the judge told the clerk to swear the jury before the judge asked the state and defense if they had any issues with the jury selection. The clerk did swear the jury. ROA p. 21, lines 1 – 21. The jury then exited the court room. ROA p. 22, lines 1- 12.

At that point, the judge recognized defense counsel. Counsel objected to the selection of the jury because there were no black people on the jury. He argued that a black lawyer was struck when two other lawyers were seated on the jury. The result was that there were no black people on the jury. ROA p. 22, lines 13 – 18.

The judge said that the jury had been sworn and counsel's motion was too late. The judge then asked the State what their reason was for striking the black lawyer. The Solicitor said that that lawyer engages in a great deal of criminal defense work and he did not want someone like that on the jury. The judge said that was a race neutral reason for striking the juror. He told defense counsel that he would have denied his motion even if it had not been too late. ROA p. 22, lines 19 – 25; p. 23, lines 1 – 7.

Appellate courts are bound by the trial court's factual finding unless they are clearly erroneous. State v. Edwards, 374 S.C. 543, 649 S.E.2d 112 (Ct. App. 2007). This standard of review however, is premised on the trial court following the mandated procedure for a *Batson* hearing. State v. Cochran, 369 S.C. 308, 631 S.E.2d 294 (Ct. App. 2006). In Batson v. Kentucky, 476 U.S. 79 (1986), the United State Supreme Court held that the Equal Protection Clause forbids the State from challenging potential jurors solely on account

of their race.. In State v. Rayfield, 369 S.C. 106, 631 S.E.2d 244 (2006), the Supreme Court ruled that both the State and defendants are prohibited from discriminatorily exercising a peremptory challenge of a prospective juror.

In State v. Rayfield the Supreme Court described the purpose of *Batson* as being to protect the defendant's right to a fair trial by a jury of the defendant's peers, protect each venire person's right not to be excluded from jury service for discriminatory reasons, and preserve public confidence in the fairness of the system of justice by seeking to eradicate discrimination in the jury selection process.

In Purkett v. Elem, 514 U.S. 765 (1995), the Supreme Court announced: Under our *Batson* jurisprudence, once the opponent of a peremptory challenge has made out a prima facie case of racial discrimination (step one), the burden shifts to the proponent of the strike to come forward with a race-neutral explanation (step two). If a race-neutral explanation is tendered, the trial court must then decide (step three) whether the opponent of the strike has proved purposeful racial discrimination. State v. Cochran, *supra*, citing Purkett v. Elem, 514 U.S. 765 (1995). Where the assignment of error is the failure to follow the *Batson* hearing procedure, the Court of Appeals must answer a question of law and the standard of review is plenary. State v. Cochran, *supra*.

At step three of a *Batson* challenge to the use of peremptory challenges, the opponent of the strike must show the reason offered, though facially race-neutral, was actually mere pretext to engage in purposeful racial discrimination. State v. Cochran, 369 S.C. 308, 631 S.E. 2d 294 (Ct. App. 2006); State v. Edwards, 374 S.C. 543, 649 S.E.2d 112 (Ct. App. 2007).

Following a *Batson* challenge to the use of peremptory challenges, unless a discriminatory intent is inherent in the explanation provided by the proponent of the strike, the reason offered will be deemed race neutral and the trial court must proceed to the third step of the *Batson* process and decide whether the opponent of the strike has proved purposeful racial discrimination. State v. Cochran, *supra*. The opponent of a peremptory strike carries the ultimate burden of showing purposeful discrimination and must demonstrate the pretextual nature of the stated reason for the strike; this burden is generally established by showing similarly situated members of another race were seated on the jury. *Id.*; State v. Evins, 373 S.C. 404, 645 S.E.2d 904 (2007).

The explanation for the strike need not be clear, reasonably specific, or legitimate, and instead, it only needs to be race-neutral. State v. Edwards, *supra*, citing State v. Easler, 322 S.C. 333, 471 S.E.2d 745 (Ct. App. 1996). The reason is not required to be persuasive or plausible and may even be silly or superstitious. State v. Edwards, *supra*, citing Purkett v. Elem, *supra*, and State v. Casey, 325 S.C. 447, 481 S.E.2d 169 (Ct. App. 1997).

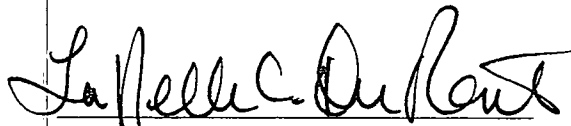
The trial court in Hudson's case did not follow the *Batson* procedure as outlined by the United States Supreme Court in Purkett and which the South Carolina Court of Appeals followed in State v. Cochran, *supra*. The judge merely said that the reason for the strike was racially neutral. He did not hold a hearing.

The judge also denied defense counsel the opportunity to make a timely motion. The judge immediately had the jury sworn after the last juror was selected before he asked counsel if they had any problems with the jury. This was prejudicial to Hudson and to his counsel.

The judge was wrong to go forward with the selected jury without following the *Batson* procedure and without providing counsel the opportunity to make a timely objection and motion to the selection of the jury.

For the above reasons, the conviction should be vacated and the case remanded.

Respectfully submitted,

A handwritten signature in cursive script, reading "LaNelle C. DuRant".

LaNelle C. DuRant
Appellate Defender

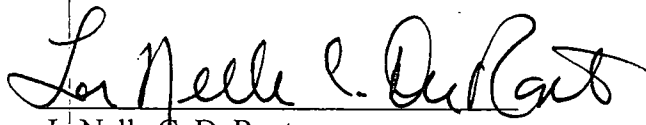
ATTORNEY FOR APPELLANT

This 9th day of December, 2008.

CERTIFICATE OF COUNSEL

The undersigned certifies that to the best of my ability this Final brief of Appellant complies with Rule 211(b), SCACR, and the August 13, 2007, order from the South Carolina Supreme Court entitled "Interim Guidance Regarding Personal Data Identifiers and Other Sensitive Information in Appellate Court Filings."

December 9, 2008

A handwritten signature in black ink, reading "LaNelle C. DuRant". The signature is fluid and cursive, with the first name "LaNelle" being more prominent than the last name "DuRant".

LaNelle C. DuRant
Appellate Defender

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STATE OF SOUTH CAROLINA
IN THE COURT OF APPEALS

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Appeal from Greenville County

C. Victor Pyle, Jr., Circuit Court Judge

THE STATE,

RESPONDENT,

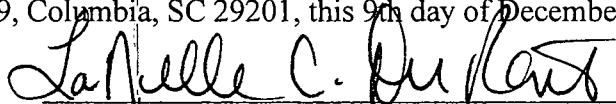
V.

MARQUES HUDSON,

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 Julie M. Thames, Esquire, at the Rembert Dennis Building, 1000 Assembly Street, Room 519, Columbia, SC 29201, this 9th day of December, 2008.



LaNelle C. DuRant
Appellate Defender

ATTORNEY FOR APPELLANT

SUBSCRIBED AND SWORN TO before me
this 9th day of December, 2008.

 (L.S.)
Notary Public for South Carolina

My Commission Expires: March 19, 2017.

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STATEMENT OF ISSUES ON APPEAL

I.

Did the trial court properly refuse to charge the jury on assault and battery of a high and aggravated nature (ABHAN) as a lesser included offense to infliction of great bodily injury upon a child when ABHAN fails the same elements test?

II.

Did the trial court correctly sustain the objection to the testimony that the medical team would always prefer to find something other than a non-accidental reason for an injury and when no curative instruction was requested and no mistrial motion was made?

III.

Did the trial court correctly find that the objection to the jury was not timely made?

STATEMENT OF THE CASE

For purposes of this Brief, the Respondent agrees with the Statement of the Case provided by the Appellant.

STATEMENT OF FACTS

Late at night on October 12, 2003, Emergency Medical Services (EMS) was called to an apartment in Greenville County. Paramedic Francis Crosby responded and was met at the scene by Hudson, who was holding the victim, a sixteen month old girl. The child was limp and unresponsive to any type of stimuli. Once the victim was placed in the truck, Crosby noticed some redness and bruising on her chest and blood on her lip. The victim was placed on oxygen and was taken to the hospital. She was in very critical condition. Crosby testified that Hudson stated that he had been giving the child a bath and the child fell in the bathtub and hit her face on the tub floor. She did not respond, so Hudson picked her up and ran outside to call for help but he missed the first step and fell down the stairs. (R. pp.62-67)

Deputy Craig Hawkins, with the Greenville County Sheriff's Department, responded to the hospital. He observed the visible injuries on the victim and then spoke with Hudson. Hawkins saw bruises on the victim's forehead, chest, left leg, bottom, and back. Hawkins testified that Hudson told him he had attempted to give the victim a bath, but she would not stop crying or screaming so he laid her down. Later, while the victim was still asleep, Hudson again attempted to give her a bath. Hawkins stated Hudson said she fell face first in the tub and he picked her up to take her down stairs and he tripped and fell down the stairs. Hawkins testified that when he said to Hudson that the marks on the victim did not match a fall down the stairs, Hudson told him earlier in the evening he had spanked the victim's bottom with his hand and then whipped her with a belt because she had gotten into some wires connected to the stereo equipment. Hawkins observed no injuries on Hudson. (R. pp.72-75).

Dr. Allison Jones testified that the victim was unresponsive and in critical condition upon arrival in the emergency room. Her opinion was that the injuries were not consistent with the history given by Hudson and that the injuries were excessive for the history provided. (R. pp.82-85).

Melissa Tryling, a registered nurse, testified at trial that on the night of the incident, Hudson was brought to her area of the hospital for observation and evaluation. He complained of lower back pain, right shoulder pain, tingling in his left foot and neck stiffness. Tryling testified that she found no evidence of trauma to Hudson; no broken bones, bruises or lacerations. His examination was completely normal. (R. pp.94-96).

Dr. Robert Seigler, the medical director for the pediatric intensive care unit at the Greenville Memorial Hospital, testified about the victim's injuries. He testified that the victim had a significant alteration in her mental status and appeared to have suffered a severe brain injury. Dr. Seigler testified that she also had numerous bruises; he noted ten bruises that appeared to be fairly recent. One bruise on her abdomen was likely caused by some type of blunt trauma. Dr. Seigler testified that pattern bruises on the victim's thighs most likely represented fingers gripping the thighs very tightly. (R. pp.99-109). On her back were pattern injuries that "appears to have a pattern of a chain running from side to side across her back. . ." (R. p.109, lines 16-18).

Dr. Seigler testified that in addition to the external bruising, the victim suffered from bleeding around her brain, bleeding in the back of both eyes, an injury to the pancreas, and severe brain injury. He testified that he believed the injuries were not caused by accidental trauma. Dr. Seigler testified that massive force was required to cause the bleeding in the

brain (subdural hemorrhage) and the bleeding in the eyes (retinal hemorrhages). He testified that retinal hemorrhages are rarely seen even in severe car wreck situations. Dr. Seigler testified that the severe brain injury, the subdural hemorrhage, and the retinal hemorrhages could not have been caused by a fall in the bathtub or by a fall down the stairs. (R. pp.110-119). He testified that there were no external injuries to the skull that would have caused the intra cranial bleeding and that he believed the injuries could only have been caused by violent shaking. (R. pp.120-121).

Carrie Smith, the victim's paternal grandmother, testified that prior to the incident, the victim was a normal, happy and active baby. She had regular checkups and could walk and talk. She fed herself and was able to play and run. Ms. Smith testified that the day of the incident, the victim was in good physical condition, in good health and did not have any marks on her body. (R. pp.154-160). At the time of the trial, the victim was five years old. She could say a only few words and could walk, but with difficulty. She wore a brace on her left leg and could not use her left hand or arm at all. She could not put complete sentences together and was attending a special school. She also had seizures. The victim was not potty trained, had limited vision, and needed to wear a helmet at school due to balance problems. (R. pp.164-166).

Dr. Anthony Johnson also testified as to these ongoing problems the victim continued to have. (R. pp.199-204). Dr. Johnson also testified that in his professional opinion, the retinal hemorrhages were not accidental and were inflicted injuries. (R. pp.207-208).

Hudson testified that he was at home with the victim, who was his girlfriend's niece, and his own two children. His girlfriend, the mother of his two children, was at work and

he was caring for the three children. The victim was sixteen months old; his children were four years old and seven months old. He testified that he had a surround sound unit and that the center speaker was mounted directly to the wall with double sided tape. The victim kept getting behind the television and Hudson's daughter told Hudson that the victim was pulling on the wires. This happened again and Hudson got a belt and popped the victim on the back with the belt. The victim again went behind the television and pulled the surround sound unit off the top of the television, so Hudson spanked her again with the belt across the back. Later in the evening, he went to give the victim a bath. Hudson testified that she resisted and when he put her in the tub, she started squirming and hollering, so he decided to try the bath later. He got his own children ready for bed and the victim fell asleep on the couch. He then attempted to bathe her again while she was asleep. She woke up and started crying and trying to stand up. Hudson testified that he turned to put a wash rag down and the victim fell and hit the soap dish and then fell flat in the water. He picked her up and noticed she was limp so he "freaked out." Hudson testified that he tried to revive her, could not and then thought to call 911. He did not have a telephone in the house, so he started to go to the neighbors house to use the phone. He came out of the bathroom and tripped on a comforter and some toys that were sitting at the top of the stairs. Hudson testified he fell down the stairs with the victim in his arms. He got up saw blood coming out of the victim's mouth and took her to the living room floor and laid her down. He got up to go to the door and his neighbor was at his door. Hudson told her to call 911. (R. pp.230-244).

ARGUMENT

I.

The trial court did not err in refusing to charge assault and battery of a high and aggravated nature as a lesser included offense to infliction of great bodily injury upon a child.¹

The Respondent submits that the offense of ABHAN does not qualify as a lesser included offense to infliction of great bodily injury upon a child because the offense of infliction of great bodily injury upon a child does not contain the elements of ABHAN. Carving out another exception to the elements test is not warranted in this case. Moreover, as the trial judge found, even if ABHAN were to be construed as a lesser included offense, a jury charge on ABHAN would not have been warranted in this case as the evidence clearly demonstrated that Hudson was not "only guilty" of ABHAN.

The test for determining when an offense is a lesser included offense of another offense is whether the greater of the two offenses includes all the elements of the lesser offense. State v. Elliott, 346 S.C. 603, 606, 552 S.E.2d 727, 728 (2001). If the lesser offense contains an element which is not included in the greater offense, it is not a lesser included offense of the greater offense. Id.; see Blockburger v. United States, 284 U.S. 299, 52 S. Ct. 180, 76 L.Ed. 306 (1932) (the test to determine whether there are two offenses or only one is whether each provision requires proof of an additional fact which the other does not). A lesser offense is included in the greater only if each of its elements is always a necessary element of the greater offense. State v. Easler, 327 S. C. 121, 489 S.E.2d 617 (1997). While

¹

Infliction of great bodily injury upon a child will also be referred to as Section 16-3-95 in the body of the argument.

a few anomalies have been recognized, the courts generally adhere to use of the traditional elements test. State v. Elliott, at 607, 552 S.E.2d at 729.

A charge on a lesser included offense is only required when the evidence warrants such an instruction. State v. Mitchell, 362 S.C. 289, 608 S.E.2d 140 (2005). The circuit court does not err in refusing to charge a lesser included offense unless there is testimony tending to show that the defendant is only guilty of the lesser included offense. Id. (internal citations omitted).

Section 16-3-95 of the South Carolina Code provides in pertinent part:

(A) It is unlawful to inflict great bodily injury upon a child. S.C. Code Ann. § 16-3-95 (2000).

(C) For purposes of this section, "great bodily injury" means bodily injury which creates a substantial risk of death or which causes serious or permanent disfigurement, or protracted loss or impairment of the function of any bodily member or organ.

(D) This section may not be construed to prohibit corporal punishment or physical discipline which is administered by a parent or person in *loco parentis* in a manner which does not cause great bodily injury upon a child.

South Carolina Code Ann. § 16-3-95 (2000).

Assault and battery of a high and aggravated nature (ABHAN) is an unlawful act of violent injury to the person of another, accompanied by circumstances of aggravation, such as the use of deadly weapon, the infliction of serious bodily injury, the intent to commit a felony, a great disparity between the ages and physical condition of the parties, a difference in the sexes, the taking of indecent liberties with female, the purposeful infliction of shame and disgrace, or resistance of lawful authority. State v. Sprouse, 325 S.C. 275, 478 S.E.2d 871 (1996).

Hudson concedes that an exception would have to be made in order for ABHAN to be considered a lesser included offense to Section 16-3-95. He is asking the Court to carve out another exception to the traditional elements test and find that the elements of ABHAN are all contained in infliction of great bodily injury on a child. However, the elements necessary to prove ABHAN are not found in Section 16-3-95.

The Respondent first submits that "violent injury" and "great bodily injury" are simply not the same. Section 16-3-95(C) defines "great bodily injury" as "bodily injury which creates a substantial risk of death or which causes serious or permanent disfigurement, or protracted loss or impairment of the function of any bodily member or organ." South Carolina case law demonstrates that the term "violent injury" does not necessarily import serious injury. See State v. Germany, 211 S.C. 297, 44 S.E.2d 840 (1947). See also State v. LaCoste, 347 S.C. 153, 553 S.E.2d 464 (Ct. App. 2001) (assault and battery has also been defined as any touching of the person of an individual in a rude or angry manner, without justification(internal citations omitted)). The element of "violent injury" required to prove ABHAN is not an element of Section 16-3-95, thus, ABHAN fails the elements test.

Second, the Respondent submits that "circumstances of aggravation" is not an element of Section 16-3-95. While Hudson argues that the disparity in ages and physical conditions between a child and an adult is a circumstance of aggravation, the other circumstances of aggravation are not included, thus, it does not qualify as a lesser included offense.

While a case prosecuted for a violation of Section 16-3-95 will necessarily include circumstances of aggravation such as disparity in ages and physical conditions and serious

bodily injury, not all of the circumstances of aggravation are elements of Section 16-3-95, but are matters of fact that *might* be presented. Thus, because not all of the circumstances of aggravation are always part of Section 16-3-95, ABHAN is not a lesser included offense of Section 16-3-95. See State v. Primus, 349 S.C. 576, 564 S.E.2d 103 (2002) (employing the traditional elements test, ABHAN is not a lesser included offense of first degree CSC; however, the Court found an exception was proper because ABHAN had been consistently found to be a lesser included offense to CSC in the past); Knox v. State, 340 S.C. 81, 530 S.E.2d 887 (2000) (even though second degree lynching includes two circumstances of aggravation that may establish ABHAN, ABHAN is not lesser included offense because there are other circumstances of aggravation that are not included in second degree lynching); State v. Easler, 327 S.C. 121, 489 S.E.2d 617 (1997) (because each circumstance of aggravation for ABHAN is not always a necessary element of felony DUI, ABHAN is not a lesser included offense of felony driving under the influence).

Thus, the Respondent submits that because all of the circumstances of aggravation are not enumerated elements of Section 16-3-95, ABHAN is not a lesser included offense. Thus, the Respondent submits that ABHAN fails the same elements test and the trial judge properly refused to charge ABHAN. In addition, while the courts have carved out exceptions based on historical precedent as discussed below, no such situation exists in the case at bar.

The Elliott Court found ABHAN to be a lesser included offense to assault with intent to commit criminal sexual conduct (ACSC). "To the extent that the elements of ABHAN and ACSC do not meet the elements test, we recognize this situation presents an anomaly in the law, akin to manslaughter and murder... Nevertheless, we find compelling reasons not

to abandon our longstanding inclusion of ABHAN as a lesser included offense of attempted sexual battery crimes.” State v. Elliott, at 729, 346 S.E.2d at 607. Likewise, in State v. Primus, 349 S.C. 576, 564 S.E.2d 103 (2002), the Supreme Court found that under the traditional elements test, ABHAN is not a lesser included offense of first degree criminal sexual conduct (CSC). However, the Court found that, “In order to have a uniform approach to CSC and ABHAN offenses, we likewise hold ABHAN is a lesser included offense of first degree CSC.” Id., at 581, 564 S.E.2d at 106.

The Respondent submits that another exception to the elements test is not warranted in this case. There is no history of treating ABHAN as a lesser included offense to infliction of great bodily injury upon a child. The statute is relatively new, as it was created in 2000. There have been no published cases addressing this statute. Thus, there is no history of treating ABHAN as a lesser included offense. In addition, the Act, No. 261, specifically relates Section 16-3-95 to homicide by child abuse and creates a felony offense for inflicting great bodily injury upon a child.

The Respondent further submits that Hudson is asking the Court to return to the “same conduct” test that was abandoned in State v. Easler, at 131, 489 S.E.2d at 623. In 1990, in Grady v. Corbin, 495 U.S. 508, 110 S. Ct. 2084, 109 L.Ed.2d 548 (1990), the United States Supreme Court expanded the Blockburger analysis, holding that even if two offenses do not have the same elements, double jeopardy “bars a subsequent prosecution if, to establish an essential element of an offense charged in that prosecution, the government will prove conduct that constitutes an offense for which the defendant has already been prosecuted.” The South Carolina Supreme Court adopted the “same conduct” test in State

v. Grampus, 288 S.C. 395, 343 S.E.2d 26 (1986)(the Court anticipated the holding in Grady and relied on dictum in Illinois v. Vitale, 447 U.S. 410, 100 S. Ct. 2260, 65 L.Ed. 2d (1980)).

As stated, this test was abandoned and the Easler Court found that the only remaining test for determining a double jeopardy violation was the Blockburger test. The Respondent submits that because the test for determining whether an offense is a lesser included offense to another offense derives from the Blockburger "same elements" test, it is the correct test and, contrary to Hudson's argument, the trial court need not engage in a factual analysis to determine whether the conduct complained of can be factually compared to other offenses.

Further, the trial judge clearly indicated that he did not believe there was any evidence presented to support ABHAN even if it were a lesser included offense. Thus, the Respondent submits that even if the Court decides to carve out another exception to the elements test, the charge would not have been appropriate in this case. As the trial judge noted, there was no evidence that Hudson committed anything other than the charged offense. Hudson admitted that the child was fine when he took over the responsibility for caring for her. He did say that he thought maybe she had a cold because she was not as playful as usual, but he also stated that she was playful. (R. p.231). Doctor Johnson testified that while the injury to the victim could have occurred up to forty-eight hours prior to her admittance to the hospital, he also testified that the injury was so traumatic that it would have been noticeable immediately. He testified that the injuries to the brain and the retinal hemorrhages all occurred simultaneously. (R. pp.210-213). Thus, Hudson's implication that she had suffered the head injury prior to Hudson taking over caring for her is not plausible. The trial judge stated that he did not hear any evidence that any other incident caused the

major injury to the child and that a charge on a lesser included offense was not warranted.

Hudson argues that the doctors' testimony did not limit the cause of retinal hemorrhages to shaking the baby and that other possible causes existed. The Respondent submits that this assertion is erroneous. The doctors testified that there are some instances where other causes could result in the types of injuries seen in the victim but they ruled out other potential causes in this case. Dr. Johnson specifically testified that other causes such as meningitis, a bleeding disorder, or a metabolic disorder were ruled out and that the fall down the stairs could not have caused the injuries to victim. (R. pp.204-208). Dr. Seigler testified that he did not believe that a fall in the bathtub or a fall down the stairs could have caused the injuries to the victim. (R. pp.117-119). Dr. Seigler also testified that there was no evidence of external injuries to the victim's skull that would cause the intra cranial bleeding, thus, the only conclusion left was a violent shaking. (R. p.121).

Further, the Respondent submits that a jury charge on ABHAN was not appropriate in this situation when Hudson failed to admit to any illegal conduct. His theory appeared to be that the injuries were accidental as a result of the victim falling in the bathtub and also from the fall down the stairs. He also seemed to imply that perhaps the injuries occurred before he assumed responsibility for the victim. While he admitted to beating her with a belt, the beating did not cause the injuries to the victim. Hudson did not dispute that the victim suffered the devastating head injuries, he disputed that his actions cause the injuries. See State v. Cude, 265 S.C. 313, 218 S.E.2d 240 (1975) (an instruction on a lesser included offense is proper only when the charged greater offense requires that the jury find a disputed factual element which is not a requisite for conviction of the lesser included offense).

Moreover, Section 16-3-95(D) *infra* specifically provides that corporal punishment does not qualify as an offense under the statute. Defense counsel's argument at trial was that if the jury believed Hudson only whipped the child with a belt and did not cause the head and brain injuries and the pancreatitis, the jury could find him guilty of ABHAN as a lesser included offense. The Respondent submits that the statute covers the situation defense counsel put forth and that if the jury believed that he merely disciplined the sixteen month old child with a belt, they would have reached a not guilty verdict.

Thus, the Respondent submits that ABHAN is not a lesser included offense of infliction of great bodily injury upon a child. The legislature could have drafted the statute to mirror the language of ABHAN if they intended for it to be a lesser included offense. They did not. They included the offense in the chapter with homicide by child abuse and related the two offenses. There is no history of ABHAN being treated by the courts as a lesser included offense. The Respondent submits that another exception to the elements test should not be created in this instance and that too many exceptions will eventually swallow the rule. In addition, even if the Court is inclined to find ABHAN is a lesser included offense, the Respondent submits that such an instruction was not warranted in this case where the evidence did not support anything less than what was charged.

II.

The trial court did not err in allowing testimony from a pediatric ophthalmologist as to what the medical team desired to believe.

The Respondent submits that this issue is not preserved for review. The objection to the testimony was essentially sustained when the trial judge instructed the solicitor to move on, no further testimony in this regard was elicited, and defense counsel requested neither a curative instruction nor a mistrial.

A motion to strike is necessary where a question is answered before an objection thereto has been interposed, even though the objection is sustained. State v. Wingo, 304 S.C. 173, 403 S.E.2d 322 (1991); See also State v. McFadden, 318 S.C. 404, 458 S.E.2d 61 (1996) (Defendant in sexual assault prosecution failed to preserve for appeal his objection to police officer's testimony about victim's statements to officer, where defendant did not move to strike the testimony after trial court sustained his objection to it).

Dr. Johnson, a pediatric ophthalmologist, explained how he became involved in treating the victim. He was describing how the team of medical personnel deals with a serious head injury. (R. pp.179-181). He testified: "And every time that a head injury patient is evaluated and cared for the team would like nothing more than to find some other explanation other than a non-accidental injury. None of the team wants to find that and, therefore, all of the" (R. p.181, lines 7-11). Defense counsel objected, "Your, Honor, I object to this doctor speaking for the team." (R. p.181, lines 12-13). The trial judge stated, "Let's move on to what specifically he did. I think you've gone far enough." (R. p.181, lines 14-15). There was no further objection, no request for a curative instruction and no request for a mistrial.

The Respondent submits this issue is simply not preserved for review. Hudson argues that the doctor's answer violated Rule 702, SCRE, because the answer did not qualify as scientific or technical knowledge. He also argues that the answer violated Rule 602, SCRE, because Dr. Johnson could not know what the rest of the team believed. Hudson argues the testimony was hearsay in violation of Rule 802, SCRE. Lastly, he argues that the testimony violated Rule 403, SCRE, because it was more prejudicial than probative.

Unfortunately, none of these arguments were made at trial, thus, they are not preserved for review.

In addition, the Respondent submits that if the Court determines that this issue is preserved for review, no prejudice can be shown. Dr. Johnson merely stated that the team would rather find an accidental cause for the injuries than an intentional cause. It is hard to imagine a scenario where anyone would prefer an intentional cause over an accidental one. Hudson's argument that the statement made the jury believe that the team believed Hudson was a bad person is speculative and convoluted.

III.

The issue of whether the trial judge erred in not following the procedure for a Batson issue is not preserved for review and in any event, no prejudice can be shown.

The Respondent submits that defense counsel did not object to the procedure regarding the Batson motion and therefore, this issue is not preserved for review. Furthermore, the Respondent submits that the trial judge, even though he told defense counsel that his Batson motion came too late, heard the solicitor's reason for the strike in question and determined that the reason was race neutral and that even if defense counsel had made the motion in a timely fashion, he would have denied it.

The general rule of issue preservation states that if an issue was not raised and ruled upon below, it will not be considered for the first time on appeal. State v. Dunbar, 356 S.C. 138, 587 S.E.2d 691 (2003). Imposing this preservation requirement on the appellant is meant to enable the lower court to rule properly after it has considered all relevant facts, law, and arguments. On v. Town of Mt. Pleasant, 338 S.C. 406, 422, 526 S.E.2d 716, 724 (2000); see also Ellie, Inc. v. Miccichi, 358 S.C. 78, 103, 594 S.E.2d 485, 498 (Ct. App.2004) ("Without an initial ruling by the trial court, a reviewing court simply would not be able to evaluate whether the trial court committed error.").

A hearing held pursuant to Batson v. Kentucky, 479 U.S. 79, 106 S. Ct. 1712, 90 L.Ed.2d 69 (1986) is trifurcated. In State v. Rayfield, 369 S.C. 106, 631 S.E.2d 244 (2006) our Supreme Court reiterated the proper procedure for conducting a Batson hearing originally set forth in State v. Adams, 322 S.C. 114, 470 S.E.2d 366 (1996) (citing Purkett v. Elem, 514 U.S. 765, 115 S. Ct. 1769, 131 L.Ed.2d 834 (1995)). First, when one party strikes a member of a cognizable racial group, the circuit court must hold a Batson hearing if the opposing

party requests one. State v. Shuler, 344 S.C. 604, 545 S.E.2d 805 (2001). In order to raise and preserve a Batson issue, the opposing party must move for the hearing after the jury is selected but before it is sworn. State v. Jones, 293 S.C. 54, 358 S.E.2d 701 (1987).

Hudson argues, "Immediately after the last juror was selected, the judge told the clerk to swear the jury before the judge asked the state and defense if they had any issues with the jury selection." (App.Brief.p.11). The Respondent submits this is erroneous in two ways. First, the judge never did ask the attorneys if they had any issues with the jury selection. Second, it is true that after the last juror was selected, the Clerk stated: "Please take a seat in the jury box," and the next line of the transcript is the trial judge saying: "Swear the jury, please." (R. p.21). However, there is no indication that this occurred "immediately" in time. It is entirely possible that it took several moments for the juror to make his way to the jury box. No objection to the jury selection process was made.

After the jury was sworn and excused from the courtroom, the judge recognized defense counsel, who then objected to the selection of the jury. His objection was that three attorneys were called as potential jurors but only the black attorney was struck by the State. The trial judge told defense counsel that his motion was made too late as the jury had already been sworn. He then asked the solicitor what his reason was for striking the potential juror. The solicitor responded that the lawyer did a great deal of criminal defense work. The trial judge stated that the solicitor's reason was race neutral and that even if trial counsel had objected in a timely manner, he would have denied the motion. (R. pp.22-23). Defense counsel did not object to the trial court's procedure and did not request the trial judge to follow the procedures in Batson. (R. p.22). Thus, this issue is not preserved for review.

The Respondent can find no case that requires the judge to inquire whether there is a Batson issue. This responsibility is on counsel. Defense counsel in this case failed to raise the issue in a timely manner. In addition, when he did raise the issue, he made no objection to the procedure, or lack thereof, by the trial judge.

Finally, the Respondent submits no prejudice can be found as the trial judge listened to the reason for the motion and determined the reason to be race neutral. The lawyer was struck because he was a criminal defense attorney, which is a race neutral reason. Thus, Hudson can show no prejudice.

CONCLUSION

For all of the foregoing reasons, it is respectfully submitted that the judgment and conviction of the lower court be affirmed.

Respectfully submitted,

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Attorney General

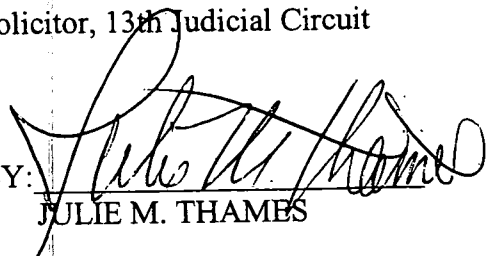
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December 9, 2008

STATE OF SOUTH CAROLINA

IN THE COURT OF APPEALS

Appeal From Greenville County
C. Victor Pyle, Jr., Circuit Court Judge

THE STATE,

Respondent,

vs.

MARQUES A. HUDSON,

Appellant.

CERTIFICATE OF COUNSEL

The undersigned certifies that this Final Brief of Respondent complies with Rule 211(b), SCACR, and the August 13, 2007, order from the South Carolina Supreme Court entitled "Interim Guidance Regarding Personal Data Identifiers and Other Sensitive Information in Appellate Court Filings."

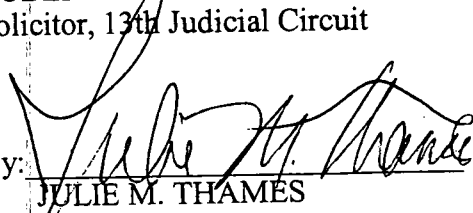
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