

STATE OF SOUTH CAROLINA
IN THE SUPREME COURT

VOLUME I OF II

RECEIVED

Appeal from Spartanburg County

DEC 28 2015

Honorable Perry H. Gravely, Circuit Court Judge
S.C. SUPREME COURT

RASHAWN MURPHY,

PETITIONER

V.

STATE OF SOUTH CAROLINA,

RESPONDENT

APPELLATE CASE NO 2016-001415

APPENDIX

WANDA H. CARTER
Deputy Chief Appellate Defender

ALAN WILSON
Attorney General

South Carolina Commission on Indigent
Defense
Division of Appellate Defense
PO Box 11589
Columbia, SC 29211-1589
(803) 734-1330

ALICIA OLIVE
Assistant Attorney General
Office of the Attorney General
Rembert Dennis Building
1000 Assembly Street, Room 519
Columbia, SC 29201

ATTORNEY FOR PETITIONER

ATTORNEYS FOR RESPONDENT

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STATE OF SOUTH CAROLINA	)	COURT OF GENERAL SESSIONS
	)	
COUNTY OF SPARTANBURG	)	Case No(s) : 2009GS2302210
	)	
State of South Carolina,	)	
	)	
Plaintiff,	)	
	)	
-VS-	)	TRANSCRIPT OF RECORD
	)	
Rashawn Sha-Meik Murphy,	)	
	)	
Defendant.	)	

March 14-17, 2011
Spartanburg, South Carolina

B E F O R E:

HONORABLE LETITIA H. VERDIN, Judge.

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

BARRY BARNETTE, Esquire
TONY LEIBERT, Esquire
Assistant Solicitors

CHRIS THOMPSON, Esquire
Attorney for the Defendant

Teresa B. Johnson
Certified Verbatim Reporter
P.O. Box 2812
Greenville, S.C. 29602

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1 **P R O C E E D I N G S**

2 **(WHEREUPON,** the proceeding begins on Monday, the
3 14th day of March, 2011 at approximately 12:08 p.m.)

4 **THE COURT:** All right. Ladies and Gentlemen,
5 we're now ready to draw the jury for the case
6 that we have this week. This is the State of
7 South Carolina versus Rashawn Murphy. You might
8 have gotten something that said you were going to
9 be in civil court this week, but all of our civil
10 cases have been otherwised taken care of. So we
11 have moved on to a criminal case that we have. I
12 apologize for the delay. We had some legal
13 matters we had to take up.

14 I'm going to go over some things with you
15 all. I ask any juror to stand -- at this point,
16 I'm going to ask you to stand if any of these
17 questions that I ask apply to you. What we are
18 looking at here today is we talked earlier about
19 the general qualifications to serve a juror. Now,
20 we're going to talk about if there's any reason
21 that you could not be fair and impartial to sit
22 as a juror on this particular case. As I said,
23 this is a case involving the State of South
24 Carolina versus Rashawn Murphy.

25 Mr. Murphy, I ask you to stand and face the

1 jury pool, if you will please. Any member -- if
2 you'll turn around for me, sir. Turn all the way
3 around so they can see you. There you go. All
4 right. You can have a seat.

5 Any member of the jury pool related by blood
6 or marriage of have any connection with the
7 defendant in this case, Rashawn Murphy? If so,
8 please stand. (No response.)

9 All right. Mr. Thompson and Mr. Leibert and
10 Mr. Barnette, if you will, please stand.

11 This is Chris Thompson, Tony Leibert and the
12 Solicitor, Barry Barnette. If any of you all
13 have been, uh, represented by any of these
14 attorneys, have any connection to these lawyers
15 whatsoever, if you would, please stand. (No
16 response.)

17 Also, I believe, Mr. Thompson, Frank Adams is
18 also in your firm. Is that correct?

19 **MR. THOMPSON:** Yes, Your Honor.

20 **THE COURT:** All right. If any of you have
21 been represented or have any connection --
22 represented by or have any connection to Frank
23 Adams, if you would, please stand.

24 Yes, sir. Tell me your juror number please.

25 **THE JUROR:** 76.

1 **THE COURT:** All right. Yes, sir.

2 **THE JUROR:** Mr. Adams represented the
3 gentleman that I bought some real estate from.
4 It's probably been six or seven years ago maybe.

5 **THE COURT:** All right. Do you believe that
6 being involved with Mr. Adams on that case that
7 you could still be fair and impartial seated on a
8 jury with Mr. Thompson as the attorney?

9 **THE JUROR:** I believe I could.

10 **THE COURT:** All right. Thank you, sir. I
11 appreciate it.

12 All right. Now, I'm going to read you a
13 brief statement of the facts on the indictment,
14 which is the charging document in this case, is
15 claiming. I want you all to listen to this and
16 see if you know anything about these facts and
17 circumstances. All right.

18 The defendant in this case is charged with
19 Homicide by Child Abuse. The indictment charges
20 that Rashawn Sha-Meik Murphy did, in Spartanburg
21 county, on or about January the 3rd, 2009 cause
22 the death of Minor [REDACTED], under the age
23 11, while committing child abuse or neglect and
24 the death occurred in circumstances manifesting
25 an extreme indifference to human life, that he

Jury Qualification

13

1 shook the child or struck the child or caused the
2 child to strike some object and this was in
3 violation of the law. Does any member of the
4 jury panel believe that you know anything about
5 the particular facts and circumstances of this
6 case, including -- I don't know if there was any
7 media report on it or anything like that -- but
8 including any media reports. Anything like that?
9 Anybody have any familiarity with the case
10 whatsoever? If so, please stand. (No response.)
11 And none are standing.

12 All right. I'm now going to read a list of
13 potential witnesses in this case. I do not know
14 how many of these witnesses will actually
15 testify. But these are all the possible
16 witnesses that could testify in this case. I'm
17 going to ask if any of you are connected with any
18 of these witnesses, if you are related by blood
19 or marriage to any of them or if you are
20 acquainted with them, for you to please stand and
21 let us know about that.

22 Investigator Lorin Williams of Spartanburg
23 Sheriff -- Spartanburg County Sheriff's Office,
24 Investigator Jason Bryant also of the Spartanburg
25 County Sheriff's Office, David Taylor formerly of

1 the Spartanburg County Sheriff's Office, Steven
2 Lully -- am I saying that correct -- Lully
3 formerly of the Spartanburg County Sheriff's
4 Office, excuse me, Spartanburg County Coroner's
5 Office, Investigator Gary Everette of the
6 Spartanburg County Coroner's Office, Sergeant
7 David Hogsed of the Spartanburg County Sheriff's
8 Office, Deputy Michael Sean Nix of the
9 Spartanburg County Sheriff's Office, Master
10 Deputy Jack Westmoreland of the Spartanburg
11 County Sheriff's Office, Master Deputy Robert
12 Rosenberg of the Spartanburg County Sheriff's
13 Office, Master Deputy Anita Mullinax also of the
14 Spartanburg County Sheriff's Office, Samantha
15 Renee Hill, M.J. [REDACTED] [REDACTED]
16 Deputy Sarah Thorne of the Spartanburg County
17 Sheriff's Office, Lieutenant Bobby Turner also of
18 the Spartanburg County Sheriff's Office,
19 Lieutenant of the Spartanburg County Sheriff's
20 Office, Sergeant Allan Wood of the Spartanburg
21 County Sheriff's Office, Jasmine Hill, Brooklyn
22 Colegrove of EMS, Cornelius Huff of EMS, Gaile
23 Heath of the, uh, South Carolina Law Enforcement
24 Division or also heard called SLED, Betty Butler
25 of SLED, Kimberly McGill Miller formerly with

Jury Qualification

15

1 SLED, Nikki Perry of SLED, Jasper Humber formerly
2 with SLED, Doris Yarborough of SLED, Selena
3 Kinard or Kinard -- I'm not sure -- of SLED, Dr.
4 David Wren, a pathologist, Tabitha Weber or
5 Joshua Rogers.

6 I'm sorry, sir. Yes, sir. No, I'm sorry.
7 Mr. Thompson?

8 MR. THOMPSON: I was going to give this as
9 potential list for Mr. Murphy. He gave that to
10 me prior to coming in.

11 THE COURT: Okay. Okay.

12 MR. THOMPSON: Thank you.

13 THE COURT: Yes, ma'am. Tell me your juror
14 number.

15 THE JUROR: 137.

16 THE COURT: And who is it you believe you
17 know?

18 THE JUROR: Well, I know one of the EMTs. I
19 work closely with the EMTs.

20 THE COURT: Okay. And who is the EMT that
21 you know?

22 THE JUROR: Cornelius Huff.

23 THE COURT: And if Mr. Huff were, uh, a
24 witness in this case, could you still be fair and
25 impartial in this case?

1 **THE JUROR:** I believe so.

2 **THE COURT:** Okay. Thank you, ma'am.

3 I've got a few other names to read to you
4 again. Don't know if they are going to testify
5 or not but just could possibly -- oh, I'm sorry,
6 ma'am. Yes, ma'am. Tell me your juror number.

7 **THE JUROR:** Uh, 27.

8 **THE COURT:** All right. And yes, ma'am.
9 Who?

10 **THE JUROR:** Dr. David Wren. I believe works
11 at the laboratory at which work is sponsored by
12 Greenville Hospital.

13 **THE COURT:** Okay. And you work in the
14 laboratory where he is?

15 **THE JUROR:** Yes, ma'am.

16 **THE COURT:** If he were a witness in this
17 case, do you believe you could be fair and
18 impartial in this case?

19 **THE JUROR:** I believe.

20 **THE COURT:** All right. Thank you, ma'am.

21 Timothy Collins and Tasha Collins, Alicia
22 Eison, CH'Harra Murphy, Nina Wilkinson, Bernice
23 Murphy, La'Angela Gison and Renee McKissick.
24 Anyone familiar with any of those witnesses? Of
25 all the witnesses I've called out, uh, anyone,

Jury Qualification

17

1 any juror familiar with, acquainted with by blood
2 or marriage or have any connection with any of
3 these witnesses? All right. (No response.)

4 And none are standing. All right then. I
5 just have a few more questions to ask you. I ask
6 you to stand if any of these apply to you. Has
7 anyone in the jury panel been arrested for,
8 charged with or convicted of a crime involving
9 homicide or child abuse or similar offense --
10 similar type offense in state court? Anyone?
11 (No response.)

12 All right. Is anyone in the jury panel -- do
13 -- you or any member of your family, have you
14 been the victim of a violent crime? If so,
15 please stand.

16 Yes, sir. Tell me your juror number.

17 **THE JUROR:** 132.

18 **THE COURT:** Yes, sir. Tell me your response
19 to that question.

20 **THE JUROR:** My daughter was attacked in
21 somewhat of a similar situation.

22 **THE COURT:** All right. Do you feel like if
23 you were seated as a juror in this case that you
24 could be fair and impartial?

25 **THE JUROR:** Yes.

1 **THE COURT:** All right. Thank you, sir. I
2 appreciate your honesty. Anyone else needing to
3 respond to that question? (No response.)

4 Is any member of the jury panel related by
5 blood or marriage to any employee of the Seventh
6 Circuit Solicitor's Office? That's Mr.
7 Barnette's office. Anyone? (No response.)

8 None are standing. Is anyone related by
9 blood or marriage to any employee of the
10 Spartanburg County Sheriff's Office, Public
11 Safety Office, Child Advocacy Center here in
12 Spartanburg county or the Spartanburg County
13 Jail? Is there anyone related by blood or
14 marriage?

15 Yes, ma'am. I'm going to start with you.
16 Tell me your juror number.

17 **THE JUROR:** It is 73.

18 **THE COURT:** All right. Yes, ma'am. Tell me
19 your relationship.

20 **THE JUROR:** My husband is a Spartanburg
21 detention center officer.

22 **THE COURT:** Thank you very much, ma'am.
23 Yes, sir.

24 **THE JUROR:** Juror number 70. My cousin is
25 on the county office, sheriff's deputy.

Jury Qualification

19

1 **THE COURT:** All right. All right. Thank
2 you very much.

3 Yes, ma'am. Tell me your juror number.

4 **THE JUROR:** 151.

5 **THE COURT:** Yes, ma'am.

6 **THE JUROR:** I think he still works here.
7 James Pea. He's my cousin.

8 **THE COURT:** Tell me his last name again.
9 I'm sorry.

10 **THE JUROR:** Pea, P-E-A.

11 **THE COURT:** P-E-A?

12 **THE JUROR:** Yes.

13 **THE COURT:** Okay. All right. And where do
14 you think he might have worked or works?

15 **THE JUROR:** Spartanburg County.

16 **THE COURT:** Okay. All right. Thank you,
17 ma'am. I appreciate it.

18 **MR. THOMPSON:** Your Honor, what's that
19 number? I'm sorry.

20 **THE COURT:** I'm sorry, ma'am. Tell me your
21 number again.

22 **THE JUROR:** 151.

23 **THE COURT:** 151. All right. Uh, is there
24 any reason -- now, we've gone through the
25 witnesses. We've gone through, uh, the

1 indictment in this case. From everything that
2 the jury panel has heard, is there anyone on the
3 jury panel who knows for any reason that they
4 could not sit on this jury and be fair and
5 impartial? If so, I would ask you to please
6 stand. Anyone? (No response.)

7 All right. And none are standing. Any other
8 voir dire?

9 MR. BARNETTE: Your Honor, we would just ask
10 that number 6 on our list be asked. I know it is
11 a similar question.

12 THE COURT: All right. I apologize. Does
13 anyone in the jury panel have a family member or
14 close friend that has been arrested for, charged
15 with or convicted of a crime involving homicide
16 or child abuse or similar type offense in any
17 state court. Anyone? (No response.)

18 Anyone in the jury panel that that applies
19 to? (No response.)

20 And none are standing.

21 MR. BARNETTE: Thank you.

22 THE COURT: Anything else from the State?

23 MR. BARNETTE: No, ma'am.

24 THE COURT: Anything else from the defense?

25 MR. THOMPSON: None, Your Honor.

Jury Selection

21

1 **THE COURT:** All right. We will proceed to
2 selecting our jury in this case. What I'm going
3 to ask you to do is this, you are going to hear
4 your juror number and name called. When you do,
5 I'm going to ask you to step right here sort of
6 in between these two tables up just a little bit
7 and face the jury panel. If you are chosen as a
8 juror, if you hear the defense say "Please seat
9 the juror", I'll ask you to take a seat in the
10 jury box. All right. All right.

11 We're ready -- then we'll be ready to begin
12 in just a moment. I'm sorry.

13 **MR. BARNETTE:** May we approach for one
14 second, Your Honor?

15 **THE COURT:** Absolutely.

16 (WHEREUPON, a bench conference is held off the
17 record.)

18 **THE COURT:** Is the State ready?

19 **MR. LEIBERT:** Yes, Your Honor.

20 **THE COURT:** Is the defense ready?

21 **MR. THOMPSON:** Yes, Your Honor.

22 **THE COURT:** All right.

23 **THE CLERK:** Juror Number 20, Mark Brown.
24 What says the State?

25 **MR. LEIBERT:** Please present Mr. Brown.

1 **THE CLERK:** What says the defense?
2 **MR. THOMPSON:** Please present the juror.
3 **THE CLERK:** Juror number 3, Barbara Ashley.
4 What says the State?
5 **MR. LEIBERT:** Please present Ms. Ashley.
6 **THE CLERK:** What says the defense?
7 **MR. THOMPSON:** Please excuse the juror.
8 **THE CLERK:** Juror 142, Tommy Thomas.
9 What says the State?
10 **MR. LEIBERT:** Please present Mr. Thomas.
11 **THE CLERK:** What says the defense?
12 **MR. THOMPSON:** Please excuse the juror.
13 **THE CLERK:** Juror 31, Yera Colon.
14 What says the State?
15 **MR. LEIBERT:** Please excuse the juror.
16 **THE CLERK:** Juror 73, Lindley Housand.
17 What says the State?
18 **MR. LEIBERT:** Please present the juror.
19 **THE CLERK:** What says the defense?
20 **MR. THOMPSON:** Please excuse the juror.
21 **THE CLERK:** Juror 153, Beth Wilkins.
22 What says the State?
23 **MR. LEIBERT:** Please present Ms. Wilkins.
24 **THE CLERK:** What says the defense?
25 **MR. THOMPSON:** Please present the juror.

1 **THE CLERK:** Juror 133, Terrell Sowell.
2 What says the State?
3 **MR. LEIBERT:** Please present the juror.
4 **THE CLERK:** What says the defense?
5 **MR. THOMPSON:** Please excuse the juror.
6 **THE CLERK:** Juror 108, Hillary Page.
7 What says the State?
8 **MR. LEIBERT:** Please present the juror.
9 **THE CLERK:** What says the defense?
10 **MR. THOMPSON:** Please present the juror.
11 **THE CLERK:** Juror 9, Carolyn Belue.
12 What says the State?
13 **MR. LEIBERT:** Please present the juror.
14 **THE CLERK:** What says the defense?
15 **MR. THOMPSON:** Please present the juror.
16 **THE CLERK:** Juror 37, Benjamin Culbertson.
17 What says the State?
18 **MR. LEIBERT:** Please present the juror.
19 **THE CLERK:** What says the defense?
20 **MR. THOMPSON:** Please present the juror.
21 **THE CLERK:** Juror 40, Timothy Dean.
22 What says the State?
23 **MR. LEIBERT:** Please present the juror.
24 **THE CLERK:** What says the defense?
25 **MR. THOMPSON:** Please present the juror.

1 **THE CLERK:** Juror 159, Toby Yon.
2 What says the State?
3 **MR. LEIBERT:** Please present the juror.
4 **THE CLERK:** What says the defense?
5 **MR. THOMPSON:** Please excuse the juror.
6 **THE CLERK:** Juror 155, Anita Womick.
7 What says the State?
8 **MR. LEIBERT:** Please present the juror.
9 **THE CLERK:** What says the defense?
10 **MR. THOMPSON:** Please present the juror.
11 **THE CLERK:** Juror 27, Whitney Cochran.
12 What says the State?
13 **MR. LEIBERT:** Please present the juror.
14 **THE CLERK:** What says the defense?
15 **MR. THOMPSON:** Please excuse the juror.
16 **THE CLERK:** Juror 116, Edward Poole.
17 What says the State?
18 **MR. LEIBERT:** Please excuse the juror.
19 **THE CLERK:** Juror 151, Wanda Watson.
20 What says the State?
21 **MR. LEIBERT:** Please present the juror.
22 **THE CLERK:** What says the defense?
23 **MR. THOMPSON:** Please present the juror.
24 **THE CLERK:** Juror 7, James Ballinger.
25 What says the State?

1 **MR. LEIBERT:** Please present the juror.
2 **THE CLERK:** What says the defense?
3 **MR. THOMPSON:** Please present the juror.
4 **THE CLERK:** Juror 77, Ashlie Jennings.
5 What says the State?
6 **MR. LEIBERT:** Please present the juror.
7 **THE CLERK:** What says the defense?
8 **MR. THOMPSON:** Please present the juror.
9 **THE CLERK:** Juror 150, Kelly Waters.
10 What says the State?
11 **MR. LEIBERT:** Please present the juror.
12 **THE CLERK:** What says the defense?
13 **MR. THOMPSON:** Please present the juror.
14 **THE CLERK:** And for the alternate, Juror
15 114, Patrick Pickens.
16 What says the State?
17 **MR. LEIBERT:** Please present the juror.
18 **THE CLERK:** What says the defense?
19 **MR. THOMPSON:** Please present the juror.
20 **THE COURT:** All right. All right. Ladies
21 and Gentlemen -- it will help if I turned on my
22 microphone. You are going to be our jury in this
23 case. I'm going to ask the remainder of the jury
24 panel to retire to the jury assembly room for
25 just a moment. I'll be back with you, uh, very

1 shortly. All right. Thank you.

2 (WHEREUPON, the jury exits at approximately

3 12:38 p.m.)

4 **THE COURT:** Is there anything from the State

5 on the jury selection?

6 **MR. LEIBERT:** No, Your Honor.

7 **THE COURT:** Anything from the defense?

8 **MR. THOMPSON:** None, Your Honor.

9 **THE COURT:** All right. Thank you.

10 Madam Clerk, could I ask you to swear the

11 jury.

12 **THE CLERK:** Please stand and raise your

13 right --

14 **THE COURT:** I'm sorry. Wait just one

15 second. Yes, sir.

16 **MR. BARNETTE:** May we approach one second,

17 Your Honor?

18 **THE COURT:** Yes.

19 (WHEREUPON, a bench conference is held off the

20 record.)

21 **THE COURT:** All right. Uh, as I said, you

22 are going to be our jury for this case. I have

23 some good news for you, that is, that we're not

24 going to need you for the remainder of the day.

25 I'm going to ask you to report back tomorrow

Remarks

27

1 morning at nine o'clock in the morning. At that
2 time, we're going to swear -- swear you as our
3 jurors and, uh, begin the trial of this case. I
4 do not anticipate that this case will be an
5 extremely lengthy one, but we do anticipate that
6 we will work into Wednesday if you need to make
7 arrangements otherwise.

8 Now, I need to talk to you about a couple of
9 things. First of all, this, you will, uh, --
10 during this break time, you might be tempted to
11 go and look this case up -- I don't know that
12 there was any publicity or anything like that --
13 or find out about this case or find out about
14 this charge even to find out something more about
15 this case than what you are going to hear in this
16 courtroom. I'm going to tell you as jurors that
17 you are prohibited from doing that. All right.
18 You can not research this case on the internet.

19 You can't ask friends or family about it. In
20 other words, when you go home, certainly someone
21 at your house is going to say did you get picked
22 for a jury. You can say yes. Anything past
23 that, I would ask you not to discuss the case
24 whatsoever. Even if you tell the person who the
25 person is on trial, they may say, oh, I know

1 about that or something along those lines. If
2 anyone tries to contact you, if anyone tries to
3 say anything to you about this case, I want you
4 to let one of the bailiffs know as soon as you
5 get here tomorrow morning. I want the bailiffs
6 to let me know so that I can take care of that
7 issue.

8 Please don't begin to discuss this case, even
9 with your fellow jurors. You're going to hear
10 testimony and you're going to see some evidence
11 in this case. That's all testimony and evidence
12 that we will have determined can be used in a
13 trial against the defendant. All right. Other
14 testimony -- other comments or other evidence or
15 anything that should not be considered in this
16 case, if you begin to research or talk to people
17 or try to make up your mind about this case,
18 you'd be considering things that would be outside
19 of this courtroom. That would be in violation of
20 your juror oath as well.

21 Furthermore, as I said, that pertains even to
22 discussing this case with your other jurors.
23 When you do come back tomorrow for us to begin
24 this case, I'm going to ask you the whole time
25 that you are here to keep an open mind, listen to

Remarks

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1 both sides fairly and weigh all the evidence.

2 And then, at the appropriate time, at the end of
3 this case, after final closing arguments in this
4 case, then I will instruct you when you are able
5 to begin deliberating in this case. All right.

6 But as it stands right now, you are released
7 for the rest of the day. I ask you to report to
8 your jury room by nine o'clock tomorrow morning.
9 So if you will be in your jury room at nine
10 o'clock tomorrow morning, we'll begin as promptly
11 thereafter as we possibly can. I can not tell
12 you how much I appreciate your service this week.
13 How much both sides in this case appreciate the
14 service that you are going to give to us. I
15 think if any of us had a case at all for either
16 side or if we had a civil case, we would want
17 people to listen to our case with an open mind.
18 I'm going to ask you to do the same thing. I
19 thank you so much for that.

20 I hope you enjoy the rest of your day. All
21 right. We'll see you back tomorrow morning at
22 9:00 a.m. Thank you.

23 (WHEREUPON, the jury exits at approximately
24 12:43 p.m.)

25 THE COURT: All right. As I understand,

1 there a numb-- there are at least several motions
2 from the State and the defense in this case.
3 Let's come back -- let's take a break and come
4 back at, uh, -- well, let me just ask.
5 Scheduling-wise, are there things you want to go
6 ahead and take care of before the lunch break?
7 Anything from the State you want to do or would
8 y'all prefer to come back at two o'clock and do
9 it?

10 **MR. BARNETTE:** I know we got a Jackson v.
11 Deno which will probably be longer than 15
12 minutes, Your Honor.

13 **THE COURT:** All right.

14 **MR. BARNETTE:** We got some other motions.

15 **MR. THOMPSON:** I would say we just come back
16 after lunch.

17 **THE COURT:** All right. Let's be back at two
18 o'clock for motions in the case. All right.
19 Thank you.

20 **MR. THOMPSON:** Thank you, Your Honor.

21 (WHEREUPON, a recess is taken from approximately
22 12:45 p.m. to 2:53 p.m.)

23 (WHEREUPON, State Exhibits 1 through 40 are marked
24 for identification purposes.)

25 **THE COURT:** I understand there are some

Remarks

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1 motions we need to take care of.

2 **MR. LEIBERT:** That's correct, Your Honor.

3 **THE COURT:** Yes, sir.

4 **MR. LEIBERT:** Mr. Barnette has -- Solicitor
5 Barnette has a stipulation, Your Honor.

6 **MR. BARNETTE:** Your Honor, State Exhibit 6,
7 and I appreciate the Court's patience to let us
8 premark exhibits.

9 **THE COURT:** That's fine.

10 **MR. BARNETTE:** State Exhibit 6, I talked
11 with Mr. Thompson, it's a DNA report. It was
12 actually done by Kimberly McGill. Ms. McGill is
13 under subpoena. She's in Charlotte. She says
14 she's willing to come back. I talked with Mr.
15 Thompson in this case. He has stipulated to her
16 part of the chain as well as the report. She did
17 some initial work on the DNA. It's actually Mr.
18 Jasper Humbert that did the analysis and did some
19 comparisons on that. He's been kind enough to
20 stipulate to State Exhibit number 6.

21 **THE COURT:** All right. Very well then. Is
22 that correct, Mr. Thompson?

23 **MR. THOMPSON:** Yes. I think she's a part of
24 the chain. We stipulate to her role.

25 **THE COURT:** All right.

1 **MR. BARNETTE:** I believe we have her report
2 too on that.

3 (WHEREUPON, State Exhibit 6 is admitted into the
4 record.)

5 **MR. LEIBERT:** May it please the Court, Your
6 Honor.

7 **THE COURT:** Yes, sir.

8 **MR. LEIBERT:** There are three written
9 statements that Mr. Murphy gave. The first one
10 was at the coroner's office a former investigator
11 named Steven Lully. He's going to be in the
12 morning. We're going to handle the other two
13 today that were taken by detectives for the
14 sheriff's office. Our first witness, Your Honor,
15 would be David Taylor. We'll call Jason Bryant.

16 **JASON BRYANT**
17 having first been sworn, testifies as follows:

18 **THE CLERK:** Be seated.

19 **MR. LEIBERT:** May it please the Court, Your
20 Honor?

21 **THE COURT:** Yes, sir.

22 **DIRECT EXAMINATION**

23 **BY MR. LEIBERT:**

24 **Q** State your name.

25 **A** Jason Bryant.

1 Q Where are you employed?

2 A The Spartanburg County Sheriff's Office.

3 Q And how long you been so employed?

4 A Since 1996.

5 Q What is your current position there?

6 A I'm a Violent Crimes Investigator.

7 Q How long have you been a Violent Crimes

8 Investigator?

9 A Since 2004.

10 Q Were you on duty on January the 3rd, 2009?

11 A I was called to assist. That's correct.

12 Q All right. What time were you called to
13 assist?

14 A It was around 11 a.m.

15 Q And where did you report to?

16 A First, I reported to the Spartanburg County
17 Sheriff's Office.

18 Q And what did you do there?

19 A Assisted Investigator Taylor with the search
20 warrant in regards to the apartment on East Blackstock
21 Road.

22 Q All right. And then what did you do?

23 A Then, at that time, responded to, uh, the
24 incident location.

25 Q Where is that?

1 A That was -- if I may refer to my notes, 323
2 East Blackstock Road, apartment 10.

3 Q Here in Spartanburg County?

4 A In Spartanburg County, that's correct.

5 Q Did you have an occasion to meet with, uh,
6 Mr. Murphy?

7 A I did.

8 Q Are you familiar with the Miranda warnings on
9 a suspect's constitutional rights?

10 A I am.

11 Q And did you have an occasion to advise him of
12 those rights?

13 A I did at about 5:10 p.m.

14 Q And you were employed in your present
15 capacity on that?

16 A I --

17 Q At that time, you were employed as a Violent
18 Crime Investigator?

19 A Absolutely, yes, sir.

20 Q Explain to the judge, Her Honor, how you read
21 him his rights.

22 A Your Honor, how I did it, approximately 5:10
23 p.m., was I advised him of his Miranda rights from a
24 pocket card that I carried with me at all times.

25 Q All right. Do you have it with you?

1 **A** I do.

2 **Q** All right. Pull it out and show the Court
3 how you advised him of his rights.

4 **A** It's an old pocket card that I've carried for
5 years.

6 **Q** Just go ahead and read it just like you would
7 have read it to him.

8 **A** Okay. I advised him you have the right to
9 remain silent. Anything you say can be used against
10 you in a court of law. You have a right to talk to an
11 attorney and have him or her present with you while
12 you are being questioned. If you can not afford to
13 hire an attorney, one will be appointed to represent
14 you before any questioning begin if you so wish. You
15 can decide at anytime to exercise these rights and not
16 answer any questions or make any statements. Do you
17 understand each of these rights as I have explained to
18 you? And then having these rights in mind, do you
19 wish to talk to us now?

20 **Q** And what did he tell you?

21 **A** Absolutely.

22 **Q** Where were you at when this was done?

23 **A** This was done at the former county Sheriff's
24 Office.

25 **Q** Do you recall what his physical appearance

1 was?

2 A I'm sorry.

3 Q Do you recall what his physical appearance

4 was?

5 A No, sir.

6 Q Do you recall whether he appeared to be

7 intoxicated by alcohol or drugs?

8 A No, sir. He was not intoxicated.

9 Q Did he appear to understand your questions?

10 A He did.

11 Q Did he respond when you asked whether he

12 wanted an attorney?

13 A He did.

14 Q What was his reply?

15 A He wanted to talk to us.

16 Q He wanted to talk to you?

17 A Absolutely.

18 Q He did not want an attorney?

19 A No, sir.

20 Q Did you promise him anything?

21 A Not at all.

22 Q Did you threaten him in any way?

23 A No, sir.

24 Q To the best of your knowledge, was his

25 statement free and voluntary?

1 **A** It was.

2 **Q** Now, in this case, did he then give you a
3 statement?

4 **A** He provided a couple of statements during the
5 course of the evening.

6 **MR. LEIBERT:** Your Honor, may I approach the
7 witness?

8 **THE COURT:** Yes.

9 **BY MR. LEIBERT:**

10 **Q** I'll show you what has been marked State
11 Exhibit 14. When you say he gave a couple of
12 statements, what's the date on State Exhibit 14 and
13 what is that?

14 **A** State Exhibit 14 is a voluntary statement
15 form from the Spartanburg County Sheriff's Office.

16 **Q** Who gave that statement?

17 **A** Mr. Murphy.

18 **Q** And what is the date of that?

19 **A** That is on the first day -- I'm sorry. The
20 third day of January, 2009.

21 **Q** What is the time on that?

22 **A** That is 10:05 p.m.

23 **Q** I'll show you what has been marked State
24 Exhibit 13. What is that?

25 **A** It is also a voluntary statement from the

1 Spartanburg County Sheriff's Office.

2 Q And who made that statement?

3 A Mr. Murphy.

4 Q What time was that completed on January the

5 3rd?

6 A That was completed at 6:03 p.m. on January

7 the third.

8 Q Now, were you present for State Exhibit 13 at

9 6:03 p.m.?

10 A I was.

11 Q The entire time?

12 A Yes, sir.

13 Q And who witnessed that?

14 A That would have been Investigator Taylor.

15 Q And what did you do? You notarized it?

16 A I notarized it.

17 Q All right. As to State Exhibit 14, at 10:05

18 p.m. on the third of January, were you present during

19 that time?

20 A I was.

21 Q Was there anyone present with you that entire

22 time?

23 A Investigator Taylor notarized that particular

24 statement.

25 Q Now, with regard to State Exhibit 14, how

1 many pages is it?

2 A Let me see that if you don't mind, sir.

3 State Exhibit 14 is two pages.

4 Q And did you write it for Mr. Murphy or did he
5 write it himself?

6 A No, sir. That would be in his own
7 handwriting.

8 Q In addition to what he wrote here, did he
9 also give you an oral statement at that time after you
10 mirandized him.

11 A He did.

12 Q And what, if anything, did he say to you at
13 that time?

14 A That was during the course of the interview.
15 If you don't mind, I may refer to my notes here.

16 Q That will be fine.

17 A He assured me that Samantha was gone during
18 the evening time and that Mike did not do this.

19 Q Who is Mike?

20 A Mike is, at that time, the young child of the
21 mother of Minor

22 Q The eight-year-old?

23 A I'm sorry.

24 Q The eight-year-old child?

25 A I believe he was seven or eight at that time.

1 **Q** All right.

2 **A** And he also advised me that Mike didn't do
3 it, that no one had broken into the residence during
4 this time and that Samantha was not at home during
5 this time when this occurred.

6 **MR. THOMPSON:** Your Honor, I seek
7 clarification as to when what occurred. It
8 sounds like he's saying my client admitted to a
9 crime. I don't recall anything in the statement
10 saying that he admitted -- where he admits to
11 anything. I would like to basically object to
12 that being put on the record.

13 **THE COURT:** All right. And of course, I
14 will allow you to cross-examine him when you have
15 the opportunity. And, Solicitor, if you want to
16 flesh that out just a little bit more, but that's
17 fine.

18 **BY MR. LEIBERT:**

19 **Q** Before giving, writing the statement, did he
20 make an oral statement or did he do it afterwards?

21 **A** It was afterwards.

22 **Q** All right. So at 10:05 p.m., he signs
23 this ---

24 **A** Correct.

25 **Q** --- State Exhibit 14.

1 **A** Correct.

2 **MR. LEIBERT:** I offer this for purpose of
3 identification, State 14.

4 **THE COURT:** Thank you.

5 **BY MR. LEIBERT:**

6 **Q** All right. So now, the statement is
7 complete, then what happened?

8 **A** Once the statement --

9 **Q** He continued to talk -- or go ahead.

10 **A** We continued to talk. Actually, I want to
11 make sure that you are correct. We continued to talk
12 after the 6:03 p.m. statement.

13 **Q** All right.

14 **A** And after the 6:03 p.m. statement, we did
15 continue the interview. He also made statements in
16 regards to that. Then I did have an opportunity to
17 speak with Mike, the small child, then spoke with Mr.
18 Murphy about the interview with Mike.

19 **Q** As to State Exhibit 13, the 6:03 p.m., that's
20 the one that was witnessed by David Taylor?

21 **A** Correct.

22 **MR. LEIBERT:** Your Honor, I offer this as
23 State's 13 for the purpose of identification.

24 **THE COURT:** Thank you.

25 **BY MR. LEIBERT:**

1 Q All right. Between the first and second
2 statements given to your office, what oral statements
3 did Mr. Murphy make to you?

4 A If I could refer to my notes please.

5 Q That will be fine.

6 A I want to make sure that I tell you
7 correctly. After the first voluntary statement,
8 that's when he had made the oral statements that Mike
9 didn't do it, no one had broken into his residence and
10 Samantha was not home during the time that this
11 occurred.

12 Q All right. Thank you. Answer any questions
13 that the defense may have. Hold on a second.
14 (Pause.)

15 State Exhibit 13, was that also written by
16 his own hand?

17 A If I could see it one second please. Yes,
18 sir. It was.

19 Q And a couple of times you referred to
20 Samantha, who is Samantha?

21 A The mother of Minor [REDACTED]

22 Q There were no threats or promises of leniency
23 or anything of that nature whatsoever?

24 A Absolutely not.

25 Q All right. Thank you.

1 **THE COURT:** Mr. Thompson.

2 **MR. THOMPSON:** Please the Court, Your Honor.

3 **CROSS-EXAMINATION**

4 **BY MR. THOMPSON:**

5 **Q** Officer Bryant or Detective Bryant?

6 **A** Just however you want to call me, sir.

7 **Q** Officer Bryant, so at 5:10, my client comes
8 into the police station, correct?

9 **A** Correct.

10 **Q** During that period of time, he gives you
11 three separate statements, correct?

12 **A** He provides two written statements.

13 **Q** Okay. And I didn't keep up when we were
14 marking these. You said the 6:03 statement is his,
15 right?

16 **A** That's correct, sir.

17 **Q** He wrote that one, correct?

18 **A** He did.

19 **Q** And then you say he wrote this 10:05, right?

20 **A** He did.

21 **Q** And it's your testimony that after the 5:10
22 visit to the jail or to your office, he was shortly
23 thereafter mirandized, correct?

24 **A** That's correct. Upon his arrival.

25 **Q** You admit that no other time from 5:10 til

1 10:05 was he mirandized?

2 A No, sir. Just one time.

3 Q During that time period, he spoke not only to
4 you but to Officer Taylor as well, correct?

5 A And to Investigator Williams.

6 Q And Williams. Okay. And then you also went
7 back and forth speaking with the child?

8 A Sure.

9 Q Okay. And did you tell him at any time that
10 Miranda attached from the time you told him that first
11 time all the way to the ten o'clock?

12 A I explained his rights to him from the pocket
13 card. He acknowledged that he understood.

14 Q You never reemphasized those rights again
15 after that initial reading of Miranda?

16 A I just advised him of his rights one time,
17 yes, sir.

18 Q Okay. And the, uh, situation down there was
19 that you -- basically when you get two people in there
20 -- and Samantha was probably considered a suspect at
21 this time too?

22 A I didn't have dealings much with Samantha
23 other than basically asking her to speak with Mike.

24 Q Okay. Why would she, uh, -- is it Lori
25 Willis? Who is that? L. Williams, who is that? L.

1 Williams?

2 **A** Lorin Williams.

3 **Q** Lorin Williams. Did you notice Lorin, she
4 gives the Miranda waiver form on each of Samantha's
5 statements that she provides? Are you aware of that?

6 **A** No, sir.

7 **Q** You're not? Okay. Well, isn't that common
8 that if you're going to take Miranda, you get somebody
9 to sign that waiver form?

10 **A** (Inaudible.)

11 **Q** I mean, you're in the office, not on the
12 street.

13 **A** It could have been done that way.

14 **Q** All right.

15 **A** It could have been done the way that I done
16 it.

17 **Q** And you don't deny my client sat there five
18 hours with no food, probably in a horrible, emotional
19 state because of the death of this child. You gave
20 him a Sprite.

21 **A** Yeah, I did. I got him something to drink
22 that he requested.

23 **Q** That's all he had in a five-hour period,
24 correct?

25 **A** That was all he wanted.

1 Q You never inquired as to anything else, did
2 you? He had asked for the Sprite, didn't he?

3 A He asked for something to drink and I gave it
4 to him.

5 Q All right. And, uh, you don't deny you
6 didn't provide a sign-off sheet or a waiver of
7 Miranda?

8 A No, sir. That's correct. I done it from my
9 pocket.

10 Q And he had sit there probably in excess of
11 five hours before eliciting that?

12 A That's correct.

13 Q Especially the second response, right?

14 A I'm sorry. I didn't understand.

15 Q Especially the second statement that he gave.

16 A From the time he arrived at the Sheriff's
17 office til the time that he finished his second
18 statement?

19 Q Yes.

20 A It was probably around five hours.

21 Q Okay. And at one point during the, uh,
22 sequence of these two statements, he left you and went
23 to Mr. Taylor, is that right? Mr. Taylor began to
24 interview him?

25 A No, sir. I left the interview room. And

1 then he requested and got Investigator Taylor's
2 attention and wanted to speak with him. He asked
3 Investigator Taylor a question.

4 **Q** You are saying you read Miranda at 5:10 for
5 the 6:03 statement, which is actually witnessed by
6 David Taylor, right?

7 **A** It could have. Yes, sir. If I could see it
8 to make sure I tell you right. That's correct.

9 **Q** Did you just mirandize him and leave the
10 room?

11 **A** No, sir. Mirandized him before we spoke with
12 him. He provided a voluntary statement. Then I
13 notarized the statement. Investigator Taylor
14 witnessed it.

15 **Q** That was at 10:05, right?

16 **A** No, sir. The 6:03 statement, David Taylor
17 witnessed his statement.

18 **Q** Right, right.

19 **A** Then, on the 10:05 statement, I witnessed his
20 signature and Investigator Taylor notarized it.

21 **Q** But you were in and out of that room,
22 correct?

23 **A** Absolutely.

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

25 **THE COURT:** Yes, sir. Any redirect?

1 **MR. LEIBERT:** No, Your Honor.

2 **THE COURT:** All right. Thank you, sir. You
3 can step down.

4 **THE WITNESS:** Thank you, ma'am.

5 **MR. LEIBERT:** David Taylor.

6 **DAVID TAYLOR**

7 having first been sworn, testifies as follows:

8 **THE CLERK:** You can be seated.

9 **MR. LEIBERT:** May it please the Court, Your
10 Honor?

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

12 **DIRECT EXAMINATION**

13 **BY MR. LEIBERT:**

14 **Q** Please tell us your name.

15 **A** My name is David Taylor.

16 **Q** Were you previously employed with the
17 Spartanburg County Sheriff's Department?

18 **A** Yes, I was.

19 **Q** Were you so employed on January the 3rd,
20 2009?

21 **A** Yes, I was.

22 **Q** How many years were you employed there?

23 **A** Uh, I would be in my 24th and a half year
24 right now.

25 **Q** At the time of this incident, January 3rd,

1 2009, what was your position?

2 **A** I was assigned to the Violent Crime Division
3 of the Sheriff's Office. Actually, I was in the Major
4 Crime Unit and assigned as an on-call investigator for
5 the major crime or the Violent Crime Division.

6 **Q** Were you present when Mr. Murphy arrived at
7 the Sheriff's Department?

8 **A** Yes, sir. I was.

9 **Q** Was he brought there by Sheriff's Department
10 personnel or did he come on his own?

11 **A** No, sir. He and the, uh, lady, Ms. Samantha
12 Hill, I think is her name ---

13 **Q** Yes, sir.

14 **A** --- drove up theirselves.

15 **Q** Upon them arriving, tell the court what, if
16 anything, took place.

17 **A** They were brought upstairs to a second floor
18 where our office is. We have inter rooms -- interview
19 rooms there. He was placed into one of the interview
20 rooms, at which time Investigator Bryant and myself
21 walked in.

22 **Q** What time was that?

23 **A** Approximately 5:10 p.m.

24 **Q** What's the first thing you or Investigator
25 Bryant did?

1 **A** The very first thing Investigator Bryant did
2 was read the, uh, Mr. Murphy his rights from his
3 rights card that he keeps in his pocket.

4 **Q** All right. At that time, did he agree to
5 give a statement?

6 **A** He did. He talked to us then.

7 **Q** Did he appear to be intoxicated?

8 **A** No, sir. He did not.

9 **Q** Or under the influence of any drugs?

10 **A** No, sir. He did not.

11 **Q** Did you or Investigator Bryant promise him
12 anything?

13 **A** No, sir.

14 **Q** Threaten him at all?

15 **A** No, sir.

16 **Q** In your opinion, was his statement free and
17 voluntary?

18 **A** Yes, sir. It was.

19 **MR. LEIBERT:** Your Honor, may I approach?

20 **THE COURT:** Yes.

21 **MR. LEIBERT:** May I have the statements?

22 **THE COURT:** Oh, I'm sorry.

23 **BY MR. LEIBERT:**

24 **Q** I hand you State 13. Who was that witnessed
25 by?

David Taylor - Direct Examination by Mr. Leibert

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1 A That was witnessed by me. That's my
2 signature there.

3 Q All right. And then what was the time of
4 that statement?

5 A 6:03 p.m.

6 Q And then State 14 is at 10:05 p.m., did you
7 witness that or notarize it?

8 A I notarized that one.

9 Q What's the difference?

10 A Basically, I was witness to the interview and
11 the statement he wrote here. The other one,
12 Investigator Bryant continued throughout the night the
13 interview. This statement here was given at a later
14 time. It's either/or. We're both notarized and we
15 will sign them either/or.

16 Q Now, as to the 6:03 statement, did he start
17 writing pretty much right after he was mirandized?

18 A We talked to him for just a few minutes.
19 Then he wanted to provide a written statement.

20 Q Then after he finished, what happened?

21 A After he finished this statement here, uh, we
22 had actually talked to him a little bit more about it.
23 Investigator Bryant was back and forth. Investigator
24 Williams had come into play at that time. I had
25 stepped back in my office which is just around the

1 corner from the interview room.

2 Q All right. And is there like glass?

3 A There's a doorway that's got a window, just
4 like a split window, a four-inch wide window that you
5 can see through.

6 Q And at some point, did Mr. Murphy flag you
7 down to get you to come back?

8 A Yes, he did.

9 MR. THOMPSON: I'm going to object to the
10 leading.

11 THE COURT: All right. I just ask you to
12 attempt not to lead. All right.

13 BY MR. LEIBERT:

14 Q After you left the office, did you come back
15 in?

16 A I did. I did.

17 Q And why?

18 A I was actually walking over to see where we
19 were during the case. At which point, when I walked
20 by one of the interview rooms, I don't know which
21 number it was, Mr. Murphy had pecked on the window and
22 asked me a question.

23 Q What did he ask you?

24 A He asked -- there was a table that sat right
25 outside this interview room. There was a picture or a

1 stack of pictures that Investigator Williams asked me
2 to get earlier from Sergeant Hogsed who was in the ID
3 division. He asked me could he look at that picture
4 again.

5 Q What did you do?

6 A I held the picture up to the window for him.

7 Q Then what happened?

8 A At that point, he just looked at it. I think
9 he called the child Mami or Mimi or Mamah or something
10 like that, a nickname that I didn't recognize. He
11 asked me would I sit and talk to him for just a
12 minute.

13 Q And what did you do?

14 A I sat and talked to him for just a minute.

15 Q What did he tell you?

16 A He told me that -- he became upset. He was
17 crying. I actually stepped out to get a tissue for my
18 -- there's a lady investigator's cubicle that's right
19 in front of here. She had some tissues. I would
20 retrieve some tissues for him and gave them to Mr.
21 Murphy. He started -- I advised him that we just want
22 to know what happened to the child. At that point, he
23 went on to a different statement and gave us that.

24 Q That's when he gave you the oral statement?

25 A Yes, sir.

1 Q That was after he signed the 6-0 --

2 A Yes, sir. This is.

3 Q Tell the Court what he told you.

4 A He basically said that he was going upstairs
5 and found the young child toward the bottom of the
6 steps. He never said all the way to the bottom. He
7 just said toward the bottom of the steps and that he
8 had picked her up and she appeared to be shaken and
9 dazed.

10 Q And then did he do anything with the baby at
11 that point?

12 A Took her back upstairs. Actually, if I could
13 have just a second to refer to my notes.

14 Q Sure.

15 A Went back upstairs. Played with the child
16 for a little while. It said the crying, uh, -- she
17 was crying just a little. He then goes on to say that
18 he put the baby back to bed and she appeared to go to
19 sleep before Samantha had got home. He stated that he
20 thought the child was okay when he put her back to
21 bed. He said that he and Samantha stayed downstairs
22 that night. At this point, uh, I advised him I think
23 he should tell Investigator Bryant the story he was
24 telling me.

25 Q What did you do?

1 **A** I asked Investigator Bryant to step back in
2 the room and hear what he had to say.

3 **Q** All right. Thank you. Answer any questions
4 Mr. Thompson has.

5 **THE COURT:** Mr. Thompson.

6 **MR. THOMPSON:** Please the Court, Your Honor?

7 **THE COURT:** Yes, sir.

8 **CROSS-EXAMINATION**

9 **BY MR. THOMPSON:**

10 **Q** All right. Uh, David, you heard Officer
11 Bryant's recollection at the time. Is that fairly
12 accurate?

13 **A** Yes, sir. I believe it is, yes, sir.

14 **Q** My client was probably there five hours?

15 **A** Yes, sir.

16 **Q** And you admit that he had given one statement
17 at the time. You had put in your report he asked if
18 you would sit and talk with him for a minute.

19 **A** Yes, sir.

20 **Q** That's your testimony, right?

21 **A** Yes, sir. It is.

22 **Q** At that time, did you mirandize him or let
23 him know that he didn't have to talk to you?

24 **A** No, sir. I did not.

25 **Q** And you were aware he didn't receive anything

1 in writing that he didn't have to talk?

2 A I was present when Investigator Bryant read
3 it from his rights card, yes, sir.

4 Q So you knew he didn't have anything in
5 writing. You -- at no time did you remind him of
6 Miranda?

7 A No, sir. I did not.

8 Q Okay. And, uh, he begin talking to you after
9 you showed him that photograph, correct?

10 A He asked to see a photograph. It was sitting
11 on a table, kind of like this one, outside the room.

12 Q And this was a picture of the child?

13 A The child, yes, sir.

14 Q And the child was dead at that time?

15 A The child was laying there. I assume that's
16 where that picture would have come from, yes, sir.

17 Q And he became visibly upset?

18 A He did.

19 Q And he needed a tissue, correct?

20 A I did give him a tissue, yes, sir.

21 Q And you won't deny that there was a
22 statement. Subsequent to his emotional breakdown, he
23 had give another statement, right?

24 A He did give another statement.

25 Q After viewing the child's photograph,

1 correct?

2 **A** Yes, sir. It was after -- I told him we just
3 wanted to find out what happened to the child.

4 **Q** Okay. And at that time, you told him he
5 needed to tell his new -- this version to Mr. Bryant,
6 correct?

7 **A** Yes, sir. I did. I had him come in and
8 witness.

9 **Q** And Mr. Bryant came in?

10 **A** Yes, sir.

11 **Q** And did he write the statement at that time?

12 **A** He did. He began to write the statement.

13 **Q** He was not remirandized, correct?

14 **A** No, sir. He was not.

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

16 **THE COURT:** Any redirect?

17 **MR. LEIBERT:** No, Your Honor.

18 **THE COURT:** All right, sir. You can step
19 down. Thank you.

20 **MR. THOMPSON:** Your Honor, I want to add one
21 question. I'm sorry.

22 **THE COURT:** That's fine. The State have any
23 objection to --

24 **MR. LEIBERT:** Yes, ma'am.

25 **THE COURT:** Sir, if you don't mind having

1 a --

2 THE WITNESS: Yes, ma'am. No problem.

3 THE COURT: All right. Thank you.

4 BY MR. THOMPSON:

5 Q Now, David, at any time, did Mr. Murphy
6 request the assistance of an attorney?

7 A No, sir. He did not.

8 Q He never asked for anybody other than for you
9 to come in there and talk?

10 A That was all. Yes, sir. That's correct.

11 Q No further questions.

12 THE COURT: Anything else?

13 MR. LEIBERT: No, Your Honor. Thank you.
14 That's our showing.

15 THE COURT: All right. Thank you, sir.

16 THE WITNESS: Your Honor, leave these here?
17 They've already been marked.

18 THE COURT: Yes, sir. That will be fine.

19 MR. LEIBERT: Your Honor, that's our showing
20 as to those two statements. Again, Steven Lully
21 with her statement, we'll do in the morning.

22 THE COURT: That will be fine. All right.
23 Thank you, sir. All right. So we will sort of
24 pause on the Jackson v. Deno hearing. Then we'll
25 -- we can pick up with other motions unless there

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1 is anything else on the Jackson -- well, anything
2 else on the Jackson v. Deno?

3 MR. LEIBERT: Not as to those two
4 statements?

5 MR. BARNETTE: Not unless the defendant want
6 to testify.

7 THE COURT: Mr. Thompson, does your client
8 want to testify with regards to it?

9 MR. THOMPSON: May I beg the Court's
10 indulgence?

11 THE COURT: All right. And I will just say
12 to you -- I will say if he wants to wait until
13 the morning, I think we can allow him to wait
14 until the morning until after he hears the other
15 officer testify as well. That would be your
16 prerogative. You can speak to your client.

17 MR. THOMPSON: Okay. That may be what will
18 happen.

19 THE COURT: Okay. All right.

20 (WHEREUPON, Mr. Thompson consults with Mr.
21 Murphy.)

22 MR. THOMPSON: Your Honor, he's going to
23 wait until in the morning ---

24 THE COURT: All right.

25 MR. THOMPSON: --- to make up his mind.

1 **THE COURT:** All right. That will be fine.
2 All right. So do we need to pick up with any
3 other motions from the State?

4 **MR. BARNETTE:** Yes, ma'am. We have a third-
5 party guilt motion that we would like to put on
6 the record, Your Honor.

7 **THE COURT:** Yes, sir.

8 **MR. BARNETTE:** I've got a copy of the motion
9 as well as a memo of law, Your Honor. I'll pass
10 it up to the Court. I've also given copies to
11 Mr. Thompson. Your Honor, we would ask that
12 before any third-party guilt is brought into the
13 case that they proffer that evidence.

14 **THE COURT:** Yes.

15 **MR. BARNETTE:** I don't know if they are
16 going to introduce it. I haven't talked to Mr.
17 Thompson about that. But if there is any to
18 introduce, we would like it to be heard by the
19 Court.

20 **THE COURT:** All right. Mr. Thompson?

21 **MR. THOMPSON:** Your Honor, my position is
22 there are four other people in the home at the
23 time this child was killed, my client included in
24 those four.

25 **THE COURT:** You mean living in the home

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1 or ---

2 MR. THOMPSON: Living in the home, ---

3 THE COURT: --- present at the home at the
4 time of death?

5 MR. THOMPSON: --- present in the home at
6 the time this child likely died. I think there
7 is a coroner's report that says the time of death
8 is around 2 a.m. or something along there. I
9 intend to proffer evidence that the child -- and
10 the coroner's report will list a series of
11 injuries, old and new, to the child. I would
12 want to proffer that maybe there was an abusive
13 environment that the child was being exposed to
14 on a daily basis that she was born into. I would
15 take it -- without going into very much detail,
16 I'm saying there are three other people,
17 including two children, that, uh, could have
18 contributed to the injuries on this child and,
19 therefore, could have contributed toward the
20 death here. I think the evidence will bear that.

21 THE COURT: All right. Mr. Barnette?

22 MR. BARNETTE: Uh, thank you, Your Honor.
23 Just in response, Your Honor, I think that he had
24 to proffer that evidence to show there is a
25 connection between any other third-party guilt

1 person he would bring in. Plus it has to show --
2 basically, if the defendant's with that,
3 basically he (inaudible). I mean, if he's -- the
4 case law, if I understand correctly means just
5 because he said somebody else may contribute to
6 it doesn't matter. It has to basically show --
7 third-party guilt would be casting bare suspicion
8 would still not be inconsistent with his own
9 guilt. It has to be inconsistent with his own
10 guilt. If he's cooperated with another person,
11 it can't be introduced under that law. That's
12 State versus Mansfield -- well, the cases cited
13 in the memo that I handed up to the Court.

14 **THE COURT:** Mr. Thompson?

15 **MR. THOMPSON:** Your Honor, my position would
16 be South Carolina has a very stringent third-
17 party guilt law, to the point that the United
18 States Supreme Court had to come in and overturn
19 some decisions and went back to the case that he
20 refers to. The Holmes versus South Carolina
21 recently, I think it was in '08 and '06,
22 determined by the Supreme Court that South
23 Carolina set too stringent of a, uh, of a third-
24 party guilt rule.

25 South Carolina was on a path where we are

1 basically limiting the defendant's constitutional
2 right to put up a defense, went back in Gregory
3 and said, okay, Gregory is good law but the
4 others after Gregory wasn't. If you look at
5 Gregory, he's right. It says that he has to show
6 that's not inconsistent with his guilt. We've
7 got evidence that there's a two-year-old child in
8 the home that's destroyed a crib, that he
9 scratched the child on the back, the victim on
10 the back. He's torn up another --

11 **THE COURT:** A two-year-old child?

12 **MR. THOMPSON:** A two-year-old. The eight-
13 year-old testifies that the child couldn't sleep
14 in the crib because the two-year-old had
15 destroyed it, something to that effect. Those
16 children -- there's a bunkbed where the child is
17 put. She was put in there with that child and
18 the eight-year-old child. There's too many
19 possibilities out there as to other things that
20 could have happened to this child.

21 **THE COURT:** Isn't that exactly the -- isn't
22 that exactly the mere suspicion that we are
23 talking about? There are plenty of things that
24 could have happened, but to cast suspicion on a
25 two-year-old child.

1 **MR. THOMPSON:** I'm just saying that could be
2 part of the reason and contributed to the injury,
3 Your Honor.

4 **THE COURT:** But contributed to is not
5 enough.

6 **MR. THOMPSON:** And then until we hear from
7 the coroner, I don't think we can make a decision
8 on --

9 **THE COURT:** This is what I'm inclined to do,
10 after the coroner testifies, uh, and I hear what
11 the coroner has to say, I will just say that any
12 evidence of third-party guilty that you make the
13 Court aware before you are planning on getting
14 into anything like that and we make a proffer at
15 that time. All right?

16 **MR. THOMPSON:** All right. And I'll just go
17 back to Gregory where Gregory says that remote
18 acts disconnected and outside the crime itself
19 can not be proved for the purpose of showing
20 third-party guilt. I think the term there is
21 disconnected outside. I think these third party
22 guilt cases come down to somebody saying, well,
23 there was a guy on the street or there was
24 somebody that looked like him. We're not saying
25 that. We're saying that the potential and the

1 testimony depending on who the State calls should
2 prove that we would be able to proffer that
3 evidence.

4 **THE COURT:** All right. Well, Mr. Barnette?

5 **MR. BARNETTE:** Your Honor, thank you. I
6 disagree with my colleague on a couple of points.
7 Holmes, the reason why it was reversed was they
8 were looking to strengthen the State's case. You
9 can't do that. You got to look at what the
10 defense has presented.

11 In State versus Levine which is on page three
12 of the memo -- excuse me -- it's 353 S.E. 2d
13 405. It's a 2003 Appellate Court case. It
14 retests third-party guilt or restate it.

15 State versus Gregory was the first case. In
16 that case, he wanted to offer the testimony of
17 Officer Joe Phillip Smith and establishes James
18 Connors who lived in the apartment with the
19 victim. During the proffer, he wanted to testify
20 to the living situation of Connors and the
21 victim. Officer Smith stated the first police
22 look for a suspect once a murder victim had been
23 identified is her immediate family or immediate
24 surroundings. The trial court excluded this
25 testimony. Plus, there was some DNA that was

1 involved there. They didn't allow that. They
2 excluded the evidence.

3 Basically, what the Court of Appeals says
4 offer -- the defense's offer of this evidence was
5 not inconsistent with his own guilt, nor did it
6 raise a reasonable inference presumptive of his
7 innocence. In other words, just because, say for
8 example Mr. Thompson's argument, the two-year-old
9 did this, which I don't agree with. That's what
10 they are arguing. If he did some of this injury,
11 it doesn't explain the brunt force trauma. It
12 don't explain the spiral fractures. It's not
13 inconsistent with this guilt at this point. I
14 know the Court has not heard the evidence. If I
15 understood, I think he means Dr. Wren who
16 performed the autopsy.

17 **THE COURT:** Okay. All right.

18 **MR. BARNETTE:** And I agree with the Court's
19 ruling. It may be better to wait until after he
20 testifies that we take this matter up. I think
21 just because their arguments may explain some of
22 these injuries, it's still not inconsistent with
23 this guilt or what happened that night in our
24 opinion. What I think he is talking about is the
25 two-year-old, eight-year-old and the mother is

1 the other three people in the house. The mother
2 was not there the whole time.

3 **THE COURT:** All right.

4 **MR. BARNETTE:** I think you will see through
5 the evidence statements that he said the mother
6 did not do this and he said that the, uh, -- and
7 Mike didn't do it in this case. So that leaves
8 the two-year old. I don't think the two-year-old
9 could do a spiral fracture.

10 **MR. THOMPSON:** My client was speaking in
11 terms of he didn't think they could do it.

12 **THE COURT:** Okay. And I do think this is
13 probably better suited for after we hear the
14 person who did the autopsy. But in general, I
15 would say before we get into any evidence or if
16 we feel like we are going down that road of any
17 evidence of third-party guilt that we need to
18 take this issue up again. All right. Anything
19 else from the State?

20 **MR. LEIBERT:** Your Honor, we have two more
21 motions. May we approach on that matter?

22 **THE COURT:** Yes, sir.

23 (WHEREUPON, a bench conference is held off the
24 record from approximately 3:29 p.m. to 3:42 p.m.)

25 **MR. THOMPSON:** Please the Court, Your Honor.

1 I'm going to make a motion. My client has --
2 there is an order where Judge Cole required my
3 client to provide DNA sample.

4 **THE COURT:** Yes, sir.

5 **MR. THOMPSON:** Uh, I want to make a motion
6 to suppress the DNA evidence. I don't -- what we
7 basically talked about in this case is a blunt
8 force trauma to the head and a fractured leg are
9 the most serious injuries to the child. It's our
10 position, Your Honor, the DNA gathered by SLED, I
11 don't believe there is a nexus between the crime
12 and the death of -- the crime alleged and the
13 death of the child -- the DNA and the death of
14 the child.

15 There's matter taken from the baby's bed, a
16 comforter and I think some sheets. The sheets
17 and the comforter both are mobile and can be
18 moved from room to room. We don't have any
19 determination as to how new or old that evidence
20 was. Especially when the baby got the situation
21 where they are in diapers. The potential for
22 having the DNA get there, uh, is pretty, uh,
23 pretty significant.

24 I feel like with my client, there's some
25 blood or some DNA taken that matches him. We

1 don't know the age. This is a bed he has had
2 from the 1990s and the bedding that goes with it.
3 I wouldn't feel like it has any nexus between
4 what's alleged -- that he's alleged to have done
5 with this child and the information gathered from
6 the DNA. I feel like the finding that there's a
7 mixture of the two is potentially harmful and can
8 bias a jury because it may give the impression
9 that there's something going on where this is
10 occurring at the same time. There's no evidence
11 of that in the DNA information that I can find.

12 I'm asking that it be suppressed due to a
13 lack of nexus. And the connotation that DNA
14 evidence gives, I feel like is far more
15 prejudicial than it is probative in this matter.

16 **THE COURT:** All right.

17 **MR. THOMPSON:** And I think there's some
18 evidence that the child had a cut on her tongue
19 for some time prior to the January 2nd date when
20 she passed away. That could have potentially
21 been where some blood came from. As I said, with
22 a baby, you have diaper changes and slobber,
23 other things that could contribute to DNA getting
24 on the bed or on the, uh, comforter, the bed or
25 the sheet. I think they are the three. I just

1 ask that that be suppressed.

2 **THE COURT:** All right. Mr. Leibert or Mr.
3 Barnette?

4 **MR. BARNETTE:** Your Honor, I would like to
5 respond.

6 **THE COURT:** Yes, sir.

7 **MR. BARNETTE:** Please the Court. Your
8 Honor, we did have a hearing in front of Judge
9 Cole. That was held September 25th, 2009, Your
10 Honor. I represented the State. Roger Poole was
11 representing the defendant at that time, Your
12 Honor. We had the hearing, Your Honor. We had
13 Investigator Mark Williams. He testified at the
14 hearing. We also -- he signed an affidavit along
15 with four exhibits, the defendant's written
16 statement, the autopsy report by Dr. Wren, the
17 written report by Investigator Bryant, the SLED
18 DNA analysis on the case which we stipulated to.
19 It's actually State Exhibit number 6. We've done
20 that, Your Honor. They were attached as Court
21 Exhibit 1, Your Honor.

22 Basically, he found under the present state
23 law, Your Honor, the probable cause believed the
24 crime of Homicide by Child Abuse occurred on
25 January 3rd of 2009 at 323 East Blackstock Road,

1 apartment 10 in Spartanburg County. There is
2 probable cause to believe the defendant committed
3 this above crime. The sheriff's department
4 placed several things into evidence where it has
5 been alleged to have been handled by the
6 defendant during the commission of the crimes,
7 Your Honor. They were sent to SLED. They used a
8 safe and reliable method. They used the buccal
9 swab. They did that and collected it, Your
10 Honor.

11 In terms of the seriousness of the crime and
12 part of the evidence of this investigation and
13 the availability of an alternative, less
14 intrusive means to obtain the evidence against
15 the concern of the defendant's constitutional
16 rights will be free from bodily extrusion. He
17 felt a buccal swab was appropriate in this case
18 and he ordered it, Your Honor. So I would like
19 to make this a Court Exhibit.

20 **THE COURT:** All right. Yes, sir.

21 **MR. BARNETTE:** The order issued by Judge
22 Cole. I would say based on all the present case
23 law in South Carolina that they met the standard
24 here. I would ask us to be able to introduce the
25 DNA evidence that was collected from the

1 defendant in this case.

2 **THE COURT:** What would the relevancy of the
3 DNA evidence be in this case? What do you
4 anticipate the relevancy would be?

5 **MR. BARNETTE:** Your Honor, what they did
6 was, there was a comforter that was involved in
7 this -- that was found around the child. What
8 happened was they tested to see -- there was --
9 apparently looked like blood that was on there.
10 They tested a different part. There was one part
11 of the comforter cutting that was done from the
12 comforter that was found in the room. That
13 basically had a mixture of the defendant and the
14 child in this case. Just showing he possibly
15 could have been there at the same time this
16 happened. Of course, you can't date DNA
17 evidence.

18 **THE COURT:** Of course.

19 **MR. BARNETTE:** That's the biggest thing. It
20 does show that apparently there was a blood
21 sample, a DNA sample that was a mixture at one
22 point.

23 **THE COURT:** At this point, I will say, Mr.
24 Thompson, based on what I've heard, my
25 inclination is not to exclude it. Of course,

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1 that would be subject to renewal of your
2 objection at the appropriate time, when it's
3 going to be introduced. That certainly would be
4 subject to a foundation being laid ---

5 **MR. THOMPSON:** Thank you, Your Honor.

6 **THE COURT:** --- and its relevancy being
7 established.

8 **MR. BARNETTE:** And Your Honor, can I enter
9 this as a Court Exhibit?

10 **THE COURT:** Of course, Yes, sir.

11 **MR. THOMPSON:** Which one will that be? Will
12 that be 1 or 2?

13 **MR. BARNETTE:** 1. Thank you, ma'am.

14 **THE COURT:** Thank you.

15 (WHEREUPON, Court's Exhibit 1 is marked for
16 identification purposes.)

17 **THE COURT:** Mr. Thompson, is there anything
18 else?

19 **MR. THOMPSON:** Your Honor, the only other
20 issue I would have would be my client's prior
21 record. I think we can take that up at the
22 appropriate time if he decides to testify.

23 **THE COURT:** All right. All right. Uh, all
24 right then. Well, then if there's nothing else
25 -- is there anything else from the State?

1 **MR. LEIBERT:** No, sir, Your Honor -- No,
2 ma'am, Your Honor.

3 **THE COURT:** All right then. We'll adjourn
4 until nine o'clock in the morning. At that point
5 in time, we'll hear from the next officer on the
6 Jackson v. Deno hearing. If the defendant
7 wishes to testify at that time, we'll hear from
8 him. Hopefully, we can get the jury in here and
9 start -- and open somewhere in the neighborhood
10 of 9:30. All right.

11 **MR. THOMPSON:** Thank you, Your Honor.

12 **THE COURT:** Thank you.

13 (WHEREUPON, the Court recesses for the day at
14 approximately 3:53 p.m.)

P R O C E E D I N G S

1
2 (WHEREUPON, the Court resumes on Tuesday, the 15th
3 day of March, 2011 at approximately 9:34 a.m.)

4 THE COURT: We're going to have an officer
5 testify, is that correct, or someone on behalf of
6 the State? All right. You ready to proceed?

7 MR. LEIBERT: Yes, Your Honor. We call
8 Steve--

9 THE COURT: Any matters we need to take up
10 before then?

11 MR. LEIBERT: None from the State.

12 THE COURT: Okay.

13 MR. THOMPSON: None from the defense.

14 THE COURT: All right. Thank you.

15 MR. LEIBERT: Your Honor, we call Steven
16 Lully. And may I grab my little notebook?

17 THE COURT: Of course.

18 MR. LEIBERT: Come on up.

19 STEVEN LULLY

20 having first been sworn, testifies as follows:

21 THE CLERK: You may be seated.

22 MR. LEIBERT: May it please the Court, Your
23 Honor?

24 THE COURT: Yes, sir.

25 DIRECT EXAMINATION

1 BY MR. LEIBERT:

2 Q Please state your name.

3 A Steven Lully.

4 Q Where were you employed on January 3rd, 2009?

5 A The Spartanburg County Coroner's office.

6 Q What was your position there?

7 A Uh, Coroner Investigator.

8 Q How long were you employed there?

9 A Four and a half years.

10 Q Did you have an occasion to go to Spartanburg
11 Regional Medical Center on January 3rd, 2009?

12 A Yes, sir.

13 Q What time did you arrive there?

14 A 9:45 a.m.

15 Q And what was the purpose of your going there?

16 A I received a call to respond to Trauma Bay 3
17 for a fatality.

18 Q When you arrived at the trauma bay, is that
19 part of the emergency room?

20 A Yes, sir. It is.

21 Q What did you do?

22 A First, I go in and take a look at the
23 decedent. I took pictures. Then I went and I spoke
24 with the family.

25 Q And the family consisted of who?

1 **A** Basically Samantha Hill, the mother. I spoke
2 with Rashawn Murphy.

3 **Q** Did you obtain statements from them?

4 **A** Yes, sir. I did.

5 **Q** Tell the Court how you get statements. What
6 do you do?

7 **A** Basically, first, I'll talk to them and just
8 ask them a few questions. Then I'll ask if you will
9 put in a voluntary statement.

10 **Q** What is the purpose of that?

11 **A** Just so we will have a written record for the
12 coroner's office of the events that happened and all
13 information surrounding it.

14 **Q** Did Mr. Murphy write a statement himself or
15 did you write it for him?

16 **A** Mr. Murphy wrote a statement himself.

17 **Q** And do you suggest anything to him or stand
18 over him?

19 **A** No, sir.

20 **Q** Did he appear in any way to be intoxicated or
21 under the influence of drugs?

22 **A** No, sir.

23 **Q** Did you promise him anything?

24 **A** No, sir.

25 **Q** Did you threaten him in any way?

1 **A** No, sir.

2 **Q** Were you working at the direction of any of
3 the law enforcement officers?

4 **A** No, sir.

5 **MR. LEIBERT:** Your Honor, may I approach the
6 witness?

7 **THE COURT:** Yes.

8 **BY MR. LEIBERT:**

9 **Q** I'm going to hand you what's been marked
10 State Exhibit 12. Do you recognize that?

11 **A** Yes, sir.

12 **Q** What is that?

13 **A** This is a statement that Mr. Murphy wrote.

14 **MR. LEIBERT:** Your Honor, I'd offer this as
15 State 12.

16 **MR. THOMPSON:** I have a copy, Your Honor.

17 **THE COURT:** Thank you.

18 **MR. LEIBERT:** May I have one moment?

19 **THE COURT:** Of course.

20 **(WHEREUPON, State Exhibit 12 is admitted into the**
21 **record.)**

22 **BY MR. LEIBERT:**

23 **Q** Thank you, sir. Answer any questions that
24 Mr. Thompson may have.

25 **A** Yes, sir.

1 **MR. THOMPSON:** Please the Court, Your Honor?

2 **THE COURT:** Yes, sir.

3 **CROSS-EXAMINATION**

4 **BY MR. THOMPSON:**

5 **Q** Mr. Lully, at no time, you didn't indicate to
6 Mr. Murphy that his statement was part of any criminal
7 investigation, did you?

8 **A** No, sir.

9 **Q** And you didn't read him any Miranda rights or
10 anything like that?

11 **A** No, sir.

12 **Q** And you basically said this was for a written
13 record for the coroner's office?

14 **A** Yes, sir.

15 **Q** And you said you didn't coerce him in any way
16 to give a statement?

17 **A** No, sir.

18 **Q** What was his emotional state at the time you
19 spoke with him?

20 **A** If I could recall, he was upset.

21 **Q** Upset about?

22 **A** Just upset from what I could recall.

23 **Q** Okay. Angry, sad, what?

24 **A** Uh, I don't really remember.

25 **Q** And where did you take his statement?

1 **A** One of the family rooms right outside the
2 trauma bay. I think it was the big family room.

3 **Q** And at that time, was he aware the child was
4 dead?

5 **A** Yes, sir.

6 **Q** And this was around 9:45, you said?

7 **A** That's when I arrived. The statement, I
8 think, was a little after 11:00.

9 **Q** Okay. So how long did you talk with Mr.
10 Murphy?

11 **A** Probably 30 minutes. 30 to 45 minutes
12 probably.

13 **Q** And you didn't indicate to him at any time
14 that this could be used against him in the future, did
15 you?

16 **A** No, sir.

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

18 **THE COURT:** Anything else from the State?

19 **MR. LEIBERT:** No, Your Honor. Thank you.

20 **THE COURT:** Sir, you can step down. Thank
21 you for being here.

22 **THE WITNESS:** Thank you.

23 **MR. LEIBERT:** Your Honor, that's the State's
24 showing.

25 **THE COURT:** All right. Mr. Thompson?

1 **MR. THOMPSON:** Your Honor, Mr. Murphy will
2 not testify in this hearing.

3 **THE COURT:** All right. He understands he
4 has an absolute right to testify here if he
5 wanted to?

6 **MR. THOMPSON:** He does.

7 **THE COURT:** All right. Anything else from
8 the State?

9 **MR. LEIBERT:** No, Your Honor.

10 **THE COURT:** Well, I find that the, uh,
11 statement given by -- the statements given by the
12 defendant were all freely and voluntarily given.
13 He was not -- there's ample evidence in the
14 record he was not under the influence of drugs or
15 alcohol. He was not under any undue duress in
16 any way where, apparently, he was mirandized.

17 And then the last statement that he gave, he
18 gave in a non-custodial, completely non-custodial
19 situation with someone with no power to arrest
20 and identified himself as such. Therefore, I'm
21 going to allow -- well, I'll allow the statements
22 subject to their use at trial but I find that
23 they were freely and voluntarily made. Anything
24 else I need to -- that the State would like for
25 me to include for the record?

1 **MR. LEIBERT:** Your Honor, we would just ask
2 that under State versus Sprouse wherein the Court
3 of Appeals found that a DSS did not have to
4 mirandize, that he not be able to question Mr.
5 Lully about whether he mirandized him.

6 **THE COURT:** I think that would be confusing
7 to the jury and mislead the jury into finding
8 that Mr. Lully had some duty to mirandize this
9 Defendant. That certainly would -- in this
10 situation, that he did not have any duty to
11 mirandize, I'm going to prevent the defense from
12 asking any questions regarding, uh, mirandizing
13 Mr. Lully. All right. Anything else before we
14 bring the jury in?

15 **MR. LEIBERT:** No, Your Honor.

16 **THE COURT:** Mr. Thompson?

17 **MR. THOMPSON:** No, nothing from the defense.

18 **THE COURT:** All right then. Let's go ahead
19 and bring the jury in.

20 Mr. Leibert and Mr. Thompson, my law clerk
21 tried to make a copy of the witness list, the
22 proposed witness list that you gave. And
23 unfortunately, it wouldn't copy very well. He
24 took the liberty of just making a witness list,
25 if that's all right, so that both sides would

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1 have a copy.

2 MR. LEIBERT: Are you going to charge me for
3 that?

4 THE COURT: No. Tell you what, we're going
5 to hold on to this original unless you need it
6 back.

7 MR. LEIBERT: Your Honor, if it's possible,
8 we would like to get date of births on these
9 folks.

10 THE COURT: To the extent that we have them.

11 MR. THOMPSON: During the first break, I'll
12 present it to his sister and she'll help get
13 them.

14 (WHEREUPON, the jury enters at approximately
15 9:42 a.m.)

16 THE COURT: Could I ask the attorneys to
17 approach please?

18 (WHEREUPON, a bench conference is held off the
19 record from approximately 9:43 a.m. to 9:44 a.m.)

20 THE COURT: All right. Ladies and Gentlemen,
21 I appreciate your being here and your being here
22 so promptly this morning. The bailiffs informed
23 me that you all were all here at the time that I
24 asked you to. I appreciate that so much. I am
25 very sorry that you had to wait in your jury room

1 for 45 minutes. I am most apologetic about that.
2 That was my fault. I had to take up some legal
3 matters. It was not either of the attorneys
4 faults whatsoever. I do apologize for that.
5 We're going to try to minimize any kind of delays
6 from here on out.

7 Madam Clerk, I'll ask you to swear the jury.

8 **THE CLERK:** Please stand and raise your
9 right hand. You solemnly swear or affirm on the
10 case about to be tried to truly try the issues
11 joined in this case and render a true verdict
12 according to the law and evidence so help you
13 God?

14 (WHEREUPON, each juror responds.)

15 **THE CLERK:** Thank you. You may be seated.

16 **THE COURT:** Ladies and Gentlemen, we are
17 about to try the case of the State of South
18 Carolina versus Rashawn Sha'Meik Murphy. Mr.
19 Murphy, as I read to you during qualification is
20 charged in Indictment 2009-GS-42-2210 with the
21 charge of Homicide by Child Abuse or Neglect.
22 Now, the indictment is not in any way evidence in
23 this case. It is just, uh, a document that
24 charges Mr. Murphy with a crime. Furthermore,
25 this document will go back with you when you

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1 begin your deliberations. It will be for you to
2 write your verdict.

3 Now, Mr. Ballenger. Yes, sir. You are going
4 to be the foreperson of this jury. And when we
5 come back, when we break and we come back in
6 after break, I'm going to ask you to sit where
7 this lady with the yellow shirt is sitting. All
8 right. I'll just ask you to sit there for the
9 remainder of the trial every time we come back in
10 from breaks.

11 Everyone else, you can sit where you want to
12 sit with the exception of, sir, Mr. Pickens.

13 Are you Mr. Pickens? You are our alternate.
14 I'm going to ask you to sit in that seat right
15 where you are. You are sitting in the exact
16 place I need for you to. You will not actually
17 -- unless one of the jurors for some reason can
18 not serve, you will not actually deliberate in
19 this case. But we don't know whether or not
20 we'll need you to deliberate at this point. I
21 ask you to listen to all the testimony and be
22 engaged in this trial just like everyone else. I
23 know you will be. I don't have any concerns
24 about that whatsoever.

25 Mr. Ballenger, as foreperson of the jury,

1 your responsibilities will include this, you will
2 -- when the jury finally goes back to deliberate,
3 you will just be a leader for the deliberations.
4 In other words, you will just help organize the
5 deliberations.

6 I say to the entire jury, Mr. Ballenger's
7 opinion is no more important than anyone else's
8 on this jury. Your verdict must be unanimous in
9 this case and, thus, he will just be someone who
10 guides and sort of organizes the deliberations.
11 Furthermore, if there is any communication that
12 needs to be made during your deliberation, you
13 can do so by note to the Court.

14 And I would ask, Mr. Ballenger, that you be
15 the one to actually send that note, whether or
16 not it be expressly from you. I just ask you to
17 be the one to send the note. Finally, you'll be
18 the one to write the verdict and sign the verdict
19 as the foreperson of this jury. Other than that,
20 you will act just as one of the other twelve
21 jurors in this case.

22 Now, I want to tell you a little bit about a
23 trial and how it goes. It won't be like what you
24 seen on TV. Most people are very surprised when
25 they see a trial. A trial is in many ways a

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1 puzzle or picture that's being put together piece
2 by piece. That's why I ask you not to make up
3 your mind before you've heard every bit of the
4 testimony and evidence in this case. It's just
5 like if you were putting together a puzzle and
6 you only used part of the pieces, you might guess
7 that the picture of the puzzle was something very
8 different. When you get it all together, then
9 you can see it in its entirety. I ask you to
10 wait until the end of this trial when I instruct
11 you to begin deliberating to then begin to make
12 up your mind in this case.

13 You are going to hear witnesses who will
14 testify. You are going to have an opportunity to
15 look at some evidence. If, at any time any of
16 you all can not hear anything, uh, if, any time
17 you all need to take a break, then I would just
18 ask if you would just either let the bailiff know
19 quietly by raising your hand, or if I see your
20 hand raised, I might ask you what you need.
21 Okay. But I want you to be comfortable
22 throughout this trial. If we have any problems
23 with the conditions in the courtroom or anything
24 like that, if you will, let the bailiff know that
25 as well.

1 Uh, we're going to hear opinion statements
2 from the attorneys in this case. They are in no
3 way evidence. They will sort of give you a lay
4 of the land of what each intends to show in this
5 case and what their theory of the case is. Next,
6 we will, as I said, hear testimony and evidence
7 from the parties. Finally, you will hear closing
8 arguments from the attorneys. It is only then
9 that you are to begin your deliberation.

10 Now, I spoke with you about this last night
11 before we went home. Excuse me. I do not want
12 you to discuss this case with anyone, even your
13 fellow jurors to in any way say anything --
14 discuss this case in any way or allow anyone to
15 discuss this case with you. If anyone begins to
16 discuss this case with you and you inform them
17 immediately that you are a juror on this case and
18 they continue to try to discuss this case with
19 you, I ask you to please report that to one of
20 the bailiffs or one of the deputies so that he or
21 she can report it to me and I can deal with that
22 person accordingly. All right.

23 Also please do not do any independent
24 research. We talked about this before. I just
25 say again please do not do any independent

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1 research. It's a very tempting thing to do in
2 this day and age. I know. But I ask you to
3 please not do anything about it. I ask you not
4 to say anything about this case via blog or
5 Facebook or any of those things. I don't really
6 know what exactly they are. Please do not say
7 anything about that. That has been a problem
8 before. I just wanted to explicitly say that to
9 you.

10 It's going to be your solemn responsibility
11 to determine the guilt or innocence of the
12 defendant in this case, Mr. Murphy. Your verdict
13 has to be solely based on the evidence and
14 testimony that is presented to you at trial. At
15 the end of this trial, before you begin your
16 deliberations, I'm going to instruct you on the
17 law in this case. It might be different from
18 what you think the law is, but you have to take
19 the law just as I tell it to you.

20 You all are the decider of the facts. You
21 determine the facts in this case and then apply
22 the law. I am the judge of the law and you are
23 the judge of the facts. You take the law I give
24 you and apply it to the facts and come up with
25 your unanimous verdict. All right.

1 From time to time, you may hear the attorneys
2 say that they have a question of law or they need
3 to take up a matter outside of your presence. I
4 ask you not to speculate on what that would be.
5 We have certain rules that govern how evidence
6 and testimony are presented in a trial only for
7 the purpose of allowing all that testimony and
8 evidence to be presented fairly. I ask you not
9 to speculate on what these matters of law might
10 be that we are taking up outside your presence
11 and I also ask you not to be offended that we
12 have to send you out sometimes. We will do
13 everything we can to minimize those delays. All
14 right.

15 Uh, as I said, when you hear the witnesses,
16 you will have the right to consider -- you will
17 be the decider of the facts in this case. As you
18 listen to the witnesses and you see the evidence
19 in this case, then you can take into
20 consideration any interest of the witness, any
21 bias of the witness. You can take into account
22 the demeanor of the witness in what you will
23 believe. I ask you not to begin to make up your
24 mind about believability until you begin your
25 deliberations.

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1 I also ask you, at the end of this case, when
2 you do begin your deliberations to not consider
3 anything that has not been presented in this
4 courtroom. In other words, only make your
5 decision based on the law that I give you and the
6 testimony and the evidence that you hear here
7 today. Just to make sure that I've done what I
8 need to do, I'm going to ask the attorneys in
9 this case if there's anything I need to add or if
10 they object to anything I said.

11 Anything from the State?

12 **MR. LEIBERT:** No, Your Honor.

13 **THE COURT:** Anything from the defense?

14 **MR. THOMPSON:** Can we approach, Your
15 Honor, ---

16 **THE COURT:** Absolutely.

17 **MR. THOMPSON:** --- on just one minor issue.

18 (WHEREUPON, a bench conference is held off the
19 record from approximately 9:53 a.m. to 9:54 a.m.)

20 **THE COURT:** The attorneys brought up an
21 excellent point that I failed to mention to you
22 all and that is the fact -- I don't know if there
23 is going to be any media coverage about this. I
24 quit watching the news a long time ago. But I
25 don't know if there's going to be any media

1 coverage about this or anything in the newspaper
2 about it. I ask you to please disregard anything
3 that is said in the media about this case,
4 anything that would be reported in the newspaper,
5 I ask you to disregard it.

6 If you happen to look at the newspaper in the
7 morning and you saw something about it, I ask you
8 to just put it down or skip to another article.
9 I know that would be a very tempting thing to do
10 to read that, but I want to say to you, uh, that
11 it would be a violation of your oath to consider
12 something that is not in evidence or testimony
13 from this witness stand here today.

14 Uh, the media does not follow the same rules
15 that we do in court. They do not have to
16 consider -- take into consideration the things
17 that we have to in court. I ask you to disregard
18 anything in the media as it may be very
19 misleading to you. It might result in your not
20 giving a just verdict in this case. I ask you to
21 disregard that and only consider what you hear in
22 the courtroom. All right.

23 Anything else from the State?

24 **MR. LEIBERT:** No, Your Honor.

25 **THE COURT:** Anything from the defense?

1 **MR. THOMPSON:** None, Your Honor.

2 **THE COURT:** You ready to proceed with
3 opening arguments?

4 **MR. LEIBERT:** Yes, Your Honor.

5 **THE COURT:** All right.

6 **MR. LEIBERT:** May it please the Court.

7 **THE COURT:** Yes, sir.

8 **MR. LEIBERT:** Mr. Thompson. Solicitor
9 Barnette.

10 Ladies and Gentlemen, on the morning of
11 January 3rd, 2009, eleven-month-old Parris was
12 taken to the emergency room at Spartanburg
13 Regional Medical Center and pronounced dead.
14 That's her mother right there.

15 Will you stand up, Samantha?

16 That's her mother and that's her father.

17 Will you stand up?

18 The evidence will show that Parris resided
19 with her mother, two-year-old and eight-year-old
20 brothers and the defendant. Dr. David Wren
21 performed an autopsy. And he will testify later
22 today that the cause of death was from an acute
23 subdural hemorrhage secondary to blunt force
24 trauma to the head. She also had a spiral
25 fracture on her left leg from twisting. And he

1 will explain what all that means. She also had
2 other injuries that he will tell you about.

3 The defendant has been charged with Homicide
4 by Child Abuse. I want to read what that is
5 defined as. A person is guilty of Homicide by
6 Child Abuse if the person causes the death of a
7 child under the age of 11 while committing abuse
8 and neglect and a death occurs under
9 circumstances manifesting an extreme indifference
10 to human life.

11 You will also hear the testimony of several
12 people in law enforcement. Investigators at the
13 scene, investigator from the coroner's office and
14 there are people from SLED, the Law Enforcement
15 Division. After hearing all the testimony and
16 hearing and seeing all the evidence, the evidence
17 will show he is guilty as charged. Thank you.

18 **THE COURT:** Mr. Thompson.

19 **MR. THOMPSON:** Please the Court, Your Honor.

20 **THE COURT:** Yes, sir.

21 **MR. THOMPSON:** Ladies and Gentlemen, uh, I
22 know the judge went over the fact that this can
23 be an inconvenience for you. I want you to
24 overlook any inconvenience this is. It's going
25 to be a couple of days. This is very, very

1 serious stuff here. Okay. This is probably one
2 of the benchmarks of our society that makes us
3 better than any other country in the world.
4 Okay. We have a trial by jury.

5 The judge gave you some great instructions
6 earlier on. She said don't make a decision until
7 you hear every fact. When these witnesses get up
8 here, you determine their credibility. Determine
9 if they are genuine or disingenuous. Make your
10 decision based upon what's presented to you.
11 You're going to hear attorneys in here -- it's
12 like the judge said, this isn't going to be like
13 TV. It's not going to be a situation where me or
14 one of these fine lawyers over here crack
15 somebody on the stand and then there's a
16 confession that yeah, I did something wrong or
17 yeah I planted evidence. There won't be anything
18 like that. It's not going to be drama.

19 There's going to be some important stuff.
20 You hear stuff like reasonable doubt. Reasonable
21 doubt is a situation where if you don't believe
22 100, if you're not convinced that my client's
23 guilty, then you come back with a not guilty
24 verdict. You're going to hear things like burden
25 of proof. My client and I can sit over there at

1 that table and we don't have to do anything. We
2 don't have to put up a case. We don't have to do
3 anything. The State has to bring in evidence.
4 They have to prove guilt beyond a reasonable
5 doubt. So take what they give us. See what they
6 got and evaluate it. And hopefully, at the end
7 of the day, we will learn something. It will be
8 a little bit dramatic. I think you're going to
9 come back and find my client's not guilty.

10 Okay. I want you to evaluate these things.
11 You're going to hear that the State has the
12 burden to overcome -- or the burden to prove my
13 client guilty. Think about the burden on my
14 client. They are accusing him of a crime in this
15 state. Okay. The State charges all of us tax
16 dollars. The tax dollars go to support the
17 police department. They've got solicitors.
18 They've got a mountain of resources at their
19 disposal to convict somebody. My client has me
20 and a few witnesses we may call. I will evaluate
21 that when the State is done presenting their
22 case.

23 I ask you guys to dig in here. Take these
24 two, three days that you are going to be
25 inconvenienced, but make it a very serious

1 endeavor on your part to evaluate. Don't be
2 quick to come to a decision. Listen to
3 everything that's put forth. Evaluate that. Go
4 back and discuss it. Then you will come out here
5 with a not guilty verdict. Thank you.

6 **THE COURT:** The State ready to proceed?

7 **MR. LEIBERT:** Yes, Your Honor. The State
8 would call Investigator Jason Bryant.

9 **THE COURT:** All right. Sir, I'll ask you to
10 come forward and be sworn.

11 **JASON BRYANT**

12 having first been sworn, testifies as follows:

13 **THE CLERK:** Thank you. You may be seated.

14 **MR. LEIBERT:** May it please the Court?

15 **THE COURT:** Yes, sir.

16 **DIRECT EXAMINATION**

17 **BY MR. LEIBERT:**

18 **Q** Please tell us your name.

19 **A** My name is Jason Bryant.

20 **Q** Where are you employed?

21 **A** Spartanburg County Sheriff's Office.

22 **Q** What's your position there?

23 **A** I'm a Violent Crimes Investigator.

24 **Q** How long have you been so employed?

25 **A** Since 2004 with the Violent Crimes Division.

1 I been a member of the Spartanburg County Sheriff's
2 Office since 1996.

3 Q Were you employed as an investigator on
4 January 3rd, 2009?

5 A I was.

6 Q Were you called into the case involving
7 Parris?

8 A I was. That's correct.

9 Q And how did you kind of get into the case?

10 A I was asked by Investigator Williams to
11 assist in the death investigator of Minor [REDACTED].

12 Q And where did you go?

13 A At first, I responded to the Spartanburg
14 County Sheriff's Office to assist Investigator Taylor.

15 Q And from there, where did you go?

16 A At that time, I then responded to the
17 Spartanburg Regional Medical Center, I believe. Let
18 me refer to my notes. Or actually, I apologize, to
19 323 East Blackstock Road, apartment 10 first and then
20 to the Spartanburg Regional Medical Center.

21 Q That address, is that the location where
22 Parris resided?

23 A That's correct.

24 Q Is that in Spartanburg County?

25 A It is.

1 Q And upon leaving there, you went to the
2 hospital. What did you do there?

3 A I assisted Investigator Williams with the
4 investigation. Then we responded back to the
5 sheriff's office.

6 Q All right. Who did you meet at the sheriff's
7 office?

8 A I met with the investigators and Samantha and
9 Rashawn Murphy.

10 Q Are you familiar with the defendant's
11 constitutional rights called the Miranda warnings?

12 A That's correct.

13 Q Did you give those warnings and rights to
14 people when you were doing an investigation?

15 A I do.

16 Q Now, in this case, did you interview Rashawn
17 Murphy?

18 A I did.

19 Q Where did this interview take place?

20 A At the Spartanburg County Sheriff's Office
21 Criminal Investigation Division Unit upstairs.

22 Q And did you advise him of his rights?

23 A I did.

24 Q How did you do that?

25 A I did from a pocket card that I always carry

1 in my wallet.

2 Q Do you have that with you?

3 A I do.

4 Q All right. Would you pull it out?

5 A Sure.

6 Q Is that the card you had back on January 3rd,
7 2009?

8 A That's it.

9 Q Would you read to the jury exactly the rights
10 that you read to the defendant?

11 A Sure. It's suspect rights Miranda warning
12 from the card here. You have the right to remain
13 silent. Anything you say can be used against you in a
14 court of law. You have the right to talk to an
15 attorney and have him or her present with you while
16 you are being questioned. If you can not afford to
17 hire an attorney, one will be appointed to represent
18 you before any questioning begins, if you wish. You
19 can decide at any time to exercise these rights and
20 not answer any questions or make any statements. Do
21 you understand each of these rights as I've explained
22 to you? And having these rights in mind, do you wish
23 to talk to us now?

24 Q How did he answer to those questions?

25 A He wanted to talk.

1 Q What time did you read him those rights?

2 A It was about 5:10 p.m.

3 Q Now, did you take him to the sheriff's
4 office?

5 A No, sir. He drove himself.

6 Q Did you then get a statement?

7 A We did.

8 Q Now after you read them their rights, do you
9 just immediately get a statement? Walk the jury
10 through the process.

11 A Not at all. What happens is basically we get
12 someone, they come upstairs. Then we advise them of
13 their rights. At that time, we talk to them briefly.
14 They verbally go through what occurred, what happened.
15 Then we ask them to provide a voluntary statement for
16 us. That's what happened in this incident.

17 Q Now, during the course of your career, have
18 you interviewed people who had been under the
19 influence of alcohol or drugs?

20 A Absolutely.

21 Q Was the defendant under the influence of any
22 drugs or alcohol?

23 A Not at all.

24 Q Did you promise him anything?

25 A Not at all.

1 **Q** Did you threaten him in any way?

2 **A** No.

3 **Q** Did you coerce him in any way?

4 **A** No.

5 **Q** Now, did you write this statement for him?

6 **A** No, sir. The statement is in his own hand.

7 **Q** When the statement is taking place, are you
8 standing there with him? Do you leave the room? Tell
9 the jury.

10 **A** No, sir. During his statement, basically he
11 had advised me of the incident. I think Investigator
12 Taylor was in there at the time also. We actually
13 provided him a voluntary statement. He scribed the
14 statement.

15 **Q** You gave him a voluntary statement form and a
16 pen?

17 **A** Exactly.

18 **MR. LEIBERT:** Your Honor, may I approach the
19 evidence?

20 **THE COURT:** Yes.

21 **MR. LEIBERT:** State's 13 and 14 please.

22 May I approach the witness?

23 **THE COURT:** Yes.

24 **BY MR. LEIBERT:**

25 **Q** Now, at any point, did he ask for an

1 attorney?

2 **A** Not at all.

3 **Q** All right. So now he's written his
4 statement.

5 **A** Correct.

6 **Q** And then do you come back into the room?

7 **A** I do.

8 **Q** I hand you what's been marked as State
9 Exhibit 13. What is that?

10 **A** That is the voluntary statement of Rashawn
11 Murphy.

12 **Q** How many pages is it?

13 **A** It's just one page.

14 **Q** And did he sign that?

15 **A** He did.

16 **Q** All right. Did you and Investigator Taylor
17 sign on it as well?

18 **A** That's correct.

19 **MR. LEIBERT:** Your Honor, I would offer this
20 as State 13 into evidence.

21 **THE COURT:** Mr. Thompson.

22 **MR. THOMPSON:** Your Honor, I would just only
23 go into objections based upon the Jackson v.

24 Deno ---

25 **THE COURT:** All right.

1 **MR. THOMPSON:** --- that you already ruled
2 on. .

3 **THE COURT:** All right. Your previous
4 objection pretrial is noted. I will admit the
5 statement into evidence.

6 **(WHEREUPON, State Exhibit 13 is admitted into the**
7 **record.)**

8 **MR. THOMPSON:** Thank you, Your Honor.

9 **MR. LEIBERT:** Thank you, Your Honor. May I
10 publish it to the jury?

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

12 **MR. LEIBERT:** Statement of Rashawn Murphy,
13 age 22, 1/3/09. I first put Parris to sleep at 6
14 p.m. or a little later. She woke up at around --
15 after 7 p.m. She played with her brothers for a
16 little while. Then I told them she was about to
17 go to sleep. I told them to watch her while I
18 get her bottle. I came back with her bottle and
19 she wouldn't drink it. I gave her her pacy.

20 Later on, I put her brothers in bed and I
21 checked on her. After that, I checked on her a
22 couple of more times. She seemed fine. Her
23 brother came downstairs -- then his oldest
24 brother came downstairs -- I'm sorry. Let me
25 start that again.

1 Then this morning, her oldest brother came
2 downstairs. He was crying tell us that Parris
3 wasn't moving. So me and Samantha ran upstairs.
4 Then I ran back downstairs to get the phone. I
5 called 911. 911 tried to coach me through CPR
6 until the ambulance came.

7 At the bottom, it's typed, I have read this
8 statement consisting of one page. And I swear
9 that the statement that I have just given is the
10 truth, the whole truth and nothing but the truth
11 so help me God. I also swear this statement is
12 freely given and voluntary and I've received a
13 copy of my statement. It was completed at 6:03
14 p.m. on the 3rd day of January, 2009.

15 **BY MR. LEIBERT:**

16 **Q** What did you do after that statement,
17 Investigator?

18 **A** After that statement, I went back in and
19 spoke with Mr. Murphy and begin to discuss the
20 discrepancies in the statement and what was noted at
21 the house as far as that goes and the injuries that we
22 were able to obtain the description from Dr. Wren.

23 **Q** All right. What, if anything, did he say to
24 you at that time?

25 **A** At that time, and if you don't mind me

1 referring to my notes here. He advised me that --
2 that Mike didn't do it. No one had broke into his
3 house or his residence.

4 Q Now, who is Mike?

5 A Mike is the eight-year-old child that lives
6 at the residence.

7 Q Okay.

8 A And that Samantha was gone.

9 Q And Samantha is?

10 A Was gone.

11 Q Who is that?

12 A That is the child's mother.

13 Q Right. Then what did you and the other
14 investigators do?

15 A At that time, I think I asked Ms. Samantha if
16 I could speak with Mikey. I talked to Mikey and
17 interviewed him. Once I had interviewed Mikey, I had
18 actually went back and talked to Mr. Murphy. Mikey
19 had advised me --

20 Q Wait. You can't say what Mikey said.

21 A I apologize. I apologize. Once then, I had
22 went back and he had provided me with a second
23 statement.

24 Q A second written statement?

25 A That's correct.

1 **MR. LEIBERT:** Your Honor, may I approach the
2 witness?

3 **THE COURT:** Of course.

4 **BY MR. LEIBERT:**

5 **Q** During this time, did he ask for anything to
6 eat or drink?

7 **A** He asked for a Sprite.

8 **Q** What did you give him?

9 **A** A Sprite.

10 **Q** I hand you what has been marked State Exhibit
11 14. Do you recognize it?

12 **A** I do.

13 **Q** All right. And what is that?

14 **A** That is a voluntary statement of Mr. Murphy.

15 **Q** That's the second statement he gave you?

16 **A** That's correct. Completed at 10:05.

17 **Q** This was also at the sheriff's department?

18 **A** It was.

19 **Q** Would you have been present when he gave this
20 statement?

21 **A** I had provided him with the voluntary
22 statement form. He completed it in his own hand.

23 **MR. LEIBERT:** Your Honor, I'd offer this as
24 State 14.

25 **THE COURT:** Any objection, Mr. Thompson?

1 **MR. THOMPSON:** Same objection as in the
2 Jackson v. Deno hearing.

3 **THE COURT:** Same objection is noted and I
4 will allow the statement.

5 **(WHEREUPON,** State Exhibit 14 is admitted into the
6 record.)

7 **MR. LEIBERT:** May I publish this to the
8 jury, Your Honor?

9 **THE COURT:** Yes, sir.

10 **MR. LEIBERT:** Statement of Rashawn Murphy,
11 age 22, 1/3/09. He lists his address, Social
12 Security number. After I laid Parris down the
13 first time, a few minutes after Samantha left
14 while me, Mikey and Mijay was watching TV with
15 the surround sound on loud. I decided to check
16 on Parris as I always do, but when I got to the
17 steps, I already seen her close to the bottom
18 step. It surprised me because she usually
19 wouldn't come down the steps.

20 I left the room that she was in door cracked
21 open a little bit, as I always do, so I can hear
22 her whine or cry. But either she didn't cry or
23 I didn't hear her because of the TV. She was
24 asleep on the steps. So I woke her up and took
25 her to the room -- took her to the room. Mikey

1 and Mijay ended up following me up the stairs.
2 So we played with her for a few minutes to try
3 and stop her from whining.

4 She was sitting on the floor and started
5 nodding. So I took her. She was sleepy. I
6 called her by her nickname, Mama, and she opened
7 her eyes and reached for me. I put her on the
8 bed and told her, Mikey and Mijay -- told Mikey
9 and Mijay to watch her while I got her a bottle.
10 I came back with the bottle and tried to give it
11 to her, but she didn't want it. So I gave her
12 pacy -- her pacy. She closed her eyes and I laid
13 her down. I told the other two kids let's go
14 downstairs so she could sleep.

15 Mijay started crying for no -- for nothing.
16 So I sent him to his room as I always do. He
17 came back downstairs after a few minutes. And
18 Samantha had pulled up then. She came in and
19 sent him to bed. I went upstairs to make sure
20 they went to bed. I turned the lights on.
21 Parris, I heard her breathing because she
22 breathes loud when she sleeps.

23 Later, Samantha told me to go upstairs and
24 get the pillow. So I did. And while I was up
25 there, I checked on the kids and they were fine.

1 At least that is what it seemed.

2 I have read this statement consisting of two
3 pages and I swear that the statement I have just
4 submitted is the truth, the whole truth and
5 nothing but the truth so help me God. I also
6 swear this statement was given freely and
7 voluntarily and I received a copy of my
8 statement. This statement is completed at 10:05
9 p.m. on the 3rd day of January 2009.

10 BY MR. LEIBERT:

11 Q Did Mr. Murphy sign that?

12 A He did.

13 Q And you and David Taylor as well?

14 A That's correct.

15 Q Did you talk any further with the defendant?

16 A Let me refer to my notes if you don't mind,
17 sir. (Pause.)

18 Once he had provided that statement, we were
19 pretty much through.

20 MR. LEIBERT: Thank you. Answer any
21 questions that --

22 May I have the Court's indulgence?

23 THE COURT: Sure.

24 (WHEREUPON, there is a pause.)

25 BY MR. LEIBERT:

1 **Q** During the course of your investigation, did
2 you become aware of a letter that Mr. Murphy sent?

3 **MR. LEIBERT:** Your Honor, may I get the
4 exhibit?

5 **THE WITNESS:** I did.

6 **MR. BARNETTE:** May we approach one second,
7 Your Honor?

8 **THE COURT:** Yes.

9 (WHEREUPON, a bench conference is held off the
10 record.)

11 **MR. LEIBERT:** Would you mark this as 15A?

12 (WHEREUPON, State Exhibit 15A is marked for
13 identification purposes.)

14 **BY MR. LEIBERT:**

15 **Q** Investigator, I hand you what has been marked
16 as State Exhibit 15A. Is that the letter that was
17 written by Mr. Murphy consisting of 12 pages?

18 **MR. THOMPSON:** Your Honor, at this time, I
19 would object to the letter. I don't believe he's
20 established that the letter was written in the
21 presence of Officer Bryant. I think there is a
22 chain we need to go through to enter that letter
23 into evidence.

24 **THE COURT:** All right. I --

25 **MR. LEIBERT:** May I approach?

1 **THE COURT:** Absolutely.

2 (WHEREUPON, a bench conference is held off the
3 record.)

4 **THE COURT:** All right. It is my
5 understanding that the State is not attempting to
6 admit the letter at this time but just using it
7 for identification purposes. I will limit it to
8 that at this point.

9 **BY MR. LEIBERT:**

10 **Q** All right. Is that the letter by Mr. Murphy?

11 **A** No, that was a copy of a letter that I was
12 advised.

13 **Q** Right.

14 **A** Correct.

15 **Q** Thank you.

16 **MR. LEIBERT:** We reserve the right to offer
17 that at a later time, Your Honor.

18 **THE COURT:** Yes, sir.

19 **MR. LEIBERT:** Thank you, Your Honor.

20 Answer any questions Mr. Thompson may have.

21 **THE COURT:** Mr. Thompson.

22 **MR. THOMPSON:** Please the Court, Your Honor.

23 **CROSS-EXAMINATION**

24 **BY MR. THOMPSON:**

25 **Q** Officer Bryant.

1 **A** Yes, sir.

2 **Q** You, uh, -- in here, this is your narrative,
3 right?

4 **A** That's a copy of my investigative report.
5 Yes, sir.

6 **Q** You stated he came in at 5:10, correct?

7 **A** That was the time I advised him of his
8 rights. He showed up shortly before.

9 **Q** Okay. And you read that off of a card is
10 your testimony, right?

11 **A** That's correct.

12 **Q** Didn't give him anything in writing to tell
13 him what his rights were, right?

14 **A** No, sir.

15 **Q** And you will admit that in these statements
16 he provided have a good bit of information, but you
17 also have a lot of information in your narrative here
18 ---

19 **A** Absolutely.

20 **Q** --- that's absent from the written statement,
21 right?

22 **A** Correct.

23 **Q** And you basically, uh, took this on the same
24 day that he was told the child was dead, right?

25 **A** That evening, yes, sir.

1 Q Okay. And after -- he was shown a photograph
2 of the child?

3 A I wasn't present when he was shown the photo.

4 Q But you were aware that he was upset about
5 the photograph?

6 A I knew he demanded to see proof of the
7 injuries to the child.

8 Q So he -- this is a bad time for him,
9 obviously, and the mother, correct?

10 A Are you talking about when he demanded to see
11 proof of the injuries?

12 Q No, I'm just talking about the overall
13 totality of the situation. There's a child that he
14 has cared for, he been in the home with this child
15 and, all of a sudden, the child is dead. So it's a
16 traumatic time for anybody, right?

17 A Absolutely. I would say.

18 Q Okay. And you elicited those two statements
19 and you added things in here, right?

20 A Only what he had stated to me.

21 Q Okay. And at no time during your interview
22 with him did he say that he did anything wrong, did
23 he?

24 A When he was questioned in regards to that,
25 the only information he provided me was Mikey didn't

1 do it, no one broke into my home and Samantha was
2 gone.

3 Q Okay. So you don't -- you basically don't
4 believe these statements, right? You think he's
5 lying, correct?

6 A Absolutely.

7 Q Okay. But why -- does he lie in there when
8 he says he don't think Mikey did it?

9 A He didn't say he didn't think Mikey didn't do
10 it. He stated Mikey did not do it, Samantha was not
11 at home, and no one broke into my home.

12 Q Okay. So the thing I want to get to here is
13 the Samantha was not home during this time. What time
14 period was established?

15 A Sir, I didn't have anything to do with that
16 aspect of the investigation.

17 Q You got no idea when the child's time of
18 death was, right?

19 A No, sir.

20 Q So basically he's saying that he didn't think
21 Mikey did it.

22 A No, he said Mikey did not do it.

23 Q He didn't think Mikey did it, right?

24 A No, he did not do it.

25 Q Okay. He says that right?

1 **A** Yes.

2 **Q** Okay. And he's saying that Samantha was not
3 home during this time?

4 **A** Right.

5 **Q** And you learned later Samantha does
6 eventually come home at 10:00 or so, right?

7 **A** She does.

8 **Q** Okay. And then we, uh, -- he goes in and
9 talks to Mr. Taylor and gives the second statement,
10 right?

11 **A** That was when he wanted to see the photos of
12 the injuries to the child.

13 **Q** Okay. And isn't it true now, you know, he's
14 here from 5:10 p.m. until 10:05 when he gives that
15 second statement, right? Five hours.

16 **A** Yes, sir.

17 **Q** Okay. And it's your testimony there wasn't
18 any cussing and yelling and screaming at him?

19 **A** It was an emotional interview. It was never
20 an aggressive interview.

21 **Q** Okay. Well, what's the difference between
22 showing an emotional interview and an aggressive
23 interview?

24 **A** Well, basically he had -- during the
25 traumatic impact of this, he did become emotional

1 during the time.

2 Q All right.

3 A Especially when you go from I don't know
4 anything, nothing happened to, well, then the child
5 fell down the steps.

6 Q Did he ever say she fell down the steps?

7 A If I could see the -- she had found -- he had
8 found the child at the bottom of the steps.

9 Q So really, your interpretation is she'd go
10 down the steps. He didn't say she fell down the
11 steps, right?

12 A I misspoke. It was what he had stated in his
13 statement.

14 Q And go back to emotional versus aggressive.
15 Okay. If I'm emotional and my wife is emotional,
16 that's two different emotional things right there.
17 How is this emotional?

18 A I mean, he did show emotion. He cried.

19 Q What about you? What were your emotions?

20 A Just as I am now.

21 Q I'll ask you again, did you yell, did you
22 scream, did you cuss at him?

23 A There was profanity used between both people.
24 It was how he understood.

25 Q So you're saying that's the only way you

1 could get across to him was to cuss at him?

2 **A** No, not at all. I did not want to break the
3 flow of communication. He understood the words that I
4 was saying. That's how information had flowed.

5 **Q** So you did use profanity?

6 **A** Absolutely.

7 **Q** Did you yell at him?

8 **A** No.

9 **Q** Did you raise your voice at him?

10 **A** No.

11 **Q** But you did use profanity?

12 **A** Sure.

13 **Q** Correct?

14 **A** Yes, sir.

15 **Q** And so you would -- he's told you a lot of
16 information in the two statements, right?

17 **A** Sure.

18 **Q** And you are telling him that there's
19 discrepancies with his story?

20 **A** Exactly.

21 **Q** What are you comparing the first statement to
22 to say there are discrepancies?

23 **A** That he didn't know what went on, didn't know
24 anything had went on. You mind if I see the
25 statement?

1 Q I'll hand those to you. I'm sorry.

2 A I appreciate it.

3 Q I think that's the second.

4 A That's the second.

5 Q Then, if you go to your notes --

6 A If you don't mind if I refer to my notes. He
7 provided a voluntarily statement that he did not know
8 what happened to the child.

9 Q That would be the first one?

10 A That's the first one.

11 Q So --

12 A 6:03.

13 Q 6:03, right?

14 A Yes, sir.

15 Q And then you go on, about halfway down that
16 second page, you said I did begin to discuss the
17 discrepancies in the stories that he had provided ---

18 A Sure.

19 Q --- regards to knowledge of injuries the
20 child had sustained.

21 A That's correct.

22 Q Okay. So if we look at that first statement,
23 he's basically said that he gave her a bottle, she
24 wouldn't take it. She took her pacy. She went to
25 bed, right?

1 **A** Correct.

2 **Q** All right. So he admitted no wrongdoing.

3 Really, there's nothing in that statement to compare
4 any discrepancies to, was there?

5 **A** In regards to the injuries and the child and
6 the information that we found out about the injuries
7 to the child.

8 **Q** And where was the child's mom at the time you
9 were interviewing my client?

10 **A** She was at the Spartanburg County Sheriff's
11 Office.

12 **Q** Okay. Did they come together?

13 **A** They did. If I remember correctly, they
14 arrived together.

15 **Q** So you bring up these discrepancies?

16 **A** Yes, sir.

17 **Q** And I guess you are saying, so you are
18 telling me you put the child to bed, gave her a bottle
19 and she went to sleep, but over here I got a report
20 that there's some injuries?

21 **A** Exactly.

22 **Q** That's the discrepancy.

23 **A** Exactly.

24 **Q** You are not saying my client lied to you
25 about anything earlier?

1 A Well, I mean, he doesn't know anything and
2 the child has massive trauma and injuries to it.
3 That's a huge discrepancy to me.

4 Q Well, but you are implicating that he had
5 some knowledge of the injuries.

6 A No, he apprised me that he didn't know what
7 had happened.

8 Q Right. But your analysis here is that he
9 does have knowledge of those injuries?

10 A Exactly.

11 Q But he didn't give you anything, nothing in
12 these statements --

13 A Are you talking about in his first statement,
14 his second statement or his other stories?

15 Q He didn't acknowledge any injuries. He
16 didn't admit to injuring the child.

17 A He stated that he did not know what happened.

18 Q Okay. And then in the second one, he said
19 she was asleep on the stairs. Does he say anything
20 about injuries in there?

21 A Let me refer to it. I don't want to
22 misspeak. (Pause.)

23 It says when I got to the steps, I had
24 already seen her close to the bottom step. It
25 surprised me. She usually wouldn't come down the

1 steps. That's what he stated in his statement.

2 Q So his statements remained consistent in the
3 fact that from the time he put the child to bed, there
4 was nothing wrong with the child. That's what he's
5 saying, correct?

6 A No, sir. His first statement was I
7 absolutely don't know what happened.

8 Q Where is that at in the first statement?

9 A And I'm referring to my writeup that he
10 didn't know what had happened to the child. That was
11 basically the gist of the first statement. I'll be
12 glad to read it to the jury if you want me to.

13 Q No, you said his first statement said I don't
14 know anything. Now you are saying it's his oral
15 statement, not a written statement, right?

16 A Basically, his voluntary statement stated he
17 did not know what happened to the child. He didn't
18 know of any injuries to the child. He didn't know
19 what had happened.

20 Q Okay.

21 A She was still breathing heavy and asleep.

22 Q Okay. So that remained consistent throughout
23 for both statements, right?

24 A Well, and in his second statement, he had
25 found the child supposedly near the bottom step.

1 Q Uh-huh.

2 A That's a good bit more information. I mean,
3 not know anything and found the child at the bottom of
4 the step.

5 Q He didn't say at the bottom of the step.

6 A Or near the bottom.

7 Q Near the bottom. Close to the bottom is what
8 he said, right?

9 A Close to the bottom.

10 Q Okay. But at the same time, he's not
11 acknowledging any injuries to the child when he puts
12 her back to bed, right?

13 A He did make the statement that the child
14 seemed dazed, I believe, sir.

15 Q Uh-huh. All right. And the child was sleepy
16 and the child went to bed, right?

17 A Let me refer to my notes. She had seemed --
18 had a dazed look about her. Then he put her in the
19 bed.

20 Q Okay. But he does say she took a bottle to
21 the pacy and all that, right?

22 A I don't think she took a bottle. I think he
23 tried to give her a bottle. And she didn't --

24 THE COURT: All right. Let's stop right
25 there. Uh, I just want to ask the attorneys --

1 and just to give a general admonition, just be
2 careful about speaking over witnesses. I don't
3 want my Court Reporter to quit on me. She just
4 started with me. All right. Thank you.

5 **BY MR. THOMPSON:**

6 **Q** Okay. Officer, I'm going over the second
7 statement. He said she was sitting on the floor,
8 correct?

9 **A** What line are you at, sir? I apologize.

10 **Q** Probably 10 lines down.

11 **A** You talking about after he stated that he
12 played with her for a few minutes to try to stop her
13 from whining?

14 **Q** Yes.

15 **A** And she was sitting on the phone?

16 **Q** Yes.

17 **A** And started nodding, so I took it that she
18 was sleepy.

19 **Q** Okay. And she opened her eyes, reached for
20 me. Put her on the bed. Told the boys to watch her.
21 That's when he got the bottle and she took the pacifier
22 and then laid down, correct?

23 **A** I laid her down.

24 **Q** And my goal here is, you are attempting to
25 make my client look like a dishonest person, correct?

1 **A** I think he did a pretty good job of that
2 himself.

3 **Q** In your -- you are playing them, correct?

4 **MR. LEIBERT:** Objection.

5 **THE WITNESS:** I'm sorry.

6 **THE COURT:** Wait just one second. What's
7 the basis for the objection?

8 **MR. LEIBERT:** We have a witness and he's
9 saying he's playing with the jury. That's not
10 appropriate.

11 **THE COURT:** I'm sorry. I didn't hear you.

12 **MR. LEIBERT:** He said that he -- may we
13 approach?

14 **THE COURT:** Yes.

15 (WHEREUPON, a bench conference is held off the
16 record from approximately 10:32 a.m. to 10:33 a.m.)

17 **THE COURT:** I'm going -- I'm going to allow
18 the question. I'll overrule the objection.

19 **BY MR. THOMPSON:**

20 **Q** Officer, he added some things to the second
21 statement, correct?

22 **A** That's correct.

23 **Q** And how long you been in law enforcement?

24 **A** Since 1996.

25 **Q** Is that uncommon that people come back and

1 write a second statement and add things to it?

2 **A** Not if they are forthcoming and give a
3 complete statement in the beginning.

4 **Q** All right. So he's lying in the first
5 statement?

6 **A** Well, I'm not going to judge him.

7 **Q** Okay. And you got him there for five hours,
8 correct?

9 **A** That's correct.

10 **Q** And he gave you a statement at six o'clock,
11 right?

12 **A** Correct.

13 **Q** You didn't -- y'all didn't leave him alone
14 from there, did you?

15 **A** No, sir. We didn't leave anybody alone. We
16 talked to a lot of people.

17 **Q** Okay. So it's normal -- does it not stand to
18 reason that if he gives one statement and you keep
19 questioning him, he'll give more -- give you more
20 information?

21 **A** Exactly. Correct.

22 **MR. THOMPSON:** No further questions, Your
23 Honor.

24 **THE COURT:** All right. Any redirect?

25 **MR. LEIBERT:** No redirect. Thank you, Your

1 Honor.

2 THE COURT: Thank you, sir. You can step
3 down.

4 MR. LEIBERT: We call Investigator David
5 Taylor to the stand.

6 DAVID TAYLOR
7 having first been sworn, testifies as follows:

8 THE CLERK: Thank you. Have a seat.

9 MR. LEIBERT: May it please the Court?

10 THE COURT: Yes, sir.

11 DIRECT EXAMINATION

12 BY MR. LEIBERT:

13 Q State your name.

14 A My name is David Taylor.

15 Q You were employed by the Sheriff's Department
16 January 3rd, 2009?

17 A Yes, I was.

18 Q In what position?

19 A I was assigned to the Major Crime Unit. I
20 was on call for the Violent Crime Division.

21 Q How long were you employed by the Sheriff's
22 Department?

23 A I would have been in my 24th and a half year.
24 I am now retired.

25 Q Are you familiar with Miranda warnings?

1 **A** Yes, sir. I am.

2 **Q** Were you present when the defendant received
3 Miranda warnings from --

4 **A** Yes, sir. I was.

5 **Q** Tell the jury how you were brought into the
6 case and what you did initially.

7 **A** I was asked to come in. Investigator
8 Williams had called and asked me to assist him --

9 **MR. THOMPSON:** Your Honor, if you would just
10 ask the witness to be careful about hearsay.
11 He's indicating it was told something by one
12 officer.

13 **THE COURT:** All right. I'll just ---

14 **THE WITNESS:** I understand.

15 **THE COURT:** --- tell you to just be careful.
16 You can't say what someone else said.

17 **THE WITNESS:** I responded to the Sheriff's
18 office to assist by typing up a search warrant
19 and presenting it to a judge for a signature.

20 **BY MR. LEIBERT:**

21 **Q** All right. And were you present when Mr.
22 Murphy was spoken with by Investigator Bryant?

23 **A** Yes, sir. At the sheriff's office, yes, sir,
24 I was.

25 **Q** And you were present when you read him his

1 rights. What takes place after that? Did he
2 immediately write the statement?

3 A No, sir. Investigator Bryant starts an
4 interview and speaks to them about what happened and
5 what's going on and everything. Then we provided him
6 with Sheriff's office paperwork, a voluntary statement
7 and a pen and pretty much leave him there to write a
8 statement.

9 Q Does he get to write whatever he wants?

10 A Yes, sir.

11 Q As little as he wants or as much as he wants?

12 A Absolutely. Yes, sir.

13 Q Did he make any statements to you after he
14 was mirandized?

15 A Yes, sir. He did.

16 Q What did he say?

17 A After he had written the statement, the
18 interview continued on with Investigator Williams who
19 was the lead investigator in the case. Investigator
20 Bryant -- my office is off -- away from theirs, from
21 their cubicles at this time. And, uh, they -- I saw
22 Investigator Bryant back and forth between two of the
23 interview rooms. I had actually walked over there to
24 see where we were at with the case. At which point,
25 there was a knock on the window as I walked by the

1 interview room for Mr. Murphy. At which point, he
2 asked me to look at a photograph that was laying on
3 the table similar to this one right here outside the
4 door, outside a cubicle.

5 Q Investigator, let me back you up.

6 A Sure.

7 Q Before the statement, did he make a statement
8 to you -- and you may refer to it ---

9 A Yes, sir.

10 Q --- in your report.

11 A Did he make a statement to me?

12 Q Right, while you were present.

13 A At this point, he made a statement to me
14 after I had shown him the picture of what he asked to
15 look at. He had -- after I showed him this picture,
16 uh, he asked me could I sit and talk to him for a few
17 moments, which I did. At that point, he does give me
18 a verbal statement.

19 Q All right. And what did he tell you?

20 A At that point, he told me -- I will be
21 referring to my notes. He became upset. He was
22 crying. Not sobbing uncontrollably, but he had
23 started crying. I actually stepped up and got to the
24 cubicle, a lady's cubicle just outside the door there.
25 Retrieved some tissue for him. He wiped his tears

1 away. I told him that all we wanted to do is find out
2 what happened to this child.

3 At that point, he goes to tell me, uh, that
4 after a couple of minutes, uh, sitting there that he
5 would put the baby upstairs and had left the door
6 cracked to hear the baby. This is around 7 p.m. The
7 two other kids were downstairs and they were watching
8 TV.

9 At some point, he went to go back upstairs
10 and noticed that the baby was near the bottom of the
11 stairs. He stated that he picked up the baby and
12 appeared to be dazed and shaken a little. He said
13 that he took the baby back upstairs. Played with the
14 child for a little while. He stated that she was
15 crying a little. He then goes on to say that he put
16 the baby back to bed. Uh, that he put the baby back
17 to bed and the baby went to sleep. However, he tried
18 to give her a bottle. She did not take it.

19 He said he checked on the baby a couple of
20 times before Samantha got home. Said that he thought
21 the child was okay when he put her to bed. He stated
22 that he and Samantha stayed downstairs that night.

23 At this point, I advised him he should tell
24 Investigator Bryant. He was kind of leading the
25 investigation. He talking with him, the interview, he

1 should tell him that story, which he did and then he
2 wrote it down again on the voluntary statement here.

3 Q And that was the second statement?

4 A Yes, sir. That was the one that was
5 completed at 10:05 p.m. evening.

6 Q And during your career, you seen people under
7 the influence of alcohol and drugs?

8 A Yes, sir. I have.

9 Q Was the defendant under alcohol or --

10 A No, sir. He was not.

11 Q Did you threaten him or promise him to give
12 another statement?

13 A No, sir. No, sir.

14 Q It was free and voluntary?

15 A Yes, sir.

16 Q Thank you. Answer any questions Mr. Thompson
17 may have.

18 THE COURT: Mr. Thompson.

19 MR. THOMPSON: Please the Court, Your Honor.

20 THE COURT: Yes, sir.

21 CROSS-EXAMINATION

22 BY MR. THOMPSON:

23 Q David, you took the first statement or the
24 second statement?

25 A I was present for both of them, sir.

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1 Q Okay.

2 A I was present for both of them.

3 Q You were there for both. Now, was Officer,
4 uh, Bryant there for both of them?

5 A Yes, sir. He was.

6 Q He was there for both?

7 A Yes, sir.

8 Q Okay. Now, uh, when you report, you state
9 here about -- let's go to this second paragraph.
10 Investigator Bryant and Investigator Williams walked
11 into the room to speak with Mr. Murphy?

12 A Yes, sir.

13 Q Were you in there at that time?

14 A No, sir. I was not.

15 Q I noticed Investigator Williams and Bryant in
16 and out of the interview room several times.

17 Investigator Williams asked me to get the ID officer,
18 Hogsed, and get more photos of the victim in the case.

19 A To get some photos of the victim in this
20 case.

21 Q All right. I got some photos and gave them
22 to Investigator Williams and Investigator Bryant. And
23 Investigator Williams walked out of the room to speak
24 with Samantha Hill who was in another room, right?

25 A Yes, sir.

1 Q As I walked by the door, Murphy asked if he
2 could see a photo of the victim ---

3 A Yes, sir.

4 Q --- that was lying on the table outside.

5 A Uh-huh.

6 Q Held up the photo and he looked at it.
7 Murphy then asked if I would sit and talk with him for
8 a minute.

9 A Yes, sir. That's correct.

10 Q Okay. I stated yes and I sat down in the
11 room with him. All right. Is Bryant in there at that
12 time?

13 A No, sir. They are not in -- they were
14 talking to, I believe, the other small child in the
15 other room and also Ms. Samantha was in another room
16 as well.

17 Q Okay.

18 A But they are not in here during this time,
19 no, sir.

20 Q Right here where he's talking to you, he
21 stated he really did not know what happened to the
22 victim. He appeared to start crying. You got him
23 tissues?

24 A Yes, sir. I did.

25 Q You asked him to tell you what had happened?

1 **A** That's right.

2 **Q** After a couple of minutes, he stated he put
3 the baby to bed, cracked the door so you could hear
4 the baby. This was around 7:00. The two other kids
5 were downstairs watching TV. At some point, he went
6 to walk upstairs and noticed the baby near the bottom
7 step of the stairs.

8 **A** Yes, sir.

9 **Q** He stated that he picked the baby up and she
10 appeared to be dazed and shaken a little.

11 **A** Yes, sir.

12 **Q** Okay. So still Officer Bryant is not in that
13 room with you, right?

14 **A** No, sir. He is not.

15 **Q** He's making a big deal about the fact that he
16 was told the baby is dazed, right? You notice that?

17 **A** Yes, sir. I did.

18 **Q** But he wasn't in here when Mr. Murphy
19 indicated the baby was dazed, was he?

20 **A** If I may explain, uh, I was in there by
21 myself at this time. I requested --

22 **Q** I mean, it's a yes or no.

23 **MR. LEIBERT:** Your Honor, I request that he
24 be able to explain.

25 **THE COURT:** I -- he is able to explain his

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1 there?

2 **A** This is a Spartanburg County Sheriff's Office
3 or Sheriff's Department preinterrogation waiver form.

4 **Q** Okay. And what is that commonly used for?

5 **MR. LEIBERT:** Your Honor, may we approach?

6 **THE COURT:** All right.

7 (WHEREUPON, a bench conference is held off the
8 record at from approximately 10:54 a.m. to 10:55 a.m.)

9 **BY MR. THOMPSON:**

10 **Q** So, David, commonly, this is just a form that
11 somebody that gives a statement will come in and say I
12 know I have the right to remain silent, right?
13 Anything I say can be used against me. I have the
14 right to talk to a lawyer. If I can't hire a lawyer,
15 I'll get one appointed. I have the right to stop
16 answering questions at any point, correct?

17 **A** That is the form.

18 **Q** Yeah. And it is common that that's used and
19 then people will sign off on it, right?

20 **A** It's, uh, -- I've been -- several different
21 times, I've used a form and I've not used a form. Ask
22 Investigator Bryant, he's been my partner since '03 or
23 '04. I seen him do it the way that he did it just a
24 minute ago on the stand.

25 **Q** Okay. You have a card like he has?

1 **A** I do.

2 **Q** What's that card say? The same thing as
3 these?

4 **A** Yes, sir.

5 **Q** That he can stop answering questions at any
6 time?

7 **A** Yes, sir. I sure do. Uh-huh.

8 **Q** But Mr. Murphy never received one of these?

9 **A** No, sir.

10 **Q** Never signed one?

11 **A** No, sir. He did not.

12 **Q** Okay. And you witnessed the second statement
13 at 10:05, correct?

14 **A** Yes, sir. 10:05 p.m., yes, sir. That's
15 correct.

16 **Q** No further questions.

17 **MR. LEIBERT:** May we approach, Your Honor?

18 **THE COURT:** Yes.

19 (WHEREUPON, a bench conference is held off the
20 record from approximately 10:46 a.m. to 10:47 a.m.)

21 (WHEREUPON, State Exhibit 41 is marked for
22 identification purposes.)

23 **REDIRECT EXAMINATION**

24 **BY MR. LEIBERT:**

25 **Q** Investigator Taylor, I hand you what's been

1 marked State Exhibit 41. What is that?

2 **A** This is my investigation report that I filed.

3 **MR. LEIBERT:** Your Honor, I would offer this
4 as State 41.

5 **MR. THOMPSON:** The defense has no objection.

6 **THE COURT:** All right then. Without
7 objection, it's admitted.

8 (WHEREUPON, State Exhibit 41 is admitted into the
9 record.)

10 **MR. LEIBERT:** Thank you, Your Honor. No
11 further questions.

12 **THE COURT:** All right. Anything else, Mr.
13 Thompson?

14 **MR. THOMPSON:** None, Your Honor.

15 **THE COURT:** All right. You can step down.

16 **THE WITNESS:** May I be excused, Your Honor?

17 **THE COURT:** Any objection to this witness
18 being excused?

19 **MR. LEIBERT:** No, Your Honor.

20 **THE COURT:** We thank you, sir, for being
21 here.

22 **THE WITNESS:** Thank you, ma'am.

23 **MR. THOMPSON:** I may need Mr. Taylor to stay
24 all week, Your Honor. Just kidding.

25 **MR. LEIBERT:** We call Steven Lully, Your

1 Honor.

2 THE COURT: All right.

3 STEVEN LULLY

4 having first been sworn, testifies as follows:

5 THE CLERK: You may be seated.

6 THE WITNESS: Thank you.

7 MR. LEIBERT: May it please the Court, Your
8 Honor?

9 THE COURT: Yes, sir.

10 DIRECT EXAMINATION

11 BY MR. LEIBERT:

12 Q Sir, please tell us your name.

13 A Steven Lully.

14 Q Where were you employed on January 3rd, 2009?

15 A Spartanburg County Coroner's Office.

16 Q Are you currently employed there?

17 A No, sir.

18 Q What was your position there?

19 A I was a coroner investigator.

20 Q On January 3rd, were you called out to the
21 emergency room?

22 A I was.

23 Q And in reference to the death of Parris?

24 A Yes.

25 Q And what time did you arrive?

1 **A** 9:45 a.m.

2 **Q** Where specifically did you arrive?

3 **A** I went to the Trauma Bay number 3.

4 **Q** And what did you do upon arriving there?

5 **A** When I initially got there, I talked with the
6 nurses, took photos of the decedent. Then after that,
7 I went and talked with any family members that were
8 present at the hospital.

9 **Q** And in this case, who did you speak with?

10 **A** I spoke with the mother, Samantha Hill and
11 Mr. Murphy.

12 **Q** Did you ask them to do anything for you?

13 **A** Just get personal information. Then I asked
14 just a little bit about what happened. Then asked if
15 they would write a voluntary statement, which they
16 both did.

17 **Q** And when they did this, where would they have
18 been?

19 **A** We call it the family room. It's right
20 outside the trauma bay. It's a little room where
21 families can go and get a little bit of privacy.

22 **MR. LEIBERT:** May I approach the witness,
23 Your Honor?

24 **THE COURT:** Yes, sir.

25 **BY MR. LEIBERT:**

1 answer.

2 MR. LEIBERT: Thank you, Your Honor.

3 THE COURT: And I will allow you to finish
4 it.

5 THE WITNESS: As explained, I was by myself
6 at this point. I asked him to, uh, -- that he
7 should tell his story to Investigator Bryant who
8 was leading the interview of the guy. I asked
9 him that he should tell him that. That's when I
10 asked Investigator Bryant to walk back in. He
11 pretty much told us the same story again. Then
12 he put it on paper. Thank you, Your Honor.

13 BY MR. THOMPSON:

14 Q That would be the statement?

15 A Yes, sir. The one that, yes, sir, Mr.
16 Thompson, that's finished at 10:05 p.m.

17 Q Did he write down that she was dazed in here?

18 A I don't recall. If I may look at the...

19 (Pause.)

20 Mr. Thompson, unless you see it, I don't see
21 it.

22 Q I didn't think it was in there.

23 A No, sir. I don't see it right in here.

24 Q And lastly, and I'll quit bothering you.

25 That's just for reference. What is that sheet right

1 **Q** Sir, I hand you this. It's been marked State
2 Exhibit 12. Do you recognize it?

3 **A** Yes, sir.

4 **Q** What is that?

5 **A** This is the voluntary statement written by
6 Rashawn Murphy.

7 **Q** Did you witness that?

8 **A** Yes, sir. I did.

9 **Q** And did he sign that?

10 **A** Yes, sir. He did.

11 **MR. LEIBERT:** I'd offer this as State
12 Exhibit 12.

13 **THE COURT:** Mr. Thompson.

14 **MR. THOMPSON:** Just the same objection as
15 the earlier Jackson v. Deno.

16 **THE COURT:** All right. Your objections are
17 so noted and I will allow it.

18 **MR. LEIBERT:** May I publish it to the jury?

19 **THE COURT:** Yes, sir.

20 **MR. LEIBERT:** Rashawn Murphy, 323 East
21 Blackstock Road, age 22, 1/3/09. Last night,
22 around 8 p.m., as Parris finished playing with
23 her two-year-old brother, I gave her a pacy when
24 she wouldn't drink her bottle. Then I laid her
25 down to go to sleep. An hour or so later, I put

1 her two brothers to bed and check on her as I
2 always do. She seemed fine. I heard her
3 breathing this morning. Her eight-year-old
4 brother came down -- I'm sorry. I heard her
5 breathing period.

6 This morning, her eight-year-old brother came
7 down crying and he was telling us that Parris
8 wasn't moving. So we ran upstairs. When we got
9 to her, her lips were purple and she was cold. I
10 called 911 while Samantha helped her. 911 told
11 me to try CPR, but I couldn't get her mouth open
12 enough. I tried sticking my finger in her mouth
13 to open her mouth, but her jaws were locked. A
14 minute or two later, the ambulance was there.

15 I read this statement. I certify that the
16 facts contained in it are true and correct. I
17 further certify that I made no request for the
18 advice or presence of a lawyer before giving this
19 statement or any time before it was finished.
20 This statement was completed at 11:35 a.m. on the
21 3rd of January, 2009. Signed, Rashawn Murphy.
22 Witnessed, Steven Lully.

23 Thank you, sir. Answer any questions Mr.
24 Thompson may have.

25 **THE COURT:** Mr. Thompson?

1 MR. THOMPSON: Please the Court, Your Honor.

2 THE COURT: Yes, sir.

3 CROSS-EXAMINATION

4 BY MR. THOMPSON:

5 Q Mr. Lully, you were, uh, present there in
6 your capacity as an investigator for the coroner's
7 office. Is that correct?

8 A Yes, sir.

9 Q Okay. And you took a statement from Mr.
10 Murphy at 11:35, it said, is that right?

11 A Yes, sir.

12 Q How long had he known about the death of this
13 child when you took this statement?

14 A Probably about 30 minutes possibly.

15 Q 30 minutes? Is it common that you request a
16 statement that soon after the announcement of death?

17 A Yes, sir.

18 Q It is?

19 A Yes, sir.

20 Q Why is that?

21 A I told whoever was there that night to
22 present the story to the pathologist, Dr. Wren, so
23 he'll know before he does, in this case, an autopsy, a
24 little bit of facts about what took place from anybody
25 that was present.

1 Q You run into a situation where maybe the
2 statements are incomplete as a result of you asking so
3 close to the time of death?

4 A I have in the past where people wanted to add
5 more.

6 Q Later, they wanted to add more?

7 A Later, once everything -- maybe a couple of
8 days later.

9 Q And that gives them some time, though, to
10 absorb the trauma, correct?

11 A Yes, sir.

12 Q And they can rethink the situation out,
13 right?

14 A Yes, sir.

15 Q What are you doing now, Mr. Lully?

16 A Right now, I own my own landscaping company.

17 Q Okay. And you basically -- you say you
18 received a call concerning a death, right?

19 A Yes, sir.

20 Q Went to the ER or trauma bay or wherever?

21 A Yes, sir.

22 Q And basically, they tell you to go get
23 statements from these folks, is that right?

24 A That's pretty much what I did. Every call
25 that I go on, I will try to get a statement from

1 everybody that was present.

2 Q Okay. Did you take a statement from Samantha
3 Hill?

4 A Yes, sir. I did.

5 Q You did? Okay. And she was present at the
6 hospital too?

7 A She was, yes, sir.

8 Q Okay. And was that a written statement?

9 A Yes, sir. It was a written statement.

10 Q Okay. I want to show you this form here.

11 MR. LEIBERT: Objection, Your Honor. May we
12 approach?

13 THE COURT: Yes.

14 (WHEREUPON, a bench conference is held off the
15 record from approximately 10:54 a.m. to 10:55 a.m.)

16 THE COURT: Objection overruled.

17 BY MR. THOMPSON:

18 Q Sorry, Mr. Lully. I'm trying to get a staple
19 out. Lack of nails. Okay. That says voluntary --
20 first off, I'll ask you is that your signature there?

21 A Yes, sir. It is.

22 Q Okay. And that's the voluntary statement,
23 right?

24 A Correct.

25 Q And who gave that statement?

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1 **A** Samantha Hill.

2 **Q** Okay. And what's her address?

3 **A** 323 East Blackstock Road, apartment number

4 10.

5 **Q** And what was the date?

6 **A** The third -- January 3rd of '09.

7 **Q** Okay. So is that the same date Rashawn

8 Murphy gave you a statement?

9 **A** Yes, sir.

10 **Q** Okay. Did he give you the same address?

11 **A** I'll refer to my notes. Same address.

12 **Q** Okay. And then at 11:35, she completed hers.

13 You have the same time for that one, right?

14 **A** Correct.

15 **Q** So Samantha Hill gave a statement at that

16 time too, correct?

17 **A** Yes, sir.

18 **MR. THOMPSON:** I have no further questions.

19 **THE COURT:** Anything else?

20 **MR. LEIBERT:** May it please the Court.

21 **REDIRECT EXAMINATION**

22 **BY MR. LEIBERT:**

23 **Q** Did the defendant make any mention of finding

24 little Parris on the steps?

25 **A** No, sir.

1 **MR. THOMPSON:** I don't think I went into
2 that on cross-examination. I don't believe that
3 he could be privy to that on redirect.

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

5 **MR. LEIBERT:** Your Honor, he went into, uh,
6 what he does when he takes the statement. He
7 asked specifically about the statement and their
8 emotions when giving the statement.

9 **MR. THOMPSON:** My objection is he can limit
10 it on redirect to go --

11 **THE COURT:** I understand your objection. I
12 understand your objection and I'll sustain it.
13 All right. Anything else?

14 **MR. LEIBERT:** Not from this witness.

15 **MR. THOMPSON:** No, Your Honor.

16 **MR. LEIBERT:** May he be excused, Your Honor?

17 **THE COURT:** Uh, any objection, Mr. Thompson?

18 **MR. THOMPSON:** None, Your Honor.

19 **THE COURT:** All right. Thank you, sir, for
20 being here.

21 **THE WITNESS:** Thank you.

22 **MR. BARNETTE:** Your Honor, our next witness,
23 we'll need to set up a few things if we could
24 take a little break.

25 **THE COURT:** And I think this would be a good

Remarks

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1 time for a break. Let's take a 15-minute break.

2 All right.

3 (WHEREUPON, the jury exits at approximately

4 10:57 a.m.)

5 (WHEREUPON, a recess is taken from approximately

6 10:57 a.m. to 11:23 a.m.)

7 (WHEREUPON, the jury enters at approximately

8 11:23 a.m.)

9 THE COURT: All right. Thank you, Ladies
10 and Gentlemen, you ready to resume?

11 MR. BARNETTE: Yes, sir, uh, Yes, ma'am.
12 Please the Court. I would like to call
13 Investigator Hogsed to the stand.

14 DAVID HOGSED
15 having first been sworn, testifies as follows:

16 DIRECT EXAMINATION

17 BY MR. BARNETTE:

18 Q If you would, sir, please state your full
19 name for the record.

20 A David Hogsed.

21 Q And where do you work at, sir?

22 A Spartanburg County Sheriff's Office.

23 Q And what is your position there, sir?

24 A I'm a sergeant with the Crime Scene Unit.

25 Q How long have you been with the Crime Scene

1 Unit, sir?

2 **A** With the Sheriff's Office, since 2005.

3 **Q** And prior to that, where did you work at?

4 **A** Since 19 -- I began my law enforcement career
5 in 1989 with the City of Spartanburg.

6 **Q** And, uh, how long have you been with the
7 crime unit?

8 **A** Five years. I started in 2000.

9 **Q** The crime unit, is that what we call the ID.
10 unit?

11 **A** Right. Some people call it crime scene.
12 Others refer to it as forensics. It's also called an
13 ID unit.

14 **Q** On January 3rd, 2009, did you go to
15 Spartanburg Regional?

16 **A** Yes, I did.

17 **Q** And why did you go to Spartanburg Regional?

18 **A** I was dispatched from our 911 system. Our
19 911 communication system called in reference to an
20 infant death at Spartanburg Regional and I responded
21 there.

22 **Q** When you arrived there, what did you do?

23 **A** Walked into the trauma room. I observed a
24 baby lying on a gurney, wrapped up. She was wrapped
25 in a blanket. We had covered the blanket -- uh,

1 uncovered. Later identified as Parris. We had
2 covered her. She was lying there on a gurney, nothing
3 but her diaper on.

4 Noticed several areas of bruising about her
5 body. When I noticed that -- I mean to the facial
6 area, chin, side of her left face, underneath her
7 chin. Her arms, legs, she had what I thought to be
8 fingernail marks on -- one on her left shoulder blade,
9 one on her right shoulder blade. Once we saw all
10 that, also what appeared to be bruising on her vagina
11 area, on the bottom of her feet.

12 Uh, Investigator Lully with the coroner's
13 office arrived. When he arrived, he and I spoke. And
14 we requested that full body x-rays be done of her.
15 While that was being done, I was constantly taking
16 digital photographs. I observed what I thought to be
17 a piece of paint chip or drywall in her hair. After
18 we took pictures of it, I collected it from her hair.

19 Q I'll show you what's been marked as State
20 Exhibits. I believe it's going to be State Exhibits
21 18 through 30. If you will, take a look at those
22 pictures, sir.

23 A (Reviewing.) Yes, I took all of these
24 photographs.

25 Q Do those photographs fairly represent what

1 you saw that day?

2 **A** Yes, they do.

3 **MR. BARNETTE:** Your Honor, I would like to
4 introduce State 8 [sic] through 30 at this time.

5 **MR. THOMPSON:** No objection.

6 **THE COURT:** All right. Then, without
7 objection, the photographs are admitted.

8 (WHEREUPON, State Exhibits 18 through 30 are
9 admitted into the record.)

10 **MR. BARNETTE:** Your Honor, I would like to
11 publish these to the jury at this time.

12 **THE COURT:** Yes, sir.

13 **MR. BARNETTE:** I'll ask the witness to step
14 down.

15 **THE COURT:** Yes, sir.

16 **BY MR. BARNETTE:**

17 **Q** If you would, sir, I'm going to give you the
18 little pointer there. Let me show you State Exhibit
19 number 19. If you would, tell the jury what you saw
20 in this picture, sir.

21 **A** This is Parris after she was uncovered. We
22 started taking digital photographs. She's lying on
23 her back. This is the right side of her face. This
24 is her nose. There appears to be a breakage to her
25 nose, a bruising here and the paint chip drywall that

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1 I was talking about in her hair.

2 Q Let me show you State Exhibit number 18. If
3 you would, tell the jury what you observed in this
4 picture.

5 A This is underneath her chin. Actually, her
6 chin was downward. When I took some photographs, we
7 lifted her head back a little bit. There was some
8 bruising underneath her chin all under here.

9 Q Let me show you State Exhibit number 20.
10 Please describe what you see in this picture.

11 A The left side of her face, a mark here, an
12 abrasion type mark. She has a large bruise here to
13 the left side of her face. She has marks here,
14 abrasive type marks and you can still see some of the
15 bruising underneath the chin, even from this angle.

16 Q I'll show you State Exhibit 21. If you
17 would, describe for the jury what you see happening
18 there.

19 A This is the abrasion type mark that you saw
20 earlier in the photograph. This is actually lifting
21 her ear and showing the mark that actually run beneath
22 her left ear.

23 Q I'm going to show you State Exhibit number
24 22. Please describe what you see in that picture.

25 A Bruising and what appears to me to be

1 abrasions in her upper lip back. As you see, she has
2 started to teeth and there are two teeth. That's
3 underneath of her lip where the bruising or abrasions
4 are underneath the upper lip.

5 Q Show you State Exhibit number 23. If you
6 would, tell us what we're seeing in those pictures.

7 A Left side cheek. Large bruise here with
8 maybe an abrasion or nail mark type of mark on the
9 left side of her cheek, right beside her mouth.

10 Q Show you State Exhibit number 24. If you
11 would, tell us what this is.

12 A This is actually her right shoulder blade.
13 We rolled her over. This is a scale photograph of
14 that to show that the victim's, uh, what I believe to
15 be fingernail mark embedded into her shoulder blade.

16 Q State Exhibit number 25. Tell us what this
17 is.

18 A It's a mark on, like the left shoulder blade
19 area, back area. The lighting was not very good.
20 It's small. It's like a small, like, puncture wound
21 maybe. An abrasion. Then you also have the abrasion-
22 type mark here. To me, that looks like maybe puncture
23 wounds, small puncture wounds. It's actually down
24 near the diaper. So it's actually the smaller wound.

25 Q Let me show you State Exhibit 26. What is

David Hogsed - Direct Examination by Mr. Barnette

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1 this showing?

2 **A** That's the left shoulder blade when Parris
3 flipped over or turned over onto her stomach area.
4 This is what I believe to be a fingernail mark in the
5 left shoulder blade of Parris.

6 **Q** I'm going to show you State Exhibit 27. What
7 is this?

8 **A** This is Parris' right leg. Can I explain?

9 **Q** Yeah. Or maybe it might be better -- let me
10 show you State Exhibit 28. It may be better to
11 explain from that.

12 **A** We discovered, after the -- after the full
13 body x-rays were done which was basically two to three
14 x-rays of Parris. We took the x-rays over to the
15 lighting more and we discovered that Parris' right leg
16 was broken. I took photographs of the x-rays. I then
17 went back on the right leg and actually had to
18 manipulate -- when I say manipulate, I'm not saying I
19 manipulated the lighting. I adjusted my lighting more
20 to capture the bruising that was on her right leg. It
21 was so faint, I had to basically bounce lighting off
22 the ceiling to get the bruise to show up for a
23 photograph. That's basically what that is, the bruise
24 where her leg was broken, in the area where her leg
25 was broken.

1 **Q** What happened -- when a person dies, what
2 happens?

3 **A** The bruise -- when your heart stops, the
4 blood stops flowing. That's what causes the bruise,
5 when the blood flows. So this bruise did not come out
6 like the other bruises have.

7 **MR. THOMPSON:** Your Honor, I'm going to --
8 he can't just give medical testimony. He's not
9 been qualified as any type of expert.

10 **THE COURT:** Mr. Barnette, until he's been
11 qualified, I'm going to prevent him from going
12 any further talking about the medical testimony.

13 **MR. BARNETTE:** No problem. I will move on,
14 Your Honor.

15 **BY MR. BARNETTE:**

16 **Q** State Exhibit 28, is that the picture of the
17 break?

18 **A** Yes, that's the picture of the leg break.

19 **Q** Let me show you State Exhibit 29. What does
20 that show?

21 **A** Photograph of her -- one of her arms. I'm
22 not sure by the photograph which one it was. I would
23 have to see the picture before it. It's an abrasion
24 mark on one of her arms.

25 **Q** Let me show you State Exhibit number 30.

1 **A** That's another photograph of the left
2 shoulder blade.

3 **Q** Let me take you back to State Exhibit number
4 19. The paint chip or drywall that was found in her
5 hair, did you collect that?

6 **A** I did.

7 **Q** Let me show you what's been marked as State
8 Exhibit number 10. If you need to open that, you can.
9 Is that the paint chip you collected from her hair?

10 **A** It is.

11 **Q** Okay. You can go ahead and open that.

12 **A** Okay.

13 **Q** You collected this and placed this into
14 evidence?

15 **A** I did.

16 **Q** If you would, hold on to that.

17 **A** Yes. It was collected from -- this is my
18 signature on the envelope. Also, I signed my name
19 across the tape that I sealed the back with. It was
20 placed into evidence by me.

21 **Q** Can you open that little bag too?

22 **MR. BARNETTE:** Your Honor, we would like to
23 enter State Exhibit 10 into evidence at this
24 time.

25 **THE COURT:** Any objection?

1 **MR. THOMPSON:** I want to look at that.

2 **THE COURT:** All right. We'll be off the
3 record.

4 (WHEREUPON, there is a break in the record.)

5 **THE COURT:** All right. We're back on the
6 record. Mr. Thompson?

7 **MR. THOMPSON:** Uh, no objection, Your Honor.

8 **THE COURT:** All right. Then, without
9 objection, it's admitted into evidence.

10 **MR. BARNETTE:** Your Honor, may we publish
11 Exhibit 10 to the jury?

12 **THE COURT:** Yes.

13 **MR. BARNETTE:** I'm going to ask Officer
14 Hogsed to step over and walk down this way.

15 (WHEREUPON, State Exhibit 10 is admitted into the
16 record.)

17 **BY MR. BARNETTE:**

18 **Q** Going back to State Exhibit number 19, was
19 that the picture -- was that the piece of drywall
20 paint that you found, sir?

21 **A** Yes. It's going to look bigger in the
22 photograph because the camera lens zoomed in on it.
23 It's going to look bigger than it actually is.

24 **Q** Okay. Thank you, sir. Later on, uh, --
25 Minor [REDACTED], was she approximately 11 months old?

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1 **A** Yes, she was.

2 **Q** Did you go to 323 East Blackstock Road,
3 Apartment 10 here in Spartanburg?

4 **A** Yes.

5 **Q** And, uh, did you meet Investigator Nix there?

6 **A** Uh, yes. I met Investigator Sean Nix. I
7 arrived there approximately 4:57 in the afternoon.

8 **Q** And was there some pictures also taken there?

9 **A** Yes, there were.

10 **Q** Let me show you what's been marked as State
11 Exhibit 31 through State Exhibit 40.

12 **A** Yes.

13 **Q** Do those pictures fairly represent what you
14 saw there at that residence?

15 **A** They do.

16 **MR. BARNETTE:** Your Honor, I would like to
17 admit State Exhibits 31 through State Exhibit 40
18 into evidence.

19 **THE COURT:** Any objection?

20 **MR. BARNETTE:** I'm going to withdraw State
21 Exhibit 36 because it's the same picture as 31.

22 **THE COURT:** All right.

23 **MR. BARNETTE:** For some reason, we have two
24 of the same picture. We'll ask 32 to stay in and
25 withdraw 36.

1 **THE COURT:** All right. Any objection?

2 **MR. THOMPSON:** No ob-- no objection.

3 **THE COURT:** All right then.

4 **(WHEREUPON, State Exhibits 31, 32, 33, 34, 35, 37,**
5 **38, 39, and 40 are admitted into the record.)**

6 **BY MR. BARNETTE:**

7 **Q** Is this residence in Spartanburg County?

8 **A** Yes, it is.

9 **Q** Let me show you State Exhibit 31. Can you
10 tell the jury what that is, sir?

11 **A** It's the front of the residence. It's
12 actually like a condominium, a two-story condominium
13 off of East Blackstock Road. This is the front of the
14 residence.

15 **Q** And State Exhibit 32, can you tell us what
16 this is?

17 **A** Uh, the stairway leading up to the bedroom to
18 the upstairs.

19 **Q** State Exhibit 33, what is this of?

20 **A** Uh, this is a hole in the wall of the child's
21 bedroom. As you go up the stairs, you have to turn to
22 the left. The child's bedroom would be on the left.
23 This was a hole that was discovered in the drywall in
24 the room. What you see here is basically what we call
25 a pocket rod. It's a standard tool. It tells the

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1 dimensions of basically how high it is up off the
2 floor. So it is between basically three feet, about
3 nine, eight, nine inches up to a little over five
4 feet. It's like a foot. A little over a foot.

5 Q So it's a foot. I guess it's a foot height-
6 wise?

7 A Height-wise, about a foot. It would be from
8 about three foot, ten inches, nine or ten inches up to
9 5'1, heightwise.

10 Q Let me show you what's been marked as State
11 Exhibit 34. What is this a picture of, sir?

12 A That's a picture of the same hole, just
13 zooming in closer on it. It's actually the same pole
14 distance. Maybe more close up.

15 Q Let me show you State Exhibit 35. What is
16 this of?

17 A The drywall.

18 Q Okay. Did you also check the furniture in
19 her room?

20 A Investigator Nix did.

21 Q Okay. Did it appear when you went in the
22 room that any furniture was moved or anything like
23 that?

24 A Uh, some of the beds looked like they may
25 have been moved. The footing, you know how you put a

1 carpet or put a bed on carpeting and it leaves an
2 impression.

3 **Q** When y'all went through it, did y'all see any
4 movement in any of these?

5 **A** I did not.

6 **Q** Going back to -- obviously y'all took
7 pictures. State Exhibit 34 and 33 were pictures of
8 the holes in the drywall.

9 **A** That's true.

10 **Q** And going back to State Exhibit number 19,
11 did that drywall seem consistent with the drywall, the
12 substance you found in the hair?

13 **A** Yes. The color of the drywall, the paint on
14 the drywall, yes, it did seem consistent with that.

15 **Q** Did you attend the autopsy of Ms. Rogers,
16 the infant in this case?

17 **A** Yes, I did.

18 **Q** And did you take a DNA swab from her?

19 **A** Yes, I did.

20 **Q** And let me show you State Exhibit number 8.
21 Was that the swab that you took from her at the
22 autopsy?

23 **A** Yes, it is.

24 **MR. BARNETTE:** Your Honor, I would like to
25 enter State Exhibit number 8 into evidence.

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1 **THE COURT:** Any objection?

2 **MR. THOMPSON:** No objection.

3 **THE COURT:** Without objection then.

4 (WHEREUPON, State Exhibit 8 is admitted into the
5 record.)

6 **BY MR. BARNETTE:**

7 **Q** And did you, uh, place this into evidence,
8 sir?

9 **A** Yes, it was placed into evidence by me.

10 **Q** And was it later sent to the South Carolina
11 Law Enforcement Division for DNA testing?

12 **A** Yes, it was.

13 **Q** Let me show you State Exhibit number 11. Did
14 you receive a court order to get a DNA standard from
15 the defendant, Rashawn Murphy, in this case?

16 **A** I did.

17 **Q** And did you collect a buccal swab from him?

18 **A** Yes, I did on March 22nd of 2002.

19 **Q** Is this -- does State Exhibit 11, is this the
20 buccal swab that you collected from him?

21 **A** That's correct.

22 **MR. BARNETTE:** Your Honor, I would like to
23 enter State Exhibit number 11 into evidence at
24 this time.

25 **THE COURT:** Mr. Thompson?

1 **MR. THOMPSON:** No objection, Your Honor.

2 **THE COURT:** All right then.

3 (WHEREUPON, State Exhibit 11 is admitted into the
4 record.)

5 **BY MR. BARNETTE:**

6 **Q** And was this also placed into evidence, sir?

7 **A** Yes, it was.

8 **Q** And was it also sent to SLED for DNA testing?

9 **A** Yes.

10 **Q** This was collected from the room and Rashawn
11 Nix and was sent down to SLED?

12 **A** Yes, Investigator Nix actually sent several
13 items to SLED for DNA analysis.

14 **MR. BARNETTE:** One moment, Your Honor,
15 please.

16 **THE COURT:** Yes.

17 **BY MR. BARNETTE:**

18 **Q** If you would, sir, please answer any
19 questions Mr. Thompson has for you.

20 **A** Yes, sir.

21 **THE COURT:** Mr. Thompson.

22 **MR. THOMPSON:** Please the Court, Your Honor.

23 **THE COURT:** Yes, sir.

24 **CROSS-EXAMINATION**

25 **BY MR. THOMPSON:**

1 Q Officer, your testimony on this chip of paint
2 is that that was on the child at the hospital, right?

3 A It was in her hair, yes.

4 Q And you got no -- other than picking it up at
5 the hospital, you don't know where it could come from
6 other than -- that's the only place you got that from,
7 right?

8 A That's correct.

9 Q The child could have picked it up at the
10 house or on the way or anything?

11 A That's correct.

12 Q And you testified as to the injuries you
13 observed on the child, right?

14 A Yes.

15 Q And you recall in your statement, in your
16 narrative, that you stated that you observed some
17 scratches that were healed?

18 A Yes, on her stomach and on her chest area.

19 Q Okay. Now when you say healed, what do you
20 mean by that?

21 A Basically maybe scar -- looking type of
22 healing.

23 Q And, uh, I want to talk about the fracture in
24 the leg, okay. You don't have any medical training
25 and you are not a doctor or anything, right?

1 **A** No, I'm not a medical doctor.

2 **Q** Who was assisting you when you were observing
3 the x-rays?

4 **A** Myself and Investigator Lully with the
5 coroner's office and then the medical personnel that
6 was in the room.

7 **Q** Okay. Now, on that broken leg, you said
8 there was a faint bruise and that's the bruise you
9 indicated you had to manipulate the light to get it to
10 show up, correct?

11 **A** That's correct.

12 **Q** Okay. And then, uh, you also observed that
13 this section of the leg did not appear to be swollen.
14 You recall putting that in here?

15 **A** Yeah. Yes, I do.

16 **Q** All right. What -- and I'm not -- just based
17 upon your experience, would that indicate that that's
18 an old wound?

19 **A** In my experience and in law enforcement and
20 any crime scene work from 11, almost 11 years just in
21 crime scene alone, it's my experience that when that
22 break happened or close to that break happening that
23 Parris was already close to or dead, already deceased.

24 **Q** You think it was a post-death break?

25 **A** I don't know if it was post or prior. I'm

1 just saying she died close to it or right after.

2 Q That's just based upon what?

3 A My experience as a law enforcement officer,
4 not as a medical person. Just my experiences in
5 dealing with the deceased and so forth for pretty much
6 half of my career.

7 Q And then you went to the house after that,
8 right?

9 A I did. Actually, after that, I went straight
10 to the autopsy.

11 Q Okay. After you left the hospital, you went
12 to the house?

13 A Yes.

14 Q And what -- who was the doctor that did the
15 autopsy?

16 A Dr. David Wren.

17 Q Okay. In all the photos we went over, and
18 I'm not going to put them back up there, uh, did any
19 of the other injuries appear to -- did she have other
20 injuries that looked like they were healing?

21 A Not that I recall, no.

22 Q Were there any scabs?

23 A I don't recall any, no.

24 Q You don't recall. Now, I'm not seeing any
25 blood in the hair on the child on these photos. Do

1 you recall any blood?

2 **A** No, I do not.

3 **Q** You recall any blood being in that one-foot
4 hole? Did you take any blood samples from there?

5 **A** No, I did not. And if I may refer to my
6 notes on that. Basically, when I got there --
7 Investigator Shawn Nix actually worked the crime scene
8 itself while I dealt with Parris. I assisted with
9 just removing that area of the drywall. He --
10 literally, he and I together -- with a hand tool, cut
11 that section out of the wall.

12 **Q** Okay.

13 **A** But I did not examine it for blood or
14 anything myself. I did not.

15 **Q** And then, uh, when you say you went into the
16 child's room, I just want to get a feeling of what's
17 upstairs. How many bedrooms are there upstairs?

18 **A** If I recall correctly, there was two.

19 **Q** Two. And was that, uh, --

20 **A** If I may.

21 **Q** If you can, clarify on why -- how do you
22 determine which one is the child's room?

23 **A** Well, I have children. You come to my house,
24 you're going to know which one is my child's room. I
25 have a five-year-old and one that just turned three.

1 Chase's room, destroyed. Toys everywhere. His bed,
2 destroyed. My three-year-old the same way. Matter of
3 fact, daddy told him this morning, you cleaning your
4 room up today, boy. But the bed is never made up.
5 Children have certain type of beds. This bed was
6 bunkbeds. Most adults do not sleep on bunkbeds, uh,
7 unless they are in the military. I mean, there are
8 some that do, but most don't. And you have the child-
9 sized beds. That's basically what we were standing
10 over. Clothing, shoes, toys, type of bedding, and all
11 that that's within a room.

12 Q What next did you observe in the children's
13 room?

14 A I was not at the house very long. I actually
15 didn't go through the entire house. I want to say
16 there was a set of bunk beds on one wall and a single
17 bed on the other wall.

18 Q Bunk bed and there was a -- there was a
19 single bed and a bunk bed in the same room, the
20 children's room?

21 A I think so. I'm not 100 percent sure.

22 Q I'm going to show you some photographs. This
23 is what you are calling the children's room, right?
24 There's a bunkbed here and a single bed on the other
25 side, right?

1 **A** Yes.

2 **Q** Okay. And where, in relation to those beds,
3 is that hole?

4 **A** Well, in this photograph, you will see this
5 picture is taken after we cut the hole out.

6 **Q** That's where the hole was?

7 **A** That's where the hole was. This was after we
8 cut it out. This was taken -- we all -- if we remove
9 an area of a wall, floor or whatever, we always take
10 before and after photographs. Basically, the hole
11 that -- is it Thompson?

12 **Q** Yes, sir.

13 **A** -- that Mr. Thompson is referring to is in
14 the wall between where the bed sits.

15 **Q** Okay.

16 **MR. THOMPSON:** Your Honor, if I may
17 introduce this as Defendant's 1.

18 **THE COURT:** Any objection?

19 **MR. THOMPSON:** The State's got a better
20 looking copy than I do.

21 **MR. BARNETTE:** No objection.

22 **THE COURT:** All right. Without objection.

23 **(WHEREUPON, Defendant's Exhibit 1 is marked for**
24 **identification and admitted into the record.)**

25 **MR. BARNETTE:** Your Honor, the only thing I

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1 would -- that's obviously after the hole was cut
2 out. I think they've already talked about that.
3 Just want to make sure that's made part of the
4 record.

5 **THE COURT:** All right.

6 **BY MR. THOMPSON:**

7 **Q** Right. That square hole is after you cut the
8 hole out?

9 **A** That's correct. That's correct.

10 **Q** Then I want to show you some more photographs
11 here.. Is this the bunk bed -- right there, you've
12 taken the sheets and mattress and all of off of the --
13 somebody took it off the bunkbed, right?

14 **A** Yes. All that was done prior to my arrival.
15 The only thing I did at the residence was go in and
16 help Investigator Nix with removing that section of
17 drywall. That's all I did.

18 **Q** Okay. So you didn't take those photographs
19 there with the mattress?

20 **A** No, no, sir.

21 **Q** So it would stand to reason that after you
22 got there, there was no mattress on that bed, right?

23 **A** That's correct.

24 **Q** So these here were taken prior to getting
25 there, right?

1 **A** That's right.

2 **Q** And what does that appear to be on the bed
3 right there.

4 **A** Looking at a black and white photo, it
5 appears to be -- well, possibly drywall. I'm not 100
6 percent sure. I wasn't there.

7 **Q** It could be anything. I can work that out
8 later. I guess Officer Nix or somebody took these.
9 But that hole is in proximity of the bunkbed, is it
10 not? I mean -- it was when you got there. The hole
11 was right close to the bunkbed, right?

12 **A** It was between the bunkbed and the -- I don't
13 remember if it was closer to this bed or closer to the
14 bunk bed as far as if you are looking at it at a 90
15 degree angle which one it's closer to. I do not
16 recall.

17 **Q** It stands to reason debris could fall out of
18 that hole?

19 **A** Oh, yes. Yes.

20 **Q** How often do you attend autopsies?

21 **A** Oh, goodness. Let's just say that I've been
22 to more than my fair share. Me alone, I'm probably
23 500 or over.

24 **Q** Okay. So you go to quite a few. I'll show
25 you one more photo of the bed. That's basically the

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1 bunkbed, right?

2 **A** Yes.

3 **Q** So the bunkbed has bars to the side and
4 above, correct?

5 **A** Yes, this -- if I may. This appears to be
6 one of the bunkbeds. At the bottom, is like a, I
7 think it's called a futon. The back lets up like a
8 couch and lets down into a bunkbed -- into a bed.
9 That's what it appears to me.

10 **Q** And it appears that bottom part won't fold
11 up, will it not?

12 **A** Yes. This section will slide inward. This
13 section will slide upward.

14 **Q** And form a seat?

15 **A** Right. Or sit like a sofa.

16 **MR. THOMPSON:** Your Honor, I would move to
17 enter that one as Defendant's 2.

18 **THE COURT:** Any objection? (Pause.)

19 Any objection?

20 **MR. BARNETTE:** No objection. I'm sorry,
21 Your Honor.

22 **THE COURT:** All right then. Without
23 objection, it's admitted into evidence.

24 **(WHEREUPON, Defendant's Exhibit 2 is marked for**
25 identification and admitted into the record.)

1 BY MR. THOMPSON:

2 Q How long after the child was pronounced dead
3 did you arrive at this home?

4 A I arrived at the home at, uh, 4:57 in the
5 afternoon.

6 Q All right. Do you recall if the mother or
7 the father had been back to the home since they went
8 to the hospital?

9 A No, sir. I do not. From 9:31 a.m. until I
10 went to the residence arriving right at 5 p.m., I was
11 at Spartanburg Regional Medical Center with Parris.

12 Q Okay. And you stated earlier your own
13 children's rooms are a mess, right? Or oftentimes a
14 mess?

15 A Oh, yes.

16 Q And that you found this house to be much like
17 the same statement?

18 A Well, I'm not going to say that their house
19 was a mess. It was obvious there were children in the
20 residence, yes.

21 Q When you, uh, indicated on some of those
22 marks, you said it looked like a fingernail mark?

23 A That's correct.

24 Q Uh, you are not certain about that, right?

25 A No, I'm not 100 percent certain. But based

1 on the curvature and where they are at on the body,
2 that's what I feel that they are based on my
3 experience.

4 Q You and I guess it would be whoever did the
5 autopsy that would measure it, would he not?

6 A Yes, Dr. Wren would do a more accurate
7 measure, yes.

8 Q And then, uh, a few more questions. The hole
9 in the wall, was there any other -- you didn't analyze
10 that I don't guess. You just cut it out and packaged
11 it and sent it on?

12 A Yes. I assisted Investigator Nix with
13 removing it from the wall. Once we got it out of the
14 wall and it was packaged up, I had no other contact
15 with it whatsoever.

16 Q And I want you to look at photograph 35 and
17 clarify something for me. I won't pretend to know how
18 to use that. That right there, they are not holes in
19 the wall, but some sort of an indentation [sic] in the
20 wall?

21 A That's correct.

22 Q Is that the wall or is that the door?

23 A Uh, actually, I don't recall. Investigator
24 Nix may know more. But I actually don't recall on
25 that.

1 Q You recall if he measured those?

2 A I do not, no.

3 Q This big or this big? Do you recall?

4 A I don't recall.

5 Q Once you collected the paint chip, you had no
6 more dealing with the chip from there, right?

7 A That's correct. It was packaged and placed
8 into evidence.

9 Q And your testimony on the whole, you call --
10 I forget what you called the tape measure, but it was
11 from three foot nine to a little bit over five?

12 A That's -- that's looking at the photograph
13 from down here.

14 Q So would it be accurate that's about a 14-to-
15 15-inch hole in the wall?

16 A Yes, that's correct.

17 Q And you remember the width on that?

18 A No, I do not.

19 Q Do you recall when she was covered with a
20 blanket on that gurney, was that a blanket of hers or
21 was that one issued by Spartanburg Regional?

22 A Can I refer to my notes?

23 Q Sure.

24 A Actually, I'm pretty sure it was one by
25 Spartanburg Regional. Everything that Parris had on

1 her once she was laying on the gurney, uh, once we
2 went to move Parris or hospital personnel went to move
3 Parris down to the morgue, I requested that everything
4 that she was on or everything that was covering her,
5 she be wrapped in to be transported, to transport her
6 down to the morgue. We could then collect those --
7 that bedding and those blankets later.

8 Q Was there any blood on those blankets? I
9 guess where I'm going with that, I mean, is there a --

10 A I don't recall seeing any.

11 Q Right. You said there's none in the hair?

12 A I don't -- no, I do not recall seeing any.

13 Q Investigator, that's all the questions I
14 have. Thank you.

15 THE COURT: Anything from the State?

16 MR. BARNETTE: May it please the Court. I
17 have just a couple.

18 THE COURT: Yes, sir.

19 MR. BARNETTE: I would like to go ahead and
20 mark this picture as State Exhibit 41. 42. I
21 apologize, it's 42.

22 (WHEREUPON, State Exhibit 42 is marked for
23 identification purposes.)

24 REDIRECT EXAMINATION

25 BY MR. BARNETTE:

1 **Q** Sir, if I can show you State Exhibit 42. Do
2 you recognize that picture, sir?

3 **A** Yes, this is a picture basically standing
4 back at the foot end of the bed and take a picture of
5 the wall prior to the hole being removed.

6 **MR. BARNETTE:** Your Honor, I would like to
7 enter State Exhibit 42 into evidence at this
8 time.

9 **THE COURT:** Any objection?

10 **MR. THOMPSON:** None, Your Honor.

11 **THE COURT:** All right then.

12 (WHEREUPON, State Exhibit 42 is admitted into the
13 record.)

14 **MR. BARNETTE:** May I publish it to the jury,
15 Your Honor?

16 **THE COURT:** Yes, sir.

17 **BY MR. BARNETTE:**

18 **Q** I'm just showing you this picture. Can you
19 tell us what we are seeing there?

20 **A** Can I step down?

21 **Q** Yes, sir. You may.

22 **A** This is basically -- this is the bunk beds we
23 were talking about. This is basically standing,
24 basically when you enter the room, against the left
25 side wall. Pretty much a 90-degree angle taken

1 picture of the room with this being the whole drywall.
2 Of course, you can see the plaster and debris and all
3 that that was in the room prior to the bedding being
4 collected by Investigator Nix.

5 Q Okay. Showing you State Exhibit 2. That --
6 the bedding was on there before. I guess I'm getting
7 at if you look at State Exhibit 42, the bedding was on
8 there. The bedding was removed. I guess the picture
9 was taken in Defendant's Exhibit 2?

10 A That's correct.

11 Q Actually, the way it looked --

12 A It was more of this. This is more of the
13 room that we walked as you enter as it was seen that
14 day.

15 Q Y'all did attempt to take the -- cut the hole
16 out of the wall. What happened to --

17 A Didn't take it out. It pretty much crumbled.

18 Q So it just fell apart?

19 A It fell apart. What we tried to do was cut a
20 big enough area out around to secure it like it was,
21 but also since this is rental property, not destroy
22 the whole wall. When it fell apart, it just --
23 drywall is fragile. It's going to fall apart. That's
24 basically what it did.

25 Q Let me show you State Exhibit 27 again. I

1 know Mr. Thompson asked you about that. That's the
2 best picture you could take of the bruise on Parris'
3 leg?

4 **A** That's correct. That's -- when I say
5 manipulating, I'm not saying I cheated or anything.
6 I'm moving my flash, what we refer to as bouncing
7 light, which is basically bouncing it off the ceiling.
8 We come down shooting light at different angles trying
9 to get the best exposure you can in that area.

10 **Q** State Exhibit 28.

11 **A** Once we saw the photographs or the x-rays
12 rather, we discovered that the right leg was broken.

13 **Q** I'll publish it again to make sure we're
14 clear. For example, State Exhibit 18, was that
15 picture taken -- did you take a clear picture of this?

16 **A** That's straight lighting. Set the camera on
17 automatic lighting and let the camera do the work.

18 **Q** And like I said, Exhibit number 19, that's
19 the same way there?

20 **A** The same way.

21 **Q** And he asked you about -- are all these
22 bruises that you took pictures of or all these
23 evidence of trauma, did they look fresh to you?

24 **A** Yes, they do.

25 **Q** Thank you, sir. Please have a seat. That's

1 all the questions I have.

2 **THE COURT:** Mr. Thompson?

3 **MR. THOMPSON:** Just briefly.

4 **RECROSS-EXAMINATION**

5 **BY MR. THOMPSON:**

6 **Q** You're -- on the ankle, you manipulate the
7 light so the bruise will show up, correct?

8 **A** Yes.

9 **Q** It's your testimony you did that on the chin
10 and neck as well?

11 **A** No. That is setting my camera on automatic
12 flash, letting the camera adjust to the exposure to
13 lighting already in the hospital room and the camera
14 does it itself.

15 **Q** Okay. And that's the same with this one
16 here, no manipulation on that one either?

17 **A** That's correct. The camera is on automatic
18 flash. It basically automatically adjust to the
19 exposure to lighting already in the room to capture
20 that photograph.

21 **Q** And he asked you about there being fresh
22 wounds. Did you have -- did you -- I mean, you don't
23 have any indication of how they got there, right?

24 **A** No, I do not.

25 **MR. THOMPSON:** I have no further questions.

1 **THE COURT:** Anything else from the State?
2 **MR. BARNETTE:** No, sir. I mean, No, ma'am.
3 We ask this witness be excused.
4 **MR. THOMPSON:** No objection.
5 **THE COURT:** Any objection? All right.
6 Thank you, sir, for being here.
7 **MR. BARNETTE:** Your Honor, I'd like to call
8 Investigator Nix to the stand.
9 **THE COURT:** All right.
10 **MICHAEL NIX**
11 having first been sworn, testifies as follows:
12 **THE CLERK:** Thank you. You may be seated.
13 **DIRECT EXAMINATION**
14 **BY MR. BARNETTE:**
15 **Q** If you would, sir, please state your full
16 name for the record.
17 **A** Michael Shawn Nix.
18 **Q** And where do you work at, sir?
19 **A** Spartanburg County Sheriff's Office in the
20 Crime Scene Unit.
21 **Q** And how long have you been there, sir?
22 **A** I been there four years this past November.
23 **Q** Back on January 3rd, 2009, were you working
24 that day?
25 **A** Yes, sir.

1 Q Were you called out to a crime scene at 323
2 East Blackstock Road?

3 A Yes, sir.

4 Q And, uh, did you arrive there -- when did you
5 arrive there? You can look at your notes.

6 A Yeah, I'll have to. I arrived there at, uh,
7 -- I have 12:50.

8 Q And, uh, did you take pictures of the
9 residence?

10 A Yes, sir.

11 Q And, uh, when you arrived there, did you go
12 to the bedroom where the child was found?

13 A I went up to the two bedrooms at the top of
14 the condo, yes, sir.

15 Q And, uh, let me show you State Exhibit 32.
16 State Exhibit 32, is this a picture of the stairs of
17 the residence?

18 A Yes, ma'am.

19 Q Was there carpet on them?

20 A I believe there was, yes, sir.

21 Q State Exhibit 31, is that a picture of the
22 residence itself?

23 A Yes, sir.

24 Q Did you go to the room where there were bunk
25 beds located?

1 A Yes, sir.

2 Q Can you tell the jury what you observed once
3 you went in that room, sir?

4 A Yes, sir. Hold on one second.

5 Q I'll show you State Exhibit 42. Is this a
6 picture you took, sir?

7 A Yes, sir. It is.

8 Q What do you observe on the wall there?

9 A There is a hole in the sheetrock wall.

10 Q Did y'all attempt to try to cut that out
11 later, sir?

12 A Yes, sir.

13 Q What happened to that?

14 A It crumbled to pieces.

15 Q Did you look at the bedding and things inside
16 that room, sir?

17 A Yes, sir. I did.

18 Q And did you collect some of that?

19 A Yes, sir. I did.

20 Q Let me show you what I marked as State
21 Exhibit -- State Exhibit 5. If you would, take a look
22 at that, sir.

23 A (Reviewing.)

24 Q Did you collect that item, sir?

25 A Yes, sir. I did.

1 Q What was that item, sir?

2 A I have it labeled as a crib mattress fitting.

3 Q Were they collected from the scene?

4 A Yes, sir. It was.

5 MR. BARNETTE: Your Honor, I would like to
6 enter State Exhibit 5 into evidence.

7 THE COURT: Any objection?

8 MR. THOMPSON: Your Honor, if we could
9 approach on that.

10 THE COURT: All right.

11 (WHEREUPON, a bench conference is held from
12 approximately 12:14 p.m. to 12:16 p.m.)

13 THE COURT: All right. Uh, and you, uh,
14 made a motion to move the, uh, --

15 MR. BARNETTE: State Exhibit 5.

16 MR. THOMPSON: I assume that -- I mean, once
17 chain of custody is established, I don't have any
18 objection. We can let it in, contingent upon
19 Betty Butler. Is she coming?

20 THE COURT: Well, now --

21 MR. BARNETTE: She is. She's going to be
22 here after lunch, Your Honor.

23 THE COURT: But this is the sheet. It's not
24 fungible.

25 MR. BARNETTE: Right. The sheet was

1 actually collected by Shawn Nix.

2 **THE COURT:** Okay.

3 **MR. THOMPSON:** He collected it.

4 **THE COURT:** So the sheet is -- if he says
5 other than the piece that was cut.

6 **MR. BARNETTE:** I would have somebody else
7 testify about that.

8 **THE COURT:** He can --

9 **MR. THOMPSON:** I think it will all come in.
10 I think he's got a little bit of a chain that he
11 can establish with Betty.

12 **THE COURT:** All right. I'm going to allow
13 it into evidence.

14 **MR. BARNETTE:** Okay. Thank you.

15 (WHEREUPON, State Exhibit 5 is admitted into the
16 record.)

17 **MR. BARNETTE:** Okay. Thank you.

18 **MR. THOMPSON:** Just to clarify. Allow it
19 contingent upon Betty Butler?

20 **THE COURT:** I don't understand -- I'm not
21 understanding the objection with regards to --

22 **MR. THOMPSON:** I think it's been cut and
23 manipulated. Not manipulated but at least taken
24 and processed.

25 **THE COURT:** Right.

1 **MR. BARNETTE:** I'll let him -- it has been
2 processed. I can have him take it out of the
3 bag. This is what he collected.

4 **THE COURT:** All right. That will be fine.

5 **MR. THOMPSON:** I'm just trying to cover my
6 bases.

7 **THE COURT:** That this is the sheet minus
8 some portion of it that has been removed?

9 **MR. BARNETTE:** Right. And Betty Butler will
10 testify to that.

11 **THE COURT:** So the remainder, she --

12 **MR. BARNETTE:** Right.

13 **THE COURT:** All right.

14 **BY MR. BARNETTE:**

15 **Q** Just take it out and see if that is the same.
16 And of course, this has been sent to SLED, is that
17 right?

18 **A** Yes, sir.

19 **Q** You need a knife?

20 **A** Yeah, yeah, yeah. I need something to cut it
21 with.

22 **Q** I need to give that back to the officer.

23 **A.** Right.

24 **Q** The other officer.

25 **A** Let's see. Do you want me to hold it up or

1 something?

2 **Q** No, if you could identify it. I'll let Betty
3 Butler show whatever she did.

4 **A** Yes, sir.

5 **Q** Okay. Put it back in the bag. Let me show
6 you State Exhibit 3. Is this the comforter that was
7 recovered from the bedroom, sir?

8 **A** It says twin bed fitting and blue Batman
9 cover. Yes, sir.

10 **Q** Okay. Did you collect that, sir?

11 **A** Yes, I did.

12 **Q** And did you place that into evidence?

13 **A** Yes, sir. I did.

14 **MR. BARNETTE:** Okay. Your Honor, I would
15 like to move State Exhibit 3 into evidence at
16 this time.

17 **THE COURT:** Any objection?

18 **MR. THOMPSON:** Contingent upon the other.

19 **THE COURT:** All right. I'll allow it into
20 evidence.

21 **(WHEREUPON, State Exhibit 3 is admitted into the**
22 **record.)**

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

24 **BY MR. BARNETTE:**

25 **Q** Would you like to go ahead and open that just

1 to verify?

2 **A** Yes, sir. Yes, sir.

3 **Q** Thank you, sir. Let me let you look at State
4 Exhibit number 4. What is that item, sir?

5 **A** Bunk bed mattress cover is the way I labeled
6 this.

7 **Q** Okay. And did you collect that, sir?

8 **A** Yes, sir. I did.

9 **Q** And did you enter that into evidence?

10 **A** Yes, sir. I did.

11 **MR. BARNETTE:** I would like to enter that
12 into evidence, Your Honor.

13 **MR. THOMPSON:** Same contingency, Your Honor.

14 **THE COURT:** All right. I'm going to allow
15 it.

16 **(WHEREUPON, State Exhibit 4 is admitted into the**
17 **record.)**

18 **BY MR. BARNETTE:**

19 **Q** Go ahead and open that.

20 **A** Yes, sir. That's the bunk bed mattress
21 cover.

22 **Q** That came off the bunk bed, is that right,
23 sir?

24 **A** Yes, sir. The one on the left.

25 **Q** The one on the left. Let me show you State

1 Exhibit number 2. This is the bed sheet fitting?

2 A Yes, sir.

3 MR. BARNETTE: Your Honor, I would like to
4 move this into --

5 BY MR. BARNETTE:

6 Q Let me ask you this question. Did you
7 collect this item, sir?

8 A Yes, sir.

9 Q And did you put it into evidence?

10 A Yes, sir.

11 MR. BARNETTE: Your Honor, I would like to
12 move State Exhibit 2 into evidence.

13 THE COURT: All right. Any objection?

14 MR. THOMPSON: Let me check.

15 MR. BARNETTE: Let me take a look at it.

16 THE WITNESS: Okay.

17 MR. BARNETTE: Go ahead and open it.

18 THE WITNESS: Yes, sir.

19 (WHEREUPON, State Exhibit 2 is admitted into the
20 record.)

21 BY MR. BARNETTE:

22 Q After these items were collected, were they
23 sent to SLED, sir?

24 A Yes, sir.

25 Q And looking at some pictures, did you take

1 some pictures to see whether the furniture had been
2 moved around, sir?

3 **A** Yes, sir. I believe it was in the master
4 bedroom.

5 **Q** And did you find any evidence of like the bed
6 -- the bunk bed being moved around or anything like
7 that? Let me show you State -- I think these are
8 already entered into evidence -- State 37, 38, 39 and
9 40.

10 **A** Okay.

11 **Q** Has the items appeared to stay in the same
12 place?

13 **A** Yes, sir. They appeared to have.

14 **MR. BARNETTE:** Okay. Let me go ahead and
15 publish -- I believe these are already into
16 evidence, Your Honor. May I have permission to
17 publish them to the jury?

18 **THE COURT:** Yes, sir.

19 **BY MR. BARNETTE:**

20 **Q** I'm showing you State Exhibit 39. Did it
21 appear that the bunkbed stayed in the same spot?
22 There were no other impressions anywhere else.

23 **A** It appears that that has stayed in the same
24 spot. It doesn't appear that it's been moved.

25 **Q** And that's one of the reasons why y'all took

1 these pictures, isn't that right?

2 A Yes, sir.

3 Q State Exhibit 38, is that the same type of
4 the bunkbed area, sir?

5 A Actually, I think these are photographs of
6 the big bed in the master bedroom, not the bunkbed.

7 Q All right. And State Exhibit 37?

8 A That's a speaker in the master bedroom.

9 Q That had not been moved either?

10 A Yes, sir.

11 Q Showing you Defendant's Exhibit number 1.
12 Was these pictures taken after the mattress is moved
13 off the bunk beds or the futon?

14 A Yes, sir.

15 Q Did Investigator Hogsed come to the scene
16 later, sir?

17 A Yes, sir. He did.

18 Q Did he tell you about drywall being in the
19 infant's hair and so forth about what he found in the
20 hospital?

21 A I'm sorry. I'm sorry. Could you repeat that
22 again, sir?

23 Q You found out -- the hospital found the
24 drywall or pieces had been in the baby's hair?

25 A He advised me of those things.

1 **MR. THOMPSON:** Your Honor, objection to the
2 leading.

3 **THE COURT:** Yes, sir. Your objection?

4 **MR. THOMPSON:** Object to the leading of the
5 witness in that question.

6 **THE COURT:** All right.

7 **MR. BARNETTE:** I'll rephrase the question.

8 **THE COURT:** Thank you, sir.

9 **BY MR. BARNETTE:**

10 **Q** When you saw the hole in the -- when y'all
11 looked at the hole in the drywall, uh, had you
12 received information from the hospital?

13 **A** Yes, sir. I had.

14 **Q** And did that drywall become more interesting
15 to y'all when y'all heard that information?

16 **A** Yes, sir.

17 **Q** Is that the reason why you took the picture
18 of the wall?

19 **A** Yes, sir.

20 **Q** Showing you State Exhibit number 40, did you
21 do a presumptive test for blood on certain areas
22 throughout the room?

23 **A** Yes, sir.

24 **Q** During the test in State Exhibit 40, was that
25 sample possible blood that you found in the bedroom?

1 **A** Yeah, if I may refer to my notes real quick.

2 **Q** Yes, sir.

3 **A** Based on the photo I'm seeing, if I remember
4 correctly, that is the bunk bed mattress after the
5 sheet has been cut off of it. We tested that spot and
6 it came back as a presumptive positive for blood.

7 **Q** And once you did that -- that's one of the
8 reasons why y'all sent the indictment to SLED?

9 **A** Yes, sir. It is.

10 **Q** And was it tested by SLED?

11 **A** Yes, sir. I believe they were.

12 **MR. BARNETTE:** One moment, Your Honor.

13 (Pause.)

14 **BY MR. BARNETTE:**

15 **Q** If you would, please answer any questions
16 that Mr. Thompson has for you.

17 **A** Yes, sir.

18 **THE COURT:** Mr. Thompson.

19 **MR. THOMPSON:** Please the Court, Your Honor.

20 **THE COURT:** Yes, sir.

21 **CROSS-EXAMINATION**

22 **BY MR. THOMPSON:**

23 **Q** Officer Nix, I want to ask you a few
24 questions.

25 **A** Yes, sir.

1 Q Uh, you didn't recover any blood from that
2 hole in the wall, did you?

3 A No, sir.

4 Q And you don't have any way of knowing what
5 caused that hole?

6 A No, sir. I don't have any way of knowing.

7 Q And looking through your narrative, on page
8 2, if you look at the third paragraph down.

9 A Page 2, which paragraph, sir?

10 Q Uh, it's the third -- second full paragraph.
11 I've got a different one than you do.

12 A Yeah, yours is going to be a little bit more
13 slightly different from mine. What does it start off
14 with? I mean, which paragraph are you talking about?

15 Q Kids' bedroom.

16 A Kids' bedroom. Okay. I got it right now.

17 Q Okay. Uh, two beds in the room. Both of
18 them were on the right. The beds were across from
19 each other. I'm assuming if I entered that room on
20 the right, the doorway would be in here and both of
21 those beds over here?

22 A If you are using me as coming in the doorway
23 of the kids' bedroom, when I say both beds are on the
24 right, as soon as you enter the doorway, they are both
25 on the righthand side of me. Not meaning they are

1 both on the righthand side.

2 Q They are both on the same wall though, right?

3 A No, they are not on the same wall. When I
4 say they are --

5 Q They're across from each other.

6 A They are across from each other. When I say
7 they are both on the right, that just means when I
8 come in the doorway and I look right, there are two
9 bedrooms -- two beds to my right are what I'm saying.

10 Q And you go through that paragraph. There was
11 a black in color, metal bunk bed on the left if facing
12 the beds?

13 A Yes, sir.

14 Q Okay. And that's the one we published
15 earlier. That's the bunkbed there, right?

16 A Yes, sir.

17 Q Now, when you got there, were there covers on
18 the bunkbed?

19 A Uh, let's see. Yes, they had a cover and
20 pillows according to my narrative.

21 Q Were you the one that removed those?

22 A Eventually, yes, sir.

23 Q And how many covers did you take off the
24 bunkbed? Do you recall?

25 A I do not recall how many there were.

1 Q You recall which cover was on the bunkbed?

2 A Uh, I want to say -- I do not recall right
3 off hand what kind of cover it was.

4 Q I will show you 42 here. This is the bunkbed
5 here, right?

6 A Yes, sir. It looks like a beige and kind of
7 a greenish cover.

8 Q Okay. So that cover's there.

9 A Yes, sir.

10 Q And then what is the black here? Is that a
11 sheet, a comforter?

12 A If I remember correctly, the bunk bed has
13 like a futon-type mattress. That black is actually
14 the fabric that covers -- well, you've already taken
15 that picture down, but it's the fabric that covers
16 that white, uh, mattress part of it.

17 Q Okay. So does it only cover one half of the
18 bed or the whole thing here?

19 A You talking about the mattress part of it?

20 Q Yes.

21 A It covers the entire part of the bottom.

22 Q So this thing folds out to be slept on. If
23 it folds up, it can be sat on as a couch, right?

24 A From what I'm understanding, yes, sir.

25 Q And you stated you collected something that

1 tested presumptively positive for blood, right?

2 **A** Uh-huh. Yes, sir.

3 **Q** From where was that collected? Which bed?

4 **A** Okay. If you are referring to what we had up
5 on the screen earlier, that was the actual bottom
6 mattress on the bunkbed. That's that futon-type
7 mattress I'm referring to.

8 **Q** Underneath these layers of blanket,
9 mattress ---

10 **A** Yes.

11 **Q** --- cover and sheet?

12 **A** Yes, sir.

13 **Q** So was that -- was the blood wet or did it
14 appear to be aged?

15 **A** I can't testify to if it was aged or not.
16 But when we bring these items back to the office, one
17 of the things we have to do in order to package them
18 up for evidence is to let them dry out so by the time
19 we tested the mattress in question, it had already
20 dried before we tested it.

21 **Q** But when you are there pulling the covers
22 off, it wasn't wet to the touch, was it?

23 **A** I wouldn't know because I had gloves on.

24 **Q** You don't recall if it came off on your
25 gloves?

1 A No, it didn't come off on my gloves, no, sir.

2 Q Okay. But you did assist in removing all
3 those layers of cover from the bed, from the mattress
4 on the futon, right?

5 A Yes, sir.

6 Q And now, here you are going to -- you are
7 discussing the beds.

8 A Uh-huh.

9 Q Each had cover and pillows. The bed and the
10 mattress on it were not all the way against the wall.

11 A Yes, sir.

12 Q So there is some space between the wall? My
13 question is on both beds. Is the futon laid out like
14 a bed or is it like the couch at that time?

15 A At the time when I arrived on the scene, it
16 was laid out like a bed, the bottom part of it was,
17 yes, sir.

18 Q Okay. And the other was -- how far was the
19 twin bed here, how far was that from the wall?

20 A If I may refer, sir.

21 Q Okay.

22 A I believe I do have it in here. (Pause.)
23 According to my narrative, the twin bed was
24 all the way against the wall.

25 Q Okay. So the twin bed was against the wall?

1 A Yes, sir.

2 Q And here is what I entered as Defendant's 1.
3 That shows the bunkbed in relation to the wall. Do
4 you recall if you said how close it was or did you
5 measure?

6 A Yes, sir. I did. It's in the narrative.

7 Q All right.

8 A What specifically would you like to know?

9 Q The bunkbed, how far was it from the wall?

10 A Uh, according to what I wrote in the
11 narrative, I had that the mattress on it was
12 approximately five inches away from the wall. The
13 distance of the post nearest to the wall and to the
14 triangulation point, uh, was approximately eight
15 inches. When I say nearest, if you are looking at --
16 when I refer to nearest of both bunkbed posts, I'm
17 talking about the ones that are against the wall. The
18 one that's closer to the point we triangulated was
19 eight inches. The one that is furthest away from the
20 point I triangulated was six inches away from the
21 wall.

22 Q Would you believe in my ADD world, I don't
23 understand any of that.

24 A I understand.

25 Q I want you to take it slow.

1 **A** Okay.

2 **Q** What's the triangulation point?

3 **A** Triangulation point, sir, are just two points
4 we pick in a room that we measure items of evidence to
5 so that if we had to go back and show where these
6 items of evidence were sitting in the room, that we
7 could give as close as a proximate location as they
8 were at the time when we collected them.

9 **Q** Okay. So that's just a point of reference.

10 **A** Just a point of reference is all it is.

11 **Q** And how close is the bunkbed to the wall, you
12 said?

13 **A** Again, depending on which post you are using
14 in this picture, either eight or six inches.

15 **Q** Eight or six?

16 **A** Uh-huh.

17 **Q** You are talking about the post going up,
18 right?

19 **A** Yes, sir. Yes, sir.

20 **Q** Now, does that back side extend beyond the
21 post?

22 **A** I do not remember if it does or does not,
23 sir.

24 **Q** I don't know if I published these to the jury
25 or not, but I will. But that looks fairly close to

1 the wall in that one, doesn't it?

2 **A** You talking about that bunkbed, sir?

3 **Q** Yes, sir.

4 **A** Yes, sir. It does.

5 **Q** I'll just publish these. I'll put them up.

6 **THE COURT:** Let's just -- I'll tell you
7 what. Mr. Thompson, if you will get those and
8 maybe just put them on the presenter, I think all
9 you have to do is just lie them down on there.
10 Is that correct?

11 **MR. BARNETTE:** Yes, ma'am.

12 **THE COURT:** All right. I think that might
13 be the most efficient way to do it. Just lay
14 them right like that. There you go.

15 **BY MR. THOMPSON:**

16 **Q** I used to be a school teacher. Isn't that
17 bad? Okay. So all I'm asking is how close that part
18 of the bunkbed is to the wall. You said six inches
19 and eight inches on the bars going up, right?

20 **A** Yes, sir.

21 **Q** Then we're not certain on whether or not that
22 bed extends past the post.

23 **A** I can't tell for 100 percent sure, no, sir.

24 **Q** Okay. And you stated that it's a metal
25 bunkbed, is that correct?

1 A Yes, sir.

2 Q And I assume what kind of metal is that?

3 A I have no idea, sir.

4 Q Metal, iron?

5 A No, sir. I don't know.

6 Q Did the bed appear to be damaged in any way?

7 A I do not recall that it was damaged in any
8 way, no, sir.

9 Q I think you had made some reference to, uh,
10 -- I think you said the home was disorganized. You
11 recall that?

12 A Yes, sir.

13 Q You just basically mean kids' stuff strung
14 around?

15 A Yes, sir.

16 Q All right. Now, did you, uh, -- I'm seeing
17 you indicated in here you only removed -- did you
18 remove any red discoloration or notice that on any of
19 the other sheets?

20 A Let me look at my notes here. Let's see, the
21 first thing I come to in my notes is that I refer to I
22 checked the twin bed, I noticed an area of red
23 discoloration on the bed sheet near the foot of the
24 twin bed. I performed a presumptive test for blood
25 using the quick check and it was presumptive positive

1 for blood.

2 Q And that --

3 A That's just the first instance though, yeah.

4 Q On what bed was that?

5 A The twin bed, which would be the one on the
6 -- well, that one on the bottom.

7 Q So when you found that presumptive spot, was
8 it under layers of cover as well or was it on the
9 cover?

10 A I can not recall right off the top of my
11 head, sir.

12 Q You did -- I think we're looking in the same
13 area here.

14 A Actually, I think I'm on another paragraph.

15 Q Okay.

16 A I'm where you're at now I think, sir.

17 Q Okay. But you also checked some
18 discoloration and it was positive for blood on a ---

19 A On the crib.

20 Q --- crib mattress ---

21 A Yes, sir.

22 Q --- and the mattress of the bed?

23 A Yes, sir. That's true.

24 Q In another room?

25 A Another room, yes, sir.

1 Q So there's blood on all three beds or all --
2 these two beds and then the mattress ---

3 A Yes, sir.

4 Q --- in the master bedroom?

5 A Well, there's what appeared to be blood, yes,
6 sir.

7 Q You didn't test it for presumptive blood?

8 A The crib mattress, I believe I did. Let me
9 be 100 percent sure for you. (Pause.)

10 Yes, sir. I performed a presumptive test for
11 blood on the crib mattress as well.

12 Q And what were the results of that?

13 A It had a presumptive positive for blood.

14 Q And then the master bedroom, you did another
15 presumptive test from the bed in there, correct?

16 A Are you referring to the master bed, sir?

17 Q Yes, sir.

18 A Yes, sir.

19 Q And what were the results of that?

20 A Uh, it had a presumptive negative for blood.

21 Q So I'm going to get done with you. These are
22 the layers of cover here that were removed and then
23 the blood was found in the bunkbed, right?

24 A The, uh, what I'm referring to on the second
25 report, that wasn't found until after the black

1 covering of that mattress was removed.

2 Q Just taken off.

3 A Which was another day. Let's see. It was on
4 January 8th when that mattress cover was removed.
5 That's when we found that spot.

6 Q Okay. And the other side here is where you
7 went under -- you found another blood sample under all
8 this here, correct? Or under the sheet?

9 A It was somewhere on the twin bed, yes, sir,
10 at the foot of the bed. I don't remember if it was
11 under -- sitting out in the open.

12 Q On the mattress though?

13 A It believe it was on the sheet. Let me make
14 sure. I have it as on the bedsheet.

15 Q Okay. And so we'll talk with a DNA person
16 later. The last thing I want to ask you and then I'll
17 leave you alone. Is it your testimony -- I'll just
18 leave this picture up here. This sheetrock debris
19 here was all over this bed, was it not?

20 A There were pieces of sheetrock on the bunkbed
21 mattress, yes, sir.

22 Q Okay. And that's, uh, -- that's this bed
23 here, right?

24 A Yes, sir.

25 Q Hold on a minute. I want to make sure I

1 don't have more questions. I have one more question.
2 On the speaker, now you indicated the master bed had
3 not moved?

4 A Yes, sir.

5 Q Is that correct?

6 A Yes, sir.

7 Q And why would that be important if it had
8 been moved?

9 A I don't know, sir. I was requested to take
10 photos of it.

11 Q And then the speaker here that the State is
12 putting into evidence, the testimony is it did not
13 appear to have been moved?

14 A It did not appear to have been moved, no,
15 sir.

16 Q There would have been some indentation in the
17 carpet or something?

18 A If it had been moved, the indentation that
19 it's currently making by sitting in that spot would
20 have been visible, it would seem to me.

21 Q And are there not two speakers, are there not
22 two speakers in the room?

23 A I don't recall, sir, if there were two or
24 not.

25 Q But we only photographed one, right?

1 **A** Yes, sir.

2 **MR. THOMPSON:** I have no further questions.

3 **THE COURT:** Mr. Barnette?

4 **MR. BARNETTE:** May it please the Court, Your
5 Honor, just one or two for the record.

6 **THE COURT:** Yes, sir.

7 **REDIRECT EXAMINATION**

8 **BY MR. BARNETTE:**

9 **Q** I'm showing you State Exhibit number 3. Was
10 these items that were taken from the bunkbed?

11 **A** This is, uh, item 2. This is the twin bed.

12 **Q** Twin bed. State Exhibit 4 is your item 3?

13 **A** Yeah, that's my item 3.

14 **Q** And that's what came off the bunkbed and so
15 forth, sir?

16 **A** Yes, sir.

17 **Q** Thank you, sir.

18 **MR. THOMPSON:** No further, Your Honor.

19 **THE COURT:** Anything further? All right.

20 Thank you, sir.

21 **THE WITNESS:** Thank you, ma'am.

22 **THE COURT:** Will the attorneys approach?

23 **MR. BARNETTE:** Could the witness be excused,
24 Your Honor?

25 **THE COURT:** Yes, sir.

Remarks

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1 **MR. THOMPSON:** No objection.

2 **(WHEREUPON,** a bench conference is held off the
3 record from approximately 12:46 p.m. to 12:47 p.m.)

4 **THE COURT:** All right. Ladies and
5 Gentlemen, I think we've come to a point in the
6 trial where it would be good to break for lunch.
7 Due to some scheduling concerns, we're going to
8 break -- be in recess until 2:15. I'll ask you
9 to return to your jury room by 2:15. Please
10 don't discuss this case with anyone, including
11 your fellow jurors. Thank you and have a good
12 lunch.

13 **THE BAILIFF:** Follow me please.

14 **(WHEREUPON,** the jury exits at approximately
15 12:47 p.m.)

16 **THE COURT:** Mr. Murphy and Mr. Thompson, I
17 just want to advise you of this. You need to
18 start talking to your client, if you have not
19 already done so, about whether or not he wants to
20 testify in this trial. I just want to mention to
21 you that the lunch break might be a good time. I
22 don't know when the State's case is going to be
23 over. I just wanted to mention to you that you
24 need to start talking to your attorney about
25 whether or not you want to do that. All right?

1 I don't need to know what your plan is, I just --
2 until later on. But I just want you to have an
3 opportunity to fully go over that issue with the
4 attorney. All right. We're going to be in
5 recess until 2:15.

6 MR. THOMPSON: Thank you, Your Honor.

7 (WHEREUPON, a recess is taken from approximately
8 12:48 p.m. to 2:22 p.m.)

9 THE COURT: Anything you need to put on the
10 record before the jury comes back in?

11 MR. BARNETTE: Not from the State, Your
12 Honor.

13 THE COURT: Anything from the defense?

14 MR. THOMPSON: None from the defense at this
15 time, Your Honor.

16 THE COURT: All right. We can go ahead and
17 get the jury back around.

18 (WHEREUPON, the jury enters at approximately
19 2:22 p.m.)

20 THE COURT: All right. I trust everyone had
21 a good lunch and ready to resume with the State's
22 case.

23 MR. BARNETTE: May it please the Court, Your
24 Honor, I'd like to call Betty Butler to the stand
25 please.

Betty Butler - Direct Examination by Mr. Barnette

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1 **BETTY BUTLER**

2 having first been sworn, testifies as follows:

3 **DIRECT EXAMINATION**

4 **BY MR. BARNETTE:**

5 **Q** Ms. Butler, if you would, state your full
6 name for the record please.

7 **A** Betty Walker Butler.

8 **Q** And where do you work at, ma'am?

9 **A** I work with the South Carolina Law
10 Enforcement Division also known as SLED.

11 **Q** And where is SLED located?

12 **A** SLED is located in the Columbia area.

13 **Q** And what's your position there?

14 **A** I am a forensic technician in the DNA
15 department.

16 **Q** And how long you been with SLED, ma'am?

17 **A** Over 15 years.

18 **Q** Does SLED handle most of the DNA lab requests
19 throughout the state?

20 **A** Yes, it does.

21 **Q** And what is a forensic tech? If you would,
22 tell me a little bit about what you do?

23 **A** As a forensic technician, we look at
24 biological fluids such as, uh, do a presumptive test
25 for blood or semen. We do skin cells, saliva, uh,

1 fibers, hairs, glass or anything that would be of
2 value to the case.

3 Q And in this case, involving the victim in
4 this case, Ms. Rogers, did you do -- test some items
5 that were submitted by the sheriff's department?

6 A I did.

7 Q And were those items sealed when you received
8 them, ma'am?

9 A Yes, they were.

10 Q Let me show you State Exhibit number 2. This
11 item has already been placed into evidence, the bed
12 sheets, the fitting on them. Did you examine that
13 item, ma'am?

14 MR. BARNETTE: Your Honor, may I ask the
15 witness to step down?

16 THE COURT: Of course.

17 THE WITNESS: Yes, I did.

18 BY MR. BARNETTE:

19 Q I don't know if you need these or not. How
20 do you know this is the item that you examined?

21 A Every item that we test, we have to have an
22 item number or tracking number, my initials BJW, the
23 lab number L92630 with the initials. This is the date
24 when I processed it that's on this. It's inside the
25 item and it's also on this particular bag.

Betty Butler - Direct Examination by Mr. Barnette

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1 **MR. BARNETTE:** May I publish this to the
2 jury, Your Honor?

3 **THE COURT:** Yes.

4 **BY MR. BARNETTE:**

5 **Q** We'll let the jury see. Is that the item
6 number you are talking about?

7 **A** Yes, it is.

8 **Q** Is that your initials there?

9 **A** Yes, they are.

10 **Q** Is that the lab number that SLED assigned
11 this case?

12 **A** Yes, it is.

13 **Q** And is that the date that you received?

14 **A** That's the date I processed the item.

15 **Q** That was March 17, 2009?

16 **A** Yes.

17 **Q** This is the bag that you received from the
18 sheriff's department?

19 **A** That's correct.

20 **Q** And then this is the item -- publish the
21 inside part of State Exhibit 2.

22 **A** Yes, it is.

23 **Q** And you sealed this item afterwards, is that
24 right, after you collected that evidence from them?

25 **A** That's correct.

1 Q This item here, did you collect some cuttings
2 or swabs from it?

3 A Yes, I did.

4 Q How many cuttings did you get?

5 A Two.

6 Q And before I start pulling all these items
7 out, this was heat sealed before it was opened and
8 marked as evidence. Is this the bag that you all put
9 it in once you do the examination? If you would,
10 explain that to the jury a little bit.

11 A Yes, it is. This is a heat sealed pouch that
12 we put all of our evidence in. We have to seal it
13 with our initials across the top, the date. Then we
14 sign it and we date it.

15 Q Let me show you State Exhibit 2.1 and State
16 Exhibit 2.2. 2.1 and 2.2, are those items you
17 collected from item number 2?

18 A Yes, they were because I have item 2.1, 2.2,
19 the lab number L0923-- 2630 and it's from a fitted
20 sheet. I have cuttings and for presumptive test for
21 blood.

22 Q And you collected these cuttings?

23 A Then I have my initials.

24 Q And did you seal those things and send them
25 to DNA?

Betty Butler - Direct Examination by Mr. Barnette

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1 **A** I sealed it and I put it in a heat sealed
2 pouch and routed to Evidence Control Department.
3 They, in turn, put it in the DNA storage.

4 **Q** And I might get a little bit ahead of myself.
5 On these items, did you do a presumptive test for DNA
6 on them?

7 **A** Yes, I did.

8 **Q** Did you do it for these two items here?

9 **A** Yes, I did.

10 **Q** And what was the test -- what did it show?

11 **A** The test came back positive for possible
12 blood.

13 **MR. BARNETTE:** Okay. Your Honor, I would
14 like to introduce State Exhibits 2.1 and 2.2 into
15 evidence at this time.

16 **THE COURT:** Mr. Thompson?

17 **MR. THOMPSON:** No objection.

18 **THE COURT:** All right. They are admitted
19 without objection.

20 **MR. BARNETTE:** May I publish them to the
21 jury, Your Honor?

22 **THE COURT:** Of course.

23 **(WHEREUPON, State Exhibits 2.1 and 2.2 are**
24 **admitted into the record.)**

25 **BY MR. BARNETTE:**

1 Q Can you see from there, ma'am, on the board?

2 A Yes.

3 Q Just showing 2.2. If you would, describe
4 what's on there, ma'am.

5 A On the outside, it has item number 2.1, SLED
6 lab number L092630 and description is from fitted
7 sheet. You have the type of exam, uh, -- sample was a
8 cutting. And the type of request was blood. And
9 that's what was checked.

10 Q When we're talking about cutting, you're just
11 cutting pieces out of the clothe, is that right?

12 A That's correct.

13 Q And on the back there, was it sealed by you?

14 A Yes, it was.

15 Q And was it tested by DNA on a later date?

16 A Yes, it was.

17 Q I believe Kimberly McGill actually tested it
18 first, is that correct?

19 A That's correct.

20 Q And then Jasper, uh, -- I don't know. I
21 better stop there. Here is State Exhibit number 2,
22 2.1. Is this the same?

23 A Yes, it is.

24 Q And Kimberly McGill actually tested the
25 samples?

Betty Butler - Direct Examination by Mr. Barnette

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1 **A** Yes.

2 **Q** And you sealed it initially. It was sealed
3 by you and also sealed by Ms. McGill later?

4 **A** That's correct.

5 **Q** Let me show you what's already into evidence
6 as State Exhibit number 3. Is this an item that you
7 examined also, ma'am?

8 **A** Yes, it was. It has item number 3.0, my
9 initials BWB, SLED lab number and the date. Inside,
10 you will find the item number and my initials on it
11 with the lab number.

12 **Q** Thank you. You can place that back in there.
13 How many cuttings did you get from item 3?

14 **A** Two cuttings.

15 **Q** Let me show you what's been marked as 3.1 and
16 3.2. Is this the two cuttings you got from that item?

17 **A** Yes, it was.

18 **Q** Did you also do a presumptive test on that?

19 **A** Yes, I did.

20 **Q** And what did it test for?

21 **A** It test positive for possible blood.

22 **Q** Okay. Thank you, ma'am.

23 **MR. BARNETTE:** I would like to introduce
24 State Exhibits 3.1 and 3.2 into evidence.

25 **THE COURT:** Mr. Thompson?

1 **MR. THOMPSON:** No objection.

2 **THE COURT:** All right then.

3 **MR. BARNETTE:** May I publish these to the
4 jury, Your Honor?

5 **THE COURT:** Yes, sir.

6 **(WHEREUPON, State Exhibits 3.1 and 3.2 are**
7 **admitted into the record.)**

8 **BY MR. BARNETTE:**

9 **Q** I'm showing the jury this. That is the same
10 format, is that correct?

11 **A** Yes, it is the same format.

12 **Q** And this is from the comforter, is that
13 right?

14 **A** That's correct.

15 **Q** And again, it was sealed by -- BWB is your
16 initials?

17 **A** And Kimberly McGill is the other initials.

18 **Q** Okay. I'm showing you 3.2. This is also
19 from the comforter. Is that correct, ma'am?

20 **A** That's correct.

21 **Q** And the same procedure on that?

22 **A** That's correct.

23 **Q** Let me show you State Exhibit number 4,
24 ma'am. That's from the bunkbed area. Take a look at
25 that and tell me if you examined that.

Betty Butler - Direct Examination by Mr. Barnette

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1 **A** Yes, I did. It has item number 4.0, my
2 initials BWB, the lab number and the date I tested it.
3 On the inside, you will find 4.0, my initials and the
4 lab number.

5 **Q** Thank you, ma'am. How many cuttings did you
6 get from that?

7 **A** Two cuttings.

8 **Q** Let me show you State Exhibits 4.1 and 4.2.
9 Are those items that you got cuttings from or item 4?

10 **A** Yes, they were.

11 **MR. BARNETTE:** Your Honor, I would like to
12 introduce 4.1 and 4.2 into evidence at this time.

13 **MR. THOMPSON:** No objection.

14 **THE COURT:** All right.

15 **MR. BARNETTE:** And may I publish it to the
16 jury again, Your Honor?

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

18 **(WHEREUPON, State Exhibits 4.1 and 4.2 are**
19 **admitted into the record.)**

20 **BY MR. BARNETTE:**

21 **Q** Was the same procedure followed with these
22 items also?

23 **A** Yes, it was.

24 **Q** And this actually came from the mattress
25 cover?

1 **A** Yes, it did.

2 **Q** I'm showing you 4.2, State Exhibit. I'm
3 showing you the last item that I think you looked at,
4 State Exhibit 5. Take a look at that item, ma'am.

5 **A** Item 5.0, lab number, my initials and the
6 date I processed it. On the inside, they have the
7 item number, the lab number and my initials.

8 **Q** Thank you, ma'am. And that's the crib fitted
9 sheet?

10 **A** Crib fitted sheet, yes.

11 **Q** And how many cuttings did you get from that?

12 **A** Two cuttings.

13 **Q** And are those 5.1 and 5.2?

14 **A** That's correct.

15 **Q** Would you take a look? Are those the two
16 items that you collected, ma'am?

17 **A** Yes.

18 **MR. BARNETTE:** Your Honor, I would like to
19 introduce State Exhibits 5.1 and 5.2 at this
20 time.

21 **THE COURT:** Any objection?

22 **MR. THOMPSON:** No objection.

23 **THE COURT:** Thank you, sir.

24 **MR. BARNETTE:** I will just publish them just
25 to show the same procedure.

Betty Butler - Direct Examination by Mr. Barnette

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1 **THE COURT:** Of course. Yes, sir.

2 **(WHEREUPON, State Exhibits 5.1 and 5.2 are**
3 admitted into the record.)

4 **BY MR. BARNETTE:**

5 **Q** Just publishing 5.1. Is this the same
6 procedure you followed with the other cutting?

7 **A** That's correct.

8 **Q** And just showing 5.2. Did you submit a
9 report, ma'am?

10 **A** Yes, I did.

11 **Q** Let me show you what's been marked as State
12 Exhibit number 9. Is this a copy of your report,
13 ma'am?

14 **A** Yes, it is.

15 **MR. BARNETTE:** Your Honor, I would like to
16 introduce State Exhibit number 9 into evidence at
17 this time.

18 **THE COURT:** Any objection?

19 **MR. THOMPSON:** No objection.

20 **THE COURT:** All right then.

21 **MR. BARNETTE:** Permission to publish, Your
22 Honor.

23 **THE COURT:** Yes, sir.

24 **(WHEREUPON, State Exhibit 9 is admitted into the**
25 record.)

1 BY MR. BARNETTE:

2 Q This is a copy of your evidence process
3 report, ma'am?

4 A Yes, it is.

5 Q And the victim in this case was Parris
6 Rogers?

7 A That's correct.

8 Q And Rashawn Murphy was the subject?

9 A That's correct.

10 Q And you tested the fitted sheet, which is
11 item 2?

12 A Yes, I did.

13 Q You tested item 3, which is the comforter?

14 A That's correct.

15 Q You tested item 4, which was the mattress
16 cover?

17 A That's correct.

18 Q And item 5, which is the crib fitted sheet?

19 A That's correct.

20 Q And all those items, once you did those
21 cuttings, they were all sent to the DNA department?

22 A Yes.

23 Q Or given to the DNA department?

24 A Yes.

25 Q If you would, please answer any questions

1 that Mr. Thompson has for you.

2 **THE COURT:** Mr. Thompson.

3 **MR. THOMPSON:** Please the Court, Your Honor.

4 **CROSS-EXAMINATION**

5 **BY MR. THOMPSON:**

6 **Q** You don't actually do the DNA testing on this
7 stuff, right?

8 **A** No, I don't.

9 **Q** When you receive this, do you receive the
10 entire comforter or does somebody precut a piece for
11 you?

12 **A** When I receive them, I normally receive the
13 whole entire comforter.

14 **Q** Okay. So on these sheets and all, this is,
15 uh, 2, which is the sheet, right?

16 **A** The fitted sheet.

17 **Q** The fitted sheet. They'll send this whole
18 thing to you. How do you determine what you cut out
19 of here? I guess a better way to phrase my question
20 is do they have a specific mark they want you to cut
21 or do you determine where you cut?

22 **A** Sometimes something will come from the HC
23 circled. But what we do, as our procedure, we look at
24 the item. We do a chemical test. If it turns pink,
25 that's a possibility it's blood. We circle that and

1 we cut it out and we send it to the DNA department.

2 Q Okay. So when you get it from the sheriff's
3 office, do they have it marked or do you recall?

4 A On this particular --

5 Q This one here.

6 A This particular one right here is -- I had in
7 my notation MSN had circled area that said number one
8 swabbed area. I didn't collect a sample because a
9 swab was collected. So what I did, I looked, uh, for
10 possible blood and collected other samples.

11 Q That little blue mark there, I guess, is
12 where they said they got the -- collected something?
13 The blue circle there? I assume that might be what
14 they were saying. Then there are the two holes you
15 cut out, right?

16 A This blue area here is a negative -- an area
17 negative for possible blood. I circled that.

18 Q So is that where you put that chemical on
19 there that you said potentially could be blood?

20 A No, what I do, I use a clean cotton swab. I
21 swabbed this particular area. I look at it. If
22 something appears to be blood, I swab that particular
23 area with a clean swab and put a chemical on it. And
24 if it turns pink, then I know to cut that particular
25 spot. If it doesn't react, I know it's negative for

Betty Butler - Cross-Examination by Mr. Thompson

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1 positive blood. That's why you see these two negative
2 for blood.

3 Q So there were other stains on this sheet that
4 you thought possibly could be blood?

5 A That's correct.

6 Q Okay. And those two that you cut out did
7 test positive. And those are now sent on up to the
8 lab, I guess?

9 A Yes.

10 Q So there's other marks here.

11 A That mark there, that's why I made a notation
12 that that person, MSN had that mark. They swabbed it
13 and sent a swab. I didn't use that. I used my own.

14 Q Okay. Okay. So some of these things, you
15 just basically try -- down on the bottom there, I
16 guess they swabbed that too, is that right?

17 A Here, I swabbed this because it looks like
18 blood and it came back negative. That's what our code
19 for negative, that's what we use for not being blood.

20 Q I assume the older the item you have, a
21 sheet, for example, would probably have more and more
22 stains on them that could come back negative. Does
23 that sound accurate?

24 A It doesn't matter is it older. If it comes
25 back, if it's possible blood, it will show up.

1 Q It will show up no matter how old the blood
2 is?

3 A To my knowledge. What we do is we test the
4 stain. If it comes -- if it turns for possible blood,
5 we cut it out.

6 Q Okay. So my question is it doesn't matter if
7 the blood has been there for a day or a year, it's
8 still going to test positive for blood in the same
9 manner?

10 A In my experience, I've had items that for a
11 year or more years down the line and it has turned,
12 uh, possible blood.

13 Q Okay. All right. And I apologize for
14 grabbing that. I just wanted to get an idea of the
15 cuts. And the same procedure was performed on all
16 four pieces of the evidence, correct?

17 A That's correct.

18 Q This is just for the jury's sake and my
19 clarification. This is Exhibit 2. When they look at
20 Exhibit 2.1 and 2.2, those pieces will fit into this
21 sheet where it was cut at, correct?

22 A That's correct.

23 Q Okay. Now, I'm trying to put this back.
24 Now, on the, uh, -- the date of the alleged crime here
25 was January the 2nd. Are you aware of that?

1 **A** On my sheet that I printed off, it says
2 January 3rd.

3 **Q** 1/3. Okay. That's right. And then you --
4 what date did you analyze all this? April 24th, 2009?

5 **A** It was March 17th, 2009.

6 **Q** Is when you did?

7 **A** That's when I did the cuttings.

8 **Q** Okay. And this case file number was 2630 on
9 this one, right?

10 **A** L-09-2630.

11 **Q** By March, we already had 2600 pieces of
12 evidence sent to SLED, is that what the number means?

13 **A** I'm sorry. Which number are you referring
14 to.

15 **Q** Does the number indicate how many pieces of
16 evidence you guys have processed that the 2630 was the
17 file number?

18 **A** That number is perhaps the number of cases
19 that came into SLED. It doesn't necessarily mean that
20 we received the 2630 amount. We have various
21 departments all over SLED that evidence do go to.
22 Everything doesn't come to us to be processed.

23 **Q** And I'm not going to pull out the others, but
24 the comforter and bed cover and all this can be
25 basically spread out and the cuts will fit just like I

1 asked you on the other, right?

2 A That's correct. Everything has marking of
3 2.1 or 2.2 and so forth. And it will fit back in.

4 Q Okay. And then on the comforter, you made
5 two cuts. Do you recall if there were any negatives
6 on the comforter?

7 A I can look at it and see.

8 Q If you don't mind, let's spread it out.

9 A I see where we have one right here and we
10 have one here. This here is a positive. Sometimes we
11 get representative samples and we leave some blood
12 sometimes. That's why we mark as a positive blood.
13 We leave it just in case we have to get another
14 cutting and it's already marked.

15 Q Okay. And then this would be -- there would
16 be no way to know how old the blood on this is?

17 A No, I don't.

18 Q I won't pull the other one out. Do you
19 recall if you had any negatives?

20 A I don't remember. I have to look at it and
21 see.

22 Q The other, number 4, was a mattress cover.

23 A Yes, they are some negatives on it.

24 Q Okay. So it's not uncommon in your line of
25 work to come across various stains, things that may

1 look like blood?

2 **A** And you test it and it comes back negative.

3 **Q** Okay. And you don't know -- your file
4 doesn't indicate which beds these came off of I would
5 imagine, does it?

6 **A** No, my file doesn't.

7 **Q** Okay. And then what was number 5, what do
8 you call that? I didn't write it down.

9 **A** Crib fitted sheet.

10 **Q** Crib fitted sheet. Do you mind if I bother
11 you to let's look at that one too, then I'll leave you
12 alone after that.

13 **A** This is positive blood, meaning it's positive
14 it's blood. I took a representative sample. I left
15 this just in case they would like more blood. This is
16 one cutting that I received. This is the other one.

17 **Q** Did you do anything with this stain here in
18 the middle?

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

20 **Q** Okay. Now, my last question, when you make a
21 cut, you are not saying this is how big of a blood
22 spot there is. Is that what you're saying? Is it
23 that much blood or you just cut around to make sure
24 you get it entirely?

25 **A** It's a possibility. The blood spot was that

1 large that I had to cut it around to get the whole
2 spot. That's what happens. I mark it around and I
3 cut the out layers of the marking. So the spot had to
4 have been that been that big.

5 Q When you say the spot, do you mean one
6 continuous blob of blood or just sprinkle?

7 A I would have to look at the cutting itself---

8 Q We'll look at that.

9 A --- to see it.

10 Q Okay. All right. And do you have any way of
11 indicating whether -- when you first introduced
12 yourself, you said there are various amounts of fibers
13 that you tested. Everything you are looking for on
14 that cover, is it blood only? You searched through
15 and found out anything else?

16 A No. The request on these items were to
17 request for blood. That's all I look for.

18 Q Okay. So whoever you got it from requested
19 blood only then?

20 A That's correct.

21 Q I have no further questions.

22 MR. BARNETTE: No further questions of this
23 witness, Your Honor.

24 THE COURT: Thank you, ma'am, for being
25 here.

1 **MR. BARNETTE:** We ask her to be excused,
2 Your Honor.
3 **THE COURT:** Any objection?
4 **MR. THOMPSON:** None, Your Honor.
5 **THE COURT:** All right. Thank you.
6 **MR. BARNETTE:** Your Honor, I'd like to call
7 Jasper Humbert to the stand please.
8 **THE COURT:** All right.
9 **JASPER HUMBERT**
10 having first been sworn, testifies as follows:
11 **DIRECT EXAMINATION**
12 **BY MR. BARNETTE:**
13 **Q** If you would, sir, please give your full name
14 for the record please.
15 **A** Jasper Humbert.
16 **Q** And, sir, back in 2009, where did you work
17 at, sir?
18 **A** I was working at the South Carolina Law
19 Enforcement Division also known as SLED.
20 **Q** And what was your position there, sir?
21 **A** I was an DNA analyst in the DNA department.
22 **Q** And, uh, as part of DNA analyst, is part of
23 your job to look at lab samples when they come in?
24 **A** Yes, it is.
25 **Q** How many times have you been qualified as an

1 expert in DNA?

2 **A** Approximately 15 times.

3 **Q** And how many samples have you looked at, sir?

4 **A** Thousands of samples.

5 **Q** And where did you -- can you give the jury a
6 little bit about your educational background?

7 **A** Sure. I have a Bachelors of Science degree
8 in Biological Sciences from the Armstrong Atlantic
9 State University in Savannah. I have a Masters of
10 Science degree in Biology from the University of Iowa.
11 I have further three years of graduate education in a
12 Genetics PhD program from the Penn State Medical
13 College in Hershey, Pennsylvania.

14 **Q** And you said you been qualified 15 times as
15 an expert in DNA analysis?

16 **A** Yes, I am.

17 **MR. BARNETTE:** Your Honor, I would submit
18 he's an expert in DNA analysis at this point.

19 **THE COURT:** All right. Mr. Thompson,
20 anything in reply? Any voir dire?

21 **MR. THOMPSON:** Uh, I would just like to know
22 the capacity of his being qualified as an expert.
23 I mean, I assume it's in court.

24 **THE COURT:** All right. You --

25 **THE WITNESS:** I testified 15 times in court.

1 Also I was trained as a DNA analyst at the South
2 Carolina Law Enforcement Division under a court-
3 qualified analysis where I did hundreds of
4 samples under, uh, court-qualified analyst
5 supervision. I also did proficiency samples,
6 blind proficiency samples twice a year. They
7 were always done correctly to ensure that my work
8 was done properly. Every report I ever did was,
9 uh, basically reviewed twice to make sure that it
10 was in good quality.

11 **MR. THOMPSON:** How many years have you been
12 in SLED?

13 **THE WITNESS:** I was there approximately four
14 and a half years.

15 **MR. THOMPSON:** That's fine.

16 **THE COURT:** All right. Then I'll find she
17 is qualified in the area, as an expert witness in
18 the area of DNA analysis. Is that what you
19 requested?

20 **MR. BARNETTE:** Yes, ma'am.

21 **THE COURT:** All right. Ladies and Gentlemen
22 of the jury, normally, a person can not give
23 opinion testimony. Normally, when a person
24 testifies, he or she must testify as what they
25 either saw, heard, sensed, by smell or something

1 of that nature. However, there is an exception
2 when someone is qualified because of experience
3 and education and/or education. They are
4 permitted to give their opinion in certain areas
5 if the Court qualifies them that way.

6 This witness is going to be qualified in the
7 area of DNA analysis to give opinion testimony in
8 that area. That does not mean that you must
9 accept the opinion but it is evidence for you to
10 use in any way you see fit and give the weight
11 and credibility that you believe is appropriate.
12 All right.

13 Yes, sir.

14 **MR. BARNETTE:** Thank you, Your Honor. May
15 it please the Court.

16 **THE COURT:** Yes.

17 **BY MR. BARNETTE:**

18 **Q** The initial cuttings and things, they were
19 out by -- analysis done by Ms. McGill, is that
20 correct?

21 **A** That's correct.

22 **Q** Let me show you State Exhibit number 6 which
23 has been stipulated to by the defense. Ms. McGill
24 did analysis on the cuttings from the items that we
25 have here, items 2, 3, 4, and 5, State Exhibits?

1 **A** Uh, she did cuttings from those items, which
2 is indicated on her report.

3 **Q** Initially, they did not have a standard from
4 the defendant, is that correct?

5 **A** That is correct.

6 **Q** They did have the victim's analysis at that
7 time?

8 **A** They did.

9 **Q** And later on, did you receive a standard from
10 the defendant in this case?

11 **A** Yes, I did.

12 **Q** Let me show you State Exhibit number 11. Is
13 that a sample that you received from the defendant in
14 this case?

15 **A** Yes, it is.

16 **Q** Okay. Did you also use the blood standard
17 from the victim again, State Exhibit number 8?

18 **A** Yes, I did. Actually, I received another
19 one. This is not the one that I used. I used one
20 that was submitted, item number 8.

21 **Q** Uh-huh.

22 **A** But it was a standard from the same
23 individual.

24 **Q** Okay. And did that verify Ms. McGill's
25 findings also?

1 **A** Yes, the two DNA profiles matched.

2 **Q** And before we go into the results, can you
3 tell the jury a little bit about DNA and how y'all use
4 it in the lab terms?

5 **A** Sure. DNA stands for Deoxyribonucleic acid.
6 It's basically a chemical found in all of our cells.
7 We get half of it from mom and half from dad. It's
8 basically a blueprint for who we are. If we have a
9 certain color hair or whatnot, our DNA determines
10 that. And in forensic science or in forensic DNA
11 analysis, it's used -- basically the DNA is tested
12 from different items and subject standards or evidence
13 and there are some comparisons done. A DNA profile is
14 basically developed from the items. It's a series of
15 numbers. If the numbers match from a standard to an
16 evidence item, a match can be made. The numbers are
17 the same, you basically call it a match.

18 **Q** And did you run an analysis on the items that
19 you looked at?

20 **A** I did.

21 **Q** And did you compare those to Ms. McGill's
22 findings also?

23 **A** I did, yes.

24 **Q** Okay.

25 **MR. BARNETTE:** Your Honor, I'd like to enter

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1 State Exhibit number 7.

2 BY MR. BARNETTE:

3 Q Is this a copy of your report on the testing
4 that you did, sir?

5 A Yes, it is.

6 MR. BARNETTE: Your Honor, I'd like to enter
7 State Exhibit number 7 into evidence at this
8 time.

9 THE COURT: Mr. Thompson?

10 (WHEREUPON, there is a pause.)

11 MR. THOMPSON: I have no objection to that
12 report, Your Honor.

13 THE COURT: All right.

14 (WHEREUPON, State Exhibit 7 is admitted into the
15 record.)

16 BY MR. BARNETTE:

17 Q If you would, come down, sir, if you would.

18 A Okay.

19 MR. BARNETTE: Permission to publish State
20 Exhibit 6 and 7 to the jury, Your Honor?

21 THE COURT: All right. So granted.

22 BY MR. BARNETTE:

23 Q I'm actually showing you State Exhibit number
24 6. This is Mr. McGill's report, is that correct?

25 A That's correct.

1 Q And what they did was, these are the cuttings
2 or items that were submitted, is that right?

3 A That's correct.

4 Q And she did an analysis on those items over
5 here.

6 A That's correct.

7 Q 2.1, 2.2, she did an analysis. 3.1, 3.2,
8 4.1, 5.1, she did an analysis?

9 A Yes, that's correct.

10 Q 4.2, she didn't find any -- y'all did another
11 test to check and see if blood was available or not?

12 A She would.

13 Q That would be her -- basically her testing on
14 the -- is you all's a more specific and presumptive
15 test?

16 A It's essentially the same test. It's the
17 same chemical test. It basically is a color change if
18 there's blood found there. If it turns pink, we
19 basically said it's a presumptive test for blood.

20 Q 5.2, she had a standard from the victim in
21 this case, but she didn't have a standard from the
22 defendant?

23 A If she had, it would have been indicated on
24 her report.

25 Q These objects were compared to, by her, is

1 that correct?

2 **A** That's correct. Those are the items.

3 **Q** Her results were -- I know from this, she
4 found that 4.1, 5.1, 5.2 matched the profile of the
5 victim **Minor**

6 **A** That's what it says.

7 **Q** And it's 1 out of 69,000,000,000,000,000.

8 **A** Yes.

9 **Q** How many zeros is that?

10 **A** That's approximately 10 zeros.

11 **Q** Very large number.

12 **A** Very large.

13 **Q** And then she goes through her analysis and
14 find out there is a mixture of like two individuals?

15 **A** Actually, it's 15 zeros.

16 **MR. THOMPSON:** Your Honor, I'm going to
17 object to the leading on the witness.

18 **THE COURT:** All right. I just ask you to be
19 careful about leading.

20 **BY MR. BARNETTE:**

21 **Q** On the report, the other cuttings, like 2.1,
22 what did she find?

23 **A** DNA profile, 2.1 is a mixture of at least two
24 individuals. That basically comes from a chart that
25 she develops where she puts all the numbers for the

1 DNA profile she developed. You mind if I flip it
2 over?

3 Q Not at all.

4 A And that was item 2.1. So if you look at
5 item 2.1, you see right here. If you look at item
6 2.1, you can see that there's three numbers at several
7 locations. That's how you know it's a mixture. As
8 individuals, we have two numbers essentially. One
9 from mom and one from dad. If we get the same number
10 from mom and dad, it shows up as one number on the
11 chart. You see that 22, that means someone got the
12 same number from mom and the same number for dad. If
13 I have a mixture of more than one person, I'll start
14 seeing three numbers instead of two numbers in the
15 little chart. That's basically what she means, what
16 she meant when she said it is a mixture.

17 Q What we could do in my view is just go ahead
18 and just read the report. Your report is the same?

19 A Uh, there are some items that I reiterate and
20 there are some that she did. I didn't review all of
21 her testing.

22 Q Okay. Go ahead, sir.

23 A So DNA profile, the major contributor also
24 matches the DNA profile of Minor [REDACTED]. What that
25 means is when we do DNA testing, sometimes one person

1 has a lot more DNA there. We can tell this from
2 basically our results we get off the instrument. If
3 one person is there a lot more, those two numbers will
4 be more representative. We can pull that out and call
5 it a major contributor. In this case, Minor [REDACTED]
6 had more of a contribution in the profile or in the
7 DNA and could pull out that profile as the major
8 contributor. It also matched Minor [REDACTED]. The
9 numbers matched between that major contributor and a
10 standard from Minor [REDACTED]

11 A partial DNA profile of the minor
12 contributor from unidentified. There were no
13 standards to compare to. Any other individual, we
14 call them unidentified. You want me to go through
15 all?

16 Q Yes.

17 A The DNA profile for item 3.1 is a mixture
18 which is what I talked about earlier. DNA profile
19 from a major contributor, also matches Minor [REDACTED],
20 which like I said, there's more of her DNA. The
21 partial DNA profile, the minor contributor from an
22 unidentified individual.

23 DNA profile developed from item 2.2 is a
24 mixture of at least three individuals. What that
25 means is there's going to be some locations on that

1 DNA where there's more than four numbers. Two people,
2 you would expect four numbers, two from each person.
3 If there's five, you are like okay, there must be
4 three people because there's extra numbers.

5 Minor can not be excluded as a
6 possible contributor to this mixture. What that means
7 is DNA levels were pretty equal. She must have a good
8 number of her numbers in the DNA profile because she
9 is not excluded. If there was a lot of her numbers
10 missing in the endless belt, which in this case
11 Kimberly McGill thought that she could be excluded,
12 she would have said that. She said they can not be
13 excluded. There must be a good contribution of Minor
14 DNA profile in that mixture.

15 The DNA profile developed in item 3.2 is a
16 mixture of at least two individuals. The DNA profile,
17 the major contributor to this mixture is an
18 unidentified male individual. No conclusive
19 statements can be made to the inclusion or exclusion
20 of Minor as a possible minor contributor to
21 this. This is all of Kimberly McGill's findings. I
22 went on later and tested the DNA standard ---

23 **MR. BARNETTE:** I'm showing State Exhibit
24 number 7 and publish that to the jury, Your
25 Honor.

1 **THE COURT:** All right.

2 **THE WITNESS:** --- for Rashawn Murphy and
3 then I would make conclusions based on that
4 standard to the evidence that she tested
5 previously. So I did items 8 and 11. 8 was a
6 resubmission of a standard for **Minor**. I
7 did a buccal swab from Rashawn Murphy, which are
8 basically just swabs from the inside of his
9 mouth. I can use that as a DNA standard. Then,
10 I compared to this item I listed from Kimberly
11 McGill. And I noted that. Previously reported
12 by Kimberly McGill. See report dated 8/26/09,
13 which is the report that I just went over, which
14 was her original report.

15 All right. Everything in bold that I put up
16 there. I don't know if you can tell that or not,
17 was an original. Basically, it's a new
18 conclusion that I came to that I noted. So item
19 3.2, which she noted had a major contributor
20 which was an unidentified male individual. I
21 made a conclusion. The DNA profile developed
22 from item 3.2 is a mixture of at least two
23 individuals. The DNA profile, the major
24 contributor of this mixture matches the DNA
25 profile of Rashawn Murphy. The probability of

1 randomly selecting an unrelated individual having
2 a DNA profile matching this item is approximately
3 one in 5.5 quintillion, which is the one with 18
4 zeros, not 15 zeros.

5 I also went on and looked at item 2.2. The
6 DNA profile developed from item 2.2 is a mixture
7 of a least three individuals. **Minor** and
8 Rashawn Murphy can not be excluded as possible
9 contributors to this mixture. They both had
10 enough of their numbers present in the mixture
11 that I could not exclude them from it. That's
12 essentially my conclusion.

13 The way that I got to a match, which I will
14 go ahead and show as well, is that -- if I can
15 get. I'll just show part of it. So if you look
16 at major contributor, it's bolded, which I don't
17 know if you can tell. I can tell that the male
18 individual on that item had more DNA present. I
19 could pull him out as a major contributor. She
20 could do -- that's what she did originally when
21 she first did it. I made a direct match. So,
22 like the 13 is bolded. His DNA profile has a 13
23 in it. 31-6 from the item, his DNA profile has a
24 31-6. The 8-9 is bolded as the major. His DNA
25 profile has an 8-9. 10-12 is bolded from the

1 major contributor. He has a 10-12 in his -- in
2 the standard from the DNA profile. It just
3 continues to go on that way. There's matches all
4 the way across.

5 That is how I say it's a match. I look. I
6 see that the numbers match. Then, that is how I
7 come to a match.

8 **BY MR. BARNETTE:**

9 Q You feel confident that the DNA you found on
10 that item definitely came from the defendant?

11 A It definitely matched the DNA profile or his
12 standard.

13 Q Sir, if you would, please have a seat.
14 Please answer any questions Mr. Thompson may have for
15 you.

16 **THE COURT:** Mr. Thompson.

17 **MR. THOMPSON:** Please the Court.

18 **THE COURT:** Yes.

19 **CROSS-EXAMINATION**

20 **BY MR. THOMPSON:**

21 Q When you say 3.3, you are talking about up
22 here, what we've already marked as Exhibit 3.3,
23 correct?

24 A 3.2.

25 Q 3.2? I'm sorry. 3.2 is from the comforter,

1 right?

2 **A** That's right.

3 **Q** And the 2.2 -- so the comforter had what you
4 said was the mixture. Now, you're not saying that
5 this all was put in there at the same time, are you?

6 **A** About when the DNA was put in there?

7 **Q** Yeah, I mean --

8 **A** I can't tell when the DNAs were put on there.

9 **Q** I could bleed on the floor here today and
10 then a year later, somebody else could bleed there. A
11 year later, you could find both of us.

12 **A** Yeah, if someone didn't clean up the blood or
13 bleach it or do something to it, if it just sat there
14 and someone added to it later, I couldn't tell which
15 DNA was put there when.

16 **Q** Okay. And you are saying Mr. Murphy's DNA
17 was found on those two items, 3.2 and 2.2, which was a
18 bed sheet, right?

19 **A** Uh, 2.2 -- let me look -- is a cutting from a
20 fitted sheet.

21 **Q** Okay. And again, you don't know -- you have
22 no way to determine whose blood was there first or if
23 they came at the same time or anything like that,
24 correct?

25 **A** Uh, that is correct. I can't tell when it

1 was put there.

2 Q When the jury hears mixture, it doesn't mean
3 that everything was mixed together at the same time
4 necessarily, does it?

5 A Not necessarily. I don't know when the two
6 DNAs would have been contributed or the blood there or
7 whatever.

8 Q And you say there is a third contributor on
9 the bed sheet as well, correct?

10 A On the bed sheet, it was a mixture of three
11 people. So you would conclude that there was some
12 other -- some numbers from some other person there.

13 Q You didn't receive any -- you received Mr.
14 Murphy's and you received the child's, but you weren't
15 provided anybody else to test, have you?

16 A Those were the only standards.

17 Q Okay. And I'm not a science person, but if
18 you had the third person's DNA, you could pull that
19 out too?

20 A I would be able to make conclusions on the
21 mixture. Like, if there were more people, I may be
22 able to match to someone and see if they could not be
23 excluded. But without another standard, I can't
24 really tell you right now.

25 Q But your swab you got from him were matched

1 to the cutouts that Ms. Betty's testified to,
2 correct?

3 **A** Yeah, item 3.2.

4 **Q** Now, did you test his DNA on the other items
5 too? Was it --

6 **A** I compared his profile to the other items. I
7 wasn't able to make a conclusion to his -- basically
8 whether he was on them or not. In fact, uh, those
9 were the only -- the two items I listed were the only
10 two items that I saw a Y chromosome, which males are
11 XY and females are XX. So because those had a Y
12 chromosome, I thought they were more important to
13 report. I also compared to the other items, but I
14 wasn't able to match them to them.

15 **Q** Out of the four, he was matched to two,
16 correct?

17 **A** Uh, yeah. He was matched to one of them and
18 I couldn't exclude him from the other.

19 **Q** Okay. He matched on -- you had him as the
20 major contributor on 3.2, correct?

21 **A** That is correct.

22 **Q** And you couldn't eliminate him as a
23 contributor on 3.2?

24 **A** That's correct.

25 **Q** And on the third contributor, could you tell

1 if there was a Y in that or not?

2 A I can look at her report. There is a --
3 because it's three people, there is a Y present.

4 Q All right.

5 A If it was in a -- you know, I couldn't tell
6 if it would be directly from any individual in that
7 mixture specifically. Does that make sense?

8 Q I'm just trying to see if we could determine
9 whether it was male or female.

10 A Oh, there was some male DNA on the sheet
11 because it was a Y chromosome.

12 Q Is that the one you said you couldn't
13 eliminate my client, correct?

14 A From item 2.2, which is a mixture of at least
15 three individuals.

16 Q But you don't know who the third -- can you
17 determine if the third individual was male or female?

18 A Uh, I wouldn't be able to tell.

19 Q It's pretty exciting stuff, you get to
20 actually speak at a lot of parties?

21 A Not to many.

22 Q All right. I appreciate your time. I'm
23 done. Thank you.

24 **THE COURT:** Mr. Barnette?

25 **MR. BARNETTE:** Just one question.

1 **THE COURT:** Okay.

2 **REDIRECT EXAMINATION**

3 **BY MR. BARNETTE:**

4 **Q** Obviously, you had a mixture, both of them
5 together, when you tested, is that right?

6 **A** That's correct.

7 **Q** You may not know when, but they were together
8 when the case was presented to you?

9 **A** Yeah, the DNA would be together when it's
10 tested.

11 **Q** Yes, sir. Thank you, sir.

12 **THE COURT:** Anything else, Mr. Thompson?

13 **MR. THOMPSON:** No, Your Honor.

14 **THE COURT:** All right. Thank you, sir, for
15 being here.

16 **MR. BARNETTE:** I ask the witness be excused.

17 **THE COURT:** Any objections?

18 **MR. THOMPSON:** None, Your Honor.

19 **THE COURT:** All right. You are excused.

20 **MR. BARNETTE:** May we approach for a second,
21 Your Honor?

22 **THE COURT:** Yes.

23 **(WHEREUPON, a bench conference is held off the**
24 **record from approximately 3:20 p.m. to 3:21 p.m.)**

25 **THE COURT:** All right. Ladies and

1 Gentlemen, it looks like we've come to a point
2 maybe a little earlier than we planned but a
3 point for us to take an afternoon break. So
4 let's break for about 15 minutes. All right.
5 Thank you.

6 (WHEREUPON, the jury exits at approximately
7 3:22 p.m.)

8 **THE COURT:** All right. Let's be in recess
9 for about 15 minutes. Thank you. Y'all just let
10 me know when she gets here.

11 (WHEREUPON, a recess is taken from approximately
12 3:23 p.m. to 4:14 p.m.)

13 (WHEREUPON, State Exhibits 43 and 15B are marked
14 for identification purposes.)

15 (WHEREUPON, the jury enters at approximately
16 4:14 p.m.)

17 **THE COURT:** Ladies and Gentlemen, I feel
18 like I been apologizing to you all day and I hate
19 that. Uh, I apologize again for keeping you
20 waiting. We had some legal matters we had to
21 take up. Again, not either of the, any of the
22 attorneys' fault but something we had to deal
23 with we wanted to do so when we got back on the
24 record, we wouldn't have to break again. All
25 right.

1 You ready to proceed?

2 **MR. BARNETTE:** Yes, Your Honor. May it
3 please the Court. We'd like to call Gaile Heath
4 to the stand please.

5 **GAILE HEATH**

6 having first been sworn, testifies as follows:

7 **DIRECT EXAMINATION**

8 **BY MR. BARNETTE:**

9 **Q** Please state your full name for the record.

10 **A** My name is Brenda Gaile Heath, H-E-A-T-H.

11 **Q** Where do you work at, ma'am?

12 **A** The South Carolina Law Enforcement Division
13 commonly known as SLED.

14 **Q** And what is your position there?

15 **A** I am a forensic document examiner.

16 **Q** How long you been in that position?

17 **A** For 27 years.

18 **Q** What is your position? What duties and what
19 do you do in court concerning that position?

20 **A** I am in charge of all the question document
21 cases that come into the state laboratory. It could
22 be checks. It could be writing. Anything, any form
23 of written communication that's authenticity or
24 authorship has been called into question comes into
25 the question document section of the forensic

1 laboratory at SLED. And I look at them.

2 **Q** So you can look at handwriting and tell if
3 the handwriting is similar to another person or if
4 it's the person's handwriting?

5 **A** Yes, sir. That's correct.

6 **Q** And how many times have you been qualified as
7 a handwriting expert?

8 **A** Uh, just finished number 163.

9 **Q** Is that all in state court, ma'am?

10 **A** Uh, about 30 of them are in federal court.

11 **Q** And can you give the jury a little bit about
12 your training and education?

13 **A** I have two undergraduate degrees from the
14 University of South Carolina. Then I went to SLED and
15 completed a two-year internship under another forensic
16 document examiner and received my training that way.
17 I also attended, uh, classes by the United States
18 Secret Service and the FBI. I have attended
19 retraining classes twice a year for the last 27 years.
20 I am nationally board certified by the American Board
21 of Forensic Document Examiners.

22 **MR. BARNETTE:** Your Honor, at this time, I
23 move her as an expert in handwriting analysis at
24 this time.

25 **MR. THOMPSON:** No objection.

1 **THE COURT:** Any objection? Alrighty.
2 Ladies and Gentlemen of the jury, I've already
3 spoken to you about what an expert witness is. I
4 would just say once again we are qualifying this
5 lady as an expert in the area of handwriting
6 analysis. She is entitled, based on education
7 and experience, to give opinion testimony in this
8 area. However, you are the judges of the facts.
9 You give it what -- you give the evidence and
10 testimony whatever weight you assign it. All
11 right.
12 **MR. BARNETTE:** Thank you, Your Honor.
13 **BY MR. BARNETTE:**
14 **Q** Did you receive a handwriting sample from the
15 Spartanburg County Sheriff's Department?
16 **A** Yes, I did.
17 **Q** And did you receive a known sample of the
18 defendant Rashawn Murphy's handwriting sample?
19 **A** Yes, sir. I did.
20 **Q** Let me show you what's marked as 15B. Is
21 that the handwriting sample that you looked at to
22 compare with the other -- with the sample they asked
23 you to compare to a known sample?
24 **A** Yes, sir. It contains the laboratory number,
25 my item number and my initials.

1 Q Okay. Let me show you what's been marked as
2 State Exhibit number 13. Is this the item that was
3 submitted to you that was a known sample that was
4 written by Rashawn Murphy?

5 A Yes, sir. That is correct.

6 Q And is that actually a written statement that
7 he provided to Spartanburg County Sheriff's
8 Department?

9 A Yes, sir. That is correct.

10 Q And did you compare that? Let me show the
11 jury what we're talking about here.

12 MR. BARNETTE: Your Honor, permission to
13 publish State Exhibit 13, which is in evidence at
14 this point?

15 THE COURT: Yes.

16 BY MR. BARNETTE:

17 Q I believe this is already a statement that
18 was read to the jury. Is this the known sample that
19 was given to you to use to compare to the letter that
20 you were given?

21 A That is correct.

22 Q If you would, tell the jury a little bit of
23 what you do when you get a known sample like this and
24 a sample to compare to see if it's the same person or
25 not.

1 **A** Okay. When evidence comes into the
2 laboratory, the first thing I do is microscopically
3 examine the questioned document, looking for any pen
4 lifts or pen stops, looking for naturalness, looking
5 for beginning and ending strokes, looking to see how
6 letters are formed, looking to see how letters are
7 connected to one another. Then, if I have more than
8 one writer, I will look at the first writer and
9 compare their known samples, again looking at
10 beginning and ending strokes, connecting strokes, any
11 uniquenesses in that particular handwriting
12 microscopically.

13 Then after a microscopic examination, I
14 actually lay the two documents in front of me and do
15 what's called a side-by-side comparison, where I look
16 for both similarities as well as dissimilarities in
17 the writing, in the way the writing is written and the
18 way the letters are constructed and the connecting
19 strokes and ending strokes, in flourishes and
20 naturalness to see if I see any pen lifts or pen stops
21 in the writing.

22 I then make photocopies of all of my
23 documents. Then I have a yellow highlighter. I
24 highlight any similarities and then I use a red arrow
25 on the photocopies to mark any dissimilarities that I

1 might see between the questioned and the known
2 writing.

3 Q Okay. Looking at State Exhibit 15B, is that
4 the item that you examined, ma'am?

5 A This is a machine copy of the item that I
6 examined.

7 Q But you looked at the original?

8 A Yes, sir. I did.

9 Q And you got an opinion in comparing the two
10 samples?

11 A Yes, sir. I do.

12 Q And what's your opinion?

13 A My opinion is Rashawn Murphy wrote the item
14 in question, the letter.

15 Q And that's in State Exhibit 15 or copy of
16 15B?

17 A That is correct.

18 Q And did you do a report on that, ma'am?

19 A Yes, sir. I did.

20 Q And is this State Exhibit 43, is that a copy
21 of the report?

22 A Yes, it is.

23 **MR. BARNETTE:** Your Honor, I would like to
24 introduce State Exhibit 15B and 43 into evidence
25 at this time.

1 **THE COURT:** Any objection, Mr. Thompson?

2 **MR. THOMPSON:** Your Honor, I object to it
3 coming in. There's no chain of custody shown on
4 this piece of forensic evidence. She said she
5 got it from a John Westmoreland. I would like to
6 hear from where Mr. Westmoreland received it.

7 **THE COURT:** Mr. Barnette?

8 **MR. BARNETTE:** Your Honor, this is a writing
9 sample. It's really not a chain. It's not a
10 fungible evidence in the case. It's not like
11 blood. It's not like drugs or anything like
12 that. Therefore, I think and I know Investigator
13 Bryant testified to -- his original testimony was
14 the sheriff's department had received this letter
15 that was sent supposedly to the mother of the
16 victim in this case. And they submitted that to
17 SLED. And she's gone over the analysis of
18 comparing the known sample, which is the written
19 statement.

20 **THE COURT:** All right. I'll note your
21 objection, but I'm going to allow the documents
22 into evidence.

23 (WHEREUPON, State Exhibits 15B and 43 are admitted
24 into the record.)

25 **MR. BARNETTE:** Your Honor, at this time,

1 permission to publish these two items to the
2 jury?

3 **THE COURT:** Yes.

4 **BY MR. BARNETTE:**

5 **Q** If you would, ma'am, please step down for a
6 second. I don't know which way would be the best way
7 of doing this. If you would like to show samples of
8 where the writing was similar to both State Exhibit
9 15B as well as State Exhibit 13. I don't know if you
10 do a side-by-side.

11 **A** What a forensic document examiner looks for
12 is any kind of uniquenesses in the handwriting that
13 differ from copy book style. Copy book style is the
14 style from which you learned to write. When you first
15 learned to write, you were drawing out your letters.
16 Well, what forensic document examiners look for is any
17 uniquenesses or differences that occur in that writing
18 since the time when you first learned to write from
19 copy book style. Say, for instance, in this case, I
20 looked at the letter D, the openness of the back of
21 the D here. We also have the openness of the D. I
22 also was looking at this particular writer in writing
23 an A. I don't know if it's very visible from up
24 there. He actually starts inside of the letter A.

25 **Q** You can just do a back and forth if you can.

1 **A** Okay. The A actually begins on the inside,
2 goes around and make a circle and then comes down,
3 which is very unique from any type of copy book style
4 that you would see. You also have that over in the
5 known writing. It's a little more visible on this
6 one. You can see that the inside of the A -- the
7 inside of the A right here. A lot of times, the
8 writer begins way inside and curls it around. The G
9 is constructed in almost a similar manner.

10 **Q** You can move that over if you want.

11 **A** Okay. If you'll look at this G, the
12 beginning of the G starts inside of the staff, goes
13 around in a circle and then comes down. You also find
14 that in the known writing. Let me use my copy.

15 **Q** I'm sorry.

16 **A** I can see the highlights. Here is a G here.
17 This isn't a very good example. But again, it's
18 starting on the inside going around and then coming
19 back down and terminating. So document examiners look
20 for these uniquenesses in the handwriting. I found
21 these through, I believe, uh, nine pages, no twelve
22 pages in all, as compared with the known sample. I
23 found all of these differences in how a normal person
24 would write from copy book style as this as a class
25 characteristic would be copy book style, but this is

1 an individual characteristic of this particular writer
2 to do his letters, forming the A, coming inside of it
3 and coming around it and doing. The same movement
4 with the G formation. Whereas copy book style would
5 dictate the letter begins at the top and come
6 counterclockwise around and down. So this was a
7 particular habit of this particular writer.

8 Q And very unique?

9 A And very unique throughout the writings.

10 Q Thank you, ma'am.

11 MR. BARNETTE: Your Honor, permission to
12 publish and read State Exhibit B to the jury?

13 THE COURT: Yes.

14 BY MR. BARNETTE:

15 Q What I'm going to do is try to leave this up
16 so they all can. Samantha, I know you really don't
17 want to hear from me and I'm going to get in more
18 trouble if they find out I wrote you, but I can't help
19 it. I'd risk that to let you know what happened that
20 night. I'm not trying to intimidate you or threaten
21 you. I mean no harm whatsoever by this letter. I
22 just want my chance to explain to you what happened
23 because investigators are wrong. They are just trying
24 to make a case. You personally know I wouldn't do
25 anything like that to Mama as much as I loved and

1 cared about her. How could I?

2 Samantha, they straight turned you against
3 me. They knew what they were doing cause when you
4 told them I wouldn't do that, they knew you were on my
5 side. They knew in order to build a case they had to
6 turn you against me. I hate to open up old wounds,
7 but this is serious.

8 Samantha, they are charging me with murder to
9 a child. That is ridiculous because you know how much
10 I love kids, especially yours. But anyway, I told
11 them not to show you the pictures. Because I know --

12 Before I go on, does he -- is that just where
13 you mark on each picture, I mean, each page?

14 A Yeah, beside -- yeah, that's my item number
15 and my initials and the laboratory case number.

16 Q Going to page 2. They were trying to do and
17 we just lost Mama. You didn't need to see something
18 like that. They knew by showing it to you that they
19 would get you on their side and it worked. That hurt
20 the hell out of me that you actually fell for their
21 trick. Samantha, investigators are full of tricks and
22 trick questions.

23 It is something that I been waiting to tell
24 you. I remember there was a point in time where Mama
25 was in the room with me. I opened the door for him.

1 That was after -- after he heard the bumping --
2 bumping. I couldn't remember that time because there
3 was so much going on in my head in that little room.
4 I was still shocked that Mama was gone. I was
5 concerned about you. Had them throwing questions at
6 me back to back. I was mad because I was being
7 accused of murder and that they got in your head and
8 one of them was in my face cussing me and yelling. On
9 top of that, I was drunk. So when they asked me was
10 she in the room with me, I said no.

11 Samantha, I couldn't think straight. I
12 didn't know what to do or say. I know it's hard to
13 believe that she was on the steps, but it's true. Why
14 would I lie about that when we both know that she used
15 to just sit on the (inaudible). She was trying
16 different things. Hell, she just started walking,
17 backing off the bed in our room.

18 On to page 3. When I picked her up, it would
19 sound like whispering, says Dada, Dada. But I miss
20 that shit. I can't believe you actually think I would
21 hurt her. Damn, this is crazy. I know I have a
22 temper problem. I would never take it out on you or
23 your kids. I can't make you believe what I'm about to
24 tell you. I can do is let you know what happened and
25 let you know I wouldn't take this risk just to tell

1 you a lie.

2 When you left out of the room and closed the
3 door, I go to go downstairs so I could lock the top
4 lock. When I got back upstairs, Mikey said you said
5 for me to make some Kool-Aid. Being that I was
6 upstairs already, I told him I would make a little
7 bit. That's when I went in the room and locked the
8 door.

9 I ended up too much weight on my foot. It
10 gave out. I fell being that it hurt so bad. I
11 started cussing and punching at the wall and floor.
12 Then I laid there for a while until it stopped
13 hurting. Being that the song had went off, I stood
14 up, turned it down a little bit. I remembered the
15 Kool-Aid. When I opened the door, I seen her crawling
16 out of the kids' room.

17 On to page 4. And shaking her head no when
18 we told her to do something. She was learning. I
19 caught her a lot of times holding on to the rail
20 that's connected to the floor and on your right when
21 you at the top of the stairs about to come down.
22 Excuse me.

23 I know I messed up by not telling you that
24 night, but she didn't seem hurt when I picked her up.
25 Yeah, she whined a little bit. But she stopped when I

1 took her to the kids room. She just kept nodding off
2 like she was still sleeping.

3 Sometimes seems like she was -- she did not
4 seem like she was in pain. I didn't think anything
5 else of it. I didn't tell Mikey what happened so he
6 wouldn't know if she did or didn't. Hell, he was so
7 stuck in front of the TV, he didn't even see me go to
8 the stairs.

9 Samantha, I don't care what anybody says or
10 say, I would never do something to hurt you or
11 jeopardize what we had. Tell them -- tell it -- I did
12 -- Samantha use your common sense. Why would I hurt
13 Mama knowing that you would come home and notice it?
14 Especially when what they said I did. How could I
15 explain that? You know how I feel about your kids and
16 you. How much I loved to the daycare just to see Mama
17 smiling when I come through the door.

18 On the next page. Upstairs and I said Mijay
19 and you said you seen someone looking out the window.
20 Then you told them to go to bed. Then I went upstairs
21 with them to make sure they laid down and to check on
22 Mama. I told them I loved them and closed the door.
23 I went back up there a couple of more times to check
24 on her. One time I asked you did you want me to take
25 her in our room. You said not if she's going to wake

1 up.

2 So I left her in the kids' room. Then we
3 ate. You gave a massage and caught an attitude after.
4 I went to sleep. We both wake up later. You cut the
5 TV off and told me to cut the surround sound off.
6 Before I laid down, I went upstairs and peeped in the
7 room to make sure she was up. I came back downstairs
8 and laid down. I woke up around -- I apologize. It
9 looks like a five. Something. Then the alarm went
10 off. You gave me a nudge. I asked did you want me to
11 cut it off. You said might as well because you
12 weren't going anywhere. So I went up there and cut it
13 off. I didn't think to check in the kids' room. I
14 came back downstairs and laid down. I said I'm
15 surprised.

16 On the next page. Mama haven't woke up
17 crying for a bottle yet. Then I went back to sleep
18 and you know the rest. Samantha, you are not the only
19 one who is hurt because she is gone. Y'all not the
20 only ones who lost her. Mama was my heart and you
21 know that.

22 Them crackers don't know me from Adam and
23 Eve, but you still gone listen to the bullshit they
24 have told you -- they told you. That's their job,
25 Samantha. Come on. Look at, they wouldn't even let

1 me talk to you instead of telling you this and that
2 and filling your head up so you wouldn't want to talk
3 to me. Hell, you wouldn't even look at me. So
4 whatever they did, they did a good job of it. You
5 wouldn't even give me a chance. You don't know how
6 much emotional pain I was in.

7 Samantha, you and your kids are everything to
8 me. Now, everything has gone. I wrote several
9 letters to you, but my family wouldn't give them to
10 you. Hell, they were scared to call and check on you.
11 They kept telling me to give you some time. I am so
12 anxious to check on you and wonder if you still on
13 going in -- do you think she would have come to me if
14 I had hurt her. You seen her hurt. I would not
15 actually think that I have it in me to do something
16 like that to her when I get mad at Mijay for putting
17 scratches on her.

18 I picked her up. She stank. So I said Mama,
19 you stank, girl, you stank. I opened up her room door
20 and took her in there so I could change her. I closed
21 the door back behind her because the music was still
22 kind of loud. I didn't noticed I locked it until
23 Mikey knocked on it. I opened the door. When I went
24 to the door to open it, I guess Mama thought I was
25 going to leave her in there. She turned over and

1 started crawling towards me whining. I went back to
2 her and Mikey and Mijay came in and stood there for a
3 second and left out. I changed her. Then took her
4 back in the kids' room.

5 After that, I went downstairs to make Kool-
6 Aid. Mikey and Mijay were standing in front of the
7 TV. They didn't see me go to the kitchen or back
8 upstairs. I went back to the room, closed the door
9 and started looking for songs on my Ipad. I laid
10 across the bed for a minute doing that until I got
11 bored and hungry. I cut everything off and went
12 downstairs, walked in the kitchen. Then I turned
13 around and went and asked them were they hungry. They
14 said yeah. So I told them to come on.

15 Going to the next page. They sat at the
16 table where I fixed the hot dogs. I told Mikey to
17 pour the Kool-Aid. I warmed the plate of food my aunt
18 had brought over there on New Years while you were at
19 work. I sat on the counter and it warmed in the
20 microwave and joked with Mikey and Mijay and I took it
21 out and went to the living room, turned up the
22 surround sound, sat on the couch and went to Video on
23 Demand.

24 Mikey came in the living room and said what
25 is this. I said something about I was about to watch.

1 And I started laughing. And he went back to the
2 kitchen. Mijay came and said the same thing. I told
3 him to go eat. I ate what I was going to eat. I went
4 to throw the plate away. I sat on the counter again
5 to make sure Mijay finished eating while I was in
6 there. I was joking with Mikey some more.

7 I thought I heard some thumps, but I didn't
8 pay any attention to it because I figured it came from
9 the movie that was on. I went back to the living
10 room, sat on the couch. Mikey came in. Mijay a
11 little later. A few minutes later, I thought about
12 Mama. So I got up to check on her.

13 When I got to the steps, she was lying on the
14 steps, a few steps from the bottom. How she was
15 laying was like she had backed down the steps and had
16 nodded off. Fell backwards on the next step where her
17 hands, excuse me, where her head -- going to the next
18 page -- was and just went back to sleep. Her knees
19 was on the step just above that one. When I picked
20 her up, she opened her eyes and whined a little. She
21 leaned against my shoulder like she was still
22 sleeping. I took her back upstairs. I didn't know
23 why. I just wasn't thinking.

24 I took her back to the kids' room. Then I
25 thought about my grandmother told me about when a baby

1 hit their head and being that the cut on her tongue
2 had opened back -- opened back up, I know she hit her
3 head on the step that her head was on. I didn't
4 figure she fell down the stairs. She didn't seem
5 hurt, so I didn't mention it, but I wish I would have
6 now. But anyway, when I took her to the kids' room, I
7 sat on her bed and kept messing with her to keep her
8 up for a while. She would look back and then lean
9 towards me. I would lift her back up. She would open
10 her eyes and whine and do it again.

11 Mikey and Mijay came in the room. I told
12 them to keep her up but I didn't tell them why. So I
13 finally got her to stay up a few minutes. She whined
14 a little, but not like she was in pain but how she did
15 when she get aggravated. I told Mikey and Mijay to
16 play with her while I got a bottle. I got the bottle
17 out of the fridge, warmed it up and went back
18 upstairs. When I got back to the room, she was asleep
19 again. I told them I thought I told y'all to play
20 with her. Mikey said she keeps going to sleep.

21 So I woke her back up and tried to give her a
22 bottle twice. She slightly pushed it away. I gave
23 her her pacy. She closed her eyes and leaned towards
24 my shoulder. I just said I was going to let her go to
25 sleep. I laid her on her stomach and told Mikey and

1 Mijay to come on and I closed the door.

2 About 15 minutes passed that we were
3 downstairs. I told Mikey to go up and check on her.
4 He came back and said she was in between the bed and
5 the wall and that he put her in the middle of the bed.
6 Some minutes after, Mijay started cutting up. So I
7 painted -- pointed upstairs. He went upstairs. A few
8 minutes after, I heard him jumping on the bed. I was
9 getting ready to go up and tell him to stop before he
10 wakes Minor up if he hadn't already did, but he was
11 on his ways downstairs by then.

12 He stood by the door. I leaned over the
13 couch and saw he was back. I opened the door and you
14 came in and said -- I apologize. I opened the door
15 and you came in and said wasn't y'all just -- I would
16 call your phone and I would hang up because I wanted
17 to hear from you. Just hang up when you hear my
18 voice. I just want a chance to talk to you and hear
19 your voice.

20 Samantha, please write me and let me know
21 something. Ask me anything. I swear I will give you
22 the truth. I know people is probably telling you all
23 kinds of things, especially your family, but you have
24 to block it all out. How could you say you love me
25 but when things get thick, you straight turn your

1 back, no questions asked. Just the moment when I need
2 you, Samantha.

3 If you decide to write me, use Kim's address
4 and make up a name because they are going to be
5 expecting your name and address. Please give me a
6 chance. And please don't tell anyone else, Shawn and
7 Kim, because they would just make things worse than
8 what they are. This is the address. Shawn Murphy,
9 Pod 6, number 19, California Avenue, Spartanburg,
10 South Carolina, 29303. Samantha, I love you with all
11 my heart. I put everything in this letter on my life.
12 Last page. I'd rather take a risk and tell you than
13 to take the risk not to tell you, Samantha.

14 And this letter was written by Rashawn
15 Murphy?

16 **A** That is correct.

17 **MR. BARNETTE:** One moment, Your Honor,
18 please. (Pause.)

19 Please answer any questions Mr. Thompson has
20 for you.

21 **THE COURT:** Mr. Thompson.

22 **MR. THOMPSON:** May it please the Court, Your
23 Honor.

24 **THE COURT:** Yes.

25 **MR. THOMPSON:** The letter. Here it is. It

1 didn't flow. It's out of order, Your Honor. If
2 I could republish it. I think Mr. Barnette had
3 some areas in there where the thought process and
4 the letter didn't flow.

5 **MR. BARNETTE:** And I would apologize. Like
6 I said, some things, I might have just -- I tried
7 to read it best I could.

8 **MR. THOMPSON:** Some pages are out of order.
9 I'm just afraid it might have confused the jury.
10 I would like a chance to get with him and see if
11 he could approve the order I have it in.

12 **THE COURT:** All right.
13 (WHEREUPON, there is a pause.)

14 **MR. BARNETTE:** Your Honor, we rearranged the
15 order. There were two pages out of order. I
16 don't have any problem with redoing that. I
17 think Mr. Thompson agree.

18 **THE COURT:** All right. I'll tell you what,
19 can I just have the attorneys approach for a
20 moment?

21 **MR. BARNETTE:** Yes, ma'am.

22 (WHEREUPON, a bench conference is held off the
23 record from approximately 4:48 p.m. to 4:50 p.m.)

24 **THE COURT:** Ladies and Gentlemen, I
25 apologize. There was a letter, this letter that

1 was read to you. You probably heard the
2 discussion here. A couple of pages had gotten
3 out of order. I know that this might be a little
4 tedious, but we wouldn't want to do anything to
5 mislead you in any way. I'm going to allow these
6 attorneys to republish this letter. All right.

7 **MR. THOMPSON:** Just give me one minute, Your
8 Honor.

9 **THE COURT:** I apologize.

10 **MR. THOMPSON:** I will try to go as fast as I
11 can. Samantha, I know you really don't want to
12 hear from me and ---

13 **THE COURT:** Don't go too --

14 **MR. THOMPSON:** --- I'm going to get in more
15 trouble --

16 **THE COURT:** Mr. Thompson, don't go too fast.
17 My Court Reporter has got to take down what you
18 say.

19 **MR. THOMPSON:** I'm going to get in more
20 trouble if they find out -- if they find out I
21 wrote you, but I can't help it. I'd risk that to
22 let you know what happened that night. I'm not
23 trying to intimidate you or threaten you. I mean
24 no harm whatsoever by this letter. I just want
25 my chance to explain to you what happened because

1 the investigators are wrong. They are just
2 trying to make a case. You personally know I
3 wouldn't do anything like that to Mama. As much
4 as I loved and cared about her, how could I?

5 Samantha, they straight turned you against
6 me. They knew they was -- they knew what they
7 were doing cause when you told them I wouldn't do
8 that, they knew you were -- you was on my side.
9 And they knew in order to build a case, they had
10 to turn you against me. I hate to open up old
11 wounds, but this is serious, Samantha.

12 They're charging me with murder to a child
13 and that is ridiculous because you know how much
14 I love kids, especially yours. But anyway, I
15 told them not to show you the pictures. Because
16 I know what they were trying to do and we just
17 lost Mama. You didn't need to see something like
18 that, but they knew by showing it to you that
19 that would get you on their side and it worked.
20 And that hurts the hell out of me that you
21 actually fell for their tricks. Samantha, the
22 investigators are full of tricks and trick
23 questions.

24 And something that I been wanting to tell you
25 is I remember there was a point in time where

1 Mama was in the room with me and I opened the
2 door for him. But that was after he heard the
3 bumping. I couldn't remember at that time
4 because there was so much going on in my head and
5 in that little room. I was still in shock that
6 Mama was gone. I was concerned about you. I had
7 them throwing questions at me back to back. I
8 was mad because I was being accused of murder and
9 that they got in your head and one of them was in
10 my face cussing and yelling. And on top of that,
11 I was drunk. So when they asked me was she in
12 the room with me, I said no.

13 Samantha, I couldn't think straight, so I
14 didn't know what to do or say. I know it's hard
15 to believe that she was on the steps, but it's
16 true. Why would I lie about that when we both
17 know that she used to just sit at the top of
18 them? But I seen it as she was trying different
19 things. Hell, she was starting to walk, backing
20 off the bed in our room and shaking her head no
21 when we told her to do something. She was
22 learning. I caught her a lot of times holding on
23 to the rail that's connected to the floor and on
24 your night -- on your right when you at the top
25 of the stairs about to come down.

1 I know I messed up by not telling you that
2 night, but she didn't seem hurt when I picked her
3 up. Yeah, she whined a little bit but she
4 stopped when I -- she stopped when I took her to
5 the kids' room. She just kept nodding off like
6 she was still sleepy.

7 She didn't seem like she was in any pain so
8 I didn't think anything else of it. I didn't
9 tell Mikey what happened so he wouldn't know if
10 she did or didn't. Hell, he was so stuck in
11 front of the TV, he didn't even see me go to the
12 stairs.

13 Samantha, I don't care what anybody say. I
14 would never do something to hurt you or
15 jeopardize what we had. Let them tell it, I did
16 -- I did. Samantha, use your common sense. Why
17 would I hurt Mama knowing that you would come
18 home and notice it? Especially what they said I
19 did. How could I explain that -- that way to --
20 cause you know how I feel about your kids and
21 you. How much I loved to go to the daycare just
22 to see Mama smile when I come through the door.
23 And I picked her up, it would sound like
24 whispering, Dada, Dada. Boy, I miss that shit.
25 And I can't believe you actually think I would

1 hurt her.

2 Damn, this is crazy. I know I have a temper
3 problem, but I would never take it out on you or
4 your kids. I can't make you believe what I'm
5 about to tell you as I can do -- all I can do is
6 let you know what happened and let you know I
7 wouldn't take this risk just to tell you a lie.

8 When you left out of the room and closed the
9 door, I got up to go downstairs so I could lock
10 up the top lock. When I got back upstairs, Mikey
11 said that you said for me to make some Kool-Aid.
12 Being that I was upstairs already, I told him I
13 would make some in a little bit. Then I went in
14 the room and locked the door.

15 I ended up putting up too much weight on my
16 foot and it gave out. And I fell. Being that it
17 was hurting so bad, I started cussing and
18 punching on the wall and floor. Then I laid
19 there for a while until it stopped hurting.
20 Being that the song had went off, I stood up and
21 turned it down a little bit. Then I remembered
22 the Kool-Aid.

23 When I opened the door, I seen her coming out
24 of the kids' room. And I picked her up and she
25 stank. So I said Mama, you stank stank, girl.

1 So I opened up our room door and took her in
2 there so I could change her. I closed the door
3 back behind us because the music was still kind
4 of loud. I didn't noticed I had locked it until
5 Mikey knocked on it and I opened the door.

6 When I went to the door to open it, I guess
7 Mama thought I was going to leave her in there.
8 She turned over and started crawling towards me
9 whining. So I went back to her and Mikey and
10 Mijay came in and stood there for a second. Then
11 left out. I changed her. Then took her back in
12 the kids' room.

13 After that, I went downstairs to make Kool-
14 Aid. Mikey and Mijay were standing in front of
15 the TV. They didn't see me in the kitchen or go
16 back upstairs. I went back to the room, closed
17 the door and started looking for songs on my
18 Ipod. I laid across the bed for a minute doing
19 that until I got bored and hungry. So I cut
20 everything off and went downstairs, walked in the
21 kitchen. Then I turned around and went outside
22 -- went and asked them what they -- was they
23 hungry. They said yeah. So I told them to come
24 on.

25 They sat at the table while I fixed the hot

1 dogs. I told Mikey to pour them some Kool-Aid.
2 I warmed the plate of food from my -- food my
3 aunt had brought over there on New Years while
4 you was at work. I sat on the counter while it
5 warmed in the microwave and I joked with Mikey
6 and Mijay. Then I took it out and went to the
7 living room, turned up the surround sound, sat on
8 the couch and went to Video on Demand.

9 Mikey came in the living room and said what
10 is this. I said something about I was about to
11 watch. And I started laughing. And he went back
12 to the kitchen. Mijay came and said the same
13 thing. I told him to go eat. I ate what I was
14 going to eat. I went to throw the plate away. I
15 sat on the counter again to make such -- to make
16 sure Mijay finished eating. While I was in
17 there, I was joking with Mikey some more.

18 I thought I heard some thumps, but I didn't
19 pay any attention to it because I figured it came
20 from the movie that was on. I went back to the
21 living room, sat on the couch. Then Mikey and --
22 Mikey came in and Mijay a little later. A few
23 minutes later, I thought about Mama. So I got up
24 to check on her.

25 When I got to the steps, she -- she laid on

1 the steps, a few steps from the bottom. How she
2 was laid was like she had backed down the steps
3 and had nodded off and fell backwards on the next
4 step where her head was and just went back to
5 sleep. Her knees was on the step just above that
6 one. And I picked her up. She opened her eyes
7 and whined a little. She leaned against my
8 shoulder like she was still sleepy. I took her
9 back upstairs. I didn't know why. I just wasn't
10 thinking.

11 I took her back to the kids' room. Then I
12 thought about my grandma told me about when a
13 baby hit their head and being that the cut on her
14 tongue had opened back up. I know she hit her
15 head on the step that her head was on. I didn't
16 figure she fell down the stairs and she didn't
17 seem hurt. So I didn't mention it, but I wish I
18 would have now.

19 But anyway, when I took her to the kids'
20 room, I sat on her bed and kept messing with her
21 trying to keep her up for a while. She would
22 look, then lean towards me, and I would lift her
23 back up. She would open her eyes and whine
24 again.

25 Mikey and Mijay came in the room. I told

1 them to help me keep her up but I didn't tell
2 them why. So I finally got her to stay up for a
3 few minutes. She whined a little, but not like
4 she was in pain but how she do when she gets
5 aggravated. I told Mikey and Mijay to play with
6 her while I go get a bottle. I got the bottle
7 out of the fridge, warmed it up and went back
8 upstairs.

9 When I got back to the room, she was asleep
10 again. I told them I thought I told y'all to
11 play with her. Mikey said she keeps going to
12 sleep. So I woke her back up and tried to give
13 her the bottle twice. She slightly pushed it
14 away so I gave her her pacy. She closed her eyes
15 and leaned towards my shoulder. So I just said I
16 was going to let her go to sleep. I laid her on
17 her stomach and told Mikey and Mijay to come on
18 and I closed the door.

19 About 15 minutes passed since we were
20 downstairs. I told Mikey to go and check on her
21 because -- on her. He came back and said she was
22 in between the bed and the wall and that he put
23 her in the middle of the bed. Some minutes after,
24 Mijay started cutting up. So I pointed upstairs.
25 He went upstairs. A few minutes after, I heard

1 him jumping on the bed. I was about to go up
2 there to tell him to stop before he wakes **Minor**
3 up, if he hadn't already did. But he was on his
4 ways downstairs by then.

5 He stood by the door. I leaned over the
6 couch and saw you was back. I opened the door
7 and you came in and said wasn't y'all just
8 upstairs. And I said Mijay. You said you seen
9 somebody looking out the window. Then you told
10 them to go to bed. Then I went upstairs with
11 them to make sure they laid down and to check on
12 Mama. I told them I loved them and closed the
13 door. I went back up there a couple of more
14 times to check on her.

15 One time I asked you did you want me to take
16 her in our room. You said not if she's going to
17 wake up. So I left her in the kids' room. Then
18 we ate. You gave me a massage and caught an
19 attitude after. I went to sleep. We both wake
20 up later. You cut the TV off and told me to cut
21 the surround sound off. Before I laid down, I
22 went upstairs and peeped in the room to make sure
23 she was up.

24 Then I came back downstairs and laid down. I
25 woke up around 5:00-something. Then the alarm

1 went off. You gave me a nudge. I asked did you
2 want me to cut it off. You said might as well
3 because you weren't going anywhere. So I went up
4 there and cut it off. I didn't think to look in
5 the kids' room. I came back downstairs and laid
6 down. Then I said I'm surprised Mama haven't
7 woke up crying for a bottle yet. Then I went
8 back to sleep and you know the rest.

9 Samantha, yall are not the only ones which is
10 hurt because she is gone. Y'all not the only
11 ones who lost her. Mama was my heart and you
12 know that. Them crackers don't know me from Adam
13 and Eve but you still gone listen to the bullshit
14 they told you. That's their job, Samantha. Come
15 on. Look, they wouldn't even -- they wouldn't
16 even let me talk to you. Look, they wouldn't
17 even let me talk to you. Instead they telling
18 you this and that, filling your head up so you
19 wouldn't want to talk to me. Hell, you wouldn't
20 even look at me. So whatever they did, they did
21 a good job at it. You wouldn't even give me a
22 chance. You don't know how much emotional pain I
23 was in.

24 Samantha, you and your kids are everything to
25 me. Now, everything is gone. I wrote several

1 letters to you, but my family wouldn't give them
2 to you. Hell, they were scared to call and check
3 on you. They kept telling me to give you some
4 time, but I am so anxious to check on you and
5 wondering if you still have a young'un and if
6 it's a boy or girl. I did not -- I can't make
7 that out -- not abuse Mama. Do you think she
8 would have came to me at all if I was hurting
9 her? You seen how hurt I was. You actually
10 think I have it in me to do something like that
11 to her when I used to get mad at Mijay for
12 putting scratches on her?

13 I would call your phone but I'll hang up
14 because I'm not prepared for you to just hang up
15 when you hear my voice. I just want a chance to
16 talk to you and hear your voice.

17 Samantha, please write me and let me know
18 something. Ask me anything and I swear I will
19 give you the truth. I know people is probably
20 telling you all kinds of things, especially your
21 family, but you have to block out all the
22 negative because they are just hurt and angry.
23 How could you say you love me but when things get
24 thick, you straight turn your back, no questions
25 asked? Just a moment when I need you, Samantha.

1 If you decide to write me, use Kim's address
2 and make up a name because they going to be
3 expecting your name and address. Please give me
4 a chance. Boy, please don't tell anyone else
5 besides Shawn and Kim, because it would just make
6 things worse than what they are. This is the
7 address.

8 Samantha, I love you with all my heart. I
9 put everything in this letter on my life. I would
10 rather take a risk to tell you than to take the
11 risk not to tell you.

12 I have no questions for the witness, Your
13 Honor.

14 **THE COURT:** All right. Anything else?

15 **MR. BARNETTE:** No further questions, Your
16 Honor. We would ask the witness be excused.

17 **THE COURT:** All right, ma'am. You can step
18 down. Thank you for being here.

19 Ladies and Gentlemen, we know gone a little
20 bit past five o'clock. I'm going to let you all
21 go for the day. I want to thank you before you
22 go. I want to tell you you have been so
23 attentive. Even with our stops and starts, I
24 want to thank you for your attentiveness and how
25 you have been.

1 We will reconvene tomorrow morning at nine
2 o'clock and we will start as close to nine
3 o'clock as possible. All right. Thank you so
4 much. I hope you have a good evening. I ask you
5 just once again not to discuss this case with
6 anyone else.

7 (WHEREUPON, the jury exits at approximately
8 5:08 p.m.)

9 **THE COURT:** All right. Anything we need to
10 take up before we adjourn for the evening?

11 **MR. LEIBERT:** No, Your Honor.

12 **THE COURT:** All right. Mr. Thompson,
13 anything from the defense?

14 **MR. THOMPSON:** No, Your Honor.

15 **THE COURT:** All right then. Then we'll
16 start tomorrow morning at nine o'clock. I'll be
17 here a little bit before nine o'clock if there's
18 any matters that we need to take up prior to
19 then.

20 **MR. BARNETTE:** Thank you, Your Honor.

21 **THE COURT:** Thank you.

22 **MR. BARNETTE:** May we approach for a second,
23 Your Honor?

24 **THE COURT:** Sure. And while we're doing --
25 before we actually adjourn, let me just say

1 something. This is a serious case. I don't care
2 what anybody thinks about the case. It's got
3 serious and sad facts. If there's anybody in the
4 courtroom that feels like they can't control
5 their emotions from the standpoint of chuckling
6 or laughing or making light of this case, I'd ask
7 you to remain outside of the courtroom. Thank
8 you.
9 **(WHEREUPON,** the Court recesses for the day at
10 approximately 5:11 p.m.)

P R O C E E D I N G S

1
2 (WHEREUPON, the Court resumes on Wednesday, the
3 16th day of March, 2011 at approximately 9:20 a.m.)

4 (WHEREUPON, the jury enters at approximately
5 9:20 a.m.)

6 THE COURT: All right. Thank you, Ladies
7 and Gentlemen. I appreciate your punctuality
8 today. We will go ahead and resume with the
9 State's case now. Thank you.

10 MR. LEIBERT: May it please the Court, Your
11 Honor?

12 THE COURT: Yes.

13 MR. LEIBERT: The State would call Dr. David
14 Wren to the stand.

15 THE COURT: Dr. Wren, if you will, come
16 forward and be sworn.

17 DR. DAVID WREN
18 having first been sworn, testifies as follows:

19 MR. LEIBERT: May it please the Court?

20 THE COURT: Yes, sir.

21 **DIRECT EXAMINATION**

22 **BY MR. LEIBERT:**

23 Q Dr. Wren, please tell the jury your full
24 name.

25 A John David Wren.

1 Q What's your occupation?

2 A I'm a medical doctor with a specialty in
3 pathology.

4 Q And where are you employed?

5 A I'm employed by Carolina Pathology Group, but
6 I am the laboratory medical director of Spartanburg
7 Regional Hospital and Spartanburg Hospital for
8 Restorative Care. I work there as a pathologist.

9 Q Please give the jury a background of your
10 education and qualification.

11 A Well, first off, I have a, uh, Bachelors
12 degree, a Masters degree, and a Doctor of Philosophy
13 degree in Chemical Engineering. I went to the medical
14 school at the Medical University of South Carolina. I
15 did a combined anatomic and, uh, clinical pathology
16 residency at the Medical University of South Carolina.
17 While I was there, I was, uh, assistant medical
18 examiner of Spartan-- of Charleston County from, uh,
19 July of 1980 until I left there to come to work in
20 Spartanburg. I was medical examiner for several
21 months after that on the weekends in Charleston. I
22 actually left that position at the end of January in
23 1983.

24 Since 1982, in October, I been in Spartanburg
25 as a pathologist at either Spartanburg Regional

1 Medical Center, old Doctors Memorial Hospital or Mary
2 Black Hospital where I been actually stationed. Uh, I
3 have a -- I'm board certified in anatomic and clinical
4 pathology, passing those on the first, uh, attempt. I
5 have -- I was -- I am -- I was qualified to take the
6 boards in forensic pathology, although I've never
7 attempted to take the boards just because of the time
8 that was necessary to, uh, take those.

9 But I have been qualified as an expert
10 witness in forensic pathology in multiple counties in
11 South Carolina both as a, uh, in civil and in criminal
12 cases. I've testified as an expert in some of the
13 counties that I can mention being Charleston,
14 Berkeley, uh, Beaufort, Horry, Dillon, Orangeburg,
15 Lexington, Fairfield, uh, Laurens, Spartanburg,
16 Cherokee, Greenville, Anderson and, uh, Newberry.
17 Those are the main ones that I've actually testified
18 in while I was at the medical university to fulfill my
19 requirements for taking the boards in forensic
20 pathology.

21 I did forensic autopsies for the state. At
22 that time, the only forensic pathologist, besides in
23 Greenville and one in Kingstree who did not do
24 forensic pathology, uh, as a practice. He was board
25 certified but did not do those. The majority of the

1 cases, beside those that went to Greenville and some
2 hospital pathologists that did do coroner's cases on
3 non-complicated cases were all sent to the medical
4 university. And while I was there, for about most of
5 that time I was Assistant Medical Examiner, I did
6 autopsies at the medical university under the
7 supervision of forensic pathologists at that time as a
8 resident one weekend a month. I did about -- anywhere
9 from four to twelve autopsies each weekend that I was
10 on call. I filled in for several years when the
11 forensic pathologist had to go testify in other cases.

12 **Q** Approximately how many autopsies have you
13 performed?

14 **A** Since 1989, I've done anywhere from 140
15 probably up to 270 a year. So as a rough estimate,
16 about 4000 now.

17 **MR. LEIBERT:** Your Honor, at this time, I
18 move to qualify Dr. Wren as an expert in the
19 field of forensic pathology.

20 **THE COURT:** Mr. Thompson, you got an
21 objection to that?

22 **MR. THOMPSON:** No objection.

23 **THE COURT:** All right then. He is so
24 qualified. Ladies and Gentlemen of the jury, I
25 spoke with you yesterday about an expert witness'

1 ability to give an opinion. All right.

2 BY MR. LEIBERT:

3 Q Dr. Wren, did you perform an autopsy on
4 Minor [REDACTED] on January 3rd, 2009?

5 A Yes, I did, in the Spartanburg Regional
6 Medical Center autopsy room beginning at approximately
7 1:10 p.m. that day.

8 Q And what was her approximate age?

9 A She was quoted as approximately 11 months
10 old.

11 Q What clothing did she have on?

12 A She had a wet and soiled pamper. That was
13 the only clothing she had on. She had EKG patches on
14 the chest, a monitor apparatus taped to the right
15 thumb. That was it.

16 Q She had any blood that was visible?

17 A There was some dried blood about the mouth
18 along with smaller amounts of dried non-specific
19 fluid.

20 Q Could you explain to the jury the process
21 when you do an autopsy.

22 A Well, basically the, uh, law enforcement
23 personnel and the coroner in this county are
24 instructed to bring the body just as its found without
25 any, uh, disturbance. Oftentimes, I ask them to leave

1 it in the position it is, although if the body is
2 faced down, I ask them to turn it over simply because
3 a person decomposes quicker when they are faced down
4 than when they are supine, on their back. They do
5 take pictures of that.

6 So I actually examine the body, the clothing
7 and describe it. Then we unclothe the body and take
8 all of the clothing and other apparatus that may be on
9 the body. We examine for trace evidence, including
10 the clothing prior to taking it off. I describe the
11 body externally, taking any samples that may be
12 necessary depending on the case. Then I do a complete
13 autopsy, head and internal description.

14 **Q** Dr. Wren, I want to show you some
15 photographs.

16 **MR. LEIBERT:** May I approach the witness,
17 Your Honor?

18 **THE COURT:** Yes, sir.

19 **BY MR. LEIBERT:**

20 **Q** Starting with State Exhibit 18 and running
21 through 30, take a moment to look at those and see if
22 you recognize those.

23 **A** (Reviewing.) These are all photographs of
24 the body along with an x-ray of one of the extremities
25 which depict those injuries that I described in my

1 autopsy.

2 **MR. LEIBERT:** Your Honor, we're going to put
3 them up on the wall if that's alright.

4 **THE COURT:** Yes.

5 **MR. LEIBERT:** The Solicitor is going to
6 assist me with that.

7 **THE COURT:** All right.

8 **BY MR. LEIBERT:**

9 **Q** All right. We'll start with the first one.
10 Describe the injuries for the jury.

11 **MR. BARNETTE:** State Exhibit 18.

12 **THE WITNESS:** This is a photograph of the
13 right side of the face. There are contusions
14 here that are relatively recent. I have to look
15 at my notes. But that might be a slight abrasion
16 there. I would have to look at it to make sure.
17 But these are the major injuries, contusions to
18 basically the jaw itself and extending down
19 underneath the jaw onto a portion of the neck.

20 **MR. BARNETTE:** State Exhibit number 19.

21 **THE WITNESS:** This is a relatively large
22 contusion to the left side of the face, also
23 abrasions to the nose, at the tip of the nose as
24 well as the edges of the nose called the nasal
25 ala, alae if it's plural. These abrasions can be

1 from pressing on the, uh, -- it's just like just
2 a little abrasion from, uh, what a lot of people
3 call skin marks.

4 **MR. BARNETTE:** Exhibit 20.

5 **THE WITNESS:** These are -- this is the left
6 side of the face including the ear. There is a
7 slight abrasion there. This is a curvilinear and
8 a separate abrasion with contusion around it.
9 This is -- since it's curvilinear, it's most
10 probably a fingernail mark. Then there are
11 abrasions to the left, contusions to the left
12 side of the face and a slight abrasion there,
13 which these are about the same timeframe as the
14 other side. Then there's an abrasion in this
15 area right there on the shoulder.

16 **MR. BARNETTE:** State Exhibit 21.

17 **THE WITNESS:** This is also the left side of
18 the face. There's a trailing contusion and
19 abrasion from the one that I showed earlier, the
20 curvilinear abrasion and the abrasion more
21 posteriorly stemming to behind the ear, actually
22 inferior to the ear.

23 **MR. BARNETTE:** State Exhibit 22.

24 **THE WITNESS:** Uh, this is inside of the
25 mouth. When we are examining infants, we look at

1 what's call the frenulum, the little tag of
2 tissue that extends from the inside of the lip
3 across to see if there are tears which most often
4 occurred by pressing against the mouth. There is
5 no tearing of the frenulum, but there is a
6 contusion here from pressing or hitting the mouth
7 in that area. There's a slight contusion there
8 and abrasion at the right corner, left corner of
9 the mouth.

10 **MR. BARNETTE:** State Exhibit 20-- State
11 Exhibit 23.

12 **THE WITNESS:** Just another picture of the
13 left side of the face with the abrasion and
14 contusion and separate contusion over the cheek
15 and possibly a little contusion at the point in
16 the chin.

17 **MR. BARNETTE:** State Exhibit 24.

18 **THE WITNESS:** I'm not sure exactly what this
19 came from, but there's another curvilinear
20 abrasion. She did have one on the back. Oh,
21 this is the one -- I think -- well, I'm not
22 exactly sure. I would have to look. But there
23 is an abrasion here and a trailing, a curvilinear
24 abrasion like a fingernail mark and then an
25 abrasion extending toward the lateral as if it

1 was pulled across the skin, the fingernail.

2 **MR. BARNETTE:** State Exhibit 25.

3 **THE WITNESS:** I'm not sure exactly where
4 this is from. We're supposed to take pictures
5 closer -- further away and closer. But
6 nevertheless, there is a contusion here and vague
7 evidence of an abrasion and contusion in that
8 area.

9 **MR. BARNETTE:** State Exhibit 26.

10 **THE WITNESS:** I believe this was the head
11 here and this is the left back. There's a linear
12 abrasion over the posterior shoulder, near the
13 scapular, which is the shoulder blade. There's a
14 little abrasion there, minor contusion.

15 **MR. BARNETTE:** State Exhibit 28.

16 **THE WITNESS:** This is an x-ray of the right
17 leg where there is a spiral type fracture of the
18 lower portion of the leg. I don't think the --
19 this is the tibia. The other bone is a fibula.
20 I don't see a fracture in the fibula, but
21 nevertheless, there is a slightly spiral type
22 fracture which those type fractures are usually
23 caused by twisting the leg in the direction that
24 causes the bone to snap. It most commonly occurs
25 in children.

1 There was a contusion overlying that area,
2 which we will see in a little bit. I took
3 sections of that area to see how long ago that
4 happened prior to death. There was a slight
5 vital reaction under the microscope. One gets a
6 vital reaction -- after one gets a contusion,
7 which is, uh, blood accumulating in the tissues,
8 the body, within 30 to 45 minutes, will start
9 reacting and trying to clear up that contusion.
10 The sequence of discoloration everybody is
11 familiar with occurs, that is, the blood first
12 changes its configuration of what's called
13 hemotobin and then to hemosiderin, which we can
14 tell under the microscope whether that's the
15 there.

16 The reaction occurs within 30 to 45 minutes
17 as the body starts to respond. There was a
18 slight bodily reaction here. So this person --
19 but there was no other evidence of a reaction to
20 that fracture. So this occurred within no more
21 than two hours at the most prior to death.

22 **MR. BARNETTE:** State Exhibit 27.

23 **THE WITNESS:** This is the area of contusion
24 overlying the leg. The foot's here. There's
25 where, uh, blood has accumulated beneath that

1 fracture.

2 MR. BARNETTE: State Exhibit 29.

3 THE WITNESS: Simply another abrasion. I
4 think this one is probably on the left shoulder.
5 I'm not absolutely sure. This looks like the
6 axilla here.

7 MR. BARNETTE: State Exhibit 30.

8 THE WITNESS: Which is the armpit.

9 MR. BARNETTE: Sorry.

10 THE WITNESS: This is the one that we saw
11 earlier on the, uh, left posterior shoulder.
12 Just another picture of it. Possibly a slight
13 contusion or either accumulation of blood there
14 after death.

15 MR. LEIBERT: Solicitor, would you go back
16 to Exhibit 28.

17 BY MR. LEIBERT:

18 Q Dr. Wren, tell the jury the difference in the
19 bone of an infant and in an adult and the amount of
20 pressure that's needed to cause a fracture as set
21 forth in that exhibit.

22 A Well, fractures in children, uh, usually take
23 a little bit more pressure because the bone is
24 beginning to calcify. After death, I mean, after
25 birth, the bone starts calcifying to gain strength.

1 As it does, where they have stood for a while -- when
2 they aren't used to standing very much, the bone is
3 slightly curved. As the bone calcifies, as one gets
4 older, then the bone is much more sturdy as far as
5 notwithstanding bending forces. So it will actually
6 fracture an adult with somewhat less pressure than an
7 infant, particularly those bones in the head.

8 I show people that come to autopsies for law
9 enforcement how difficult it is to actually cause a
10 skull fracture in a child. There's no calcification
11 for a year or so. So one can take the skull and
12 actually almost -- after it is removed from the head,
13 one can take it and actually bend it together and it
14 doesn't fracture. Whereas, in an adult, not only can
15 you not bend it like that, but it would fracture if
16 you did. So it's, uh, -- this is actually more
17 cartilage than it is bone as it's starting to calcify.
18 It takes more force to fracture.

19 Q After you did the external examination, you
20 did an internal?

21 A Yes.

22 Q Please tell the jury what your findings were
23 on the internal portion of your exam.

24 A The major things that I found were in the
25 head. The internal chest and abdomen had very little

1 abnormalities, although the abdomen was slightly --
2 the abdomen itself was somewhat tense. That was
3 actually gas start to accumulate and press the skin
4 outward to where it was tense. When it is tense,
5 sometimes one will find blood in the abdomen. But
6 there was no blood there.

7 The major injuries that I found were
8 contusions to the back of the head. There were
9 actually at least four to the back of the head. The
10 largest and most severe was in the left back of the
11 head which is called the occipital region. Then there
12 were three smaller contusions on the right side in the
13 back of the head. There were no skull fractures.

14 Once I took the calvarium, which was the top
15 of the head, off, I could see no epidural hemorrhage,
16 which is hemorrhage above the covering of the brain
17 which is like a sheet of soft tissue that's more like
18 scar tissue, but it's actually supposed to be there
19 rather than scar tissue. It's like scar tissue. If
20 one fractures the skull and you happen to lacerate an
21 artery which runs in the skull itself, one will get
22 what's called an epidural hemorrhage above that dura,
23 which is the covering over the brain. It actually
24 covers and goes between the hemispheres of the brain
25 and actually separates the cerebrum, which is the

1 upper portion of the brain, from the cerebellum, which
2 is the part, uh, -- you have a picture of a brain?
3 Just the brain. Nevertheless, -- this one is alright.

4 (WHEREUPON, State Exhibit 44 is marked for
5 identification purposes.)

6 MR. LEIBERT: Your Honor, permission to
7 publish.

8 THE WITNESS: He's going to actually show
9 you just a, basically a routine picture of a
10 brain. I'll explain the parts. But
11 nevertheless, there was no epidural hemorrhage,
12 meaning that there were no fractures that were of
13 the calvarium. Now, when the head's in motion
14 and it suddenly stops in adults and in children,
15 what will happen, their little bridging veins
16 that run from the surface of the brain out to
17 that dura, which actually has a vascular channel
18 in it to where the blood accumulates as it leaves
19 the brain from oxygenating and nourishing the
20 brain. It actually goes into this collecting
21 system and runs around over the top of the head
22 and through the area between the, uh, hemispheres
23 of the brain and accumulates in the back and then
24 goes out on a curved channel that goes down
25 through the base of the skull and out the

1 internal jugular veins and then goes back to the
2 inferior vena cava and goes to the heart.

3 Those bridging veins are rather fragile. If
4 the head stops suddenly, by Newton's laws of
5 motion, the brain itself, it's not anchored in
6 there very well. It will continue in motion
7 until it hits the front or the back or the side
8 or wherever direction the head's going. Then it
9 will recoil. When that happens, those little
10 bridging veins will sometimes tear. When they
11 tear, blood accumulates over the surface of the
12 brain beneath that dura that I was describing and
13 one gets a subdural hematoma.

14 This child had a large subdural hemotoma on
15 the left side. It went all over the surface of
16 the brain and actually down to the base of the
17 skull into what are call the faci, which are
18 actually little cup-shaped areas. There are
19 three on each side where the brain rests in those
20 areas. The blood extended down into there too.
21 I estimate about 20 cc's of subdural hemorrhage.

22 **MR. BARNETTE:** Your Honor, we have State
23 Exhibit 44 which is the diagram that we have
24 shown to Mr. Thompson. We enter that into
25 evidence at this time.

1 **THE COURT:** Any objection?

2 **MR. THOMPSON:** No objection.

3 **THE COURT:** All right. Without objection.

4 (WHEREUPON, State Exhibit 44 is admitted into the
5 record.)

6 **MR. BARNETTE:** May we publish it to the
7 jury?

8 **THE COURT:** Yes, sir.

9 **THE WITNESS:** This is just -- actually, this
10 is a cross section of the brain. One half of the
11 brain. This is the cerebrum, which is the upper
12 portion, the thinking part of the brain. And
13 then, uh, this is the cerebellum. This is the
14 brain stem which is composed of the pons, the
15 medula and then the cervical cord.

16 Now, the dura that I was talking about
17 actually covers the brain. It extends between
18 the two hemispheres. If you can imagine another
19 hemisphere on this side, it extends between there
20 down to this level here. Then on the back of the
21 brain, it actually invest between the cerebellum
22 and the cerebrum and forms a dividing membrane
23 between the two. When the brain continues to
24 move, these little bridge veins that run over the
25 surface of the brain, collecting blood as it

1 leaves the brain for reoxygenation and nutrition,
2 those can tear, as I described earlier. You'll
3 get a subdural hemorrhage.

4 There's also a fine, almost transparent
5 covering over the brain, all of the brain,
6 including the cerebellum called the
7 leptomeninges. That's part of the dura mater,
8 it's called. If you get hemorrhage, one can't
9 get hemorrhage in that area, which is also called
10 the arachnoid membranes. One gets hemorrhage
11 beneath there, up against the brain. That's
12 called subarachnoid hemorrhage. This child did
13 have some subarachnoid hemorrhage too.

14 The only other comment I have is that the,
15 uh, brain will sometimes directly beneath the
16 blow, if one hit the person hard enough to bend
17 the calvarium in or actually fracture the
18 calvarium and hit against the brain, it will be
19 called a contusion. One can see contusions on
20 the brain if there's not too much blood. Or if
21 the brain is moving, let's just take for instance
22 this part hits something and then as it recoil
23 for some reason, the recoil will cause what's
24 called a contrecoup contusion, meaning against
25 the blow. A contusion is directly beneath the

1 blow. A contrecoup contusion is opposite to
2 where the blow occurred.

3 Neither one of those were present in this
4 one, but that's not unusual. It depends on the
5 surface area that the brain actually hits. There
6 was no contusion nor contrecoup contusion. One
7 wouldn't expect a contusion without a fracture.
8 A contrecoup contusion can not occur depending on
9 a lot of circumstances, which I won't go into.
10 But there weren't any.

11 The brain was also edematous. And the way
12 one can tell, that happens -- these are called
13 giri that I'm pointing to which looks like little
14 ridges of tissue. Between there is called sulci
15 or sulcus, which is a depression. If one gets
16 edema of the brain, the brain actually swells.
17 And when that happens, these sulci close up and
18 the brain flattens out and actually swells and
19 causes flattening of the giri because they are
20 slightly curved. One can see curved areas here.
21 They will flatten out and the sulci can narrow
22 where one can bring this edematous. You can see
23 it microscopically, but not necessarily.

24 BY MR. LEIBERT:

25 Q Based on your -- I'm sorry.

1 **A** Okay.

2 **Q** Based on your examination, have you reached
3 an opinion to a reasonable degree of medical certainty
4 as to the cause of death of **Minor**

5 **A** Yes, I called the, uh, -- I said the cause of
6 death in this individual was secondary to acute
7 subdural hemorrhage, which means an accumulation of
8 blood under that dura, which is not shown here,
9 secondary to blunt force trauma to the head. The
10 blood actually accumulated enough there to cause
11 pressure in the brain and the person stops breathing.
12 Then the heart stops after a longer period of time.

13 **Q** When you say blunt force trauma to the head,
14 an 11-month-old going backwards down some steps, is
15 that sufficient to cause --

16 **MR. THOMPSON:** Leading the witness.

17 **THE COURT:** Overruled. I'm going to allow
18 it.

19 **BY MR. LEIBERT:**

20 **Q** Is that sufficient to cause the injury that
21 you saw?

22 **A** Oh, yes. The injuries to the head?

23 **Q** Right.

24 **A** Yes.

25 **Q** They could be caused from falling on a couple

Dr. David Wren - Direct Examination by Mr. Leibert

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1 of steps?

2 **MR. THOMPSON:** He's answered the question,
3 Your Honor.

4 **THE COURT:** I'm going to allow him to answer
5 it.

6 **THE WITNESS:** I didn't --

7 **BY MR. LEIBERT:**

8 **Q** Blunt force trauma --

9 **A** She said I could answer it?

10 **Q** Yes.

11 **A** Uh, there have been a lot of studies on
12 injuries to children. There's a large study in one of
13 the neuropathology -- forensic neuropathology texts
14 where around 900 cases have been examined. It's very
15 unlikely that a simple fall will actually cause a
16 fracture to the skull or any of those injuries.
17 Specifically, it takes 15 -- I'm sorry. It takes 90-
18 foot pounds of force to cause significant injuries to
19 the head in a child. That means that a 15-pound
20 infant would have to fall six feet before they would
21 get any significant injuries. In this large study in
22 hospitals where they were documented falls off a bed,
23 only one incident is there a fracture, and that was to
24 the clavicle.

25 So basically speaking, falling onto steps,

1 unless one falls 12 to 15 steps and doesn't fall in
2 between, then these injuries would not occur. The more
3 likely thing would be, if a person was tumbling down
4 the stairs, they would most likely have a neck
5 fracture than any type of head injury other than
6 contusions. The contusions actually were associated
7 with this subdural hemorrhage.

8 The injuries that were there, I didn't
9 section every one of those. We don't want to
10 disfigure the face where a lot of the injuries as you
11 see were there. We didn't want to take actual
12 sections of that skin. But I did take that of the
13 leg. As I said, it was less than two hours with 95 or
14 greater percent certainty from when the person died.
15 That subdural hemorrhage and subarachnoid hemorrhage
16 that was there actually had no evidence of a vital
17 reaction and no evidence of organization. So it
18 wasn't, uh, any longer than that in the leg.

19 Q Does that mean the child lived over two hours
20 before she died after the fracture to the leg?

21 A Yes, and to the head.

22 Q Thank you, Dr. Wren.

23 THE COURT: Mr. Thompson.

24 MR. THOMPSON: Please the Court, Your Honor?

25 THE COURT: Yes, sir.

CROSS-EXAMINATION

1
2 **BY MR. THOMPSON:**

3 **Q** Dr. Wren, did you confirm a time of death on
4 **Minor** ?

5 **A** Well, my standard answer to that is contrary
6 to, uh, what you see on TV and all of that things, one
7 can not pinpoint a time of death unless one has a
8 heart monitor on a person. One can get some
9 indication as to how long, but as far as one knows
10 without, uh, measurements of body temperature
11 depending on weather the person, and an environment
12 around them, there are no specific ways to pinpoint a
13 time of death.

14 **Q** Is there any way to get a generalization?
15 I'll show you this document here. It has your name on
16 it indicating you performed an autopsy. That time of
17 death, it says between 2 a.m. and 8:45 a.m., would
18 that be something you would -- is that a time period
19 you came up with?

20 **A** No, I think that's what the coroner puts
21 down. What they do is they take the history and, uh,
22 they know what time the person was found dead
23 eventually, which is the 8:45. The last time they
24 were reported alive, they take that time too. Those
25 are -- as I understand it, those are the, uh, -- those

1 numbers that are there. One would have to ask the
2 coroner itself. I did not put that down.

3 Q Okay. Let's talk about the leg fracture.
4 You said that occurred within two hours of death,
5 right?

6 A Yes, within two hours and probably even less
7 than that. I was given the benefit of the doubt.

8 Q And there was an absence of bruising in that
9 area, right?

10 A No, no. There was bruising. There was
11 absence of what is called a vital reaction, which is
12 the natural body mechanism of resolving a contusion or
13 a bruise to the body.

14 Q There was no none on there, right?

15 A There was an earlier vital reaction. I guess
16 the best way to explain that is, uh, let's say someone
17 gets hit or has an injury that causes blood to
18 accumulate in the tissues around a laceration to a
19 vessel or squeezing blood out. When that blood comes
20 out, all one sees if one looks at the tissue under a
21 microscope is blood. They don't see any white blood
22 cells except those that are scattered in the blood and
23 if the person has a normal white blood count, they
24 will be few and far between. The first thing that one
25 sees, 30-45 minutes later, on the average, some of it

1 depends on how much blood a person has lost. In that
2 length of time, one can not date impact until 30 to 45
3 minutes. One sees nothing except blood essentially.

4 The first thing that happens is the body
5 actually produces increased white blood cells. Those
6 are the blood cells that eventually resolve this
7 injury. What happens then is they start accumulating
8 by release of certain chemicals they accumulate to
9 that area. The first thing that happens is one sees
10 these red blood, I mean, white blood cells along the
11 walls of blood vessels. They have to actually,
12 essentially crawl through those little openings in the
13 vessels to get out into the tissue. That's called a
14 vital reaction.

15 The first thing one sees is what's called
16 margination of those cells around that area. You will
17 see a lot of those around the blood vessels and very
18 few out in the tissue. As the reaction progresses,
19 one sees more and more and more because those white
20 cells actually dissolve the blood and scavengers
21 called microphages come in and digest that blood and
22 the blood actually changes to what I call the
23 hemotodin and the hemosiderin, which is the iron,
24 changing, uh, molecular configuration. It actually
25 resolves and takes it away. So one can date the time

1 by looking at it under the microscope.

2 And actually, on top of that, uh, everyone
3 has had a bruise, I'm sure. And the first thing you
4 see is either a red or dark blue reaction. Then, as
5 it starts resolving, it changes color to greenish, to,
6 uh, brown, and then a yellow. Then it slowly fades.
7 If you looked at it under the microscope, one could
8 tell how far that vital reaction, as I call it, the
9 resolving of that contusion is.

10 To summarize, 45 -- 30 to 45 minutes after it
11 happens, you will see some evidence that something has
12 happened other than blood. That's what I saw. The
13 person lived a short time after it happened, but not a
14 long time. Not days or 12 to 15 hours. It happened
15 within a few hours, at the most, from the time the
16 person died. Is that, uh, understand?

17 Q Yes, sir. Now, let's say one time I broke a
18 rib.

19 A Yes, sir.

20 Q And didn't find out until years, two years
21 later, is it possible to carry a break around like
22 that?

23 A A lot of people break bones and particular
24 ribs and don't know it. What will happen is some
25 people form callus around it. Eventually, it can be

1 no residual evidence that one had the fracture, either
2 microscopically or radiologically, but one can have a
3 fracture and not know it. Yes, that's true.

4 **Q** Now, this child was old enough to walk fairly
5 much. She just started walking. Is it possible that
6 leg could have been broke months before?

7 **A** No.

8 **Q** Why not?

9 **A** Because there's no vital reaction there. The
10 color of the injury was acute. There was no
11 resolution. What one sees, if it happened a month or
12 so earlier was either no evidence, the fracture would
13 have had to start healing, that's the natural body
14 reaction. There's no way that that doesn't have --
15 doesn't start to resolve. On top of that, if there's
16 evidence of blood there or a bruise there, one would
17 see what's called hemosiderin, which is a pigment that
18 we can see in the tissues as we look at it. There was
19 none of that.

20 **Q** I'll ask you about on this brain here.
21 You're saying that if I'm struck on one side of the
22 brain, the brain is going to shift and probably make
23 contact with the back side of that, correct?

24 **A** It depends on how rough the area is on the
25 other side. Most people that get what are called

1 contrecoup contusions are usually along the
2 undersurface of the cerebrum more than likely. What
3 one see if someone has had a contusion or contrecoup
4 contusion is blood will accumulate there. One will
5 see a yellow-ish tan or brown -- let's say it happened
6 right here and one had a contusion there, years later,
7 in some cases, one can -- depending on how much blood
8 was there and how well the body reacted to it, one
9 would see a yellow-ish orange discoloration there.
10 You could take a section there and all one would see
11 is some what's called hemosiderin. Some of that
12 pigment would be left over because the blood brain
13 barrier doesn't resolve injuries real well.

14 Q You determined that Minor had a sub -- I'm
15 probably butchering this word up. What's the
16 hemorrhage?

17 A She had subdural hemorrhage as well as
18 subarachnoid hemorrhage.

19 Q But you said there was no damage to the other
20 side of the brain, correct?

21 A There was none under there or on the other
22 side.

23 Q On the opposite side, right?

24 A Right.

25 Q Okay. And then you said that it was caused

1 by blunt force trauma, correct?

2 **A** Yes.

3 **Q** So walk me through this, with your pointer,
4 show me where the damage was to her brain?

5 **A** You would have to have the other side of this
6 specimen. Basically, the damage on me, if you could
7 take my skull off, it would be all along this side of
8 my head extending to the back of the head, of the
9 brain itself. One can peel that dura off. That dura
10 is only anchored around the skull in certain places.
11 When we take the brain out, that dura comes off. When
12 it comes off, if you are real careful, you can see
13 those little bridging veins that are there. After a
14 person dies, there's nothing to cause pressure there
15 and on top of that, one can -- these are small
16 vessels.

17 Just like if you could cut your skin open and
18 look in there, everyone knows that there are little
19 veins and capillaries there. But one can't see those
20 either. You can barely see them on the surface of the
21 brain. They actually bridge between the surface of
22 the brain here and if one can imagine a several
23 millimeter space between there and this dura, which is
24 the covering over it, then one can see those bridging
25 veins.

1 Now, if a person, uh, this is basically the
2 front of this side of the brain and this is the back
3 side. The roughest part of the skull is along the
4 base of the skull. So to get a contrecoup contusion,
5 what would happen is the brain would have to hit, say,
6 in this area to cause a contrecoup contusion along
7 this area.

8 Well, basically it's area because I didn't
9 know he was going to put this one up. You would have
10 to flip it over. You want to get another diagram, I
11 might can explain it a little bit better. But
12 nevertheless, if the blow was here and the brain was
13 moving in that direction and the skull stopped here,
14 then the contusion would be down here. On the other
15 hand, if it were -- if the front of the head hit or
16 the back of the head hit and stopped, then the
17 contrecoup contusion, if there was one that occurred
18 would be on the opposite side.

19 Fortunately, the top of the skull, the whole
20 skull cap is smooth. So you wouldn't get a definite
21 contusion in that area. That's probably what
22 happened. The, uh, blow, the major blow was at the
23 back of the head. So the -- you would get a contusion
24 beneath that if it pressed the skull down enough to
25 actually bruise the brain, which usually doesn't

1 happen.

2 On the opposite side would be the contrecoup
3 contusion. In that case, the skull in this area is
4 smooth. There's no rough area for it to hit. So
5 that's why you didn't get that contusion in either
6 place because the blow was in a place to where the
7 opposite side was smooth with no rough areas to cause
8 it.

9 Q Your testimony was --

10 A You want to explain that again, you can put
11 this one up and I'll explain it.

12 MR. BARNETTE: This isn't marked. There
13 would be no objection if you want to mark it.

14 (WHEREUPON, Defendant's Exhibit 3 is marked for
15 identification purposes.)

16 BY MR. THOMPSON:

17 Q Okay. Now --

18 A Now this is a better depiction of the way the
19 actual brain looks. The other one is more like a
20 schematic. This is the front of the brain. The back
21 of the brain. "Occipital" means the posterior head.
22 Of course, the frontal is the front. Now, the
23 cerebrum, I'm going to outline the whole cerebrum.
24 The cerebellum is this part here, the darker part.
25 Then the brain stem is actually partially covered in

1 this depiction by the cerebellum. It actually sticks
2 out in front of between the two hemispheres. Now, the
3 dura covers, it goes around, over the top, outlining
4 this. In the back, it actually invests or extends
5 between the two hemispheres of the cerebrum and the
6 two hemispheres of the cerebellum and actually extends
7 right up to the posterior border of the brain stem.

8 On top of that, if one could imagine a deep
9 grove between the two hemispheres of the brain, if you
10 were looking at the top, then that dura actually
11 extends down to about the area that I showed here
12 between the two hemispheres. That dura is what covers
13 the whole brain. Now, if one hit the back of their
14 head and stopped the skull, because it's rigid, the
15 brain is like gelatinous, or a gel, it actually
16 continues in motion and hits up against the brain of
17 the skull. It stopped. Then on the opposite side, if
18 you were going to get a contrecoup contusion would be
19 where you would get the bruise.

20 In this area, in the front of the brain, all
21 the way down to about this area, the skull is
22 extremely smooth. There's no rough area for it to
23 hit. On the other hand, if a person fell and hit the
24 top of their head, then the base of their skull is
25 very rough. If it hits up against there, one would

1 possibly get a contusion. Another instance is if the
2 side of the head hit here, then on the opposite side
3 -- this is the left side -- on the right side in about
4 this area on the other side, one would get a
5 contrecoup contusion, if it were hard enough, if the
6 brain was moving enough to hit against it.

7 Q And you say there's an absence of that on
8 these injuries?

9 A Yes. As I said, this blow was here. The
10 skull on this side was smooth so it wouldn't
11 necessarily get -- it's like me walking up to the wall
12 here and falling up against it with my whole shoulder.
13 If I didn't hit a corner of the shoulder, I probably
14 wouldn't get a contusion against there. The blow has
15 been dispersed over a larger area rather than a focal
16 area.

17 If I hit the wall with my hand, with my fist
18 closed, I would get a contusion on the knuckle. But
19 on the other hand, if I slapped either front or back
20 with the blow being dispersed, I would not necessarily
21 get a contusion unless there was something rough on
22 the wall that I would have hit. So it's not
23 surprising that there's neither a contusion or a
24 contrecoup contusion to the brain because of where the
25 blow was.

1 Q Did you document an injury where the strike
2 would occur in your report?

3 A Yes.

4 Q Where was that?

5 A I told him and I showed everyone that the
6 major blow to the head was in the left occipital
7 region and specifically that contusion or bruise,
8 hematoma, measured 12 and a half centimeters in
9 maximum diameter which is about four inches in
10 diameter. On a child's head, that's a pretty good
11 amount. Actually, it is on an adult too. But that
12 was the largest, uh, contusion or hematoma to the back
13 of the head. And it didn't bleed enough to cause a
14 bulging because when one gets a hematoma, it will
15 actually bulge out. So I couldn't feel it. I could
16 only see it when I reflected the scalp back.

17 Q Was it present on the outside of the head
18 more or on the inside?

19 A Well, if you could take the hair, which is
20 real dark in this infant, if one could remove the
21 hair, then, uh, you might see a contusion there. You
22 might not because the skin's a little darker.
23 Nevertheless, I couldn't feel it. I could only see it
24 after I reflected the scalp. That's why we do an
25 autopsy, so we can see those injuries when you can't

1 see them otherwise. But you could definitely see them
2 on the face and those other places I showed on the
3 leg. If I had cut into them, I would have, uh, seen
4 the hemorrhage there too. We try not to macerate a
5 body any more than we have to to do the autopsy.

6 Q And when you say blunt force trauma, does
7 that have to be a strike, or can it be caused by
8 something else?

9 A Uh, I don't -- you mean what -- no blunt
10 force trauma is actually -- blunt force trauma is
11 caused by a blunt object rather than a sharp object.
12 For instance, if I took a two by four and hit you up
13 side the head, if I used the flat surface of the two
14 by four and hit you beside the head, you would get a
15 contusion. But if I took the edge of it and hit you,
16 you would not only get a contusion, most likely, you
17 would get a laceration too because the skin would tear
18 beneath that area.

19 So blunt force trauma simply means that the
20 trauma was dispersed over a wide enough area to where
21 it did not cause a laceration. You can't get a
22 contusion, blunt force -- you can't get a sharp injury
23 to cause that. You would get a laceration or an
24 incised wound or puncture wound if you had something
25 that was smaller.

1 Q Okay. The answer to my question is it would
2 be more of a flatter surface?

3 A Yeah, it would be a flat surface and it would
4 either be a -- it's a flat surface bigger than the
5 force of where it hit.

6 Q So the wall would be an example.

7 A Or the floor.

8 Q Or a stair?

9 A Right. Well, not so much stairs --

10 Q Well --

11 A Wait a minute. This infant, the stairs that
12 I saw pictures of were actually carpeted.

13 Q But a sketch of --

14 MR. LEIBERT: Your Honor, can he finish his
15 answer?

16 THE COURT: Okay. Allow him to finish his
17 answer.

18 THE WITNESS: If you fell hard enough on a
19 flat surface, yeah, that could have happened. If
20 you fell far enough.

21 BY MR. THOMPSON:

22 Q And you discussed this study about, uh, it
23 takes 90-foot pounds of force to injure a child. Is
24 that correct?

25 A To cause very much -- yeah, to cause very

1 much injury, right.

2 Q And on Minor [REDACTED], and I'm showing my
3 limited knowledge of science here, but a skull doesn't
4 -- there's a soft spot in a baby's head, right?

5 A Pardon?

6 Q Isn't there a soft spot in a baby's head?

7 A Oh, yeah. Well, they close up about a year
8 age. There are two soft spots. There's one in the
9 front called landa and there's on the back called
10 bregma which is where the skull bones -- actually, as
11 one grows and matures, those soft spots close in.

12 Q Right.

13 A With bone.

14 Q That means they haven't come together yet?

15 A Yes.

16 Q The skull hasn't?

17 A Well, if that's there, yes. That's right.

18 Q Then you said it usually occurs at about a
19 year old?

20 A The one in the back, which is basically just
21 behind the vertex of the head, it closes at about six
22 months. The one in the front closes usually between a
23 year -- around a year. So if you took a three-month
24 old and you palpated it, you could feel that soft
25 spot. If it's tense, that means that there's fluid

1 probably accumulating beneath that area. That's one
2 way a physician checks for signs of meningitis because
3 the brain will swell and press up against that. It
4 will be real tense. Whereas if you take a normal
5 infant, you could feel that and it's soft. It's
6 normally soft.

7 Q Did you determine if Minor skull was fully
8 developed?

9 A I don't mention every normal thing in an
10 autopsy because it would take a book to fill it out.
11 If I don't mention something, that means, uh, that
12 it's not there. I did not mention that the soft spot
13 was there. So I assume, without looking -- I wouldn't
14 look at pictures of it, it was probably pretty much
15 close. But that wouldn't cause a hematoma anyway or a
16 subdural hemorrhage. That's extraneous. That has
17 nothing to do with this case. Whether it was there or
18 not doesn't do anything.

19 Q Okay. Did you develop a theory on how this
20 blunt force trauma was done? Was the child struck
21 with something or was the child's head moving?

22 A I think the child's head was probably moving
23 when it happened. You don't get a subdural hemorrhage
24 with the head stationary usually. You get a contusion
25 and then an epidural hemorrhage. Subdural are most

1 commonly associated with a severe fall. For instance,
2 if one's old and their blood doesn't clot as well or
3 they are taking blood thinners or whatever or people
4 that are habitual alcoholics get drunk and fall and
5 they hit their head, the brain is moving when the head
6 stops. Those bridging veins tear, one gets a subdural
7 hemorrhage. It usually clots off. The more space you
8 got, the more you can stand of a subdural. It will
9 stop sometimes in a person. Then they will fall again
10 and it will start again. But nevertheless, when that
11 happens, if it's clotted and stopped, the brain starts
12 trying to resolve that clot and get it out. We see
13 what's called organization of the blood. The blood is
14 fiberglass which is tissue repair. So it will grow
15 into that and the blood is removed if one survives it.
16 You can bleed again. So it's not unusual for a person
17 to be in an accident and hit their head and, uh,
18 actually not have very many symptoms and go to
19 subdural and then it go two or three months and bleed
20 again and the person can die from it.

21 Someone told me yesterday where a guy was
22 celebrating in another state. He knew -- he was
23 celebrating a football recruiting victory for his
24 team. He was a relatively old fellow. He went down
25 to the campus and they were out coborting along a

1 railroad track. And he tripped and fell and hit his
2 head. EMS came and checked out everything. He said
3 he was okay. It just stunned him a bit. His wife
4 came and picked him up because he lost contact with
5 his son who was driving and took him home. The next
6 morning, she couldn't wake him up. He had a subdural.
7 He did survive it, but he could not, uh, -- he doesn't
8 walk very well, but he is getting his functions back.
9 So you can survive a subdural depending on how much
10 empty you got up there, I guess.

11 Q Doctor, how many autopsies do you do a year?
12 Just roughly.

13 A Well, earlier, I said since 1989, I've done
14 between about 150. The most I think I've done is 270
15 in a year.

16 Q The majority of those limited to Spartanburg
17 County or you said you go anywhere?

18 A I don't go anywhere. I do some occasionally
19 for Cherokee. I do some occasionally for Union. In
20 the past, I have done an occasional one for Laurens
21 because those people died at the hospital and the
22 coroner didn't want to transport them to another
23 location. It was just easier to have me do the
24 autopsy and have the funeral home pick up the body
25 then. So, uh, almost all of them are from Spartanburg

1 County. I do, uh, -- they do send one occasionally
2 from out of state and from other parts of the state on
3 some that no other, uh, -- other pathologists are
4 scared to do them because of the chances of getting a
5 disease.

6 Q And you mentioned you had seen a photograph
7 of some stairs?

8 A Yes, as I stated earlier, once again, I get
9 them to take photographs. And since we do digital
10 photographs now, I have a better chance to see them.
11 I have gone to scenes before when they requested them.
12 But now, usually, they bring the pictures and show
13 them to me if I want to see anything.

14 Q Who is "they"?

15 A Uh, the coroner's office or the, uh,
16 sheriff's department or the Spartanburg Police
17 Department. Whoever comes to the autopsy and has
18 investigated the case usually brings their camera with
19 them. Because the coroner and the law enforcement
20 have two sets of pictures for the autopsy.

21 Q Have you discussed -- any of those
22 organizations discussed their theory of this case with
23 you?

24 A No, not really.

25 Q What does "not really" mean?

1 **A** Well, people talk a lot. They might say do
2 you think this could have happened or do you think
3 that could have happened and I say no, I don't think
4 it could have or yeah, it's possible. I don't
5 remember anyone saying -- I do remember them showing
6 me a hole in the wall and asking me if that could have
7 been from the infant's head and I said yes.

8 **Q** So who was that?

9 **A** Uh, I don't -- I signed this thing out almost
10 two years ago and about 300 autopsies have gone since
11 then. I don't remember who showed them to me first.
12 But I do know that the Solicitor's office came and
13 showed me some of those pictures later. We talked
14 about if it were possible. I said yes, it was
15 possible.

16 **Q** And that basically has guided your testimony
17 today, ---

18 **A** What?

19 **Q** --- has it not? Their theory. Your
20 testimony is basically to fit their theory, is it not?

21 **A** Well, it does. It could have been -- it
22 could have been something else. But it does fit
23 what's shown.

24 **Q** Okay. And I'll go back to your answer on the
25 stairs. Mr. Leibert asked you if this could be caused

1 by a fall down the stairs. You said, yes, definitely.

2 **A** I said it could have been if the person did
3 not hit steps as they were going down.

4 **Q** Originally though.

5 **A** No, I never said that.

6 **Q** That was your answer.

7 **A** No, I never said that it could have --
8 actually could have caused that injury to the head, I
9 don't think. If I did, I was dreaming.

10 **Q** You recall my objection when I said you had
11 already answered that question when he asked you
12 again?

13 **A** When you objected, he was asking me a
14 specific question. I don't remember exactly what it
15 was. But I sort of stopped listening when you
16 objected. And then, if you remember, when, uh, the
17 judge said I could answer it, I went ahead and
18 answered.

19 **Q** In more detail, correct?

20 **A** I don't know. I don't remember exactly what
21 I said, but I did answer whatever he asked.

22 **MR. THOMPSON:** No further questions.

23 **THE COURT:** Anything else from the State?

24 **MR. LEIBERT:** May I approach the witness,
25 Your Honor?

1 **THE COURT:** I'm sorry.

2 **MR. LEIBERT:** May I approach the witness?

3 **THE COURT:** Of course.

4 **REDIRECT EXAMINATION**

5 **BY MR. LEIBERT:**

6 **Q** Doctor, I show you what's been marked and
7 entered into evidence as State's 42. It shows a hole
8 in the wall. Have you ever seen that before?

9 **A** Yes.

10 **Q** Is the injury to **Minor** to the left side of
11 her head, the subdural hematoma consistent with that,
12 that surface?

13 **A** Well, without any obvious measurements on
14 that, I can't say for sure. But it certainly looks
15 like the outline of a head. It's too big for a fist
16 or an elbow. These are plates, like this one right
17 here and this thing is at least four or five times as
18 big as that. My fist is about the size of that plate.
19 So if I hit that thing, unless it hit it four or five
20 or six times, I would not make a hole like that.

21 **Q** I'll show you State Exhibit 34. That's a
22 close up.

23 **A** Well, on this side over here, it's depressed
24 in. There's some of it missing. It looks like it's
25 torn out rather than -- well, I mean, the sheet --

1 sheetrock underneath is still there. So all this
2 stuff on the floor came off of that.

3 Q Let me show you State Exhibit 32. Have you
4 seen that?

5 A Yes. These are the steps supposedly that the
6 infant fell on.

7 Q All right. So to clear up any confusion, for
8 that to have happened on the steps, she would have
9 gone from the top and landed on the bottom and skipped
10 all these steps? And what influence does the
11 carpeting have?

12 A The carpeting is actually cushioning. As I
13 said previously, each one -- well, I didn't say
14 previously, but each one of these steps is about --
15 most of them have nine-inch risers. So if you count
16 one, two, three, four, five, six, seven and say this
17 is eight, that's 72 inches. That's six feet. As I
18 stated previously, children that fall directly onto
19 hard surfaces from that distance did not get a
20 significant injury.

21 Q In this case, we have injuries in the front
22 of the face.

23 A Pardon?

24 Q In this case, we have injuries in the front
25 of her face.

1 **A** Yeah. On top of that, when people fall
2 against objects and cause contusions, they are usually
3 on prominences, for instance, point of the shoulder,
4 points of the elbows, the wrist, the knees. These
5 injuries were not in those type of areas. The only
6 one that I can recall right now is the one I saw --
7 told you about on the chin. That would be a
8 prominence. But the ones on the side would not be.
9 They would have to hit a prominence, which is not
10 present on here at all.

11 **Q** All right, sir. Thank you.

12 **THE COURT:** Mr. Thompson.

13 **THE WITNESS:** Now, this child, I might add
14 weigh 7680 grams, which is, uh, well, that's
15 453.56 grams per pound. So that would be about
16 17 pounds maybe. 16 or 17 pounds. So to get a
17 significant injury consistent with that large
18 study I told you of about 8-900 children, that
19 child would have had to fall at least six feet
20 unobstructed before you would expect any type of
21 injury and then not, uh, -- the fracture would
22 have been more than likely clavicle or something
23 like that, not the middle of a bone unless it was
24 really, really bent when the child fell. And one
25 fall couldn't do all these injuries, I don't

1 think.

2 **RECROSS-EXAMINATION**

3 **BY MR. THOMPSON:**

4 Q So your testimony is that wall would have to
5 be hit five or six times with a fist to make all that
6 damage?

7 A I would think it would have to be more than
8 once but just a fist.

9 Q And that photo, that hole is about even with
10 a top bunk, is it not?

11 A You talking about right here?

12 Q No, no. The other bunk. It's a bunk here.

13 A Oh, there?

14 Q Yes, sir.

15 A Yeah.

16 Q Okay. So my kids' bunk bed at home is even
17 with my head. All right.

18 A Okay.

19 Q So that holds about six feet off the ground,
20 right? A little bit less than six feet on the -- off
21 the ground, right?

22 A Uh, yeah, between five and a half and six, I
23 would imagine.

24 Q It's up that high?

25 A About chin high on an adult.

1 Q Chin high. All right. And that is
2 sheetrock, right?

3 A Pardon?

4 Q That is sheetrock, isn't it?

5 A Yes, I think.

6 Q That's the sheetrock there. That's got a
7 paper hooding on it, right?

8 A That's correct.

9 Q And that's plaster. It's not unusual for a
10 man to put his fist through a sheetrock wall, is it?

11 A No.

12 Q It's not physically impossible, is it?

13 A Pardon?

14 Q It's not physically impossible?

15 A Well, I wasn't there. But if someone told me
16 they clinched a sheetrock wall, I'd say let me see
17 your hand.

18 Q It would injure their hand, wouldn't it?

19 A Pardon?

20 Q It would injury their hand. Wouldn't it?

21 A More than likely it would. You would
22 probably see a bruise and maybe some scratches.

23 Q So is it possible they could hit that, hurt
24 their hand and not need medical attention?

25 A Well, sure.

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1 **MR. THOMPSON:** I have no further questions,
2 Doctor. Thank you.

3 **THE COURT:** Anything else from the State?

4 **MR. LEIBERT:** Nothing further, Your Honor.
5 May Dr. Wren be excused please?

6 **MR. THOMPSON:** No objection.

7 **THE COURT:** All right. Sir, thank you for
8 being here.

9 **MR. BARNETTE:** Your Honor, if we could have
10 a break for a second, we need to put something on
11 the record before we continue the trial.

12 **THE COURT:** All right. All right. Ladies
13 and Gentlemen of the jury, it seems like it would
14 be a good time for us to take a morning break.
15 Let's take about a 10-minute break. All right.
16 (WHEREUPON, the jury exits at approximately
17 10:40 a.m.)

18 **THE COURT:** Yes, sir.

19 **MR. BARNETTE:** May it please the Court, Your
20 Honor. We're getting ready to rest. There's one
21 thing I want to put on the record from yesterday
22 from Gaile Heath's testimony. We had the letter
23 that was introduced as State Exhibit 15. We've
24 met with defense counsel and with Your Honor back
25 in chambers with your law clerk. There were some

1 things that were redacted from there. I want to
2 put on the record, in case it came up later. 15A,
3 I think, was entered as an exhibit. I think you
4 and your law clerk looked at it and marked it
5 yellow.

6 **THE COURT:** Yes, I've chosen the portions to
7 mark.

8 **MR. BARNETTE:** And then 15B was actually
9 what was marked out?

10 **THE COURT:** Yes.

11 **MR. BARNETTE:** That's what we used and
12 introduced into evidence and published to the
13 jury.

14 **THE COURT:** Yes.

15 **MR. BARNETTE:** I just want to make sure for
16 the record that they understood -- if somebody
17 looked at the record later, they understood where
18 that redaction came from.

19 **THE COURT:** All right. Just so we are clear
20 on it, I instructed my law clerk on what portions
21 to redact after discussion with both the State
22 and the defense. Both parties consented to those
23 redactions. He redacted only the portions I
24 asked him to do so.

25 **MR. BARNETTE:** I just wanted to put that on

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1 the record and make sure it's clear if someone
2 would review the record at a later date.

3 **THE COURT:** Mr. Thompson, does that
4 accurately reflect what happened with that
5 letter?

6 **MR. BARNETTE:** It does, Your Honor.

7 **THE COURT:** All right. While the jury is
8 out -- of course, I will allow you to rest in
9 front of the jury -- but any matters -- you're
10 not going to present any more evidence at this
11 point, is that correct?

12 **MR. BARNETTE:** Let me check with Mr. Leibert
13 and make sure.

14 **MR. LEIBERT:** That's all the evidence, Your
15 Honor.

16 **THE COURT:** All right. Mr. Thompson,
17 motions you want to make?

18 **MR. THOMPSON:** Just the proffer on the, uh,
19 -- I don't think it can be considered third-party
20 guilt. I want to present evidence that reputes
21 the hole-in-the-wall theory that they had. That
22 evidence is available in the Solicitor's file.
23 There's an explanation for the hole in the wall.
24 It's not to prove anybody else guilty, it's to
25 explain the hole in the wall. I need that

1 evidence put forth. I need the mother and I need
2 the child.

3 **THE COURT:** And what do you anticipate that
4 evidence would be so far as the third -- the hole
5 in the wall?

6 **MR. THOMPSON:** The child and the mother
7 state that my client took his fist and beat the
8 wall once he was on the phone with 911. He
9 couldn't perform what they were telling him to
10 do. Out of frustration, he turned around and
11 bashed the wall in.

12 **THE COURT:** All right. I don't think that
13 goes to any third-party guilt.

14 **MR. BARNETTE:** I would agree that that was
15 the testimony.

16 **THE COURT:** All right. All right. If
17 there's anything else you need to proffer, are
18 there any motions you need to make at this point?

19 **MR. THOMPSON:** Your Honor, I would make a
20 motion that if you look at the indictment on this
21 thing --

22 **THE COURT:** Could we -- could we get the
23 lights back on? I don't want anybody falling
24 asleep on us. Thank you, ma'am.

25 **MR. THOMPSON:** On the indictment, they are

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1 saying, one, he shook the child -- that he shook
2 the child. There's no evidence indicating that.
3 Or he struck the child or that he caused the
4 child to strike some object. The State's theory
5 is he took this child and rammed her into a wall.
6 I don't know that their case, as put forth,
7 actually fits the indictment or the crime as was
8 indicted.

9 **THE COURT:** Yes, sir.

10 **MR. BARNETTE:** Your Honor, just to respond
11 to that, uh, basically, it's a circumstantial
12 case. Obviously, one thing is that he could have
13 hit the wall. You will find out that the letter
14 that he sent to the mother contradicts what
15 evidence he wants to show us. He claims he did
16 it when he was dancing is when he fell down and
17 hit the wall and things like that. That's going
18 to be something for a question of fact for the
19 jury.

20 Striking some object, it appears from the
21 injuries elicited from Dr. Wren's testimony, you
22 have a spiral fracture. You have bruising. He
23 said the child fell down the stairs like the
24 defendant has alleged in his letter and
25 statements given to police. He told after two

1 other statements that he never told anybody
2 about, he didn't even tell the mother that night
3 about the, uh, falling down. He didn't tell
4 anybody until the police confronted him with the
5 pictures in that case.

6 Like Dr. Wren said, if he fell down the
7 stairs, which these stairs are carpeted on top of
8 that, obviously it would have cushioned that
9 blow. You would have bruises on the elbows, on
10 the shoulders, things like that. All the
11 bruising is in the facial area. Also, falling
12 down stairs wouldn't occur from fingernail marks
13 on the person either.

14 He was left to care for the child. He admits
15 in statements he had given to police that the
16 mother was not there. He even says on the letter
17 she arrived after all this happened. He said
18 Mikey didn't do it and definitely the two-year
19 old didn't do it.

20 **MR. THOMPSON:** He says he didn't do it
21 either, Your Honor. If we're going to give
22 credence to those statements, we're --

23 **MR. BARNETTE:** Very simply he did by process
24 of elimination. Somebody caused these injuries
25 to this child.

1 **THE COURT:** While I appreciate your motion
2 for directed verdict and, uh, after considering
3 hearing the testimony and the evidence, I think
4 that the State has put forth at least evidence
5 that in fact this Defendant could have caused
6 this crime. Therefore, I'm denying your motion
7 for directed verdict.

8 **MR. THOMPSON:** Your Honor, one other issue.
9 On the letter we put into evidence, I wouldn't
10 think Mr. Barnette did it intentionally, but the
11 address is the county jail. Basically, that's
12 been read out to the jury. I would like that
13 redacted off of there. Off that letter.

14 **MR. BARNETTE:** It's easy to explain. He's
15 been in jail since this crime -- when the crime
16 occurred. That was the reason why he's been in
17 jail. He's been arrested on this charge. It
18 don't reflect any prior charges at all.

19 **THE COURT:** I'm not sure that -- I'm not
20 sure that the defendant -- I'm not sure that the
21 jury even picked up that that's the jail's
22 address. However --

23 **MR. THOMPSON:** I'd ask that we mark it out
24 before it goes back to the jury.

25 **THE COURT:** I don't have a problem doing

1 that as long as the State consents to it. I'll
2 say it was not objected to at the time.

3 **MR. BARNETTE:** We have no objection to that,
4 Your Honor. If they would like to have that
5 redacted, if they want to explain that he was in
6 jail on this charge is the reason why he's in
7 jail. I have no problem.

8 **THE COURT:** Mr. Thompson, do you want me to
9 give some instructions to the jury or do you
10 think that's just going to point it out?

11 **MR. THOMPSON:** I think that will work just
12 to scratch it out.

13 **THE COURT:** All right.

14 **MR. THOMPSON:** Also, Your Honor, there's
15 evidence about the State produced a picture of a
16 speaker that the officers said had not been
17 moved. There's testimony or there's record of
18 the mother indicating that a speaker was in fact
19 moved. So --

20 **THE COURT:** Are you planning on calling her?

21 **MR. THOMPSON:** I am, Your Honor.

22 **THE COURT:** All right. Well, then I'll
23 allow you to ask her about a speaker being moved.
24 I don't know what the relevance of that is at
25 this point. But subject to being able to tie it

1 to some relevancy, I'll allow you to ask her
2 about it. Uh, have you had an opportunity to
3 talk to your client about whether or not he
4 intends to testify? We can cross that bridge in
5 a little while if you want.

6 **MR. THOMPSON:** I'll do that. Like I said, I
7 think we'll proffer those.

8 **THE COURT:** All right. Why don't I go ahead
9 and just advise him of his rights at this point,
10 so far as testifying so he's heard it. Then
11 we'll come back to it after the proffer.

12 **MR. THOMPSON:** And I would make a motion
13 before going into that, under State v. Lyle, he
14 has a prior record. I don't think anything he's
15 been convicted of has any nexus or connection to
16 what he's charged with. A firearm and maybe an
17 ABHAN. I was going to get the Court's position on
18 whether the State can bring that out.

19 **THE COURT:** What's the substance of his
20 record?

21 **MR. BARNETTE:** Well, let me read it from the
22 RAP sheet.

23 **THE COURT:** Or what's the substance of what
24 you would intend to use for impeachment purposes?

25 **MR. BARNETTE:** I will put on the record what

1 we would like to introduce for impeachment.

2 **THE COURT:** Yes, sir.

3 **MR. BARNETTE:** He has a Possession of Beer
4 of a Minor, 2003. He has a Resisting Arrest in
5 2004 which we would not ask to introduce. He has
6 Unlawful Carrying in 2006 which we would not move
7 to introduce. He does have a Burglary third and
8 a first offense. We would ask to introduce that.
9 It is a 2006 charge. He has Malicious Injury to
10 Real Property between 1-5000, which is a 2006.
11 We would ask to introduce that. He has a Simple
12 Assault and Battery in 2008, which we would not
13 introduce. He has Possession of Marijuana, 2010
14 which we would not introduce. The only two that
15 we would ask to introduce is Burglary and
16 Malicious Injury to Real Property. In the
17 alternative, if the Court decides it's too
18 prejudicial, we would ask --

19 **THE COURT:** I'm inclined to allow those.

20 **MR. BARNETTE:** Okay. We would ask for the
21 Burglary third and first offense. Actually, it
22 dates August 20th, 2007. Malicious Injury to
23 Real Property between 1000 and 5000, which is
24 also August 20th, 2007.

25 **THE COURT:** All right. Those aren't of any

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1 nature that I think might cause prejudice to the
2 jury and could be used to impeach his
3 credibility. I will allow you to use those two
4 convictions if the circumstances arise.

5 All right. Mr. Murphy, you understand that
6 you have a right to remain silent in this case.
7 You absolutely do not have to present any
8 testimony and evidence whatsoever. You do not
9 have to testify. I can not compel you to
10 testify. The State can not compel you to
11 testify. But you have an absolute right to
12 remain silent. You also have an absolute right
13 to testify if that's what you would like to do.
14 This is your trial. If you want to testify, you
15 have an absolute right to do so.

16 I believe the State has offered some evidence
17 that they intend to use for impeachment purposes.
18 You've been advised of that. Otherwise, as I
19 said, you have an absolute right to give your
20 defense in this case. I want you to have enough
21 time to speak with your attorney about this. I'm
22 going to go back over it with you. We talked
23 about it one time. I'm talking to you about it
24 again. I want you to go over this with your
25 attorney prior to your actual decision on whether

1 or not you're going to testify. At that point in
2 time, whatever your decision is going to be, I'm
3 going to need to talk to you a little bit further
4 about it. You have any questions about your
5 right, uh, to remain silent or your right to
6 testify in this case?

7 **MR. MURPHY:** No.

8 **THE COURT:** All right then. Anything the
9 State wants me to add at this point?

10 **MR. BARNETTE:** Not at this time.

11 **THE COURT:** All right. Anything else, Mr.
12 Thompson, you want me to tell your client with
13 regard to it?

14 **MR. THOMPSON:** No, Your Honor.

15 **THE COURT:** All right then. We'll be in
16 recess for about 10 minutes. When we return,
17 I'll allow the State to rest on the record.
18 Since we've already taken care of motions, we'll
19 start with the defense's case.

20 **MR. BARNETTE:** Your Honor, will there be any
21 proffer or will we get straight to testimony?

22 **THE COURT:** Mr. Thompson?

23 **MR. THOMPSON:** Like I said, I intend to
24 present rebuttal evidence to the, uh, hole in the
25 wall. I want to do that.

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1 **THE COURT:** Yes, sir.

2 **MR. THOMPSON:** I want to present evidence
3 that the time of death is thought to be within
4 2:00 to 8:00. The mother is on record as checking
5 on the child before that time. I would like to
6 see what she has to say about her checking on the
7 child.

8 **THE COURT:** All right. So you want -- if
9 I'm understanding what you are saying, you want
10 to put up -- you want to go directly into some
11 testimony. Then depending on that testimony,
12 there might be, you might want to get into some
13 third-party guilt testimony which we already
14 discussed you would need to proffer before I
15 would allow you to introduce it?

16 **MR. THOMPSON:** I don't see how we would not
17 tread -- how we would not blend the two together.
18 I think we would eventually work into that.

19 **MR. BARNETTE:** I would like to do the
20 proffer, to let the court hear it first to make
21 sure it's proper before it goes in front of the
22 jury.

23 **THE COURT:** Absolutely. I'm just trying to
24 get a feel from Mr. Thompson. You want to go
25 straight into the testimony -- is there some

1 testimony you want to take before you make a
2 proffer? I just want to know how you want to try
3 your case so I'll know what to do with the jury.

4 **MR. THOMPSON:** I would, uh, and I think
5 Barry would agree the proffer probably needs to
6 take place first.

7 **THE COURT:** All right.

8 **MR. THOMPSON:** That would allow you to --
9 I'm reading my motion on Holmes v. South
10 Carolina. I think all of it should come in.

11 **THE COURT:** Okay. From what I heard, based
12 on the coroner's testimony, I'm still uninclined
13 to allow it -- allow what we have discussed. I
14 don't know exactly what you wanting to proffer.
15 We'll take a look at it then. All right. In
16 that regard, it seems like what maybe we should
17 do, just for planning purposes, is allow the jury
18 to go to lunch?

19 **MR. BARNETTE:** We could, Your Honor. What
20 we could do is let us rest on the record and let
21 us take a break and do the proffer on the record
22 and have them come back at a time that suits the
23 Court.

24 **THE COURT:** That will be fine to do it.
25 I'll tell you what, before we take him out, let's

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1 go ahead and -- has the jury been out 10 minutes?
2 Surely so. Let's bring the jury back in and do
3 that very quickly. Then we can -- let's do that.
4 Let's go ahead and just bring them back in and
5 I'll release them until -- as far as the proffer
6 is concerned, Mr. Thompson, how long do you think
7 you're going to need to do that?

8 **MR. THOMPSON:** It depends on the
9 availability of the child. I don't know if they
10 have the child here or not.

11 **THE COURT:** The child is here?

12 **MR. BARNETTE:** Yes, Your Honor.

13 **MR. THOMPSON:** Basically, what I'll do is go
14 over --

15 **THE COURT:** I'm going to have the jury come
16 back at 1:30 then. Probably by the time we get
17 through this, I would say maybe an hour.

18 **MR. THOMPSON:** I would like that. Just for
19 the sake of the jury, I would need Lorin Williams
20 as well. I would ask that I be able to call him
21 as well.

22 **THE COURT:** Those are going to be in your
23 proffer? All three of those witnesses are going
24 to be in your proffer?

25 **MR. THOMPSON:** Might as well, yes.

1 **MR. BARNETTE:** It will take probably at
2 least an hour.

3 **THE COURT:** That will be good. Yes, sir.
4 You can bring them back in. Thank you.

5 **(WHEREUPON, the jury enters at approximately**
6 **10:56 a.m.)**

7 **THE COURT:** All right. Anything from the
8 State?

9 **MR. LEIBERT:** Your Honor, the State rests.

10 **THE COURT:** All right. Ladies and Gentlemen
11 of the jury, you didn't get your seats warm in
12 here before I'm going release you again to go to
13 lunch. We're going to take a little bit of an
14 early lunch. I apologize about that.
15 Timingwise, I think that will be best. Between
16 the State's case and the defense's case, we have
17 to take up certain legal matters before we can
18 begin. I'm going to let you go now and be back
19 at 1:30. Be back in your jury room at 1:30.
20 That's going to be kind of a long lunch. But
21 maybe y'all maybe run an errand or something
22 while you're out and about.

23 Please don't discuss the case with anyone.
24 Please do your very best to not be exposed to any
25 media attention with regards to this case. If

1 you were to be exposed to anything, if you would
2 just turn the page or turn off the TV or whatever
3 if there is any media coverage. All right? All
4 right. Thank you so much. We'll see you back at
5 1:30.

6 (WHEREUPON, the jury exits at approximately
7 10:58 a.m.)

8 THE COURT: All right. Let's take about a
9 10-minute break. Mr. Thompson, that will give
10 you a chance to kind of get organized and ready
11 to go and we will start back in 10 minutes.

12 MR. LEIBERT: Thank you, Your Honor.

13 THE COURT: Thank you.

14 (WHEREUPON, a recess is taken from approximately
15 10:59 a.m. to 11:10 a.m.)

16 THE COURT: Okay.

17 SAMANTHA HILL

18 having first been sworn, testifies as follows:

19 DIRECT EXAMINATION

20 BY MR. THOMPSON:

21 Q I'm going to go over this part right here,
22 the day that Minor had died, you indicated that you
23 left and came back at 10:00. Do you remember where
24 you went?

25 A I went out with my sister.

1 Q Do you remember where you guys went?

2 MR. BARNETTE: Your Honor, I'm going to
3 object at this point. That was part of our
4 motion. For proffer, I guess it could be
5 allowed. But in front of the jury, we'd object
6 to the areas that she went to.

7 THE COURT: I will allow it on proffer, but
8 that's certainly not waiving any objection you
9 have for the jury to not hear that.

10 MR. THOMPSON: Okay. And I'll just withdraw
11 the question.

12 THE COURT: All right.

13 BY MR. THOMPSON:

14 Q You remember you said you came home around
15 10:00?

16 A Uh-huh.

17 Q And you pulled up and you could see -- is it

18 S.J. Is that how to pronounce that?

19 A Yes.

20 Q Okay. S.J. looking out the window at you,
21 is that right?

22 A Uh-huh.

23 Q Okay. And then, uh, when you came in,

24 M.J. and S.J. were downstairs watching TV.

25 Minor was asleep. When you went and changed clothes

1 and checked on the kids, do you remember telling her
2 that?

3 **A** Yes.

4 **Q** Did you go upstairs to your bedroom and
5 change clothes or change clothes downstairs?

6 **A** I went upstairs.

7 **Q** And that's when you went and peeked in on the
8 kids?

9 **A** Uh-huh.

10 **Q** And you went in the part about the alarm
11 clock going off and you discovered **Minor**. And you
12 said that Shawn got frustrated and punched a hole in
13 the wall, right?

14 **A** Yes.

15 **Q** And were they all in the same room that
16 night?

17 **A** Yes.

18 **Q** You remember the letter where Rashawn told
19 you that he had danced in the room?

20 **A** Uh-huh.

21 **Q** What room was that?

22 **A** In our room.

23 **Q** That was in your master bedroom, right?

24 **A** Uh-huh.

25 **Q** Not in the kids' room?

1 **A** Right.

2 **Q** And you recall telling the people at the
3 Children's Advocacy Center that there was in fact the
4 speaker moved?

5 **A** Yes.

6 **Q** And you recall that -- how far was the
7 speaker moved?

8 **A** From downstairs.

9 **Q** So it was brought from downstairs to
10 upstairs?

11 **A** Yes.

12 **Q** Okay. And that was put in the master
13 bedroom, right?

14 **A** Yes.

15 **Q** Okay. And did **Minor** have an occasion when
16 she would get on the stairs at your house?

17 **A** She would go upstairs but she wouldn't come
18 down.

19 **Q** She wouldn't come down?

20 **A** She wouldn't come down.

21 **Q** I got a dog like that. He's scared of the
22 stairs. So when you say she would get on the stairs,
23 what exactly would she do?

24 **A** She would crawl upstairs.

25 **Q** Crawl up?

1 **A** Yeah. But she wouldn't come down.

2 **Q** Okay. I think she would stay at the top and
3 cry for you?

4 **A** Yes.

5 **Q** Was she walking yet?

6 **A** She was trying to.

7 **Q** She was trying to?

8 **A** Yeah.

9 **Q** Who was -- when you checked on the kids that
10 night, who all were in the bed that you checked on
11 after you changed clothes?

12 **A** All three of them.

13 **Q** All three of them were in the bunk bed?

14 **A** I had just told the boys to go to bed.

15 **Q** And do you recall who got to **Minor** first
16 that morning? You or Rashawn?

17 **A** Me.

18 **Q** You did?

19 **A** Yes, sir.

20 **Q** And you guys tried to revive her, right, or
21 call 911? Or you told him to get your phone?

22 **A** Yeah.

23 **Q** Was that your phone that he threw?

24 **A** Uh-huh.

25 **MR. THOMPSON:** I have no further questions,

1 Your Honor. Thank you.

2 THE COURT: All right. Mr. Barnette.

3 MR. BARNETTE: Thank you, Your Honor. May
4 it please the Court.

5 THE COURT: Yes, sir.

6 CROSS-EXAMINATION

7 BY MR. BARNETTE:

8 Q Ms. Hill, let me show you State Exhibit 15.
9 If you would, talk a little bit louder so this lady
10 over here can hear you as well as the judge. Can you
11 turn a little bit? Was that the letter you received?
12 I believe it was given to you and you turned that over
13 to the Solicitor's office or to the sheriff's
14 department?

15 A Yes, it is.

16 Q Was that handwriting the defendant's
17 handwriting, Shawn Murphy's handwriting?

18 A Yes.

19 Q You were familiar with his handwriting?

20 A Yes.

21 Q You received this and you turned it over to
22 law enforcement, is that right?

23 A Yes.

24 Q Now, that night, you and your sister had went
25 out, is that right?

1 A Yes.

2 Q Matter of fact, y'all been to Taco Bell?

3 A Yes.

4 Q And you went some different places?

5 A Yeah.

6 Q You didn't come home til around 10 o'clock?

7 A Yes.

8 Q When you got home, was Minor already in bed?

9 A Uh-huh. Yes.

10 Q Was the boys in bed yet?

11 A No.

12 Q So you sent the boys in the bed later?

13 A Yes.

14 Q When you went up and checked in the room, let

15 me ask you this question, had Rashawn Murphy been

16 drinking alcohol that night? I remember you said

17 about you smelled alcohol on his breath.

18 A Yes.

19 Q So he had been drinking that night?

20 A Yes.

21 Q And then you went up to the room, about two

22 o'clock, you think, that morning?

23 A Yes.

24 Q You didn't go all the way in the room, did

25 you?

1 A No.

2 Q Did you just glance in there?

3 A Yes.

4 Q Were there any lights on? Was there a light
5 coming in from outside?

6 A Yes.

7 Q Did you just see that they were in there?

8 A Yes.

9 Q You didn't check **Minor** or anything to see if
10 she was breathing or anything at that time? You
11 didn't look at her?

12 A No.

13 Q But you made sure that you saw her in there?

14 A Yes.

15 Q You don't know if she was breathing or not at
16 that time?

17 A No.

18 Q When, uh, y'all got up the next morning, I
19 think I heard your testimony right, 5:45 when the
20 alarm went off, did the defendant insist going
21 upstairs to check on the kids?

22 A Yes.

23 Q So he insisted that you wouldn't go up there.
24 He went up there?

25 A Yes.

1 Q Did he go up there?

2 A Yes.

3 Q You don't know what he did when he got up
4 there obviously?

5 A No.

6 Q When he came back, what did he tell you?

7 A Everything is fine.

8 Q He said everything was fine upstairs?

9 A Yes.

10 Q Okay. Later that morning, did Mikey come and
11 tell y'all something?

12 A Yeah.

13 Q What did he tell you?

14 A He ran downstairs and said something wrong
15 with Minor.

16 Q Talk a little bit louder, if you could, so
17 they could hear you. What did you do?

18 A I ran upstairs.

19 Q When you ran in the room, what's the first
20 thing you focused on?

21 A Minor

22 Q Did you focus on the walls or anything else
23 from that point?

24 A No.

25 Q What did you do when you got to Minor?

1 A I picked her up.

2 Q What did you notice?

3 A She wasn't breathing.

4 Q What did you try to do?

5 A I told him to go get the phone. He brought

6 me the phone. I dialed 911. They was going through

7 CPR stuff, so I handed him the phone.

8 Q So you were the one trying to help **Minor** as

9 much as you can?

10 A Yes.

11 Q You said you heard him hit the wall?

12 A Uh-huh.

13 Q How many times did you hear him hit the wall?

14 A Once.

15 Q Did you notice there was a hole there before

16 you went in the room or anything like that?

17 A No, I wasn't paying attention.

18 Q Who were you paying attention to?

19 A **Minor**

20 Q You don't know if there was a hole in the

21 wall before or not before you even went in there?

22 A No.

23 Q You said you only heard him hit it once?

24 A Yes.

25 Q I noticed in the letter when it was being

1 read yesterday, does he have a temper, Rashawn Murphy,
2 and shows it at times?

3 **MR. THOMPSON:** I think he's trying to go
4 into character.

5 **MR. BARNETTE:** I think that was a question
6 asked on the letter -- I mean, the letter being
7 introduced. He mentions that he has a temper. I
8 can withdraw the question.

9 **THE COURT:** I'm not going to allow you to go
10 into that.

11 **MR. BARNETTE:** Thank you, ma'am.

12 **BY MR. BARNETTE:**

13 **Q** At any time, what did the defendant first
14 tell you about **Minor** supposedly falling down the
15 steps?

16 **A** I found out about it at the sheriff's office.

17 **Q** So he never told you -- how long was you with
18 him before y'all went to the sheriff's department?

19 **A** From when I got home that night.

20 **Q** Did he ever tell you anything about that?

21 **A** No.

22 **Q** He never said anything about her falling down
23 the steps?

24 **A** No.

25 **Q** If you had known she had fell down the steps,

1 what would you have done that night?

2 **A** I left him my phone. He could have called
3 and told me and I would have come home right then.

4 **Q** So you had your cell phone?

5 **A** He had my cell phone.

6 **Q** He could have called you right then?

7 **A** Yes.

8 **Q** And you would have been home as soon as you
9 could have been home. Would you have had her treated?
10 Taken her to the hospital?

11 **A** Uh-huh. Yes, I would have.

12 **Q** Mr. Thompson was asking this, she wouldn't
13 come down the stairs?

14 **A** No.

15 **Q** What would she do? She would stand at the
16 top of the stairs?

17 **A** Like the rail that was on the -- the rail's
18 right here. Come down the stairs right here. She
19 wouldn't come around the rail.

20 **Q** She wouldn't come around the rail or anything
21 like that?

22 **A** No.

23 **Q** Now, you saw the bruises and everything. You
24 saw the pictures and everything. Did she have any of
25 those bruises before you left that night?

1 **A** No.

2 **Q** Did she have a broken leg?

3 **A** Not that I -- no. She was fine when I left.

4 **Q** No bruises, none of the lacerations and
5 things like that? She had none of that?

6 **A** No.

7 **Q** You saw her before you left that night?

8 **A** Yes.

9 **MR. BARNETTE:** One moment, Your Honor,
10 please. Thank you, ma'am. Please answer any
11 question Mr. Thompson may have.

12 **THE COURT:** Mr. Thompson, any redirect?

13 **MR. THOMPSON:** Yes, Your Honor.

14 **REDIRECT EXAMINATION**

15 **BY MR. THOMPSON:**

16 **Q** Do you remember telling Ms. Weber that you
17 had never seen Mr. Murphy get violent?

18 **A** Yes.

19 **Q** And that he didn't discipline -- he didn't
20 punish **S.J.**

21 **A** No.

22 **Q** Okay. And you don't dis-- you don't deny you
23 went in and checked on the children two times, isn't
24 that right?

25 **A** Yes.

1 Q And were all three sleep in the bed?

2 A Yes.

3 MR. THOMPSON: No further questions.

4 MR. BARNETTE: No further questions for this
5 witness, Your Honor.

6 THE COURT: All right. Ma'am, you can step
7 down. I ask that you not be excused. I don't
8 know if we're going to call you in the trial
9 itself or not, okay.

10 Mr. Thompson.

11 MR. THOMPSON: M.J. [REDACTED]

12 MR. BARNETTE: Your Honor, we're going to go
13 to get him.

14 (WHEREUPON, there is a pause.)

15 THE COURT: We got the charge ready for
16 y'all to look at. We'll give it to you before
17 the break for lunch.

18 MR. LEIBERT: Thank you, Your Honor.

19 M.J. [REDACTED]

20 having first been sworn, testifies as follows:

21 THE COURT: I'm going to ask you to scoot up
22 real close to that microphone if you can. Okay.
23 Is your name M.J. [REDACTED]?

24 THE WITNESS: Yes.

25 THE COURT: Okay. Now, you're in what's

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1 called a courtroom, okay? I'm a judge, but I'm
2 not the mean kind of judge you see on TV. Okay.
3 I promise everybody in here is going to be nice
4 to you. Nobody in here can hurt you. In fact,
5 there's deputies, police officers in here. They
6 are here for nothing else but to make sure that
7 everybody in here is safe and everything goes
8 fine. Okay. All I'm going to ask you to do is
9 to listen to the questions that these attorneys,
10 these lawyers here have asked you and for you
11 just to answer it to the best of your ability.
12 Okay. You understand?

13 **THE WITNESS:** Yes.

14 **THE COURT:** Mr. Thompson.

15 **MR. BARNETTE:** Please the Court, Your Honor.
16 Your Honor, would he need to be qualified before
17 he testifies?

18 **THE COURT:** He will.

19 **MR. BARNETTE:** Okay.

20 **DIRECT EXAMINATION**

21 **BY MR. THOMPSON:**

22 **Q** Hey, M.J. . My name is Mr. Thompson. How
23 are you today?

24 **A** Good.

25 **Q** Good. You go by Mikey or M.J. ?

1 **A** M.J. [REDACTED].

2 **Q** Mikey, you mind if I call you Mikey?

3 **A** Uh-huh.

4 **Q** All right. I'm going to talk to you a little
5 bit about some things you told Ms. Weber at the
6 Children's Advocacy Center. Do you know where that
7 is?

8 **MR. BARNETTE:** Your Honor, I would ask that
9 he qualify as a witness.

10 **THE COURT:** All right. He's going to need
11 to be qualified to know if he is capable of
12 distinguishing right and wrong.

13 **BY MR. BARNETTE:**

14 **Q** And do you remember Ms. Weber kind of went
15 over that with you. You remember she asked you if you
16 knew the difference between the truth and a lie? You
17 remember her asking you that? And she would, uh, --
18 do you understand what truthfulness is and what a lie
19 is?

20 **A** (Nods head.)

21 **Q** So if I say that my suit is green, I would
22 not be telling the truth, would I?

23 **A** No.

24 **Q** If I said my tie is pink, I would be telling
25 the truth, right?

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1 **A** (Nods head.)

2 **Q** So you know the difference between the truth
3 and a lie, right? And I think she went over that
4 because she said that you did understand truthfulness,
5 right?

6 **THE COURT:** Mr. Barnette?

7 **MR. BARNETTE:** Your Honor, I'm going to have
8 to object at this point. He's not really -- he's
9 nodding.

10 **THE COURT:** Yes.

11 **MR. BARNETTE:** I don't think the court
12 reporter can hear him or not.

13 **THE COURT:** Let's do it like this. Mikey,
14 is that what you go by, you said?

15 **THE WITNESS:** (Nods head.)

16 **THE COURT:** I need for you to say yes or no.
17 I know that when we talk to people, we nod our
18 head yes and we shake our head no. I need for
19 you actually to say the word yes, if you mean
20 yes, and no, if you mean no. Can you do that for
21 me?

22 **THE WITNESS:** Yes.

23 **THE COURT:** Okay. And can you say it into
24 that microphone if you possibly can, okay?

25 **THE WITNESS:** (Nods head.)

1 **THE COURT:** Okay. All right. And tell me
2 this, Mikey, how old are you?
3 **THE WITNESS:** 11.
4 **THE COURT:** And what grade are you in?
5 **THE WITNESS:** Fifth. Fifth.
6 **THE COURT:** Fifth. And what school do you
7 go to?
8 **THE WITNESS:** Park Hills Elementary School.
9 **THE COURT:** Who is your teacher?
10 **THE WITNESS:** Ms. Clemmons.
11 **THE COURT:** Miss who?
12 **THE WITNESS:** Ms. Clemmons.
13 **THE COURT:** Ms. Clemmson? You like Ms.
14 Clemmons?
15 **THE WITNESS:** Yes.
16 **THE COURT:** Is she nice?
17 **THE WITNESS:** Yes.
18 **THE COURT:** Okay. You're doing great saying
19 yes and no into the microphone. You are doing
20 great. Mikey, you understand that you have to
21 tell the truth in court, right?
22 **THE WITNESS:** Uh-huh.
23 **THE COURT:** And say yes or no into the
24 microphone for me.
25 **THE WITNESS:** Yes.

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1 **THE COURT:** Okay. Now, is it better to tell
2 the truth or is it better to tell a lie?

3 **THE WITNESS:** It's better to tell the truth.

4 **THE COURT:** What happens if you tell a lie?

5 **THE WITNESS:** You probably will go to jail
6 or probably could get in trouble.

7 **THE COURT:** You would get in trouble.
8 That's exactly right. You would get in trouble.
9 Everything is okay if you tell the truth, right?

10 **THE WITNESS:** Yes.

11 **THE COURT:** All right. Uh, I've got a ball
12 in my hand. What color is this ball?

13 **THE WITNESS:** Green.

14 **THE COURT:** And if I told you that this ball
15 was blue -- just like this attorney asked you, if
16 I told you this ball was blue, would I be telling
17 you the truth or would I be telling you a lie?

18 **THE WITNESS:** A lie.

19 **THE COURT:** And that wouldn't be good, would
20 it?

21 **THE WITNESS:** No.

22 **THE COURT:** Mr. Barnette, ---

23 **MR. BARNETTE:** That's fine.

24 **THE COURT:** --- anything else?

25 **MR. BARNETTE:** That's fine. Thank you, Your

1 Honor.

2 THE COURT: All right. I find he is
3 qualified. All right.

4 BY MR. THOMPSON:

5 Q And you understand that if you don't remember
6 something, you can just say I don't remember. You
7 don't have to guess an answer. Okay?

8 A Yes.

9 Q Okay. And do you remember talking at the
10 Children's Advocacy Center with Ms. Weber?

11 A No.

12 Q It's the big brick house over in Spartanburg?

13 A No, I don't remember.

14 Q You don't remember going over there with your
15 mother? Okay. I'm going to read some stuff and see
16 if it sparks your memory, okay?

17 MR. BARNETTE: Your Honor, I want to object
18 at this point unless he forms it in the form of a
19 question. He can't read it to him.

20 THE COURT: All right. Mr. Thompson, I'm
21 just going to ask you to phrase it in a question.

22 BY MR. THOMPSON:

23 Q Okay. Do you remember, uh, going here and
24 talking to Ms. Weber?

25 A No.

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1 **Q** You don't remember? You don't remember going
2 over there with your mother? Did you go with your
3 mother on a few days, about two weeks after **Minor**
4 death? You don't remember?

5 **A** (Shakes head.)

6 **Q** Do you remember going and talking to a lady?

7 **A** Yes, I remember going and talked to her. But
8 I don't know what --

9 **Q** Okay. That was the Children's Advocacy
10 Center. And did you go and talk to her --

11 **MR. BARNETTE:** Your Honor, he can't lead the
12 witness. He said he talked to a lady. I know
13 he's a child and he has to give some latitude,
14 but he can't assume that's the lady that he
15 talked to.

16 **THE COURT:** All right. And Mr. Thompson, I
17 would just be careful to lay the proper
18 foundation.

19 **BY MR. THOMPSON:**

20 **Q** All right. You said you do remember talking
21 to someone?

22 **A** Yes.

23 **Q** Okay. And how many times did you go over
24 there, do you remember?

25 **A** I think I went over there two times.

1 Q Okay. Good. And you remember talking to her
2 about the night that [REDACTED] died?

3 A Yes.

4 Q Okay. Do you remember that night?

5 A Yes.

6 Q Okay. Who all was at your house that night?

7 A It was me, Shawn and my brother and [REDACTED].

8 THE COURT: Mikey, I'm going to need you to
9 speak into the microphone. Hold on one second.
10 (Pause.)

11 Mr. Thompson, can I ask you to move around.
12 I want to see if you will move in front of him.

13 MR. THOMPSON: Okay.

14 THE COURT: That way, what he's doing is
15 exactly right. He's trying to answer your
16 questions and turn into you. But if you're in
17 front of him, he might answer forward. Okay.
18 Will you ask that question again and will you
19 answer it again?

20 BY MR. THOMPSON:

21 Q Okay. Who all was at your house that night?

22 A Me, my brother, my sister and Shawn.

23 Q And is your brother Mijay? Is that what he
24 goes by?

25 A Yes.

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1 Q Okay. And do you recall eating supper that
2 night?

3 A Uh-huh. Yes.

4 Q And what did you have for supper?

5 A I probably ate some noodles or -- I forgot.
6 I remember eating though.

7 Q Okay. And did you watch TV that night?

8 A Yes.

9 Q What did you watch?

10 A My brother wanted to watch SpongeBob so I
11 turned it to that channel.

12 Q You watched SpongeBob? You like SpongeBob?

13 A My brother does, but I don't.

14 Q He does. You got to do what your little
15 brother likes sometimes, right?

16 A Yes.

17 Q Okay. Did you watch The Suite Life of Zack
18 and Cody?

19 A Yes.

20 Q Okay. And did you -- where was Shawn when
21 you were watching TV?

22 A Upstairs in my mom's room.

23 Q In who's room?

24 A My mom's.

25 Q Your mom's room? Okay. Did you go up to

1 that room?

2 A Yes.

3 Q Okay. Was Shawn still in there?

4 A Yes.

5 Q Where was Minor [REDACTED]?

6 A She was on the wall, leaning a little bit,

7 crying.

8 Q She was upstairs in the hallway?

9 A No, inside the room with Shawn.

10 Q Okay. Did you see inside the room?

11 A No, cause the door was locked.

12 Q Okay. The door was locked. Was Shawn

13 playing music?

14 A Yeah.

15 Q What did you do after? Did you knock on the

16 door?

17 A Yes.

18 Q Did Shawn open the door?

19 A Yes.

20 Q He did?

21 A (Nods head.)

22 Q Okay. And what was Minor [REDACTED] doing when you --

23 when he opened the door?

24 A She was leaning against the wall, slanted a

25 little bit, crying.

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1 Q Okay. And what happened then? Did you go
2 back downstairs?

3 A No, I said I heard a lot of bumping. I
4 wanted to know what it was.

5 Q Did you ask Shawn what it was?

6 A Yes.

7 Q What did he say?

8 A He said that he was moving stereos and
9 everything around.

10 Q And where did you go from there? Did you
11 just stay in the room with Shawn?

12 A No, I went back downstairs.

13 Q Okay. You started watching SpongeBob again?

14 A Uh-huh.

15 Q Mijay, was he still downstairs?

16 A Yes.

17 Q Okay. And what did, uh, -- did Minor go
18 downstairs?

19 A No, she stayed inside the room with Shawn.

20 Q She stayed inside your mom's room with Shawn?

21 A Yes.

22 Q And did Shawn comes downstairs eventually?

23 A Yes, with Minor.

24 Q He brought Minor downstairs?

25 A Yes.

1 Q And is that when you guys ate supper or did
2 you already eat supper?

3 A We had already eaten supper.

4 Q Okay. You remember about what time was it?
5 Was it dark outside already?

6 A It was dark outside.

7 Q It was. Was it getting close to bedtime?

8 A Yes.

9 Q Now, when you say you looked in the room and
10 saw Minor [REDACTED] was that after you heard the bumping?

11 A No, it was before.

12 Q Before?

13 A (Nods head.)

14 Q You heard bumping. Is that when you went up
15 and knocked on the door?

16 A Yes.

17 Q You -- is that when Shawn opened it?

18 A Yes.

19 Q Is that when he told you he was moving stuff?

20 A Yes.

21 Q And where was Minor [REDACTED] when he opened the door?

22 A On the wall beside my mom's bed leaning,
23 crying.

24 Q Was she standing or sitting?

25 A Sitting.

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1 Q Sitting. Was she crying?

2 A Yes.

3 Q Was? Okay. Now at any time during that
4 night did Shawn go into your room?

5 A Yeah. He had went inside my room when it was
6 time for bed and tried to put her to sleep.

7 Q Who all slept -- who did you sleep with?
8 Anybody?

9 A No, I slept by myself.

10 Q You did? Okay. And did you share a room
11 with anybody?

12 A Yeah, I shared a room with my brother.

13 Q With your brother Mijay?

14 A Yes.

15 Q Where did Minor sleep?

16 A That night, she slept with my brother.

17 Q Slept with who?

18 A My brother.

19 Q With your brother? Is that your bed there?

20 A Yeah.

21 Q That looks like your bed? And then, I guess,
22 is that Mijay's bed, the bunk bed right there?

23 A Yes.

24 MR. BARNETTE: Your Honor, may I go up and
25 be able to see what he's pointing at?

1 **THE COURT:** Yes.

2 **MR. THOMPSON:** And these are probably in
3 evidence.

4 **BY MR. THOMPSON:**

5 **Q** Are these beds in the same room?

6 **A** Yes.

7 **Q** Okay. And how does Mijay get the bunk bed?
8 That's a pretty cool bed, isn't it?

9 **A** Yes. I used to sleep with my brother. But
10 now I didn't because I had my own bed inside the same
11 room.

12 **Q** You liked the bunk bed?

13 **A** No.

14 **Q** You don't?

15 **A** (Shakes head.)

16 **Q** Mijay like it?

17 **A** Yes.

18 **Q** And do you, uh, -- did [REDACTED] have a crib?

19 **A** Yes. It was inside my mom's room, I think.

20 **Q** Okay. And did she sleep in the crib nightly?

21 **A** Not all the time.

22 **Q** Why not?

23 **A** Because she will try to climb out and stuff
24 like that. Really, sometimes she'll go to sleep with
25 my mom or my brother.

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1 Q Was the crib in good shape?

2 A Yes.

3 Q Okay. Now, M.J., I mean, Shawn was
4 upstairs. And you went up there and you opened the
5 door. You said he brought Minor downstairs, right?

6 A Yes.

7 Q And is that when he put all you guys to bed?

8 A Yes.

9 Q Now, did you go to bed the same time Minor
10 did?

11 A Yes.

12 Q When you went into your mom's room, did you
13 talk to her or play with her or anything?

14 A No. He told me to go back downstairs.

15 Q Okay. Then he followed after you did?

16 A No, we stayed downstairs for a little while.
17 After I think when it was time for me to eat, he came
18 down here -- came downstairs and took Minor.

19 Q Now, when you saw Minor was she playing,
20 jumping, walking, what was she doing?

21 A She was just sitting there being quiet.

22 Q She was sitting there. Was she awake?

23 A Yes.

24 Q Okay. And did she eventually stop crying?

25 A Yes.

1 Q Okay. Did Shawn do anything to make her stop
2 crying, give her a bottle or pacy or anything?

3 A He laid her down on the bed and started
4 patting her on the back.

5 Q Okay. Was that on your mom's bed?

6 THE COURT: Mr. Thompson, could just you to
7 just move around front?

8 MR. THOMPSON: I'm sorry.

9 THE COURT: That's okay. He's just wanting
10 to talk to you.

11 BY MR. THOMPSON:

12 Q Was that on your mom's bed? He laid her on
13 your mom's bed or your bed?

14 A My brother's.

15 Q Mijay's bed?

16 A Yes.

17 Q And was SpongeBob off by then, gone off by
18 then?

19 A Yes.

20 Q So it was getting later at night?

21 A Yes.

22 Q Do you remember the next morning when you
23 found Minor in the bed?

24 A Yes.

25 Q Did you run and check on her?

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1 A Yeah.

2 Q Okay. What made you want to check on Minor ?

3 A Really, out of nowhere. Sometimes when my
4 mom has a baby and it's a girl, I like to check on
5 them.

6 Q Okay. Repeat that one more time.

7 A Really, like when my mom has a baby and it's
8 a girl, I like to check on them a lot.

9 Q Okay. Cause you're a big brother, right?

10 A Yes.

11 Q That's what big brothers do. That's good.
12 Okay. And when you checked on her, what did she look
13 like?

14 A She looked kind of purple.

15 Q Where was she?

16 A She was like in the corner of the bed and the
17 wall.

18 Q Okay. Can you show me on this bunk bed where
19 she was?

20 A Her head was right there. The rest of her
21 body was right here.

22 Q I'm going to put this up. You see that big
23 screen, M.J. ?

24 A Yes.

25 Q I'm going to try to put this up here. So you

- 1 said her head was right here where my pen is?
- 2 A Yes.
- 3 Q Okay. And what position was she in?
- 4 A She was on her belly.
- 5 Q Her belly?
- 6 A Yes.
- 7 Q Which way were her legs going?
- 8 A They were going like -- they were going
- 9 towards, like, off the bed.
- 10 Q Toward the wall or toward the outside of the
- 11 bed right here?
- 12 A Yeah.
- 13 Q Or here?
- 14 A (No response.)
- 15 Q Here?
- 16 A Yeah.
- 17 Q Okay. And her head was -- when you say her
- 18 head was here, what do you mean there?
- 19 A Her head was like between the bed and the
- 20 wall.
- 21 Q Between the bed and the wall?
- 22 A Yeah.
- 23 Q Okay. Was it stuck in there?
- 24 A No.
- 25 Q It was between the wall and the bed, right?

M.J. [REDACTED] - Direct Examination by Mr. Thompson

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1 A Yes.

2 Q Where were her arms?

3 A One of her arms was right there behind her
4 back. The other one was right bedside her.

5 Q Behind her back?

6 A Yeah. Her arms like this. (Demonstrating.)

7 Q All the way behind?

8 A Not all the way. Just like this.

9 Q Okay. And was that how she normally slept?

10 A No. Usually, she would sleep with both her
11 arms beside her, like that.

12 Q I'm going to show you something here just to
13 give me an idea.

14 MR. BARNETTE: Your Honor, I'm going to
15 object. I know we're doing for a proffer, but
16 I'm going to object in front of the jury.

17 THE COURT: All right. All right. For
18 purposes of the proffer, just to give us an idea
19 what he's talking about.

20 BY MR. THOMPSON:

21 Q All right. You see this little stuffed
22 animal? That's all I had in my house.

23 A Yes.

24 Q Can you show me how she was laying?

25 A She was laying with this arm like this and

1 the other one right beside her and her head just like
2 that.

3 Q Okay. Was her leg bent? Her head bent, I
4 meant?

5 A I forgot about her legs. I don't remember
6 how they went.

7 Q You forgot how her legs were?

8 A Yeah.

9 Q Okay. So she had her arm kind of behind her
10 like that?

11 A Yeah.

12 Q And the other one beside her?

13 A Yes.

14 Q Okay. Where was Mijay?

15 A Mijay was sitting there on the pillow sleep.

16 Q He was sitting on the pillow sleep?

17 A Yes.

18 Q What happened next?

19 A I had got up just to check on her. Once I
20 tried to check on her, I tried to see if she was
21 breathing. She wasn't. I went downstairs to tell my
22 mom and Shawn that she wasn't breathing. So they ran
23 upstairs and called the, uh, hospital. Shawn, he got
24 kind of mad because he didn't know what to do and
25 punched holes in the wall.

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- 1 Q He did? He punched it a bunch of times?
- 2 A Yes.
- 3 Q And hurt his hands?
- 4 A Yeah.
- 5 Q He did?
- 6 A (Nods head.)
- 7 Q Was that in your room or in your mother's
- 8 room?
- 9 A My room.
- 10 Q And where did he punch a hole in relation to
- 11 your bed and Mijay's bed? Why did he punch the wall?
- 12 A Because he --
- 13 MR. BARNETTE: Objection, Your Honor.
- 14 THE COURT: Sustained.
- 15 BY MR. THOMPSON:
- 16 Q Was he happy or sad or angry?
- 17 A Angry.
- 18 Q Angry?
- 19 A He didn't know what to do.
- 20 Q Okay. So where was Minor at this time?
- 21 A She was on my bed.
- 22 Q On your bed?
- 23 A Yeah.
- 24 Q And where was your mom?
- 25 A She was sitting next to -- I think I had a

1 closet next to the door. She was sitting down crying.

2 Q So let's pretend that this is your bed right
3 here and this is Mijay's bed over there. Okay. So
4 would that be the wall he hit between the two beds?

5 A Yes.

6 Q Okay. And you said he hurt his hand?

7 A Yes.

8 Q Did you sleep in that room all night?

9 A Yes.

10 Q Did anybody come in that room during the
11 night?

12 A Really, I don't know because I was sleep.

13 Q You remember if your mom came and checked on
14 you?

15 A Huh-uh, cause my mom just got in the house
16 when it was time for us to go to sleep.

17 Q Okay. But you did get to see your mom before
18 you went to sleep?

19 A Yes.

20 Q Okay. Who went to sleep first? Mijay or

21 Minor

22 A Really, I go to sleep faster.

23 Q Do you?

24 A Yes.

25 Q And you were sleep across the room on your

M.J. - Cross-Examination by Mr. Barnette

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1 bed, right?

2 A Yes.

3 Q And how long did you lay there before you
4 went to sleep?

5 A I don't know.

6 Q You remember what Mijay was doing or what
7 Minor was doing?

8 A Mijay, he was sitting up playing with Minor
9 so she could get tired and go to sleep.

10 Q So she wasn't sleeping?

11 A Huh-uh.

12 Q You think you probably went to sleep before
13 Minor and Mijay did?

14 A Yes.

15 Q Okay. And how does Mijay play with her?

16 A Like, he picks her up and tickles her.

17 Q Okay. M.J., I don't have any more
18 questions for you. Mr. Barnette will ask you some
19 questions.

20 MR. BARNETTE: May it please the Court, Your
21 Honor?

22 THE COURT: Yes, sir.

23 MR. BARNETTE: May I sit in a chair, Your
24 Honor?

25 THE COURT: Sure.

1 CROSS-EXAMINATION

2 BY MR. BARNETTE:

3 Q Mikey, my name is Barry. I know we didn't
4 get a chance to talk earlier, but I need to ask you
5 some questions. Is that okay?

6 A Yes.

7 Q Uh, I noticed you said that [REDACTED] was up in
8 the room. Was that the master bedroom? Was she
9 crying in the room when you went up that day?

10 A Yes.

11 Q And the door was locked when you got there?

12 A Yes.

13 Q Did you knock on the door to try and get in?

14 A Yes.

15 Q And he opened the door?

16 A Yes.

17 Q Did he see [REDACTED] crying in there?

18 A Yes.

19 Q And did he tell you to leave?

20 A Well, he -- I looked at her a little bit.

21 When he came to the door, I asked him what was he
22 doing. He said he was moving stereos around. I said
23 okay. I went back downstairs. Then he tells me -- he
24 tells me to go downstairs and watch TV until he comes
25 downstairs.

M.J. - Cross-Examination by Mr. Barnette

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1 Q The bumping and things you heard, was that
2 after you went back downstairs?

3 A Huh-uh, that was before.

4 Q That was before when you went up to check and
5 see what was going on?

6 A Yes.

7 Q So you heard a lot of bumping in the master
8 bedroom?

9 A Yes.

10 Q He said he was moving furniture?

11 A Yes.

12 Q Did he just want to move one stereo? Is that
13 all he moved?

14 A I think two stereos in there.

15 Q Okay. How long did it take? The bumping
16 went on -- it got your attention, I assume, for you to
17 go upstairs.

18 A Yes.

19 Q And Minor wouldn't go down the stairs
20 herself, would she?

21 A Huh-uh.

22 Q She was scared to. She wouldn't go down --
23 she would cry or ask somebody to help take her
24 downstairs, wouldn't she?

25 A Yes.

1 Q And, uh, the night this happened or whatever,
2 didn't your mom ask you to go -- weren't you still up
3 when your mom got there?

4 A Yes.

5 Q And did she tell you -- you and your brother
6 -- your sister was already in bed, wasn't she, when
7 your mom got there?

8 A No, Shawn was holding her downstairs. Then
9 he had brought her up. Me and my brother, we were
10 already in the bed until Shawn came up there and laid
11 her down and tried to put her to sleep.

12 Q Okay. What time did you go to bed?

13 A I don't remember.

14 Q Okay. I don't want to put words in your
15 mouth or anything like that. I want you to go back
16 and remember that night. Was you up when your mom got
17 there?

18 A No. Well, yeah. I was up but we were just
19 going upstairs when my mom had walked in.

20 Q So you did see your mom that night?

21 A Yes.

22 Q And she told you to go ahead and go to bed,
23 isn't that right?

24 A Yes.

25 Q And wasn't it true that your sister -- Shawn

1 had already put your sister to bed before your mom got
2 there in the room?

3 **A** Yes.

4 **Q** Your sister was already in the room when
5 y'all went to bed that night?

6 **A** Yes.

7 **Q** And when you woke up that morning, you said
8 she was purple?

9 **A** Yes.

10 **Q** She wasn't breathing?

11 **A** Huh-uh.

12 **Q** Was it your mom that ran over to get her once
13 you told her what happened? When you went downstairs,
14 did your mom come up and check [REDACTED] or look at
15 [REDACTED]

16 **A** Yeah, and then Shawn had came over and picked
17 her up and put her on my bed.

18 **Q** Let me ask you a question. When you went up
19 the stairs, did your mom go up the stairs first? Who
20 went up the stairs first to [REDACTED] -- to y'all's room?

21 **A** Shawn.

22 **Q** Shawn did?

23 **A** Yes.

24 **Q** And who went up second?

25 **A** My mom.

1 Q Who went up third?

2 A My brother.

3 Q Who went up fourth?

4 A Me.

5 Q Okay. Now I know you testified earlier your
6 brother was asleep.

7 A Yeah.

8 Q How did he get downstairs?

9 A I really don't know. I went downstairs.
10 Everybody came up. I think he woke up.

11 Q Uh-huh. So where did you -- you went up the
12 stairs last?

13 A Yes.

14 Q How long did it take -- was you downstairs
15 for a little while with your brother before y'all went
16 upstairs?

17 A No.

18 Q Okay. And did your mom call the police or
19 call 911?

20 A No, Shawn did.

21 Q So Shawn called the police? Are you sure
22 that she didn't call the police or do you know? What
23 I'm saying is, did they get up there before you got up
24 there?

25 A Yeah. But my mom told Shawn to call the

1 police. He did.

2 Q Was your mom real concerned about Minor ?

3 A I don't know what concern mean.

4 Q What's that? I'm sorry.

5 A I don't know what concern mean.

6 Q Not concerning you, Minor Was she trying
7 to help Minor and trying to check Minor out?

8 A Yes.

9 Q When you said that Shawn hit the wall, did
10 you actually see him hit the wall or did you hear the
11 wall?

12 A I seen him hit the wall.

13 Q Where was you standing at when that happened?

14 A I was standing where my mom was.

15 Q Where your mom was?

16 A Yes.

17 Q Was your mom working with Minor s or had she
18 carried Minor out that time?

19 A Shawn really carried her. My mom was just
20 sitting or whatever by the wall crying. My brother
21 was with me and my mom.

22 Q Okay. So your testimony was that Shawn was
23 holding Minor ?

24 A Yeah. He picked her up and hold her for a
25 while. He had put her down on my bed.

1 Q Let me ask you this question. Obviously,
2 [REDACTED] -- Shawn had put [REDACTED] to bed that night, is
3 that right?
4 A Yes.
5 Q Had she, uh, -- did she have a lot of bruises
6 on her face before she went to bed that night or
7 anything like that?
8 A No.
9 Q Did she have any cuts on her face before she
10 went to bed that night?
11 A No.
12 Q Had she broke her leg that night?
13 A No.
14 Q And she wouldn't go down the stairs?
15 A No.
16 Q You didn't see her land on the stairs that
17 night, did you?
18 A No.
19 Q Did Shawn say anything about her falling down
20 the stairs to you?
21 A No.
22 Q You never saw her on the stairs, did you?
23 A I seen her go up the stairs, but not come
24 down.
25 Q She wouldn't come down the stairs, would she?

1 A No.

2 Q And, uh, when Shawn hit the wall, did he hit
3 it one time?

4 A No, more than one time.

5 Q Did you see that or hear that?

6 A I seen it.

7 Q Okay. Where was [REDACTED] when this happened?

8 A When I woke up?

9 Q No, when he hit the wall. Where was she at?

10 A She was laying in my bed.

11 Q In your bed?

12 A Yes.

13 Q Who put her in that bed?

14 A Shawn.

15 Q You say normally she lays with both arms
16 down? The only difference was she had one arm back, I
17 guess, and one down. She usually laid like this when
18 she laid in the bed.

19 A Yeah.

20 Q And, uh, how was she in the bed when Shawn
21 put her in your bed?

22 A She had, like, one of -- like, both of her
23 feet was kind of hanging off the bed. It was like
24 when I just woke up. When I had just came down the
25 stairs and told them, Shawn had came up there and put

1 her on my bed. And her, kind of, both of her feet was
2 hanging off the bed. Her arms was like up there with
3 her head like this. (Demonstrating.)

4 Q So her head was pointing against the other
5 wall?

6 A Yes.

7 Q Like this is the room. You are saying your
8 bed is on this side?

9 A Yes.

10 Q Your bed was on this side. The bunk bed was
11 on this side?

12 A Yes.

13 Q Her feet was hanging this way towards the
14 middle of the room and her head was pointing away from
15 it?

16 A Yeah.

17 MR. BARNETTE: One moment, Your Honor,
18 please. (Pause.)

19 Mikey, thanks for answering my questions.

20 THE WITNESS: You're welcome.

21 THE COURT: Mr. Thompson.

22 MR. THOMPSON: Just briefly.

23 REDIRECT EXAMINATION

24 BY MR. THOMPSON:

25 Q Mikey, is the stereo big at your house? Is

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1 that a big stereo?

2 A Yes.

3 Q It was? All right. And I want to get clear
4 on where Minor was laying at. When you said her feet
5 were hanging off, was that off of your bed when Shawn
6 had picked her up and put her over there?

7 A Yes.

8 Q And was her feet hanging -- were her feet
9 hanging off the bunk bed too?

10 A (Shakes head.)

11 Q They weren't?

12 A No.

13 Q Okay. Now, does Mikey go up and down the
14 stairs? I mean Mijay. I'm sorry.

15 A Yeah.

16 Q He does? Okay. And how long did you guys
17 live there? How long did you guys live in that house?
18 Do you remember?

19 A No.

20 Q Could Mijay walk when you guys moved in
21 there?

22 A Yes.

23 Q He was always up and down the stairs then?

24 A Yes.

25 Q Okay. No more questions, Mikey. Thank you.

1 **THE COURT:** Anything else?

2 **MR. BARNETTE:** Nothing further, Your Honor,
3 for this witness.

4 **THE COURT:** All right. Mikey, you can step
5 down. Okay. You can come down and, uh, walk out
6 with this lady right here. Okay. Thank you.
7 You did great.

8 Mr. Thompson, you going to call anybody else
9 on proffer?

10 **MR. THOMPSON:** No, Your Honor.

11 **THE COURT:** All right. Uh, so we're in a
12 situation to break for lunch it looks like? All
13 right. Let's be in recess until 1:30. I want to
14 give both of y'all a copy of my charge. It's the
15 whole entire thing.

16 **MR. BARNETTE:** May I approach the bench,
17 Your Honor?

18 **THE COURT:** Of course.

19 (WHEREUPON, a recess is taken from approximately
20 12:25 p.m. to 1:46 p.m.)

21 **THE COURT:** Any matters that we need to take
22 up from the State before the jury comes back in?

23 **MR. THOMPSON:** No, Your Honor.

24 **THE COURT:** From the defense?

25 **MR. THOMPSON:** None, Your Honor.

1 **THE COURT:** All right. We can bring the
2 jury back in.

3 **(WHEREUPON, the jury enters at approximately**
4 1:48 p.m.)

5 **THE COURT:** Ladies and Gentlemen of the
6 jury, I hope you had a good lunch. I appreciate
7 you being back so promptly. While you were gone,
8 I'm pleased to report we were able to take care
9 of all of our business. So we are ready to start
10 back with the defense's case.

11 Yes, sir.

12 **MR. THOMPSON:** Please the Court, Your Honor.
13 I'll call Officer Lorin Williams.

14 **LORIN WILLIAMS**

15 having first been sworn, testifies as follows:

16 **DIRECT EXAMINATION**

17 **BY MR. THOMPSON:**

18 **Q** Officer Williams, can you state your name for
19 the Court's records please.

20 **A** Lorin Williams.

21 **Q** Lorin, uh, where do you work?

22 **A** Spartanburg County Sheriff's Office.

23 **Q** And what's your capacity at the sheriff's
24 office?

25 **A** I'm a violent crime investigator with the

1 sheriff's office.

2 Q Did you participate in investigating the
3 death of Minor [REDACTED]

4 A Yes, sir. I did.

5 Q Okay. And did you take a statement from
6 Samantha Hill?

7 A Yes, sir. I believe so.

8 Q All right. Is this your signature here?

9 A Yes.

10 Q You witnessed that statement. Do you have
11 any notes with you today from that case?

12 A Yes, sir. I do.

13 Q Okay. Now, can you tell me how you initially
14 became involved with the case?

15 A I would have been on call for violent crimes
16 with the sheriff's office. I believe I received a
17 call from Spartanburg County 911 in reference to a
18 child death. At that point, I would have contacted
19 the officer that was on the scene. In this particular
20 case, it was Sergeant Turner. The female had actually
21 been transported to the sheriff's office -- I'm sorry
22 -- to the morgue. We had an ID officer that was at
23 the trauma bay at Spartanburg Regional. I had spoken
24 to him on the phone.

25 Q Okay. And did you go to the hospital first?

1 **A** I believe I actually went to the scene first.

2 **Q** The scene would be their home?

3 **A** Their home, yes, sir. The incident location.

4 **Q** Did you go inside the home?

5 **A** Yes, we did.

6 **Q** And do you recall what you observed inside
7 the home?

8 **A** Uh, I had documented somewhere in my notes
9 that upon going inside the residence, it was cluttered
10 but not dirty. We had actually gone upstairs to, uh,
11 the room where the child was found by the mother.

12 **Q** Okay. Now what did you observe in that room
13 as far as the condition of that?

14 **A** Just looked like a child's room. Cluttered.
15 The thing that stood out the most at that point was a
16 hole in the wall between the two beds.

17 **Q** And that's the hole we received a picture of?

18 **A** That's correct.

19 **Q** And what did you -- did you investigate that
20 hole in the wall?

21 **A** Yes, sir. I mean, we asked what -- where it
22 come from.

23 **Q** And did you ask the family members?

24 **A** In my notes --

25 **MR. BARNETTE:** Your Honor, I want to object

1 at this point about hearsay.

2 THE COURT: All right. I'll just say you
3 can't say anything or elicit testimony about what
4 anyone said. You can continue.

5 BY MR. THOMPSON:

6 Q Did your investigation -- what did you learn
7 about the hole?

8 A Once we spoke with, uh, --

9 MR. BARNETTE: Objection, Your Honor.

10 THE COURT: Sustained.

11 MR. THOMPSON: He didn't finish his
12 statement. He didn't say --

13 THE COURT: Will the attorneys approach?

14 (WHEREUPON, a bench conference is held off the
15 record from approximately 1:54 p.m. to 1:55 p.m.)

16 THE COURT: Sustained.

17 BY MR. THOMPSON:

18 Q All right. In the course of your
19 investigation, did you learn where the hole came from?

20 A I was told how the --

21 MR. BARNETTE: Objection, Your Honor.

22 Hearsay. I think it's hearsay no matter what.
23 He's trying to get the answer somebody told him.

24 THE COURT: All right. Sustained.

25 BY MR. THOMPSON:

Lorin Williams - Direct Examination by Mr. Thompson

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1 Q Did you speak with the owners of the house or
2 the people that lived in the house?

3 A I spoke to the victim's mother and Mr.
4 Murphy.

5 Q You did speak to Mr. Murphy? Okay. Now, uh,
6 did you inquire from Mr. Murphy about the hole in the
7 wall?

8 A Yes, sir. We had asked how it, how it got
9 there.

10 Q And did you get a -- you can't say what he
11 said. Okay. Did he give you an explanation?

12 A He said that he had punched a hole in the
13 wall.

14 Q He did? Did you observe any scars or
15 anything on his hands that might have indicated he did
16 that?

17 A No, sir.

18 Q You didn't?

19 A No, sir.

20 Q You didn't ask him about his hand?

21 A If anything -- if we had noticed anything
22 about that, as far as any types of injuries or
23 anything such as that, it would have been documented
24 through photographs.

25 Q Of him?

1 **A** Yes, sir.

2 **Q** Okay. And then, uh, where did you go from
3 there? From the scene?

4 **A** Uh, I would have gone back to the hospital.
5 We would have gone to the hospital for the autopsy.

6 **Q** Okay. And eventually, did you -- what was
7 your role from there? Once you attended the autopsy
8 and it was over, what was your role from there?

9 **A** Well, once it was determined by Dr. Wren what
10 the cause of death was, basically at that point, we
11 went back to the scene. We had obtained some contact
12 information prior to leaving for both the mother and
13 for Mr. Rashawn Murphy. We called them. And if I
14 remember correctly, they actually met us back at the
15 house at that point. We asked them if they would come
16 to the sheriff's office. They drove to the sheriff's
17 office and then we started the interviews.

18 **Q** And eventually, are you the one that signed
19 the warrant?

20 **A** Yes, sir.

21 **Q** Okay. I have no further questions.

22 **THE COURT:** Mr. Barnette?

23 **MR. BARNETTE:** Just one question, Your
24 Honor.

25 **THE COURT:** Yes, sir.

1 **MR. BARNETTE:** Please the Court.

2 **CROSS-EXAMINATION**

3 **BY MR. BARNETTE:**

4 **Q** Investigator Williams, uh, when you went to
5 the autopsy, obviously, this was not a natural death,
6 what happened to this child?

7 **A** Absolutely not.

8 **MR. BARNETTE:** Okay.

9 **THE COURT:** Anything else, Mr. Thompson?

10 **MR. THOMPSON:** No, Your Honor.

11 **THE COURT:** Sir, you can step down. Thank
12 you for being here.

13 Can he be excused or is he staying?

14 **MR. BARNETTE:** We give him permission to
15 leave if he needs to.

16 **THE COURT:** Sure.

17 **MR. BARNETTE:** He can stay also.

18 **THE COURT:** Of course. Thank you.

19 **MR. THOMPSON:** Please the Court, Your Honor.

20 **THE COURT:** Yes, sir.

21 **MR. THOMPSON:** We call Samantha Hill.

22 **THE COURT:** All right. Ms. Hill, if you'll
23 come forward and be sworn.

24 **SAMANTHA HILL**

25 having first been sworn, testifies as follows:

DIRECT EXAMINATION

1
2 **BY MR. THOMPSON:**

3 **Q** Ms. Hill, can you state your name for the
4 Court please.

5 **A** Samantha Hill.

6 **Q** Samantha, you are the mother of **Minor**
7 Rogers, correct?

8 **A** Yes.

9 **Q** I'm going to ask you some things about that.
10 Okay. Do you recall the day you went to the hospital
11 with **Minor** ?

12 **A** Yes.

13 **Q** Okay. And do you remember speaking with Mr.
14 Lully from the coroner's office?

15 **A** Yes.

16 **Q** And you remember writing this statement for
17 him?

18 **A** Yes.

19 **Q** Okay. And that's your signature down here?

20 **A** Yes.

21 **Q** Okay. And you did that at 11:35 on January
22 3rd, is that correct?

23 **A** Yes.

24 **Q** Now, I'm going to ask you some questions
25 about this statement. Did you put -- you said --

1 **MR. BARNETTE:** Your Honor, I'm going to
2 object to him reading the statement. If he wants
3 to ask her questions, I don't have a problem with
4 that.

5 **THE COURT:** I will just ask you to phrase
6 your questions in the form -- comments in the
7 form of a question.

8 **MR. BARNETTE:** Your Honor, the thing I'm
9 concerned about is he's asking her to read the
10 statement. I think he needs to ask her the
11 question and then if she ---

12 **THE COURT:** I'm sorry.

13 **MR. BARNETTE:** --- answers --

14 **THE COURT:** All right. If you'll just ask
15 her questions based on her statement. If I could
16 ask you, Mr. Thompson, just to maybe stand on her
17 other side. I'm not trying to block the jury. I
18 just want my court reporter to be able to see
19 her.

20 **BY MR. THOMPSON:**

21 **Q** All right. This is your statement, correct?

22 **A** Yes.

23 **Q** Okay. And in your statement, did you
24 indicate what time Shawn put **Minor** to bed?

25 **A** Yes.

1 Q Did you indicate her condition at that time?

2 A Yes.

3 Q Did you indicate that she was fine?

4 A Yes.

5 Q And what time -- according to your statement,

6 what time did you and Shawn go to bed?

7 A 2 a.m.

8 Q Did you indicate what **Minor** condition was

9 at that time?

10 A Fine.

11 Q I'm sorry. What?

12 A She was fine.

13 Q Okay. And then what time did your alarm go

14 off?

15 A 5:45.

16 Q And why do you get up that early?

17 A My alarm go off every morning at 5:45 for my

18 kids to go to school.

19 Q All right. And now who usually got up first,

20 you or the kids?

21 A Me, when I hear it go off.

22 Q Did you turn the alarm off?

23 A No.

24 Q Who did?

25 A Shawn insisted on turning it off.

Samantha Hill - Direct Examination by Mr. Thompson

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1 Q Okay. Where were you sleeping at that time?

2 A Downstairs.

3 Q Was Shawn with you?

4 A Yes.

5 Q Was there a bedroom downstairs?

6 A No.

7 Q So where were you sleeping?

8 A On the couch.

9 Q And did the kids -- were the kids up yet?

10 A No.

11 Q What time did they get up?

12 A Mikey ran downstairs.

13 Q Okay. You don't remember what time?

14 A No.

15 Q Okay. So when your alarm went off, were you
16 going to work or was it a school day?

17 A No. I don't remember.

18 Q You don't remember? Okay. And when you say
19 -- what happened then? How long did you lay there
20 after the alarm went off?

21 A I got ready to get up as soon as it went off.

22 Q Okay. And so when Mikey came downstairs,
23 where were you?

24 A Laying on the couch.

25 Q You continued to lay there after the alarm

1 went off, right?

2 A Yes, cause he wanted to go up there.

3 Q Okay. Mr. Murphy went and turned the alarm
4 off?

5 A Yes.

6 Q Where was the alarm?

7 A In my room. I think it was in my room. It
8 should have been in my room.

9 Q Is that upstairs or downstairs?

10 A Upstairs.

11 Q And how long after he turned the alarm off
12 was it until Mikey came downstairs?

13 A I don't remember what time it was.

14 Q Five minutes later or an hour later?

15 A Maybe -- I don't know. I don't remember.

16 Q Okay. And what happened when Michael come
17 downstairs?

18 A He ran downstairs crying and said Minor was
19 -- something was wrong with Minor.

20 Q And what did you do?

21 A I ran upstairs.

22 Q And what did Rashawn do?

23 A He came upstairs.

24 Q And what occurred next?

25 A I went to Minor and picked her up.

Samantha Hill - Direct Examination by Mr. Thompson

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- 1 Q Where was Minor
- 2 A On the twin, I mean, on the bunk bed.
- 3 Q On the bunk bed?
- 4 A Yes.
- 5 Q And that's the bunk bed we were shown several
- 6 photographs of, correct?
- 7 A Yes.
- 8 Q Right here, the bunk bed doesn't -- it
- 9 doesn't have any mattress on it.
- 10 A Yes.
- 11 Q That's the same bunk bed there in that photo,
- 12 the entire photograph. That's where she was, on the
- 13 bunk bed, right?
- 14 A Yes.
- 15 Q Now is that an accurate depiction of the room
- 16 when you found Minor?
- 17 A Yes.
- 18 Q And you said you removed her from the bed?
- 19 A Yes.
- 20 Q What did you do?
- 21 A I picked her up. I was calling her name. I
- 22 told him to go get my phone. He brought me the phone
- 23 and I called the police.
- 24 Q Talking about Rashawn?
- 25 A Yes.

1 Q And you, uh, remember what happened next?

2 A I dialed the police and I gave Rashawn the
3 phone so he can coach me through the CPR. They was
4 still trying to tell me. I laid her on the twin bed
5 on the other side of the room. I was trying to open
6 her mouth and I couldn't get it open.

7 Q Okay. What was Rashawn doing during this
8 time?

9 A Threw my phone against the wall and broke it.

10 Q He threw your phone up against the wall?

11 A (Nods head.)

12 Q What else did he do?

13 A I heard him punch the wall.

14 Q Heard him do what?

15 A Punch the wall.

16 Q Punch the wall?

17 A Uh-huh.

18 Q Did he -- was he here between the two beds
19 when that occurred?

20 A Yes.

21 Q And why do you think he punched the wall?

22 **MR. BARNETTE:** Objection, Your Honor.
23 Speculation.

24 **THE COURT:** Sustained.

25 **BY MR. THOMPSON:**

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1 Q Did he say anything when he punched the wall?

2 A I don't remember.

3 Q Okay. Do you recall -- you heard Officer
4 Williams. You recall going and giving a second
5 statement at the police station?

6 A Yes.

7 Q Okay. I'm going to ask you a little bit
8 about that one too. Is this your signature here?

9 A Yes.

10 Q This was at 17:50. I guess that's about 5:30
11 in the afternoon, right? Does that seem like when you
12 were down there?

13 A Yes.

14 Q Okay. Now, in this one, where -- where --
15 what time did you get home that night?

16 A Well, a little bit before 10:00.

17 Q And who had you been out with?

18 A My sister.

19 Q When you got home, where were the children?

20 A Mikey and Mijay was downstairs in front of
21 the TV. He said he put Minor to bed at 8:00.

22 Q He said he put Minor to bed at 8:00. And
23 what time did you send the other kids to bed?

24 A I told them to go to bed because it was time
25 for them to go to bed.

1 **Q** Did you indicate in your statement how
2 everybody was?

3 **A** I said everyone was okay.

4 **Q** And then you and Shawn, did y'all fall asleep
5 downstairs?

6 **A** Yes.

7 **Q** In this one, did you indicate what time the
8 alarm went off?

9 **A** Yes.

10 **Q** Okay. And did you indicate what time Mikey
11 came down?

12 **A** Yes.

13 **Q** Okay. And did you indicate what you did
14 next?

15 **A** Yes.

16 **Q** Okay. And what was that?

17 **A** Ran upstairs.

18 **MR. THOMPSON:** And Your Honor, I would move
19 to have these offered as Defendant's 4 and 5.

20 **MR. BARNETTE:** Your Honor, we object. She's
21 testified to them.

22 **THE COURT:** I think she has testified
23 consistently with them, has she not?

24 **MR. THOMPSON:** I think it would be
25 beneficial for the jury to look at them if they

1 want to.

2 **THE COURT:** I'm not going to allow them.
3 She's testified in accordance with her
4 statements.

5 **BY MR. THOMPSON:**

6 **Q** You recall some time later taking Mikey to
7 the Children's Advocacy Center?

8 **A** Yes.

9 **Q** Did you speak to those counselors down there
10 concerning this case?

11 **A** Yes.

12 **Q** And just a few more questions. Did you speak
13 to them about your phone getting destroyed on that
14 day?

15 **A** I don't remember.

16 **Q** Did you talk to them about Rashawn at all?

17 **A** Yes.

18 **Q** And did you -- you already indicated that he
19 hit the wall. Was it with his fist, I guess?

20 **A** I guess. I just heard it.

21 **Q** You didn't see it?

22 **A** No.

23 **Q** And when you went into this bedroom, you were
24 in the bedroom here, do you recall a hole in the wall
25 when you got in there?

1 A I wasn't paying any attention.

2 Q Okay. So when you went into the room, was it
3 daylight?

4 A Yes.

5 Q Okay. When you got home that night, did you
6 -- you may have answered this. Who was up? Was any
7 of the children up or were they all in the bed?

8 A The boys were up and Rashawn was up.

9 Q Okay. By the boys, you mean --

10 A Michael and S.J. [REDACTED]

11 Q Okay. And Minor [REDACTED] was in the bed?

12 A Yes.

13 Q I think you stated earlier that you checked
14 on her twice, is that right?

15 A Yes.

16 Q And she seemed fine, I think was your word,
17 right?

18 A Yes.

19 Q Now, when did, uh, you and Mr. Murphy begin
20 living together?

21 A November of '08.

22 Q November of '08?

23 A Yes.

24 Q Okay. So he had been there a little less
25 than two months living with you?

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1 A Yes.

2 Q Had you lived there prior to his moving in or
3 did he live there and you moved in?

4 A No, I had just moved.

5 Q You had just moved?

6 A Yes.

7 Q And he moved in with you?

8 A Yes.

9 Q You recall some of this bedding that we've
10 shown to the jury, right?

11 A Yes.

12 Q Did he bring some of that with him into the
13 relationship?

14 A He brought some of it.

15 Q Okay. Now, was it common for **Minor** to sleep
16 in the bunk bed?

17 A No.

18 Q Is that the first time she ever slept in the
19 bunk bed that night?

20 A No.

21 Q Where would she usually sleep?

22 A In my room.

23 Q And how often would she sleep in the bunk
24 bed?

25 A Not that much.

- 1 Q Not much?
- 2 A No.
- 3 Q Some?
- 4 A Nah.
- 5 Q And who did she sleep with that night?
- 6 A She was in bed with S.J. and Mikey.
- 7 Q So all three of them were in the bunk bed
- 8 that night?
- 9 A Yeah.
- 10 Q On the bottom of it?
- 11 A Yeah.
- 12 Q That bunk bed, does it fold up like a couch?
- 13 A Yes.
- 14 Q Did you normally do that or just leave it as
- 15 a bed all the time?
- 16 A Leave it as a bed.
- 17 Q Okay. And Minor was 11 months old, right?
- 18 A Yes.
- 19 Q Was she walking yet?
- 20 A She was trying to.
- 21 Q You said she was trying. She wasn't mobile?
- 22 A No.
- 23 Q And, uh, did she crawl?
- 24 A Yes.
- 25 Q And where did she usually crawl? All over

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- 1 the house or just anywhere?
- 2 **A** Yeah.
- 3 **Q** She crawl up the stairs?
- 4 **A** She'd go upstairs.
- 5 **Q** Okay. Crawl up the stairs?
- 6 **A** Yes.
- 7 **Q** Okay. You have any pets in the house?
- 8 **A** No.
- 9 **Q** Anybody in the house a smoker?
- 10 **A** Cigarettes.
- 11 **Q** Who smoke?
- 12 **A** I smoke cigarettes.
- 13 **Q** You do?
- 14 **A** Yes.
- 15 **Q** Had you, uh, -- what time did you leave that
- 16 night?
- 17 **A** 7:30.
- 18 **Q** You returned at 10:00, right?
- 19 **A** Yes.
- 20 **Q** You got home. Who was watching TV?
- 21 **A** Mikey and S.J. [REDACTED]
- 22 **Q** Where was Mr. Murphy when you got home?
- 23 **A** Downstairs.
- 24 **Q** He was downstairs with the boys?
- 25 **A** Yes.

1 Q Okay. You remember the letter we read onto
2 the record, you remember that?

3 A Yes.

4 Q You received that letter in the mail,
5 correct?

6 A Yes.

7 Q In that letter, Mr. Murphy indicated that he
8 made bottles and food and that type of thing. Was
9 that something he did on occasion?

10 A Not on occasion, but if I asked him to, he
11 would.

12 Q Okay. And would it be fair to say he took
13 pretty good care of your kids?

14 A Yeah.

15 Q And did you comment to anybody about his
16 ability to care for children that you remember?

17 A No.

18 MR. THOMPSON: Beg the Court's indulgence.

19 THE COURT: Yes, sir.

20 BY MR. THOMPSON:

21 Q When you got home, what did you do right when
22 you got home that night?

23 A I told the boys to go to bed.

24 Q You told the boys to go to bed?

25 A Yes.

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1 Q And they went to bed?

2 A Yes, they went upstairs. I went upstairs,
3 changed clothes and I peeked in on them and then I
4 went back downstairs.

5 Q You changed clothes. Did you change clothes
6 in that room or is there another room upstairs?

7 A In my room.

8 Q In your room?

9 A Yes.

10 Q And did you notice anything different about
11 your room?

12 A No.

13 Q All right. How far is your room from the
14 child -- children's room?

15 A Not far.

16 Q Across the hall maybe or something?

17 A Like next door. The apartment wasn't that
18 big.

19 Q All right. You changed clothes, right?

20 A Uh-huh.

21 Q And you said you peeked in on the children?

22 A Yeah.

23 Q That's when you observed the two boys and
24 Minor in the same bed, right?

25 A Yes.

1 Q And were the boys asleep yet?

2 A No.

3 Q Did Minor have a crib?

4 A She had one but it was broken. She had a
5 bed.

6 Q Okay. So the crib was broken?

7 A Uh-huh.

8 Q Do you remember how it was broken, how it got
9 broken?

10 A Yes.

11 Q How?

12 A Rashawn and Minor father were fighting and
13 they broke her crib.

14 MR. BARNETTE: Your Honor, I'm going to
15 object at this point. I don't know what the
16 relevance of this is.

17 THE COURT: All right. The attorneys will
18 approach.

19 (WHEREUPON, a bench conference is held off the
20 record from approximately 2:18 p.m. to 2:19 p.m.)

21 BY MR. THOMPSON:

22 Q So you did peek in on the three children?

23 A Yes.

24 Q They were in that bunk bed?

25 A Yes.

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- 1 Q All right. What did you do next?
- 2 A I went back downstairs.
- 3 Q And what did you do then? Did you guys watch
- 4 TV?
- 5 A I ate and watched TV.
- 6 Q Do you have a stereo in the house?
- 7 A Yes.
- 8 Q Okay. Where is it located?
- 9 A Downstairs.
- 10 Q Okay. And you recall when we showed the
- 11 picture of the stereo speaker, was that downstairs?
- 12 A No. He took it upstairs.
- 13 Q Who is -- Mr. Murphy took it upstairs?
- 14 A Yes.
- 15 Q When did he do that?
- 16 A I guess while I was gone.
- 17 Q That night?
- 18 A Yes.
- 19 Q Okay. Now, when you checked in on the
- 20 children, was there a hole in the wall?
- 21 A I didn't pay it any attention.
- 22 Q How long did you wait to go and check on the
- 23 children after you sent them to bed?
- 24 A It wasn't long. I just changed clothes and
- 25 went and peeked at them.

1 Q Were they already asleep?

2 A No.

3 Q What were they doing?

4 A Just laying there.

5 Q How do you know they weren't sleep?

6 A Mijay was looking at me or something. I just
7 know he wasn't sleep.

8 MR. THOMPSON: I have no further questions
9 for the witness.

10 THE COURT: Mr. Barnette.

11 MR. BARNETTE: May it please the Court, Your
12 Honor?

13 THE COURT: Yes.

14 CROSS-EXAMINATION

15 BY MR. THOMPSON:

16 Q Ms. Hill, I have to apologize. I'm going to
17 have to ask you some questions about what happened
18 that night. So I'm going to apologize before I do
19 that. They were talking about the steps. Minor
20 would crawl, is that right?

21 A Yes.

22 Q Would she crawl down the steps?

23 A No.

24 Q What would she do?

25 A Sit and stop on the top of the stairs and cry

1 for someone to come get her.

2 Q So she wouldn't crawl down the stairs, would
3 she?

4 A No.

5 Q You were out with your sister that night, is
6 that right?

7 A Yes.

8 Q You got home around ten o'clock?

9 A Yes.

10 Q Or a little bit before 10:00?

11 A Yes.

12 Q And was she -- when you got there, the two
13 boys were downstairs with the defendant?

14 A Yes.

15 Q And Minor was already in the bed?

16 A Yes.

17 Q When you got home, did he tell you about her
18 falling down the steps?

19 A No.

20 Q Could he have called you?

21 A Yes, I left my cell phone.

22 Q So you had your cell phone, but never told
23 you anything about her falling down any steps?

24 A No.

25 Q If you had heard your daughter fell down the

1 steps, what would you have done?

2 **A** I would have stopped what I was doing and
3 came home to my daughter.

4 **Q** When is the first time you found out that he
5 told somebody she fell down the steps?

6 **A** At the sheriff's office.

7 **Q** So he never told you?

8 **A** No.

9 **Q** When you were looking in on them after you
10 changed your clothes, did you go in and look at them
11 physically or look at **Minor** or did you just peek in?

12 **A** No, I just peeked in.

13 **Q** Was there a light on?

14 **A** The first time I went in, I flicked it on. I
15 just glanced over there and I cut it off.

16 **Q** So you didn't on -- I'm not trying to say
17 this in any bad way. But you didn't go check to see
18 if **Minor** was breathing or anything at that time, did
19 you?

20 **A** No.

21 **Q** You were just in the doorway and you just
22 looked in?

23 **A** Yes.

24 **Q** As a matter of fact, I think you said Mijay
25 drew your attention. You saw him and he was up?

1 A Yes.

2 Q So you went back downstairs. When you went
3 back downstairs, did the defendant tell you that she
4 had fell down the steps?

5 A No.

6 Q When you got up at two o'clock and checked in
7 on them, did you just peek in again?

8 A Yes.

9 Q Was the light on, did you turn the light on
10 or did you just look with the light from outside?

11 A The light from outside.

12 Q Did you go -- you never went over to check on
13 Minor ?

14 A No.

15 Q When you got home that night, had the
16 defendant been drinking?

17 A Yes.

18 Q Let me show you the letter just to make sure
19 we're clear. State Exhibit 15. I'm showing you State
20 Exhibit 15. Was this the actual letter you received?
21 Take a look at it there for a second. Was that the
22 actual letter you received from the defendant?

23 A Yes.

24 Q And is that his handwriting?

25 A Yes.

- 1 Q And you know his handwriting from before?
- 2 A Yes.
- 3 Q And when you got this, did you turn this over
- 4 to law enforcement, ma'am?
- 5 A Yes.
- 6 Q In that letter, is that the first time he
- 7 said anything about Minor falling down the steps?
- 8 A Yes.
- 9 Q So he never told you in person or told you at
- 10 any time?
- 11 A No.
- 12 Q When you left with your sister that night at
- 13 7:30, did Minor have a broken leg?
- 14 A No.
- 15 Q Did she have bruises on her face?
- 16 A No.
- 17 Q Did she have lacerations on her face?
- 18 A No.
- 19 Q When the alarm went off at 5:45, did he
- 20 insist in going upstairs?
- 21 A Yes.
- 22 Q Were you going up the stairs to turn off the
- 23 alarm? Did he say he was going to check on the kids?
- 24 A Yes.
- 25 Q What did he say to you when he came back?

1 A That it was okay.

2 Q When Mikey came down that morning, he talked
3 with, uh, -- he was telling you something was wrong
4 with Paris.

5 A Yes.

6 Q When you went in that room, what did you do?

7 A I picked her up and told him -- told Shawn to
8 go get my phone so I can call the police.

9 Q And, uh, you knew something was immediately
10 wrong?

11 A Yeah.

12 Q Did you initially call the police or 911
13 first?

14 A Yes.

15 Q And you handed the phone to him?

16 A Yes.

17 Q And he threw and destroyed the phone?

18 A Yes.

19 Q Later on, you did talk to investigators and
20 so forth. You didn't go into detail of what happened
21 that night, did you?

22 A I don't remember.

23 Q And I want to make perfectly clear, did you
24 ever see Minor try to go down the stairs?

25 A No.

1 Q She would just stand up top and she would,
2 cry?

3 A Yes.

4 Q For somebody to help her?

5 A Yes.

6 Q And, uh, this Defendant, until you got that
7 letter, never told you that she had gone down the
8 stairs?

9 A No.

10 Q How many times did you -- I'm sure y'all
11 talked when y'all got to the hospital about what
12 happened, how she had these injuries?

13 A He didn't say nothing.

14 Q He didn't say a word to you?

15 A No.

16 Q Did he tell the medical people?

17 A He didn't talk to no one. He just talked to
18 whoever gave him the paper.

19 Q Matter of fact, he told the coroner's office
20 he didn't know what happened, didn't he?

21 A Yes.

22 Q He didn't tell the medical people that she
23 fell down the stairs, did he?

24 A No.

25 Q Matter of fact, the first time he told

1 anybody is when they showed him the picture. That's
2 when you found out, after they showed him the
3 pictures, what happened to her?

4 **A** Yes.

5 **Q** When you came, she was already put in bed by
6 that Defendant?

7 **A** Yes.

8 **MR. BARNETTE:** One moment, Your Honor.

9 **THE COURT:** Yes.

10 **MR. BARNETTE:** Thank you. I'm sorry about
11 asking you those questions. Please answer any
12 questions Mr. Thompson has for you.

13 **THE COURT:** Mr. Thompson.

14 **MR. THOMPSON:** Please the Court, Your Honor.

15 **REDIRECT EXAMINATION**

16 **BY MR. THOMPSON:**

17 **Q** Just briefly. Uh, when you went to the
18 police station, did they seat you and Mr. Murphy in
19 the same room?

20 **A** No.

21 **Q** What did they do?

22 **A** They put us in separate rooms.

23 **Q** Okay. And did you see him again after that?

24 **A** No.

25 **Q** Why not?

1 A I don't know why.

2 Q The police took him away, didn't they?

3 A They, uh, -- I had to write a statement in
4 another room. He wrote his statement in a different
5 room.

6 Q Did you ever -- you never saw him after that,
7 have you?

8 A No.

9 Q What was Rashawn drinking?

10 A I don't know what he was drinking.

11 Q Okay. Did you smell it in the house or on
12 him?

13 A On him.

14 Q Uh, had you been drinking?

15 A No.

16 Q I'm going to show you the letter. (Pause.)
17 Do you remember when you got this letter
18 approximately?

19 A No, I don't remember when I got it.

20 Q This page here, uh, -- do you remember
21 reading that letter? Did you read it or just take it
22 straight to the police?

23 A I didn't read -- I got to one or two pages
24 and I didn't read it.

25 Q So you don't know about -- when he indicates

1 she was on the stairs, I can't find in the letter
2 where it says she fell. Can you find that in there?

3 **A** (Reviewing.)

4 **Q** All these pages here, I'll share these out
5 loud. Is that okay? Okay. He says he got up to
6 check on her. When I got to the steps, she was laying
7 on the steps a few from the bottom. How she was
8 laying was like she had backed down the steps and had
9 nodded off. There's where he said fell backwards, but
10 he says she fell backwards on the next step where her
11 head laid, was, and just went back to sleep. Is that
12 what you think is -- the Solicitor keeps saying that
13 -- he referenced her falling down the steps. Do you
14 know anywhere else in the letter it says that she
15 fell?

16 **A** No.

17 **Q** Okay. And you stated that the first time you
18 went in and look in on the children, you flipped the
19 light on, right?

20 **A** Uh-huh.

21 **Q** Were all three sleep at that time or was that
22 when Mijay was looking up at you?

23 **A** Mijay was looking up at me.

24 **Q** Okay. Now, did you state earlier that **Minor**
25 would sleep in either room? Was that your testimony

1 that she slept in your room sometimes and sometimes in
2 the boys' room?

3 **A** She slept in my room most of the time.

4 **Q** Okay. Was that -- is it in your bed where
5 she would sleep or a separate cot or mattress?

6 **A** Either/or.

7 **Q** Okay. Now, when you peeked in at 2:00 a.m.
8 -- were downstairs and woke up at 2:00 and went
9 upstairs?

10 **A** Yes.

11 **Q** Did you go back downstairs or did you go to
12 your room?

13 **A** I went back downstairs.

14 **Q** When you peeked in, what does that mean? You
15 stood at the door, went all the way in the room?

16 **A** I was at the door.

17 **Q** You did?

18 **A** Yes.

19 **Q** Where was Rashawn Murphy at 2:00 a.m.?

20 **A** Downstairs.

21 **Q** Was he sleep?

22 **A** I don't remember.

23 **MR. THOMPSON:** No further questions.

24 **MR. BARNETTE:** Just a couple on redirect,
25 Your Honor.

1 THE COURT: Yes, sir.

2 **RECROSS-EXAMINATION**

3 **BY MR. BARNETTE:**

4 Q Ms. Hill, uh, the stairs had carpet on them,
5 is that correct?

6 A Yes.

7 Q (Inaudible). He says that she was just
8 laying there?

9 A Yes.

10 Q If you were laying there, how would you get
11 these kinds of injuries, do you know?

12 A No.

13 Q I just want to make perfectly clear for the
14 jury and everybody else, State Exhibit 18, before you
15 left that night, ma'am, was that bruise on **Minor**
16 face before you left that night with your sister?

17 A No.

18 Q State Exhibit 19. Was that bruise on her
19 head?

20 A No.

21 Q I'm not going to go through every picture
22 again, but let me show you State Exhibit 20. Was her
23 leg broken when you left that night?

24 A No.

25 Q She was fine when you left that night?

1 A Yes.

2 Q In whose care was she left in?

3 A Rashawn.

4 Q This was the girl that would never go down
5 the stairs?

6 A No.

7 Q That was just laying on the stairs. These
8 stairs were carpeted?

9 A Yes.

10 Q He never told you about that, did he, ma'am?

11 A No.

12 Q Never told anybody until the police
13 confronted him on the picture?

14 A Yes.

15 Q Thank you, ma'am.

16 **THE COURT:** Mr. Thompson, anything else?

17 **REDIRECT EXAMINATION**

18 **BY MR. THOMPSON:**

19 Q When you left that night, she did have two
20 cuts on her, didn't she?

21 A Yes.

22 Q And those were bleeding frequently?

23 A No.

24 Q Okay. But they did bleed some, right?

25 A No.

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1 Q Never bleed?

2 A No, when I first seen it --

3 Q I mean, when you left that night, she had
4 cuts on her tongue, didn't she? Do you recall that?

5 A They wasn't cuts. It was like she bit her
6 tongue or something.

7 Q Those were there before you left, right?

8 A Yes.

9 Q Okay. And was it a reoccurring injury? I
10 assume with her teething, it was hard to get rid of
11 that. How long they been there?

12 A Uh, --

13 Q You don't --

14 A I don't remember.

15 MR. THOMPSON: Okay. Uh, I have no further
16 questions.

17 MR. BARNETTE: No further questions for this
18 witness, Your Honor.

19 THE COURT: Ma'am, you can step down.

20 All right, Mr. Thompson.

21 MR. THOMPSON: Your Honor, I call Michael
22 Williams [sic].

23 M.J.

24 having first been sworn, testifies as follows:

25 MR. THOMPSON: May I approach, Your Honor?

1 **THE COURT:** Yes.

2 (WHEREUPON, a bench conference is held off the
3 record from approximately 2:40 p.m. to 2:41 p.m.)

4 **DIRECT EXAMINATION**

5 **BY MR. THOMPSON:**

6 **Q** Hey, Michael. My name is Mr. Thompson. I'm
7 going to ask you a few questions. Okay?

8 **A** Okay.

9 **Q** All right. Remember you need to lean down
10 and speak into that microphone. Okay.

11 **A** Okay.

12 **Q** I'm going to try to stay in front of you this
13 time.

14 **THE COURT:** And remember, Michael, we talked
15 a little bit earlier about instead of saying
16 (demonstrating), say yes or no. Okay. Can you
17 do that for me?

18 **THE WITNESS:** Yes.

19 **THE COURT:** Okay. Great. Thank you.

20 **BY MR. THOMPSON:**

21 **Q** Okay. How old are you, Michael?

22 **A** 11.

23 **Q** Just a little closer.

24 **A** 11.

25 **Q** Okay. Where do you go to school?

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1 A Park Hills Elementary School.

2 Q What grade are you in?

3 A Fifth.

4 Q Okay. And you are Minor brother, right?

5 A Yes.

6 Q And you are the big brother, right?

7 A Yes.

8 Q Now, I'm going to ask you some questions
9 about Minor and about your house and about some
10 people you spoke to, okay?

11 A Okay.

12 Q Now, you remember the day that you went down
13 and told your mom that Minor was not responsive to
14 you?

15 A Yes.

16 Q Now, I want to show you some pictures. All
17 right. Now I'm going to try to focus in on that one
18 topic, the bunk bed and then the other one with the
19 other bed. Can you tell me whose bed -- do you
20 recognize that room?

21 A Yes.

22 Q Whose room is that?

23 A Mine and my brother's.

24 Q And when you say your brother, you mean
25 Mijay, right?

- 1 A Yes.
- 2 Q And where did you sleep in that room?
- 3 A Uh, the right side of the room.
- 4 Q Okay. And that's the bed that's not the bunk
5 bed, right?
- 6 A Yes.
- 7 Q And who slept in the bunk bed?
- 8 A My brother.
- 9 Q And where did Parris sleep?
- 10 A My sister, she had the crib, but sometimes
11 she would try to get out. So she sleep with either me
12 or S.J. [REDACTED] or my mom.
- 13 Q And the night, the morning you found her,
14 where had she slept that night before?
- 15 A Inside my -- inside my brother's bed.
- 16 Q Okay. So did she sleep by herself or with
17 one of you guys?
- 18 A She slept with my brother.
- 19 Q Did you sleep with them?
- 20 A No, I slept in my own bed.
- 21 Q Now, does anybody sleep in that top bunk up
22 there?
- 23 A No.
- 24 Q That's a cool bed. Is that a fun bed?
- 25 A Not to me, it isn't.

M.J. - Direct Examination by Mr. Thompson

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- 1 Q Did you ever climb on top?
- 2 A Yes.
- 3 Q You did?
- 4 A (Nods head.)
- 5 Q What about Sam J?
- 6 A Huh?
- 7 Q Samijay?
- 8 A Yeah.
- 9 Q He climbed up top too?
- 10 A (Nods head.)
- 11 Q And you are the big brother for Minor ,
- 12 right?
- 13 A Yes.
- 14 Q I bet you wouldn't let her try to climb up
- 15 there, would you?
- 16 A (Shakes head.)
- 17 Q All right. So you went down and got your
- 18 mom. Why did you go down there and do that?
- 19 A Because she wasn't breathing or talking.
- 20 Q So what did you do when you woke up that
- 21 morning?
- 22 A At first, I went over to Minor to see if she
- 23 was breathing. Then I checked her heart and
- 24 everything. Once I found out she wasn't breathing, I
- 25 went downstairs and told my mom and Shawn. They ran

1 upstairs to see if she really wasn't. They ran
2 upstairs.

3 Q Okay. Now how do you check to see if she's
4 breathing?

5 A I put my ear on her heart or I just put my
6 ear kind of close to her mouth to see if she was
7 breathing. Is that something you did every morning
8 when you got up?

9 A No.

10 Q And why did you decide to do it that morning?

11 A Because something didn't feel right with my
12 sister and brother.

13 Q Where was S.J. [REDACTED]

14 A He was on the bed with my sister.

15 Q Was he asleep or awake?

16 A He was sleep.

17 Q Okay. And where was Minor [REDACTED] laying on the
18 bed?

19 A She was laying next to the wall on the bed.

20 Q Okay. Which side? You say she was next to
21 the wall. She was on this side?

22 A Yes.

23 Q Okay. And what position was she laying in?

24 A Her head was in between -- she was on her,
25 uh, belly.

M.J. [REDACTED] - Direct Examination by Mr. Thompson

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1 Q Her belly. What were you saying about her
2 head?

3 A Her head was between the wall and the bed.

4 Q Her head was between the wall and the bed?

5 A Yes.

6 Q Off the bed?

7 A Yes.

8 Q She was sleeping on her belly?

9 A Yes.

10 Q Where were her arms?

11 A One arm was behind her back, kind of like
12 this. The other arm was beside her.

13 Q Did she usually sleep with her arm behind her
14 back?

15 A No.

16 Q And when you went to check on her, where was

17 S.J. [REDACTED]

18 A He was still on the pillow sleep.

19 Q So he was on -- was he on this side of the
20 bed here?

21 A No, he was up the top.

22 Q Here?

23 A Yes.

24 Q Okay. And he was asleep?

25 A Yes.

1 Q Did you check to see if he was breathing or
2 if his heart was beating?

3 A No, cause he kind of sleeps kind of wild and
4 I can hear him breathing.

5 Q Okay. [REDACTED] Minor could you hear her breathing
6 usually when she slept?

7 A No.

8 Q You couldn't? Okay. Now, when you ran
9 downstairs, what happened next?

10 A I told Shawn and my mom that [REDACTED] Minor wasn't
11 breathing.

12 Q Okay. And what did they do?

13 A They ran upstairs to see if they could get
14 her to start beating. My mom told Shawn to call the
15 police and he did. They told him to do CPR, but he
16 didn't know. So he got angry and punched holes in the
17 wall.

18 Q Who got angry?

19 A Shawn.

20 Q And he did what?

21 A Punched holes in the wall.

22 Q And you see that one picture in the corner
23 down there, does that look about where he punched?

24 A Yes.

25 Q You say yes?

M.J. [REDACTED] - Direct Examination by Mr. Thompson

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- 1 A Yes.
- 2 Q That's where he punched?
- 3 A Yes.
- 4 Q How many times did he hit it?
- 5 A I don't remember.
- 6 Q Okay. A lot of --
- 7 A It was a lot.
- 8 Q A lot. Okay. I guess when that happened,
- 9 did all that white stuff -- did any of that white
- 10 stuff fly around in the room?
- 11 A Yes.
- 12 Q It did?
- 13 A It fell on the floor.
- 14 Q Where was Minor [REDACTED] at when he did that?
- 15 A He -- well, Minor [REDACTED] when he ran upstairs to
- 16 check on her, he had picked her up and laid her on my
- 17 bed.
- 18 Q Okay. Shawn picked her up off of the black
- 19 -- off of the bunk bed and put her on your bed?
- 20 A Yes.
- 21 Q And you said he was trying to do what?
- 22 A Do CPR, but -- the hospital was telling him
- 23 to do CPR, but he didn't know how to.
- 24 Q Okay. So was Minor [REDACTED] laying on this end of
- 25 the bed or this end?

1 A In the middle.

2 Q In the middle?

3 A Yes.

4 Q Right in there?

5 A Yes.

6 Q Where was your mom at that time?

7 A She was -- I think we had a closet right

8 there where the door was. It was just a regular wall.

9 She was just sitting right there next to the wall

10 crying.

11 Q She was crying?

12 A Yes.

13 Q Did you try to help do the CPR?

14 A No, cause I ain't know it either.

15 Q Okay. Now, earlier in the night, before you

16 went to bed, do you know if your mom -- who all was

17 home at, let's say, suppertime?

18 A It was just me, Shawn, my sister and my

19 brother.

20 Q Okay. And did you guys eat, supper?

21 A Yeah.

22 Q You remember what you had?

23 A I think we had noodles.

24 Q What did you do next?

25 A After we finished eating, we had watched TV.

M.J. [REDACTED] - Direct Examination by Mr. Thompson

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1 Q Okay. Who was watching TV?

2 A Me and my brother.

3 Q Where was Shawn?

4 A Shawn was up inside my mom's room.

5 Q How did you know he was up there?

6 A I heard a whole bunch of bumping. I think my
7 mom's room is where the kitchen is, up under the
8 kitchen. That's where my mom's room -- I think I
9 heard a whole bunch of bumping from the kitchen up to
10 the ceiling.

11 Q Okay. And where was Minor [REDACTED]

12 A [REDACTED] was inside Shawn -- Minor [REDACTED] was inside
13 the room with Shawn.

14 Q Okay. Did you go check it out?

15 A Yes.

16 Q You did?

17 A Uh-huh.

18 Q What did you do?

19 A I went upstairs and knocked on the door. I
20 tried to open it but it was locked. Shawn came to the
21 door. I said what are you doing. He said he was
22 moving furniture around. I looked at Minor [REDACTED] She was
23 leaning on the wall crying.

24 Q She was leaning on the wall crying?

25 A Yes.

- 1 Q Standing up or sitting or what?
- 2 A Sitting.
- 3 Q Okay. And did -- was she crying loud or just
- 4 a little bit? How was she crying?
- 5 A She was crying loud.
- 6 Q What did Shawn do from there?
- 7 A He told us to go back downstairs and watch
- 8 TV. I think just a while ago, he had came -- I think,
- 9 uh, a little bit later, he came downstairs with
- 10 Minor [REDACTED]
- 11 Q Okay. So he brought Minor [REDACTED] downstairs?
- 12 A Yes.
- 13 Q What did he do from there?
- 14 A He said it was time for bed.
- 15 Q And you and your brother were watching TV at
- 16 that time?
- 17 A Yes.
- 18 Q Okay. How much time went by from the time he
- 19 brought Minor [REDACTED] down -- let me get this straight. He
- 20 opened the door. You said what are you doing, right?
- 21 A Yes.
- 22 Q He said he was moving some furniture?
- 23 A Yes.
- 24 Q Was he moving the stereo?
- 25 A Yes.

M.J. - Direct Examination by Mr. Thompson

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1 Q He was? Okay. And you saw Minor sitting on
2 the floor, right?

3 A Yes.

4 Q And she was just sitting straight up or how
5 was she sitting?

6 A She was like on the wall leaning this way
7 crying.

8 Q And you remember, uh, what she did from
9 there? What did Shawn do? You said he brought Minor
10 downstairs?

11 A Yes.

12 Q Did he feed her or anything like that?

13 A She had already ate.

14 Q She already ate? When did she eat?

15 A I think she ate the same thing me and my
16 brother ate.

17 Q Okay. Did she eat the same time y'all did?

18 A Yes.

19 Q Did she still take her bottle?

20 A Yes.

21 Q Shawn make her a bottle?

22 A Yes.

23 Q Okay. And did he put all you guys to bed at
24 the same time or did you stay up late?

25 A He put us all to bed at the same time.

- 1 Q Okay. So where did you go to bed?
- 2 A I went to bed on the right side of the room.
- 3 Q Okay. So you didn't sleep on the bunk bed?
- 4 A No.
- 5 Q Did you get up during the night at any time?
- 6 A No.
- 7 Q Uh, so you -- did, uh, Mijay get in the bunk
- 8 bed with Minor
- 9 A Yes.
- 10 Q All right. And who went to sleep first?
- 11 A Me.
- 12 Q You go to sleep first?
- 13 A Yes.
- 14 Q All right. And do you remember if it took
- 15 Mijay a while to go to sleep?
- 16 A No.
- 17 Q Okay.
- 18 A Usually, my brother stay up late.
- 19 Q He does?
- 20 A Yeah.
- 21 Q Okay. And does he like to stay up late?
- 22 A If he can't come out the room, he'll start
- 23 crying saying he want to come out.
- 24 Q Okay. And when he went to bed, was Minor in
- 25 the bed too?

M.J. - Direct Examination by Mr. Thompson

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- 1 A Yes.
- 2 Q You all three went to bed at the same time?
- 3 A Yes.
- 4 Q Were you in the bed when your mom got home?
- 5 A No, cause we was just coming up the steps.
- 6 My mom had just came inside the door.
- 7 Q Okay. So Shawn was taking Minor to bed and
- 8 you two were walking up the stairs to go to bed when
- 9 your mom got home, is that right?
- 10 A Yes.
- 11 Q Okay. And do you remember if Minor had a
- 12 bottle when she went to bed?
- 13 A Yes, she had one.
- 14 Q She did? Okay. And did she -- did you drink
- 15 from the bottle -- did she drink from the bottle? Is
- 16 that how she went to sleep?
- 17 A No, Shawn had gave her her pacifier.
- 18 Q And did y'all play with Minor any of that
- 19 time?
- 20 A Mijay did but I was gone to sleep.
- 21 Q How did he play with her?
- 22 A He picks her up and tickles her.
- 23 Q She like that?
- 24 A Yeah.
- 25 Q Okay. Did she laugh when he tickled her?

1 A Yeah.

2 Q Did he tickle her that night?

3 A Uh, really I don't know. I think I was
4 sleep.

5 Q And so you remember when your mom came in and
6 checked on you?

7 A No.

8 Q Do you remember if anybody came in that room
9 that night after you went to bed?

10 A I was sleep.

11 Q So you don't know. You said you sleep over
12 on the right, right?

13 A Yes.

14 Q Uh, you remember when you went and spoke to
15 some people about [REDACTED] death?

16 A Yes.

17 Q You do? And do you remember that thing with
18 Ms. Weber?

19 A Yes.

20 Q And, uh, did you tell her basically the same
21 thing you told me today?

22 A Yes.

23 Q It's hard to remember stuff, isn't it, from
24 two years ago?

25 A Yes.

M.J. [REDACTED] - Direct Examination by Mr. Thompson

455

1 Q You remember what you were watching on TV
2 that night?

3 A Watching SpongeBob.

4 Q SpongeBob? Did you tell her you were
5 watching The Suite Life of Zack and Cody?

6 A Yes. After SpongeBob had went off, we had
7 watched The Suite Life of Zack and Cody.

8 Q Okay. Is that a pretty good show?

9 A Yes.

10 Q All right. And when you were watching that,
11 when you were watching SpongeBob, is that when you
12 heard Michael, I mean, Rashawn making the noise up the
13 stairs?

14 A Yes.

15 Q And did you say he was moving a stereo? He
16 had a stereo in the house?

17 A He said he was moving a stereo.

18 Q Is it a big one?

19 A Yes.

20 Q And do you know how many pieces there is to
21 it?

22 A No.

23 Q And, uh, did you tell a lady at the
24 Children's Advocacy Center how Minor was laying when
25 you found her?

1 **A** Yes.

2 **Q** Huh?

3 **A** Yes.

4 **Q** Okay. What did you -- you remember what you
5 told her?

6 **A** Yeah.

7 **Q** What did you tell her?

8 **A** I told her that her head was between the wall
9 and the bed. Her arms -- one arm was behind her back
10 and the other one was beside her.

11 **Q** You told her the same thing you told me?

12 **A** Yes.

13 **Q** You remember if you told her how **Minor** died?

14 **MR. BARNETTE:** Your Honor, I'm going to
15 object at this point. It's pure speculation.

16 **THE COURT:** Sustained.

17 **MR. THOMPSON:** I'm just asking if he
18 remember what he said.

19 **MR. BARNETTE:** Your Honor, that's
20 speculating. We can approach the bench.

21 **THE COURT:** All right.

22 **(WHEREUPON, a bench conference is held off the**
23 **record from approximately 3:00 p.m. to 3:01 p.m.)**

24 **MR. THOMPSON:** I will withdraw the question.

25 **THE COURT:** All right.

M.J. - Direct Examination by Mr. Thompson

457

1 BY MR. THOMPSON:

2 Q Okay. Let me go back to when you knocked on
3 that door. You remember that?

4 A Yes.

5 Q And Shawn come to the door. Did he answer
6 the door?

7 A Yes.

8 Q Did he open it?

9 A Yes.

10 Q And he opened it -- did he open it wide
11 enough so you can see inside the whole room?

12 A Yes.

13 Q All right. And that's where you saw Minor

14 A Yes.

15 Q Okay. And after you left the room, did you
16 go watch SpongeBob?

17 A Yes.

18 Q And how long -- you were watching SpongeBob.
19 How much time went by until Shawn brought Minor down?

20 A I don't know.

21 Q Long time or was it a short time?

22 A I think it --

23 MR. BARNETTE: I'm going to object. I think
24 the question has been asked and answered.

25 THE COURT: Uh, sustained.

1 BY MR. THOMPSON:

2 Q So your answer was you don't remember?

3 A Huh-uh.

4 Q But he did bring her down, correct?

5 A Yes.

6 Q What did he do when he brought her down?

7 A He had told me and my brother it was time for
8 us to go to bed.

9 Q Did he -- you said there was a bottle, right?

10 A Yes.

11 Q Did he make the bottle or did you make the
12 bottle?

13 A Usually, they will tell me to make it.

14 MR. BARNETTE: Your Honor, I'm going to
15 object. It's basically a situation where he's
16 leading in asking those questions.

17 THE COURT: I understand it's a child
18 witness, but I'll just ask you to be careful
19 about that.

20 BY MR. THOMPSON:

21 Q Okay. All right. But she had a bottle,
22 right?

23 A Yes.

24 Q You remember who made the bottle?

25 A Usually they'll tell me to make it.

M.J. - Direct Examination by Mr. Thompson

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1 Q Who told you to make it?

2 A Shawn.

3 Q You know how to make a bottle for your little
4 sister?

5 A Yes.

6 Q And did you take the bottle upstairs or did
7 you give it to Shawn and he took it upstairs?

8 A I took it upstairs.

9 Q Where was Minor

10 A She was with my brother inside the bed.
11 Shawn was in there trying to put her to sleep.

12 Q Okay. And that's when you said that he was
13 tickling, playing with her?

14 A Yes.

15 MR. THOMPSON: Beg the Court's indulgence.

16 THE COURT: Yes.

17 (WHEREUPON, there is a pause.)

18 BY MR. THOMPSON:

19 Q Mikey, before you went to mom's room and
20 Shawn opened the door, when had you seen Minor before
21 that?

22 A First, I looked inside the room to see if he
23 was really moving furniture. Then I looked over at
24 Minor

25 Q Okay. Before that, when was the last time

1 you had seen Minor

2 A Uh, it was when he brought her downstairs.

3 Q Not after you knocked on the door, but before
4 you knocked on the door. Do you remember?

5 A Huh-uh.

6 Q Okay. And you were watching -- was all that
7 noise going on when you were watching SpongeBob?

8 A Yes.

9 Q Before you watched SpongeBob, what were you
10 doing?

11 A Still sitting down watching TV.

12 Q You remember what you were watching before
13 that?

14 A No.

15 Q Where was Mijay?

16 A He was downstairs with me.

17 Q Where was Minor

18 A Upstairs with Shawn.

19 Q Did Shawn ever come downstairs without

20 Minor

21 A No.

22 Q He didn't? Okay. And did she ever come
23 downstairs?

24 A No.

25 Q She wasn't downstairs that night at all?

M.J. - Direct Examination by Mr. Thompson

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1 A No.

2 Q And then, so you basically watch TV all night
3 and then went up to bed. You went up there and
4 knocked on the door and saw her in there sitting down
5 crying. Then you saw her in the bed with Mikey?

6 A Yes.

7 Q Okay. You don't remember anybody coming in
8 the room to check on you that night at all, right?

9 A No.

10 Q Did, uh, Rashawn lay down with you guys or
11 just lay you down and put you to bed?

12 A He had put us to bed.

13 Q You know how long S.J. laid there with
14 Minor before you went to sleep?

15 A No.

16 Q So they didn't get up, didn't get up and walk
17 around?

18 A No.

19 Q Did Minor go to bed with a bottle?

20 A No.

21 Q Okay. Uh, when did, uh, -- did Shawn take
22 the bottle out of the room?

23 A Yes.

24 Q He did?

25 A (Nods head.)

- 1 Q And did he give her a pacy?
- 2 A Yes.
- 3 Q He did?
- 4 A (Nods head.)
- 5 Q Okay. How long did it take you -- how long
- 6 did they stay downstairs when you were making the
- 7 bottle?
- 8 A I think just one minute. I don't know.
- 9 Q I'm sorry. I can't hear you.
- 10 A I think it was one minute.
- 11 Q One minute?
- 12 A (Nods head.)
- 13 Q You made the bottle in a minute?
- 14 A Yes.
- 15 Q How do you make a bottle?
- 16 A First, I pour the milk in. Then I pour the
- 17 cereal in. Then I shake it up and put it inside the
- 18 microwave and go give it to Shawn. No, then I go
- 19 upstairs, then I give it to Taraji. I mean, no,
- 20 Minor [REDACTED]
- 21 Q You get it out of the microwave?
- 22 A Yes.
- 23 Q Then what do you do?
- 24 A I go upstairs and give it to Minor [REDACTED]
- 25 Q You went upstairs and give it to Minor [REDACTED]

M.J. - Direct Examination by Mr. Thompson

463

- 1 A Yes.
- 2 Q She take it? She reach out and get it?
- 3 A Yes.
- 4 Q All right. And Mijay was in the bed with her
- 5 already?
- 6 A Yes.
- 7 Q Does he take a bottle?
- 8 A No.
- 9 Q He's outgrown the bottle?
- 10 A He tries to hold it for her.
- 11 Q He tries to what?
- 12 A To hold it for her.
- 13 Q Oh, does he?
- 14 A (Nods head.)
- 15 Q I'm going to show you one more picture.
- 16 (Pause.)
- 17 MR. THOMPSON: Beg the Court's indulgence.
- 18 THE COURT: Yes, sir.
- 19 BY MR. THOMPSON:
- 20 Q Does that look like the hole you saw?
- 21 A Yes.
- 22 Q The wall you saw Rashawn hit?
- 23 A Yes.
- 24 Q Okay. (Pause.)
- 25 That looks like it?

1 **A** Yes.

2 **MR. THOMPSON:** I'll publish it to the jury.

3 It's already entered, Your Honor.

4 **THE COURT:** All right.

5 **BY MR. THOMPSON:**

6 **Q** That looks like it?

7 **A** Yes.

8 **Q** Okay. Now, when you went to bed, you gave

9 **Minor** her bottle, right?

10 **A** Yes.

11 **Q** Did you notice any scratches on her or

12 anything?

13 **A** No.

14 **Q** Any injuries or anything like that?

15 **A** No.

16 **MR. THOMPSON:** All right. No further

17 questions.

18 **THE COURT:** Mr. Barnette.

19 **MR. BARNETTE:** May it please the Court, Your

20 Honor. May I pull a chair up?

21 **THE COURT:** Yes.

22 **CROSS-EXAMINATION**

23 **BY MR. BARNETTE:**

24 **Q** Mikey, I want to ask you a few questions. Is

25 that okay?

M.J. - Cross- Examination by Mr. Barnette

465

1 A Yes.

2 Q If you would, sit up a little bit closer to
3 the mic so we'll make sure the jury can hear you.

4 Mikey, uh, would Minor go down the stairs?

5 A No.

6 Q She wouldn't go down the stairs?

7 A No.

8 Q And what would she do?

9 A She would look down. And then once somebody
10 comes to the stairs, she would look up at them and do
11 like that (demonstrating), so somebody could take her
12 downstairs.

13 Q So she wouldn't go down the stairs, would
14 she?

15 A No.

16 Q The night this happened, you heard a lot of
17 thumps upstairs above the kitchen?

18 A Yes.

19 Q Did you think something was wrong? Is that
20 the reason why you went and checked because you heard
21 all that thumping?

22 A Yes.

23 Q If you would, talk a little bit louder.

24 A Yes.

25 Q And that's the reason why you went upstairs?

1 A Yes.

2 Q When you got to the door, was the door
3 locked?

4 A Yes.

5 Q Now, you and your brother was downstairs?

6 A Yes.

7 Q Was you eight years old at that time?

8 A I think I was nine.

9 Q Nine. And how old was your younger brother?
10 Was he two?

11 A I think he was four, no, three.

12 Q Three at the time. Y'all was downstairs. He
13 had the door locked upstairs when you got to it?

14 A Yes.

15 Q When he opened the door, he told you he was
16 moving furniture if I understood your testimony,
17 right?

18 A Yes.

19 Q So you didn't actually see it, but he told
20 you that's what he was doing?

21 A Yes.

22 Q And when he opened the door, actually you
23 looked to see what he was doing, didn't you?

24 A Yes.

25 Q That's when you saw Minor [REDACTED] on the wall.

M.J. [REDACTED] - Cross-Examination by Mr. Barnette

467

1 A Yes.

2 Q And she was, you say, kind of leaning against
3 the wall?

4 A Yes.

5 Q She was crying loudly?

6 A Yes.

7 Q He told you to go back downstairs?

8 A Yeah.

9 Q So you did what he told you to do?

10 A Yes.

11 Q Later on that night, your mom came home?

12 A Yes.

13 Q You and your brother were downstairs when
14 your mom came home, weren't you?

15 A Yes.

16 Q Matter of fact, [REDACTED] had already been put
17 in bed by Shawn by the time your mom got home?

18 A Yes.

19 Q And she actually told you that y'all needed
20 to get to bed, didn't she?

21 A Yes.

22 Q Did you go to bed after she came home?

23 A Yes.

24 Q And [REDACTED] was already in the bed when y'all
25 got there, isn't that right?

1 A Yes.

2 Q So Shawn had been the one, the defendant had
3 been the one that put her into bed that night, into
4 your brother's bed?

5 A Yes.

6 Q The, uh, -- so actually your brother and you
7 came up afterwards when your mom told you to go to
8 bed?

9 A Yes.

10 Q You slept in your bed?

11 A Yes.

12 Q Your brother slept with your sister?

13 A Yes.

14 Q Did you ever see your sister on the stairs
15 that night?

16 A No.

17 Q So you were in the house, actually you had
18 been going up and down the stairs that day, that
19 night?

20 A Yes.

21 Q Never saw your sister on those stairs?

22 A No.

23 Q Did Shawn say anything about her being on the
24 stairs to you?

25 A No.

M.J. [REDACTED] - Cross- Examination by Mr. Barnette

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1 Q She wouldn't go down those stairs, would she?

2 A No.

3 Q She was scared of them?

4 A Yes.

5 Q The next morning when you woke up, you
6 checked on your sister?

7 A Yes.

8 Q And, uh, you couldn't wake her up?

9 A No.

10 Q The evening before, you saw her crying in the
11 room with the defendant?

12 A Yes.

13 Q And she was leaning against the wall. So she
14 was crying loudly?

15 A Yes.

16 Q And he had the door locked?

17 A Yes.

18 Q You heard several loud thumps?

19 A Yes.

20 MR. BARNETTE: One moment, Your Honor,
21 please.

22 BY MR. BARNETTE:

23 Q Mikey, thank you for answering my questions.

24 A You welcome.

25 THE COURT: Mr. Thompson, anything else?

1 **MR. THOMPSON:** Just a few, Your Honor.

2 **REDIRECT EXAMINATION**

3 **BY MR. THOMPSON:**

4 **Q** Michael, that bump that he was asking you
5 about, that was in your mom's room or your room?

6 **A** My mom's.

7 **Q** Your mom's room?

8 **A** Yes.

9 **Q** Okay. And you went up there and knocked on
10 the door. How long did it take him to come to the
11 door?

12 **A** I don't remember.

13 **Q** Did you wait a whole long time? Just a
14 little bit?

15 **MR. BARNETTE:** Your Honor, I'm going to
16 object. Asked and answered.

17 **THE COURT:** Sustained.

18 **BY MR. THOMPSON:**

19 **Q** And you just told Mr. Barnette that you were
20 downstairs when your mom got home, right?

21 **A** Yes.

22 **Q** Did you tell me that you all three went to
23 bed at the same time?

24 **A** Yeah, but I was like near the steps getting
25 ready to go up.

1 Q All right. So you were on your way to bed?

2 A Yes.

3 Q All right. And you said **Minor** wouldn't come

4 down the steps, is that what you said? She would come

5 to the top and reach out. Is that what you said?

6 A Yeah.

7 Q And she do that -- would she stand up when

8 she did that?

9 A No. She would just sit down and look up and

10 move her arms out like that.

11 Q Okay. Was she walking? Could she walk?

12 A A little.

13 Q Just starting?

14 A Yes.

15 Q And you checked on her that next morning,

16 right?

17 A Yes.

18 Q What did you mean when you said just didn't

19 feel right?

20 A Like something didn't feel right with my

21 family. Something just didn't feel right.

22 Q You got that feeling when you woke up?

23 A Yes.

24 Q And then did you happen -- you checked on her

25 heart and everything. Did you have to lay over Mijay?

1 A I had to lay over him.

2 Q You did?

3 A Yes.

4 Q Did you wake him up?

5 A No.

6 Q Did you hear him breathing?

7 A Yes.

8 Q You said he's a loud sleeper. Did you ever

9 hear any loud thumps coming from your room that night?

10 A No.

11 Q You remember when you went to bed, was there

12 a hole in your wall when you went to bed?

13 A No.

14 Q Do you know if Mr. Murphy ate when y'all ate?

15 A Yes.

16 Q Did he drink anything with his supper?

17 A Yes.

18 Q And you said Minor was learning to walk,

19 right? Did she pull herself up?

20 A No, she would just get on the steps and get

21 on her knees and start crawling up.

22 Q Okay. And when she was in your room or

23 something, would she pull herself up and get on her

24 feet?

25 A Yes.

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1 Q She could? Did you see her do that any that
2 night?

3 A No.

4 Q You didn't? Did you see her crawling any
5 that night?

6 A Yes.

7 Q You did? Where would she crawl?

8 A When she wasn't upstairs with Shawn and she
9 was downstairs with my brother and me, she would just
10 start crawling everywhere and start playing.

11 Q Is that after your mom had left?

12 A Yes.

13 Q And then when you went up to your mom's room
14 and asked Shawn what was happening, did you see that--

15 MR. BARNETTE: Your Honor, I'm going to
16 object. I mean, this has been asked and answered
17 I don't know how many times.

18 THE COURT: Sustained.

19 BY MR. THOMPSON:

20 Q How many -- did you ever see -- how many
21 steps was the most steps you ever saw her take?

22 A I probably seen her take five.

23 Q Did Minor quit crying when she got her
24 bottle?

25 A Yes.

1 Q When Rashawn had his supper, what did he have
2 to drink?

3 A I think it was a soda.

4 MR. THOMPSON: I have no further questions.
5 Thank you, Mikey.

6 THE COURT: Mr. Barnette.

7 MR. BARNETTE: Just one question, Your
8 Honor.

9 **RECROSS-EXAMINATION**

10 **BY MR. BARNETTE:**

11 Q Mikey, your sister might try to climb up the
12 stairs, but she would never try to climb down, would
13 she?

14 A No.

15 Q And she would wait for somebody to help her?

16 A Yes.

17 Q And that night, you never saw her on the
18 steps, did you?

19 A No.

20 MR. BARNETTE: Thank you.

21 THE COURT: All right. Mr. Thompson,
22 anything else?

23 **REDIRECT EXAMINATION**

24 **BY MR. THOMPSON:**

25 Q When she got to the stairs, did she get to

Bernice Murphy - Direct Examination by Mr. Thompson

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1 the top and just -- did she come close to the stairs?

2 **A** Yes.

3 **MR. THOMPSON:** No further questions.

4 **MR. BARNETTE:** Nothing further of this
5 witness, Your Honor. We ask that he be excused.

6 **THE COURT:** Yes. Thank you very much.

7 Okay. You can step down and you can head out,
8 uh, outside. Okay?

9 Mr. Thompson, you have any other witnesses?

10 **MR. THOMPSON:** Your Honor, I'll call Bernice
11 Murphy.

12 **THE COURT:** All right. Ms. Murphy, if you
13 would, come forward and be sworn please.

14 **BERNICE MURPHY**

15 having first been sworn, testifies as follows:

16 **DIRECT EXAMINATION**

17 **BY MR. THOMPSON:**

18 **Q** Ma'am, state your name for the Court's record
19 please.

20 **A** Bernice Murphy.

21 **Q** Ms. Murphy, I'm going to try to be brief
22 with you.

23 **MR. THOMPSON:** Beg the Court's indulgence.

24 **THE COURT:** Yes.

25 **BY MR. THOMPSON:**

1 Q Ms. Murphy, I'm going to show you what's
2 been marked as State Exhibit 4. Do you recognize
3 that?

4 A Yes.

5 Q Okay. Would you explain to the Court what
6 that is.

7 A That goes to Shawn's futon that he had for a
8 long time, since he was about 12 or 13 years old.

9 Q Okay. What is it?

10 A The cover to his mattress for the futon.

11 Q The mattress cover. How long did you say he
12 had it?

13 A Since he was about 12 or 13 years old.

14 Q How many years would that be?

15 A He's 24 now.

16 Q And it was his exclusively?

17 A Yes, it was his. Even when he moved in with
18 Samantha, he took it with him and his bed.

19 Q You're pretty sure that's his, right?

20 A Yes.

21 Q Okay. When you saw it, was it dirty like
22 that?

23 A Well, I don't live with them, but no.

24 Q All right. Well, uh, I have no further
25 questions, ma'am. Answer any Mr. Barnett might have.

Remarks

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1 **MR. BARNETTE:** No questions for this
2 witness, Your Honor.

3 **THE COURT:** All right. Ma'am, you can step
4 down.

5 **THE WITNESS:** Thank you.

6 **THE COURT:** Is this a good time for a break?

7 **MR. THOMPSON:** Yes, Your Honor.

8 **THE COURT:** All right then. Ladies and
9 Gentlemen, let's take an afternoon break just a
10 few minutes, maybe about 10 minutes. All right.
11 (WHEREUPON, the jury exits at approximately
12 3:28 p.m.)

13 **THE COURT:** Mr. Thompson, you think your
14 client's ready?

15 **MR. THOMPSON:** Your Honor, I was wanting to
16 -- he wanted to discuss it during the break.

17 **THE COURT:** All right. That will be fine.
18 Let's take a break and then we will return in
19 about 10 minutes.

20 (WHEREUPON, a recess is taken from approximately
21 3:33 p.m. to 3:53 p.m.)

22 **MR. THOMPSON:** Your Honor, may we approach?

23 **THE COURT:** Yes.

24 (WHEREUPON, a bench conference is held off the
25 record from approximately 3:53 p.m. to 3:57 p.m.)

1 **THE COURT:** All right. Mr. Murphy, will you
2 stand and raise your right hand please?

3 **(WHEREUPON, the defendant complies.)**

4 **THE COURT:** You swear to tell the truth, the
5 whole truth and nothing but the truth under
6 penalty of perjury?

7 **MR. MURPHY:** Yes.

8 **THE COURT:** All right. You can put your
9 hand down.

10 **(WHEREUPON, the defendant complies.)**

11 **THE COURT:** All right. You can put your
12 hand down but remain standing if you don't mind.
13 It's my understanding from your attorney that you
14 all have had an opportunity to confer about
15 whether or not you wish to testify at this trial,
16 is that correct?

17 **MR. MURPHY:** That's correct.

18 **THE COURT:** Have you had enough time to talk
19 to him about your decision?

20 **MR. MURPHY:** Not really.

21 **THE COURT:** Well, now I've spoken with you
22 on two other occasions and asked you to please
23 speak with your attorney about this decision. Do
24 you -- how much longer do you think you need?

25 **MR. MURPHY:** Until tomorrow.

Remarks

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1 **MR. THOMPSON:** Your Honor?

2 **THE COURT:** Mr. Thompson.

3 **MR. THOMPSON:** If I could, if we could talk
4 maybe 10 more minutes and if I may incorporate
5 his family in that discussion. We're kind of
6 limited where we are.

7 **THE COURT:** All right. I'll tell you what,
8 we'll release the jury for the day, I'll let you
9 do that and then, uh, we'll, if nothing else, let
10 you rest on the record tomorrow whatever you
11 decide to do. Let's just bring the jury back on
12 in.

13 **MR. THOMPSON:** And I apologize.

14 **THE COURT:** That's fine. That's fine.

15 **MR. THOMPSON:** It's heavy on him.

16 **THE COURT:** I understand. I certainly
17 understand. It's a serious decision. All right.
18 If we can, get them back in.

19 **(WHEREUPON, the jury enters at approximately**
20 3:59 p.m.)

21 **THE COURT:** All right. Ladies and
22 Gentlemen, as you might, uh, have been
23 suspecting, we are drawing towards the close of
24 this case. We may or may not have some more
25 testimony tomorrow. But then we'll also have

1 closing arguments. Then we'll have -- then I
2 will charge you on the law tomorrow. However, I
3 don't think there's anything else that we can do
4 today without having to stop in the middle of it.
5 I think it would be best if we pick back up
6 tomorrow. I fully anticipate that we will
7 conclude, that at least the trial itself will
8 conclude fairly quickly tomorrow and that you all
9 will have an opportunity to deliberate on this
10 case tomorrow.

11 I am going to let you go for the evening. Due
12 to some scheduling concerns, we're going to start
13 back tomorrow morning at 10:30. If you will, be
14 here. Uh, I would like to start as close to
15 10:30 as possible. How about I just ask if you
16 will be here at 10:20 to make sure we have
17 everyone here. We will start at 10:30 very
18 promptly. All right. Thank you so much.

19 (WHEREUPON, the jury exits at approximately
20 4:02 p.m.)

21 **THE COURT:** Mr. Thompson, I don't mind
22 holding everybody for about 10 minutes if y'all
23 want to go and talk and see if you want to make
24 your decision now.

25 **MR. THOMPSON:** That's fine.

Court Remarks to Defendant

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1 **MR. LEIBERT:** And may we approach on one
2 matter?

3 **THE COURT:** Absolutely.

4 **MR. LEIBERT:** I was going to make a copy of
5 15B. Where I was standing at the light, I
6 realized that I could read it.

7 **(WHEREUPON, a recess is taken from approximately**
8 4:03 p.m. to 4:23 p.m.)

9 **THE COURT:** We are back on the record in the
10 State versus Rashawn Murphy. And when we broke
11 earlier, Mr. Murphy, I was discussing with you
12 whether or not you had adequate time to talk to
13 your attorney about your decision to testify.
14 Will you stand for me? I'll remind you that you
15 are still under oath. Have you had adequate time
16 now to speak with your attorney?

17 **MR. MURPHY:** Yes, ma'am.

18 **THE COURT:** Has anybody forced you into your
19 decision?

20 **MR. MURPHY:** No, ma'am.

21 **THE COURT:** Has anybody promised you
22 anything to get you to enter into this decision?

23 **MR. MURPHY:** No, ma'am.

24 **THE COURT:** You feel like you got a clear
25 mind here today?

1 **MR. MURPHY:** Yes, ma'am.

2 **THE COURT:** You are not under the influence
3 of drugs or alcohol, are you?

4 **MR. MURPHY:** No, ma'am.

5 **THE COURT:** You understand you've got an
6 absolute right to testify if that's what you
7 would like to do?

8 **MR. MURPHY:** Yes, ma'am.

9 **THE COURT:** And you have an absolute right
10 to remain silent. You understand that as well?

11 **MR. MURPHY:** Yes, ma'am.

12 **THE COURT:** All right. What is your
13 decision regarding your testimony?

14 **MR. MURPHY:** Not to testify..

15 **THE COURT:** All right. Very well. We will
16 break. Is there any other matters we need to
17 take up from the State?

18 **MR. BARNETTE:** Your Honor, I was talking to
19 the Court Reporter earlier while we were on the
20 break here. I haven't had a chance to talk to
21 Mr. Thompson. She said State Exhibit number 6, I
22 think we stipulated to it, that was the DNA
23 report by Kimberly McGill. That was stipulated
24 to at the beginning of the record as part of
25 evidence. We both agreed to that. I just want

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1 to make sure that's part of the record too. She
2 just mentioned she has got 400 pages. She felt
3 like she couldn't check back through that.
4 That's one thing we agreed to at the beginning of
5 the trial. And she said something about State
6 Exhibit 3, which is the comforter. I'm more than
7 positive we moved that into evidence. But if we
8 didn't move it into evidence, but I'm pretty sure
9 we did, but if we didn't, I want to make sure
10 that was on the record too.

11 **THE COURT:** All right. Any objection to
12 having State Exhibit number 3 moved into
13 evidence?

14 **MR. THOMPSON:** I think my notes indicated it
15 was.

16 **MR. BARNETTE:** And State Exhibit 6, which is
17 the DNA report, that was stipulated to as
18 evidence before the trial began.

19 **THE COURT:** All right. Very well then. Uh,
20 all right. Anything else we need to take up from
21 the defense?

22 **MR. THOMPSON:** None, Your Honor.

23 **THE COURT:** All right. We will resume
24 tomorrow morning at 10:30.

25 (WHEREUPON, the Court recessed for the day at

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1 approximately 4:26 p.m.)

P R O C E E D I N G S

1
2 (WHEREUPON, the proceeding begins on Thursday, the
3 17th day of March, 2011 at approximately 10:56 a.m.)

4 THE COURT: We ready for the jury?

5 MR. LEIBERT: Yes, Your Honor.

6 MR. THOMPSON: Yes, Your Honor.

7 THE COURT: All right then. Oh, are you
8 ready to rest?

9 MR. THOMPSON: I am, Your Honor.

10 THE COURT: Okay. You know what. Hold up
11 one second. Hold up just one second. I'm sorry.
12 One second.

13 Do you need to make any motions or do
14 anything like that? If we bring the jury in, I
15 don't want to bring them in and you rest and then
16 put them right back out if you need to make a
17 motion.

18 MR. THOMPSON: Your Honor, the Court have
19 already ruled on the third-party guilt motion. I
20 think that it was made. I had made the statement
21 I would get around that and my testimony would be
22 to rebut the State's case. I'll make the motion
23 now. I think enough came out in the, uh,
24 testimony of the mother and the child to overcome
25 -- to overcome the State's motion and therefore

1 grant that motion based upon Holmes v. South
2 Carolina. I think there's enough that came out
3 that I can argue third-party guilt in closing.

4 MR. BARNETTE: Your Honor, I don't --

5 THE COURT: Yes, sir.

6 MR. BARNETTE: I think, uh, -- I don't think
7 it's third-party guilt. We have no problem with
8 -- obviously, we disagree with him, but I think--

9 THE COURT: Absolutely. He's just got a
10 differing theory of the case.

11 MR. BARNETTE: Right. I don't think -- he's
12 not blaming another individual. He might say it
13 happened in a different way.

14 THE COURT: Let's just say this. To the
15 extent that you offered to this court evidence of
16 third-party guilt -- in other words, there was,
17 at some point, some talk that you might have
18 offered a defense that casts the doubt on someone
19 else or cast suspicion on someone else who was in
20 the home at that point in time, possibly even a
21 child who was in the home at the time. I'm
22 excluding that. I believe that under Holmes v.
23 South Carolina, my reading of it, was just that
24 that would just casts just a bear suspicion, that
25 there was no real evidence to tie anyone else who

1 was in the home at that time to it.

2 Now, so far as a differing theory of the
3 case, I think we talked about that in chambers.
4 I think everyone's fine with my understanding of
5 what you intend to offer as your theory of the
6 case.

7 **MR. THOMPSON:** Right. I'll do that, but I --

8 **THE COURT:** You just want to protect the
9 record.

10 **MR. THOMPSON:** As far as third party guilt,
11 I think enough was possibly offered by the mother
12 saying she was up at 2:00 in the morning that
13 would bring her in as somebody the jury could
14 infer that could possibly be responsible.

15 **THE COURT:** But you have nothing else to tie
16 it to her other than that she was in the home at
17 that time. There's no other testimony. In fact,
18 the child testified, did he not, that he slept in
19 that room, heard absolutely nothing all night.

20 **MR. THOMPSON:** He said he didn't hear
21 anybody come in and check on them. She said she
22 checked on them twice. He said he didn't hear
23 that. He was sleep, slept through it.

24 **THE COURT:** I'm going to allow you to get
25 into your differing theory of the case. But so

1 far as to cast third party guilty on a particular
2 individual, no.

3 **MR. THOMPSON:** I'm not wanting to say here's
4 what happened. I just -- I don't want to get
5 objected on in the middle of closing if something
6 is said. I think I got my closing structured
7 around that to satisfy, I assume, a motion be
8 granted on third party guilt.

9 **THE COURT:** All right.

10 **MR. THOMPSON:** I structured my closing
11 accordingly. But in the event you were going to
12 deny the motion, it wouldn't fit.

13 **THE COURT:** And you are renewing your motion
14 for directed verdict. I'll deny that.

15 **MR. THOMPSON:** Right. But that was my
16 question that I was seeking clarification.

17 **THE COURT:** Okay. All right. Very well
18 then. Are we clear on it? Everybody feel clear
19 on it?

20 **MR. THOMPSON:** Yes, Your Honor.

21 **THE COURT:** All right then. We can bring
22 the jury around.

23 **MR. THOMPSON:** Your Honor, could I run to
24 the restroom?

25 **THE COURT:** That's fine.

1 This would be a good point for me just to
2 make a general statement to everybody who's in
3 the gallery. If I could ask you folks to go
4 ahead and have a seat. To all the people in the
5 gallery, I want you to hear this. No matter what
6 comes out, no matter what happens in arguments,
7 the verdict or anything like that, I want you to
8 understand that this is a courtroom and I expect
9 you to act accordingly. This jury has given us
10 its full attention and respect and I expect that
11 kind of respect for them.

12 I want to be clear. If you feel like you
13 can't hold your emotions either during closing
14 argument or at any point in the remainder of this
15 trial, I want you to leave now. I do not want you
16 to come back. I want to be clear. I will deal
17 with it severely if we've got problems in this
18 courtroom. If these deputies have to do one
19 thing to get control of this courtroom, I'm going
20 to deal with it severely. As long as we are
21 clear on that with everybody. All right.

22 (WHEREUPON, the jury enters at approximately
23 11:02 a.m.)

24 **THE COURT:** Ladies and Gentlemen, I hope you
25 all got to have a little, maybe a little extra

1 hour to sleep or something this morning. But in
2 any event, I appreciate, uh, -- I appreciate you
3 being back so promptly. I will report to you
4 that while we were once again delayed, we were
5 delayed this morning somewhat, we took care of a
6 lot of business that I think is going to make
7 things go a lot more smoothly.

8 All right. Mr. Thompson, we were at the
9 point in your case, uh, -- is there anything you
10 -- any additional, uh, evidence or testimony you
11 would like to present?

12 **MR. THOMPSON:** Uh, the defense would rest,
13 Your Honor.

14 **THE COURT:** All right then. Ladies and
15 Gentlemen -- and is there any reply from the
16 State?

17 **MR. BARNETTE:** None from the State, Your
18 Honor.

19 **THE COURT:** All right. Ladies and
20 Gentlemen, we are now moving to the portion of
21 this trial in which the attorneys are going to
22 make their closing arguments to you. All right.
23 I ask you -- I don't think I need to ask you this
24 because you have been so attentive throughout
25 this whole trial. I have observed you and seen

1 you being so attentive. But I'd ask you to give
2 your attention just a little longer to these
3 attorneys. As soon as they finish their closing
4 arguments to you, I'm going to charge you on the
5 law. All right. All right.

6 Mr. Thompson?

7 **MR. THOMPSON:** Please the Court, Your Honor.

8 **THE COURT:** Yes, sir.

9 **MR. THOMPSON:** Ladies and Gentlemen of the
10 jury, I will probably be a little lengthy here.
11 I hope you're patient with me. As I go through
12 this, I told you at one time I used to be a
13 school teacher. I was a football coach too. So
14 if it sounds like I may be addressing you
15 inappropriately or calling you guys or something
16 like that, I don't mean anything.

17 I want to talk to you about this case. A lot
18 of times when I do a closing or an opening, you
19 seek some kind of guidance. I've got the benefit
20 of having a fantastic wife. She always tells me
21 to go to the Bible. I'm not very biblical, I'm
22 not a scholar of the Bible at all. You know,
23 I've got a better attitude about it. I can't
24 understand what they're saying. She was like
25 you've got a law degree. Fortunately, she's like

1 you ladies and probably Judge Verdin, she's got
2 these long beautiful fingernails and she could
3 peel right out that scripture. She brought me
4 out, a long time ago, probably my favorite
5 scripture. It comes out twice in the Bible.
6 First in the Psalms and second in Matthew where
7 Jesus just repeats --

8 **MR. LEIBERT:** Your Honor, I would object.
9 May we approach?

10 **THE COURT:** Let's approach.

11 **(WHEREUPON, a bench conference is held off the**
12 **record from approximately 11:05 a.m. to 11:06 a.m.)**

13 **MR. THOMPSON:** May I continue, Your Honor?

14 **THE COURT:** Yes, sir.

15 **MR. THOMPSON:** Okay. And as the Bible says,
16 a history teacher found this verse. It says the
17 stone the builders have rejected is the capstone.
18 This is marvelous in the Lord's eyes. Now, I
19 like that because in history, there's an arch.
20 The oldest archeological structure ever built is
21 the arch. There are arches still standing that
22 were built thousands of years ago. That capstone
23 represented in that verse is the last piece that
24 goes in. The builders would get the most perfect
25 stones and they would cast them on top of each

1 other. As an arch, it would go this way. One
2 would build over here, one would build over
3 there.

4 When they came together, a perfect stone
5 wouldn't fit. They took one of the jagged rough
6 stones that the builders had thrown away
7 previously. That would fit in the middle. It
8 would all lean in and fit together. So something
9 that was thrown away became the most useful part
10 of the arch. I'm going to go back to that here
11 in a little bit. I want you to keep that in your
12 mind as we go through this summarization of the
13 case.

14 I'm going to go right into -- Judge Verdin
15 has done a great job as the judge. We are
16 honored to be in her courtroom. She told you in
17 the beginning, she referenced the trial as a
18 puzzle. You're going to be presented with
19 several pieces of evidence. As you go through,
20 it's going to be your job to put all those pieces
21 together into a verdict.

22 So I'm going to go over the puzzle pieces
23 that were presented to you. I'm going to go over
24 each police officers statement, each person I
25 called as a witness, their statement. I'm going

1 to go over things that the State produced, the
2 DNA, the letter. All of this, the hole in the
3 wall. I'm going to go over all that. Like I
4 said, I hope you're patient with me. This is
5 serious stuff. I'm going to try to be detailed
6 and I'm going to try to be thorough. At the same
7 time, I will try to move quickly. Okay?

8 Now, on either January 2nd or January 3rd, a
9 horrible, horrible act occurred. As I go through
10 this, I don't, in any way, want to downplay the
11 horrific thing that happened to that family.
12 January 2nd is a Friday night. January 3rd is a
13 Saturday morning. Ms. Hill told you she came
14 home. Eventually went to bed. The next morning,
15 they found the child.

16 The first person we met up here in this trial
17 was Officer Bryant. Officer Bryant, as police
18 officers are trained to do, take the question
19 from me and look at you. He would answer the
20 question and tell you. I asked him one time was
21 he not hamming it up a little bit. I don't know.
22 He's a good guy. He's a good officer. I just
23 felt like he was. I felt like he went to -- if
24 you noticed, he wanted to make a big deal about
25 my client adding the stairs after his initial

1 statement was made. Okay. He made a big deal of
2 that and he wanted to portray my client as being
3 dishonest because of that.

4 My client gave three statements that day.
5 The stair issue never showed up in any of the
6 statements, but he did share it with the police
7 officer. His attempt, in my opinion, was to make
8 you think my client was making up stuff or lying
9 about what happened.

10 Also, if you remember correctly, he didn't
11 give my client a list of his constitutional
12 rights under Miranda v. Arizona. He just read
13 them to him. That's a very minor detail, but at
14 the same time, my client sat for five hours. You
15 give him a piece of paper and let him know what
16 his rights are. He never did that.

17 As I said, he made a big issue out of the
18 stairs. He found in his opinion that he had
19 found a discrepancy. It's Saturday afternoon.
20 He's been working all day. This guy's got
21 something that I feel that's a lie. He's guilty
22 of this crime. Let's close up shop and go home.
23 Instead of exploring the case further, he gets a
24 warrant and throws my guy in jail.

25 Also, the State asked Ms. Hill did Mr.

1 Murphy ever tell you anything about the stairs?
2 Ever tell you anything about the stairs? Well,
3 he was in a room. She was in another room. She
4 hadn't seen him since. They took him away. He
5 can't have contact with her.

6 Officer Bryant, like I said, is a good guy.
7 But in my opinion, he basically drew a
8 conclusion. He got it five hours later. He's
9 tired of fooling with this thing and he just
10 closed up shop. He didn't pursue this case
11 anymore.

12 Then we saw Officer Taylor. Officer Taylor
13 is a friend of mine. I'll go ahead and be honest
14 with you. And he told you something I think is
15 very important. I'm going to hit on that in the
16 letter. He said he put the picture of the baby
17 on that glass. Okay. And then my client begin
18 to tell what happened that night. Think about
19 that later when I get into the letter. Okay.

20 This picture, he showed you. It wasn't
21 detailed photos that the officer made. It wasn't
22 detailed photos of the coroner. It's just the
23 pictures of the child. He's less than 12 hours
24 from finding out this child's died. Yet, Officer
25 Bryant and Taylor fill out -- he's supposed to

1 have every detail down. He's supposed to know
2 everything, give them everything that satisfies
3 them. Some reason, they feel that way. Officer
4 Taylor, in my opinion, the big part he played was
5 showing that picture to my client.

6 Then we've got Officer Hogsed. Officer
7 Hogsed said he was present when these photos were
8 made. He manipulated the light on the one that
9 show the bruise on the leg. And he came over here
10 and it's a big deal. Look at that head. Look at
11 that plaster in the head. That was his main --
12 he wanted you to see that. That was up there.
13 It stayed up there for a long time. Where did
14 that plaster come from, Officer? Oh, it come out
15 of the wall over there at that apartment where
16 the child was killed. He made a big deal out of
17 that. I think Mikey's testimony crushed that
18 theory about the child's head hitting that wall.
19 But that was his big contribution.

20 Also, what else did he say? He goes over and
21 helps remove that section. But he doesn't get
22 any DNA from it. It conveniently collapses and
23 falls to pieces. Where this child's head
24 supposedly hit, they can't pull any blood because
25 it collapsed.

1 He did -- you know, he testified. He's a
2 very experienced officer. Yeah, there was a lot
3 of bruises under the chin. Here are those
4 abrasions. I think his puncture wounds, several
5 fingernail marks. He testified to all that.
6 Like I said, this big one was the plaster in the
7 head. He took the testimony of that child. That
8 theory is out the door.

9 The next person we saw was Officer Nix. My
10 notes indicated he's the one that said the
11 plaster crumbled. He and Officer Hogsed, I
12 assume, were the two taking it out and it
13 crumbled. They didn't find DNA or blood. I
14 don't know if you watch CSI but according to
15 them, you can find DNA on about anything.

16 Then Ms. Betty Butler came through. Mr.
17 Barnette came up here and showed her a little
18 piece of this, a little piece of where was cut
19 out. The State wanted to leave those things in
20 the bag. They didn't want you to see the whole
21 thing. These are old covers. They got marks all
22 over them. They got blood from my client. They
23 got blood from a baby. That's all they checked
24 was those two. Okay. If they had checked it,
25 they probably found blood from everybody that

1 lived in that house.

2 I had to pull these sheets out. I had to
3 show you the condition that cover's in. The
4 State wanted to just pull out a corner. Look
5 here. Is this what you got? Yeah, that's what I
6 got. That's why we removed it. My client's
7 grandmother testified that one of these has been
8 around since the mid-90s. It looks like its been
9 around since the mid-90s.

10 So, Ms. Butler, great woman. She testified
11 as to the facts. I think the State did not want
12 you to see the whole cover. Okay. You are not
13 required to take that back there and spread it
14 out, but I encourage you to. Okay. Look at the
15 condition of the cover. It's old stuff. The
16 truth be known, it's got several DNA samples on
17 it from various people.

18 Also remember the cuts on the tongue the
19 child had. Okay. Mama verified the child had
20 cuts before she left. Had cuts for a while. The
21 child's teeth. Very, very possible that's where
22 the child's blood came from. Remember Dr. Wren
23 couldn't find any blood where he said the
24 puncture wound, I mean, the blunt force trauma
25 wound occurred.

1 Then we saw Mr. Jasper Humbert. He verified
2 the DNA finding. He verified my client's DNA on
3 a couple of pieces of this stuff and then a
4 couple of the child's. Then he said, well, it's
5 a mixture. The child and the defendant or Mr.
6 Murphy are on one of them. But he told you
7 there's no way to determine when the DNA got
8 there. No way to determine if they came in there
9 at the same time, if there's something that Mr.
10 Murphy had on him in the mid-90s or on up until
11 2010 or '9. He doesn't know when the baby's got
12 there. All he knows is that they were both
13 there. There's no age determination on there.

14 The only DNA they had was blood. No
15 fingernail. Nothing under people's fingernails.
16 Nothing from any other hair fibers. Nothing like
17 that. Just blood. The State was there. The
18 police officers were there the next day. They
19 could have gotten an array of fibers. They chose
20 only to take those four samples that they did
21 from those four pieces of cover.

22 And then we saw Dr. Wren. I ought to call
23 Dr. Wren the State's hired gun. Very
24 knowledgeable. Very smart. He's a doctor and he
25 is very knowledgeable and probably explained