

Volume I of II

STATE OF SOUTH CAROLINA
IN THE SUPREME COURT

Appeal from Sumter County
William Jeffrey Young, Circuit Court Judge

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S.C. SUPREME COURT

MARTINA R. PUTNAM,

PETITIONER,

V.

STATE OF SOUTH CAROLINA,

RESPONDENT

Appellate Case No. 2012-212396

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STATE OF SOUTH CAROLINA
COUNTY OF SUMTER

) COURT OF GENERAL SESSIONS
) 2008-GS-43-360

State of South Carolina)

vs.)

) TRANSCRIPT OF RECORD
) (Trial)
)

Martina Putnam,)

Defendant.)

April 20, 21, 22, 2009
Sumter, South Carolina

BEFORE:

GEORGE C. JAMES, JUDGE; and a jury

APPEARANCES:

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JACK HOWLE, PUBLIC DEFENDER
Attorney for the Defendant

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Monday, April 20, 2009

1
2 **THE COURT:** All right, ladies and gentlemen. We
3 are now going to select a jury for the trial of the
4 case of The State of South Carolina vs. Martina
5 Putnam. The oath that you took earlier this morning
6 to respond to questions truthfully is carrying
7 forward with you now. If I ask a question that
8 prompts a response from you, simply stand, and I will
9 ask the necessary follow-up questions.

10 Please do not offer any other information other
11 than what I specifically ask for. If you feel after
12 those questions that I ask you that I haven't
13 inquired fully into the particular situation that
14 you're standing about, just simply let me know that
15 you may have something else to say and I'll bring you
16 up if necessary.

17 All right. Again, ladies and gentlemen, you are
18 under oath, so it's necessary for you to listen
19 carefully and to provide completely truthful
20 responses to these questions.

21 Now, ladies and gentlemen, in this case the
22 defendant has been indicted for the crime termed
23 homicide by child abuse. And I will tell you this,
24 ladies and gentlemen, that the fact that a person has
25 been arrested for a crime, charged with a crime or

1 indicted for a crime is not evidence of anything.
2 The defendant has entered a plea of not guilty to
3 this charge, and that plea puts the burden of proof
4 on the State to prove the elements of the charged
5 offense by what the law calls proof beyond a
6 reasonable doubt. And at all times until that burden
7 of proof is met the defendant is presumed innocent of
8 the crime for which she is charged.

9 All right. And just by way of background, I'm
10 going to refer to this indictment just to give you
11 some information about what the State claims the
12 facts are; again, keeping in mind that the defendant
13 denies that, and the State does have the burden of
14 proving guilt beyond a reasonable doubt.

15 The indictment says that the defendant, Martina
16 Putnam, did on or about March 10, 2007 willfully and
17 unlawfully commit the offense of homicide by child
18 abuse by causing the death of a child under the age
19 of 11 while committing child abuse or neglect. And
20 the name of the child was Child date of
21 birth [REDACTED] [REDACTED]

22 The first question, ladies and gentlemen; is
23 there any member of the jury panel who knows anything
24 about this case at all, who has heard anything about
25 it, read anything about it or has any knowledge about

1 it from any source other than what I just stated a
2 moment ago? Anyone know anything about it at all or
3 heard anything about it? Please stand.

4 All right. No one stood.

5 All right. The defendant is Martina Putnam.
6 Ms. Putnam, if you could stand, please, face the jury
7 panel. All right. You can have a seat. Thank you,
8 ma'am.

9 If I use the term, ladies and gentlemen,
10 immediate family member, that means your father,
11 mother, brother, sister or child. Here is the
12 question.

13 Is there any member of the jury panel or member
14 of your immediate family who is kin to Ms. Putnam or
15 who knows her or has any connection, acquaintance or
16 association with her at all? You or any immediate
17 family member?

18 All right. The record will show no one stood.

19 The following, ladies and gentlemen, is a list
20 of potential witnesses in this case. This does
21 not -- if I call their name, that does not mean that
22 the witness will testify, but these are potential
23 witnesses. And if any of the witnesses are present,
24 if you would please stand and face the jury panel for
25 four or five seconds to let the jury see you. And

1 the question is this, ladies and gentlemen. Is there
2 any member of the jury panel or member of your
3 immediate family who is kin to, that means related by
4 blood or even connected by marriage, if you're kin to
5 any of these potential witnesses, if you know them,
6 have been associated with them, have worked with them
7 or have any connection at all now or in the past with
8 any of these witnesses.

9 Lieutenant David Florence Sumter County
10 Sheriff's Office. Sergeant Robert Burnish of the
11 Sheriff's Office. Captain Jamie Turner, Sumter
12 Sheriff's Office. Sergeant Rob Denison, Sumter
13 Sheriff's Office. Ray Mackessy, Sumter Sheriff's
14 Office. Gwen Herod, Sumter County Sheriff's Office.

15 Deborah McDonald, Sumter County Department of
16 Social Services, also known as DSS. Julia Wilson,
17 Sumter County DSS. Collette Putnam, Las Vegas,
18 Nevada. Lieutenant Tony Horton, Sheriff's Office.
19 Hope Yarborough, Sumter, S.C. Carolyn Lane, Sumter.
20 Edward Quick, Laura Quick, Mary Baxley, Jennifer
21 Timmons, Patrick Putnam. Investigator Melissa
22 Bradley of the Sheriff's Office.

23 Shanna (phonetic) or Shana Johnson, registered
24 nurse, Palmetto Richland in Columbia. Is it Fadia?
25 Fadia Belch, RN, Palmetto Richland. Richard J.

1 Cartie, MD. Humana Hospital in Augusta. Joel
2 Sexton, MD, Newberry Pathology Associates. Clay
3 Nichols, MD, of Palmetto Richland Hospital. Richard
4 Davis, MD, UNC-Chapel Hill. He's an ophthalmologist.

5 Michael Richard Mease, MD, Sumter Radiology.
6 Tracey Bailey, MD, Tuomey Regional or Tuomey Health
7 Care Systems in Sumter. He's an emergency medical
8 doctor. He or she. Sorry. Johnny J. Hudson,
9 Palmetto Richland, Columbia, South Carolina.

10 Lenwood Smith, MD, Palmetto Neurosurgery &
11 Spine. Susan B. Luberoff. Is she a medical doctor?

12 **MS. MAYES:** Yes, sir, Your Honor.

13 **THE COURT:** Susan B. Luberoff, MD, Palmetto
14 Richland. Cindy Pierson, Sumter County Sheriff's
15 Office. Verna Moore, former coroner from Sumter.
16 She's from Sumter County. David Eagerton, State Law
17 Enforcement Division, sometimes known as SLED. Wendy
18 Bell, forensic toxicologist at SLED. She's an MD?

19 **MS. MAYES:** No, sir, Your Honor.

20 **THE COURT:** She's not. All right. Custodian of
21 records of the 911 dispatch logs, Sumter County
22 Sheriff's Office. Custodian of records of Sumter
23 County EMS. Custodian of records, Sumter County DSS.
24 Sibling 1 Sibling 2 Custodian of
25 records, Tuomey Hospital. Custodian of records,

1 Palmetto Richland Hospital.

2 Dean Plute, Sumter Police Department. Tamiko
3 Robinson, registered nurse, Tuomey Health Care.
4 Julie Hancock, registered nurse at Tuomey. Tanya
5 Floyd, registered nurse, Tuomey. Harvin Bullock,
6 Sumter County Coroner. Doris Glover, Sumter County
7 DSS. Hampton Gardner, Sumter County Sheriff's
8 Office.

9 Does that include the complete listing, Ms.
10 Mayes and Mr. Howle?

11 **MS. MAYES:** Yes, sir, Your Honor.

12 **THE COURT:** All right. Again, ladies and
13 gentlemen, any member of the jury panel or member of
14 your immediate family who is kin to any of these
15 folks or has any connection, acquaintance,
16 association of any kind with any of these potential
17 witnesses? All right. Your name first of all,
18 please, ma'am.

19 **JUROR:** Sandra Geddings.

20 **THE CLERK:** Number 49, Your Honor.

21 **THE COURT:** All right. Ms. Geddings is number
22 49. Which potential witness, Ms. Geddings? First of
23 all, name? Which witness?

24 **JUROR:** David Florence and Tonya.

25 **THE COURT:** Floyd?

1 *JUROR:* Yes.

2 *THE COURT:* All right. With regard to Mr.
3 Florence, are you related to him or acquainted with
4 him?

5 *JUROR:* Acquainted with him.

6 *THE COURT:* How long have you known him?

7 *JUROR:* Oh, a number of years.

8 *THE COURT:* All right. So that's separate and
9 apart from his employment as a law enforcement
10 officer?

11 *JUROR:* Yes.

12 *THE COURT:* All right. So it's been some period
13 of years. Do you still maintain an acquaintance with
14 him now?

15 *JUROR:* Yes.

16 *THE COURT:* All right. The question is this
17 then, ma'am. Would any of that information that you
18 have related to me concerning Lieutenant Florence
19 make it difficult or impossible for you to be a fair
20 and impartial juror in this case?

21 *JUROR:* No.

22 *THE COURT:* Would you be able to set that aside,
23 what you've related to me, and base your verdict in
24 this case on the evidence and the law?

25 *JUROR:* Yes.

1 **THE COURT:** All right. With regard to Tonya
2 Floyd, she is an RN at Tuomey, and do you know her
3 from a professional standpoint?

4 **JUROR:** Yes.

5 **THE COURT:** All right. How about the other
6 RN's, Tamiko Robinson or Julie Hancock?

7 **JUROR:** No.

8 **THE COURT:** All right. With regard to Tonya
9 Floyd, how long have you worked work her?

10 **JUROR:** Probably about four years.

11 **THE COURT:** All right. Are you in the same
12 department?

13 **JUROR:** Not now. But I have been.

14 **THE COURT:** What department was that?

15 **JUROR:** Rehab.

16 **THE COURT:** Okay. And you've known her for four
17 years?

18 **JUROR:** Off and on.

19 **THE COURT:** What department are you in now at
20 Tuomey?

21 **JUROR:** Emergency room.

22 **THE COURT:** Are you acquainted with Ms. Floyd
23 outside work as well?

24 **JUROR:** Occasionally.

25 **THE COURT:** All right. Would those

1 circumstances make it difficult or impossible for you
2 to be fair and impartial to both sides?

3 *JUROR:* No.

4 *THE COURT:* Would you be able to set aside those
5 circumstances and base your verdict on the evidence
6 and the law?

7 *JUROR:* Yes.

8 *THE COURT:* All right. Any other witnesses that
9 you have a connection with?

10 *JUROR:* No.

11 *THE COURT:* All right. Thank you, ma'am. Yes,
12 ma'am. In the green, your name?

13 *JUROR:* Selina Kirkpatrick.

14 *THE COURT:* Kirkpatrick?

15 *JUROR:* Yes, sir.

16 *THE COURT:* All right, ma'am. Which witness or
17 witnesses?

18 *JUROR:* Tamiko Robinson.

19 *THE COURT:* All right. And do you work with
20 her? Do you know her or are you kin to her.

21 *JUROR:* I know her.

22 *THE COURT:* How long have you known her?

23 *JUROR:* Maybe three or four years.

24 *THE COURT:* Okay. And is that totally separate
25 from her work in the medical field?

1 **JUROR:** Yes. She dated one of my friends.

2 **THE COURT:** Okay. Would any of that, ma'am,
3 make it difficult or impossible for you to be
4 completely fair and impartial to both sides?

5 **JUROR:** No, sir.

6 **THE COURT:** Would you be able to set aside those
7 circumstances and base your verdict in this case on
8 the evidence and the law?

9 **JUROR:** Yes, sir.

10 **THE COURT:** Thank you, ma'am. Yes, ma'am. Your
11 name?

12 **JUROR:** Geddings, April.

13 **THE COURT:** April Geddings. All right. All
14 right, Ms. Geddings. Which prospective witness or
15 witnesses?

16 **JUROR:** I don't really know any of them
17 personally, but I am familiar with Tuomey RN's.

18 **THE COURT:** Okay. Do you know any of them,
19 other than the fact that I mentioned that they work
20 at Tuomey?

21 **JUROR:** I don't.

22 **THE COURT:** Okay. And you're an RN?

23 **JUROR:** No. I'm just familiar with Tuomey RN's.

24 **THE COURT:** Would the fact that you know that
25 these folks work at Tuomey, would that make it

1 difficult or impossible for you to be fair and
2 impartial?

3 *JUROR:* No, sir.

4 *THE COURT:* Would you be able to base your
5 verdict on the evidence and the law?

6 *JUROR:* Yes.

7 *THE COURT:* Thank you, ma'am. All right. Is
8 there anyone else who would stand in response to the
9 question about these prospective witnesses? Yes,
10 sir. Your name?

11 *JUROR:* Lawrence Gotlieb.

12 *THE COURT:* All right.

13 *JUROR:* 155.

14 *THE COURT:* All right. Mr. Gotlieb is number
15 155. Yes, sir. Which potential witness or
16 witnesses?

17 *JUROR:* Dr. Mease.

18 *THE COURT:* All right. Are you acquainted with
19 him in a personal --

20 *JUROR:* Acquainted with him.

21 *THE COURT:* How long have you known him?

22 *JUROR:* About a year.

23 *THE COURT:* All right. Mr. Gotlieb, would that
24 make it difficult or impossible for you to be fair
25 and impartial to both sides?

1 **JUROR:** It would not.

2 **THE COURT:** Could you base your verdict on the
3 evidence and the law?

4 **JUROR:** I could.

5 **THE COURT:** Thank you. All right. The State of
6 South Carolina is represented by Suzanne Mayes, and
7 the defendant is represented by Jack Howle. Ms.
8 Mayes, you can stand and introduce yourself. Mr.
9 Howle, after she does that, you can do the same
10 thing.

11 **MS. MAYES:** I am Suzanne Mayes, a prosecuting
12 attorney with the South Carolina Commission on
13 Prosecution Coordination, and I work today in
14 conjunction with the Third Circuit Solicitor's
15 Office.

16 **THE COURT:** Mr. Howle.

17 **MR. HOWLE:** Thank you, Your Honor. I am Jack
18 Howle. I am the Public Defender for the Third
19 Judicial Circuit. That is Sumter.

20 **THE COURT:** All right. Ladies and gentlemen, is
21 there any member of the jury panel or member of your
22 immediate family who is kin to either one of these
23 attorneys, or do you have any connection of
24 acquaintance with them at all, or have you been
25 represented by either of these attorneys or members

1 of their offices? And that would be the Third
2 Circuit Defender's Office or the Commission on
3 Prosecution Coordination or the Third Circuit
4 Solicitor's Office? Do you know these folks, kin to
5 them or have you or a family member ever been
6 represented by these lawyers or members of their
7 offices?

8 All right. Yes, sir. Mr. Cuttino, let me get
9 your number.

10 *JUROR:* 28.

11 *THE COURT:* Number 28. Yes, sir.

12 *JUROR:* I worked with Jack Howle.

13 *THE COURT:* All right. How long ago was that?

14 *JUROR:* A year or two.

15 *THE COURT:* All right. And that work is
16 completed?

17 *JUROR:* That work is completed.

18 *THE COURT:* Would any of that create any
19 difficulty for you being fair and impartial?

20 *JUROR:* It would not.

21 *THE COURT:* Would you be able to set that aside
22 and base your verdict on the evidence and the law?

23 *JUROR:* Yes, sir.

24 *THE COURT:* Thank you, sir. Anyone else?

25 Is there any member of the jury panel or member

1 of your immediate family who is now or has in the
2 past been employed at Quick Transportation Trucking
3 Company which is located on Corporate Way here in
4 Sumter? Any member of your family or you now or in
5 the past been employed at Quick Transportation
6 Trucking Company?

7 All right. No one stood.

8 Is there any member of the jury panel or member
9 of your immediate family who has ever been
10 investigated for or charged with the offense of child
11 abuse or neglect, or have you or any member of your
12 immediate family ever been the victim of such
13 circumstance, child abuse or neglect?

14 All right. No one stood.

15 Is there any member of the jury panel who has
16 any religious or moral beliefs which would prevent
17 you from passing judgment on another person if you
18 were a member of a jury?

19 All right. No one stood.

20 Is there any member of the jury panel who is
21 aware of any bias or prejudice that you might have
22 for or against the State or for or against the
23 defendant in this case?

24 Is there any member of the jury panel who has
25 formed or expressed any opinion, even sitting here

1 this morning, formed or expressed any opinion about
2 any issue or matter involved in this case?

3 No one stood.

4 Is there any member of the jury panel who is a
5 member of or a contributor to any organization has
6 that has as its primary focus the promotion of law
7 enforcement or victims' rights? And these
8 organizations would include but they're not limited
9 to Mothers Against drunk Driving, Students Against
10 Drunk Driving, Citizens Against Violent Crime or
11 similar such organizations.

12 Keeping in mind, ladies and gentlemen, the
13 particular emphasis on your ability to be fair and
14 impartial to both the State and the defendant, is
15 there any member of the jury panel who knows of any
16 reason why you should not serve as a juror in this
17 case?

18 All right. No one stood.

19 Any other questions from the State?

20 **MS. MAYES:** None from the State, Your Honor.

21 **THE COURT:** Any from the defendant?

22 **MR. HOWLE:** None from the defense, Your Honor.

23 **THE COURT:** All right. Two alternates suitable,
24 ladies and gentlemen?

25 **MS. MAYES:** Yes, sir, Your Honor.

1 **THE COURT:** All right. It's five and five. Any
2 disagreement with five and five? Ms. Mayes?

3 **MS. MAYES:** None from the State.

4 **THE COURT:** Mr. Howle?

5 **MR. HOWLE:** No, Your Honor.

6 **THE COURT:** All right. Ladies and gentlemen,
7 we'll follow the same process we followed with your
8 prior jury selection. I wasn't in here, but I'm sure
9 it went in the same format. If your name is called,
10 please come forward, and the striking process will
11 take place then.

12 (Pause)

13 **THE COURT:** All right.

14 **THE CLERK:** Okay, ladies and gentlemen. If I
15 call your name and number, just exit on your right.
16 There's a single gate. Or on your left there's
17 another gate. Come up to the front, face the back of
18 the courtroom.

19 Number 146, Chenelle Wilson.

20 (Black female)

21 **THE CLERK:** What says the State?

22 **MS. MAYES:** Please present the juror.

23 **THE CLERK:** What says defense?

24 **MR. HOWLE:** Please present the juror.

25 **THE CLERK:** Have a seat in the jury box.

1 Number 102, Pierre Neal.

2 (Black male)

3 **THE CLERK:** What says the State?

4 **MS. MAYES:** Please present the juror.

5 **THE CLERK:** What says defense?

6 **MR. HOWLE:** Please excuse the juror from the
7 trial of this case.

8 **THE CLERK:** Sir, please return back with the
9 jury panel at this time. You are excused from the
10 trial of this case.

11 Number 42, Brett Fonteyne.

12 (White male).

13 **THE CLERK:** What says the State?

14 **MS. MAYES:** Please present the juror.

15 **THE CLERK:** What says defense?

16 **MR. HOWLE:** Please seat the juror.

17 **THE CLERK:** Have a seat in the jury box here.

18 Number 34, Lakisha Dyer.

19 (Black female)

20 **THE CLERK:** What says the State?

21 **MS. MAYES:** Please excuse the juror from the
22 trial of this case.

23 **THE CLERK:** Ma'am, please return back with the
24 jury panel at this time. You are excused from the
25 trial of this case.

1 Number 51, Mark Gillard.

2 (Black male)

3 **THE CLERK:** What says the State?

4 **MS. MAYES:** Please present the juror.

5 **THE CLERK:** What says defense?

6 **MR. HOWLE:** Please excuse the juror from this
7 trial.

8 **THE CLERK:** Please return back with the jury
9 panel at this time, sir. You are excused from the
10 trial of this case.

11 Number 38, Mozette Edwards.

12 (Black male)

13 **THE CLERK:** What says the State?

14 **MS. MAYES:** Please present the juror.

15 **THE CLERK:** What says defense?

16 **MR. HOWLE:** Please seat the juror.

17 **THE CLERK:** Please have a seat in the jury panel
18 here.

19 Number 124, Jorie Singletary.

20 (Black female)

21 **THE CLERK:** What says the State?

22 **MS. MAYES:** Please excuse the juror from the
23 trial of this case.

24 **THE CLERK:** Please have a seat back with the
25 panel, ma'am. You are excused from this trial.

1 Number 83, Selina Kirkpatrick.

2 (White female)

3 **THE CLERK:** What says the State?

4 **MS. MAYES:** Please present the juror.

5 **THE CLERK:** What says defense?

6 **MR. HOWLE:** Please seat the juror.

7 **THE CLERK:** Please have a seat in the jury box,
8 ma'am.

9 Number 8, Leland Benenhaley.

10 (White male)

11 **THE CLERK:** What says the State?

12 **MS. MAYES:** Please present the juror.

13 **THE CLERK:** What says defense?

14 **MR. HOWLE:** Please seat the juror.

15 **THE CLERK:** Have a seat in the jury box, sir.

16 Number 40, Christopher Eppley.

17 (White male)

18 **THE CLERK:** What says the State?

19 **MS. MAYES:** Please present the juror.

20 **THE CLERK:** What says defense?

21 **MR. HOWLE:** Please excuse the juror from this
22 trial.

23 **THE CLERK:** Have a seat back with the jury
24 panel. You are excused from the trial of this case,
25 sir.

1 Number 130, Ronald Stadalsky.

2 (White male)

3 **THE CLERK:** What says the State?

4 **MS. MAYES:** Please present the juror.

5 **THE CLERK:** What says defense?

6 **MR. HOWLE:** Please seat the juror.

7 **THE CLERK:** Have a seat in the jury box here,
8 sir.

9 Number 66, Jock Hendricks.

10 (White male)

11 **THE CLERK:** What says the State?

12 **MS. MAYES:** Please present the juror.

13 **THE CLERK:** What says defense?

14 **MR. HOWLE:** Please excuse the juror from the
15 trial.

16 **THE CLERK:** Have a seat back in the jury panel.
17 You are excused from this trial, sir.

18 Number 122, Letitia Simien.

19 (Black female)

20 **THE CLERK:** What says the State?

21 **MS. MAYES:** Please present the juror.

22 **THE CLERK:** What says defense?

23 **MR. HOWLE:** Please seat the juror.

24 **THE CLERK:** Please have a seat in the jury box
25 over here.

1 Number 28, Tillman Cuttino, Jr.

2 (White male)

3 **THE CLERK:** What says defense? Excuse me. What
4 says the State?

5 **MS. MAYES:** Please present the juror.

6 **THE CLERK:** What says defense?

7 **MR. HOWLE:** Please seat the juror.

8 **THE CLERK:** Have a seat in the jury box here.

9 Number 94, Angler McDaniel.

10 (Black female)

11 **THE CLERK:** What says the State?

12 **MS. MAYES:** Please present the juror.

13 **THE CLERK:** What says defense?

14 **MR. HOWLE:** Please seat the juror.

15 **THE CLERK:** Please have a seat in the jury box,
16 ma'am.

17 Number 46, Beverly Gardner.

18 (White female)

19 **THE CLERK:** What says the State?

20 **MS. MAYES:** Please excuse the juror from the
21 trial of this case.

22 **THE CLERK:** Ma'am, please have a seat back with
23 the panel. You are excused from this trial.

24 Number 123, Janie Sims.

25 (Black female)

1 **THE CLERK:** What says the State?

2 **MS. MAYES:** Please excuse the juror from the
3 trial of this case.

4 **THE CLERK:** Have a seat back with the jury
5 panel. You are excused from the trial at this time.

6 Number 62, Lucious Harvin.

7 (Black male)

8 **THE CLERK:** What says the State?

9 **MS. MAYES:** Please present the juror.

10 **THE CLERK:** What says defense?

11 **MR. HOWLE:** Please seat the juror.

12 **THE CLERK:** Please have a seat in the jury box,
13 sir.

14 Number 153, Tracy Gerecke.

15 (White male)

16 **THE CLERK:** What says the State?

17 **MS. MAYES:** Please present the juror.

18 **THE CLERK:** What says defense?

19 **MR. HOWLE:** Please excuse the juror from this
20 trial.

21 **THE CLERK:** Have a seat back with the jury
22 panel. You are excused from the trial at this time.

23 Number 65, Gerard Henderson.

24 (White male)

25 **THE CLERK:** What says the State?

1 **MS. MAYES:** Please present the juror.
2 **THE CLERK:** What says defense?
3 **MR. HOWLE:** Please seat the juror.
4 **THE CLERK:** Have a seat in the jury box, sir.
5 Number 128, Christopher Spencer.
6 (White male)
7 **THE CLERK:** What says the State?
8 **MS. MAYES:** Please present the juror.
9 **THE CLERK:** What says defense?
10 **MR. HOWLE:** Please seat the juror.
11 **THE CLERK:** Have a seat in the jury box, sir.
12 **THE COURT:** There will be two alternates, one
13 and two on both.
14 **THE CLERK:** All right. Number 22 (sic), Regina
15 Giles.
16 (Black female)
17 **MR. HOWLE:** What number was that?
18 **THE CLERK:** Number 1 -- I'm sorry. Number 50.
19 **MR. HOWLE:** 50?
20 **THE CLERK:** 50.
21 **MR. HOWLE:** Thank you.
22 **THE CLERK:** What says the State?
23 **MS. MAYES:** Please present the juror.
24 **THE CLERK:** What says defense?
25 **MR. HOWLE:** Please seat the juror.

1 **THE CLERK:** Have a seat in the jury box, ma'am.
2 Number 37, Michael Edwards.

3 (Black male)

4 **THE CLERK:** What says the State?

5 **MS. MAYES:** Please present the juror.

6 **THE CLERK:** What says defense?

7 **MR. HOWLE:** Seat the juror, please.

8 **THE CLERK:** Have a seat in the jury box, sir.

9 **THE COURT:** All right. Any motions, issues or
10 other matters pertaining to jury selection from the
11 State?

12 **MS. MAYES:** None from the State, Your Honor.

13 **THE COURT:** Any from the defendant?

14 **MR. HOWLE:** None from the defendant, Your Honor.

15 **THE COURT:** All right. Lawyers, come up here
16 for just a second. And Mr. Jackson.

17 **THE CLERK:** Yes, sir.

18 (Whereupon, a bench conference is had)

19 **THE COURT:** Members of the jury panel who were
20 not selected as jurors in this case, thank you for
21 your patience this morning. This will be the longest
22 amount of time you spend in the courtroom unless you
23 are selected to be on a jury. But you are released
24 for the remainder of today, and you are to call the
25 number that you have after 6 this evening.

1 You'll hear a recording, and that recording will
2 either tell you to come back at a reported time
3 tomorrow or it will tell you to call back sometime
4 tomorrow. So simply follow the instruction that you
5 hear. If you're uncertain or unclear about what the
6 recording says, just call here tomorrow morning after
7 8:30 to the main number at the clerk's office and
8 you'll get some clarification if you need it. But
9 thank you for your patience and your time today.
10 You're released. Call back after 6 this evening.
11 Thank you very much.

12 (Pause)

13 **THE COURT:** And if you folks will stay seated
14 for just a minute. If you all will stay seated for
15 just a minute.

16 (Pause)

17 **THE COURT:** All right. Ladies and gentlemen of
18 the jury who were selected as jurors in this case,
19 we're going to actually start the trial at 3:30 this
20 afternoon. There are some things I will be
21 discussing with the lawyers to start the case in an
22 orderly fashion that won't need your participation.
23 And I want to tell you a couple of things before I
24 let you go.

25 First of all, this is the only thing that most

1 of you have in common with each other, this case.
2 This case is the only thing that you can talk about.
3 You cannot talk about this case when you go to lunch
4 or when you go home this evening. If you're sitting
5 in the jury room during a break or during a recess of
6 any kind, you cannot talk about this case amongst
7 each other. That is because you will be hearing
8 evidence in this case and you are not to make any
9 decisions and you're not to begin to form any
10 conclusions in your mind about what your verdict is
11 going to be until you've heard everything.

12 When you go to lunch, you may go home, you may
13 go to work, you may go wherever; somebody may say,
14 hey, did you get picked on a jury? Your only
15 response to that question can be yes. Because that
16 person is going to ask you what kind of case it is,
17 what's it about?

18 Well, right now you and I know as much about
19 this case as each other. I am not going to talk
20 about this case with anybody. Of course my view of
21 the facts of the case won't mean anything. It's
22 going to be what you think the facts should be. But
23 if you talk to somebody about this case, somebody
24 will likely say something that will have an impact on
25 your decision. So let's keep mum.

1 Also you cannot undertake on your own to do any
2 kind of investigation or research into any issue in
3 this case. As part of your oath you are going to
4 well and truly try this case according to the
5 evidence and the law, so help you God. That's the
6 evidence you see and hear in the courtroom and that's
7 the law as I give it to you in the courtroom. So it
8 would be completely improper and a complete violation
9 of your oath to do any research into this case either
10 by Internet or whatever vehicle that you might think
11 is available. You can't do it. And I sincerely mean
12 that.

13 So you can go to lunch at this time with those
14 instructions. Be back -- which jury room will they
15 be in?

16 **THE BAILIFF:** The jury room down the hall.

17 **THE COURT:** Okay. When you come, you'll be told
18 what door to come in. And this will be The State vs.
19 Putnam case or jury number two, however they have you
20 when you come in the door. But just make sure you go
21 to the appropriate jury room. Take a look around now
22 to see who's on your jury. When you get back into
23 your jury room this afternoon, that other jury is
24 likely going to already be in the courtroom working.
25 So you should have no confusion in that regard.

1 But I look forward to seeing you at 3:30.

2 Please be on time. We'll start promptly at 3:30.

3 Thank you very much.

4 (Jury out at 1:03 p.m.)

5 **THE COURT:** All right. We will start now. The
6 only pre-trial matter we need to hear is a Jackson
7 vs. Denno matter. Is that right, Ms. Mayes?

8 **MS. MAYES:** At this time I believe that's
9 correct, Your Honor.

10 **THE COURT:** Mr. Howle?

11 **MR. HOWLE:** (Nods head affirmatively).

12 **THE COURT:** All right. We'll start back at 2:15
13 in courtroom number 2. I think that's the plan,
14 isn't it? The other trial will be here in this
15 courtroom? See you at 2:15. And if there is
16 anything that you need to discuss with me, I'll be
17 back in my office probably around ten minutes 'til 2
18 or so. Thank you. All right. Thank you. What's
19 the defendant's situation on bond?

20 **MR. HOWLE:** She is incarcerated.

21 **THE COURT:** Okay. Thank you very much.

22 (Whereupon, a lunch break is taken)

23 **THE COURT:** All right. Are you ready to go
24 forward with any pre-trial matters? It's my
25 understanding that there is a Jackson vs. Denno

1 issue. Are there any other issues that we need to
2 take care of?

3 **MR. HOWLE:** I don't believe so.

4 **MS. MAYES:** Your Honor, we did mention during
5 our previous meeting with Your Honor in chambers that
6 there are going to be some additional issues that
7 arise during the course of the trial. But in terms
8 of pre-trial matters at this time, this is what the
9 State would intend to offer concerning the three
10 statements that were made. I'm sorry. The
11 statements that were made to three separate
12 individuals who are I believe with law enforcement
13 concerning the incident involving the victim, Child
14 Putnam.

15 **THE COURT:** Okay. You may call your first
16 witness.

17 **MS. MAYES:** The State calls Gwen Herod.

18 **THE CLERK:** State your full name for the record.

19 **THE WITNESS:** Gwen L. Herod.

20 GWEN L. HEROD, after being duly sworn, testifies
21 as follows:

22 **THE CLERK:** State your name and spell your last
23 for the record.

24 **THE WITNESS:** Gwen L. Herod, H-E-R-O-D.

25 DIRECT EXAMINATION

1 BY MS. MAYES

2 Q All right. And, Ms. Herod, where are you employed
3 and in what capacity?

4 A I am employed by the Sumter County Sheriff's Office
5 as a victim assistance officer.

6 Q All right. And what does that job entail?

7 A It entails responding to crime scenes and responding
8 to victims of crime at the time of the incidents and
9 working with them throughout the process, throughout
10 the criminal justice system. And also in working
11 with victims, you do different things for different
12 types of victims, but my job is to respond and meet
13 the needs of victims of crime.

14 Q All right. And how do you normally learn of a case
15 or get called onto a case initially?

16 A Usually, if it's -- if it's during working hours when
17 I'm out, I'll either be contacted by cellphone or
18 radio. If it's after hours and I'm on call, I'll get
19 contacted by an officer who is at the scene or
20 dispatched upon the instruction of the officer.

21 Q And can you tell us whether or not you've had the
22 opportunity to get called to respond to a hospital
23 setting in the course of your employment?

24 A Many times.

25 Q And describe what circumstances might bring you to a

1 hospital setting?

2 A I will respond to the hospital if there's been an
3 assault where the victim has already been transported
4 to the hospital to meet with that victim; in cases of
5 sexual assault, to meet with a victim of sexual
6 assault, or in cases of death to meet with the family
7 members who are at the hospital waiting to learn what
8 happened to their loved one.

9 Q And what about if there is a child who is a hospital
10 patient and law enforcement is notified? What's
11 normally the course of procedure for you?

12 A I would get called on those type of cases to respond
13 to the family members of the victim to meet whatever
14 need there is for the family members who are there.

15 Q All right. Now, can you tell us whether or not you
16 had the opportunity to respond in the case of State
17 vs. Martina Putnam on or about March 10th of 2007?

18 A I did. I was contacted on March the 10th, and I
19 believe that was a Saturday. I was at home and was
20 contacted by Major Gardner of the Sumter County
21 Sheriff's Office who was the commander on call that
22 day. And he asked me to respond to Tuomey in
23 reference to a baby they had there, a 13-month-old
24 baby who had been brought in by his parents after he
25 had stopped breathing. And they had some family

1 members at the hospital, including some siblings of
2 the baby. And he asked me to respond, and I
3 responded based on his instruction.

4 Q What are the circumstances as you recall them upon
5 arriving there at the scene greeting family members?

6 A When I pulled into the parking lot of the hospital I
7 saw Major Gardner outside in the parking lot. And I
8 saw Sergeant Burnish, Sergeant Robert Burnish. And I
9 saw an ambulance and they were loading a baby into an
10 ambulance. And a lady was there with the baby who I
11 assumed was the baby's mother. But that's what I saw
12 as I drove into the parking lot.

13 Q And specifically, which hospital are you referring
14 to?

15 A To Tuomey. I'm sorry.

16 Q Tuomey here in Sumter County?

17 A Yes, ma'am.

18 Q All right. And what happened next?

19 A Sergeant Burnish came over to me and told me -- I
20 said, what do you all need me to do? What's going
21 on? And he said, we don't know what we've got. What
22 I need you to do right now is, there are two small
23 children in the waiting room that were the brothers
24 of the baby. And he asked me to respond and see what
25 I could -- information I could get from the two boys.

1 Q And do you recall the age or approximate age of the
2 two siblings?

3 A I recall I think it was six and nine, somewhere in
4 that area.

5 Q All right. And what happened next?

6 A I went into the ER and introduced myself to the boys
7 and had a conversation with them. And after my
8 conversation with them, I asked them if they would --
9 because of their age and because I didn't know what
10 we had, I asked them if they would go with me to my
11 office. And in my office is where I conduct forensic
12 interviews of children. I took them and got them
13 something to eat. And then I asked Lieutenant
14 Florence who had responded to the scene as well if he
15 would come and observe the interviews. And that was
16 the next thing I did after getting the boys something
17 to eat. I conducted interviews of them.

18 Q And you're referring to Lieutenant David Florence?

19 A I am. Yes, ma'am.

20 Q All right. And so you conducted interviews with the
21 two siblings that were also observed by Lieutenant
22 David Florence?

23 A I did. Yes, ma'am.

24 Q And what actions, if any, were taken next?

25 A After finishing the interview with them, I went and

1 met with Major Gardner back at the main law
2 enforcement center, briefed him on the children. And
3 he asked me if I would ride with Lieutenant Florence
4 and go to Palmetto Richland in Columbia because no
5 one had met with the mother yet, and asked me if I
6 would accompany him. He was going to go check on the
7 status of the baby and asked me if I would go with
8 him and help him in speaking with the mother and
9 checking on the status of the baby.

10 Q All right.

11 A And I did that.

12 Q And you mentioned that there were two siblings, there
13 is a baby who is injured at the hospital, and you've
14 mentioned that there was another -- or the baby. Are
15 you aware of whether there were any other family
16 members?

17 A There was a father of the baby who I determined after
18 the interview was not the biological father of the
19 other two siblings but was the father of the baby
20 according to what the boys told me. And I had not
21 spoken with him or the mother. He was speaking with
22 Sergeant Burnish I believe at that time.

23 Q Okay. And what is the name of the father?

24 A The father's name was Patrick Putnam.

25 Q And the baby's mother?

1 **A** The mother's name was Martina Putnam.

2 **Q** And did you ultimately go with Lieutenant Florence to
3 Richland Hospital or to Palmetto Richland?

4 **A** I did. I rode with him in his car.

5 **Q** All right. And tell us what happened upon your
6 arrival there?

7 **A** Once we got to Palmetto Richland, Lieutenant Florence
8 and I went to the pediatric intensive care unit that
9 was located on the ninth floor. And as we got there
10 we saw a nurse and the nurse informed us of the
11 status of the baby.

12 **Q** All right.

13 **A** And after learning about the condition of the baby,
14 Lieutenant Florence said that -- he took the
15 information from her and said that he was going to go
16 speak with the doctor. And I told him I would just
17 wait on him. And I was taken to the family room.

18 And once I got into the family room of that waiting
19 area, Child mother, Martina Putnam, was there, and
20 I introduced myself to her and explained to her who I
21 was and what my role was and started a conversation
22 with her. And then Lieutenant Florence had come back
23 in after we had already started a conversation.

24 **Q** All right. So this conversation occurred in the
25 family room on the ninth floor at Palmetto Richland?

1 **A** That's correct. Yes, ma'am.

2 **Q** And can you tell us whether or not Ms. Putnam was in
3 custody at that point?

4 **A** No, ma'am.

5 **Q** Law enforcement custody?

6 **A** No, ma'am.

7 **Q** Did she have any reason to believe that she was in
8 custody?

9 **A** No, ma'am. None at all.

10 **Q** And can you tell us whether or not she -- her
11 decision to participate in the interview in your
12 opinion was voluntary or involuntary? Do you have an
13 opinion in that regard?

14 **A** It was completely voluntary. In fact, she -- when I
15 introduced her and told her who I was, she began
16 talking to me about what had happened and what was
17 going on with her baby.

18 **Q** Describe what you mean by that?

19 **A** She told me -- she started telling me some things
20 that the doctor had told her about Child receiving
21 injuries that would have occurred that day. And she
22 asked me what I knew about that. And at that point
23 she said, I don't know how that could have happened.
24 She told -- you know, she started that conversation.

25 **Q** All right. Now, specifically in regards to the

1 conversation, how, if at all, did you document any
2 statements that were made by Ms. Putnam regarding the
3 injuries or the circumstances involving her son,
4 Child

5 A I prepared some notes for the trial. It wasn't like
6 I was interviewing her and taking a statement at that
7 point. It was a conversation between she and I, and
8 then Lieutenant Florence came back in the room after
9 we had started a conversation. So after my
10 conversation with her I prepared the summary of the
11 notes of what we had talked about and turned them
12 over to Lieutenant Florence.

13 Q All right. And do you have a copy of the verbal
14 statement that was summarized by you?

15 A I do. I have it with me.

16 Q And how many pages is that?

17 A It consists of three pages.

18 Q Do you recall when this summary was prepared in
19 relation to the conversation with Ms. Putnam?

20 A If I'm not mistaken, it was that same day. It was
21 when we returned back to Sumter that same day which
22 would have been Saturday.

23 Q Have you had the opportunity to review the statement?

24 A I read it earlier today.

25 Q Do you have an opinion as to whether or not the

1 summary that you are looking at or that you reviewed
2 earlier today is a fair and accurate representation
3 of the earlier statement that was made by Ms. Putnam
4 on March 10th, 2007?

5 A Yes, ma'am. I believe that this accurately
6 summarizes what we talked about.

7 Q I want to ask you to review the portion in which you
8 documented the specifics of any verbal statement made
9 by Ms. Putnam regarding the events of that day. And
10 if so, if you could recite them as is documented in
11 your summary?

12 A Okay. Martina told me that the doctor told her that
13 Child had received an injury today -- and Child was
14 the name of the baby. I'm sorry. I don't know if
15 I've said that -- that caused him to stop breathing.
16 She told me she didn't know how that could have
17 happened because she was the only one with him. She
18 told me that the baby had been real cranky and she
19 thought he was probably getting a tooth.

20 She told me that she woke up because Child was
21 crying. She told me he always cried. She went and
22 got him out of the crib. She didn't know what time
23 it was but she told me that the other boys were
24 outside playing already and her husband was in the
25 kitchen fixing something to eat.

1 She fixed Child some baby cereal. She told me
2 she sat down on the living room floor, like always,
3 to feed him. He was still cranky, like he had been
4 all week. She told me he didn't even want to be
5 held. She went on to tell me that he had a, quote,
6 mad cry, but he settled down and ate.

7 At this point she told me after he was about
8 three-quarters of the way through eating he got mad
9 and threw himself down. She told me he did this
10 about five or six times. She told me that after he
11 ate she carried him to his bedroom and set him in his
12 car seat. After a few minutes she took him into the
13 bathroom and laid him on the floor and started his
14 water. She told me he was just staring at the light.

15 She turned around to get a towel and then went
16 to pick him up and saw he wasn't breathing. She
17 called for her husband and they drove to the
18 hospital. She was giving him CPR at the house and
19 then again on way to the hospital.

20 She told me that Child was a premature baby and
21 they had given her a refresher course on CPR. She
22 told me he was only about seven months old
23 developmentally and that they were trying to work
24 with him to get him to sit up.

25 At this point I asked her about him throwing

1 himself down while he was eating and getting back up.
2 I asked her if he was able to sit up by himself then.
3 At this point she got down on the floor and told me
4 she would show me what happened.

5 Q Okay. Let me stop you right there.

6 A Yes, ma'am.

7 Q When you say that she told you that she would show
8 you what happened, you're referring to what event?

9 A About him throwing himself down while she was feeding
10 him the cereal.

11 Q All right. And can you tell us what she did in
12 response to wanting to show you that?

13 A Yes, ma'am. She sat down on the floor spreading her
14 legs out and she showed us how she set Child between
15 her legs facing her to feed him. She went on to
16 explain that when he threw himself backwards hitting
17 his head she would take him by his arms and pick him
18 back up each time. She said this went on five or six
19 times until finally she picked him up and set him
20 down on his butt and stated at that point, maybe I
21 sat him down too hard.

22 At this point Lieutenant Florence asked her if
23 she thought about using a pillow behind his head when
24 she saw him hitting his head repeatedly. She paused
25 and stared for a moment and then replied, he does it

1 all the time; I don't really think about it.

2 I asked her if Child had ever been in the
3 hospital before. She told me he was at Kingman
4 Regional Hospital in Arizona because he kept losing
5 weight. She told me that CPS got involved and took
6 Child and put him in a foster home. She said she
7 was glad to get the help. She told me that he stayed
8 in foster care from August until November of '06.

9 She said her father-in-law and his wife had told
10 CPS that Sibling took care of Child and tried to get
11 them to take Child from her. She stated they didn't
12 like her and didn't think she was a good mother. She
13 didn't know the name of the foster parents but said
14 the CPS worker's name was Patricia and she thought
15 her last name had Y's in it.

16 She told us that Child pediatrician was Dr.
17 Kahn, K-A-H-N, in Kingman, Arizona. She told us that
18 they did not see eye-to-eye.

19 Q Let me stop you right there.

20 A Yes, ma'am.

21 Q The expression "eye-to-eye", whose words are those?

22 A Those were Martina Putnam's words.

23 Q All right.

24 A When asked about Sibling 2 and Sibling and how they treat
25 Daniel, she told us Sibling 2 didn't like Child at

1 all.

2 Q All right. Let me stop you right there.

3 A Okay.

4 Q Sibling 2 is which sibling? The older sibling or
5 younger sibling?

6 A If I'm not mistaken, Sibling 1 is the older one, and then
7 there is Sibling 2 and then there was Child

8 Q And Sibling 2 would be the six-year-old?

9 A Yes, ma'am.

10 Q Okay. Please continue.

11 A She told us that Sibling worried about him but doesn't
12 like it because he thinks he cries too much. She
13 told us that she does not let Sibling 2 and Sibling even
14 around Child unless they're all together because
15 part of the allegations against her in Arizona was
16 that Sibling parents Child She commented that Child
17 does cry a lot and that he has basically cried for
18 four months straight.

19 When asked about what they do with Child with
20 him crying so much, she told us that she generally
21 just puts him in the crib and walks away from him.
22 She said she could get angry with him but she just
23 walks away. She told us that neither her or her
24 husband spansks Child because you can't reason with
25 him.

1 She told us that they moved to Sumter the first
2 of January because she got a job. She said she had
3 met her husband going to Lewiston, Idaho to work for
4 Swift Trucking.

5 At this point I encouraged her to go see Child
6 again as the nurses had said he wouldn't live much
7 longer. She said she wanted her husband and I told
8 her he was on his way. She left and went to Child
9 bed and approximately five minutes later Child died.

10 She came back in the family room and we talked
11 some more. A chaplain came in. She asked where her
12 other boys were and I explained that we had put them
13 in protective custody. She told us she understood
14 why we had done that. She told us Sibling2 might have
15 some problems because he had separation anxiety
16 because she was gone so much driving the truck.

17 I left our phone numbers with her and told her
18 that if she wanted to call us and talk with us she
19 could.

20 Q Can you tell us whether or not the summary that you
21 referred to bears your signature?

22 A It does. Yes, ma'am.

23 Q At this time I'm going to ask to mark this as Court's
24 Exhibit 1. Your Honor, if I may, I'll hand the
25 witness a second copy.

1 **THE COURT:** All right.

2 **MS. MAYES:** I'd like to mark that as a Court's
3 Exhibit.

4 (WHEREUPON, Court's Exhibit No. 1 is marked for
5 identification.)

6 **Q** Now, Ms. Herod, you had previously testified that at
7 the outset of the interview that Ms. Putnam was not
8 in custody. Can you tell us at any point during the
9 course of the interview, did she become somewhat in
10 custody?

11 **A** No, ma'am. We left her at the hospital and I
12 accompanied Lieutenant Florence and we came back to
13 Sumter.

14 **Q** Did Ms. Putnam understand that you were a
15 representative of law enforcement of the Sheriff's
16 Office?

17 **A** I explained to her that as my role as victim advocate
18 of the Sheriff's Office that I was there to find --
19 you know, to help her find out what happened and to
20 help her with anything that she needed, anybody that
21 she wanted me to call, anything like that. Yes,
22 ma'am.

23 **Q** Can you tell us whether or not Lieutenant Florence
24 was present for any portions of your interview?

25 **A** Yes, ma'am, he was. And when I initially went into

1 the room, he was not with me. He had gone to speak
2 with the doctor. He came in shortly after that, and
3 I introduced him to Ms. Putnam at that point. And he
4 was in and out. He would stay in for a while. And I
5 think he asked a few questions and then if the nurse
6 would come he would step outside and talk with the
7 nurse. And I think he went to see Child actually
8 while we were talking.

9 Q Did your introduction to Ms. Putnam explain that
10 Lieutenant Florence was a member of law enforcement?

11 A I did. And I think the way I explained it, if I
12 remember it correctly, is that he works for the
13 Sheriff's Office but his role was to find out -- he's
14 the investigator and his role is to find out what
15 exactly happened to Child And I did explain that
16 to her when I introduced him.

17 Q All right. And at any point did he also engage in
18 asking questions of Ms. Putnam?

19 A He asked a couple of clarification type questions.
20 The main gist of the conversation was she and I
21 talking, but he did ask -- I can remember him asking
22 a couple of questions to clarify maybe something that
23 he heard. And there was probably a couple of times
24 during that because he was sitting in there, and I
25 remember specifically when she was on the floor and

1 showing us, demonstrating what had happened, that he
2 was sitting there. And she may have addressed -- you
3 know, they talked during the conversation as well.

4 Q Can you tell us generally what was the purpose of the
5 conversation with Ms. Putnam? What was the purpose
6 of the interview?

7 A The initial purpose, the reason that I was there was
8 to respond to a mother of a child who had received
9 very serious injuries. And that was my reason for
10 responding to the hospital along with Lieutenant
11 Florence.

12 Q Okay. And at any portion during the interview, can
13 you tell us whether or not you asked for details
14 concerning what may have happened to Child

15 A Yes, ma'am. When she started telling me about the
16 injuries that the doctor said that Child would have
17 sustained and asking me questions, then we -- you
18 know, I set out in that conversation: Well, let's
19 figure out what happened; tell me what happened that
20 day. And so, you know, it was a very specific
21 conversation about what had happened that day.

22 Q During the course of that interview with Ms. Putnam,
23 did she ever implicate anyone else in the injuries to
24 her son?

25 A No, ma'am. She never -- she told me that she didn't

1 have any idea what could have happened and
2 specifically told me that she was the only one with
3 him. So she didn't even give us a name of anybody
4 else who was with the baby that day. She said that
5 she was the only one that was with him.

6 Q And we talked about her being the only one with him.
7 I will ask you specifically, in her statement she
8 mentioned waking up and feeding him cereal?

9 A She did.

10 Q From that point on to when she described the child
11 becoming unresponsive or not breathing, did she ever
12 indicate that he was out of her sight?

13 A No, ma'am. She was with him and she went through the
14 details of what she he had done with him.

15 Q Did she ever indicate that he was out of her custody?

16 A No, ma'am.

17 Q Did she ever indicate that anyone else had had
18 physical access to the child during that period of
19 time?

20 A No, ma'am.

21 Q Beg the Court's indulgence. What happened next?

22 A After the baby died the chaplain came in and we had a
23 discussion with the chaplain. I asked her if there
24 was anybody else she wanted me to call. She wanted
25 her husband. And I had called and found out --

1 either Lieutenant Florence or myself had called
2 Sumter, and I was told that he was on the way. And I
3 told her that I understood that he was on the way. I
4 explained to her what we had done with her other two
5 boys. And then I left and went back to Sumter with
6 Lieutenant Florence.

7 Q And you mentioned what had happened with the other
8 two boys. In law enforcement terms, can you tell us
9 what had happened?

10 A We had placed the boys in protective custody and DSS
11 was finding placement for them.

12 Q And can you tell us whether that's usual or unusual
13 when there has been suspicious injuries sustained to
14 a child in a home to another sibling?

15 A That would be very common. That would be what we
16 expected to happen. That was nothing unusual.

17 Q And you mentioned that Mr. Putnam at some point was
18 arriving to the hospital. Do you know if he was
19 arriving freely and voluntarily?

20 A I was told that he was on the way there. And I think
21 he came by himself. Yes, ma'am.

22 Q So to your knowledge was he in custody at that time?

23 A At the time I told her he was on the way, he was not.

24 Q Okay. And do you know whether or not Ms. Putnam was
25 free to leave the hospital that evening of her own

1 free will?

2 **A** She was. I think she was going to wait at the
3 hospital for her husband to get there, is what I was
4 told. But, you know, we didn't instruct her on
5 whether to leave or not leave. We left and came home
6 and left her there waiting on her husband.

7 **Q** And to your knowledge did she ultimately go back to
8 her home or to another location on her own that
9 evening?

10 **A** To my knowledge, she did. Because I saw her after
11 that, a couple of days after that.

12 **Q** So for several days after that she remained free from
13 custody. Is that correct?

14 **A** Yes, ma'am.

15 **Q** And do you have documentation as to the date in which
16 she was ultimately arrested for the injuries that
17 were sustained by Child

18 **A** My notes do not indicate that, but I remember it was
19 March the 13th.

20 **MS. MAYES:** Nothing further of this witness at
21 this time, Your Honor.

22 **THE COURT:** Mr. Howle.

23 **MR. HOWLE:** Thank you, Your Honor.

24 CROSS EXAMINATION

25 **BY MR. HOWLE**

1 Q Ms. Herod, after you got to the hospital, you went to
2 talk to the boys. You didn't tell Ms. Putnam that
3 you were going to talk to the boys, did you?

4 A Ms. Putnam was gone.

5 Q She was already gone?

6 A Yes, sir.

7 Q She was?

8 A Yes, sir.

9 Q Okay.

10 A And -- but I think when I asked the boys about coming
11 to talk to me, they knew their mama was gone and they
12 wanted their dad to know where they were going. And
13 so I had a conversation with one of the officers
14 there, Sergeant Burnish or Major Gardner, and asked
15 them to speak to Mr. Putnam before I took the boys,
16 because they wanted their dad to know where they were
17 going.

18 Q Did you get permission to take the boys to eat?

19 A According to -- they said, yeah, we'll take care of
20 it. The boys were satisfied at that point.

21 Q But you never spoke with Mr. Putnam?

22 A No. I never spoke with Mr. Putnam that day. I've
23 spoken with him since, but not that day.

24 Q You say when you first started talking with her you
25 explained that you were from the Sheriff's

1 Department?

2 A Yes, sir.

3 Q Also Detective Florence with the Sheriff's
4 Department?

5 A I did when I introduced her. When he walked into the
6 room --

7 Q You said he came in shortly after you started talking
8 with her?

9 A Mm-hmm (affirmative).

10 Q So he heard a good deal of what you all were talking
11 about?

12 A Yes, sir.

13 Q Okay. Were you taking physical notes while you were
14 doing this? Were you writing things down?

15 A I don't remember, Mr. Howle. And I don't remember if
16 I was taking notes, if Lieutenant Florence was taking
17 notes. I just don't remember.

18 Q So this two and a half pages is just from your memory
19 when you got back?

20 A Yes, sir. Now, I may have documented some things on
21 the way back or something. I don't remember. I
22 remember typing these notes up.

23 Q Can you show me the notes that you took --

24 A No, sir.

25 Q -- that produced this?

1 **A** No, sir.

2 **Q** So all these quotes and everything that are in here
3 are just from what you remember when you got back to
4 your office?

5 **A** Yes, sir.

6 **Q** Okay. But when you told her that you worked at the
7 Sheriff's Department and then when Detective Florence
8 came in and he said he works for the Sheriff's
9 Department, I realize you haven't said you're in
10 custody, but you took no means whatsoever to give her
11 any Miranda rights?

12 **A** When I -- at that point, Mr. Howle, I was responding
13 to the mother of a baby who had sustained these
14 horrible injuries. And as a rule --

15 **Q** Yeah. But the initial purpose, you said that's what
16 it was; but obviously somewhere in your questioning
17 it changed and you became an advocate for the state
18 and not there to help somebody whose child was dead?

19 **A** I am always an advocate for finding out what happened
20 to a child in this situation. That didn't change.
21 But I had -- it wasn't like I was acting as an
22 investigator trying to interrogate her. I was
23 responding to her as a mother of a child who had
24 received these injuries. And she said to me, I don't
25 know how this could have happened. The doctor

1 said -- and she started telling me about what the
2 doctor had said. And I said -- she said, how could
3 this have happened? And I said, I don't know. Let's
4 talk about what happened.

5 Q All right. As soon as you said, let's talk about
6 what happened, don't you think you're going beyond
7 being an advocate, a victim advocate?

8 A No, sir..

9 Q You don't think so?

10 A No, sir. I really don't think that I am --

11 Q Don't you think that -- just let me finish the
12 question and then you can start again.

13 A I don't believe that I was going outside of that
14 scope at that time. Now, when -- as a rule, when
15 I -- I think it would be bad victim advocacy to have
16 a bunch of information that a victim or a family
17 member of a victim told me and not pass it on and
18 document it for the file. That's normal course of
19 action. I'll lots of times give the investigator a
20 summary of my conversation with victims because I
21 think that's important. But my role at the point
22 that I responded was not to go talk to a suspect.

23 No, sir.

24 Q Let me ask you this. When you were told to go over
25 or asked to go over to Columbia, was it not because

1 someone, whether law enforcement or whatever, had
2 said this could be some kind of child abuse?

3 A Oh, there was no doubt that it was child abuse to any
4 of us involved.

5 Q I know. But you're talking to the mother and you
6 know that you've been sent there because there's an
7 issue of child abuse and you start asking her
8 questions that obviously you want to use in court
9 because you think they establish some kind of child
10 abuse. Nothing happened to make you think, you know,
11 maybe this lady should get some Miranda rights? You
12 just go on and she won't be in custody and I'll just
13 get everything I need and then I'll have avoided this
14 whole problem?

15 A No, sir. If she would have said to me like -- and
16 this has happened in the past. If she would have
17 said something to me like, am I going to get in
18 trouble for what I did; I didn't mean to hurt my baby
19 when I shook him, something like that, then I at that
20 point would have said, hey, she's fixing to make a
21 confession; maybe I need to get Lieutenant Florence
22 in here and advise her of her rights. That would
23 have been something that I would have thought about
24 doing. But when she was talking to me, she was
25 talking to me about there's no way this could have

1 happened; no one had the baby but me and I know that
2 nothing happened. And so that was my conversation
3 with her. She was -- she was never talking to me
4 about something that she or someone else had done.

5 Q What you're saying is if she doesn't ask the magic
6 questions or if she doesn't know what her Miranda
7 rights are she's just free game for you to just keep
8 asking questions until you get whatever you think you
9 need?

10 A No, sir. And to be honest with you, Mr. Howle, I
11 wasn't asking questions. She initiated the
12 conversation with me when I came in and I was
13 responding to her like I would have any mother.

14 Q Well, I understand that. But you went in. You
15 initiated the whole conversation and said who you
16 were?

17 A And my purpose for being there.

18 Q And your purpose for being there?

19 A And I asked questions like, is there anyone I can
20 call? Is there anything I can do for you? And she
21 was, I just want to figure out what happened to my
22 baby.

23 Q Well, if it's then her response to show anything that
24 you thought indicated bad behavior or wrong behavior
25 on your behalf, that doesn't make you do Miranda

1 rights or stop. You just right on going?

2 A I kept listening to her. Yes, sir. I kept listening
3 to her and taking part in the conversation. She
4 never made what I considered an admission of anything
5 that she had done to me. She -- it wasn't like she
6 said, I did this; I lost my temper. She never said
7 anything like that to me. So in my role as a victim
8 advocate, I was exploring with her what could have
9 happened to her baby.

10 Q So your testimony now is there's nothing in these
11 three pages in your opinion that indicates any wrong
12 or improper behavior on her part as far as child
13 abuse goes?

14 A No, sir. That's not my testimony. And in looking
15 back now and knowing the facts of the case that I
16 didn't know then, then there are some things in here
17 that would cause people concern --

18 Q That might never have been said if she'd been given
19 her Miranda rights?

20 A I don't -- I don't think so. I don't -- it wasn't
21 like I was initiating a conversation to get her to
22 say something. And at the time she was saying it, it
23 wasn't like I was, oh, okay. She wasn't even a
24 suspect in my mind. I was dealing with her as the
25 mother because I had not spoken to her yet. She was

1 leaving in the ambulance when I pulled up. And as
2 part of my job, I needed to make contact with the
3 mother.

4 Q And even when Detective Florence came there as a
5 detective with the Sheriff's Department and he's
6 listening to all this, still no Miranda rights or
7 anything to say, you don't have to tell us anything?

8 A He did not stop the conversation to advise her of her
9 rights. I do not remember that happening. No, sir.

10 Q All right.

11 THE COURT: Redirect?

12 MS. MAYES: Yes, sir, Your Honor.

13 REDIRECT EXAMINATION

14 BY MS. MAYES

15 Q To your knowledge, were there any specific details
16 that were left out or omitted from your summary?

17 A It wasn't verbatim, word-for-word, but it's a
18 representation of how I remember the conversation
19 going. I didn't purposely leave out anything or
20 anything like that. No, ma'am.

21 Q All right. And was she voluntarily participating in
22 the interview until the end in your opinion?

23 A Yes, ma'am. She was.

24 Q Now, you mentioned that the two boys were interviewed
25 prior to speaking to Ms. Putnam. How important, if

1 at all, is it to determine what may have happened
2 within a home when a child is injured, whether
3 accidentally or as a result of abuse?

4 **A** Well, it's very important to talk to everybody who
5 was in the home. And like I said, the two brothers
6 had been talked to. Patrick Putnam had been talked
7 to by someone other than me. And then she was the
8 last person that was in the home. And I did speak
9 with her along with Lieutenant Florence.

10 **Q** All right. And what are some of the things that you
11 need to know about the baby or his health or his
12 history in a situation like this?

13 **A** We needed to find out any background, anything that
14 could have happened. You know, we found out that
15 there were some prior problems with, you know, Child
16 Protective Services I think. But the main thing is
17 to find out every detail of what happened that day,
18 who was with the baby, who fed the baby, who saw the
19 baby; and when it went from the baby being fine to
20 the baby being non-responsive, who was with the baby
21 during that time.

22 **Q** I understand. Thank you. Nothing further.

23 **THE COURT:** Mr. Howle.

24 **MR. HOWLE:** I just have one other question.

25 RE CROSS EXAMINATION

1. **BY MR. HOWLE**

2. **Q** Once you had typed all of this as to what you say you
3. remember, did you send this to Ms. Putnam or get her
4. to look at it and sign it and see if that's what she
5. remembered she'd said?

6. **A** No, sir.

7. **Q** Thank you.

8. **THE COURT:** Does anybody have any objection if I
9. ask a question?

10. **MS. MAYES:** No, sir, Your Honor.

11. **EXAMINATION**

12. **BY THE COURT**

13. **Q** How long was the waiting room interview?

14. **A** If I remember correctly, I was in the waiting room.
15. When this conversation took place, we were probably
16. talking about 20 minutes, and then she went and saw
17. the baby and came back in and that was the end of the
18. interview. I spoke with her a little bit longer
19. after the baby had died.

20. **Q** Based on that, between 20 and 30 minutes total?

21. **A** Yes, sir.

22. **Q** What is the significance, if at all, of any prior
23. issues concerning CPS in another state?

24. **A** The boys, the other two boys I had interviewed had
25. made some statements to me about CPS and being

1 concerned about CPS. And then Ms. Putnam had brought
2 that up to me, too. And so I did explore that with
3 her. And --

4 Q How long ago did that occur in the other state?

5 A I think -- I think she --

6 Q How long prior to that date you became involved did
7 that occur in the other state?

8 A I think she told me -- let me look in here, Your
9 Honor, just a minute. He had stayed in foster care
10 from August until November of '06, talking about the
11 baby. And when I saw her, it was March the 10th,
12 '07.

13 Q Is that in your summary here?

14 A Yes, ma'am.

15 MR. HOWLE: Your Honor, one thing that's not in
16 the summary that I would just add is, she consented
17 to the placement. The child was placed --

18 THE COURT: I was going to ask some follow-up on
19 that.

20 MR. HOWLE: All right, sir.

21 THE COURT: And I'll allow the State, too.

22 Q You mentioned a moment ago, I believe it was when Mr.
23 Howle was asking you questions, you said that she
24 didn't see how this would have happened. Is that in
25 the summary?

1 **A** Let me look and see. In the last paragraph on the
2 first page, Your Honor.

3 **Q** Okay. I see it.

4 **A** Yes, sir.

5 **THE COURT:** Any follow-up in response to my
6 questions, Ms. Mayes?

7 **MS. MAYES:** No, sir, Your Honor.

8 **THE COURT:** Mr. Howle?

9 **MR. HOWLE:** Your Honor, one response.

10 FURTHER RECROSS-EXAMINATION

11 **BY MR. HOWLE**

12 **Q** In regards to the statement made about the 90-day
13 placement --

14 **A** Yes, sir.

15 **Q** -- were you aware that that followed about a week in
16 the hospital and that she in fact signed something
17 that was like an agreement that was put in there, at
18 the end of 90 days CPS gave Child back to her?

19 **A** I wouldn't dispute that. She did tell me she was
20 glad to get the help at that point. And she didn't
21 make it sound like they had come in and snatched the
22 baby. No, sir.

23 **Q** Are you aware now that that's what happened?

24 **A** No, sir. I'm --

25 **Q** A voluntary 90-day program, that they gave the child

1 back to her?

2 **A** I wouldn't dispute it, but I haven't reviewed those
3 records to know that.

4 **Q** I'm sure.

5 **THE COURT:** Thank you, ma'am. You can step
6 down.

7 **THE WITNESS:** Thank you, sir.

8 **THE COURT:** Ms. Mayes, any other witnesses?

9 **MS. MAYES:** Yes, sir, Your Honor. The State
10 calls Lieutenant David Florence.

11 **THE CLERK:** State your name, please.

12 **THE WITNESS:** I'm David Earl Florence.

13 **DAVID E. FLORENCE,** after being duly sworn,
14 testifies as follows:

15 **THE CLERK:** State your name and spell your last
16 name.

17 **THE WITNESS:** David Earl Florence,
18 F-L-O-R-E-N-C-E.

19 **DIRECT EXAMINATION**

20 **BY MS. MAYES**

21 **Q** Lieutenant Florence, where are you employed and in
22 what capacity?

23 **A** I'm employed at the Sumter County Sheriff's Office
24 and I'm a lieutenant in the investigation division,
25 and I currently work major crimes.

1 Q All right. And can you tell us whether that includes
2 homicides?

3 A Yes, ma'am, it does.

4 Q All right. And going back to the events of
5 March 10th, 2007, can you tell us how you became
6 involved in the investigation concerning injuries
7 that were ultimately fatal injuries to the infant by
8 the name of Child

9 A Yes, ma'am. I was contacted by Captain James Turner,
10 the Sumter County Sheriff's Office, and asked to
11 respond to the hospital in reference to the situation
12 with Child

13 Q And which was the first hospital location you went
14 to?

15 A Tuomey Hospital here in Sumter.

16 Q All right. And do you recall who was at Tuomey when
17 you arrived there?

18 A When I arrived Major Gardner was there. Sergeant
19 Burnish, Captain Turner and Gwen was there at that
20 time already.

21 Q You're referring to Gwen Herod?

22 A Yes, ma'am.

23 Q Okay. All right. And did you have any direct
24 contact with -- can you tell us whether Ms. Martina
25 Putnam was in custody, police custody at that point?

1 **A** No, ma'am. I didn't see her at that time, but the
2 understanding I got from the other officers, that she
3 was in route to Richland Memorial with the baby.

4 **Q** All right. And, in fact, do you know how he was
5 transported from Tuomey to Richland?

6 **A** By ambulance. Yes, ma'am.

7 **Q** All right. And what happened next?

8 **A** Once I arrived I was briefed on the situation by
9 Major Gardner and Captain Turner, and at that point I
10 was requested to meet with Gwen Herod at the office
11 to do a forensic interview with the two children,
12 Sibling 1 and Sibling 2

13 **Q** All right. And did you in fact observe those
14 interviews?

15 **A** Yes, ma'am, I did.

16 **Q** And what is your understanding based on those
17 interviews about who would have been typically
18 residing in the home on the date in question?

19 **A** The persons that were residing in it was Martina
20 Putnam, Patrick Putnam and Baby Child and the other
21 two boys, Sibling 1 and Sibling 2

22 **Q** And who were approximately aged six and aged nine?

23 **A** That is correct.

24 **Q** And tell us about how you made contact with Ms.
25 Putnam at Richland Memorial Hospital?

1 **A** After we, Ms. Herod and I, finished the interviews
2 with the two boys, we responded back to the Sumter
3 Sheriff's Office main building and made contact with
4 Captain Turner and Major Gardner. We developed a
5 plan, so to speak, to go to Richland Memorial and
6 make contact with Ms. Putnam and check on the status
7 of the baby and talk with the doctors.

8 **Q** All right. And ultimately, what happened next?

9 **A** When we arrived Gwen and I went to the pediatric
10 intensive care unit and made contact with -- I talked
11 with one of the nurses at that time. And Gwen made
12 contact with Ms. Putnam I think at that time in one
13 of the visitation rooms.

14 **Q** All right.

15 **A** A short time later I came into the room and was
16 introduced to Ms. Putnam.

17 **Q** Was Ms. Putnam in custody, in the custody of law
18 enforcement at this point in time?

19 **A** No, ma'am.

20 **Q** Based on your observations, can you tell us whether
21 or not she appeared to engage in the conversation
22 voluntarily?

23 **A** Well, based on my -- and I came in after the
24 conversation already started, but based on my
25 interpretation of what was going on, that she was

1 engaging freely and voluntarily.

2 Q All right. And did she understand that you were a
3 law enforcement officer?

4 A Yes, ma'am, she did.

5 Q And can you tell us in general, what is the process
6 of conducting conversations or interviews like this
7 when someone has been injured under circumstances
8 where you don't specifically know yet what has
9 happened?

10 A Well, we try to get as much information as we
11 possibly can to get a better understanding of the
12 situation that occurred to try to make a
13 determination who committed the crime.

14 Q And can you tell us whether or not you were able to
15 ask any specific questions to Ms. Putnam concerning
16 the health of that child, his physical well-being on
17 the date in question and what might have led to his
18 injuries?

19 A Well, during one of the occasions I came in,
20 Ms. Herod was engaging in conversation with that
21 point as far as the feeding is concerned. And I
22 think at one point I came in and Ms. Putnam was
23 sitting on the floor demonstrating to Ms. Herod about
24 how the child was hitting his head back. And at one
25 point I asked, did you think about putting a pillow

1 under the child? And her response was something to
2 the order, well, he does that all the time and I just
3 didn't think about it, or something of that nature.

4 Q All right. And you are referring to when they were
5 in what area of the home?

6 A The living room area where she indicated she was
7 feeding the child.

8 Q And to your knowledge, does that area have a carpeted
9 floor?

10 A Yes, ma'am. It did.

11 Q What type of home structure are we talking about?

12 A We're talking about a doublewide mobile home.

13 Q All right. And she indicated he was doing what?
14 What event was occurring when she described him
15 hitting his head on the floor?

16 A She was feeding him.

17 Q And can you tell us whether or not she indicated he
18 was actually eating his food?

19 A She indicated he was eating and he was cranky. And
20 at that time she said that he would hit his head back
21 and she would grab his arms and pull him up and at
22 one point said that she sat him down on his behind, I
23 believe. But she didn't say, I sat him down hard.
24 She just kind of made the motion of that nature.

25 Q And can you tell us when she was referring to him

1 hitting his head whether she said that had ever
2 happened before?

3 **A** She said it happens all the time, that he did that
4 all the time.

5 **Q** All right. So do you have an impression at that
6 point as to whether that event was the result of this
7 fatal injury?

8 **A** Well, based on her information that this occurred all
9 the time; no, ma'am, I don't believe that would have
10 caused it.

11 **Q** All right. So what happens next then?

12 **THE COURT:** Are you going to be offering that in
13 the case in chief, his opinion in that regard?

14 **MS. MAYES:** No, sir, Your Honor.

15 **THE COURT:** Go ahead.

16 **Q** What happened next?

17 **A** We continued to talk. I got up and went out and
18 talked to the doctor. And during the course of this
19 conversation I got up several times and went out, and
20 a lot of the conversation that Ms. Herod had, I did
21 not get. But at one point one of the questions I did
22 ask was who was in control of the child that day.
23 And her response to me was that she was, that the
24 child was in her control that entire day.

25 **Q** And when you talk about control, specifically from

1 the point that she described to you that he was
2 eating his food in the living room to the point that
3 he became unresponsive, did she ever indicate that
4 anyone else had physical access to Child

5 A No, ma'am.

6 Q Did she ever indicate that he was out of her line of
7 sight?

8 A No, ma'am.

9 Q Or out of her physical control?

10 A No, ma'am.

11 Q And did she ever implicate anyone else, whether that
12 be her husband or her children?

13 A No, she did not.

14 Q And what was her description of events as you recall
15 after she fed him?

16 A After she fed him, as I recall I, she stated that
17 he --

18 Q Let me ask you this. Where or what room were they in
19 when she described that he became unresponsive?

20 A They were in the living. I'm sorry. She picked him
21 up from the living room and she was -- the child was
22 unresponsive in the bathroom. She had indicated that
23 she was running the bath water for him.

24 Q Okay. Beg the Court's indulgence. Lieutenant
25 Florence, can you tell us whether or not she was in

1 any custody at the close of the interview?

2 A No, ma'am. She was not.

3 Q And to your knowledge, did she leave the hospital
4 setting on her own free will, of her own free will?

5 A Yes, ma'am.

6 Q She was free to go to her own home or a home of her
7 choosing?

8 A Yes, ma'am.

9 Q And ultimately, when was she arrested?

10 A She was arrested a couple of days later. I think it
11 was either Monday or Tuesday of that week, of the
12 following week.

13 Q Can you tell us whether or not there had been any
14 additional interviews with other persons, such as
15 medical personnel, prior to her actual arrest on the
16 13th?

17 A I briefly spoke with the doctor, Dr. Cartie, and one
18 of the nurses, actually two of the nurses. One of
19 them was Fadia. I don't recall the last name. And
20 there was one other nurse at the hospital. I also
21 briefly talked with a -- and this was after the
22 fact -- a Dr. Bailey at Tuomey.

23 Q And can you tell us whether or not an autopsy was
24 conducted between the timing of your interview with
25 Ms. Putnam and ultimately her arrest?

1 **A** Yes, ma'am, it was.

2 **MS. MAYES:** Nothing further, Your Honor.

3 **THE COURT:** Mr. Howle.

4 **MR. HOWLE:** Thank you, Your Honor.

5 CROSS EXAMINATION

6 **BY MR. HOWLE**

7 **Q** Lieutenant Florence, who suggested that you go over
8 to Columbia?

9 **A** Major Gardner and Captain Turner requested that I go
10 to Richland Memorial with Ms. Herod.

11 **Q** You're not a doctor, are you?

12 **A** No, sir, I'm not.

13 **Q** So what was your purpose of going over there?

14 **A** My purpose was to follow up the investigation.

15 **Q** And I think you made a reference when she asked you a
16 question your job is to find people committing
17 crimes?

18 **A** Absolutely. That's part of it.

19 **Q** That's why you were there?

20 **A** Well, that's part of the reason I was there. Yes,
21 sir.

22 **Q** And this nurse that you say you talked to before you
23 went into the room where Ms. Herod was interviewing
24 her or talking to her --

25 **A** Yes, sir.

1 Q -- what was in her statement?

2 A We basically -- I basically asked her where the child
3 was and how the child was doing. And it was pretty
4 much that the child was not going to make it.

5 Q Any discussion though as to questions of child abuse
6 that you raised or the nurse raised?

7 A No, sir. Not on my part.

8 Q Now, you say when you went into the room she was
9 talking freely and voluntarily?

10 A Yes, sir.

11 Q But you didn't hear material that would cause you to
12 give her her rights?

13 A No, sir.

14 Q And you didn't give her her rights?

15 A No, sir.

16 Q You were there to see if there was a crime. Did you
17 take any notes?

18 A No, sir, I did not.

19 Q When you -- and I think you explained to us that when
20 you went over there you said you watched the
21 interviews of Sibling 2 and Sibling 1

22 A I was a witness to the actual interviews. Yes, sir.

23 Q That was of them?

24 A Yes, sir.

25 Q The two of them were done back-to-back?

1 A That's correct.

2 Q And you watched all of that?

3 A Yes, sir.

4 Q Okay. She told you she was in control of the child
5 all day, right?

6 A Yes, sir.

7 Q Did you hear Sibling say on tape when you were
8 listening -- or not the tape but the actual
9 interview -- that he'd gone into the room and taken
10 the child out of the bed and was holding him upside
11 down?

12 A I don't recall that. No, sir.

13 Q Well, if I told you that was on that tape, would you
14 deny it?

15 A No, sir, I wouldn't.

16 Q Which would seem to show she wasn't in control of him
17 all day long, of that child. Correct?

18 A I can only go by what she said.

19 Q But you don't want to go by what Sibling said either?

20 A Well, I don't know that that's a fact.

21 Q Well, you watched it?

22 A Yes, sir.

23 Q When you have someone give a statement, a written
24 statement, the first thing that they have in that
25 written part, typed up part makes reference to the

1 statement being given freely and voluntarily. Is
2 that right?

3 A Yes, sir.

4 Q You say you went over there because you wanted to
5 know who committed the crime or you had the crime in
6 mind when you went over there?

7 A Yes, sir.

8 Q But as you go in and you hear her talking and then
9 you asked her questions, you don't change to make it
10 like a statement or advise her of her rights or
11 anything?

12 A No, sir.

13 Q I don't have anything further.

14 A And the reason ...

15 Q Thank you.

16 THE COURT: You can respond, sir.

17 A Thank you, sir. And the reason for that is Ms.
18 Putnam's husband was being detained at the Sheriff's
19 Department where he was -- I said being detained --
20 was at the Sheriff's Department taking a polygraph
21 test because the first suspicions were that he may
22 have committed the act and that she may have been
23 covering for him at that point. And that was part of
24 the follow-up at that point. But as far as I was
25 concerned, that he was the main suspect at that time.

1 Q But you certainly weren't going to advise her of any
2 rights to stop her while she was talking?

3 A We never had intended to put her into custody, and
4 she was never detained to have Miranda rights.

5 Q So you just wait until someone tells you what you
6 want to hear and then say, you're in custody, to get
7 around Miranda rights?

8 A No, sir. That's not it. If we're talking to
9 somebody and they get to the point of where they're
10 about to confess to something, then we stop them and
11 advise them. But if we are in an initial interview
12 with somebody, then we don't do Miranda rights.

13 Q But you said you went over there because you wanted
14 to know who committed the crime?

15 A Yes, sir. That's part of the process for being
16 there.

17 Q And you were interviewing somebody and they're giving
18 information and saying what happened that day or what
19 didn't happen, you don't feel like, okay, I'm in the
20 middle of interrogation now, that's why I came, but
21 I'm not going to tell this person; I'm going to wait
22 until they've said whatever I want to hear and then
23 say, oh, by the way, now you're in custody?

24 A Yes, sir.

25 Q Would you like a lawyer or would you like to know

1 that you don't have to say anything?

2 **A** At that time if she would have been a suspect, I
3 would agree with you. But at that time she was not a
4 suspect.

5 **Q** She was not a suspect? You said you went over there
6 to see who committed a crime?

7 **A** To find out who committed a crime because we had her
8 husband as the initial person taking a polygraph
9 because that's who we felt was the suspect at that
10 time.

11 **Q** So if you'd have felt she was a suspect, you would
12 have given her her rights?

13 **A** Yes, sir. If it came to that point.

14 **Q** I have no further questions.

15 **THE COURT:** Redirect?

16 **MS. MAYES:** Yes, sir, Your Honor.

17 REDIRECT EXAMINATION

18 **BY MS. MAYES**

19 **Q** Just to clarify what was being discussed previously
20 on cross, from the point that Ms. Putnam had started
21 waking up that day, --

22 **A** Mm-hmm (affirmative).

23 **Q** -- did she ever indicate that anyone else had injured
24 the child in her presence or had physical control of
25 the child during the day?

1 **A** No, ma'am. She did not.

2 **Q** And from the point that he appeared to be alert,
3 conscious and eating his cereal, did she ever
4 indicate that her son, Sibling 1 or anyone else in the
5 home had had physical control or access to the child?

6 **A** No, ma'am, she did not.

7 **Q** And how specific were you in asking such a question?

8 **A** As far as the -- I was very specific as far as asking
9 that particular question.

10 **Q** Nothing further.

11 **THE COURT:** Anything else, Mr. Howle?

12 **MR. HOWLE:** Nothing further, Your Honor.

13 **THE COURT:** Thank you, sir. You can step down.

14 **THE WITNESS:** Thank you, sir.

15 **THE COURT:** All right. Ms. Mayes.

16 **MS. MAYES:** The State calls, I believe it's
17 Corporal Denison. Sergeant.

18 **THE CLERK:** Place your left hand on the Bible
19 and raise your right hand. State your name, please.

20 **THE WITNESS:** Robert Denison.

21 **ROBERT DENISON,** after being duly sworn,
22 testifies as follows:

23 **THE CLERK:** Thank you. State your name and
24 spell your last for the record.

25 **THE WITNESS:** Robert Denison, D-E-N-I-S-O-N.

DIRECT EXAMINATION

1
2 **BY MS. MAYES**

3 **Q** And what is your job capacity with the Sheriff's
4 Department, Sergeant?

5 **A** I am a sergeant on patrol with the Sumter County
6 Sheriff's Office.

7 **Q** All right. And can you tell us whether or not you
8 had the opportunity to fill out or denote in the
9 incident report concerning the case involving the
10 minor child victim, Child

11 **A** Yes, I did.

12 **Q** How did you become involved in this case?

13 **A** I was called to respond to Tuomey Hospital. It's the
14 standard protocol that they notify law enforcement
15 when there is any type of activity that involves
16 minor children with suspicious injuries.

17 **Q** And do you have a copy of that incident report with
18 you today?

19 **A** I don't have one with me, no.

20 **Q** For purposes of your testimony, can you tell us
21 whether or not it would refresh your memory to look
22 at your statement?

23 **A** It would.

24 **Q** I'm going to hand you what is the county incident
25 report which consists of two pages along with the

1 county supplemental report which is one page, all
2 bearing your signature, and ask you whether or not
3 you recognize this document?

4 A Yes, ma'am, I do.

5 Q And how is it that you recognize it?

6 A I wrote these shortly after my response.

7 Q All right. And I think you first responded at Tuomey
8 Hospital. What do you recall about arriving at that
9 location?

10 A Excuse me. When I responded to Tuomey I went into
11 one of the rooms. And Child was laid on the table
12 in there, and the nurses had advised me that he was
13 unresponsive and he had some bruising on him and they
14 just -- again, they notified me that it was their
15 protocol that they needed to call us because of any
16 type of injury to a minor child.

17 Q And speaking of that briefly, can you tell us whether
18 or not you had the opportunity to document those
19 findings?

20 A Yes, ma'am. I took a few pictures.

21 Q All right. And in addition to that, can you tell us
22 whether or not you had the opportunity to speak with
23 the child's mother, Martina Putnam?

24 A Yes, I did.

25 Q And what do you recall about the conversation in

1 which you met with her?

2 **A** I believe her and her husband and the two other
3 children were in the waiting room, in the family
4 waiting room. And I went in and talked with them
5 just to see what had happened and what brought them
6 to Tuomey and why they brought him to Tuomey that
7 day.

8 **Q** And again, we're referring to Tuomey Hospital?

9 **A** Right. Tuomey Hospital.

10 **Q** Prior to the child being transported to Richland
11 Memorial in Columbia?

12 **A** Right.

13 **Q** And at that point, Sergeant, was any member of the
14 family in custody?

15 **A** No. No.

16 **Q** And specifically as to Ms. Martina Putnam, did she
17 understand that you were a law enforcement officer?

18 **A** Yes, ma'am. I was in uniform.

19 **Q** All right. And can you tell us whether or not you
20 had the opportunity to question her or ask any
21 specifics about what had happened to the child?

22 **A** I basically just put out a blank question of what
23 happened and why they had brought him to Tuomey.

24 **Q** And can you tell us whether or not that was standard
25 or not standard in a case in which a child had been

1 injured, whether accidental or intentional?

2 A It's a fairly standard question, you know, what
3 happened and how did it happen, that kind of thing.

4 Q All right. And do you have with you any
5 documentation as to a response to that question that
6 was given by Ms. Putnam?

7 A Yes, ma'am.

8 Q And how was that documented?

9 A In my incident report.

10 Q And who filled out the incident report that
11 documented the responses by Ms. Putnam?

12 A I did.

13 Q And do you have a date reflected on the report which
14 is contemporaneous with the conversation?

15 A Yes, ma'am. It's the 10th of March of '07.

16 Q Okay. So March 10th, 2007, that would be the same
17 day that we're previously referring to as the date
18 the child was injured or brought to Tuomey?

19 A Right. Right.

20 Q I'm going to ask you to look at this particular
21 document. I beg the Court's indulgence. Do you
22 recognize your handwriting?

23 A Yes, I do. It's mine.

24 Q And does it appear to be a fair and accurate
25 representation of the document that you prepared

1 originally?

2 **A** Yes. Yes.

3 **Q** And have you had the opportunity prior to coming in
4 here today to review the summary of the verbal
5 statement that was made by Ms. Putnam?

6 **A** Right. Right.

7 **Q** Does that appear to be a fair and accurate
8 representation of your memory of that conversation?

9 **A** Yes, it does.

10 **MS. MAYES:** Your Honor, at this time we would
11 ask it be marked as Court's Exhibit 2.

12 **THE COURT:** Okay. Just for identification.
13 It's marked Court's just for hearing purposes.

14 (WHEREUPON, Court's Exhibit No. 2 is marked for
15 identification.)

16 **MS. MAYES:** Your Honor, may I submit it to the
17 witness, a copy in addition to the Court's Exhibit?

18 **THE COURT:** All right.

19 **Q** I'm going to ask you, Sergeant Denison, to recite
20 slowly the document and summary that you prepared
21 concerning the conversation with Ms. Putnam about the
22 events of that day, whatever events she recalled
23 transpiring?

24 **A** Okay. Off of this incident report?

25 **Q** Yes, sir. If you would slowly start at the beginning

1 and then recite that for the record?

2 **THE COURT:** What the defendant said to him?

3 **MS. MAYES:** Yes, sir, Your Honor.

4 **THE WITNESS:** You just want that portion of it?

5 **Q** Correct?

6 **A** Okay. I talked with the parents and the mother told
7 me that she fed the baby, then took him in and laid
8 him on the bed while she went to run him a bath.
9 When she returned the baby was not breathing and was
10 unresponsive. Mother stated that she -- I'm sorry.
11 I lost my place -- that she went -- mother stated
12 that her and the father put Child in the truck and
13 rushed him to Tuomey. The father told me that he
14 tried mouth-to-mouth and that the mother did
15 mouth-to-mouth on the way to Tuomey.

16 **Q** All right. Did she ever indicate -- or I'm sorry.
17 Did she ever implicate anyone else concerning the
18 injuries to her son?

19 **A** No, she did not.

20 **Q** Beg the Court's indulgence. Specifically, Sergeant
21 Denison, from the point in which the mother indicated
22 that she had fed the baby, which is documented in the
23 statement, that she fed the baby, did she ever
24 indicate that he was out of her line of sight or not
25 within her physical custody during that time period?

1 **A** No, ma'am.

2 **MS. MAYES:** Thank you. Nothing further.

3 CROSS EXAMINATION

4 **BY MR. HOWLE**

5 **Q** On the report that you read from, I think you first
6 started and said I talked with the parents? So you
7 talked to Mr. Putnam also?

8 **A** Yes, sir. They were both in the family waiting area.

9 **Q** And this was still in --

10 **A** That was at Tuomey.

11 **Q** And this is before Ms. Putnam had even gone to
12 Columbia?

13 **A** Yes.

14 **Q** All right. Were the boys there? Did you see either
15 one of the two boys, or did you know where they were?

16 **A** I believe they were there also.

17 **Q** So Mr. Putnam was there at Tuomey at the same time
18 the boys were?

19 **A** I believe so.

20 **Q** And there's nothing in this statement that says she
21 did anything wrong or did anything to hurt this
22 child?

23 **A** No, sir. This is just a preliminary report of what I
24 was told happened.

25 **Q** And she told you the baby was not breathing and was

1 unresponsive?

2 **A** Right.

3 **Q** And both she and the father apparently gave
4 mouth-to-mouth resuscitation to try to keep the child
5 alive they said?

6 **A** Right.

7 **Q** I don't have any further questions for you.

8 **THE COURT:** Redirect?

9 **MS. MAYES:** Nothing further at this time, Your
10 Honor.

11 **THE COURT:** You may step down. Ms. Mayes, do
12 you have any other witnesses?

13 **MS. MAYES:** Your Honor, I just briefly do want
14 to inform the Court that following this particular
15 event on March 10th that we contacted Ms. Putnam,
16 members of law enforcement. She was subsequently
17 Mirandized on March 12th, 2007 at 3:36 p.m. at which
18 time she acknowledged understanding her Miranda
19 rights and stated that she wished to have an attorney
20 present. And I just wanted to state that for the
21 Court. Now, the --

22 **THE COURT:** You wouldn't be offering that at
23 trial, would you, that she asserted her Miranda
24 rights?

25 **MS. MAYES:** That's correct, Your Honor.

1 Although there may be testimony that law enforcement
2 did make initial contact on March 12th. However, we
3 understand we will need to tread lightly and
4 certainly not mention anything about asserting her
5 rights.

6 **THE COURT:** Don't tread on it at all. Of course
7 you can't comment on her silence. Is that what
8 you're talking about?

9 **MS. MAYES:** Yes, sir, Your Honor.

10 **THE COURT:** All right. Mr. Howle, do you have
11 any more witnesses on this phase?

12 **MS. MAYES:** Not at this time, Your Honor.

13 **THE COURT:** All right. Mr. Howle, do you have
14 any witnesses?

15 **MR. HOWLE:** I can put Ms. Putnam up but I don't
16 really think I need to because it's not my concern
17 that --

18 **THE COURT:** Okay. Let me just do this. From
19 our meeting before the trial, and you jump in
20 whenever you feel it necessary, the question was
21 whether or not she was in custody at the time these
22 statements were made. And I take it from just
23 listening to the testimony and from what I just
24 assume that the State is not claiming that any of
25 these statements are directly inculpatory but based

1 on certain forensic findings you're claiming that
2 they're circumstantially inculpatory. Is that
3 correct?

4 **MS. MAYES:** That is correct, Your Honor.

5 **MR. HOWLE:** Your Honor, if I may?

6 **THE COURT:** Yeah.

7 **MR. HOWLE:** The one thing that Ms. Mayes in
8 asking these questions, she keeps referring to what's
9 not in the statement. And that's what causes
10 concerns with me just as much.

11 **THE COURT:** Not in the statement from who?

12 **MR. HOWLE:** From her. You didn't name anybody
13 else. You didn't say anybody else did anything.
14 It's almost like they didn't ask her that.

15 **THE COURT:** Well, that's not the scope of my
16 inquiry now. That certainly would make for very
17 effective cross examination. But the question I've
18 got to determine now is whether or not this summary
19 or the statements made to Ms. Herod and in the
20 presence of Lieutenant Florence at some point are
21 admissible.

22 And the first thing I have to determine is
23 whether or not she was in custody. And that's to be
24 taken or looked at in the totality of the
25 circumstances. Would a reasonable person feel that

1 he or she was not free to leave?

2 MR. HOWLE: Well, Your Honor, and I know she's
3 asked this over and over, she wasn't in custody, she
4 wasn't in custody. But when Detective Florence says,
5 I went over there to see who committed the crime,
6 that's his words --

7 THE COURT: Well, isn't the law that even the
8 motives of the law enforcement officers don't go into
9 that equation, that what goes into the equation is
10 whether or not a reasonable person in her situation,
11 what that reasonable person would have thought?
12 Isn't that what the inquiry is?

13 MR. HOWLE: Your Honor, that's part of the
14 inquiry. But what has happened unfortunately is this
15 whole aspect of the law is, if I don't tell you
16 you're in custody and I keep talking to you and you
17 keep talking to me, you're fair game.

18 THE COURT: If I go up to you in a parking lot
19 and you're surrounded by law enforcement officers and
20 your hands are put on the hood of a car and we start
21 asking you questions, what did you do, where did you
22 go, who did you see, tell me what happened; you're in
23 custody more than likely because a reasonable person
24 in that situation would think that he was in custody.

25 MR. HOWLE: That's very true, Your Honor. But

1 it's done much more subtly than that.

2 **THE COURT:** Does subtly matter? Does subtly
3 matter?

4 **MR. HOWLE:** I think it matters when you say, I'm
5 going over here to see who committed this crime, and
6 then you start talking to someone and you're sitting
7 there as the detective; it's not the advocate, and
8 you're asking questions like, why did you do this?
9 Who was there? Whatever you're saying, I mean, it's
10 just like free game, you know. You don't -- if they
11 don't know that they have Miranda rights and if they
12 don't know they don't have to talk to you, I think
13 when you go specifically to -- just like one thing
14 Ms. Herod said. She went there initially to do
15 so-and-so, and then she -- I think once she heard
16 some things, she thought, well, let's see what else I
17 can find out.

18 And this thing of just saying, well, we won't
19 take her into custody, we won't take her into
20 custody, well, just like we're sitting here today
21 with this hearing, as soon as they showed her a
22 statement advising her of her Miranda rights, she
23 said, I want a lawyer; I'm not talking to you. Two
24 days later. Two days later.

25 **THE COURT:** All right.

1 **MR. HOWLE:** Because then that's something, she
2 saw what they were trying to do. But she certainly
3 wouldn't know that in the hospital. She's sitting
4 there. She's worried about her child. She doesn't
5 know whether he's living or dying. And they're
6 asking these questions and they will come into court
7 and say, well, no, we didn't advise her of any of her
8 rights or anything else and we just kept talking to
9 her and now we want to use all that against her. And
10 I think that's improper, Your Honor.

11 **THE COURT:** Ms. Mayes, what's your position
12 about the custody element?

13 **MS. MAYES:** Yes, sir, Your Honor. It seems to
14 be clear from the testimony of the officers that Ms.
15 Putnam was not in custody. She had in fact arrived
16 at the hospital of her own free will as part of the
17 ambulance team accompanying the child. And then she
18 participated in the interview in the family room
19 voluntarily, as has been indicated through the
20 testimony, and then ultimately left the hospital that
21 evening of her own free will to go anywhere she
22 liked. We don't know where that would have been, but
23 it certainly was not in police custody. And then she
24 ultimately is not arrested until three days later.

25 **THE COURT:** Do you have any final word, Mr.

1 Howle?

2 **MR. HOWLE:** Well, Your Honor, I realize you seem
3 to be hanging your hat on this "in custody" aspect of
4 it.

5 **THE COURT:** Well, what else can I hang my hat
6 on? I mean, in order to prompt the requirement of
7 Miranda warnings, a person has to be in custody.

8 **MR. HOWLE:** But, Your Honor, you could be in
9 custody and I'm just not going to tell you you're in
10 custody and I'm going to let you talk and then when
11 it's all over I'm going to say, oh, now I've got all
12 this stuff I can use. I didn't have to give you
13 Miranda rights. I probably should have arrested you
14 right when you first started saying something, but,
15 hey, it's a lot better for me just to let you talk.
16 And I just think that's wrong.

17 I mean, the detective says, I went there to
18 solve a crime, in essence. I went there to see who
19 committed this thing. He didn't just go over there
20 just to go in the room to talk to her to soothe her
21 or make her feel better. He went in there to see
22 what she was going to say so that he could help solve
23 this crime. And once that's his motive, I think
24 there's an obligation and responsibility to give
25 Miranda rights, whether in custody or not.

1 **THE COURT:** All right. My finding based on the
2 totality of the circumstances is that the defendant
3 was not in custody at the time the statements were
4 given. That's not going into the inquiry though --
5 Ms. Mayes, you're not going to seek during your case
6 in chief to introduce these notes to the file into
7 evidence, are you?

8 **MS. MAYES:** That is correct, Your Honor. That's
9 a Court's Exhibit.

10 **THE COURT:** All right. What that's going to
11 bring up as I perceive it is a real issue as to
12 Ms. Herod's statement and Detective Florence's
13 statement and perhaps even Sergeant Denison's -- I
14 can't really remember -- that no one -- and I wrote
15 it down. Who was in custody of the child that day?
16 I was. And the statement, no one else had access.

17 **MR. HOWLE:** Your Honor, there --

18 **THE COURT:** I've heard no --

19 **MR. HOWLE:** I'm sorry, Your Honor.

20 **THE COURT:** I've heard no testimony. I've just
21 heard reference to the fact that one of the boys said
22 that he'd been into the room and taken the baby out
23 of the crib, and I assume while the mother was
24 sleeping, because she says she was asleep and Child
25 cried and woke her up. Are these boys going to come

1 to this courtroom?

2 **MR. HOWLE:** That's our question, Your Honor.

3 **THE COURT:** Well, it's hearsay and of course as
4 you both know a violation of that Title 17 statute to
5 let that testimony in. But what concerns me is the
6 testimony of what Lieutenant Florence said. He said
7 I can only go by what she told us, that no one else
8 had access to the child.

9 And when you're trying to get at the truth and
10 you're admitting to building your case on the
11 circumstantial inference, well, she said I was the
12 only one that had access and this is an acute injury
13 according to the expert; so, therefore, it had to be
14 her. Well, is that really, really the whole truth?
15 I don't want to be -- I think it's Rule 102 that
16 tells us what the purposes of the rules of evidence
17 are, to seek a fair and trustworthy determination of
18 what the facts are.

19 And what I am concerned about is if these
20 children don't come, whether or not the Jessie's law
21 statute which is where it comes from, right, is truly
22 being put to the right use. It may still be hearsay
23 but it might not be being offered to prove the truth
24 of the matter asserted. It might be offered to prove
25 that what she said is not entirely correct.

1 **MS. MAYES:** Your Honor, the State does not
2 dispute that. And just to clarify, when we discussed
3 this previously in chambers, the State's objection
4 would be getting into all of the details and
5 specifics encompassed in those forensic interviews
6 with the two boys who were ages six and nine.

7 However, a question to a law enforcement officer
8 about what they have garnered as a result of their
9 investigation concerning the point from when Ms.
10 Putnam woke up at home and we have established would
11 not have included that event.

12 However, to also ask prior to the point where
13 she described waking up, as a result of your
14 investigation, did you determine whether anyone else
15 may have had contact with the child, I think that's a
16 fair question.. And I think that a law enforcement
17 officer can indicate --

18 **THE COURT:** You would not object to that?

19 **MS. MAYES:** I would not object to their
20 testimony, that according to her statement, according
21 to her statement, from the point she was up, no.
22 However, I believe only the investigation which would
23 include the conversations of the child, he very well
24 may have had contact with the child, with the baby
25 that morning.

1 I do want to clarify something that was
2 mentioned in chambers. I believe that Mr. Howle has
3 referenced a whole new situation with the baby. The
4 sibling did acknowledge that that event had occurred.
5 However, it was not on the day in question. I
6 believe he had indicated that this was two days
7 prior. Prior to --

8 **THE COURT:** You're saying that would be too far
9 removed from the acute situation unless he had expert
10 testimony that would bring two days ago into the
11 realms of reason?

12 **MS. MAYES:** I believe that's correct.

13 **THE COURT:** Well, I'll just have to handle that
14 as we go along.

15 **MR. HOWLE:** Your Honor, I'll watch the tape
16 again because I had it written down in my notes as it
17 was that morning. Because he made it very clear that
18 he had gotten up that morning and gone in there.

19 **THE COURT:** I haven't seen the tape, so I don't
20 know.

21 **MR. HOWLE:** Yes, sir.

22 **THE COURT:** And here is what I'm getting to
23 right now. We have jurors getting ready to come in
24 and you're getting ready to give opening statements.
25 And I don't know what you're going to say. And it's

1 your opening statement, not mine, and I need to lay
2 some ground rules down.

3 Before I forget, moving on to the next point.
4 What is the State's contention of how it is
5 admissible or relevant or comes in even under Rule
6 403 about the failure to thrive allegations two
7 years -- or excuse me -- six minutes prior, was it,
8 in another state?

9 **MS. MAYES:** Yes, sir, Your Honor. We believe
10 that is relevant to explain the developmental level
11 that the child was at. And it may not be the full
12 specifics of what was included in the conversation
13 with Ms. Herod. We're not necessarily --

14 **THE COURT:** I probably am not going to let you
15 get into the fact that they were taken into custody
16 by CPS. Now, the fact that the child may have been
17 considered to be failure to thrive, which I think is
18 a medical term, I think that's appropriate to show
19 that the child was behind seven months
20 developmentally as opposed to thirteen months of age.
21 But to throw in there that the child had been taken
22 into our equivalent of emergency protective custody
23 is something that I am concerned about.

24 **MS. MAYES:** And just to clarify, Your Honor,
25 this child was 13 months of age. However, by all

1 accounts, he was not walking. He was just learning
2 to sit up according to the statement of Ms. Putnam.
3 So it is extremely relevant for the jury to
4 understand this isn't a normal 13-month-old who --

5 **THE COURT:** I agree with you, that he can't sit
6 up, falling back, so on and so forth makes that less
7 credible according to your view. But going back
8 to -- what state was it?

9 **MS. MAYES:** Arizona.

10 **THE COURT:** The fact that he was taken into EPC
11 in Arizona for failure to thrive, I think that that
12 would not survive a Rule 403 analysis, at least based
13 on my view at this point.

14 And, second of all, the other point that I have
15 written down, the placing of the other children into
16 emergency protective custody after that I suppose,
17 was that done as a matter of course or because law
18 enforcement thought that the parents were negligent?
19 And which parent? Or both?

20 **MS. MAYES:** That's correct, Your Honor. At that
21 point there was no conclusion as to which parent, or
22 both, as you indicated, how --

23 **THE COURT:** Or either.

24 **MS. MAYES:** Correct. But DSS was involved. And
25 it is routine when a child --

1 **THE COURT:** Is that relevant to this case?

2 **MS. MAYES:** Is it relevant? I believe it is,
3 Your Honor, to explain whether they had continued
4 acts with those boys. It may be that they ultimately
5 testified in this case as Mr. Howle has indicated.
6 And I think what degree of influence or access the
7 parents may have had at that interview onto a second
8 interview could have --

9 **THE COURT:** Well, stay away from that in your
10 opening statements.

11 **MS. MAYES:** Yes, sir, Your Honor.

12 **THE COURT:** And don't talk about the EPC in
13 equivalent in Arizona, and we'll just see how that
14 goes.

15 **MS. MAYES:** Yes, sir, Your Honor.

16 **THE COURT:** And, Mr. Howle, the sum of the
17 content of what Ms. Herod says the defendant told her
18 is going to come in based on my earlier ruling. Of
19 course Ms. Herod well knows not to go into what the
20 emergency room nurse said, about what she said about
21 this being the worst shaken baby case she's ever
22 seen. She can't go into that.

23 **MR. HOWLE:** And I assume she is not going to say
24 anything about "it is my opinion" or anything of that
25 nature.

1 **THE COURT:** No. If she tries to do it, I
2 suppose you'll object at this point.

3 **MR. HOWLE:** Yeah. I don't think she will try to
4 do that.

5 **THE COURT:** Well, I just want her to hear it.
6 Because sometimes, you know, you're talking and you
7 just say it not knowing that anybody was going to
8 object to it. Then I guess you'd better practice
9 what I call the Rusty Weinberg rule. You'd better
10 stand up and object.

11 **MR. HOWLE:** I will, Your Honor.

12 **THE COURT:** All right. We'll take about five
13 minutes. The jury is here. I haven't appointed a
14 foreperson yet. We'll come back out. And, Ms.
15 Mayes, what do you want to accomplish today in your
16 case in chief?

17 **MS. MAYES:** However much the Court is prepared
18 to hear, Your Honor. We do have Sergeant Denison
19 here who could testify concerning the initial
20 incident report. He also took some photographs which
21 will be offered in evidence. Or we could do that in
22 the morning, whatever the Court sees fit.

23 **THE COURT:** All right. We'll probably get one
24 witness in. And I will give opening remarks to the
25 jury. We'll be finished with the opening statements

1 I'm sure by 4:30. Maybe that will be our only
2 witness of the day.

3 **MR. HOWLE:** Your Honor, the only thing I was
4 concerned about; in the report we have a statement
5 where he says a nurse told him something about it
6 being a shaken baby. I assume that's not going to be
7 gone into?

8 **MS. MAYES:** Correct. Correct.

9 **THE COURT:** The only thing he can testify to are
10 what the defendant told him and the generic
11 circumstances of how he was called. He can leave the
12 medical diagnosis to an expert.

13 **MR. HOWLE:** Since that was put in there
14 specifically, I just wanted to make sure that same
15 document was not going to be introduced.

16 **THE COURT:** I doubt it.

17 **MS. MAYES:** That's correct, Your Honor.

18 **THE COURT:** Okay. All right. We'll take about
19 five minutes.

20 (Whereupon, a break is taken)

21 (WHEREUPON, Court's Exhibit No. 3 is marked for
22 identification.)

23 **THE COURT:** All right. Can I get that Court's
24 Exhibit back? We have what's been marked as a
25 Court's Exhibit that I went through with the

1 attorneys in chambers. It's a determination fact
2 sheet from the South Carolina Department of Social
3 Services on Juror Stadalsky who is juror number 130.
4 He was the sixth juror seated.

5 He evidently was investigated. He brought this
6 to the one of the bailiff's attention. He was
7 investigated May 17th, 2007 for physical abuse
8 concerning his daughter. The investigation or the
9 complaint was determined unfounded. No abuse
10 occurred.

11 Ms. Mayes, what's the State's position on that?

12 **MS. MAYES:** Your Honor, prior to jury selection,
13 the State had submitted specific voir dire questions
14 to the Court and that voir dire question was whether
15 any member of the prospective panel had been
16 investigated for or charged with child abuse and
17 neglect. And certainly we've now learned that this
18 was an initial Child Protective Services
19 investigation for abuse and neglect.

20 The State would have moved certainly to have
21 stricken this juror, exercise our strike had he come
22 forward as the Court requested and acknowledged that
23 he had in fact been previously investigated for child
24 abuse or neglect. So for that reason we move to have
25 this juror dismissed at this time and replaced with

1 an alternate.

2 **THE COURT:** Mr. Howle.

3 **MR. HOWLE:** Your Honor, I can't really disagree.
4 Even though it said it was unfounded, the question
5 you asked was charged or investigated.

6 **THE COURT:** Right.

7 **MR. HOWLE:** And no response was given.

8 **THE COURT:** All right. In addition, the Court's
9 Exhibit shows that the finding of -- or the
10 determination that was unfounded was signed by Julia
11 Wilson who is a witness in this case. And I'm going
12 bring Mr. Stadalsky in and release him for the day
13 and instruct him to come back after 6:00. Excuse me.
14 Call back after 6:00 with the rest of the jury panel.

15 What I have done is I have written down on two
16 pieces of paper number 1 and number 2. When
17 Mr. Stadalsky leaves I'm going to ask the bailiffs to
18 draw out of this cup one of these pieces of paper.
19 If it has 1 on it, that will be Ms. Giles seated as
20 the alternate. If it's number 2, that will be Mr.
21 Edwards.

22 Any objection to that, Ms. Mayes?

23 **MS. MAYES:** None at all, Your Honor.

24 **MR. HOWLE:** None, Your Honor.

25 **THE COURT:** All right. You can bring in

1 Mr. Stadalsky.

2 (Whereupon, Juror Stadalsky enters the courtroom.
3 and is excused by the Court from the trial of the
4 case)

5 **THE COURT:** All right. You can bring in the
6 rest of the jury. Before we do that, Mr. Prince, you
7 can draw one of these pieces of paper out of here.
8 All right. Open it up. And what number is on it?

9 **MR. PRINCE:** Number 2.

10 **THE COURT:** All right. That means Mr. Edwards
11 will now be a member of the jury. All right. When
12 they come in, just ask Ms. Giles to now be in the
13 alternate's chair.

14 (Jury in at 4:06 p.m.)

15 **THE BAILIFF:** All the jurors and the alternate
16 are in the courtroom, Your Honor.

17 **THE COURT:** All right, ladies and gentlemen of
18 the jury. I apologize for the delay in keeping you.
19 We've been taking care of some scheduling issues just
20 to make sure that once the trial gets started it runs
21 in an orderly fashion. And one thing that we have
22 done, Mr. Edwards, you are now a member of the jury.
23 Ms. Giles, you're still an alternate. And right now
24 you are the only person who has an assigned seat. So
25 when you come in after the foreperson is appointed,

1 you'll be the only one with an assigned seat.

2 Before we get actually started with the trial,
3 ladies and gentlemen, the bailiff is going to swear
4 you. So if you can please stand.

5 (Whereupon, the jury is sworn)

6 **THE COURT:** All right, ladies and gentlemen.
7 What I'm going to tell you now is specifically
8 intended to serve as an introduction to the trial of
9 this case. And to get straight to the point, under
10 our system of justice, members of the jury are the
11 sole persons who can make determinations of facts.
12 And that will be your role in this case.

13 You have been sworn now to render a verdict
14 according to the evidence, and a part of that oath is
15 to render a verdict according to the law. And that
16 right there tells you what our true roles are. You
17 are the sole judges of the facts in this case and I
18 am the sole judge of the law.

19 In this case the defendant has been charged with
20 an offense or with the offense of homicide by child
21 abuse. As I've told you before you were selected,
22 the fact that a person is arrested, charged and
23 indicted for an offense is evidence of absolutely
24 nothing. The defendant has entered a plea of not
25 guilty and that plea puts the burden of proving guilt

1 upon the State by the burden of proof of what is
2 called beyond a reasonable doubt. That will be
3 explained to you in detail as the case goes on.

4 Your purpose as jurors is to find and determine
5 the facts. And how do you do that? You do that by
6 listening very carefully to each witness that
7 testifies. Testimony of the first witness is no more
8 or no less important than the second of the second,
9 third, fourth, fifth, twelfth, fifteenth or fortieth
10 witness. The testimony of every witness is
11 important.

12 For example, when you are here this afternoon
13 beginning at 4:00, if you hear witnesses testify, you
14 may think, well, you know, I'm not really going to
15 pay attention because I'm a little bit tired. I
16 worked this weekend, or I'm not particularly
17 interested in paying attention right now. It is
18 absolutely imperative that you understand as part of
19 your oath that you have sworn to pay attention to
20 everyone who testifies. And you have to do that.

21 As the trial goes on you may be tempted to let
22 your attention wander; and I'm telling you right now
23 that you can't do that because you will notice that
24 when a witness testifies, the witness will be
25 basically facing you and the lawyer who is asking the

1 questions. The witness will rarely, if ever, look up
2 at me. That's because I don't have anything to do
3 with a determination of the facts. That's your
4 province and no one else in the world is going to be
5 allowed to determine the facts of this case other
6 than you. So it's very, very important that you
7 perform your duty conscientiously. And it will be
8 absolutely incumbent upon you to do that.

9 How do you determine what the truth is? Well,
10 one of the things that you bring into this courtroom
11 with you is your good common sense. And one of the
12 things you will have to do during the course of your
13 listening to the testimony is to determine the
14 credibility or believability of the witnesses who
15 testify.

16 We have the South Carolina rules of evidence and
17 we have all kinds of books. We have all kinds of
18 laws. But there is nothing in those books that tells
19 you how to determine who to believe and what to
20 believe other than the exercise of your good common
21 sense. You do that every day when you watch somebody
22 talk. The difference is today during the course of
23 this trial these witnesses right in front of you.

24 So how do you determine who to believe and what
25 to believe? You determine whether to believe someone

1 by how they appear on the witness stand. Was the
2 witness hesitant or straightforward in answering
3 questions? Did the witness have any reason to give
4 testimony that would help or hurt one side or the
5 other? In other words, does that witness have a bias
6 or a prejudice for or against one side or the other?

7 Does that witness have or has that witness given
8 a different statement on a prior occasion, or was
9 that witness's testimony strengthened or weakened by
10 other testimony or evidence that's in the record?

11 You can believe everything a witness has to say.
12 You can believe nothing of what a witness has to say,
13 or you can believe parts and reject the rest. That's
14 solely up to you. Now, you do not determine the
15 truth in any way by counting up the number of
16 witnesses for one proposition or the other. You
17 determine what you believe to be the truth and what
18 the facts are based on your overall view of the
19 evidence.

20 Now, ladies and gentlemen, during the course of
21 the trial from time to time you may hear one of the
22 lawyers or both of the lawyers stand up and object to
23 a question or to an answer. As I mentioned a few
24 moments ago, we have the South Carolina rules of
25 evidence. They're in this book.

1 And there are many times differences of opinion
2 as to whether or not evidence is admissible. One
3 lawyer may ask a question thinking it's perfectly
4 proper; the other lawyer may make a perfectly good
5 faith objection thinking that it's improper.

6 Just because a question is objected to does not
7 mean that the lawyer who asked the question is trying
8 to slip something in that shouldn't come in. Just
9 because a lawyer objects to something does not mean
10 that lawyer is trying to hide something from you.
11 Again, there are many times when there is a good
12 faith difference of opinion as to whether or not
13 something truly should come before a jury.

14 If it turns out that I have to send you out of
15 the room to discuss that evidentiary question, I will
16 do that. And that's not to hide anything from you.
17 But keep in mind that you determine facts; I
18 determine the law. And the law dictates as to
19 whether or not something is admissible. So when we
20 discuss points of law, we may have to do that outside
21 of your presence.

22 And to give you a good illustration, when you
23 retire at the end of this case to deliberate the
24 facts, we don't go with you. There is no court
25 reporter. There is no bailiff. There is no

1 microphone. There is no recording device. There is
2 no camera. You go into that jury room alone. So if
3 we have to debate points of law, we may do that
4 outside of your presence; and if we do that, I'll
5 apologize ahead of time.

6 Now, during the course of this trial you are not
7 to read about, listen to or watch anything about this
8 case in whatever form it may present itself. I don't
9 know if it will, but I tell every jury don't read
10 anything about this case, don't listen to anything
11 about it, don't watch anything about it because what
12 you are allowed to base your decisions on in this
13 case is what you see and hear in this courtroom and
14 not from any other source.

15 If it turns out that that happens
16 unintentionally, you are to alert a bailiff upon your
17 arrival at the next resumption of the trial and we'll
18 deal with that issue if necessary. And that's an
19 instruction I give every jury. I don't foresee any
20 difficulty in that regard, but please make sure that
21 you pay very close attention to that instruction.

22 I had a case in Kershaw County one time. It
23 involved a case where there was a lawsuit over a
24 house that was under construction. And despite my
25 instructions not to go to the house, not to walk

1 through it and not to do anything, one of the jurors
2 took it upon herself to ride by there on the way home
3 and walk through the whole house. And needless to
4 say, a mistrial was declared, and that juror was in
5 somewhat a bit of hot water for failing to abide by
6 my instruction.

7 It's your job to keep an open mind until you've
8 heard everything. There is no way at all that anyone
9 can make a determination of what facts are until that
10 person hears everything that there is to hear.

11 Now, the same law that makes you the judge of
12 the facts makes me the judge of the law. I'm saying
13 that for this purpose. During this trial we will go
14 through certain phases. In a moment the lawyers are
15 going to give you an opening statement. They will be
16 through. Then the State will present its evidence in
17 chief. That's because the State has the burden of
18 proof.

19 Then the defendant after the conclusion of the
20 State's evidence has the right, but does not have to,
21 present evidence. And if the defendant does produce
22 evidence in this case, the State can produce reply
23 evidence, and after that you will hear closing
24 arguments from the attorneys, and after that you will
25 hear my charge to you on the law. And you will have

1 to accept the law as I give it to you at the
2 conclusion of this case.

3 What the lawyers say to you in the form of their
4 statements and arguments is not evidence. And they
5 will argue to you, however, under the rules to tell
6 you in just a moment what they think the evidence
7 will or will not show. But you do base your
8 determinations on the evidence that is presented.

9 All right, Ms. Mayes and Mr. Howle. Any
10 objection to those remarks?

11 **MS. MAYES:** None from the State, Your Honor.

12 **MR. HOWLE:** I have no objection.

13 **THE COURT:** All right. All right, Ms. Mayes.

14 **MS. MAYES:** Yes, sir, Your Honor. May it please
15 the Court?

16 **THE COURT:** Yes, ma'am.

17 **MS. MAYES:** Ladies and gentlemen, my name is
18 Suzanne Mayes and I am a prosecuting attorney in this
19 case. I work with the State Prosecution Commission
20 and I'm here in conjunction with your local
21 solicitor, which is the Third Circuit Solicitor's
22 Office here in Sumter County. Our job as prosecutors
23 is to prosecute criminal cases on behalf of law
24 enforcement and the state of South Carolina.

25 Now, we are here today because of a sad and

1 serious case. It involves the homicide of a baby and
2 specifically a little baby who was killed in his own
3 home. And most shocking and tragic of all is that
4 the person sitting there at the defense table,
5 Martina Putnam, is the mother of little Child
6 who was 13 months old when he was killed in his own
7 home here in Sumter County.

8 You may hear facts during the course of this
9 trial that are hard to listen to and at times may
10 make you feel uncomfortable and you would much rather
11 be somewhere else listening to something else, but we
12 ask you to keep in mind that it's absolutely
13 necessary for the trial of this case to establish
14 through proof and evidence exactly what Child
15 injuries were and how we know that this was in fact a
16 homicide as I submit to you.

17 Now, the facts is in this case, and you'll hear
18 from witnesses right here on this witness stand, is
19 that on March 10th, 2007, little Child
20 resided here in Sumter County with his mother, the
21 defendant, Martina Putnam, her husband, Patrick
22 Putnam, who was the father of little Child
23 and with his two siblings who were Sibling 1 and Sibling 2
24 and they were ages six and nine at that
25 time in 2007.

1 You'll hear testimony that on March 10th Child
2 was brought to the Tuomey emergency room by his
3 parents. And you will hear testimony that as Martina
4 Putnam brings him into the emergency room she states
5 that he became unconscious while she is attempting to
6 give him a bath and that he stopped breathing.

7 You will hear testimony that she says she
8 doesn't know what happened to Child You will hear
9 testimony most significantly later on in this trial
10 from medical experts who will explain exactly what
11 his injuries were. I submit to you you will hear
12 testimony from a pathologist who performed the
13 autopsy that in fact Child injuries were a
14 subdural hematoma which is a massive injury to the
15 brain, a subarachnoid hematoma, and that he had optic
16 nerve hemorrhage along his eyes, all a result of what
17 was determined to be a homicide requiring blunt
18 trauma. Abusive head injury is what you'll hear
19 testimony about.

20 Specifically, you'll hear from an expert in
21 pediatrics, a pediatric intensive care specialist who
22 was Child attending physician when he was taken
23 not just to Tuomey but from Tuomey on to Palmetto
24 Richland in Columbia to see if they could help him,
25 if they could possibly save his life.

1 You will hear testimony from that pediatric
2 specialist that Child was diagnosed with what is
3 called abusive head injury. Why is it called abusive
4 head injury? Because it's the result of abuse, child
5 abuse and neglect. It is not accidental trauma. The
6 child did not fall on the couch. This child did not
7 simply bump his head. These injuries were not
8 obtained by any kind of accident. These injuries
9 were inflicted.

10 Further you will hear testimony from that
11 specialist that these injuries were so severe that
12 Child would have been almost immediately
13 incapacitated; just as she described him,
14 unresponsive and not breathing as she was with him
15 there on the bathroom floor.

16 Now, that's not all Martina Putnam says. I
17 submit you'll hear testimony from law enforcement
18 officers who met with her on that date as well as
19 some testimony from medical personnel. But according
20 to Martina Putnam, she fed Child baby cereal. He
21 was eating. He was alert. And then, according to
22 her, he also started falling over on to the floor and
23 hitting his head onto a carpeted floor in the living
24 room.

25 Ladies and gentlemen, that is ridiculous for her

1 to suggest that that type of maneuver could have
2 possibly resulted in these injuries. You'll hear
3 testimony that it is in fact medically impossible,
4 that Child was delayed, developmentally
5 delayed. Even at 13 months he was just learning to
6 sit up according to his mom or to the Putnams. And
7 yet she wanted law enforcement to believe that as he
8 was just learning to sit up he would sit up and then
9 fall over onto a carpeted floor that somehow resulted
10 in these massive injuries.

11 No, that's not what happened to Child
12 She took him after he ate into a bathroom where she
13 was alone with him. You will hear testimony that
14 from her own mouth she maintains that he was only
15 with her from the time he was alert, healthy and
16 eating until the time he became unresponsive on that
17 bathroom floor with her.

18 And then when he's unresponsive and finally not
19 breathing, only then is he taken to the hospital.
20 And by that point she is saying, I don't know what
21 happened to him. But we know that Child died that
22 same day as a result of these massive injuries.

23 And you will hear specifically from that
24 pediatric specialist that in addition to the subdural
25 hematoma, bleeding deep inside the brain, he had a

1 subarachnoid hematoma, which is bleeding on another
2 level of the brain, massive head injuries, and that
3 he also suffered from what is known as bilateral
4 retinal hemorrhages, meaning he was bleeding in the
5 back of both eyes internally; again, the result of
6 abusive head injuries.

7 Ladies and gentlemen, this type of case is
8 shocking and tragic. I submit we realize that. But
9 at the same point these crimes unfortunately happen
10 in this country more than we like to imagine, more
11 than we like to acknowledge. And after all is said
12 and done, the State will meet its burden of proof
13 that Martina Putnam is guilty as charged of
14 inflicting these injuries as a result of abusive head
15 injury. That is child abuse and that is neglect that
16 led to his death on March 10th, 2007. Thank you.

17 **THE COURT:** Mr. Howle.

18 **MR. HOWLE:** Thank you, Your Honor. Ladies and
19 gentlemen of the jury, my name is Jack Howle. I'm
20 the Chief Public Defender for the Third Circuit which
21 is Sumter, Lee, Williamsburg and Clarendon Counties,
22 and I represent Ms. Putnam.

23 Now, obviously we disagree with a lot that the
24 State has said they're going to prove. And one thing
25 that I want to tell you about, the way our system

1 works, the State presents their case first. So
2 everything you're going to hear is going to be from
3 State witnesses, which makes you kind of lean that
4 way a little bit. But I just ask that you wait until
5 you've heard everything before you make any kind of
6 decision.

7 Child was 13 months old when he died on
8 March the 10th, 2007, and the State is saying it was
9 Martina Putnam, his mother, who is responsible. Ms.
10 Mayes said there is going to be evidence of abuse.
11 Well, I want you to listen for this evidence of
12 abuse, because I think the evidence will show that
13 Martina Putnam is a good mother and has these other
14 two sons that she has raised. And that will be
15 brought out as we go through the trial.

16 Now, the State has indicated it's going to show
17 you through medical experts that this child died from
18 these subdural hematomas and the other kind. It's
19 not our intention to troop a bunch of doctors here to
20 have this argument of whether there is such a thing
21 as these hematomas causing immediate unconsciousness
22 and all of those types of things. What you need to
23 determine as a jury is who caused such an injury.

24 Now, the State has made these comments about
25 nobody was there or she was the only one in control.

1 There were other people in this house, the father and
2 two other children. And I think there is going to be
3 evidence to show reasons why there may have been
4 other people that could have caused this just as
5 easily as their allegations that it was Ms. Putnam.

6 Now, Ms. Putnam is certainly not going to
7 suggest to you that this falling over would have
8 caused these kinds of injuries. We realize that
9 they're very severe injuries. But here is part of
10 the difference. There is going to be conflicting
11 evidence from the experts, if you will, as to whether
12 this kind of injury would be something that if it
13 happened there would be this immediate effect where
14 you were unconscious or semiconscious which is what
15 the State wants to say, or whether there could be
16 some kind of injury and a period of some lucid time
17 before when the child would have been become
18 semiconscious or unconscious.

19 And that's a big difference. Because what you
20 want to say is, well, Ms. Putnam says she got up that
21 morning and started feeding him and she was in
22 control of the child, she was with him the whole
23 time, and things like that; where is somebody else
24 that could have caused something like this? Well,
25 that timeframe is important because there were other

1 people there and there are other opportunities, if
2 you will, that something else could have happened to
3 that child because there is going to be testimony as
4 to who else was in the house, like I say, the husband
5 and these two other children.

6 Child was born premature, about 28 weeks
7 premature. He had problems. One of them was he
8 didn't walk. He had a very difficult time sitting
9 up. He was just still trying to learn to sit up at
10 13 months. So he had physical problems as well. As
11 a matter of fact, the first three months of his life
12 he was in the hospital as a premature baby before he
13 came home.

14 Now, the loss of a child is certainly something
15 that is dramatic. And the how or through exactly
16 what means that death occurred is even more difficult
17 to accept. But again, the question is not the cause
18 per se of that death but who caused that death. And
19 that's the evidence that you need to focus your
20 attention on that you'll hear.

21 This is a burden that's placed on the State, as
22 the judge told you in the beginning, by our law. And
23 it's one that we don't look at and say, well, that
24 could have been happened, it might have been happened
25 or even it probably happened. It's beyond a

1 reasonable doubt. It's a high standard. And it
2 should be.

3 The charge against Martina Putnam says that she
4 willfully caused the death of Child and the death
5 occurred under circumstances manifesting an extreme
6 indifference to human life. Now, that's part of the
7 definition within that charge itself. And the judge
8 in the case will give you some law in regard to that
9 so you will fully understand that.

10 But this is what the State must prove beyond a
11 reasonable doubt if it wants to tell you that Martina
12 Putnam would have caused this injury. Now, the
13 State, like I say, presents their case first, and you
14 will hear all of that. And I would just ask that you
15 reserve any determination until you've heard
16 everything both in the State's case and in the
17 defendant's case. Thank you very much.

18 **THE COURT:** Thank you, Mr. Howle. All right,
19 Ms. Mayes. Call your first witness.

20 **MS. MAYES:** Yes, sir, Your Honor. The State
21 calls Sergeant Rob Denison.

22 **THE CLERK:** Place your left hand on the Bible
23 and raise your right hand. State your name, please.

24 **THE WITNESS:** Robert Denison.

25 ROBERT DENISON, after being duly sworn,

1 testifies as follows:

2 **THE CLERK:** State your name. Spell your last
3 for the record.

4 **THE WITNESS:** Robert Denison, D-E-N-I-S-O-N.

5 DIRECT EXAMINATION

6 **BY MS. MAYES**

7 **Q** Sergeant Denison, where are you employed and in what
8 capacity?

9 **A** With the Sumter County Sheriff's Office. I'm a
10 sergeant on patrol.

11 **Q** All right. And what does that job normally entail?

12 **A** Pretty much patrol. I'm a supervisor for the north
13 side region.

14 **Q** All right. And does that mean sometimes you respond
15 to situations where you will fill out an incident
16 report or talk to bystanders or witnesses, things of
17 that nature?

18 **A** Yes, ma'am.

19 **Q** All right. And specifically, can you tell us whether
20 or not you had the opportunity to respond to an
21 incident on March 10th, 2007 that involved ultimately
22 fatal injuries to a baby?

23 **A** Yes, ma'am. I responded to Tuomey Hospital for that.

24 **Q** And do you have with you today a record of any kind
25 of incident report or documentation concerning that

1 response?

2 A Yes, ma'am. I have my incident report right here.

3 Q And whose signature is on the incident report?

4 A That's my signature.

5 Q All right. And specifically, what time, if you can
6 refer to the incident report, did you respond to
7 Tuomey Hospital?

8 A I arrived at Tuomey Hospital at 12:24 in the
9 afternoon.

10 Q Okay. 12:24 in the afternoon?

11 A Yes, ma'am.

12 Q And who did you see upon arriving there?

13 A I spoke with Dr. Bailey.

14 Q All right. And specifically concerning the young
15 patient, Child who did you speak with that
16 may have been family members who were there at the
17 hospital?

18 A I spoke with the mother, the father. They were both
19 in the family waiting room when I arrived there.

20 Q All right. I want to take you back a little bit and
21 ask you about that. When you say the mother, you're
22 referring to Martina Putnam?

23 A Yes, ma'am.

24 Q And can you tell us whether or not her husband,
25 Patrick Putnam, was also present?

1 **A** Yes, ma'am, he was.

2 **Q** And can you remember whether the young boys who were
3 six and nine were also present at the hospital?

4 **A** Yes, ma'am. I believe they were.

5 **Q** What was your understanding of how Child arrived at
6 the hospital? Was it by ambulance or was it by
7 another means?

8 **A** It's the parents who brought him to the emergency
9 room.

10 **Q** Okay. So they bring him into the emergency room and
11 then at some time law enforcement was notified. Who
12 notified law enforcement to come down to the hospital
13 in this particular case?

14 **A** I believe it was Dr. Bailey had notified law
15 enforcement as part of their protocol.

16 **Q** Then you were notified by Tuomey Hospital to come
17 down there under the circumstances of this case?

18 **A** Yes, ma'am.

19 **Q** All right. And you arrived there and you had the
20 opportunity to see Ms. Putnam. What do you normally
21 do in such a situation when you know that there has
22 been injury to a child and law enforcement has been
23 called on behalf of the hospital? What's the normal
24 procedure for finding out what happened?

25 **A** Basically just going to the parents and trying to

1 find out exactly what had happened and how the
2 injuries occurred and what brought them to the
3 hospital that day.

4 Q All right. And in so doing, did that give you the
5 opportunity to speak directly with Martina Putnam?

6 A Yes, ma'am, it did.

7 Q And at that point in time, was she in police custody?

8 A No, ma'am. No, ma'am.

9 Q Was she free to come and go from the hospital?

10 A Yes, ma'am.

11 Q And were you dressed so that she would know that you
12 were a law enforcement officer?

13 A Yes, ma'am. I was in uniform.

14 Q All right. And did you document in any way your
15 conversation with Ms. Putnam?

16 A Yes, ma'am, I did. I took notes.

17 Q And what is the date that your documentation was
18 prepared in relation to the incident?

19 A It was the same day, the 10th of March.

20 Q So that would be March 10th. Now, I'm going to ask
21 you to look specifically at your document summary.

22 And if you could slowly inform us of what, if
23 anything, Martina Putnam stated to you concerning
24 what had happened to Child

25 A I had talked with the parents, and the mother told me

1 that she fed the baby and then took him in and laid
2 him on the bed while she went to run him a bath.
3 When she returned the baby was not breathing and was
4 unresponsive. The mother stated that her and the
5 father put Child in the truck and rushed him to
6 Tuomey.

7 Q All right. Now, specifically you said that she
8 stated that she fed the baby?

9 A Yes, ma'am.

10 Q Was there any indication to you that he was injured
11 at that point?

12 A No, ma'am.

13 Q All right. And after she fed the baby, did she
14 indicate that he was ever in anyone else's care or
15 control until she found him to be unresponsive?

16 A No, ma'am.

17 Q And what exactly did she say she was doing or
18 preparing to do when she found him to be
19 unresponsive?

20 A She was preparing to draw a bath for him.

21 Q And while at the hospital did you have the
22 opportunity to actually see Child himself?

23 A Yes, ma'am, I did.

24 Q All right. And did you document or did you observe
25 anything unusual about his condition?

1 **A** Yes, ma'am. I took some photographs of different
2 bruises on Child

3 **Q** All right. And were those visible to the naked eye?

4 **A** Yes, ma'am.

5 **Q** And who brought these bruises to your attention?

6 **A** The nurses at the hospital did.

7 **Q** All right. I want to show you some photographs and
8 ask you to take a moment to review them and then
9 whether or not you recognize these items?

10 **A** Yes, ma'am. Those are the photographs I took.

11 **Q** Okay. And having reviewed these items, Sergeant
12 Denison, do they appear to be a fair and accurate
13 representation of the bruises that you saw on Child
14 Putnam there at Tuomey Hospital when he was being
15 treated?

16 **A** Yes, ma'am.

17 **MS. MAYES:** All right. Your Honor, at this time
18 we would ask for the individual photographs to be
19 marked as State's Exhibits 1, 2, 3, 4 and 5 for
20 evidence at this time.

21 **THE COURT:** Mr. Howle?

22 **MR. HOWLE:** Your Honor, I have seen the
23 photographs. I have no objection.

24 **THE COURT:** Without objection. 1 through 5 are
25 in evidence without objection.

1 (WHEREUPON, State's Exhibit No. 1 is marked for
2 identification and received in evidence.)

3 (WHEREUPON, State's Exhibit No. 2 is marked for
4 identification and received in evidence.)

5 (WHEREUPON, State's Exhibit No. 3 is marked for
6 identification and received in evidence.)

7 (WHEREUPON, State's Exhibit No. 4 is marked for
8 identification and received in evidence.)

9 (WHEREUPON, State's Exhibit No. 5 is marked for
10 identification and received in evidence.)

11 Q I'm going to start by showing you what is State's
12 Exhibit 1 for evidence and ask you what is depicted
13 in this particular photograph?

14 A That would be bruises on the right wrist of Child

15 Q All right. I'm going to show you what is State's
16 Exhibit 2 and ask you if you can identify what is
17 depicted in that photograph?

18 A Bruises on the upper chest of Child

19 Q And State's Exhibit 3?

20 A Bruises on the upper left thigh of Child

21 Q And State's Exhibit 4, if you could describe what is
22 depicted in that photograph?

23 A Bruises on the knee, I believe that's the right knee,
24 of Child

25 Q And State's Exhibit 5?

1 **A** Bruises on -- I'm not sure where those bruises are,
2 but they were just small bruises.

3 **Q** All right. And was it your intent to document any
4 such bruises which appeared to be out of the
5 ordinary?

6 **A** Yes, ma'am.

7 **MS. MAYES:** Your Honor, at this time the State
8 would ask to publish State's Exhibits 1 through 5 to
9 members of the jury.

10 **THE COURT:** All right. Ladies and gentlemen,
11 that means, publication means the exhibits are going
12 to be shown to you. And that's going to be done now.
13 Make sure that as you're passing the exhibits through
14 the jury box that you continue to pay very close
15 attention to the witness's testimony. All right.

16 **Q** Beg the Court's indulgence. Can you tell us,
17 Sergeant Denison, whether any other member of law
18 enforcement were also present at Tuomey in addition
19 to yourself?

20 **A** I notified investigations, and I believe Sergeant
21 Burnish was the first one to show up while I was
22 still there.

23 **Q** And what is your understanding of your procedure for
24 Child further treatment?

25 **A** That he was transported to Richland County by

1 ambulance.

2 MS. MAYES: Nothing further of the witness at
3 this time, Your Honor.

4 THE COURT: Mr. Howle.

5 MR. HOWLE: Thank you.

6 CROSS EXAMINATION

7 BY MR. HOWLE

8 Q I think you stated, you indicated that you were
9 talking to the parents?

10 A Yes.

11 Q Did you talk to someone other than Martina?

12 A I was talking to Martina and her husband.

13 Q And her husband was who?

14 A Patrick.

15 Q Seeing these pictures of these bruises and all, did
16 you ask Patrick Putnam anything about the bruises?

17 A I believe -- I'm not sure if I did or not. Like I
18 said, I had the parents together and was just asking
19 them together what had occurred.

20 Q So you didn't inquire as to how any of these could
21 have happened?

22 A No. Not at this time.

23 Q Were you aware that this child did not walk and did
24 not sit up by himself even though he was 13 years
25 old?

1 **A** No. I wasn't aware of that at the time.

2 **Q** You don't know what caused these bruises?

3 **A** No, I don't.

4 **Q** Thank you. That's all.

5 **THE COURT:** Redirect?

6 **MS. MAYES:** Yes, sir, Your Honor.

7 REDIRECT EXAMINATION

8 **BY MS. MAYES**

9 **Q** Just to clarify. Did your documentation testify as
10 to who specifically made the statement to you about
11 being with Child feeding him and then taking him to
12 give him a bath and ultimately finding him
13 unconscious?

14 **A** Yes, ma'am. That was the mother.

15 **Q** Okay. And you're referring to the defendant, Martina
16 Putnam?

17 **A** Yes.

18 **Q** And did she ever implicate anyone else during the
19 course of that conversation?

20 **A** No, ma'am.

21 **Q** And did she ever indicate that anyone else had access
22 to Child following her immediate feeding of him?

23 **A** No.

24 **Q** Thank you. No further questions.

25 **THE COURT:** Mr. Howle.

1 **MR. HOWLE:** Just a few more questions.

2 RE CROSS EXAMINATION

3 **BY MR. HOWLE**

4 **Q** Ms. Mayes used the word "implicate" there. The
5 father -- you say both of them brought him in?

6 **A** Right.

7 **Q** And the children were with them, too?

8 **A** Right.

9 **Q** So obviously all four of these people were at the
10 house where the child was?

11 **A** That would be a safe assumption, yes.

12 **Q** And even though Ms. Putnam said that she was in the
13 process of giving the child a bath, you don't know
14 what happened earlier that morning?

15 **A** No, sir.

16 **Q** You don't know who was with that child at that house
17 hours before or minutes before she started feeding
18 the child?

19 **A** No, sir.

20 **Q** Thank you.

21 **THE COURT:** All right. Thank you, sir. You can
22 step down. Ms. Mayes.

23 **MS. MAYES:** Your Honor, I believe our next
24 witness may carry us past 5.

25 **THE COURT:** All right. Ladies and gentlemen,

1 we're going to resume the trial tomorrow morning at
2 9:30. I had hoped to make a little bit more progress
3 today but we did have to get some preliminary matters
4 out of the way that took a little bit longer than I
5 thought.

6 Please be in your jury room tomorrow morning at
7 9:30, and please remember my very specific
8 instruction that you are not to discuss this case
9 with anyone. And that includes friends, family,
10 co-workers, no one. And that would include even
11 someone as close to you as your spouse, boyfriend,
12 girlfriend, whatever. So please make sure that you
13 don't violate that instruction. Even though you
14 might think it might be perfectly normal to go home
15 and discuss this case with whoever you feel you're
16 close to, that would be inappropriate and I am asking
17 you not to do that.

18 I will see you back tomorrow morning at 9:30,
19 and we'll be ready to resume and get a full day in.
20 Thank you very much.

21 (Jury out at 4:43 p.m.)

22 **THE COURT:** Ms. Mayes.

23 **MS. MAYES:** Nothing from the State, Your Honor.

24 **THE COURT:** Mr. Howle.

25 **MR. HOWLE:** Nothing, Your Honor.

1 **THE COURT:** All right. Why don't you all hang
2 around for just a few minutes after we go off the
3 record. I'll talk to you about tomorrow.

4 (Whereupon, the proceedings are concluded for
5 the day, to be reconvened tomorrow morning)

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Tuesday, April 21, 2009

THE COURT: Have a seat. Thank you. All right.
Are you ready? Are you ready for the jury?

MR. HOWLE: Yes, Your Honor.

THE COURT: All right. Bring in the jury.

(Jury in)

THE BAILIFF: All the jurors and the alternate
are in the courtroom, Your Honor.

THE COURT: Thank you, sir. All right, ladies
and gentlemen. Please accept my apology for this
delay and keeping you in your jury room. I can tell
you this. I will use my best efforts to make sure
this won't happen again. We are ready to continue
with the trial. And the State is continuing with its
presentation of evidence. Ms. Mayes, you may call
your next witness.

MS. MAYES: The State calls Gwen Herod.

THE CLERK: State your name, please.

THE WITNESS: Gwen L. Herod.

GWEN L. HEROD, after being duly sworn, testifies
as follows:

THE CLERK: State your name and spell your last
for the record.

THE WITNESS: Gwen L. Herod, H-E-R-O-D.

DIRECT EXAMINATION

1 BY MS. MAYES

2 Q Ms. Herod, could you state where you are employed and
3 in what capacity?

4 A I work for the Sumter County Sheriff's Office as the
5 victim assistance officer.

6 Q All right. And what do you mean by that? Tell us a
7 little bit about your job description at the
8 Sheriff's Department?

9 A As the victim assistance officer I'm responsible for
10 responding to and taking care of the needs of people
11 who become victims of crime or family members of
12 victims of crime. And in that I mean that I am
13 called to respond to the scene when there's a
14 traumatic event that happens and serve the needs of
15 victims or sometimes I follow up by seeing a report
16 the next day. However it's brought to my attention
17 that someone has become a victim of crime, it's up to
18 me to respond and take care of that victim.

19 Q All right. And when you say victim, does that
20 include family members of victims as well?

21 A Yes, ma'am. In some cases when there is an assault
22 and there is nothing I can do for the victim, if
23 they're under medical care, or a murder where the
24 victim is deceased, then it's my responsibility to
25 respond to and sometimes do death notifications,

1 other times to make whatever arrangements are
2 necessary with the family and do whatever they need
3 at the time.

4 Q All right. And what happens normally as a matter of
5 procedure if you get a call about a victim who is in
6 the hospital? It could be a shooting, it could be a
7 stabbing, something of that nature.

8 A When I say I respond to victims, I respond to
9 wherever the victims are, which sometimes is the
10 scene, sometimes is a neighbor's house, sometimes is
11 the hospital. Wherever that victim is at, then I
12 respond to where the victim or the victim's family
13 is.

14 Q All right. And have there been occasions prior to
15 March 10th, 2007 when you responded to a hospital
16 setting in order to talk to family members in a case
17 where someone has been injured as a result of a crime
18 or even an accidental case?

19 A Many times my response is to the hospital because by
20 the time I get to call they've already transported to
21 victim to the hospital. So I go wherever the victim
22 is, and many times that is the hospital.

23 Q All right. Now, I want to take you specifically to
24 the date of March 10th, 2007.

25 A Yes, ma'am.

1 Q I want to ask you whether or not you had the
2 opportunity to respond in a case that involved an
3 injured baby?

4 A I did. I was contacted by the commander on call,
5 Major Gardner, and instructed to go to the hospital
6 in reference to a 13-month-old baby who was
7 non-responsive.

8 Q All right. And you went to what location?

9 A I went to Tuomey Regional Medical Center in Sumter.

10 Q All right. And do you know who notified law
11 enforcement?

12 A Yes, ma'am, I do. The hospital officials.

13 Q All right. And tell us what you recall upon arriving
14 at that location?

15 A Upon arriving at the location, as I pulled into the
16 hospital I saw a baby and a woman who I assumed to be
17 the baby's mother getting onto an ambulance. And
18 then I was briefed by the law enforcement officials,
19 the people from the Sheriff's Office there as to what
20 we had and what my responsibilities would be.

21 Q Okay. And what did you do next?

22 A The next thing I did was go into the waiting room of
23 Tuomey and make contact. There were two little boys
24 there who were the siblings of the victim in this
25 case. And I spent some time, introduced myself to

1 those little boys. And then it was determined --
2 part of my job as victim assistance officer is
3 interviewing children who have been victims or have
4 witnessed, possibly witnessed an assault or
5 something. And I made contact with those boys and
6 took them to my office to interview the boys about
7 what they may have known that happened.

8 Q All right. And you talked about interviewing them.
9 Tell us what, if any, experience you have in
10 interviewing children who may be victims or witnesses
11 of abuse?

12 A The way that we at the Sheriff's Office perform
13 interviews of children is a little different than we
14 do adult witnesses or victims. And we perform what
15 we call forensic interviewing of children, which just
16 means it's a -- you don't assume anything. It's a
17 format when it's just the interviewer and the person,
18 the child, in the room and you ask open-ended
19 questions. And that interview is handled different
20 than an adult witness. If you were assaulted as an
21 adult and I would respond to you, you know, I would
22 just interview you knowing what I know. With
23 children, we try not to assume or ask any leading
24 questions of that child.

25 Q All right. And is anyone given an opportunity to

1 observe an interview with the child under that
2 setting?

3 **A** There always is someone to observe the interview.
4 And when I say someone, it's a law enforcement
5 official, an official from DSS. It's never a family
6 member. Like I said, it would just be me and the
7 child in the room. But in my office there is an
8 interview room and behind my office is what we call
9 the observation room where it is law enforcement
10 officials. In this case it was Lieutenant Florence.
11 He accompanied me and observed the interview of the
12 two brothers.

13 **Q** Okay. And is Lieutenant Florence in the courtroom?

14 **A** He is. He's sitting at the table.

15 **Q** All right. And so he would have the opportunity to
16 observe the interview as well. Is that correct?

17 **A** Yes, ma'am. That's correct.

18 **Q** Now, you mentioned that you were at Tuomey Hospital
19 and you observed the ambulance leaving. Do you know
20 where the ambulance was in route to?

21 **A** I learned that the ambulance was in route to Palmetto
22 Richland Hospital to transport the patient, the
23 13-month-old baby.

24 **Q** And why is it necessary in cases like this to follow
25 up with other family members such as you did?

1 **A** It's necessary for a lot of reasons. Number one, we
2 certainly want to ascertain who was in the home
3 because it's very important that the investigators
4 working the case have the information from everybody
5 who was in the home who may have seen or heard
6 something that happened. Second of all, it's
7 important to me as the victim assistance officer to
8 respond to someone who may have witnessed a traumatic
9 event.

10 **Q** Beg the Court's indulgence.

11 **THE COURT:** Yes, ma'am.

12 **Q** Do you have -- as a result of the law enforcement
13 investigation, Ms. Herod, do you have personal
14 knowledge as to who resided in the Putnam family
15 home?

16 **A** I do.

17 **Q** And who were the family members?

18 **A** Living in the home would be the victim, the
19 13-month-old baby, Child

20 **Q** All right. Anyone else?

21 **A** There were two brothers, Sibling Putnam -- Sibling
22 Thomasson. I'm sorry. He had a different last name.
23 And he was nine if I am correct.

24 **Q** All right.

25 **A** Then Sibling 2 the other brother, who was

1 six at the time I believe. The mother of all three
2 of the children, Martina Putnam.

3 Q All right.

4 A And the father, Patrick Putnam.

5 Q And when you say father, you're referring to the
6 father of the 13-month-old child?

7 A Correct. The husband of Martina.

8 Q All right. Now, do you have knowledge as to whether
9 or not this family residence was within the
10 jurisdiction of Sumter County?

11 A It was. It was in Crescent Mobile Home Park which is
12 in Sumter County.

13 Q All right. Now, if you can, please continue. I know
14 that you had mentioned that you had the opportunity
15 to conduct those interviews. And who, if anyone
16 else, did you have the opportunity to meet with
17 following that?

18 A Following that, after I had interviewed the two
19 children, I accompanied Lieutenant Florence to
20 Palmetto Richland Hospital and had an opportunity
21 there to meet with the mother, Martina Putnam.

22 Q All right. And tell me where you met with Martina
23 Putnam when you arrived at Richland Palmetto?

24 A When I got to the hospital I went to the pediatric
25 intensive care unit floor which I believe was the

1 ninth floor. And once there I went into the family
2 waiting room and at that point introduced myself to
3 Martina Putnam, and that's where I talked with her.

4 Q All right. Now, I want to ask you a few questions
5 about that if you don't mind. Was anyone else
6 present, such as Patrick Putnam?

7 MR. HOWLE: Your Honor, I would just ask the
8 Court to note my objection in regard to any pending
9 interview that she had.

10 THE COURT: All right. Your objection is based
11 on hearsay?

12 MR. HOWLE: Yes, sir.

13 THE COURT: All right. That objection is
14 overruled. It will continue throughout the
15 questioning of this witness.

16 MR. HOWLE: All right.

17 A No, ma'am. I did not meet with Patrick Putnam. He
18 was not there at the hospital.

19 Q Okay. Your understanding is he was at what location?

20 A He was at the law enforcement center.

21 Q All right. And the two boys that you mentioned
22 earlier, were they at Palmetto Richland?

23 A They were not. I left them with other people in
24 Sumter before I went to Columbia.

25 Q By other people involved, you mean law enforcement?

1 **A** Yes, ma'am.

2 **Q** Investigations?

3 **A** Yes, ma'am.

4 **Q** And so finally we have Martina Putnam. And where was
5 it that you met with her within the hospital
6 confines?

7 **A** In the family waiting room on that floor where the
8 intensive care unit was.

9 **Q** All right. And --

10 **THE COURT:** Your objection to the interview of
11 Martina Putnam is not a hearsay objection. But your
12 previous objection is noted and you argued it for the
13 record.

14 **MR. HOWLE:** Yes, sir.

15 **THE COURT:** And it does continue. I apologize.
16 I misspoke. All right. Go ahead.

17 **Q** And I think you mentioned that is at the pediatric
18 intensive care ward?

19 **A** It is. Yes, ma'am.

20 **Q** And was Ms. Putnam in police or law enforcement
21 custody at this time?

22 **A** No, ma'am, she was not. She was in the waiting area
23 of the hospital.

24 **Q** Was she free to leave or come and go?

25 **A** Yes, ma'am.

1 Q Okay. And was she aware that you were a
2 representative of law enforcement?

3 A Yes, ma'am. When I went into the room I explained to
4 her who I was and what my role was. And then after
5 we spoke a little bit, Lieutenant Florence came into
6 the room and I introduced her to him and he explained
7 to her who he was, too. So it was -- the only people
8 that were in the room when I was talking with her
9 would have been me and then Lieutenant Florence, and
10 she knew who both of us were.

11 Q Lieutenant Florence, can I ask you whether or not he
12 was identified as a law enforcement officer?

13 A Yes, ma'am. He was identified as Lieutenant Florence
14 of the investigative division.

15 Q All right. Now, start at the beginning and kind of
16 take us through the initial interview with Ms. Putnam
17 and what, if anything, you learned?

18 A When I walked into the room and introduced myself to
19 her, she told me about a conversation she had had
20 with the doctor about the injuries Child --

21 Q Okay.

22 MR. HOWLE: Your Honor, that's certainly
23 hearsay.

24 THE COURT: Anything the doctor says would be
25 hearsay. I sustain that.

1 **MS. MAYES:** Yes, Your Honor.

2 **Q** Without repeating anything --

3 **A** Right.

4 **Q** -- that was said by any other person, it was your
5 understanding -- do you have an understanding as to
6 whether or not she may have met with medical staff
7 prior to meeting with you?

8 **A** Right. She told me about meeting with the doctor and
9 then she said to me that she didn't know how the
10 injury could have happened because she had been the
11 only one with the baby. And that's how the
12 conversation started. At that point we began our
13 conversation.

14 **Q** Was she speaking with you voluntarily, or do you have
15 an opinion as to whether or not she was speaking with
16 you voluntarily?

17 **A** Yes, ma'am. It was voluntary. Yes, ma'am.

18 **Q** All right. And I know you said that as a result of
19 her saying that the baby had been in her care that
20 day, you had a further conversation with her. Can
21 you kind of describe what the purpose, overall
22 purpose of the interview was, of your conversation
23 was, and what you were trying to determine?

24 **A** Yes, ma'am. Whenever I respond to a victim who
25 has -- or a family member who has been involved in a

1 traumatic event, one of the tools that we use is
2 to -- if we're trying to figure out what happened --
3 and usually it's the victim is trying to figure out
4 what happened as well, or the person we are talking
5 to -- is we go back and go through the events of the
6 day in a chronological order. You know, she was
7 saying that she didn't know how this could have
8 happened, and so we began to go through the events of
9 the day in a chronological order. And that's what
10 Martina and I did in that room.

11 Q All right. And did you ask for additional details?

12 A I did.

13 Q All right. Can you kind of -- did you summarize your
14 conversation with Ms. Putnam in any way?

15 A I did. I prepared a summary of the notes of my
16 conversation with her.

17 Q Okay. And that documentation was prepared by who?

18 A By me.

19 Q All right. And do you have a copy of that with you
20 today?

21 A I do.

22 Q And you've had a chance to review it?

23 A I have.

24 Q Is it a fair and accurate representation of your
25 conversation with Ms. Putnam as you recall it?

- 1 **A** Yes, ma'am, it is.
- 2 **Q** All right. I'm going to take you specifically to the
3 notes that you have relating to your conversation
4 with Ms. Putnam and ask you to follow up with any
5 information she provided about her caretaking of
6 Child on March 10th.
- 7 **A** Yes, ma'am. After she told me that, expressed to me
8 the fact that she didn't know how it could have
9 happened because she was the only one with him, she
10 told me that the baby had been real cranky and she
11 thought he was probably getting a tooth. She told me
12 that she woke up because Child was crying. She told
13 me he always cried. She went and got him out of the
14 crib.
- 15 **Q** Stop there.
- 16 **A** Okay.
- 17 **Q** She stated that she got him out of the crib. And you
18 may continue.
- 19 **A** Yes, ma'am. She didn't know what time it was, but
20 she told me that the other boys were outside playing
21 already.
- 22 **Q** All right. And that would be a reference -- your
23 understanding, that's a reference to the two --
- 24 **A** The two brothers, Sibling and Sibling 2 Yes, ma'am.
- 25 **Q** All right. Please continue.

1 **A** And that her husband was in the kitchen fixing him
2 something to eat.

3 **Q** All right. Please continue.

4 **A** She then told me she fixed Child some baby cereal.
5 She told me she set him down on the living room
6 floor, like always, to feed him. He was still
7 cranky, like he had been all week. She told me he
8 didn't even want to be held. She went on to tell me
9 that he had a mad cry but he settled down and ate.
10 At this point she told me that after he was about
11 three-fourths of the way through eating he got mad
12 and threw himself down. She told me he did this
13 about five or six times.

14 She told me that after he ate she carried him to
15 his bedroom and set him in his car seat. After a few
16 minutes she took him to the bathroom, laid him on the
17 floor and started his water. She told me he was just
18 staring at the light. She turn around to get a towel
19 and then went to pick him up and she saw he wasn't
20 breathing. She called for her husband and they drove
21 to the hospital. She told me --

22 **Q** All right. Let me stop you right there.

23 **A** Okay.

24 **Q** She described giving the baby cereal and the child
25 eating. Is that correct?

1 A Baby cereal. Yes, ma'am.

2 Q All right. And then the description was that the
3 child threw himself on the floor?

4 A That's correct.

5 Q And that happened how many times?

6 A Five or six.

7 Q And then she said she was in what location?

8 A She carried him to his bedroom and sat him in his car
9 seat.

10 Q And then what happened next according to her
11 description?

12 A After putting him in his car seat in his bedroom, she
13 took him to the bathroom and laid him on the floor
14 while she started his water.

15 Q All right. And then what happened next?

16 A She said that he was staring at the light and she
17 turned around to get a towel and after she turned
18 around to get the towel she went to pick him up and
19 at that point she saw he wasn't breathing.

20 Q All right. And then how was her husband notified, if
21 at all, that the child wasn't breathing or wasn't
22 being responsive?

23 A She explained calling for her husband and then
24 driving to the hospital.

25 Q All right. So if I understand correctly, according

1 to Ms. Putnam's statement, she was inside the
2 residence. The boys were not inside the residence?

3 A They were outside playing. Yes, ma'am.

4 Q And the husband was in the kitchen area?

5 A Correct.

6 Q Did her statement indicate where the child had been
7 fed?

8 A On the living room floor, like always, is her
9 description to me.

10 Q All right. What, if anything, did she report to you
11 after she indicated the child was not breathing and
12 that she had called for her husband?

13 A After that point she gave me a little history on
14 Child the fact that he was a premature baby. And
15 we had a conversation about his developmental age
16 which she said was seven months old. And she
17 explained that they were trying to work with him at
18 that point to get him to be able to sit up.

19 Q All right. So according to Ms. Putnam, Child had to
20 have help to sit up. Is that correct?

21 A That's correct.

22 Q And he according to her description was at
23 approximately what age of development?

24 A According to her, seven months.

25 Q And according to her, what were his motor skill

1 capabilities?

2 **A** That they were working with him trying to get him to
3 sit up. So he had not -- he wasn't able to sit up on
4 his own yet.

5 **Q** Do you have another statement as to whether or not
6 the child was walking?

7 **A** No, ma'am. The child was not walking.

8 **Q** All right. Now, after that discussion about his
9 developmental level between you and Ms. Putnam, what,
10 if anything, did you further try to get an
11 understanding of concerning her statement about her
12 contact with Child after feeding him cereal?

13 **A** Right. I went back to what she had told me about him
14 throwing himself on the floor five or six times, and
15 I asked her about him throwing himself while he was
16 eating and getting back up. I asked her if he was
17 able to sit up by himself then. And it was then at
18 that point that she got down on the floor and told me
19 she would show me what happened.

20 **Q** Did she do that?

21 **A** She did. She sat down on the floor and was sitting
22 on the floor with her legs spread out and she showed
23 us how she set Child between her legs facing her to
24 feed him. She went on to explain that when he threw
25 himself backwards hitting his head she would take him

1 by his arms and help him back up each time. She said
2 this went on five or six times until finally she
3 picked him up and set him down on his butt. And at
4 that point she said, maybe I set him down too hard.

5 At this point Lieutenant Florence asked her if
6 she thought about putting a pillow behind his head
7 when she saw him hitting his head repeatedly, and she
8 paused for a minute and stared and then replied, he
9 does it all the time, I don't really think about it.

10 Q Let me stop you right there. So her description of
11 the child falling over onto the floor five or six
12 times during the feeding on the living room floor she
13 indicated had occurred before?

14 A Yes, ma'am. She said that he did that all the time
15 and that she didn't really think about it.

16 Q All right. And had she placed any kind of pillow or
17 anything like that underneath him?

18 A No, ma'am. She indicated that she didn't.

19 Q All right. Please continue.

20 A At that point I talked with her about other history.

21 Q All right. Well, let me ask you a little bit. Were
22 you able in trying to determine the developmental
23 level of the child and the physical condition of the
24 child, were you able to determine whether he had had
25 any medical setbacks?

1 **A** Yes, ma'am. We talked about some times that he had
2 had some medical treatment.

3 **MR. HOWLE:** Your Honor, I'm just not sure where
4 this is going.

5 **THE COURT:** You may continue.

6 **MS. MAYES:** I will follow up with that question.
7 May we approach?

8 **THE COURT:** Yes, ma'am.

9 (Whereupon, a bench conference is had)

10 **Q** I know you indicated that part of the interview was
11 to obtain some history on the family. What was your
12 understanding from Ms. Putnam about where they
13 previously resided prior to Sumter County?

14 **A** Prior to Sumter County they lived in Arizona.

15 **Q** All right.

16 **A** And they had not lived in Sumter County very long.

17 **Q** All right. I think you had indicated earlier in the
18 morning that according to her statement she had heard
19 Child crying and went and lifted him out of the
20 crib. Did you have a conversation with her about
21 whether or not that was usual or unusual to hear
22 Child cry?

23 **A** Yes, ma'am. She told me that he cried a lot. We had
24 a conversation about how much he cried.

25 **Q** All right. And what did she say about that?

1 **A** Let me go back and see exactly what. She commented
2 that Child does cry a lot and that he had basically
3 cried for four months straight.

4 **Q** All right. And what, if anything, did she indicate
5 she normally does in response to hearing the baby
6 cry?

7 **A** She told me she just generally puts him in the crib
8 and walks away from him. She said she could get
9 angry with him but she just walks away. She told me
10 that neither her or her husband spansks Child because
11 you can't reason with him.

12 **Q** And so who says they can't reason with him?

13 **A** Martina Putnam.

14 **Q** All right. And you indicated that the family had
15 moved to Sumter County recently. Did she inform you
16 when they had moved to Sumter?

17 **A** I don't know if I got that information from her, but
18 I learned when they had moved to Sumter. I don't
19 remember if she told me exactly when they moved to
20 Sumter or not.

21 **Q** If you could just take a look at your summary and the
22 third page of that. Just take a moment to review it.

23 **A** She told me they had moved to Sumter the first of
24 January because she had gotten a job.

25 **Q** All right. So when you say moved to Sumter in

1 January, this occurred in March. So approximately
2 three months?

3 A It's the first of March. Two or three months.

4 Q All right. And did she indicate where she had been
5 working or in what capacity?

6 A She was working for Swift Trucking, I think is what
7 she told me. She was working as a truck driver.

8 Q All right. Now, at any portion during this
9 interview, can you tell us whether or not Lieutenant
10 Florence of the Sheriff's Department was also present
11 to hear her description of events that day?

12 A Yes, ma'am. He was in and out of the room. There
13 are certain points that I remember specifically him
14 being in there, but when someone would come to the
15 door, he was getting information from different
16 medical personnel that he needed to get. So he would
17 step outside of the room and come back in. But
18 throughout the whole interview he was in and out.

19 Q All right. And in terms of trying to determine the
20 validity of Mrs. Putnam's statement, her information
21 to you, were you able to follow up and confirm any of
22 the information she had provided?

23 A Yes, ma'am, I was. I was able to -- during our
24 conversation she had made mention of several names of
25 people from other jurisdictions that I was not

1 familiar with and had never heard of before but was
2 able to ascertain that those were real people and
3 real places.

4 Q Okay. Concerning her prior residence in Arizona?

5 A Yes, ma'am. And different officials.

6 Q All right. And in your opinion, did that information
7 turn out to be accurate?

8 A It did. Yes, ma'am.

9 Q Now, you had indicated that you had previously
10 interviewed the boys at the Sheriff's Department
11 prior to coming down to Columbia and interviewing Ms.
12 Putnam at Richland Memorial Hospital?

13 A Right. The first thing I did was meet with the boys
14 and get information from them and conduct interviews
15 with them. And after that is when I went to
16 Columbia.

17 Q Okay. Based on the results of your investigation and
18 your interviews with the boys, were you able to
19 determine whether either one of them had access to
20 Child on that same particular day, perhaps
21 prior to Ms. Putnam getting him out of the crib?

22 A Yes, ma'am. The older boy, Sibling 1 had told me that
23 before he went outside to play he reported going
24 outside to play and being outside when everything
25 happened. But before he had gone outside to play, he

1 told me that he went to the crib where Child was and
2 reported picking him up, and I think he said hugging
3 him and putting him back in the crib before he went
4 back out, before he went outside to play that morning
5 prior to him being injured.

6 Q Was there anything as a result of the investigation
7 or those interviews to indicate that Child had been
8 injured in any way prior to the boys going outside to
9 play?

10 A No, ma'am. No, ma'am.. Sibling had told me that --

11 Q Okay. Try not to repeat what anybody else said.

12 A I was going to say Sibling¹ had told me that the event
13 that he had was that morning.

14 MR. HOWLE: Your Honor. Objection. She can't
15 even answer the question about what he said. It's
16 hearsay.

17 THE COURT: You can withdraw the question.
18 Jury, disregard that last exchange. Ladies and
19 gentlemen, disregard the witness's last statement.
20 You can go ahead.

21 MS. MAYES: Yes, sir, Your Honor.

22 Q The event that you described about picking the child
23 up, the nine-year-old picking the child up --

24 A Yes, ma'am.

25 Q -- out of his crib, what's your understanding of the

1 day or time this actually occurred?

2 A It was that morning. It would have been March the
3 10th, but it would have been prior to the events that
4 Martina Putnam told me about.

5 Q Okay. And was there anything specific in regards to
6 that connection about approximate timeframe on that?

7 A Well, it would have been prior to Martina picking the
8 child up, picking Child up out of the crib and
9 feeding him.

10 Q In terms of minutes or hours is what I'm referring
11 to.

12 A They had been outside playing for some time. And so
13 as far as a timeframe, I don't know the time that
14 would have been, but it would have been prior to all
15 of this happening.

16 Q All right. Now, when you were talking with Ms.
17 Putnam, did she indicate whether anyone else had
18 access to the child from the time she got him out of
19 the crib?

20 A No. She always maintained from our first exchange
21 with each other that she was the only one that had
22 the baby during all of this time.

23 Q Did she ever indicate that anyone else had harmed the
24 child or anything of that nature in her presence?

25 A No, ma'am.

1 Q Did she give any indication as to whether anyone else
2 had physical access to the child or control of the
3 child during that time period when she got Child

4 A No, ma'am. She was very sure of the fact that she
5 was the only one that had Baby Child during that
6 whole time. We went over that.

7 Q All right. And what was the purpose of trying to
8 determine that?

9 A At that point to determine who could have -- what
10 could have happened to the baby. And so her
11 statements to me and to Lieutenant Florence both were
12 that no one could have done anything to the baby
13 because Child was with her the whole time.

14 Q All right. And is there -- I want to take you back
15 to when she previously had talked to you about trying
16 to determine if anybody else had access to the child
17 that morning. When you spoke with the son, Sibling 1 do
18 you recall asking him for an approximate timeframe of
19 when that would have happened, when he would have
20 picked the child up and hugged him?

21 A Early that morning before he went outside to play.

22 Q Beg the Court's indulgence.

23 A I do think when we --

24 THE COURT: Wait a minute.

25 THE WITNESS: Sorry.

1 **THE COURT:** It has to be in response to a
2 question.

3 **THE WITNESS:** Okay.

4 **Q** Now, what happened next after your conversation with
5 Ms. Putnam?

6 **A** After my conversation with Ms. Putnam I left with
7 Lieutenant Florence and went home. We came back to
8 Sumter.

9 **Q** All right. And was Ms. Putnam under arrest at that
10 time?

11 **A** No, ma'am.

12 **Q** And she was --

13 **A** No, ma'am.

14 **Q** -- free to leave?

15 **A** Yes, ma'am.

16 **Q** Free to leave the hospital, things of that nature?

17 **A** Yes, ma'am.

18 **Q** All right. And do you know what the status was of
19 Child at the close of your interview with Ms.
20 Putnam?

21 **A** When I got there Child was still living. During the
22 time I was there he died. And so when I left he had
23 already died.

24 **Q** All right. And is it your understanding that Ms.
25 Putnam was arrested that same day or at a later date?

1 **A** No. She was not arrested that day. It was two or
2 three days later before she was arrested.

3 **Q** Beg the Court's indulgence.

4 **THE COURT:** Yes, ma'am.

5 **Q** The information that you've shared with us about your
6 conversation with Ms. Putnam you have indicated that
7 you documented, did you share that with law
8 enforcement, the actual investigator on the case?

9 **A** Yes, ma'am. Once I prepared my notes, the summary of
10 my conversation with Ms. Putnam, I turned that over
11 to Lieutenant Florence.

12 **Q** All right. And is it your understanding that's part
13 of the law enforcement file?

14 **A** Yes, ma'am.

15 **Q** All right. Thank you. Nothing further at this time.

16 **THE COURT:** Is everybody on the jury okay? If
17 anybody needs to take a break, just raise your hand.
18 Okay. All right. Mr. Howle.

19 **MR. HOWLE:** Yes, Your Honor.

20 CROSS EXAMINATION

21 **BY MR. HOWLE**

22 **Q** Ms. Herod, you say when you first went in to talk
23 with her you sat down and started talking to her, she
24 kind of started a conversation. She was talking to
25 you freely and voluntarily?

1 **A** Yes, sir.

2 **Q** And you were there in what capacity? What was your
3 capacity that you were there?

4 **A** I was there at the victim advocate of the Sheriff's
5 Office.

6 **Q** Of the Sheriff's Office. And at this time did you
7 ever advise her, give her Miranda rights or anything
8 like that? You just sat there and let her talk and
9 you asked questions?

10 **A** Correct. I was responding to her as the mother of
11 the baby who had sustained those injuries. Yes, sir.

12 **Q** You still didn't advise her of any kinds of rights.
13 I know she wasn't in custody, but you didn't say, I'm
14 from the Sheriff's Department, I'm going to ask you
15 some questions. You said, I'm a victim advocate.
16 I'm going to ask you some questions. Right?

17 **A** I never said, I'm going to ask you some questions.
18 The conversation just kind of evolved. It wasn't
19 a --

20 **Q** But you asked questions during this conversation?

21 **A** -- sitting in the chair. And she asked me questions.
22 Yes, sir.

23 **Q** Okay. One of the things she told you was -- and I
24 don't know if this is in response to your questions
25 or not -- I was the only one who really ever had the

1 child and had access to the child. You said you were
2 trying to determine the chronological order of
3 things?

4 A Yes. The first thing she said to me when I walked
5 into the room, she repeated to me some things the
6 doctor had told her. And then she told me she didn't
7 know how that could have happened because she was the
8 only one with him. That's how the conversation
9 started. Yes, sir.

10 Q She was the only one with him when she saw him stop
11 breathing?

12 A I'm telling you what she said. And from that point I
13 said, well, then, you know, let's go back over and
14 figure out what could have happened.

15 Q So this chronological order that is written here
16 really is not correct, is it? Because prior to her
17 getting him out of the crib Sibling 1 had already been in
18 there and taken him out of the crib?

19 A This was the chronological order. I don't know
20 whether it's correct or not. It's what Martina
21 Putnam told me.

22 Q I understand that. She did not know that Sibling had
23 been in the room, that Sibling 1 had taken him out of the
24 crib?

25 A I can't answer what she knew or -- I can tell you

1 what she said.

2 Q All right. And she also said when she got up Pat was
3 in there fixing breakfast?

4 A Let me make sure I'm telling you correct. She told
5 me her husband was fixing something to eat. Yes,
6 sir.

7 Q Okay. So when she got up, Sibling had already been in
8 the room, picked him up out of the crib. And he told
9 you that was earlier?

10 A According to Sibling 1 had been in the room and
11 picked him up.

12 Q Okay.

13 A And --

14 Q Before anybody else got up?

15 A Before anybody -- it was much earlier. Before
16 anybody had gotten up, he had gone outside to play.
17 He'd been outside playing for some time when all of
18 this happened.

19 Q And he told you that he took him out the crib and did
20 what?

21 A I believe, without having time to review it, I
22 believe what he told me is he picked him up and
23 hugged him and he described him babbling and talking
24 and then he was fine, I think was his words, and then
25 he put him back in the crib --

1 Q Okay. Did he --

2 A -- and went outside to play.

3 Q Did he tell you he'd ever gone in and picked him up
4 before?

5 A On that day?

6 Q Yes, ma'am. On that day.

7 A Yes, sir. I think in the conversation and my
8 interview of him we talked about how he interacted
9 with the baby before. So we did get some history.

10 Q Now, did Sibling tell you he had picked the baby up and
11 what he had done with the baby before?

12 A He described lots of things that happened with the
13 baby.

14 Q Did he ever say he picked him up upside down by his
15 feet?

16 A He did talk about that. And he -- I think my
17 question would have been something like, tell me
18 about other times, other ways you could have picked
19 him up. And he --

20 Q So that's what he told you when --

21 A He described picking him up and holding him by his
22 feet. And I explored that with him. But that was
23 not that day. That was a couple of days before that.

24 Q So did he tell you how far previous it was that he
25 had done that?

1 **A** I think he told me a couple of days, two days maybe
2 were his words.

3 **Q** Did he tell you anybody else had ever done that?

4 **MS. MAYES:** Objection, Your Honor. It's
5 hearsay.

6 **THE COURT:** Mr. Howle. In his presence, Mr.
7 Howle?

8 **MR. HOWLE:** Yes, sir.

9 **THE COURT:** You all come around here. I'm not
10 sure what you're addressing.

11 (Whereupon, a bench conference is had)

12 **THE COURT:** All right, ladies and gentlemen.
13 Please go to the jury room for just a few minutes.
14 Do not discuss the case. We will have you back out
15 momentarily.

16 And when we do come back out, I've decided to
17 appoint Mr. Cuttino as the foreperson. So,
18 Mr. Cuttino, you'll be seated in the seat that's
19 closest to the door when you come back out. And I'll
20 talk to you in more detail later about your
21 responsibility. But again, do not discuss the case
22 during this break.

23 (Jury out at 10:37 a.m.)

24 **THE COURT:** All right. Mr. Howle, you can ask
25 that question of her, please, sir.

IN CAMERA EXAMINATION.

BY MR. HOWLE

Q Did he indicate to you that he had seen anyone else do that same thing, pick him up by his feet?

A Mr. Howle, without reviewing the tape, I honestly don't remember the answer to that question.

Q Well, let me ask it this way. Did he not say to you that he had seen his dad do that and he went through the whole demonstration of picking him up and how he'd hold his head and everything else? You don't recall that being on tape?

A I can't -- I can't deny that that was on tape, but I can't -- and I'm trying to be real careful. And I didn't get to see that part a few moments ago when we reviewed it. So --

Q You interviewed the tape prior to this trial?

A I've only reviewed the tape one time and that was a couple of weeks ago. And I can't -- I'd be glad to try to review it or to do something to refresh my memory. But I'm just trying to be real careful, and I don't specifically remember that. No, sir. I'm not -- if you say it's on there, I wouldn't say you weren't telling the truth. But -- and if you gave me a chance to review it, it would refresh my memory. But I'm just -- I'm trying to be real careful, and I

1 don't remember that.

2 **MR. HOWLE:** The only reason I'm asking the
3 question is not only has the boy himself seen
4 somebody else doing it. I'm trying not to go outside
5 the limits of what that statute limits us on with
6 the --

7 **THE COURT:** Well, I figured you were --

8 **MR. HOWLE:** But it would show where the boy may
9 have seen or copied that from, is what I wanted to --

10 **THE COURT:** Well, proffer it.

11 **MR. HOWLE:** The reference that we had this
12 morning was basically an agreement between the two
13 sides that the statute would be gone outside of, if
14 that's the right grammatical wording. And, Your
15 Honor, I think Ms. Mayes objects to the question of
16 what Child -- excuse me -- Sibling saw somebody else
17 do. That's not hearsay from time to time to say, I
18 saw somebody do this. Now, if he said, I heard
19 somebody say this, that's hearsay.

20 **THE COURT:** So your objection to him saying --
21 assuming the witness recalls whatever might be on the
22 tape, which of course I haven't seen, how is that
23 hearsay --

24 **MS. MAYES:** Yes, sir.

25 **THE COURT:** -- of what she says the boy saw

1 somebody do?

2 **MS. MAYES:** It wouldn't be if Sibling 1 were
3 actually here testifying and that question was being
4 posed to him.

5 **THE COURT:** All right. So you're saying that
6 you haven't agreed that that part of the hearsay --

7 **MS. MAYES:** Your Honor.

8 **THE COURT:** -- stipulation had been waived by
9 you.

10 **MS. MAYES:** Yes, sir, Your Honor. We didn't
11 actually put on the record what the stipulation was.
12 It was something that was discussed by us --

13 **THE COURT:** All right. Well, go ahead and tell
14 me what that is.

15 **MS. MAYES:** -- in chambers, Your Honor. Mr.
16 Howle and I had agreed that it was a matter of
17 fairness to have law enforcement acknowledge that on
18 the morning in question which was March 10th of 2007
19 that in fact through law enforcement investigation
20 they had determined that Sibling 1 had had
21 access to the child on that morning and, in fact, had
22 gone into his room, had picked him up. That is
23 something we feel like the jury has a right to know,
24 even though it's technically hearsay for him to say
25 that.

1 **THE COURT:** And you've agreed not to object to
2 the fact that Sibling said that two days prior he
3 picked the boy up by his ankles but he didn't do it
4 on the day in question?

5 **MS. MAYES:** Actually, Your Honor, I did have an
6 objection to that. But in our discussing it in
7 chambers, the Court had indicated that --

8 **THE COURT:** I was going to allow it.

9 **MS. MAYES:** -- that that particular question
10 would be allowable. My objection had been that it
11 was remote and that it needed to relate to the day in
12 question. However, I understand the Court's ruling
13 on that. But we're now going outside that issue --

14 **THE COURT:** You're saying you're going outside
15 what you agreed to as far as 17-23-175?

16 **MS. MAYES:** Yes, sir. We're now getting into
17 the father's conduct. And my issue there is Mr.
18 Putnam is someone who had been available to the
19 defense if they wanted to call him. He has been here
20 in South Carolina at bond hearings. I know that he's
21 had some contact with Ms. Putnam. I don't know how
22 recently. But certainly they could have produced him
23 here as a witness. If they wanted to explore this,
24 they could cross examine him about all of his type of
25 prior behaviors with this baby.

1 **THE COURT:** All right.

2 **MS. MAYES:** But to now get into this with
3 Ms. Herod relating to an interview with a child, it's
4 not fair to the State because it would be hearsay.

5 **THE COURT:** All right. Well, the first point is
6 is that the witness says that she doesn't recall,
7 which at this point in the proceedings, even if the
8 questions were not objected to, that would give us
9 some issues about how far you can go with the
10 witness.

11 **MR. HOWLE:** I understand.

12 **THE COURT:** Now, what is your response to Ms.
13 Mayes' argument that Child (sic) testimony while
14 on some points is not being objected to as hearsay,
15 she's saying this is not part of the overall
16 agreement by the State that she is not objecting to
17 Child (sic) testimony about what he did?

18 **MR. HOWLE:** Your Honor.

19 **THE COURT:** Excuse me. Sibling 1 testimony about
20 what he did.

21 **MR. HOWLE:** Yes, sir. Your Honor, we went into
22 the stipulation with Ms. Mayes. It did not
23 specifically go into this. And I understand that.
24 And I told the Court in chambers I'm not going to use
25 that to try to keep kind of going further and further

1 and further and further until someone stopped me.
2 But the fact that the Court was going to allow me to
3 ask the question about holding the child upside down,
4 I thought it was pertinent to ask where would the
5 child have learned that or wanted to copy that from.

6 And on this tape, without question, whether she
7 recalls it or not, he goes through this whole process
8 how daddy used to do this and how they would hold his
9 head and everything else. And I'm not going into any
10 of that. But I did just want to say, did he say that
11 he had seen anybody else do that? And she said it
12 was Pat Putnam. I don't think that goes outside of
13 that statute from what Your Honor told us.

14 **THE COURT:** Well, it goes outside the statute
15 because ultimately Child (sic) -- excuse me --
16 comments are outside the statute and the^{ib}
17 State has just agreed not to object. I'm going to
18 sustain the objection, but I'm going to allow you to
19 continue to make sure at least during this break to
20 proffer it to the fullest extent possible. I think
21 the witness has said that if you say it's on there, I
22 agree with that or I don't have any reason to dispute
23 it.

24 But I'm not going to allow the witness to
25 testify on that because I don't think that the

1 stipulation that it was or was not going to be
2 objected to would include Child (sic) testifying to
3 what he saw the father did. Sibling saw his father do.
4 Excuse me.

5 All right. Do you all need to take a couple of
6 minutes yourselves, or are you all ready to go?

7 MR. HOWLE: Your Honor, I think we're ready to
8 go. Do you want me just to put that proffer on the
9 record?

10 THE COURT: Yes, sir. You need to ask more
11 questions?

12 MR. HOWLE: Yes, sir.

13 THE COURT: All right.

14 MR. HOWLE: Well, I just want to make sure that
15 there's a clarification in what the Court has told me
16 I can ask and what I can proffer.

17 Q (By Mr. Howle) And the question I'm asking is; in
18 regard to him talking to you, I understand that he
19 said he has held him up by his legs before, but the
20 last time he did it was a couple of days before?

21 A Yes, sir.

22 Q Okay. And if I told you on the tape he said, my dad,
23 Pat, Patrick Putnam, does this and he has seen him do
24 it before; would you agree that that is on the tape
25 if I told you that's what's on the tape?

1 **A** I wouldn't have any reason not to believe you. And
2 to be honest, Mr. Howle, I didn't realize I was going
3 to be testifying to the forensic interview of the
4 tapes and I did not prepare that. When we went
5 downstairs a few minutes ago I was going to watch the
6 tape and we didn't get that far. So I just am being
7 careful to say what I actually remember. But I have
8 no reason not to believe you. No, sir.

9 **MR. HOWLE:** Well, we did not get to that point.
10 I certainly want the Court to realize that I was not
11 trying to just --

12 **THE COURT:** I understand.

13 **MR. HOWLE:** -- appear to go beyond what Ms.
14 Mayes agreed to, because that was beyond the
15 stipulation. And I apologize.

16 **THE COURT:** Okay. Are you all ready for the
17 jury?

18 **MR. HOWLE:** Yes, sir.

19 **THE COURT:** All right. So, Ms. Mayes, your
20 objection is sustained. And, Mr. Howle, you can pick
21 up the questioning in a flow that you think is
22 appropriate --

23 **MR. HOWLE:** I will.

24 **THE COURT:** -- when the jury comes back in. All
25 right. Ready for the jury?

1 **MS. MAYES:** We are.

2 (Jury in at 10:46 a.m.)

3 **THE BAILIFF:** All the jurors and the alternate
4 are in the courtroom, Your Honor.

5 **THE COURT:** All right. Thank you, ladies and
6 gentlemen. Mr. Howle, you may continue with your
7 questioning.

8 **MR. HOWLE:** Thank you, Your Honor.

9 CROSS EXAMINATION

10 **BY MR. HOWLE**

11 **Q** Ms. Herod, in regard to what was related to you as
12 far as the chronology that she was putting down, in
13 talking to Sibling¹ did you know he was in the room
14 earlier that day?

15 **A** According to Jacob; yes, sir.

16 **Q** And --

17 **A** Earlier, before she got him out of the crib.

18 **Q** Okay. And before she got him out of the crib, she
19 also said when she got up -- and, Your Honor, all
20 this is subject to my objection I guess.

21 **THE COURT:** Yes, sir.

22 **Q** -- that Pat was already in the kitchen fixing
23 breakfast when she got up?

24 **A** She reported the other boys outside playing and her
25 husband in the kitchen.

1 Q So when she got up, she makes this comment, I'm the
2 only one who really had access to the child, it may
3 be from that point forward; I understand that. But
4 at least two people would have had access to the
5 child prior to her getting up?

6 A Well, of course anybody in the home, and that's why
7 we talked to everybody in the home. Yes, sir.

8 Q All right. But we know that those two people were
9 up. We know one of them actually was in the room
10 picking him up?

11 A We know that the boys were up and that the husband
12 was up. Yes, sir. According to Martina, according
13 to --

14 Q But we know from Sibling 1 was in the room and
15 picked him up before she got up?

16 A Yes, sir. According to Sibling 1 he had gone in there
17 before she had gotten up and, I mean, this was much
18 earlier, picked him up, put him down and then went
19 outside with his brother to play.

20 Q Okay. Did you ever interview Patrick?

21 A Did I ever interview Patrick? No, sir.

22 Q Did you ever talk to him at all?

23 A I've spoken to him. I didn't -- I didn't respond to
24 him. When I got there he was already there with
25 somebody else.

1 Q Have you ever had a run-in with Patrick Putnam?

2 A Did I have a run-in with Patrick?

3 Q Did you all have anything that caused any concern to
4 Mr. Putnam?

5 MS. MAYES: Objection. Relevance, Your Honor.

6 THE COURT: Mr. Howle.

7 MR. HOWLE: Your Honor, may we approach?

8 THE COURT: Come on around.

9 (Whereupon, a bench conference is had)

10 THE COURT: All right, ladies and gentlemen.
11 Please excuse yourselves and go to your jury room.
12 I'll have you back out momentarily.

13 (Jury out at 10:50 a.m.)

14 THE COURT: All right.

15 MS. MAYES: If I could state my objection on the
16 record?

17 THE COURT: Yes, ma'am.

18 MS. MAYES: I'll give more detail at this point.
19 Your Honor, Mr. Putnam who would be the husband of
20 Martina Putnam was the subject of a law enforcement
21 incident report on August 10th of 2007. So that
22 would be approximately five months after this
23 particular incident date, at which point the
24 allegations are that he had made a threat against
25 Lieutenant Florence and Ms. Herod. These were verbal

1 threats. He was not actually in possession of a gun
2 or pointed a gun at them. It was a verbal threat
3 made to a third party, it is my understanding.

4 And the State's objection would be that this is
5 irrelevant to this proceeding and remote in time.
6 And, again, that is something that would most
7 appropriately be something that would be brought up
8 if Mr. Putnam potentially were a witness and were
9 here. And then it would be an issue about does it
10 affect his character and, if so, how. But he's not
11 here. And this doesn't seem to fall under any kind
12 of third party guilt scenario because it doesn't
13 relate to the day in question. Now, --

14 **THE COURT:** All right. Mr. Howle, why don't you
15 ask the question and then I'll have a fuller picture
16 of it. Of course you folks understand when these
17 questions are asked I have no clue what the answers
18 are because I haven't heard all this before.

19 Is there going to be anything else that either
20 side can fathom would come up during the cross
21 examination of this witness that would prompt me
22 having to send the jury back out that we can perhaps
23 handle it during this break?

24 **MR. HOWLE:** No, sir.

25 **THE COURT:** All right. Go ahead, Mr. Howle.

1 **MR. HOWLE:** And, Your Honor, okay. I'll go over
2 my questions first.

3 **THE COURT:** Okay.

4 IN CAMERA EXAMINATION

5 **BY MR. HOWLE**

6 **Q** Were you aware that at some time after this incident
7 on the 10th when you were at the hospital and
8 everything else that Mr. Putnam made a threat against
9 you?

10 **A** Yes, sir. I'm aware of that.

11 **Q** That threat was that he had a gun and was going to
12 kill David Florence and Gwen Herod?

13 **A** Yes, sir. I'm aware of that.

14 **Q** Okay. Now, you say you had never actually talked to
15 him per se about the incidences and everything? You
16 didn't take statements from him or anything of that
17 nature?

18 **A** No, sir. I had conversation with him in the
19 following days. But I didn't interview him about the
20 events of that day. That was done by someone else.

21 **Q** Okay. Would you say that when someone makes a
22 statement that I'm going to kill you that there is
23 some propensity for violence?

24 **MS. MAYES:** Objection, Your Honor.

25 **THE COURT:** Relevance?

1 **MS. MAYES:** Yes, sir, Your Honor. And it falls
2 outside the scope of what this witness may or may not
3 know about Mr. Putnam.

4 **Q** Let me ask you this. Would it have concerned you to
5 be with Mr. Putnam or would you be scared of Mr.
6 Putnam if you knew he had made a statement like this?

7 **A** Yes, sir. I would be concerned about anybody who
8 made a threat against my life.

9 **Q** And you don't have any idea as to whether he was
10 capable or would have carried out such a threat?

11 **A** I -- I don't know how -- I had a conver -- during a
12 later time during another proceeding I heard an
13 explanation that he gave, but he didn't give it to
14 me. He gave it in a setting of a courtroom.

15 **THE COURT:** Go ahead and say what it was so I'll
16 know.

17 **A** And during the proceeding of that he made the
18 statement that he didn't remember saying that, he was
19 just out of his mind and he apologized.

20 **Q** He apologized for threatening to kill you with a gun?

21 **THE COURT:** All right.

22 **A** That's what was said at that court hearing, if I
23 remember correctly. And I think I do. And that was
24 what his attorney represented to me that he said.

25 **Q** Of course his attorney would get him to say he was

1 sorry?

2 A Yes, sir. Of course.

3 Q But it certainly gave you fear when you heard that he
4 had made this?

5 A Yes, sir.

6 Q It gave you concern as to whether Patrick Putnam was
7 someone who was capable of carrying out such
8 violence?

9 A Yes, sir. I would be concerned any time someone
10 threatened my life.

11 Q And I just take it that he indicated that he would or
12 could carry out such violence?

13 A Yes, sir.

14 Q Now, you made some statement in talking with her that
15 she was a truck driver. Are you aware he drove
16 trucks also?

17 A Yes, sir.

18 Q Are you aware that there are times when she would be
19 on the road working and he would be at home and vice
20 versa and that only one parent would be there maybe
21 several days?

22 A I don't think I had that conversation. But knowing
23 the life of a truck driver, I wouldn't argue with
24 that.

25 Q Were you aware that at the time this happened she was

1 working and he wasn't, so he was home every day with
2 all the children right up until this incident?

3 A No, sir.

4 Q Okay.

5 THE COURT: Is that part of the proffer?

6 MR. HOWLE: Yes, sir.

7 THE COURT: Okay. Do you still have some more?

8 MR. HOWLE: No, sir.

9 THE COURT: Do you have any objection to that
10 last question, Ms. Mayes?

11 MS. MAYES: That wasn't in reference to the --

12 THE COURT: Their work schedules?

13 MS. MAYES: No, sir. I do not. I think that's
14 not in any way related I don't believe to a threat.

15 MR. HOWLE: Your Honor, since I am not so much
16 trying to establish motive but trying to establish
17 the nature of this individual, the fact that there is
18 a tendency to express violence, the fact that he was
19 not only in the household but he was up that morning
20 earlier --

21 THE COURT: Who was the threat made to?

22 MR. HOWLE: It was made -- it was a comment that
23 was made to someone the day of the hospital and they
24 relayed it.

25 THE COURT: That's hearsay, isn't it?

1 **MR. HOWLE:** Well, Your Honor, I was going to
2 complete the record just to say that, are you aware
3 that a threat was made against your life by him? And
4 she has said, yes, she was aware of that threat.

5 **THE COURT:** All right. How is that relevant to
6 the facts of this case or the disposition of this
7 case?

8 **MR. HOWLE:** Your Honor, it's not just
9 established that there are other people that are in
10 this chronological line ahead of her even getting up,
11 but I think to establish that Mr. Putnam has a lot of
12 reasons why he's not here. He was on her list as a
13 witness but he's not here.

14 **THE COURT:** It's what the jury is going to hear.

15 **MR. HOWLE:** I understand.

16 **THE COURT:** Is the jury going to hear about
17 anybody else? Well, I assume if he doesn't come,
18 they're going to know he wasn't here. But does it
19 matter why he's not here? Is there any obligation on
20 the part of anybody to appear in court voluntarily?

21 **MR. HOWLE:** Your Honor, I think he's got a
22 reason not to want to come today. He indicated to us
23 he was going to come. He then said he wasn't going
24 to come back. And I think part of that is he is
25 concerned he is going to be charged if he comes back.

1 I talked to him just in the last few days, and he
2 indicated, I've got things to do, I ain't coming.

3 **THE COURT:** And you said he thinks he's going to
4 be charged. But he didn't tell you that?

5 **MR. HOWLE:** Well, no, sir. He didn't tell me
6 that.

7 **THE COURT:** But it's what you think.

8 **MR. HOWLE:** But, Your Honor, I will tell you
9 this also. As part of all this that came out, he has
10 to notify Sumter County, the law enforcement before
11 he even comes back to Sumter County because they want
12 to know he's here because of their concerns for this
13 apparently or potential violent nature he has. And I
14 think I should be able to show that the man has that
15 kind of potential violent nature as being someone who
16 was there in the household and had access to
17 Child --

18 **THE COURT:** Well, isn't there means by which you
19 can get a subpoena certified and served on him?
20 Couldn't you do that?

21 **MR. HOWLE:** Your Honor, we called him. He said,
22 I'm going to be on the road. And my indication was
23 from talking to him and his father that he has
24 purposely gotten in a truck and he's driving
25 somewhere, wherever. We don't know where he is.

1 **THE COURT:** All right. Anything else you want
2 to proffer on what you consider to be the violent
3 propensities of Mr. Putnam?

4 **MR. HOWLE:** Not with Ms. Herod, Your Honor.

5 **THE COURT:** All right. We'll take a break in
6 just a few minutes then. Ms. Herod, you can step
7 down. Please don't discuss your testimony with
8 anybody.

9 (Whereupon, a break is taken at 11:00 a.m.)

10 **THE COURT:** All right. Have a seat. All right,
11 Mr. Howle, Ms. Mayes. Ms. Mayes, I will sustain your
12 objection to that question or that last line of
13 questioning about the threat Mr. Howle was
14 referencing with the witness.

15 First of all, I don't think it's relevant to
16 these proceedings. It's not relevant to the issue of
17 guilt or non-guilt of the defendant. Even if it were
18 somehow related to a viable third party guilt
19 approach, I still don't think it would be appropriate
20 testimony.

21 And I will also make the observation that the
22 threat expressed to the unknown third party that was
23 in turn related to law enforcement gives me some
24 concerns from a hearsay standpoint, that even if it
25 were not hearsay or fell into its own exception under

1 the hearsay rule, I still would not allow it on
2 relevance grounds.

3 **MR. HOWLE:** Your Honor, I understand your
4 ruling. It was not an unknown person. She was named
5 in the incident report, the person that was referred
6 to.

7 **THE COURT:** Well, at least the proffer indicates
8 that it wasn't.

9 **MR. HOWLE:** Yes, sir.

10 **THE COURT:** That's all I know.

11 **MR. HOWLE:** But in connection to the proffer,
12 can the incident report itself be introduced along
13 with that?

14 **THE COURT:** Yes. I don't have a problem with
15 that to make the record complete. That will be a
16 Court's Exhibit at this time. Does the State think
17 there is to be a foundation laid for the proper
18 authenticity of the incident report, or do you agree
19 to the incident report coming in as a Court's
20 Exhibit?

21 **MS. MAYES:** I have no objection to it being a
22 Court's Exhibit for purposes of this trial, Your
23 Honor.

24 **THE COURT:** All right. And there is no
25 objection to the testimony -- and I can't even

1 remember what it was now --

2 **MS. MAYES:** Work schedule, Your Honor.

3 **THE COURT:** Work schedule. I'll allow that
4 testimony. Okay. All right. You can hand that
5 incident report to the Court reporter.

6 (WHEREUPON, Court's Exhibit No. 4 is marked for
7 identification.)

8 **THE COURT:** All right. Ms. Mayes, are you ready
9 for the jury?

10 **MS. MAYES:** Yes, sir, Your Honor.

11 **THE COURT:** All right. Mr. Howle, how long do
12 you think you'll take with your remaining questions?

13 **MR. HOWLE:** I'm just about through with her,
14 Your Honor.

15 **THE COURT:** Ms. Mayes, do you anticipate any
16 lengthy redirect?

17 **MS. MAYES:** No, sir, Your Honor.

18 **THE COURT:** Your next witness is going to be
19 who?

20 **MS. MAYES:** Probably Dr. Bailey from the
21 emergency room.

22 **THE COURT:** All right. And how long will Dr.
23 Bailey take?

24 **MS. MAYES:** Approximately 30 minutes, Your
25 Honor.

1 **THE COURT:** All right. You can bring in the
2 jury..

3 (Jury in at 11:16 a.m.)

4 **THE BAILIFF:** All the jurors and alternate are
5 in the courtroom, Your Honor.

6 **THE COURT:** All right. Thank you, sir. All
7 right, Mr. Howle.

8 CROSS EXAMINATION

9 **BY MR. HOWLE**

10 **Q** I need to repeat some things that we have already
11 covered. In talking with Ms. Putnam, I think she
12 said she doesn't spank him because you cannot reason
13 with him, talking about Child

14 **A** Let me get my notes back. She said neither her or
15 her husband spanked Child because you can't reason
16 with him.

17 **Q** Okay. And then I think you also indicated that as
18 far as any other things that she said that you kind
19 of checked up on or followed up, there was
20 truthfulness in everything she was telling you?

21 **A** That -- yes, sir. I indicated that she gave me
22 several names of places and people's names that later
23 checked out to be the correct names of people and
24 those places and those kind of things that I wouldn't
25 have any idea of knowing. I'd never heard of those

1 people before, but in checking it out, she was
2 telling me the right names. Yes, sir.

3 **Q** In that regard she didn't seem to be trying to give
4 you any misinformation?

5 **A** Correct.

6 **MR. HOWLE:** I have no further questions, Your
7 Honor.

8 **THE COURT:** All right. Redirect?

9 **MS. MAYES:** No, sir, Your Honor.

10 **THE COURT:** Thank you, ma'am. You may step
11 down. All right. The State can call its next
12 witness.

13 **MS. MAYES:** Yes, Your Honor. May we approach?

14 **THE COURT:** Ma'am?

15 **MS. MAYES:** May we approach?

16 **THE COURT:** Yes.

17 (Whereupon, a bench conference is had)

18 **THE COURT:** Ladies and gentlemen, there is
19 nothing earth shattering going on in the background.
20 In the preparation of these cases documents are
21 produced and exchanged and the lawyers were just
22 explaining to me the circumstances behind the
23 document production by Tuomey. And they just wanted
24 to make sure that I was fully aware of the playing
25 field in that regard.

1 Ms. Mayes, you can call your next witness.

2 **MS. MAYES:** The State calls Dr. Tracey Bailey.

3 **THE CLERK:** Place your left hand on the Bible
4 and raise your right hand. State your name, please.

5 **THE WITNESS:** My name is Tracey Bailey.

6 DR. TRACEY BAILEY, after being duly sworn,
7 testifies as follows:

8 **THE CLERK:** State your name and spell your last
9 for the record.

10 **THE WITNESS:** Tracey Bailey, B-A-I-L-E-Y.

11 DIRECT EXAMINATION

12 **BY MS. MAYES**

13 **Q** And, Dr. Bailey, where are you employed in and what
14 capacity?

15 **A** Tuomey Emergency Department. I'm an emergency
16 medicine physician.

17 **Q** All right. And how long have you worked there in
18 that capacity?

19 **A** Nine and a half years.

20 **Q** All right. Can you tell us a little bit of
21 information about your educational background and
22 training?

23 **A** I received my bachelor's degree in science at the
24 University of Tennessee, Chattanooga. I received my
25 medical degree from the James H. Quillen College of

1 Medicine at East Tennessee State University, and I
2 performed my residency at St. Vincent Mercy Medical
3 Center in Toledo, Ohio.

4 Q All right. And how long have you been practicing
5 medicine?

6 A I've been practicing out of residency for nine and a
7 half years.

8 Q All right. And how long have you been at Tuomey
9 Hospital?

10 A For about nine and a half years.

11 Q All right. And what is your specific area of
12 training where medicine is concerned?

13 A Emergency medicine.

14 MS. MAYES: All right. Your Honor, at this time
15 the State would offer Dr. Bailey as an expert in the
16 field of emergency medicine.

17 THE COURT: Any questions or objections?

18 MR. HOWLE: No questions, Your Honor.

19 THE COURT: All right. Ladies and gentlemen,
20 typically when a witness testifies in a trial, that
21 person or that witness can testify to what he saw or
22 heard or smelled or touched, and that type of witness
23 is called a lay witness. Lay witnesses can't give
24 opinions. There is an exception in the rules of
25 evidence for expert witnesses, and I will charge you

1 that witnesses who are qualified in a particular
2 field by reason of education, training or experience
3 are permitted to give opinions about certain matters.

4 That does not mean that you are bound by the
5 opinion testimony of any expert witness. In short,
6 you don't have to accept the testimony of a witness
7 just because that witness is an expert. You are to
8 weigh the evidence and the testimony presented by an
9 expert witness just as you would any witness that
10 testifies in the case. In other words, you give it
11 the weight that you think it's entitled to.

12 All right, Ms. Mayes.

13 **MS. MAYES:** Yes, sir, Your Honor.

14 **Q** (By Ms. Mayes) Now, I know you mentioned that you
15 work at Tuomey and that you've been there for some
16 period of time. Have you ever had the opportunity to
17 treat critical patients who arrive there?

18 **A** Yes, ma'am.

19 **Q** All right. And were you working there at Tuomey on
20 March 10th, 2007?

21 **A** Yes, ma'am.

22 **Q** Can you tell us whether or not you had the
23 opportunity to treat or to see a patient that came
24 into the facility by the name of Child

25 **A** Yes, ma'am.

1 Q And do you have any records with you today that
2 concerned his treatment?

3 A Yes, ma'am, I do.

4 Q All right. How old was Child when he arrived
5 at the emergency room?

6 A Thirteen months.

7 Q All right. And do your records indicate for purposes
8 of diagnosis and treatment -- let me back up and ask
9 you whether for purposes of medical diagnosis or
10 treatment it's sometimes necessary for you to
11 ascertain the events surrounding what may have
12 happened to a patient?

13 A Yes, ma'am.

14 Q All right. And how is it that Child was brought to
15 the emergency room?

16 A His mother and family brought him in that morning.

17 Q Okay.

18 A Or that day. Excuse me.

19 Q And when you say they brought him in, what do you
20 mean by that?

21 A I was called out of the nurses' station or from a
22 patient's room that I had an unresponsive child in
23 Room 10. So I immediately went there.

24 Q All right. And that's within the emergency
25 department?

1 A Yes, it is.

2 Q And when you say they brought him in, are you
3 referring to a personal vehicle?

4 A Yes. A private vehicle.

5 Q So you get to Room 10 in the emergency room. And who
6 do you recall seeing once you arrived there, Dr.
7 Bailey?

8 A His mother was there. He was there. And there were
9 a number of nurses and other staff in the room.

10 Q And I know that you described him as unresponsive.
11 Can you kind of break that down and explain what you
12 mean by that term?

13 A At the time the child did not respond to touch. He
14 didn't respond to painful stimuli. I stuck him with
15 a needle; he did not respond. He did not respond to
16 shaking. He was not breathing at the time.

17 Q When you have a patient who is not breathing, and
18 particularly as to Child what medical
19 proceedings do you undertake in order to establish an
20 airway?

21 A We ultimately intubate the patient, which is put down
22 a tube into his airway to breathe for him.

23 Q Were you able to do that for Child

24 A Yes, ma'am.

25 Q So within the emergency department he was able to get

1 oxygen back into his system?

2 A Yes.

3 Q All right. And you indicated that he was
4 unresponsive. At any point did he become responsive?

5 A No, ma'am.

6 Q For purposes of medical diagnosis and treatment, how
7 do you go about trying to ascertain what might have
8 led to a certain condition?

9 A I actually talked to the people that were present at
10 the time. I did talk with his mother who was at the
11 foot of the bed while he was there. And I usually as
12 I am examining the patient talk with the family or
13 whomever is present to try to get a history so I can
14 figure out what's going on and what I need to do for
15 the patient.

16 Q Okay. And is that a normal part of the medical
17 diagnosis and treatment?

18 A Yes.

19 Q Do you have with you today, Dr. Bailey, any records
20 that reflect the history that you obtained from the
21 child's mother?

22 A Yes, ma'am.

23 Q All right. I just ask you to go slowly and if you
24 could refer to your records. And who prepares the
25 dictation?

- 1 **A** We have a system of recording called Ivex. And
2 depending on the case, you choose which template you
3 use. Some of it is check boxes to click. If you
4 don't have an appropriate template, then you just
5 type in the information. For this case I actually
6 typed in a good portion of the information.
- 7 **Q** All right. And when you say that, you mean you typed
8 it in yourself?
- 9 **A** Yes.
- 10 **Q** Okay. And do you have with you the records that
11 pertain to the history that Ms. Putnam related to you
12 as to what happened to Child
- 13 **A** Yes, ma'am.
- 14 **Q** Okay. Could you start at the beginning and slowly
15 state for us the history that was provided to you?
- 16 **A** The patient's mom states that she fed the patient
17 cereal mixed with formula. She then took him into
18 the bathroom and laid him on the floor. She states
19 that he fell over because he cannot balance himself
20 yet to sit up unassisted.
- 21 **Q** All right. Let me stop you right there. So she
22 stated that she fed him cereal and that the cereal
23 was mixed with formula?
- 24 **A** Yes, ma'am.
- 25 **Q** And that she then took him into the bathroom?

1 A Yes, ma'am.

2 Q And laid him on the floor. Is that correct?

3 A Yes, ma'am.

4 Q All right. And then she stated that he fell over
5 because he cannot balance himself?

6 A Yes, ma'am.

7 Q And what else?

8 A She states that she didn't think much of that. She
9 states that she started running him a bath and then
10 got a towel for him. She picked him up to put him in
11 the tub when she noticed that he wasn't breathing.

12 Q All right. What else did she report?

13 A She states that she began breathing for him and they
14 brought him to the emergency department. She states
15 that she had also noticed that he had aspirated some
16 of his formula. Mom states that he is a 27-week
17 preemie and has had problems in the past with apneic
18 spells. However, they are usually able to stimulate
19 him. However, this time they were not able to get
20 him to start breathing again.

21 Q All right. And the preemie reference is the fact
22 that he was born premature. Is that correct?

23 A Yes, ma'am.

24 Q Now, once you established the airway and were
25 providing the initial vital treatments, what, if

1 anything -- or did you have the opportunity to
2 observe anything else about Child

3 A Yes, ma'am. On physical examination there were some
4 bruises noted on the child. The child was noted his
5 face was blue. He had coarse breath sounds when I
6 listened to his lungs when we were bagging him or
7 giving him air. He was noted to have a red bruise or
8 abrasion over the proximal sternal area which is in
9 the middle of his chest.

10 Q That would be -- the sternal would be back chest or
11 front chest?

12 A Front chest.

13 Q And what, if any, observations did you make after
14 that?

15 A His abdomen was distended. He had two small bruises
16 noted to the right mid-lower back region.

17 Q All right. What else?

18 A The patient had a bluish bruise with surrounding
19 yellowing area to the bruise to the dorsal aspect of
20 his right distal forearm.

21 Q Okay. And what else?

22 A The patient has three to four small reddish bruises
23 to the lateral aspect of the right thigh. He also
24 has a bluish bruise to the anterior aspect of the
25 right knee.

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1 Q All right. Anything else?

2 A Other than him being unresponsive, that was it.

3 Q Did you make a note as to whether he ever opened his
4 eyes?

5 A He had a Glasgow Coma Scale of 3 which means he never
6 opened his eyes.

7 Q All right. Any verbal response?

8 A No.

9 Q Or motor response?

10 A None.

11 Q How was it determined that Child had a head injury?

12 A We did a CT scan. After noting the bruises, a CT
13 scan of his head was ordered.

14 Q And that CT scan was done where?

15 A At Tuomey Hospital in the radiology department.

16 Q All right. And what did you determine next would be
17 the best course of treatment for Child

18 A For him to be transferred to Palmetto Richland.

19 Q Why is that?

20 A We cannot take care of children that are that sick at
21 Tuomey. He was intubated and was not responsive, and
22 it was more than we could handle at Tuomey.

23 Q And when you say that after he was intubated at
24 Tuomey, where is it that you refer he go?

25 A We typically refer to Palmetto Richland, the

1 children's department there, pediatric department
2 there.

3 Q That would be the pediatric intensive care unit?

4 A Yes.

5 Q And I ask you whether or not you can review your
6 notes as to who you spoke with concerning Child
7 transfer to the pediatric specialist at Palmetto
8 Richland?

9 A I spoke with Dr. Cartie.

10 Q Okay. And what arrangements were made, Dr. Bailey,
11 to have Child transported to Richland in order to be
12 in the care of Dr. Cartie and the pediatric intensive
13 care unit?

14 A Dr. Cartie said that he would send the pediatric
15 transport team to pick up the child.

16 Q And from that point on, Tuomey had no further
17 involvement other than having Child transferred to
18 Richland?

19 A Once he was transferred, no.

20 Q Beg the Court's indulgence. How much time had
21 transpired would you estimate, or if you can refer to
22 the records, of between when he first presented into
23 triage and when you had the opportunity to do your
24 physical examination?

25 A He arrived at 10:44 a.m. He was intubated at

1 10:46 a.m. And I was doing a physical exam on him at
2 that time. The bruising was noted at -- or all of
3 the bruising was noted at -- give me one second -- we
4 did a thorough exam at 11:23.

5 Q All right. And you said he originally arrived at
6 what time?

7 A 10:43.

8 Q And you first saw him at ...?

9 | **A** 10:44.

10 Q So according to the records at Tuomey, that
11 10:44 a.m., we are talking a.m.?

12 | **A** A.M.

13 Q Okay. The 10:44 a.m. arrival time would be when it's
14 first noted that he has come through the door, he's
15 been brought through the door by his parents?

16 A He was brought -- he actually did not stop by the
17 front triage room. He was brought -- he was right at
18 the front door. The greeters noted that he wasn't
19 breathing. They brought him straight to the back.
20 He did not stop at any room until he got to Room 10.

21 Q And when he got to Room 10 you were called to come
22 out there?

23 A Yes, ma'am. I met him there. They were walking down
24 the hallway and I was walking this way.

25 Q Thank you. Nothing further.

1 **THE COURT:** Mr. Howle.

2 **MR. HOWLE:** Your Honor, I have no questions for
3 this witness.

4 **THE COURT:** Thank you, ma'am. You can step
5 down. Any objection to this witness being excused?

6 **MS. MAYES:** No objection at all, Your Honor.

7 **MR. HOWLE:** None, Your Honor.

8 **THE COURT:** Thank you, Doctor. You can leave or
9 stay, whichever you would like.

10 **MS. MAYES:** The State calls Dr. Joel Sexton.

11 **THE CLERK:** State your name, please.

12 **THE WITNESS:** Dr. Joel Steven Sexton.

13 DR. JOEL S. SEXTON, after being duly sworn,
14 testifies as follows:

15 **THE CLERK:** State your name and spell your last
16 for the record.

17 **THE WITNESS:** I am Dr. Joel Steven Sexton. It's
18 S-E-X-T-O-N.

19 DIRECT EXAMINATION

20 **BY MS. MAYES**

21 **Q** Dr. Sexton, where are you employed and in what
22 capacity?

23 **A** Well, I'm actually retired. I retired last July.
24 Prior to that I was the President of Newberry
25 Pathology Associates which was a group of

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1 pathologists that did consulting pathology for the
2 coroners mostly in the upper part of the state.
3 About 25 of the 46 county coroners assess a little
4 over 700 cases a year. The practice also was
5 responsible for doing the surgical pathology and
6 clinical pathology for Newberry County Hospital. And
7 I live in Newberry.

8 Q All right. And how long have you been practicing
9 medicine?

10 A I graduated in 1968. So I've been practicing
11 pathology -- I actually started my residency in '68
12 which was a residency in pathology. But I've been
13 doing this for 40 years.

14 Q All right. And I say medicine. But the type of
15 patients that you normally see, what condition are
16 they in?

17 A They're all expired. Now, we do see tissue removed
18 from patients that have surgery. The surgical
19 pathology we do has to do with examining tissue that
20 we can hopefully diagnose accurately so that the
21 physician knows whether the patient has cancer and if
22 so what extent the concern is involving the patient
23 or if there's some other condition.

24 Plus, the material that we examine in the
25 laboratory is a matter of making sure that the

1 technologists are accurately determining the levels
2 of various fluids and blood, cerebral spinal fluid or
3 urine so that the doctor can get an understanding of
4 whether that patient has a particular illness or
5 disease and whether they're getting better or worse.
6 And our responsibility is to help those physicians
7 interpret those results as well as making sure
8 they're accurate.

9 Q All right. Now, when I talk about pathology, what
10 specific certification do you have regarding
11 pathology?

12 A First we have to get a license to practice medicine,
13 which I have in this state. Then we also have to
14 pass a national board certification. I have national
15 board certification in anatomic pathology, clinical
16 pathology and forensic pathology. That was done back
17 in 1972 and 1973 when I finished my residency
18 training at the Medical University in Charleston.

19 MS. MAYES: All right. Your Honor, at this time
20 we would offer Dr. Sexton as an expert in the field
21 of pathology.

22 THE COURT: Any objection?

23 MR. HOWLE: No objection, Your Honor.

24 THE COURT: All right. Ladies and gentlemen,
25 this witness will be qualified as an expert in the

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1 field of pathology. And my earlier comments to you
2 about your evaluation of this testimony will be the
3 same. You can go ahead, Ms. Mayes.

4 **MS. MAYES:** Yes, sir.

5 **Q** Dr. Sexton, you mentioned before that you were
6 involved in the practice of seeing patients?

7 **A** That's correct.

8 **Q** What are some of the reasons that you may perform an
9 autopsy on an individual?

10 **A** We do the autopsies under the authorization of the
11 local coroner. Or in the case of hospital autopsies,
12 we do it at the authorization of the family after
13 request by the physician that was treating that
14 patient. By and large, most of our cases -- since
15 we're in a small community hospital, most of our
16 cases were from coroners sending them to us because
17 they wanted to know more about the cause and the
18 circumstances surrounding that death as well as the
19 manner of death.

20 **Q** All right. Is there any type of protocol in our
21 state for when there is a suspicious death that
22 involves a minor?

23 **A** Yes, there is. There is the -- there is a state law
24 that encourages the coroners to contact SLED if they
25 have any questions about whether an autopsy should be

1 done. And in general, most of the minors that die
2 suddenly who are not being treated for some sort of
3 specific illness or disease that the doctors
4 understand, most of those are autopsied. But it's
5 done at the request and authorization of the coroner.

6 Q All right. And can you tell us whether or not Child
7 Putnam was referred to you or the pathology
8 department for an autopsy?

9 A Yes. That was on November (sic) 10th of 2007.

10 Q All right. And I believe you were actually employed
11 with the Newberry Pathology Associates in Newberry?

12 A Yes. That's correct.

13 Q Do you have with you the records on the date that
14 relate to the autopsy of Child following his
15 death?

16 A Yes, I do.

17 Q I'm going to ask you, Dr. Sexton, if you could refer
18 to those records. On what date did you perform the
19 autopsy on Child

20 A It was on November (sic) 11th, the following day
21 after his death, at 11:25. I'm sorry. At 11:00.

22 Q Okay. If you could refer to the record again
23 concerning the date of autopsy?

24 A I'm sorry. I said November. It's March 11th.
25 Pardon me.

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1 Q Can you kind of take us through the process, Dr.
2 Sexton, of how an autopsy is performed?

3 A We ask that the deceased be brought to us just as
4 they are at the time death is pronounced. Of course
5 we ask that they leave any resuscitation measures
6 still there in place and send the body in that
7 condition. Then we examine that body, photograph the
8 person at that time in the condition they are in,
9 then carefully remove anything that might be present,
10 looking for any evidence or any injuries.

11 Then we do a complete internal examination
12 collecting tissue for microscopic exams as well as
13 looking for any disease or trauma internally. And
14 then we document all this with photographs, with a
15 dictated and later typed report as well as diagrams
16 and charts.

17 Q All right. And did you have an opportunity to make a
18 determination in looking at Child as to
19 whether there were any external signs of injury or
20 abnormalities?

21 A Yes, we did.

22 Q All right. Can you describe to us as you have
23 documented it in your report what observations were
24 made?

25 A There were a number of what I consider minor

1 injuries. But in a child that, as in the case of
2 this child, has a delayed development, so was not
3 even able to sit up on his own at 13 months, then
4 these are significant. And so these included some of
5 the bruises that were on the right arm. These did
6 not include the needle punctures that were there
7 where they had either tried to start IV's or had IV's
8 in that they took out later.

9 In addition to a few bruises on the right arm,
10 there was one bruise on the left side of the face
11 between the top of the ear and the eye. There was a
12 small bruise on the back of the right hip. And on
13 the back of the body was a very short linear
14 abrasion, which means like a scrape. If you fell and
15 hit your knee on a enough surface, it would scrape
16 the skin off.

17 This is a very thin linear, meaning sort of a
18 straight line abrasion that was about a half inch in
19 length and right below it another bruise that was
20 reddish in color. So a total of series of bruises,
21 one on the side of the face, several on the right
22 arm, one on the right hip or thigh area and a linear
23 abrasion and a bruise on the back. All of these like
24 I say were minor. None of them were in any way life
25 threatening, just unusual in a child that doesn't

1 move very much other than trying to crawl.

2 Q Okay. Once you complete the external examination,
3 how do you go about looking internally at the organs
4 to determine what type of injuries may have been
5 sustained?

6 A We open up the body through a Y shaped incision and
7 examine and remove each of the organs. We then cut
8 through them to look internally and take small
9 samples that we'll examine microscopically. The
10 scalp is reflected so that we can get into the brain
11 and look at not only the interior of the scalp as
12 well as the brain itself.

13 A child or an adult who is struck in the head,
14 depending on how it occurs, whether they fall against
15 a sharp surface like the portion of wood here in
16 front of me on the railing, or whether they're struck
17 with something, usually there is a bruise between the
18 scalp and the skull not necessarily seen from outside
19 because it's a little, tiny capillaries breaking in
20 that tissue that's pinched between the hard object
21 and the bone itself.

22 In this case the child had been treated with a
23 catheter that was placed inside the brain. When
24 there's swelling of the brain, sometimes it's
25 important to try to drain some of the fluid that's

1 naturally formed inside the brain to prevent that
2 from contributing to the swelling. Because the brain
3 is a mostly fluid, it's almost 70 something percent
4 water, and if you increase the amount of water from
5 edema that occurs when you're injured, if you hit
6 your arm, you tend to get a little bruise there and
7 sometimes a swelling, and that swelling is from fluid
8 leaking out of the vessel which we call the edema.
9 And that occurs in the brain as well. So we
10 reflected all of that and looked inside, and that's
11 when we saw the trauma that was present in the brain.

12 Q And you described that you found trauma inside the
13 brain. Can you elaborate more on that?

14 A Yes. As I mentioned, they had placed a catheter
15 inside the brain into the ventricle area which is a
16 cavity inside the brain where fluid is manufactured.
17 The fluid leaks out and surrounds the brain so as to
18 protect it.

19 The brain is actually at the top of the skull,
20 slightly to the right of the mid-line and in that
21 area, because of the surgery required to do that,
22 there was some bruising between the scalp and the
23 surface of the skull. Some of this looked a little
24 different from the rest, but in my opinion it was
25 mostly due to the surgery they performed to put that

1 catheter in. But it also could have been on top of
2 some injury that was there already.

3 The most significant finding was the fact that
4 the surface of the brain had a blood clot on the
5 surface that we call a subdural hematoma which had
6 been seen previously by the radiographic studies that
7 had been performed.

8 Q Okay. I'm going to stop you right there so I can
9 make a note of this.

10 A It's a subdural hematoma.

11 Q All right. And when you say that it had been seen
12 previously, you're referring to the pictures that
13 were performed at Tuomey Hospital?

14 A Yes. That's correct.

15 Q And the subdural hematoma, can you break that down
16 and tell us what you mean by that term?

17 A As I mentioned, there is fluid around the brain.
18 There is this floating in this cerebral spinal fluid.
19 Between the dura which is a thick membrane that coats
20 the insides of the skull to keep it from being too
21 rough since the brain is a soft organ, between the
22 dura and the brain are little bridging blood vessels,
23 little veins that go from the outer structure inside
24 of the skull to the brain. With a severe enough jolt
25 those vessels get torn. And when they are torn, then

1 the blood leaks into that space where the blood is
2 combined with the cerebral spinal fluid, and with
3 time that tends to coagulate.

4 And so a subdural hematoma is below the dura and
5 the brain in that empty space where there is cerebral
6 spinal fluid and it's a type of clot that develops in
7 that area. We often see this in people who are
8 chronic alcoholics, fall down and hit their head.
9 Because of the alcohol in their system their blood
10 doesn't clot as readily and it finally gets large
11 enough that it compresses the brain and causes their
12 death while they're asleep.

13 In this case it was not that large, although it
14 was larger than many that we see. But it denoted
15 that there was severe trauma to have lacerated those
16 blood vessels and caused bleeding in that area.

17 Q All right. In looking at the subdural hematoma, were
18 you able to make a determination as to whether it
19 appeared to be something that was acute or not acute?
20 And then would you tell us what you mean by that?

21 A In general, subdural hematomas that are acute are
22 small and are related to other injuries to the brain
23 which this child had which are called subarachnoid
24 hemorrhages. The membrane coating the brain is a
25 very thin membrane, and that blood vessel, when I

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1 mentioned this was torn or gets torn passes on
2 through that membrane into the brain tissue. And
3 when there's severe enough injury, not only is there
4 a tearing of the vessel in that open space or that
5 cavity, but it's pulled loose from its attachment.
6 So you get hemorrhage below the pia arachnoid or what
7 we call the subarachnoid hemorrhage which indicates a
8 little more violent injury. And this is generally an
9 acute type of trauma.

10 But now, acute, there are three categories:
11 acute, subacute and chronic. This was definitely not
12 chronic, meaning days, weeks or even months. It may
13 represent something subacute in that the clot, the
14 subdural hematoma, had clotted. But it still would
15 be no more than a matter of hours, and it could have
16 been in a matter of minutes from the time of the
17 injury to the presentation at the hospital because
18 the child was kept alive nearly eight hours in the
19 hospital.

20 And the initial insertion of this catheter
21 indicated when they cut through the dura to put the
22 catheter into the brain there was only thin fluid
23 that was blood stained. So much of this subdural
24 hematoma may have formed while the child was in the
25 hospital.

1 So, in general, this is in my opinion most
2 probably within reasonable medical certainty an acute
3 process that may have some features suggesting it was
4 there for a longer period, a matter of hours.

5 Q All right. Now, Dr. Sexton, when you find these
6 injuries in a child that's of this age, how do you go
7 about making a determination, or is it your job to
8 make a determination as to the mechanism of death?

9 A It is our job to do that. What we try to do is
10 determine first the cause of death: a gunshot wound,
11 stab wound, heart attack, something of this sort.
12 And then we try to establish how this occurred; what
13 are the circumstances surrounding that. And in this
14 case there is, as I mentioned, blood between the
15 scalp and the bone underneath the outer layer of the
16 scalp. So it was not visible externally in the
17 location where the catheter was placed.

18 If that were not present and I found hemorrhage
19 there as I did see, several, two areas that were sort
20 of round areas of contusion, I would say that the
21 mechanism was a blow to that part of the head,
22 because it's in an area where there's already some
23 hemorrhage and those round hemorrhages could have
24 occurred from either the needles that were used to
25 inject the area to numb it or for the surgery that

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1 they made a little Y -- I'm sorry. A little X shaped
2 incision to get inside to do the surgery. And in so
3 doing they have to hold this tissue back and they
4 clamp it with a little sharp clamp. So any of this
5 could have caused this bruising I saw. On the other
6 hand, the bruising may have represented blows to that
7 part of the head.

8 So what in this case my opinion was within
9 reasonable medical certainty was that it was either
10 shaking of the child to produce this injury, shaking
11 of the child and impacting the child's head on
12 something soft or padded like a portion of padded
13 furniture that suddenly stops the movement of the
14 head but doesn't cause any sort of bruising of the
15 scalp; or it could be a padded floor. Sometimes the
16 rug and the padding under it are sufficient to be
17 soft enough not to cause any bruises to the scalp; or
18 just an impact perhaps with an open hand, something
19 that would spread the energy over a large enough area
20 that there would be no bruising here under the skin.

21 So, yes. In my opinion within a reasonable
22 medical certainty the cause of death was an abusive
23 head trauma by either shaking it in fact or impact
24 causing the injuries to the brain that we saw, the
25 subdural hematoma and the subarachnoid hemorrhage.

1 Q And when you make this determination that abusive
2 head trauma is involved, how do you classify that in
3 terms of manner of death?

4 A There are four primary manners of death. Natural
5 disease can cause death. A person can inflict injury
6 upon themselves and cause death. A person can die of
7 an accidental means of death, struck by lighting or
8 drowning. Or another person can cause their death,
9 at the hands of another which we refer to as a
10 homicide.

11 I actually should include a fifth because there
12 are occasionally skeletons and decomposed bodies and
13 people that look perfectly healthy who die who we
14 don't find a cause of death on, and they are listed
15 as undetermined. So there are actually five manners
16 of death.

17 In this case our opinion was, or my opinion
18 within reasonable medical certainty was this was at
19 the hands of another; therefore, a homicide.

20 Q And is that determination that the manner of death
21 was a homicide reflected in your official autopsy
22 report?

23 A Yes, it is. And I should mention the word "homicide"
24 is not the same as murder. It doesn't carry any
25 intent. It just says someone else had to cause this

1 injury.

2 Q Dr. Sexton, what, if any, notations did you note
3 during the autopsy about any type of injury or trauma
4 noted within the eyes?

5 A Their history was that they had seen hemorrhage
6 inside the eye. In the back of the eye is a membrane
7 that communicates with the back of your brain called
8 the retina. And the rods and cones there detect
9 light coming in and enable us to see. When they're
10 injured by a severe jolt, just as the brain gets
11 injured by a severe jolt, we see hemorrhage in that
12 area of the eye in the retina. In addition,
13 examining the eye at autopsy we saw hemorrhage along
14 the nerve, the optic nerve from the eyeball going
15 back to the rest of the brain.

16 Q And that would be an optic nerve hemorrhage?

17 A That's correct. And that was also seen on the CT
18 scans.

19 Q Can you tell us in your opinion to a reasonable
20 degree of medical certainty, are the retinal
21 hemorrhages and the optic nerve hemorrhages that were
22 observed in conjunction or constellation with the
23 subdural hematoma and this subarachnoid hematoma
24 consistent or inconsistent with abusive head trauma?

25 A They are consistent with abusive head trauma.

1 Q Beg the Court's indulgence.

2 THE COURT: Yes, ma'am.

3 Q Dr. Sexton, I did want to follow up and ask you
4 whether other types of testing are done to have ruled
5 out other factors, such as toxicology or poisoning
6 issues, things like that?

7 A Yes. What we do is at the time of autopsy we collect
8 fluids. We collect blood and urine if it's present.
9 In this case there was no urine present. There was
10 some stomach contents present. And we collect bile.
11 And all this is sent to the State Law Enforcement
12 Division for them to analyze and we receive back a
13 toxicology report. There was some Lidocaine in the
14 gastric contents that was used in the hospital in
15 treating the child. The blood revealed no drugs and
16 no chemicals that would reflect any sort of poisoning
17 had occurred.

18 Q Thank you. Nothing further.

19 THE COURT: Mr. Howle.

20 MR. HOWLE: Thank you, Your Honor.

21 CROSS EXAMINATION

22 BY MR. HOWLE

23 Q Dr. Sexton, you say when you first observed the child
24 you mentioned some bruising that you also saw on the
25 child?

1 A Yes. That's correct.

2 Q And those were minor. It had nothing to do with the
3 cause of death or anything of that nature?

4 A Correct. Those resulted in minor injuries.

5 Q Were you aware at that time that the child had been
6 born premature and did not sit up on its own?

7 A We'd been given a history at a later time, not at
8 that time.

9 Q Okay. And that the child did fall over on its own in
10 trying to sit up?

11 A Yes.

12 Q Okay. Do you think that would have possibly caused
13 any of the minor bruises that you saw?

14 A The bruise on the back and the linear abrasion on the
15 back certainly could have been caused by a child
16 falling back on a toy or something of that sort. The
17 child is not walking. So the bruises on the back
18 side of the right hip I don't think would be caused
19 by that. The bruises on the arms could be from
20 flinging the arms around and hitting various things.
21 The bruise on the side of the head could be caused by
22 falling over on something.

23 Q He had two brothers, nine and six?

24 A Yes. We were told that later on.

25 Q Could they have caused any bruising to him?

1 **A** Having four children and four grandchildren, yes,
2 that could cause bruising.

3 **Q** You said some of the bruises though that you saw on
4 the head that you otherwise were concerned with, you
5 think it was the surgery?

6 **A** I can't really tell. Recognize that medicine is not
7 an exact science. It's an art and a science. From
8 my years of training and experience and communicating
9 with other forensic pathologists about cases, we
10 learn to be very cautious about assigning
11 responsibility of injuries like that without knowing
12 for sure. In this case it could be there was injury
13 there and it was covered up by the bleeding from the
14 surgery, or it may not have been there.

15 **Q** In response to the questions about, I think Ms. Mayes
16 asked you about time of duration. But the bleeding
17 that you saw, you said some of these blood vessels
18 break. I think the word you said, the small blood
19 vessels are torn. With time they coagulate?

20 **A** Well, with time, the blood that comes out coagulates.
21 In other words, if you cut yourself and you don't do
22 anything about it because it's a very small cut,
23 you'll see clotted blood on the surface of your skin.
24 Or if we put it in the test tube, we can measure how
25 long it takes to clot which is generally a matter of

1 minutes. In that cerebral spinal fluid, it takes
2 longer, but it eventually will coagulate or clot.

3 Q Well, then would it be possible for an impact injury
4 that you've described to have happened and yet the
5 child still has some period of being lucid before he
6 went into some semiconsciousness or another injury?

7 A I've been doing this 40 years. I've only seen two
8 cases where I found no impact in the scalp. And I've
9 had a number of cases where there was injury, a lucid
10 period and then later unconsciousness or another
11 injury. So, yes, in my opinion, there could have
12 been a lucid period. But I can't rule out the fact
13 that all of this may have occurred just minutes
14 before the child or just prior to the child becoming
15 unresponsive, because that can occur as well.

16 Q Okay. But you say you have seen a number of cases
17 where there has been an impact, lucid period, and
18 then unconsciousness?

19 A That's correct.

20 Q Okay. And you said you found it or classified it as
21 homicide, but at the same time you do not attach any
22 intent to that?

23 A As pathologists we cannot attach any intent to that.
24 That's why we use the word "homicide" instead of
25 first or second degree murder, because we're simply

1 indicating whether the person could have done it
2 themselves or whether a natural disease or something
3 of that sort could have caused it. So all I can say
4 is that it was caused by another person which is by
5 definition homicide but has no intent.

6 Q Do the retinal hemorrhages that you saw -- you were
7 aware the child was premature?

8 A Yes. That's correct.

9 Q Could there have been some retinal hemorrhage
10 connected with him being a premature baby?

11 A It depends on whether the child was born vaginally or
12 by Caesarean. And I do not have that history. But
13 irregardless (sic) of that, there is often hemorrhage
14 in the retina at the time of birth vaginally but it
15 generally resolves in a week or two. So this child
16 being 13 months old would not be expected to have any
17 hemorrhage in the eye from delivery.

18 Q Is it possible some of that could have carried over
19 or could some other reason other than just an impact
20 injury --

21 A Recognize in medicine we deal with probabilities. We
22 have to understand that they say it's an art and a
23 science, not a science, that anything is potentially
24 possible. But what we do is evaluate what we see and
25 what our knowledge is of that particular entity and

~~Dr. Joel S. Sexton - Cross by Mr. Howle~~

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1 give an opinion within reasonable medical certainty
2 of probability. It's not probable, but I can't say
3 it couldn't have happened.

4 Q But you certainly said that it's quite possible that
5 whatever the impact injury was it could have been
6 followed by a lucid period of time before he would
7 have gone into some kind of unconsciousness?

8 A Based on my experience and training, yes. In my
9 opinion that is possible and it could be even
10 probable. Certainly it's a thing I have seen in the
11 past.

12 Q Thank you very much, Dr. Sexton.

13 THE COURT: Redirect?

14 MS. MAYES: Yes, sir, Your Honor.

15 REDIRECT EXAMINATION

16 BY MS. MAYES

17 Q Dr. Sexton, you said you have seen that in the past.
18 That would include things such as epidural hematomas?

19 A Epidural hematomas are a different type than what we
20 described. I've only seen four of those in 40 years.
21 They are more commonly accidental. And it's when you
22 injure the side of your head where the bone is
23 approximately an eighth of an inch in thickness.
24 It's more commonly seen in children who are playing
25 sports and get hit in the side of the head or fall or

1 hit some surface.

2 And what happens, you get bleeding from an
3 artery as opposed to a vein and the dura is holding
4 that artery in place. So it slowly pulls away from
5 the surface of the skull and finally starts pressing
6 on the brain enough to be fatal. That's why a person
7 hit in that area is often kept overnight in the
8 hospital, because they you do almost invariably have
9 a lucid period after the initial blow that has
10 rendered them unconscious.

11 But it's because that dura is slowly being
12 dissected away from the pressure of the artery. So
13 I've seen it in those cases. But I've also seen it
14 in cases where the child has a traumatic injury
15 generally from a blow to the head where you'll see
16 knuckle marks under the scalp and we'll have a
17 history of what happened from witnesses that are not
18 partial.

19 Q All right. And just to clarify, not everyone who has
20 a subdural hematoma dies, correct?

21 A In fact, children who have subdural hematomas
22 generally do not die from the subdural hematoma. As
23 I mentioned, it's generally a chronic alcoholic who
24 has a huge subdural hematoma that occurs over hours
25 and they finally die. Children generally have very

~~Dr. Joel S. Sexton - Redirect by Ms. Mayes~~

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1 small subdural hematomas, but they also associate
2 with subarachnoid hemorrhage that the alcoholic
3 really doesn't have and sometimes contusion of the
4 brain itself. So the abusive head trauma is a
5 different category from subdural being a cause of
6 death.

7 The cause of death and abusive head trauma, as
8 in this case, is the injury to the brain tissue
9 itself. It tends to depolarize some of that tissue.
10 Our brain is functioning due to electrical stimuli,
11 and if it gets depolarized, it sometimes comes back.
12 People who get a concussion can sometimes usually
13 come right back after a matter of time. But if they
14 get a second concussion, as in sports, they sometimes
15 die from that concussion alone where there's very
16 little evidence on the brain of a trauma.

17 So the subdural hematoma and abusive head trauma
18 is just one of the findings along with the hemorrhage
19 in the retina and the subarachnoid, indicating that
20 trauma caused the death, not the subdural hematoma.

21 Q Thank you, Dr. Sexton. Nothing further.

22 A You're welcome.

23 MR. HOWLE: Nothing further, Your Honor.

24 THE COURT: All right. Thank you, Doctor. You
25 may step down.

1 **THE WITNESS:** Might I be excused, Your Honor?

2 **THE COURT:** Any objection?

3 **MS. MAYES:** None from the State, Your Honor.

4 **THE COURT:** You may be excused. Come down.

5 **THE WITNESS:** Thank you, Your Honor.

6 **THE COURT:** All right, Ms. Mayes.

7 **MS. MAYES:** May we approach briefly, Your Honor?

8 **THE COURT:** Yes, ma'am.

9 (Whereupon, a bench conference is had)

10 **MS. MAYES:** The State calls Investigator Ray
11 Mackessy.

12 **THE CLERK:** State your name, please.

13 **THE WITNESS:** Ray Mackessy.

14 RAYMOND A. MACKESSY, after being duly sworn,
15 testifies as follows:

16 **THE CLERK:** State your name and spell your last
17 for the record.

18 **THE WITNESS:** Raymond A. Mackessy,
19 M-A-C-K-E-S-S-Y.

20 DIRECT EXAMINATION

21 **BY MS. MAYES**

22 **Q** Investigator Mackessy, where are you employed and in
23 what capacity?

24 **A** Sumter County Sheriff's Department, supervisor of
25 crime scene investigation.

1 Q All right. And how long have you been with
2 investigations?

3 A I've been with Sumter County investigations since
4 October of 1987.

5 Q All right. And what do we mean by the term
6 "investigations"? What kind of job duties and
7 responsibilities do you have?

8 A My job would be to respond to various types of crime
9 scenes where I document through photographs how I
10 find the scene. I then collect the evidence. I also
11 process for fingerprints and any kind of other
12 evidence I may find there.

13 Q All right. Did you have the opportunity to respond
14 to a scene which was located in Sumter County at the
15 Crescent Mobile Home Park, Lot 77?

16 A Yes, ma'am.

17 Q On what date did you respond to that scene?

18 A That was on the 10th of March of 19 -- or 2007.

19 Q All right. And do you have with you any reference
20 associated with that?

21 A Yes, ma'am. I have my crime scene report that I did.

22 Q Okay. If you could pull that out and use it to refer
23 to it, if you would. And according to your
24 understanding, was this the residence of Martina
25 Putnam?

1 **A** Yes, ma'am.

2 **Q** All right. And you were -- can you tell us whether
3 or not you responded to that location after learning
4 that the child was in critical care in the hospital?

5 **A** Yes, ma'am. I was contacted by Captain James Turner,
6 my supervisor, who asked me to respond there to that
7 mobile home to take photographs.

8 **Q** All right. And do you have with you a notation as to
9 what time you arrived there at the residence?

10 **A** Yes, ma'am. At 2:38 p.m.

11 **Q** And that was on March 10th, the same day on which the
12 child was being treated?

13 **A** That's correct.

14 **Q** And who was at the residence, if anyone, when you
15 arrived?

16 **A** When I arrived I was met by Captain Turner. Also
17 Major Hampton Gardner had arrived shortly after.

18 **Q** And those are law enforcement?

19 **A** Yes, ma'am.

20 **Q** And prior going to the home for the purpose of taking
21 photographs and anything else that may have been
22 essential, had you obtained permission to go to the
23 residence?

24 **A** Captain Turner did.

25 **Q** All right. Now, I want to ask you specifically about

1 arriving at the residence. How did you document any
2 findings there?

3 A They were documented through photographs.

4 Q All right. I want to show you some photographs and
5 ask you whether or not you recognize these items. If
6 you could look through these items.

7 A Yes, ma'am. I can identify them.

8 Q Beg the Court's indulgence. And do you recognize
9 these?

10 A Yes, ma'am. I can.

11 Q And how is it that you recognize those photographs?

12 A The smaller photographs, the three-by-fives, have my
13 initials and date and case number on the back of the
14 photograph along with a number that I assigned.

15 These here are photographs it appears that were done
16 on computer from probably a CD.

17 Q All right. And the enlarged photographs, do they
18 appear to be a fair and accurate representation of
19 the original photographs?

20 A Yes, they do.

21 Q And then also these photographs which have your
22 initials on the back, I'll ask you whose initials
23 those are.

24 A Yes, ma'am. They're my initials.

25 Q All right. Your Honor, at this time -- are all these

1 photographs -- I will ask you whether or not they are
2 a fair and accurate representation of the scene you
3 recall seeing on March 10th, 2007?

4 **A** Yes, ma'am.

5 **MS. MAYES:** Your Honor, at this time the State
6 would offer these items as exhibits.

7 **MR. HOWLE:** Your Honor, I've seen all those
8 pictures. I have no objection.

9 **THE COURT:** They're in. For the record, what
10 numbers are they?

11 (WHEREUPON, State's Exhibit No. 6 is marked for
12 identification and received in evidence.)

13 (WHEREUPON, State's Exhibit No. 7 is marked for
14 identification and received in evidence.)

15 (WHEREUPON, State's Exhibit No. 8 is marked for
16 identification and received in evidence.)

17 (WHEREUPON, State's Exhibit No. 9 is marked for
18 identification and received in evidence.)

19 (WHEREUPON, State's Exhibit No. 10 is marked for
20 identification and received in evidence.)

21 (WHEREUPON, State's Exhibit No. 11 is marked for
22 identification and received in evidence.)

23 (WHEREUPON, State's Exhibit No. 12 is marked for
24 identification and received in evidence.)
25

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1 (WHEREUPON, State's Exhibit No. 13 is marked for
2 identification and received in evidence.)

3 (WHEREUPON, State's Exhibit No. 14 is marked for
4 identification and received in evidence.)

5 (WHEREUPON, State's Exhibit No. 15 is marked for
6 identification and received in evidence.)

7 **COURT REPORTER:** State's Exhibits 6 through 15.

8 **THE COURT:** All right. They're in without
9 objection.

10 **Q** I want to show you what is marked as State's Exhibit
11 15 and ask you, what is that particular area of the
12 home?

13 **A** This is a view of the bedroom and a bathroom in the
14 parents' room inside the mobile home.

15 **Q** All right. I want to show you what is State's
16 Exhibit No. 8 and ask you whether or not you can
17 identify that area of the home?

18 **A** Yes, ma'am.

19 **Q** And what is that area?

20 **A** That appears to be the living room area.

21 **Q** All right. And that area which is the living room,
22 can you tell us whether or not it was carpeted in any
23 way?

24 **A** Yes, ma'am. It's carpeted.

25 **Q** And I'm going to show you what is State's Exhibit 14

1 and ask you if you can tell us what is depicted in
2 that photograph?

3 **A** It's a kitchen sink and it shows --

4 **THE COURT:** What number is that one?

5 **A** It's 14, Your Honor. It's the kitchen sink.

6 **Q** And what, if anything, is depicted in the scene?

7 **A** It's two bowls in the sink along with some other
8 kitchen utensils, a glass. It appears to be a small
9 spoon in there, like a child or an infant spoon.

10 **MS. MAYES:** Your Honor, at this time we would
11 ask to publish these photographs which are State's
12 Exhibits 15, 14 and 8 to the jury.

13 **THE COURT:** Yes, ma'am. Ladies and gentlemen,
14 please again make sure that you continue to pay
15 attention as you're looking at these photos.

16 **MS. MAYES:** Beg the Court's indulgence. That's
17 all for the witness at this time, Your Honor.

18 **THE COURT:** Mr. Howle.

19 **MR. HOWLE:** Thank you, Your Honor.

20 CROSS EXAMINATION

21 **BY MR. HOWLE**

22 **Q** So you went to the house and, as you say, you took
23 pictures that one time, just the one trip?

24 **A** Yes, sir.

25 **Q** Do you have a report that you were reading from --

1 **A** Yes, sir.

2 **Q** -- for this? Was there any sign of a struggle or
3 anything like that in the house?

4 **A** No, sir.

5 **Q** There's a statement you've made in there about the
6 interior of the house. Would you read that, please?

7 **A** Yes, sir. In my opinion the interior of the
8 residence was not messy but had clutter expected of a
9 home with young children.

10 **Q** Okay. And if you'd just read the rest of it, please.

11 **A** The medication, there was medication found in the
12 bedroom but it was prescribed to the mother of the
13 infant. And I found nothing of evidentiary value
14 inside or outside the residence.

15 **Q** Thank you very much.

16 **A** Thank you.

17 **THE COURT:** Redirect?

18 **MR. HOWLE:** Nothing further.

19 **MS. MAYES:** Nothing further, Your Honor.

20 **THE COURT:** Thank you, sir. You may step down.

21 **THE WITNESS:** May I be excused, Your Honor?

22 **THE COURT:** Is there any objection to him being
23 excused?

24 **MR. HOWLE:** No objection, Your Honor.

25 **THE COURT:** Yes, sir. Ms. Mayes, any additional

1 witnesses before lunch?

2 **MS. MAYES:** Not before lunch, Your Honor.

3 **THE COURT:** All right. Come around just a
4 minute.

5 (Whereupon, a bench conference is had)

6 **THE COURT:** All right, Ladies and Gentlemen.
7 The next witness in the case will be taking an
8 extended time and that witness is not going to be
9 here until about 2:15. So we're going to break until
10 then. You are free to go until 2:15. Please be back
11 at that time and we will start at 2:15.

12 You may not discuss the case and do not begin
13 forming opinions in your mind about what your verdict
14 will be in this case because of course you've not
15 heard all the testimony. All right. Thank you very
16 much.

17 (Jury out)

18 **THE COURT:** All right. We'll break. If the
19 lawyers could be back at about ten minutes until two,
20 that gives you a good solid hour and a half or an
21 hour and 25 minutes for lunch. And I'm usually back
22 before then. I think the clock is a little bit slow.
23 All right. We'll work by that wall clock. We'll see
24 you back at ten 'til two. Thank you.

25 (Whereupon, a lunch break is taken)

1 **THE COURT:** Okay. Is everybody ready to go?

2 **MS. MAYES:** Yes, sir, Your Honor.

3 **MR. HOWLE:** Yes, sir.

4 **THE COURT:** All right. We're ready for the
5 jury.

6 (Jury in at 2:17 p.m.)

7 **THE BAILIFF:** All the jurors and the alternate
8 is in the courtroom, Your Honor.

9 **THE COURT:** Thank you. All right, ladies and
10 gentlemen. We are going to continue with the trial.
11 I just want to make sure you understand that I know
12 that all of you probably had a nice lunch or lunch of
13 some sort and this would be the time of the day that
14 some of you might be inclined to let your attention
15 wander or even doze off. But try to keep that from
16 happening, and we'll take a break if need be. But
17 please continue to pay close attention to all the
18 testimony. All right, Ms. Mayes.

19 **MS. MAYES:** Yes, sir, Your Honor. The State
20 calls Dr. Clay Nichols.

21 **THE CLERK:** State your name for the record.

22 **THE WITNESS:** Clay Allen Nichols, N-I-C-H-O-L-S.
23 DR. CLAY A. NICHOLS, after being duly sworn,
24 testifies as follows:

25 **THE CLERK:** Thank you. Have a seat. State your

1 name and spell your last for the record.

2 **THE WITNESS:** Clay Allen Nichols, N-I-C-H-O-L-S.

3 DIRECT EXAMINATION

4 **BY MS. MAYES**

5 **Q** Good afternoon, Dr. Nichols.

6 **A** Good afternoon.

7 **Q** Could you begin by telling us where you are employed
8 and in what capacity?

9 **A** I'm employed at Palmetto Health Richland where I'm a
10 staff pathologist. I'm also the chief medical
11 examiner for Richland County.

12 **Q** All right. And what do your job duties entail being
13 the chief medical examiner?

14 **A** Essentially I perform the autopsies for Richland
15 County on people who die suspicious or unnatural
16 deaths.

17 **Q** All right. And is there a way to estimate how many
18 such autopsies you've performed over the course of
19 your career?

20 **A** Over 5,000.

21 **Q** All right. Can you give us some information
22 concerning your educational background and training
23 and experience concerning forensic pathology?

24 **A** I received my bachelor of science degree from the
25 University of Oklahoma in 1981. I received my MD

~~Dr. Clay A. Nichols - Direct by Ms. Mayes~~

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1 degree also from Oklahoma in 1985. After that I
2 entered a residency program in both anatomic and
3 forensic pathology at MUSC, completing that in 1999.
4 Following that I was on the faculty for ten years at
5 MUSC where I was an associate professor teaching
6 pathology and forensic pathology to medical students,
7 residents who are in training of pathology, forensic
8 pathology fellows which are people undergoing
9 specialized training.

10 After that I entered private practice here or in
11 Columbia, South Carolina. I am board certified by
12 the American Board of Pathology. I am board
13 certified by the American Board of Pathology in both
14 anatomic and forensic pathology.

15 I have taught courses or helped teach courses on
16 child abuse at the National Advocacy Center on the
17 USC campus. I am also the chairman of the South
18 Carolina Child Fatality Advisory Committee.

19 Q All right. And physically, when you talk about child
20 abuse in relation to forensic pathology, what are
21 some examples that you might can give of the type of
22 injuries involved in fatal child abuse?

23 A There are numerous. We've had cases where babies
24 have been scalded, placed in hot water, babies that
25 have been beaten, babies that have been poisoned,

1 babies that have been shot. Almost any sort of
2 traumatic injury that can occur to a person can occur
3 to a child.

4 Q And have you testified previously, Dr. Nichols, as an
5 expert in courts of this state in the field of
6 forensic pathology?

7 A Numerous times.

8 Q Have you testified previously concerning the topic of
9 abusive head injury?

10 A Yes, I have.

11 MS. MAYES: Your Honor, at this time we would
12 offer Dr. Nichols as an expert in the field of
13 forensic pathology.

14 THE COURT: Mr. Howle?

15 MR. HOWLE: Your Honor, I have no questions as
16 to his qualifications, but I would like to approach
17 the bench if I could.

18 THE COURT: All right.

19 (Whereupon, a bench conference is had)

20 THE COURT: All right, ladies and gentlemen.
21 This witness is qualified as an expert in the field
22 of forensic pathology. The instruction I gave you
23 before as to your way to evaluate the testimony of
24 witnesses applies to this witness as well. All
25 right, Ms. Mayes.

~~Admitted to the Hospital by Dr. Clay A. Nichols -- Direct by Ms. Mayes~~

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1 **MS. MAYES:** Yes, sir, Your Honor.

2 **Q** Now, Dr. Nichols, you testified that in your years of
3 experience you have had the opportunity to be
4 involved in cases that involve abusive head injury.
5 Does that also include performing autopsies or
6 reviewing autopsy findings in such cases?

7 **A** That's correct.

8 **Q** All right. And I want to start by asking you if you
9 could give us a general overview of what is meant in
10 the field of forensic pathology by the term "abusive
11 head injury"?

12 **A** That is an all-inclusive term indicating that some
13 sort of head trauma occurred, be it minor or
14 catastrophic. And fatal head injury as a result of
15 child abuse, it can be something as simple as
16 concussions or bruising of the brain or actually
17 having something more devastating, such as having the
18 skull crushed by an object such as a baseball bat.

19 **Q** And, Dr. Nichols, I want to ask you in this case if
20 you had the opportunity to review the autopsy
21 findings which include the autopsy photographs in
22 addition to the medical treatment records from
23 Palmetto Richland Hospital and Tuomey Hospital
24 concerning Child

25 **A** Yes, I have.

1 Q And have you also had the opportunity to review
2 previous medical records concerning Child
3 including birth records?

4 A Yes, I have.

5 Q And, Dr. Nichols, being familiar with and having had
6 the opportunity to review the autopsy findings, do
7 you have an opinion concerning the cause of death?

8 A Yes, I do.

9 Q And what is that opinion?

10 A I agree with Dr. Sexton that the child died
11 essentially as a result of a subdural hematoma as a
12 result of a shaking or impact injury.

13 Q I want to ask you a little bit more about the term
14 "subdural hematoma". And as to Child what,
15 if anything, was significant about the subdural
16 hematoma in this child?

17 A Well, first off, there was a subdural hematoma.
18 Subdural hematoma means that there is a collection of
19 blood underneath the most protective membrane which
20 is right underneath the skull inbetween the brain
21 known as the dura. Blood underneath that is known as
22 a subdural hematoma. These are almost always
23 associated with a traumatic injury.

24 Q In addition to the subdural hematoma that was noted
25 concerning Child what, if any, other type of

Dr. Clay A. Nichols - Direct by Ms. Mayes

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1 injuries did he have?

2 **A** There was a minor degree of subarachnoid hemorrhage
3 which is bleeding beneath the next layer of membranes
4 that actually cover the brain itself. And also there
5 were retinal hemorrhages which extended into the
6 optic nerve.

7 **Q** All right. And what, if anything, is significant
8 about the finding of the optic nerve hemorrhage?

9 **A** The constellation of subdural hematomas associated
10 with or without subarachnoid hemorrhage as well as
11 retinal hemorrhages or optic nerve hemorrhage is
12 usually an indication of some sort of a shaking
13 episode or an episode with shaking where a baby is
14 perhaps thrown against an object causing an impact.

15 **Q** All right. And I think you also mentioned that in
16 this case Child also had a subarachnoid hemorrhage?

17 **A** Yes.

18 **Q** I'm going to ask you if you could take a moment and
19 using this diagram of the brain; if you could depict
20 for us, where would the area of the subdural hematoma
21 and the subarachnoid hematoma, if you could?

22 **THE WITNESS:** May I step down, Your Honor?

23 **THE COURT:** Yes, sir.

24 **THE WITNESS:** Thank you.

25 **THE COURT:** And make sure when you refer to

1 that, make sure everybody on the jury can see it.
2 There is a pointer down there. I'll leave that up to
3 you, just so long as everybody on the jury can see.
4 **A** Yes, sir. What this is is a cross section of the
5 brain. This is actually the right side of the brain
6 cut in half long ways like this. And this is what's
7 known as the cerebral hemisphere and this would be
8 covered by at least two membranes. One is called an
9 arachnoid which is right up against the brain, and
10 the other would be the dura which is a much thicker
11 membrane that goes around like that. And then the
12 skull, the bone, would actually be adjacent to this
13 dura.

14 A subdural hematoma diagram automatically
15 representing not actually where it's located would be
16 between this space here. That would be a subdural
17 hematoma. Bleeding beneath the arachnoid in this
18 space here, that would be subarachnoid hemorrhage.

19 **MS. MAYES:** And, Your Honor, this would be
20 State's Exhibit 17 for evidence. Excuse me. 16.

21 **MR. HOWLE:** Your Honor, I have no objection to
22 the exhibit.

23 **THE COURT:** All right. That is number 16.

24 (WHEREUPON, State's Exhibit No. 16 is marked for
25 identification and received in evidence.)

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1 (WHEREUPON, State's Exhibit No. 17 is marked for
2 identification.)

3 Q Dr. Nichols, when you talk about these injuries in
4 relation to Child do you have an opinion
5 concerning the cause of death?

6 A I believe I stated earlier that I agree with Dr.
7 Sexton that young Putnam died as a result of
8 complications of either shaking and/or impact
9 episode.

10 Q And what have you named it?

11 A I believe this is a homicide.

12 Q Now, when we talk about these injuries and when they
13 are found together in constellation, do you have an
14 opinion as to the -- when such injuries are
15 inflicted, do you have an opinion as to the time
16 differential, if any, between the infliction of such
17 injury and then the onset of symptoms, such as
18 unresponsiveness, unconsciousness?

19 A I don't know about unresponsiveness or
20 unconsciousness, but usually upon the infliction of
21 such an injury, the child's lifestyle would change
22 almost immediately or in a very short interval of
23 time. Exactly what the symptoms would be would be
24 depending upon the type of injury, the location of
25 injury and the severity of injury.

1 Q All right. And when you say that lifestyle will
2 change, can you tell us in medical terms what you
3 mean by that?

4 A Well, the child's behavior would be different.
5 Instead of a happy, playing child, the child would
6 become perhaps more fussy, more irritable. People
7 who would know the child would pretty much know that
8 there's something wrong with the child as a result of
9 the injury.

10 Q All right. And considering the extent of injuries
11 that were present in the case of Child with
12 the subdural hematoma, the subarachnoid hemorrhage
13 and the retinal hemorrhage, optic nerve injuries, do
14 you have an opinion as to whether or not a child with
15 these injuries would be able to eat a meal, eat
16 cereal?

17 MR. HOWLE: Your Honor, if I may, I have an
18 objection to that. If you'd like a side bar, I don't
19 know if you want us to put it on the record outside
20 the presence of the jury or not.

21 THE COURT: The objection is overruled. We'll
22 do that at the break.

23 MR. HOWLE: All right, sir.

24 THE COURT: All right.

25 MR. HOWLE: I preserve the objection in that

1 regard.

2 **THE COURT:** Yes, sir. Yes, sir. You have a
3 right to preserve in that regard. You may go ahead,
4 Ms. Mayes.

5 **A** No. I don't believe a child would eat a normal
6 breakfast after the infliction of such an injury.

7 **Q** Why or why not?

8 **A** Once again, the child would be injured. The brain
9 would be injured. There would be the development of
10 the hemorrhages. The child once again would not be
11 under its normal behavior and as such would not do
12 normal things such as eating or playing or just being
13 its typical self.

14 **Q** Would you, Dr. Nichols, to a reasonable degree of
15 medical certainty expect any sort level of normal
16 functioning in a child who had previously sustained
17 these injuries?

18 **A** You ask -- "normal function" is a broad term.

19 **Q** Okay.

20 **A** There might be some normal function someplace, but
21 for the most part the child once again would not
22 exhibit a normal behavior pattern for that child.

23 **Q** All right. And I'm going to show you some
24 photographs and ask -- or State's Exhibits 1 through
25 5. I ask you if you'd take a look at these.

1 **A** Okay.

2 **Q** Do you have an opinion, Dr. Nichols, concerning the
3 bruises as to the general timeframe?

4 **A** General timeframe? Dating of bruises is difficult.
5 You look at them. If they're more blue or black,
6 they're going to be fresher. If they're more yellow
7 or green, they're going to be later. These bruises
8 look more recent in these photographs.

9 **Q** Can you tell us, Dr. Nichols, in your opinion to a
10 reasonable degree of medical certainty, would normal
11 playing with the child, such as picking the child up,
12 jostling a child, bouncing the child on a knee, would
13 that type of activity produce such injuries?

14 **A** No. The only type of other activity -- I won't even
15 call it activity -- but brachial hemorrhages,
16 subdural hematomas, these things put together are
17 usually seen in cases of abuse or severe trauma such
18 as automobile accidents. Normal playing would not
19 produce these types of injuries.

20 **Q** And I show you a photograph which is State's Exhibit
21 8 which depicts the living room area of the residence
22 with the carpeted floor. I ask you to take a look at
23 that photograph.

24 **A** Yes.

25 **Q** Do you have an opinion, Dr. Nichols, as to whether a

1 13-month-old child who is developmentally delayed,
2 small for his age, sitting up eating cereal and then
3 toppling over on a floor repeatedly would produce
4 this constellation of injuries?

5 **A** No.

6 **Q** And why or why not?

7 **A** Once again, these injuries are not associated with
8 normal activities, such as falling over, falling
9 down. Even falling off of a sofa would not cause
10 these types of injuries.

11 **Q** All right. I show you also a photograph which is
12 State's Exhibit 15 which depicts the bathroom area of
13 the home.

14 **A** Okay.

15 **Q** Do you have an opinion, Dr. Nichols, as to whether a
16 child of this age, 13 months and developmentally
17 delayed falling over or toppling over onto the
18 bathroom floor would produce such injuries?

19 **A** No.

20 **Q** Beg the Court's indulgence. Can you tell us in your
21 opinion, Dr. Nichols, whether such injuries could
22 hypothetically be sustained hours beforehand, whether
23 it be one hour, two hours, three hours, and the child
24 continue to function normally and eat prior to
25 becoming unresponsive?

1 **A** Once again, to a reasonable degree of medical
2 certainty, no.

3 **Q** Thank you. Nothing further.

4 **THE COURT:** Mr. Howle. Subject to your
5 objection.

6 **MR. HOWLE:** Subject to my objection.

7 CROSS EXAMINATION

8 **BY MR. HOWLE**

9 **Q** Dr. Nichols, you said something about you did not
10 think that if Child sustained this kind of
11 injury that he could have continued to do normal
12 behavior habits?

13 **A** Yes, sir.

14 **Q** Now, you're aware he was premature?

15 **A** Yes.

16 **Q** And didn't walk?

17 **A** Yes.

18 **Q** And really couldn't sit up by himself?

19 **A** That's my understanding. He had to be propped up.

20 **Q** So how do you know what his normal behavior patterns
21 were? How do you know what would have varied from
22 what he was normally like?

23 **A** I didn't define what normal would be for him. I
24 believe I stated that this child would not exhibit
25 normal behavior patterns after the infliction of such

1 an injury.

2 Q But you don't know what his normal behavior patterns
3 were before to know what the difference would have
4 been that would have changed?

5 A That's correct.

6 MR. HOWLE: I don't have any further questions.

7 THE COURT: Redirect?

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

9 MR. HOWLE: Your Honor, there's no redirect on
10 these questions.

11 THE COURT: Well, I'll watch the scope of
12 redirect. It has to be confined to those matters.

13 MS. MAYES: Yes, sir, Your Honor.

14 REDIRECT EXAMINATION

15 BY MS. MAYES

16 Q When you talk about normal behaviors, did you have an
17 opportunity to review information that included a
18 statement by Martina Putnam?

19 A Yes, I did.

20 Q Okay. Do you -- regarding that particular statement
21 and the description that the child fell over while
22 eating but that he does that all the time, would that
23 lead you to believe that there was anything unusual
24 about that particular day?

25 A Well, it's not necessarily that particular day per

1 se, but just falling over is not going to cause these
2 injuries.

3 Q All right. Is there anything to suggest that such
4 injuries would have already been present prior to the
5 child eating his meal?

6 A No. Once again, I --

7 MR. HOWLE: I don't think that's --

8 THE COURT: Objection sustained.

9 MS. MAYES: Nothing further.

10 THE COURT: Anything else, Mr. Howle?

11 MR. HOWLE: Nothing further, Your Honor.

12 THE COURT: All right, sir. You can step down.

13 THE WITNESS: Thank you, Your Honor. Appreciate
14 it.

15 THE COURT: Any objection to this witness being
16 excused?

17 MS. MAYES: No objection, Your Honor.

18 MR. HOWLE: None from the defense, Your Honor.

19 MS. MAYES: He is on call.

20 THE COURT: Doctor, you may leave or stay,
21 whichever you prefer.

22 THE WITNESS: Thank you, Your Honor. I
23 appreciate it.

24 THE COURT: Ms. Mayes.

25 MS. MAYES: Yes, sir, Your Honor. The State

Dr. Clay A. Nichols - Redirect by Ms. Mayes

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1 calls David Florence.

2 **THE CLERK:** State your name, please.

3 **THE WITNESS:** David Florence.

4 DAVID FLORENCE, after being duly sworn,
5 testifies as follows:

6 **THE CLERK:** State your name and spell your last
7 for the record.

8 **THE WITNESS:** David Florence, F-L-O-R-E-N-C-E.

9 **THE COURT:** Ms. Mayes, are you ready to proceed?

10 **MS. MAYES:** Yes.

11 DIRECT EXAMINATION

12 **BY MS. MAYES**

13 **Q** Investigator Florence, can you tell us where you are
14 employed and in what capacity?

15 **A** Yes, ma'am. I'm employed by the Sumter County
16 Sheriff's Office and my capacity is lieutenant in
17 charge of the investigation division.

18 **Q** All right. And what kind of investigations do you do
19 there at the Sheriff's Department?

20 **A** I primarily do major crimes.

21 **Q** And that includes homicide?

22 **A** Yes, ma'am.

23 **Q** And crimes of burglary?

24 **A** That is correct.

25 **Q** And I'm going to ask you whether or not you had the

1 opportunity to be involved as the investigator or
2 chief investigator in the case concerning Child

3
4 A Yes, ma'am, I did.

5 Q All right. And when did you first become involved in
6 the investigation of this case?

7 A On March the 10th I was contacted by Captain James
8 Turner of the Sumter County Sheriff's Office and I
9 was requested to respond to Tuomey Hospital.

10 Q All right. And tell us a little bit about what you
11 recall after you initially responded to the hospital
12 on March 10th?

13 A Once I responded to the hospital I met with Captain
14 James Turner, Major Hampton Gardner, Sergeant Burnish
15 and Victim's Advocate Gwen Herod and was briefed on
16 the situation. At that time I was instructed by
17 Captain Turner to meet with Gwen Herod at her office
18 to do a forensics interview with the two children,
19 Sibling and Sibling 2 the siblings of the
20 baby, Child

21 Q All right. I think we had previously discussed that
22 Child had the two siblings, Sibling and Sibling 2 And
23 then what can you tell us about the parents, Ms.
24 Putnam and Patrick Putnam, and their whereabouts on
25 March 10th?

David Florence - Direct by Ms. Mayes

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1 **A** When I arrived at the hospital Ms. Putnam had already
2 left in the ambulance to go to Palmetto Richland
3 Hospital with the child, Child and the husband was
4 there at the hospital at that time and was later
5 taken over to the Sheriff's Office for interview.

6 **Q** All right. And while the father, Patrick Putnam, was
7 at the Sheriff's Office for an interview and Ms.
8 Putnam was at Palmetto Richland, --

9 **A** Yes, ma'am.

10 **Q** -- what did you and Ms. Herod do initially?

11 **A** Ms. Herod and I -- actually Ms. Herod took the two
12 children to her office. I met her there, and a
13 forensic interview for both of those children was set
14 up and conducted.

15 **Q** All right. And when we talk about forensic
16 interviews, at the Sheriff's Department, when you
17 have kids who may be victims of crimes or witnesses
18 of crimes or whether it's abuse and neglect or
19 anything of that nature, can you tell us what the
20 protocol normally is for talking with such children?

21 **A** Well, what we try to do is set up an interview with
22 our victim's advocate as a one-on-one. We have an
23 interview room for the children and the advocate to
24 talk. We also have a viewing room where the chief
25 investigator or law enforcement officer or persons

1 involved with the case other than family members or
2 anyone outside the scope of the investigation view
3 the interviews.

4 Q All right. And did you have the opportunity to
5 observe the interviews with both Sibling 1 and
6 his brother, Sibling 2

7 A Yes, ma'am, I did.

8 Q All right. And during the course of that particular
9 interview and as a result of your investigation, did
10 you determine who was actually present in the home on
11 March 10th, 2007?

12 A Yes, ma'am. We came to the conclusion that Child
13 Putnam, the victim, was in the home; Sibling 1 and
14 Sibling 2 the two siblings, as well as
15 Martina Putnam and her husband, Patrick Putnam.

16 Q All right. And after you interviewed the boys, where
17 did you go next? Or after Ms. Herod did the
18 interview that you observed, where did you go next?

19 A We met back at the law enforcement center at the main
20 office and decided to come to Palmetto Richland
21 Memorial to check on the child and also talk with Ms.
22 Putnam at that time.

23 Q All right. And can you tell us whether or not you
24 spoke with Ms. Putnam on March 10th, 2007?

25 A Yes, ma'am, we did.

1 **Q** All right. Can you tell us, Lieutenant Florence,
2 about your recollection of events once you arrived
3 there and you and Ms. Herod or whether separately or
4 together had the opportunity to actually meet with
5 Ms. Putnam?

6 **A** Once we arrived Ms. Herod initially met with Ms.
7 Putnam in one of the visitation rooms. I made
8 contact with the doctor and talked with the doctor
9 and the nurses and just tried to obtain some
10 information on the situation and the condition of the
11 child at that time. During the interview that we had
12 with Ms. Putnam, I was in and out of the room during
13 the time and --

14 **MR. HOWLE:** Your Honor, the same objection I
15 voiced earlier in regards to the interview itself.

16 **THE COURT:** Yes, sir. The objection is
17 preserved and it's overruled.

18 **MR. HOWLE:** Thank you, Your Honor.

19 **A** And during the time I was in and out Ms. Herod had
20 already established a rapport with Ms. Putnam and she
21 conducted the majority of the interview and I
22 basically interjected a couple of questions during
23 that time.

24 **Q** Can you tell us whether or not Ms. Putnam was in law
25 enforcement custody at that time?

1 **A** No, ma'am, she was not.

2 **Q** Was she free to leave or to come and go during the
3 interview?

4 **A** That's correct.

5 **Q** And was she free to even leave the hospital if she
6 had chosen to do that?

7 **A** Yes, ma'am.

8 **Q** And was she aware that you were a law enforcement
9 officer?

10 **A** She was.

11 **Q** Do you have an opinion as to whether or not she was
12 speaking with you voluntarily?

13 **A** Yes, ma'am, she was. She was speaking to us
14 voluntarily.

15 **Q** What was the general purpose in your following up
16 with Ms. Putnam on March 10th?

17 **A** Basically we wanted to get an idea of what the
18 circumstances were at the house during that time, to
19 try to interview everyone in the residence to get a
20 piece of information from everybody so we can come up
21 with the conclusion and actually find out who
22 committed the crime.

23 **Q** Okay. And when we talk about the interview that was
24 conducted with Ms. Herod, when specifically or what
25 specifically were you present for that you remember

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1 observing?

2 A Well, at one point I came in and Ms. Putnam was on
3 the floor demonstrating to Ms. Herod how she was
4 feeding Child and how Child was falling back on the
5 floor and hitting his head on the carpet. At that
6 point I asked the question to her, why didn't you put
7 a pillow under his head if you knew he was doing
8 that? And that she said he does it all the time and
9 she really didn't -- pretty much didn't think about
10 it.

11 Q Okay. And was it your understanding that that was by
12 her description normal behavior?

13 A Yes, ma'am. That's correct.

14 Q And what, if anything, did you specifically ask her?

15 A Well, at one point I had asked her who was in control
16 of the child or who was in control of the child that
17 day, and she indicated to me and Ms. Herod that she
18 was the only one in control of the child during that
19 day.

20 Q All right. And how specific were you in trying to
21 ascertain those details about any other possible
22 people that may have had access to the child from the
23 point that Martina Putnam woke up until the time she
24 described him becoming unresponsive in the bathroom?

25 A Well, I was giving -- she was given every opportunity

1 to be specific to name anyone else that may have had
2 control of him at the time.

3 Q And did she ever indicate that he was out of eyesight
4 during that period of time?

5 A No, ma'am, she didn't.

6 Q Did she ever indicate that any other people who were
7 in the house approached the child and had any
8 physical contact with the child or harmed the child
9 in any way?

10 A Not to my knowledge. No, ma'am.

11 Q Did she ever indicate or refer to any type of injury
12 to Child prior to him becoming unresponsive in the
13 bathroom?

14 A No, ma'am.

15 Q Beg the Court's indulgence. Do you recall if Ms.
16 Putnam addresses that day whether or not Child had
17 been crying?

18 A Yes, ma'am. She had indicated that he had been
19 cranky. I wasn't there for the entire conversation,
20 but that was one of the things I did hear. She
21 was -- that he was cranky.

22 Q And did she indicate that that was unusual in any
23 way?

24 A No, ma'am.

25 Q And specifically what actions did you take, if any,

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1 following your conversation or interview with Ms.
2 Putnam?

3 **A** We got together after the interview and went back to
4 Sumter and made contact with the other officers
5 involved in the investigation and came up with a
6 conclusion as far as our belief in this particular
7 case.

8 **Q** All right. Now, did you have the opportunity to
9 consult with anyone else prior to, as you say, coming
10 back to law enforcement and developing any
11 conclusions?

12 **A** Coming back?

13 **Q** Right. Prior to coming back or while you were at the
14 hospital, did you have the opportunity to consult
15 with anyone else?

16 **A** I don't recall, other than phone conversations that
17 we had with -- or I had with the investigator in
18 Sumter.

19 **Q** All right. And who specifically did you speak with
20 while you were at Palmetto Richland Hospital?

21 **A** Captain James Turner.

22 **Q** And he is a member of law enforcement?

23 **A** Yes, ma'am.

24 **Q** All right. What about any persons at Richland
25 Memorial Hospital who aren't members of law

1 enforcement?

2 A Yes, ma'am. I did speak with Dr. Cartie and one of
3 the nurses. I do not recall her name. Fadia Belch I
4 believe it is. I had to think for a moment.

5 Q The Dr. Cartie that you referred to, is that the Dr.
6 Cartie at Richland with whom you met at the pediatric
7 care unit?

8 A Yes, ma'am. That's correct. He was the attending
9 physician of Child

10 Q Okay. And without going into anything Dr. Cartie
11 told you, did you have the opportunity to speak with
12 him regarding any diagnosis that he may have made on
13 Child

14 A Yes, ma'am.

15 Q And following that, I believe you indicated you came
16 back to law enforcement and met with other
17 investigators?

18 A Yes, ma'am.

19 Q Now, did you also have the opportunity to review
20 autopsy findings?

21 A Yes, ma'am, we did. After the autopsy was done, I
22 was out of town that particular day, and when I
23 returned I reviewed those.

24 Q Okay. And then in addition to the autopsy findings,
25 were you able to obtain any written statements from

1 any medical personnel or staff?

2 A Yes, ma'am, I was.

3 Q And who were those persons, if you recall?

4 A Okay. Dr. Cartie. I obtained information from
5 Tuomey Hospital, Dr. Bailey, the information she
6 provided that was typed in by her according to her
7 testimony, as well as Nurse Belch and another nurse
8 that was in the pediatric IC unit.

9 Q Now, you mentioned earlier that during the course of
10 your interview with Martina Putnam on March 10th she
11 was then in custody?

12 A Yes, ma'am. That's correct.

13 Q And following that day, was she in custody the next
14 day?

15 A No, ma'am.

16 Q Okay. Tell us a little bit about the investigation,
17 how that proceeds before ultimately someone may be
18 taken into custody?

19 A Okay. Once we've come to a conclusion, we -- in this
20 particular case Ms. Putnam was brought into the law
21 enforcement center or came to the law enforcement
22 center and she was advised of her rights at that time
23 by Captain Turner. And at that point, according to
24 the information I have in my report or my file there,
25 that she had indicated that she was requesting a

1 lawyer at that time.

2 Q All right. You mentioned previously that the other
3 persons in the home were interviewed. You mentioned
4 that you determined that Ms. Putnam, at least
5 according to her statement, was the only person with
6 the child from the time he was removed from the crib
7 and until he became unresponsive?

8 A Yes, ma'am.

9 Q As a result of your investigation, did you determine
10 whether or not anyone else within the home may have
11 had direct contact with Child that morning?

12 A Yes, ma'am, we did.

13 Q Who was that person?

14 A The possibility that one of the sibling children, a
15 nine-year-old, had contact with him that morning.

16 Q And you observed the interview. What is your
17 understanding of that contact?

18 MR. HOWLE: Your Honor, may we approach the
19 bench?

20 THE COURT: Yes, sir.

21 (Whereupon, a bench conference is had)

22 THE COURT: All right. You can go ahead, Ms.
23 Mayes.

24 Q Had there been any indication from Ms. Putnam that
25 the child was injured in any way prior to what she

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1 described as him becoming unresponsive in the
2 bathroom?

3 A No, ma'am. None at all.

4 Q All right. And on what date was Ms. Putnam arrested?

5 A She was arrested on the 12th.

6 Q Okay. Nothing further at this time.

7 THE COURT: Mr. Howle.

8 MR. HOWLE: Thank you, Your Honor.

9 CROSS EXAMINATION

10 BY MR. HOWLE

11 Q Detective Florence, when you first got over to
12 Columbia Palmetto --

13 A Yes, sir.

14 Q -- when you went into the area where Ms. Putnam was,
15 she was already being -- talking with Gwen Herod?

16 A Yes, sir. I believe they had already started a
17 conversation.

18 Q So you don't know what Ms. Herod said to her prior to
19 the conversation starting?

20 A No, sir.

21 Q Now, you say that she was free to leave at any time?

22 A Yes, sir.

23 Q Did you tell her that?

24 A No, sir.

25 Q With her child there in intensive care, would you

1 have expected her to leave?

2 **A** That would have been a decision -- I couldn't expect
3 anything. But as far as police custody, she was not
4 in police custody.

5 **Q** Not in police custody. So you didn't give her any
6 Miranda rights or anything like that?

7 **A** No, sir.

8 **Q** But later on when you had her to come down to the
9 station and you told her you were going to arrest her
10 and you gave her Miranda rights, she didn't speak to
11 you?

12 **A** Captain Turner advised her.

13 **Q** Captain Turner?

14 **A** Yes, sir.

15 **Q** One of the things that -- and, Your Honor, my
16 questions in regards to conversations specifically
17 with Ms. Putnam is still subject to the objection I
18 made. One of the things you stated in there was that
19 she made these comments about him falling over and
20 you asked her about a pillow?

21 **A** Yes, sir.

22 **Q** You heard the testimony from several doctors who said
23 that that would not have created the injury that was
24 sustained?

25 **A** Yes, sir. That's correct.

1 Q So whether this young child fell over several times
2 while she was feeding him or not, that would not have
3 been the source of whatever the injury was?

4 A No, sir.

5 Q Okay. She made the -- in regard to one of the
6 statements you said she made, that she was in control
7 of the child all day, and I think Ms. Mayes just
8 asked the question, it was obvious that Sibling
9 unbeknownst to her at the time you had talked to her
10 had gone in that morning and got him from the crib?

11 A Yes, sir. That's correct.

12 Q And you're also aware of the statement about Patrick
13 was fixing breakfast, was in there or whatever when
14 she first got up?

15 A Yes, sir.

16 Q So he was in the house and he was already up?

17 A Yes, sir.

18 Q So both of those children -- I mean, both of those
19 people were up and may have had contact with Child
20 prior to her even getting up and knowing about it?

21 A It's a possibility.

22 Q Did you ever interview Pat Putnam yourself?

23 A No, sir, I did not.

24 Q I don't have any further questions.

25 THE COURT: Redirect?

1 **MS. MAYES:** Yes, sir, Your Honor.

2 REDIRECT EXAMINATION

3 **BY MS. MAYES**

4 **Q** Do you have a recollection as to the timeframe in
5 which the child would have had contact with the child
6 before they went to the hospital?

7 **A** Talking about a couple of hours.

8 **Q** Nothing further.

9 **THE COURT:** Anything else?

10 **MR. HOWLE:** Nothing further.

11 **THE COURT:** Thank you, sir. You may step down.

12 **THE WITNESS:** Thank you, sir.

13 **THE COURT:** All right, Ms. Mayes.

14 **MS. MAYES:** Your Honor, our final witness is the
15 expert.

16 **THE COURT:** Oh. The final witness is the expert
17 from ...?

18 **MS. MAYES:** Georgia.

19 **THE COURT:** All right. Will he be here tomorrow
20 morning?

21 **MS. MAYES:** Yes, sir, Your Honor.

22 **THE COURT:** All right. Ladies and gentlemen,
23 this is obviously a bit out of the ordinary. The
24 next witness who is going to testify -- Ms. Mayes,
25 that will be your last witness that you perceive at

1 this time?

2 **MS. MAYES:** Most likely, Your Honor.

3 **THE COURT:** All right. That witness is under
4 subpoena but is not directed to be here until
5 tomorrow morning. Does 9:30 suit both lawyers?

6 **MS. MAYES:** Yes, sir, Your Honor.

7 **MR. HOWLE:** That's fine, Your Honor.

8 **THE COURT:** We'll begin tomorrow morning at
9 9:30. I'm going to continue meeting with the lawyers
10 this afternoon to firm up some things in the nature
11 of jury charges and charges on the law that I'll give
12 you at the conclusion of this case. But are you free
13 to go for the rest of the day.

14 Please do not discuss the case with anyone else.
15 Do not -- just put it out of your mind the rest of
16 the day. Enjoy your lengthy afternoon. Enjoy your
17 evening. We'll see you back tomorrow morning at
18 9:30. I will remind you, don't read anything about,
19 listen to anything about or watch anything about this
20 case at all. All right. Thank you.

21 (Jury out at 2:59 p.m.)

22 **THE COURT:** Yes, sir. Mr. Howle, at some point
23 obviously I'll be discussing with your client her
24 rights specifically whether or not she is going to be
25 choosing to testify in this case. Make sure you

1 discuss with her the general questions I'll be asking
2 her and tell her that that will have to be her
3 decision and her decision made with full knowledge of
4 her rights under the Constitution.

5 **MR. HOWLE:** Yes, Your Honor.

6 **THE COURT:** Let's take a break for just a few
7 minutes. And I'm going to ask the Court reporter to
8 stay for at least another 30 minutes just in case we
9 can get some things put on the record about the jury
10 charge if the last thing that you're going to put up
11 is the doctor. And what's the nature of that
12 doctor's testimony?

13 **MS. MAYES:** This is the treating physician, Your
14 Honor, the pediatric specialist from Richland
15 Memorial. He is now in Georgia, but he is going to
16 talk about --

17 **THE COURT:** So he is not a prior treating. He
18 was treating him at the hospital?

19 **MS. MAYES:** Yes, sir, Your Honor. He would be
20 the treating physician.

21 **THE COURT:** All right. What I wanted to do is
22 try to make some use of our long afternoon, talk
23 about some charges. So if we could do that in my
24 office first, I will ask the court reporter to stay
25 for about 30 minutes.

1 **MR. HOWLE:** Your Honor, I had that one motion
2 that you said we could put on. Do you want to do it
3 now or when we come back?

4 **THE COURT:** Go right ahead.

5 **MR. HOWLE:** Your Honor, when Dr. Nichols began
6 to testify, I objected when she started asking him
7 questions about this period of time, the duration
8 between when the injury occurred and when he might
9 would no longer be able to maintain his natural
10 functions or whatever thing she was trying to show,
11 and I felt she is pitting her own witness against
12 other witnesses she put up.

13 **THE COURT:** Is there any rule against that? I
14 don't think you can pit. I think you just have
15 different nuances of opinion. Dr. Sexton said it
16 wasn't likely but he ruled it out as being a
17 possibility. This witness said, was a little bit
18 firmer I would say.

19 **MR. HOWLE:** Dr. Sexton went so far as to say it
20 wasn't just possible, it probably was more likely in
21 the many cases he has seen that there was a period
22 when he was in a lucid condition, more likely than
23 not.

24 **THE COURT:** All right, Ms. Mayes. What's your
25 response to that for the record?

1 **MS. MAYES:** Yes, sir, Your Honor. It would not
2 be pitting because I believe the legal definition of
3 pitting would be asking one witness whether they
4 believed the other witness or whether they have an
5 opinion whether the other witness is lying or telling
6 the truth.

7 In addition, you may have physicians, medical
8 doctors giving expert opinions that slightly differ
9 which is something we see in almost every case where
10 a medical issue is involved.

11 **THE COURT:** All right. Anything else, Mr.
12 Howle?

13 **MR. HOWLE:** Your Honor, I --

14 **THE COURT:** There is some difference in the
15 testimony. I don't think it violates any evidentiary
16 rule. Did Dr. Nichols do the autopsy, or did he just
17 review the records?

18 **MR. HOWLE:** He just reviewed the record. He did
19 not do the autopsy.

20 **THE COURT:** That might be something you could
21 use to your advantage by way of argument, but I am
22 going to overrule your objection to striking the
23 testimony in that regard.

24 **MR. HOWLE:** Thank you, Your Honor.

25 **THE COURT:** All right. Let's take just a few

1 minutes. And then, Melissa, if you'd stay, we'll let
2 you know if we need anything else this afternoon.

3 **COURT REPORTER:** Okay.

4 (Whereupon, the proceedings are concluded for
5 the day, to be reconvened tomorrow morning)

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1 Wednesday, April 22, 2009

2 **THE COURT:** All right.. Are we ready for the
3 jury?

4 **MR. HOWLE:** We're waiting for Ms. Mayes.

5 **THE COURT:** Oh, I thought she was in here.

6 (Pause)

7 **THE COURT:** Are you ready?

8 **MR. HOWLE:** Yes, sir, Your Honor.

9 **THE COURT:** All right. You can bring in the
10 jury.

11 (Jury in at 9:30 a.m.)

12 **THE BAILIFF:** All the jurors and the alternate
13 are in the courtroom, Your Honor.

14 **THE COURT:** All right. Thank you, sir. All
15 right, ladies and gentlemen. We're ready to continue
16 with the trial. And the State is still presenting
17 its evidence. Ms. Mayes, you can call your next
18 witness.

19 **MS. MAYES:** The State calls Dr. Richard Cartie.

20 **THE CLERK:** Raise your right hand, please.
21 State your name for us.

22 **THE WITNESS:** Richard Cartie.

23 DR. RICHARD J. CARTIE, after being duly sworn,
24 testifies as follows:

25 **THE CLERK:** Have a seat in the witness box.

1 State your name and spell your last for the record.

2 THE WITNESS: My name is Dr. Richard J. Cartie,
3 Cartie.

4 DIRECT EXAMINATION

5 BY MS. MAYES

6 Q Good morning, Dr. Cartie.

7 A Hey.

8 Q Could you tell us where you are currently employed
9 and in what capacity?

10 A Currently I am the director of Pediatric Critical
11 Care Services for the Joseph M. Still Burn Center in
12 Augusta, Georgia.

13 Q All right. And can you give us some information,
14 general information concerning your educational
15 training and background?

16 A Sure. I was a graduate of University of Rochester
17 for both my undergraduate and medical school degree.
18 I graduated in '91 and '95 respectively from
19 undergraduate and medical school. I did my initial
20 pediatric training at East Carolina University in
21 Greenville, North Carolina for three years and went
22 on to do a pediatric critical care fellowship
23 initially at Georgetown University for approximately
24 six months and then completed it at L. A. Children's
25 Hospital in Los Angeles, California for two and a

1 half years.

2 My initial position coming out of there was
3 assistant professor of pediatrics at the University
4 of Texas Health Science Center in San Antonio, Texas,
5 and I then took a position at Palmetto Children's
6 Hospital, Richland Memorial Hospital in Columbia,
7 South Carolina in 2001 and was there until taking the
8 position at the Joseph N. Still Burn Center
9 approximately a year ago. I'm sorry. Approximately
10 a year and a half ago.

11 Q And, Dr. Cartie, have you testified previously in
12 courts of this state or in other states as an expert
13 in the field of pediatric intensive care?

14 A I have.

15 MS. MAYES: Your Honor, at this time we would
16 offer Dr. Richard Cartie as an expert in the field of
17 pediatric intensive care.

18 THE COURT: Mr. Howle, any questions or
19 objections?

20 MR. HOWLE: No, sir.

21 THE COURT: All right. Ladies and gentlemen,
22 this witness is qualified as an expert in the field
23 of pediatric intensive care. Is that correct, Ms.
24 Mayes?

25 MS. MAYES: Yes, sir, Your Honor.

1 **THE COURT:** My instruction to you earlier
2 concerning the testimony of witnesses who are
3 qualified as experts is the same. You can accept or
4 reject the testimony of this witness and evaluate it
5 just as you would the testimony of any other witness.
6 All right.

7 **Q** Now, Dr. Cartie, throughout your years of clinical
8 expense as you have described as a pediatric
9 specialist, can you tell us how it comes about that
10 pediatricians are trained, specifically as to child
11 abuse issues?

12 **A** We receive training in both any medical school
13 courses we might have in pediatrics, but then once we
14 go on to a pediatric residency, you get extensive
15 training as part of the program in recognition of
16 signs and symptoms of child abuse.

17 For me as a pediatric ICU physician, I tend to
18 see unfortunately the most severe cases of pediatric
19 child abuse. I generally don't see minor, simple,
20 questionable bruises or minor, questionable fractures
21 that would be treated as an outpatient or in an
22 emergency room. I tend to see the more severe cases,
23 whether it be traumatic head injuries, abusive head
24 trauma, whether it be suffocation or significant
25 bodily injury.

1 Q Can you give us an overview as to how pediatric
2 intensive care that you practice, how that differs
3 from the practice of a normal pediatrician who might
4 see well children?

5 A Pediatricians who practice out of an office or at a
6 combination of an office and hospital setting will
7 see children who come in for obviously well child
8 checks and immunizations, follow-up appointments as
9 well as sick visits. They will also see deliveries
10 of newborn babies that are being referred to their
11 practice and also for admissions to the hospital of
12 ill children for things that they feel like they can
13 take care of.

14 Once a child becomes sick enough to require a
15 higher level of care, most pediatricians have not had
16 that experience in caring for that level of illness,
17 and physically they are transferred into a pediatric
18 intensive care unit out of a regular inpatient ward
19 and at that time they become cared for by the
20 critical care physician, the ICU physician such as
21 me.

22 We are trained in the more aggressive
23 interventions. We have the facilities and the staff
24 to recognize moment-to-moment, minute-to-minute
25 changes in somebody's health for their ongoing

1 illness and respond appropriately.

2 Q All right. Now, you mentioned that you are currently
3 working as a pediatric intensive care specialist at
4 the Augusta Burn Center. What kind of cases are you
5 currently involved in?

6 A I see approximately 650 to 750 pediatric patients
7 that are admitted to our facility every year.
8 Approximately ten to twenty percent of those are
9 children who have been severely burned and require
10 intensive care. The majority of what we do are
11 household accidents, things like teen-agers doing
12 something dumb with turning trash or small children
13 getting underfoot in the kitchen and having freshly
14 poured tea spilled on them or things like that.

15 We also see the more severe injuries such as
16 house fires with large burns and inhalational injury,
17 and then also approximately ten to twenty percent of
18 what I see is also intentional burns or neglect for
19 children that are improperly cared for or
20 intentionally burned as a result of child abuse.

21 Q All right. And prior to you going to the Augusta
22 Burn Center, I believe you testified you were working
23 at -- we know it as Palmetto Richland now, but
24 currently or before we knew it as Richland Memorial
25 Hospital in Columbia. And, Dr. Cartie, how long were

1 you there as a pediatric intensive care specialist?

2 **A** I was there for -- let's see. I started there in --
3 I was there for approximately three years.

4 **Q** All right. And can you give us an overview of the
5 types of cases that you saw there while you were at
6 Richland?

7 **A** As a practicing pediatric ICU physician at a major
8 children's hospital affiliated with the university
9 program, we see children who have overwhelming
10 illness from viral infections or bacterial infections
11 such as pneumonia. We see children who require
12 higher levels of postoperative care from significant
13 surgeries, such as teenagers who undergo a spinal
14 fusion will come to our unit for a period of time
15 postoperatively.

16 We saw trauma patients that were the result of
17 motor vehicle accidents. We saw children with
18 chronic medical problems. So children who had been
19 premature that had ongoing medical illnesses over
20 long periods of time, we saw those children as well.
21 So that's kind of a cross section of the type of kids
22 we used to see.

23 **Q** All right. So dating back to your residency that you
24 described and the various hospitals that you worked
25 at all the way up to your experience there at

1 Richland Memorial Hospital in Columbia, have you had
2 the opportunity to have clinical experience with
3 child abuse?

4 A Yes.

5 Q And how so?

6 A The regular experience for what I saw in my pediatric
7 residency as well as going on to an ICU setting, I
8 took care of a regular case load of children. My
9 fellowship training at L. A. Children's, we would
10 approximately average one to two patients per month
11 that were admitted to the ICU with significant child
12 abuse injuries, being a major metropolitan center.
13 Going on to Columbia wasn't quite as many as that,
14 but I still saw a regular amount of kids
15 unfortunately that were the victims of child abuse.

16 Q All right. Do you have any training specifically in
17 the area of abusive head injury?

18 A That was part and parcel of my training as both a
19 pediatric resident and a pediatric critical care
20 fellow.

21 Q Okay. And, Dr. Cartie, were you working at Richland
22 Palmetto Hospital or Palmetto Richland on March 10th,
23 2007?

24 A I was.

25 Q All right. Dr. Cartie, there was previous testimony

1 in this case concerning a child by the name of Child
2 Putnam who was 13 months of age. Are you familiar
3 with that patient?

4 **A** I am.

5 **Q** And how so?

6 **A** I was the physician on call for the intensive care
7 unit that day. I believe it was a Saturday in which
8 I received a call from an outlying hospital in which
9 they had a child who had presented to their emergency
10 room who was unresponsive and in severe distress, and
11 they recognized immediately the child once stabilized
12 by their institution was going to require intensive
13 care unit monitoring at our institution.

14 **Q** All right. And specifically do you recall or do your
15 records reflect a conversation with a Dr. Tracey
16 Bailey at Tuomey Hospital here in Sumter about
17 transferring the young patient to the P.I.C.U. at
18 Richland for your care?

19 **A** Yes.

20 **Q** All right. And what kind of capabilities do you have
21 at Richland Hospital that might not be available here
22 at Tuomey Hospital to care for a child who has been
23 this injured?

24 **A** Well, we have obviously a pediatric intensive care
25 unit which is not present at Tuomey, Tuomey Hospital,

1 as well as the higher level of trained staff in
2 treating and recognizing illnesses in pediatric
3 patients, as well as pediatric surgery, pediatric
4 neurosurgery, pediatric orthopedics, all the
5 subspecialty requirements that might be necessary for
6 a severely ill or injured child.

7 Q And do you have with you today your records that
8 relate to Child treatment?

9 A I do.

10 Q And if at any time you need to stop and review
11 records, Dr. Cartie, that is fine. And I want to ask
12 you first, what information you can give us about
13 Child arrival there at the P.I.C.U. at Richland
14 and the kind of treatment he needed?

15 A I received a call late morning on that date of the
16 10th and spoke with Dr. Bailey who had initially seen
17 and stabilized Child shortly after his
18 arrival. And she recognized that he was in extremis
19 which is a term we use to basically mean almost dead
20 or looks like he's going to be dead very soon.

21 And she had established an airway, put in a
22 breathing tube and was in the process of continuing
23 her work-up and treatment but wanted to let us know
24 so that we could mobilize our transport team to come
25 out and pick up the child, which most emergency room

1 physicians, while they're very good at stabilizing
2 children, especially critically ill children, are
3 very able to recognize when something needs to go to
4 a higher level of care and want that done as
5 expeditiously as possible.

6 I actually know Dr. Bailey quite well from
7 numerous transfers, and she is an excellent emergency
8 room physician. I know what I'm getting --

9 **MR. HOWLE:** Your Honor, I appreciate his
10 confidence, but that's not proper. That's
11 bolstering.

12 **THE COURT:** Your objection is sustained.

13 **MS. MAYES:** Yes, sir, Your Honor.

14 **A** I have spoken with her before and gotten patients
15 from her before. And this child I immediately
16 recognized from speaking with her was very sick. She
17 described initially some physical findings that made
18 me concerned for abusive type injuries, and I asked
19 that she get a head CT scan prior to transferring the
20 child to us if she was able to and if the child was
21 stable enough to kind of help us out to know what we
22 were dealing with prior to the child's arrival.

23 **Q** Okay. And after Child arrival there at Tuomey, do
24 you know whether or not they were able to conduct a
25 CT scan or radiological scan of the --

1 A They were.

2 Q -- brain prior to him being transported to Richland?

3 A Yes. Yes.

4 Q And what happened next? What did the CT scan find?

5 A I got a call back from Dr. Bailey to notify me that
6 there was evidence of blood on the CT scan,
7 indicating that the child had suffered some type of
8 head trauma.

9 Q Okay. And so just to clarify, if the child first
10 presents at the emergency room and nobody knows what
11 the problem is and the family doesn't give a history
12 of any type of injury, is a CT scan normal to
13 determine whether there might be bleeding in the
14 brain?

15 A Yes.

16 Q And is that ultimately how it was diagnosed that the
17 baby did have bleeding of the brain?

18 A Yes.

19 Q And what happened next after his arrival at Richland
20 Hospital?

21 A Well, prior to his arrival at Richland our transport
22 team went out to pick him up. The child was
23 incredibly unstable during his time at Tuomey and
24 during transport to our institution. When a child
25 has a head injury and there is significant swelling,

1 increased pressure inside the head and inside the
2 brain, it affects the whole body. It affects the
3 blood pressure. It affects the heart rate. It
4 affects the breathing.

5 Obviously he had had a breathing tube put in and
6 he was having his breathing performed for him. But
7 the transport team noted that his heart rate and
8 blood pressure would regularly drop to unsustainable
9 levels, requiring numerous interventions in route to
10 our institution, even in the short drive that made me
11 very concerned that this was a severe injury and one
12 that he was going to have a difficult time surviving.

13 Q All right. And once he did arrive at Richland, what
14 happened next?

15 A Once he arrived at our institution we immediately put
16 in some invasive lines to monitor and give fluids.
17 He had an arterial line placed which is in order to
18 monitor blood pressure. He had a central venous line
19 placed which is a large catheter inserted into a vein
20 to allow medicines and fluids to be given at a rapid
21 rate. We changed his breathing tube out to one
22 slightly larger. He had had excessive air leaking
23 around the outside of that tube which was making it
24 hard to get air in and out of his lungs. So that was
25 done very quickly.

1 We also because of CT scan results and because
2 of his instability in route, we had the neurosurgeon
3 standing by at his arrival. And immediately after we
4 were done with our procedures the neurosurgeon placed
5 a monitor inside the skull to look at the pressure
6 and be able to assess how high the pressure was
7 inside of his skull because of the instability in
8 route.

9 Q Okay. And what type of procedure, if any, is done to
10 treat the bleeding and the swelling that you
11 described?

12 A To treat the bleeding and swelling inside the brain,
13 inside the skull, there's a number of different
14 things we can do. We give certain types of medicine
15 to help pull off fluid or decrease swelling in the
16 brain. We breathe at a faster rate for the child.
17 That helps cut down on some blood flow to the brain
18 and decrease the blood pressure that way.

19 In more severe cases of bleeding and swelling we
20 can cool the patient so that their brain becomes less
21 active and they require less energy and less blood
22 flow which can sometimes help. And in the most
23 severe cases the neurosurgeons can actually remove a
24 section of the skull to allow the swelling to
25 continue. If we have been unable to stop it, the

1 swelling can continue outside of the skull. That's
2 done in the most severe cases.

3 Q Were any measures taken other than you've described
4 in order to relieve that type of swelling in Daniel's
5 case?

6 A Child had received a number of different medications
7 in route to help decrease some of the swelling and
8 pull off some of the fluid that may have been
9 collecting inside of his brain. He had the monitor
10 placed that has the capability to drain fluid as well
11 if we need to. And upon his arrival he was already
12 fairly cool. His body temperature was about
13 94 degrees.

14 If he needed more stability in his blood
15 pressure and in his heart rate and in his overall
16 status initially, we would have then gone on to
17 consider other interventions. Unfortunately, he
18 was -- he made it very evident very quickly that the
19 injuries he sustained were not going to be
20 survivable.

21 Q All right. And understanding his situation and his
22 severe injuries, how important is it to try and
23 obtain a history from the caretaker to determine what
24 might have happened in order to offer medical
25 intervention?

1 **A.** Any time we have children who arrive critically ill,
2 the history is incredibly relevant to what we do.
3 Whether it's the course of bacterial illness at home
4 and the pattern of fevers and what antibiotics have
5 been administered by other physicians, what
6 interventions have been done by parents at home and
7 what parents observe, things that parents observe
8 help us greatly in narrowing down our diagnosis from
9 a very large list to a very targeted list that can --
10 oftentimes the parents' history can be the relevant
11 factor in figuring out what exactly is going on.

12 Whenever we have an injury to a child, whether
13 it be a car accident, whether it be a fall or whether
14 it be abuse, the mechanism and manner of the injury
15 helps us determine how severe the injury is going to
16 be, what happened to the child immediately following
17 the injury, were they breathing effectively, were
18 they not breathing effectively, as well as what other
19 injuries we perhaps need to look for in the child.

20 **Q** And did you have the opportunity to speak to the
21 child's mother, Martina Putnam, concerning Child and
22 what might have happened to him?

23 **A** I did briefly. Yes.

24 **Q** And did you consider that to be necessary for medical
25 diagnosis and treatment?

1 **A** I did.

2 **Q** And also necessary to medical diagnosis and
3 treatment, did you have with you the histories that
4 were obtained by any other staff member in regard to
5 Child treatment?

6 **A** Yes. I reviewed the history obtained at the outside
7 hospital by Dr. Bailey as well as history obtained by
8 the resident who was on that day as well as myself.

9 **Q** All right. Now, what is your understanding, Dr.
10 Cartie, based on the history of what had happened to
11 Child

12 **A** According to the history that we obtained, the
13 patient, Child had been in his usual state of
14 health the day prior and the day of his presenting to
15 the emergency room. According to the history
16 obtained, the mother went to give him a bath. She
17 noted that the patient had stopped breathing. This
18 was a slight variation from the report by Dr. Bailey
19 at the --

20 **MR. HOWLE:** Objection to him referring to these
21 other things. If he wants to talk about what she
22 told him, that's one thing. But there's nothing to
23 indicate that what he received or was looking at was
24 typed correctly or there may have been some other
25 errors.

1 **THE COURT:** The objection is based on --

2 **MR. HOWLE:** Well, he said he's just looking at
3 other things to try and see if this is consistent
4 with that. And those reports are such that they're
5 not in evidence or anything else. I don't know what
6 he's looking at. If he wants to refer to what she
7 may have told him specifically, that's fine. But --

8 **THE COURT:** Well, I think the witness can offer
9 testimony based on matters gathered in accordance
10 with his own factors. Any information he considers
11 customarily in forming opinions --

12 **MR. HOWLE:** My objection is we don't know if
13 that was correct information, whether it was
14 transferred correctly, typed correctly or misheard or
15 anything else.

16 **THE COURT:** All right. Ms. Mayes, if you would
17 please lay a little bit firmer foundation what he was
18 considering other than what the mother told him.

19 **MS. MAYES:** Yes, sir, Your Honor.

20 **Q** (By Ms. Mayes) How is history normally obtained by
21 physicians?

22 **A** Normally history is obtained by speaking with the
23 parent or caregiver or the patient themselves, as
24 well as reviewing any and all relevant medical
25 records. And that can include but is not limited to

1 EMS reports, outside institutions such as emergency
2 rooms or outside physicians' offices, any results of
3 any tests that have been done at outside
4 institutions, as well as old medical records that
5 have been from previous admissions or from a birth
6 history.

7 Q Okay. And do you know whether there were specific
8 notations by Dr. Bailey concerning a history provided
9 on this child?

10 A There were.

11 Q Okay. And what is your understanding of what had
12 happened to Child considering all of the history
13 that you had and them trying to determine which
14 series of events might be -- which series of events
15 might be the most accurate, the most detailed to try
16 and determine what happened?

17 A The history of events were such that, as I said, the
18 child had been in his previous state of health prior
19 to the events described by the mother. And she had
20 described to me that she had gone to give him a bath
21 and she noted that he had stopped breathing and that
22 she had started some rescue breaths given; which for
23 her, because the child had been a premature infant,
24 was something that she had been trained in prior to
25 the child being discharged from the neonatal

1 intensive care unit approximately a year prior.

2 The history obtained from Dr. Bailey revealed
3 that the patient may have stopped breathing while she
4 was giving him a bath, at which point she gave some
5 rescue breathing.

6 Q All right. And do you have with you your records
7 concerning your conversation with Ms. Putnam as well
8 as particularly that was obtained by other physicians
9 there at Richland as well?

10 A I do.

11 Q How specific or detailed are you in trying to
12 determine whether there's been any significant
13 accident or a sign of injury prior to an event such
14 as a child stopping breathing?

15 A We always try and figure out a very detailed history,
16 minute-by-minute, moment-by-moment to determine what
17 the exact sequence of events were prior to and
18 including the time when a patient stops breathing.
19 Those can often be relevant to determine what causes
20 a child to stop breathing as well as what was
21 immediately happening prior to that time where they
22 stopped breathing.

23 Q All right. And specifically, did you ask Ms. Putnam
24 whether the child had to her knowledge sustained any
25 type of fall?

1 **A** I did.

2 **Q** And what was her response?

3 **A** There was no history at all given of any type of
4 accidental injury, accidental fall, accidental blow
5 to the head. There was almost no history of anything
6 happening to the child prior to the time when he
7 stopped breathing.

8 **Q** And, in fact, how detailed are you in trying to
9 determine whether there was any sign of unusual
10 behavior or symptoms of injuries?

11 **A** I'm always very detailed, especially when we can't
12 get any information about what exactly happened to
13 try and find out from parents were there things that
14 were things that they didn't recognize were abnormal
15 or were things -- were there periods of time when the
16 child was unwitnessed. So we really try to find out
17 exactly what could have happened to result in
18 whatever illness presents the child to our
19 institution.

20 **Q** And did Ms. Putnam relate to you any period of time
21 in which Child had been acting abnormal or unusual
22 that morning prior to him stopping breathing?

23 **A** There was none whatsoever.

24 **Q** And so with this history of a child who is acting
25 normal and nothing appears to be unusual and they

1 stop breathing, how do you go about trying to
2 determine what the actual injuries are based on this
3 type of history?

4 **A** We look for everything. When we have something that
5 doesn't fit the clinical picture that we see, we have
6 to consider that there is other things going on that
7 we're either not seeing or that we have not been told
8 about. And so we -- you know, unfortunately, the
9 most likely situation in that type of a history or
10 that type of a story prior to the child's arrival
11 makes us very concerned for child abuse.

12 **Q** All right. And you had mentioned that a CT scan had
13 been done at Tuomey. Can you tell us whether you had
14 the opportunity or staff members at Memorial had the
15 opportunity to review that when Child arrived?

16 **A** I had the opportunity to see both the CT scan and the
17 reports of the CT scan.

18 **Q** All right. And based on that, were you able to
19 determine what Child actual injuries were?

20 **A** There was evidence of bleeding inside the skull and
21 around the brain indicating that there had been some
22 type of traumatic injury.

23 **Q** All right. And you describe the bleeding in the
24 brain. Can you give us the medical term for that?

25 **A** In his case it was a subdural hematoma.

1 Q All right. And what happened next after you
2 determined that the child's injury is actually more
3 than just stopped breathing but that he's actually
4 bleeding inside the brain?

5 A We then begin to target our therapies around that
6 injury. We start to be worried about swelling. We
7 start to be worried about ongoing blood loss, at
8 which point we involve the neurosurgeons.

9 Q All right. And what other types of -- what else aids
10 in his diagnosis in trying to determine what may have
11 actually happened? Are there any other physical
12 signs and symptoms that you're looking for in order
13 to try to determine what type of traumatic injury may
14 have occurred?

15 A When there is an absence of historical description of
16 any type of traumatic injury, we have to consider
17 child abuse as the leading diagnosis. In addition to
18 a head CT, it is routine for us to also perform a
19 skeletal survey, an x-ray of all of the bones of the
20 child, as well as a retinal exam by either ourselves
21 or the ophthalmologist in order to look for retinal
22 hemorrhages, bleeding in the back of the eyes, to
23 indicate some type of abusive head trauma.

24 Q All right. I want to ask you a little bit more about
25 that. Why would looking for retinal hemorrhages be

1 significant in relation to child abuse?

2 **A** We typically see retinal hemorrhages as one of the
3 indicators of child abuse, especially when there has
4 been no description of any traumatic injury.

5 **Q** All right. And when you talk about retinal
6 hemorrhages, we're talking about what part of the
7 body?

8 **A** The retina is the lining of the back of the eyeball
9 where information is changed from light and shape
10 into electrical impulses that your brain can
11 interpret.

12 **Q** Okay. And why is it, Dr. Cartie, that retinal
13 hemorrhages may appear in conjunction with child
14 abuse? What is the mechanism or correlation between
15 retinal hemorrhages in child abuse and a subdural
16 hematoma?

17 **A** Retinal hemorrhages are caused by breaks and tears in
18 the small blood vessels that line the retina. Those
19 blood vessels are fed through the center of the eye
20 in the optic nerve. If a significant traumatic
21 injury occurs, whether it be a blow to the head or
22 whether it be a shaking injury, the traction and the
23 shearing on those blood vessels from the head being
24 hit or being shaken back and forth is enough to tear
25 those blood vessels and cause bleeding into the

1 retina in the lining of the back of the eye that can
2 be seen by a physician.

3 Q All right. And let me ask you in the case of Child
4 did you have the opportunity to look at him
5 to determine whether he did in fact have retinal
6 hemorrhages?

7 A I did.

8 Q And what was your diagnosis?

9 A There were very evident retinal hemorrhages that I
10 could see. As well as we consulted the
11 ophthalmologist shortly after his arrival, and they
12 were able to look as well with some of their more
13 specific-to-their-specialty equipment, and they were
14 able to also confirm the presence of extensive
15 retinal hemorrhaging both on the surface and deeper
16 in the retina as well as actual bleeding around the
17 optic nerve itself which is something that is not
18 seen as often in severe child abuse cases.

19 Q All right. Dr. Cartie, I'm going to show you a
20 diagram here of the human eye and ask you if you
21 could step down momentarily and show us in accordance
22 with this diagram exactly what type of bleeding is
23 involved in retinal hemorrhages and in the type of
24 optic nerve hemorrhage that Child had?

25 A The back of the eye here is where the retina is

1 located. This is the front of the eye, the cornea
2 and the lens of the eye. The area right here is the
3 back of the eye where the retina -- I'm sorry --
4 where the optic nerve comes in. The blood vessel
5 that supplies the whole retina comes in at the center
6 of the optic nerve.

7 There are small blood vessels that actually can
8 be seen when you look into the back of the eye.
9 Anybody who has had a doctor look through the scope
10 into the back of their eye with the lights out, if
11 you've had an eye exam, that's what they're looking
12 at. They're looking for the light reflection off of
13 the back of the retina as well as looking at the
14 blood vessels in order to determine in older adults
15 if they can determine the presence of hypertension,
16 and in children we specifically look for things like
17 retinal hemorrhages.

18 And when there is a large head trauma or some
19 type of shearing injury from deceleration or shaking,
20 then the traction on the back of the eye with the
21 optic nerve can pull on those blood vessels and cause
22 bleeding into the areas of the retina that can be
23 seen by a physician looking into the lens.

24 Q Okay. Is it possible, Dr. Cartie, for you to
25 demonstrate the extensive nature of the retinal

1 hemorrhages that you described on Child whether it
2 is this diagram or something that you can draw on
3 your own?

4 **A** Basically the entire back of his eye where you would
5 normally see blood vessels along with some pale
6 tissue was entirely, just about entirely taken up by
7 hemorrhage. And so the hemorrhage, once the
8 ophthalmologist looked, was both on the surface of
9 the retina and deeper in the structures of the retina
10 itself. That was not something that I am capable of
11 evaluating but they were able to report in their
12 exam.

13 **MR. HOWLE:** Your Honor, in regard to that last
14 statement, any comment from someone else's evaluation
15 that says, I'm not qualified to comment on that, I'd
16 ask that any comments made regarding ophthalmology be
17 stricken because he's said that he's not capable of
18 evaluating it.

19 **THE COURT:** Ms. Mayes, come around for just a
20 second.

21 **MS. MAYES:** Yes, sir, Your Honor.

22 (Whereupon, a bench conference is had)

23 **Q** And to clarify, Dr. Cartie, in addition to your own
24 observations concerning these retinal hemorrhages,
25 did you have -- when you do a consult which you

1 mentioned such as with the ophthalmologist, do you
2 have access to their findings?

3 A I do. As well as I speak to them in the ICU. The
4 advantage we have of consultations is that they come
5 to us and so we're able to speak to them at the
6 bedside as they perform their consult.

7 Q And the records that you have with us today that led
8 to the diagnosis of treatment of Child were
9 the retinal hemorrhages depicted by the
10 ophthalmologist as well?

11 A They were.

12 Q And by that I mean drawn or were exhibited?

13 A They were.

14 Q Can you tell us in addition to a subdural hematoma
15 what is meant by the term a subarachnoid hematoma?

16 A The basic difference of that is just the location of
17 the bleeding. And where there are different linings
18 inside of the skull, there is different layers of
19 membranes that cover the brain and line the inside of
20 the skull. And depending on where blood layers out,
21 it will determine what the findings are.

22 When you have blood that's laying up against the
23 brain and into the brain crevices, for lack of a
24 better term, those typically are considered subdural.
25 They're underneath the dura which is the innermost

1 lining of the skull. Subarachnoid is some of the
2 other layers that are less common to find blood.
3 Some of the -- another term you may hear is epidural
4 which is a bleeding above the dura inside the skull
5 bone itself.

6 Q All right. And I'm going to show you what is State's
7 Exhibit 16 already in evidence and ask you if you can
8 generally show us or demonstrate where subarachnoid
9 and subdural bleeding would occur?

10 A Subdural would be blood inside this area here, and
11 subarachnoid -- I'm sorry. Subdural would be inside
12 this innermost layer laying on top of the skull, and
13 subarachnoid would be out here.

14 Q Okay. Now, can you tell us why bleeding occurs at
15 that location in relation to abusive head injuries?

16 A Generally one of the thoughts with abusive head
17 injury and any type of head trauma, there are small
18 connecting blood vessels that go between the inside
19 of the skull and the surface of the brain. Those
20 small blood vessels travel vertically between the
21 brain and the inside of the skull. If the brain is
22 moved vigorously, whether it be because of a blow to
23 the head, whether it be because of a deceleration
24 injury such as you might find of a child falling out
25 of a window, if some type of shearing occurs, those

1 blood vessels can break because of the movements of
2 the brain against the inside of the skull.

3 Q You used the example of the child falling out of a
4 window. What type of height are you referring to to
5 fall from a window to produce that type of injury?

6 A Typically second floor or higher is where we see
7 significant head injury causing bleeding such as
8 this. I have seen it on occasions in lower heights
9 such as a first floor window. But typically most of
10 the time a child falling out of a first floor window
11 will do reasonably well without any significant
12 bleeding in the brain.

13 Q Okay. Dr. Cartie, once the diagnoses was made of a
14 subdural hematoma and the retinal hemorrhaging, the
15 extensive bleeding around the optic nerve;
16 ultimately, were you able to make a diagnosis in the
17 case of Child concerning what type of
18 injuries he had?

19 A Yes. He had abusive head trauma and child abuse.

20 Q All right. And you determined that it is abusive
21 head trauma. Again, what do you mean by that? What
22 is the medical explanation for that type of injury?

23 A I'm not sure what you're --

24 Q Okay. When you refer to abusive head trauma, what is
25 the constellation of injuries involved in that?

1 **A** Abusive head trauma is the result of some type of
2 head trauma, whether it's a blow to the head or a
3 shaking injury or a child being thrown up against
4 something and striking the head at the hands of
5 another individual. The diagnosis is made by the
6 presence of the bleeding or signs and symptoms of
7 head trauma itself and extensive history taking that
8 does not reveal an injury or reveals a description of
9 an injury that is not consistent with the child's
10 developmental age or not consistent with the injury
11 that is found.

12 **Q** All right. Now, we've talked about developmental
13 age. Child was 13 months of age. Were you able to
14 determine whether he was at the level that most
15 13-month-old children are at, or were there any type
16 of delays there?

17 **A** Child had been born premature. He was born at 27
18 weeks which is just a bit shy of seven months
19 gestation. So he was born fairly significantly
20 premature. He had been in the neonatal intensive
21 care unit for six to seven weeks. He had to receive
22 support with a ventilator with a breathing machine
23 initially.

24 He had then improved and increased his feeding
25 and was able to gain some weight and was sent home

1 from the hospital with a monitor to look for any
2 instances of him not taking adequate breaths.
3 Premature infants when they are very premature can
4 have delay in their body's ability to keep breathing
5 when they're growing and approaching a more normal
6 gestational age of 40 weeks.

7 So he had to be sent home on the monitor for a
8 short period of time. I believe it was approximately
9 two months to continue to monitor him for any ongoing
10 problems, and then the monitor had been discontinued
11 and he did not require it any more.

12 His developmental age as a result of both his
13 prematurity and his ongoing issues was not that of a
14 13-month-old child. He was not verbal, which means
15 he was not speaking yet, as well as the fact that he
16 was also not walking.

17 Q All right. And did you have the chance to -- did you
18 all have a chance to obtain history from his mom
19 about what his motor skills were in terms of whether
20 he was ambulatory or walking?

21 A Yes.

22 Q Okay. And what was determined?

23 A It was determined that he was not ambulatory and
24 that -- I would have to check some of the other
25 records, but I believe he was sitting up at times and

1 was starting to get himself around. I'm not sure if
2 he was crawling or scooting but he was starting to
3 get himself around, which would not be inappropriate
4 for a child who had been born premature.

5 **Q** All right. And when we talk about a child who is
6 learning to scoot, learning to crawl, sitting up with
7 some capability or starting to sit up but not yet
8 walking, do you ordinarily expect to find external
9 bruises in such children?

10 **MR. HOWLE:** Your Honor, I object to that.

11 **MS. MAYES:** I can come back to that, Your Honor,
12 and lay a foundation.

13 **THE COURT:** All right.

14 **Q** Dr. Cartie, do your notes from the examination of
15 Child reveal whether any type of external bruising
16 was noted?

17 **A** There were.

18 **Q** Okay. And, in fact, in your own notes, did you
19 address the location of such bruising?

20 **A** I did.

21 **Q** All right. And I'm going to ask you if you could
22 take a look at this diagram, and as I ask you about
23 the location of each bruise, please indicate in the
24 diagram where that would occur on the body.

25 **A** He had myriad bruising on his right posterior upper

1 thigh. So that would be probably in that area. His
2 right knee, his right forearm and his lower back on
3 the right. And I noted here that there was a
4 question of a possible bruise on the left side of his
5 head in the temporal region around his ear.

6 **MS. MAYES:** Your Honor, we would offer this as
7 State's Exhibit -- I believe it's No. 18. 17.

8 **THE COURT:** What's on the back? Is there any
9 testimony about the back?

10 **MS. MAYES:** No, sir, Your Honor. We can just
11 remove the back.

12 **THE COURT:** All right. Any objection to the
13 front part, Mr. Howle?

14 **MR. HOWLE:** I'm going to object to it as being
15 cumulative to the pictures they've already entered.
16 They show the same bruises.

17 **THE COURT:** All right. Let's keep it for ID at
18 this point. I haven't seen the pictures, so I don't
19 know. But I'll reserve my ruling on that, Ms. Mayes,
20 due to his objection. But right now it's 18 for
21 identification?

22 **MS. MAYES:** 17.

23 **THE COURT:** 17 for identification. Okay.

24 **Q** I ask you to take a look at these photographs, Dr.
25 Cartie, which are in evidence. It would be State's

1 Exhibit 1, State's Exhibit 2, State's Exhibit 3,
2 State's Exhibit 4 and State's Exhibit 5. Considering
3 any bruising which may be noted in those photographs
4 in addition to the bruising that you observed
5 yourself and have noted, can you tell us whether or
6 not that type of bruising is necessarily expected in
7 a non-ambulatory child that's learning to scoot?

8 **A** With the exception of the one bruise to the knee, all
9 these injuries would not be consistent with the
10 developmental and described abilities of this child.

11 **Q** Now, going back to the history that was obtained by
12 the mother, did you have the opportunity to prepare a
13 summary concerning the your diagnosis and treatment
14 of Child

15 **A** I did.

16 **Q** And are you aware that the history included that the
17 child was eating?

18 **A** I was.

19 **Q** And are you aware that the history had included --

20 **MR. HOWLE:** Your Honor, these questions aren't
21 questions. They're leading.

22 **THE COURT:** He's testified extensively about
23 history. I suppose you're going to be asking him for
24 his opinions?

25 **MS. MAYES:** Yes, sir, Your Honor.

1 **THE COURT:** All right. If you would rephrase
2 those questions and just maybe make it less leading.
3 Is that your objection, Mr. Howle?

4 **MR. HOWLE:** Yes, sir, Your Honor. They are
5 strongly leading.

6 **THE COURT:** All right. That objection is
7 sustained.

8 **Q** All right. Can you tell us whether or not to a
9 reasonable degree of certainty a child who is sitting
10 up and then falls back onto a floor, can you tell us
11 whether or not to a reasonable degree of certainty
12 that would produce the type of injuries that you
13 described?

14 **A** That would not under any circumstances.

15 **Q** And why or why not?

16 **A** The amount of force required for these injuries are
17 extensive. They are comparable to injuries I see as
18 a result of a child being struck by a car, as a
19 result of a child falling out of a second-floor
20 window or a child being in a car wreck at 40 to
21 50 miles an hour.

22 **Q** All right. And can you tell us when such injuries
23 are inflicted or sustained by a child how those
24 symptoms develop? Can you kind of describe to us
25 what happens once such injuries are inflicted?

1 **A** With an extensive abusive head trauma such as this,
2 the symptoms of decreased responsiveness or
3 unresponsive or unconsciousness, seizures, apnea,
4 which is not breathing, those things would be
5 immediate or nearly immediate, within seconds to a
6 minute or two after the event occurred.

7 **Q** All right. And when you say within seconds or a
8 minute or two within when the event occurred, would
9 you expect a child to be able to eat his cereal after
10 such an injury?

11 **A** It would be unlikely.

12 **Q** All right. And what do you mean by that?

13 **A** In general, a child has a certain amount of basic
14 reflexes with regards to swallowing that may allow
15 formula to get into the stomach or actually the
16 airway if a bottle is put into his mouth when he is
17 minimally arousable or nearing unconsciousness.

18 **Q** Okay. So just for clarification, so it would require
19 someone to actually put the bottle down into the
20 child's mouth --

21 **A** Mm-hmm (affirmative).

22 **Q** -- when he is nearing unconsciousness?

23 **A** Yes.

24 **Q** I'm going to ask you specifically in a scenario where
25 a child is seated in a living room and eating cereal

1 from a spoon while seated and alert, would you expect
2 that scenario to occur after such injuries would have
3 been sustained?

4 **A** Absolutely not.

5 **Q** And why do you say absolutely not?

6 **A** These injuries would produce immediate altered mental
7 status. You know, a lay individual would recognize
8 that the child was not acting appropriately
9 immediately following this type of an injury.

10 **Q** And would you expect that child to be alert or
11 sitting up at all?

12 **A** No.

13 **Q** What is the clinical practice of pediatric intensive
14 care? How does that differ the way you look at
15 evaluating children with such injuries from a
16 different area of that, such as pathology where you
17 are looking at a deceased patient?

18 **A** Well, other than the obvious that I get to see
19 patients while they're still alive, I as a practicing
20 pediatric intensive care physician am able to gain
21 history from multiple sources such as parents in a
22 realtime situation. I get to see both ongoing and
23 future behaviors and responses of the body in a
24 clinical situation to my interventions. I also get
25 to see injuries that don't result in a child's death

1 and what those look like and how that clinical
2 scenario differs from a child who subsequently dies.

3 Q All right. And considering these injuries that you
4 saw and were diagnosing in Child would you expect a
5 lucid period of awareness from the child following
6 this constellation of injuries?

7 A Not at all.

8 Q Now, I want to ask you in hypothetical terms whether
9 or not you are familiar with something called the
10 epidural hematoma?

11 A I am.

12 Q Okay. And are you familiar with recent news coverage
13 that involved an actress who suffered an epidural
14 hematoma in a Canadian sea accident?

15 A Yes.

16 Q Known as Natasha Richardson. Are you familiar with
17 that?

18 A Yes.

19 Q And can you tell us why or what -- why some degree of
20 awareness or alertness in that type of case would
21 be --

22 MR. HOWLE: Your Honor, I don't understand what
23 she is wanting to do with this.

24 THE COURT: All right. Ladies and gentlemen,
25 right now we've been in the courtroom for just about

1 an hour. We're going to take a break at this point.
2 Please do not discuss the case. Of course you have
3 not heard all the evidence there is to hear. If you
4 need a soft drink, just let the bailiff know, let
5 your foreman know what you want, and we'll try to get
6 that for you. When you come back out in the
7 courtroom, you can certainly bring it with you. All
8 right. Thank you very much.

9 (Jury out at 10:39 a.m.)

10 **THE WITNESS:** May I step down, Your Honor?

11 **THE COURT:** Yes, sir. You just can't discuss
12 your testimony with anyone. All right. We'll take a
13 very brief break. We'll come back in and address
14 this point.

15 (Whereupon, a break is taken)

16 **THE COURT:** I'm going to sustain the objection
17 to the question pertaining to -- I think Ms. Mayes
18 referred to her as Natasha Richardson. I'll allow it
19 concerning the level or degree of hematoma from the
20 doctor, but we're not going to get into specific
21 cases, analysis of someone falling and what the
22 medical diagnosis might have been unless this doctor
23 was the treating physician. So I'm not going to
24 allow that. I just don't think that would be
25 appropriate.

1 I am going to ask the Court reporter to remove
2 the ID tag on the chart. I think that although that
3 chart might be somewhat cumulative, it's not
4 needlessly cumulative, which is the Rule 403 trigger
5 to keep that out. So, Mr. Howle, your objection on
6 that one is overruled.

7 All right, Doctor. You can have a seat back on
8 the witness stand.

9 (WHEREUPON, State's Exhibit No. 17 is admitted
10 into evidence.)

11 **THE COURT:** All right. Are we ready for the
12 jury, Ms. Mayes?

13 **MS. MAYES:** Yes, sir, Your Honor.

14 **THE COURT:** Mr. Howle, are you ready?

15 **MR. HOWLE:** Yes, sir.

16 (Jury in at 11:00 a.m.)

17 **THE BAILIFF:** All the jurors and the alternate
18 are in the courtroom.

19 **THE COURT:** All right, ladies and gentlemen. We
20 are ready to continue. All right, Ms. Mayes.

21 **MS. MAYES:** Yes, sir, Your Honor.

22 **Q** (By Ms. Mayes) And, Dr. Cartie, I believe before we
23 broke you had described that Child did in
24 fact have a subdural hematoma. Is that correct?

25 **A** That's correct.

1 Q What are some different types of hematomas or head
2 injuries, if you can just give us a general overview?

3 A The different types of head injuries primarily refer
4 to where the blood collects, whether it's subdural,
5 subarachnoid, epidural. Those reflect exactly where
6 the blood is collecting inside of the skull.

7 In addition to that, it can also indicate where
8 the blood is coming from. It sometimes is reflective
9 of the type of injury, but more frequently it helps
10 differentiate how much concern there is for brain
11 swelling, how quickly the surgeons need to consider
12 going to the operating room to clean out the blood or
13 clot material.

14 In addition, you can also have a head injury
15 that does not cause significant bleeding but can
16 cause through the deceleration or sheer forces injury
17 to the nerves that travel through the brain and you
18 get a general sort of swelling of the entire brain
19 tissue so there's not really any blood that collects
20 anywhere.

21 But individuals who are in car accidents or have
22 significant falls can sometimes have these types of
23 injuries that are diffuse and don't localize to any
24 area but can cause significant swelling and
25 significant problems.

1 Q All right. And you mentioned an epidural hematoma?

2 A Correct.

3 Q How about an epidural hematoma? What might be the
4 different qualities of an epidural hematoma?

5 A Epidural hematomas are related to a -- most
6 frequently are related to a sharp impact below to the
7 skull itself causing a very localized bleeding that
8 is slow in nature. I have taken care of a few of
9 these in the past. Most commonly I see it in
10 skateboarders who are usually doing something they
11 shouldn't on their skateboard who either jump
12 something or fall.

13 Typically, as with most teen-agers, they are not
14 wearing a helmet on their head or their head strikes
15 a wall, a step, a railing or something to that
16 effect; and they present to the hospital generally
17 awake, large headache, and they are found to have an
18 area of bleeding inside of the skull that is commonly
19 an epidural hematoma.

20 Q All right. And how, if at all, does that type of
21 injury, the epidural hematoma where someone may
22 appear awake and alert to you differ from what Child
23 had, a subdural hematoma?

24 A Well, this subdural hematoma is a bleeding in some of
25 the deeper areas of the brain. He had more

1 significant diffuse areas of bleeding. He had
2 swelling that was evidenced by his increased pressure
3 inside of his skull. And he had clinical symptoms
4 that were consistent with a more significant injury.
5 He was unresponsive. He was not breathing
6 effectively.

7 Q Now, I believe that you previously indicated that
8 Child arrived at your hospital following treatment
9 at Tuomey. Do you have a record as to what time he
10 arrived there?

11 A I would have to look. Let's see. His transport
12 record shows that he had vital signs taken under
13 their admission time at 14:25 which would be about
14 2:25 p.m. That's probably the closest number.

15 Q That would be approximate arrival time?

16 A That's correct.

17 Q And can you tell us, Dr. Cartie, ultimately what
18 happened to Child after his diagnosis and treatment?

19 A Following Child procedures that he underwent at
20 our institution, his placement of his monitoring
21 lines, his IV's, the change of his breathing tube,
22 his emergency catheter placed inside of his skull to
23 monitor the pressure and brain excess fluid, he
24 remained very unstable with blood pressure that was
25 intermittently falling to low, low levels, heart rate

1 that would intermittently fall to low levels, it was
2 very difficult to increase his body temperature,
3 indicating the severity of injury that he had
4 suffered. His laboratory values were consistent with
5 an overwhelming and near unsurvivable injury.

6 He continued to require blood pressure support
7 through the most -- the strongest medicines we have
8 to support the heart and support the blood pressure.
9 In spite of that, his heart rate continued to fall at
10 times; his blood pressure continued to fall at times,
11 requiring a number of occasions where he received CPR
12 chest compressions at the bedside in order to sustain
13 his blood pressure. And those events continued over
14 the next few hours until his time of death which was
15 18:38. So, 6:30, just after 6:30 p.m.

16 Q 6:38 p.m.?

17 A Correct.

18 Q And the death occurred on what date?

19 A The 10th.

20 Q It would have been the same day he arrived?

21 A Correct.

22 Q Beg the Court's indulgence. Nothing further at this
23 time, Your Honor.

24 **THE COURT:** Mr. Howle.

25 **MR. HOWLE:** Thank you, Your Honor.

CROSS EXAMINATION

BY MR. HOWLE

Q Dr. Cartie, you have looked at the pictures and referred to your notes in referring to the bruises that you've drawn here?

A Mm-hmm (affirmative).

Q You don't know how those bruises were created?

A No, sir. There was -- I don't know looking at the bruises how they happened, and there was no history obtained of how they happened.

Q So there's no history in regard to the six and nine-year-old brother?

A We have that history, but there was no history of how the bruises happened.

Q But they're all relatively small bruises in regard to possibly rough-housing, just playing with a six or a nine-year-old brother?

A The bruise to the forearm was significant enough that I certainly would not expect that from any sort of rough-housing. And there was no description provided by the mother as to when she had seen or if she had seen any sort of bruises.

Q You didn't ask her?

A I asked her about the bruises and if she knew about them or how they occurred, and there was --

1 Q She said she did not know?

2 A There was no history given.

3 Q But you were aware that there were two other children
4 in the home?

5 A Yes.

6 Q You made a comment in regard to something about
7 previous state of health in talking to her, what had
8 changed from the previous state of health.

9 A That's correct.

10 Q Exactly what was the previous state of health that
11 you were looking for changes?

12 A We -- when we asked about previous state of health,
13 we always want to know what the child does normally
14 and what he did differently that day. So there had
15 been no ongoing illnesses. There was no other
16 abnormal behaviors that had been noted by the mom.
17 Those are the types of things we look for to ask what
18 was occurring the days and hours prior to the child
19 becoming ill.

20 Q But this child being undeveloped had trouble
21 keeping -- crying a lot, things like that, she told
22 you. And he wasn't a real active child to see a lot
23 of changes anyway. Would you agree?

24 A There was -- this was a developmentally delayed child
25 who while he was not at his appropriate develop for a

1 13-month-old was doing many of the things that an
2 infant should do along his development and was
3 starting to -- and was continuing to develop, which
4 is one of the things we look for as both
5 pediatricians and ICU physicians so know whether a
6 child has had significant consequences from being
7 premature.

8 Q He wasn't verbal?

9 A Correct.

10 Q Wasn't walking?

11 A Correct.

12 Q Was sitting up maybe with help?

13 A Correct.

14 Q You don't know whether he was crawling or scooting?

15 A That's correct.

16 Q If it was determined at Tuomey that these injuries
17 were as severe as they were, is there any reason why
18 they would wait for an ambulance to come from
19 Columbia? Wouldn't a helicopter be better? Why
20 wasn't he put in an ambulance here and just drive him
21 to Columbia rather than waiting for yours to come?

22 A The reason why they wouldn't just bring a child to us
23 that was that ill is that we utilize a pediatric
24 transport team which is comprised of a pediatric
25 intensive care nurse and a pediatric respiratory

1 therapist. Those individuals have had extensive
2 experience in both the ICU and in transport.

3 Whenever we have a child who is critically ill,
4 there are often instances in which by sending our
5 transport team we can initiate therapy and continue
6 therapy in an ongoing manner while the child is being
7 transported. Most outside institutions do not have
8 that resource available to them with their EMS
9 standpoint.

10 Oftentimes you get EMT's; or, if you're lucky,
11 paramedics who while their capabilities are good for
12 first responders are certainly not as experienced in
13 the ongoing care and recognition of events in
14 critically ill children.

15 And as evidenced in this child by his
16 instability in route, we were doing as much as we
17 could to maintain the level of care along the way and
18 weren't decreasing the level of care provided. But
19 that is something we weigh continuously, the
20 expeditious arrival versus utilizing our transport
21 team.

22 Q So there's some loss of time though of getting him to
23 you by doing that?

24 A Because we knew about this child early on, shortly
25 after his arrival from Dr. Bailey, we actually had

1 our transport team mobilized prior to the completion
2 of their work up at Tuomey.

3 **MR. HOWLE:** Your Honor, I don't have any further
4 questions.

5 **THE COURT:** Redirect?

6 **MS. MAYES:** Yes, sir, Your Honor.

7 REDIRECT EXAMINATION

8 **BY MS. MAYES**

9 **Q** Just to follow up on Mr. Howle's question about the
10 history of the child, you were aware that he -- were
11 you aware at that point in time that he was
12 developmentally delayed?

13 **A** Yes.

14 **Q** Okay. And who did you get that history from?

15 **A** Well, we assessed that by speaking with the mother.
16 And knowing what is an appropriate developmental --
17 what are appropriate developmental behaviors for a
18 13-month-old and comparing that with the descriptions
19 of what she described this child would normally do,
20 we were able to ascertain that this child did have
21 some developmental delay.

22 In general, we compare that to their
23 chronological age and decide with his prematurity,
24 correcting for when he should have been born, what
25 was his age versus what was he acting like. If a

1 child's -- if a child is born, you know, four months
2 premature and they are now one year old and they're
3 only doing things a one-month-old infant should do,
4 that's significant that they aren't developing
5 appropriately.

6 If they are continuing along a normal
7 developmental path and just correcting for how early
8 they are, then we feel pretty good that there wasn't
9 any other significant injuries suffered as a result
10 of their prematurity which can happen in children.

11 Q Okay. And what was your understanding -- what is
12 your understanding of Child progression?

13 A He had been progressing. He had been developing. He
14 was starting to mobilized himself. While he wasn't
15 walking, this was something that was reassuring to
16 us. In addition, looking at his neonatal history, we
17 did not see any evidence of significant problems
18 suffered from a neurologic standpoint while he was a
19 neonate which would give him increased risk for
20 having more significant developmental problems.

21 Q All right. And as to the day in question, on
22 March 10th, 2007, did Martina Putnam report to you
23 any unusual feeding problems with Child on that day?

24 A I recorded none of those in my notes, and nor do I
25 recall any of those statements.

1 Q Thank you. Nothing further.

2 MR. HOWLE: Nothing further.

3 THE COURT: Thank you, sir. You can step down.
4 Any objection to this witness being excused?

5 MS. MAYES: No, sir, Your Honor. We ask that he
6 be excused.

7 MR. HOWLE: No, sir.

8 THE COURT: Thank you, sir. You can leave or
9 stay, whatever you like. Ms. Mayes.

10 MS. MAYES: Your Honor, the State rests.

11 THE COURT: All right, ladies and gentlemen.
12 The rules of procedure that we operate under require
13 me at this point to take a brief recess. Please go
14 to your jury room. I'll have you back out
15 momentarily. You may not discuss the case. You may
16 not thus begin to form anything in your own mind
17 about any conclusions to reach in this case. All
18 right. Thank you very much.

19 (Jury out at 11:17 a.m.)

20 THE COURT: All right, Mr. Howle. Any motions
21 from the defendant?

22 MR. HOWLE: Your Honor, we would make a motion
23 for a directed verdict at this time. I mean, we're
24 talking about a case here where we're talking like
25 the State says we can show this is impact injury; we

1 don't really know who did it. There are other people
2 there, but because she was the last person who
3 apparently was with the child, that's who we're going
4 to charge.

5 Through their own evidence, they have indicated
6 that there are certainly doctors who say there was a
7 period of time between the injury and when the child
8 stopped breathing there would have been a lucid
9 period of time, which certainly indicates that she
10 was not the person who did anything just because she
11 was the last person who was physically present with
12 the child.

13 I realize that some doctors are saying some
14 opposite things. But I still think they've charged
15 the wrong person. But in regard to that, I don't
16 think there's sufficient evidence to go to a jury to
17 indicate that she is in fact guilty of any kind of
18 child abuse. Therefore, we move for a directed
19 verdict.

20 **THE COURT:** All right. Ms. Mayes.

21 **MS. MAYES:** Yes, sir, Your Honor. This case is
22 a circumstantial evidence case based primarily on Ms.
23 Putnam's statement that she was with the child. He
24 appeared to be in a healthy state and then ultimately
25 when he became unresponsive.

1 I think the testimony from the physician
2 concerning the timing of these injuries which would
3 be immediate which in a light most favorable to the
4 State, at least there is some evidence in a light
5 most favorable to the State support moving forward.

6 **THE COURT:** All right. Of course the case law
7 is such that I should grant a directed verdict motion
8 when the evidence merely raises a suspicion of guilt.
9 Of course the overall rule on a directed verdict is
10 if there is any competent evidence that would
11 indicate guilt. I don't weigh the evidence; I have
12 to consider the existence of the evidence.

13 It's an interesting issue in this case; but, Mr.
14 Howle, I'm going to deny your motion at this time. I
15 think that the case should be submitted to the jury
16 because there is evidence that reasonably tends to
17 prove the guilt of the defendant. We will revisit
18 that in case you present any evidence. So, in
19 essence, your motion is denied at this time.

20 All right. Mr. Howle, would you and the
21 defendant come forward, please. Mr. French, would
22 you place her under oath?

23 MARTINA PUTNAM, after being duly sworn,
24 testifies as follows:

25 EXAMINATION

1 **BY THE COURT**

2 **Q** All right. Your name, please, ma'am?

3 **A** Martina Putnam.

4 **Q** All right. Mr. Putnam, right now I'm going to
5 explain to you certain rights that you have under the
6 Constitution. You may have discussed this in advance
7 with Mr. Howle. I assume you did. But if you did
8 not, I'm going to talk to you about your rights under
9 the Fifth amendment.

10 If you want me to explain anything in more
11 detail than I do as I go along, you simply let me
12 know. This is not a closed session for me to talk.
13 It's going to require some response from you as to
14 certain questions. Do you understand that?

15 **A** (Nods head affirmatively).

16 **Q** All right. We have reached the stage of the trial
17 now where you may present your defense. But you do
18 have the right to claim protections given to you by
19 the Fifth amendment to the United States
20 Constitution. And, in essence, that amendment states
21 that no person in a criminal case can be compelled to
22 testify against himself or herself. Do you
23 understand that?

24 **A** Yes, sir.

25 **Q** That means that nobody can make you testify. Anyone

1 who is a defendant in a criminal case can't be
2 required to testify. Nobody in this courtroom and
3 nobody outside of this courtroom can make you
4 testify. Your own lawyer cannot force you to
5 testify. The State can't force you to testify. But
6 you do have the right to testify in your own behalf.
7 The right that you have under the Fifth amendment is
8 a personal right and no one can give up that right
9 except for you.

10 Now, if you decide to testify, you will be
11 subject to the same rules that govern the direct
12 examination or the cross examination of any other
13 witness who has testified.

14 Does the defendant have any type of criminal
15 record?

16 **MS. MAYES:** No, sir, Your Honor.

17 **MR. HOWLE:** No, sir.

18 **THE COURT:** All right. If you did, there would
19 be certain rules that govern the questioning of you
20 in that regard. But since you don't, I won't cover
21 it.

22 But again, in essence, the rules of evidence
23 that govern the questioning of any other witness in
24 this case would apply to you as well. If you decide
25 to testify, that decision on your part has to be made

1 freely, voluntarily and intelligently with full
2 knowledge on your part of the rights and privileges
3 that you enjoy pursuant to the Fifth Amendment.

4 If you decide not to testify, I would instruct
5 the jury very specifically that the jury cannot
6 consider the fact that you did not testify and hold
7 that against you in any way. I will tell the jury
8 that they can't think about it, they can't talk about
9 it and that it is not to play any part whatsoever in
10 their reaching of a verdict in this case.

11 Now, it's left entirely up to you as to whether
12 or not you want to testify in this case. You may
13 talk to your attorney about it. You may want to talk
14 to him some more about it. You may want to talk to
15 anyone else who is connected to the defense of this
16 case, including, but certainly not limited to,
17 members of your family or friends that you may want
18 to consult with.

19 Did you understand everything I've explained to
20 you?

21 **A** Yes, sir.

22 **Q** Do you have any questions about what I have explained
23 to you?

24 **A** No, sir, Your Honor.

25 **Q** Have you discussed with your lawyer whether or not

1 you will testify?

2 **A** Yes, I have.

3 **Q** Do you want to talk with him some more?

4 **A** I would like to.

5 **Q** All right. We'll take a few minutes in that regard.
6 When we come back and get on the record, Ms. Putnam,
7 I'm going to ask you again whether or not you've had
8 sufficient time to discuss it with your lawyer and to
9 make up your mind. And I will again ask you whether
10 or not you understand those rights. Okay?

11 **A** Okay.

12 **Q** All right. Thank you.

13 **THE COURT:** We'll take a break. Mr. Howle, if
14 you need to -- is there a -- there's probably not an
15 empty jury room, but if there is a place that --

16 **MR. HOWLE:** We'll go in the back, Your Honor.
17 Yes, sir.

18 **THE COURT:** All right. Okay. We'll take a
19 break for a few minutes. Mr. Howle, you alert the
20 bailiffs when you finish that and they'll let me
21 know.

22 **MR. HOWLE:** Yes, sir.

23 (Whereupon, a break is had at 11:23 a.m.)

24 **THE COURT:** Are you requesting that we break for
25 lunch now?

1 **MR. HOWLE:** Yes, sir, Your Honor.

2 **THE COURT:** All right. If we start at 1:15,
3 we'll be ready to go promptly at that time and
4 everybody will be -- won't be needing any extra time?

5 **MR. HOWLE:** I do not think we will.

6 **THE COURT:** Okay. Ms. Mayes, you agree with
7 that?

8 **MS. MAYES:** Yes, sir. With the exception of
9 depending upon what may or may not come out during
10 the course of the defense case, we may need to offer
11 reply. So we may need a few brief moments to -- with
12 the understanding our witnesses would be here.

13 **THE COURT:** That's fine. That's fine. I'm just
14 talking about the 1:15 start time.

15 **MS. MAYES:** Yes, sir, Your Honor.

16 **THE COURT:** And if we do that, assuming that you
17 don't have any reply, we'll take a very brief break
18 just to renew motions and other things. I wanted --
19 what I wanted to do was have a witness testify before
20 lunch and then take some time to go over this charge.
21 But I'm definitely going to do the arguments and the
22 charge today unless there is lengthy reply. I was
23 hoping that we would be able to get some more
24 testimony in before 1. But I'll accommodate you, Mr.
25 Howle.

1 **MR. HOWLE:** Thank you, Your Honor.

2 **THE COURT:** I'll bring the jury in, tell them to
3 be back in at 1:15. You can bring in the jury. And
4 if you have any printed requests to charge, you all
5 may hand those up now.

6 **MS. MAYES:** I do not, Your Honor. We'll work on
7 them and get them to you.

8 **THE COURT:** All right. If you get a copy to me,
9 that will be fine.

10 (Jury in at 11:51 a.m.)

11 **THE BAILIFF:** All the jurors and the alternate
12 are in the courtroom.

13 **THE COURT:** All right. Ladies and gentlemen, we
14 are actually going to break for lunch at this time.
15 And I apologize for keeping you in the jury room for
16 a period of 15 minutes or so just to bring you out
17 and tell you that, but what we're trying to do is get
18 the case moved along and concluded in an orderly
19 fashion.

20 Under the circumstances, what we're going to do
21 now is break. It's ten minutes 'til 12 according to
22 that back clock. If you would be back in your jury
23 room at 1:15, we will still start at that time.
24 Unequivocally, I'm telling you that. We'll start
25 right at 1:15. So I'll see you then.

1 You may not discuss the case. Just put it out
2 of your minds. And as I told you earlier, don't read
3 anything about it, look at anything about it, listen
4 to anything about the case and don't undertake to do
5 any investigation or research on your own. All
6 right. We'll see you back at 1:15. Thank you.

7 (Jury out at 11:52 a.m.)

8 **THE COURT:** All right. We'll go back on the
9 record at ten after 1 and I will ask my final
10 questions of the defendant as to whether or not she
11 is going to testify. Will she be your first witness
12 if she testifies?

13 **MR. HOWLE:** A proffer probably, Your Honor.

14 **THE COURT:** All right. We will not do any
15 proffer unless you tell me now that we can do this at
16 quarter to 1. Because I've told the jury that we're
17 going to start with them at 1:15. If she is not the
18 first witness, Ms. Mayes said in chambers she may
19 have some issues with whatever other witness you
20 have. I don't know who it is. But if there are some
21 issues, I expect you all to let me know during lunch
22 what they are. But we're going to start with the
23 testimony at 1:15.

24 **MR. HOWLE:** Yes, sir.

25 **MS. MAYES:** I can let you know now, Your Honor.

1 **THE COURT:** All right. Okay.

2 **MS. MAYES:** My understanding is that the
3 potential second witness that the defense may offer
4 is the foster mother of Sibling 1 and Sibling 2
5 Following their removal on March 10th, 2007 by Sumter
6 County law enforcement, DSS places them in her foster
7 care home. I believe it was about two or three days
8 after their removal Sibling 1 had a physical altercation
9 with his six-year-old brother, and as a result of
10 that altercation he was taken to MUSC in Charleston.

11 **THE COURT:** Who was taken to MUSC?

12 **MS. MAYES:** Sibling 1 the nine-year-old, at the
13 recommendation of DSS. He was sent to MUSC for an
14 evaluation. Which when you have situations in foster
15 care, whether it be physically acting out or sexual
16 abuse acting out or anything of that nature, that's
17 not uncommon. But my understanding is that's
18 probably the line of testimony we'd get into which
19 may certainly lead to, depending on where that goes,
20 to an objection on part of the State on the grounds
21 of third party guilt.

22 **THE COURT:** What would be the relevance of that,
23 Mr. Howle?

24 **MR. HOWLE:** Your Honor.

25 **THE COURT:** Or is she accurate in what your

1 reason for calling her would be?

2 **MR. HOWLE:** Well, not exactly. I'm not so much
3 concerned of the fact that he was sent to MUSC for
4 this evaluation. But what he did, he kicked his
5 brother in the chest and he kicked him so hard you
6 could see the shoe print on his chest; to show since
7 this is the same boy that says he went in that
8 morning, took him out the crib.

9 **THE COURT:** Will she be your first witness after
10 lunch?

11 **MR. HOWLE:** If you want her to be my first
12 witness, Your Honor, I can call her ahead of her.

13 **THE COURT:** We're going to start at 1:15 with
14 this jury. Now, I'm not going to start any later
15 than that. We can do the proffer now or we can do it
16 at 1:00, but the jury is going to be in the courtroom
17 at 1:15.

18 **MR. HOWLE:** Yes, sir.

19 **THE COURT:** So you all are going to have to do
20 it at 1:00.

21 **MR. HOWLE:** I need to talk to the lady who just
22 came in this morning. I'm trying to put her on stand
23 without even talking to her.

24 **THE COURT:** Well, I think she's been here for a
25 couple of days.

1 **MR. HOWLE:** No, sir.

2 **THE COURT:** She was here yesterday.

3 **MR. HOWLE:** No, sir.

4 **THE COURT:** All right. What's her name?

5 **MR. HOWLE:** Starnes.

6 **THE COURT:** Starnes? Okay. All right. And
7 what would be the relevance in this case to the
8 facts? What would be the relevance of her testimony
9 to the facts in this case?

10 **MR. HOWLE:** Your Honor, to show that someone
11 else who was in the home who had access to the child
12 that very morning has these violent propensities. He
13 did it towards his other brother. To show, you know,
14 expected behavior.

15 **THE COURT:** Do you have any case law on that
16 that you'd be able to find?

17 **MR. HOWLE:** I don't, Your Honor. But I can look
18 for things at lunch, Your Honor.

19 **THE COURT:** Well, I would assume that you all
20 would know that this would be a point of contention.
21 So I'll do some research during lunch and see if I
22 can find something myself. But why don't you all be
23 back at ten 'til 1 and we'll go back on the record at
24 1 for that proffer.

25 **MS. MAYES:** Your Honor, may I mention that the

1 case of State v. Cope, I believe that's going to be a
2 recent case from April of 2009, it is opinion number
3 4526, State v. Cope, and it's a recent third party
4 guilt case where it was addressed about the Supreme
5 Court going back to the original adoption of the
6 third party guilt rule that was established back in
7 State v. Gregory from 1941.

8 A quick synopsis is that evidence which would
9 have no other effect but to raise a bear suspicion
10 towards someone else is inadmissible. And I'm going
11 to have my hands on that case momentarily and I can
12 give it to your law clerk.

13 **THE COURT:** Well, I can find it. It's
14 April 11th. A week ago?

15 **MS. MAYES:** That's my understanding, Your Honor.

16 **THE COURT:** All right. Mr. Howle, is ten
17 minutes 'til 1 too early?

18 **MR. HOWLE:** If that's the time you want to
19 start, that would be fine.

20 **THE COURT:** No. I'm talking about we're going
21 to go on the record at 1. What I'm trying to avoid
22 is what we continue to do, is start ten to fifteen
23 minutes late. And if you need more time, that's
24 fine. But every time we assure the jury we're going
25 to start at a certain time, we don't. And I don't

1 think that's the right way to do it. So if you want
2 more time, just let me know and I'll consider it. Do
3 you need more time to talk with this witness other
4 than the lunchtime?

5 **MR. HOWLE:** I do not think I will, Your Honor.

6 **THE COURT:** Is she under subpoena?

7 **MR. HOWLE:** Yes, sir.

8 **THE COURT:** Okay. All right. Okay. I'll be in
9 the office. I won't be going anywhere.

10 **MR. HOWLE:** Thank you, sir.

11 (Whereupon, a lunch break is taken)

12 **THE COURT:** Mr. Howle, will Ms. Starnes be your
13 first witness?

14 **MR. HOWLE:** Yes, sir, Your Honor.

15 **THE COURT:** Okay. You can call her on up.

16 **MR. HOWLE:** Ms. Starnes.

17 **THE CLERK:** Place your left hand on the Bible.
18 Raise your right hand. State your full name, please.

19 **THE WITNESS:** Terri L. Starnes.

20 TERRI L. STARNES, after being duly sworn,
21 testifies as follows:

22 **THE CLERK:** State your name. Spell your last
23 for the record.

24 **THE WITNESS:** Terri L. Starnes, S-T-A-R-N-E-S.

25 DIRECT EXAMINATION

1 **BY MR. HOWLE**

2 **Q** Good afternoon, Ms. Starnes. Ms. Starnes, where do
3 you live here in Sumter?

4 **A** 2365 Equinox Avenue in Dalzell.

5 **Q** Are you presently employed?

6 **A** No, sir. I'm on disability.

7 **Q** And where did you work previously?

8 **A** Tuomey Regional Medical Center and also Clarendon
9 Memorial.

10 **Q** And what did you do at those hospitals?

11 **A** I was a licensed nurse, LPN.

12 **Q** What kind of nursing?

13 **A** Well, I was an LPN but I had a certification in
14 neonatal care.

15 **Q** Now that you are medically retired from that, is
16 there anything else that you do now?

17 **A** Foster care.

18 **Q** And what qualifications do you have for being a
19 foster care parent?

20 **A** Well, my medical training, for one; and then just
21 I've always worked with kids, you know, through my
22 medical training. And every two years my husband and
23 myself, we have to have 28 college credits to keep
24 our foster care license.

25 **Q** So you're certified as a foster parent?

1 A Yes, sir.

2 Q And does the Department of Social Services use you
3 and your husband for placement of children?

4 A Yes, sir.

5 Q In 2007 were you and your husband taking children at
6 that time?

7 A Yes, sir.

8 Q How many children did you and your husband have in
9 foster care in 2007?

10 A A total of sixteen kids.

11 Q And what were the age ranges of those children?

12 A From two months to sixteen years.

13 Q During the placement of children, did you ever have
14 Sibling and Sibling 2 in your care?

15 A Yes, sir, I did.

16 Q Do you remember roughly when they were with you in
17 your home?

18 A March of 2007. I don't remember the exact dates, but
19 ...

20 Q And how long were they with you?

21 A Sibling 2 was with us I want to say maybe a couple of
22 months. Sibling 1 was there for a short time.

23 Q Was there any particular reason why Sibling 1 did not
24 stay there as long as Sibling 2

25 A Yes, sir. There was an incident where Sibling got

1 physically aggressive with Sibling 2 and kicked him in
2 the chest and left a shoe print on his chest. So I
3 felt at that time it was not safe to keep the boys
4 together.

5 Q All right. Were there any other actions you saw of
6 violence that he demonstrated when he was there?

7 A No, sir. Just the verbal aggression towards his
8 brother. That was the only physical incident that we
9 witnessed.

10 Q Okay. Did he require any hospitalization or going to
11 the doctor or anything? We were talking about Sibling 1
12 I'm talking about Sibling 2

13 A No, sir.

14 Q But as a result of that incident happening in your
15 home, did you then ask for him to be removed?

16 A Yes, sir. We felt it was in the best interest of
17 Sibling 2 for him to be removed.

18 Q Okay. I don't have anything further, Your Honor.

19 THE COURT: All right. Any questions, Ms.
20 Mayes?

21 MS. MAYES: Yes, sir, Your Honor.

22 CROSS EXAMINATION

23 BY MS. MAYES

24 Q What was the date of this incident, Ms. Starnes?

25 A I don't remember the exact date. He had been with us

1 two or three days when it happened.

2 Q All right. Now, you testified that you had had a
3 total of sixteen foster kids at that time?

4 A Yes, ma'am.

5 Q Were they all in the home at the same time, or would
6 you mean over the course of your experience of the
7 foster home?

8 A Over the course of that year.

9 Q And how many kids were there when Sibling 1 and Sibling 2
10 were there?

11 A Just Sibling and Sibling 2 and I have a son, Sibling 2 my
12 biological son.

13 Q Okay. And you mentioned that you have not only
14 experience as a foster care mom but also training in
15 that regard?

16 A Yes, ma'am.

17 Q All right. And I take it that some of the kids you
18 probably have in foster care of the sixteen kids that
19 you mentioned include special needs and physical
20 needs?

21 A Yes, ma'am.

22 Q All right. So you're aware from your training that
23 it's not unusual for kids who are in foster care to
24 act out violence or abuse that they have witnessed in
25 their home, correct?

1 **A** Right.

2 **MS. MAYES:** Nothing further, Your Honor.

3 **THE COURT:** All right. Anything further, Mr.
4 Howle?

5 **MR. HOWLE:** Nothing further, Your Honor.

6 **THE COURT:** Nothing further, ma'am. You can
7 step.

8 **THE WITNESS:** Thank you.

9 **THE COURT:** All right. Ms. Mayes, it's the
10 appropriate order to go in now. You indicated you
11 would object to the admissibility of this testimony.
12 If you could -- and, ma'am, you can just have a seat
13 right back where you were. I just want to make sure
14 you don't leave.

15 **THE WITNESS:** Okay. Yes, sir.

16 **THE COURT:** You would be objecting to this
17 testimony on what basis?

18 **MS. MAYES:** Yes, sir, Your Honor. First as to
19 relevance. Due to the remote nature that this
20 occurred, two to three days after the injury to the
21 child. And also that it appears to be character
22 evidence offered against someone who is not here and
23 has not testified. And then most significantly, Your
24 Honor, the third party guilt provision, which this
25 appears to be a situation where the defense is

1 raising a bear suspicion towards someone else, this
2 person being the nine-year-old brother, Sibling 1 And
3 it appears to be a scenario where there is no basis
4 to connect him to any injuries to the child, Child
5 Putnam, but instead to another sibling on another day
6 in a completely different set of circumstances. And
7 for that reason I do not believe that it fills the
8 requirements necessary for admission of third party
9 guilt evidence.

10 **THE COURT:** All right. Mr. Howle, now, the
11 witness's testimony was that this kicking event
12 occurred three days after the young Child died?

13 **MR. HOWLE:** Well, she said that he was there
14 with them two or three days, she wasn't sure, before
15 it happened. So it would have been probably two or
16 three days after.

17 **THE COURT:** Within a week after Child death?

18 **MS. MAYES:** It would have been a week. Yes,
19 sir, Your Honor.

20 **THE COURT:** All right. Just as an isolated
21 point, I don't think that is too remote. But what I
22 want to hear from Mr. Howle is how you respond to the
23 State's argument that this is inadmissible character
24 evidence under 404 and inadmissible third party guilt
25 evidence.

1 **MR. HOWLE:** Well, Your Honor, we think it's
2 certainly applicable for several reasons. One, this
3 whole characterization that the State says that Ms.
4 Putnam was the only one who had any access to the
5 child, Your Honor, we understand Sibling 1 was there
6 earlier and went into the room. So it's not just he
7 was in the house; he had actual access to him.

8 It's not so much characterizing his character as
9 to show that there is a propensity to do some
10 violence. While I don't know why he did it or what
11 he did, I don't think you can just characterize it as
12 acting out because he is leaving some home and is
13 with a foster home.

14 It just was an outright act of violence where it
15 was a kick to the chest. It was way beyond verbal.
16 And I think the fact that this child has exercised
17 that kind of conduct to a sibling makes it admissible
18 to show that that propensity could exist and could
19 have existed on that day.

20 **THE COURT:** All right.

21 **MR. HOWLE:** I mean, nobody was in the room to
22 see what he did. I understand that. I'm not trying
23 to say what he did or might not have done that
24 morning. But I think when you have someone who shows
25 that kind of conduct, and like I say, it's within

1 just a few days after that, that the jury should be
2 aware that someone who had access to the child also
3 has a history of doing that kind of thing.

4 **THE COURT:** All right. Anything else, Ms.
5 Mayes?

6 **MS. MAYES:** No, sir. Your Honor, it does
7 seem -- other than there does seem to be showing a
8 propensity of violence which is, in effect, third
9 party guilt evidence under this scenario.

10 **THE COURT:** Well, it's a difficult question
11 because the third party guilt cases refer to conduct
12 of another third party concerning the victim in
13 question. It's not one where two people were
14 allegedly overheard by a witness saying, yeah, we
15 killed that guy. If either one of those two were the
16 defendant, that was third party guilt evidence
17 relating to the specific incident for which the
18 defendant is under indictment. So, in that sense,
19 it's not truly third party guilt evidence.

20 If you look at it under 404(b), evidence of
21 other crimes, wrongs or acts, this would be an act
22 that is not admissible to prove the character of a
23 person in order to show action and conformity
24 therewith. And it doesn't restrict the prior bad
25 act, even though that's how we loosely refer to it,

1 as other bad acts, it is -- other bad act evidence is
2 admissible to show motive, identity, existence of a
3 common scheme or plan, or the absence of mistake or
4 accident or intent.

5 What I am struggling with is, under that
6 analysis, and just accepting Ms. Starnes' testimony,
7 I think it's clear and convincing that the young man
8 did kick the sibling. So we move past that hurdle.
9 But I don't think it's -- and case law I believe says
10 that the bad act has to logically relate to the crime
11 with which the defendant has been charged and there
12 has to be similarity between the two crimes.

13 And even if you adopt and lower the standard of
14 similarity, which a recent case talks about, State v.
15 Cope, which according to the heading has not been
16 released for publication, I still think that those
17 comments are correct.

18 But let me move straight to the point. The
19 defendant has to show that the other act, kicking the
20 sibling in the chest, is of a similar nature to the
21 shaking or the brain injuries sustained by Child I
22 don't think it survives that analysis under 404(b).

23 With regard to the third party guilt, in my view
24 the evidence offered by this witness doesn't do
25 anything but cast a bear suspicion of guilt on a

1 third party. And I don't think it survives the
2 analysis of what the Supreme Court set forth in State
3 v. Gregory even as reigned in by the Holmes v. State
4 which is the U.S. Supreme Court case.

5 In other words, I think the Holmes -- the U.S.
6 Supreme Court case didn't nullify the ruling in
7 Gregory. It just kind of reigned our state courts in
8 on how far we are to go with it.

9 What Holmes prohibits me from doing is looking
10 at the case solely from my view of the strength of
11 the prosecution's case. I'm not looking at it from
12 that standpoint. I can still look at it from the
13 standpoint of whether this evidence does do anything
14 that casts a bare or mere suspicion of guilt on a
15 third party. Mr. Howle, do you think this evidence
16 does more than that?

17 **MR. HOWLE:** Your Honor, one of the comments you
18 made --

19 **THE COURT:** You're saying you're not so much
20 calling it third party guilt; but how else can I
21 analyze it other than under 404(b) or third party
22 guilt?

23 **MR. HOWLE:** Well, I would make the analogy that
24 the kicking was not the same kind of -- well, that
25 was an impact injury that a six-year-old may have

1 hurt and left a mark; whereas, an instance of -- I
2 still think it could be characterized as the same
3 kind of outburst. I mean, obviously I don't have
4 anything to show that this child was present in the
5 room, that he did something specific, that we heard a
6 scream or went in there. And I understand that.

7 The only thing that I can do is once I know that
8 he is present, that he went into the room unattended
9 is bring to the Court's attention that there have
10 been other instances within a few days of this where
11 he has demonstrated violent conduct toward a sibling.
12 And, Your Honor, that's only what it does, but I
13 still think it is relevant.

14 **THE COURT:** All right. Well, I think, Mr.
15 Howle, if my analysis is correct, it wouldn't come in
16 under 404(b) or under any thirty party guilty
17 scenario. I think the testimony has been
18 sufficiently proffered and I think the record is
19 protected, but I'm not going to allow the testimony.
20 Anything else?

21 **MR. HOWLE:** No, sir. Not with regard to that.

22 **THE COURT:** Are you ready to proceed otherwise?

23 **MR. HOWLE:** Yes, sir.

24 **THE COURT:** All right. Mr. Howle, are you
25 ready?

1 **MS. MAYES:** Yes, sir, Your Honor. I did mention
2 the issue in chambers, and if I do perceive any such
3 issues at the close of the direct examination, I will
4 approach the bench and bring it to your attention.

5 **THE COURT:** All right. We'll bring in the jury.
6 You have rested in front of the jury. Now, before we
7 bring in the jury, Ms. Putnam, you can stand to make
8 sure you can hear me. You're still under oath. Have
9 you fully discussed with your lawyer as to whether or
10 not you are or are not going to testify?

11 **MS. PUTNAM:** Yes, sir.

12 **THE COURT:** And what is your decision?

13 **MS. PUTNAM:** I am going to.

14 **THE COURT:** All right. Are you making that
15 decision freely and voluntarily with full knowledge
16 of the rights that I explained to you before lunch?

17 **MS. PUTNAM:** Yes, sir.

18 **THE COURT:** And do you need my more time to
19 think about it?

20 **MS. PUTNAM:** No.

21 **THE COURT:** All right. Mr. Howle, do you have
22 any additional questions you want me to ask?

23 **MR. HOWLE:** No, sir, Your Honor.

24 **THE COURT:** All right. I do find that her
25 decision to testify has been made freely and

1 voluntarily with full knowledge of her rights of the
2 Fifth Amendment. As this jury walks in, if you
3 change your mind, you simply let Mr. Howle know. All
4 right. Thank you. You may bring the jury in.

5 (Jury in at 1:21 p.m.)

6 **THE COURT:** All right, ladies and gentlemen. As
7 was indicated before lunch, the State has rested its
8 case, and that means under the rules the State has
9 presented the evidence it is going to present in its
10 case in chief.

11 All right, Mr. Howle. Will the defendant be
12 presenting any evidence?

13 **MR. HOWLE:** Yes, sir, Your Honor.

14 **THE COURT:** All right. You can call your first
15 witness.

16 **MR. HOWLE:** Your Honor, we call Martina Putnam.

17 **THE CLERK:** Place your left hand on the Bible.
18 Raise your right hand. State your name, please.

19 **THE WITNESS:** Martina Putnam.

20 MARTINA PUTNAM, after being duly sworn,
21 testifies as follows:

22 **THE CLERK:** State your name. Spell your last
23 for the record.

24 **THE WITNESS:** Martina Putnam, P-U-T-N-A-M.

25 DIRECT EXAMINATION

1 BY MR. HOWLE

2 Q Martina, are you from South Carolina?

3 A No, sir.

4 Q Where did you grow up?

5 A Originally in Hampton, Virginia.

6 Q And what did your family do that made you all live in
7 Hampton?

8 A My father was in the Navy.

9 Q And he was stationed in Hampton?

10 A No. He was stationed in Norfolk, Virginia.

11 Q Okay. All right. How long was he there that -- I
12 mean, all total, how long did you live in Hampton?

13 A About ten years, twelve years.

14 Q Were you living in Hampton when you got married?

15 A No. I was living in North Carolina at the time.

16 Q All right. You had already moved out of Hampton and
17 moved somewhere else?

18 A Yes.

19 Q All right. And who did you marry?

20 A My first husband, Ronnie Thomasson.

21 Q And when was that marriage?

22 A In 1994.

23 Q Did you and Mr. Thomasson have any children?

24 A Yes.

25 Q And what are those children's names?

1 **A** Sibling 1 and Sibling 2

2 **Q** Okay. How long were you and Mr. Thompson married?

3 **A** Eight years.

4 **Q** And when did you divorce?

5 **A** In 2003.

6 **Q** And as a result of that divorce action, who was given
7 custody of the children?

8 **A** I was.

9 **Q** And what year was that? In 2003?

10 **A** Yes.

11 **THE COURT:** Wait a second, Mr. Howle.

12 **COURT REPORTER:** Judge, I can't hear her. I'm
13 sorry.

14 **THE COURT:** Yeah. If she moves the microphone
15 closer, that's good.

16 **COURT REPORTER:** Thank you.

17 **THE COURT:** Is that close enough?

18 **COURT REPORTER:** That's fine.

19 **THE COURT:** I'm sorry, Mr. Howle. Go right
20 ahead.

21 **Q** After you and Mr. Thomasson divorced and you had
22 Sibling 1 and Sibling 2 where did you go? Where did you
23 go next?

24 **A** I moved to my mom's in Salem. Well, they were living
25 in Dayton, Oregon, which is about a half an hour

1 outside of Salem, Oregon.

2 Q Okay. Now, why did you move in with your mother?

3 A For cost reasons and for the help that she would
4 provide.

5 Q Were you doing any kind of part-time work once you
6 moved to Oregon?

7 A Yes, I was.

8 Q What was that?

9 A Numerous different things, odds and ends, delivery
10 driving for Domino's Pizza and different places like
11 that.

12 Q Okay. And who was keeping your children mainly when
13 you would be working?

14 A My mom.

15 Q And how did you meet Mr. Putnam, your present
16 husband?

17 A I was going to an orientation session in Lewiston,
18 Idaho for Swift Transportation, and I met him on the
19 ride out there.

20 Q Okay. When you say for some kind of orientation,
21 what kind of work was that?

22 A It's a long haul truck driving company.

23 Q Were you already doing some truck driving at that
24 time?

25 A Yes. I had already been licensed.

1 Q And what kind of license was that?

2 A I have to have a Class A CDL.

3 Q And you had that license?

4 A Yes.

5 Q You met Mr. Putnam, and when were you married?

6 A I met him in April, and we were married in June.

7 Q So just a couple of months then?

8 A Yeah.

9 Q Where did you and Patrick go to live then after you
10 were married?

11 A We moved down to the inlaws in Arizona.

12 Q And when you say inlaws, you're talking about Pat's
13 parents?

14 A Right.

15 Q And when was Child born?

16 A In February of 2006.

17 Q And he was born in Arizona?

18 A Yes.

19 Q Was there anything unusual about his birth?

20 A He was premature and he had severe apnea and reflux
21 issues. He had digestive problems and he had
22 retinopathy.

23 Q How long was he in the hospital before you were able
24 to take him home?

25 A They released him towards the end of April.

1 Q And when you say he had apnea, what exactly is that?

2 A He had moments where he wasn't breathing where he
3 would have to either be stimulated or there were
4 times where he'd stop and then start breathing again.
5 He'd catch himself.

6 Q Were you instructed on how to handle that if
7 something like that happened?

8 A Yes, I was.

9 Q How much longer did you and your family live in
10 Arizona before you moved somewhere else?

11 A We'd lived there for about a year and a half.

12 Q Okay. So you're talking about what? The end of 2006
13 or so?

14 A Right. We had moved out roughly the Christmas
15 vacation. It was easier on the kids to move.

16 Q During that time, we probably don't even need to talk
17 about him coming out of the hospital and what he had,
18 was there any improvement in his overall health
19 condition?

20 A There was some. His breathing had gotten better but
21 he still had quite a bit of reflux. The apnea was
22 off and on. His digestive issues, they started
23 getting a little bit better over time. But he had
24 his moments where he would -- if I could beg him
25 then, there would be days where he would refuse

1 everything.

2 Q And what exactly brought you and Pat to Sumter, South
3 Carolina?

4 A I had contacted through a mutual associate a
5 gentleman named Randy Quick who owned, leased/owned a
6 company for truck drivers out here. And he set up
7 all of the loads and everything for me to be able to
8 run with the truck that I was preparing to buy from
9 him. I did that. I met him in June of 2006.

10 Q Okay. Where did you move?

11 A Here in Sumter, South Carolina.

12 Q And after you discussed it with him, he hired you?

13 A Right.

14 Q Did he hire Pat as well?

15 A Yes, he did.

16 Q Now, why did you choose to come to Sumter as opposed
17 to continuing to live in Arizona?

18 A Primarily it was cost reasons. It was cheaper for us
19 to move out here. And not only that, but it was
20 easier for Randy to be able to find loads on the
21 eastern regions, the east coast, as opposed to having
22 to try to find me loads, constantly taking me back
23 towards the west coast and through Arizona to be able
24 to be with my family. So it gave me more home time
25 being here.

- 1 Q In other words, shorter hauls? You wouldn't have to
2 do it across country?
- 3 A Right.
- 4 Q Okay. And I think you indicated you moved here
5 during the Christmas holidays of 2006?
- 6 A Right.
- 7 Q What was the work status of both you and Pat on March
8 the 10th?
- 9 A I was still working with Randy Quick but my husband
10 had decided that he wasn't going to do that any more.
11 So he was at home taking care of the kids.
- 12 Q Okay. And when did he stop driving for Randy?
- 13 A Towards the end of February.
- 14 Q Okay. So we're only talking two or three weeks maybe
15 he was not working there any more?
- 16 A Roughly. Right.
- 17 Q Were you still going to the office? You did some
18 work on the road driving truck, but were you still
19 going to the office every day?
- 20 A Yes, I was.
- 21 Q On the morning of March the 10th, 2007, about what
22 time did you get up that morning?
- 23 A About 8:30, 9:00.
- 24 Q All right. And what caused you to get up?
- 25 A Basic kid stuff. Sibling 1 and Sibling 2 always get up

1 ahead of us on Saturday mornings. And so they're
2 knocking on the door asking, mom, can I have this?
3 Mom, can I have that? Cartoons were going. And
4 Child was getting restless. He was getting ready to
5 get out of bed. It was that time of the morning. So
6 ...

7 Q So when you got up, the two boys were already up?

8 A Right.

9 Q Sibling 2 and Sibling 1

10 A Right.

11 Q How about Pat?

12 A Patrick had gotten up a little bit earlier.

13 Q Okay. Once you got up, what did you do?

14 A I kind of took a peek out and figured that Patrick
15 had control over everything. So I went ahead and
16 took a shower before I came out and made coffee and
17 did my morning thing with everybody.

18 Q Okay. When did you turn your attention to Child

19 A It was about 9:30 or so. Patrick had told me that he
20 had already given him something to drink. But I
21 pulled him up out of his bed and took him out to the
22 living room to feed him.

23 Q Okay. And what did you feed him?

24 A Baby cereal.

25 Q Now, how do you feed -- how did you feed Child when

1 you fed him?

2 **A** Usually we'd sit on the floor. It's easier for him
3 to control his sitting up if he has something to prop
4 his hands with. He was a little unsteady still. So
5 I'd sit on the floor with my legs spread and he would
6 sit inbetween me with his hands propped against my
7 legs.

8 **Q** Do you recall talking with Ms. Herod at the hospital?

9 **A** Yes.

10 **Q** What did you tell her about how you fed Child

11 **A** I -- I told them -- I remember telling her that I sat
12 on the floor and fed him just the way that I told
13 you.

14 **Q** Okay. So you don't recall telling her anything
15 different than what you've said?

16 **A** No..

17 **Q** Was there anything unusual about Child on this day?

18 **A** He was a little out of sorts, but I didn't -- I
19 didn't chalk that up to anything really. I figured
20 that because he, you know, had been sleeping in his
21 bed or whatever, you know, and he had just been a
22 little bit cranky and I didn't -- I didn't put it up
23 to much.

24 **Q** So you really didn't notice anything that unusual
25 about his conduct at that time?

1 **A** Not really. Once I set him down and started feeding
2 him, he wasn't really eating all that much and he
3 seemed a little, I don't know, off for him.

4 **Q** When you were talking with Ms. Herod, do you recall
5 telling her that Child would fall over sometimes
6 when he was eating?

7 **A** Yeah. That was one of the things that he liked to
8 do. It was kind of a game that he liked to play with
9 us.

10 **Q** Okay. Well, try and tell me exactly what he was
11 doing when he fell over. Because I think when you
12 just hear that, you think that he was just popping
13 over. What exactly was he doing?

14 **A** Most of the time it was when he was -- he had decided
15 that he didn't want to eat any more. And he'd get
16 this kind of smirk look on his face. And you could
17 tell just by the look on his face that he was getting
18 ready to do something. And he'd just kind of let go
19 and fall back.

20 **Q** Would he cry when he did this?

21 **A** No.

22 **Q** At some point in time was it evident to you that he
23 had finished eating? Or what made you stop feeding
24 him and decide to do something else?

25 **A** He had done it a couple of times. And at that point

1 I set him back down on his rear end inbetween my legs
2 and I went ahead and wiped his face off and went to
3 get him ready to give him a bath.

4 Q All right. You were getting ready to give him a
5 bath. Exactly what did you do in regard to that?

6 A I took him into the bedroom and I grabbed a diaper
7 and towel and everything and then I went to go into
8 the bathroom. And he wasn't crawling around or
9 anything. Even though he was way active as far as
10 rolling over was concerned, I wasn't real worried
11 about him taking off because the bathroom that I was
12 using was pretty small. So I laid him down on the
13 floor and had forgotten the towel. So I went back
14 into the bedroom to get the towel.

15 Q When you came back into the bathroom, did you notice
16 any kind of change in him?

17 A He wasn't making any kind of movement or anything.
18 When I went to go to pick him up, he was -- he was
19 like a rag doll in my hands.

20 Q When you left him, he wasn't sitting up or propped up
21 or anything. He was lying on the floor?

22 A Right.

23 Q Did you hear anything while you were gone, like
24 falling over or hitting the tub or anything else?

25 A No.

1 Q Was he in pretty much the same position that you left
2 him when you went back?

3 A He was in the same spot. Yeah.

4 Q What did you do when you looked at him and saw that
5 he wasn't moving?

6 A I freaked out. I called Pat and started breathing
7 for him. And that's when Pat ran out and got the
8 kids and we took Child to the hospital.

9 Q Okay. Now, were there ever instances prior to this
10 when you found it necessary to give him
11 mouth-to-mouth resuscitation?

12 A I never have, no.

13 Q But you were aware of -- I mean, when he had his
14 apnea or anything like that, did they give you
15 training in that?

16 A Yeah. When we were at the NICU in Phoenix where
17 Child was, they had given me a refresher course on
18 infant CPR and emergency breathing techniques and
19 things like that. And we had been giving him -- we
20 had been given an apnea monitor to take home with us.
21 We had that until about November. And so we were
22 able to progress with him to find out how his
23 episodes hit and kind of watch him and gauge when
24 things were going to happen like that.

25 Q But it had gotten good enough that you weren't using

1 a monitor any more?

2 A Right.

3 Q When you started giving him mouth-to-mouth
4 resuscitation, did he respond to that at all?

5 A No.

6 Q What did you do in regard to anything that you were
7 doing with or for him while you were on the way to
8 the hospital?

9 A I continued to do the rescue breathing for him. And
10 I had kept calling his name. And I pinched him on
11 the legs a couple of times to see if he would at
12 least react to something. And he wasn't reacting to
13 anything at all.

14 Q So he didn't respond to any of the things that you
15 were doing?

16 A No.

17 Q When you got to the hospital, what exactly did you
18 do?

19 A I ran into the emergency room and told the lady at
20 the desk that my son wasn't breathing and that he
21 wasn't reacting to anything and that he had been
22 aspirating out of his nose when I had been breathing
23 for him.

24 Q And when you say aspirating out of his nose, what
25 exactly do you mean?

1 **A** When you do rescue breathing, sometimes if there is
2 fluid in the lungs or anything like that, you breathe
3 in for a person, whatever comes out of their nose or
4 mouth is the aspiration. And he had formula and
5 cereal coming out of his nose.

6 **Q** Now, when you were feeding him, did he ever seem to
7 choke in his cereal or whatever at that point?

8 **A** No.

9 **Q** And so the incident didn't appear to be something
10 from him choking on cereal?

11 **A** No.

12 **Q** Did anyone come to talk to you once you were at the
13 hospital?

14 **A** I don't remember exactly.

15 **Q** Do you recall Ms. Herod talked to you?

16 **A** When I was in Columbia, yes.

17 **Q** So she didn't talk to you at Tuomey?

18 **A** No.

19 **Q** How did you get from Tuomey to the hospital in
20 Columbia?

21 **A** I went with Child in the ambulance.

22 **Q** And once you got to Palmetto Richland, what did you
23 do?

24 **A** They took us upstairs and I sat in the waiting room
25 to find out what was going on with Child

1 Q Did Ms. Herod come and talk to you when you were in
2 the waiting room?

3 A Yes, she did.

4 Q Now, you've heard Ms. Herod testify as to what you
5 told her. Do you recall that as being what you told
6 her?

7 A Mostly, yes.

8 Q Was there anything that you recall her saying that
9 you don't remember telling her?

10 A I don't remember anything about the whole angry
11 crying thing that she had mentioned, nor do I
12 remember saying anything about him crying for four
13 months straight. While he did cry a lot initially
14 when he was brought home, probably the first six
15 months or so, maybe a little more, he cried almost
16 continuously; but by the end of the year he was doing
17 a lot better and it wasn't really something that -- I
18 mean, he had finally I guess figured out, you know,
19 that he'd cry when you want something or cry when you
20 want mom or dad, you know, but it wasn't one of those
21 crying to cry kind of things.

22 Q But do you recall telling her that when you would
23 feed him it was not unusual for him to fall over?

24 A Right.

25 Q That morning when you first got up, you say you heard

1 the boys knocking on the door and everything, did you
2 know at that time that Sibling had been in Child
3 room earlier that day?

4 A I had no clue.

5 Q Did you mention to Ms. Herod when you were talking to
6 her -- I know you didn't know about that, because you
7 said you didn't hear about that until later -- did
8 you say anything about Pat already being in the
9 kitchen?

10 A No. I don't remember.

11 Q Martina, do you know of anything at all that happened
12 to Child the morning of March 10th, 2007 while he
13 was in your care while you were sitting in the floor
14 feeding him?

15 A Nothing.

16 Q That morning when you said you got up and the kids
17 were knocking on the door, I think you said you
18 actually walked -- did you go in Child room to
19 check on him then?

20 A Yes, I did.

21 Q Had he been crying earlier?

22 A No. He seemed all right.

23 Q He wasn't crying when you first went in?

24 A No. I -- the room was pretty dark and I couldn't
25 tell whether he was sleeping or not. But he was

1 pretty quiet in there. So ...

2 Q One of the things you told Ms. Herod when you talked
3 about him falling over and you were sitting down and
4 that was a kind of a game he played, you may have
5 picked him up and sat him down too hard. Did you
6 recall saying that?

7 A Right.

8 Q Exactly what happened with regards to that?

9 A After he had done it a couple of times, I picked him
10 up around his middle and kind of parked him, parked
11 him back between my legs again.

12 Q Did you think or do anything that you think would
13 have hurt him with regard to sitting him back up or
14 him falling over or anything like that?

15 A No. I didn't toss him or set him down heavy or
16 anything like that where, you know, it wasn't kind of
17 like a jarring or anything like that. No.

18 Q Is there anything at all that morning that you saw
19 yourself or that you did yourself that you can attach
20 in any way to the injuries we've seen described?

21 A Nothing that I would have done to -- I mean, nothing
22 that I can think of that I wouldn't have done on any
23 other typical morning when I had them in my care.

24 Q So there has been testimony about some bruises that
25 were on him. How basically did those bruises get

1 there?

2 **A** The only thing that I can figure is Daniel is
3 extremely active when it comes to his rolling over.
4 In fact, he'd roll over faster than most toddlers can
5 run. And he was rolling over all sort of things. We
6 have floor mats in the trailer and there was a time
7 or two where he'd roll over the floor mat and he'd
8 got one little scratch on his arm one time and he'd
9 got a bruise up here.

10 And then the kids -- Sibling 1 was adamant about
11 trying to help him learn how to crawl. And so he was
12 on the floor with him quite a bit trying to get him
13 to crawl. And, you know, from time to time he'd
14 decide to take off and roll and he'd roll over a toy
15 or whatever that they'd have out.

16 **Q** Martina, is everything that you've told the court
17 regarding the questions I've asked you today the
18 truth?

19 **A** Yes.

20 **Q** Is there anything else further that you recall that
21 day that would have given you any concern about
22 Child safety?

23 **A** Not at all.

24 **Q** All right. Thank you.

25 **THE COURT:** Ms. Mayes.

1 **MS. MAYES:** Yes, sir, Your Honor. Beg the
2 Court's indulgence.

3 CROSS EXAMINATION

4 **BY MS. MAYES**

5 **Q** Ms. Putnam, I'm going to start by asking you a few
6 questions about the morning of March 10th. I believe
7 you've testified previously that you first got up
8 between 8:30 and 9 p.m. Is that correct?

9 **A** In the morning, yes.

10 **Q** I'm sorry. 9 a.m. And I believe you had previously
11 talked to law enforcement. That has been
12 acknowledged during your direct examination. That
13 included both I believe speaking with David Florence
14 and Gwen Herod of the Sheriff's Department, correct?

15 **A** Yes.

16 **Q** And you acknowledge that during your statement to
17 them that was given at Richland Hospital in Columbia
18 that Sibling and Sibling 2 were outside playing when you
19 went through the process of taking the baby to get
20 ready for a bath, correct?

21 **A** They were outside playing when I went to give them --
22 give him a bath, yes.

23 **Q** All right. And other than your husband, Patrick, and
24 the boys and Child was there anyone else in your
25 home that day?

1 A No.

2 Q You testified that you got up between 8:30 and 9 a.m.
3 You acknowledge that 10:44 a.m. would have been the
4 time that you arrived with Child at Tuomey Hospital,
5 correct?

6 A I have no clue.

7 Q But you don't dispute that?

8 A I -- okay.

9 Q I'm going to take you through the series of events
10 that occurred in your home upon you waking up. Do
11 you recall speaking with the officer, Sergeant
12 Denison?

13 A No.

14 Q While you were at Tuomey?

15 A No. In fact, the first time that I even saw the man
16 was when he showed up here. I don't remember ever
17 having seen him.

18 Q All right. Then I want to follow up a little bit
19 more on that then. He also testified on Monday in
20 court. He is a member of the Sheriff's Department.
21 That's Sergeant Denison. Your testimony is that you
22 have never seen him before?

23 A If he was there, I don't remember. I wasn't exactly
24 interested in what was going on outside of what I was
25 dealing with at the moment.

1 Q So you don't remember speaking to that law
2 enforcement officer?

3 A No, I don't.

4 Q Okay. And you don't remember telling him that you
5 had fed the baby and some details about it?

6 A No. I don't remember ever speaking to him.

7 Q All right. Do you remember telling him that you had
8 laid the baby on a bed?

9 A No.

10 Q Okay. And then before you went on to Richland
11 Hospital with Child you spoke with the officers
12 that we've already talked about; you acknowledge that
13 you went and got him out of the crib, correct?

14 A Right.

15 Q And I believe your testimony just a little bit
16 earlier was that he was quiet?

17 A When -- the first time that I went to check on the
18 kids, as soon as I got up and I looked and saw the
19 kids and my husband was out there already and I went
20 back to take a shower, that's when I had looked in on
21 Child

22 Q All right. And then you get him out of the crib,
23 correct?

24 A Right.

25 Q Okay. And you talked about feeding him cereal on the

1 living room floor?

2 **A** Mm-hmm (affirmative).

3 **Q** All right. And I believe on direct examination you
4 were talking about he played this game. What were
5 you talking about?

6 **A** Typical stuff that little kids do. You know, your
7 typical toddler thing, you know, kind of like sitting
8 in the high chair and throwing the rattle, you know,
9 and you go to pick it up and you give it back to them
10 and they throw it again. This is just one of the
11 things that he liked to do. And --

12 **Q** Okay. So your testimony then is that -- and I want
13 to try to get a clear understanding of what Child
14 was capable of. He wasn't walking, correct?

15 **A** Right.

16 **Q** And I believe your testimony was that he was learning
17 to scoot but not yet crawling, correct?

18 **A** Right.

19 **Q** He was rolling over?

20 **A** Yes.

21 **Q** And he was in the process of learning to sit up,
22 correct?

23 **A** He was almost completely sitting up on his own at
24 that point. He was still needing some propping
25 though.

1 Q Right. So your testimony is that he would play a
2 game where he would sit up and then I believe your
3 words were throw himself onto the floor?

4 A He'd let go and fall back.

5 Q And your testimony is that that is not unusual for
6 Child correct?

7 A No, it's not.

8 Q And so in the statement you indicated that that had
9 occurred five to six times, correct?

10 A About that, yeah.

11 Q So it's not unusual. Now, on direct examination you
12 were talking about his eating of his cereal. Do you
13 recall talking to again Ms. Herod and also Lieutenant
14 Florence who were present that day and stating that
15 Child had eaten three quarters of his cereal at
16 which point he got mad and threw himself down?

17 A Yeah. He was -- he was obviously done eating.
18 That's usually when he starts to do his little game
19 he likes to play.

20 Q So it's sort of a way of letting you know he's done
21 eating?

22 A Pretty much, yeah.

23 Q So there hadn't been any problem with him eating. He
24 ate and then decided that he had had enough and
25 that's when he played the game?

1 **A** Yeah. And usually, I mean, he usually eats more than
2 what I fed him. I usually wind up having to go back
3 for seconds. So, I mean, when he was done, he was
4 done obviously. But ...

5 **Q** All right. Now, do you recall telling Ms. Herod that
6 after he had eaten that you carried him into his
7 bedroom and put him in a car seat?

8 **A** No. I don't recall that.

9 **Q** You don't recall that?

10 **A** No.

11 **Q** Do you recall going in his bedroom?

12 **A** Yes. I did go in his bedroom.

13 **Q** Okay. And for what purpose?

14 **A** To get his diaper and a clean set of clothes and a
15 towel.

16 **Q** Okay. And what was he wearing when he wakes up in
17 the morning and he's in a crib? What would he be
18 wearing?

19 **A** He was wearing his jammies and his diaper.

20 **Q** All right. And you were in the process of going to
21 change his diaper?

22 **A** I was planning on giving him a bath, and there was no
23 point in me trying to put on the diaper that he
24 already had on. It would have been better to give
25 him a clean diaper after his bath. So --

1. Q Okay. So how much had you undressed him?

2. A I had already taken his jammies off.

3. Q All right. And I believe when he arrived at Tuomey
4. he was wearing just a diaper, correct?

5. A Right.

6. Q All right. So you had undressed him at least to the
7. point where he was only wearing a diaper, correct?

8. A Right.

9. Q Ms. Putnam, were you not appalled to see your child
10. covered in bruises?

11. A I didn't see any bruises on him other than the one
12. that was healing that was over his eye.

13. MS. MAYES: Your Honor, may I approach the
14. witness?

15. THE COURT: Yes, ma'am.

16. Q You mentioned that he had a bruise that was healing
17. on his eye?

18. A Yeah. It was over here.

19. Q You're referring to the facial bruise, correct?

20. A Mm-hmm (affirmative).

21. Q And how did he receive that facial bruise?

22. A I know about that one because I watched him roll over
23. across the vent and he hit himself on the edge of the
24. vent with it.

25. Q Okay. Which vent was that?

1 **A** In the living room.

2 **Q** All right. That would be the living room. Are we
3 talking about like the main family room?

4 **A** Mm-hmm (affirmative).

5 **Q** I'm going to show you what is State's Exhibit 8 and
6 ask you to show me which vent you're referring to?

7 **A** This one right here.

8 **Q** All right. And you say that you saw him do what?

9 **A** He rolled across it.

10 **Q** All right. And when did that occur?

11 **A** About two weeks prior.

12 **Q** Okay. So your testimony is that two weeks prior you
13 had watched him roll across the vent and receive a
14 facial bruise, and that's the only bruise that you're
15 aware of, was just the bruise located here?

16 **A** Right.

17 **Q** I show you what is State's Exhibit 4 which depicts a
18 bluish bruise on the knee and a reddish bruise on the
19 thigh and ask you how he received those injuries?

20 **A** It could have happened when I pinched him.

21 **Q** Your testimony is that it could have happened when
22 you pinched him, but you don't recall seeing that at
23 any point?

24 **A** No.

25 **Q** That's your testimony?

1 A Yes.

2 Q And again, State's Exhibit 3, do you recall seeing
3 that bruise?

4 A No. I don't.

5 Q And State's Exhibit 2 which is the upper chest area,
6 do you recall seeing that injury?

7 A No, I don't.

8 Q State's Exhibit 1 which is a forearm injury, do you
9 recall seeing that injury?

10 A No.

11 Q You've never seen that before?

12 A No.

13 Q And State's Exhibit 5 which is an abrasion to the
14 back, do you recall seeing that injury?

15 A No, I don't.

16 Q Okay. And you had nothing on him, just a diaper
17 while you were in the bedroom, correct?

18 A Yes.

19 Q Now, I'm going to show you another photograph which
20 is the bathroom area. Can you show approximately
21 where -- this is State's Exhibit 15 -- approximately
22 where he was on the floor?

23 A He wasn't in that bathroom.

24 Q Okay. Which bathroom was he in?

25 A He was in the bathroom that's shared with the boys.

1 Q Okay. And when you say that, now, do you mean the
2 one that's in the hallway? Correct?

3 A Right.

4 Q All right. Which is State's Exhibit -- or it's not
5 an exhibit yet. I'm going to ask you to take a look
6 at this photograph and whether or not you recognize
7 what's depicted in it?

8 A I do.

9 Q Okay. And what is it?

10 A It's my children's bathroom.

11 Q Okay. Well, it's the bathroom that's off of a
12 hallway?

13 A Yes.

14 Q Okay. And I believe your previous testimony was that
15 after you had him in his bathroom area that the boys
16 were outside, correct?

17 A Right.

18 Q Okay. So it was you. And you had placed Child
19 somewhere in the bathroom. Can you show me where in
20 the bathroom?

21 A It would have been up here by the bathtub on the
22 floor, inbetween the floor and the toilet.

23 **THE COURT:** Keep your voice up just a bit.

24 A Okay. I'm sorry. It would have been right here
25 inbetween the wall and the toilet on the floor.

1 Q All right. So your testimony is that you placed him
2 there on the floor. Your testimony is what happened
3 next?

4 A That I went back into the bedroom because I had
5 forgotten the towel and came back; and when I went to
6 pick up Child he wasn't doing anything at all.

7 Q All right. And which bedroom did you go in to get a
8 towel?

9 A Into Child bedroom.

10 Q All right. And why did you not tell that about going
11 into a bedroom to get a towel to Ms. Herod?

12 A I don't know why I didn't say anything to her. I
13 wasn't exactly paying -- I mean, I was trying to pay
14 attention to the questions that she had asked me but
15 I wasn't really paying attention.

16 Q You understood that you were being questioned about
17 every detail of that day to possibly try and figure
18 out what had happened to your child?

19 A No.

20 Q You didn't understand the significance of that?

21 A No. They had not told me that I was under
22 investigation for anything. So I had no idea. I was
23 under the assumption that she was there to be a help
24 to me, to speak to me, to be a comfort to me. I had
25 no idea that she was there for anything other than to

1 be a comfort to me.

2 Q Well, investigation aside, the most important issue
3 is that your child is -- his life is on the line?

4 A Obviously.

5 Q He's being treated at Richland Hospital. And so it's
6 absolutely crucial to know every possible detail
7 about your interaction with him and what happened,
8 the sequence of events, correct?

9 A Obviously. Yes.

10 Q And so I believe your testimony on direct examination
11 is that you placed the baby or laid the baby on the
12 floor, correct?

13 A Right.

14 Q And do you remember telling Dr. Bailey that when
15 you -- do you remember telling Dr. Bailey that when
16 you took him in the bathroom and laid him on the
17 floor that he fell over because he could not balance
18 himself?

19 A No. Because I never set him on the floor for him to
20 fall over.

21 Q Okay. So you don't recall making that statement to
22 Dr. Bailey?

23 A No, I don't.

24 Q You certainly didn't mention anything to Dr. Bailey
25 about having to go get a towel from another room, did

1 you?

2 A No. He never asked me anything specific about what
3 had happened as far as being in the house or anything
4 anyways.

5 Q Okay. Let's take you back. Dr. Bailey is a female
6 physician who was at Tuomey. And that's my question.
7 Do you recall making that statement to her, to the
8 female physician?

9 A No, I don't.

10 Q That he had fallen over, fell over because he could
11 not balance himself when you had him in the bathroom?

12 A No. I told her that he had a tendency to fall over
13 because he couldn't balance himself, but that had
14 nothing to do with the bathroom.

15 Q All right. And you certainly didn't mention anything
16 about going to a bedroom to get a towel, correct?

17 A No.

18 Q All right.

19 A I didn't think it was important.

20 Q All right. And at Richland Hospital, again you had
21 the opportunity to speak with Dr. Cartie about the
22 events of that day. And there was nothing mentioned
23 as well, correct?

24 A Right.

25 **THE COURT:** Nothing mentioned about --

1 **MS. MAYES:** I'll follow up with that, Your
2 Honor.

3 **Q** Dr. Cartie is the male physician who wears eye
4 glasses. You do recall telling him that Child was
5 in a good state of health, correct?

6 **A** I guess.

7 **Q** Okay. And that you were in the process of giving him
8 a bath and he stopped breathing?

9 **A** I -- yeah. I mean, I hadn't given him a bath yet.

10 **Q** All right.

11 **A** But, I mean, I was working in that direction. Yes.

12 **Q** And again, nothing was mentioned to Dr. Cartie about
13 leaving the bathroom at any point, correct?

14 **A** No. Not that I recall. No. I mean, I didn't see
15 the importance in that.

16 **Q** Okay. Now, your testimony today is that you placed
17 him on the bathroom floor?

18 **A** Right.

19 **Q** And you step out to get a towel, correct?

20 **A** Right.

21 **Q** And when you return, your testimony on direct
22 examination is that he's in the exact same spot,
23 correct?

24 **A** Right.

25 **Q** All right. And you didn't hear any fall or him do

1 anything unusual in the bathroom?

2 A No. If I had, I would have come running.

3 Q Okay. Child would not have been capable of standing
4 up and toppling over the bathtub or anything of that
5 nature, right?

6 A No.

7 Q So you come back and you find him in the exact same
8 spot, and your testimony is at that point he is not
9 breathing, correct?

10 A Right.

11 Q I believe you had also testified that because of his
12 apnea which sometimes has a tendency to cause an
13 infant to not breathe that you can do CPR. Did you
14 ever actually perform CPR before on him?

15 A No. I've never performed CPR on him before. But I
16 do know how to do it, yes.

17 Q How many times previously had he stopped breathing?

18 A He had episodes from the time that we brought him
19 home, none of any kind of length of time.

20 Q Okay. But what would normally happen when he stopped
21 breathing?

22 A Generally he'd stop and he'd catch himself and start
23 breathing again.

24 Q So the apnea that you described was something that
25 you were concerned about?

1 **A** I wasn't greatly concerned about it. It had started
2 kind of resolving itself towards the time that we
3 were getting ready to move out here to South
4 Carolina.

5 **Q** All right. Well, at 13 months he is here in South
6 Carolina. Of course he had been born premature in
7 Arizona, correct?

8 **A** Right.

9 **Q** And was hospitalized for how many weeks as a result
10 of his premature birth?

11 **A** He was born on the 5th of February and was released
12 towards the end of April.

13 **Q** Okay. So that would have put him in the hospital
14 roughly seven to eight weeks?

15 **A** At least.

16 **Q** Okay. And you mentioned some medical problems that
17 he had had during the course of your residency in
18 Arizona, correct?

19 **A** Mm-hmm (affirmative).

20 **Q** In fact, he had a regular physician in Arizona that
21 you needed to consult with on a regular basis because
22 of his ongoing medical issues, correct?

23 **A** Yes.

24 **Q** And that included everything from the apnea to the
25 digestive problems that you mentioned, correct?

1 **A** Yes.

2 **Q** All right. And he was under the treatment of these
3 physicians, one of which was Dr. Kahn. You're
4 familiar with him, correct?

5 **A** Not greatly, no. I mean, I -- he was his
6 pediatrician, yes. But I was not the one taking
7 primary care of the children.

8 **Q** All right.

9 **MR. HOWLE:** May we approach the bench a moment?

10 **THE COURT:** Yes, sir.

11 (Whereupon, a bench conference is had)

12 **THE COURT:** You can go ahead, Ms. Mayes.

13 **Q** So your testimony on direct examination is that
14 Child had a number of medical issues I believe you
15 mentioned which were his digestive problems and his,
16 I believe you termed it severe apnea, correct?

17 **A** Yes.

18 **Q** All right. So you move here, to Sumter, in January,
19 correct?

20 **A** Yes.

21 **Q** And this event happened March the 10th. When was
22 Child last well baby check here in Sumter?

23 **A** He didn't have one.

24 **Q** All right. And when you say he didn't have one, you
25 mean he never went to a doctor at all here in Sumter,

1 did he?

2 **A** We had been trying to get a pediatrician for him and
3 was having difficulties in finding one that would
4 accept his insurance.

5 **Q** All right. I want to talk with you about that. When
6 you say accept his insurance, what insurance is that?

7 **A** He was on SSI for disability because of his
8 retinopathy and his prematurity and the government
9 was providing insurance for him. And the
10 pediatricians that we'd been referred to would not
11 accept him.

12 **Q** All right. So wasn't Medicaid a part of that health
13 plan?

14 **A** Yes.

15 **Q** So he had Medicaid which is in effect financial
16 assistance in order for you to get him to a doctor,
17 correct?

18 **A** Right.

19 **Q** All right. And your testimony is that you couldn't
20 find any doctor here in Sumter or anywhere that would
21 give your baby a well check?

22 **A** I didn't say that we couldn't find one. The ones
23 that we had contacted told us that they would not
24 provide for him.

25 **Q** And who were those doctors?

- 1 **A** The only one that I can remember specifically was
2 Sumter Pediatrics because I was trying to get all of
3 my children in and went over there with them, and
4 they told me they would take my two oldest children
5 but would not take Child
- 6 **Q** All right. And you're aware of all kinds of health
7 clinics here in Sumter, aren't you? Sumter Care,
8 Family Health Care, even emergency room treatment
9 that would accept Medicaid patients?
- 10 **A** Honestly, I know that there are physicians around.
11 However, I was not here to take control of that. I
12 had primary duties not only to take care of my
13 children obviously, but I was the breadwinner in the
14 family. I was primarily working. And my husband was
15 supposed to be doing all this for me. I have no idea
16 about anything in this town. I still don't have any
17 idea about anything in this town and where things are
18 located at and who provides what in this town.
- 19 **Q** Well, I'll follow up on that a little bit more. You
20 came here and took a job as a truck driver, correct?
- 21 **A** Right.
- 22 **Q** And when I say truck driver, we're talking about, was
23 it a -- describe the kinds of trucks?
- 24 **A** I drive the -- my trucks are all flatbed trucks, 48
25 and 53-foot flatbed trucks. I do long haul,

1 over-the-road transfer.

2 Q All right. And what kind of special license did you
3 obtain for that?

4 A I have to have a Class A CDL.

5 Q Okay. And what kind of training typically is
6 involved with that?

7 A Depending on where you go, it can take anywhere
8 between four to six weeks, sometimes longer depending
9 upon your driving abilities. It can vary depending
10 on if you go to a school or if you're privately
11 taught.

12 Q Okay. And part of your training as a truck driver,
13 if you're on the road if you run into a problem, you
14 fix the truck yourself, correct?

15 A It depends on the problem.

16 Q A tire. What if a tire broke down?

17 A No, I wouldn't.

18 Q What kind of problems would you fix?

19 A Small things: Electrical issues, blown fuses,
20 headlights, things like that. Things requiring
21 heavier work like blown tires and things like that,
22 we would have to have either somebody come out on
23 call or we would have to take it to a shop to get it
24 repaired.

25 Q What kind of loads do you normally deliver?

1 A Mostly things that require flatbed work: Steel
2 coils, I-beams, things from like Alcoa, hardwood
3 veneers, heavy equipment, things like that.

4 Q All right. So, as you mentioned, you are trained as
5 a truck driver and you're on the road occasionally.
6 How frequently were you on the road?

7 A Twenty-one to twenty-eight days out of every month.

8 Q All right. Now, I believe your testimony was that
9 Child had Medicaid health insurance but to your
10 knowledge he never had a well baby check here in
11 Sumter, correct?

12 A Not to my knowledge, no.

13 Q But he still had the apnea issues while he was here
14 in Sumter, correct?

15 A As far as I know. It hadn't presented itself in --
16 the last time that we had actually seen him have any
17 kind of major apnea attack was back in November of
18 2006. And at that point he wasn't having any kind of
19 breathing difficulties or anything. We were informed
20 that we could go ahead and turn in his apnea monitor,
21 which we did.

22 Q All right. And then your testimony is that as you're
23 getting ready to give him a bath he stops breathing,
24 correct?

25 A I found him not breathing. I don't know what

1 happened between the time that I went out of the
2 bathroom and the time that I came back into the
3 bathroom. All I know is that I found him on the
4 floor and he wasn't breathing.

5 Q I believe your testimony was that you only stepped
6 out to get him a towel?

7 A Right.

8 Q Correct?

9 A Right.

10 Q All right. And you stepped back in. He's in the
11 same position but he's not breathing, correct?

12 A Right.

13 Q You never heard anything unusual or out of the
14 ordinary during that brief time you were gone. Is
15 that correct?

16 A No, sir.

17 Q All right. So, your testimony is the first time he's
18 not breathing is right there on the bathroom floor,
19 correct?

20 A Right.

21 Q And you called for you said Pat. You called for your
22 husband, correct?

23 A Mm-hmm (affirmative).

24 Q And then what happened next?

25 A I started rescue breathing for Child and Pat went

1 out of the bathroom and grabbed the kids and we went
2 to the hospital.

3 Q Okay. And, in fact, your husband, Pat, went and got
4 the truck and drove the truck with you in the
5 passenger's side allowing you to carry the baby that
6 way so that he could rush him to the hospital,
7 correct?

8 A Right.

9 Q And at that point he did in fact rush in the hospital
10 with the two older boys in the back and you holding
11 the baby up front, correct?

12 A Right.

13 Q At that point you arrived at the hospital at
14 10:44 a.m., correct?

15 A Right.

16 Q Beg the Court's indulgence. Now, you were how old in
17 2007, Ms. Putnam?

18 A Thirty-two.

19 Q And your older boys, just to clarify, Sibling 1 and
20 Sibling 2 they are your biological children, correct?

21 A Yes.

22 Q And then your husband, Pat, that you mentioned, he is
23 how old?

24 A He is 24 now.

25 Q Okay. So he would have been approximately 22 in

1 2007?

2 A Yes.

3 Q Okay. He is the biological father of Child
4 correct?

5 A Right.

6 Q Just to clarify, your testimony is that you fed
7 Child right here on the living room floor, correct?

8 A Mm-hmm (affirmative).

9 Q And that he ate three quarters of his cereal and then
10 he had enough and decided to play a game where he
11 would throw himself down. And that's not unusual,
12 correct?

13 A Right.

14 Q And following that, you went into his bedroom. You
15 took him into his bedroom in order to get a diaper,
16 correct?

17 A Right. I carried him in there with me.

18 Q All right. And then you went into the bathroom. You
19 went into the bathroom and you were going to put a
20 fresh diaper on him after you gave him a bath,
21 correct?

22 A Right.

23 Q But he was only wearing a diaper?

24 A Right.

25 Q All right. And where were you when you had removed

1 his jammies?

2 **A** In the bathroom with him.

3 **Q** In this bathroom?

4 **A** Yes.

5 **Q** Where are the jammies at in the bathroom photo?

6 **A** I don't know. I mean, I don't see them.

7 **Q** Okay. Well, what would have happened to them?

8 **A** I don't know. Can I see the picture? They're
9 probably under one of the blankets. Or, no.

10 Actually, here's his jammies right here.

11 **Q** All right. So your testimony then is that these are
12 the jammies that he would have been wearing?

13 **A** Yes.

14 **Q** Okay. So you removed these jammies. He is in a
15 diaper and then you are going to give him a bath,
16 which you go ahead and go get the towel and then when
17 you come back he is in the same spot but not
18 breathing?

19 **A** Right.

20 **Q** Nothing further.

21 **THE COURT:** Redirect, Mr. Howle?

22 **MR. HOWLE:** Nothing further, Your Honor.

23 **THE COURT:** Thank you, ma'am. You can step
24 down, ma'am. You all come up just a moment.

25 (Whereupon, a bench conference is had)

1 **THE COURT:** All right, Mr. Howle. Any
2 additional witnesses?

3 **MR. HOWLE:** None, Your Honor.

4 **THE COURT:** Will the State have any reply?

5 **MS. MAYES:** No, sir, Your Honor.

6 **THE COURT:** All right, ladies and gentlemen.

7 We're going to take a recess at this point. Please
8 go to your jury room. You may not discuss the case
9 at this point. The next phase of the trial would be
10 for the lawyers to present to you their closing
11 arguments. I'm going to discuss the order and timing
12 of that while you're out of the courtroom. We will
13 also discuss the final terms of the charge on the law
14 that I'm going to give you. We'll have you back out
15 hopefully within a few minutes. But do not discuss
16 the case and do not begin to form any conclusions in
17 your mind about what your verdict will be. Thank you
18 very much.

19 (Jury out at 2:16 p.m.)

20 **THE COURT:** All right, Mr. Howle. Any motions
21 at this time?

22 **MR. HOWLE:** Your Honor, we would renew our
23 motion for a directed verdict.

24 **THE COURT:** All right. Ms. Mayes, anything in
25 response?

1 **MS. MAYES:** Nothing, your Honor, on that issue
2 that we did previously address.

3 **THE COURT:** All right. Mr. Howle, I'm going to
4 deny the motion at this time. It is a circumstantial
5 evidence case. I do think that there is evidence
6 that could reasonably lead a jury to find the
7 defendant guilty. Obviously you have much to argue.
8 I don't want to interject myself into what are
9 factual issues. But I'm sure you're a good lawyer
10 and you will adequately cover that in your closing
11 arguments. Do you need a couple of minutes before we
12 start talking about the charge?

13 **MR. HOWLE:** Yes, sir.

14 **THE COURT:** I'll come back in about five
15 minutes. Does that suit you, or do you need more
16 time?

17 **MR. HOWLE:** Your Honor, I need to go back
18 downstairs. I've got some other notes in regard to
19 my closing that I want to make sure I have that I
20 need to put in here.

21 **THE COURT:** Do you have any objection to the
22 defendant's charges?

23 **MS. MAYES:** Your Honor, I have no objection.

24 **THE COURT:** They're not numbered. So let's do
25 it this way just for the record purposes. Number one

1 will be the longer one which is about the -- which
2 is, in essence, reasonable doubt. Number two is the
3 statute or the definition of extreme indifference.
4 Have you had a chance to review those, Ms. Mayes?

5 **MS. MAYES:** Yes, sir, Your Honor. I do not have
6 an objection to the definition of extreme
7 indifference. The case is State v. Gerald. The
8 submitted instruction as to inferences to be drawn by
9 the jury, I would prefer to use the Court's standard
10 charge on that.

11 **THE COURT:** Mr. Howle, probably what I will do
12 is I will not charge the first paragraph of that. It
13 says obviously the defendant is entitled to every
14 inference in her favor which would reasonably be
15 drawn from the evidence and when two inferences may
16 be drawn from the same set of facts, one consistent
17 with a guilty verdict and one inference consistent
18 with a not guilty verdict, the defendant is entitled
19 to the inference which is consistent with a verdict
20 of not guilty.

21 **MR. HOWLE:** That's directly from Judge Keesley.

22 **THE COURT:** That is, in essence, a part of my
23 reasonable doubt charge. I'll examine that in more
24 detail in conjunction with what I typically charge.
25 You've seen my standard charge. My standard charge

1 does not include those exact words. But I will
2 consider it.

3 In essence, the State has to prove guilt beyond
4 a reasonable doubt. If the jury thinks there's a
5 real possibility that the defendant is not guilty,
6 the defendant is entitled to the benefit of the
7 doubt.

8 **MR. HOWLE:** The second paragraph, Your Honor.

9 **THE COURT:** The second paragraph, I would not
10 use the word "sufficient". I would say based upon
11 conjecture or speculation, no matter how strong. And
12 I would -- obviously I'll say the last sentence more
13 than once or twice or three times in the course of
14 the reasonable doubt narrative. But I'll look more
15 closely at the first paragraph.

16 **MS. MAYES:** And --

17 **THE COURT:** Yes, ma'am.

18 **MS. MAYES:** -- I was going to ask Your Honor for
19 your standard circumstantial evidence charge as well.

20 **THE COURT:** Ma'am?

21 **MS. MAYES:** You will be charging circumstantial
22 evidence?

23 **THE COURT:** Yes. I'll give -- I typically give
24 an example of circumstantial evidence. I may not in
25 this case since this is for the most part a

1 circumstantial evidence case.

2 The example that I usually use is if you imagine
3 that this was a completely sound-proof, windowless
4 room and you haven't been out of it for four or five
5 hours and have no direct evidence of what the weather
6 is like outside and somebody comes into the back door
7 shaking off a wet umbrella and says, I just came in
8 from the outside, that's circumstantial evidence that
9 it was raining.

10 I probably won't do that in this case. I will
11 just let you all argue your own examples of what is
12 or what is not circumstantial evidence. Or excuse
13 me. An example of that.

14 I do tell the jury that there is -- the law does
15 not require any greater certainty in circumstantial
16 evidence than it does over direct evidence, or vice
17 versa, that they are to weigh all the evidence in the
18 same fashion in reaching a verdict.

19 **MS. MAYES:** And could we also have the
20 opportunity to take a look at your reasonable doubt
21 charges?

22 **THE COURT:** I'll make a copy of it. As a matter
23 of fact, the one that's in our new charge book, I use
24 the one in the old charge book, and I'll get a copy
25 of that for you. Okay.

1 And on the extreme indifference, we'll talk
2 about it in more detail. What I will do is I will
3 talk about -- I'll use this definition that Mr. Howle
4 has requested and you've agreed to. And I'm going to
5 sandwich the intent charge between two explanations
6 of extreme indifference.

7 I think that the facts and the law would warrant
8 that because the case law does indicate that -- well,
9 this very sentence says: The mental state akin to
10 intent. So I will weave all that together in a clear
11 fashion. I think Mr. Howle's concern is he doesn't
12 want the jury to be under the impression they could
13 find her guilty of homicide by child abuse just by
14 virtue of simple negligence.

15 **MR. HOWLE:** Thank you.

16 **THE COURT:** And I don't think that's the law
17 anyway.

18 **MS. MAYES:** Your Honor, the definition I believe
19 under homicide by child abuse does include abuse and
20 neglect. And then I think abuse and neglect is
21 defined as an act or omission.

22 **THE COURT:** But it still has to constitute
23 extreme indifference.

24 **MS. MAYES:** Right, Your Honor.

25 **THE COURT:** Which is a mental state akin to and

1 characterized by a deliberate act culminating in
2 death.

3 **MS. MAYES:** Correct. And that's our position as
4 well. Even if it were neglect, is that it would have
5 to be intent. With some deliberation it could be
6 neglect. But I just wanted to make sure that the
7 wording "neglect" was incorporated as it is in the
8 indictment.

9 **THE COURT:** Right. Okay. Yeah. Those terms,
10 abuse and neglect, will be defined because they are
11 in the statute.

12 The last thing before we stop for a minute, the
13 verdict form. We will have one charge and the
14 choices are not guilty or guilty. Do you agree with
15 that?

16 **MR. HOWLE:** Yes, sir.

17 **MS. MAYES:** Yes, sir, Your Honor.

18 **MR. HOWLE:** Thank you, Your Honor.

19 **THE COURT:** And as far as how long you're going
20 to need to argue, the State will go first and last.
21 Let me know when I get back in how much time you
22 think you're going to need, if you will.

23 **MS. MAYES:** I normally waive opening, Your
24 Honor, unless you wish me to open.

25 **THE COURT:** No. Let me ask you, Mr. Howle,

1 you'll go first.

2 **MR. HOWLE:** Yes, sir.

3 **THE COURT:** How long do you think you'll need?
4 And I'm not going to tap on the bench. I just want
5 to have an idea of --

6 **MR. HOWLE:** Twenty minutes, Your Honor.

7 **THE COURT:** Twenty to thirty?

8 **MR. HOWLE:** Yes.

9 **THE COURT:** Can we work along those lines, Ms.
10 Mayes, the same thing?

11 **MS. MAYES:** Yes, sir, Your Honor.

12 **THE COURT:** Okay.

13 (Whereupon, a break is taken)

14 **THE COURT:** You all wanted to take a look at my
15 reasonable doubt charge?

16 **MS. MAYES:** Yes, sir, Your Honor.

17 **THE COURT:** Here's a copy of it.

18 (Pause)

19 **THE COURT:** All right. With regard to the
20 reasonable doubt charge, I've given both of you a
21 copy of that. Mr. Howle, I'm not going to charge the
22 specific content of your first paragraph of your
23 requested reasonable doubt charge. If you've got a
24 copy of that and you want to give it to the court
25 reporter as a Court's Exhibit, that's fine to

1 preserve the record. I think I read it off earlier.
2 But it can be the next Court's Exhibit.

3 I will charge number 2.

4 Is there anything else in the case law that is
5 extremely different that party either party would
6 want me to charge?

7 **MS. MAYES:** Not that I'm aware of, Your Honor.

8 **MR. HOWLE:** I'm not aware of anything else, Your
9 Honor.

10 **MS. MAYES:** I do intend to inform the jury that
11 malice aforethought or premeditation would not be
12 required.

13 **THE COURT:** I agree with you that that's a
14 correct statement of the law, Ms. Mayes. Mr. Howle,
15 do you agree with that?

16 **MR. HOWLE:** I do agree with that.

17 **THE COURT:** Okay. I won't be calling time on
18 anybody in the argument. I think the jury can
19 non-verbally call time on you yourselves. So I know
20 that you are both experienced and you know how to
21 present your arguments and know what material to
22 present. I'll leave that up to you all.

23 All right. Are you ready for the jury, Ms.
24 Mayes?

25 **MS. MAYES:** Yes, sir, Your Honor.

1 **THE COURT:** Mr. Howle?

2 **MR. HOWLE:** Yes, Your Honor.

3 **THE COURT:** Okay.

4 (Jury in)

5 **THE COURT:** Ladies and gentlemen, thank you for
6 your patience. I want to make sure you understand a
7 couple of things. When any case is tried, a great
8 deal of preparation and time is put into preparing
9 for your review, and the lawyers in this case have
10 done that.

11 From time to time, since the way our system
12 works when a case is called, the trial judge is not
13 always aware of the circumstances surrounding every
14 case, some time has to be devoted then to the issues
15 that are fully presented, and I have to have the
16 opportunity to discuss with the lawyers things such
17 as arguments, jury charge and things of that nature.
18 That's what we've been doing.

19 We are now ready to proceed with the closing
20 arguments. I will tell you, ladies and gentlemen,
21 again as I did at the beginning of the trial, what
22 the lawyers say to you in the form of their argument
23 is not evidence. If they say something that does not
24 correspond with your collective memory of what the
25 evidence actually was, then you go with your

1 collective memory, because the lawyers aren't
2 witnesses. The closing argument is their opportunity
3 to argue to you at the conclusion their points of
4 view of the evidence that compels you to reach in
5 this particular case.

6 All right. Ms. Mayes, you waive your opening.
7 Is that correct? Mr. Howle, you will argue first?

8 **MR. HOWLE:** Yes, Your Honor.

9 **THE COURT:** All right. Mr. Howle.

10 **MR. HOWLE:** Thank you, Your Honor. Ladies and
11 gentlemen of the jury, on behalf of Ms. Martina
12 Putnam, I appreciate the attention that you've given
13 to everything that's been presented to you. Any time
14 it's a case of this nature, I know it's not always
15 pleasant, but you've all been attentive, and we
16 certainly appreciate you doing that.

17 March 10th, 2007, that was the date of Child
18 death. I think we need to look first of all at who
19 was in the Putnam house that morning. Martina
20 Putnam, her husband, Pat, her two sons, Sibling 2 and
21 Sibling 1 and Child

22 And now I want to look at some of those
23 chronological events. One of the things that Ms.
24 Mayes did is her chart. I assume she'll bring that
25 over here when she gives her closing argument. It

1 was a listing of chronological events to show you or
2 kind of help you go through what took place that day.
3 And there are some questions that I'd like to present
4 in my argument with regard to the chronological
5 events that's submitted in that fashion.

6 Ms. Herod, Ms. Gwen Herod interviewed Sibling on
7 March the 10th, 2007, the same day that Child died.
8 One of the things he told her was that during that
9 date that morning before Martina Putnam was even up
10 he had gone into the child's room, Child room, and
11 he'd picked Child up out of the crib. He admitted
12 that he had picked Child up before and at times
13 picked him up by the leg. He said he hadn't done it
14 that day but maybe several days before. And again,
15 this was before Martina even got up that morning.

16 When she got up, Pat was already in the kitchen
17 fixing breakfast or whatever he was doing when she
18 went into the kitchen. Now, chronologically, neither
19 one of those things were on the State's chronological
20 events when they started writing those things down.
21 And I think it's very important to know that there
22 were other people there, that there were other people
23 who could have had contact with this child before
24 Martina even got up that morning.

25 Martina told you today exactly what she did on

1 March the 10th. And I submit to you, her testimony
2 today is not any different than it was when she
3 talked to Ms. Herod back on March the 10th. She said
4 she was the only one when this thing happened that
5 was having contact with the child. And again, like I
6 say, she was not aware that anybody else had even
7 been up at that time such -- or at least she didn't
8 relate this in some of the testimony that she gave.
9 She didn't mention that Pat was in the kitchen. She
10 didn't know at all that Sibling 1 had gone in there.

11 But the State wants to take that little bit of a
12 statement that, yes, I was with Child and I was the
13 only one, I was kind of in control of him at that
14 time, and take that statement and somehow twist it
15 into some admission that, well, therefore, if
16 something happened to the baby, you must be the one
17 that did it.

18 Martina, again, like I say, did not know Sibling 1
19 had been in Child room. She did not mention Pat
20 being in the kitchen when she got up. It was only
21 after she took her shower, after she'd gotten up
22 because the kids knocked on her door, and she went
23 and she said she looked in Child room. Everything
24 seemed to be okay at that time. She went and took a
25 shower and came back. Then that's the first time she

1 had any full control, if that's what you want to call
2 it, of Child

3 And this is when she tried to feed Child And
4 she described how she did it. Well, what woke her up
5 that morning? Like I say, the kids were making
6 noise. She checked on him. He appeared to be okay.

7 Now, one of the things that in cross examining
8 Ms. Putnam when she was on the stand after she
9 reiterated that same list of events that she told
10 Gwen Herod before was the State wanted to find these
11 inconsistencies in her statement to the person she
12 had talked to at the hospital. But inconsistencies
13 are, well, you told this person you went to another
14 room to get a towel; you didn't tell this person. Or
15 you told this person you went to a bedroom; you
16 didn't tell this person.

17 Ladies and gentlemen, I submit to you that those
18 aren't -- if those are inconsistencies that she told
19 one person and not another, that is really
20 irrelevant. There is not any inconsistencies in what
21 she said. There's some things she said in the
22 statement that as a parent you may certainly not do
23 or might not think is the correct thing to do. She
24 didn't hide that then. She didn't hide it today when
25 she came in here as far as some of those things that

1 she does with her child.

2 There is not any direct evidence to connect
3 Martina Putnam with the death of Child The State
4 wants to say that while we really don't know who did
5 it, we charged Martina because she was the last one
6 with Child That seems to be the strength of the
7 case. We don't know what happened, but because she's
8 the last one there, she must be the one who did it.

9 Now, the main contention that the State gives
10 for this connection to Child death is testimony
11 that says the injury observed would have caused an
12 immediate or almost immediate change in Child
13 conduct, unconsciousness.

14 Dr. Nichols said Child lifestyle would have
15 changed from his normal behavior habits. Well, Dr.
16 Nichols did not know Child behavior habits. Now,
17 he talked about some things that he had learned. He
18 knew he didn't walk. He knew he didn't sit up well.
19 He cried often. His eating habits were a little
20 different. But what was the change Dr. Nichols
21 thought would be obvious to observe in his behavior
22 habits? There really were no changes. I mean, he
23 behaved the same way he did. There was nothing that
24 she saw that were different than would otherwise have
25 been on a normal day.

1 Dr. Cartie said he believed the injury was a
2 trauma injury that was or could be indicative of
3 abusive injury. The injury is what it is insofar as
4 it's a severe trauma injury that led to Child
5 death. Well, we don't contest that. Ms. Putnam does
6 not contest the cause of death.

7 Dr. Sexton, he testified yesterday. He's an
8 older pathologist out of Newberry who everybody uses.
9 He's been practicing for 40 years. He just retired
10 in the last year or so. He did not say this would
11 necessarily cause a huge change in conduct. He said
12 it is certainly possible that this kind of impact
13 injury could occur and there be some period of time
14 where there continued to be lucid conduct before you
15 noticed any real changes. As a matter of fact, he
16 said he had seen this on many instances where a
17 period of lucidness would follow such an injury.

18 Now, Martina told Gwen Herod that Child would
19 throw himself down, especially when he had all he
20 wanted to eat. She had explained this was sort of a
21 game thing and he did this maybe five or six times on
22 March the 10th.

23 Now, I'm certainly not saying that this was or
24 should be the way to feed your child that doesn't sit
25 up by well by himself. And it may not be parenting

1 skills that someone may feel comfortable with in
2 having someone else do. But all of those doctors
3 were very sure in saying when they testified that
4 falling over like that would in no way cause that
5 injury.

6 When Martina first talked to Gwen Herod she even
7 admitted not only the falling over like that but she
8 may have sat Child down too hard. Martina was truly
9 concerned that the falling over or that she sat this
10 child down too hard may have in some way caused him
11 to be injured.

12 If Martina had truly caused Child to be
13 injured, then I submit to you she would certainly not
14 be admitting that she did anything to cause Child to
15 stop breathing. But when she was asked what
16 happened, when she went back through those events,
17 she said, well, he fell over and I sat him back up.

18 And you remember when Detective Florence asked
19 that question, because obviously he thought, well,
20 that's unusual, why would you do that? Because he
21 didn't know at that time the child had these other
22 problems or the child considered that a game or that
23 was just something the child did.

24 She was concerned about Child As soon as she
25 went back in that room and saw that he was not

1 breathing, that he was unconscious, she immediately
2 began to give mouth-to-mouth resuscitation. She
3 immediately called her husband and they rushed him to
4 the hospital. Now, would that be the response of
5 someone who had just purposely injured their own
6 child? Martina even told Gwen that she doesn't even
7 spank him because you can't reason with him.

8 And what about Martina's truthfulness? Ms.
9 Herod said of all the information, everything that
10 she told her that she checked out to see, it all was
11 true. It all proved to be correct.

12 Well, what did cause the injuries to Child
13 to the child? I certainly don't know. But I
14 submit the State does not know either. To simply say
15 that Martina Putnam was the last person with Child
16 before he stopped breathing somehow makes her the
17 culprit is not what our law allows.

18 To simply say that the flow of events that
19 Martina Putnam gave to Gwen Herod did not match up
20 with the injury is not a unanimous opinion of the
21 experts that you heard come up here.

22 Dr. Sexton definitely said that there could be
23 an impact injury followed by a period of lucidness
24 before Child became semiconscious and stopped
25 breathing. He said the small blood vessels that are

1 torn in a subdural hematoma with time coagulate. In
2 other words, it can take some time for this to happen
3 after the injury occurred. He said with a reasonable
4 medical certainty the injury could have happened for
5 some time before it manifested itself.

6 And he said specifically this. It is possible,
7 even probable, that someone who suffers a subdural
8 hematoma could have a period of lucidity before
9 losing consciousness. And he added that he had seen
10 in previous cases a fatal trauma to the head through
11 his 40 years of pathological practice and they
12 appeared lucid after such an injury, a period of time
13 that Martina Putnam would have had this child and not
14 recognized anything.

15 Now, there's not an outside gash in the head or
16 some cut on that kind of injury that someone would
17 look and immediately say this child has been injured.
18 That wasn't there. You would not see anything that
19 was outward. And that child was remaining lucid, was
20 doing the same kind of things that he always did, no
21 indication to Martina Putnam whatsoever that child
22 had been injured in any way.

23 And when Dr. Sexton said he classified it as a
24 homicide, he just basically said because it didn't
25 look like a natural death type thing, that that in no

1 way meant intent.

2 Ladies and gentlemen, our system of justice does
3 not convict on suspicion, conjecture, speculation, no
4 matter how strong that may be. A conviction can only
5 be based upon the proof of guilt beyond a reasonable
6 doubt. And if the proof does not meet that standard,
7 you must find Martina not guilty.

8 And again, what is this proof? That Martina was
9 with Child when he stopped breathing, that she can't
10 explain who or what hurt Child that the State
11 thinks it's possible that she did something to
12 Child That's not proof. It requires proof beyond
13 a reasonable doubt, not suspicion, not conjecture,
14 not speculation. As tragic as a death of Child

15 may be, I submit the State has not met their
16 burden of proof.

17 **THE COURT:** Thank you, Mr. Howle. Ms. Mayes.

18 **MS. MAYES:** Yes, sir, Your Honor. Ladies and
19 gentlemen, I would first like to say that I noticed
20 throughout the course of the trial that all of you
21 have been paying close attention to the testimony
22 that you've heard. And a lot of it's been detailed
23 medical testimony that you may not have initially
24 been prepared to have to listen to when you came in
25 here. But all of us on behalf of the State and the

1 defense as well I'm sure appreciate the careful
2 attention that you've paid throughout the course of
3 this trial.

4 I'd like to start by saying that when we talk
5 about child abuse, children who are murdered in their
6 own homes, it's an almost unimaginable scenario to,
7 one, think that it can happen; and then, number two,
8 to have to wonder why. Why is it that a parent would
9 act out against a child in such a way? What kind of
10 frustration, what kind of anger must that require?
11 But yet, all across America we hear of cases where
12 there may not be a specific --

13 **MR. HOWLE:** Your Honor, I hate to interrupt
14 anybody in their opening or closing arguments, but
15 Ms. Putnam is not on trial for those crimes in
16 America.

17 **THE COURT:** Ms. Mayes, just confine your
18 argument to the record, please.

19 **MS. MAYES:** Yes, sir, Your Honor.

20 **THE COURT:** You do have some latitude in
21 explaining things, but factually keep it confined to
22 the record, please.

23 **MS. MAYES:** Yes, sir, Your Honor. But in a case
24 such as this, it's not necessarily a premeditated
25 fact situation where Ms. Putnam would have woke up on

1 the morning of March 10th and decided that she was
2 going to inflict injuries on her son. It is I submit
3 the result of frustration, anger, perhaps being
4 tired, perhaps not having the right parenting skills
5 to begin with. It's a combination of all kinds of
6 different events I submit that culminate in a parent
7 acting out in a way they shouldn't with a child.

8 And I'd like to start by saying that this
9 particular charge before you, homicide by child
10 abuse, is not a murder charge. And this is not a
11 murder case. And the reason it's different is, one
12 of the reasons it's different is that murder is a
13 crime that requires what we call malice aforethought,
14 premeditation, the knowing that you're going to take
15 a life and forming the intent to take a life
16 beforehand with malice and then carrying it out.

17 This crime is different. And the judge will
18 charge you on the law as to exactly what it is when
19 I'm done speaking with you. But what South Carolina
20 has defined in this particular statute is that it's
21 an extreme indifference to human life. It is I
22 submit a parent acting out in anger against a child
23 inflicting injuries, intentionally inflicting
24 injuries and perhaps not even with the realization
25 that it will result in that child's death, an

1 excessive injury because of that indifference at that
2 moment to a human life.

3 And what we know is that Child was healthy by
4 all admissions that day. Ms. Putnam admits that
5 Child was healthy, completely his usual self. She
6 was consistent about that to everyone.

7 And, ladies and gentlemen, it is medically
8 impossible for that child to have been acting
9 normally, sitting up and eating his cereal if these
10 injuries had somehow been sustained before Ms. Putnam
11 woke up that day.

12 And Dr. Sexton, the pathologist who did the
13 autopsy, he testified before us. You heard later
14 from a pediatric specialist who is extremely
15 knowledgeable in these type of injuries, but the
16 pathologist said it could be a minute, hours.
17 However, the distinction here is, what are we talking
18 about when we say a minute to hours? A minute to
19 hours of normal behavior? Absolutely not.

20 What is a lucid period? Is it sitting up and
21 eating and appearing completely normal? Absolutely
22 not. Ladies and gentlemen, the physicians explained
23 that there would be an immediate onset of symptoms in
24 which the normal functioning level would change. It
25 would be apparent to anyone observing that child that

1 they had sustained a serious injury.

2 And Dr. Cartie who testified today explained it
3 would be an immediate reaction to the point of life
4 threatening and not functioning normally, absolutely
5 would not have been sitting up and eating his cereal
6 with Martina Putnam if the injuries had been
7 previously sustained.

8 So we know that the injuries happened sometime
9 after she was in the living room feeding him his
10 cereal. And that's where the whole story starts to
11 get foggy, not a single story that she keeps straight
12 from that point on.

13 What she agreed with and testified to is that he
14 ate his cereal normally three quarters of the way and
15 then he had enough to eat. She states that he is
16 alert and conscious and normal enough that according
17 to her he forms a smirk and then starts playing the
18 game where he would throw himself down on the floor
19 repeatedly and that that was normal for him.

20 Then at some point she takes him somewhere. And
21 again, that's where the story gets foggy. You heard
22 the testimony on Monday from Sergeant Denison.
23 Sergeant Denison testified that he met with Ms.
24 Putnam at Tuomey Hospital. And the reason for this
25 is the child's life was on the line.

1 And one thing that Dr. Cartie explained today
2 is, you know, if you bring a child in and you say, I
3 have absolutely no idea what could have happened to
4 him, there is a whole lot of work that has to be done
5 by those emergency room physicians.

6 That means that Dr. Bailey at Tuomey Hospital,
7 instead of knowing right away I need to a get CT scan
8 done on him and find out how much bleeding is in the
9 brain, instead she's looking at a patient going,
10 well, maybe he choked or maybe he has apnea or maybe
11 he just stopped breathing. Maybe it's this or maybe
12 it's that, maybe not even suspecting that it could be
13 a head injury.

14 But that is valuable time lost that is critical
15 to his medical care, critical to his survival. So
16 when a parent says, I have no idea what happened,
17 they've got to start from square one. So that is why
18 it's absolutely essential for people to say, tell us
19 what happened.

20 So Sergeant Denison says, what happened? She
21 said, well, I got up, she fed the baby, then took him
22 in and laid him on the bed while she went to run him
23 a bath. She testified today she never remembers
24 saying that and she never laid him on a bed and she
25 doesn't know where that came from. All right.

1 Then Dr. Bailey sees her. Again, this is an
2 emergency room doctor whose job is to save this
3 baby's life. She gets him an airway. She stopped
4 Ms. Putnam right there. I need to know what happened
5 because it's crucial. Any parent in that situation
6 would be desperate to give the most accurate details
7 that she can.

8 She tells Dr. Bailey, well, I took him to the
9 bathroom and laid him on the floor. She says she
10 laid him on the floor and that he fell over because
11 he can't balance himself. She didn't think anything
12 of that. And she says today she doesn't remember
13 saying that either.

14 Did she tell Dr. Bailey anything about leaving
15 the bathroom? Absolutely not. And then coming back
16 and finding him that way? Absolutely not. Wouldn't
17 that be crucial? Absolutely it would.

18 Why has no one heard that until today? I
19 submit, ladies and gentlemen, because she threw that
20 in today two years later as a self-serving statement
21 somehow to support the theory that she doesn't know
22 what happened, and I forgot to tell everybody, oh, I
23 must have stepped away and then when I came back
24 Child wasn't breathing, yet doesn't say anything
25 like that to Dr. Bailey who is in fact telling Dr.

1 Bailey that while he is in the bathroom he topples
2 over.

3 Again, what's the point of that statement?
4 Perhaps a way to explain the injury? Well, why
5 doesn't she say that today? Well, because every
6 physician who has testified, I submit the physicians
7 who have testified on that particular subject have
8 made it clear that toppling over in the bathroom
9 would not create that injury. Falling backwards onto
10 that carpeted floor of the living room would not
11 create this injury. She's got to come up with
12 something else.

13 Then we have her statement to Ms. Herod. Now,
14 out of all the statements she gave, this is the one
15 that was most detailed because Child has already
16 been transferred to Richland Hospital. Again,
17 doctors there are trying to save his life. Law
18 enforcement is saying, we need to know what happened.
19 We all want to know what happened to Child

20 Here is where again she confirms that she gets
21 him out of the crib. The boys are outside playing.
22 The baby is eating his cereal. Everything is normal,
23 the story about after he finishes eating the cereal
24 he throws himself onto the floor five or six times.
25 But this times she says, well, she took him into the

1 bedroom and put him in the car seat.

2 Now, she testified today, yes, okay, I took him
3 in the bathroom because that's where I was getting
4 his extra diaper from. So she never said anything
5 about a car seat.

6 Well, ladies and gentlemen, there is a car seat
7 in his bedroom. So again, that's not something that
8 just came out of the sky. That's part of the
9 statement that was made to Ms. Herod and part of the
10 reason that Ms. Herod testified about some of the
11 names and information that she had given about her
12 background in Arizona came out was to show that her
13 note taking skills were extremely detailed, that the
14 statement that Martina Putnam made was documented
15 verbatim by Ms. Herod. That's the reason that the
16 names matched up with the names in Arizona, is
17 because her note taking skills were that accurate.

18 So the statement about taking him into the
19 bedroom and putting him into the car seat, today she
20 said she doesn't recall saying that at all. And then
21 she states to Ms. Herod and law enforcement that she
22 took him in the bathroom and laid him on the floor to
23 start the water and then found out he's not
24 breathing.

25 Is there anything at all said to law enforcement

1 about leaving the room and going to another room to
2 get a towel? Nope. Not mentioned. Even though this
3 interview was so detailed that they are down to
4 asking her to reenact what she saw him doing on the
5 living room floor.

6 Again, trying to figuring out what's happened to
7 him, she gets down and reenacts what she says is the
8 event where he was throwing his head onto the floor.
9 Again, his life is on the line. They need to know
10 every detail about what happened. And nothing at all
11 stated about leaving the bathroom.

12 Then again, the conversation with Dr. Cartie,
13 the attending physician. What happened? Well, I'm
14 giving him a bath, he stopped breathing. Nothing at
15 all about leaving him alone. You can only tell the
16 truth one way, not four different ways.

17 And so it's very foggy from the perception of
18 Ms. Putnam about what happened because the truth
19 isn't being told. All four of these stories can't be
20 true, especially in comparison to what she testified
21 to today, which would be story number five. They
22 can't all be true.

23 And perhaps I submit none of them are true,
24 because there was certainly a very critical portion
25 that is left out, and that is the explanation for how

1 Child could have gotten these bruises, injuries that
2 Dr. Cartie testified were diagnostic of, to a
3 reasonable degree of medical certainty, diagnostic of
4 abusive head trauma, subdural hematoma, subarachnoid
5 hemorrhage and then perhaps most significantly in
6 this case a combination of retinal hemorrhaging and
7 epidural hemorrhaging which shows how much force
8 would have had to have been required in order for
9 those injuries to be inflicted.

10 This isn't toppling over. This isn't falling
11 from a couch, falling from a bed. This isn't
12 flipping over a tub. This is violent blunt trauma
13 resulting in traumatic injuries, especially to
14 produce that degree of retinal hemorrhages as was
15 described by Dr. Cartie.

16 And again, most significantly, these injuries,
17 not other cases that a pathologist may have seen in
18 their years of experience where somebody has had an
19 impact blow to the head and it could be this, it
20 could be that; but these injuries produce immediate
21 onset of symptoms, so immediate that the child is
22 virtually unresponsive, unconscious, not capable of
23 conducting normal functioning lifestyle, not capable
24 of sitting up and eating his food, not capable of
25 playing a game or being alert and performing it.

1 Absolutely medically impossible. That's how we know
2 that the injuries were sustained after that point in
3 time. And there was only one person with him, by her
4 own admission.

5 There has only been one person with him from
6 that point when he was known to be healthy and the
7 injuries could not have been sustained to when these
8 injuries would have been life changing. Of course
9 that's when the story gets foggy about where she went
10 and what she did.

11 She had Child with her and Child in her
12 eyesight. And then today for the first time she
13 says, well, I did step out to get a towel. Never
14 mentioned that before. Yet, says she comes back and
15 finds him in the same spot; never heard a noise,
16 never heard a sound. Ladies and gentlemen, it's not
17 true. I submit to you that her testimony today is
18 not true.

19 She hurt that child in the bathroom. And why?
20 We may never know. And we are not required to prove
21 why. Perhaps out of frustration, perhaps out of
22 anger, perhaps out of exhaustion. Perhaps she did
23 not realize that the injuries she was inflicting
24 would kill him and that he could die as a result, but
25 that's what happened. And we're not required to show

1 that it was premeditated because that's not the law.
2 She acted towards that baby in a way that is unlawful
3 and ultimately resulted in his death.

4 She took the stand and said she had him there in
5 a diaper in the bathroom. Yet she never saw these
6 injuries to his ribs. How could any parent not see
7 this, not be appalled at this injury? That's not
8 something you overlook. She said she never saw any
9 of the bruises on Child says she had no idea where
10 they came from. Oh, maybe she pinched him. Ladies
11 and gentlemen, this blue bruise on the knee, on the
12 thigh, these aren't the result of pinching him.

13 The judge is also going to charge you on what we
14 call circumstantial evidence. And circumstantial
15 evidence I submit to you is good evidence. Under the
16 law we have two types of evidence. One is direct
17 evidence. The second is circumstantial evidence.

18 Direct evidence is normally when a witness sees
19 a crime happen; for example, a murder case or a
20 murder that may happen in a parking lot that's full
21 of people such as witnesses and a witness can come in
22 and say I saw person A shoot person B. That is
23 direct evidence.

24 But often I submit in these cases what we're
25 left with is circumstantial evidence. Because this

1 isn't a crime that anybody wants to own up to and
2 this isn't a crime that happens in front of other
3 people. Child abuse is a secret crime.

4 And ultimately we have medical professionals
5 that know it when they see it. And in the absence of
6 any other explanation, we certainly know that there
7 was no other explanation for this event. And we
8 certainly know that he was healthy up until she took
9 him to the bathroom.

10 And, ladies and gentlemen, circumstantial
11 evidence, as I stated, is good evidence. For
12 example, it's 28 degrees outside and we all know that
13 it might snow and we're worried it might show and how
14 we're going to get home in the snow and then we turn
15 to the door and we see someone walking in and they
16 are wearing snow boots and shaking snow off their
17 boots and we see them tracking that snow on the
18 floor.

19 Well, even though we're not looking out of a
20 window and seeing the snow fall from the sky, we know
21 it's there. We know it snowed already. We have seen
22 the evidence of it. That's circumstantial evidence
23 and that's why it's good evidence.

24 And, ladies and gentlemen, these injuries that
25 happened to Child they tell us what happened and

1 they tell us who did it. So this is not conjecture
2 about who did it in this case. These medical
3 professionals look at these injuries and know in a
4 person who was healthy when this happened, and we
5 know it happened and we know it happened after that
6 point and we know who was with him. She did it. By
7 her own admission, it was her who was with him during
8 that time. It was her who told so many different
9 stories even though there's only one way to tell the
10 truth.

11 You have before you the most noble of
12 opportunities, the chance to strike back against
13 injustice and deliver a verdict that speaks the
14 truth, a verdict to ensure that this life will be
15 answered for, that what happened to Child that it
16 didn't have to happen; but it did, but that justice
17 will prevail.

18 I submit to you the correct verdict in this case
19 is guilty of homicide by child abuse or neglect which
20 is defined as an extreme indifference to human life,
21 to Child life on that morning. Thank you.

22 **THE COURT:** Thank you, Ms. Mayes. All right,
23 ladies and gentlemen. The next point in the trial
24 will be for me to give you the charge on the law. Is
25 there anybody who needs to take a brief break before

1 we do that? All right.

2 All right. Mr. Foreman, before I get fully
3 started into that, I wanted to let you know what your
4 role is as foreperson. You don't have any greater
5 authority in the jury room than any other juror.
6 Your responsibility is to make sure that there is a
7 full and orderly discussion of the issues in this
8 case, and you are to make sure that the verdict that
9 is reached in this case is unanimous. That means all
10 of you have to agree.

11 This is not a seven-to-five or eight-to-four or
12 even eleven-to-one proposition. You are not
13 permitted to complete the verdict form and sign it
14 and knock on the door and let the bailiff know you
15 have reached a verdict until you are assured that it
16 is unanimous.

17 If someone needs to use the restroom while
18 you're deliberating, please stop your deliberations
19 while that person is in the restroom. If for some
20 reason someone needs to use the phone, certainly you
21 have to get permission to come out of the jury room
22 and use the phone, but if anyone is excused from the
23 jury room temporarily, you have to stop your
24 deliberations as well.

25 I trust that none of you have your cellphones

1 with you because I think you're instructed to keep
2 those in the car. But nobody is permitted to take a
3 cellphone in the jury room either.

4 If someone wants to discuss the issues in this
5 case, you don't have the authority to take it upon
6 yourself to decide when enough time has gone by. In
7 other words, you don't have the right to cut off the
8 debate of a particular point. If there is someone or
9 some people on the jury who choose not to actively
10 participate in the actual discussions, that's fine.
11 But again, at the end of your deliberations you have
12 to make sure that all of you agree as to what the
13 verdict is.

14 In this case the indictment does contain one
15 charge, and that is homicide by child abuse. And as
16 we go through this charge, keep in mind that I will
17 be defining certain terms. I will be telling you
18 what the State must prove in that regard. I'll be
19 defining terms such as reasonable doubt. I'll be
20 telling you what the presumption of innocence is.
21 I'll be telling you the different kinds of evidence
22 that exist in the laws of this state. I'll be going
23 through certain points of law for your benefit.

24 And you are required through your oath to accept
25 the law as I give it to you. If you come into this

1 case with any preconceived notion of what the law is
2 or what it ought to be, you have to put that out of
3 your mind. If I make a mistake charging the law to
4 you, there is a different time and a different place
5 for that error to be corrected. So, for today's
6 purposes and throughout your deliberations you must
7 accept the law as I give it to you.

8 An example that I typically use is in some
9 places on Liberty Street the speed limit is 30. Some
10 it's 35. Some it's 40. If you were sitting on a
11 jury in a speeding ticket case and that person got a
12 ticket for going 38 in a 35-mile an hour zone, you
13 could not take it upon yourself to say, well, the law
14 ought to be the speed limit is 30 down the whole
15 stretch. You can't do that. You have to accept the
16 law as I give it to you even if you disagree with it.
17 All right. Listen. I wanted to make that clear.

18 All right. Again, Ladies and Gentlemen, the
19 indictment in this case charges the defendant with
20 homicide by child abuse. As I told you at the
21 beginning of this trial, the fact that a defendant is
22 arrested, charged and indicted for anything is not
23 evidence of one thing. The fact that the person has
24 been arrested and charged and indicted is not to be
25 considered by you as evidence of guilt, and nor does

1 it create any presumption or inference of guilt.

2 The indictment is a document that's simply the
3 formal written instruct which contains the charge
4 made against the defendant. And in simplest terms,
5 the indictment is the piece of paper that gets the
6 case to court. That's all it is.

7 The State, as I will tell you, must prove the
8 elements of the crime charged by the standard of
9 proof known as beyond a reasonable doubt.

10 All right. Ladies and gentlemen, the defendant
11 has entered a plea of not guilty to the indictment.
12 And as I told you at the beginning of this case, that
13 plea puts the burden on the State to prove the
14 defendant guilty. A person charged with committing a
15 criminal offense is never required to prove himself
16 or herself innocent or not guilty.

17 It's an important rule of law that the defendant
18 in a criminal trial, no matter what the seriousness
19 of the charge might be, that defendant is always
20 presumed to be innocent of the crime for which the
21 indictment was issued unless and until guilt is
22 established by evidence satisfying you of that guilt
23 beyond a reasonable doubt.

24 Now, the presumption of innocence that the
25 defendant enjoys does not end when you walk out of.

1 this courtroom to deliberate. The presumption of
2 innocence accompanies the defendant throughout the
3 trial and throughout the course of your deliberations
4 until you reach a verdict of guilt based on evidence
5 satisfying you of that guilt beyond a reasonable
6 doubt.

7 Some have described the presumption of innocence
8 to be like a robe of righteousness that's thrown over
9 the defendant's shoulders. And that robe can't be
10 stripped away until it is stripped away by evidence
11 that establishes to you that the defendant is guilty
12 beyond a reasonable doubt.

13 Now, the presumption of innocence, one more
14 thing, is not a catch phrase. It's not a simple
15 little legal theory. The presumption of innocence is
16 a substantial right that every defendant is entitled
17 to again unless you, the jury, are satisfied of the
18 defendant's guilt beyond a reasonable doubt. And
19 I'll be talking to you in just a few minutes about
20 what a reasonable degree of medical certainty is.

21 Now, during the course of this trial you and I
22 have had certain duties to perform. As I told you at
23 the beginning of this case, all of the witnesses were
24 going to be testifying to you and not to me. I think
25 that was established. All the exhibits were

1 introduced and they were shown to you if they were
2 published. They weren't shown to me. The only time
3 I would perhaps ever have to get involved would be to
4 determine whether or not the exhibit would come into
5 evidence.

6 But the simple fact is that you are the sole
7 finders of the facts. I am not permitted to have any
8 view on the facts of this case, and I do not have a
9 view on the facts of this case. That's your job and
10 your job alone.

11 Now, you can consider when you evaluate the
12 evidence in this case the testimony that's come to
13 you from the witness stand, the exhibits that have
14 been introduced into evidence, any stipulations or
15 agreements between the two sides that have been made
16 known to you. That's what you consider.

17 If I have instructed you to disregard a question
18 or disregard an answer or disregard any evidence that
19 was attempted to be brought before you, you are
20 obligated under your oath to disregard what I told
21 you you are to disregard.

22 Now, ladies and gentlemen, again, I can't state
23 to you or even indicate to you what I think the facts
24 are. If I have said or done anything during the
25 course of this trial that makes you think that I

1 favor one side over the other or that I think your
2 decision ought to be this or your decision ought to
3 be that, just put that out of your mind, because
4 again, that's your responsibility and your
5 responsibility alone.

6 In other words, don't keep score as to how many
7 times I sustained or overruled an objection for one
8 side or the other. I trust you haven't done that.
9 But certainly don't put any stock on any rulings that
10 I have made as to what I think about the facts of
11 this case. It's your duty, your duty alone to
12 determine the effect, the value and the weight and
13 the truth of the evidence presented during this
14 trial.

15 Speaking of the word "evidence" which I have
16 just used and which I have used several times during
17 this charge, there are generally two types of
18 evidence that are presented during a trial. These
19 are called direct evidence and circumstantial
20 evidence. Direct evidence is the testimony of a
21 person who claims to have actual knowledge of a fact.

22 An example of that would be a witness who says,
23 I saw this, I heard this, or I touched this. That's
24 direct evidence. Now, evidence or direct evidence is
25 evidence that immediately establishes the main fact

1 sought to be proved.

2 On the other hand, the other type of evidence is
3 called circumstantial evidence. Circumstantial
4 evidence is proof of a chain of facts and
5 circumstances that indicate the existence of a fact.
6 It's evidence that immediately establishes collateral
7 facts from which the main fact may be inferred.
8 Circumstantial evidence is based on inference and not
9 on personal knowledge or observation.

10 I charge you, ladies and gentlemen, that the law
11 makes no distinction between the weight or value that
12 you are to give to either direct or circumstantial
13 evidence, nor is a greater degree of certainty
14 required of circumstantial evidence than of direct
15 evidence.

16 In essence, what you are to do is you are to
17 evaluate all the evidence, whether direct or
18 circumstantial, and after weighing all the evidence,
19 if you are not convinced of the guilt of the
20 defendant beyond a reasonable doubt, you must find
21 the defendant not guilty. Now, again, I will be
22 defining reasonable doubt in just a moment.

23 As the fact finders, ladies and gentlemen, it's
24 no secret by now, I told you this at the beginning of
25 the trial, you have to determine the credibility

1 which is the believability of witnesses who testified
2 in this case. Credibility again is believability.
3 And it's your duty to analyze and evaluate the
4 evidence and determine which evidence convinces you
5 of its truth.

6 In determining believability of a witness, you
7 use your good common sense. All of you brought that
8 into this courthouse today and you've had it with you
9 throughout the trial. You can believe part of what a
10 witness says. You can believe none of what a witness
11 says. You can believe all of what a witness says.
12 Again, believe parts or reject the rest. It's
13 entirely up to you.

14 You use your good common sense. You can
15 consider whether or not that witness has any bias or
16 prejudice for or against one side over the other.
17 You can consider the demeanor which is the appearance
18 and the manner of the witness on the witness stand.
19 And you can consider whether or not that witness'
20 testimony is strengthened or weakened by other
21 testimony or evidence in the record. And you can
22 consider whether or not that witness made a given
23 different account on a prior occasion.

24 Now, with regard to expert witnesses, as I told
25 you several times throughout the trial, the rules of

1 evidence ordinarily do not permit witnesses to give
2 opinions or conclusions. There is an exception to
3 the rules of evidence for people who are qualified
4 because of education, training or experience. And
5 those people may give opinions as to relevant and
6 material matters in which the witness claims to be an
7 expert. And those witnesses can give reasons for
8 those opinions.

9 You consider the opinion of an expert just like
10 any other evidence. You give it the weight you think
11 it deserves. If you think the opinion of an expert
12 is not based on sufficient education and experience
13 or if you believe after evaluating that testimony
14 that the reasons given in support of the opinion are
15 not sufficient or if you conclude that the opinion is
16 outweighed by other evidence, you can disregard the
17 opinion in its entirety.

18 You are not required to accept the testimony of
19 an expert just because it comes from an expert. And
20 you're not required to accept an expert's opinion
21 even though that opinion might be uncontradicted.

22 Now, ladies and gentlemen, right now we're going
23 to be getting into what reasonable doubt is. And
24 just for your benefit, if you would just oblige me
25 for just a moment, just stand and stretch your legs

1 for about ten or twelve seconds and you can sit right
2 back down. If you don't want to, you don't have to.
3 But, Mr. Cuttino, why don't you stand up and take the
4 lead in that regard. Everybody, why don't you just
5 go ahead and stand up. I'd like to make sure I
6 continue to have your full attention.

7 (Pause)

8 **THE COURT:** All right. I've used the term,
9 ladies and gentlemen, reasonable doubt several times
10 throughout this charge. So the logical question then
11 is, what is reasonable doubt? Reasonable doubt is
12 not an imaginary doubt. It's not a fanciful doubt.
13 It's not a weak doubt. A reasonable doubt is a
14 substantial doubt. It is a doubt for which you can
15 give or assign a reason based on testimony and
16 evidence in this case.

17 A reasonable doubt is a doubt which makes an
18 honest, sincere, conscientious juror in search of the
19 truth hesitate to act. Proof beyond a reasonable
20 doubt is proof that leaves you firmly convinced of
21 the defendant's guilt. If you have a doubt for which
22 you can give or assign a reason as to the guilt of
23 the defendant, then she is entitled to a verdict of
24 not guilty. Reasonable doubt may arise from evidence
25 which is in the case or reasonable doubt may arise

1 from a lack of or absence of evidence in the case.

2 Now, ladies and gentlemen, if you are not
3 satisfied that the State has established guilt beyond
4 a reasonable doubt, then you must give her the
5 benefit of the doubt and find her not guilty. You
6 are not permitted to find the defendant guilty based
7 on conjecture or speculation. A conviction can only
8 be based on proof of guilt beyond a reasonable doubt,
9 as I have previously explained to you.

10 Now, ladies and gentlemen, in this case the
11 defendant is charged with homicide by child abuse.
12 That is an offense set forth in South Carolina Code
13 of Laws Section 16-3-85. And I charge you, ladies
14 and gentlemen, that with regard to the elements of
15 that crime that I will charge to you, the State has
16 the burden of proving each element by the standard of
17 proof beyond a reasonable doubt.

18 The State must prove beyond a reasonable doubt
19 that the defendant caused the death of a child under
20 the age of 11 while committing child abuse or
21 neglect, and the State must prove that the death
22 occurred under circumstances manifesting an extreme
23 indifference to human life.

24 Now, ladies and gentlemen, child abuse or
25 neglect as I have previously mentioned, those terms

1 are defined as an act or a failure to act which
2 causes harm to the child's physical health or
3 welfare. Harm to the child's physical health or
4 welfare means that the defendant either inflicted
5 physical injury or allowed physical injury to be
6 inflicted on the child or failed to supply the child
7 with adequate food, clothing or shelter and this
8 failure caused a physical injury which caused death,
9 or abandoned the child causing the child's death.

10 Now, ladies and gentlemen, as I previously
11 charged you, the State also has to prove that the
12 death occurred under circumstances manifesting an
13 extreme indifference to human life. And I charge
14 you, ladies and gentlemen, that the words extreme
15 indifference, that's a mental state akin to intent
16 characterized by a deliberate act culminating in
17 death.

18 Now, further, ladies and gentlemen, to further
19 explain the concept of intent along the lines of what
20 I just explained to you about extreme indifference,
21 the State must prove beyond a reasonable doubt the
22 element of criminal intent. Criminal intent is
23 always a matter that must be determined by a jury
24 from the circumstances surrounding the situation.

25 Now, there is no way to prove intent to a

1 mathematical certainty, and there is no way that
2 medical science can dissect a person's brain, examine
3 it and decide what, if anything, the person intended
4 to do at any given time. So the law says that
5 criminal intent may be inferred from circumstances
6 shown to have existed. And that's how you make a
7 determination of whether or not the element requiring
8 intent for extreme indifference was present.

9 It's not necessary to establish this by direct
10 and positive evidence, but it may be established by
11 inference in the same way as any other fact, by
12 taking into consideration the actions of the parties
13 and all the facts and circumstances of the case.

14 Criminal intent is a mental state of conscious
15 wrongdoing. And that's why it's up to you to
16 determine what, if anything, a defendant intended to
17 do based on the circumstances shown to have existed.
18 Now, ladies and gentlemen, criminal intent can arise
19 from action or a failure to act.

20 All right, ladies and gentlemen. Again, your
21 verdict will culminate in the foreperson's completion
22 of this verdict form. The verdict form has the case
23 caption on it which says the State of South Carolina
24 vs. Martina Putnam. It has a document number on
25 there. It has the word "verdict" which means or

1 comes from the Latin word which means "speak the
2 truth".

3 And it has one inquiry. As to the charge of
4 homicide by child abuse, we, the jury, unanimously
5 find the defendant, there are two choices, first:
6 Not guilty; second, guilty. These are obviously in
7 no particular order. One had to come before the
8 other. So don't take anything from the particular
9 order. Don't attach any significance to that.

10 If you are not satisfied that the State has
11 established guilt beyond a reasonable doubt, then you
12 find the defendant not guilty. It has to be a
13 unanimous verdict in that regard. Likewise, if you
14 conclude that the State has proven the defendant's
15 guilt beyond a reasonable doubt, your verdict would
16 be guilty. Again, it has to be unanimous.
17 Mr. Foreman, you would obviously put a check or an
18 "X" in the appropriate space by the verdict that you
19 have reached.

20 I am not so much concerned about what your
21 verdict is going to be, but I want to make sure that
22 your verdict is the result of honest and sincere and
23 conscientious deliberation of the evidence that's
24 been introduced. The only way that you can render a
25 true verdict is to make sure that all of you take

1 your oath seriously as you have throughout the trial,
2 continue to take it seriously as you deliberate the
3 evidence in this case.

4 You will have with you in your jury room the
5 exhibits that have been introduced. You will have
6 the law as I charged it to you that you've heard over
7 the last few minutes, and you'll have your good
8 common sense.

9 If you have any questions as you deliberate,
10 there will be a note pad available for you. Simply
11 write the question down, tap on the door, hand it to
12 the bailiff. If the law permits me to provide you
13 with a response, I will do that. The law dictates
14 what I can answer and what I can't answer. But if
15 you do have a question, simply write it down and pass
16 it to the bailiff.

17 Once you have reached a verdict and once you've
18 made sure it's unanimous, you complete the verdict
19 form, sign it, date it, tap on the door and let the
20 bailiff know you've reached a verdict.

21 Right now I'm going to send you to the jury room
22 because the next -- there is a brief phase of the
23 trial. It will be the opportunity for the lawyers to
24 tell me if they think I've charged anything
25 improperly or if I have left something out. So don't

1 begin to deliberate yet. If the bailiff returns to
2 the door with all of the exhibits and the verdict
3 form and he or she tells you that you can begin your
4 deliberations, then you can do so. But don't do that
5 until the bailiff alerts you that you can begin your
6 deliberations, because I may have to bring you back
7 out very briefly.

8 All right. Please do not discuss the case yet.
9 And we do -- if there are no additional charges to be
10 made to you, then you will be notified of your right
11 to begin your deliberations. If there is anyone who
12 does need to make any contact with anyone in the
13 outside world, please make sure that you let the
14 foreman know, he'll let the bailiff know, and we'll
15 accommodate you in the best way possible. All right.
16 Thank you, ladies and gentlemen.

17 (Jury out at 3:44 p.m.)

18 **THE BAILIFF:** Do you want to bring the alternate
19 back in?

20 **THE COURT:** Yes, sir. Any exceptions or
21 additions? Mr. Howle? Ms. Mayes?

22 **MS. MAYES:** None from the State, Your Honor.

23 **MR. HOWLE:** None from the defendant.

24 **THE COURT:** All right. If you all will, while
25 I'm talking, you can get with the court reporter and

1 make sure all the exhibits are in order and not
2 perhaps absentmindedly on somebody's table.

3 (Whereupon, the alternate is excused from the
4 trial of the case)

5 **THE COURT:** All right. Is everything in order?

6 **MS. MAYES:** Yes, sir. We were going to remove
7 the back portion of one of these exhibits.

8 **THE COURT:** Okay. Here is the verdict form.
9 Mr. Howle, are all the exhibits in order?

10 **MR. HOWLE:** Yes, sir. I was counting the
11 pictures that were put in. I think these were the
12 only ones put in.

13 **THE COURT:** I know that you have folks that may
14 be affiliated with one side or the other. Just make
15 sure they understand if a question is asked by the
16 jury, of course the defendant will be present once
17 the question is given to me, but make sure they are
18 reachable in case we need to come back in the
19 courtroom.

20 **MS. MAYES:** Okay, Your Honor.

21 **MR. HOWLE:** Thank you.

22 (Whereupon, deliberations begin)

23 (WHEREUPON, Court's Exhibit No. 5 is marked for
24 identification.)

25 **THE COURT:** Mr. Howle and Ms. Mayes, the jury

1 has reached a verdict. First of all, with regard to
2 Court's Exhibit No. 5, the jury submitted a question:
3 "A juror would like to see the photo of the
4 bathroom."

5 We've been over that. With the permission of
6 the State and the defendant, and I think, Mr. Howle,
7 you discussed it with your client --

8 **MR. HOWLE:** Yes, Your Honor.

9 **THE COURT:** -- I went to the door of the jury
10 room and told them that what they were permitted to
11 consider as far as tangible exhibits were the
12 exhibits that had been introduced, and I left it at
13 that.

14 All right. Obviously this is a case with some
15 marked degree of an emotional component to it. My
16 direction to everybody in the courtroom is once the
17 verdict is read to not have any visible or audible
18 reaction to the verdict. And we'll receive it in
19 that fashion. Does anybody suspect any problem with
20 that? If anybody in the courtroom thinks that
21 they're not able to abide by that instruction, you
22 can just simply step out in the hall while the
23 verdict is read.

24 All right. You can bring in the jury.

25 (Jury in at 5:13 p.m.)

1 **THE BAILLIFF:** All the jurors are present in the
2 courtroom, Your Honor.

3 **THE COURT:** All right. Mr. Foreman, have you
4 reached a verdict?

5 **MR. FOREMAN:** Yes, sir, we have.

6 **THE COURT:** Is it unanimous?

7 **MR. FOREMAN:** Yes, sir, it is.

8 **THE COURT:** All right. You can hand it to the
9 bailiff.

10 (Foreman complies)

11 **THE COURT:** All right. If you'll publish the
12 verdict. Ma'am, Mr. Howle, if you and Ms. Putnam
13 will please stand.

14 **THE CLERK:** The State of South Carolina vs.
15 Martina Putnam. In the Court of General Sessions,
16 case number 2008-GS-43-360, as to the charge of
17 homicide by child abuse, we, the jury, unanimously
18 find the defendant guilty.

19 Jurors, if this is your verdict, so say you all
20 by raising your right hands.

21 **THE COURT:** The record will show that all jurors
22 raised their hand. You all can have a seat.
23 Anything, Mr. Howle, before the jury is released,
24 such as polling the jury?

25 **MR. HOWLE:** No, sir. All of them raised their

1 hand. I will accept that.

2 **THE COURT:** All right. Anything from the State
3 before the jury is released?

4 **MS. MAYES:** Nothing from the State, Your Honor.

5 **THE COURT:** All right. Ladies and gentlemen,
6 thank you very much for your service in this case.
7 Your service in this case is over with. I would
8 appreciate it if you would follow this one additional
9 instruction. Do not discuss this case, if you
10 wouldn't mind, until your service this week is over.

11 After that you will be permitted to discuss this
12 case with anybody that you want to. If, however,
13 during the course of your experience after your
14 service this week is over someone comes up to you and
15 wants to talk to you about this case and you don't
16 want to talk about it, simply tell the person that.

17 If that person persists in trying to talk to you
18 about the case, get the person's name, report the
19 person's name to the clerk's office, and it will be
20 relayed to me. You are released for the day. I
21 believe the instructions that we have are for them to
22 call back after 6?

23 **THE CLERK:** After 6. Yes, sir.

24 **THE COURT:** You are to call the number that you
25 have after 6 this evening, which is 45 minutes from

1 now, and you'll receive your additional instructions
2 at that time. And the instruction may be to call
3 back tomorrow, or more likely than not, it will be to
4 come back tomorrow morning at 9:30. All right. You
5 are free to go at this time. Thank you very much.

6 All right, Mr. Howle. Any motions?

7 **MR. HOWLE:** Your Honor, we would move for a new
8 trial based on the fact that we still think the
9 evidence as presented clearly presented reasonable
10 doubt and that the State did not prove their case,
11 Your Honor, beyond a reasonable doubt.

12 **THE COURT:** All right. Anything in response,
13 Ms. Mayes?

14 **MS. MAYES:** No, sir, Your Honor, other than the
15 argument that I put previously on the record in that
16 regard.

17 **THE COURT:** Well, I agree with Mr. Howle's
18 difficulty in the case factually for the jury the
19 resolve. It was clear to me they paid very close
20 attention throughout the trial and rendered a verdict
21 that they considered speaking the truth, and I think
22 that I will respectfully deny your new trial motion.

23 The statute, 16-3-85, sets forth the sentencing
24 parameters. And section (d) says that I must
25 consider any aggravating circumstances including, but

1 not limited to, a defendant's past pattern of child
2 abuse or neglect of the child under the age of 11 and
3 any mitigating circumstances. And it throws in there
4 the caveat that a child's crying does not constitute
5 provocation so as to be considered a mitigating
6 circumstance.

7 What's the State's view of the evidentiary
8 confines of that? Most penal statutes don't have
9 something that some construe to be a requirement that
10 we have a sentencing hearing as opposed to a typical
11 summary and so forth. What's the State's position on
12 that?

13 **MS. MAYES:** Your Honor, we would beg the Court's
14 indulgence. We don't necessarily intend to offer
15 anything further at this proceeding, Your Honor.
16 There was a previous incident in which in Arizona the
17 child was removed and placed into foster care and a
18 diagnosis of failure to thrive which has previously
19 been put on the record. But in terms of offering
20 evidence of that finding, those physicians are not
21 here for the State and that's not evidence we can
22 offer at this point in any type of sentencing
23 proceeding.

24 **THE COURT:** Of course, Mr. Howle, I suppose you
25 object to that on the basis that it would have to be

1 established with some degree of certainty as opposed
2 to being presented in a conclusory fashion?

3 **MR. HOWLE:** Yes, Your Honor.

4 **THE COURT:** What's the defendant's position as
5 to presentation of mitigating circumstances?

6 **MR. HOWLE:** Judge, --

7 **THE COURT:** The range of sentence is 20 years to
8 life.

9 **MR. HOWLE:** Yes, sir. Your Honor, in regard to
10 mitigation, one thing that -- and I don't know
11 whether to probe -- I don't know if we asked the
12 question -- Ms. Putnam has no record whatsoever. In
13 regard to the matter of the first divorce, she was
14 granted custody of both children. She has
15 continually denied that she did anything overtly that
16 she knows of that would have caused this injury. I
17 had hoped Mr. Putnam himself may be here. I talked
18 to him. He let us know last Saturday he had no
19 intentions of coming.

20 **THE COURT:** He's in North Carolina?

21 **MR. HOWLE:** No, sir. This is the husband who is
22 a truck driver.

23 **THE COURT:** I see.

24 **MR. HOWLE:** Your Honor, I still believe that he
25 was concerned that he may well be charged. But,

1 regardless, he has informed her last Saturday that he
2 had no intention of coming.

3 **THE COURT:** I'll give you a couple of minutes or
4 a few minutes, Mr. Howle, to discuss with your client
5 as to whether or not she wants to say anything about
6 the scenario for the sentencing.

7 **MR. HOWLE:** Thank you, Your Honor.

8 **THE COURT:** All right. And, Ms. Mayes, when I
9 come back, I'll ask for the State's position one more
10 time.

11 **MS. MAYES:** Yes, sir, Your Honor.

12 (Whereupon, a break is taken)

13 **THE COURT:** All right. Mr. Howle?

14 **MR. HOWLE:** Your Honor, Ms. Putnam has indicated
15 she would like to talk to the Court.

16 **THE COURT:** She would?

17 **MR. HOWLE:** Yes, Your Honor. Do you want her to
18 talk to you here, or should she be closer?

19 **THE COURT:** That's fine. That's fine.

20 **MS. PUTNAM:** This has been a really terrible
21 time. The entire time that I've been incarcerated,
22 I've seen everything that the doctors have said. In
23 trying to go over everything that happened that day,
24 I have had two years to sit and think about
25 everything that's happened. And there isn't anything

1 that I did that day that I wouldn't have done on any
2 normal day. And I still wish to God I knew what it
3 was that caused Child injuries and caused him to
4 pass, because with all my heart I wish I knew what it
5 was.

6 I love my children and my whole life has been
7 involved with trying to make sure that my children
8 are taken care of to the best of my abilities. I
9 went so far out of the way as to come here to South
10 Carolina to try to better my children's lives because
11 I wasn't making it back west where I was. I thought
12 in doing so that I could get my family involved in
13 something bigger, that we would have something to
14 show for our efforts, for all the work that I put
15 into it.

16 But I don't know what happened to Child And
17 when the officers were asking me questions, when the
18 doctors were asking me what happened, there were
19 certain things that I didn't say simply because I
20 didn't think that at that point in time that those
21 things were important. I thought that I needed to
22 let them know exactly what happened and not go into
23 every single detail to the doctor simply because I
24 wasn't thinking about a towel or a car seat when the
25 doctors were asking me what happened.

1 I told them I found him and he wasn't breathing
2 and he wasn't responsive. I don't know anything
3 beyond that other than what I had done during that
4 day. I don't know what happened before. I had no
5 idea. The kids were going in and out of the house,
6 doing the things that they normally do.

7 All I know is that I love my children with all
8 my heart and I would do anything for them. And I
9 know that you can nullify certain laws, and so am I,
10 that I have to follow, that everybody has to follow.
11 And I know that this charge carries a large amount of
12 time, up to and including life. And I maintained my
13 innocence through this entire thing because I
14 honestly don't know what happened to him and I wish
15 to God I did.

16 I refused to accept a lesser plea simply because
17 I know that I didn't do anything. There is nothing
18 on this earth that will make me change what I said.
19 There is nothing on earth that will make me change
20 the way I feel about my children or anything, sir.

21 No matter what, I know what I did, and I know
22 that I didn't harm my son in any way. And I wouldn't
23 have ever have harmed my son. I am not a
24 disciplinarian. I never strike my children. It
25 wouldn't have made any difference to me whether it

1 was Child or Sibling 2 or Sibling 1 If something had
2 happened to my children, I would have been there for
3 them.

4 All I'm saying, sir, is that I did anything that
5 any reasonable parent would have done. I didn't
6 neglect my child by taking him to the hospital. I
7 did everything that I thought in my power that I
8 could do for him. I wasn't being neglectful in my
9 duties by taking him there.

10 Maybe I wasn't there with my children all the
11 time, but I had to work. I had to take care of my
12 family. I don't know what happened during the times
13 that I wasn't there. I don't know what happened in
14 the morning before I woke up that day. All I can say
15 is what happened when I saw him.

16 And when I found him and he wasn't breathing and
17 he wasn't reacting or anything, I didn't know what to
18 do other than to do what I was told. And I knew that
19 I had to breathe for him and I knew that I had to do
20 everything in my power to try to get him to come back
21 to us because I knew that something serious had
22 happened because he wasn't breathing.

23 And no matter what, I'm still going to make
24 statements that I didn't do anything here because I
25 still don't know what happened and I wish that I did.

1 Thank you.

2 **THE COURT:** Mr. Howle, any additional comments
3 from you?

4 **MR. HOWLE:** Your Honor, only that throughout all
5 this, in dealing with Mr. Boltman down in Family
6 Court and the matters down there with regard to child
7 custody, the story that she told Ms. Herod, the story
8 that she told us in regard to efforts that happened
9 that day has not changed one bit. It's always been
10 the same story. She has told what she did. I told
11 her, I wish you could just point to anything that
12 would have caused this, and she said, I can't.
13 That's it. Thank you.

14 **THE COURT:** Ms. Mayes?

15 **MS. MAYES:** Nothing further from the State, Your
16 Honor.

17 **THE COURT:** No recommendation, no position as to
18 sentencing?

19 **MS. MAYES:** No, sir, Your Honor.

20 **THE COURT:** Does anyone from law enforcement
21 want to speak?

22 **MS. MAYES:** No, sir, Your Honor.

23 (Pause)

24 **THE COURT:** All right. The statute clearly
25 states that in sentencing a person under this section

1 I must consider any aggravating circumstances which
2 include, but are not limited to, a past pattern of
3 child abuse or neglect of a child under the age of 11
4 and any mitigating circumstances.

5 As I continuously say, passing a sentence is the
6 least -- it's a very distressing part of the task of
7 any trial judge, and it's not -- I don't see it as a
8 pleasure sentencing anyone who has been found guilty
9 by a jury. It in this particular case is a very
10 heartrending situation.

11 I am going to exercise my discretion taking into
12 account the parameters of 20 years to life and
13 considering the aggravating circumstances which
14 really aren't in evidence of a past pattern of child
15 abuse or neglect, but I believe I can take into
16 account the aggravating circumstances of this case
17 itself; also taking into account the fact that the
18 defendant does not have a criminal record. And as
19 Mr. Howle indicated and I think the defendant
20 indicated during her testimony, she was given custody
21 of the two other children upon her divorce from her
22 first husband.

23 Ms. Putnam, the sentence of the Court is you are
24 committed to the State Department of Corrections for
25 a period of 25 years. You will receive credit for

1 the time you have served.

2 Anything additional, Mr. Howle?

3 **MR. HOWLE:** Not at this time, sir.

4 **THE COURT:** Ms. Mayes?

5 **MS. MAYES:** Nothing from the State, Your Honor.

6 **THE COURT:** All right. Thank you. All right.

7 We're adjourned. And if everyone in the courtroom
8 would obey my instruction to the jury and don't
9 impose on their further jury service this week by
10 engaging in any discussions about this case, I would
11 appreciate it. Thank you very much.

12 Mr. Howle, you consult with your client about
13 motions she wishes served.

14 **MR. HOWLE:** All right, sir.

15 **THE COURT:** Yes, sir.

16 (Whereupon, the proceedings are concluded)

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I, Jenny H. Williams, Official Court Reporter for the Fifth Judicial Circuit of the State of South Carolina, having transcribed this trial for Melissa Singletary, the court reporter who was present at trial, do hereby certify that the foregoing is a true, accurate and complete Transcript of Record of the proceedings had and evidence introduced in the trial of the captioned case, relative to appeal, in the Court of General Sessions for Sumter County, South Carolina, on the 20th, 21st and 22nd days of April, 2009.

December 28, 2009

Jerry H. Williams

Jenny H. Williams, Court Reporter

THE STATE OF SOUTH CAROLINA)
COUNTY OF SUMTER)

THE STATE OF SOUTH CAROLINA)

v.)

MARTINA RENAE PUTNAM,)

DEFENDANT.)

IN THE COURT OF GENERAL SESSIONS

OF THE THIRD JUDICIAL CIRCUIT

Warrant/Indictment Nos.: 2008-GS-43-360

2009 APR 24 AM 12:34

JAMES: MOTION TO VACATE,
CLERK OF COURT
SUMTER COUNTY
OR IN THE ALTERNATIVE,
FOR RECONSIDERATION

TO: THE HONORABLE GEORGE C. JAMES, JR.; & SUZANNE MAYES, SC COMMISSION ON PROSECUTION COORDINATION

PLEASE BE ADVISED AND TAKE NOTICE that the Defendant, Martina Renae Putnam, through Her undersigned attorney, hereby moves and request of this Honorable Court that the sentence imposed on the Defendant, Martina Renae Putnam, on April 23, 2009 be vacated.

The Defendant was found guilty to the charge of Homicide by Child Abuse before Judge James. The court sentenced the Defendant to twenty-five (25) years.

The Defendant would move to vacate the sentence for the following reasons;

1. The Prosecution made an offer to plea to a lesser offense while the jury was deliberating the charge against the Defendant.
2. The jury returned a verdict very shortly after this offer was tendered and the Defendant did not have sufficient time to consider the offer and its consequences.
3. The Defendant realizes that the offer made by the Prosecution is more appropriate to the conduct or lack of care committed by the Defendant and would desire to plea to that charge.

WHEREFORE, the Defendant respectfully requests and prays that this Honorable Court:

- 1.) Vacate the sentence imposed on April 22, 2009 of twenty (20) years on the charge of Homicide by Child Abuse (Code Section 16-3-85(A) (1) and allow the Defendant to plea to Homicide by Child abuse, (Code Section 16-3-85(A)(2)), providing a sentence of imprisonment for a term not exceeding twenty(20) years nor less than ten (10) years.

In the alternative, should the Court not vacate the sentence imposed on April 22, 2009, that the Court reconsider such sentence for the following reasons:

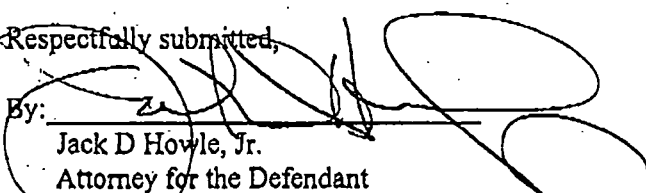
1. The Court imposed the minimum sentence of twenty (20) years and then provided an additional five (5) years after considering aggravating and mitigating circumstances.
2. The defendant, Martina Renea Putnam, would contend that the state offered no other matters of aggravation, while the defense presented mitigation: specifically; that the defendant had no criminal history and that she had been awarded custody of her two other children. Based on this information defense counsel feels that the minimum sentence of twenty (20) years should have

been imposed.

WHEREFORE, the Defendant respectfully requests and prays that this Honorable Court:

- 1.) Recognize the lack of aggravating circumstances and amend the current sentence of twenty-five (25) years to the minimum sentence of twenty (20) years.

Respectfully submitted,

By: 

Jack D Howle, Jr.
Attorney for the Defendant
141 North Main Street, Rm # 102
Sumter, SC 29150
(803) 436-2424

SUMTER, SC
Date: April 24, 2009

ORIGINAL

STATE OF SOUTH CAROLINA
COUNTY OF SUMTER

) COURT OF GENERAL SESSIONS
)

2008-GS-43-360

State of South Carolina)

vs.)

) TRANSCRIPT OF RECORD
) (Motion to Reconsider)
)

Martina R. Putnam,)

)
)
) Defendant.)

November 10, 2009
Sumter, South Carolina

BEFORE:

THE HONORABLE GEORGE C. JAMES, JR., JUDGE

APPEARANCES:

SUZANNE MAYES, ASSISTANT ATTORNEY GENERAL
Attorney for the State

JACK HOWLE, CHIEF PUBLIC DEFENDER
Attorney for the Defendant

JENNY H. WILLIAMS
Official Circuit Court Reporter
(803) 576-1743

Tuesday, November 10, 2009

THE COURT: The State of South Carolina vs. Martina Renee Putnam, indictment 2008-GS-43-360. I believe on April 23rd, Mr. Howle, sentence was imposed after she was found guilty of homicide by child abuse. Is that correct?

MR. HOWLE: That's correct, Your Honor.

THE COURT: Do you have some motions?

MR. HOWLE: Yes, sir.

THE COURT: Okay.

MR. HOWLE: Your Honor, while the jury was out, the solicitor, Ms. Mayes, approached me in regard to an offer. I think it may have had the wrong number on the motion. It was under 16-3-95, infliction, allowing infliction of great bodily injury on a child.

THE COURT: 16-3-95?

MR. HOWLE: Yes, sir. 16-3-95. I went and spoke with her but we really only had a short time to talk before the jury actually came back with a verdict. We came into the courtroom. The jury gave its verdict of guilty and Your Honor went ahead and sentenced in regard to that particular section and gave her a sentence of 25 years.

We filed a motion asking that that be vacated

1 and allowing us to plead under the provision that was
2 offered; or, in the alternative, if that was not
3 granted, to reconsider the 25-year sentence that you
4 gave the defendant, Your Honor.

5 **THE COURT:** All right. Ms. Mayes, do you have
6 any response to that at this point?

7 **MS. MAYES:** Yes, sir, Your Honor. We'd just
8 like to put on the record that the State's
9 understanding is that the offer was communicated to
10 Ms. Putnam. It's a situation when the jury is out
11 deliberating that anyone in that -- under that
12 scenario would recognize that they would have to be
13 mentally prepared to accept a plea and that it's
14 something that couldn't wait until a verdict comes
15 back and then they may accept or not accept it.
16 And --

17 **THE COURT:** I guess from the timing standpoint,
18 once -- of course the jury could stay back in the
19 jury room. Let me back up. I know that I wasn't
20 made known of any negotiations, nor was there any
21 need for me to be made known of that. But if there
22 was something that was in the hopper at that time, I
23 guess one of y'all or both of y'all could have said:
24 Can we have a little time before the jury comes back.
25 Is there any reason why that wasn't done?

1 **MR. HOWLE:** Your Honor, I think I was still down
2 the hall when the verdict came, and I just assumed at
3 that point that Your Honor wasn't going to just stop
4 and allow us to continue to have some conversation.

5 **THE COURT:** Well, the (a)(1) is what? Zero to
6 20? 3-95(a)(1)?

7 **MS. MAYES:** Correct, Your Honor. That's a zero
8 to 20. And --

9 **THE COURT:** And the offer was a 20-year cap,
10 ten-year floor?

11 **MS. MAYES:** No, sir.

12 **THE COURT:** That's what your motion says.

13 **MR. HOWLE:** And that section is wrong. The
14 offer made was the zero to 20.

15 **THE COURT:** Okay.

16 **MR. HOWLE:** And that code section was
17 inadvertently put in there wrong.

18 **THE COURT:** From a procedural standpoint, the
19 defendant could still enter a plea. Is that correct?

20 **MS. MAYES:** She could have at that point in
21 time?

22 **THE COURT:** Yeah. Come out -- let's say, for
23 example, an appeal is filed. She could enter a plea
24 during that phase, couldn't she? Of course you
25 wouldn't have to be on board with that. I mean,

1 that's done. When cases are on appeal, sometimes
2 pleas are entered. Is that correct?

3 **MS. MAYES:** I have never -- this is a novel
4 situation for me, Your Honor. And we'd just like to
5 add that when the verdict came in, of course there
6 was no indication whatsoever that Ms. Putnam was
7 inclined to accept the plea at that point.

8 During sentencing she did stand up and address
9 the Court. And at that time she said -- and I'm
10 paraphrasing because I don't have the transcript in
11 front of me, but I do recall it -- that she said: I
12 refuse to plead guilty to a lesser charge in this
13 case because -- and she went on to deny her guilt.
14 So she appeared to be recognizing to the Court she
15 was unwilling to accept responsibility.

16 **THE COURT:** I think what she said was: I refuse
17 to plead guilty to something that I didn't do.

18 **MR. HOWLE:** That's correct, Your Honor. She did
19 not address the offer. She did not address the
20 offer. Your Honor, one thing that was unusual about
21 this case, there are some things that happened in
22 Arizona that neither Ms. Mayes nor I were going to
23 introduce because there were some admissibility
24 problems in regard to that, some of which may have
25 hurt her position and some of which may have helped

1 mine.

2 The entire time -- and I had conversations with
3 Ms. Mayes, and this was certainly not presented
4 before the jury -- was involvement that the husband
5 had had. We tried to subpoena him and he was --

6 **THE COURT:** What was his name again?

7 **MS. PUTNAM:** Patrick.

8 **MR. HOWLE:** Patrick Putnam. He was aware that
9 we were trying to get him here, and he communicated
10 to us that he wasn't coming to South Carolina because
11 he thought there was a warrant out for him.

12 **THE COURT:** I remember y'all telling me about
13 that.

14 **MR. HOWLE:** 'And that's why when the offer was
15 made that basically says allowing the infliction of
16 great bodily injury, maybe by kind of like receiving
17 stolen goods, you get something that's too good a
18 price, you should know it was stolen, then maybe
19 there were some things that she saw that should have
20 made her aware that something was going on. It
21 wasn't what she was doing, maybe what the husband was
22 doing.

23 But I couldn't -- in the trial itself I can't
24 say, well, she didn't do it; somebody else must have
25 done it if I couldn't make something more definite in

1 regard to the testimony to indicate that he had done
2 it.

3 **THE COURT:** All right. Anything else, Ms.
4 Mayes?

5 **MS. MAYES:** Yes, sir, Your Honor. And just
6 briefly in response to that. The State's position
7 has been that there is substantial evidence that the
8 injuries could have been inflicted by Ms. Putnam
9 based on her own statements, the statements going
10 back to what she told hospital personnel, law
11 enforcement, and then ultimately what she testified
12 to.

13 The State's position is that her testimony is
14 completely inconsistent with the injuries having
15 previously been inflicted. And so it's always been
16 our theory based on her statements that she would
17 have inflicted the injuries.

18 Now, there is the matter of the husband, what
19 his awareness was, but we don't know the answer to
20 that. We only know that Ms. Putnam has never
21 implicated him herself.

22 **THE COURT:** All right.

23 **MR. HOWLE:** We weren't indicating it at the
24 trial because --

25 **THE COURT:** Any final word on that, Mr. Howle?

1 And then we'll move on to your alternative motion.

2 **MR. HOWLE:** Well, Your Honor, the only thing
3 with regard to that was the week before this happened
4 she was on the road. She was a truck driver. He was
5 there with the child. She only got in like the night
6 before when this is supposed to have happened.

7 And --

8 **THE COURT:** But the doctor testified that
9 whatever happened would have had to have happened
10 immediately before the child showed --

11 **MR. HOWLE:** Her doctor did. The pathologist,
12 specifically when he took the stand stated that he
13 had certainly seen cases when that was not the case
14 where there was immediate, a comatose situation or
15 something like that where he had seen where it could
16 be several hours before someone showed the results of
17 that.

18 **THE COURT:** But the jury could have accepted the
19 other testimony.

20 **MR. HOWLE:** Yes, sir. They heard both of them,
21 Your Honor. That's true.

22 **THE COURT:** Okay. How about your alternative
23 motion that I --

24 **MR. HOWLE:** That you just --

25 **THE COURT:** I imposed a 20-year sentence and an

1 additional five years --

2 **MR. HOWLE:** That's correct.

3 **THE COURT:** -- on the aggravating/mitigating,
4 taking into account aggravating or mitigating
5 circumstances.

6 **MR. HOWLE:** Yes, sir.

7 **THE COURT:** I did sentence her to the minimum of
8 20 years, and it was 20 to 30. So that was the --
9 essentially 30?

10 **MR. HOWLE:** Essentially 25.

11 **THE COURT:** I know. But is the range 20 to 30,
12 or is it 20 to life?

13 **MS. MAYES:** 20 to life, Your Honor.

14 **THE COURT:** That's right. All right. What's
15 your point on my failure to take into account
16 aggravating and mitigating circumstances?

17 **MR. HOWLE:** Well, Your Honor, --

18 **THE COURT:** She had no criminal history.

19 **MR. HOWLE:** She had no criminal history. Well,
20 Your Honor, even the offer itself I thought from the
21 State wasn't one offered I don't think because she
22 felt her case was weak. I think she had proven what
23 she had proven.

24 One of the concerns we had all the time was what
25 the husband's involvement was. He wasn't charged.

1 We could not prove anything. We couldn't just bring
2 in records from someone else we knew that was going
3 to be inadmissible for some previous situations.

4 But we felt like when that offer was made that
5 the State has well had some concern that she may be
6 guilty of neglect, she may be guilty of seeing some
7 things that were being done that she should have
8 addressed or reported or something else and didn't.
9 And I felt that that was some mitigation in itself.

10 I don't think there have been any real
11 complaints anywhere of her ability as a mother and
12 taking care of the child.

13 One of the problems we had in addition to this,
14 Your Honor, as you may be aware, Gwen Herod
15 interviewed both of the children. However, under
16 that code section, if you're going to present that,
17 the children have to be available to be questioned or
18 whatever. And her ex husband refused to bring the
19 children and indicated that under no circumstances
20 was he going to have them come down here. So we
21 didn't have that available to present to the Court
22 itself.

23 And I realize I'm kind of going into some
24 mitigation that you didn't hear, because we couldn't
25 present it. But, Your Honor, we just felt there were

1 a number of other reasons why the sentence should be
2 the minimum sentence if you were going to impose a
3 sentence under that section.

4 **THE COURT:** What's the State's position on the
5 period of years I sentenced her to?

6 **MS. MAYES:** Your Honor, I believe that
7 sentencing is a matter entirely within the discretion
8 of the Court. But just in response to the matter in
9 Arizona. And Your Honor may recall. I know it's
10 been several months, quite a length of time since we
11 dealt with these issues. But Child had been removed
12 by authorities in Arizona for failure to thrive and
13 had been hospitalized and ultimately was placed back
14 with the parents.

15 Our information was that both parents would have
16 been involved in that to the extent that it was
17 neglect. Ultimately though the child was returned
18 and they were not charged criminally. But there was
19 a diagnosis of failure to thrive.

20 **THE COURT:** The doctor's testimony was that the
21 child died because of being shaken. Is that right?

22 **MS. MAYES:** Yes, sir, Your Honor. The failure
23 to thrive incident occurred in the state of Arizona
24 prior to them moving to Sumter County.

25 **THE COURT:** But the shaking occurred here in

1 Sumter County?

2 **MS. MAYES:** Yes, sir, Your Honor.

3 **THE COURT:** There was no eye witness to it. Is
4 that right?

5 **MS. MAYES:** That's correct.

6 **MR. HOWLE:** That is correct, Your Honor.

7 **THE COURT:** Circumstantial, and she was the one
8 that had the last contact with the child by her own
9 statements. So she was holding the child when the
10 child showed the significant distress and that your
11 theory was that since the testimony was that it had
12 to be an immediate onset of that problem that it had
13 to be her.

14 **MS. MAYES:** Yes, sir, Your Honor. And beyond
15 that, she gave a description of events that the
16 State's presentation was that there was a change or
17 revolving history concerning what exactly had
18 occurred that day.

19 **THE COURT:** And so you maintain that the 25-year
20 sentence was appropriate?

21 **MS. MAYES:** Yes, sir, Your Honor. Within the
22 discretion of the Court.

23 **THE COURT:** Anything else, Mr. Howle?

24 **MR. HOWLE:** Your Honor, we realize it's within
25 the discretion of the Court. We just felt like the

1 facts -- and like I say, the jury certainly heard
2 from two different doctors and they had to believe
3 one or the other in regard to that.

4 But like I say, the people in Arizona, they gave
5 the child back to her. The child was born premature.
6 A lot of those problems -- and there was some
7 reference to indicate that as well, that that
8 underweight and some other things had to do with
9 the -- as a matter of fact, even the psychiatrist --
10 I mean the pathologist who conducted the autopsy in
11 regard to the burst blood vessels in the eyes
12 indicated that that initially could have been from
13 premature birth. And later on there was a question
14 as to whether that would still have existed after a
15 year and a half.

16 But still, we still feel that whatever happened
17 in Arizona was resolved. She had been taking care of
18 this child and that if sentence of 25 years was
19 excessive.

20 **THE COURT:** All right. Anything else, Mr.
21 Howle?

22 **MR. HOWLE:** No, sir.

23 **THE COURT:** All right. What I'm going to do,
24 I'll take into account the arguments that you've made
25 today and I'll advise both of you in writing of what

1 my decision is. Okay?

2 **MS. MAYES:** Thank you, Your Honor.

3 **MR. HOWLE:** Thank you, Your Honor.

4 **THE COURT:** Thank you, Ms. Putnam.

5 (Whereupon, the proceedings are concluded)

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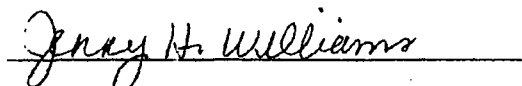
CERTIFICATE OF REPORTER:

STATE OF SOUTH CAROLINA)
)
COUNTY OF SUMTER)

I, Jenny H. Williams, Official Court Reporter for the Fifth Judicial Circuit of the State of South Carolina, having transcribed this for Melissa Singletary who reported it, do hereby certify that the foregoing is a true, accurate and complete Transcript of Record of the proceedings had and evidence introduced in the Motion to Reconsider of the captioned case, relative to appeal, in the Court of General Sessions for Sumter County, South Carolina, on the 10th day of November, 2009.

I do further certify that I am neither of kin, counsel nor interest to any party hereto.

March 5, 2010



Jenny H. Williams, Court Reporter

STATE OF SOUTH CAROLINA) RECORDED
 COUNTY OF SUMTER) 2009 DEC 30
 IN THE COURT OF GENERAL SESSIONS
 THIRD JUDICIAL CIRCUIT
 CASE NO.: 2008-CP-43-360

State of South Carolina,
 Plaintiff,)
 JAMES C. HOWELL
 CLERK OF COURT
 SUMTER COUNTY, S.C.

J289224

vs.)
)
 Martina Renae Putnam,)
 Defendant)
 _____)

ORDER

This matter is before the court pursuant to defendant's Motion to Vacate or in the Alternative, for Reconsideration. A hearing was held on November 10, 2009. Suzanne Mayes, Esq. appeared for the State and Jack Howle, Esq. appeared on behalf of the defendant. The defendant was also present.

Defendant was found guilty of the charge of Homicide by Child Abuse on April 23, 2009. Defendant was sentenced to twenty-five (25) years. Defendant moves to vacate the sentence on the following grounds: 1) The Prosecution made an offer to plea to a lesser offense while the jury was deliberating the charge against the Defendant; 2) The jury returned a verdict very shortly after the offer was tendered and the Defendant did not have sufficient time to consider and offer its consequences; 3) The Defendant realizes that the offer made by the State is more appropriate to the conduct of lack of care committed by the Defendant and would desire to plead to that charge.

Both the State and defendant acknowledged at the hearing that there was a plea offer made to the Defendant prior to the jury returning a verdict, but neither party made the court aware of this offer. Had the court been on notice of plea negotiations at the time the jury reached a verdict, the court would have allowed a reasonable time in which to consider the offer. The



court cannot vacate the sentence imposed after the jury returned its verdict based on the Defendant's current assertion that she would have accepted the plea offer had she had more time to consider it. The Defendant's hindsight that the offer extended by the State is more appropriate to the crime charged is not appropriate for the court's consideration in deciding whether to vacate the sentence. This is especially so where the State does not now wish to allow the Defendant to plead to the charge offered during deliberations.

Defendant's Motion to Vacate the Sentence is Denied.

The Defendant moves in the alternative for the court to reconsider the 25 year sentence imposed. The Defendant bases this motion on the following grounds: 1) The court imposed the minimum sentence of twenty (20) years and then provided an additional five (5) years after considering the aggravating and mitigating circumstances; and 2) The defendant contends that the State offered no other matters of aggravation, while the defense presented mitigation: specifically that the defendant had no criminal history and that she had been awarded custody of her two other children.

S.C. Code Ann. § 16-3-85 (D) sets forth factors the judge must consider when sentencing a defendant convicted of homicide by child abuse: "In sentencing a person under this section, the judge must consider any aggravating circumstances including, but not limited to, a defendant's past pattern of child abuse or neglect of a child under the age of eleven, and any mitigating circumstances; however, a child's crying does not constitute provocation so as to be considered a mitigating circumstance." The court took into consideration that the defendant had no criminal record and that she did not have a past pattern of child abuse or neglect. However, under the statute, these are not the only factors the court can consider. Balancing these factors against the facts and evidence in the case, that the defendant shook her thirteen month old son to

death, the court found the twenty-five year sentence appropriate.

After careful consideration of the motion and supporting arguments, the Defendant's Motion to Vacate on in the Alternative for Reconsideration is Denied.

AND IT IS SO ORDERED.

December ³⁰~~22~~, 2009

12/30/09


George C. James, Jr., Circuit Court Judge

THE STATE OF SOUTH CAROLINA)
 COUNTY OF GREENVILLE)

IN THE COURT OF GENERAL SESSIONS
 THIRD JUDICIAL CIRCUIT
 Warrant/Indictment Nos.: 2008-GS-43-360

THE STATE)

v.)

AFFIDAVIT OF SERVICE
(Hand Delivery & US Mail)

MARTINA RENAE PUTNAM,)

DEFENDANT.)

PERSONALLY APPEARED before me the below signed employee of the Third Circuit Public Defender Office who states, after first being duly sworn, that they have served the below listed pleading upon all parties by hand delivering or placing in the U.S. Mail a copy to their office address(es) listed below on this 24th day of April, 2009.

Pleadings Served: Motion to Vacate, or in the Alternative for Reconsideration

Parties Served: The Honorable George C. James (HAND DELIVERED)
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Mrs. Suzanne Mayes (US MAIL)
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THIRD CIRCUIT PUBLIC DEFENDER OFFICE

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SWORN TO and subscribed before me
 this 24th day of April, 2009

Kimberly A. H. Melford
 NOTARY PUBLIC FOR SOUTH CAROLINA

My Commission Expires: 7/18/2015

STATE OF SOUTH CAROLINA

IN THE COURT OF APPEALS

Appeal from Sumter County

George C. James, Jr., Circuit Court Judge

THE STATE,

RESPONDENT,

V.

MARTINA PUTNAM,

APPELLANT

FINAL BRIEF OF APPELLANT

WANDA H. CARTER
Deputy Chief Appellate Defender

South Carolina Commission on Indigent Defense
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ATTORNEY FOR APPELLANT.

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STATEMENT OF ISSUE ON APPEAL

The trial judge erred in denying appellant's motion to suppress statements made to police officers in the case because warnings per Miranda v. Arizona¹ were not given to appellant despite the fact that appellant was being interrogated and in custody while in the presence of these officers.

¹ 384 U.S. 436 (1966)

STATEMENT OF THE CASE

Appellant Martina Putman was found guilty of homicide by child abuse pursuant to a jury trial held during the April 2009 term of the Sumter County General Sessions Court before the Honorable George C. James, Judge. Appellant was sentenced to imprisonment for a period of twenty-five years.

Appellant appealed. This brief follows.

ARGUMENT

The trial judge erred in denying appellant's motion to suppress statements made to police officers in the case because warnings per *Miranda v. Arizona*² were not given to appellant despite the fact that appellant was being interrogated and in custody while in the presence of these officers.

On March 10, 2007, appellant's thirteen-month old male baby was taken by appellant and her husband (baby's parents) to Tuomey Hospital in Sumter and later to Palmetto Richland Hospital in Columbia because the baby was unresponsive and not breathing. ROA p. 117, l. 14 – p. 125 l. 13. Ultimately, the baby died of abusive head injury/trauma due to shaking or head impact. ROA p. 140, lines 8 – 25. The cause of the baby's death was subdural hematoma. ROA p. 164, lines 13 – 16. The state's case was comprised of two pieces of evidence: appellant's statements given to Officers Florence, Herod, and Dennison, and the medical findings of Dr. Joel Sexton and Dr. Clay Nichols.

Gwen Herod testified that she approached appellant as a victim's advocate/assistance officer because her duties entailed serving the needs of victims of crimes. Herod testified that she went to the pediatric intensive care hospital unit on the day in question to assist appellant. Herod admitted that she asked appellant for the details of what happened, and prepared a summary of her notes from their conversation. Note that Herod stated that she subsequently turned her notes over to Investigator Florence, who was also associated with the investigation of the case. Herod recalled that appellant stated that the doctors told her of the baby's injuries, but that she did not know how the injuries came about. According to Herod's testimony, appellant explained that the baby cried incessantly

² 384 U.S. 436 (1966)

on that day, and that the baby kept throwing himself down on the floor. Then, appellant claimed that she noticed later that the baby was not breathing. Also, Herod learned that the people who were present at the home at the time of the incidents occurred were appellant, appellant's husband, and the baby in question and two other children (males ages 6 and 9). ROA p. 90, line 5 – p. 93, line 24; ROA p. 95, line 21 – p. 96, line 13.

Investigator David Florence testified that he arrived at the hospital on the day in question and was with and in close contact with Herod during that time. Investigator Florence stated that he was in and out of the hospital waiting room while Herod talked to appellant. Investigator Florence stated that he also asked appellant a few questions and that appellant knew that he was a law enforcement officer. Investigator Florence stated that he “wanted to get an idea of what the circumstances were at the house during that time” and to “get . . . information” in order “find out who committed the crime.” ROA p. 175, line 11 – p. 181, line 13; ROA p. 185, line 19 – p. 186, line 1. The gist of the information Florence received from appellant was identical to the information Herrod received from appellant.

Police Officer Robert Denison also arrived at the hospital and interviewed appellant on the day in question in order to “find out exactly what happened.” ROA p. 69, line 10 – p. 70, line 3. Denison added that appellant stated that she was the only one in control of the baby. ROA p. 76, lines 9 – 23. Additionally, both Florence and Herod stated that appellant told them also that she was the only one who was in control of the child on the day in question. ROA p. 181, line 15 – p. 182, line 10; ROA p. 91, lines 8 – 9.

Appellant was the only witness who testified during the case for the defense. Appellant testified that she told Herod that the baby was unsteady on that day so she sat the baby in-between her legs in order to feed him. Appellant explained that the baby was

“cranky,” and kept falling back a couple of times. Appellant stated that after the baby fell back, she just “sat him back down on his rear,” and that when she returned to him after going off to prepare for his bath, she noticed that the baby was unresponsive and not breathing. Appellant concluded that at that point, she and her husband took the baby to the hospital. ROA p. 245, line 1 – p. 259, line 13. Appellant said that even though the baby would fall back, she did not sit him down hard enough to cause head trauma. ROA p. 261, lines 2 – 23. Regarding the baby’s injuries, appellant testified that the baby was always active and rolled everywhere and he could have received injuries from that type of activity.³ ROA p. 261, line 24 – p. 261, line 23.

Prior to trial, counsel moved to suppress appellant’s statements given to Officers Demnison, Florence, and Herod on the ground that appellant was in custody and being interrogated while in the presence of those officers, but nevertheless did not receive the proper warnings per Miranda v. Arizona, 384 U.S. 436 (1966). An in camera hearing followed. ROA p. 1, line 23 – p. 2, line 4. At the close of the hearing, defense counsel argued that clearly appellant was in custody because the officers kept talking, questioning, and interrogating her at the hospital, and that at some point Herod’s victim’s advocate role morphed into an investigative arm of law enforcement set in place to find out what happened. Although appellant was admittedly in the intensive care unit while her baby’s life was hanging in the balance, all three officers kept talking to appellant continually and took full advantage of appellant’s placement in the hospital. Clearly, the officers’ goal was to elicit incriminating responses. ROA p. 60, line 7 – p. 64, line 25. Nonetheless, the trial

³ Dr. Tracey Bailey testified that she first saw the baby on day in question and that the baby was unresponsive and not breathing and had numerous bruises from apparent injuries. ROA p. 115, line 10 – p. 126, line 24.

judge ruled that appellant was not in custody at the time the statements were given. ROA p. 65, lines 1 – 25.

The officers in this case claimed that appellant was free to leave the hospital and/or come and go in and out of the hospital as she pleased during the time that they questioned her on that day. To the contrary, however, appellant was clearly “in custody” because the officers took full advantage of the fact that appellant was not going to leave the hospital while her baby was in the intensive care until a resolution came to pass. In addition, appellant was being interrogated while at the hospital. For example, Herod’s role in assisting appellant merged into an investigative police role. Appellant was in a vulnerable state and probably believed Herrod was there to assist. However, at some point Herod played on appellant’s vulnerabilities and began asking interrogative and investigative law enforcement questions. At that time, appellant was being “interrogated.” Compare the case of State v. Evans, 354 S.C. 579, 582 S.E.2d 407 (2003), where the court held that because the defendant was questioned by a female agent soon after her three children perished in a fire and because said female agent showed sympathy and made religious comments regarding how her three deceased children were in heaven, the defendant’s confession regarding setting her house on fire was inadmissible. In Evans, the court held that under the totality of the circumstances the defendant was being interrogated and in custody (not free to leave) at the time, which in turn meant she should have received her warnings per Miranda v. Arizona, *supra*. The defendant in Evans was detained for three hours and questioned by two male officers and one female officer and was followed to and from the bathroom while detained.

All of the officers in the case at bar testified that appellant was free to leave, but clearly appellant was not free to leave. Appellant would not and could not have left the hospital until finding out the fate of her baby, which meant that Officers Gwen Herod, Florence, and Demnison had ample opportunity to talk to her in sympathy and then question her in an investigative manner. Appellant was not at police headquarters, but her confinement at the hospital as she awaited the doctor's reports was the equivalent of or tantamount to confinement and being in custody. Compare, In State v. Navy, 370 S.C. 398, 635 S.E.2d 549 (2006), where the court held that the defendant was in custody after police officers cornered him at the funeral visitation for his deceased child and told him that a trip to the police station for a talk could not wait until the end of the funeral.

The purpose of the Miranda warnings is to apprise the defendant of the constitutional privilege not to incriminate himself while in the custody of law enforcement. State v. Evans, supra. An interrogation is either express questioning or its functional equivalent, which would include words or actions on the part of police that police should know are reasonably likely to elicit an incriminating response. State v. Easler, 327 S.C. 121, 489 S.E.2d 617 (1997), citing Rhode Island v. Innis, 446 U.S. 291 (1980). Additionally, "in custody" is described in terms of whether one has the freedom to leave the scene, and the purpose, place and length of the questioning under the totality of the circumstances. See State v. Easler, supra, and State v. Evans, supra, citing to Berkemer v. McCarty, 468 U.S. 420 (1984). The relevant inquiry is whether a reasonable person in the suspect's position would have understood himself to be in custody in light of the objective circumstances of the interrogation. Bradley v. State, 316 S.C. 255, 449 S.E.2d 492 (1994). State v. Sprouse,

325 S.C. 275, 478 S.E.2d 871 (Ct. App. 1996) citing Stansbury v. California, 511 U.S. 318 (1994).

Three officers descended upon appellant and spent practically the whole day at the hospital with her. Appellant knew she could not escape them or their questions. Appellant was in custody. Moreover, the questions all three officers asked went to the very heart of the case, i.e. what happened to the baby and who was in control of the baby when this happened. Hence this was an interrogation of appellant.

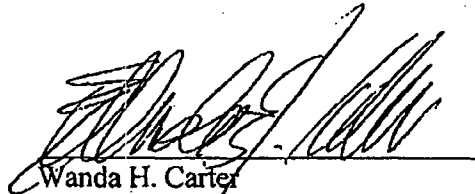
The officers' testimony indicated that appellant admitted that she had control of the baby and did not prevent the baby from falling back and harming himself. This information linked appellant to the case and formed the ground for the state to allege that appellant's negligence led to the baby's death. This information given to the officers by appellant should not have been admitted into evidence because she was not advised of her warnings per Miranda v. Arizona, *supra*. This error violated appellant's Sixth Amendment right to counsel and her Fifth Amendment privilege against self incrimination, and appellant was prejudiced by the error because there was no overwhelming evidence presented establishing that appellant was guilty as charged. Sans appellant's statements which linked appellant to the charges, the only other piece of evidence presented was the medical finding of the baby's head trauma. Appellant testified in her defense probably because her statements were already presented as evidence in the case.

The trial judge erred in denying the motion to suppress the statements appellant made to police officers in the case as they were given in violation of Miranda v. Arizona.

CONCLUSION

Based on the foregoing argument, appellant's conviction should be reversed and her case remanded to the lower court for a new trial

Respectfully submitted,

A handwritten signature in black ink, appearing to read 'Wanda H. Carter', is written over a horizontal line.

Wanda H. Carter
Deputy Chief Appellate Defender

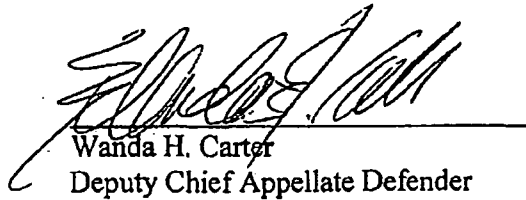
ATTORNEY FOR APPELLANT.

This 14th day of October, 2010.

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."

October 14th, 2010



Wanda H. Carter
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STATE OF SOUTH CAROLINA

IN THE COURT OF APPEALS

Appeal from Sumter CountyGeorge C. James, Jr., Circuit Court Judge

THE STATE,

RESPONDENT,

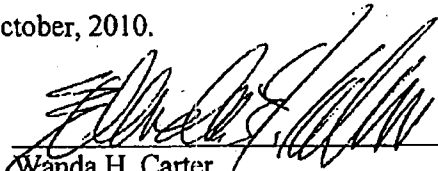
V.

MARTINA PUTNAM,

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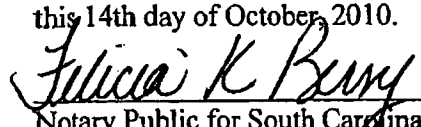
CERTIFICATE OF SERVICE

The undersigned attorney hereby certifies that a true copy of the Final Brief of Appellant in the above referenced case has been served upon Mark R. Farthing, Esquire, Assistant Attorney General, Office of the Attorney General, Rembert Dennis Building, 1000 Assembly Street, Rm. 519, Columbia, SC 29201, this 14th day of October, 2010.


Wanda H. Carter
Deputy Chief Appellate Defender

ATTORNEY FOR APPELLANT.

SUBSCRIBED AND SWORN TO before me
this 14th day of October, 2010.


Notary Public for South CarolinaMy Commission Expires: June 21, 2020.