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SC Court of Appeals

STATE OF SOUTH CAROLINA

IN THE COURT OF APPEALS

Appeal from Lexington County

Honorable Thomas A. Russo, Circuit Court Judge

THE STATE,

RESPONDENT,

V.

FILIBERTO CAMPOS,

APPELLANT

APPELLATE CASE NO. 2015-001293

RECORD ON APPEAL

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(PHOTORAPHS), AND STATE'S EXHIBIT #73 (PHOTOGRAPH).**

1 State of South Carolina) In the Court
2 County of Lexington) Of General Sessions
3 Indictment No.: 2014-GS-32-1347
4 State of South Carolina,)
5 vs. Plaintiff,) Transcript of Record
6 Filiberto Garcia-Campos,)
7 Defendant.)
8

June 1 Through June 3, 2015
Lexington, South Carolina

11 BEFORE:
12 The Honorable Thomas A. Russo, Judge, and Jury

14 APPEARANCES:
15 Suzanne Mayes, Assistant Solicitor
16 Robert McNair, Assistant Solicitor
17 Attorneys for the State
18 Aimee Zmroczek, Esquire
19 Attorney for the Defendant

20 ALSO PRESENT:
21 Filiberto Garcia-Campos
22 Laura Cahue, Translator

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* * * * *

June 1, 2015

BAILIFF: All rise. Court is now in session.

THE COURT: Thank you. Please take your seats. All right. Ladies and gentlemen, we are ready to proceed with drawing our first jury. I will recognize the State to call the first case for trial.

MS. MAYES: May it please the Court.

THE COURT: Yes, ma'am.

MS. MAYES: Your Honor, the State calls indictment number 2014-GS-32-1347, the State versus Filiberto Garcia-Campos. This indictment is for homicide by child abuse. Mr. Garcia-Campos is present in the courtroom.

THE COURT: Thank you, ma'am. Ladies and Gentlemen, you have heard the Solicitor call the first case for trial, that being the State of South Carolina versus Filiberto Garcia-Campos. Mr. Campos is charged under this document that we call an indictment. An indictment, ladies and gentlemen, is simply a piece of paper or a document that contains the allegations that the State has made against the defendant. It is not in any way or in any sense evidence in this case. It is merely the allegations that the State has made against a defendant.

This indictment is indictment 2014-GS-32-1347-A, and it charges Mr. Campos with the offense of homicide by

1 child abuse. Now, to that allegation or to that charge
2 he has pled not guilty and that plea of not guilty places
3 upon him the presumption of innocence and it places upon
4 the State the burden of proving the elements of these
5 allegations beyond a reasonable doubt. I am going, as I
6 said, even though this is not evidence in the case, I am
7 going to read to you the allegations that the State has
8 made against this Defendant so that you will have some
9 idea about what this case is about and then I can ask you
10 questions as it relates to these facts or to these
11 allegations.

12 Ladies and gentlemen, the allegations that the State
13 has made against Mr. Campos are as follows: That
14 Filiberto Garcia-Campos did in Lexington County, South
15 Carolina on or about July the of 2012 through
16 September the 2nd of 2013 cause the death of a child
17 under the age of 11 while committing child abuse or
18 neglect and the death occurred under circumstances
19 manifesting an extreme indifference to human life to wit
20 Infant , date of birth being of 2012
21 under circumstances manifesting an extreme indifference
22 to human life and while committing child abuse or neglect
23 as defined by South Carolina Code Section 16-3-85(b)
24 being an act or omission which caused harm to the child's
25 physical health or welfare such act or omission including

1 malnutrition and other dehydration and/or medical neglect
2 and/or failure to supply the child with adequate food or
3 health care and the failure to do so caused physical
4 injury or condition resulting in the death of Infant
5 all in violation of Section 16-3-85(a)(1) and (b)
6 of the South Carolina Code of Laws 1976 as amended.

7 As I said, ladies and gentlemen, those are the
8 allegations the State has made against the Defendant.

9 Is there any member of the jury panel who knows
10 anything about this case or about these facts based upon
11 what I have just shared with you? If so, please stand.
12 All right. Can I get your name, please?

13 SHARON MILLS: Sharon Mills.

14 THE COURT: All right.

15 THE CLERK: 152, Your Honor.

16 THE COURT: Ms. Mills, I'm gonna get you to step up
17 here and let me ask you.

18 SHARON MILLS: I work at the lab and I had to do a
19 ticket on another child in this case.

20 THE COURT: So you have some information and
21 knowledge about this case?

22 SHARON MILLS: Yes, Your Honor. I don't know a lot
23 but...

24 THE COURT: Was it on the --

25 MS. MAYES: Yes, sir. What happened is on Friday of

* * * * *

(Whereupon, State's Exhibits #1 through #52 marked for Identification.)

BAILIFF: All rise.

THE COURT: Thank you. Please be seated. Yes, ma'am, please swear the translator.

THE CLERK: Please raise your right hand. Do you solemnly swear or affirm that you will interpret English into Spanish and Spanish into English, that you will not change any of the wording, that you will translate accordingly as to what is said?

LAURA CAHUE: I do.

THE CLERK: Thank you, ma'am.

THE COURT: Ms. Cahue, thank you for your willingness to assist us in this matter. We appreciate your time and talents. Do you have everything you need, ma'am?

TRANSLATOR: Yes, sir.

THE COURT: Okay.

TRANSLATOR: Do you have any questions for me?

THE COURT: No, ma'am. I don't think I have anything. I think we are ready to go. All right. We ready to proceed with any pretrial matters?

MS. MAYES: Yes, sir, Your Honor. The State will have a Jackson v. Denno hearing regarding two statements

1 of the Defendant and then we have a motion concerning the
2 admission of photographs in this case. Specifically the
3 issue deals with post mortem photographs. And then the
4 defense has several other motions and I think we have a
5 motion in limine or two or something of that nature so
6 however you wish to proceed.

7 THE COURT: All right. Let me first ask, Ms. Cahue,
8 have you interpreted in this courtroom before?

9 TRANSLATOR: Not in this courtroom, sir.

10 THE COURT: Okay. Because I want to make sure that
11 you are in a good place to do what you need to do and I'm
12 afraid being over there you won't be able to -- Is it
13 better for you to see the witnesses as they testify or
14 does it matter?

15 TRANSLATOR: It doesn't matter to me as long as I
16 can hear everybody.

17 THE COURT: Okay. I just didn't know if it might be
18 -- Are you set up in anything other than a chair? You
19 just have a chair over there?

20 TRANSLATOR: Yes, sir. I have everything I need
21 right here.

22 THE CLERK: We have a small table over here that we
23 can use if she needs it, Your Honor.

24 THE COURT: Well, I just want her to be comfortable
25 and be in a position where she can - and yet I don't want

1 you to feel uncomfortable by being placed out in the
2 middle of the room or anything. But would it be good for
3 you if we put the chair over there next to the court
4 reporter next to his --

5 TRANSLATOR: That won't work because sometimes he
6 might be able to hear my whispers and it will interfere
7 with him.

8 THE COURT: Okay. What about sitting up in front of
9 your desk so at least she can get a look at the witness
10 over here.

11 THE CLERK: We can do that.

12 THE COURT: Let's try and do that and use that
13 little table so that she has something if she needs to
14 take notes or write on or whatever. Ma'am, if at any
15 time someone is not speaking loud enough or you need
16 anything repeated, you let me know and we'll make sure
17 they do that, okay?

18 TRANSLATOR: Yes, I will. Thank you.

19 THE COURT: All right. Now, let me just -- I have
20 just received some paperwork on some motions that the
21 defense has and to me judicially for economy sake it
22 might be better to take up the motions that the defense
23 has made that would be dispositive of the case if the
24 court were to grant them so that we don't go through a
25 lot of other matters and then end up quashing the

1 indictment, for example. I see that's one of the
2 motions.

3 MS. ZMROCZEK: Right.

4 THE COURT: So let's take up, if we could, those
5 defense motions which if granted would be dispositive of
6 the case so that if that's going to occur, we won't waste
7 any further time and if it doesn't occur, then we'll just
8 continue with our motions, okay?

9 MS. ZMROCZEK: Thank you, Your Honor. The first one
10 that I filed dealt with discovery and there were at least
11 a thousand pages and photographs turned over within the
12 last three weeks. I'm not asking for a continuance. One
13 of the reason I'm not asking for a continuance, Your
14 Honor, is this, my client has been in jail now for 14
15 months. My trial schedule is - I have a serious felony
16 trial, if not federal trial every month, sometimes two a
17 month until October so I didn't feel that it was
18 necessarily in my client's best interest to sit in jail
19 because of their Brady violations, Your Honor, and I
20 understand that what the position of - and they have been
21 very candid with the stuff that they have turned over,
22 that the officers did not give it to them and I honestly
23 believe that. I don't think they were hiding anything.
24 I think that they were as surprised at the volume of
25 items that were received after.

1 Your Honor, it's concerting for two reasons. One,
2 this case was called for trial by the State and the
3 officers and the people that work with the prosecutors as
4 Kyles v. Whitley says they are a team and they need to
5 let them know not at the last minute when they're
6 receiving items.

7 And then additionally, Your Honor, because of this
8 later discovery it's changed - the co-defendant was going
9 to come in and testify. Now her attorney has advised me
10 that she is pleading the Fifth Amendment which changes
11 our case a little bit and the presentation of evidence.

12 So we are not asking for a continuance I understand.
13 If anything, it's in the Court's discretion, but what we
14 would ask for, Your Honor, is if the Court does not see
15 the need to dismiss, that A, they would admonish the
16 police officers to let them know that when cases are
17 called, that they can't be turning stuff over at the last
18 minute and maybe provide a little bit of flexibility with
19 admission of, there are some writings and things that
20 were received just a few weeks ago, Your Honor. The
21 writings are writings done by the co-defendant who is now
22 not testifying and so I would ask the Court for a little
23 leeway to be able get those items introduced since those
24 are issues that I can't deal with since she will not be
25 here.

1 THE COURT: Ms. Mayes.

2 MS. MAYES: Yes, sir, Your Honor. With the original
3 discovery in this case which would have been I believe
4 2014 there were numerous evidence entries and they were
5 entered as documents personal or business and there were
6 probably about 12 of those entries on the evidence
7 listing that was given to the Defendant and we had a copy
8 of that as well.

9 Now, it was actually Ms. Zmroczek who suggested that
10 we go over to the evidence room and review all of that.
11 When she made that request, we basically called the
12 evidence room and said, hey, we have got to come over.
13 We've got to come over now. We're looking at a potential
14 trial date and within two days I think we got over to the
15 evidence room to start reviewing those items. Once we
16 got over there, Ms. Zmroczek requested the copies which
17 are voluminous of basically all the paperwork that was
18 found in the home. These were a combination of social
19 security records, medical records, entries by the
20 co-defendant who is the mother of the child, sort of like
21 calendars, journals. This is what I'm doing today. A
22 lot of information about bills. There were receipts. So
23 basically every piece of paper over there we ended up
24 copying. I can't say every, but almost every and Ms.
25 Zmroczek and both co-counsel and I kind of went through

1 the items and determined what we wanted.

2 So it was - they were originally on notice from 2014
3 that there were numerous documents personal or business
4 over there. We just didn't know the nature of them, that
5 it was actually handwritten notations contained in a
6 spiral notebook by the co-defendant so that made them
7 more of interest once we got over there and got the
8 copies.

9 Now, apparently there was a supplemental report
10 provided by Detective Day that actually referred to those
11 documents as spiral notebooks. We didn't actually have a
12 copy of it. We copied our materials from Detective
13 Gooding's collection of case file materials back in 2014,
14 so we didn't actually have that. We had not actually
15 seen that supplemental report by Detective Day. My
16 understanding is that it was on what's called the server.
17 I don't know the date it was uploaded, but it should have
18 been uploaded to the server and that is something that
19 our case managers have access to. So unfortunately that
20 was an oversight that that supplemental was not
21 discovered and that actually referred to them more so as
22 papers rather than file notebooks.

23 MS. ZMROCZEK: And I believe it was about
24 185 additional photos that y'all were just recently
25 provided last week.

1 MS. MAYES: There were two CD's that were recently
2 provided. One had 187 photos from a search and the other
3 one had numerous photos from a camera. Those had not
4 originally been provided to us, but I do believe it was
5 an oversight because the search photos should have been
6 on the server where we should have been able to access
7 them. The other one concerning the Sanyo camera, we got
8 that CD sometime in April and unfortunately didn't
9 realize the significance of it until we were actually
10 preparing for this trial. I'm going to submit to the
11 Court a copy of the original evidence list.

12 THE COURT: Now, when was this list provided?

13 MS. MAYES: That would have been with the original
14 discovery. That was the first set of discovery, Your
15 Honor.

16 THE COURT: 2014?

17 MS. MAYES: It may have been 2013. I'm going to
18 check that real quick. That was January 23rd of 2014.
19 Your Honor, also if I could add, we had two separate CD's
20 that had photos and we were confused about exactly where
21 the photos -- We actually thought those were photos of
22 both searches and once we started getting into it
23 ourselves we had questions about, well, we thought such
24 and such should be on this CD. Why isn't it on this CD?
25 That's when we really started looking at the fact that we

1 may be missing a CD and at that point the case manager
2 went to the system that law enforcement has called RMS
3 and that's when she was able to locate the 187 additional
4 photos.

5 Now, the fact that there was a search was a part of
6 the original discovery. It was always known that there
7 was a second search on September 12th. We just had two
8 separate CD's that had photos from the scene and it
9 wasn't clear that photos from the second search weren't
10 contained on those CD's.

11 THE COURT: Do you believe you have everything now
12 that the State has, Ms. Zmroczek?

13 MS. ZMROCZEK: I believe so, Your Honor. My concern
14 even just today when we were going through the photos so
15 that we could argue the photo motions, my concern and I
16 understand that there are 187 photos on the pictures that
17 they gave us but I have looked through so many photos in
18 last few weeks and there were some in what they referred
19 to as the new photos, the September 12th search warrant
20 that I didn't recognize. Now, I'm not saying that I
21 don't have them. My private investigator, I have just
22 texted him while we were looking through them and I was
23 sending him pictures, you know, do we have these? Did I
24 just overlook them? And he's searching right now so I
25 believe that they have provided me everything, Your

1 Honor, if I can just check. I didn't bring my disk with
2 me.

3 THE COURT: You have a disk of 187 photos. Are you
4 trying to introduce all 187 photos?

5 MS. MAYES: No, sir, Your Honor. We don't. And
6 what we did is we actually set up a time for Ms. Zmroczek
7 to come to our office and we compared our CD's to her
8 CD's and at that time all the images seemed to match up
9 in terms of you have this many on your CD, we have this
10 many on our CD. So I do feel like she has everything.
11 It's just unless you're actually going through those
12 photos individually it is easy to miss something. So I
13 feel like they are all going to be on the CD. If she had
14 it here, we would check it now. But at that time I
15 believe we went through every item that we are aware
16 of.

17 MS. ZMROCZEK: And I think Mr. McNair will confirm
18 that those 187 were received after we sat down because he
19 sent me an e-mail specifically because he put it on a
20 disk. I received that disk after we sat down.

21 THE COURT: Well, if you all --

22 MS. MAYES: Actually I should have the receipt on
23 that.

24 THE COURT: Here's the thing. These items have been
25 known about for some year or two and I'm not in any way

1 trying to relieve the State of their burden of having to
2 turn over evidence pursuant to Brady and Rule 5, but when
3 you have a list and the State has turned over evidence
4 and you look at that list and you see one, two, three,
5 four, five, six, seven, eight, nine, ten, eleven, twelve,
6 well, numerous, twenty or more items that the State has
7 listed on this evidence sheet that you don't have in your
8 possession, there's got to be also some responsibility on
9 the part of the defense to look over there and say, hey,
10 where are these items?

11 MS. ZMROCZEK: Well, that's what we did, Your Honor,
12 and they were in evidence.

13 THE COURT: I understand. But --

14 MS. ZMROCZEK: But the point is that they went
15 through --

16 THE COURT: But that occurred a couple of weeks
17 ago.

18 MS. ZMROCZEK: Correct. But they had incident
19 reports that didn't just refer to just documents and
20 papers. They had - when we got the supplemental evidence
21 reports just a few weeks ago, it showed that they had
22 actually gone through these notebooks and that there were
23 notebooks in there and taking notes from those notebooks
24 and I would have asked, oh, if I had that, then I would
25 have compared it to that list. Because typically, Your

1 Honor, as you're familiar, a list of items in evidence is
2 simply just that, something that we go look for before
3 trial not detailed handwriting notes from the
4 co-defendant or pictures from a camera that were never
5 provided. Even though it says camera in there and we
6 have pictures, we, you know -- And I agree. I mean, I
7 agree. But that's the nature of us not having control of
8 the case.

9 THE COURT: But here's my question. For the last
10 couple of weeks you have been dealing with this stuff and
11 it's, I mean, it's hard for me to quite understand
12 exactly the posture we are in because -- Have you had the
13 time that you need to go through those things? Have you
14 been able to go through the things? Because it's a
15 little bit odd. I'm being asked to dismiss the charges
16 for failure to comply, but at the same time you're saying
17 I'm not asking you to continue the case, Judge. I'm just
18 asking you to dismiss it.

19 MS. ZMROCZEK: Not only that. Well, yes. I have
20 made the time, Your Honor. I have gone through it so I'm
21 prepared. That's not the point. The point is I would
22 ask for some leeway in being able to introduce some of
23 these items because some of the writings -- I'm not going
24 to introduce every single thing that was provided.

25 THE COURT: Right.

1 MS. ZMROCZEK: But there are some specific notes and
2 handwritings and things that the co-defendant that were
3 collected and they're in the co-defendant's handwriting
4 and in the co-defendant's possession and now the
5 co-defendant is not testifying and so for me to be able
6 to get --

7 THE COURT: Well, I don't know. And again I don't
8 know what the co-defendant is doing. I know what you
9 have been told. I don't question that, but obviously you
10 can subpoena the co-defendant.

11 MS. ZMROCZEK: Oh, I have. I have. She's under
12 subpoena.

13 THE COURT: And is it my understanding, I'm
14 assuming, is this not the case that the co-defendant has
15 already pled and her case has been resolved?

16 MS. ZMROCZEK: She pled. Correct.

17 THE COURT: Under what basis can she claim --

18 MS. ZMROCZEK: There are two --

19 THE COURT: -- Fifth Amendment?

20 MS. ZMROCZEK: -- that she is claiming, Your Honor.
21 One is she filed a motion for reconsideration and then
22 secondly that her attorney recently found out about all
23 of these items and is now considering an appeal as well
24 based on violations. So that's how we ended up here. I
25 think, I felt like I needed to ask for the dismissal out

1 of an abundance of caution, but more so, Your Honor,
2 because if we continue this case, I won't be able to date
3 certain it until November and I'm ready now.

4 THE COURT: It's a little -- Well, let me say this:
5 I'm going to deny your motion to dismiss the case, but as
6 far as your request for leeway on those matters, in all
7 candor I probably am going to have to take -- I mean,
8 I'll certainly consider that obviously, but I'll have to
9 take them up as they come up because I don't know what we
10 are talking about number 1, and under what context we are
11 talking about. So it's not like I can really make some
12 pre-judgment on admissibility of anything until we get to
13 that point, but I will certainly consider the
14 circumstances as a whole:

15 MS. ZMROCZEK: I understand. And kind of procedural
16 just so that I can make the Court aware so that we
17 weren't in the middle of trial and you say why didn't you
18 bring this up to me before? So I was trying to because
19 honestly I don't know which items will come in and maybe
20 she'll get up on the stand and she'll change her mind. I
21 have no idea.

22 THE COURT: All right. Well, I'm going to deny the
23 motion, but I'm going to certainly keep the circumstances
24 surrounding that in mind as we go through and deal with
25 these items and these matters. And then I think there is

1 a motion to quash the indictment.

2 MS. ZMROCZEK: Correct, Your Honor, and that one I
3 have actually provided some case law and was just
4 e-mailed another case dealing with that issue as well and
5 it's Lucas Bailey v. South Carolina. It's a 2011 case.
6 The cite is 392. I think I e-mailed it to you as well.
7 SC 422, 2011.

8 Your Honor, interestingly these are homicide by
9 child abuse cases and the reason that we have moved to
10 quash the indictment is based on the vagueness of what
11 he's charged with. You will see, you have a copy of the
12 amended indictment with his name and we are not
13 challenging that. We stipulated to that name change
14 because the remainder of it is the same and he's charged
15 under Section 16-385(a)(1). That is a person is guilty
16 of homicide by child abuse if the person causes the death
17 of a child under the age of 11 while committing child
18 abuse or neglect and the death occurs under circumstances
19 manifesting an extreme indifference.

20 THE COURT: Slow down.

21 MS. ZMROCZEK: Sorry.

22 MS. MAYES: Judge, I have a copy of the statute
23 (proffering.)

24 THE COURT: I have got the indictment here I'm
25 looking at. Is that not the same thing?

1 MS. MAYES: It is.

2 MS. ZMROCZEK: Your Honor, the State Supreme Court
3 in Bailey as well as the case I handed up dealing with
4 the to wit language, Your Honor, and that is Roshay. I
5 think I argued it, but it's Gentry and Baker, Your Honor.
6 The Supreme Court has said that it's not enough to just
7 put to wit and list the elements in the indictment.

8 This is what counsel, I have been told over and over
9 and we discussed this when I sat down with them a couple
10 weeks ago, I said what is it they are charging him with
11 so that we know how to defend? And she said, well, it's
12 listed in the indictment. Well, everything is listed in
13 the indictment that falls under the definition of the to
14 wit. But, Your Honor, the question and what I have been
15 told repeatedly is there is no way he couldn't have
16 known. And that's what I have been told. So that's the
17 defense that I have been preparing for which I believe
18 doesn't even fall under (a)(1). I believe, if anything,
19 it would fall under (a)(2). But that's an argument for
20 directed verdict at a later date. But I'm asking what he
21 didn't do and I have been told, well, he didn't do
22 anything.

23 And I guess that's where the confusion is. I said,
24 well, what is it that he didn't do? Well, the child
25 starved to death. Well, I understand that and the mother

1 pled guilty to that. Well, there's no way he could have
2 not known about it. And, Your Honor, A, I don't believe
3 that falls under the statute and, B, that doesn't clarify
4 what exactly they're saying he was supposed to do. And I
5 think that the case law has been fairly clear especially
6 on these kind of cases that it is a general and broad
7 statute and I understand that's a problem with the
8 legislature, but they have separated it out into two
9 separate kind of actions. One, (a)(1) I would call the
10 principal and (a)(2) I would call the aider and abettor
11 which I think they actually call it aiding and abetting
12 in the statute. And to have a co-defendant who has pled
13 guilty to this as the principal, I just want to make
14 sure, Your Honor, as the trial goes forward that they
15 don't say that he affirmatively did something new that we
16 haven't been put on notice of.

17 THE COURT: Guys?

18 MS. MAYES: Yes, sir, Your Honor. The statute
19 defines child abuse or neglect as an act or omission by
20 any person which causes harm to the child's health and
21 welfare and then the harm element is defined as the
22 failure to supply the child with adequate food, clothing,
23 shelter or health care and the failure to do so causes a
24 physical injury or condition resulting in death and that
25 is exactly what we have. It is a constellation of

1 neglect that amounted to starvation. The child was also
2 dehydrated. There was extreme medical neglect because
3 she had not been to a physician in many, many months and
4 her condition was readily apparent or at least the State
5 argues that it would have been readily apparent to any
6 care giver.

7 Now, he is the biological father of the child. He
8 and the mother lived together with the child in the
9 family home on Edmund Highway and he had been living in
10 the home since the time of her birth so they were both
11 charged. There really is not a principal and an
12 accessory. They were both charged with homicide by child
13 abuse under the theory that they both neglected by
14 omission to provide the child with adequate food or
15 health care.

16 THE COURT: Ms. Zmroczek, I don't know how much more
17 detail they need to put you on notice of other than to
18 give specifics as far as what foods weren't supplied. I
19 mean, that seems for a notice document which is what an
20 indictment is, that seems to put you on notice as to what
21 their allegations are, that it specifically says to
22 supply the child with adequate food, nourishment, to
23 avoid physical injury or a condition that would result in
24 death.

25 MS. ZMROCZEK: My concern, Your Honor, is that the

1 argument is going to be to the jury and throughout this
2 case that he knew or should have known and I just want to
3 make sure that that's not the basis of the argument. If
4 the argument is he did this, he withheld food, then I
5 understand and that's what I'm --

6 THE COURT: Well, there's acts and omissions. So
7 it's not that he withheld food. It's that he didn't
8 provide it.

9 MS. ZMROCZEK: Right. Or that he didn't provide it.

10 THE COURT: Which would all be appropriate if the
11 evidence supports that.

12 MS. ZMROCZEK: Certainly. But if the argument is
13 made that --

14 THE COURT: I don't think this is a hand of one hand
15 of all thing.

16 MS. ZMROCZEK: Right. Like she -- If the food was
17 there and if she didn't feed the child and she told him
18 that she did, at that point if they get up and argue,
19 well, he should have known that she wasn't feeding her,
20 then that's when I think the issue is going to change.

21 THE COURT: Well, I'm not sure -- Again, nothing has
22 been presented at this time, but in a case like this that
23 may be a very valid argument. I don't know. I haven't
24 heard it in its context. I haven't heard any evidence
25 yet. But at this point I'm going to respectfully deny

1 the motion to quash because I think it is specific enough
2 to put the defense on notice.

3 Now, if things, if they go into things that aren't
4 encompassed in that, I'll certainly - any objection you
5 make with regards to that and we'll address that if it
6 goes outside of that parameter.

7 MS. ZMROCZEK: Thank you, Your Honor. And a lot of
8 these pretrial motions, I know that we have been working
9 on this case for years and you know tiny little bits
10 about it but a lot of them are just so that later on when
11 we revisit these issues that the Court says, oh, wait. I
12 remember we talked about that.

13 THE COURT: Sure. Now, I'm just going to say next
14 because it's another one that's here that I'm looking at,
15 is a motion for a competency hearing upon --

16 MS. ZMROCZEK: C.G.

17 THE COURT: Is that the co-defendant we are talking
18 about?

19 MS. ZMROCZEK: No.

20 MS. MAYES: Your Honor, that is a sibling who was
21 seven years of age at the time. That would be an
22 appropriate matter to take up prior to his testimony if
23 he testifies. At this point we are just not even sure
24 that he would so we'll be glad to take up any competency
25 issues prior to his testimony if it gets to that point.

1 MS. ZMROCZEK: He was just listed on the witness
2 list.

3 THE COURT: We'll take the time to do that then for
4 sure if that occurs.

5 MS. ZMROCZEK: And I believe that maybe the next one
6 we might have to wait as well, but it deals with the
7 forensic, with the cause of death. I'll hand it up and
8 we can mark it as a Court's exhibit.

9 THE COURT: Wait a minute. I want to get on the
10 same page with you.

11 MS. ZMROCZEK: It's Dr. Welsh.

12 THE COURT: All right. That's the motion to quash.
13 This is the motion for the Brady and the Rule 5 which we
14 have dealt with. This is the motion of the competency of

15 C.G. which we have dealt with. Oh, all right.
16 Then you have got this motion in limine on Dr. Welsh; is
17 that correct?

18 MS. ZMROCZEK: Yes. That's correct, Your Honor.

19 THE COURT: All right. Go ahead.

20 MS. ZMROCZEK: And if we can mark this as a Court's
21 exhibit.

22 (Whereupon, Court's Exhibit #1 marked.)

23 MS. ZMROCZEK: Your Honor, I'm handing it up to you,
24 it's the death certificate and it wasn't provided to me.
25 I found it in discovery on my own and I did provide a

1 copy to the Solicitor's Office. Your Honor, my concern
2 is that the autopsy as well as the death certificate
3 indicate a cause of death as lethal neglect. And, Your
4 Honor, Dr. Welsh is a clinical and anatomical pathologist
5 and he is not a forensic pathologist and so I understand
6 maybe why he didn't know what went there, but my concern
7 is that that reaches a legal definition. If they want to
8 say starvation or if they want to say, you know,
9 different through the doctor, those, I think, are okay,
10 but to use --

11 THE COURT: Your concern is the phrase lethal
12 neglect?

13 MS. ZMROCZEK: Lethal neglect which I think rises to
14 a legal conclusion that, A, I don't think he's qualified
15 to make and, B, it's my concern that those are words that
16 are straight from the statute so if they see that's the
17 cause of death --

18 THE COURT: Is lethal neglect --

19 MS. ZMROCZEK: It's not a medical diagnosis, Your
20 Honor.

21 THE COURT: Well, I don't know. It seems to me to
22 be more that than a legal conclusion.

23 MS. MAYES: Your Honor, I'm going to submit, we
24 actually when we found out about the motion, I found this
25 over lunch. This is an abstract from Medline and it

1 addresses lethal child neglect so it is something that is
2 discussed in both medical terms as well as in
3 investigative or forensic science terms.

4 THE COURT: My concern for purposes of the motion is
5 whether or not it's a legal conclusion versus a medical
6 diagnosis, I guess, and that might -- Hope, would you
7 make me a copy of this for Ms. Zmroczek?

8 THE CLERK: Yes, sir.

9 THE COURT: You know, that might be a situation that
10 we might want to take up that testimony and maybe proffer
11 it outside the jury's presence to -- I don't want a
12 situation trying to unring a bell type situation. If we
13 proffer that here where that is and allow you to make
14 whatever objections, if any, that you have.

15 MS. ZMROCZEK: Next, Your Honor, what I had hoped to
16 do, and that's why I told them, I gave them a list last
17 week of the motions. I understand that the doctor was
18 maybe out of town. I guess my concern is that it just
19 doesn't get said before we are allowed to do that so
20 maybe in opening or by whomever until the Court has had
21 an opportunity to hear the testimony.

22 THE COURT: Well, I don't know what Ms. Mayes or
23 Mr. McNair may say in opening. I don't know that they
24 intended to use that phrase lethal neglect.

25 MS. MAYES: That is correct, Your Honor. And the

1 autopsy does use the phrase lethal neglect, but it also
2 details the findings which were chronic starvation,
3 dehydration and then there is also, the defense has been
4 aware throughout the case evidence of medical neglect.
5 So it's a combination of the things that are in the
6 indictment. So there would be no need in opening to use
7 the term lethal neglect. But prior to Dr. Welsh's
8 testimony and also the testimony of Dr. Luberoff that can
9 be proffered outside the presence of the jury and we will
10 be glad to take it up however.

11 THE COURT: Yeah. Because obviously we'll need to
12 hear from everybody with regards to that terminology and
13 that issue so...

14 MS. ZMROCZEK: Thank you.

15 THE COURT: And we'll do that so please don't forget
16 to remind me.

17 MS. ZMROCZEK: Okay. I think the last one, they
18 filed one and I filed probably one and the same about the
19 photographs.

20 THE COURT: All right. Let me give this back to
21 Steve so he can keep up with this. That's Court's 1.
22 All right. And then we have the photograph issue and I
23 realize y'all have a bunch. Well, maybe not as many as I
24 think. I just heard about hundreds.

25 MS. MAYES: Your Honor, actually the items that we

1 were discussing that have been turned over within the
2 last two weeks or so about the 187, they are not the post
3 mortem photos. The post mortem photos have been
4 available since, well, they have had them since 2014.
5 Those consist of photos taken by the coroner's office and
6 also photos taken by law enforcement and of those I
7 believe there was a total of 112. There was a disk of 98
8 of which 82 had been taken pre-autopsy. When I say
9 pre-autopsy, they are not actually cutting yet. And then
10 an additional 32 taken by a law enforcement officer who
11 was at the autopsy. So of those probably 112 we are
12 offering less than 20 and the ones we are offering do not
13 deal with the actual autopsy itself. They show the
14 condition of the victim pre-autopsy and then I think
15 there is going to be one that is an x-ray. I'm going to
16 submit to the Court a copy of our motion in support of
17 the photographic evidence as well as the case law in
18 support and Ms. Zmroczek has received a copy and the case
19 law as well.

20 THE COURT: Okay. Now, have y'all, with regards to
21 the photographs, has there been any consensus to any of
22 them? Like, in other words, if you have got 18, are we
23 objecting to all 18 or are we dealing with 6?

24 MS. ZMROCZEK: And I just got a chance. I came this
25 morning at 8:30, but nobody was here yet so I had a

1 chance to look at them just now. The ones -- I'm not
2 objecting to everything in that box, of course. Right
3 now, Your Honor, what I'm focusing on are the autopsy,
4 what they call the autopsy photos. My concern is this:
5 She, the baby, was taken. My client calls 911. EMS gets
6 there to the house and she's clearly passed away and they
7 take her to the hospital and then there is this set of
8 seven random pictures in the camera that are missing and
9 then they pick back up at a different number and those
10 pictures begin right at midnight and, Your Honor, those
11 pictures are clearly taken before she's put in the
12 autopsy holding room, the ice box for lack of a cleaner
13 term.

14 So there are some pictures that are taken right when
15 she gets to the hospital that I'm, I mean, I'm not okay
16 with, but I'm more okay with than the pictures - because
17 if you look at those pictures, you can look at the
18 Medidata and see that those pictures were taken at
19 midnight and then the autopsy is completed the next day
20 after she's been in this cooler and they're still bad.
21 Don't get me wrong, Your Honor, the ones from that night.
22 And I'm not trying to say that they're not. But the ones
23 from the next say, the ones that they are trying to put
24 in are way worse because in the pictures at midnight her
25 stomach is not like it is in the pictures that you are

1 about to see. Those are after she's been in a cooler for
2 a number, number of hours just waiting to be autopsied.

3 And, Your Honor, I have a copy and I'm getting a
4 certified copy, but the court reporter, I apologize,
5 couldn't get it to me fast enough, but I would like to
6 make it a Court's exhibit as well and I will hand up to
7 you --

8 THE COURT: What is that?

9 MS. ZMROCZEK: And I'll get them a copy. It's a
10 copy of the plea transcript that Judge Maddox took the
11 plea of Tracey Roach, the co-defendant and, Your Honor,
12 he said things from the bench such as I have been a judge
13 for 16 years. I know I'm supposed to be impartial. I
14 cannot be impartial after looking at these pictures. He
15 says in the one page that I have it turned to, Your
16 Honor, he says that this is horrendous. If you took this
17 picture in 1945 in Germany, it wouldn't be surprising
18 referring to the Nazi concentration camps.

19 THE COURT: Well, with all due respect to Judge
20 Maddox, what does that have to do with what we have here?

21 MS. ZMROCZEK: I believe these were the pictures
22 that he was looking at, Your Honor.

23 THE COURT: Well, I understand that.

24 MS. ZMROCZEK: And it just goes to -- What my
25 concern is is that it just shows --

1 THE COURT: But that's Judge Maddox's own personal
2 views which I don't know what bearing they would have on
3 this trial.

4 MS. ZMROCZEK: Well, what my concern is, Your Honor,
5 is on the record he says that he knows he's supposed to
6 be impartial and can't be and these are 14 jurors who are
7 told to be impartial and then are going to be handed the
8 same pictures.

9 THE COURT: Well, what if I look at them and then
10 look at you and tell you that I can be impartial?

11 MS. ZMROCZEK: Then I would argue that we should
12 keep them out.

13 THE COURT: That I can be impartial? What do you
14 want?

15 MS. ZMROCZEK: That you can be impartial?

16 THE COURT: That I can be impartial.

17 MS. ZMROCZEK: Okay.

18 THE COURT: I guess what I'm saying is, I appreciate
19 the impact that it had on Judge Maddox, but that would go
20 towards Judge Maddox's impartiality not the 12 jurors
21 that sit over here. I don't understand the connection.

22 MS. MAYES: If we could just clarify. We haven't
23 seen the transcript, but what is the reference he makes
24 to not being impartial?

25 MS. ZMROCZEK: I'll find it for you.

1 THE COURT: Again, and I'm not trying to open a can
2 of worms here. I just don't know how that's relevant to
3 these proceedings. I know what you are saying. Judge
4 Maddox declared or verbalized the impact that the
5 photographs had on him and it was a shocking thing for
6 him. I don't know. It's just some people are affected
7 more so than others and that's true in life throughout
8 life. I don't know how in a plea, and I realize we are
9 talking about the same pictures so I know we are not
10 talking about a different case. We're talking about a
11 different case, but we're talking about the same facts,
12 the same evidence, that it affected Judge Maddox in
13 a certain way. But I just don't know how that's relevant
14 to how these jurors -- And I know that I have to rule as
15 a matter of law whether or not they are appropriate, but
16 I haven't seen them and I'm reserving judgment on that.

17 MS. ZMROCZEK: And I will withdraw the motion to
18 make that a Court's exhibit as well, Your Honor. I guess
19 it's just, for the purposes of deciding whether or not
20 the pictures come in, I can assure you that some of those
21 pictures were taken -- most of those pictures were taken
22 after she had been put in the slab, in the cooler for a
23 while and I would argue that those are markedly worse
24 than the ones taken at midnight. I think those are still
25 bad and prejudicial, Your Honor, and I would ask that --

1 And I believe that the case that they cited or that they
2 handed up was Collins. I think we are all familiar with
3 it. It's the gruesome pictures of the --

4 THE COURT: The dog attack.

5 MS. ZMROCZEK: -- the dog attack, yes, Your Honor.
6 It talks about how the court weighs relatively -- Or
7 excuse me. Relevancy, materiality and admissibility of
8 each photo and in that case, Your Honor, they were
9 necessary to corroborate testimony regarding the extent
10 of the skull fracture. Your Honor, my concern is that
11 the State is going to argue that these are required to
12 corroborate the testimony of the amount of starvation and
13 dehydration. But, Your Honor, I would again assert that
14 they don't properly reflect that because they weren't
15 taken close in time to when she died. They were taken
16 after she was stored in a cooler. And you can see, I
17 just did it the other night, the pictures that were taken
18 at midnight you can see parts of her stomach where in the
19 pictures that are to be put in it's all sunk down and
20 they're markedly different and maybe you should see the
21 photos.

22 THE COURT: Well, I was going to say, not that I'm
23 -- I don't know what we are talking about, I guess, is
24 what I'm saying. How many, Suzanne, do you have there?

25 MS. MAYES: Yes, sir, Your Honor. Out of a total of

1 approximately 112 photos from autopsy, we have eight that
2 we are offering and Ms. Zmroczek has reviewed these. One
3 of them is an x-ray. I'm going to go ahead and pass
4 those up to you and then we can also make available to
5 the Court other photos as well.

6 THE COURT: Let me ask. Are these the eight that
7 you are talking about?

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

9 THE COURT: Let me ask this, so and you object to
10 those eight?

11 MS. ZMROCZEK: Well, actually, like the one with the
12 arm I probably wouldn't object to. I can probably agree
13 to these.

14 THE COURT: I guess what I would like, if you don't
15 mind, is to just flip through, present to me the ones you
16 have an objection to. There is no sense in me ruling on
17 stuff that is not objected to.

18 MS. ZMROCZEK: There are three that I can --

19 THE COURT: These are the ones that you object to?

20 MS. ZMROCZEK: Yes.

21 THE COURT: Okay.

22 MS. MAYES: Your Honor, if I could also state that
23 the defense in this case is challenging the cause of
24 death so they are not agreeing that she died of
25 starvation so with cause of death at issue that makes

1 them even more relevant than in a case where perhaps
2 everyone agreed that starvation was the sole cause of
3 death.

4 In addition to that, the defense also takes the
5 position that the Defendant was not aware of the victim's
6 condition. So it's important, it's actually necessary.
7 We are going to have to be able to prove to the jury at
8 least circumstantially that any care giver would be able
9 to be aware that the child needed medical attention.
10 That makes them relevant.

11 But most importantly, Your Honor, they are necessary
12 to illustrate the findings of the physicians in this
13 case. There are so many hallmark features of starvation
14 that you really cannot appreciate until you see the
15 photos. For example, the protrusion of the bones is a
16 hallmark feature. The sunken eyes is a hallmark feature.
17 The loss of subcutaneous fat throughout the body
18 including the face where it takes on a triangular shape.
19 All of those features are addressed in the autopsy report
20 including that the spine, the ribs, what's called the
21 winging of the scapula which are the back shoulder
22 blades, all of those are diagnostic features of chronic
23 starvation and for that reason the pathologist as well as
24 Dr. Luberoff will need the photos in order to explain
25 those findings and illustrate them to the jury and I can

1 also make available other photographs that we are not
2 offering.

3 THE COURT: Well, let me, I guess, if I hear the
4 objection, it's that the photographs taken prior to the
5 extended time in the coroner's lab are more indicative of
6 the situation than these taken after the extended stay in
7 the coroner's lab.

8 MS. ZMROCZEK: Correct.

9 THE COURT: I would need to see those.

10 MS. MAYES: Yes, sir, Your Honor. And I will say
11 that we haven't seen any marked difference between the
12 two photos. I will there is about a ten hour difference
13 and some of those original set of photos did not show the
14 extensive nature of the findings because they were taken
15 while she's still - she's just been pronounced dead so an
16 officer or a coroner's deputy, I believe, shows up and
17 takes some preliminary photographs and then actually at
18 autopsy when the pathologist is present he's concerned
19 with certain angles and capturing certain features that
20 weren't necessarily as important with the original
21 photographs.

22 THE COURT: Okay.

23 MS. MAYES: What we'll do is get all of the photos
24 that have been printed out from that period of time that
25 we are talking about where she had been pronounced dead

1 and then also all of the autopsy photos and we'll go
2 ahead and mark them all as Court's exhibits so the Court
3 can consider all of them in totality.

4 THE COURT: Yeah. That's fine. I just, without
5 seeing them I don't know what I'm comparing. I don't
6 know what the situation is with regards to the other
7 ones.

8 MS. ZMROCZEK: Well, A, I don't want any of them in,
9 Your Honor. I haven't printed any of them, but I would
10 specifically ask the Court, we got here this afternoon so
11 that we would be able to do that, just like the argument
12 said right when the coroner pronounced her dead, they
13 took some of them. I'm not okay with them, but I'm more
14 okay with them than --

15 THE COURT: Yeah. Let's do this.

16 MS. MAYES: We have them printed out already.

17 THE COURT: And that's fine. Is that where Robbie
18 has gone?

19 MS. MAYES: Yes, sir.

20 THE COURT: Why don't we do this then. I'm just
21 trying to keep our time moving. I think we have gotten
22 past anything dispositive so that now it would be
23 relevant to do the Jackson v. Denno and these other
24 matters that we need to take up because we are
25 approaching the 4:00 hour. I don't know how long those

1 motions are going to take. These are things that I'll
2 get here early in the morning and we can continue to talk
3 about them and these aren't anything that are going to
4 appear early in the trial I wouldn't think.

5 MS. MAYES: Your Honor, actually the EMS worker had
6 documented very thoroughly in his report about the
7 condition that he found her in so we would at least show
8 a photograph or two to him to say is this the same
9 condition that you found her in which we --

10 THE COURT: Would that be one of these?

11 MS. MAYES: Yes, sir, Your Honor. He has documented
12 in his report very, very similar findings to ultimately
13 what we are seeing at autopsy.

14 THE COURT: All right. And I guess, like I said,
15 we'll deal with it obviously. Maybe it will be earlier
16 in the trial than I assumed.

17 MS. ZMROCZEK: And my one concern with the Jackson,
18 I don't know that we need to take testimony, Your Honor,
19 unless -- Here's my concern is that he's going to get on
20 the stand so they get to ask him whatever. But there was
21 a statement that he wrote. It's in Spanish. He's not
22 the most literate individual. He's very hard working and
23 he's a very good worker, but he didn't go that far in
24 school, Your Honor, and so the statement is extremely
25 difficult for me to read and I'm fluent in Spanish. In

1 fact, I had to get him to -- And he told me he was
2 nervous when he wrote it and it doesn't necessarily hurt
3 us. But, Your Honor, my concern is that they have never
4 translated it. They have never provided us with what it
5 says so I don't know what they think it says, but they
6 had Micah Caskey who is also fluent translated it last
7 week, but didn't translate it. He just kind of told them
8 what it says. So my concern is just what statement that
9 they are trying to get in. But they're going to get to
10 ask as an officer of the Court I'm telling you --

11 THE COURT: I don't know. What is the statement?

12 MS. MAYES: Yes, sir, Your Honor. There is a verbal
13 statement and then there is also a written statement. In
14 the verbal statement basically he acknowledges that he
15 lived in the home.

16 THE COURT: Okay.

17 MS. MAYES: It may be better to just refer directly
18 to it. Detective Gooding notes that I spoke with Garcia
19 outside the home. And this is on the night of the
20 incident. He is not in custody. He seemed upset as he
21 told me what took place that day. He told me that he
22 works about 40 hours a week for a light metal company.
23 He had been off for the holiday. He woke up at about, it
24 says 13:00 hours but 1:00 p.m. and his wife was on the
25 couch where she usually sleeps. She had been sick the

1 last couple of days. He said that she always feeds the
2 baby because of his work. He told me that he did not
3 check on the baby when he woke up because her room was on
4 the other side of the home. He then made food and went
5 back to bed. When he woke up, he went to check on the
6 child and found her non responsive. He said that the
7 baby had been sick all day but that nothing had been
8 different in the last day or so. His wife had not told
9 him anything about the baby today and that he called 911.
10 He also said that he could not write in English and
11 provided a brief written statement in Spanish. While
12 speaking with him his son told me that he had not heard
13 the baby whine or cry once all day.

14 Now, that is a summary by Detective Gooding of the
15 verbal statement. He ended up putting a statement in
16 writing and that statement was in Spanish and this is all
17 pretty much contemporaneous. He's still at the scene and
18 this is at about 12:40 a.m. on September 3rd, 2013. So
19 the same night of the incident. It's just past midnight
20 and turned into the next day. This particular statement
21 is in Spanish and this is the statement that ultimately,
22 if admitted, would then be subject to translation by the
23 court interpreter. And we can mark that as a Court's
24 exhibit as well.

25 Now, the translation that we have in this case, and

1 we did speak with Ms. Zmroczek about what we believe the
2 translation is, is I woke up and got out of the bed and I
3 returned. In the afternoon, I don't remember, but I told
4 Tracey happened and that is when we realized it. I
5 realized that she was dead so I went to the store to call
6 911.

7 THE COURT: All right. Now, Ms. Zmroczek, so
8 there's two statements. There is the verbal.

9 MS. ZMROCZEK: We don't challenge anything he said.
10 Obviously we would argue hearsay with what the child
11 said.

12 THE COURT: All right. So there is a challenge to
13 the written statement or obviously the purpose for the
14 Jackson v. Denno is to determine the voluntariness of the
15 statement.

16 MS. ZMROCZEK: Right, Your Honor, and I think that
17 we don't challenge the voluntariness of it. We would
18 just want to make sure if they just try to say this is
19 what you said that night, but since he's limited in his
20 writing that it all comes in, what he said to - all the
21 words that he said to Detective Gooding and Detective
22 Gooding's notes. And we don't challenge that.

23 THE COURT: Well, it's like you said, he will have
24 that opportunity.

25 MS. ZMROCZEK: Right.

1 THE COURT: So is there a need for a Jackson v.
2 Denno?

3 MS. MAYES: Then there is the second statement that
4 Ms. Zmroczek is also aware of that was made to a deputy
5 Joshua Ryan and that was on the same night as well and
6 Mr. McNair can address that.

7 THE COURT: Is that a verbal statement?

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

9 MR. MCNAIR: Your Honor, that was a verbal
10 statement. Deputy Ryan was at the house securing the
11 scene until investigators arrived. Mr. Garcia showed
12 back up from the hospital. He just told Mr. Garcia he
13 couldn't go into the house until investigators got there.
14 Mr. Garcia made some statement to the effect of, well, I
15 need to get in the house to go to sleep because I have to
16 work the next day and he admitted he lived there. That
17 would be the extent of the statement we would offer to
18 Detective Ryan.

19 THE COURT: Any objection to that?

20 MS. ZMROCZEK: No. We agreed to stipulate that he
21 lived there. I understand now when we got these new
22 records about she, the co-defendant, told all of these
23 workers that she was a single mom, et cetera, et cetera.
24 So now I understand why they think that he didn't live
25 there but he's never denied living there.

1 THE COURT: All right. So there is no objection
2 then to the statements that we have heard thus far.

3 MS. ZMROCZEK: No.

4 THE COURT: Is there anything else? We have the two
5 verbals and the written. Anything else?

6 MS. MAYES: No, sir, Your Honor.

7 THE COURT: Okay. So if there is no objection, then
8 there is no need for the Denno Hearing. So then we move
9 on. I know we've got photographs. I haven't forgotten
10 that, but is there anything else from the State's
11 perspective that we need to address?

12 MS. MAYES: Yes, sir, Your Honor. The State has a
13 motion in limine to exclude any reference by defense
14 counsel whether in argument to the jury or in questioning
15 of witnesses to the sentence in this case. It's a
16 sentence that carries 20 years up to life and sentencing
17 is, of course, in the province of the Court and solely a
18 matter for the Court and we believe it would be
19 prejudicial to inform the jury as to the potential
20 sentence.

21 MS. ZMROCZEK: And I certainly wouldn't inform the
22 jury of a potential sentence. But, Your Honor, I think
23 where this comes in, Your Honor, is that I have to tell
24 them or explain to them at least in my closing why the
25 co-defendant wasn't here. She's already pled guilty.

1 Well, why she's not here is because she did plead guilty
2 and she's serving a life sentence.

3 THE COURT: You don't have to tell them that. You
4 can tell them that she's incarcerated. She's serving a
5 prison sentence based upon her plea of guilt.

6 MS. ZMROCZEK: But am I allowed to say a plea of
7 guilty?

8 THE COURT: I mean, she pled guilty, right?

9 MR. McNAIR: Yes, sir.

10 MS. ZMROCZEK: Oh, yeah, she pled.

11 THE COURT: My point is, and this is what I hear Ms.
12 Mayes saying is this, and you know, I don't know what
13 jury's know, lay people. I don't know if they think at
14 some point they're gonna have to sentence somebody, but
15 that's not their role and it's nothing for them to
16 consider. They are only to consider guilt or innocence
17 based upon evidence that's been presented and so I think
18 you can certainly talk about her, that she pled guilty
19 and that she's serving a prison sentence, but I don't
20 think it's necessary to tell them she's serving life in
21 prison and so I would --

22 MS. ZMROCZEK: Okay. While we are on that subject,
23 Your Honor, just because I don't want to get yelled at in
24 front of the jury --

25 THE COURT: I wouldn't do that to you. I would send

1 them out.

2 MS. ZMROCZEK: Mr. Garcia-Campos is aware obviously
3 that his wife or common law wife pled guilty and received
4 a life sentence and that's why -- He was offered the same
5 plea just straight up which is why we didn't do that.
6 But, Your Honor, he has a greater concern because of his
7 status in the country. I'm not sure if he goes on the
8 stand, I just don't know -- I think we need to hash that
9 out.

10 THE COURT: I don't see that as being an issue. Is
11 that an issue in this case?

12 MS. MAYES: Definitely not in the case in chief,
13 Your Honor. If he testifies, he did have some false
14 credentials on him that could potentially become an issue
15 because it goes to, well, it's a matter of deceit. But,
16 of course, that's an issue prior to his testimony that we
17 can take up at that point.

18 THE COURT: Yeah. I don't see any need or reason
19 for that to be an issue in the State's case if chief.

20 MS. ZMROCZEK: Okay.

21 THE COURT: Whether it becomes relevant depends on
22 what the defense puts up and we'll address it at that
23 point.

24 MS. ZMROCZEK: I guess would that fall within the
25 Lyles Hearing that we would have before he goes?

1 THE COURT: Probably.

2 MS. ZMROCZEK: Okay. They have provided me with
3 some NCIC reports because he used to live in Chester
4 where he has gotten 30 day charges and we have a
5 disagreement about whether or not those are admissible
6 and I understand we can take that up when he decides,
7 makes his final decision. But if we can also address it,
8 the immigration status at that time.

9 THE COURT: We'll do that.

10 MS. ZMROCZEK: Okay. I just wanted to make sure
11 because it would change how I frame my opening because I
12 don't want them to think that I'm --

13 THE COURT: Sure.. And again, it won't be an issue
14 in the State's case in chief. So is there anything else
15 either from the defense or the State that we need to
16 address?

17 MS. MAYES: Your Honor, one of the motions Ms.
18 Zmroczek has proposed is about admission of certain
19 statements that were made by the co-defendant during the
20 course of her mental evaluation so we have let her know
21 that we'll take a look at those statements and we may be
22 able to reach a compromise or something close to a
23 compromise about those statements and we should be able
24 to get that completed by the end of this afternoon.

25 THE COURT: Okay. All right.

1 MS. ZMROCZEK: We have been trying to actually
2 communicate to see what we can stipulate to.

3 THE COURT: Okay. That would be good.

4 MS. MAYES: One thing is that the reason they ended
5 up in possession of those documents is I felt that they
6 were discoverable and prior to releasing her mental
7 evaluation report she had a competency to stand trial
8 report and she had a capacity to conform report. I
9 discussed with Mr. Madsen who represented her whether
10 they had any objection to releasing first of all her
11 mental health records and we did release her mental
12 health records as part of discovery. And then we
13 actually had set up a hearing on the issue of turning
14 over the competency evaluation and the capacity to stand
15 trial evaluation because I felt like they should be
16 turned over for purposes of discovery, but also felt like
17 we needed to be protected on the record that they were
18 being turned over for a valid reason which is discovery
19 and once we set the hearing up, Ms. Roach, the
20 co-defendant ended up waiving that privilege and agreeing
21 that they would be turned over for purposes of discovery
22 so that is how they got possession of those documents.

23 Now, as to whether or not the information contained
24 therein is admissible in court, I'm not sure whether -
25 I'm not sure whether there would have to be an additional

1 waiver or I would think that a court order would override
2 or be the equivalent of a waiver by the patient. So if
3 we reach a stipulation and then can propose it to the
4 Court, I would think that the court order would be
5 sufficient.

6 THE COURT: I think you are correct.

7 MS. ZMROCZEK: And we do have her under subpoena,
8 Your Honor, and I had, before your law clerk went on
9 vacation, there was some discussion with SCDC because
10 they were like we need a transport order. And I'm like
11 you have a subpoena. But I think that we have it worked
12 out, Your Honor, where on Thursday -- I anticipate and I
13 think that this is probably right, I anticipate them
14 finishing with their case Wednesday afternoon and us
15 beginning our case or maybe concluding our case also on
16 Thursday and so I just told SCDC to have her all day here
17 on Thursday.

18 THE COURT: You want an order from me?

19 MS. ZMROCZEK: I think that I'm under the
20 understanding that we don't need one, but I will e-mail
21 Dan Crooks who is their legal counsel and I will confirm
22 that. There have been several e-mails back and forth.

23 THE COURT: Okay. If you just want to avoid, out of
24 an abundance of caution --

25 MS. ZMROCZEK: Maybe we'll get a transport order.

1 THE COURT: -- I can order that they bring her on
2 Thursday morning.

3 MS. ZMROCZEK: Okay. That might be safer, Your
4 Honor.

5 THE COURT: That might be safer.

6 MS. ZMROCZEK: Because I don't want to be sitting
7 here with a jury and no --

8 THE COURT: And no person, yeah. That's probably
9 safer.

10 MS. ZMROCZEK: I can e-mail - would you like me to
11 e-mail a transport order?

12 THE COURT: Yeah, if you don't mind.

13 MS. ZMROCZEK: And I'll send it straight to your
14 e-mail.

15 THE COURT: Send it to mine and I'll get Hope to
16 help me print it.

17 MS. ZMROCZEK: I'll make sure I cc her.

18 THE COURT: I can't print in my own office. It's
19 ridiculous. My law clerk can but she's not here.

20 MS. MAYES: I think, Your Honor, where we are is
21 that a stipulation would be consistent with the rule of
22 completeness where if the statement comes in, then it
23 comes in in its entirety. I believe we are dealing with
24 a statement that she made to examiners about the last 24
25 hours prior to the child's death.

1 THE COURT: Okay. All right. Anything further?
2 You have got those photographs that we need to consider?

3 MS. MAYES: Yes, Your Honor. These, I believe, are
4 the three that defense does not object to.

5 THE COURT: Correct. So if you want to -- If there
6 is no objection, we can mark those into evidence.

7 MS. ZMROCZEK: Well, as long as they lay the
8 foundation.

9 THE COURT: Sure. Sure.

10 (Whereupon, Court's exhibits #2, #3 and #4 marked.)

11 MS. MAYES: Now, these, Your Honor, the difference
12 between what was, I guess you would say what she was in
13 the possession of the pathologist or on the table for the
14 autopsy it's actually a silver table which is apparent
15 and then the other photos have a Navy blue type of cloth
16 underneath and those are the photos that would have been
17 taken in between her death and actually being placed on
18 the table for the autopsy.

19 MS. ZMROCZEK: If Your Honor wants to come back in
20 the morning as well. The ones that I object to the least
21 I can print out in case they can't find them. I know
22 that the coroner -- Did the coroner ever provide you with
23 his report?

24 MR. McNAIR: Actually we picked it up on Friday
25 after you subpoenaed it. We got a copy of whatever you

1 got.

2 MS. ZMROCZEK: Okay. I think there are some
3 pictures in there that I'm okay with.

4 MR. McNAIR: I didn't see it to tell you the
5 truth.

6 MS. ZMROCZEK: For whatever reason, Your Honor, the
7 coroner did not turn over his file to anybody, but I
8 subpoenaed it and got a copy. I knew that this would
9 happen. When I subpoenaed it, I knew that they would
10 make a copy for the Solicitor and the photos that I'm
11 referring to may actually be in there, but I don't know
12 what you are looking at right now so I don't know.

13 MS. MAYES: Your Honor, one more thing for the
14 record because it is imperative to the State's position
15 on these photos. The photos that were taken before she
16 actually was transported to the autopsy table were after
17 she had been transported by EMS to the hospital and they
18 attempted some life saving measures. They put the CPR
19 equipment on both her chest and her back and that
20 equipment obscures the findings that were apparent at
21 autopsy or at least in large part obscure those findings.
22 There are certain portions of her ribs and chest which
23 are not visible and then certain portions of her spine
24 which are not visible which is why we believe that the
25 autopsy photos are most indicative of her true condition.

1 THE COURT: Let me ask. Are all of the photos on
2 the blue, and I'm going to refer to them as the ones on
3 the blue cloth, on the blue sheet, are all of those with
4 the, I assume, I'm just going to call it CPR equipment in
5 place?

6 MS. ZMROCZEK: I would have to look.

7 THE COURT: All of the photos that I have seen thus
8 far and I flipped through it quickly seem to be with that
9 equipment in place.

10 MS. ZMROCZEK: Judge, I just pulled out one and held
11 it in place, Your Honor, but this is the kind of thing
12 I'm talking about. You can see, if you look at the
13 difference between that and the one that's on there, you
14 can tell that there is --

15 THE COURT: Well, you know, Ms. Zmroczek, the
16 difference is the pad covers up the sternum.

17 MS. ZMROCZEK: Right. But I'm talking about --

18 THE COURT: But even the stomach I don't see the
19 difference. I mean, I guess it's -- I'm just going here
20 on the top. I don't see a whole lot of difference right
21 there (indicating.)

22 MS. ZMROCZEK: Right. But I'm not okay with any of
23 them, Judge.

24 THE COURT: I understand. I certainly do. I
25 absolutely understand that.

1 MS. ZMROCZEK: And I believe there are some, Your
2 Honor, that they probably just got, too, that the coroner
3 is in possession of that nobody was in possession of
4 until last Friday and so I'll bring those in tomorrow
5 morning. I'll get here early and I'll e-mail those to
6 you, too. I know you have them, but the ones that I'm
7 talking about.

8 THE COURT: I'll return these to you, Suzanne, and
9 also this statement.

10 MS. MAYES: Yes, sir.

11 THE COURT: Well, actually, if you don't mind, all
12 of them and I'll deal - we'll deal with that first thing
13 in the morning. Let's start at 8:30 with that issue so
14 that when 9:00 rolls around, we should be ready to
15 proceed with the jury and not have them sit back in the
16 back.

17 MS. ZMROCZEK: Your Honor, I'll make sure to get
18 here before 8:30 so that maybe we can --

19 THE COURT: Yeah. If you can - obviously anything
20 that you can stipulate to or agree on would be helpful.
21 But 8:30 I'll be here and we'll try to get started at
22 that point. Anything else that we can do this afternoon?

23 MS. MAYES: Not at this point, Your Honor.

24 THE COURT: Okay. Aimee, can you think of anything
25 else?

1 MS. ZMROCZEK: No, Your Honor.

2 THE COURT: All right. Let's plan on reconvening at
3 8:30 for the purposes of resolving the photo issues so
4 that when 9:00 rolls around, we should be ready to start,
5 okay? All right. Court will then be in recess until
6 8:30.

7 (Whereupon, court was recessed for the evening at
8 4:15 p.m.)
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1 June 2nd, 2015

2 BAILIFF: All rise.

3 THE COURT: Okay. Thank you. Please take your
4 seats. Did you all have an opportunity to view pictures,
5 review all that stuff and see if there is anything that
6 can be agreed upon and then we'll deal with the stuff
7 that can't be agreed upon?

8 MS. ZMROCZEK: Your Honor, I think he just finished
9 marking them. I can agree, I mean, I have no objection
10 to most of them but for the relevance. I don't know what
11 some of them --

12 THE COURT: Right. We may just go through the
13 process and show you which one they are about to
14 discuss.

15 MS. ZMROCZEK: Yeah. Because I have seen them all
16 and so none of them are as objectionable as the ones from
17 yesterday. It's just, it simply deals with the relevance
18 of some of them.

19 THE COURT: Okay.

20 MS. ZMROCZEK: And, Your Honor, I did go back last
21 night and I did have that disk of those items. It was
22 provided on the 19th of last month.

23 THE COURT: Aimee, do you have that order?

24 MS. ZMROCZEK: Do I what?

25 THE COURT: Did you remember that order?

1 MS. ZMROCZEK: It's being e-mailed to me now.

2 THE COURT: Okay.

3 MS. ZMROCZEK: I guess we also, the translator knows
4 to be here, correct?

5 THE COURT: Well, for right now I'm just wanting to
6 deal with what pictures are objections to so maybe we can
7 get that done. I don't think -- I don't know that that's
8 any different from the motions that we did yesterday.

9 MS. ZMROCZEK: There are some, Your Honor, that I
10 can go ahead. I know that y'all have them grouped, but
11 the ones that I don't have any relevance issues with I
12 can - I can --

13 THE COURT: Let's deal with the objections first
14 because I think, Suzanne, you indicated there's
15 40, 42 pictures in there.

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

17 THE COURT: I'm guessing other than maybe the
18 relevance issue, I'm guessing for the vast majority of
19 those there's probably not any objection to it so let's
20 deal with the things that we do have the objections to so
21 that we can get that resolved.

22 MS. MAYES: Okay. Pre-marked by the court reporter
23 are the photos that we discussed yesterday that are post
24 mortem and there are five of these and then I believe
25 there were three additional that there was no objection

1 at all.

2 THE COURT: Okay. And then, Aimee, did you, I know
3 you had in your thoughts photos you thought, even though
4 you're not happy with any of them, but there are some
5 that you thought were more appropriate or whatever. Do
6 you have those culled out or do we need to go through
7 those from yesterday?

8 MS. ZMROCZEK: Uhm --

9 THE COURT: Remember the ones we looked at up here
10 yesterday?

11 MS. ZMROCZEK: Right.

12 THE COURT: I call those the ones with the blue
13 sheet on the thing.

14 MS. ZMROCZEK: If I can just --

15 THE COURT: Go ahead and look at those.

16 MS. ZMROCZEK: Yeah. Because after we left, Your
17 Honor, I know that -- Do you have the other ones marked?

18 THE COURT: The ones with the pre --

19 MR. McNAIR: These are the ones.

20 MS. ZMROCZEK: No. No.

21 THE COURT: No. No. These were ones that were in,
22 I think they were just in a manilla folder with a clip.
23 Not a manilla folder. That expandable folder. I think
24 that's them.

25 MS. MAYES: It should be everything in here.

1 MS. ZMROCZEK: You want me to look at them?

2 MS. MAYES: Yes. And again we are not using
3 those.

4 THE COURT: I think those are the autopsy right
5 there. I think the other ones were inside the expandable
6 folder.

7 MS. ZMROCZEK: Obviously, Your Honor, I'm going to
8 continue to keep my objection, but I understand that they
9 feel the necessity, so State's 10 I think shows one of
10 the things that they wanted to talk about about the wings
11 and things like that.

12 THE COURT: Right.

13 MS. ZMROCZEK: Obviously I would still object, but
14 it's less objectionable. I feel like 9, 11 and 12 are
15 duplicative. Then, Your Honor, there's a picture that
16 wasn't in - it was in the pre-autopsy. There are some
17 pictures that are in the pre-autopsy that I think show
18 what they want to show with the least possible
19 prejudicial effect as possible. I understand that
20 yesterday that the rib issue was a big issue and there is
21 one. I knew that there were a few, pre-autopsy without
22 the blue stuff.

23 THE COURT: Without the equipment.

24 MS. ZMROCZEK: Right. And then I know that they
25 wanted to show the sunken in eyes, Your Honor, and I

1 think that there are three that were taken pre-autopsy.
2 I know that she has the life saving ventilator tube in
3 here mouth which obviously didn't work, but I think that
4 any one of these three, Your Honor, obviously all
5 objectionable but still, A, are more reflective of what
6 would have been seen at the time and also less
7 objectionable than the ones that they are trying to put
8 in.

9 THE COURT: All right. Let me see those.

10 MS. ZMROCZEK: (Proffering.)

11 THE COURT: Well, let me let Ms. Mayes to look at
12 the ones that you pulled here versus those there and then
13 I'll get from her the State's position on that.

14 MS. MAYES: Yes, sir, Your Honor. This photo which
15 is State's exhibit 9, we chose this photo because it's a
16 comprehensive photo that shows the victim from the top of
17 head to the bottom of the feet so it's the best full body
18 shot that also shows the face at an angle that is going
19 to be consistent with what we expect the pathologist and
20 Dr. Luberoff to testify to concerning the facial
21 features.

22 Also of note is, as Dr. Welsh will explain, one of
23 the hallmark features of the malnutrition is what's
24 called the wrinkling of the overlay skin and that is
25 consistent with both the dehydration and the chronic

1 malnutrition. It's visible in one photo underneath the
2 armpit and then it's also visible here in the neck and
3 the literature supports that in the neck area that is a
4 common location of such a finding and I'll submit that to
5 the Court at this time. So we felt that number 9 was the
6 most comprehensive photo because it shows the face at an
7 angle where you can see her, you can see the head and the
8 face in the context of the full body. It also shows the
9 protrusion of the ribs and then the overlay of the skin
10 in the neck area which is one of the features that Dr.
11 Welsh will explain.

12 THE COURT: Okay.

13 MS. MAYES: Photo number 12 shows, and it's probably
14 the best photo for showing the protrusion of the hip
15 bones and again that is another hallmark feature. It
16 also shows the ribs not just from a superior position,
17 but here at an angle where you can see from the sternum
18 all the way down to the posterior ribs to the lower rib
19 cage and so that's a very comprehensive shot there of the
20 body and the hip bones. And it was the other objection
21 to number 11. We feel that number 11, I believe number
22 11 is the only photo that shows the spine from the top of
23 vertebrae all the way down and then also what's known as
24 the winging of the back shoulder blades which is another
25 hallmark feature in malnutrition cases.

1 MS. ZMROCZEK: Your Honor, if that would be the
2 case, then I would withdraw the close up of the two areas
3 that they were trying to focus on, if they want to put
4 one with the back and one with the front.

5 THE COURT: Are you talking about the other one?

6 MS. ZMROCZEK: Yesterday one of the --

7 THE COURT: Those three are the ones that --

8 MS. ZMROCZEK: That I agreed to yesterday and these
9 were the two from the back that I was going to agree to
10 today, but if they would rather a full comprehensive,
11 then I would ask that these be not considered.

12 MS. MAYES: Okay. Well, number 2, Your Honor, is,
13 there were many photos that showed this, but what is
14 characteristic of this photo and this is actually taken
15 at LMC before she got to the autopsy table and was
16 cleaned. There is crystallized urine around the genital
17 area and that is consistent with dehydration and it's
18 also a photo that is relevant because it shows the
19 pressure sores and then the crystallized urine in
20 conjunction with that.

21 THE COURT: And then that one was the --

22 MS. MAYES: Okay. This is a close up of the winging
23 of the scapula and again that's taken at a position where
24 we can see the full protrusion here in an even better
25 light than in the other photo which is comprehensive, but

1 I believe this one is going to be at an angle that will
2 aid Dr. Welsh in showing here the shoulder blades, the
3 winging and then a close-up of the vertebrae. And then
4 we still have number 1 and number 3 which I believe there
5 is no objection.

6 THE COURT: Now, did you show --

7 MS. ZMROCZEK: 1 and 3, yeah, I showed her the other
8 one, all the other ones.

9 THE COURT: -- her your alternative?

10 MS. ZMROCZEK: Right.

11 MS. MAYES: Okay. I guess the issue with this one
12 and it's not marked, but we are looking at the face at an
13 angle where she has the intubation tube in her so we are
14 really only getting from the nose up. We are not getting
15 a full context of the face that includes the neck and
16 that's the same issue here. I think what the witnesses
17 will testify about is looking at the head, how the head
18 fits with the rest of the body and how she doesn't appear
19 to be a normal baby where you would have like the round
20 face and the chubby cheeks and here it's much more of a
21 skeletal appearance I guess is how I would put it. But
22 it's relevant in this case, Your Honor, of course,
23 because the Defendant is maintaining that he was not
24 aware that the victim had any kind of malnutrition issues
25 or needed medical assistance.

1 So it is a neglect case and what's probative to the
2 State is to show the victim or show aspects of the victim
3 that should have been readily apparent to a care giver.
4 So we believe that number 13 shows the face in the
5 context with the body because here we can see the
6 shoulder blades and how the head or face is out of
7 proportion with that area and then it's a much more
8 clearer photo than what we see in the other one.

9 And then as I stated before this one we are not
10 really getting the context of the face in proportion with
11 the body and it's obscured by the intubation tube. I'll
12 pass these up.

13 MS. ZMROCZEK: Your Honor, I would certainly agree
14 and submit that this is not, and I hate to use the word,
15 but not to be politically correct, but this is not a
16 normal child to begin with and so I don't think that
17 malnutrition has anything to do with the shape of the
18 round face because that's not what a Down syndrome
19 trisomy 21 child presents with.

20 MS. MAYES: Actually, that's exactly what Dr.
21 Luberoff will address is that the malnutrition in this
22 case had completely faded away what would be the
23 characteristics of Down syndrome where normally there is
24 a very round face, the eyes have a unique appearance and
25 in this case because of the malnutrition it had almost

1 completely caused those facial features to dissolve and
2 that's actually mentioned in her report and that will be
3 her testimony as well so that's another reason that the
4 full face shot and in proportion to the body is relevant.

5 MS. ZMROCZEK: And I think, Judge, just lastly, the
6 blue she noted, she said, well, the one they have marked
7 is more skeletal than the ones that I had selected and
8 that's, I guess, kind of the point that I have been
9 arguing is that the ones that were taken more close in
10 time to the presentation would be more reflective.

11 THE COURT: But aren't these others what the doctors
12 actually examined and used to come up with their findings
13 and their diagnosis? I mean --

14 MS. ZMROCZEK: She was seen by several doctors. She
15 was seen by doctors when she went to the ER and he's on
16 the witness list. I don't know if they're going to call
17 him or not. And then the autopsy was conducted by a
18 doctor, but again, Your Honor, he's a clinical and he's
19 not a forensic pathologist. He's a clinical pathologist
20 and an anatomical pathologist. So my issue is yes, he
21 probably did rely on these. Do I think that he was
22 qualified to do that? No. So that's why I think that
23 the probative value is greatly outweighed by the
24 prejudicial effect that those would have. I think again
25 that the ones that were taken close in time are more

1 reflective of what she looked like at presentation even
2 though they are still bad.

3 THE COURT: And I don't know this. I'm not a doctor
4 and maybe the doctors will address it. But in this case
5 she had passed by the time they had gotten her to the
6 hospital, correct?

7 MS. ZMROCZEK: She had passed before she got to the
8 hospital.

9 THE COURT: Correct. So as she arrives at the
10 hospital, and again not easy subject matter, but then for
11 preservation purposes the bodies are placed in a cooler
12 in a condition of preservation. As I looked at the
13 photos that you presented prior to being placed in the
14 preservation state and the ones that the doctor saw the
15 next morning, I don't see any difference to speak of and
16 I think that's because that's the whole purpose in
17 placing deceased folks into that preservation state so
18 that whatever is there can be preserved for examination
19 so...

20 MS. ZMROCZEK: If we could mark those just for the
21 record, Your Honor.

22 THE COURT: Absolutely.

23 MS. ZMROCZEK: And then also I guess my final
24 objection is which ever ones, I'm not sure because I
25 don't know that you have ruled yet, but if you are going

1 to, I would make a cumulative objection if we are going
2 to have close-ups and far away. I think the case law,
3 even Collins is very clear that they picked the least
4 prejudicial pictures. Even though they were prejudicial
5 and everybody knows that, the Court was very specific in
6 its ruling saying that it put one picture in and I
7 understand they want to show front and back but...

8 THE COURT: I'm going to sustain your objection as
9 to 10. As I look at 11 and I realize that 10 is a close
10 up, but I think what appears in 10 appears in 11 and I
11 think the doctor can certainly point out the physical
12 issues that appear in 10 and 11 so I'm going to sustain
13 as to 10.

14 MS. MAYES: Your Honor, what we'll probably do is
15 just place this in a different location with the court
16 reporter so that it doesn't get mixed in by any kind of
17 error.

18 THE COURT: Okay. As to State's 2, 9, 11, 12 and 13
19 I'm going to overrule the objection. Now, as to the
20 photos, that doesn't relieve the State of being able -
21 having to lay the proper foundation.

22 MS. ZMROCZEK: Okay. So 2 --

23 THE COURT: 2, 9, 11, 12 and 13, and I'll sustain
24 the objection as to 10. And let me say this as far as
25 the use of those, Ms. Mayes, I'm assuming you're going to

1 have the physician use those as far as this is what we
2 observed which lead to these opinions and diagnosis. I
3 mean, that's the purpose of them obviously. So you still
4 have to lay the proper foundation. But as far as the
5 objection that the prejudicial effect is outweighed by
6 any probative value I'm going to overrule as to those.

7 MS. ZMROCZEK: I understand that, Your Honor, they
8 want to put some of those pictures in through the EMS
9 worker and obviously I haven't had the opportunity to
10 know whether or not -- I would think that he would
11 probably be more inclined to identify with the pictures
12 that I had selected. I want to make sure that those get
13 marked for Court's ID.

14 THE COURT: Sure. Make sure those are marked.

15 MS. ZMROCZEK: But I would -- I'm not trying to put
16 more pictures in by any means but, Your Honor --

17 THE COURT: Well, I mean, you can.

18 MS. ZMROCZEK: No.

19 THE COURT: I'm just saying.

20 MS. ZMROCZEK: No. I don't want any more in than I
21 need. But my concern is, and I assume that he knows what
22 to say or that he's going to say that, yes, this is what
23 she looked like when I found her, but because the
24 question that you had asked earlier, is this what the
25 doctors relied on in making their diagnoses and he, the

1 EMS worker, did treatment and not necessarily diagnoses
2 and, Your Honor, although there were the patches on her
3 which you saw which I know they laid on quickly, when he
4 found her, it's my understanding according to his report
5 that she had on an animal onesie zipped up in a diaper so
6 I don't know that he could --

7 MS. MAYES: We'll lay that foundation, Your Honor.
8 He's actually the paramedic who removed her clothing and
9 put the CPR defibrillation pads on her so he will testify
10 about what's in his report, about his observations.
11 There is one photo which is State's exhibit 9 that he
12 will testify to concerning whether or not it's a fair and
13 accurate representation of what's reflected in his
14 report. But, of course, we'll lay that foundation before
15 we get to that point. And these would be the three
16 photos to mark for ID that the defense proposed.

17 (Whereupon, Defendant's Exhibits #1 through #8
18 marked for identification.)

19 MS. MAYES: And we'll take back, Your Honor, the
20 remaining 100 or so photos that are not being offered.

21 THE COURT: All right. Is there anything else
22 before we bring the jury out that we need to deal with?

23 MS. MAYES: We had some original items. They
24 haven't been pre-marked because the evidence custodian is
25 actually here with the original items. Based on what we

1 discussed before, I don't think there's an objection but
2 there's a receipt for a Budweiser purchase on 8/31.
3 There's also a food receipt from September 2nd so we'll
4 give her a chance to review any of those before we go
5 ahead and pre-mark them.

6 MS. ZMROCZEK: And I don't have an objection as long
7 as they lay a foundation. I have no objection to that.
8 Your Honor, just so that appellate defense doesn't yell
9 at me, when those come in, I'm simply going to just say
10 subject to my previous objection just to make sure that
11 the record is preserved.

12 THE COURT: Okay. Anything else we need to take up
13 before the jury comes in?

14 MS. MAYES: We have a witness here, Ms. Kayse. We
15 called her, but I believe you may have subpoenaed her,
16 too so she's already here. We are going to call her most
17 likely tomorrow. Is it okay for her to be excused?

18 MS. ZMROCZEK: Absolutely. And I told her to be on
19 telephone standby in case y'all didn't call her.

20 MS. MAYES: I think she may have misunderstood
21 then.

22 MS. ZMROCZEK: After openings, Your Honor, is when
23 we would ask that the witnesses be sequestered.

24 THE COURT: Okay.

25 MS. MAYES: As far as sequestration goes no

1 objection as long as it's mutual. Detective Gooding is
2 the chief investigating officer. Now, we do expect some
3 expert testimony so it may be a situation where when your
4 expert testifies, we may have someone available for
5 reply. And I believe you're going to have an expert here
6 for the testimony of our expert?

7 MS. ZMROCZEK: Yes.

8 THE COURT: So, of course, those folks would be
9 allowed to be present.

10 MS. ZMROCZEK: Thank you, Your Honor.

11 THE COURT: All right. Let's bring the jury in,
12 please.

13 (Whereupon, the prospective jury entered the
14 courtroom.)

15 THE COURT: Good morning, ladies and gentlemen. I
16 hope everyone had a good evening and are ready to get
17 started. Before we do begin, let me stress a few things
18 with you. First of all, folks, it's very important that
19 you are comfortable and that you can hear everything
20 that's going on. I think that we do a decent job of
21 keeping the temperature controlled. You're not going to
22 ever make everybody happy. I tend to be hot natured. My
23 wife is freezing if it drops below 80 so you have got
24 differences with folks and so we try to keep it at a
25 temperature that everybody is going to be relatively

1 comfortable. But if it gets uncomfortable for you,
2 please let me know and we'll try to make any adjustment
3 that we can.

4 It's also very important that you hear everything
5 and see everything that's presented so that if at any
6 time someone is speaking too softly or you don't
7 understand, they may talk too fast or mumble, if you
8 didn't understand or hear something that was said, don't
9 hesitate to let me know so that we can have that person
10 either repeat their response or question or speak louder
11 and that goes for the attorneys as well as any of the
12 witnesses.

13 It's also important as I have said earlier that you
14 are comfortable. Now, I don't know that there's any
15 delicate way to say this, but there are times in life
16 that mother nature calls and you have to answer the call
17 and it may not be at a perfect time. It may be right in
18 the middle of a witness' testimony, but if that occurs
19 and you need a break, you let me know and all you have
20 got to do is get my attention or get the bailiff's
21 attention and we will stop right where we are at and
22 we'll take a break. We can always start back where we
23 left off, okay? So don't sit there and be uncomfortable
24 because when people are uncomfortable, their thoughts
25 tend to move to their discomfort rather than what's being

1 testified to and it's important that you listen to
2 everything and absorb everything that's being presented.

3 Also, as a matter of fact, let me address this right
4 now, if I can. Mr. Camp.

5 HERBERT CAMP: Yes, sir.

6 THE COURT: I'm going to ask, if you would, to serve
7 as the foreperson of the jury and so I'm going to ask if
8 you would get up and come down to the end of this row and
9 if everyone would slide down a seat and I'm going to have
10 you occupy this first seat. And I will speak a little
11 bit more to that in just a moment.

12 Folks, I tell people all the time there are really
13 no assigned seats in the jury box other than in this case
14 three. The seat where the foreperson would sit and where
15 the two alternates are sitting. Those folks need to be
16 in those seats throughout the course of the trial. The
17 rest of you are welcome to sit wherever you normally just
18 flow in and out so don't feel like you have got to sit
19 where you are right now. You can just wherever you
20 normally flow in and out.

21 The reason that the Court appoints a foreperson is
22 simply this: You are all equal members of the jury
23 panel. Now, no one person has any more authority than
24 another person. The foreperson is not a person who is in
25 authority over the jury, but it is a person that is

1 basically the communicator between the jury panel and the
2 Court so that if at any time any member of the panel has
3 a question about anything, the foreperson would then
4 write that question out and pass it to me. Depending on
5 the question I'll either write my response and send it
6 back to you, or I will bring you out as a panel and
7 respond to the question. But that really is the main
8 role of the foreperson is to be the communicator between
9 the jury panel and the Court.

10 I will tell you that at some point this week when
11 you do have the case for your consideration and you begin
12 your deliberations, it's important that there be no
13 deliberations that are taking place unless everybody is
14 present. So another thing the foreperson would do is if
15 during your deliberations someone needs to excuse
16 themselves to use the restroom, then the foreperson would
17 ask that the deliberations stop until that person can
18 return and once that person returns, then you will start
19 back.

20 Your verdict in this case and in every case that's
21 tried in this courtroom must be unanimous and because of
22 that that tells you that you are all equal members of the
23 jury. The foreperson has no greater authority than
24 anyone else. The foreperson's thoughts or opinions are
25 no greater than anyone else's. I encourage all jurors to

1 listen with an open mind to each other, have constructive
2 dialogue. Your verdict in this case will be a result of
3 your collective deliberation and so no one person has any
4 more authority than another person, but it's important
5 that everybody have a voice and be considered when that
6 time comes.

7 But as we go through the process of the trial,
8 Mr. Camp, if there are any questions or any issues that
9 the jury needs to address to me, if you will do that for
10 me, I would appreciate that, sir.

11 HERBERT CAMP: Yes, sir.

12 THE COURT: Okay. Now, we are about to begin the
13 trial of the case, ladies and gentlemen, and what I'm
14 going to share with you right now is just some thoughts.
15 I don't know how many of you, if any of you, have ever
16 served on an actual jury trial. Most folks, the
17 experience they have had with jury trials are what they
18 have seen on television or what they have read in books
19 or what they have seen on TV and as we know those trials
20 are always full of high drama and intense action and
21 riveting circumstances because that's what Hollywood
22 does.

23 Now, during the course of this trial while any
24 number of those things could occur, the important thing
25 for you to remember is this, and that is that this trial

1 is not for your entertainment. This trial is a
2 fundamental part of our democracy. It is a search for
3 the truth in an effort to make sure that justice is done
4 for the parties. Oftentimes that process is slow. It's
5 very deliberate. Sometimes it can be repetitive. In
6 other words, it's very different from what you have read
7 in books, seen in the movies or seen on television. This
8 courtroom is a place of honor that is dedicated to the
9 protection and to the preservation of citizens' rights
10 through what many have called the greatest justice system
11 ever created.

12 The attorneys that appear before you are advocates
13 for the parties that they represent, but first and
14 foremost they are officers of the Court sworn to uphold
15 the integrity and the fairness of our judicial system.
16 You should expect them to be professional, competent and
17 ethical in the performance of their duties and in the
18 representation of their client's interests.

19 Now, in just a moment I'm going to turn it over to
20 Ms. Frick and she is going to place you under your oath
21 for your role as jurors in this case and so you are also
22 expected to be professional, reasonable and ethical in
23 the performance of your duties which I have absolutely no
24 doubt you will do and I do want to take this opportunity
25 to thank you for your contribution to our system of

1 justice here in Lexington County.

2 Now, before we go any further, Ms. Frick is going to
3 place you under your oath for your role as jurors in this
4 case so if you would, please, give her your attention.

5 THE CLERK: Please stand and raise your right hand.

6 (Whereon, the jury was duly sworn by the Clerk of
7 Court at 9:30 a.m.)

8 THE CLERK: Be seated, please.

9 THE COURT: Folks, what I'm going to share with you
10 for just a moment here is meant to serve as an
11 introduction to the trial of the case. This is not a
12 charge on the law, although I will charge you on the
13 applicable law at the close of this case. What I'm going
14 to do for the next minute or two is basically explain to
15 you the procedures that we are going to follow so that
16 you can better understand what's taking place as we go
17 forward.

18 MS. ZMROCZEK: Judge, may we approach briefly?

19 THE COURT: Yes, ma'am.

20 (Side bar off the record.)

21 THE COURT: Ladies and gentlemen, the Defendant in
22 this case is charged by an indictment which I read to you
23 yesterday. He's charged with the offense of homicide by
24 child abuse. The elements of that crime I will explain
25 to you in greater detail when I give you the charge on

1 the law. What is important for you to understand, ladies
2 and gentlemen, is that to that indictment the Defendant
3 has pled not guilty and the indictment that I read to you
4 yesterday is not in any sense evidence of the allegations
5 that it contains. It is merely the document that brought
6 this case into court. Mr. Campos' plea of not guilty to
7 that charge places the burden of proof on the State to
8 prove the elements of that allegation beyond a reasonable
9 doubt and it's going to be your duty to determine whether
10 or not the State has met that burden.

11 Your purpose as jurors is to find and to determine
12 the facts in this case. You are the sole judges of the
13 facts in this case. If at any time I make any comment
14 about the facts or the evidence in this case, you must
15 disregard those comments because only you the jury are
16 allowed to decide what the facts are in this case. You
17 determine the facts from the testimony that you hear as
18 well as any other evidence that may be introduced during
19 the course of this trial. It is up to you to determine
20 the inferences which you feel may be properly drawn from
21 that evidence. It is especially important that you
22 perform your duty of determining the facts diligently and
23 conscientiously because there's really no way for me or
24 anyone to correct an erroneous determination of facts by
25 a jury.

1 Now, on the other hand but with equal emphasis the
2 same law that makes you the judges of the facts makes me
3 the judge of the law. The law as given to you by the
4 Court is the only law that you may consider. You must
5 accept and follow it even though you may disagree with
6 it. I'm not allowed to tell you what I think about the
7 facts in this case and you are not allowed to disagree
8 with me about what the law is or what you think the law
9 should be. Your job is to take the law as I give it to
10 you, apply it to the facts as you find the facts to be
11 from the testimony of the witnesses as well as any other
12 evidence that comes in during the course of this trial.

13 Now, until I advise you to begin your deliberations
14 you must not have any conversation or discuss this case
15 with anyone and that includes amongst yourselves. Now,
16 sometimes a jury will look at me a little funny about
17 that and think, well, I thought that's what we do as a
18 jury. Well, you do, but not until it's appropriate.
19 Until I tell you that it's time to begin your
20 deliberations or that it's appropriate to begin your
21 deliberations you are to have no conversation amongst
22 yourselves about anything that goes on during the course
23 of this trial. From time to time during the course of
24 the trial we'll take breaks and I'll send you back into
25 the jury room and during those times you can talk about

1 anything in the world you want to talk about, but do not
2 discuss the trial or the case, okay?

3 Now, it's very important that throughout the course
4 of this trial that you keep an open mind and that you do
5 not decide any issue in this case until all of the
6 evidence has been presented, the parties have had an
7 opportunity to address you with their closing remarks and
8 I have given you the instruction on the law. It's going
9 to be your solemn responsibility to determine the guilt
10 or the innocence of the Defendant and your verdict must
11 be based solely upon the evidence as it is presented to
12 you during this trial in this courtroom and on the law as
13 I instruct it to you.

14 Now, in just a moment I'm going to recognize the
15 Solicitor and he or she, whichever one is going to speak
16 will make what we call an opening statement. Pretty much
17 what occurs in that opening statement is they share
18 with you what they believe the evidence in this case is
19 going to show. Once they have concluded their opening
20 remarks, then I recognize Ms. Zmroczek on behalf of the
21 defense and she will be allowed to make an opening
22 statement if she chooses to do so. However, she is not
23 required to do that. The important thing to remember is
24 this: It's important that you listen carefully to the
25 opening statements, but it's also important that you

1 understand this and that is that what you are told in
2 opening statements is not evidence. It is merely their
3 contention as to what they believe the evidence in this
4 case will show. The evidence in this case is going to be
5 presented to you by the testimony of witnesses who are
6 sworn, placed under oath and who testify from this
7 witness stand as well as any exhibits that may come in
8 during the course of the trial.

9 From time to time during the course of this trial
10 you may hear one of the attorneys say something along
11 these lines. Judge, we have a matter of law we need to
12 take up with the Court. Or, Your Honor, may we approach
13 the bench? If I can resolve an issue up here at the
14 bench without sending you out, I will do that. But
15 sometimes it's an issue that requires a little bit more
16 than what I can do up here at the bench and I may ask you
17 to step back in the jury room while I take up a matter of
18 law. If I do that, the only reason I would do that is
19 simply this. There are times depending on what the issue
20 is when I'm taking up a matter of law it may require that
21 I make some comment about the testimony or about some
22 evidence that has been presented in connection with a
23 ruling that I'm required to make. As I told you earlier,
24 I'm not to have any influence over you about the evidence
25 in this case. And so to protect you from those comments

1 I may have you step back into the jury room, allow me to
2 address that legal issue and once we have resolved that
3 legal issue, bring you back in and we'll pick up where we
4 left off.

5 Now, it is important, ladies and gentlemen, that I
6 have no influence over you in your role as the fact
7 finders. In this case in determining the facts and the
8 true facts that are presented you are going to have to
9 decide whether or not the testimony and the evidence that
10 is presented is believable. It's going to be my
11 responsibility to rule as a matter of law whether certain
12 testimony is admissible at all or not. But once
13 testimony is allowed into this record whether or not you
14 believe it is solely up to you to decide.

15 In determining whether to believe a witness you have
16 the right to consider the interest of a witness, the bias
17 of any witness, the opportunity for that witness to have
18 seen the matters and the things about which they testify,
19 the way the witnesses act on the witness stand. You have
20 the right, ladies and gentlemen, to consider anything in
21 this record that will help you in evaluating the
22 credibility or the believability of the witnesses. That
23 means that it's your duty to pay close attention to the
24 witnesses, observe them, listen carefully both to the
25 witnesses as well as to the attorneys. Pay close

1 attention to everything that is presented during the
2 course of this trial so that at the end of the
3 presentation of all the evidence, the attorneys have had
4 an opportunity to address you with their closing remarks
5 and I have given you the charge on the law, after all of
6 that has occurred, you will then be in a position to go
7 back into your jury room and have the case for your
8 consideration.

9 Now, before I turn it over to the attorneys and
10 begin the case, let me first inquire from the State, are
11 there any objections or exceptions to the Court's opening
12 remarks?

13 MS. MAYES: None from the State, Your Honor.

14 THE COURT: Anything from the defense?

15 MS. ZMROCZEK: None from the defense, Your Honor.

16 THE COURT: All right. Ladies and gentlemen,
17 please, if you would, give the attorneys your undivided
18 attention as they address you with their opening remarks.
19 Mr. McNair.

20 MR. McNAIR: Thank you, Your Honor. May it please
21 the Court.

22 THE COURT: Yes, sir.

23 MR. McNAIR: A baby's cry. It's one of those sounds
24 that can't be ignored especially by a parent. Baby

25 Infant cries of hunger fell on deaf ears, and

1 as those cries of hunger went on and were unanswered, she
2 would have lost the sensation of hunger. And as time
3 went on when most children were walking and crawling she
4 couldn't have rolled over in her crib. And then as more
5 time progressed she would have been too weak to even cry.
6 It would have been deathly silent in her room. The last
7 of whatever energy reserve she had left would be going to
8 keep her little heart beating and then that would have
9 stopped, too.

10 And during all of these stages of death that would
11 have taken weeks if not months to progress her father
12 Filiberto Garcia-Campos did nothing to save her. Her
13 father who lived in that small trailer with her who was
14 there almost every day according to neighbors watched her
15 die like a potted plant.

16 Is that extreme indifference to human life? That's
17 what we have to prove. She dies on September 2nd, 2013,
18 Labor Day. She was 13 months old. She weighed nine
19 pounds two ounces. That's the weight of some newborns.
20 When EMS responded and found her, she was wearing what
21 they described as a degraded diaper. She had been laying
22 stationary for so long in her own urine that she had
23 ulcerations on her skin. Her eyes were sunken in. Her
24 skin was dry from dehydration. Her hair was brittle.
25 Her ribs were protruding like some child in a third world

1 country.

2 Ladies and gentlemen, this America. They had every
3 benefit available to them. In addition to his \$38,000.00
4 a year salary, they had food stamps. They had WIC which
5 provides free baby food and formula. They were getting a
6 \$700.00 per month check from Social Security for her
7 care. This was not a case where they weren't able to
8 provide. They chose not to provide.

9 Ladies and gentlemen, she had free full medical care
10 under Medicaid. Her last known doctor's appointment was
11 on November 12th, 2012, when she was three months old.
12 She had been in for a well checkup about three days prior
13 on November 9th. The nurse at Brookland Pediatrics, Mary
14 Kayse, you will hear from her, was so concerned about

15 Infants weight that she personally fed Infant to see
16 if she had any trouble feeding. She documented that

17 Infant had a strong suck and took down formula greedily.
18 So she told the mother Tracey Roach the long time live in
19 girlfriend of Mr. Garcia and the mother of his two
20 children, Infant and C.G. , his seven year old son at
21 the time, the nurse told Tracey feed Infant regularly
22 for three days with concentrated formula and bring her
23 back for a weight check. The Defendant and Tracey Roach
24 came back. They brought Infant back three days later.
25 She had gained over five ounces in three days. She

1 weighed 8.25 pounds at that time. Over five ounces. But
2 before the doctor could actually examine Infant that
3 day, they disappeared. They took Infant and they left
4 and that was the last time Infant was even close to a
5 doctor until she died. And in the next ten months before
6 she died she gained approximately 16 ounces after she
7 gained five ounces in three days. Nine pounds two
8 ounces, 13 months old.

9 What is evident, ladies and gentlemen, is at some
10 point Ms. Roach and Mr. Garcia, they made a decision. It
11 was not a snap decision made in a fit of rage. It was a
12 cold and calculated decision that that child was going to
13 die a slow death, a tortuous death, a death by
14 starvation. I don't know what their motive is. We can't
15 dissect their brain and figure out why they did what they
16 did and the law does not require us to prove that. I
17 don't know whether they wanted to get rid of Infant
18 because she was born with Down syndrome and maybe they
19 wanted it to appear to be a natural death. Or maybe they
20 wanted to get rid of Infant but at the same time they
21 liked that \$700.00 per month check they were getting for
22 her care so maybe they wanted to keep her alive for a
23 little while. We just don't know.

24 But what we do know, like I mentioned earlier, is
25 that Mr. Garcia lived in that house with her, with

1 Infant the whole time she was alive. He was laid off
2 from his job from January to June of 2013 prior to her
3 death about six months. When he went back to work in
4 June of 2013, he didn't work much more than 40 hours a
5 week. He didn't work weekends, and he was off on Labor
6 Day weekend, the weekend prior to when she died so
7 therefore he had plenty of opportunities to see his
8 child. And what father wouldn't at some point see their
9 child? And why that's important is because the statute
10 that he's charged with, it doesn't require that we prove
11 that he committed some act that caused her death. It can
12 be an omission. A failure to act when he should have. A
13 failure to provide his child with adequate food and
14 health care that lead to a condition that resulted in her
15 death under circumstances manifesting an extreme
16 indifference to human life. Failure to feed her.
17 Failure to take her to a doctor. Failure to call 911
18 prior to when she died. He did call after she died.

19 Ladies and gentlemen, the pictures in this case as
20 you can imagine are horrific. They're disturbing. I
21 apologize that we have to show them to you, but they are
22 extremely relevant in this case to show that anybody who
23 saw that child much less her father it would have been
24 immediately apparent that that child was on death's
25 doorstep. She was in dire need of help. I notice when

1 my son has a mosquito bite on his face. This child's
2 eyes were sunken in.

3 Now, I don't know what his defense is going to be
4 and they don't even have to put up a defense. The burden
5 is upon us to prove him guilty and that's fine. But I
6 suspect they will put up a defense and the easiest thing
7 for them to do is blame Tracey Roach. Blame the mother.
8 Say it was her responsibility to take care of the child.

9 And you're going to hear about a search that was
10 done on their home computer that law enforcement seized
11 pursuant to a search warrant and there was a search done
12 on that computer when Infant was about two months old
13 and that search was something to the effect of can you
14 detect Trazodone in a two month old. Trazodone is an
15 antidepressant drug and at autopsy they sent some tissue
16 samples from Infant to SLED and they found the presence
17 of several antidepressant drugs in Infant. Several
18 drugs that Tracey had been prescribed.

19 But, ladies and gentlemen, we don't know who gave
20 Infant those drugs. We don't know if the Defendant did.
21 We don't know if Tracey Roach did. We don't know if he
22 was present when they were given or whether or not he was
23 even aware of it, but you will hear from two doctors that
24 the drugs were not the cause of her death. The cause of
25 death was starvation. The effects of those drugs would

1 have been to sedate the child. Probably to try to make
2 the child lethargic. Sedate her so they would not have
3 to hear those God awful screams.

4 Now, I'm about to sit down. I want to talk to you a
5 little bit about reasonable doubt. Everybody has heard
6 that that's the standard in a criminal case and a lot of
7 people have misconceptions about what reasonable doubt
8 really means. It doesn't mean that we have to prove our
9 case to an absolute certainty. There are very few things
10 in this world that we can ever know with absolute
11 certainty. It doesn't mean that we have to prove our
12 case beyond any or all doubt. It simply means that after
13 you hear all of the evidence, you're firmly convinced
14 he's guilty. And if you are firmly convinced, you have
15 taken an oath to convict him.

16 Ladies and gentlemen, you all have a multitude of
17 life experience. You have a lot of common sense between
18 you. It gives you a very powerful ability to determine
19 the truth, to separate fact from fiction in this case.
20 You don't have to leave your common sense at the door.
21 Use it in this case and at the end of this trial we will
22 come back before you and we are going to ask you to
23 return a verdict that speaks the truth and that's going
24 to be encompassed in one word, guilty.

25 THE COURT: Thank you, Mr. McNair. Ms. Zmroczek.

1 MS. ZMROCZEK: Thank you. May it please the
2 Court.

3 THE COURT: Yes, ma'am.

4 MS. ZMROCZEK: Good morning. Last night, actually
5 for the last few weeks as I have been getting ready for
6 this trial I'm saying to myself how do it I get up in
7 front of 14 strangers and ask you to listen to all of the
8 facts and find Filiberto Garcia-Campos not guilty? How
9 do I do that? And I have been struggling with it for a
10 while. For someone who can't have children, this is a
11 case that I'm defending. I was appointed to defend him.
12 And it's going to come out and I'll just tell you. I
13 figured the best way to do it, the best way to get you
14 all to come to the fair and just decision is to be honest
15 and tell you the truth.

16 The truth is Mr. Campos, Filiberto is an illegal
17 citizen and he's been here since 1997. He's been working
18 in this country. He's been paying taxes as you will see.
19 He has a wife and two kids. One of those children is now
20 dead and the government and I can agree on one thing, one
21 thing very certainly. Tracey Roach killed this child.
22 She pled guilty. We don't get to hear from her. She
23 killed this child.

24 Infant was born on 2012.
25 She was born with a multitude of health problems. And

1 typically when people hear that from a defense attorney,
2 oh, you like to cloud the water. Muddy it up. Smoking
3 mirrors. Confuse the jury. Don't get them to focus on
4 what's true. In law school when maybe the second year
5 when we take a class called trial advocacy, and I'll tell
6 you law school is nothing like the real thing, but they
7 try to teach us and one thing that the professor said
8 that stuck with me, he said if the law is on your side,
9 then you hammer the law. I'll stop there for a second
10 because I tell you when the Judge gives you the law at
11 the end of the case and you apply it to these terrible
12 facts, you will see that the law is on our side.

13 You will see pictures, horrible pictures that the
14 State apologizes for putting in front of you. They don't
15 have to put them in front of you, because 13 months old
16 and 9.2 pounds is enough to not have to see it, but they
17 are putting them in front of you because they want to
18 disturb your emotions. Which brings me to the second
19 part. If you don't have the law on your side, you pound
20 the facts.

21 Well, the facts are Mr. Campos, Filiberto, has been
22 working in this country providing for his family, has a
23 seven year old at the time who is nine now, healthy,
24 happy child and you will see pictures of that. The facts
25 are that Filiberto is gonna get on that stand and he's

1 gonna testify and he's gonna tell you. How did you not
2 know? That's the question that everybody is asking.
3 That's the question I asked. The question that everybody
4 wants to know. How can you not know? And he'll tell
5 you.

6 The last part of that saying is if you don't have
7 the law or the facts, you pound the table. And, ladies
8 and gentlemen, I submit to you that when you see these
9 awful pictures, that that's what the State and government
10 is doing. They're pounding the table. There's a dead
11 special needs child. Convict that man. But that's not
12 what the constitution says.

13 In addition to Filiberto, he's gonna get on the
14 stand and he's gonna tell you about what he did everyday
15 and what he saw everyday and how he went to work everyday
16 and how he played with C.G. everyday and there will be
17 some other pictures, thank goodness, that you get to look
18 at that aren't just of dead Infant . They are pictures
19 of Filiberto holding Infant . Because the testimony will
20 bear out that he was the one that made her smile. Tracey
21 Roach wanted an abortion. Their witnesses will testify
22 to it. He will testify to it. He talked her out of it.

23 She was crazy. What woman, what person couldn't be
24 crazy to kill their own child? But I submit and the
25 government will agree that there have been competency

1 hearings, responsibility hearings. She was crazy. But
2 she was crazy enough to hide it.

3 The State is gonna tell you and the State did tell
4 you and you will hear from the witness stand that the
5 last time that Infant went to the doctor was in November
6 of 2012. She weighed eight pounds five ounces and that's
7 correct. They'll tell you that Mr. Garcia was there.
8 Part of the job that I do have is not to muddy the water,
9 but to bear out the facts, to test the evidence that they
10 have because if the government tells you right now that
11 not one person, not one DSS worker ever saw Infant after
12 November of 2012, then they're not telling you the truth
13 and the evidence will come from the stand.

14 Infant was seen by someone in DSS as late as
15 June 24th, 2013. July, August, two months, two months
16 prior. I'm not blaming DSS. I know there's a funding
17 ban for the state right now and when I subpoenaed DSS to
18 come here. I'm not blaming DSS. I want to be very clear
19 on who I am blaming. I am blaming Tracey Roach because
20 she is the one to blame.

21 But the reason that DSS is so important is because
22 if Tracey Roach can manipulate trained professionals,
23 people who are trained to recognize and identify signs of
24 neglect, then I assure you that she is manipulative
25 enough to fool Mr. Garcia.

1 Starvation, medical illnesses. You will hear about
2 the illnesses that she was born with. Not just the
3 trisomy 21, the Down syndrome, but the illnesses that
4 came along with that. She had a hole in her heart. She
5 was in the NICU for 23 days. This is all testimony
6 that's going to be presented to you about the problems
7 that she had. I'm not blaming those either. I'm blaming
8 Tracey Roach because what you will hear is the autopsy
9 that was performed and I submit to you it wasn't
10 thorough, it wasn't done by a forensic pediatric
11 pathologist, but at least we have tissue samples that
12 show drugs, antipsychotic drugs. We'll have a
13 pharmacist, toxicologist come up and testify what kind of
14 drugs were in her system and what those drugs can do to
15 someone especially a child. Especially a child with
16 health problems.

17 You have been selected by the government and by
18 myself because you are neutral. Because you stood up and
19 you said those pictures are not going to the basis of our
20 decision. And that neutrality and common sense that
21 Mr. McNair spoke about should pervade the entire trial.
22 You have been brought to answer two very important
23 questions. How did Infant die? And who did it?
24 I submit to you Tracey Roach did it. I submit to you
25 that how unfortunately won't be known. It could have

1 been starvation. It could have been an overdose of drugs that
2 she was giving her. It could have been a combination. But I
3 submit to you once you have listened to all of the facts you
4 will know one thing and that is that the law requires them to
5 prove beyond a reasonable doubt that he acted with
6 indifference and at the end of the case after all the evidence
7 is presented and not a moment before we will ask that you
8 review that evidence and find Filiberto not guilty.

9 THE COURT: Thank you, ma'am. All right. The State
10 may call their first witness.

11 MS. MAYES: Yes, sir, Your Honor. The State calls
12 Hunter Reed.

13 Thereupon,

14 HUNTER REED
15 after having been first duly sworn, testified as follows,

16 THE CLERK: Please have a seat. After you're
17 seated, please state your full name spelling your last
18 name for the record.

19 THE WITNESS: Hunter Reed, R-e-e-d.

20 DIRECT EXAMINATION

21 BY MS. MAYES:

22 Q. Mr. Reed, tell us what type of work you do?

23 A. I'm a paramedic for the County of Lexington.

24 Q. How long have you been employed with the Emergency
25 Medical Services here in Lexington County?

1 A. Original employment was September of 2012. I did
2 leave the county for a bit and I have been back since January
3 of this year.

4 Q. Now, take us through some of the educational
5 training and certification that leads to becoming a
6 paramedic?

7 A. My training started when I was working with the fire
8 department in Nashville, Kentucky, and I rose up through EMT
9 basic, about a six month course with some clinical time
10 through a paramedic course which was an 18 month course with
11 quite a bit more clinical time.

12 Q. What type of certification is required?

13 A. In the State of South Carolina to be a paramedic you
14 have to hold a national certification at the level of
15 paramedic, also an advanced life support. I'm sorry.
16 Advanced cardiac life support certification and a pediatric
17 advanced life support certification.

18 Q. Is this a specific type of test you do to get this
19 certification?

20 A. Yes, ma'am. The advanced cardiac life support and
21 pediatric advanced life support are both courses through the
22 American Heart Association. You take a course and are
23 required to complete the practical skills and a written
24 examination.

25 Q. Al right. Now, I'm going to take you to the time

1 frame of September of 2012. Were you working for Lexington
2 County at that point in time?

3 A. Yes.

4 Q. And specifically what were your responsibilities
5 with EMS?

6 A. I was a crew chief paramedic.

7 Q. All right. When you say crew chief, can you tell us
8 a little bit about that?

9 A. As a crew chief I am responsible for my ambulance,
10 all the personnel on my ambulance, all the equipment, primary
11 patient care and providing advanced life support care in
12 emergency situations.

13 Q. Are you the supervising EMT or paramedic for that
14 crew?

15 A. Yes, ma'am.

16 Q. Mr. Reed, I want to take you specifically to the
17 evening of September 2nd, 2012. Do you recall that night?

18 A. Yes, ma'am.

19 Q. Can you tell us whether or not you were working as
20 crew chief that night?

21 A. Yes, ma'am. I was crew chief on unit 11.

22 Q. Now, can you tell us whether or not you received a
23 call for assistance at a location on Edmund Highway here in
24 Lexington County?

25 A. Yes, ma'am. I did receive a call on Edmund Highway

1 in Lexington County.

2 Q. Specifically what time was the call received?

3 A. The call was received at 21:31.

4 Q. That's military time. Tell us what it means in
5 civilian time?

6 A. 9:31 p.m.

7 Q. Do you have that actually documented on your
8 report?

9 A. Yes, ma'am.

10 Q. What does it say specifically on the report as to
11 the time the call was received?

12 A. Call received 21:31.

13 Q. All right. So a call is received for assistance at
14 Edmund Highway and what is the routine when you're getting
15 ready to respond to a call in terms of trying to go ahead and
16 gather information in advance for the purpose of medical
17 diagnosis and treatment once you get there?

18 A. We have mobile data terminals in our ambulances and
19 the information that dispatch is receiving is relayed to us by
20 that so they give us the nature of the call and whatever notes
21 that they have received. In this particular case I received
22 that it was a one year old female that was not breathing.

23 Q. All right. So you knew the call involved a one year
24 old female that was not breathing. What happened next?

25 A. We arrived on scene to find an adult male and

1 female. The child was being held by an adult male.

2 Q. All right. What did you understand the relationship
3 to be between the adult female and the adult male and the
4 child?

5 A. The adult male was the father of the child, the
6 adult female was the mother of the child.

7 Q. Can you tell us whether or not this child you are
8 referring to was Infant ?

9 A. It was.

10 Q. What was the address?

11 A. Referencing my report, Edmund Highway.

12 Q. All right. Tell us what happened once you walked
13 up, you get out of the ambulance and you walk up to the scene.

14 A. Walking up to the scene the patient's father was
15 holding the patient. The child appeared obtunded, limp. I
16 noticed no spontaneous movement. Noticed no respiration.
17 Confirmed that when I got up to the child. The child was
18 handed to me and I proceeded to move the child to the
19 ambulance and began emergency care.

20 Q. All right. Who handed the child to you?

21 A. The father.

22 Q. All right. What was your reaction or initial
23 reaction when you received the child from Mr. Garcia?

24 A. I initially confirmed the child's age.

25 Q. Why was that?

1 A. The child appeared to be very small and under weight
2 for a 13 month old.

3 Q. You held her in your arms?

4 A. Yes, ma'am.

5 Q. Did she feel like a one year old?

6 A. No.

7 Q. Did she look like a one year old?

8 A. No.

9 Q. What happened next?

10 A. I moved the child to the ambulance while performing
11 one rescuer CPR. My partner was waiting on me. Placed the
12 child on the cot. Disrobed the child. Applied a cardiac
13 monitor and proceeded with pediatric advanced life support on
14 the child.

15 Q. Let me ask you this: Were you getting any heartbeat
16 at all from Infant ?

17 A. No, ma'am. The child was pulseless. The cardiac
18 monitor revealed asystole which is a flat line.

19 Q. All right. Now, prior to removing any clothing that
20 the child had, what part or parts of her body were you able to
21 observe?

22 A. Neck, head, face, hands and feet.

23 Q. What, if any, observations did you make concerning
24 her face and head?

25 A. Immediately noticed the complete lack of adipose

1 tissue, very skeletal, slender appearance. Eyes were very
2 sunken in.

3 Q. You noted the term adipose tissue.. What does that
4 mean to people like us, lay people?

5 A. Adipose tissue is the fatty tissues.

6 Q. In your report do you have a specific area or
7 location in the report where you address observations
8 concerning the head, face?

9 A. That is addressed under the patient evaluation.

10 Q. All right. What, if anything, specifically did you
11 note about the patient's eyes?

12 A. The patient's eyes were noted to be sunken, pupils
13 fixed and dilated.

14 Q. Why did you use the term sunken?

15 A. When assessing children, you need to look at the
16 eyes. It can point to the - if the eyes are sunken, it can
17 point to dehydration or malnourishment.

18 Q. Mr. Reed, what you have testified to concerning the
19 shape of the face, the loss of tissue, the sunken eyes, can
20 you tell us whether that's common or uncommon in your
21 assessment in infants and toddlers?

22 A. It is uncommon.

23 Q. Can you tell us whether or not those features of her
24 face and eyes were readily apparent to you?

25 A. Yes, they were.

1 Q. Now, what was the next step in treatment?

2 A. As I said, I removed her clothes, applied a cardiac
3 monitor, established interosseus access and began
4 administering fluids and medications.

5 Q. When you say that you removed her clothing, what did
6 you observe at that point?

7 A. The patient was profoundly emaciated. I believe I
8 noted --

9 Q. And I do want you to refer directly to your report.
10 Is there a location in your report where you make notes
11 concerning the physical conditions that you observe of a
12 patient?

13 A. Yes, ma'am. Inpatient evaluation. Patient appeared
14 to be emaciated.

15 Q. When you use that word emaciated, tell us what you
16 mean by that?

17 A. Emaciated refers to once again lack of fatty tissue.
18 I was able to see all the patient's ribs and sternum.

19 Q. What, if anything, did you note specifically about
20 that in your report?

21 A. Patient appeared to be emaciated. Ribs were showing
22 and abdomen was sunken in.

23 Q. You noted that the ribs were showing and the abdomen
24 sunken in. What else?

25 A. I continued. Patient appeared to be dirty. Also

1 under weight for her age.

2 Q. All right. What did you mean by the term dirty?

3 A. The patient's hair was very greasy and appeared to
4 unwashed.

5 Q. Was she wearing a diaper?

6 A. Yes, ma'am.

7 Q. What, if anything, did you note in your report
8 concerning her diaper?

9 A. The patient was found wearing a diaper that appeared
10 to be degraded and stained yellow with what appeared to be
11 urine.

12 Q. What did you mean when you stated that the diaper
13 appeared to be degraded?

14 A. It appeared very old, almost falling apart.

15 Q. Mr. Reed, can you tell us whether or not those
16 observations concerning her ribs, her abdomen, her emaciated
17 condition are common or uncommon when you assess infants and
18 toddlers?

19 A. Uncommon.

20 Q. Can you tell us whether or not what you observed
21 when removing her clothing was readily apparent to you?

22 A. Yes. It was readily apparent to me.

23 Q. Where did you take Infant for treatment?

24 A. Lexington Medical Center emergency department.

25 Q. You mentioned that the call was received at 9:31.

1 What time did you actually arrive at the hospital?

2 A. Arrival at destination 22:06 which is 10:06 p.m.

3 Q. 10:06 p.m.?

4 A. Yes, ma'am.

5 Q. Based on your report time how long were you actually
6 at the scene working on Infant ?

7 A. 17 minutes.

8 Q. All right. So you arrived at 9:31. You stayed
9 there at the scene for 17 minutes working on her, and then you
10 transported her onto LMC. Mr. Reed, throughout that time that
11 you provided medical assistance to Infant en route in the
12 ambulance did she ever get a heartbeat?

13 A. No, ma'am.

14 Q. Did she ever take a breath?

15 A. No, ma'am.

16 Q. I'm going to show you a photo which is State's
17 exhibit 9 and ask you if you can take a look at this photo for
18 a moment. Do you remember treating Infant that night?

19 A. Yes, ma'am.

20 Q. Have you ever forgotten that night?

21 A. No, ma'am.

22 Q. Can you tell us whether or not the photo of Infant
23 depicted in State's exhibit 9 is a fair and accurate
24 representation of how you observed her at the scene and in
25 your ambulance on the night of September 2nd, 2012?

1 A. Yes, ma'am, it is a fair and accurate
2 representation.

3 MS. MAYES: Your Honor, at this time the State would
4 offer exhibit 9 as evidence.

5 THE COURT: All right.

6 MS. ZMROCZEK: Object as to my previous objections.

7 THE COURT: Note your objection. Overruled.

8 MS. MAYES: Your Honor, at this time the State would
9 request permission to publish.

10 THE COURT: Yes, ma'am.

11 BY MS. MAYES:

12 Q. Now, Mr. Reed, once you first arrive at a scene,
13 what, if anything, is the routine to try to get a patient
14 history?

15 A. Gathering a patient history can give you insight to
16 the events leading up to the current patient's condition, also
17 the past medical problems of the patient.

18 Q. How important, if at all, is that to you in your
19 initial assessment in providing a medical diagnosis and
20 treatment?

21 A. It's extremely important and especially in the
22 pediatric population.

23 Q. Is there a portion of your report that specifically
24 allows to note patient history?

25 A. Yes, in the HPI, history of present illness and in

1 the PMH, past medical history.

2 Q. In this case you mentioned that there was a male and
3 female at the scene. Were they apart or together?

4 A. They were together.

5 Q. Who actually provided the history concerning
6 Infant ?

7 A. The female.

8 Q. And you identified her as who in relation to
9 Infant ?

10 A. Patient's mother.

11 Q. All right. What, if anything, did the patient's
12 mother state to you for the purposes of medical diagnosis and
13 treatment concerning her history?

14 A. Reading from my report history of present illness,
15 patient stated that the -- Correction. Patient's mother
16 stated that the patient was last seen acting normally at 03:00
17 and that her father had checked on her multiple times since
18 then.

19 Q. Let me stop you right there.

20 MS. ZMROCZEK: Your Honor, I have a hearsay
21 objection.

22 THE COURT: I'm sorry?

23 MS. ZMROCZEK: I have a hearsay objection. May we
24 approach?

25 THE COURT: Yes, ma'am.

1 (Side bar off the record.)

2 THE COURT: Okay. Ladies and gentlemen, let me get
3 you to step back into the jury room and let me take up
4 this issue. Please have no conversation about the case.
5 If you need anything while you're back there, soft drink,
6 crackers or something, just let the bailiffs know, okay?

7 (Whereupon, the jury entered the jury room at 10:25
8 a.m.)

9 THE COURT: I'm going to take a short break first.

10 MS. ZMROCZEK: Okay. Good. And also I wanted to
11 tell Your Honor, he's been in jail for 14 months and he's
12 contracted a bacterial infection that requires him to
13 have more frequent breaks.

14 THE COURT: Let me know if that ever arises, but
15 let's go ahead and take a short break and then we'll come
16 back and we'll take up the issue.

17 (Short break.)

18 (Whereupon, State's Exhibits #56 and #57 marked for
19 identification.)

20 THE COURT: Back on the record. Go ahead.

21 MS. ZMROCZEK: My objection is to the hearsay not
22 for the purposes of medical diagnosis, Your Honor, but
23 the next part where he goes on to say mom said that he
24 checked on him - he checked on her many times throughout
25 the day I think is what he testified to and I think the

1 report says that. My concern is that, Your Honor, I
2 understand that in most times that would be an exception
3 to the hearsay rule for the purposes of medical
4 diagnosis, but I cannot - it also presents a Bruton in a
5 proffered issue about confrontation and challenging that
6 statement about checking throughout the day. And the
7 reason it's important, Your Honor, is because the
8 statement that he gives, I think you heard a little bit
9 of it yesterday, he doesn't say that he checked on her
10 throughout the day and I just don't want that to be the
11 focus of the testimony that he's giving, that he's giving
12 inconsistent statements when he's not giving inconsistent
13 statements, but she is giving a statement that she said
14 what he did and I can't confront her about that.

15 MS. MAYES: Your Honor, he wasn't able to state the
16 full history. If we could proffer that at this time.

17 THE COURT: Yes. Let me go ahead and let you do
18 that.

19 MS. MAYES: All right.

20 BY MS. MAYES:

21 Q. Mr. Reed, if you could, please, state for the record
22 what your report notes concerning the history that you
23 received upon arrival for the purpose of medical diagnosis and
24 treatment of Infant .

25 A. Patient was found unresponsive in cardiopulmonary

1 arrest.

2 Q. Okay. I'm sorry. Go back to the beginning.

3 A. I'm sorry. The beginning. Okay. Patient's mother
4 stated that the patient was last seen acting normally at 03:00
5 and that her husband had checked on the patient multiple times
6 since then. Patient was found unresponsive in cardiopulmonary
7 arrest.

8 Q. So that history starts with how she had been acting
9 or observed throughout the day and then it ends where she was
10 found unresponsive in cardio arrest?

11 A. Yes, ma'am.

12 Q. What, if anything, else did you obtain concerning
13 any background history?

14 A. Patient had medical history of Down syndrome and
15 mother stated that the child would not gain weight.

16 Q. Okay. And that's noted in your report as well as
17 part of the history?

18 A. Yes, ma'am, in the PMH, past medical history.

19 Q. Was the patient's father present for those
20 statements?

21 A. Yes, ma'am.

22 Q. Did he disagree in any way with the history
23 provided?

24 A. No, ma'am.

25 MS. MAYES: Your Honor, that would be the State's

1 proffer pursuant to Rules of Evidence, Rule 8034 as an
2 exception to the medical diagnosis and treatment
3 exception to hearsay including when the declarant is
4 unavailable.

5 MS. ZMROCZEK: Your Honor, my only, and I think that
6 Bruton and Crawford certainly outweigh the Rules of
7 Evidence, but I would ask that that one statement, that
8 one sentence be redacted and that her husband checked on
9 the patient multiple times. Obviously what she says
10 regarding the Down syndrome and the gaining weight, that
11 doesn't go to something that I could attack or even - it
12 doesn't even implicate my client. But, Your Honor, what
13 the statement does especially in light of the fact that
14 they asked did the father disagree, what they were trying
15 to, I think, establish is that he makes a different
16 statement an hour later or a few hours later to the
17 officers and I don't have the opportunity to challenge
18 what she is saying. She is a co-defendant is saying
19 against this Defendant which is the statement that will
20 be used, I think, against his credibility at least and I
21 think that that part of the issue being diagnosis should
22 be redacted, just that one sentence.

23 THE COURT: Ms. Mayes, I do have a concern of the
24 purpose for which that statement can be used as a
25 statement against interests of the Defendant and to

1 attack the Defendant's credibility based upon, I'm
2 assuming, his statement that he had not checked on the
3 child and that that witness is unavailable for
4 confrontation. That causes me concern.

5 MS. MAYES: I believe there is no objection to the
6 portion of the history that states that the patient's
7 mother states the child had Down syndrome. Patient's
8 mother stated that the child would not gain any weight
9 and that statement be made in the presence.

10 THE COURT: Correct. What I'm gonna do is I'll
11 sustain the objection as to the reference to the
12 Defendant and his actions. Everything else would be
13 appropriate.

14 MS. MAYES: All right.

15 THE COURT: Is that agreed?

16 MS. ZMROCZEK: Yes. And I think that's okay.

17 THE COURT: All right.

18 MS. ZMROCZEK: Thank you, Your Honor.

19 THE COURT: Suzanne, are you ready to go?

20 MS. MAYES: Yes, Your Honor.

21 THE COURT: Defense ready?

22 MS. ZMROCZEK: Yes, Your Honor.

23 THE COURT: Let's bring the jury back in, please.

24 (Whereupon, the jury returned to the courtroom at
25 10:40 a.m.)

1 THE COURT: Folks, if you recall, we were on the
2 State's direct examination so we'll pick up there.

3 BY MS. MAYES:

4 Q. Now, Mr. Reed, you have testified previously about
5 your observations when you arrived, but what, if any,
6 background history do you obtain for the purpose of rendering
7 medical diagnosis and treatment?

8 A. I obtain the events leading up to the patient's
9 current condition. Also any past medical history, problems,
10 surgeries and medications the patients are taking.

11 Q. Specifically concerning that medical history, can
12 you tell us whether or not both parents were present when you
13 obtained that history?

14 A. Yes, ma'am. They were both present.

15 Q. What is the history, medical history that you were
16 given concerning Infant ? If you can read slowly from your
17 report concerning past medical history.

18 A. Passed medical history of Down syndrome.

19 Q. All right. Down syndrome.

20 A. And patient's mother stated that the child would not
21 gain any weight.

22 Q. So the statement child would not gain any weight was
23 given to you as part of her history?

24 A. Yes, ma'am.

25 MS. MAYES: Nothing further from Mr. Reed at this

1 time, Your Honor.

2 THE COURT: All right. Cross.

3 MS. ZMROCZEK: Thank you, Your Honor.

4 CROSS EXAMINATION

5 BY MS. ZMROCZEK

6 Q. Good morning, Mr. Reed.

7 A. Good morning, ma'am.

8 Q. I understand that you had special training in a
9 subsection of pediatric emergency response; is that correct?

10 A. Yes, ma'am.

11 Q. Tell the jury why pediatrics has their own
12 subspecialty.

13 A. The anatomy of children is different from adults.
14 Relationship, for example, of head size to body size, all of
15 your medications are weight based calculations.

16 Q. And in this case you just testified that you knew
17 that the child had some prior medical conditions, correct?

18 A. Yes, ma'am.

19 Q. And a child with Down syndrome actually has their
20 own growth chart. They have weight problems and multiple -
21 they can have a multitude of health problems, correct?

22 A. To my knowledge of Down syndrome, yes, ma'am.

23 Q. And you noted additionally in your report that --
24 Well, first of all, you were called there. Tell the jury how
25 that works?

- 1 A. How I was called there?
- 2 Q. (Attorney nodding head.)
- 3 A. We were in the ambulance and dispatch radioed in an
- 4 emergency traffic and then they sent the information for the
- 5 emergency traffic to our mobile terminal.
- 6 Q. When you say dispatch, for us lay people is that
- 7 911?
- 8 A. Yes, ma'am.
- 9 Q. So somebody called 911, right?
- 10 A. Yes, ma'am.
- 11 Q. Who called 911?
- 12 A. I do not know.
- 13 Q. You don't know?
- 14 A. I imagine somebody on scene with the child.
- 15 Q. And then you said when you got there, the child was
- 16 in the father's arms. Found in her father's arms, right?
- 17 A. Yes, ma'am.
- 18 Q. Can you see Filiberto Garcia?
- 19 A. Yes, ma'am.
- 20 Q. This is the father's arms that the child was found
- 21 in?
- 22 A. Yes, ma'am.
- 23 Q. Do you know that it was he who called 911?
- 24 A. I do not know that, no, ma'am.
- 25 Q. You noted in your report that she had vomit in her

1 mouth or trachea. What is that indicative to you?

2 A. I noted that there was a small amount of vomit
3 noticed in the oral pharynx. It could be indicative of an
4 aspiration, however, I ruled that out.

5 Q. Okay. But there was something in there. You called
6 it vomit, right?

7 A. Yes, ma'am.

8 Q. Typically when someone experiences drug overdose, is
9 there vomit involved?

10 A. There can be, yes, ma'am.

11 MS. ZMROCZEK: No further questions.

12 REDIRECT EXAMINATION

13 BY MS. MAYES:

14 Q. Just to clarify, Mr. Reed, if you could refer
15 directly to your report. Does it ever say in your report that
16 there was vomit in the trachea?

17 A. No, ma'am, it does not.

18 Q. All right. So that was defense counsel's words, not
19 the words in your report?

20 A. Yes, ma'am. There was no vomit in the trachea. I
21 visualized the trachea when I intubated the patient.

22 Q. All right. What did you notice in the mouth area?

23 A. I noticed a small amount of what appeared to be
24 vomit at the corner of the mouth.

25 Q. So it was at the corner of the mouth?

1 A. Yes, ma'am.

2 Q. And you used the word vomit. Could this be
3 formula?

4 A. It's very possible, yes, ma'am.

5 Q. And when you said that you ruled out aspiration,
6 tell us what you mean by that?

7 A. I intubated the patient and when I intubated the
8 patient, I visualized the opening of the trachea and I seen no
9 foreign body, no vomit. When the patient was intubated, she
10 had clear and equal lung sounds which is not indicative of any
11 type of aspiration.

12 MS. MAYES: Nothing further.

13 MS. ZMROCZEK: I just have one question.

14 RECROSS EXAMINATION

15 BY MS. ZMROCZEK:

16 Q. The report actually says oral pharynx, correct?

17 A. Yes, ma'am.

18 Q. Can you tell the jury what that is?

19 A. The oral pharynx, the pharynx is the opening of the
20 mouth and back of the throat. Oral would be associated with
21 the mouth.

22 Q. And the pharynx is the back of the throat?

23 A. Yes, ma'am.

24 MS. ZMROCZEK: Thank you.

25 THE COURT: Thank you very much, sir. You may step

1 down. You may call your next witness.

2 MR. McNAIR: The State calls Deputy Joshua Ryan.

3 Thereupon,

4 JOSHUA T. RYAN

5 after having been first duly sworn, testified as follows,

6 THE CLERK: Please have a seat. After you're
7 seated, please state your full name spelling your last
8 name for the record.

9 THE WITNESS: Joshua Thomas Ryan, R-y-a-n.

10 DIRECT EXAMINATION

11 BY MR. McNAIR:

12 Q. Deputy Ryan, how long have you worked with the
13 Sheriff's department?

14 A. I have worked with them for about four years.

15 Q. What's your current position over there?

16 A. I am currently a school resource officer.

17 Q. Were you on duty, on patrol the night of September
18 2nd, 2013?

19 A. Yes, sir. South region patrol division.

20 Q. Did you respond to Edmund Highway that night?

21 A. Yes, I did.

22 Q. Is that in Lexington County?

23 A. Yes, sir.

24 Q. Why were you responding to that particular
25 location?

1 A. My patrol supervisor Sergeant Blake had called me.
2 Stated there was some kind of medical emergency at the
3 residence and he had to leave to go with EMS and needed
4 somebody to secure the residence until investigators could be
5 contacted and asked what to do with the scene.

6 Q. When you say secure the residence, what does that
7 mean?

8 A. To ensure that nobody goes in it or out of it. Make
9 sure nothing is removed and to just make sure nobody disturbs
10 anything of a potential crime scene.

11 Q. To preserve it?

12 A. Yes, sir.

13 Q. Was anybody on scene when you first arrived?

14 A. I believe Sergeant Blake was there. EMS and
15 everybody else had already left.

16 Q. Were the home owners there?

17 A. No, not at that time.

18 Q. At some point did one of the home owners arrive
19 back?

20 A. Yes. Mr. Garcia arrived back with his son.

21 Q. Do you recall his son's name? You can reference
22 your report. Does the name C.G. ring a bell?

23 A. Yes, sir, it was C.G.

24 Q. Okay. Now, do you recall what time they arrived
25 back on scene?

1 A. Mr. Garcia and his son arrived at about 11:27 p.m.

2 Q. Did you speak to him?

3 A. Yes. I identified myself as Deputy Ryan with the
4 Sheriff's Department. I told him that nobody could go inside
5 the residence because investigators requested to hold the
6 scene until they determined their course of action.

7 Q. So nobody is allowed to go inside the residence at
8 that point?

9 A. No, sir.

10 Q. What did Mr. Garcia say to you after you told him
11 that?

12 A. He said that he needed to go home to go to sleep.
13 He had to work the next day. Something to that effect.

14 Q. He had to go to sleep because he had to work the
15 next day?

16 A. Yes, sir.

17 Q. All right. Did you speak English to Mr. Garcia?

18 A. I did.

19 Q. Did Mr. Garcia speak English back to you?

20 A. He did. I could tell that it wasn't his native
21 language but we were able to communicate.

22 Q. Was he able to understand what you were saying?

23 A. Yes. He knew that he couldn't go inside.

24 Q. Did he respond to you appropriately? Was it in
25 context with what you were asking him?

1 A. Yes, sir. Like I said, I identified myself. Told
2 him he couldn't go in and asked him what his name was and he
3 responded.

4 Q. After that conversation, did you have any further
5 communication with him?

6 A. We talked a little bit. I tried to talk a little
7 bit with him.

8 Q. Small talk?

9 A. Small talk trying to comfort them in the situation
10 because I didn't know exactly what was going on either.

11 Q. You didn't know what type of scene you were
12 responding to at that point?

13 A. No. I didn't. I didn't know if it was going to be
14 an actual crime scene or not at that point.

15 Q. You were just there to secure the residence?

16 A. Yes, sir.

17 Q. Were all of your conversations with Mr. Garcia in
18 English?

19 A. Yes.

20 Q. As part of securing the scene, do you maintain a log
21 of who goes in and out of the residence?

22 A. Yes, sir. We initiate a crime scene log and
23 document, at that point I would document anybody that comes
24 through me onto the scene or into the scene.

25 (Whereupon, State's Exhibit #58 through #61 marked

1 for identification.)

2 BY MR. McNAIR:

3 Q. I'll show you what's marked as State's exhibit 58
4 for identification. Is this the crime scene log that you just
5 referenced?

6 A. Yes, sir.

7 Q. Did you prepare that?

8 A. Yes, sir.

9 MR. McNAIR: Your Honor, we would offer State's 58
10 into evidence at this time.

11 THE COURT: Any objection?

12 MS. ZMROCZEK: No objection.

13 THE COURT: Without objection State's 58 is in
14 evidence.

15 BY MR. McNAIR:

16 Q. So nobody entered that scene until investigators
17 arrived and went inside?

18 A. No. Mr. Garcia waited in the driveway next to his
19 vehicle, but nobody went into the residence.

20 Q. Other than you securing the scene, did you have any
21 other involvement in this case after that date?

22 A. No. I was relieved by Sergeant Blake a short time
23 later.

24 MR. McNAIR: Okay. Thank you. Please answer any
25 questions Ms. Zmroczek has.

1 CROSS EXAMINATION

2 BY MS. ZMROCZEK:

3 Q. Officer Ryan, it wasn't just Mr. Garcia. He had his
4 seven year old son, right?

5 A. Yes.

6 Q. Who was also trying to get inside to go to sleep?
7 It was late?

8 A. Yes, ma'am.

9 Q. And he spoke broken English?

10 A. Mr. Garcia?

11 Q. Yes.

12 A. Yes.

13 Q. But he could understand you?

14 A. Yes, ma'am.

15 Q. And the purpose of securing the crime scene and that
16 crime scene log that's in evidence is to make sure that that
17 reflects exactly the scene as it is when there's a question
18 about a crime taking place, correct?

19 A. It's to document anybody that would go into that
20 crime scene from the point it's initiated.

21 Q. And also to reflect exactly what it looks like on
22 that day, on the day of an incident, correct?

23 A. To represent at that point in time when I'm there
24 everything should remain in place.

25 MS. ZMROCZEK: Thank you.

REDIRECT EXAMINATION

BY MR. McNAIR:

Q. Deputy Ryan, I forgot to ask you, but did you observe Mr. Garcia speaking to his son C.G. ?

A. I did see them talking some outside of the vehicle.

Q. Could you hear them talking?

A. No. I was sitting in my vehicle.

MR. McNAIR: Okay. No further questions.

RE CROSS EXAMINATION

BY MS. ZMROCZEK:

Q. Just one further question. Did he appear to be a caring parent and a concerned parent?

A. He looked upset about what was going on.

MS. ZMROCZEK: Thank you.

THE COURT: All right. Thank you very much, sir. You may step down. You may call your next witness.

MR. McNAIR: Your Honor, the State calls Becky Kelly.

Thereupon,

DONNA REBECCA KELLY

after having been first duly sworn, testified as follows,

THE CLERK: Please have a seat. After you're seated, please state your full name spelling your last name for the record.

DONNA KELLY - DIRECT BY MR. McNAIR

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1 THE WITNESS: My name is Donna Rebecca Kelly,
2 K-e-l-l-y. I go by Becky.

3 DIRECT EXAMINATION

4 BY MR. McNAIR:

5 Q. Ms. Kelly, where do you live?

6 A. Edmund Highway, West Columbia, South
7 Carolina.

8 Q. Do you know Tracey Roach and Mr. Garcia?

9 A. Yes, I do.

10 Q. How do you know them?

11 A. They were my neighbors.

12 Q. Where did they live in relation to your house?

13 A. Directly in front of me.

14 Q. So you can see their house from your house?

15 A. Yes, sir.

16 Q. How long were they your neighbors at that
17 location?

18 A. Uhm, a good two years.

19 Q. Were you aware of when Tracey Roach became pregnant
20 with Infant ?

21 A. Yes, sir.

22 Q. Are you aware of when Infant died?

23 A. Yes, sir.

24 Q. Did they live at that location beside you during
25 that whole time period?

1 A. Yes, sir, they did.

2 Q. Okay. Were you aware of when Tracey became pregnant
3 with Infant ?

4 A. Yes, sir.

5 Q. Did you have any conversations with her about
6 that?

7 A. Yes, sir, I did.

8 Q. What was her attitude when she initially became
9 pregnant?

10 A. She was very happy. Very happy.

11 Q. At some point did her attitude appear to change?

12 A. It did. She went and had some tests done and she
13 did tell me that the baby had Down syndrome and she become
14 different after that totally.

15 Q. What do you mean by different?

16 A. She just, the smile wasn't there anymore. She
17 wasn't - she didn't seem happy. She just --

18 Q. Okay. What about Mr. Garcia, did anything change
19 with what you observed about him?

20 A. Uhm, more distant. Especially Tracey more
21 distant.

22 Q. Did you know their son C.G. ?

23 A. Yes, I did.

24 Q. How did you know him?

25 A. Uhm, I babysat him a couple times and he would come

1 over and play some games with my youngest son.

2 Q. Your kids played together?

3 A. Well, my son is a little older than C.G. but they
4 enjoyed video games.

5 Q. After the conversation that you had with Tracey
6 Roach about Infant having Down syndrome, did things change
7 with C.G. as well?

8 A. Yes. I used to see C.G. outside playing a good
9 bit with Mr. Garcia. I didn't see him outside hardly ever,
10 ever.

11 Q. Did you not see -- You didn't see Mr. Garcia playing
12 with C.G. outside like he used to prior to that
13 conversation?

14 A. No, sir.

15 Q. What would you see Mr. Garcia doing when he was
16 outside?

17 A. Usually with his vehicles. He would either be
18 sitting in and listening to music in his vehicle or working on
19 them. That's about it.

20 Q. Did he work on his vehicles often?

21 A. Pretty often. I mean...

22 Q. Let's talk about their vehicles. Are you familiar
23 with who drove what vehicle?

24 A. Yes, sir.

25 Q. What vehicles did they have and who drove them?

1 A. There was a white Dodge truck. Mr. Garcia drove it.
2 There was a Tahoe. Tracey drove it. She never - I never seen
3 her in the Dodge. There was also a Ford Mustang. She never
4 drove it.

5 Q. Okay. Was there an issue with the Mustang?

6 A. I believe it was a transmission problem because at
7 the time I had lost my vehicle and they were letting me use
8 theirs. This was before Tracey found out she was pregnant and
9 there was transmission issues I think with the Mustang.

10 Q. Okay. So Mr. Garcia drove the Dodge Ram?

11 A. Mm-hmm.

12 Q. The white Dodge Ram and Tracey predominantly drove
13 the Tahoe?

14 A. Yes, sir.

15 Q. Where do you work?

16 A. Wal-Mart.

17 Q. What are your shift hours there?

18 A. I work from 10:00 p.m. to 7:00 a.m.

19 Q. What days?

20 A. I work Sunday night through Friday morning.

21 Q. So what time do you leave for work?

22 A. Between 9:20 to 9:30 to get there by 10:00.

23 Q. Before you would leave for work, did you typically
24 see Mr. Garcia at the home?

25 A. Yes, sir. All three vehicles were there pretty much

1 every day.

2 Q. Okay. Is it fair to say you would have been
3 surprised if you didn't see his vehicle there?

4 A. Very surprised.

5 Q. Are you aware of what time he got home?

6 A. I would say usually between 4:30 and 5:00 maybe.

7 Q. Well before you would leave for work?

8 A. Yes. Yes, sir.

9 Q. Was it the same the months leading up to Infants
10 death I guess from June until Labor Day of 2013?

11 A. Yes, sir.

12 Q. Was there a time when you didn't notice him home
13 during that time?

14 A. No, sir.

15 Q. Okay. So as far as you know he was there in the
16 home during that time?

17 A. Yes, sir.

18 Q. Occasionally you would see him outside working on
19 cars?

20 A. Yes, sir.

21 Q. Did you ever speak to Mr. Garcia?

22 A. A few times.

23 Q. Did you speak to him in Spanish?

24 A. No. No.

25 Q. You spoke to him in English?

1 A. Mm-hmm.

2 Q. Did he appear to understand what you were saying?

3 A. He would nod his head and sometimes reply back.

4 Q. Were his replies in context with what you were
5 asking?

6 A. Yes.

7 Q. He wasn't nodding his head and just saying si like
8 he didn't understand, right?

9 A. Mmm-mmm.

10 Q. Now, did you ever see Infant after she was born?

11 A. I did.

12 Q. When was that?

13 A. Uhm, we had to go over. They were having issues
14 with their heating and air system.

15 Q. When you say "we", who are you referring to?

16 A. I'm sorry. Keith Shealy, my landlord, my fiance
17 John Reedy, we had went over to look at the AC unit and I had
18 seen Infant then, but she was just born.

19 Q. Just been born?

20 A. I would say maybe a month.

21 Q. Okay. Did you ever see Infant after that time?

22 A. I seen her in her carriage going in the house with
23 Tracey. That was it. That was the last time I seen her.

24 Q. When was that?

25 A. Uhm, I want to say it was a couple months, maybe

1 three to four months after we looked at the AC unit. It was
2 still --

3 Q. Would that have been around November, December?

4 A. Yes, sir.

5 Q. Of 2012?

6 A. Yes, sir. It was still a small baby carrier, like
7 not the car seat, just a carrier.

8 Q. Did you attempt to see Infant at that time?

9 A. I tried. I called Tracey several times to try to
10 see her. When her birthday came up, I called. I never got a
11 response from Tracey.

12 Q. So you never saw Infant inside or outside that
13 house after December of 2012?

14 A. After, yes, sir. Ever. I never seen her again.

15 Q. Would you ever ask Mr. Garcia how Infant was
16 doing?

17 A. I seen him once in the drive. He was, I think he
18 was working on his Dodge. I'm not sure. But he was outside
19 and I did ask, but I didn't really - he didn't really reply
20 back. Maybe he didn't hear me because I was in my vehicle
21 passing and I did stop, but he did turn around and look at me
22 when I did ask but...

23 Q. Okay. During the time that they were your
24 neighbors, did Tracey Roach always own that Tahoe?

25 A. Yes, sir.

1 Q. Did Mr. Garcia always have that Dodge Ram?

2 A. Yes, sir.

3 Q. And they had those vehicles at the time Infant
4 died?

5 A. Yes, sir. They also had the Ford Mustang.

6 Q. And the Ford Mustang?

7 A. Yes, sir.

8 Q. Were there vehicles clean?

9 A. Yes, they were.

10 Q. Who cleaned the vehicles, do you know?

11 A. I never seen Tracey outside at all so he was always
12 the one with the vehicles working on them or cleaning them.

13 Q. They were well kempt?

14 A. Yes, sir, very well kempt.

15 MR. McNAIR: That's all the questions I have.

16 Please answer any questions Ms. Zmroczek has.

17 CROSS EXAMINATION

18 BY MS. ZMROCZEK:

19 Q. Ms. Kelly, you said you never saw Tracey outside,
20 right, even before the diagnosis of Down syndrome?

21 A. No, ma'am.

22 Q. She wasn't really an outside kind of girl?

23 A. No, ma'am.

24 Q. But Mr. Garcia was, right?

25 A. Oh, yes.

- 1 Q. And he would play outside with C.G. ?
- 2 A. Yes, ma'am.
- 3 Q. A lot. In fact, C.G. would help him work on the
- 4 cars, right?
- 5 A. Yes, he would.
- 6 Q. He's a very involved father?
- 7 A. Mm-hmm.
- 8 Q. In fact, you saw him that night, this night
- 9 September 2nd, do you recall?
- 10 A. Yes, ma'am, I did.
- 11 Q. Do you recall seeing Mr. Garcia?
- 12 A. Yes, I did.
- 13 Q. Tell the jury about what you told the police?
- 14 A. Uhm, I approached - actually C.G. approached me
- 15 first and was telling me that his sister was asleep. She
- 16 wasn't breathing and he was crying and Mr. Garcia approached
- 17 me and he was crying as well and he repeated I want to say
- 18 three to four times "my baby's dead. My baby's dead."
- 19 Q. Very distraught?
- 20 A. He was distraught but...
- 21 Q. And you say crying, correct?
- 22 A. Yes.
- 23 Q. Okay. Did you see Tracey that evening?
- 24 A. I did.
- 25 Q. Did she have tears in her eyes?

1 A. No.

2 Q. I'm sorry?

3 A. No, ma'am.

4 Q. Did she seem as emotional as her husband?

5 A. No, ma'am, she didn't.

6 MS. ZMROCZEK: Thank you.

7 REDIRECT EXAMINATION

8 BY MR. McNAIR:

9 Q. So when you spoke to Mr. Garcia and you were talking
10 about him crying, when was that? Was that Labor Day?

11 A. No, sir. That was the night that Infant had
12 passed.

13 Q. So the night of September 2nd?

14 A. Yes, sir. I was on my way to work. I had got out
15 to see if everything was okay and then he approached me
16 there.

17 Q. All right. You were off Friday and Saturday prior
18 to leaving for work at 9:30 on Sunday?

19 A. Yes, sir.

20 Q. Was Mr. Garcia home that entire weekend to
21 your knowledge?

22 A. Yes, sir.

23 MR. McNAIR: Okay. Thank you.

24 MS. ZMROCZEK: Nothing further, Your Honor.

25 THE COURT: All right. Thank you very much, ma'am.

1 You may step down.

2 MS. MAYES: May we approach?

3 THE COURT: Yes, ma'am.

4 (Side bar off the record.)

5 THE COURT: Ladies and gentlemen, we have got a
6 witness that's enroute who should be here very shortly
7 within the next five to ten minutes and I was asking the
8 attorneys about maybe taking a witness out of order, but
9 then the next witness is going to take some time to set
10 up some equipment so it's kind of a wash. We're gonna
11 have to wait for a few minutes, so I'm gonna ask you
12 instead of just sitting here staring at everybody, if
13 you want to step back into your jury room. Have no
14 conversation about the case and just relax and we'll get
15 started as soon as that witness arrives, okay?

16 (Whereupon, the jury entered the jury room at 11:05
17 a.m.)

18 MS. MAYES: Actually, Your Honor, we'll go ahead and
19 set up the equipment for Detective Gooding. He'll be
20 fairly lengthy, probably take us to the lunch hour, but
21 we'll have to set up the overhead and get some exhibits
22 ready.

23 THE COURT: All right. We'll do that while we are
24 on break.

25 (Short break.)

1 BAILIFF: All rise.

2 THE COURT: Thank you. Please be seated. Let's
3 bring our jury back.

4 (Whereupon, the jury returned to the courtroom at
5 11:30 a.m.)

6 THE COURT: All right. Folks, we're ready to
7 proceed continuing with the State's case. Please call
8 your next witness.

9 MS. MAYES: The State calls Detective Michael
10 Gooding.

11 Thereupon,

12 MICHAEL GOODING
13 after having been first duly sworn, testified as follows;

14 THE CLERK: Please have a seat. After you're
15 seated, please state your full name spelling your last
16 name for the record.

17 THE WITNESS: My name is Michael Gooding,
18 G-o-o-d-i-n-g.

19 DIRECT EXAMINATION

20 BY MS. MAYES:

21 Q. Detective Gooding, where are you employed?

22 A. I'm a sergeant with the Lexington County Sheriff's
23 Department.

24 Q. All right. Specifically what type of work have you
25 done throughout your career with the Lexington County

1 Sheriff's Department?

2 A. Initially I started out as a patrol deputy. The
3 county is actually broken down into three regions, north,
4 south and west. I started as a patrol deputy in the north
5 region, worked there for a little over a year, then I was
6 promoted to investigations. Began to work property crimes
7 investigations and then went to work in what we call major
8 crimes. You might think of it as crimes against persons. I
9 worked in that capacity before going back to the road as a
10 supervisor.

11 Q. All right. What is your educational background and
12 training that led you to a career in law enforcement?

13 A. I'm a military veteran. I served in the United
14 States Army. I'm a Gulf War veteran. I did that first. When
15 I got out of the military in '91, I went to school and got an
16 associate's degree from the University of South Carolina,
17 Beaufort. I followed that up with a Bachelor's Degree from
18 the University of South Carolina in Columbia where I attended
19 the Honors College. Prior to coming to work in law
20 enforcement I worked for SLED a couple years in a non sworn
21 capacity. SLED is the South Carolina Law Enforcement
22 Division. I worked in their breath alcohol testing unit.
23 When that federal grant ran out, I was hired by the University
24 of South Carolina and went to work for the University of South
25 Carolina police department where I worked for about ten years.

1 To become certified as a police officer obviously I
2 attended the South Carolina Criminal Justice Academy and
3 graduated from there with honors. Since that time I have
4 received training in, let's see, I was a defensive tactics
5 instructor, firearms instructor, Tazer instructor, OC
6 instructor, pepper ball instructor. I have trained officers.
7 I have received training in, as far as investigations go I
8 have had training in DNA, latent fingerprints, crime scene
9 photography, basic intervention, crime scene, interview
10 interrogation, meteorological aspects of death
11 investigations.

12 Q. All right. Now, specifically concerning death
13 investigation, can you tell us how you became involved in the
14 investigation of the death of Infant on or about
15 September 2nd of 2012?

16 A. Yes, ma'am. The way the Sheriff's Department is set
17 up is you essentially have four different teams within the
18 major crime section. Each one of those teams will take call
19 for a certain period of time. In other words, we are still
20 responsible for working the other cases that we have, but we
21 go on-call at 2:00 in the afternoon and are essentially
22 responsible for any requests for an investigator that would
23 deal in the major crimes area until 4:00 in the morning and we
24 cover the entire weekend. During this particular week, my
25 team or the team that I was a part of was on-call and I

1 received a phone call from the supervisor of the unit at that
2 time Sergeant Robbie Lint who notified me that an incident had
3 taken place here within the county and they were requesting an
4 investigator to respond and he directed me to respond to the
5 Lexington Medical Center as an investigator.

6 Q. All right. And what was your understanding of the
7 nature of the call?

8 A. What I had been told at that time is that EMS and
9 law enforcement had responded to an address on Edmund Highway,
10 that a approximately one year old child had apparently passed
11 away at that residence but had been transported by EMS to
12 Lexington Medical Center and pronounced dead there within the
13 ER and based on the totality of the circumstances they were
14 requesting we respond. It's also our protocol that
15 essentially the Sheriff's Department, I don't know if you know
16 it or not, we respond to every death that takes place in the
17 county outside of the emergency room or a hospice center so
18 that request with a death is not unusual. Because children
19 are such a vulnerable population there may be actually even a
20 little bit more emphasis on it to make sure that we are doing
21 everything we can do in conducting a thorough investigation to
22 determine what may have happened to them.

23 Q. If you could pull the microphone a little bit more
24 towards your mouth so that way we can hear you from this back
25 area.

1 A. I'm sorry, ma'am.

2 Q. Now, you mentioned that you responded to the scene
3 on September 2nd, 2012. I'm sorry. Not to the scene, but to
4 the hospital, to Lexington Medical Center. Tell us what
5 occurred when you first got there?

6 A. I arrived at the hospital and went to the emergency
7 room where I was told that Infant was located. When I got
8 there, I made contact with, I believe it was Sergeant Blake.
9 He was one of the officers who had responded as well as the
10 nursing personnel and I made my first contact with Infant .

11 Q. All right. Where did you observe Infant ?

12 A. There at the hospital in the emergency room.

13 Q. And what, if anything, Detective Gooding, did you
14 observe about her?

15 A. I was shocked. As a parent having had two children
16 --

17 MS. ZMROCZEK: Objection, Your Honor.

18 THE COURT: Sustained.

19 BY MS. MAYES:

20 Q. Let me ask you this: When you say "shocked", what
21 did you observe about Infant ?

22 A. She appeared to me to be extremely thin. I had been
23 told she was a Down syndrome child, but I could not
24 distinguish any of the characteristics that you would normally
25 see in a Down syndrome child from her head that you would

1 expect to see. Her eyes were sunken. Her mouth appeared to
2 be very dry. I could see cleanly and clearly each and every
3 one of her ribs. Her shoulder blades were protruding. She
4 had open sores on her body especially on her backside and
5 buttocks that appeared to be seeping. I observed what
6 appeared to be crystallized urine on her body especially in
7 the groin. There was a smell of urine about her. I think her
8 diaper had been removed at that point and placed to the side
9 as well as her clothing.

10 Q. All right. You mentioned that she had sores. Where
11 were the sores that you observed?

12 A. The sores were predominantly concentrated in and
13 around her groin with the emphasis really on her back side, on
14 her buttocks and lower back area.

15 Q. You mentioned crystals of urine. Where did you
16 observe crystals of urine?

17 A. On her buttocks and around her groin area.

18 Q. Observing her face alone, what, if anything, did you
19 observe about her face?

20 A. As I said before, I had been told that she was a
21 Down syndrome child so I expected certain facial features that
22 are common with children with Down syndrome. I didn't see any
23 of those features whatsoever. Her eyes appeared to be sunken
24 into her head. Her face had sort of a weird triangular shape
25 almost to it. The common thing you would expect as far as

1 cheeks and stuff like that, all those features almost appeared
2 to have been missing. Mouth appeared to be very dry.
3 Completely inconsistent with what a healthy normal child would
4 look like in my opinion.

5 Q. I'm going to show you what is State's exhibit 9 and
6 ask you to take a look at that. First of all, I want to ask
7 you when you were at the emergency room and you observed what
8 you just testified to, were you able, were you present when
9 any photos were taken?

10 A. Yes, ma'am.

11 Q. There in the emergency room?

12 A. Yes, ma'am.

13 Q. What about whether or not she had an autopsy?

14 A. She did, ma'am.

15 Q. What was the date of her autopsy?

16 A. It was about ten hours later. It was the next day.
17 We responded that evening. We worked the scene basically
18 through midnight, 2:00, 3:00 in the morning and her autopsy
19 was, I believe, at 10:00 the next morning.

20 Q. All right. Were you present for that autopsy?

21 A. I was.

22 Q. All right. Were you present when photographs were
23 taken during her autopsy?

24 A. Yes, ma'am.

25 Q. So you observed her that night and then the next

1 morning at the autopsy. State's exhibit 9 that you are
2 looking at now, can you tell us whether or not that photo is a
3 fair and accurate representation of how you have described her
4 looking that night in the emergency room?

5 A. It is.

6 Q. Now, what was the next step after you made contact
7 at the emergency room and saw Infant ?

8 A. After I saw Infant , I went to speak with the
9 parents. As part of the investigation it was important to us
10 to determine what were the events that lead up to the death of
11 Infant . And the other thing that we try and do is basically
12 we try and work back a timeline. We know that Infant was
13 alive at a certain point in time. What were the events that
14 took place prior to that. I went to speak with Infants
15 mother, Tracey Roach, there at the hospital. I interviewed
16 her briefly there, I believe, in the presence of the victim's
17 advocate who had responded to the hospital, Detective
18 Parcheta, and I believe Sergeant Blake may have also been on
19 scene.

20 Q. Who do you recall being physically present at the
21 hospital?

22 A. It was the mother, Tracey Roach.

23 Q. All right. Did you yourself have any personal
24 contact with the Defendant Mr. Garcia at the hospital?

25 A. No, ma'am. He had left.

1 Q. All right. And your understanding based on your
2 investigation is that he had left the hospital and gone
3 where?

4 A. I was told that he had gone home, back to the
5 residence because he had to work the next day.

6 Q. Is that residence the Edmund Highway residence that
7 someone had secured?

8 A. Yes, ma'am, it is.

9 Q. There has been testimony in this case already from
10 Deputy Joshua Ryan. Can you tell us what his role was?

11 A. As part of any investigation we want to make sure,
12 essentially you're trying to capture a snapshot in time.
13 You're trying to - you have a certain set of conditions that
14 took place at the time of someone's death and it's important
15 to us as an investigator to be able to see what those
16 conditions were. By asking the deputy to respond and secure
17 the scene, we can ensure then as investigators that nothing
18 would be added or taken from the home prior to our arrival and
19 our opportunity to examine it.

20 Q. Okay. So from the point that Infant went to the
21 hospital in an ambulance, her parents went to the hospital
22 after the ambulance, Deputy Ryan secures the scene, from that
23 point to your knowledge did either Tracey Roach, the wife of
24 the Defendant, or the Defendant Filiberto Garcia ever enter
25 that residence prior to law enforcement?

1 A. They did not.

2 Q. When I say prior to law enforcement, let me ask you
3 this: Ultimately was a search warrant obtained for that
4 home?

5 A. It was.

6 Q. When did that occur?

7 A. Oftentimes because we work as a team what will
8 happen is that someone will respond to the residence, a
9 detective. Another detective who is a part of that team will
10 respond to headquarters where we have access to computers and
11 that type of thing to type a search warrant. What I did was
12 once I got on the scene, I got a description because the
13 search warrant is particular in describing the residence to be
14 searched. I gave that description to Sergeant Lint and he
15 then therefore typed out the search warrant on a computer to
16 take it to a neutral detached magistrate for signature.

17 Q. So you're at the scene and you're waiting on a
18 search warrant; is that correct?

19 A. Yes, ma'am.

20 Q. While you are at the scene, what, if any, contact
21 did you have with the Defendant Filiberto Garcia?

22 A. I spoke with him outside at the residence as well as
23 C.G.

24 Q. All right. When you say C.G. , you're referring
25 to whom?

1 A. C.G. was the older brother of Infant He's the
2 biological child of Tracey Roach and Filiberto Garcia. He
3 lived there in the home. He was I think seven years old at
4 the time.

5 Q. All right. So C.G. is the biological child of
6 the Defendant and Tracey Roach, correct?

7 A. That's what I was told, yes, ma'am.

8 Q. And Infant , can you tell us whether or not
9 your understanding is she is the biological child of Tracey
10 Roach?

11 A. Yes, ma'am.

12 Q. Can you tell us whether or not she is the biological
13 child of the Defendant Filiberto Garcia?

14 A. Yes, ma'am.

15 Q. What steps, if any, did you take to obtain some
16 history and information about the scene from Mr. Garcia?

17 A. Prior to leaving the hospital and going to speak
18 with Mr. Garcia, I wanted to make sure that I would be able to
19 communicate with him. I knew that Mr. Garcia was Hispanic.
20 Obviously I don't speak Spanish so I asked the mother if we
21 was able to communicate in English. Could he read, write,
22 understand English. Can he communicate. She indicated --

23 MS. ZMROCZEK: Objection, Your Honor.

24 THE COURT: Sustained as to any hearsay.

25 BY MS. MAYES:

1 Q. Please don't repeat what she said to you. But can
2 you tell us whether or not you did take efforts to ascertain
3 whether or not Mr. Garcia understood the English language?

4 A. I did.

5 Q. All right. Did you have an understanding as to
6 whether or not he had been living in America for some period
7 of time?

8 A. Yes, ma'am.

9 Q. In fact, would that have preceded C.G.
10 birth?

11 A. Yes, ma'am.

12 Q. Now, how do you go about approaching someone in a
13 situation like this at a death investigation to develop a time
14 line?

15 A. Ask questions. Walk up to them. Introduce myself,
16 who I am, why I'm there so they know what the police are doing
17 and begin to ask questions.

18 Q. Was Mr. Garcia in custody at that time?

19 A. No, ma'am.

20 Q. Was he under arrest at that time?

21 A. No, ma'am.

22 Q. Had Tracey Roach, his wife, been arrested or in
23 custody?

24 A. No, ma'am.

25 Q. And at this point in time again where is Ms.

1 Roach?

2 A. She was still at the hospital I believe at that
3 point in time. She arrived sometime later.

4 Q. All right. So what, if any, information did
5 Mr. Garcia give you in response to your questions about
6 Infant ? I'm going to ask you whether or not you noted his
7 responses in the form of handwritten notes at any point?

8 A. I did.

9 Q. All right. And also if you documented it in the
10 form of a narrative at any point?

11 A. I did.

12 Q. All right. And do you have those documents with you
13 today?

14 A. I do, ma'am.

15 Q. All right. Now, was the first information you
16 obtained from him in writing or was it obtained verbally?

17 A. It was obtained verbally.

18 Q. Okay. If you could slowly take us through the
19 information that Mr. Garcia provided to you. And about what
20 time is this?

21 A. This is about 12:30 in the morning at this point in
22 time.

23 Q. All right. So about 12:30 a.m.?

24 A. Yes, ma'am.

25 Q. All right. So we have moved now into the early

1 morning hours of September 3rd?

2 A. That's correct.

3 Q. All right. What did he tell you concerning
4 Infant ?

5 A. He told me that he worked about 40 hours a week for
6 a metal company.

7 Q. All right. He worked about 40 hours a week at a
8 metal company. What else?

9 A. He told me he had been off for the holiday.

10 Q. All right. And what holiday are we referring to?

11 A. Labor Day weekend. Three day weekend.

12 Q. All right. And what else?

13 A. That he had woken up about 1:00 in the afternoon and
14 his wife was on the couch where she usually slept.

15 Q. So he told you that he woke up around 1:00 p.m. in
16 the afternoon. Did he say anything about why he had only
17 woken up around 1:00?

18 A. No, ma'am.

19 Q. And that is wife was on the couch. What else?

20 A. He indicated to me that his wife had been sick for
21 the last several days.

22 Q. Did he say how many days?

23 A. He said the last couple. I interpreted that to be
24 two to three.

25 Q. All right. What else?

1 A. He said that she always feeds the baby because of
2 his work.

3 Q. All right.

4 A. He told me that he did not check on the baby when he
5 woke up at 1:00 because her, referring to Infant , her room
6 was on the other side of the house.

7 Q. Her room was on the other side of the house?

8 A. Yes, ma'am.

9 Q. Describe this house.

10 A. It's a single wide trailer residence. Coming up the
11 front porch and entering the front door you enter into what
12 you would describe, I guess, as a living room area. If you
13 make an immediate right within two to three feet essentially
14 down the hallway from the front door on the left the first
15 doorway would have been Infants bedroom. Following
16 Infants bedroom would be a small bathroom. On the other
17 side of that bathroom was C.G. 's bedroom. If you proceeded
18 left through the residence, you would pass through the living
19 area into the open kitchen area and then down the hallway,
20 just a few feet down the hallway would have been, I guess,
21 another bedroom or a master bedroom. It appeared to be
22 Mr. Garcia's bedroom and there's a bathroom off of that.

23 Q. All right. So based on what you are describing do
24 you think that you could give us a basic diagram showing the
25 house and the layout?

1 A. I can try.

2 Q. If you could step down, please.

3 MS. MAYES: Your Honor, if the witness may have
4 permission to step down..

5 THE COURT: Sure.

6 BY THE WITNESS:

7 A. (Witness complies.) I apologize in advance.
8 There's essentially a small parking area right here which is
9 where two out of the three vehicles were generally parked.
10 When I got there, that would have been the area that the Tahoe
11 and the pickup truck was parked. Then a few steps leading up
12 to a small wooden front porch. Front door would have been in
13 this area. As I said, it opens essentially into a small
14 living area and immediately as you make your right to the left
15 would have been Infants room, a small bathroom and then
16 C.G.'s room. The kitchen is open in the sense that there's
17 a small counter here basically relatively counter height with
18 cabinets above it so that you could see from the kitchen into
19 the living room. In the living room there was a couch along
20 this wall. Next to the couch appeared to be a small smaller
21 couch almost you call it, but it came out from this wall right
22 along here and both of these areas essentially can be seen
23 from the kitchen. From the master bedroom you can see
24 straight down the hallway into the living room and then this
25 wall is actually hard to describe. It doesn't actually come

1 that far. I'm not that good, but there's a tub that kind of
2 sits in this corner and then back over here would have been
3 the vanity and the toilet (indicating.)

4 BY MS. MAYES:

5 Q. All right. This is the single wide mobile home that
6 you described as the family residence?

7 A. Yes, ma'am.

8 Q. All right. You may return.

9 A. (Witness complies.)

10 Q. Now, I believe the portion of the statement that you
11 had covered was that the Defendant stated he did not check on
12 the baby. Her room was on the other side of the house. What,
13 if anything, did he state to you after that during the course
14 of this conversation?

15 A. That when he had woken up at 1:00, he had gone into
16 the kitchen essentially and made some food and then he had
17 gone back to bed.

18 Q. All right. What else?

19 A. Later when he had woken up, he had gone to check on
20 the child Infant and that's when he found her non
21 responsive.

22 Q. Okay. And what is your understanding of the time
23 that a 911 call was placed in this case?

24 A. I would have to look at the CAD report. I know it
25 was testified to. I believe the call was received --

1 Q. Let me ask you this: If EMS responded at 9:31, can
2 you tell us whether or not an EMS response would be
3 contemporaneous with a 911 call?

4 A. Yes, ma'am. They would be dispatched with police
5 and law enforcement at the same time.

6 Q. Do you all use the same dispatch system?

7 A. We do.

8 Q. What else did he state to you after that?

9 A. He told me that Infant had been sick all day.

10 Q. All right. He stated that -- Did he say Infant or
11 the baby?

12 A. The baby.

13 Q. What did he say specifically?

14 A. That the baby had been sick all day, but that
15 nothing had been different in the last day or so.

16 Q. All right. Baby had been sick all day but nothing
17 different than the last day or so?

18 A. Yes, ma'am.

19 Q. What else?

20 A. Uhm, and he also said that his wife had not told him
21 anything about the baby today.

22 Q. All right. Did he provide anymore information?

23 A. He told me that he could not write in English, uhm,
24 and then while speaking with him C.G. told me something.

25 Q. All right. Did he, did Mr. Garcia ever indicate to

1 you that he had heard the baby whine or cry at any point that
2 day?

3 A. No, ma'am.

4 Q. All right. Did he ever tell you that he had checked
5 on the baby prior to 9:31?

6 A. No, ma'am.

7 Q. And did he say anything about care for the baby in
8 the preceding days of that Labor Day weekend? Labor Day being
9 a Monday. Did he have any information to provide you
10 concerning Infants condition on Friday or Saturday or
11 Sunday?

12 A. He told me that his wife usually fed the baby and
13 other than the fact that the child had been sick for the last
14 couple of days, but that there hadn't been anything different.
15 That was basically the initial timeline that he had given
16 us.

17 Q. All right. When he says the baby had been sick all
18 day or the last couple of days, did he ever indicate anything
19 about medical care for Infant ?

20 A. None at all.

21 Q. Now, throughout this conversation with him what
22 language were you speaking?

23 A. English, ma'am.

24 Q. Can you tell us whether or not he appeared to
25 understand your questions in English?

1 A. He did.

2 Q. Were you able to understand his answers in
3 English?

4 A. I was.

5 Q. Were his answers responsive to the questions that
6 you were asking?

7 A. They were.

8 Q. Did you observe him have conversations with seven
9 year old C.G. at any point?

10 A. I did.

11 Q. Were those conversations in Spanish or English?

12 A. They were in English.

13 Q. What is your understanding -- You have had contact
14 with the co-defendant Tracey Roach?

15 A. Yes, ma'am.

16 Q. What language does she speak?

17 A. English.

18 Q. Now, you mentioned that he put a statement in
19 writing in Spanish, correct?

20 A. Yes, ma'am.

21 Q. Was he in custody at that point?

22 A. No, ma'am, he wasn't.

23 Q. In fact, throughout this night and into the next day
24 at any point was Mr. Garcia or Ms. Roach in custody?

25 A. No, ma'am.

1 Q. All right. Did that statement that he made to you
2 verbally appear to be freely and voluntarily given?

3 A. It did.

4 Q. What about the written statement?

5 A. It was as well.

6 Q. How did you go about obtaining a statement in
7 writing?

8 A. After speaking with him, I asked him if he would put
9 something in writing. He told me that he couldn't write in
10 English and I said that's fine. If you would like to write in
11 Spanish, you can and he took the statement form from me. I
12 filled out the heading on the top, the information. He wrote
13 it down what he wanted to write down about that day and then
14 we signed it and I gave him a copy.

15 Q. Do you have the original with you today?

16 A. I do, ma'am.

17 Q. Where is it located?

18 A. In my case file.

19 Q. Could you go ahead and obtain that?

20 A. (Witness complies.)

21 MS. MAYES: Your Honor, if we could have this
22 marked.

23 MS. ZMROCZEK: Your Honor, may we approach?

24 THE COURT: Yes, ma'am.

25 (Side bar off the record.)

1 (Whereupon, State's Exhibit #62 marked and received
2 in evidence.)

3 BY MS. MAYES:

4 Q. Is that the statement, State's exhibit 62?

5 A. Yes, ma'am.

6 Q. All right. State's exhibit 62 in evidence, is that
7 the statement?

8 A. It is, ma'am.

9 Q. All right. And could you read into the record that
10 statement as it's written?

11 A. (No response.)

12 THE COURT: That would be a no?

13 THE WITNESS: Yes.

14 MS. ZMROCZEK: Your Honor, I just don't think --
15 That was my issue.

16 THE COURT: We have a translator.

17 MS. ZMROCZEK: Right.

18 THE COURT: The translator can. Ma'am, can you read
19 this statement in Spanish?

20 TRANSLATOR: In Spanish?

21 THE COURT: Yes, ma'am.

22 TRANSLATOR: Yes.

23 MS. ZMROCZEK: I just didn't think that he could do
24 it. That's all.

25 THE COURT: I think we have established that. All

1 right. Ladies and gentlemen, just let me -- I haven't
2 addressed it because you knew when we began this trial
3 through my questions that Mr. Campos would have an
4 interpreter present and this is our interpreter Ms.
5 Cahue. She is certified to do this. She's been placed
6 under oath to translate verbatim everything that is said
7 without any additions or deletions and she's been doing
8 that for Mr. Campos so she's going to translate the
9 statement as it's written.

10 (Whereupon, the translator in Spanish reads the
11 statement.)

12 THE COURT: All right. Now, can we get that in
13 English?

14 TRANSLATOR: I woke up -- "Woke up and I was going
15 to bed. I was coming back until the afternoon. I don't
16 remember, but I told Tracey" -- And then I don't
17 understand what this means, (santi paso) in brackets.
18 "And that is when we realized, I realized that she was
19 dead and then I went to the store and asked them to call
20 911."

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

22 BY MS. MAYES:

23 Q. Now, that particular written statement, was that
24 also obtained while you were still at the scene?

25 A. Yes, ma'am.

1 Q. All right. What was the next step in the
2 investigation while still there at the scene?

3 A. At about 1:30 that morning I received a phone call
4 from Sergeant Lint. Sergeant Lint called and told me that the
5 search warrant had been presented to a magistrate and it had
6 been signed and we then therefore had a search warrant for the
7 residence. Sergeant Lint responded to the scene. I believe
8 CSI Chapel was on the scene. Detective Parcheta had come back
9 from the hospital and I believe Ms. Roach may have been back
10 on scene at this point in time.

11 Q. All right. What happened next?

12 A. The first thing we essentially did was we did a walk
13 through of the house photographing the house and the interior
14 of the house to include all of the rooms to document the
15 condition of the home. We also collected some potential
16 physical evidence from the residence.

17 Q. All right. Now, during the course of your contact
18 with Mr. Garcia that night, did he relate to you at any point
19 which bedroom of that residence was his?

20 A. What I referred to as the master bedroom, the
21 bedroom that was in the back on the other side of the kitchen,
22 he indicated that's where he slept and that Tracey, his wife
23 essentially slept on the couch.

24 Q. All right. So he normally stayed in the master
25 bedroom at night and Ms. Roach on this living room couch that

1 you put here in the diagram?

2 A. Yes, ma'am, or at least for the last several days.

3 Q. What happened next?

4 A. Immediately upon entering the home I could smell
5 what smelled like urine as I walked through the front door.

6 As we made the right-hand turn down the hall and went to

7 Infants room the smell seemed to get stronger to me. I
8 examined Infants room looking for some reason for that
9 smell. Was there a trash can in there. Some sort of diaper
10 genie or used diapers or anything that would explain the smell
11 and I did not find anything. Looking around the house we
12 noted the general condition of the residence. As I said we
13 photographed it, the areas that would commonly, with an
14 emphasis on the areas that would commonly be involved in the
15 care of Infant . We collected a couple items of evidence,
16 physical items of evidence and closed out the search warrant
17 at some point in time after that. We also talked with Tracey
18 again prior to leaving.

19 Q. What, if anything, did you note about baby items,
20 particularly baby food items in the residence?

21 A. There in the living room -- Excuse me. Well, yeah.
22 In the living room there was a bottle laying on the floor, a
23 baby bottle near where we had been told that Tracey was
24 sleeping. That ended up being the bottle - that was the
25 bottle we ended up collecting because we believed it most

1 likely to have been the last bottle that Infant would have
2 been fed. In the absence of that -- But that bottle, even
3 that bottle at the time appeared degraded. When milk sits
4 after a while it starts to curdle sort of and get hard on the
5 inside of the baby bottle. That's what the inside of that
6 bottle looked like even then. In the kitchen I believe we
7 found two or three other baby bottles on the counter.

8 Q. What condition were those bottles in?

9 A. Just as bad a condition if not worse. We didn't
10 notice any of the utensils that you would normally associate
11 with cleaning baby bottles, you know, the bottle brushes and
12 that kind of stuff around the sink. The highchair in the
13 kitchen area, it's actually in the corner sort of on the side
14 of the kitchen. I guess I kind of drew a wall on that side,
15 but it's more open if that makes sense. There's a highchair
16 sitting there in the corner and it was stacked with stuff. It
17 didn't appear as though it was being used for anything at all
18 other than storage essentially within the kitchen. We
19 notated, I noticed that there were some other baby food type
20 items or formula type things in that kitchen area, but none of
21 those appeared to have been opened or used in any manner.
22 They were just sort of dusty and buried if that makes sense
23 among other things in the kitchen.

24 Q. Did you find any unopened baby jars or recently used
25 baby jars in that home whether on the counters or in the sink

1 or even in the fridge?

2 A. None that were open, no, ma'am, or the trash or
3 anywhere else that we noticed.

4 Q. And the unused or unopened baby food items, where
5 were they?

6 A. There were some -- If you're standing in the kitchen
7 to the sink, to the right of the sink back behind other items,
8 I think, there's a refrigerator right here, there was some
9 kind of tucked back in there underneath kind of other food
10 items and stuff and then if I was facing the highchair, to the
11 right is the kitchen table, to the left was sort of a credenza
12 or piece of furniture. I don't really know what the proper
13 term of it is and looked like they just kind of stored stuff
14 on that and sort of in the back in the corner of that there
15 was a line of some baby food jars sitting there.

16 Q. All right. What bathroom or which bathroom -- How
17 many bathrooms were in the home?

18 A. Two.

19 Q. And which bathroom was it where any baby type items
20 were located?

21 A. In the bathroom in the master bedroom there sort of
22 in that corner where I notated the tub there was one of those
23 small baby tub type items that you would use to give a baby a
24 bath kind of perched on the corner there and it, too, had
25 items sort of on top of it as if it really hadn't been used.

1 Q. Where was Mr. Garcia when the search of the
2 residence was taking place during the early morning hours of
3 September 3rd?

4 A. He was there.

5 Q. I'm going to ask you to look at these photos and
6 tell us whether or not they depict a fair and accurate
7 representation of the scene on September 3rd?

8 A. They do.

9 Q. All right. Also if you could look at these photos
10 and tell us whether or not they depict accurately a fair
11 representation of the scene on September 3rd?

12 A. Yes, ma'am, they do.

13 MS. MAYES: Your Honor, at this time we would offer
14 all of these photos. They have all been pre-marked as
15 State's exhibits for evidence.

16 THE COURT: Any objection? I'll give you a moment
17 to look through those.

18 MS. MAYES: While she is looking, Your Honor, I can
19 read into the record --

20 MS. ZMROCZEK: No objection, Your Honor, to these.
21 I'm pretty sure I don't have an objection to these.

22 MS. MAYES: I can read into the record the numbers
23 of these exhibits.

24 MS. ZMROCZEK: No objection.

25 MS. MAYES: State's 18, 19, 20, 21, 22, 23, 24, 25,

1 26, 27, 28, 29, 30, 31, 32 as evidence, 43.

2 THE COURT: All of those are in evidence without
3 objection.

4 MS. MAYES: 37, 38, 39, 40, 41, 42, 14, 15, 16 and
5 17.

6 THE COURT: Those items are in without objection.

7 MS. MAYES: As well as State's 33, 34, 35 and 36.

8 THE COURT: All without objection.

9 BY MS. MAYES:

10 Q. Detective Gooding, I'm going to start with the
11 kitchen/living room area that you noted. Can you tell us
12 whether or not the kitchen is visible from the living room and
13 vice versa, the living room is visible from the kitchen?

14 A. They are, yes, ma'am.

15 Q. I want to start here with the kitchen/living room
16 area looking at State's exhibit 33. Well, State's 28, what
17 are we looking at here?

18 A. That is the exterior of the residence, ma'am,
19 looking at the front door with the numbers displayed to
20 the right of the doorway. Ma'am, my view is partially blocked
21 by the easel. Can I step down?

22 Q. Are you able to see the photo clearly?

23 A. Yes, ma'am.

24 Q. What are we looking at here?

25 A. The exterior of the home. That's the front door, to

1 the right of the front door. It was a picture taken just to
2 show essentially that while we are executing the search
3 warrant we had identified that residence by that number. That
4 was the number that was posted by the door.

5 Q. All right. State's exhibit 26. If you could, keep
6 your voice up. If you could talk directly into the
7 microphone. What are we looking at here?

8 A. That is the living room area, ma'am, looking
9 essentially through the front door and slightly to the left.
10 What you see is the couch that I was told that Tracey had been
11 sleeping on. There is a blanket there. In front of the couch
12 there's a bag containing medicines and on the floor near the
13 left hand corner of the couch there would be where the bottle
14 was. I can't tell from that photo if the diaper cream is in
15 that photo.

16 Q. Okay. And again we are looking at this on a
17 projector with a light and it's somewhat different, but you
18 have seen the actual State's Exhibit 26. Is the bottle
19 visible in the photo when you look directly at it?

20 A. Not in that one, no, ma'am.

21 Q. (Indicating.)

22 A. Right down there actually it is.

23 Q. Okay. And you mentioned that some items were taken
24 as evidence. Now, specifically as to the bottle that was
25 located near the couch area in the living room, can you tell

1 us whether or not that was actually taken into evidence in
2 this case?

3 A. It was.

4 Q. Now, this is a somewhat better view. This is
5 State's exhibit 33, a closer view of that location.

6 A. Yes, ma'am.

7 Q. What are we looking at right here?

8 A. That's where the bottle that was collected was
9 located.

10 Q. Is that the end of the bottle there?

11 A. Yes, ma'am.

12 Q. What are these other items off to the side?

13 A. There's a tube of diaper cream, diaper rash ointment
14 I guess is what it's called. Basically that blue and white
15 object that you see toward the center, down and to the right
16 like tissue and a bottle of water.

17 Q. All right. Now, once the search is taking place,
18 I'm going to show you this particular photo. You were present
19 for the taking of these photos?

20 A. Yes, ma'am.

21 Q. Who else assisted you in the taking of these
22 photos?

23 A. Detective Chapel crime scene investigator.

24 Q. When we talk about crime scene investigator, what
25 are these items marked? What would be State's exhibit 2? Or

1 I'm sorry. What would be scene item 2 and scene item 3?

2 A. Essentially what the markers do is allow us to
3 identify where within a location a particular item of evidence
4 is located. This is sort of a photographic representation so
5 you can sort of see the relationship between items.

6 Q. Specifically this would be the diaper cream you
7 referred to and then at this point we are looking at the
8 bottle again, correct?

9 A. Yes, ma'am.

10 Q. What, if anything, stood out to you as you are there
11 at the scene in the early morning hours of September 3rd
12 concerning the condition of this bottle?

13 A. I think, as I said before, it already seemed to be
14 in poor shape. The milk or what appeared to be milk or
15 substance on the inside almost appeared to start to set up or
16 curdle so to speak within the bottle.

17 Q. Did you find any fresh milk in any bottle inside the
18 home?

19 A. No, ma'am.

20 Q. When I say milk, I'm including formula?

21 A. No, ma'am.

22 Q. State's exhibit 27, is that the bottle by the couch
23 or another location?

24 A. That's the bottle by the couch, ma'am, the one that
25 was collected.

1 Q. Now, you had also testified concerning a baby chair
2 being in the residence. I'm going to show you State's exhibit
3 29 and ask you what we are looking at in this photo?

4 A. That's the highchair that I was talking about that
5 was in the kitchen area against the wall. Essentially if
6 you're standing there facing it right now, your back is to the
7 stove and the refrigerator. To the left in that picture is
8 the credenza or piece of furniture that I was referring to.
9 Essentially it's hard to see from this angle, but below that
10 lamp and in front of it is where there was a bunch of unused
11 baby food containers.

12 Q. (Indicating.)

13 A. That's correct, ma'am. You've got a bunch of other
14 food items and cleaning items. There are items stacked on the
15 highchair as if it's being used for storage.

16 Q. Did you have any indication that the highchair had
17 been used recently to feed the baby?

18 A. It did not appear to be. And then to the right of
19 the highchair is the kitchen table with just more items
20 stacked on top of that.

21 Q. All right. State's exhibit 31 is another view
22 closer up of the credenza that you previously identified; is
23 that correct?

24 A. Yes, ma'am.

25 Q. What are we looking at here?

1 A. Essentially that's a close up picture. What you are
2 seeing that little white portion in the upper top left hand
3 corner is the lamp that I referred to before and then those
4 are the baby food containers that are stacked there along with
5 the other items. They were dusty and didn't appear to have
6 been used.

7 Q. Now, once you got into the kitchen, what, if any,
8 importance does the kitchen have in a death investigation
9 concerning the circumstances such as this with Infant ?

10 A. Well, obviously as I stated before, when we are
11 trying to figure out what the cause of death is or what caused
12 Infants death, one of the things we want to do is examine
13 bottles that she may have had, food. Is there a chance that
14 something could have entered her system that could have caused
15 her death other than -- You know, we have got to explore all
16 of the possibilities so we're looking, in this case we're
17 looking for bottles. We're looking for things that look like
18 they would be used to clean bottles. We're looking for baby
19 food. We're looking for formula. All of those types of
20 things that would lend itself to the care of the child.

21 Q. All right. These particular bottles were found as
22 noted here in the photograph in what area of the home?

23 A. Ma'am, that's in the kitchen essentially to the left
24 of the stove to the right of the sink on the kitchen counter
25 there.

1 Q. What, if anything, did you note about the condition
2 of the milk or formula in those bottles?

3 A. It would be similar to what I described before, if
4 not worse. If anything, it appeared to be older.

5 Q. Now, this would be what location of the kitchen?

6 A. Ma'am, that's in the kitchen facing towards the
7 living room to the left of the sink and that was the other
8 bottle I believe we located. It actually looked like it
9 didn't have anything in it, but it too appeared to be degraded
10 and in poor condition.

11 Q. In looking here at State's exhibit 19, what, if
12 anything, did you note about the sink area?

13 A. Generally when you have got a baby and you're bottle
14 feeding a baby, there's things that you use to clean bottles,
15 bottle brushes, that type of thing. I didn't see any clean
16 bottles or dirty bottles in the sink. I didn't see any bottle
17 brushes. I didn't see any of the nipples associated with
18 bottles or the little rings that hold them on, anything that
19 would have been used in providing Infant with a bottle.

20 Q. Okay. So taking into account that bottle that we're
21 looking at and then the bottle depicted in State's exhibit 22
22 on the other side of the sink and then, of course, the bottle
23 that you have testified to in the living room, was there any
24 other indication of Infant being fed other than these bottles
25 containing what you have described as curdled milk?

1 A. There was one other bottle in the home, I believe,
2 but it didn't appear to have been used and that was located in
3 Mr. Garcia's bedroom next to the bed underneath a bedside
4 table.

5 Q. All right. Now, what area of the home are we
6 looking at here in State's exhibit 18?

7 A. That is still within the living room. When I
8 described before, the couch sat against the back wall of the
9 living room. Next to the couch there was a smaller couch,
10 settee, whatever, piece of furniture, I don't really know how
11 to describe it, and that appeared to be, if anything, a
12 changing area for Infant . That's the only place in the home,
13 I think, where we really located any diapers. That was also
14 in close proximity to where Tracey was supposed to have spent
15 most of her time and then where the diaper cream was located
16 on the floor.

17 Q. What are we looking at here to the far right?

18 A. If I remember correctly, that's like a piece of
19 plastic like trash bag or something to put over the furniture
20 to protect it. It appears as though she was being changed on
21 it.

22 Q. And here on this bin on the floor we have what?

23 A. Diapers.

24 Q. That collection of diapers, can you tell us whether
25 or not you found any other indication that she was changed in

1 any other area of the home other than here in the living room
2 where there is the bin of diapers?

3 A. No, ma'am. That appeared to be the only place.

4 Q. All right. This area, the living room by this couch
5 and this couch, can you tell us whether or not this area of
6 the living room is visible from the kitchen?

7 A. It is.

8 Q. Is it visible if you are standing in the bedroom of
9 Mr. Garcia?

10 A. Standing in the doorway of the bedroom, yes, ma'am,
11 it would be.

12 Q. Now, specifically as to the bedroom of Mr. Garcia,
13 the master bedroom, what are we looking at here in State's
14 exhibit 37? I realize it's kind of hard to see this
15 particular photo.

16 A. That is a small bedside table that's located
17 immediately to the right as you come into the bedroom and was
18 adjacent to where the bed was located on the right hand wall.
19 At the base, and it's difficult to see from that lighting, but
20 underneath that table sort of there at the corner of the bed
21 there's a baby bottle lying there on the floor.

22 Q. And again we're looking at a somewhat distorted
23 photo with the overhead, but you have had a chance to view
24 State's exhibit 37?

25 A. Yes, ma'am.

1 Q. All right. Is the bottle visible in this
2 photograph?

3 A. It is.

4 Q. All right. And specifically where is it located?

5 A. On the floor near the essentially the front left
6 post or leg that supports the table right there adjacent to
7 the bed.

8 Q. All right. Was there an indication of any other
9 baby type items in that room?

10 A. There were -- I would have to look.

11 Q. I'll show you State's exhibit 38. It's a little bit
12 more clearer.

13 A. It appeared that there may have also been some
14 clothing items in the bedroom that were consistent with the
15 baby. You can see it down there on the right, lower right
16 hand corner of the picture.

17 Q. So there's a baby bottle in Mr. Garcia's bedroom?

18 A. One or two. It's difficult to tell from the picture
19 if it's one or two and some clothing items, yes, ma'am.

20 Q. Three baby bottles on the kitchen counter?

21 A. Yes, ma'am.

22 Q. And then the baby bottle that was found near the
23 couch of Tracey Roach?

24 A. Yes, ma'am.

25 Q. What was the condition of these bottles? Was it

1 anything - was there anything to indicate that they had been
2 used recently?

3 A. No, ma'am.

4 Q. All right. What are we looking at here in State's
5 exhibit 41? What bedroom would this be?

6 A. That would to be same bedroom, ma'am.

7 Q. So we have seen the side of the bed. This would be
8 the other side?

9 A. Yes, ma'am.

10 Q. Can you tell us what, if anything, that you noted
11 concerning personal belongings of Mr. Garcia's whether items
12 of clothing or anything of that nature?

13 A. There's numerous items of clothing that appear to be
14 Mr. Garcia's as far as shoes and other clothing items to
15 indicate to me that it would seem to me that he lived in that
16 room.

17 Q. State's exhibit 42, what are we looking at here?

18 A. I can't really tell the angle from the lighting,
19 ma'am. I believe based on the location of the bed and based
20 on the location of the end of the dresser you're looking down
21 into what would be the bathroom.

22 Q. Okay. The bathroom would be this area here?

23 A. Yes, ma'am.

24 Q. All right. I'm going to show you State's exhibit 42
25 and ask you what, if anything, else you note concerning this

1 photograph?

2 A. There's at least four pairs of shoes that appear to
3 belong to Mr. Garcia. There's also some additional clothing
4 items. There's also a beer can on the end of the dresser, a
5 Tecate beer can.

6 Q. You mentioned a Tecate beer can. What type of beer
7 is that?

8 A. It's a Mexican brand of beer, ma'am.

9 Q. And the Tecate can is located specifically where?

10 A. It's on the corner right there between - it's on the
11 edge of that white dresser, ma'am, between the bed and the
12 bathroom.

13 Q. Now, specifically as to the bathroom in the master
14 bedroom, the master bath, what are we looking at here?

15 A. That's through the doorway into the master bath over
16 to the left where the tub area is.

17 Q. All right. What kind of items are these?

18 A. Items consistent with the care of children. You
19 know, like children's shampoo, that kind of stuff.

20 Q. What are we looking at here in State's exhibit 39?

21 A. That's also the master bathroom over into the corner
22 there by where the tub is. Can I see that picture a little
23 closer?

24 Q. Yes.

25 A. I think there's an item. I just want to verify that

1 it's in that photo before I talk about it.

2 Q. Yes. State's exhibit 39.

3 A. This is a photograph taken of the master bathroom,
4 the one that was Mr. Garcia's bathroom. To the edge of the
5 tub there's the baby tub as I would call it, the tub that you
6 would use to bathe a small child and it appears to have
7 clothing items stacked upon it.

8 Q. All right. This item?

9 A. Yes, ma'am.

10 Q. That would be the baby bath that you are referring
11 to?

12 A. Yes, ma'am, that's correct.

13 Q. And this item?

14 A. I'm sorry.

15 Q. Are you familiar with this item?

16 A. That looked like baby lotion.

17 Q. All right. Now, is this master bath visible if you
18 are in the master bedroom?

19 A. It is.

20 Q. Specifically State's exhibit 42, if you are here
21 standing in the master bedroom or in the bed, can you see into
22 the master bath?

23 A. You can.

24 Q. Now, was there any other, were photos taken of any
25 other bathroom in the home?

1 A. There was a photograph of the bathroom that was
2 located between Infant and C.G. r's room that were taken.

3 Q. So State's exhibit 24. Were there any baby items in
4 this bathroom?

5 A. No, ma'am.

6 Q. So based upon your investigation of the scene which
7 bathroom appeared to be used for Infants care?

8 A. The one in the master bedroom.

9 Q. The Defendant's bedroom?

10 A. Yes, ma'am.

11 Q. What are we looking at here in State's exhibit 43?

12 A. That's C.G. s room.

13 Q. Did you go into Infants room?

14 A. I did.

15 Q. What are we looking at here in State's exhibit 16?

16 A. That's looking into Infants bedroom from the
17 hallway.

18 Q. This is when you walk in the door?

19 A. Yes, ma'am. To the right, then her open doorway
20 would be to the left. Immediately against that right hand
21 wall was just a bunch of stuff stacked up. That would be
22 looking towards the left from the opening of the doorway to
23 where her crib was located on the left-hand side.

24 Q. And finally State's Exhibit 14?

25 A. That's a picture of her crib.

1 Q. Was there anything about the crib that caused any
2 concern or alarm during the course of this investigation?

3 A. Because that was the place that Infant was found
4 when she was believed to have passed away, obviously that
5 would be an area that we would place some emphasis on or some
6 focus on and would want to make sure we examine. We did
7 collect the bedding, but there was nothing in the crib that
8 would indicate to us that the crib or some function of the
9 crib could be the problem. One of the things we look for
10 sometimes is is there something, for example, in the crib,
11 stuffed animals, loose blankets, other type things that could
12 have interfered with the child's breathing and we didn't
13 locate anything even remotely like that within the crib.

14 Q. Now, in the kitchen area what, if anything, did you
15 observe about the floor and any items on the floor?

16 A. There were a number of empty beer boxes, the big
17 cardboard boxes that beer come in. I think a couple of them
18 were for Tecate and some of them were for Bud Light and those
19 were located sort of on the middle portion of the kitchen
20 floor near where the trash can would be located.

21 Q. State's exhibit 34?

22 A. Yes, ma'am.

23 Q. State's exhibit 25 looking down into these boxes
24 that you mentioned. Concerning these three boxes here, what
25 brand of beer was that?

1 A. Tecate.

2 Q. Okay. So there are three cartons of Tecate and
3 those held how many?

4 A. I believe those were 12 packs.

5 Q. So three 12 packs of Tecate. Now, underneath this
6 carton of Tecate, what do we see there?

7 A. An empty case for Budweiser.

8 Q. What size of container is that for the Budweiser?

9 A. 24 pack.

10 Q. Based on the location where they were found, was
11 there any indication as to whether or not those items had
12 recently been used?

13 A. Based on where they were located in the middle of
14 the floor as well as what was observed within the
15 refrigerator, it appeared to have been recent, yes, ma'am.

16 Q. Specifically did you look inside the refrigerator?

17 A. Yes, ma'am, we did.

18 Q. For what purpose did you look inside the
19 refrigerator?

20 A. Well, our main purpose was to see if we could locate
21 anything that would be used in the care of Infant or if there
22 was not anything that was used in the care of Infant, that
23 would be potentially of interest as well. So we were looking
24 for open baby food jars or pre-mixed formula or milk or
25 anything like that that could have been used for her care.

1 Q. Did you find any baby bottles or pre-mixed formula
2 in the refrigerator?

3 A. None at all.

4 Q. Did you find any baby food jars?

5 A. No, ma'am.

6 Q. What did you find?

7 A. Food and beer.

8 Q. What brand of beer is this?

9 A. Tecate.

10 Q. All right.

11 A. And Budweiser.

12 Q. All right. And then over here how many Budweisers
13 were in the fridge?

14 A. I believe it's five. I would have to look to make
15 sure it wasn't six, but it's five to six.

16 Q. So that would be now be four 12 packs of Tecate and
17 six Budweisers?

18 A. Yes, ma'am.

19 Q. Based upon your observations were those cartons in
20 front of the refrigerator, the 24 pack of Budweiser and the
21 three cartons of Tecate being 12 packs each, did that appear
22 to be empty?

23 A. Yes, ma'am.

24 Q. So moving forward, those are the events of September
25 3rd. Was an additional search warrant obtained at any point

1 in this investigation?

2 A. Yes, ma'am, it was.

3 Q. When was that search warrant obtained?

4 A. On the 12th.

5 Q. So we're talking about nine days later?

6 A. Yes, ma'am.

7 Q. You mentioned that you had attended the autopsy of
8 Infant ?

9 A. I did.

10 Q. Can you tell us whether or not there was anything
11 different about her physical appearance at the time of the
12 autopsy on the morning of September 3rd versus the way you
13 viewed her that night in the emergency room when you responded
14 shortly after EMS arrived?

15 A. The only difference, ma'am, was they had removed the
16 pads that the EMT's would have used to try to do CPR.

17 Q. Did you observe any difference in her face or facial
18 features?

19 A. No, ma'am.

20 Q. Or her body?

21 A. No, ma'am.

22 Q. Did you consult with the pathologist in this case
23 following the autopsy?

24 A. I did.

25 Q. Did you make any efforts to consult with any other

1 medical experts in this case?

2 A. I did.

3 Q. Who was that?

4 A. Dr. Susan Luberoff.

5 Q. Why was that?

6 A. That's her specialty. She is an expert in the field
7 and in child death investigation and child abuse cases that's
8 what she does. And I wanted to make sure that any of the
9 physical findings that we were observing, any of the results
10 that we were getting from autopsy, anything that we may have
11 gotten from toxicology essentially that another set of eyes,
12 someone who is an expert in the field could look at it and
13 render an opinion.

14 Q. All right. Now, did you also submit medical records
15 and the autopsy report, things of that nature to Dr. Luberoff
16 as pediatrician for her consideration?

17 A. Yes, ma'am.

18 Q. Can you tell us what type of medical records you
19 were able to obtain concerning Infant during the course of
20 this investigation?

21 A. We had checked with the mother and with the
22 assistance of both the coroner's office and Dr. Luberoff to
23 identify any of the places that Infant may have received
24 medical care or assistance during her life and for each and
25 every one of those locations that we could identify we

1 executed subpoenas on those to get their medical records.

2 MS. MAYES: Your Honor, may we approach?

3 THE COURT: Yes, ma'am.

4 (Side bar off the record.)

5 THE COURT: All right. Folks, we're not done with
6 the detective's testimony, but this is probably a good
7 stopping point to take a lunch break so I'm going to
8 excuse you for lunch. I would ask that you be back in
9 the jury room at 2:30, all right, ready to go. That
10 gives you a little over an hour and a half for lunch.
11 Please have no conversation about the case. Do not allow
12 anyone to talk with you and we'll start back at 2:30.
13 Everyone else remain seated while the members of the jury
14 are excused.

15 (Whereupon, the jury took their luncheon recess.)

16 THE COURT: All right. What's the issue?

17 MS. MAYES: If I could just clarify, Your Honor,
18 he's going to put on the record and explain the type of
19 records that he obtained during the course of this
20 investigation. He's not interpreting any medical
21 conditions, just to clarify.

22 THE COURT: Okay.

23 MS. ZMROCZEK: That's fine.

24 THE COURT: Out of curiosity, why would that be
25 lengthy if he's not going to go into -- And I agree, he's

1 probably not qualified to go into medical diagnosis
2 but...

3 MS. MAYES: There are various aspects of the medical
4 records that are pertinent. When he obtained the records
5 from Brookland Pediatric, it notes specific appointment
6 dates and then, of course, the last appointment date and
7 then it's going to be the same concerning other records
8 that he obtained and then whether there was -- Basically
9 there was an exhaustive search, Your Honor, through
10 numerous medical providers to find any evidence that she
11 had been treated between the dates of November/December
12 2012 and then the time of her death approximately nine to
13 ten months later and there's no indication that she
14 was.

15 MS. ZMROCZEK: Are you going to move them in or is
16 he just going to give a list?

17 MS. MAYES: No. We're not putting records in
18 through him.

19 MS. ZMROCZEK: Okay. No problem.

20 MS. MAYES: This is about the effort to locate that
21 type of information.

22 MS. ZMROCZEK: Yes. I have no problem with that.

23 THE COURT: All right. Well, is there anything else
24 we need to deal with before we adjourn?

25 MS. MAYES: We're going to have the photos from the

1 September 12th search and these are --

2 MS. ZMROCZEK: I may have some relevance objections
3 to those, Your Honor.

4 MS. MAYES: -- also marked.

5 MS. ZMROCZEK: But I'll look at those before -- I
6 have already looked at them and I know I have some
7 relevance objections.

8 THE COURT: All right. We'll take up then at the
9 time. All right. We will be in recess then until 2:30.

10 (Luncheon recess.)

11 BAILIFF: All rise.

12 THE COURT: Thank you. Please be seated. Anything
13 we need to take up before we get started?

14 MS. ZMROCZEK: None, Your Honor, except that I
15 pre-marked a couple of exhibits that I'm going to get in
16 through this witness and I don't believe there's any
17 objection. They have one more that I didn't object to.

18 THE COURT: Okay. Let's bring the jury in then so
19 we can get started.

20 (Whereupon, the jury returned to the courtroom at
21 2:30 p.m.)

22 THE COURT: All right. Folks, I hope everyone had a
23 good lunch break. If you recall, we're still on the
24 detective's direct examination and we'll pick up right
25 where we left off with that. Ms. Mayes.

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

2 BY MS. MAYES:

3 Q. Now, Detective Gooding, I know you had testified
4 already about the search that was conducted on September 3rd
5 and specifically in regards to that search, that would have
6 been done in early morning hours following Infants death?

7 A. Yes, ma'am.

8 Q. I'm going to refer to the dates of September of 2013
9 with the death of Infant occurring here on September 2nd.
10 The search occurring in the early morning hours of September
11 3rd. What transpired between those dates and ultimately the
12 date of September 12th when the second search occurred?

13 A. On September 3rd at about 10:00 in the morning I
14 went to the Lexington Medical Center. That's where Infants
15 autopsy was held. Present were myself, CSI Ross, a
16 representative from the coroner's office and at that date and
17 on that time at that location Infants autopsy was performed.
18 We also collected Infants clothing and other items she was
19 wearing at the time of her death. Later that afternoon at
20 about 3:10 in the afternoon I attempted to make contact with
21 Filiberto and Tracey's neighbor.

22 Q. I need you to speak up a little bit more.

23 A. I'm sorry. I tried to make contact with her
24 neighbor. Went to their house behind them, knocked on door.
25 I didn't make contact with her and I left a card. On the 3rd

1 and about right after leaving the neighbor's house around
2 twenty after three, I went and made contact with Filiberto and
3 Tracey again at their residence. I wanted to confirm that
4 Infant had not been seen by any other doctors other than what
5 had been indicated to us as Brookland Pediatrics and it was
6 confirmed at that time.

7 Q. Let me stop you there. When you talk about medical
8 exams not just at Brookland Pediatrics but potentially
9 anywhere, what efforts did you take to locate any medical
10 providers for Infant ?

11 A. Well, we asked the family multiple times where
12 Infant was seen and who her care givers were so we could have
13 from the family that information so we could look further into
14 Infants medical records. In addition to that the coroner's
15 office did a search. They have some abilities that we don't
16 have because of their function where they can see certain
17 things we can't have. They did a search and it's my
18 understanding that Dr. Luberoff in conjunction wanted to
19 confirm that the information she had was a total and complete
20 set of circumstances so she through her channels also did a
21 search to see where Infant may have been cared for and the
22 only thing we were able to identify was the Brookland
23 Pediatrics.

24 Q. Brookland Pediatrics, where is it located?

25 A. In West Columbia.

1 Q. So it's here in Lexington County?

2 A. Yes, ma'am.

3 Q. Do you know whether subpoenas were sent to
4 facilities such as Palmetto Baptist?

5 A. Yes, ma'am.

6 Q. Palmetto Richland Children's Hospital?

7 A. Yes, ma'am. We sent subpoenas -- Well, actually the
8 coroner's office sent subpoenas to all those different medical
9 institutions, Lexington Medical, Richland. I think it's
10 called something else now, but I think it was Richland
11 Memorial. We served subpoenas on all of those places in an
12 attempt to get medical records in regards to Infant and they
13 were returned to us as not having any records.

14 Q. What about USC Pediatrics?

15 A. I think there was some limited information from them
16 because there were originally appointments scheduled, but I
17 don't know that any of those appointments were ever kept or
18 followed through with so they did have some records, but they
19 weren't extensive records of care.

20 Q. Okay. Were you able to obtain Infants birth
21 records? And by that I mean from the time that she was
22 actually born at Lexington Medical Center until the time that
23 she was discharged?

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

25 Q. All right. And so you had a complete record from

1 time of birth all the way through?

2 A. Yes, ma'am.

3 Q. And can you tell us whether you had any record of
4 Infant being seen by a physician of any type in the year
5 2013?

6 A. The last -- I don't believe so. Just to double
7 check, the last one that we had was -- The last time the baby
8 was actually brought to a clinic that we could show through
9 all of our searches in regards to records was the appointment
10 that she had on November 12th, 2012. That was the appointment
11 at Brookland Pediatrics where she was there for a weight check
12 and if her weight hadn't improved, that she would be admitted,
13 but that Mr. Garcia and Ms. Roach left prior to the baby being
14 scene.

15 Q. And that was Brookland Pediatrics on what date?

16 A. November 12th, 2012.

17 Q. From the date and time of this appointment at
18 Brookland Pediatrics on November 12th, 2012, were you in
19 cooperation with the coroner's office throughout this
20 investigation, were you ever able to find any medical exam for
21 Infant after that date when she was alive?

22 A. No, ma'am.

23 Q. Now, in addition to the services that were being
24 offered through Brookland Pediatrics, what, if any, other
25 records did you have about services offered to Infant ?

1 A. She had Medicaid. She had a Medicaid card in her
2 name for insurance purposes. They received WIC or they were
3 eligible for WIC and they were involved in the WIC program
4 which is Women, Infants and Children. It's a program here in
5 Lexington County. They had food stamps. EBT. The family did
6 Easter Seals Program to provide therapy and some in home care
7 for Infant as well. There were a number of different
8 resources.

9 Q. Now, when you talk about Easter Seals, I'm gonna
10 make a note right here, were you able to obtain records
11 concerning Easter Seals?

12 A. We did, ma'am.

13 Q. All right. And do you know whether or not Easter
14 Seals ever conducted a home visit there at the Edmund Highway
15 address with Infant ?

16 A. They did.

17 Q. All right. Were you able to determine whether she
18 was ever seen in the year 2013?

19 A. She was not.

20 Q. All right. So all of the Easter Seals home visits
21 would have occurred in what year?

22 A. They occurred within the month of November in 2012,
23 ma'am.

24 Q. All right. Now, through your investigation were you
25 able to determine whether there had been scheduled

1 appointments with Infant at Brookland Pediatrics and Easter
2 Seals and other providers?

3 A. Yes, ma'am.

4 Q. Were any of those appointments kept?

5 A. There were 37 appointments that were either missed
6 or cancelled or rescheduled and not kept.

7 Q. Did that include what you called WIC?

8 A. Yes, ma'am.

9 Q. Now, you mentioned SSI. What is SSI?

10 A. Social Security.

11 Q. All right. And you mentioned food stamps.

12 A. Yes, ma'am.

13 Q. Then you mentioned the WIC, the Women, infants and
14 Children Program. You also mentioned Medicaid. At what point
15 in time did you locate records affiliated with all those
16 services being available to the household on Edmund Highway?

17 A. Some of those we determined through our
18 investigation. Others we were able to determine through the
19 execution of a search warrant on the residence, a second
20 search warrant that took place on the 12th, ma'am.

21 Q. All right. So a second search warrant on the 12.
22 I'm gonna talk about that now. As you were obtaining this
23 information regarding the lack of medical care and having
24 attended the autopsy of Infant what, if anything, ultimately
25 lead to an arrest of Filiberto Garcia and Tracey Roach?

1 A. Initially when we responded to the hospital, we
2 didn't know what we had. We knew that we had a child that
3 appeared to be severely malnourished. We knew that physically
4 shocking, but the question we had to answer at that point was
5 was there a medical reason or some other reason which could
6 have contributed to Infants death which would explain what
7 we saw. That process began essentially when I stepped in the
8 emergency room through really the events of September 12th.
9 We went to autopsy the following morning at about 10:00 and at
10 that point in time when they began to examine Infant , they
11 began to determine that there was no medical cause. There's
12 nothing medically wrong with Infant that would have caused
13 her death.

14 MS. ZMROCZEK: Objection, Your Honor.

15 THE COURT: Sustained.

16 BY MS. MAYES:

17 Q. Let me ask you this, Detective Gooding. Were you
18 present for the entire autopsy?

19 A. I was.

20 Q. How close were you?

21 A. Within about as far away as from me to the young
22 lady right there in the first row.

23 Q. Were you able to observe the pathologist Dr. Welsh
24 when he conducted his examination?

25 A. I was.

1 Q. Do you know whether or not he examined the heart?

2 A. He did.

3 Q. What did you see him do?

4 A. They actually examined the heart. He took it out.

5 Had it in his hand. Had it during examination. Physically

6 examined it to determine if there was anything wrong with

7 it.

8 Q. You observed that yourself?

9 A. I did.

10 Q. All right. Did you consult with Dr. Welsh about his
11 findings? And that's a yes or no question.

12 A. I did.

13 Q. All right. And having consulted with Dr. Welsh you
14 mentioned before a Dr. Luberoff, a pediatrician, had you
15 consulted with her as well?

16 A. I had.

17 Q. And ultimately was a decision made by the Lexington
18 County Sheriff's department to obtain warrants in this case?

19 A. It was, ma'am.

20 Q. All right. And who was arrested?

21 A. Both Tracey Roach and Filiberto Garcia.

22 Q. All right. Now, how did you all go about executing
23 those arrest warrants?

24 A. On September 12th we responded to the residence.

25 Prior to responding to the residence, I confirmed with Dr.

1 Welsh on the 12th what the cause of death was going to be.

2 MS. ZMROCZEK: Objection, Your Honor. I just don't
3 want -- This goes to the issue that we discussed
4 previously about the cause of death.

5 THE COURT: All right.

6 MS. ZMROCZEK: I just didn't want it to go any
7 further.

8 THE COURT: Okay. Are you done with that question?

9 MS. MAYES: Your Honor, I can follow up.

10 BY MS. MAYES:

11 Q. Did you discuss cause of death with Dr. Welsh? And
12 that's a yes or no question.

13 A. Yes, ma'am, I did.

14 Q. Did you also discuss manner of death which includes
15 suicide, natural death, unnatural death, homicide?

16 A. Yes, ma'am.

17 Q. All right. Based on that information, did you
18 obtain arrest warrants in this case?

19 A. We did.

20 Q. All right. Were they together when they were
21 arrested?

22 A. They were.

23 Q. Where was that?

24 A. At the home there on Edmund Highway.

25 Q. How did you go about making contact with them on

1 that date? Who was with you?

2 A. That was myself, Sergeant Lance, Sergeant Lint,
3 Sergeant Lenny, Detective Etheridge and resident Deputy Dykes
4 as well as CSI Degg showed up. I shouldn't say showed up. He
5 was requested to be there.

6 Q. Okay. In addition to the arrest warrants, did you
7 have anything else with you?

8 A. Yes, ma'am, we had a search warrant.

9 Q. All right. Why was the second search warrant
10 obtained?

11 A. A second search warrant was obtained because we had
12 received additional information during the investigation in
13 regards to the manner in which Infant died and because we had
14 additional information at that time that we didn't possess on
15 the night of the 3rd, there were then specific items that
16 might be found in the home or things that would not be found
17 in the home which were then relevant and necessary to the
18 investigation so we presented that information to a magistrate
19 and he agreed and issued a second search warrant for the
20 residence.

21 Q. At this time tell us about the search.

22 A. This time the condition of the house had been
23 changed. It was not in the condition that we found it on the
24 3rd. Specifically it appeared, for example, the kitchen area
25 and the highchair had been essentially staged. The items that

1 were originally buried under other things and covered with a
2 layer of dust had now been pulled out, polished off and
3 essentially stacked neatly there within the kitchen on the
4 kitchen counter and the highchair almost as if on display. We
5 found a sympathy card to Infant that hadn't been opened.
6 During the execution of this search warrant as we walked
7 through the house we noticed, and it was something that we
8 didn't notice the first time, Infants picture was not
9 present anywhere in the home with the exception of the
10 brother's bedroom. Mr. Garcia's items were still in the
11 bedroom consistent with what they had been before, but
12 essentially the areas that would revolve around the care of
13 Infant had all been changed.

14 Q. All right. I'm going to show you a photograph and
15 ask you whether or not you recognize this. This is State's
16 exhibit number 48.

17 A. Yes, ma'am.

18 Q. How so?

19 A. This was what we found in the kitchen when we
20 executed the second search warrant. Well, more specifically
21 it was the area there where the highchair was and I was
22 present when the photograph was taken.

23 Q. What are we looking at here?

24 A. The kitchen table is still where it was, it's just
25 been cleaned off and neatened up and some of the items have

1 been removed from it. The highchair has been completely
2 essentially uncovered. All the items that were placed on top
3 of it to start with had now been removed and item, it's marked
4 by an evidence marker in the picture as item 4. What you see
5 there, for example, it's like baby formula, rice cereal kind
6 of thing stacked there on the highchair. And then in item 3
7 it would indicate that those baby food jars that you had seen
8 in the previous picture below that white lamp that was
9 there on the credenza have now been kind of brought out and
10 dusted off and set on display.

11 Q. And State's exhibit 56 looking here at this photo
12 can you tell us whether or not this photo here at the top is a
13 true or fair and accurate representation of the highchair as
14 it appeared on September 3rd?

15 A. It is, ma'am.

16 Q. And the bottom picture as it appeared on September
17 12th?

18 A. Yes, ma'am, it is.

19 Q. What else did you observe during your search on
20 September 12th in terms of searching for baby related items?
21 First, let me show you these photos and ask you whether or not
22 you recognize them?

23 A. I recognize these.

24 Q. How so?

25 A. There's are photographs taken on the 12th during the

1 execution of the second search warrant.

2 MS. MAYES: I believe, Your Honor, these are all for
3 evidence without objection.

4 THE COURT: Is that correct?

5 MS. ZMROCZEK: That's correct, Your Honor.

6 THE COURT: Without objection..

7 BY MS. MAYES:

8 Q. I'll show you State's 63 and ask you what we're
9 looking at here?

10 A. That's a picture in the kitchen looking above the
11 stove into the cabinets.

12 Q. Why was that picture taken?

13 A. Just to document the general condition of the
14 cabinets and the food items and stuff that were in there.

15 Q. Were any baby related bottles found in the cabinets
16 on this date?

17 A. Not that I recall.

18 Q. Do you recall locating any additional food items or
19 essential items other than what was seen on the highchair
20 during this search on September 12th?

21 A. No, ma'am.

22 Q. All right. What are we looking at here in State's
23 exhibit 47? What area of the home are we looking at?

24 A. You're standing in the kitchen, the highchair and
25 kitchen table are to your left, you're looking directly down

1 into the living room. On the left-hand side against the left
2 wall under the drape is the couch. Against the far wall is
3 the area that we had identified previously as most likely
4 where Infant was changed and to the right along that wall as
5 you see underneath the counter is the hallway that led to
6 Infants room first on the left and then C.G. s later
7 further down.

8 Q. All right. So we're looking at the kitchen and
9 then, of course, the living room further down. What is the
10 most immediate area that's not shown in this photograph that
11 precedes the kitchen?

12 A. That precedes the kitchen?

13 Q. That precedes the kitchen? What is actually located
14 her on this side?

15 A. I'm sorry. I'm not following your question,
16 ma'am.

17 Q. Okay. This is the kitchen and this is the living
18 room to the right. What is to the left of the kitchen?

19 A. Well, basically to your back where you would be
20 standing would be the bedroom that Mr. Garcia stayed in and
21 master bath.

22 Q. If you are in the kitchen and looking toward this
23 couch, what is this back wall? What actually is that?

24 A. That would be the wall separating the living room
25 from Infants bedroom.

1 Q. So this is Infants bedroom. This is an adjacent
2 wall to Infants bedroom here?

3 A. Yes, ma'am.

4 Q. And what are we looking at here in this photo?

5 A. That was the entertainment center area.

6 Q. What room was that in?

7 A. Master bedroom, I believe. You see there's a stack
8 of movies and games there to the right. There's another
9 Tecate beer can to the left and behind what, I guess, is the
10 cable box.

11 Q. What are we looking at in this photo?

12 A. At the time that Mr. Garcia was arrested at the
13 residence with his wife, he had \$484.00 in cash on him. That
14 is the money that's laid out. It came from his wallet and
15 photographed next to his wallet. Then there's his
16 identification in the wallet.

17 Q. Okay. Do you know what kind of services or what
18 kind of television or media services were available at the
19 home?

20 A. They had satellite I'm pretty sure with dish. I
21 could look in my notes to be sure.

22 Q. What are we looking at here?

23 A. Mr. Garcia's truck.

24 Q. Okay. What, if anything, is significant or unique
25 about the truck?

1 A. The rims and tires were not stock. They were these
2 large oversized chrome rims on the outside of the truck.

3 Q. Are you familiar with such rims?

4 A. Yes, ma'am.

5 Q. Are those rims valued at more or less --

6 MS. ZMROCZEK: Objection, Your Honor. Relevance.

7 THE COURT: Overruled on relevance. I think it's
8 relevant.

9 BY MS. MAYES:

10 Q. Are those rims valued at or more or less than the
11 factory model rims?

12 A. Oh, much more.

13 Q. What are we looking at here, State's exhibit 50?

14 A. That was the other SUV that was parked at the house,
15 the one that was identified to me as the one that Tracey
16 operated. You're seeing it from the exterior of the vehicle.
17 It too has after market chrome rims on it.

18 Q. What are we looking at here, State's exhibit 52?

19 A. Those are a collection of documents that were
20 recovered from Ms. Roach's purse. They include receipts.
21 They include some documentation on some of the different
22 services that were available. There's some credit cards,
23 debit cards, Medicaid cards. There's, I think, a game stop
24 frequent shopper card, some other items.

25 Q. All right. In addition to those receipts, can you

1 tell us whether or not receipts were gathered from other areas
2 of the home?

3 A. They were.

4 Q. As well as papers and documents?

5 A. Yes, ma'am.

6 Q. Now, what are we looking at in this particular
7 photo? What type of card is that?

8 A. Medicaid card spending account.

9 Q. Medicaid being health insurance?

10 A. Yes, ma'am.

11 Q. And whose name was that card in?

12 A. Infant

13 Q. So Infant had health insurance?

14 A. Yes, ma'am.

15 Q. She had full health insurance?

16 A. Yes, ma'am.

17 Q. Now, going back to the photos from September 3rd,
18 back to those briefly, on September 3rd you had identified
19 this area of the home as where Tracey Roach normally slept and
20 that's according to a statement by Mr. Garcia?

21 A. Yes, ma'am.

22 Q. All right. What, if anything, was later located,
23 was present on the 3rd, but later located on the 12th? By
24 located I mean located and recovered?

25 A. There was a I want to say it was a blue Tommy

1 Hilfiger bag that contained a number of prescription
2 medications as well as some over the counter medications.

3 Q. Again we're talking about being present on the 3rd.
4 This is State's exhibit 18, a photo from September 3rd. Do
5 you see in that photo the bag that you are referring to?

6 A. Yes, ma'am. If you come out to the upper left from
7 the fan to the left of whatever that white object is to the
8 right of the bowl, you can see it right there. It's sort of a
9 dark blue object with writing on the top of it.

10 Q. Now, also around the couch area I'm going to refer
11 to a receipt. Do you know whether or not that receipt was
12 ultimately collected as evidence?

13 A. It was, ma'am.

14 Q. So I want to go through now some of these items that
15 were recovered on the 12th ultimately as evidence that
16 includes various receipts. These are State's exhibit 55, 59,
17 54 and 53 and I believe there is no objection to these items
18 as well.

19 THE COURT: Is that correct?

20 MS. ZMROCZEK: That's correct.

21 THE COURT: All right. Without objection.

22 BY MS. MAYES:

23 Q. You have had an opportunity to review these
24 previously; is that correct --

25 A. Yes, ma'am.

1 Q. -- Detective Gooding?

2 A. Yes, ma'am.

3 Q. So let's take a look at what we know about that
4 final Labor Day weekend, and that final Labor Day weekend
5 starting around Friday all the way through Monday. There's
6 been testimony already that it was Monday night, September 2nd
7 at 9:31 p.m. that 911 was called due to Infant being
8 unresponsive. What, if anything, were you able to determine
9 about these dates and any activity by the parties?

10 A. It appeared that both from everything that we could
11 gather that both the mother and father had been in the home as
12 well as C.G. and Infant. It appears that at a couple
13 different times someone left briefly to go to the grocery
14 store, that type of thing, but pretty much everybody was at
15 the house.

16 Q. All right. Now, specifically as to Saturday, August
17 31st, I'm going to ask you what receipts were recovered for
18 that time frame.

19 A. Yes, ma'am. The reason that we had looked for and
20 recovered receipts during execution of the search warrant on
21 the home is that we had been told the reason Infant had not
22 been taken to the doctor --

23 MS. ZMROCZEK: Objection, Your Honor.

24 MS. MAYES: Okay.

25 THE COURT: Sustained.

1 BY MS. MAYES:

2 Q. Don't repeat anything anyone said to you, but let me
3 refer you directly to the receipt that you have for August
4 31st. Were you able to determine from these receipts -- First
5 of all, based upon your observations from the night you
6 arrived on September 2nd, were there working vehicles?

7 A. Yes, ma'am.

8 Q. And on Saturday, August 31st, what, if anything, was
9 noted in a receipt?

10 A. On the 31st a purchase was made at a Food Lion at
11 7:24 in the evening for a 24 pack of Budweiser.

12 Q. I believe there's been testimony already that a 24
13 pack carton was found in the kitchen area of Budweiser,
14 correct?

15 A. Yes, ma'am.

16 Q. All right. What else?

17 A. It looks like at 7:22 p.m. on the 31st a purchase
18 was made at Burger King.

19 Q. What else?

20 A. On the 31st at 5:11 in the afternoon a purchase was
21 made at Taco Bell.

22 Q. All right. And what was the form of payment at Taco
23 Bell?

24 A. Cash.

25 Q. Now, moving on from August 31st through September

1 1st into Monday, September 2nd which is the day that Infant
2 died, what, if any, information was recovered concerning
3 purchases on that day?

4 A. On the 2nd at about 6:02 in the evening a purchase
5 was made at the Food Lion in the amount of \$20.81 and paid for
6 with an EBT or food stamp card.

7 Q. Can you read into the record the items that were
8 purchased at 6:00 p.m. at Food Lion on the night that Infant
9 died?

10 A. Grape soda, six pack of regular soda, six pack of
11 fruit punch, looks like some sort of chicken and rice,
12 Chocolate Lucky Charms, Juanita's Menudo.

13 Q. A Mexican dish?

14 A. Yes, ma'am.

15 Q. Were any baby food items purchased?

16 A. No.

17 Q. Or baby formula?

18 A. No, ma'am.

19 Q. Now, based upon your investigation was 911 called
20 from the home?

21 A. No, ma'am.

22 Q. All right. When 911 was called on the night of
23 9/31, based on your investigation do you know where it was
24 called from?

25 A. Up the road at a convenient store.

1 Q. All right. And do you have an understanding as to
2 why the 911 was not called from a mobile phone belonging to
3 Mr. Garcia or Ms. Roach?

4 A. Yes, ma'am.

5 Q. What is your understanding of that?

6 A. They didn't have any minutes.

7 Q. When you say they didn't have any minutes, what are
8 you referring to?

9 A. They were on a pre-paid phone, the one that you
10 would have to purchase a phone card for. You have all seen
11 where you purchase a certain number of minutes and they said
12 they didn't have any minutes.

13 Q. I'm going to show you a receipt for September 3rd,
14 2013 which is the morning after Infant died.

15 A. Yes, ma'am.

16 Q. What was purchased on that date?

17 A. A \$25.00 phone card.

18 Q. What type of phone card?

19 A. Net Ten.

20 Q. So it's a Net Ten phone card?

21 A. Yes, ma'am.

22 Q. How is that paid for?

23 A. In cash.

24 Q. I'm going to show you an item and ask you whether or
25 not you recognize it as State's exhibit 60?

- 1 A. Yes, ma'am.
- 2 Q. What is that?
- 3 A. It was a cell phone that was recovered during the
- 4 execution of the second search warrant.
- 5 Q. And where was it recovered from?
- 6 A. Let me double check my notes, if I may.
- 7 Q. All right.
- 8 A. That's the LG black TracFone that was recovered in
- 9 the living room.
- 10 Q. From the living room area of the home?
- 11 A. Yes, ma'am.
- 12 Q. Have you had follow up investigations concerning
- 13 this phone?
- 14 A. Yes, ma'am.
- 15 Q. What's your understanding as to whom it belongs
- 16 to?
- 17 A. Mr. Garcia.
- 18 Q. Now, in addition to this phone, were any other
- 19 electronic items recovered?
- 20 A. Yes, ma'am.
- 21 Q. What were they?
- 22 A. A computer and a digital camera and a modem.
- 23 Q. The computer was what type of computer? Is it a
- 24 large monitor computer or some other type?
- 25 A. A laptop computer, portable.

1 Q. I'll show you State's exhibit 37 previously
2 identified as being the bedroom of Mr. Garcia. What is in
3 that photograph?

4 A. If you look to the right of the bed on the floor in
5 front of the table to one side is like a baby bumper cushion
6 hold up thing. That's the striped object to the right.
7 Immediately to left is a laptop, laptop bag with some
8 children's clothing on top of it.

9 Q. Now, you testified about some items that were found
10 in the living room specifically a Tommy Hilfiger bag that had
11 also been present on September 3rd?

12 A. Yes, ma'am.

13 Q. All right. Do you know what was contained in that
14 bag?

15 A. I do.

16 Q. All right. What was contained in that bag?

17 A. There were a number of prescription medications as
18 well as some over the counter medications.

19 Q. All right. Whose name were those medications in?

20 A. Tracey Roach.

21 Q. Can you tell us whether or not based upon your
22 investigation she had prescriptions for multiple types of
23 medication?

24 A. She did.

25 Q. And going back to the autopsy that you mentioned,

1 were any tissue samples collected at the autopsy?

2 A. Yes, ma'am.

3 Q. For what purpose?

4 A. Toxicology so that we could send those samples to
5 SLED to be analyzed to see if there's a presence of any
6 foreign substance in Infants body.

7 Q. Okay. And ultimately did you receive results from
8 the State Law Enforcement Division crime lab in that
9 regards?

10 A. Yes, ma'am, we did.

11 Q. Can you tell us whether or not there were any
12 antidepressants in Infants system at the time of death?

13 A. There were.

14 Q. Okay. And do you know the names of those drugs,
15 those antidepressants?

16 A. May I refer?

17 Q. Yes.

18 A. I know one of them was named Remeron. One of them
19 was Celexa, also goes by Lexapro and there was some
20 metabolites or drug that had been broken down in her system as
21 well. In addition we also found Zeldox, or another name for
22 that would be Geodon, in another one of the organs in the
23 body.

24 Q. All right. Now, in addition to the receipts that we
25 have already been through for that specific time frame of the

1 final days after Infants life, is there also a receipt for
2 August?

3 A. Yes, ma'am.

4 Q. All right. And specifically a large purchase made
5 in August?

6 A. Yes, ma'am, there is.

7 Q. What is the date of that receipt?

8 A. The 8th of August, ma'am.

9 Q. Where was the purchase made?

10 A. The same Food Lion.

11 Q. What is the total amount of that purchase at Food
12 Lion on August 8th?

13 A. \$271.62.

14 Q. What form of payment was used for that \$271.00
15 grocery bill?

16 A. \$258.79 was paid for with the food stamps or EBT
17 card and \$12.83 were paid with a debit card.

18 Q. Of that \$271.00 grocery bill, how many of those
19 groceries were baby food or baby formula?

20 A. Looking at the receipt there were 108 items
21 purchased and none of them were baby food or baby formula.

22 Q. You mentioned before that Infant had Down syndrome.
23 As a result of that through your investigation did you
24 determine if she was eligible for Social Security benefits --

25 A. I did.

1 Q. -- for her care?

2 A. Yes, ma'am.

3 Q. What was the amount of her Social Security benefits
4 per month?

5 A. \$698.00.

6 Q. You have testified that the household there on
7 Edmund Highway received food stamps. Through your
8 investigation did you receive verification as to the amount of
9 food stamps they receives each month?

10 A. Yes, ma'am.

11 Q. What is that amount?

12 A. Sorry. Give me just one minute, ma'am.

13 Q. I'll show you a document and ask you whether or not
14 you recognize it in conjunction with the search?

15 A. Yes, ma'am. That's what I was looking for.

16 Q. What is the amount of food stamps they received each
17 month?

18 A. \$526.00.

19 Q. And you mentioned before that Infant was eligible
20 for WIC, assistance for Women, Infants, and Children.

21 A. Yes, ma'am.

22 Q. Through your investigation was there any record
23 whatsoever of Infant receiving WIC food or formula after June
24 of 2013?

25 MS. ZMROCZEK: Objection, Your Honor. May we

1 approach?

2 THE COURT: Yes, ma'am.

3 (Side bar off the record.)

4 BY MS. MAYES:

5 Q. Can you tell us whether or not WIC vouchers were
6 recovered from the home?

7 A. Yes, ma'am. They were unused.

8 Q. And they were taken as evidence?

9 A. Yes, ma'am.

10 Q. So you did recover unused WIC vouchers from the
11 home?

12 A. Yes, ma'am.

13 Q. I think you testified previously that you recovered
14 a Medicaid card in Infants name?

15 A. Yes, ma'am.

16 Q. For full health and medical coverage?

17 A. Yes, ma'am.

18 Q. During the course of your investigation, did you
19 ever observe the Defendant and the co-defendant Tracey Roach
20 speak to one another?

21 A. I did.

22 Q. What language were they conversing in?

23 A. English.

24 Q. And do you know whether or not based upon your
25 observations and your investigation if the Defendant has a

1 nickname?

2 A. I heard him referred to as Bedo or Beto.

3 Q. And based upon your investigation who resided at
4 that residence on Edmund Highway from the time of Infants
5 birth until the time of her death?

6 A. Filiberto Garcia, Tracey Roach, C.G. and
7 Infant .

8 MS. MAYES: Thank you. Nothing further.

9 (Defendant's exhibit number 9 marked for
10 identification.)

11 CROSS EXAMINATION

12 BY MS. ZMROCZEK:

13 Q. Detective Gooding, I'm showing you what's been
14 marked as Defendant's ID number 9. Do you recognize this
15 picture?

16 A. Yes, ma'am, I do.

17 Q. Do you recognize this person?

18 A. Yes, I do.

19 MS. ZMROCZEK: Your Honor, at this time we would
20 like to move Defendant's number 9 into evidence.

21 MS. MAYES: No objection.

22 THE COURT: Without objection.

23 BY MS. ZMROCZEK:

24 Q. Will you tell the jury what exhibit number 9
25 depicts?

1 A. That would Tracey Roach's booking photograph.

2 Q. I'm showing you what's been previously marked for
3 identification as Defendants' exhibit number 1 and ask you if
4 you recognize that?

5 A. Yes, ma'am.

6 Q. Do you need to look inside?

7 A. I can just to verify. Yes, ma'am, I do.

8 MS. ZMROCZEK: Your Honor, at this time we would
9 like to move Defendant's number 1 into evidence.

10 THE COURT: Any objection?

11 MS. MAYES: No objection, Your Honor.

12 THE COURT: It's in.

13 BY MS. ZMROCZEK:

14 Q. Tell the jury what Defendants' number 1 is?

15 A. That's the Tommy Hilfiger bag I described with the
16 over the counter medications and prescription medications.

17 Q. And this was found in the custody and control of
18 Tracey Roach?

19 A. No, ma'am. It was found in the living room in the
20 common area.

21 Q. Right next to the couch where she slept?

22 A. Yes, ma'am. Right where everybody had access.

23 Q. And was there also another item in here that you
24 sent to SLED?

25 A. There was.

1 Q. Tell the jury what that item was.

2 A. A pill crusher.

3 Q. A pill crusher?

4 A. Yes, ma'am.

5 Q. Why did you send that item to SLED?

6 A. To be tested for any kind of drug residue.

7 Q. Are you familiar with -- Did you receive the results
8 back from that?

9 A. I did. I haven't looked at the pill crusher in a
10 while. I would have to refresh my memory.

11 Q. That's okay.

12 A. I think that there were numerous substances actually
13 found in it.

14 Q. I'm showing you what's been previously marked as
15 Defendant's 2 through 8 and ask if you recognize those?

16 A. Yes, ma'am.

17 MS. ZMROCZEK: Your Honor, at this time we would
18 like to move Defendant's 2 through 8 into evidence as
19 well.

20 MS. MAYES: No objection.

21 THE COURT: Without objection Defendant's 2 through
22 8.

23 BY MS. ZMROCZEK:

24 Q. On September 3rd, the early morning hours of the end
25 of September 2nd, I think CSI Chapel who is no longer with the

1 program but he took about 85 photographs of the residence that
2 evening; is that correct?

3 A. Yes, ma'am.

4 Q. Defendant's 2 you indicated that that was the Infants
5 room?

6 A. Yes, ma'am.

7 Q. And you indicated that there were a bunch of items
8 stacked up, but those were all baby items, correct?

9 A. I don't believe we dug through everything. You
10 can't see them in that picture. Basically what you see is the
11 crib and the rug. It's cropped out of that picture to the
12 right-hand side. The items that I'm talking about were
13 against that far wall.

14 Q. Defendant's 3, tell the jury what that depicts.

15 A. Infants crib.

16 Q. The very night that she passed away in that crib?

17 A. Yes, ma'am.

18 Q. And were you aware of what clothing she had on when
19 she was taken by EMS?

20 A. When I got to the hospital, I believe that her
21 clothing was there, the jumper.

22 Q. Did she have a diaper on?

23 A. She did.

24 Q. And I hate to be gross about this, but was there
25 anything in addition to urine in the diaper?

1 A. No, ma'am.

2 Q. There was no other substances in the diaper?

3 A. Not that I saw.

4 Q. Okay. Defendant's 4, I think that you had that item
5 collected. Tell the jury what that is?

6 A. Diaper rash cream.

7 Q. And that was consistent with what she or you had
8 been told that she had a rash, correct?

9 A. Yes, ma'am.

10 Q. You took several, this is Defendant's 5 and 6,
11 several close-ups of the crib on the inside, correct?

12 A. Yes, ma'am.

13 Q. No urine stains?

14 A. Not that I recall seeing, no, ma'am.

15 Q. In fact, you knew that C.G. had a bed wetting
16 problem, right?

17 A. That's what we had been told and then we received
18 additional information about it.

19 Q. Okay. This was the bag that's now in as Defendant's
20 item 1; is that correct?

21 A. Yes, ma'am.

22 Q. These are diapers?

23 A. Yes, ma'am.

24 Q. This is where Tracey slept and stayed, correct?

25 A. Yes, ma'am.

1 Q. Do you know what this item is right here?

2 A. From here, ma'am, I can't tell.

3 Q. I'll zoom in on it for you.

4 A. Looks like a TV remote, a cell phone and I can't
5 tell what the third item is. I don't know if it's a receipt
6 or a tissue.

7 Q. Okay. And this is not the cell phone that you
8 recovered on the 12th, correct?

9 A. No, ma'am.

10 Q. This cell phone was actually in Filiberto's
11 possession when you arrested him, right?

12 A. The notes say it was recovered from the living room,
13 but we identified that as his phone.

14 Q. You would agree with me that he was arrested in the
15 living room?

16 A. Yes, ma'am.

17 Q. Okay. And you would agree with me that you tested,
18 actually tested to see if that phone had made any calls during
19 the timeline of August 31st to September 2nd; isn't that
20 right?

21 A. I personally did not test it. It was submitted to
22 evidence for essentially a forensic download to download the
23 data off the phone.

24 Q. And another agent can testify about that?

25 A. Yes, ma'am.

1 Q. Along with the camera that had lots of pictures on
2 it?

3 A. Yes, ma'am.

4 Q. But you are the lead case agent, right?

5 A. I am.

6 Q. You did an extensive investigation into discussing
7 and meeting with witnesses, correct?

8 A. Yes, ma'am.

9 Q. Were any of those interviews audiotaped or
10 videotaped?

11 A. No, ma'am.

12 Q. Did you generate a summary?

13 A. I did.

14 Q. I'm going to hand you this page and ask if you
15 recognize this as part of your summary?

16 A. Yes, ma'am.

17 Q. After reading it -- I'll let you refresh your
18 recollection. I'll take it back and ask the question again.

19 A. Mm-hmm.

20 Q. Were any of this interview audio or videotaped?

21 A. No, ma'am. There was a forensic interview with
22 C.G. which was audiotaped and videotaped at the Dickerson
23 Center. With the exception of that none of the other
24 interviews were.

25 Q. But that one was?

- 1 A. The one with C.G. , yes, ma'am.
- 2 Q. Additionally you obtained work records?
- 3 A. I did.
- 4 Q. To verify when Filiberto was working, correct?
- 5 A. Yes, ma'am.
- 6 Q. He actually worked on September 12th, the day he was
- 7 arrested, right?
- 8 A. I would have to refresh.
- 9 Q. Do you have it in front of you?
- 10 A. Yes, ma'am.
- 11 Q. Sorry. I'll make it easier for you.
- 12 A. I have never seen this. This is a record -- This is
- 13 a record that came from EMR that I didn't get so I'm not
- 14 familiar with it.
- 15 Q. I'll ask the representative from EMR. But you would
- 16 agree with me that he did work at EMR?
- 17 A. Yes, ma'am.
- 18 Q. He was the sole provider for the family?
- 19 A. Yes, ma'am.
- 20 Q. You testified extensively about all of the services
- 21 and those services require applications, correct?
- 22 A. Yes, ma'am.
- 23 Q. You have read all of these applications, correct?
- 24 A. No, ma'am.
- 25 Q. You haven't?

1 A. No, ma'am.

2 Q. Have you received them though?

3 A. The applications?

4 Q. For the services?

5 A. I believe so.

6 Q. Okay. You knew that the autopsy, the toxicology had
7 come back with these antipsychotics in Infants system,
8 right?

9 A. Yes, ma'am.

10 Q. And you knew that all those medicines were
11 prescribed to Tracey Roach?

12 A. Yes, ma'am.

13 Q. And you knew that her prescriptions were picked up
14 at Rite Aid, correct?

15 A. Yes, ma'am. I believe the majority of them were.

16 Q. Did you ever follow through to see who signed for
17 those prescriptions?

18 A. No, ma'am.

19 Q. Would it surprise you that Tracey signed for all
20 those prescriptions?

21 A. It would not.

22 Q. Okay. You did extensive, you had extensive
23 conversations with Dr. Luberoff as you discussed, right?

24 A. Yes, ma'am, I did speak with her.

25 Q. And she recommended that you get a pediatric

1 pharmacologist, didn't she?

2 A. Not that I recall.

3 Q. I'll show you some of your handwritten notes and see
4 if that refreshes your memory.

5 A. I don't believe she recommended that. I believe
6 during the course of my research it was a question should I
7 speak to a pediatric pharmacologist and Dr. Luberoff. If you
8 notice there as an and sign right there. I just had a
9 question. I was concerned about how the drugs would work and
10 so that was a thought I had.

11 Q. Did you follow up on that thought?

12 A. No, ma'am.

13 Q. You would agree that you had extensive conversations
14 with SLED that there would be no prescriptions for Infant and
15 no reason to find those drugs in her system, correct, other
16 than somebody putting them there? She wasn't breast fed?

17 A. No, ma'am.

18 Q. Okay. You are aware that DSS, Medicaid and any
19 government programs have statutes and regulations when people
20 don't do what they are supposed to when receiving their
21 services, correct?

22 A. Yes, ma'am.

23 Q. In fact, your notes indicated that the doctor was
24 mandated to report for failure to comply?

25 A. No, ma'am. That was a question I had in my mind. I

1 was wondering if they were and in this case I had a number of
2 questions. You have my handwritten notes throughout the
3 investigation. My handwritten notes include thoughts. As I
4 was trying to figure out how to investigate the case, I would
5 jot notes to myself about different things. And I was
6 wondering because if she hadn't been seen by Brookland
7 Pediatrics for a period of time, if there was some condition
8 where they would have to report, but I don't know how that
9 works. That's me sitting there brain storming on a piece of
10 paper.

11 Q. So you didn't know that DSS did an internal
12 investigation and, in fact, subpoenaed the coroner's office
13 for their records?

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

15 Q. Your handwritten notes indicate that you did some
16 research into acetone. Tell the jury why that was
17 important?

18 A. During cases of starvation, what can happen is as
19 the muscles break down, the body can produce acetone. You
20 also see it sometimes, for example, people undergoing diabetic
21 shock where their breath almost smells like alcohol so one of
22 the things that SLED tested was for acetone in Infants
23 blood.

24 Q. Chronic starvation, if fact, that's an indicator of
25 chronic starvation, right?

1 A. I believe it's one of them, yes, ma'am.

2 Q. One of the indicators?

3 A. Yes, ma'am.

4 Q. They have a cut off level?

5 A. Yes, ma'am. They detected it, but it was below the
6 cut off level.

7 Q. Well below the cut off level. Well, SLED can
8 testify as to how far below, right?

9 A. Yes, ma'am.

10 Q. All right. You got the Brookland Pediatrics notes
11 so you knew that Tracey had taken Infant back to Lexington
12 Medical Center on September 9th of 2012; isn't that right?

13 A. I don't have that. I could go through all of the
14 LMC records, but I don't show it, no, ma'am.

15 Q. That's all right. Did you secure or search for any
16 DSS records involved in this case or were you involved with
17 any DSS records? In fact, you have testified, I think, at the
18 DSS hearing before, haven't you, or at least appeared?

19 A. I was subpoenaed to attend a DSS hearing.

20 Q. You're familiar with the records that they have?

21 A. They have never turned, I don't believe, all of
22 their records over to me. I don't know what records they are
23 in possession of.

24 Q. So it would surprise you to learn that there was
25 somebody from DSS attending the house two times a month all

1 the way up until June 24th, 2013?

2 A. Yes, ma'am. I wouldn't know about that. I knew
3 that there had been a previous neglect investigation in
4 regards to C.G. . That was the investigation that I was
5 familiar with.

6 Q. Did you read those records?

7 A. But other than that investigation, that's the only
8 one. I believe that was passed onto me from DSS and
9 information about that investigation was provided. That's the
10 only DSS investigation I'm familiar with.

11 Q. Did you read those records?

12 A. I don't think I was ever given all the records to
13 read. I do have some records from DSS, but that's from
14 different --

15 Q. From a different investigation?

16 A. No. That's - this is a safety plan that took
17 C.G. out of the house after Infants death. I have an
18 examination that was done of C.G. at DSS's request after he
19 was removed from the house.

20 Q. So for whatever reason you weren't provided with the
21 records just months before?

22 A. Medical records of C.G. from DSS and some from
23 Brookland Pediatrics, immunization records and that appears to
24 be all the records I have from DSS in regards to them.

25 Q. So the answer is, yes, it would surprise you to know

1 that a DSS worker was in the house as late as June 24th,
2 2013?

3 A. Yes, ma'am.

4 Q. Through the course of your investigation you learned
5 that Tracey started to exhibit very abnormal and strange
6 behavior just a week prior to Infants death, didn't you?

7 A. No, ma'am.

8 Q. The pictures in the house indicate that the children
9 were not lacking for much. There were numerous children's
10 clothes both Infant and C. C.G. correct?

11 A. Yes, ma'am, there was clothing found in the house.

12 Q. There were video games?

13 A. There were in C.G.'s bedroom, yes, ma'am.

14 Q. There were, in addition to the beer that you were
15 able to point out in the fridge, there was actually a gallon
16 of milk?

17 A. Yes, ma'am.

18 Q. And several food items?

19 A. Adult food items, yes, ma'am.

20 Q. Adult food items including hot dogs?

21 A. Yes, ma'am.

22 Q. And Labor Day weekend is a cookout weekend, right?

23 A. Yes, ma'am.

24 Q. In fact, on September 3rd all four burners, I
25 believe, had frying pans on them and grease, right?

1 A. Yes, ma'am.

2 Q. And the kitchen was a mess. We saw that, right?

3 A. Yes, ma'am.

4 Q. And you said that someone on September 2nd on Labor
5 Day went to Food Lion. I believe you read that receipt out to
6 us and it included grape soda, maybe some Hi-C, Chocolate
7 Lucky Charms?

8 A. Mm-hmm.

9 Q. Would you consider those children food items?

10 A. Not baby food, but appropriate for C.G. or
11 anybody else, yes, ma'am.

12 Q. And through the course of your investigation you
13 have learned that C.G. was well taken care of by his
14 father, correct?

15 A. (No response.)

16 THE COURT: If you know.

17 MS. ZMROCZEK: I'll rephrase the question.

18 BY THE WITNESS:

19 A. There were allegations that C.G. was abused with
20 over the counter medications that came from his mother and his
21 father to help him sleep and that they may have contributed to
22 his bed wetting problem.

23 BY MS. ZMROCZEK:

24 Q. And you did run a hair test on him?

25 A. SLED cannot do that test.

1 Q. Are you aware that one was done?

2 A. I know one was sent off. However, what I was told
3 was that the sample may be insufficient for testing. I don't
4 know what the results are.

5 MS. MAYES: Your Honor, may we approach?

6 THE COURT: Yes.

7 (Side bar off the record.)

8 BY MS. ZMROCZEK:

9 Q. When an infant has a sudden death like
10 manifestation, is there a special investigation that's
11 required to go into that?

12 A. No, ma'am.

13 Q. Are you aware if the coroner's office or any medical
14 office has to do a special examination?

15 A. I'm not really sure what you are asking.

16 Q. If there's a sudden infant death or --

17 A. I'm familiar with the concept of sudden death, yes,
18 ma'am. Generally it's found in infants below the age of seven
19 months. Almost never found in infants above the age of 12
20 months. It's generally a diagnosis of exclusion when all
21 other underlying causes can be excluded based on a number of
22 factors. Almost always below the age of 12 months, generally
23 always below the age of seven months.

24 THE COURT: Hold on. Hold on. We've got a
25 translator here. You have to come down to about 50 miles

1 an hour.

2 BY THE WITNESS:

3 A. I'll do my best. I'm sorry. SIDS is a diagnosis of
4 exclusion. In other words, generally speaking when no other
5 underlying cause can be found for someone's death, it can be
6 attributed to SIDS. The statistics say that SIDS is almost
7 never found in infants above the age of seven months and
8 rarely if ever found in infants above the age of 12 months.
9 So we had that in mind on the night of September 2nd as a
10 possible cause and at that point in time we didn't know what
11 caused Infants death and it was our responsibility to try
12 and find out whatever it could have been so certainly that
13 would have been one of the things we would have considered.

14 BY MS. ZMROCEK:

15 Q. Okay. Are you aware that Infant was buried on
16 September 7th of 2013?

17 A. Yes, ma'am.

18 Q. And so the search warrant that you executed, the
19 second search warrant was September 12th?

20 A. Yes, ma'am.

21 Q. Okay. So that would have been, the funeral was on
22 the 7th, five days after?

23 A. Yes, ma'am.

24 Q. Okay. You did investigate and research into that
25 Ms. Roach had accessibility to two vehicles, right?

1 A. Yes, ma'am.

2 Q. And that she, in fact, did drive them?

3 A. Yes, ma'am.

4 MS. ZMROCZEK: Thank you. I have no further
5 questions.

6 REDIRECT EXAMINATION

7 BY MS. MAYES:

8 Q. Detective Gooding, Ms. Zmroczek just questioned you
9 about the fact that Ms. Roach had access to two vehicles?

10 A. Yes, ma'am.

11 Q. Did Mr. Garcia have access to those same two
12 vehicles?

13 A. Yes, ma'am.

14 Q. Did he drive a vehicle?

15 A. Yes, ma'am.

16 Q. And you testified in response to a question by
17 defense counsel that there were allegations that C.G. had
18 been drugged by his mother and father. When were those
19 allegations made?

20 A. During the forensic interview.

21 Q. Now, I want to ask you specifically about DSS
22 involvement as Ms. Zmroczek brought that up. Your
23 understanding of DSS involvement, was it about Infant ?

24 A. No, ma'am.

25 Q. Which child was that about?

1 A. C.G. .

2 Q. And was that related to anything involving Infant
3 to your knowledge?

4 A. No, ma'am.

5 Q. And Ms. Zmroczek asked you about prior testimony at
6 a DSS hearing?

7 A. Yes, ma'am.

8 Q. Did that concern Infant

9 A. It was in regards to C.G. .

10 Q. All right. And when we talk about C.G. , you have
11 already testified that both the mother and the father were
12 arrested on September 12th of 2012?

13 A. Yes, ma'am.

14 Q. What arrangements were made for C.G. ?

15 A. He was removed from the home and placed in an
16 alternative care.

17 Q. Where was that?

18 A. I believe initially it may have been with Beth
19 Hempton in Chester.

20 Q. Who did that removal?

21 A. DSS. They did a safety plan.

22 Q. And so when Ms. Zmroczek talks about a DSS hearing,
23 was that some kind of internal inquiry or was that related to

24 C.G. safety and a permanent placement?

25 A. C.G. safety and a personal placement.

BRENDA McLAIN - DIRECT BY MR. McNAIR

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1 Q. Detective Gooding, who are these two people here?

2 A. They are C.G.'s foster parents.

3 MS. MAYES: Nothing further.

4 THE COURT: Anything further?

5 RECROSS EXAMINATION

6 BY MS. ZMROCZEK:

7 Q. If DSS did an internal based placement, it's your
8 testimony you don't know anything about it, correct?

9 A. That's correct.

10 MS. ZMROCZEK: No further questions.

11 THE COURT: All right. Thank you very much, sir.

12 You may step down.

13 MS. MAYES: The State calls Brenda McLain.

14 Thereupon,

15 BRENDA McLAIN

16 after having been first duly sworn, testified as follows,

17 THE CLERK: Please have a seat. After you're
18 seated, please state your full name spelling your last
19 name for the record.

20 THE WITNESS: My name is Brenda McLain,

21 M-c-L-a-i-n.

22 DIRECT EXAMINATION

23 BY MR. McNAIR:

24 Q. Ms. McLain, where do you work?

25 A. At EMR, Incorporated.

1 Q. What does EMR do?

2 A. We are fabricator of metal stampings, smaller pieces
3 of steel.

4 Q. Where is EMR located?

5 A. On Platt Springs Road, West Columbia.

6 Q. What do you do for EMR?

7 A. I'm the accountant and bookkeeper. I do the payroll
8 receivables, payables, financial statements.

9 Q. In your position with EMR, do you maintain EMR's
10 business records?

11 A. I do.

12 Q. All right. Were you subpoenaed to bring records
13 pertaining to a Filiberto Garcia-Campos?

14 A. Yes.

15 (Whereupon, State's exhibit #64 marked for
16 identification.)

17 BY MR. McNAIR:

18 Q. I'm going to show you what's been marked as State's
19 exhibit 64 for ID and ask you if you recognize this?

20 A. Yes. That's our application for employment at
21 EMR.

22 Q. That's kept in the regular course of business?

23 A. It is.

24 Q. Whose application is that?

25 A. This is Garcia-Campos, Filiberto.

1 MR. McNAIR: Your Honor, we would offer State's
2 exhibit 64 into evidence at this time.

3 THE COURT: Any objection?

4 MS. ZMROCZEK: No objection.

5 THE COURT: All right.

6 BY MR. McNAIR:

7 Q. When did Mr. Garcia-Campos start working at EMR?

8 A. In September of 2009.

9 Q. What was his position when he first started?

10 A. He had several duties, but his main position was
11 press operator.

12 Q. What does a press operator do?

13 A. They put pieces of steel into a press, just some
14 dies, push a button and it comes down and forms the metal.

15 Q. In September of '09 what shift did Mr. Garcia
16 work?

17 A. The night shift, second shift.

18 Q. What hours was the night shift?

19 A. Uhm, it was -- I did not work there then. I only
20 came in 2015.

21 Q. Do you all have a night shift now?

22 A. We don't have a night shift now. We haven't had it
23 since --

24 Q. Well, at some point did he change from night shift
25 to day shift?

1 A. He did. He was on, put on lay off as well as a
2 number of other folks in January of 2013, but on June 1st,
3 2013 he was rehired and called back but it was the day shift
4 and it's from 6:00 to 2:30 normally, but we would work
5 sometimes to 3:30 or 4:00 depending on what our customers
6 needed.

7 Q. Let's back up a little bit. So he had started
8 employment in September of '09?

9 A. Right.

10 Q. He was on night shift initially. At some point he
11 switched to day shift. Do you know when he first switched to
12 day shift?

13 A. Uhm, it's my understanding from what I see in the
14 personnel file that when he got called back in June of 2013 it
15 was to the day shift at that time.

16 Q. So he was laid off from January to June of 2013?

17 A. Correct.

18 Q. When did he resume employment with EMR?

19 A. June the 1st he was recalled.

20 Q. Okay. And at that time he was on day shift?

21 A. Days, yes.

22 Q. That was from 6:00 a.m. to 2:30 p.m.?

23 A. Those were the normal hours, but we did work
24 overtime, some overtime several hours a week generally but at
25 least 40 was the norm.

1 Q. 40 was the normal time that they worked per week.

2 All right.

3 (Whereupon, State's exhibit #65 and #66 marked for
4 identification.)

5 BY MR. McNAIR:

6 Q. All right. I'm going to show you what's been marked
7 as State's 65 and 66. Do you recognize State's 65?

8 A. Yes.

9 Q. What is that?

10 A. That's the payroll earnings report on him from July
11 of 2012 to September 13th, 2013 showing his money and hours.

12 Q. Money and hours. Is that a document that's kept in
13 the ordinary course of your business?

14 A. It's a computer information that we can pull up with
15 his earnings history if we need one, yes. It's kept on
16 everybody.

17 MR. McNAIR: Your Honor, we would offer State's 65
18 into evidence?

19 MS. ZMROCZEK: Without objection.

20 THE COURT: Without objection 65 in evidence.

21 BY MR. McNAIR:

22 Q. And State's 66, do you recognize this?

23 A. I do.

24 Q. What is this?

25 A. That's an attendance calendar that the girl who

1 works for me, Gail, kept each day when she came in a little
2 bit after the shop. She didn't come in that early. She would
3 check the computerized time in the computer just to see if
4 everybody was there and if they weren't there, find out if
5 they were sick or had car trouble or a problem. This is just
6 an attendance calendar that she kept.

7 Q. Like taking roll in elementary school?

8 A. Basically that was it.

9 Q. She checked if they were there. If she didn't check
10 it, they weren't there, correct?

11 A. Correct. And she put a reason if she could find out
12 why they weren't there.

13 MR. McNAIR: You Honor, we would offer State's 66 in
14 evidence as well.

15 MS. ZMROCZEK: No objection.

16 THE COURT: Without objection. Let me get you all
17 to step up here real quick.

18 (Side bar off the record.)

19 THE COURT: Mr. McNair, you may proceed, sir.

20 MR. McNAIR: May the witness step down, Your Honor?

21 THE COURT: Yes. Step down and I'll get you to
22 stand on that side and face the court reporter and
23 if you would just keep your voice up so he can hear, all
24 right?

25 THE WITNESS: Yes, sir.

1 BY MR. McNAIR:

2 Q. All right. This is State's 65. What does this
3 reflect?

4 A. This reflects the time that he worked each week with
5 his earnings and the overtime, the total gross earnings and
6 it's represented by the hours and then the overtime hours and
7 the total hours.

8 Q. This last column, does that represent the number of
9 hours that he worked that particular week?

10 A. Yes.

11 Q. So, for instance, June the 14th, would that be the
12 end of that pay week?

13 A. June 14th is always -- Our pay week ends on Saturday
14 and then we're paid the next Friday.

15 Q. So this would reflect the beginning of the work week
16 or the end of that work week?

17 A. That would be the end.

18 Q. So for the week preceding June 14th he worked about
19 46 hours?

20 A. Correct.

21 Q. Then the next week he worked 41.5?

22 A. Correct.

23 Q. 46.1, 44.6, 42, 45, 41, 34. Losing track here. 40
24 and 40?

25 A. Correct.

1 Q. So the week prior to Labor Day 8/30 how many hours
2 per week did he work that week?

3 A. So the week ending 8/30, is that what you're asking
4 me?

5 Q. Yes, ma'am.

6 A. 40.

7 Q. 40 hours that week?

8 A. Yes.

9 Q. Okay. In State's 66, this is the attendance log you
10 said that Miss Gail kept?

11 A. Yes.

12 Q. All right. So if somebody was present, are these
13 the dates of the month?

14 A. Correct.

15 Q. Okay. So this would be June 1st?

16 A. June. Mm-hmm.

17 Q. She would check if they were present. If it's not
18 checked, they were off or whatever?

19 A. Usually try to put something like vacation or off or
20 sick or whatever the reason was that they weren't there.

21 Q. So this first sheet is for June of 2013. Now in
22 July of 2013 this is the attendance for Mr. Garcia-Campos?

23 A. Correct.

24 Q. Okay. So the 4th the 5th the 6th and the 7th are
25 not checked so that means he was off those days?

1 A. It was a weekend and holiday apparently.

2 Q. And towards the end of this month for the 29th, 30th
3 and 31st, what does VAC mean?

4 A. Vacation.

5 Q. He had three days off the end of that month as
6 well?

7 A. That's correct.

8 Q. And it continues to August 1st and 2nd. He was also
9 on vacation those days?

10 A. That's correct.

11 Q. He had not worked on the 3rd or the 4th as well,
12 correct?

13 A. That was probably a Saturday and Sunday I'm
14 guessing.

15 Q. Did he generally not work weekends?

16 A. No. None of us. Occasionally some would have to
17 work on Saturdays, but not work Saturdays.

18 Q. Generally did not work weekends?

19 A. That's correct.

20 Q. Okay. For the month of September it's not checked
21 for the 1st and 2nd so he was off?

22 A. Holiday.

23 Q. It's a holiday which the 2nd was a Monday so that
24 was Labor Day. Then on the 3rd the day after Infant died
25 what does that reflect right there?

1 A. DIF is death in family.

2 Q. So he did not come into work the day after she
3 died?

4 A. That's correct.

5 Q. Nor the next three days after that?

6 A. That's correct. And then the weekend and then back
7 to normal four days.

8 Q. Was Mr. Garcia ultimately terminated?

9 A. Uhm, he was terminated because he never showed back
10 up and we found out that he had gone to jail.

11 Q. Okay. All right. Thank you, ma'am. You may have a
12 seat.

13 A. (Witness complies.)

14 Q. Now, do you all keep records pertaining to when a
15 person clocks in and clocks out on a particular day?

16 A. I get those records weekly off of the computer and
17 that's what I do the paychecks by. Uhm, I don't individually
18 keep them. The employee himself punches into the time clock
19 each day and out of the - it's a computer system. He punches
20 in and out each day and keeps his own time in the computer.

21 Q. But that information is entered into a computer
22 system that you have access to?

23 A. Correct.

24 (Whereupon, State's exhibit #67 marked for
25 identification.)

1 BY MR. McNAIR:

2 Q. Let me show you State's exhibit 67. Do you
3 recognize that document?

4 A. Yes.

5 Q. What does that show?

6 A. This is actually a record of everybody who worked
7 for these particular days. The time they punch in, the time
8 they punched out and it shows their net hours for the day and
9 the date.

10 Q. Is Mr. Garcia on that list?

11 A. He is.

12 MS. MAYES: Your Honor, we offer State's 67 in
13 evidence.

14 MS. ZMROCZEK: No objection.

15 THE COURT: Without objection.

16 BY MR. McNAIR:

17 Q. Now, based on this record, what time did Mr. Garcia
18 leave work on Friday, August 30th?

19 A. 2:31 in the afternoon he punched out.

20 Q. Prior to that Labor Day weekend on that Friday he
21 got off at 2:31?

22 A. Yes.

23 Q. You said he typically got off around 2:30 based on
24 that day shift?

25 A. Yes. Mm-hmm.

1 Q. Sometimes you work longer, but usually you worked
2 about 40 hours a week; is that correct?

3 A. That's correct.

4 Q. Now, on his employment application did he list any
5 particular skills or qualifications that he had?

6 A. I think he did list that he had been a press, he was
7 familiar with the press machine which was of interest to us
8 because it was a press operator's job.

9 Q. Did he indicate whether or not he spoke English?

10 A. He did. He indicated that he was bilingual and a
11 quick learner.

12 MR. McNAIR: That's all the questions I have.

13 Please answer any questions Ms. Zmroczek has.

14 (Whereupon, Defendant's exhibit number 10 marked for
15 identification.)

16 CROSS EXAMINATION

17 BY MS. ZMROCEK:

18 Q. Ms. McLain, I know that you weren't there when EMR
19 had second shift, but do you know or do you know what the
20 hours were for second shift?

21 A. I don't know for certain. I know approximately, but
22 I don't know for certain what the second shift hours were.

23 Q. But to your knowledge it would be in the night?

24 A. Yeah. It would have been probably around 5:00 to
25 2:00. That's just an educated guess.

1 Q. Okay. I'm showing you what's marked for ID as
2 Defendant's 10 and ask you if you recognize that?

3 A. I do have one of those in my personnel files.

4 MS. ZMROCZEK: Your Honor, at this time I move
5 Defendant's exhibit 10 into evidence.

6 THE COURT: Any objection?

7 MR. McNAIR: No objection, Your Honor.

8 THE COURT: All right.

9 BY MS. ZMROCZEK:

10 Q. Tell the jury what Defendant's exhibit 10 is. I'll
11 let you hold my copy.

12 A. Yeah. I can't read it. It's in Spanish, but it's a
13 forklift test after he had his forklift instruction and
14 training.

15 Q. And it's in Spanish?

16 A. It is.

17 Q. Do you have several Hispanic workers?

18 A. We do.

19 Q. And do they converse in Spanish when they are at
20 work?

21 A. Both. I mean, they do both, but they mainly
22 converse in English, but there's some of both.

23 Q. And is it a way, have you noticed that the more, the
24 longer that your Hispanic workers are there, the better they
25 learn English? Does their English improve?

1 A. I think that would probably the case. I have only
2 been there since January and I don't have a real knowledgeable
3 opinion about that because I've just been there a few months
4 and I also don't work in the plant with the Spanish workers.
5 I work in the office so...

6 Q. And in the personnel file if there were any write
7 ups or problems, those would be contained in the personnel
8 file as well, right?

9 A. That's correct.

10 Q. And you don't have any?

11 A. I do not see any.

12 MS. ZMROCZEK: Thank you. I have no further
13 questions.

14 REDIRECT EXAMINATION

15 BY MR. McNAIR:

16 Q. Very briefly. Just to clarify because Ms. Zmroczek
17 asked you about the second shift, he was laid off and not
18 working from January to June of 2013; is that correct?

19 A. That's correct.

20 Q. When he came back in June, he worked from 6:00 a.m.
21 to 2:30 p.m. until he left work?

22 A. That's correct. We no longer had -- That was the
23 reason for the lay off is that particular customer that made
24 us work two shifts because of the volume of work stopped. The
25 customer's work stopped. It was a Siemens contract and that

1 was the reason we had the lay off.

2 MR. McNAIR: Yes, ma'am. Okay. Thank you.

3 Appreciate it.

4 THE COURT: Thank you very much, ma'am. You may
5 step down. We're going to take a short break.

6 MS. MAYES: Yes, Your Honor.

7 THE COURT: Ladies and gentlemen, step back into the
8 jury room for a short break. Have no conversation about
9 the case.

10 (Whereupon, the jury entered the jury room.)

11 (Short break.)

12 BAILIFF: All rise.

13 THE COURT: Please keep your seats. All right.

14 Let's bring the jury back.

15 (Whereupon, the jury returned to the courtroom.)

16 THE COURT: Call your next witness.

17 MS. MAYES: The State calls Melissa Juergens.

18 Thereupon,

19 MELISSA JUERGENS

20 after having been first duly sworn, testified as follows,

21 THE CLERK: Please have a seat. After you're
22 seated, please state your full name spelling your last
23 name for the record.

24 THE WITNESS: Melissa Juergens, J-u-e-r-g-e-n-s.

25 DIRECT EXAMINATION

1 BY MS. MAYES

2 Q. Ms. Juergens, can you tell us a little bit about
3 yourself? Where were you employed in 2012?

4 A. I was employed for the Easter Seals of South
5 Carolina as an early intervention specialist.

6 Q. I'll need you to pull up a little bit closer to that
7 microphone so that this last juror can hear you. Again
8 where are you employed?

9 A. Easter Seals of South Carolina.

10 Q. What was your job description with Easter Seals?

11 A. An early intervention specialist.

12 Q. What is an early intervention specialist?

13 A. We go into the family's home and we provide
14 developmental training to the family to give them ideas and
15 support to help them work on goals with their child to
16 increase their developmental milestones.

17 Q. All right. Now, Ms. Juergens, tell us a little bit
18 about yourself. Are you a mother?

19 A. I am. I have four children.

20 Q. In addition to that, what is your educational
21 background and training that led you to work with Easter
22 Seals?

23 A. I have a Bachelor's Degree in science of education.
24 I was a special education teacher in Ohio before moving here.
25 Uhm, I worked in the school system. I actually did early

1 intervention in Ohio as well.

2 Q. During the time frame of 2012, were you certified in
3 the field of special education or early intervention?

4 A. Uhm, I was employed with Easter Seals. There's not
5 actually a certification in South Carolina to do that, but you
6 have to have your Bachelor's Degree. You do have to go
7 through training in order to be employed.

8 Q. Now, in your job capacity as an early intervention
9 specialist, can you tell us whether or not you ever had
10 contact with an infant by the name of

11 A. Yes, ma'am.

12 Q. How does Easter Seals get referrals for clients?

13 A. We get referrals through Babynet which is the lead
14 agency that provides the referrals.

15 Q. That's Babynet, correct?

16 A. Yes, ma'am.

17 Q. And Babynet made a referral concerning Infant . Do
18 you know the date of or do you have with you your records?

19 A. I do.

20 Q. What is the date of your first contact with Infant
21 pursuant to that referral?

22 A. We received the referral on September 11th, 2012 and
23 I made contact with mom on September 12th, 2012.

24 Q. Now, you have talked a little bit about the services
25 that you provide. Where does that take place?

1 A. It takes place in the home typically. For Infant
2 it did.

3 Q. Do you have with you a record as to the address that
4 you went to to provide services for Infant ?

5 A. Yes, ma'am. The address I went to was Edmund
6 Highway.

7 Q. All right. At that home on Edmund Highway how many
8 times did you have direct contact, provide direct services to
9 Infant ?

10 A. Six.

11 Q. And those six times, can you tell us what year they
12 occurred?

13 A. They were all between September of 2012 and December
14 of 2012.

15 Q. Now, during the course of your intervention
16 sessions, do you take notes as to how the client may be
17 progressing?

18 A. We do. We provide a summary of what our visits were
19 like, what we did with the child, what we talked to the
20 parents about, how the parent interacted with us as well and
21 then we leave suggestions for the parents to work on for that
22 week.

23 Q. In addition to your notes about your contact with
24 Infant , do you remember her?

25 A. Yes.

1 Q. Tell us how Infant was progressing?

2 A. She was making progress. She was learning to follow
3 objects with her eyes. She was learning to keep that eye
4 contact. She had learned to bear weight on her forearms when
5 she was on her tummy. She had actually begun to reach for a
6 rattle or to reach for your face if you put her close to
7 you.

8 Q. So you witnessed her making progress with those
9 motor skills?

10 A. Yes, ma'am.

11 Q. Such as grasping and bearing her own weight?

12 A. Yes, ma'am.

13 Q. Ms. Juergens, was there ever a time that you weighed
14 Infant ?

15 A. Yes. Mom had purchased a scale. She had told me
16 she bought one and she couldn't figure how to work it and so
17 on December 5th we talked about it and I offered to help her
18 try to figure out how to work it. We placed it on the
19 linoleum and we were able to weigh her that day.

20 Q. All right. I'm gonna make a note of that date that
21 Infant was weighed by you. I believe you said that was
22 December 5th?

23 A. Yes, ma'am.

24 Q. Of what year?

25 A. December 5th, 2012.

1 Q. December 5th, 2012. So at this point in time
2 Infant would have been a little over four months old?

3 A. Yes.

4 Q. And how much did you note and make a record of her
5 weighing on that date?

6 A. According to that scale she weighed nine pounds one
7 point five ounces.

8 Q. Nine pounds one point five ounces?

9 A. Yes, ma'am.

10 Q. In December of 2012. And did you ever see Infant
11 after that date when she was weighed?

12 A. Uhm, I saw her one more time. Yeah. I saw her on
13 December 11th, 2012.

14 Q. All right. December 11th, 2012. Did you ever have
15 contact with Infant after that date?

16 A. No.

17 Q. All right. That's your last contact?

18 A. With Infant, yes.

19 Q. Now, are you the one that terminated or ended that
20 contact?

21 A. No, I did not. Mom requested that we end services,
22 that she was moving.

23 Q. All right. And did you attempt to make contact even
24 after that date?

25 A. Yes. I went to the home and there was nobody.

1 There was no one there when I arrived, uhm, and then I also
2 made several attempts to try to reschedule and that's when mom
3 informed me that they were moving, uhm, and then we tried to
4 keep her case open until we received an address and mom
5 did not return our calls to give us an address.

6 Q. All right. Let me ask you specifically about the
7 Defendant Mr. Garcia. Did you ever see him at the
8 residence?

9 A. One time.

10 Q. All right. And what do you recall about that time
11 in terms of was it morning or afternoon?

12 A. I believe it was in the afternoon as I was leaving.
13 We typically write our notes and have the parent or guardian
14 that's there sign it and when I was leaving, I believe he was
15 coming so I had already completed my note and I don't have
16 that documented, but I remember that either I handed Infant
17 or mom maybe handed the child and I just remember him picking
18 her up and holding her and looking at her.

19 Q. And what room in the home did that occur in?

20 A. In the living room.

21 Q. All right. And that based on what you recall about
22 that, was that morning or afternoon?

23 A. I believe that was in the afternoon.

24 Q. Do you have any notes as to when you had afternoon
25 contact with Infant through all of your contact with her?

1 A. I do. Uhm, one of my visits that was in the
2 afternoon was the December 11th, 2012 appointment. That was
3 at 4:00.

4 Q. It was a 4:00 appointment. And do you have on there
5 what time it ended and what time you would have left?

6 A. I got there at 4:00 and I left at 5:07.

7 Q. So you left the home around 5:07 and I believe your
8 testimony is you recall the Defendant coming in at that
9 time?

10 A. Yes.

11 Q. And that was on the last contact date of December
12 11th, 2012?

13 A. Yes, ma'am.

14 Q. Now, how were you dressed?

15 A. Typically I have an Easter Seals shirt with our logo
16 on it and at that point I was wearing scrubs to my family
17 training visits.

18 Q. So you are identified as a health care worker or
19 Easter Seals worker?

20 A. Yes, ma'am.

21 Q. After that appointment on December 11th, 2012, did
22 either parent ever contact you to set up an additional
23 visit?

24 A. She did not contact me, but I made several attempts
25 and it shows that I spoke with her on December 18th. She said

1 that she was busy with holiday cleaning and did not want to
2 reschedule.

3 Q. All right. Were there ever any appointments that
4 were kept in the year 2013?

5 A. No, ma'am.

6 Q. What about during the time of January 2013 through
7 June 2013?

8 A. No.

9 Q. If someone does not cooperate, Ms. Juergens, can you
10 force your way into their home?

11 A. No. We cannot.

12 Q. Based upon your last contact with her in December of
13 2012 when she weighed nine pounds one point five ounces, based
14 upon what you observed was she making progress with her motor
15 skills and development?

16 A. Yes, ma'am.

17 MS. MAYES: Nothing further.

18 MS. ZMROCZEK: Just briefly, Your Honor.

19 CROSS EXAMINATION

20 BY MS. ZMROCZEK:

21 Q. Good afternoon, Ms. Juergens. You indicated that
22 the last visit either you or Ms. Roach passed Infant on to
23 Mr. Garcia or to Filiberto, correct?

24 A. Mm-hmm.

25 Q. And she went readily?

1 A. Yes, ma'am.

2 Q. In your specific job going into people's homes and
3 seeing how they interact, did you have an ability to see how
4 Infant interacted with her father?

5 A. I remember that he placed her -- We had been working
6 that day on her eyes because there was concerns and I remember
7 he held her where he could see her eyes. I remember making a
8 point to say that that was a really good thing for mom to do
9 with her.

10 Q. And by your notes and your indications who is the
11 primary care giver in this house?

12 A. The person that I dealt with the most was Tracey.

13 Q. In fact, did she fill out the paperwork for
14 Babynet?

15 A. Yes. We just require one parent or guardian to do
16 that.

17 Q. Didn't she lie on that paperwork and say that she
18 was a single parent?

19 A. I don't ask that question.

20 Q. Do your notes reflect that she said she was a single
21 parent?

22 A. Not on anything that I asked her.

23 MS. MAYES: Object to the hearsay, Your Honor.

24 THE COURT: Sustained.

25 MS. ZMROCZEK: I was just asking if she had it in

1 her notes and I think she -- I didn't know if she --

2 THE COURT: Again, by your question you're putting
3 it in evidence and that's not in the record.

4 MS. ZMROCZEK: Okay.

5 BY MS. ZMROCZEK:

6 Q. She indicated to you in December that she was
7 moving?

8 A. Yes, ma'am.

9 Q. And you didn't have any other numbers to call?

10 A. I attempted to call those numbers, but never was
11 able to get in touch with anyone.

12 Q. Okay. The reason that people receive Easter Seals
13 is specifically for that disability for the trisomy 21 Down
14 syndrome or is it a wide spectrum?

15 A. We receive referrals from Babynet for many different
16 reasons. The child doesn't have to have a diagnosis of
17 anything. They can have a developmental delay where they are
18 showing that the child is behind in their developmental
19 milestones for any number of reasons.

20 Q. Did you note this child to be behind?

21 A. Yes.

22 Q. But she was making improvements?

23 A. Correct.

24 MS. ZMROCZEK: No further questions.

25 REDIRECT EXAMINATION

1 BY MS. MAYES:

2 Q. Now, defense counsel was asking you about Mr. Garcia
3 interacting with the child. Did you witness the mother
4 interact with the child?

5 A. Yes, ma'am.

6 Q. Did you make notes of her having eye contact with
7 the child?

8 A. I have documentation that shows that she held out a
9 rattle for Infant to look at; that Infant turned her head.

10 Q. Was there also notes about belly time?

11 A. Yes, ma'am.

12 Q. And that's a parent holding the baby.

13 A. Particularly we try to do tummy time on the floor
14 and also do it on our lap if the baby is sensitive on their
15 belly maybe being pushed on and I have it saying that we did
16 it a lot on our lap or on the couch to make it softer for her,
17 but that's - typically we try to do it on the floor if
18 possible to give her more resistance to push up.

19 Q. Do you also have multiple notes about Ms. Roach
20 interacting with Infant ?

21 A. Yes, ma'am. On each date we have a place where we
22 write what the parent or care giver does during our session.

23 Q. All right. Now, do you turn in clients who have
24 someone living in the home who is bringing in an income and
25 would make the family ineligible for food stamps?

1 A. No. Income is not really a part in our services so
2 I don't typically ask any of those type questions.

3 Q. So you wouldn't turn a family in for that?

4 A. No. I would not.

5 MS. MAYES: Nothing further.

6 MS. ZMROCZEK: I have no further questions, Your
7 Honor.

8 THE COURT: Thank you very much, ma'am. You may
9 step down. Did you have another witness?

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

11 THE COURT: All right. Folks, we're going to
12 adjourn for the afternoon. I would give you the same
13 instruction that I gave you yesterday. Let your family,
14 friends and loved ones know that the case is moving along
15 and that you have to be back tomorrow and that you are
16 still not allowed to have any conversation or discussion
17 about the case. And as I said earlier try to get a good
18 night's rest, if you can, so that when you come in
19 tomorrow, you'll be ready to go. We're going to start at
20 9:00. Please be here. When everyone is reconvened at
21 9:00, we'll get started. Okay. So everyone else remain
22 seated. Ladies and gentlemen, you're free to go.

23 (Whereupon, the jury was released for the evening
24 except for Robbie Brown.)

25 THE COURT: Mr. Brown, did you work last night or

1 something?

2 , ROBBIE BROWN: Yes, sir.

3 THE COURT: Do you work a third shift or something
4 like that?

5 MR. BROWN: Yes.

6 THE COURT: Mr. Brown, I figured it was something
7 like that. Here's the thing and I know it wasn't your
8 intention, but this young man over here, his life is on
9 the line this week and we have selected jurors, and again
10 you worked all night. I get it. But you probably
11 haven't heard half of the testimony today. You slept the
12 entire day on and off and the State deserves better than
13 that and he deserves better than that. Now, I don't have
14 any choice, but I'm going to have to take you off the
15 jury and I'm not going to -- What I'm going to do,
16 because I'm not going to reward people for doing this so
17 what I'm going to do is I'll take you off this jury. You
18 don't have to report back this week, but you're going to
19 get another summons and you're gonna have to come back in
20 August. But I'm telling you --

21 ROBBIE BROWN: Excuse me. I'm also full-time
22 student so in August --

23 THE COURT: Well, we'll find another time maybe in
24 July. But, Mr. Brown, here's the thing, and don't get me
25 wrong. I'm not a hard guy. I know that it's not easy to

1 be off of work and so you think, well, maybe I can do
2 both, but you can't do both. It's obvious you can't do
3 both. So, Hope, send Mr. Brown another notice --

4 THE CLERK: Yes, sir.

5 THE COURT: -- for July.

6 THE CLERK: I will get with Carol on it.

7 THE COURT: Or sometime later.

8 THE CLERK: We can go later when he's not in school
9 and when you will be out on break and we'll do that.

10 ROBBIE BROWN: I'm a college athlete, too, so
11 summer time is still --

12 THE COURT: Maybe what about December, Christmas
13 break?

14 ROBBIE BROWN: December, Christmas break.

15 THE COURT: Let's do it then.

16 THE CLERK: I will get with Carol. What Carol will
17 do, we've got phone numbers for you, Mr. Brown, and what
18 we'll do is Carol will contact you about when your break
19 is in December for the school and we'll schedule you for
20 then.

21 ROBBIE BROWN: Okay.

22 THE COURT: All right. You're free to go. Hope,
23 let Randy know.

24 THE CLERK: Yes, sir.

25 ROBBIE BROWN: I apologize, Your Honor.

1 THE COURT: It's okay.

2 ROBBIE BROWN: I apologize.

3 THE COURT: Again I know it wasn't anything
4 malicious, okay?

5 RONNIE BROWN: Yes, sir. Nothing --

6 THE COURT: But it's just important to both parties
7 that everyone on the jury is paying attention and
8 listening and you tried to do both this week and it
9 didn't work out.

10 ROBBIE BROWN: Yes, sir.

11 THE COURT: But when you come back, you're going to
12 need, if you get selected on a panel, you're going to
13 need to at least for that time period put work off.

14 ROBBIE BROWN: Yes, sir.

15 THE COURT: Okay. All right. Thank you, sir.
16 You're free to go.

17 (Whereupon, Robbie Brown was released as a jury
18 member.)

19 THE COURT: While everyone is present let me just
20 clarify the record. Throughout the day juror number 19,
21 Robbie J. Brown essentially slept all day throughout the
22 entire proceedings on and off and I figured it was
23 something that had to do with work. As it turns out he
24 apparently went into his third shift job last night and
25 was not able to stay awake through the proceedings here

1 today. I talked with counsel for the State and for the
2 defense in chambers during our last break about the grave
3 concerns I had that Mr. Brown has basically slept through
4 the entire day of testimony and that I didn't think he
5 could participate meaningfully in the deliberations when
6 that time comes. And please correct me if I'm wrong, but
7 neither the State nor the defense had any objection to me
8 letting Mr. Brown go.

9 MS. MAYES: That is correct, Your Honor, the State
10 was prepared actually to make a motion in that regard
11 because he continued to sleep even after lunch and
12 through the afternoon witnesses.

13 THE COURT: Yes.

14 MS. ZMROCZEK: And the defense took the same
15 issue.

16 THE COURT: Well, here's what we've got. We have
17 juror number 142, Anita McCormack and juror number 174,
18 Jose Rios as our alternates. I believe that the rule or
19 the statute requires that in criminal cases those two
20 names are put in a cup and we'll just draw a name out of
21 the thing.

22 THE CLERK: I just put their numbers in there.

23 THE COURT: Just the numbers?

24 THE CLERK: I just put number 13 and number 14.

25 That's the way they were seated, 13, 14.

1 THE COURT: Oh, all right. Well, I'm just going to
2 pull one. Number 13. Which one is that?

3 THE CLERK: Anita McCormack seated as alternate
4 one.

5 THE COURT: All right. Ms. McCormack will be seated
6 in Mr. Brown's place. We still have Mr. Rios if we have
7 any issues further down the road. Is there anything else
8 that we need to take up this afternoon? We're going to
9 start at 9:00 in the morning. Is there anything that
10 anybody is aware of that we need to deal with?

11 MS. ZMROCZEK: No, Your Honor, and I know that when
12 we were talking in the chambers about the juror issue,
13 and I know that this is not affecting the Court's ruling,
14 I simply wanted to make sure for the record's protection,
15 and I believe it's juror number 161, the juror with the
16 shoulder length blond hair, when the picture was passed
17 around that I objected to, I believe it's State's 9, I
18 think that's the one that went around, she had visible
19 tears and was crying and I just wanted to note that for
20 the record, Your Honor.

21 THE COURT: All right.

22 MS. ZMROCZEK: And I understand that that doesn't
23 change the Court's ruling.

24 THE COURT: Sure. I'll certainly note that. I'm
25 not sure which one it was. We don't have a 161 on the

1 panel.

2 MS. ZMROCZEK: Then it wasn't that one.

3 THE COURT: But certainly that's noted. Well, if
4 there's nothing else that we need to address this
5 evening, we'll then reconvene at 9:00 in the morning,
6 okay?

7 MS. MAYES: Thank you, Your Honor.

8 MS. ZMROCZEK: Thank you.

9 THE COURT: Everyone have a good evening. We'll see
10 you in the morning.

11 (Whereupon, court was adjourned for the day at 5:30
12 p.m.)

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1 June 3rd, 2015

2 (Whereupon, State's Exhibits #68 through #72 marked
3 for identification.)

4 BAILIFF: All rise. Court is now in session.

5 THE COURT: Thank you. Please be seated. All
6 right. Is there anything we need to take up before we
7 bring in the jury?

8 MS. MAYES: Nothing from the State, Your Honor.

9 MS. ZMROCZEK: No, Your Honor.

10 THE COURT: All right. Let's bring them out,
11 please.

12 (Whereupon, the jury entered the courtroom at 9:15
13 a.m.)

14 THE COURT: All right. Ladies and gentlemen,
15 welcome back. Just a little something before we get
16 started. I had to excuse one of the jurors, Mr. Brown.
17 You probably recognized that he wasn't here this morning.
18 I spoke with him last night and needed to excuse him.
19 So, Ms. McCormack, you are moving from alternate status
20 to main panel. Mr. Rios, you will remain as an alternate
21 until we lose another juror. Folks, that's the reason
22 that we have alternate jurors. I would say maybe for 95
23 percent of the time we never need to use an alternate,
24 but there are occasions when someone has an issue that
25 arises or someone takes ill or things of that nature and

1 you have to replace a juror. That's why it's important.
2 I tell alternates all the time at the end of their
3 service that it's kind of like, I tend to put everything
4 in the context of football and I kind of tell alternates
5 it's kind of like you're on a football team and you've
6 practiced all week long, you hit, you sweat, you hurt,
7 and then now it's Saturday afternoon, we're getting ready
8 to kick off and the coach says you can't play. That's
9 kind of the life of an alternate. You have to do
10 everything that the main panel does, but when it comes
11 time to deliberate, the alternates are not part of
12 deliberations. But it's important that they do
13 everything that the main panel does because if they have
14 to substitute in, it's just like a substitute on a
15 football team. You can't go in and play if you don't
16 know the plays. Well, as an alternate you can't
17 participate in the deliberations if you haven't heard
18 everything and seen all the evidence so it's a very
19 important role just as all of your positions are. But
20 anyway, that's what has occurred so we'll proceed now
21 under that scenario. If you recall yesterday we were
22 still on the State's case and we are going to pick up
23 there. And you may call your first witness.

24 MR. McNAIR: Thank you, Your Honor. The State calls
25 Dennis Rollings.

1 Thereupon,

2 DENNIS ROLLINGS

3 after having been first duly sworn, testified as follows,

4 THE CLERK: Please have a seat. After you're
5 seated, please state your full name spelling your last
6 name for the record.

7 THE WITNESS: My name is Dennis, last name is
8 Rollings, R-o-l-l-i-n-g-s.

9 DIRECT EXAMINATION

10 BY MR. McNAIR:

11 Q. Mr. Rollings, what do you do for a living?

12 A. I'm an accountant, tax preparer.

13 Q. What business do you work with?

14 A. Midlands Tax and Financial Services.

15 Q. Do you own that business?

16 A. I do.

17 Q. How long have you worked as a tax preparer?

18 A. 38 years.

19 Q. Do you have an accounting background?

20 A. I do.

21 Q. Are you a CPA?

22 A. I'm not. I have a degree from USC.

23 Q. Now, when you prepare somebody's tax return, do you
24 keep records of those?

25 A. I do.

1 Q. And did you prepare a tax return for Mr. Filiberto
2 Garcia-Campos?

3 A. I did.

4 Q. In 2012?

5 A. Yes, sir.

6 Q. Were you subpoenaed to bring that tax return to
7 court today?

8 A. Yes, sir.

9 Q. Do you have it with you?

10 A. I do.

11 MS. ZMROCZEK: We are going to have a matter of law,
12 Your Honor.

13 THE COURT: Okay. Ladies and gentlemen, step back
14 into the jury room. Have no conversation about the case.
15 (Whereupon, the jury entered the jury room at 9:25 a.m.)

16 THE COURT: Guys, did we honestly not know this was
17 coming?

18 MS. ZMROCZEK: Your Honor, they won't tell me who
19 they are calling so no, I have no idea. I had no idea.

20 THE COURT: Well, you knew who this witness was when
21 they called his name, right?

22 MS. ZMROCZEK: I'm sorry?

23 THE COURT: You knew who this witness was when they
24 called his name, right?

25 MS. ZMROCZEK: Honestly, I didn't but --

1 THE COURT: All right. Go ahead.

2 MS. ZMROCZEK: But the issue is, Your Honor, that
3 they are trying to get his tax returns in which is fine.
4 They keep telling me it's because they want to show he
5 was working and they want to say what his salary was, but
6 I think that that's in the record. Your Honor, what I
7 think that there is maybe a question about him claiming
8 two dependents that are his nieces or something. That's
9 improper character evidence. He's not been charged with
10 any fraud or tax evasion, anything and I just - I think
11 that it's improper to put that information into the
12 record.

13 MR. McNAIR: Your Honor, he claimed Infant
14 as a dependent. First of all, he filed as head of
15 household. Then he claimed Infant as a
16 dependent, C.G. as a dependent and then he claimed a
17 niece and a nephew as a dependent. To claim somebody as
18 a dependent that means that you have to provide for half
19 of their care and they have to actually live with you for
20 a year. So that proves that, I guess, Infant is living
21 in the house with him for one thing.

22 MS. ZMROCZEK: We stipulated to that.

23 MR. McNAIR: His income is also relevant to us. The
24 other thing about the niece and nephew, I don't know
25 whether they exist or not. He put them on his tax

1 returns being dependents and there is no evidence they
2 actually lived in the house. I wasn't going to get into
3 whether Mr. Rollings verified that they were actual
4 people or not, but they are on his tax returns. If he
5 does take the stand, that might be possible information
6 to cross examine him on.

7 THE COURT: At this stage I agree with you, that at
8 this stage I don't think there is any relevance to that,
9 but if he were to take the stand, it could become
10 relevant for impeachment purposes so at this stage
11 assuming that the proper foundation is laid I'm inclined
12 to allow it in for a limited purpose that being to show
13 that he was the head of house and that Infant was a
14 resident of that --

15 MR. McNAIR: That he claimed her as a dependent and
16 that she lived in the house.

17 THE COURT: That he claimed her as a dependent and
18 she lived in that home. It may become more relevant down
19 the road, I don't know, for other purposes.

20 MR. McNAIR: Your Honor --

21 THE COURT: And it may be objectionable
22 at that point, but as far as the admissibility, I think
23 it's admissible for that limited purpose at this point
24 and what I will caution, Mr. McNair, is that your
25 questioning of this witness be limited somewhat to the

1 information you need to get the record in, but because
2 the questions regarding the niece and the other
3 dependents, that doesn't have to be answered by this
4 witness. That can be answered by the Defendant if he
5 takes the stand and you wish to go into that.

6 MR. McNAIR: I think we'll just ask him about what
7 the requirements are to claim somebody as a dependent in
8 relation to Infant 1.

9 THE COURT: I think you can ask him the requirements
10 for claiming someone as a dependent.

11 MR. McNAIR: Okay.

12 THE COURT: You can get into that.

13 MR. McNAIR: Okay.

14 MS. ZMROCZEK: Again, I apologize, Your Honor.
15 There are 40 some odd people on the witness list. I
16 honestly don't know who --

17 THE COURT: Sure. Okay.

18 MS. ZMROCZEK: And there are DSS workers. I don't
19 know their names so I have been asking for them to just
20 tell me so I can make it easier for everybody.

21 THE COURT: You did the right thing by us sending
22 the jury out. That's fine.

23 MS. MAYES: For the record, we have Mary Kayse from
24 Brookland Pediatrics. We have Denise Tucker from WIC.
25 Then we have Shana Sorrells from SLED and the potentially

1 the pathologist this afternoon.

2 MS. ZMROCZEK: Thank you.

3 THE COURT: Okay. Let's bring the jury back in.

4 (Whereupon, jury returned back to the courtroom at
5 9:35.)

6 THE COURT: All right. Thank you, ladies and
7 gentlemen. We'll proceed with direct examination.

8 MR. McNAIR: Thank you, Your Honor.

9 BY MR. McNAIR:

10 Q. Mr. Rollings, I'll show you what's been marked as
11 State's exhibit 72 and ask you if you recognize that?

12 A. I do, yes.

13 Q. Is that the 2012 tax return that you completed for
14 Mr. Garcia?

15 A. Yes, sir.

16 MR. McNAIR: Your Honor, we would offer State's 72
17 into evidence at this point.

18 THE COURT: Subject to that limited purpose.

19 BY MR. McNAIR:

20 Q. Now, Mr. Rollings, as a tax preparer, who provides
21 you with the information that goes into a tax return?

22 A. The tax client.

23 Q. And what information would you have requested from
24 Mr. Garcia?

25 A. Well, he provided us with a picture ID which was a

1 South Carolina ID card. He also provided us with a Social
2 Security card for Madison and Cameron and I have a I-10 paper
3 on him and the niece and nephew.

4 Q. Okay. Did he provide you with an address?

5 A. He did, yes.

6 Q. What was his address?

7 A. , West Columbia, South Carolina

8

9 Q. Did he provide you with a telephone number?

10 A. He did.

11 Q. What was that number?

12 A. That number is

13 Q. What was Mr. Garcia's income in 2012?

14 A. Gross income was \$38,193.00.

15 Q. How did he file?

16 A. He filed head of household.

17 Q. What does head of household mean?

18 A. Head of household is a status for a single person
19 not married that has dependent children.

20 Q. Did he claim dependents?

21 A. He did.

22 Q. Who did he claim as dependents?

23 A. He claimed Madison Garcia his daughter, C.G.

24 his son, L.G. as a nephew and L.G.

25 as a niece.

1 Q. What are the requirements to claim somebody as a
2 dependent?

3 A. You have to provide more than 50 percent of their
4 support and they live with you more than half the year.

5 Q. So to claim Infant as a dependent she would have
6 had to have lived with him for more than half the year?

7 A. Right. And I think she was born in 2012 and the
8 year of birth it doesn't matter. If you are born in December,
9 you still claim for the entire time.

10 Q. All right. Did Mr. Garcia get a refund in 2012?

11 A. Yes, sir, he did.

12 Q. How much was that?

13 A. He had a refund of \$4985.00 from the federal. And
14 he had a refund of \$1379.00 from South Carolina.

15 Q. So about \$6000.00 total refund?

16 A. Yes, sir.

17 Q. Did he pick up that refund or how was that delivered
18 to him?

19 A. He picked that up at our office. He went through -
20 we have what's called a refund transfer program which there
21 are several banks that participate in this program. Our fee
22 is deducted from the refund and he picks the check up normally
23 within a two week period.

24 Q. Do you know when he picked up his refund?

25 A. Yes. He picked up the state refund on February 7th

1 and after our fee was deducted out and the bank fee, he
2 received a check for \$4807.00 and then he picked up the state
3 refund on February 13th which was \$1369.00 after they took a
4 \$10.00 fee out.

5 Q. Would he have had to pick up that refund in
6 person?

7 A. He would have, yes.

8 Q. Would he have had to show any ID prior to picking up
9 that refund?

10 A. He would have shown ID and we would have matched it
11 against the ID that he provided and also the check
12 signatures.

13 MR. McNAIR: Thank you, Mr. Rollings. I have no
14 further questions for you. Please answer any questions
15 Ms. Zmroczek has for you.

16 MS. ZMROCZEK: No questions.

17 THE COURT: Thank you very much, sir. You may step
18 down.

19 MS. MAYES: The State calls Mary Warren Kayse.
20 Thereupon,

21 MARY W. KAYSE

22 after having been first duly sworn, testified as follows,

23 THE CLERK: Please have a seat. After you're
24 seated, please state your full name spelling your last
25 name for the record.

MARY KAYSE - DIRECT BY MS. MAYES

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1 THE WITNESS: Mary Warren Kayse, K-a-y-s-e.

2 DIRECT EXAMINATION

3 BY MS. MAYES:

4 Q. Ms. Kayse, Can you tell us a little bit about
5 yourself? Where are you employed and in what capacity?

6 A. I'm employed for Eau Claire Cooperative Health and
7 presently I'm working at the Five Points Pediatrics Office of
8 Eau Claire. What else did you ask me? I'm sorry.

9 Q. What is your job description?

10 A. I'm a pediatric nurse practitioner.

11 Q. Tell us a little bit about how you became a
12 pediatric nurse practitioner including your educational
13 background.

14 A. In 1982 I graduated from Greenville Technical
15 College in Greenville, South Carolina with an Associate's
16 Degree in nursing. Over the next ten years I worked in
17 various capacities and went back to school and got my
18 Bachelor's Degree at the University of South Carolina in
19 Spartanburg and over those ten years I have worked at
20 different offices, pediatric, orthopedics, sexual assault,
21 ambulatory care, Shriners Hospital and then went back to
22 school again to get my Master's Degree at USC here and sat for
23 the certification for nurse practitioners through the National
24 Association of Pediatric Nurse Practitioners and I got that in
25 2001.

1 Q. Okay. So since 2001 you have been a pediatric nurse
2 practitioner?

3 A. Yes, ma'am.

4 Q. And over the course of those past 14 years, how long
5 have you been working with what's known as Brookland
6 Pediatrics for the Eau Claire Cooperative?

7 A. I have been at the cooperative since 2001 and I have
8 worked at many different offices. When you get to be the
9 senior person working, you are the one who gets to substitute
10 at other offices when they need things, and I was working at
11 the Brookland office covering for two maternity leaves that
12 were fairly simultaneous. Dr. Monteith and Dr. Atkinson were
13 out and so I was there for a four month period of time
14 covering maternity leave.

15 Q. Tell us a little bit about Brookland Community
16 Pediatrics. What county is that located in?

17 A. I think it's Lexington County.

18 Q. Okay. And it's in the West Columbia area?

19 A. Yes, ma'am. It's on 12th Street.

20 Q. All right. And that is part of what's known as the
21 Eau Claire Cooperative. Tell us a little about that in terms
22 of pediatric or family medicine type services they provide?

23 A. It is a federally qualified health center. We take
24 care of uninsured, under insured, undocumented and we take
25 people with insurance, but we don't have a lot of people that

MARY KAYSE - DIRECT BY MS. MAYES

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1 have insurance. It started with a few offices. There was one
2 on Monticello Road and it has spread.

3 Q. Let me stop you right there. We have a translator.
4 I'm getting the sign that you may be talking too fast.

5 THE COURT: Slow down just a little bit.

6 BY MS. MAYES:

7 Q. I was asking about the Eau Claire Cooperative.

8 A. Cooperative. So it has expanded. We are about 70
9 percent pediatric offices and the other 30 percent is family
10 medicine, internal medicine and OB-GYN.

11 Q. All right. How many locations altogether are in the
12 Midlands area?

13 A. I think now we might have 15 to 19. I'm not sure
14 about that number. When I started there were only five.

15 Q. All right. Now, specifically as to when you were
16 working as a pediatric nurse practitioner at Brookland
17 Community Pediatrics in West Columbia, did you have the
18 opportunity to see a patient by the name of Infant ?

19 A. I did.

20 Q. What is the date of birth for Infant ?

21 A. Is it okay if I look at my notes?

22 Q. Sure.

23 A. Okay. It is 2012.

24 Q. All right. Do you have with you information as to
25 when you first saw Infant ?

1 A. I do. I first saw her for her two month well child
2 check which she was late for. She was actually three months
3 and nine days old when I saw her for her two month well child
4 check.

5 Q. That was your first contact with her, correct?

6 A. Yes, ma'am.

7 Q. Let me go back a little bit more then and here we
8 have her date of birth, 2012. Do you have a record as to
9 -- Well, you have the records for the entire, her entire
10 involvement there at Brookland Community Pediatrics?

11 A. Yes, ma'am.

12 Q. Prior to you actually doing your own treatment and
13 assessment of a patient, do you review the medical history
14 that you have?

15 A. Yes, ma'am.

16 Q. And the chart so to speak?

17 A. Yes, ma'am. Because when you're covering for
18 another office, it's particularly important because they are
19 not patients you would regularly see on a daily basis.

20 Q. So reviewing that chart is part of your medical
21 treatment?

22 A. Yes, ma'am.

23 Q. Did you have a chance to review Infants chart to
24 see when her first visit there at Brookland Community
25 Pediatrics would have been?

MARY KAYSE - DIRECT BY MS. MAYES

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1 A. Yes, ma'am.

2 Q. Okay. What is the date of that first visit?

3 A. The date of the first visit is 8/24/2012.

4 Q. All right.

5 A. When she was 24 days old.

6 Q. Okay. 24 days. Does it note her weight at that
7 point in time?

8 A. Yes, ma'am. It was 6.56 pounds.

9 Q. Roughly 6.5 pounds?

10 A. Yes, ma'am.

11 Q. All right. And what about her next appointment
12 date?

13 A. Her next appointment date was -- I'm sorry. I think
14 I have two of the same appointment dates. Somehow I do. I'm
15 sorry. It was -- Okay. I'm sorry. I had my notes out of
16 order. You're going to have to go back one. I am so sorry.

17 Q. Okay. This is going to be the second, correct?

18 A. That's the second visit. I'm so sorry. Somehow the
19 pages got out of order when we were talking. 9/21/12 is her
20 first visit with Dr. Atkinson at two weeks. She was -- No.
21 Nope. That was the correct -- That was correct.

22 Q. All right. Keep going.

23 A. Her next visit was on 9/21/12. She was one month
24 and 21 days old.

25 Q. One month and 21 days. Does it note her weight at

1 that point in time?

2 A. Seven pounds even.

3 Q. Seven pounds even?

4 A. Yes, ma'am.

5 Q. All right. And next?

6 A. Was the visit that I saw her which was 11/9/2012.

7 She was due for her two month well check and she was three

8 months and nine days old.

9 Q. Three months nine days?

10 A. Yes, ma'am.

11 Q. Okay. So this was your first involvement with

12 Infant . She comes in three months nine days. Was she

13 weighed at this appointment?

14 A. Yes, ma'am.

15 Q. What was her weight at this point?

16 A. 7.75 pounds which is 7 pounds 12 ounces and if

17 you want to convert that 5.56 into pound and ounces, it's 6

18 pounds 9 ounces.

19 Q. That makes it much easier. 6 pounds 9 ounces. And

20 the other one is 7 point?

21 A. Zero. So 7 pounds no ounces and then on the 11/9

22 visit she was 7 pounds and 12 ounces.

23 Q. So 7 pounds 12 ounces. What, if any, concerns did

24 you have with her being three months of age and weighing the 7

25 pounds and 12 ounces?

1 A. I wouldn't have had concern if she had been growing
2 from a low birth weight up to that, but my concern was that in
3 the time period between 9/21/12 to 11/9/12 she only gained 12
4 ounces.

5 Q. Let me clarify that then. 7 pounds 12 ounces
6 here?

7 A. 7 pounds at the visit before so she had only gained
8 12 ounces in a month and a half.

9 Q. Why is that a concern?

10 A. Because she should gain an ounce a day easily at
11 that point and that would have been much less than an ounce a
12 day.

13 Q. So 12 ounces over the course of a month and a half.
14 What concerns did you have in terms of how to address it and
15 how to treat it?

16 A. Well, I asked the mom about the weight because I
17 wanted to know from her point what was going on and she said
18 that she could only get her to eat two ounces every two to
19 three hours at a time. If you calculate that out, she still
20 should have been gaining weight even if she was eating that
21 amount and that was concerning that she wasn't gaining weight
22 if she was eating what the mom said she was eating.

23 Q. How did you actually address it in terms of wanting
24 to treat or identify any type of feeding issue?

25 A. Well, when I see people that tell me that their

1 children don't eat, that there is a problem with eating
2 especially if the child looks very tiny like this one did, I
3 feed them in the office. I'm lucky because I have the
4 opportunity to do that because I'm a nurse practitioner and we
5 do a lot more teaching and we have a little bit more time for
6 our visits than the M.D.'s do. I just said do you have a
7 bottle? And I just sat her down in the office with me while
8 I'm talking to the mom and taking the rest of the history and
9 fed the baby.

10 Q. Now, do you have notes that you made as you were in
11 the office feeding Infant yourself?

12 A. Yes.

13 Q. And you made specific notes or entries about that
14 entire visit and what you witnessed?

15 A. Yes.

16 Q. All right. Tell us then, start slowly, tell us
17 what, if anything, you noted while feeding Infant

18 A. Well, that she had a strong coordinated suck and the
19 way that you document that is you put a glove on your finger
20 and you put it in the baby's mouth and you feel for anything
21 that's abnormal in the roof of their mouth, their pallet or if
22 there's something abnormal in the way that they move their
23 tongue and their suck pull, how good they pull on your finger
24 in their mouth. You can tell some gross abnormalities or some
25 uncoordinated feeding if they have got a problem with how

1 their mouth makes the food go down.

2 Q. Did you note any problems with her ability to suck
3 or take a bottle?

4 A. No. She had a really good strong coordinated suck
5 on the finger and after that I fed her myself in the office
6 and she greedily took two ounces straight down in the office
7 without any problem. And the mom had said that it was an
8 extended period of time to get the food in and that was in
9 under ten minutes in the office.

10 Q. And specifically you used the word greedily. Is
11 that noted in your actual documentation?

12 A. Yes, ma'am.

13 Q. So she greedily took the bottle. How much did she
14 end up eating right there in your office as you fed her?

15 A. Two ounces straight down.

16 Q. Two ounces from the bottle?

17 A. Mm-hmm.

18 Q. Based on those observations did Infant have a
19 feeding issue?

20 A. Not in her mechanical feeding, no.

21 Q. All right. And based on what you observed was she
22 able to gain weight? And from that I'm referring to that onto
23 any later appointments? From her weight on that date onto any
24 later appointment that she had?

25 A. I'm not sure what you are asking me. I'm sorry.

1 Q. Okay. What, if any, recommendations were made in
2 how to address this at home once she leaves the office?

3 A. Okay. So when we ruled out that part and I could
4 see that she could drink, then my concern is why are you not
5 gaining weight if you can do it. So I talked to Dr. Rice who
6 is the head doctor there. I always coordinate when it's not
7 my patients and somebody else is going to be following up in
8 an office so I coordinated with them. She said she would do
9 what I would do. Boot her up to a higher number of calories
10 per ounce so you can mix your formula with a scoop of formula
11 and two ounces of water which is what you normally do to make
12 20 calorie formula and that's what most babies eat and they
13 gain weight on. So we were going to add more scoop to the
14 water to make it a higher calorie formula at every feeding to
15 see if maybe she just needed more calories per feeding to gain
16 weight.

17 Q. All right. And how concerned were you about
18 Infants weight in terms of even potential hospitalization?

19 A. Well, I talked to the mom that day. I said, okay,
20 we can see that she can eat. She is not spitting up all her
21 food. She's got a good coordinated suck. I'm concerned that
22 this baby has only gained 12 ounces in a month and a half, so
23 we're going to increase her calories today and you're going to
24 start feeding her this way and I want you to feed her every
25 two hours at least two ounces during the day, every three

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1 hours at night until Monday when you come back and we'll do a
2 weight check, and if she has not gained weight, I'm going to
3 admit her to the hospital because we need to figure out what's
4 going on.

5 Q. So you actually discussed the possibility of
6 hospitalization?

7 A. Yes.

8 Q. Why did you think hospitalization may be
9 necessary?

10 A. Because if you've got a child that should be able to
11 gain weight and isn't and you have ruled out the mechanical
12 things, then you have to look for other reasons. Are they not
13 getting fed. Do they have trouble with some kind of genetic
14 thing that they can't use the food. Her new born screen had
15 said she could use all the amino acids so you would want to
16 put them in a hospital where you could do all those different
17 kinds of tests and actually watch them eat because sometimes
18 just you need to feed them and watch them eat.

19 Q. I want to address that also what you mentioned about
20 the newborn screen. In the State of South Carolina pursuant
21 to DHEC requirements are newborns screened for a multitude of
22 potential metabolic issues, any issues that might exist that
23 you mentioned such as genetics that may affect their ability
24 to absorb nutrients?

25 A. Yes. I don't know how many of you have had babies

1 but when you come home from the hospital, you're baby always
2 has a stick on the heel and that is done within 24 hours to 48
3 hours of life and it checks for sickle cell disease, some very
4 severe genetic disorders that would be life threatening if you
5 didn't know about them early and how you use your amino acids
6 so that if you can't use lactose which is a sugar in milk, it
7 would be deadly to you if over a month's time you built up
8 that lactose, you would catch that, and that's just an
9 example. That's not one of the things they check for but
10 that's easy to understand.

11 Q. So there is absolutely nothing in Infants chart or
12 history to suggest any type of metabolism disorder?

13 A. No.

14 Q. Now, did Infant , what else did you note concerning
15 Infants history, medical history?

16 A. That she had had a lot of coordination of care done
17 already by Dr. Atkinson. She had already had physical therapy
18 and speech therapy services and a referral to genetics which
19 is standard for any Down syndrome baby. She had had a consult
20 to, I believe, Easter Seals to get her coordinated with that
21 program to start her with and she had already seen
22 cardiology.

23 Q. Let me ask you, what is Down syndrome?

24 A. It is a genetic disorder of the pieces of the
25 chromosomes, and you all aren't medical people so your genes

1 are made up of pieces. The pieces are chromosomes. In this
2 specific one there is a very specific piece of the chromosomes
3 that's faulty and they have a very distinct set of
4 presentations physical and external that you can see and
5 internal that go with that diagnosis.

6 Q. Did Infant have any type of heart condition that
7 was noted in her chart?

8 A. She did. She had had that already checked out by
9 cardiology.

10 Q. What was that condition?

11 A. Okay. I'll make everybody turned glassy eyed from
12 doing it. Hang on just a minute. I wrote down notes so you
13 could have them. Okay. She had what's called a patent ductus
14 arteriosus. Essentially what that means is when you are in
15 your mom's tummy, your four chamber heart has blood vessels
16 that feed it, but they have a connection of the veins that
17 would normally come through to oxygenate the heart. They
18 don't have to do that because the blood doesn't go through the
19 baby's lungs. The mama does all that for the baby. So there
20 is just a connection between the in blood and the out blood
21 vessels that hooks between them so that you don't have to go
22 through the baby's lungs and she had a small opening left
23 still of that. Patent means still open. So she had that
24 little piece that connects those two was still open after
25 birth.

1 Q. And is that something that you've treated before in
2 patients?

3 A. I don't treat that because there's really not a
4 treatment, but I do refer them to cardiology. Most babies
5 when they take that first breath, the pressure changes close
6 those places. They close the little windows that have between
7 the vessel and they close that little space. In maybe one out
8 of, and I don't know statistically, probably one out of 30 or
9 40 babies that I have has one or the other of those still open
10 at birth and so you can hear a murmur and you listen to it and
11 you send them to cardiology. If they are stable, you just
12 watch it close. You just watch them until they close and make
13 sure they are not having any trouble.

14 Q. All right. Can you tell us whether or not in your
15 assessment and treatment of Infant you considered that to be
16 life-threatening?

17 A. No. Cardiology had said it was stable at the time.
18 They weren't going to see her until three months old. Mom had
19 missed the first appointment. I noted that in my note. I had
20 made another appointment for later in the week that I saw her.
21 I told her that it was really important to keep that
22 appointment just to make sure. Mom had given no indication
23 that she was sweating, turning colors. When I fed her she had
24 no cyanosis, no rapid breathing when she was trying to eat, no
25 color change.

1 Q. So your discussion about possible hospitalization
2 was based solely on her being underweight?

3 A. Yes. Yes. It didn't have anything to do with her
4 heart.

5 Q. Now, when, after this appointment on November 9th,
6 did you see Infant again?

7 A. I saw -- Well, I didn't see her. That's the
8 problem.

9 Q. Okay.

10 A. She came for an appointment, but she didn't stay.
11 She did get checked in and weighed, but she did not stay for
12 the appointment.

13 Q. What was the date of that appointment?

14 A. It was 11/12.

15 Q. Of?

16 A. Of 2012.

17 Q. So you have with you the records from this
18 appointment?

19 A. Yes, ma'am.

20 Q. Who was with Infant at that appointment?

21 A. When she was checked in, it was noted that the
22 patient information was obtained from the mother and the
23 father.

24 Q. All right. So at this particular appointment it was
25 mother and father. What happened when she came in?

1 A. She was -- She got through intake so she was checked
2 in by the medical assistant. The information was taken that
3 she was bottle feeding her Good Start. She was taking 2.5
4 ounces of formula per feeding with an average time between
5 feedings was three hours. That she had done the increased
6 calorie formula and then she got weighed and measured and they
7 got put in a room, but when I came in to see them, they were
8 not there.

9 Q. Okay. What was her weight on this date of November
10 12th which was three days after the appointment on November
11 9th?

12 A. It was 8.25 pounds which is 8 pounds and 4 ounces.
13 So she had gained 8 ounces in three days and I expected her to
14 gain one ounce each day so I was thrilled.

15 Q. Okay. 8 pounds 4 ounces. So she had gone from 7
16 pounds 12 ounces all the way to 8 pounds and 4 ounces in three
17 days?

18 A. In three days so she had gained 8 ounces in three
19 days, and in a month and a half prior to that she had gained
20 12 ounces so that was a significant weight increase which made
21 me feel very comfortable. If I had gotten to see her, I would
22 have told the mom that she can gain weight if she was fed.

23 Q. Okay. But they left before you got to do an
24 examination of Infant ?

25 A. Right.

1 Q. Now, at Brookland Pediatrics how many, how much of
2 your clientele would you estimate are Spanish speaking?

3 A. At that point it was about half.

4 Q. Okay. So with the clientele of about half being
5 Spanish speaking patients are there fliers, brochures, things
6 of that nature in the medical office and in the lobby written
7 in Spanish?

8 A. Yes.

9 Q. Do you, in fact, have a translator on staff?

10 A. Yes. And we have one in the front office and the
11 back office.

12 Q. So your staff is equipped to handle any patient or
13 parent of a patient who speaks Spanish?

14 A. Yes, ma'am.

15 Q. Now, did you get a chance once you had accounted for
16 these weights to actually chart Infant on what's known as a
17 growth chart?

18 A. Yes.

19 Q. What is a growth chart?

20 A. When you come into an office -- Let me show you. I
21 have brought some so you can see. When you come into an
22 office, every time you come, your age and your weight are
23 plotted. I don't know if you need to see that. I'm sorry.

24 Q. Let me stop you right there. Do you recognize this
25 particular growth chart?

1 A. Yes. It's the World Health Organization growth
2 chart for girls' weight by age from birth to 36 months.

3 Q. Okay. Who specifically was this growth chart, whose
4 name is on this growth chart?

5 A. Infant

6 Q. Were you involved in the charting of this
7 information?

8 A. Yes.

9 Q. And you reviewed it?

10 A. Yes.

11 MS. MAYES: Your Honor, this is State's exhibit 71
12 for evidence.

13 THE COURT: Any objection to State's 71?

14 MS. ZMROCZEK: No objection.

15 THE COURT: Without objection. Go ahead.

16 MS. MAYES: I'm going ask you if you could step
17 down. Your Honor, if the witness may step down.

18 THE COURT: Yes, ma'am.

19 BY MS. MAYES:

20 Q. Now, if you could kind of take us through what we
21 are looking at here with this exhibit. I'm going to turn it
22 slightly this way.

23 A. So growth charts are set up with how many pounds you
24 are on the left so this starts at zero pounds and goes up to
25 48. Okay. And then this is how many months old you are. So

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1 when you come, I put the weight into the computer that you are
2 today when I weigh you and the computer puts a mark on the
3 chart that's an intersection between your age and how much you
4 weigh. So if I weigh 48 pounds when I'm three months old, I'm
5 going to be way up here. If I weight three pounds when I'm
6 three months old, I'm gonna be way down here. Does that make
7 sense?

8 Q. Yes. All right. And where did Infant fall on this
9 particular chart?

10 A. So when she came on the 8/24 visit, she was 6 pounds
11 and 9 ounces. So if you look at that, she was on the 5th
12 percentile for babies her age.

13 Q. And the 5th percentile would mean 95 percent of the
14 population is above that?

15 A. Weighs more. Yes. Then when she came on the 21st
16 for her visit, she had fallen off the growth chart as we say
17 and she had come across two standard deviations so that was a
18 little bit concerning. But when she came for the 11/9 visit,
19 she had even fallen off that growth line so she was even below
20 that. So when I saw that, any time you see a baby that's
21 hitting the two to three month age and they are falling off
22 the growth chart, you have got to start looking at what's
23 going on. That's not normal. That's the age usually when
24 they are picking up and you are like, oh, my, God.

25 Q. Okay. So here this charting shows again where she

1 would have been in November of 2012?

2 A. This is when she came to see me 11/9 and this is
3 when she came to see me 11/12. It goes straight up.

4 Q. When she came into the office but did see you?

5 A. Did not see me, correct.

6 Q. And so at this point where is she falling on the
7 chart?

8 A. She's below the first percentile. We call it
9 falling off the chart. It just means that you are no longer
10 following a curve for your growth that is normal and healthy
11 and it gives us an indication to start looking for what's
12 going on.

13 Q. So below the first percentile can you tell us what
14 that means in terms of the remaining 99 percent of the
15 population?

16 A. They weigh more than you so then you're considered
17 failing to thrive.

18 Q. Now, what about the fact that Infant was Down
19 syndrome?

20 A. Down syndrome babies still grow and there is a
21 second set of growth charts for Down syndrome babies. It
22 gives them a little break you could say. So if you start the
23 regular child on this growth chart, you might start the Down
24 syndrome -- Can I get the difference?

25 Q. No. Actually --

1 A. No. I can't. Okay. So I'm just trying to think of
2 how to say this in non medical terms. I'm sorry. So this is
3 the growth chart for everybody in this room because we are all
4 pretty much normal and we don't have anything that would cause
5 us per chance, and it doesn't mean every Down syndrome person
6 does, to be a different weight. So the Down syndrome growth
7 charts are a little bit lower, not very much, but their
8 percentile might have one more imaginary line here if you can
9 imagine that comes up about like this, very close to these
10 two. It's not a big shift downward, but it's a shift about
11 like this (indicating.) So that day I said okay. Maybe I'm
12 hysterical and I just think this is bigger than it is. Let me
13 go get the Down syndrome growth charts to make sure that this
14 really looks as bad as I think it does, and even on the Down
15 syndrome growth charts she looked bad so that's when I
16 consulted Dr. Rice.

17 Q. Okay. Thank you. Please return to your seat.

18 A. (Witness complies.)

19 Q. So at this point they left without you actually
20 seeing them. Did they ever return to Brookland Pediatrics?

21 A. No.

22 Q. Did they ever return to any facility within the Eau
23 Claire Cooperative?

24 A. No.

25 Q. And exactly how old was Infant on that last

1 appointment date of November 12th?

2 A. The one that I did not see her?

3 Q. Correct.

4 A. She was three months and 12 days old.

5 Q. So from the time she was three months and 12 days
6 old until her death at age 13 months she was not seen anywhere
7 within your medical cooperative?

8 A. No, ma'am.

9 Q. Now, I want to ask a little bit more about the
10 services provided at Brookland Pediatrics. If you call after
11 hours, does anyone answer the phone?

12 A. Yes, ma'am. It goes to an answering service and the
13 doctor on-call calls the family back within 30 minutes.

14 Q. Is that 24 hours?

15 A. It is from the time we close until the time we open
16 the next morning. So if you called during the day, you would
17 get somebody in the office and they would call you back. But
18 if you call at night, there is a doctor on-call and the
19 answering service routes that call to the doctor on-call and
20 they call you back within 30 minutes.

21 Q. When you call Brookland Pediatrics, does it give you
22 information and instructions at the outset in Spanish?

23 A. It gives you English and Spanish, yes.

24 Q. And does the Eau Claire Cooperative have any
25 facility that's open on Saturdays?

1 A. Yes. Each office has a late day that they see
2 patients so Brookland Pediatrics stays open until 6:00 on
3 Tuesdays, Sterling Sharpe stays open until 6:00 or 7:00 on
4 Wednesdays, but for all the offices in the whole cooperative
5 Five Points Pediatrics on Harden Street is open from 9:00 to
6 4:00 on Saturdays to see all the cooperative patients that
7 would need care on Saturday.

8 Q. Did Infant -- Let me ask you this: The Medicaid
9 coverage that Infant had, what does that entail?

10 A. Medicaid covers everything without a copay.

11 Q. When you say everything, does that include
12 hospitalizations?

13 A. Yes.

14 Q. Does that include testing?

15 A. Yes.

16 Q. Every doctor's visit?

17 A. Yes.

18 Q. And there's no copay?

19 A. No.

20 MS. MAYES: Nothing further at this time.

21 THE COURT: Cross examination.

22 MS. ZMROCZEK: Thank you, Your Honor.

23 CROSS EXAMINATION

24 BY MS. ZMROCZEK:

25 Q. Good morning, Ms. Kayse. I believe we spoke earlier

1 in last week. My weeks are running together. I wanted to go
2 back real quick to this chart. And this is the growth chart
3 that the World Health Organization puts out. It's not a
4 politically correct term, but for lack of a better term for
5 normal children, people without trisomy 21 or this genetic
6 disorder, correct?

7 A. Correct.

8 Q. Do you have with you, did you bring -- Did the World
9 Health Organization recognize that Down syndrome children have
10 a different chart?

11 A. There are different charts for Down syndrome
12 children.

13 Q. Did you bring that with you?

14 A. Yes.

15 Q. And I'll have you step down, if you would, and you
16 can bring that chart with you this time and maybe that way you
17 don't have to guesstimate about how the differences are, what
18 kind of discount that Down syndrome children are given as far
19 as like what is considered normal. Are their weights and
20 growths stunted a little bit? Are the normal ranges lower?

21 A. The percentiles are a little bit lower like I was
22 saying so where you would normally start here at birth weight
23 probably around 5 pounds. This is in kilograms so you start
24 at 4.8 so it's not a big difference. It's just a little
25 different.

1 Q. Just a tiny little difference?

2 A. Yeah. So that's why I was saying, you see how close
3 together the 3rd and the 5th percentile lines are, they run
4 parallel. For Down syndrome the bottom line would have been
5 about that much all the way down so she would still have
6 fallen off right here.

7 Q. Thank you. You can have a seat.

8 A. (Witness complies.)

9 Q. That obviously gave you cause for concern. You
10 diagnosed her with failure to thrive, right?

11 A. Yes.

12 Q. And when you reviewed -- We'll come back to that in
13 just a minute. When you reviewed her medical records, that
14 included her birth records?

15 A. It included the birth notes by Dr. Atkinson.

16 Q. So you knew that she had spent several days in the
17 NICU?

18 A. Just to get evaluations. That's not uncommon for
19 Down syndrome babies.

20 Q. And that she did have feeding issues while she was
21 in the NICU?

22 A. But when she left was feeding well.

23 Q. Right. Right. Otherwise they wouldn't let her
24 go?

25 A. Right.

1 Q. And can you pull out your note, the last note that
2 you had on November 12th?

3 A. Yes.

4 Q. And who does it say -- You noted that there was good
5 weight gain over the weekend. What does that next sentence
6 say?

7 A. That they left with the infant without being seen.
8 Mom left with infant without being seen.

9 Q. So it says mom left with infant without being
10 seen?

11 A. Yeah.

12 Q. Okay. You said that over half of your clientele or
13 at least at that time half of your clientele were Hispanic?

14 A. Yes, ma'am.

15 Q. And being that you are involved in that population
16 it's your understanding that the mothers typically do most of
17 the raising when they are little?

18 MS. MAYES: Objection to speculation.

19 THE COURT: Sustained.

20 BY MS. ZMROCZEK:

21 Q. Are you familiar with the sociological aspects of
22 your Hispanic clients?

23 A. Yes.

24 Q. Are you familiar with who has got the primary child
25 rearing?

1 MS. MAYES: Objection. Again, speculation.

2 THE COURT: Sustained unless you're going to qualify
3 her as an expert in the social sciences. You're asking
4 for an opinion from a lay person.

5 MS. ZMROCZEK: But I asked her if she was familiar
6 with it.

7 THE COURT: I'm familiar with how a car engine
8 operates, but I couldn't testify as an expert on how they
9 run.

10 MS. ZMROCZEK: I'll move on.

11 BY MS. ZMROCZEK:

12 Q. You were familiar that Dr. Atkinson before she went
13 on maternity leave had ordered several services for Infant ;
14 is that correct?

15 A. Yes.

16 Q. Those included sending people from the Tri-County
17 Health Services out to her house for assessment of growth and
18 development including weight to see two times a week for four
19 weeks?

20 A. I do not specifically have that information. I know
21 that the referrals were made and I know exactly who they were
22 made to, but I don't have that piece of information.

23 Q. Okay. Do you have her whole chart with you?

24 A. I have the electronic medical records with all of
25 the referrals and with the phone calls and with her growth

1 charts.

2 Q. Do you see a referral to Tri-County?

3 A. Tri-County Home Health called. Request approval to
4 see two times a week for four weeks, yes.

5 Q. Those would be home visits?

6 A. Yes.

7 Q. Okay. So even Dr. Atkinson had some concerns?

8 A. That's a standard for a Down syndrome baby. All of
9 these would be standard, genetics, cardiology, Down syndrome
10 clinic.

11 Q. You said that she did follow up with a cardiologist.
12 Would it surprise you to learn that the cardiologist -- You
13 were only there for a short period of time at this clinic,
14 correct?

15 A. Yes. She had not followed up with a cardiologist on
16 the day of my visit, but she said she had rescheduled the
17 appointment for later that week.

18 Q. But you don't know that she ever went to that
19 cardiologist?

20 A. No.

21 Q. Okay. I just wanted to clarify that. You talked a
22 little bit about some of her diagnoses at birth and you said
23 that one of them was the patent ductus arteriosus?

24 A. Yes, ma'am. You did good.

25 Q. She had several other diagnoses, did she not?

1 A. She had a question of a PFO and an ASD which is just
2 two other small little holes in the bottom of the heart and
3 those were, people can have them and they never even know
4 about it. They don't need treatment and usually are found
5 disperiously (sic). If you for some reason went to your
6 doctor and he ordered an EKG today, you might find out you had
7 a PDA since you were small and it's very tiny and you never
8 knew about it.

9 Q. But in the hospital they actually did an
10 echocardiogram on her?

11 A. Yes.

12 Q. So they found to ventricular septic defect, right?

13 A. That is not -- Actually what the diagnoses were --
14 Any PDA or PFO is considered a VSD. VSD is a group term for
15 any defect of the septal wall and PDA and PFO are just
16 different terms for the specific defects. So VSD is a generic
17 term. If you sprain your ankle, you sprain one of three
18 ligaments. It just says an ankle sprain. It doesn't say the
19 ligament, if that makes any sense. So the PFO or the PDA is
20 just which one of those pieces was open.

21 Q. So is it common for the hospital to list diagnosis
22 under VSD and then list all three?

23 A. Yes.

24 Q. Okay.

25 A. Because it gives you a more specific answer.

1 Q. Okay. And actually the hospital records indicate
2 that she had a moderate and then two small holes, correct?

3 A. She had the patent ductus arteriosus which is the
4 connecting piece between the two arteries that feed the heart
5 to give it oxygenated blood and once the baby is born that
6 usually closes and then she had a small flap in the septum.

7 Q. And when you diagnose somebody with failure to
8 thrive, what does that mean?

9 A. It just means they're not growing in the manner you
10 expected them to.

11 Q. What causes that?

12 A. What causes it? It's different things for different
13 children. That's why you start looking. That's why the
14 growth charts are there.

15 Q. Do you know what serotonin syndrome is?

16 A. It is -- Yes. It is something that has to do with
17 getting too much or too little when you are on antidepressants
18 or some other medication that can make you put out too much or
19 too little over that element.

20 Q. And can that serotonin play a role in your
21 digestion?

22 MS. MAYES: Objection, Your Honor. She's not a
23 toxicologist.

24 THE COURT: Are you qualifying this witness as an
25 expert in some field?

1 MS. ZMROCZEK: I'm simply asking.

2 THE COURT: I mean, you're asking for medical
3 opinions --

4 MS. ZMROCZEK: Right, which she just gave several.

5 THE COURT: -- from a lay person.

6 MS. ZMROCZEK: I'm sorry.

7 THE COURT: From a lay person.

8 MS. ZMROCZEK: I mean, I'll be more than happy to
9 qualify her. I felt like all of the testimony regarding
10 Down syndrome and everything else fell under that same
11 medical, but if I need to qualify her as an expert.

12 THE COURT: What was your question again?

13 MS. ZMROCZEK: Does serotonin affect your digestive
14 process?

15 THE COURT: I'll allow it. Go ahead.

16 BY THE WITNESS:

17 A. I know that serotonin syndrome can give you many
18 different things, but I do not specifically know off the top
19 of my head. I would have to look it up because I'm not an
20 expert in endocrinology and that's the field it would fall
21 under.

22 BY MS. ZMROCZEK:

23 Q. Is there any reason that Infant would be on
24 antidepressants?

25 A. Not any medical reason that I would put her on.

1 Q. If Infant had been your patient and she skipped or
2 mom left that last appointment like your notes read, what
3 would be your course of action?

4 A. To call the patient's family and have them come back
5 for follow up.

6 Q. And is it common for this to happen in your
7 practice?

8 A. For what to happen?

9 Q. For people to show up, get weighed, get in a room
10 and then leave?

11 A. Not common. It happens occasionally.

12 Q. Then do you ever follow up?

13 A. Yes.

14 Q. What are you typically told? Aren't you told that
15 sometimes they doctor shop or they're moving or they go to
16 different places?

17 A. For not staying in a room?

18 Q. No. No. No.

19 A. I'm sorry. I'm confused as to what you're asking.

20 Q. Terrible question. I'll rephrase it. When she left
21 that last appointment and then didn't show back up, you were
22 gone at that point, right?

23 A. Yes, ma'am.

24 Q. So you really don't know what was done after that?

25 A. I know that a call was made to the family to ask

1 them to follow up because I asked them to do that. I do not
2 know what happened after that, no.

3 Q. All right. And that call was made to the mother?

4 A. It was made to the home. I'm sorry. I have to look
5 it up. On 11/14.

6 Q. 11/14. Do you have the number that it was made
7 to?

8 A. -6797.

9 Q. And you indicated that Dr. Atkinson had provided
10 several or had referred her to several services and that
11 several people or services were going out to the home. I
12 think you said speech and physical therapy?

13 A. And some of those go to the home and some don't so I
14 do not know that. I can tell you that she was referred to
15 genetics, the Down syndrome clinic, cardiology, speech and
16 occupational therapy and Tri-County Home Health and the only
17 one that I know specifically by definition going out to the
18 home would be the home health.

19 Q. Right.

20 A. But I don't know. Some of the other ones come to
21 the house and some of the other ones you go to their office.
22 I don't know with these particular ones. Genetics you have to
23 go to the office and cardiologist you have to go to the
24 office. But sometimes speech, ENT comes to the home and
25 sometimes you go there.

1 MS. ZMROCZEK: Thank you.

2 REDIRECT EXAMINATION

3 BY MS. MAYES:

4 Q. Let me clarify this. On the failure to thrive that
5 she was asking you about, did you actually make that entry in
6 your data?

7 A. Did I diagnose her as failure to thrive? I'm pretty
8 sure that was the diagnosis code I put her on that day. I can
9 double check. Yes. Failure to thrive in childhood, less than
10 25th percentile for weight even on Down syndrome growth
11 charts. Only gained 14 ounces in greater than 30 days.

12 Q. Okay. Does failure to thrive include when a child
13 is not being fed?

14 A. Yes.

15 Q. And Ms. Zmroczek was asking you about whether you
16 reviewed her NICU records concerning any feeding issues there.

17 A. The NICU record I did not have. I reviewed the
18 first newborn visit note from Dr. Atkinson which was
19 extensive, but I did not see the neonatal intensive care unit
20 note.

21 Q. What did those records indicate about at the time of
22 discharge how she was feeding?

23 A. That she was feeding well. That she was feeding
24 Similac Sensitive two ounces per feeding with the average time
25 between feedings three hours.

1 Q. All right. So she was feeding well at the time of
2 her discharge, correct?

3 A. Yes.

4 Q. Now, the other thing I want to follow up on that Ms.
5 Zmroczek was asking you about was that mom left without you
6 seeing her. Who brought Infant in that day?

7 A. Mom and dad. I generically put whoever -- I'm
8 sorry. I saw the mom on the last visit so I don't always say
9 mom and dad left without being seen. Most of time I'll just
10 say family left without being seen.

11 Q. So where your entry says mom left without being
12 seen, does that mean that you weren't including the dad?

13 A. No. It just meant that the family left without me
14 seeing the child.

15 Q. Okay. And was this a situation where mom and baby
16 left, but dad stayed around to talk to you about Infants
17 concerns?

18 A. No.

19 Q. They all left?

20 A. Everybody that came with the patient left with the
21 patient. Nobody was in the room when I walked in the room.

22 Q. To examine her?

23 A. To exam the patient.

24 MS. MAYES: Nothing further.

25 RECROSS EXAMINATION

1 BY MS. ZMROCZEK:

2 Q. Just a few follow up questions. You noted that
3 Similac Sensitive. Why would that be?

4 A. Similac Sensitive, a lot of babies will spit up a
5 little bit in the nursery. They could have a little bit of
6 reflux. They could have a little bit of irritation from the
7 regular formula so Similac Sensitive is just one that's better
8 tolerated by a lot of babies.

9 Q. And you noted that she, Dr. Atkinson had done an
10 extensive primary visit and then I think she did the second
11 one as well?

12 A. Mm-hmm.

13 Q. And it noted that Infant was actually taken to the
14 ER in between those visits on November 9th; is that correct?

15 A. Let me read the note and I will tell you. On the
16 9/21 visit she noted three days ER - symptoms for three days.
17 ER for diarrhea. Tried cath. Didn't get urine. Resolved.
18 No fever.

19 Q. Does that mean that she went to the emergency
20 room?

21 A. She went to the emergency room, yes, Lexington ER on
22 9/9/12.

23 Q. And you said most of the time you would write family
24 leaves, but for whatever reason on that last visit you wrote
25 mom left?

DENISE TUCKER - DIRECT BY MR. McNAIR

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1 A. Yeah. I just made a note in there that mom left.

2 MS. ZMROCZEK: Okay. Thank you.

3 THE COURT: All right. Thank you very much, ma'am.

4 You may step down. Call your next witness.

5 MR. McNAIR: The State calls Denise Tucker.

6 Thereupon,

7 DENISE TUCKER

8 after having been first duly sworn, testified as follows,

9 THE CLERK: Please have a seat. After you're
10 seated, please state your full name spelling your last
11 name for the record.

12 THE WITNESS: My name is Denise Tucker. Last name
13 is T-u-c-k-e-r.

14 DIRECT EXAMINATION

15 BY MR. McNAIR:

16 Q. Ms. Tucker, where are you employed?

17 A. DHEC.

18 Q. What do you do for DHEC?

19 A. I'm an admin specialist for the WIC office.

20 Q. What is WIC?

21 A. WIC stands for Women, Infants and Children.

22 Q. What does WIC provide?

23 A. They provide formula for infants, foods for children
24 like milk, eggs, cheese, cereal, nutrition, counseling.

25 Q. How do you qualify for WIC?

1 A. On the WIC program you automatically are qualified
2 through Medicaid, but you also qualify through your income
3 depending on how many people are living in the household.

4 Q. So you qualify based on household income. And if
5 you are on Medicaid, do you automatically qualify?

6 A. Yes, sir.

7 Q. What about food stamps?

8 A. Yes, sir.

9 Q. Now, in your position with WIC do you have access to
10 people who are enrolled in WIC?

11 A. Yes, sir.

12 Q. Do you have access to records pertaining to when
13 people show up for appointments, pick up things such as
14 vouchers for food or when they miss appointments?

15 A. Yes, sir.

16 Q. Did you search your records for an infant named
17 Infant , date of birth 2012?

18 A. Yes.

19 Q. When was the first contact that your agency had with
20 Infant ?

21 A. It was November the 14th of 2012.

22 Q. What was the purpose of that visit?

23 A. Recertification to be put on the program.

24 Q. Okay. Was it recertification or initial
25 certification?

1 A. I'm sorry. Initial certification.

2 Q. Okay. So for that visit would you all physically
3 see Infant

4 A. Yes, sir.

5 Q. What types of things did they do at that particular
6 visit?

7 A. At that visit in front my part is to do income,
8 household, just gather contact information, uhm, to get them
9 to see if they qualify for the program.

10 Q. Okay. Did Infant qualify?

11 A. Yes, sir.

12 Q. Well, after that certification visit, did you all
13 give Infant whoever brought her to your office anything?

14 A. Yes. We, after they go through all the process,
15 when they come back up front, we print the vouchers.

16 Q. What are vouchers?

17 A. Vouchers are their what we call them checks where
18 they receive their foods like their eggs, for their infant
19 formula. For the mother, they get like cheese, eggs, cereals
20 and other foods and they also get vouchers for like fruits and
21 vegetables.

22 Q. Where can vouchers be redeemed?

23 A. In a grocery store.

24 Q. At any grocery store?

25 A. Yes, sir.

1 Q. Do you have contracts with particular suppliers?

2 A. Well, you can do Bi-Lo, Wal-Mart. Any regular
3 grocery store.

4 Q. Okay. Well, what about for a particular brand of
5 baby formula?

6 A. Yes. We do have a pamphlet that we issue to each
7 client and it shows the foods that are, that you qualify for
8 when you are on WIC and they have different brands.

9 Q. Do you have a contract with Gerber Baby Foods?

10 A. Yes.

11 Q. So at that initial certification you would have
12 given whoever is with Infant vouchers?

13 A. Yes.

14 Q. Can you tell whether or not those vouchers were
15 redeemed?

16 A. Yes, sir, I can. For the initial certification the
17 vouchers were redeemed in December. Well, for November the
18 23rd and for December it was December the 11th --

19 Q. Okay.

20 A. -- 2012.

21 Q. Of 2012 right after her initial certification
22 appointment?

23 A. Yes, sir.

24 Q. After that date, when was the next time you had any
25 dealings with anybody on behalf of Infant ?

- 1 A. June the 19th of 2013.
- 2 Q. Okay. What was the nature of that date?
- 3 A. Just the voucher pick up.
- 4 Q. That was just a voucher pick up?
- 5 A. Yes, sir.
- 6 Q. Would you have seen Infant at that time?
- 7 A. No, sir.
- 8 Q. So somebody just came in to pick up vouchers on that
- 9 date?
- 10 A. Yes, sir.
- 11 Q. Can you tell whether or not those vouchers were
- 12 every redeemed?
- 13 A. Three of them were redeemed and one of them was
- 14 not.
- 15 Q. What was the date that those were redeemed?
- 16 A. June 27th of 2013.
- 17 Q. Okay. Now, so for the time period from December
- 18 when that last voucher was redeemed in 2012 until June of
- 19 2013, did anybody come in to pick up any vouchers during that
- 20 time period?
- 21 A. No, sir.
- 22 Q. After that June 2013 appointment, did anybody come
- 23 back to pick up any vouchers?
- 24 A. No, sir.
- 25 Q. So no vouchers were picked up in August?

1 A. No, sir.

2 Q. Or July?

3 A. No, sir.

4 Q. Or the beginning of September?

5 A. No, sir.

6 MR. McNAIR: Thank you, ma'am. Please answer any
7 questions Ms. Zmroczek has.

8 CROSS EXAMINATION

9 BY MS. ZMROCZEK:

10 Q. Good morning.

11 A. Good morning.

12 Q. You said that three of the June 2013 vouchers were
13 used, correct?

14 A. Yes.

15 Q. You said that part of your job in intake is to see
16 if the person qualifies?

17 A. Yes, ma'am.

18 Q. Do you have the application in front of you?

19 A. No, ma'am.

20 Q. So that's just information you weren't told to
21 bring?

22 A. No, ma'am.

23 Q. Okay. So you don't know what kind of information
24 was provided to you for this person to qualify?

25 A. No, ma'am.

1 Q. Do you know whose name these vouchers were issued
2 in?

3 A. Yes. They were issued in Infant Everybody's name
4 is on the top of the vouchers.

5 Q. And do you know to whom they were issued?

6 A. No, ma'am. I don't have a copy of that.

7 Q. You don't have a copy of any of that?

8 A. No, ma'am.

9 Q. Are people in the WIC program issued program ID
10 cards?

11 A. They are issued an ID card, yes.

12 MS. ZMROCZEK: May I approach, Your Honor?

13 THE COURT: Yes, ma'am.

14 BY MS. ZMROCZEK:

15 Q. (Indicating.)

16 A. Yes, ma'am, this is our card.

17 Q. Okay. So to whom was the program ID card issued in
18 this case?

19 A. The person that signed it?

20 Q. Do you remember the name?

21 A. No. Sorry.

22 Q. I should have told you to look at that part
23 (indicating.) Sorry.

24 A. The mother.

25 Q. The mother of Infant ?

1 A. Mm-hmm.

2 Q. Would that be Tracey Roach?

3 A. Yes.

4 MS. ZMROCZEK: Thank you.

5 MR. McNAIR: No further questions.

6 THE COURT: Thank you very much, ma'am. You may
7 step down. Call your next witness.

8 MR. McNAIR: Your Honor, the next witness may be a
9 little lengthy. This may be a good time to take a break.

10 THE COURT: We'll do that. Folks, we'll take a
11 little break. If you need anything while you're back
12 there, just let the bailiffs know. Please have no
13 conversation about the case and we'll start back in just
14 a little bit.

15 (Whereupon, the jury entered the jury room at 10:43
16 a.m.)

17 MS. ZMROCZEK: We have a matter before the jury.
18 comes back out.

19 THE COURT: Let's take it up.

20 MS. ZMROCZEK: Your Honor, the next witness I
21 understand is going to talk about digital things. He did
22 a bunch of digital analysis on phones and computers.
23 It's my understanding they want to put in an extraction
24 report from Mr. Garcia's phone which I have no problem
25 with and it's been redacted. Your Honor, on one day he

1 looked up some porn and they're going to ask Investigator
2 Phipps about -- or he's gonna --

3 THE COURT: What relevance would that have?

4 MS. ZMROCZEK: I don't think it has any relevance.

5 MS. MAYES: Your Honor, in this particular case it
6 was the weekend that the child died and this is actually
7 Mr. McNair's witness. The report has been deleted, but
8 it goes to -- I don't know if you are challenging who was
9 on the phone or that he was on the phone or on the
10 Internet during that period of time. If that's the
11 challenge, then it may be relevant that it's an adult
12 website, but I think it's going to be posed that it was
13 an entertainment website.

14 THE COURT: Let me ask this: If the purpose is to
15 show that he was on the phone, why is it necessary to put
16 in what he was on the phone doing?

17 MR. McNAIR: I think there is an ID issue, Your
18 Honor. I don't know if they are stipulating this is his
19 phone or not.

20 MS. ZMROCZEK: Yes.

21 MR. McNAIR: You are stipulating this is his phone?

22 MS. ZMROCZEK: Yeah.

23 MR. McNAIR: Okay. That would be important and the
24 nature of these websites would be to establish that it
25 was his phone and not Tracey Roach's phone.

1 THE COURT: If we're gonna stipulate that it's his
2 phone, then there's no need for any of that. Now, how
3 does the phone come into play? I mean, what's the -
4 again, what's the relevance that it's his phone and
5 instead of someone else's?

6 MR. McNAIR: First of all, during the weekend prior
7 to Infants death, it just shows that he was browsing
8 the web for a long period of time for several hours at
9 night.

10 THE COURT: Yeah.

11 MR. McNAIR: There's some text.

12 THE COURT: What's the relevance? Let's say he was
13 doing that.

14 MR. McNAIR: Well, Judge --

15 THE COURT: I guess your point is that instead of
16 tending to the child, he was doing something else, but
17 that's obvious because nobody tended to the child.
18 You see what I'm saying?

19 MR. McNAIR: It obviously goes towards the neglect
20 aspect of it. He's on his phone rather than tending to
21 this child.

22 THE COURT: But here's -- Let me just say this for
23 that issue, okay? For that issue if this was a desk top
24 computer at the home, then there is clearly a neglect
25 aspect to that because he's there at the home where the

1 child lives and he's not paying attention to her but he's
2 over here doing this. But if he's on the phone, he could
3 have been across town and been on the phone and wouldn't
4 have been home anyway. See what I'm saying?

5 MR. McNAIR: I see that. There is just no evidence
6 that he was anywhere but the home.

7 THE COURT: Well, there's no evidence that he was at
8 home either if all you're going is on a phone record.

9 MR. McNAIR: Right. But according to Becky Kelly's
10 testimony he was pretty much home that entire weekend
11 that she saw him and this usage would have been during
12 the time when she said he was home.

13 THE COURT: Again, there's probably some relevance
14 with regards to that, but not to sites he was visiting.
15 That's the - the prejudicial aspect of that would
16 outweigh any probative value.

17 MR. McNAIR: Right. We'll stay away from the nature
18 of the websites. Just that he was accessing the Internet
19 during these times and on these dates.

20 MS. ZMROCZEK: And, Your Honor, as long as we don't
21 have adult entertainment or porn.

22 THE COURT: Well, we're not going into any aspect of
23 the nature of the sites, just that he was on there.

24 MS. ZMROCZEK: Okay. That's fine.

25 THE COURT: Anything else?

1 MS. ZMROCZEK: I believe that's all, Your Honor.

2 THE COURT: That's all you have got?

3 MS. ZMROCZEK: Yes.

4 THE COURT: Anything else from the State?

5 MR. McNAIR: No, Your Honor.

6 THE COURT: Let's bring them in. Oh, for y'all's
7 purposes, kind of give me an idea because I don't know
8 who your witnesses are and roughly the length. It's a
9 little after 11:00. I'm having them have lunch brought
10 in so we can minimize the lunch time. That's going to be
11 somewhere around 1:00, so in about two hours so try to
12 just keep that in your mind as you call your witnesses
13 and be kind of aware of that.

14 (Whereupon, the jury returned back to the courtroom
15 at 11:10 a.m.)

16 THE COURT: Ladies and gentlemen, we are ready to
17 proceed with the State's case. Call your next witness.

18 MR. McNAIR: The State calls investigator Mike
19 Phipps.

20 Thereupon,

21 MICHAEL PHIPPS

22 after having been first duly sworn, testified as follows,

23 THE CLERK: Please have a seat. After you're
24 seated, please state your full name spelling your last
25 name for the record.

MICHAEL PHIPPS - DIRECT BY MR. McNAIR

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1 THE WITNESS: Michael Stewart Phipps, P-h-i-p-p-s.

2 DIRECT EXAMINATION

3 BY MR. McNAIR:

4 Q. Investigator Phipps, would you tell the jury a
5 little bit about your background in law enforcement? What do
6 you currently do for the Lexington County Sheriff's
7 Department?

8 A. I have been with the Sheriff's Department for 17
9 years. I started out on the road like most people as a
10 deputy, worked up to being a patrol supervisor, then went into
11 our crime scene unit. For approximately the past 13 years now
12 I have been in our crime scene unit. As a part of being in
13 the crime scene unit my job duties have kind of morphed over
14 into the forensic side of examining electronic evidence.

15 Q. All right. As part of your job, your current job,
16 do you regularly do forensic analysis of digital devices such
17 as computers and cell phones?

18 A. Yes, sir. Several years ago I became involved with
19 the South Carolina Electronic Crimes Task Force. That's a
20 task force administered by the United States Secret Service.
21 I have been a part of that where they supply education,
22 training and equipment to us to provide those type of
23 services.

24 Q. Okay. Roughly how many forensic examinations do you
25 think you have performed?

1 A. As you can imagine, most of the devices we are
2 receiving now are what we would consider mobile devices, cell
3 phones, tablets. People are getting away from having a
4 computer at home. So on the side of cell phones and tablets
5 and mobile devices literally hundreds and hundreds. Computers
6 and other media, you would store like thumb drives that you
7 would have information stored on those probably less than a
8 hundred.

9 Q. Have you testified as an expert in court before in
10 forensic examinations?

11 A. Yes, sir, I have.

12 Q. Were you qualified in this court?

13 A. Yes, sir, I was.

14 MR. McNAIR: Your Honor, at this time we would offer
15 Investigator Phipps as an expert in forensic examinations
16 of digital media devices.

17 MS. ZMROCZEK: We stipulate, Your Honor.

18 THE COURT: Without objection.

19 BY MR. McNAIR:

20 Q. Investigator Phipps, did you receive a cell phone to
21 examine in this case?

22 A. Yes, sir, I did.

23 Q. What type of cell phone was it?

24 A. Let me check my notes here. It' an LG cell phone.
25 It's the type that has an android operating system on it so

1 you consider it a smart phone.

2 Q. I'll show you State's exhibit 60. Does this appear
3 to be a cell phone that you examined?

4 A. Yes, sir, it is.

5 Q. Okay. Do you have the serial number on the cell
6 phone?

7 A. I do, sir. The serial number recorded as
8 110CYPY0062192.

9 Q. I'm going to show what's marked as State's exhibit
10 7. Did you take this picture?

11 A. Yes, sir, I did.

12 Q. Is that the phone you analyzed?

13 A. It is.

14 Q. Is that the same serial number?

15 A. Yes, sir. That's a match.

16 MR. McNAIR: Your Honor, we would offer State's 7
17 into evidence.

18 MS. ZMROCZEK: No objection.

19 THE COURT: Without objection.

20 BY MR. McNAIR:

21 Q. Now, Investigator Phipps, would you describe how you
22 forensically download or analyze a cell phone, the process
23 that you go through to do that?

24 A. Yes. We use a piece of hardware made by a company
25 called Cellebrite. If you have recently purchased a new phone

1 and gone into a phone store, they may have asked you if you
2 wanted your contact list moved over to your new phone and they
3 would have taken it into the back and hooked it to a device
4 similar to what we use except ours is made by the same company
5 and they make it specifically to extract information, not to
6 add information. So it's made by Cellebrite and it goes in
7 and takes information that's on that device and transfers it
8 off the device and packages it in a manner that we can verify
9 that nothing has changed with that information. We can't add
10 anything to it or take anything away.

11 Q. So it's essentially a mirror image of whatever was
12 on that cellular device?

13 A. Pretty much. There's a couple different ways you
14 can acquire that information. There's something called
15 Logical File System. In this particular instance we used a
16 file system acquisition which is like when you look at your
17 home computer and you go into Windows Explorer and you look at
18 all the file folders that are on that computer. In essence
19 we're going into that android device and grabbing all those
20 folders and pulling them off.

21 Q. What type of information are you able to retrieve?

22 A. It varies from device to device, but as you can
23 imagine it can be anything from all the photos, contact list,
24 call histories, also web browsing information, wireless
25 networks they may have connected to. Just a variety of

1 artifacts that can be on the phone.

2 Q. On this phone were you able to obtain a contact
3 list?

4 A. Yes, sir, I was.

5 Q. Out going and incoming calls?

6 A. Yes, sir.

7 Q. Text messages?

8 A. Yes, sir.

9 Q. Some pictures?

10 A. Yes, sir.

11 Q. What about Internet history?

12 A. Yes, sir.

13 Q. This phone was able to access the Internet?

14 A. Yes, it was.

15 Q. Did you even recover some things that had been
16 deleted?

17 A. Yes.

18 Q. Now, what type of phone is this?

19 A. It's a, again we call it a smart phone. It's an
20 android based device. Different makers make them. Motorola,
21 LG. They all run similar operating systems, an android
22 operating system.

23 Q. For instance, I'm with Verizon. What type of plan
24 was this phone?

25 A. The carrier for the device, who they paid the bill

1 to in this instance was TracPhone.

2 Q. And how do you obtain minutes for something like a
3 TracPhone?

4 A. TracPhones are typically a pay as you go type
5 service so you would either phone in a credit card information
6 or you would purchase cards at convenient stores and call in
7 the number on the card to get more minutes added to that
8 device.

9 Q. Were you able to obtain any identifying information
10 from this phone as to whose it was?

11 A. Yes. There was user information extracted from the
12 phone.

13 Q. Okay. What type of user information?

14 A. Let me refer to my report..

15 Q. What I'm asking for, was there an e-mail associated
16 with this phone?

17 A. The e-mail account set up on the phone was a g-mail
18 account under the name of

19 Q. Were you able to obtain the phone number for this
20 phone?

21 A. Yes, sir.

22 Q. What was that phone number?

23 A. The phone number was 1817.

24 Q. How were you able to determine the phone number?

25 A. In this instance we powered up the phone and went

1 into the android menu system where it uniquely identifies my
2 device and it lists the MEID number and the call number or the
3 phone number for the phone.

4 Q. I'll show you State's exhibit 5. Do you recognize
5 that picture?

6 A. Yes, sir, I do.

7 Q. Did you take that picture?

8 A. I did.

9 Q. What's that a picture of?

10 A. That's of the menu screen as I saw it with the
11 device powered up.

12 Q. Does that reflect the phone number on the phone?

13 A. It does.

14 Q. What you just testified to?

15 A. Yes, sir.

16 MR. McNAIR: Your Honor, we offer State's 5 into
17 evidence.

18 MS. ZMROCZEK: No objection.

19 THE COURT: Without objection.

20 BY MR. McNAIR:

21 Q. Was the name Tracey Roach stored as a contact on
22 this phone?

23 A. It was.

24 Q. Was the name Mr. Garcia or anything ending in Garcia
25 stored as a contact in this phone?

1 A. There was a reference. Let me find out the exact
2 wording. There was a Diego with a phone number listed and
3 then in user accounts there was a Beto Garcia with the same
4 gmail address listed.

5 Q. Okay. Who made up the majority of incoming and
6 outgoing calls into this phone?

7 A. As far as the person called, communications between
8 primarily Tracey and the user of the phone.

9 Q. So primarily Tracey Roach was being called or Tracey
10 Roach was calling into this phone?

11 A. Yes, sir.

12 Q. All right. Let's talk about the time period from
13 Friday, August 30th, 2013 until Monday, September 2nd. Did
14 somebody access the Internet on this phone during that time
15 period?

16 A. Yes, sir.

17 Q. When did they first access the phone?

18 A. The first access with the Internet was on the 31st.
19 August 31st, 2013 at 10:19 p.m.

20 Q. 10:19 on Saturday?

21 A. I'm not sure what day the 31st was, but it would
22 have been the 31st.

23 Q. 10:19 on August 31st. How long did that Internet
24 usage continue?

25 A. It was consistent through September 1st, 2013 at

1 12:10 a.m.

2 Q. Okay. So from 10:19 p.m. on Saturday to shortly
3 after 12:00 there on Sunday?

4 A. Yes, sir.

5 Q. Okay. Now, Friday, August 30th, 2013 were there any
6 calls or texts from this phone?

7 A. On August 30th starting at 6:00 a.m. there was five
8 phone calls listed in the directory.

9 Q. Who were those calls made to?

10 A. Tracey.

11 Q. Was there a call on August 30th made to Tracey
12 around 2:37 p.m. that day on August 30th?

13 A. There was.

14 Q. Okay. What about September -- Were there any calls
15 on August 31st which would have been Saturday?

16 A. There were none shown in the log.

17 Q. No calls on August 31st?

18 A. No calls.

19 Q. What about September 1st?

20 A. September 1st starting at 4:23 p.m. there were three
21 calls listed. One at 4:23, one at 4:24 and one at 4:32.

22 Q. And September 2nd?

23 A. None listed for the 2nd.

24 Q. Was there a break in usage or did there appear to be
25 a break in usage on this phone?

1 A. Yes. There was no activity whether it was Internet
2 browsing or phone calls found during that period for the
3 2nd.

4 Q. Okay. When did usage resume?

5 A. On the 3rd. On September 3rd, 2013 at 6:56 p.m. in
6 the afternoon.

7 Q. Were there any apps downloaded on this phone?

8 A. Yes.

9 Q. What were they?

10 A. YouTube applications. Two YouTube applications. Or
11 by apps, content was downloaded, YouTube content.

12 Q. Do you have a name?

13 MS. ZMROCZEK: Your Honor, may we approach.

14 THE COURT: Yes, ma'am.

15 (Side bar off the record.)

16 BY MR. McNAIR:

17 Q. All right. Investigator Phipps, did you also
18 receive a computer to examine in this case?

19 A. I did.

20 Q. What type of computer was it?

21 A. eMachines laptop.

22 Q. Did you perform a forensic download on that?

23 A. Yes, sir, I did.

24 Q. How did you accomplish that?

25 A. Laptops are a little different. Obviously most of

1 them have a hard drive internal to the laptop itself so we
2 disassemble the laptop, remove the hard drive and we acquire
3 the information that's on that hard drive using a tool, again,
4 it's like a one way valve that blocks any information from
5 going onto the hard drive and only allows information to come
6 off, and it's what we call a bit for bit copy meaning every
7 one and zero and all the binary code on the hard drive is
8 copied off onto another piece of media that we can then
9 analyze.

10 Q. Okay. Did you locate any searches on this computer
11 concerning giving an infant medication?

12 A. I did.

13 Q. What was the nature of that search?

14 A. There was a key word search. I don't have that copy
15 here. I would have to refer to the report that I turned over
16 to counsel.

17 Q. Do you recall anything about that search?

18 A. It was a medication, a web search for a particular
19 medication. Again, I don't have the spelling of that.

20 Q. Obviously you don't recall the date of that
21 search?

22 A. No, sir, I don't.

23 MR. McNAIR: Okay. Thank you. I have no further
24 questions.

25 MS. ZMROCZEK: Just briefly, Your Honor.

1 THE COURT: Yes, ma'am.

2 CROSS EXAMINATION

3 BY MS. ZMROCZEK:

4 Q. You indicated that the phone didn't have any
5 activity on the 2nd. Would that be consistent with it running
6 out of minutes?

7 A. It could be. It could be any reason that the phone
8 just was not used. It could be they did not have service
9 available.

10 Q. And then you weren't provided any other phones, were
11 you?

12 A. Not to my recollection in this case.

13 Q. Did you have the number that was associated with
14 Tracey Roach? Do you know the number?

15 A. I don't quite understand the question.

16 Q. The number. You said that there was contact between
17 Mr. Garcia's phone and Tracey Roach. Do you know what that
18 number is?

19 A. The phone log or directory of the phone listed
20 several numbers for Tracey. There was a 6797,
21 4968, -- That's the same one -- 6797. So two
22 numbers listed.

23 Q. And there were calls also made to Mexico or a 1-800
24 service that connects with Mexico?

25 A. I would imagine. I didn't make any specific notes

1 to that effect.

2 Q. And the eMachines laptop, you did a full forensic
3 evaluation on that eMachines, correct?

4 A. I wouldn't consider it a full forensic. We made an
5 acquisition and ran a tool called Internet Evidence Finder on
6 it which parcels out Internet trace evidence. It was during
7 that process of running that tool that the key word searches
8 were found.

9 Q. Were those key word searches in English or
10 Spanish?

11 A. What I saw was in English for the particular
12 medication.

13 MS. ZMROCZEK: Thank you.

14 MR. McNAIR: No further questions, Your Honor.

15 THE COURT: All right. Thank you very much, sir.
16 You may step down. Call your next witness please.

17 MR. McNAIR: The State calls Shana Sorrells.
18 Thereupon,

19 SHANA SORRELLS

20 after having been first duly sworn, testified as follows,

21 THE CLERK: Please have a seat. After you're
22 seated, please state your full name spelling your last
23 name for the record.

24 THE WITNESS: My name is Shana Sorrells,
25 S-o-r-r-e-l-l-s.

1 DIRECT EXAMINATION

2 BY MS. MAYES:

3 Q. Ms. Sorrells, where are you employed?

4 A. I am employed at the South Carolina Law Enforcement
5 Division, more commonly known as SLED.

6 Q. And in what capacity?

7 A. I am a forensic chemist.

8 Q. All right. A forensic chemist?

9 A. Currently, yes.

10 Q. And tell us a little bit about your background and
11 history that led you to become a forensic chemist?12 A. I have my undergraduate degree from the University
13 of South Carolina in chemistry. I also have my Master's
14 Degree from the University of South Carolina in analytical
15 chemistry.16 Q. Have you testified previously as an expert in the
17 field of forensic chemistry?

18 A. Yes, I have.

19 Q. How many such times would you estimate that you have
20 testified as an expert?21 A. I have testified as an expert 25 times. The
22 majority of that in the field of forensic toxicology. I have
23 also testified as an expert in pharmacology, chemistry and
24 biology.

25 MS. MAYES: Your Honor, at this time the State

1 offers Ms. Sorrells as an expert in the field of forensic
2 chemistry.

3 THE COURT: Any objection?

4 MS. ZMROCZEK: No objection, Your Honor.

5 THE COURT: Without objection.

6 MS. ZMROCZEK: I would ask does that include
7 toxicology and pharmacology?

8 MS. MAYES: Not pharmacology, Your Honor. It would
9 include toxicology.

10 THE COURT: Okay.

11 BY MS. MAYES:

12 Q. Now, Ms. Sorrells, I'm going to ask you a little bit
13 about some samples that were submitted in this case by the
14 State to the State Law Enforcement Division following the
15 autopsy of Infant

16 A. I'm sorry. Was that a question?

17 Q. Do you have with you information regarding the
18 tissue samples that were submitted after the autopsy of
19 Infant

20 A. Yes, I do.

21 Q. What types of samples were submitted?

22 A. In this case I received a blood sample, a brain
23 sample, a liver sample and a kidney sample. Also, I'm sorry,
24 I also later received a bottle and what was described as a
25 pill crusher.

1 Q. Okay. Now, as to the brain and liver and kidney
2 samples, were those tested for the presence of any type of
3 drugs whether that be illegal drugs or prescription drugs?

4 A. Yes, they were.

5 Q. What, if any, drugs were found in the system of
6 Infant ?

7 A. Do you mind if I look at my report?

8 Q. Yes.

9 A. All right. In this case when the brain sample was
10 analyzed, the drug Mirtazapine more commonly known as
11 Remeron.

12 Q. Let me stop you right there. We do have a
13 translator. We'll need you to speak a little more slowly than
14 you may.

15 A. I'm sorry.

16 Q. When you say commonly known as Remeron, do you mean
17 that's the brand name for the drug?

18 A. That is the brand name.

19 Q. Okay. What else?

20 A. In the toxicology lab we go by generic names so most
21 of the drugs I will be saying will be the generic name of the
22 drug. Also found was Ziprasidone which is more commonly known
23 as Zeldox or Geodon. And then I found the drug Citalopram in
24 the brain which is Celexa or Lexapro and it's metabolite
25 Norcitalopram.

1 Q. So there were three different potential brands of
2 drugs?

3 A. Yes, there was.

4 Q. When you say like in the brain, liver and kidney, is
5 it routine following the death of someone to have those
6 samples submitted, tissue samples?

7 A. In most autopsy cases and I'm going to say the
8 majority of autopsy cases we are given blood, sometimes urine
9 and then at least the brain and the liver, sometimes the
10 kidneys, not always.

11 Q. All right. In this case did you also receive a
12 blood sample from Infant ?

13 A. I did receive a blood sample from Infant .

14 Q. Okay. So I want to ask you a little bit about the
15 brand names of these because you said like Celexa or Lexapro.
16 How come you can't distinguish which one of the two it would
17 be?

18 A. There are -- Citalopram is a drug or Celexa is a
19 drug that has - if you can twist it the other way, it gives
20 you Lexapro. I don't want to get too into it, but they are
21 called mirror images of each other and based off of what we
22 have they are chiral compounds and our gas chromatography,
23 mass spectrometry or lipid chromatography and mass
24 spectrometer cannot distinguish between the chirality of the
25 compounds so we know that it is either Celexa or Lexapro, but

1 we cannot distinguish which one.

2 Q. Okay. And of those three particular brands, can you
3 tell us whether they are all drugs by prescription?

4 A. Yes, they are.

5 Q. Are these within the field of antidepressants?

6 A. Every single one, all three of these drugs are
7 considered central nervous system depressants which are
8 antidepressants.

9 Q. All right. Now, when you are talking about these
10 particular drugs, are you able to determine a level?

11 A. Yes, we are able to quantitate a certain level of
12 the drugs.

13 Q. All right. And in this particular case what were
14 you able to determine about the level?

15 A. I'm not sure what you're asking. I'm sorry.

16 Q. Okay. Are there studies about these drugs in
17 children knowledge?

18 A. No. No studies are done in children. These drugs,
19 all three of these drugs have warnings on them that say do not
20 give to children under the age of 18 so it is unethical to
21 actually do studies so most of the studies on the amounts that
22 are found in the body at either therapeutic, toxic or lethal
23 levels are all done in healthy adults.

24 Q. Okay. So based on the studies for adults are these
25 high levels or low levels?

1 A. These are low levels for an adult.

2 Q. Okay. Now, can you tell us whether or not the drugs
3 would have an effect such as causing someone or a child, for
4 example, to sleep?

5 A. Again, all of these drugs are central nervous system
6 depressants. They do cause drowsiness. They can cause
7 lethargy, confusion. A lot of these drugs especially the
8 Ziprasidone is prescribes as a sleep aid to help you sleep.

9 Q. Okay. Now, once you evaluate your findings, do you
10 issue a report?

11 A. I do issue a report, yes.

12 Q. Okay. And do you share your findings with the
13 coroner and pathologist, for example?

14 A. Yes. My report is then distributed to the coroners,
15 pathologists and detectives on the case.

16 Q. When I say pathologist, I'm referring to the
17 physician who actually conducted the autopsy or makes the
18 determination as to cause of death?

19 A. Yes.

20 Q. All right. Now, do you determine matters such as
21 cause of death?

22 A. I do not determine cause of death, no.

23 Q. And you are aware of the autopsy findings in this
24 case concerning chronic starvation in Infant ?

25 MS. ZMROCZEK: Objection, Your Honor. Testifying to

1 things not in evidence yet, the question that she asked.

2 MS. MAYES. I can rephrase that, Your Honor.

3 THE COURT: All right.

4 BY MS. MAYES:

5 Q. Are you aware of the autopsy findings in this
6 case?

7 A. Yes. I was provided with autopsy findings when this
8 case was submitted.

9 Q. Okay. Do you dispute those findings in any way?

10 A. No. I do not.

11 MS. MAYES: Nothing further.

12 THE COURT: Cross.

13 MS. ZMROCZEK: Thank you.

14 CROSS EXAMINATION

15 BY MS. ZMROCZEK:

16 Q. Good morning, Ms. Sorrells. You're not a forensic
17 pathologist so you don't make a determination of cause of
18 death, right?

19 A. I do not do the cause of death. I issue -- My job
20 as a toxicologist at this point was to analyze whatever is
21 submitted to me either biological or chemical samples and
22 report what I find. That's all I do as the toxicologist.

23 Q. In this case though when you returned the toxicology
24 report, did you also include a review article?

25 A. No, I did not.

1 Q. There was no review article about the serotonin
2 syndrome attached to the SLED report?

3 A. Not from me, no. It was not.

4 Q. So that would not have come from you if it were
5 attached?

6 A. Yes That did not come from me. All I did was my
7 report of what I found.

8 Q. All right. And you found in the brain the --

9 A. Mirtazapine.

10 Q. Yes. Which is Remeron, right?

11 A. Remeron.

12 Q. That's the synonym. Would you classify that as a
13 strong antidepressant?

14 A. It is a strong antidepressant. Yes, it is.

15 Q. Does it treat bipolar?

16 A. Yes, it does.

17 Q. You said the results were, I think you testified in
18 the lower end. Those are based on therapeutic results for a
19 150 pound adult?

20 A. They usually say the average male weighs 150
21 pounds.

22 Q. Now, I'm going to cry. Move on.

23 A. My husband would highly disagree with that. But
24 yes, these studies on average are based on the average 150
25 pound male.

1 Q. Okay. So I think you said these are not indicated
2 for any, to be given to anybody under the age of 18,
3 correct?

4 A. They are not to be given to anybody under the age of
5 18.

6 Q. So the result of the Remeron being at the lower end,
7 that would have been for a 150 pound average male?

8 A. Yes. Adult male, yes.

9 Q. And then you also said in the brain was the Geodon
10 or the --

11 A. Ziprasidone.

12 Q. Yes, that. And is that considered a high dose?

13 A. Again, no, it is not normally considered a high dose
14 for the average adult.

15 Q. Would you agree with me that any of these would be
16 considered a high dose for an infant?

17 A. Well, again, it's hard for me to say. Again it's
18 unethical to do any of these studies in any children let alone
19 infants.

20 Q. And there's no reason for an infant to have them in
21 their system?

22 A. There is no reason for an infant to have any of
23 these drugs in their system.

24 Q. And from these results -- Were you able to test the
25 blood for these?

1 A. I was not. I was able to do -- With the blood I was
2 able to do a blood alcohol and just a general drug screen. I
3 did not -- I was not given enough blood to do any further
4 testing on it so that's why I had to go to the brain and the
5 liver to do all of our testing.

6 Q. And I think like when you receive blood from an
7 autopsy, they're like a general set? It's like it's volatiles
8 that you test for for like alcohol, certain like alcohol and
9 certain just general drugs?

10 A. There are four general volatile compounds that we
11 test for when we do a blood/alcohol testing, yes.

12 Q. Then after you completed that, you weren't provided
13 enough blood to do the other testing?

14 A. I was provided enough blood to do a general drug
15 screen which is just where we have 12 classes of drugs. Hold
16 on. Let me check. I believe at this point we were only doing
17 11 drugs. I had taken one out because it wasn't accurate.
18 But we were doing a certain set of drugs and we looked for
19 those based off of the blood levels. I was able to do that
20 screening technique. That was all I was able to do.

21 Q. But based on the results that you found from the
22 brain and the liver, you can say that these were ingested
23 sometime within the last 12 hours of the death, correct?

24 A. That is correct, yes.

25 Q. I think you said you were also provided what you

1 described as a pill or what was described to you as a pill
2 crusher?

3 A. It was submitted with a description of being a pill
4 crusher, yes.

5 Q. And what drugs were found --

6 MS. MAYES: Your Honor, may we approach?

7 THE COURT: Yes, ma'am.

8 (Side bar off the record.)

9 BY MS. ZMROCZEK:

10 Q. Without going through your full results, my question
11 is simply were the drugs that were found in the tox screen of
12 Infant also found on the pill crusher?

13 A. Only one of the drugs that was found in the tox
14 screen in the brain and the liver was found on the pill
15 crusher. The --

16 THE COURT: That's the response.

17 BY MS. ZMROCZEK:

18 Q. And that's fine. Thank you. When you did the
19 volatile blood screen, did you screen for acetone?

20 A. Yes, I did.

21 Q. What is your -- Explain to the jury kind of cut offs
22 and what that means to be, for something to be positive or
23 not?

24 A. For something to show up as positive on one of our
25 results, it has to be above a certain amount. Anything below

SHANA SORRELLS - REDIRECT BY MS. MAYES

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1 that amount is considered, we report it as a negative. Either
2 one of two things can cause us to set that threshold. One, we
3 cannot accurately say how much is below that threshold or we
4 are limited by instrumentation at that point or, too, your
5 body naturally produces some drugs and so we try to take that
6 into account when we set up a threshold saying that anything
7 below this threshold could possibly just be produced naturally
8 in the system. So for our volatiles we say anything below 0.1
9 percent weight per volume is considered either negative, we
10 can't see down below that or your body naturally produces
11 it.

12 Q. So acetone although reported negative was found in
13 the blood system?

14 A. There was a minute amount of acetone in the system,
15 but it was negative, yes.

16 MS. ZMROCZEK: Thank you.

17 REDIRECT EXAMINATION

18 BY MS. MAYES:

19 Q. Just to clarify, when you say that it was negative,
20 it's because there was acetone but it was below the level?

21 A. It was below the threshold, yes, so I reported it
22 out as negative.

23 MS. MAYES: That's all from this witness, Your
24 Honor.

25 THE COURT: All right. Thank you very much, ma'am.

1 You may step down.

2 MS. MAYES: The State calls Dr. Jeffrey Welsh.

3 Thereupon,

4 JEFFREY WELSH, M.D.

5 after having been first duly sworn, testified as follows,

6 THE CLERK: Please have a seat. After you're
7 seated, please state your full name spelling your last
8 name for the record.

9 THE WITNESS: My name is Jeffrey Welsh, W-e-l-s-h.

10 DIRECT EXAMINATION

11 BY MS. MAYES:

12 Q. Dr. Welsh, how are you today?

13 A. I'm good. Thank you.

14 Q. Can you give us some information concerning your
15 educational background and training?

16 A. Yes. I received a Bachelor's Degree in chemistry
17 from the College of Charleston. I attended the Medical
18 University of South Carolina in Charleston for medical school.
19 I received my M.D. Degree in 1989. I completed a residency in
20 anatomical and clinical pathology at MUSC also in Charleston
21 in 1994. During that time I was a deputy medical examiner for
22 Charleston County for three years while a resident and I'm a
23 lecturer in forensic pathology. I joined the pathology staff
24 at Richland Hospital in 1994 and I joined - spent 17 years
25 there, I believe, and have spent the last four at Lexington

1 Medical Center as a pathologist.

2 Q. All right. And particularly once you went to
3 medical school -- Well, how many years are involved in medical
4 school? Let me ask you that.

5 A. That's four years.

6 Q. After you complete medical school, what is required
7 to actually become a licensed medical doctor?

8 A. Well, you're an M.D. after you graduate, but to
9 practice in most settings in the state in any profession you
10 need to complete an internship, a residency. I did mine in
11 anatomic and clinical pathology. That's an additional five
12 years of training that I spent also at MUSC.

13 Q. So an additional five years of internship and
14 residency in the field of pathology?

15 A. Yes.

16 Q. And I believe you said that is clinical and anatomic
17 pathology?

18 A. Yes.

19 Q. What training or experience do you have in the field
20 of forensic pathology?

21 A. Well, it's part of pathology. You have to do
22 forensic and regular hospital autopsy pathology and in
23 addition to that I was a deputy medical examiner. Charleston
24 County at that time had a medical examiner system where you
25 had a coroner and a medical examiner so we every fifth week

1 would take week long call and cover the autopsies and the
2 scene investigations for Charleston County and also at that
3 time most of the low country counties adjoining Berkeley so we
4 would do autopsies for them at a week at a time. I did that
5 for three years. That was just additional training or work
6 during residency.

7 Q. Have you had the opportunity to teach courses in the
8 field of forensic pathology?

9 A. Yes. I lectured to the medical students at MUSC in
10 forensic pathology.

11 Q. And how long were you involved in that?

12 A. Again, the whole time of my residency, several
13 years. I think for four years about.

14 Q. All right. Now, have you had the opportunity to
15 conduct autopsies?

16 A. Yes. I have done that since the beginning of
17 training and have done it in private practice for the last 21
18 years next month.

19 Q. Over the course of the past 21 years in conducting
20 autopsies is it possible to estimate how many such autopsies
21 you have conducted?

22 A. I tried to think about that and it's well over a
23 thousand. I know probably many more than that, but I tried to
24 under estimate. At least a thousand easily.

25 Q. Does that include homicides?

1 A. Yes.

2 Q. Does that include pediatric autopsies?

3 A. Yes.

4 Q. Have you testified previously as an expert in the
5 field of pathology concerning your autopsy findings?

6 A. Yes.

7 Q. Does that include cause of death?

8 A. Yes.

9 Q. And manner of death?

10 A. Yes.

11 MS. MAYES: Your Honor, at this time the State would
12 offer Dr. Welsh as an expert in the field of clinical and
13 anatomic pathology.

14 THE COURT: Any objections?

15 MS. ZMROCZEK: No, Your Honor.

16 THE COURT: All right. You may proceed.

17 BY MS. MAYES:

18 Q. Dr. Welsh, can you tell us whether or not you
19 conducted an autopsy on Infant ?

20 A. I did.

21 Q. And what was the date of her autopsy?

22 A. May I refer to my report?

23 Q. Yes.

24 A. The date of autopsy was September 3rd, 2013.

25 Q. So September 3rd of 2013 was her autopsy?

1 A. Yes.

2 Q. And at that point in time are you aware of her date
3 of birth?

4 A. Yes. We had it as 2012.

5 Q. All right. Having passed away in September of 2013,
6 that would make her 13 months of age, correct?

7 A. Yes.

8 Q. Dr. Welsh, what was Infants weight at the time and
9 date of her autopsy that you conducted?

10 A. We weighed 4.16 kilograms or 9 pounds 2.17 ounces.

11 Q. So 9 pounds 2 ounces. What, if anything, Dr. Welsh
12 is significant to you about a 13 month old toddler weighing
13 nine pounds?

14 A. Well, it's significantly below normal weight for
15 that age. Not even on a scale that we know. I mean, not even
16 on the normal growth charts so that's significant.

17 Q. During the course of the autopsy procedure, can you
18 take us through the process starting with how the body arrived
19 to you and what the steps are in your evaluation?

20 A. Yes. In a case like this where it's a request of
21 the coroner to do an autopsy, they really let our staff know
22 that there is an autopsy to be performed. The body arrives
23 with the assistance of law enforcement and all appropriate
24 people and it's placed in the autopsy room. We have staff
25 that helps us in a variety of ways. So we are notified, given

1 any relevant history that they have at the time that's
2 available before the case is done and then we go down along
3 with the staff and in a case like this law enforcement and
4 begin the procedure by just basically an external
5 investigation that includes weights, measurements,
6 photographs. That's done both by our staff and by law
7 enforcement depending on the case. It varies on what kind of
8 case you have.

9 Then we take appropriate notes and then do an
10 internal examination and that includes examination of all the
11 organs, all relevant findings that would be related, any sort
12 of disease and we also take samples that can be tested for
13 toxicology or other samples. I mean, there's certain things
14 that are standard in some cases, not in others. There's a DNA
15 card that are taken. Those are things that are part of law.
16 But it's kind of a standard every time.

17 Q. All right. And as you go about assessing a patient,
18 I say patient because they are still patients and you are
19 conducting an examination?

20 A. Yes.

21 Q. But what, if anything, stood out to you when you
22 actually saw Infant ?

23 A. Well, I remember, I mean, the fact of the size of
24 the decedent as we say, of the patient, and just the nature
25 that her skin and sunken eyes, so many things that reflected a

1 lack of nourishment. I mean, she was very extremely,
2 extremely thin and her eyes were sunk in, her cheeks were sunk
3 in. That's the first thing that struck me as I saw her.

4 Q. Okay. Now, take us through, if you will, starting
5 with the -- Do you have a copy of your report with you?

6 A. I do.

7 Q. Do you actually make a specific assessment
8 concerning the face and head and eyes?

9 A. Yes. We would typically do - the external
10 examination starts at the head every time, work our way down.
11 We look at all the relevant things and it varies based on the
12 type of case. We have different scenarios obviously. I did
13 start with the head in this case and then it's tradition as
14 I'm looking at my report to list the main and important items
15 on the front of the report so it's adequate for anybody to
16 look back and see our main findings.

17 Q. All right. Now, do you have -- Let me ask you this:
18 Do you make this autopsy report as a record in a routine
19 record during the course of an autopsy?

20 A. Yes. We take notes and we then usually dictate
21 later a report and then we wait and do microscopic examination
22 of tissues and put anything else together that we can get.

23 Q. Okay. And is the maintaining of that report done in
24 the regular course of your practice in conducting autopsies?

25 A. Yes.

1 Q. All right. And do you maintain such records even
2 after an autopsy is conducted?

3 A. Yes.

4 MS. MAYES: Your Honor, at this time the State would
5 offer the autopsy report as a business record and we
6 would publish portions of it.

7 MS. ZMROCZEK: Objection, Your Honor. He's here to
8 testify. I don't think that it needs to go into
9 evidence. He can testify from it. I think it's
10 duplicative to put it into evidence.

11 THE COURT: Response?

12 MR. McNAIR: As long as there is no objection, Your
13 Honor, to him reading directly from his report.

14 THE COURT: All right.

15 MS. ZMROCZEK: No objection.

16 THE COURT: All right, sir. If you need to read
17 directly from it, feel free to do so.

18 BY MS. MAYES:

19 Q. Now, do you have an area of your report, Dr. Welsh,
20 where you actually note your external examination?

21 A. Yes.

22 Q. Can you start at the beginning of your external
23 examination and slowly, I say slowly because we have a
24 translator over here.

25 A. Yes.

1 Q. And also the court reporter so we'll need you to
2 slowly share with us what your findings were at the time of
3 your external examination.

4 A. Okay. Would you like me to read what is my Roman
5 numeral II completely? Would that be the most accurate way to
6 do it or should I just summarize? I'm happy -- I can start by
7 reading that. I have an external and internal examination
8 Roman numeral on my front sheet. I list first of all the
9 weight of 4.16 kilograms or 9 pounds 2.17 ounces as the first
10 bullet. Gross and microscopic features of chronic
11 malnutrition including decreased adipose tissue.

12 Q. Okay. Please continue.

13 A. Sunken eyes. Sunken cheeks and depressed fontanel,
14 protruding ribs and vertebrae, wrinkled skin on extremities
15 and buttocks, pressure sores, complete lack of visceral
16 adipose tissue.

17 Q. When you use the word vertebrae, you're referring to
18 what part of the body?

19 A. The spine.

20 Q. Where were the pressure sores located?

21 A. In the diaper area.

22 Q. All right. And you used the term depressed
23 fontanel. What are you referring to there?

24 A. The fontanel are the anterior and posterior like the
25 crown of the head above the forehead and the back. As the

1 child is born those bones are not fused yet so it's really an
2 area of depression. As you age they fuse together but it can
3 still be a sign of malnutrition and dehydration because
4 they're sunken and it obvious in this case they were sunken
5 in. Just something we look for as part of the examination of
6 the head.

7 Q. All right. Now, I want to move you forward to page
8 2 of your report where there is a specific notation concerning
9 the external examination.

10 A. All right.

11 Q. If you could start there and read your findings
12 concerning the external examination.

13 A. Okay. The body is that of a profoundly emaciated
14 infant with diffuse loss of adipose tissue. The length is
15 26.5 inches, weight 4160 grams. Examination of the head
16 reveals long brittle dark hair in a normal distribution. The
17 anterior fontanel is depressed. Cheeks are sunken as are the
18 eyes. No evidence of trauma. The neck is thin with wrinkling
19 overlying skin. The examination of the chest and abdomen
20 reveal loss of adipose tissue with ribs easily seen.
21 Genitalia is atraumatic. Extremities are symmetrical and
22 normally formed and thin with wrinkled skin over joints.
23 Interosseous needle present in right tibia. Simian crease is
24 noted in the palms. No wounds are identified. Examination of
25 the back reveals thin skin with protruding visible vertebral

1 bodies and posterior ribs. There is wrinkled skin and loss of
2 subcutaneous issue over the buttocks. There is a rash in the
3 diaper area with red lesions and areas of shallow ulcers
4 suggestive of impetigo or other infection. Photos are
5 obtained and skull and full body radiographs show no
6 fractures.

7 Q. Now, I want to start with the area that would be the
8 head and face. What can you tell us about the significance,
9 if any, of the sunken eyes and sunken cheeks or hollow cheeks
10 as you put it? What causes that to occur?

11 A. Well, with the diffuse nature of this change it's
12 basically from a loss of fat. It's the cheek pads. We don't
13 think of there being fat normally in the cheek. There's fat
14 around the eyes. The actual globes of the eyes are encircled
15 in fat. It's our defensive mechanism and so with loss of that
16 fat, the eyes sink down, the cheeks sink down.

17 Q. I want to show you a photograph which is State's
18 exhibit 9 and ask you -- First of all, were photographs taken
19 during the course or your autopsy?

20 A. Yes.

21 Q. I'll show you this photograph and ask you whether or
22 not it's a fair and accurate representation of the autopsy?

23 A. Yes.

24 Q. And the autopsy findings?

25 A. Yes.

1 Q. Do you see or can you tell us whether or not the
2 symptomatology you have described is present in that
3 photograph?

4 A. Yes.

5 Q. Dr. Welsh, I'm going to ask you if you can use this
6 and take us through your findings. And if you need to step
7 down, that's fine as well.

8 A. I think I'll be okay from here. Well, this is, of
9 course, a anterior view and this is on the autopsy table the
10 patient. What we are commenting on in the various areas of
11 the external examination as can be seen here, the eyes are
12 sunken down. This is not normal pattern of where the eyes
13 should be. It's a little hard to tell the cheeks from this
14 angle and also there's a taped endotracheal tube in place.
15 That's a tube put in for resuscitative efforts. There's
16 nothing abnormal there, but it is taped in place so it's a
17 little hard to see. But the eyes are the best area to see
18 where there is a loss of fat. You get some appreciation. The
19 hair was long and as I described brittle. Just looked more
20 brittle because it was long, I believe. Probably the most
21 striking part of this, it can be two areas. There's loss -
22 some loss of fat can be appreciated in the neck. You can see
23 muscle there. It's a little hard to the untrained eye. The
24 ribs are a little easier to see. They're clearly -- You can
25 basically see the ribs that are clear. The abdomen is very

1 thin. A little hard to appreciate, but it's thin. In one
2 area you can kind of appreciate, there is loss of fat around
3 the genitalia so that's why this looks more prominent here is
4 there is a loss of fat here and here. But those are the
5 things we are looking at. And on the back also it's a similar
6 sort of finding. Those are the things we are documenting.

7 Q. Okay. And you were addressing the loss of fat to
8 the face. And when you talk about the loss of the adipose
9 tissue even in the facial area, is that something you are
10 actually able to check for at autopsy?

11 A. Yes. The area that is most striking really in
12 autopsy is because we do a standard incision all the time is
13 when you go into the chest and abdomen. There's typically, in
14 most of us there's a layer of fat and that's where there was
15 absolutely no fat at all. We don't cut into the face. We
16 could, but we didn't need to. If that's what you are asking.

17 Q. Yes.

18 A. The most striking part as I remember was when we
19 opened up there is just no fat.

20 Q. You could not visualize any layers of fat?

21 A. No.

22 Q. What effect does that have on the body?

23 A. The body, if it's a chronic situation, would tend to
24 start looking for fuel for look of a better term in other
25 places. That would be the fat that you don't have. That's

1 why you're using it for fuel. The muscle. It would have some
2 changes that we documented under microscopic examination that
3 are kind of classic. Changes in the thymus of the liver, for
4 example. They change because of the stress and the using
5 these other things as fuel. The liver becomes fatty. The
6 thymus involutes, becomes calcified. The adrenal glands, it's
7 almost like a stress situation. You lose the outer parts of
8 your adrenal glands. Those are the things we look for and
9 those were documented in this case.

10 Q. I'll show you photographs which are State's exhibits
11 13, 3, 12, and 11 and ask you whether or not you recognize
12 them?

13 A. Yes. Do you want me to describe them as I go?

14 Q. Mm-hmm.

15 A. That's a close-up photo of Infant

16 THE COURT: Just identify the numbers, doctor.

17 BY MS. MAYES:

18 Q. That's State's exhibits 13?

19 A. 13. That's a photo of Infants head. This State
20 exhibit 3 is a shot of the arm, picture of the arm. State
21 exhibit 12 is a photo of again from the lateral view much like
22 we looked at showing the ribs. This is number 12. And it
23 shows pretty much what we saw. It does include the tibial
24 line which is also resuscitative. State's exhibit 11 is a
25 picture of Infant turned on the side with, it shows here the

1 lack of adipose tissue on the back. There are two things you
2 can see. The scapulas or the winging of the scapulas and the
3 vertebral column is clearly evident. You can see how the
4 length of her hair and also you can see some off the erosions
5 or ulcers on the buttocks which are consistent with an
6 infection and rash.

7 MS. MAYES: Your Honor, at this time the State would
8 offer 11, 12, 3 and 13 as evidence.

9 THE COURT: Subject to your objection, Ms. Zmroczek,
10 except for, I think, State's 3. I don't think there was
11 an objection to 3.

12 MS. ZMROCZEK: Correct.

13 THE COURT: But as to the others, I'm going to allow
14 them subject to your objections.

15 MS. MAYES: Your Honor, the State would request
16 permission to publish.

17 THE COURT: Yes, ma'am.

18 BY MS. MAYES:

19 Q. Now, Dr. Welsh, unfortunately our overhead here is
20 not, the lighting is not as we would prefer, but I want to ask
21 you what, if anything, is the significance of the finding or
22 the significance of this photograph?

23 A. Well, the one thing I notice is the wrinkling of the
24 skin in the under arm area is a little unique in this age
25 obviously and I think that's again a loss of adipose tissue

1 there. But, in fact, nothing else looks terribly bad. You
2 might be able to get an idea of the crease in the hand which
3 is significant with a child diagnosed with Down syndrome, but
4 that's the main thing I see there as far as --

5 Q. What causes the wrinkling of the skin in a photo
6 such as that or in the photo here looking at the neck area?

7 A. Well, again, it the loss of that subcutaneous
8 tissue. Normally, of course, babies, infants have a layer of
9 fat. We are used to them -- We call it baby fat. Without
10 that the skin is very thin. We call it tenting. You can pull
11 it up and it stands because there's no underlying tissue
12 keeping it in place. I mean, that's one of the many things we
13 look at on the external exam to assess overall nutrition,
14 hydration, ex cetera.

15 Q. Was the tenting of the skin done during the autopsy
16 with Infant ?

17 A. Yes.

18 Q. Okay. And what, if anything, was significant about
19 that?

20 A. Well, again, it shows that it's very thin. It
21 stayed up and reflected a state of dehydration.

22 Q. This photograph, State's exhibit 11, what causes the
23 type of pressure sores that are visible on Infant ?

24 A. Well, in that area you can get them with diaper
25 rash, et cetera, but those are getting a little bit deep and

1 erosive ulcers. They have a look that we would call super
2 infected or impetigo. It's not uncommon. It happens. But
3 I'm afraid in a case where there is just constant pressure.
4 There's not a lot of movement. I think it would predispose to
5 that.

6 Q. Can you tell us to a reasonable degree of medical
7 certainty whether a child who is lying in the same position
8 for long, long periods of time can result in such pressure
9 sores?

10 A. Yes. Absolutely. It's just like an older patient
11 confined to a bed. It happens. Deep pressure sores is what
12 we always worry about. That's why they have to be moved.

13 Q. Now, the winging of the scapula as you put it?

14 A. Yes.

15 Q. What are you referring to there?

16 A. Well, you have what looks like wings because again
17 you have lost the fat. The scapulas are the bones, the back
18 of the shoulders that you can see clearly. It looks like they
19 are pointing up towards the head that is because again they
20 shouldn't be visible, but with the loss of all of that fatty
21 tissue and subcutaneous fat around them. That's the adipose
22 tissue I refer to in my report. We call it adipose medically.
23 It's fatty tissue.

24 Q. Dr. Welsh, do you have an opinion to a reasonable
25 degree of medical certainty as to whether this is an acute

1 condition or a chronic condition?

2 A. Yes. It's a chronic condition.

3 Q. And when we say chronic condition, what duration or
4 period of time are we talking about where starvation occurs
5 for someone to end up in the state that Infant died in?

6 A. Well, it would honestly be a question better for a
7 pediatrician who deals maybe everyday with a lot of patients,
8 but I mean weeks or months. There's just no question.

9 Q. Weeks or months?

10 A. Yes.

11 Q. And during this course of time for weeks and months
12 in which chronic starvation is occurring, what effect does it
13 have on the body?

14 A. Well, we are seeing it. I mean, it's the loss of
15 that tissues that are being used for fuel.

16 Q. What about the liver?

17 A. The liver in this case and what generally happens
18 one of the signs we look for under the microscope are fatty
19 liver. The fatty liver is thought to be formed in children
20 that have been chronically starved because again they are
21 using different sort of raw materials and proteins for fuel.
22 Some of those contain more fat and that gets deposited in the
23 liver. Also part of metabolism is that normally that gets
24 moved out of the liver. If there aren't those proteins and
25 normal substances to do that, it accumulates there. So to

1 have a one year old with a fatty liver is a unique finding in
2 starvation.

3 Q. All right. Can you tell us whether or not the
4 medical literature supports fatty liver as a symptom or
5 finding in cases of chronic starvation?

6 A. Yes.

7 Q. And Infant had that?

8 A. Yes.

9 Q. Can you tell us whether or not the literature
10 supports a finding of the depressed fontanel as you put it --

11 A. Yes.

12 Q. -- in cases of chronic starvation?

13 A. Yes.

14 Q. Did Infant have that?

15 A. Yes.

16 Q. Can you tell us whether or not the literature
17 supports the finding of wrinkling of the overlay skin such as
18 in the neck and armpit --

19 A. Yes.

20 Q. -- is cases of chronic starvation?

21 A. Yes.

22 Q. Can you tell us whether or not the literature
23 supports the protrusion of ribs, spine, hip bones in cases of
24 chronic starvation?

25 A. Yes.

1 Q. Did Infant have all of those?

2 A. Yes.

3 Q. The term winging of the shoulder blades or scapulas
4 as you put it, can you tell us whether or not that's addressed
5 in the medical literature?

6 A. It is again associated with starvation.

7 Q. With chronic starvation?

8 A. Yes.

9 Q. What about things such as pressure sores and
10 secondary infection?

11 A. Yes.

12 Q. What about the loss of visceral adipose tissue?

13 A. Yes.

14 Q. So all of these findings that you have documented
15 with Infant, can you tell us whether or not you are familiar
16 with the literature that supports such findings in cases of
17 chronic starvation?

18 A. Yes.

19 Q. Ultimately, Dr. Welsh, what did you determine the
20 cause of death in Infant to be?

21 A. I listed the cause of death as lethal neglect which
22 is a term that we use in the forensic world to describe these
23 kind of conditions.

24 Q. All right. Can you tell us a little more about that
25 when you say lethal neglect and how that encompasses chronic

1 starvation?

2 A. The term basically implies to any denying of the
3 basic needs that a child needs to survive and this would fall
4 under, of course, food, shelter, warmth.

5 Q. What about health care?

6 A. Health care. Exactly.

7 Q. In cases of chronic starvation, if adequate health
8 care is provided, can a starving child be saved?

9 A. Yes.

10 Q. Can you tell us to a reasonable degree of medical
11 certainty if Infant had received medical intervention
12 when the symptoms were apparent, could she have potentially
13 been saved?

14 A. In my opinion, yes.

15 Q. Ultimately having looked at Infant externally and
16 internally, Dr. Welsh, is the body able to sustain life,
17 prolonged sustaining of life in that condition?

18 A. No. And our literature would even suggest that it
19 can go, you know, that children are resilient more than you
20 would think, but at some point you don't have basically again
21 the fuel to keep going.

22 Q. What happens to the body when there is death by
23 starvation in terms of is it the heart that stops beating? Is
24 it the respiratory tract that stops breathing or a combination
25 thereof?

1 A. I think a combination is fair enough. I think the
2 heart basically at some point is gonna stop beating. That's a
3 terminal event.

4 Q. Did you have an opportunity to observe Infants
5 heart?

6 A. Yes.

7 Q. And was that internally?

8 A. Yes.

9 Q. Based upon your observation of her heart, Dr. Welsh,
10 did you see any type of abnormality or cause for concern?

11 A. No.

12 Q. Was there any evidence of underlying disease?

13 A. No.

14 Q. Dr. Welsh, the face as you described it with the
15 sunken eyes and the hollow cheeks and the loss of adipose
16 tissue, can you tell us whether or not that was readily
17 apparent to you when you saw her at the time of autopsy?

18 A. Yes.

19 Q. And that course of starvation as someone nears the
20 dying process, can you tell us whether or not symptoms are
21 exhibited? Is a child in that condition able to scoot or
22 crawl, for example?

23 A. I wouldn't think so. No.

24 Q. Okay. And in that condition would you expect it to
25 be readily apparent to a care giver?

1 A. I would.

2 Q. Dr. Welsh, even without the report that you brought
3 with you today, do you remember Infant ?

4 MS. ZMROCZEK: Objection, Your Honor.

5 THE COURT: What's the basis?

6 MS. ZMROCZEK: The basis is irrelevant, this
7 question.

8 THE COURT: Overruled.

9 BY MS. MAYES:

10 Q. Do you remember this autopsy?

11 A. I do.

12 MS. MAYES: Nothing further.

13 THE COURT: All right. Ms. Zmroczek.

14 MS. ZMROCZEK: Thank you.

15 CROSS EXAMINATION.

16 BY MS. ZMROCZEK:

17 Q. Dr. Welsh, lethal neglect could also include giving
18 prescription antipsychotic medication to a child, correct?

19 A. Yes.

20 Q. You sent tissue and blood samples off to SLED to be
21 tested, correct?

22 A. I did, yes.

23 Q. And you are aware that SLED found these toxic drugs
24 in the child's system?

25 A. Yes.

1 Q. You are aware that they were ingested within 12
2 hours of the child's death?

3 A. Well, that I don't know.

4 Q. Okay. Were you aware that when the EMT's brought
5 her in on the night of September 2nd, early morning hours of
6 September 3rd that there was a small amount of vomit noted in
7 the oral pharynx?

8 A. I don't know if I -- I don't know if I recall that
9 directly, no.

10 Q. Have you performed autopsies on patients who have
11 died of drug overdoses?

12 A. Yes.

13 Q. Is vomit in the oral pharynx something that's found
14 in patients who have died in drug overdoses?

15 A. Yes.

16 Q. Were you aware that when she was brought in, when
17 Infant was brought into the ER, that she had stool in
18 her diaper?

19 A. Again, I'm not sure if I had all those notes from
20 the ER, but I don't dispute that. I don't have that in my
21 note, no.

22 Q. Okay. Are you familiar with serotonin syndrome?

23 A. Yes.

24 Q. Is that something that can cause death in children
25 who are administered drugs that aren't prescribed to them?

1 A. Yes.

2 Q. Is high levels of acetone an indicator of
3 starvation?

4 A. Now, that I don't readily know. It's something that
5 we normally don't test for, but it would certainly make sense
6 because of the breakdown in the ketones, et cetera, so yes. I
7 would say yes, but we don't test for it.

8 Q. Certainly. Is organ failure an example of chronic
9 starvation?

10 A. Yes.

11 Q. How many of Infants organs had failed?

12 A. That I don't know. We're looking at a post mortem
13 examination that I can't really evaluate that.

14 Q. Did you examine all the organs?

15 A. Yes.

16 Q. Did you note any damage to any of them?

17 A. Yes. And as I recall, the main one as we mentioned,
18 the liver, having the fatty liver. The thymus being calcified
19 and the adrenal glands being basically having a loss of cortex
20 which is not really specific, but loss of fat and of stress.

21 Q. And acetaminophen or a drug commonly found to buffer
22 the release of other medication, does that also cause fat in
23 the liver?

24 A. Acetaminophen can damage the liver, yes,
25 definitely.

1 Q. Are there certified pediatric forensic pathologists
2 in this state?

3 A. There are forensic pathologists. I'm not sure that
4 they are actually pediatric, but there are forensic
5 pathologists.

6 MS. ZMROCZEK: I have no further questions. Thank
7 you.

8 REDIRECT EXAMINATION

9 BY MS. MAYES:

10 Q. Let me just clarify. When Ms. Zmroczek was asking
11 you about stool in the diaper, do you have any record or
12 evidence of that?

13 A. I don't. But -- I just don't. You know, at the
14 time when we do the autopsy, that's already been removed so I
15 just can't really speak to it.

16 Q. Did she have any stomach contents based on your
17 autopsy?

18 A. May I check my notes again?

19 Q. Yes.

20 A. The stomach is empty as put in my report.

21 Q. All right. And during starvation cases, can
22 children still be fed yet ultimately die of starvation?

23 A. Certainly. Yes.

24 Q. And the serotonin syndrome that Ms. Zmroczek was
25 asking you about, have you any reason to suspect any type of

1 drug interaction as the cause of Infants death?

2 A. I do not. There were drugs found that are
3 prescription drugs for adults. They are FDA approved for
4 children. They are not tested in children or a level well
5 known, but they were - that's part of what we do routinely.
6 We check for all those things. So we do test for it and they
7 were there, but I don't think it's a major...

8 Q. All right. In this situation considering her
9 condition of malnutrition with or without the drugs would the
10 body have been able to sustain life over a prolonged period of
11 time?

12 A. Without medical treatment?

13 Q. Without medical treatment?

14 A. No.

15 Q. And you mentioned that the thymus was calcified.
16 What did you mean by that?

17 A. It's just another finding that's been linked to
18 starvation and the thymus in children is very prominent and
19 for some reason it involutes and I imagine it has something --
20 It just shrinks and part of that is probably because it's a
21 lot of fat. In adults it pretty much disappears. I don't
22 know if we know entirely why, but the fact that it's calcified
23 again it may be a source of fat for the body. But that was
24 found and it was a unique finding that I commented on.

25 Q. All right. And Ms. Zmroczek was asking you about a

1 small amount of vomit. Are there other causes for that beyond
2 a drug overdose?

3 A. Yes.

4 Q. Did you see any evidence of asphyxiation in
5 Infant ?

6 A. No. That's again something we look for in all
7 cases. We dissect through the airways to make sure there's no
8 obstruction or anything lodged. That's a typical thing. I
9 didn't see anything that I thought was obstructing
10 breathing.

11 MS. MAYES: Nothing further.

12 MS. ZMROCZEK: I have a few follow up questions,
13 Your Honor.

14 RECROSS EXAMINATION

15 BY MS. ZMROCZEK:

16 Q. You were asked the a child could still receive some
17 food and sill be starving?

18 A. Yes.

19 Q. So but a care taker who sees a child receiving food
20 and is not a medical doctor, is it reasonable to assume that
21 the child is being fed?

22 MS. MAYES: Objection to speculation under the form
23 of that question.

24 THE COURT: Sustained.

25 BY MS. ZMROCZEK:

1 Q. Is it reasonable to assume that drugs could have
2 been a contributor with the number of drugs and the amounts
3 found in the system?

4 A. I would -- Yeah. I would have to say that it didn't
5 do any good to have several drugs on board. And again I just
6 want to stress these aren't drugs typically used in children
7 so it's really hard to evaluate what they would do.

8 MS. ZMROCZEK: Thank you.

9 THE COURT: All right. Thank you very much, doctor.
10 Step down. Any objections to the doctor being excused?

11 MS. MAYES: None from the State.

12 MS. ZMROCZEK: Not from the defense.

13 THE COURT: Thank you very much, sir. You're free
14 to go.

15 MS. MAYES: Your Honor, may we approach?

16 THE COURT: Yes, ma'am.

17 (Side bar off the record.)

18 THE COURT: Folks, I'm going to get you to step back
19 into the jury room while I work out scheduling issues and
20 I'll get back to you shortly. Please have no
21 conversation about the case.

22 (Whereupon, the jury entered the jury room at 12:40
23 p.m.)

24 THE COURT: Let's just take a minute, if anyone
25 needs to use the restroom or something and then let me

1 get the attorneys to come back in the chambers and
2 informally discuss what our schedule looks like.

3 (Short recess.)

4 BAILIFF: All rise.

5 THE COURT: Okay. Thank you. Please be seated.
6 For y'all's information we are going to bring the jury in
7 and we're going to let them go and we'll start back in
8 the morning.

9 (Whereupon, the jury returned back to the courtroom
10 at 1:50 p.m.)

11 THE COURT: Folks, I brought you in here with the
12 intention of apologizing. I got to thinking. Typically
13 you apologize when you do something you shouldn't do and
14 something wrong. Then I got to thinking that you got a
15 free lunch. That's a good thing. I'm about to excuse
16 you for the balance of the day so you're getting half a
17 day off so that's a good thing. Then I got to wondering
18 what am I apologizing for. Let me clarify all that. My
19 apology was going to be because if you felt like we have
20 wasted your time, I wanted to apologize for that. But
21 then I thought maybe a free lunch would compensate for
22 that. I don't know. Here's the thing. The State has,
23 which I think is your final witness that will be put up
24 as an expert in a particular field and they were
25 unavoidably detained this afternoon so they couldn't be

1 here to testify this afternoon.

2 Now, the other thing we could have done was, and Ms.
3 Zmroczek was kind enough to agree, was to take some
4 witnesses out of order and maybe take some defense
5 witnesses this afternoon, but the thing is that it
6 wouldn't, time wise it's not really going to change
7 anything for us. I can tell you for scheduling purposes
8 that it appears regardless of whether we had a State
9 witness here or not, we are going to go into Friday so
10 rather than take witnesses out of order and break up the
11 flow of things, that expert can't be here until the
12 morning, so we are going to go ahead and just give you
13 the afternoon off. And I didn't know that. We didn't
14 know that until we took the break at lunch time so, and
15 we really didn't know for sure until literally five
16 minutes ago because during the lunch break Ms. Mayes and
17 Mr. McNair were trying to locate her and reach her to see
18 if she could get out of this conference that she is in
19 and it just wasn't possible. We still had hopes that we
20 could get her here, but it just wasn't going to work so
21 that's why we didn't stop earlier and just tell you.

22 You can take your lunch and take it home if you want
23 because we were still in hopes of getting her here until
24 just a few minutes ago so it appears that that's not the
25 case so we are going to adjourn for the afternoon. We'll

1 start back tomorrow morning at 9:30, okay? And you can
2 let your family and friends know who are curious that you
3 do anticipate being here through Friday and so ask for
4 their patience, that you still are not allowed to talk
5 about the case. You are not allowed to have any
6 conversation about it. But that when it's over, you can
7 share everything with them when that time comes. But
8 until that time, have them just continue to respect your
9 need to protect your ability to remain fair and
10 impartial. Take the afternoon off and just let your
11 minds ease, be at ease and then we'll start back in the
12 morning. I think that's everything. 9:30. Okay. So
13 everyone else remain seated. Folks, we'll see you back
14 tomorrow morning at 9:30.

15 (Whereupon, the jury was released for the day at
16 1:55 p.m.)

17 THE COURT: I remember years ago back during the
18 O.J. trial and then even recently the trial down in
19 Florida and places like that where the lady was accused
20 of killing her child, those trials take months and you
21 hear about the times when the jury reports at 9:00 and by
22 11:30 they're gone thereafter for the day and there's
23 always stuff going on, so maybe it's not so epic that
24 this has occurred. This case would probably have taken a
25 month to try in California. Anyway. But we'll just do

1 that. We'll start back at 9:30 and start with the
2 State's witness and go through that process and then
3 we'll move on to the defense case. I'll wait obviously
4 and talk to Mr. Cameron at the close of the State's case.
5 Y'all have had that discussion and all?

6 MS. ZMROCZEK: I'm going to the jail tonight to make
7 sure one more time.

8 THE COURT: Okay. All right. Then we'll just --
9 I'm confident your office doesn't have anything else that
10 I can handle this afternoon.

11 MS. MAYES: I don't think so.

12 THE COURT: I know that Robin and them wanted to do
13 that plea, but I don't think they can get that character
14 over here in time. We'll continue it to Friday. So
15 we'll just go ahead then and be at ease and we'll start
16 back at 9:30, okay?

17 MS. MAYES: Thank you, Judge.

18 MS. ZMROCZEK: Thank you, Judge.

19 THE COURT: All right.

20 (Whereupon, court was adjourned for the day at 2:00
21 p.m.)

22

23

24

25

1 CERTIFICATE OF REPORTER

2 (STATE OF SOUTH CAROLINA)

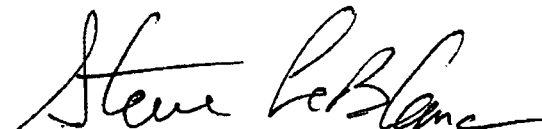
3 (COUNTY OF LEXINGTON)
4

5 I, THE UNDERSIGNED, Steven E. LeBlanc, Sr., R.P.R.,
6 and Official Court Reporter for the Eleventh Judicial Circuit
7 in and for the State of South Carolina, do hereby certify
8 that I reported the proceedings in the before captioned case
9 in the Court of General Sessions in and for the State of
10 South Carolina on the 1st day of June through the 3rd day of
11 June, 2015.

12 I FURTHER CERTIFY that the forgoing 432 pages
13 constitute a true and accurate transcript of said
14 proceedings.

15 I FURTHER CERTIFY that I am neither related,
16 counsel to, nor of interest to any party hereto.

17 IN WITNESS WHEREOF, I have hereunto set my hand at
18 Lexington County, this 3rd day of September, 2015.

19
20 
21 _____
22 Steven E. LeBlanc, Sr., R.P.R.
23 Eleventh Circuit Court Reporter
24 State of South Carolina.
25

State of South Carolina) In the Court of General Sessions
) Eleventh Judicial Circuit
County of Lexington) 2014-GS-32-1347

State of South Carolina,)
)
 Plaintiff,)
)
 vs.) Transcript of Record
)
 Filiberto Garcia Campos,)
)
 Defendant.)
)
)

June 4 - 5, 2015
Lexington, South Carolina

B e f o r e:

The Honorable Thomas A. Russo, Judge; and a jury

A p p e a r a n c e s:

Suzanne Mayes, Assistant Solicitor
Robert E. McNair, III, Assistant Solicitor
Attorneys for the Plaintiff

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Laura Cahue, Interpreter

Maryann S. Nevers, CVR-M-CM
Circuit Court Reporter

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D-12	DVD	6	
D-13	Photograph	6	107
D-14	Photograph	6	107
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D-16	Photograph	6	107
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D-18	Photograph	6	
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NO.	DESCRIPTION	I.D.	EVID.
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1 TRIAL DAY 4 - 06/04/15

2 (Whereupon, State's Exhibit 73 and Defendant's
3 Exhibits 12 through 41 were premarked for
4 identification prior to the resumption of
5 proceedings.)

6 (Whereupon, the proceedings resumed at 10:08 a.m.)

7 (Whereupon, the jury entered the courtroom at 10:08
8 a.m.)

9 THE COURT: All right. Welcome back, everybody. I
10 hope everyone had a good evening and a good afternoon
11 yesterday and you're ready to proceed. As I indicated to
12 you yesterday, the state still has, I believe, one -- but
13 they certainly can have more if they -- if they choose to.
14 But my understanding is they have one witness that was
15 unable to be present yesterday but is ready to go this
16 morning. So we are going to pick up where we left off
17 yesterday and recognize Ms. Mayes for her next witness.

18 MS. MAYES: The state calls Dr. Susan Luberoff.

19 THE COURT: All right. Doctor, if you'd please come
20 around to be sworn, ma'am. Thank you.

21 (Whereupon, the witness came forward.)

22 (Off the record briefly.)

23 THE BAILIFF: Watch your step, ma'am.

24 (Whereupon, the witness entered the witness stand.)

25 SUSAN LUBEROFF, M.D., having been first duly

DIRECT EXAMINATION BY MS. MAYES - SUSAN LUBEROFF

7

1 sworn, testified as follows:

2 DIRECT EXAMINATION

3 BY MS. MAYES:

4 Q Dr. Luberoff, can you give us some information
5 concerning your educational background and training?

6 A Sure. I graduated from USC with a biology degree and
7 then graduated from the medical school in Columbia, the
8 University of South Carolina School of Medicine in the
9 third class to graduate from there in 1983 with my medical-
10 doctor degree. I completed a three-year residency at
11 Children's Hospital at Richland Memorial in pediatrics.
12 And since then I've practiced pediatrics with a
13 concentration in the subspecialty of child-abuse
14 pediatrics. And I've had particular training in that field
15 and the majority of my practice has been in that field.

16 Q And in addition to your educational training, have you
17 -- are you currently practicing as a pediatrician?

18 A Yes. As a child-abuse pediatrician.

19 Q All right. And what medical facilities are you
20 associated with?

21 A I have privileges at Palmetto Health Richland,
22 Palmetto Health Baptist, and William S. Hall Psychiatric
23 Institute. I am employed by the University of South
24 Carolina School of Medicine, Department of Pediatrics. And
25 I am stationed at a clinic called the Assessment and

DIRECT EXAMINATION BY MS. MAYES - SUSAN LUBEROFF

8

1 Resource Center, which is a clinic that evaluates children
2 who are suspected of having been physically or sexually
3 abused or neglected. And in my role with the university,
4 if a child is admitted to the Children's Hospital, where
5 there's a worry about abuse or neglect and the hospital
6 staff wants help with that assessment, then they'll consult
7 me to assist with those inpatient evaluations. And I also
8 am often called on by law enforcement or the Department of
9 Social Services or another investigative agency to help
10 with cases that they might be investigating.

11 Q Is it possible to estimate how many patients who have
12 been diagnosed with child abuse or neglect you have treated
13 throughout your pediatric career?

14 A I have evaluated probably in the neighborhood of 8 to
15 10 thousand children for a concern of abuse or neglect.
16 Not all of them ended up with that diagnosis. Probably
17 about 25 to 30 percent did not.

18 Q Have you testified previously as an expert in the
19 field of pediatric medicine, including child neglect and
20 child abuse?

21 A Yes, I have.

22 Q And have you testified previously as an expert in the
23 field of forensic pediatrics?

24 A Yes. We call it "child-abuse pediatrics."

25 MS. MAYES: Your Honor, at this time the state would

1 offer Dr. Luberoff as an expert in the field of forensic
2 pediatrics, including the diagnosis and treatment of child
3 abuse and neglect.

4 THE COURT: Any objection?

5 MS. ZMROCZEK: No objection.

6 THE COURT: All right. Thank you very much. You may
7 proceed.

8 Q Now, Dr. Luberoff, you mentioned that you are often
9 consulted by Palmetto Health Richland, for example, if --
10 if they have a child suspected of abuse or neglect. Can
11 you tell us what type of cases that may involve? Does it
12 include critical-care patients?

13 A Yes, it does include critical-care patients.
14 Sometimes it's not a critical-care patient. It might be a
15 child with a fracture or with extensive bruising or
16 malnutrition or other matters. But often, I am consulted
17 within the intensive care unit as well.

18 Q Have you had the opportunity through your career to
19 treat victims of starvation?

20 A I have.

21 Q Including malnutrition, dehydration, things of that
22 nature?

23 A Yes.

24 Q Dr. Luberoff, what, if any, experience do you have
25 with what is known as the "Child Fatality Task Force"?

DIRECT EXAMINATION BY MS. MAYES - SUSAN LUBEROFF

10

1 A The Child Fatality Advisory Committee?

2 Q Correct.

3 A I'm the chair of the state Child Fatality Advisory
4 Committee, which is a committee established by the
5 legislature -- excuse me -- that is tasked with -- with
6 reviewing all unexpected child deaths in South Carolina to
7 look for preventable causes, for common threads where the
8 state or agencies might be able to make changes to -- to
9 help prevent future such deaths.

10 Q Does that include the review of child deaths that are
11 caused by homicide?

12 A It does. It includes review of all child deaths that
13 are unexpected. So, for example, a child being treated for
14 cancer who dies because of complications of the cancer and
15 the treating team expects that death, that death would not
16 come to the -- our committee's attention. But unexpected
17 child deaths do: homicides, suicides, accidents,
18 unexpected deaths.

19 Q Have you also had the experience, pursuant to that
20 role, to consult with forensic pathologists and other
21 medical professionals in the field in determining the cause
22 of death of -- of children?

23 A Yes.

24 Q And does that include your own experience as a
25 pediatrician as well?

1 A Yes.

2 Q I want to ask you, Dr. Luberoff, if, in the year 2013,
3 you had the opportunity to review medical records and
4 autopsy findings and photographs and important data related
5 to the death of Infant ?

6 A I did.

7 Q And what type of agency submitted that -- those
8 materials to you for review?

9 A The Lexington County Sheriff's Office.

10 Q And can you tell us whether that's common or uncommon
11 that law enforcement will seek consultation with you in
12 such a case?

13 A Oh, it's common. The facility where I work actually
14 had multidisciplinary meetings on cases that we're -- we're
15 all looking at that are -- that happen frequently.

16 Q Now, I want to ask you a little bit about Infant .
17 Can you tell us a little bit as a pediatrician about Down
18 syndrome? What is that?

19 A Down syndrome is a condition where there's an extra
20 chromosome, an extra copy of Chromosome No. 21. And
21 children with Down syndrome are typically born with a --
22 with a certain facial appearance, possibly some differences
23 in the creases in their palms. There's some cognitive
24 delays that are most commonly associated with Down syndrome
25 that can range in severity.

DIRECT EXAMINATION BY MS. MAYES - SUSAN LUBEROFF 12

1 There's some other physical manifestations that can go
2 along with Down syndrome. It's not uncommon for a child
3 with Down syndrome to have a -- a degree of a cardiac
4 defect. It's not uncommon for children with Down syndrome
5 to have thyroid issues. So there are some -- some other
6 features that can be associated with Down syndrome.

7 Q All right. And specifically as to Infant , did you
8 have a chance to review any -- any records relating to her
9 heart condition, which may be a feature of Down syndrome?

10 A I did.

11 Q And what, if anything, can you tell us about that?

12 A While she was in the nursery -- and she was in the
13 nursery for about 3 1/2 weeks, if I recall the dates
14 correctly -- she underwent an echocardiogram to screen for
15 cardiac problems that could be associated with Down's. And
16 her echocardiogram report revealed -- it's called a small
17 membranous VSD, which means ventricular septal defect. And
18 what that is, when the heart is developing, there can --
19 there can be a small opening between two of the chambers of
20 the heart. That was what was seen in -- in her
21 echocardiogram.

22 They also found that one of the blood vessels that
23 commonly closes within days to week after life was still
24 open. But this echo was done within days of her birth, so
25 it wasn't uncommon at all for that to still be open.

1 That vessel is called the ductus arteriosus. And
2 before we're born, we don't need our lungs because we're
3 not breathing air. So all of the blood that the heart
4 pumps out, most of it is shunted away from the lungs to the
5 rest of the body through this extra blood vessel. After
6 we're born and we start breathing air, then we do need for
7 blood to go into the lungs and the blood immediately starts
8 getting shunted into the lungs. And that vessel is no
9 longer needed for the rest of our lives.

10 So it'll close and -- and become nonexistent after a
11 while. But that can take days to a few weeks in a normal
12 child to completely close. That was still open in Infant
13 and was not causing her any problem in the nursery at all.

14 In the lower -- in the upper chamber of her heart,
15 there also was a question of whether she had a small
16 opening in that area. Now, those findings are not uncommon
17 in Down's children, but they're not uncommon, really, in --
18 in any child shortly after birth. They're more common in
19 Down's.

20 By the time that she had a very careful and intimate
21 examination of her heart at her autopsy, all of those had
22 completely resolved without any kind of surgery or
23 treatment. And so they -- they would not have been a
24 problem for her during her life.

25 Q And when you say they had resolved by the time of

DIRECT EXAMINATION BY MS. MAYES - SUSAN LUBEROFF 14

1 autopsy, can you tell us whether or not those conditions do
2 normally resolve in children?

3 A They often will.

4 Q And from all indications they had resolved in Infant ?

5 A They had.

6 Q Now, did you receive and review any records from
7 Brookland Pediatrics?

8 A I did.

9 Q Dr. Luberoff, what, if anything, was significant about
10 the method of feeding Infant which was utilized there by
11 the staff at Brookland Pediatrics when she was around three
12 months of age?

13 A When she came in for her scheduled visit at about
14 three months of age, there was a concern that -- that her
15 weight curve had fallen off; she had not gained as much
16 weight as she should have since the time before that she
17 had been there. The nurse practitioner who examined her
18 actually offered her a feeding, made observations about how
19 well she took that feeding, and did a really good and clear
20 documentation of exactly what she observed with regard to
21 that feeding. That's a real important step to do when we
22 first start having a concern about a child's weight, is to
23 evaluate how does the child feed? Is the child capable of
24 taking in the formula on her own power, and is she
25 interested in it, and -- and does she seem to have any

DIRECT EXAMINATION BY MS. MAYES - SUSAN LUBEROFF 15

1 mechanical problems taking that food in or keeping it down.

2 And -- and so the -- the procedure that was documented
3 in that visit was very illustrative to me. It really gave
4 me a good picture of a child who was capable and interested
5 in feeding from a bottle.

6 Q Okay. And when -- when we talk about that type of --
7 that type of feeding, where -- where it's actually
8 documented by staff that she's able to have a strong suck
9 and -- and take a bottle greedily, what, if anything, would
10 that suggest?

11 A That shows that she has the muscle strength to -- to
12 accomplish the steps of feeding. There's several steps
13 involved in being able to take a bottle. One is to be able
14 to make a good seal around the nipple to have a strong
15 enough suck to get the formula out of the nipple and to
16 have a coordinated suck followed by swallow so that the
17 food goes down instead of sitting in the mouth or coming
18 out the nose or something else like that.

19 And so those steps are of -- are observed in that
20 feeding trial.

21 Q All right. Now, from that last appointment at
22 Brookland Pediatrics when she approximately three months of
23 age until the time of her death in September of 2013 at the
24 age of 13 months, were any other pediatric well-checks,
25 medical exams, urgent-care visits, any other types of

DIRECT EXAMINATION BY MS. MAYES - SUSAN LUBEROFF

16

1 medical exam located?

2 A Yes. She had one follow-up visit to Brookland
3 Pediatrics three days later. And if I recall correctly, it
4 was a Friday and then a Monday. So it was the -- the next
5 opportunity for the purpose of reweighing her to see
6 whether she had been able to gain weight after the nurse
7 practitioner had educated the mother how to concentrate the
8 formula to put more calories in it.

9 According to the documentation of that visit, the
10 child came in to be weighed, but then her parents left with
11 her without being seen by the medical provider. That was
12 the last contact that's documented in -- in Brookland
13 Pediatrics' notes.

14 Q Now, moving forward, ultimately, following her death,
15 did you have an opportunity to review the autopsy findings
16 in this case?

17 A I did.

18 Q As well as the photo documentation of her physical
19 condition?

20 A Yes.

21 Q What, if any, opinion do you have in that regard, to a
22 reasonable degree of medical certainty?

23 A After my review of the autopsy and the records
24 available to me -- the photographs -- it was -- it's my
25 opinion that the child died of chronic starvation.

1 Q What is the process that the body undergoes in
2 starvation cases to get from the point of malnutrition into
3 extreme starvation and, ultimately, death?

4 A We all have stores of body fat that can be used in
5 emergency if -- if we don't have calories available to us.
6 One of the earlier things that we'll see in a child who is
7 being starved or not having enough calories provided is
8 that they'll start slowing down their weight gain. And
9 that is something that we follow on a graph that's in the
10 child's hospital chart. And we're at -- we all start off
11 at a little bit of a different weight from each other. And
12 that puts us to a certain place on that graph.

13 And then, we know, from studying, you know,
14 generations of children and weight patterns, that you
15 should follow a certain pattern of weight gain over your
16 infancy. So we'll follow that. And in children who are
17 malnourished or -- or starved, they'll start to fall off of
18 their weight growth curve.

19 Now, we keep several different growth curves in
20 pediatrics. We keep one to follow weight progress. We
21 keep another chart to follow length progress; and then,
22 height progress when you're -- when you're able to stand.
23 We keep one that follows head-circumference growth.

24 One of the hallmarks of malnutrition or not being
25 provided enough calories is that length velocity or -- or

DIRECT EXAMINATION BY MS. MAYES - SUSAN LUBEROFF 18

1 the ability to continue putting on length or height is
2 actually preserved a little bit better than weight velocity
3 is. And what that means at the bottom line is that when we
4 have a child who's starved and we see them slowing down
5 gaining weight, they may still gain height for a while.
6 The height is a little bit slower to stop gaining, if that
7 makes sense.

8 In Infant case, from the few visits that we had
9 where we were able to compare her weight and her height,
10 that is the pattern that was -- that was demonstrated on
11 her growth curves.

12 Now, as a child continues to be starved, it -- they
13 start to lose their body fat because the -- the body needs
14 calories to support all the functions that are going on in
15 the body. And if -- if -- if the child is not receiving
16 calories from outside, then -- am I giving the -- the
17 interpreter enough time?

18 THE INTERPRETER: (Nodded head up and down.)

19 THE WITNESS: Thank you.

20 A If -- if we're not receiving calories from outside,
21 then -- then -- then the child has to start relying on the
22 stores that she's laid in before she was born or earlier in
23 her life.

24 So as the fat is used for calories, we start to see a
25 decrease in the amount of fat. And how that might look on

1 a baby is that -- that they'll -- it -- the baby -- babies
2 generally are a little bit chubby; they have a good amount
3 of fat on their buttocks and other parts of the body.
4 We'll start to see them thin down. And -- and depending on
5 how bad the starvation becomes, we can see that can become
6 quite pronounced, the thinning down and loss of the fat in
7 the skin.

8 There's fat in other parts of the body besides the
9 skin also. Fat is in the abdomen. You have a sheet of fat
10 sort of along the front of your abdomen between the skin
11 and the organs. There's fat behind the kidneys that
12 somewhat cushions the kidneys.

13 There's fat in -- in other parts of the body that also
14 can be used as stores. And if a child actually makes it to
15 an autopsy, then sometimes we can actually see that even
16 that deep -- deep fat has been used for calories.

17 As a child is starved, over a period of time, when the
18 child is supposed to be developing with skills, then
19 they're going to become weaker with -- with malnutrition
20 and starvation. So the skills may slow down, and they may
21 become so weak that they actually lose skills that they
22 already had. For example, if a person is able to walk but
23 become horribly starved, then -- then you'll become weak
24 enough not to be able to walk anymore, that sort of thing.

25 Eventually, the body will actually reserve use of the

DIRECT EXAMINATION BY MS. MAYES - SUSAN LUBEROFF

20

1 calories and the fat stores for the organs that support
2 life. So when -- when starvation becomes very advanced,
3 then the child will really stop using energy for things
4 besides breathing and heart-beating. So they'll become
5 less active.

6 They may, early on their malnutrition and starvation,
7 may cry a lot because they're hungry. That'll become less
8 and less. And toward the end, if the -- if the starvation
9 is fatal, then they won't use energy to cry anymore either.
10 The energy will be preserved for heart and lungs.

11 So over time, in a -- in a case of starvation that's
12 fatal, we'll see a child start off at a certain appearance,
13 lose the body fat, start losing the ability to -- to -- to
14 gain developmental skills or maybe even lose developmental
15 skills, become very skinny and emaciated and weak, stop
16 crying, and die.

17 Q And, Dr. Luberoff, did you prepare a report of your
18 findings, which was submitted to Detective Gooding in this
19 case?

20 A I did.

21 Q What, if anything, was noted as to whether or not
22 Infant was emaciated?

23 A She was profoundly emaciated.

24 Q What do you mean by that?

25 A It -- it -- the degree of emaciation was -- was

1 striking and startling to see in the photographs.

2 Q I'm going to show you some photographs and ask you
3 whether or not you recognize them, related to autopsy.

4 A I do.

5 Q Okay. Dr. Luberoff, in addition to the -- what you've
6 described as the emaciation, are there other features of
7 starvation that become physically apparent as it
8 progresses?

9 A Well, with the loss of the subcutaneous, or the skin,
10 fat, the bones become more obvious. The hipbones may
11 protrude. The spine, or vertebra, will become pronounced.
12 The facial features can -- can be lost. If they -- if they
13 become starved enough, then you really can -- can even get
14 down to where you're almost seeing the skull through the
15 skin, a skeletal appearance, without that support of the --
16 of the skin.

17 There are particular places that I always look when
18 I'm seeing a living child that's a victim of starvation
19 who's in the hospital that are sort of go-to areas for me.
20 One is the buttocks because that is the most heavily padded
21 part of a baby. And so that -- that can be a real good
22 indication of -- of loss of that fat.

23 The armpits, or the axilla, is another one. Children
24 -- you know, normally, chubby children have a certain
25 appearance to their axillas. A starved child, the skin of

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1 the axilla will hang down because there's nothing
2 supporting it.

3 So we look at all the -- we really look at the overall
4 child. But -- but often, it's most noticeable in the areas
5 like that and particularly over the bones.

6 MS. MAYES: Okay. Your Honor, if the witness may step
7 down?

8 THE COURT: Yes.

9 (Whereupon, the witness exited the witness stand.)

10 Q I'm going to ask you, Dr. Luberoff, if you can tell us
11 some of the features that we're looking at here in these
12 photos. And we'll start with State's Exhibit 3.

13 A Okay. State's Exhibit 3 -- I'm going to talk about
14 these for a minute before I turn it around. This shows her
15 arm extended.

16 THE COURT: All right.

17 A And ---

18 THE COURT: Now ---

19 MS. MAYES: Okay.

20 DEPUTY CLERK OF COURT: She needs to speak up.

21 THE WITNESS: I can move.

22 MS. MAYES: Okay.

23 DEPUTY CLERK OF COURT: You can move? Okay.

24 THE COURT: Okay.

25 Q Go ahead.

1 A Thank you. State's Exhibit 3 shows her right arm
2 extended so that you get a good look at that axilla, or the
3 armpit. And it shows the skin wrinkled because of the lack
4 of supporting fat in that area.

5 You also can see a portion of her rib cage with the
6 ribs protruding in this picture. So the -- the -- the
7 loose skin and the ---

8 THE COURT REPORTER: Doctor ---

9 A --- armpit ---

10 THE COURT REPORTER: Doctor, I'm sorry. I'm going to
11 need you to speak up too.

12 MS. MAYES: Okay.

13 A The loose skin in the armpit and the ribs, they're
14 very evident.

15 Q This would be State's Exhibit 13.

16 A This is a picture of Infant face that shows so much
17 loss of her subcutaneous fat on her face that you can't
18 even see the features of Down syndrome anymore. It's not
19 -- her eyelids don't have enough fat in them to be able to
20 see the way that she looked when she was younger. Her hair
21 looks very coarse. There's no fat around her neck. And it
22 also looks as though her tongue and her mouth are very dry.

23 Q This would be State's Exhibit 9.

24 A This is an overall picture of Infant from the front
25 from head to toe. And this shows extensive loss of -- of

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1 body fat with really, really, really prominent ribs. You
2 can see folds of skin on her neck because of the lack of
3 fat there. The amount of -- of fat in her pubic area is --
4 is very reduced. And again, her -- her head is turned a
5 little bit so you can see even a better view of the lack of
6 fat on her face.

7 Q State's Exhibit 12?

8 A This is a picture of Infant head to toe from her
9 right side, which better demonstrates the -- the appearance
10 of her ribs. She basically -- her ribs look like the
11 skeleton that I had in anatomy in my -- in my medical
12 school with skin overlying it and no fat at all. Also, her
13 hip area, it's very evident, the lack of fat there.
14 There's a -- a clear angle between her hip and her thigh.

15 Q State's Exhibit 11?

16 A This is a picture of Infant rolled over on her side
17 to show her back. And it shows very, very, very prominent
18 vertebra, or backbones; and -- and also, her scapula, or
19 shoulder blades, very prominent. You can see all of her
20 ribs in this picture. You can see the lack of fat on her
21 buttocks.

22 And then, in this picture you can also see where she's
23 had skin breakdown, or pressure sores, on her buttocks from
24 lack of movement.

25 Q And State's Exhibit 2?

1 A This is a -- a closer-up picture of her buttocks area.
2 Again, demonstrated the -- the lack of -- or relative lack
3 of subcutaneous tissue. But this is a -- a -- a relative
4 close-up of those pressure sores.

5 Q Thank you, Doctor. You may return.

6 (Whereupon, the witness entered the witness stand.)

7 Q Dr. Luberoff, considering the loss of the underlying
8 tissue, the adipose tissue, what can you tell us about the
9 length of time, or duration, that that state of chronic
10 starvation would require to progress?

11 A Months.

12 Q And so those findings that you have just demonstrated,
13 would they occur over a matter of days, for example?

14 A No.

15 Q And then, in addition to the physical features that
16 you have set forth -- I want to first show you a picture
17 for identification. And this is State's Exhibit 30 -- 73.
18 And in that photo, for example, I'm just going to ask you
19 if -- if you've seen that photo of Infant before ---

20 A I have.

21 Q --- while she was alive.

22 A Well, I didn't see it while she was alive. But I saw
23 this picture of her that shows her while she was alive.

24 Q In -- in a situation where a child once had the
25 capability to support themselves, had the motor skills

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1 maybe to reach for an object, to be held up by a Boppy
2 seat, things of that nature, how, if at all, would those
3 abilities or motor skills decline over the course of
4 chronic starvation?

5 A The -- the strength and muscle coordination that are
6 required to support that head and -- and support the trunk
7 and use the arms in Infant , with her profoundly emaciated
8 state, would have drained away. She would have lost the
9 ability to do any of these things by the time that she
10 died.

11 In this particular photograph -- and I'm -- I -- I
12 can't tell exactly how old she is here. But I can see
13 several things about this that look healthy, if you wanted
14 me to ---

15 Q Yes. If you could please demonstrate.

16 A In this picture she's supported by some sort of a
17 cushion. It looks like it's probably a Boppy pillow or
18 something like that. And I can see that she's got a -- a
19 focused gaze at something that interests her. She's
20 supporting her own head. Her trunk is supported by the
21 Boppy pillow, so I can't tell how much trunk control she
22 has.

23 She's activating both hands at the same time. She has
24 chubby cheeks, a lot of subcutaneous tissue. You can see
25 that very well on the backs of her hands and on her

1 forearms also. The rest of her is clothed, so I can't say
2 anything about that.

3 I also, just in looking at her face, see the facial
4 resemblance of a Down syndrome presentation. Overall, the
5 -- the developmental skills portrayed in this picture and
6 the -- the amount of control that she has are typical of
7 around a 4-month-old child.

8 Q Okay. Now, can you tell us whether or not, in the
9 stages of chronic starvation that Infant had reached prior
10 to her death, do you have an opinion as to whether she
11 would've had the -- or would've been strong enough to scoot
12 or pull up?

13 A Well, I can't address whether she ever was able to
14 scoot or pull up before. But certainly, in the -- in the
15 last days or weeks before her death, she would not have
16 been able to do those things.

17 Q What about roll over or hold a bottle?

18 A She would've lost all of that ability by the time she
19 died.

20 Q Dr. Luberoff, considering the physical features of
21 chronic starvation that you have described, do you have an
22 opinion as to whether or not those characteristics would be
23 apparent to a reasonable caregiver?

24 A Yes, I do. And they would.

25 Q What about the decline in the motor skills that you

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1 described?

2 A To anyone who had -- had anything to do with Infant
3 at the time that she did have these motor skills, it would
4 be very obvious that she was losing these motor skills and
5 losing strength between this time and the time that she
6 died.

7 Q Now, you mentioned previously that you've had the
8 opportunity throughout your pediatric career to actually
9 treat victims of starvation, including chronic starvation.
10 Can a victim of extreme starvation be saved?

11 A Yes.

12 Q And you have seen that yourself?

13 A Yes. It's a -- it's an extremely serious condition.
14 They often have to be in the intensive care unit for the
15 beginning phases of introduction of food because it can be
16 a shock to the body. But -- but when they do get to us,
17 get to medical providers while they're still alive, we
18 often can -- and actually, in my experience the majority of
19 children that I've been involved with who presented with
20 starvation or severe malnutrition were able to be saved and
21 -- and discharged from the hospital.

22 Q Based upon your experience as a pediatrician and to a
23 reasonable degree of medical certainty, could Infant
24 life have been saved?

25 A Oh, yes. There would have been a long period of time

1 when intervention by medical providers could've saved her
2 life.

3 Q Okay. Does that include the final week of her life?

4 A Yes, it does.

5 Q Now, have you had the opportunity in this case to
6 review toxicology studies which were done by the State Law
7 Enforcement Division following her autopsy?

8 A Yes.

9 Q And have you also -- I -- I knew you've stated
10 previously about her heart condition resolving itself. But
11 have you had the opportunity to consider the heart
12 condition as well prior to your testimony?

13 A Yes.

14 Q Do you have an opinion to a reasonable degree of
15 medical certainty as to the cause of death of Infant
16 ?

17 A I do.

18 MS. ZMROCZEK: Your Honor ---

19 Q What ---

20 MS. ZMROCZEK: ---, this has been asked and answered.

21 THE COURT: Overruled. Go ahead.

22 Q What is that?

23 A Chronic starvation.

24 Q And I do want to just ask you briefly: Are you
25 familiar with what's known as "SIDS"?

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1 A I am.

2 Q All right. How, if at all, would a case such as
3 Infants be distinguished from SIDS, or sudden infant
4 death syndrome?

5 A Infants death would meet none of the criteria for a
6 SIDS death. SIDS, S-I-D-S, stands for sudden infant death
7 syndrome. In order to -- to make a diagnosis or a
8 conclusion of sudden infant death syndrome, several things
9 have to be in place. First, it has to be an infant, which
10 Infant no longer is. Infancy goes to 12 months.

11 If -- if she were still an infant, then in order to
12 conclude SIDS, there has to be a negative autopsy, which
13 means that the autopsy shows no abnormalities at all that
14 would -- that would contribute to death. There has to be a
15 negative scene, meaning that -- that when the scene is --
16 investigation is -- is done, nothing is found that -- that
17 could have had anything to do with the child's death and a
18 negative history, including the medical history.

19 I don't recall particular elements about the scene.
20 But certainly, the autopsy is not negative. And certainly,
21 the history is not negative with the extensive
22 documentation of -- of lack of medical care, lack of
23 accessing other kinds of care that were available.

24 Q And have you had the opportunity to actually diagnose
25 cases of chronic starvation in the past?

1 A Yes.

2 MS. MAYES: Nothing further, Your Honor.

3 THE COURT: Thank you, ma'am. Cross?

4 MS. ZMROCZEK: Thank you.

5 CROSS-EXAMINATION

6 BY MS. ZMROCZEK:

7 Q Good morning, Dr. Luberoff.

8 A Good morning.

9 Q You're a state-renowned expert in child abuse, yes?

10 A Thank you. I -- I'm -- I'm not in a position to
11 answer that.

12 Q You've testified in almost all homicide-by-child-abuse
13 cases, at least in the general area, recently, haven't you?

14 A I -- I testify a lot in -- in cases of this area.
15 Yes.

16 Q Always for the state, correct?

17 A Actually, I testify to assist the Court. The state is
18 usually who invites me, but not always.

19 Q Okay. And can you tell this jury how long exactly it
20 takes for someone to starve?

21 A No.

22 Q I'm sorry. I didn't ---

23 A No.

24 Q Oh.

25 A I can't tell you exactly how long it takes.

CROSS-EXAMINATION BY MS. ZMROCZEK - SUSAN LUBEROFF 32

1 Q Okay. I believe, in this case, you referred that it
2 -- that this would take months. Do -- can you give us a --
3 a -- a more -- a -- a -- a more closer range or -- or -- or
4 -- or more numerical range, like six months? four months?
5 two months?

6 A It -- it's possible that she could have achieved this
7 degree of starvation in as little as two months. But it
8 certainly could've taken longer than that.

9 Q Okay. You reviewed several records when you were
10 making your determination, correct?

11 A I did.

12 Q And you -- those included the EMS records?

13 A I did not see the EMS records.

14 Q Would -- so you did not know about the vomit that was
15 noted in the oral pharynx?

16 A No.

17 Q Okay. Have you had an opportunity to diagnose
18 children who have been overdosed with drugs?

19 A Yes.

20 Q Is vomit common in drug overdoses or ---

21 A It is.

22 Q --- is something that's seen?

23 A It is.

24 Q And you had an opportunity to review the emergency
25 room record when she was brought in that evening prior to

1 the autopsy?

2 A I did not review the emergency room record.

3 Q Okay. So -- so if that indicated that there was a
4 large amount of urine and some stool, that information --
5 in her diaper, that information would not have been
6 provided to you?

7 A I don't recall whether I had that information in
8 conversation with the detective. But I didn't review that
9 emergency room record.

10 Q But -- but you -- you do know that there was some
11 stool found in her diaper?

12 A I -- I don't recall whether I knew that or not.

13 Q Okay.

14 A Thank you for telling me, though.

15 Q Is it important to have kind of all of the records
16 when you make your determination?

17 A The more records that I have, the better.

18 Q It -- it helps kind of give you a full -- a full
19 explanation or range of what -- of really what happened?

20 A The more records -- the more records that are
21 available, the -- the more information I have.

22 Q And tell this jury what -- what a synergistic effect
23 is amongst drugs?

24 A Synergistic means that it's kind of like an additive
25 effect. If you take one drug that has synergy with another

CROSS-EXAMINATION BY MS. ZMROCZEK - SUSAN LUBEROFF 34

1 drug, then the effects of that first drug will be enhanced
2 by the other drug or vice versa.

3 Q And are the drugs that were found in the toxicology
4 report, which I can still not pronounce, are those
5 synergistic drugs?

6 A They are.

7 Q Okay. Are those drugs that have any business being
8 provided to, prescribed, or inside of a 13-month-old body?

9 A None of those drugs has any business being in the body
10 of a 13-month-old.

11 Q You did -- you did review the autopsy report?

12 A I did.

13 Q And you -- do you agree with -- with Dr. Welsh's
14 finding that the cause of death was lethal neglect?

15 A Yes.

16 Q And he did, you said, a thorough internal examination
17 of all the organs?

18 A He did.

19 Q And including the thymus that weighed 3 grams, and it
20 demonstrated no gross abnormalities?

21 A I don't have the ---

22 Q Would it ---

23 A --- do you ---

24 Q --- would it ---

25 A Are we ---

1 Q --- help if I ---

2 A --- going to go through it?

3 Q Yeah.

4 A Yeah. That would be good.

5 Q I'm shocked you don't have it memorized. I'm kidding,
6 of course.

7 A I didn't say I didn't have it memorized. I said I
8 didn't have it in front of me.

9 Thank you. I -- I wanted to see it because I didn't
10 recall that the thymus had no abnormalities. It had no
11 gross abnormalities to his eye until he sectioned it and
12 put it under the microscope, and then it did have
13 abnormalities. Thank you.

14 Q Okay. Certainly. The -- do you know what was the
15 most it was reported to police that Infant ever weighed?

16 A I don't -- I don't know whether there were any verbal
17 reports of other weights somewhere else. But the -- the
18 greatest documented weight that I had was the autopsy
19 weight, which was 9 pounds, I believe, 1 ounce or 9 pounds,
20 2 ounces. The greatest living weight that I saw documented
21 was on the -- that three-days-later visit to Brookland
22 Pediatrics, where she weighed, I believe, 8.25 pounds.

23 Q Okay.

24 A She had gained a half a pound over the weekend with
25 concentrating the formula.

CROSS-EXAMINATION BY MS. ZMROCZEK - SUSAN LUBEROFF

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1 Q Did you have discussions with -- you had numerous
2 discussions with Detective Gooding, correct?

3 A I did.

4 Q And so he didn't provide that information that -- that
5 she was -- he was told that she was -- weighed 13 pounds?

6 A I don't recall that.

7 Q Okay. You talked a little bit about Down syndrome.
8 You -- you would agree that typically, it's associated with
9 some physical growth delays?

10 A Yes.

11 Q And that some -- you talked about some of the
12 characteristics of -- of the facial features and other --
13 and other kind of recognizable characteristics. Would
14 those include stunted growth?

15 A Yes. They can and, in fact, at Brookland Pediatrics,
16 they had used a Down syndrome growth chart to -- to plot
17 her growth. So it wasn't being compared to children
18 without Down syndrome with normal chromosomes. It was
19 being compared to other children with Down syndrome.

20 Q And then, would you agree that the update for the
21 children with Down syndrome for pediatrics that came out in
22 2012 said that 80 percent have an increased skin on the --
23 on the back of their neck -- children with Down syndrome?

24 A Yes. That's -- that's common.

25 Q Very ---

1 A Are you talking about prenatal diagnosis or are you
2 talking about postnatal?

3 Q Postnatal. And were you supplied with Department of
4 Social Services records in this case?

5 A I was not.

6 Q So you didn't know that there were face-to-face visits
7 with Department of Social Services workers at least
8 documented through May and possibly June of 2013?

9 A No, I didn't know that.

10 Q Okay. Do you do training with -- with Department of
11 Social Services records -- or workers? Excuse me.

12 A I do, yes.

13 Q And you train them to look for -- for safety factors
14 relevant to cases, especially with abuse and neglect,
15 correct?

16 A I do.

17 Q And those people are -- are -- receive a lot of
18 training because they go into -- into people's homes and
19 kind of really get a -- get a look at what's going on?

20 A I don't -- I don't know the extent of what their
21 training is besides what I do. I think that they get a lot
22 of training and definitely know that they do go into homes
23 and have eyes on the situation. Yes.

24 Q Okay. You -- you -- would you expect that if they saw
25 signs of abuse or neglect, that -- that they were supposed

CROSS-EXAMINATION BY MS. ZMROCZEK - SUSAN LUBEROFF 38

1 to report it? In fact, they're -- they're mandated by law
2 to report that?

3 A Of course.

4 Q In -- in your training as an -- a -- a forensic
5 pediatrician in -- in areas of abuse and neglect, is -- is
6 it an accurate statement to say that abuse usually occurs
7 with intent to harm?

8 A I can't remember any training that I've ever had that
9 -- that says that. I can say that in many of the cases
10 that I'm involved in, in -- in -- in many cases, there is
11 intent to harm. But in many cases, there's not intent to
12 harm.

13 Q Okay. I know that you reviewed ---

14 (Whereupon, Ms. Zmroczek and Ms. Mayes conferred.)

15 Q You -- I know you reviewed -- you have a photo in
16 front of you, which you reviewed, of Infant when she was
17 alive. Did you have an opportunity to review any other
18 photos?

19 A I did see some other photos. Yes.

20 Q Do you recall how those were provided to you?

21 A Through the solicitor.

22 (Whereupon, Ms. Zmroczek and Ms. Mayes conferred.)

23 Q I'm showing you what's been marked for Defendant's ID
24 28 and 33 and ask if you recognize the child in those
25 pictures.

CROSS-EXAMINATION BY MS. ZMROCZEK - SUSAN LUBEROFF 39

1 A They look like Infant . And I am familiar -- I have
2 seen these pictures at some point in a -- in a series of
3 pictures that were explained to me as being her.

4 Q Okay.

5 A Yes.

6 MS. ZMROCZEK: Your Honor, at this point we would ask
7 to move Defendant's 28 and 33 into evidence.

8 THE COURT: Any objection?

9 MS. MAYES: No objection, Your Honor.

10 THE COURT: Without objection.

11 Q Doctor, if -- if you could step down, just briefly ---

12 THE COURT REPORTER: Ms. Zmroczek ---

13 Q --- and ---

14 THE COURT REPORTER: --- I'm sorry.

15 MS. ZMROCZEK: Oh, sorry.

16 THE COURT REPORTER: Thank you.

17 (Whereupon, Defendant's Exhibits 28 and 33 were
18 entered into evidence.)

19 (Whereupon, the witness exited the witness stand.)

20 Q And show the jury -- and -- and obviously, make sure
21 to speak up so everybody can hear you. What features do
22 you notice about Infants face in this picture?

23 A Well, a -- about a third of her face is obscured, so I
24 can't see the whole face. I do -- her -- her lips are
25 full. I see a little flattening of her nasal bridge. Her

CROSS-EXAMINATION BY MS. ZMROCZEK - SUSAN LUBEROFF 40

1 eyes are wide open.

2 Q Are her eye -- would you consider her eyes a -- a
3 little sunken in at that point?

4 A I can't tell from the picture.

5 Q Okay. And can you tell if she's large or small in
6 this picture?

7 A Well, she's smaller than whoever is holding her. And
8 I -- and I don't see any other reference, so I can't -- I
9 can't guess like how old she is or anything in that
10 picture.

11 Q Okay. I know, with the other picture, you were able
12 to -- to tell from some of the motor skills. Are you able
13 to tell from Defendant's 33 any motor skills or any --
14 maybe an estimate of age?

15 A Developmental skills?

16 Q Right.

17 A I can't definitely tell you about motor skills from
18 this because her head is being supported by the arm of
19 whoever is holding her. So I can't tell how much head
20 control she would have.

21 But I do see a good smile. So that would be -- that's
22 typically a 2-month skill that, once you gain it, you keep
23 it. So I -- I would -- you know, if I had to do a rough
24 estimate, I would say she's at least 2 months old in that
25 picture.

REDIRECT EXAMINATION BY MS. MAYES - SUSAN LUBEROFF 41

1 Q Okay. Thank you.

2 (Whereupon, the witness entered the witness stand.)

3 Q Would you agree that Infant was generally a smaller
4 baby?

5 A At birth she weighed 6 pounds, I believe, 1 ounce.
6 And that put her at about the 10th percentile for birth
7 weight. So that was well within the normal range.

8 Q And you said that you did have an opportunity to
9 review the toxicology results?

10 A I did.

11 Q And would you agree with the toxicologist that those
12 indicated those drugs were ingested within the last 12
13 hours of her life?

14 A That's outside of my area of expertise, the timing of
15 that.

16 Q Okay.

17 MS. ZMROCZEK: Beg the Court's indulgence. I have no
18 further questions. Thank you.

19 MS. MAYES: Just briefly.

20 REDIRECT EXAMINATION

21 BY MS. MAYES:

22 Q Dr. Luberoff, Ms. Zmroczek was asking you about the
23 possible presence of waste in a -- in a diaper. Does that
24 affect or change your opinion in any way?

25 A No.

REDIRECT EXAMINATION BY MS. MAYES - SUSAN LUBEROFF 42

1 Q And she also was asking you about a possible presence
2 of vomit. What happens to the mouth during the progression
3 of starvation, in the final stages?

4 A With the dehydration that's associated with the final
5 stages of starvation, all of the surfaces of the mouth
6 become dry, sticky -- I'm not sure exactly what you're
7 asking.

8 Q Well, what about the ability to swallow?

9 A Well, the ability to swallow is a -- is a strength-
10 based ability. So as the child weakens, that's going to
11 become more and more difficult to happen. When -- when the
12 mouth dries, then the ability to form a seal and -- and
13 suck from a bottle is going to be impaired to some degree
14 also.

15 Q All right. So if a child is given formula, would the
16 child necessarily be able to swallow the formula at that
17 point?

18 A If a child is given formula by mouth ---

19 Q Correct.

20 A --- the stage that Infant was at, at the time that
21 she ---

22 Q Yes.

23 A --- died?

24 Q Uh-huh.

25 A I would be surprised if she were able to take that

1 formula by mouth in that last day of her life.

2 Q Now, you noted that her last documented weight, in --
3 in terms of medical documentation, was the 8.25 pounds at
4 Brookland Pediatrics at the age of 3 months. And then you
5 noted the autopsy weight of 9 pounds, 2 ounces at the age
6 of 13 months. What, if anything, is significant about that
7 weight differential?

8 A Typically, children will double their birth weight by
9 about 6 months and triple it by a year old. Infant
10 weighed 6 pounds when she was born. So we would expect
11 her, at a year old, to weigh 18 to 20 pounds. Does that
12 answer your question?

13 Q Yes. 18.20 pounds ---

14 A 18 to 20 pounds.

15 Q Okay. That -- that would've been her -- the weight
16 she should or would've been expected to be at?

17 A That's what a typical -- typically growing child would
18 ordinarily weigh who started off at about 6 pounds.

19 Q All right. And then, the photo that you described
20 earlier, which is marked as 73 for ID ---

21 MS. MAYES: I'm going to offer it into evidence at
22 this time.

23 Q --- and ask you to show us a little bit more about the
24 motor skills you were describing.

25 MS. ZMROCZEK: Without objection, Your Honor.

RECROSS-EXAMINATION BY MS. ZMROCZEK - SUSAN LUBEROFF 44

1 THE COURT: All right. Without objection. It's
2 state's what, now?

3 MS. MAYES: 73.

4 THE COURT: 73.

5 (Whereupon, State's Exhibit 73 was entered into
6 evidence.)

7 Q This previously was not actually published to the jury
8 in -- in their view. But I'm going to show it to you now.
9 And as you have previously described, if she had been at
10 the point in her life where, at some stage, she was able to
11 support herself and her trunk and -- and -- and her head,
12 would these skills and abilities have been present during
13 the last week of her life?

14 A I would -- in the last week of the life of the child
15 whose autopsy photographs I saw, the -- she would not, in
16 my opinion, have been capable of doing this any longer.

17 MS. MAYES: Nothing further.

18 MS. ZMROCZEK: I just have a few follow-up questions.

19 RECROSS-EXAMINATION

20 BY MS. ZMROCZEK:

21 Q Doctor, is it common with children's weight to -- to
22 fluctuate and to go up and down?

23 A It is.

24 Q Is it common and possible for children who are being
25 drugged to experience a rapid weight loss?

RECROSS-EXAMINATION BY MS. ZMROCZEK - SUSAN LUBEROFF 45

1 A Yes.

2 MS. ZMROCZEK: We have no further questions. Thank
3 you.

4 THE COURT: All right. Thank you very much. You may
5 step down, ma'am.

6 THE WITNESS: Thank you.

7 THE COURT: Any objection to the doctor being excused?

8 MS. MAYES: None from the state, Your Honor.

9 MS. ZMROCZEK: None from ---

10 THE COURT: Thank you ---

11 MS. ZMROCZEK: --- the defense.

12 THE COURT: --- for being here today, ma'am.

13 THE WITNESS: Thank you.

14 THE COURT: You're free to go.

15 (Whereupon, the witness exited the witness stand.)

16 THE COURT: All right. Call your next witness.

17 MS. MAYES: At this time, Your Honor, the state does
18 rest.

19 THE COURT: All right. Thank you, ma'am. Ladies and
20 gentlemen, the state has rested their case. And at the
21 close of the state's case in -- in all actions, I'm
22 required to take up matters of law before we proceed. And
23 so I'm going to do that.

24 Now, typically, that -- that takes a -- a little bit
25 of time. But we've got something going on here at -- at

1 the courthouse today. And -- and so we're going to take a
2 little bit of a -- a different lunch break. I -- I'm --
3 I'm going to excuse you now for the lunch hour and ask that
4 you be back here at 1:30. Okay? So that gives you about 2
5 1/2 hours -- a little shy of that.

6 So if you would do that for me, be back at 1:30. And
7 -- and as always, throughout the course of these
8 proceedings and until we get to the end, you're not to have
9 any conversation with anybody about the case. Do not allow
10 anyone to talk with you. And we'll start back at 1:30.
11 Okay?

12 So if everyone will remain seated, folks, we'll see
13 you back here at 1:30.

14 (Whereupon, the jury exited the courtroom at 11:08
15 a.m.)

16 (Off the record briefly.)

17 THE COURT: All right. All right. At this time I'll
18 take up any motions at the close of the state's case.

19 MS. ZMROCZEK: Thank you. Your Honor, at -- at this
20 time, pursuant to Rule 19, we would ask for a directed
21 verdict. The -- the standard, especially in homicide-by-
22 child-abuse cases, Your Honor, is that there is substantial
23 circumstantial evidence that -- that the defendant acted
24 with extreme indifference towards Infants life.
25 And at this time, Your Honor, we would argue that the state

1 has not met that.

2 THE COURT: All right.

3 MS. ZMROCZEK: And ---

4 THE COURT: I'm going to ---

5 MS. ZMROCZEK: --- we would cite -- I -- I believe I
6 handed them up or e-mailed them to the Court earlier in the
7 week -- but *State v. Avery* and *State v. Smith*.

8 THE COURT: All right. I'm going to respectfully deny
9 that motion, Ms. Zmroczek. I think it's a factual issue,
10 which is -- I -- as we all know, is -- is the jury's
11 province, depending on how they viewed the evidence. But I
12 think there is evidence in the record that would support
13 that finding if -- if they viewed it in that fashion. So
14 I'm going to respectfully deny your motion for directed
15 verdict.

16 Anything further from the defense before we -- let me
17 go ahead and address Mr. Garcia with regards to his right
18 to remain silent and his right to testify.

19 MS. ZMROCZEK: Okay.

20 THE COURT: Okay?

21 MS. ZMROCZEK: Thank you. I -- and we may have some
22 issues with the -- the *Lyle* evidence that they intend to
23 present. But -- but I -- he is prepared to go forward with
24 the -- the colloquy.

25 THE COURT: Well, let -- well, first, let -- let --

1 let me first deal with the -- the issue regarding any prior
2 record. Is there any prior record that we need to be made
3 aware of that might be a -- open to impeachment?

4 MS. MAYES: Yes, sir, Your Honor. There is a
5 conviction for -- it's for giving false information. And
6 that is from July 17th, 2008. It goes to credibility.

7 THE COURT: Okay. Ms. Zmroczek, do you ---

8 MS. ZMROCZEK: Your Honor ---

9 THE COURT: --- you have any issue with that?

10 MS. ZMROCZEK: I do, Your Honor. And the reason is --
11 is that that's a 30-day charge from 2008. Your Honor, the
12 -- it -- it only is relevant if we put in good character
13 evidence regarding his truthfulness. At -- at -- if we did
14 it at that time, under 608, then -- then, I believe that
15 that -- that evidence would be allowed to come in. But
16 just to -- to ask him about a false-information-to-police
17 charge, to say that he ---

18 THE COURT: Why would you put somebody on the stand if
19 you weren't asking the jury to believe or believe in the
20 truthfulness of their testimony?

21 MS. ZMROCZEK: Well, I believe that what we're -- I'm
22 putting him up on the stand to tell the truth. And I think
23 that they are the judges of the credibility, Your Honor.
24 But -- but it -- if I specifically put a character witness
25 up there to say do you know Filiberto to -- to be truthful,

1 then I think, at that point, then that -- that conviction
2 would become relevant under -- under the rules of evidence.
3 But I think that the -- the -- the -- the statute
4 addressing prior convictions under 608 or 609 deals with
5 convictions that carry a sentence of a year or more within
6 the last ten years.

7 THE COURT: Or -- or deal with truthfulness, which
8 this would.

9 MS. ZMROCZEK: Okay.

10 THE COURT: So this falls under -- not a -- under the
11 one-year statute, but under the -- the statute for
12 truthfulness and veracity.

13 MS. ZMROCZEK: Okay. And that -- and so -- so to
14 clarify, that's the only one that they will be asking
15 about?

16 MS. MAYES: That is correct.

17 THE COURT: That -- that is my understanding.

18 MS. ZMROCZEK: Okay.

19 THE COURT: But you did mention some potential *Lyle*
20 issues?

21 MS. ZMROCZEK: And I don't know -- well, I asked for
22 any *Lyle* evidence, but I don't think any has been presented
23 to me.

24 THE COURT: Did ---

25 MS. ZMROCZEK: I just wanted to make sure that we

1 didn't have any other ---

2 THE COURT: Is -- is there going to be anything that
3 might be subject to -- to *State v. Lyle*?

4 MS. MAYES: I don't believe there would be at this
5 time, Your Honor. If he ---

6 THE COURT: Okay. If it ---

7 MS. MAYES: --- testifies ---

8 THE COURT: --- comes -- if ---

9 MS. MAYES: --- and it ---

10 THE COURT: --- it ---

11 MS. MAYES: --- comes up, I will ---

12 THE COURT: If it ---

13 MS. MAYES: --- approach.

14 THE COURT: --- comes up, let me know.

15 MS. MAYES: Uh-huh.

16 THE COURT: We'll -- we'll break ---

17 MS. ZMROCZEK: Okay.

18 THE COURT: --- and we'll deal ---

19 MS. MAYES: Okay.

20 THE COURT: --- with it at ---

21 MS. ZMROCZEK: I -- I don't ---

22 THE COURT: --- that point.

23 MS. ZMROCZEK: --- think it will. But I just -- I
24 hadn't -- I just hadn't been provided -- I wanted to ---

25 THE COURT: Sure.

1 MS. ZMROCZEK: --- make sure that we didn't get
2 blindsided is all.

3 THE COURT: Yeah. Absolutely. Okay. All right.
4 Now, does -- does -- does your client -- is -- does he go
5 by Mr. Campos or Mr. Garcia?

6 MS. ZMROCZEK: Garcia.

7 THE COURT: Mr. Garcia. All right.

8 Mr. Garcia, I am going to just ask you some questions.
9 If, at any time, you don't understand anything that I ask
10 and you need to talk with your attorney, you let me know
11 and I'll stop and I'll give you whatever time you need to
12 talk to your lawyer. Okay?

13 THE DEFENDANT: Yeah.

14 THE COURT: Okay. Any -- every person that is in this
15 Court that's charged with a criminal offense has the right
16 to either testify in their defense or they can remain
17 silent. They can exercise their constitutional right to
18 remain silent. Do you understand that?

19 THE DEFENDANT: (Nodded head up and down.)

20 (Whereupon, Ms. Zmroczek conferred with the
21 defendant.)

22 THE COURT: I need a verbal response. Yes or no?

23 THE DEFENDANT: Yes.

24 THE COURT: Okay. Have you talked with your lawyer
25 about that?

1 THE DEFENDANT: Sí.

2 THE COURT: Okay. And if you -- if you decide --
3 well, let me begin with this: If you decide that you wish
4 to exercise your right to remain silent, if you did that
5 and you did not testify, I would tell the members of the
6 jury that they could not in any way hold that against you.
7 I would explain to the jury that the burden of proof in
8 this case is on the state and that you don't have to prove
9 anything. And so I would tell the jury -- I would instruct
10 them that the fact that you chose to remain silent could
11 not even be talked about in the jury room at all. Do you
12 understand that?

13 THE DEFENDANT: Yeah.

14 THE COURT: Okay. Now, that's if you decided to not
15 testify. If you decide to testify, then you would have to
16 answer questions from your attorney. You understand that?

17 THE DEFENDANT: (Nodded head up and down.)

18 THE COURT: Okay. And I need a verbal response.

19 THE DEFENDANT: Yeah.

20 THE COURT: All right. But you would also have to
21 answer questions from the state's attorney. Do you
22 understand that?

23 THE DEFENDANT: Yes.

24 THE COURT: Okay. Now, it is my understanding that
25 back in 2008, you were charged with giving false

1 information to law enforcement. Do you understand that if
2 the state or your attorney, either one, if they choose to
3 ask you if you have been convicted of that charge, you
4 understand that you would have to respond to their
5 question? You understand that?

6 THE DEFENDANT: Yes. Yeah.

7 THE COURT: Okay. I would not allow them to go into
8 any details about it. I would simply allow them to ask if
9 you have been convicted. Do you understand that?

10 THE DEFENDANT: Yeah.

11 THE COURT: Okay. Now, having talked with your lawyer
12 and understanding what I've gone over with you, do you wish
13 to testify in your defense or do you wish to remain silent?

14 THE DEFENDANT: I will testify.

15 THE COURT: Okay. You wish to testify?

16 THE DEFENDANT: Yeah.

17 THE COURT: All right, sir. And I -- has -- let me
18 ask you this, Mr. Garcia.

19 THE DEFENDANT: Yeah.

20 THE COURT: Has anybody threatened you or forced you
21 to make that decision?

22 THE DEFENDANT: No.

23 THE COURT: Has that been a decision of your own free
24 will, sir?

25 THE DEFENDANT: Yeah.

1 THE COURT: Okay. All right. That sounds good.
2 Well, we'll certainly honor that. And we'll -- we'll give
3 you that opportunity ---

4 THE DEFENDANT: All right. Thank you.

5 THE COURT: --- when we start back.

6 MS. ZMROCZEK: And, Your Honor, I did speak with Mr.
7 Madsen -- well, he texted me this morning after he had an
8 opportunity to meet with Ms. Roach, the codefendant. She
9 is downstairs. And ---

10 THE COURT: Okay.

11 MS. ZMROCZEK: --- he indicated to me an hour -- or an
12 hour and a half ago that she does intend to -- to exercise
13 her Fifth Amendment right.

14 THE COURT: Okay. All right.

15 MS. ZMROCZEK: And so maybe we can deal with that
16 after ---

17 THE COURT: Yeah. We'll do that.

18 MS. ZMROCZEK: Okay.

19 THE COURT: All right. That sounds good. Then, is
20 there anything else that we need to take up before we break
21 for the lunch hour?

22 MS. MAYES: Nothing from the state, Your Honor.

23 MS. ZMROCZEK: Nothing from the defense. And we're

24 ---

25 THE COURT: All right.

1 MS. ZMROCZEK: We'll be ready to go. We have
2 everybody here.

3 THE COURT: If everyone's here and all then, when we
4 start back at 1:30, we'll just start with the defense's
5 case and move forward. All right? All right. We'll start
6 back at 1:30. Court will be in recess till 1:30.

7 (Whereupon, a recess was taken from 11:18 a.m. until
8 1:32 p.m.)

9 (Whereupon, Defendant's Exhibits 42 and 43 and State's
10 Exhibits 74 through 77 were marked for identification
11 while off the record.)

12 THE COURT: All right. Is there anything we need to
13 take up from the state before we proceed?

14 MS. MAYES: Yes, sir, Your Honor. I do ---

15 THE COURT: Yes, ma'am.

16 MS. MAYES: I -- I do just want to address -- there
17 was a question previously about -- about Lyle evidence. I
18 -- I would perceive that to be any questions concerning
19 drugging of C.G. . That's the older sibling. We're --
20 we don't intend to go there. But I did see, in some of the
21 premarked exhibits, that there were photos of the defendant
22 with that child, C.G. . So at this point, I mean, the
23 state would have a motion regarding relevance concerning
24 C.G. . I -- as far as photos of this victim, Infant ,
25 certainly are relevant.

1 THE COURT: Sure.

2 MS. MAYES: But with the C.G. issue, I don't see
3 the relevance. And that would potentially open the door,
4 if that's what they're offering: his relationship with
5 C.G. . So I ---

6 THE COURT: Ms. Zmroczek, I -- of course, I haven't
7 seen the -- the premarked exhibits. What -- what -- do you
8 know what she's talking about, photos involving the
9 defendant with the ---

10 MS. ZMROCZEK: With ---

11 THE COURT: --- other child?

12 MS. ZMROCZEK: --- with his other child? I mean,
13 there are several, Your Honor.

14 THE COURT: What's the relevance?

15 MS. ZMROCZEK: Well, the relevance is -- is that -- I
16 -- I think -- I mean, it sounds like the -- they're trying
17 to say that he was a neglectful father. I can actually
18 probably pare it down to two, which I think -- well, and
19 also, the -- the other relevance goes to, Your Honor, the

20 THE COURT: Well ---

21 MS. ZMROCZEK: --- that ---

22 THE COURT: --- here's the thing: It -- it -- the --
23 the -- the state's allegations of negligence are as to the
24 victim, not -- not to the other child.

25 MS. ZMROCZEK: But -- I agree with that. But there

1 are -- there has been testimony in the state's case about
2 the lack of pictures of -- of Infant , which I know there
3 are other pictures of Infant -- but also, the -- hang on.
4 I'll -- I'll think of it in one second, Judge.

5 Oh. The -- the time and date stamps of some of the
6 pictures -- actually, Your Honor, I can remove that Lyle
7 evidence by taking a majority of the pictures out. But I
8 think that there's one with C.G. in there that is
9 relevant. And it goes to what Ms. -- what the neighbor
10 testified about working on the vehicles.

11 There's been a lot of talk about the vehicles in this
12 case and how much money and time was spent on those. And
13 so there is one picture, Your Honor, that I think -- with
14 C.G. in it that could be -- that is relevant. And I can
15 take the others out, which I think would remove any Lyle
16 issues. And I'll ---

17 THE COURT: Let's ---

18 MS. ZMROCZEK: --- show it to you.

19 THE COURT: Yeah. So let's -- let's look at the one
20 that you intend to leave in -- or actually, let Ms. Mayes
21 look at it. And if that objection -- or that concern is
22 still there, we can deal with it.

23 MS. MAYES: Okay. Yeah. I would have no objection to
24 41.

25 THE COURT: All right. All right. So that should

1 take care of that issue. So the -- there -- and -- and
2 again, if -- if something comes up, we'll certainly deal
3 with it at that time. But as far as you know, Ms. Mayes,
4 that should take care of any potential Lyle issues that you
5 can see?

6 MS. MAYES: Yes, sir, Your Honor. I believe that the
7 defense does intend to call Olivia Woods concerning DSS
8 involvement with the family. That is limited to a neglect
9 matter concerning C.G. , not Infant . So that will be
10 brought out. But the details of it will not.

11 MS. ZMROCZEK: And -- and, Your Honor, the reason for
12 that is -- is -- is not to go into the details of that
13 investigation. It's simply that a -- a DSS worker was at
14 the -- sent to the house two times a month. And I have the
15 dates listed. I'm just going to ask her did she go to that
16 -- the -- the house on those dates and see both children.

17 MS. MAYES: And -- and that is correct. And -- and
18 she was there because of a neglect issue concerning
19 C.G. , not Infant .

20 MS. ZMROCZEK: And -- and I wouldn't go into why.

21 THE COURT: Okay.

22 MS. ZMROCZEK: But -- but just that a DSS worker was
23 there at the house and saw those children, if that's ---

24 MS. MAYES: All right. Well, I -- I'll bring out that
25 it was in reference to C.G. , not ---

1 THE COURT: Sure.

2 MS. MAYES: --- Infant .

3 MS. ZMROCZEK: Right, right, right.

4 THE COURT: Okay.

5 MS. MAYES: And then, I think the only other matter,
6 Your Honor, is there may be some type of attempted
7 scientific demonstration concerning the weight of water on
8 a scale. The state would object to that because it is, in
9 fact, nonscientific.

10 My understanding is they want to have a jug of water
11 that weighs 9 pounds versus a jug of water that weighs 13
12 pounds. And that would not be comparable or relevant
13 because without it being a living infant of the same age
14 and same physical condition of -- as Infant , one weighing
15 9 pounds and one weighing 13 pounds is just not comparable.
16 And it's certainly not a scientific demonstration in
17 nature.

18 THE COURT: And -- and what would the relevance be?

19 MS. ZMROCZEK: It -- it's demonstrative, Your Honor,
20 not -- not ---

21 THE COURT: For?

22 MS. ZMROCZEK: --- scientific. For the -- the point
23 that, I believe, the state's been trying to make is that
24 how could he not have know it. With their last witness
25 especially, they were questioning Dr. Luberoff and got

1 those responses regarding is there any way that someone
2 could be this thin in the house and not know -- and not
3 know something was wrong. And -- and the demonstrative
4 aspect of this shows, Your Honor, that at the most, we know
5 that she weighed 13 -- 13 pounds and at the -- at her
6 death, she weighed 9.2. And to -- and -- and it's -- it's
7 difficult for -- I anticipate he's going to say that it's
8 difficult for him to tell the difference between the two.
9 And that's ---

10 THE COURT: Well, how -- how -- I mean, how -- without
11 having the jurors participate in that, how -- how does that
12 ---

13 MS. ZMROCZEK: Well, because I would ---

14 THE COURT: --- demonstrate ---

15 MS. ZMROCZEK: --- move this into evidence.

16 THE COURT: Because what?

17 MS. ZMROCZEK: I would move those into evidence.

18 MS. MAYES: Yes. We -- we would object, Your Honor,
19 that it's not comparable evidence. It's certainly not a
20 fair and accurate representation of a child.

21 THE COURT: Okay. Well, I mean, if you do it at the
22 time and if they object, I'll rule on it. But I can tell
23 you right now, I don't -- I can't imagine letting that in.

24 MS. ZMROCZEK: Okay.

25 THE COURT: I -- I -- I -- I don't -- I don't think

1 it's -- it -- it -- it -- it -- it -- for sake of judicial
2 clarity, I weigh 270 pounds.

3 MS. ZMROCZEK: Right.

4 THE COURT: If you tried to pick me up, it would
5 completely different than if you tried to pick up a sack of
6 potatoes that weighed 270 pounds. There's a big
7 difference. And so it -- it's not comparable, and it
8 wouldn't be -- it wouldn't be appropriate.

9 And -- and excuse the reference. But, you know,
10 you've heard of someone being dead weight versus ---

11 MS. ZMROCZEK: Right, right, right.

12 THE COURT: --- someone who's alive.

13 MS. ZMROCZEK: Right, right ---

14 THE COURT: It ---

15 MS. ZMROCZEK: --- right.

16 THE COURT: --- it's completely different. And -- and
17 so again ---

18 MS. ZMROCZEK: Okay. And -- and I -- I understand. I
19 -- and I may not even do that, Your Honor. I just want to
20 check the rule to ---

21 THE COURT: Okay.

22 MS. ZMROCZEK: --- see what ---

23 THE COURT: Well ---

24 MS. ZMROCZEK: --- I need ---

25 THE COURT: --- again ---

1 MS. ZMROCZEK: --- if I need ---

2 THE COURT: --- we'll deal with ---

3 MS. ZMROCZEK: Yeah, yeah.

4 THE COURT: If it comes up, we'll deal with it.
5 That's not a problem.

6 MS. ZMROCZEK: Okay. And that -- he's going to be the
7 last witness, so it won't ---

8 THE COURT: Okay.

9 MS. ZMROCZEK: --- even ---

10 THE COURT: All right.

11 MS. ZMROCZEK: And then ---

12 THE COURT: Now, we have a stipulation -- is that
13 correct? -- on a 911 tape?

14 MS. MAYES: Yes, sir, Your Honor. And there's also a
15 stipulation concerning a -- it's a data entry from a record
16 that concerns Tracy Roach. And it will just be the
17 following statement was made by Tracy Roach during the
18 course of the investigation.

19 THE COURT: And you have someone to read that, Ms.
20 Zmroczek?

21 MS. ZMROCZEK: I do, Your Honor.

22 THE COURT: All right.

23 MS. ZMROCZEK: And then, I think there's an issue --
24 one of things that -- that our -- the defense case is based
25 on, Your Honor, is that Ms. Roach controlled the household.

1 She controlled the money; she controlled -- you know, he
2 worked and he provided and he relied on her to do
3 everything else, right or wrong.

4 And, Your Honor, when we went through evidence, there
5 were three calendars with appointments and birthdays --
6 like, Infants appointments, everything written on them,
7 as well as notebooks that outlined the bills. And -- and,
8 for example, her Internet searches, like -- I -- I mean, I
9 think one of them literally says "how to make a baby stop
10 crying searched on the Internet." I don't know why she
11 writes everything down, but she does, Your Honor.

12 And -- and that, we would ask to have those moved in,
13 which is one -- part of the reason that we brought her over
14 here. We thought she was going to testify as to that she
15 was the head of the household; she controlled the money;
16 she controlled all of that aspect of -- of the -- of the
17 family unit.

18 And since she's not here -- or since she, I assume, is
19 going to take the fifth -- is what I've been told -- that
20 that's why we would move those in: because I can't ask her
21 about them.

22 MS. MAYES: The state would object to the content of
23 those on grounds of relevancy. However, the evidence
24 custodian can certainly say that there were calendars
25 retrieved from the home and there were journals retrieved

1 from the home. And I believe they're going to have someone
2 testify that there was an Internet search and the date and
3 time of that Internet search, which we don't dispute that
4 there was an Internet search.

5 As for the dates and times of the appointments, those
6 are documented throughout the investigation and other means
7 too. So that's not the only way to potentially get those
8 in. I mean, it's well documented that there were numerous,
9 numerous missed appointments.

10 THE COURT: So what would the purpose be in putting
11 those in, Ms. Zmroczek?

12 MS. ZMROCZEK: Just that she led my client to believe
13 that she was making these appointments and taking the --
14 and -- and taking the steps to take care of Infant .

15 THE COURT: But how -- how do those show that?

16 MS. ZMROCZEK: Well ---

17 THE COURT: If ---

18 MS. ZMROCZEK: --- what they ---

19 THE COURT: --- if she ---

20 MS. ZMROCZEK: Well ---

21 THE COURT: --- documents -- my ---

22 MS. ZMROCZEK: It ---

23 THE COURT: --- my wife ---

24 MS. ZMROCZEK: --- it doesn't say ---

25 THE COURT: --- is meticulous at keeping a calendar.

1 I don't know what's on it. They're reminders for her. I
2 don't know what's on her calendar.

3 MS. ZMROCZEK: Okay. It -- but it -- from what I
4 understood them saying, it -- as long as they allow me to
5 call the evidence custodian and just ask her about them,
6 then -- then that's -- I'll do that instead.

7 MS. MAYES: Right. It's the -- it's the content that
8 would be hearsay. But the ---

9 THE COURT: True.

10 MS. MAYES: --- evidence custodian is aware that there
11 were appointment -- there were calendars containing
12 appointment dates that were retrieved from the living room.
13 And there were journals retrieved from the living room -- I
14 say "journals," but spiral notebooks ---

15 MS. ZMROCZEK: Spiral notebooks.

16 THE COURT: Correct.

17 MS. MAYES: --- with -- with writing.

18 THE COURT: All right.

19 MS. ZMROCZEK: And can ---

20 THE COURT: Okay.

21 MS. ZMROCZEK: --- I ask writings with regards to
22 bill-paying? Is that ---

23 (Whereupon, Ms. Mayes and Mr. McNair conferred.)

24 MS. MAYES: I mean, it -- it does go to content. But
25 I -- I wouldn't object to calling them personal --

1 containing personal information or documents ---

2 MS. ZMROCZEK: Okay.

3 MS. MAYES: --- how -- however we want to phrase it.

4 THE COURT: Okay. All right. Anything else before we
5 bring the jury in?

6 MS. ZMROCZEK: Not ---

7 MS. MAYES: Nothing from the state.

8 THE COURT: All right. (To the bailiff) Let's bring
9 the jury in, please.

10 (Off the record briefly.)

11 (Whereupon, the jury entered the courtroom at 1:44
12 p.m.).

13 THE COURT: All right, folks. I hope everyone had
14 good lunch break and enjoyed your time away from the
15 courthouse. And if you recall, when we broke for lunch
16 this morning, the state had rested their case. I -- I was
17 required by law to take up certain matters of law at the
18 close of the state's case. We've done that.

19 We've taken up those matters, and now we're ready to
20 proceed. So we will pick up now with the defense's case.

21 Ms. Zmroczek, you may call your first witness.

22 MS. ZMROCZEK: Thank you, Your Honor. The defense
23 calls Billy Patterson.

24 THE COURT: All right. Get Billy Patterson, please.

25 (Whereupon, the witness came forward.)

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1 THE COURT: All right. Mr. Patterson, if you'd please
2 come forward to be sworn.

3 THE WITNESS: (Complied.)

4 (Off the record briefly.)

5 BILLY PATTERSON, having been first duly sworn,
6 testified as follows:

7 DIRECT EXAMINATION

8 BY MS. ZMROCZEK:

9 Q Good afternoon, Mr. Patterson.

10 A Hey, how you doing?

11 Q Good. Can you tell the jury where you work?

12 A EMR, Incorporated.

13 Q How long have you worked at EMR?

14 A Twenty-one years.

15 Q What -- what is your role there?

16 A I am the training production supervisor.

17 Q Do you know this gentleman right here?

18 A Yes, I do.

19 Q And -- and I'm pointing to the defendant. How do you
20 know him?

21 A He's -- he's a employee -- or was an employee with us.
22 Also, we're related somewhat.

23 Q Tell -- tell this jury how you're related.

24 A His wife, Tracy, is the aunt to my wife through
25 marriage from her grandmother.

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1 Q Okay.

2 A You -- it -- it's adopted -- she was adopted -- my
3 wife's mother was adopted, so we're related somehow or
4 another ---

5 Q Okay.

6 A --- if you follow that.

7 Q Okay. Yeah. Tell -- tell the jury what kind of
8 worker the -- Mr. Garcia was.

9 A Very good worker. He -- on time; did everything we
10 asked him to do; never had no problem with him.

11 Q Did you have a second shift for a while at EMR?

12 A Yes, ma'am.

13 Q And what were the hours of the second shift?

14 A It went from -- I think it was 5:30 to 4 in the
15 morning or 5:30 to 5. It's been a while since we had it.
16 But I think it -- somewhere around the 5:30 time to -- to 5
17 or 5:30 in the morning.

18 Q And do you recall if Filiberto worked that shift?

19 A Yes, he did.

20 Q And when did he change from working that shift?

21 A I don't have the exact date. It was -- let's see.

22 Q In 2012 was he working second or first shift?

23 A That -- he would be on -- I hate to tell you -- I
24 really ---

25 Q That -- oh, that's ---

1 A Can't give you exact date.

2 Q Before or -- were you aware of the birth of his
3 daughter, Infant ?

4 A Yes.

5 Q Okay. Before and -- and during her birth, was he on
6 first shift or second shift?

7 A I'm sorry. I can't ---

8 Q No problem. No -- no worries. He -- but then, he
9 eventually worked first shift.

10 A Yes, ma'am.

11 Q Do you -- what are the hours for first shift?

12 A The scheduling hours are 6 to 2:30.

13 Q Six a.m.?

14 A Six a.m. to 2:30.

15 Q And then, I think that there's been testimony that, at
16 times, y'all worked overtime a little bit?

17 A Yes, ma'am.

18 Q All right.

19 A Quite a bit.

20 Q How -- were you able to converse with Filiberto?

21 A Yes.

22 Q Did he speak good English?

23 A Broken English.

24 Q Okay. Were -- are there workers at EMR that also
25 don't speak English as their first language?

DIRECT EXAMINATION BY MS. ZMROCZEK - BILLY PATTERSON 70

1 A Yes, ma'am.

2 Q And was -- did he communicate with them?

3 A Yes, ma'am.

4 Q Did he talk about his family to you at all?

5 A Yes, ma'am.

6 Q Tell the jury what he told you about his family.

7 A Usually, he came in, in the afternoons. I would ask
8 him how they were doing from being that we're somewhat
9 related, of course, and I did have to get along at EMR. So
10 most time he would say they were pretty good. They -- the
11 baby was sick or that, you know, she had doctor's
12 appointment. The -- the boy was always good. C.G. 's
13 always been a good kid. So -- but I -- that was basically
14 it. We didn't get into details, I mean.

15 Q Do you know what kind of role Tracy had -- Tracy, the
16 -- his wife, in the relationship?

17 A She was the caretaker.

18 Q Okay. Did she work?

19 A Off and on. I don't remember her working -- maybe one
20 or two months when she was -- after she moved here.

21 Q Okay. And do you know where they moved from?

22 A I want to say Chester.

23 Q Okay.

24 A Yeah.

25 Q And after -- did you ever see Tracy and Filiberto

1 interact?

2 A Yes.

3 Q How often? Often enough to make an opinion on who was
4 in control of the ---

5 A Yes.

6 Q --- relationship?

7 A Yes.

8 Q Okay. Who was in control of the relationship?

9 MR. MCNAIR: Objection: speculation.

10 THE COURT: Sustained.

11 Q To your knowledge and what you observed, simply from
12 your observation, is Filiberto an assertive person?

13 A No.

14 Q Were you aware of Tracy having any mental or medical
15 conditions?

16 A Aware as -- no. I ---

17 Q Okay. Was she able to interact normally with people?

18 A Yes.

19 Q Okay. And what, if anything, do you know about what
20 happened in September?

21 A September?

22 Q Of -- of the -- when Infant passed.

23 A Oh. Sorry.

24 Q That's okay. Sorry.

25 A It's been a while.

DIRECT EXAMINATION BY MS. ZMROCZEK - BILLY PATTERSON 72

1 Q Yeah. Let me ask it -- let me -- let me rephrase it.

2 That's a very ---

3 A Yeah.

4 Q --- poor question. Let me rephrase it. Did you spend
5 any time around Infant ?

6 A Limited.

7 Q Okay. What -- how would you describe her size and
8 weight?

9 A She was small, underweight for her size -- or for her
10 age.

11 Q Did -- were -- did you ever -- when -- do you recall
12 the last time you saw her?

13 A Can't give you specific months or whatever. But it
14 was -- I would say probably three months before he got ---

15 Q Before he got arrested?

16 A --- arrested ---

17 Q You can say ---

18 A --- incarcerated.

19 Q It's okay.

20 A Hate to put it that way.

21 Q That's all right. And at that time did you have any
22 concerns about her needing to go to the hospital due to her
23 weight or appearance?

24 A No. Again, she was small, but she -- as far as we
25 know, she was being taken care of. There was medical

1 doctors -- you know, visits and stuff, so . . .

2 Q And since then you haven't had any interaction with --
3 with Filiberto or ---

4 A No.

5 Q --- Tracy, have you? Okay.

6 Thank you. Please answer any questions that the state
7 may have.

8 CROSS-EXAMINATION

9 BY MR. MCNAIR:

10 Q Hey, Mr. Patterson.

11 A Hey, how you doing?

12 Q Who told you about Infants doctor's appointments?

13 A The wife.

14 Q Okay. She said she's taking Infant to the doctor?

15 A We would talk about in -- just, you know, in general,
16 that she had a doctor appointment be coming up or, you
17 know, she'd been to the doctor.

18 Q Was Mr. Garcia there when she was saying those types
19 of things?

20 A No. This is at our house. It's just private
21 conversation, me and her.

22 Q All right. Now, you mentioned sometimes y'all worked
23 later than your -- your shift hours. But y'all do punch in
24 and punch out at EMR, correct?

25 A Yes, sir.

CROSS-EXAMINATION BY MR. MCNAIR - BILLY PATTERSON 74

1 Q All right. So have you seen this report, this EMR
2 report, before, reflecting employees' hours?

3 A No, sir. I do not have privy to that report.

4 Q Okay. But this would accurately reflect the hours
5 that Mr. Garcia would've worked, correct?

6 A I would assume so.

7 Q Okay. Now, you mentioned you saw Infant
8 approximately three months before, I guess, Mr. Garcia got
9 arrested?

10 A Yes, sir.

11 Q Did you hold her?

12 A No, sir.

13 Q I'm going to try not to show you a bad photo. I'm
14 going to show you State's Exhibit 13. Is that the way her
15 face appeared when you saw her three months ---

16 A No ---

17 Q --- prior to her death?

18 A No, sir.

19 Q Okay. And if you had seen a face that looked like
20 that, if you had seen her like that, what would you have
21 done?

22 A Me and my wife would've talked definitely about
23 getting something done.

24 Q Is it apparent to you that something's wrong with that
25 child?

REDIRECT EXAMINATION BY MS. ZMROCZEK - BILLY PATTERSON 75

1 A Yes, sir.

2 Q Okay. Thank you.

3 THE COURT: Redirect?

4 MS. ZMROCZEK: Just one follow-up question, Your
5 Honor.

6 REDIRECT EXAMINATION

7 BY MS. ZMROCZEK:

8 Q As you -- when you saw her in -- approximately three
9 months before her death, what -- did you -- did you see her
10 without clothes on or was she ---

11 A No, ma'am. She had clothes on.

12 Q Okay. So you weren't able to see her ribs?

13 A No, ma'am.

14 Q Okay. You -- but you were able to see her face?

15 A Yes, ma'am.

16 Q And you -- you stated that she appeared small?

17 A Yes, ma'am. She was premature, so, I mean ---

18 Q Okay.

19 A --- it was ---

20 Q Thank you.

21 A --- obvious.

22 THE COURT: All right. Thank you very much, sir. You
23 may step down.

24 THE WITNESS: Thank you.

25 (Whereupon, the witness exited the witness stand.)

DIRECT EXAMINATION BY MS. ZMROCZEK - ASHLI MITCHELL 76

1 THE COURT: Any objections to this witness being
2 excused?

3 MS. ZMROCZEK: None, Your Honor.

4 THE COURT: Thank you, sir. You're free to go. (To
5 Ms. Zmroczek) You may call your next witness.

6 MS. ZMROCZEK: Your Honor, we call Olivia -- and I'm
7 sorry. I'm making sure I get her -- actually, we call
8 Ashli Mitchell.

9 THE COURT: All right. Is she out -- is she out ---

10 MS. ZMROCZEK: Yes.

11 THE COURT: --- front?

12 (Off the record briefly.)

13 (Whereupon, the witness came forward.)

14 ASHLI MITCHELL, having been first duly sworn,
15 testified as follows:

16 DIRECT EXAMINATION

17 BY MS. ZMROCZEK:

18 Q Ms. Mitchell, tell the jury where you work.

19 A I work with the Department of Social Services.

20 Q And what are your duties at the Department of Social
21 Services?

22 A I am a human resource specialist II, a treatment
23 worker in family preservation.

24 Q Okay. And have you been involved in the case with Mr.
25 Garcia?

DIRECT EXAMINATION BY MS. ZMROCZEK - ASHLI MITCHELL 77

1 A I have. Yes, ma'am.

2 Q And as part of your duties, do you have to meet with
3 him and interview him and -- and explain the process of --
4 of -- of DSS is involved?

5 A I do. Yes, ma'am.

6 Q And have you been able to do that every time without a
7 translator?

8 A I have met with him, I think, twice without a
9 translator. But every other time has been with a
10 translator.

11 Q Okay. Does he -- does he understand English?

12 A Yes. He did when I met with him.

13 Q Okay. And then, is it -- did he have a full
14 understanding of how the system worked, or is it something
15 -- it -- was he familiar with all your services or what you
16 were providing, or -- or is this something that he was not
17 -- he did not appear to be familiar with?

18 A I don't -- I don't exactly go into each case and tell
19 them about services. It kind of goes on a case-by-case
20 basis. I did explain to him that in this case, we wouldn't
21 be offering services. And he appeared to understand that.

22 Q Okay. And have you had any contact with any members
23 of his family outside of this country?

24 A Yes, ma'am, I have.

25 Q Okay. And have they been recently involved in the

CROSS-EXAMINATION BY MS. MAYES - ASHLI MITCHELL 78

1 case -- or trying to become recently involved in the case?

2 A Yes, ma'am.

3 Q Okay. Thank you. Please answer any questions that
4 the state may have.

5 CROSS-EXAMINATION

6 BY MS. MAYES:

7 Q And just to clarify, you became involved because after
8 C.G. was removed from the care of Mr. Garcia and -- and
9 Ms. Roach, DSS became his legal guardian, correct?

10 A That's correct.

11 MS. MAYES: Nothing further.

12 THE COURT: All right. Thank you very much, ma'am.
13 You can step down.

14 (Whereupon, the witness exited the witness stand.)

15 THE COURT: What ---

16 MS. ZMROCZEK: Your Honor, may we take a -- a quick
17 break?

18 THE COURT: Yeah.

19 MS. ZMROCZEK: Thank you.

20 THE COURT: Ladies and gentlemen, let me get you to
21 step back in the jury room. Please have no conversation
22 about the case. I'll get you back out here shortly.

23 (Whereupon, the jury exited the courtroom at 1:59
24 p.m.)

25 MS. ZMROCZEK: Sorry, Judge.

DIRECT EXAMINATION BY MS. ZMROCZEK - TRACY ROACH

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1 THE COURT: All right. We'll be at ease.

2 (Off the record from 1:59 p.m. until 2:07 p.m.)

3 THE COURT: All right.

4 MS. ZMROCZEK: So, Your Honor, at this time we call
5 Tracy Roach.

6 THE COURT: All right. Ms. Roach, if you'd just
7 please come around, ma'am, to be sworn.

8 (Whereupon, the witness came forward.)

9 (Off the record briefly.)

10 TRACY ROACH, having been first duly sworn,
11 testified as follows:

12 DIRECT EXAMINATION

13 BY MS. ZMROCZEK:

14 Q Ms. Roach, were you subpoenaed to -- to court today?

15 A Yes, I was.

16 Q And do you intend on offering any testimony? When I
17 ask you questions about this case, how are you going to
18 answer them?

19 A I'm going to plead the Fifth Amendment.

20 Q To each and every question that I ask you?

21 A Yes, ma'am.

22 THE COURT: Okay. All right.

23 MS. ZMROCZEK: Your Honor, I would just ask that the
24 Court declare this witness unavailable at this time.

25 THE COURT: Now, and just so the record's clear -- and

DIRECT EXAMINATION BY MS. ZMROCZEK - TRACY ROACH 80

1 -- and I'm going to -- y'all correct me if I misquote
2 anything. Ms. Roach earlier had entered a plea and was
3 sentenced by the Court, and she has since filed a motion to
4 have that sentence reconsidered, as well as has filed an
5 appeal. Is that correct, Ms. Roach?

6 THE WITNESS: Yes, sir.

7 THE COURT: Okay. And so based upon -- based upon
8 that situation and that exposure, she is opting to claim
9 her rights under the Fifth Amendment and remain silent.
10 And we certainly would honor that. So we will -- Ms.
11 Roach, I'm going to let -- allow you to step down and just
12 excuse you from these proceedings, then.

13 THE WITNESS: All right. Thank you.

14 THE COURT: Okay?

15 (Whereupon, the witness exited the witness stand.)

16 THE COURT: All right. Are we ready now to proceed,
17 Ms. Zmroczek?

18 MS. ZMROCZEK: Ready, Your Honor.

19 (Whereupon, Ms. Mayes and Ms. Zmroczek conferred.)

20 MS. MAYES: One moment, Your Honor.

21 THE COURT: All right.

22 (Off the record briefly.)

23 MS. ZMROCZEK: Okay. We're ready, Your Honor.

24 THE COURT: All right. (To the bailiff) Let's bring
25 the jury in, please.

DIRECT EXAMINATION BY MS. ZMROCZEK - OLIVIA WOODS

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1 (Off the record briefly.)

2 (Whereupon, the jury entered the courtroom at 2:12
3 p.m.)

4 THE COURT: All right, ladies and gentlemen. Thank
5 you for that courtesy of allowing us to take that break.
6 We will go ahead and proceed with your next witness, Ms.
7 Zmroczek.

8 MS. ZMROCZEK: Thank you, Your Honor. We call Olivia
9 Woods.

10 THE COURT: All right.

11 (Off the record briefly.)

12 (Whereupon, the witness came forward.)

13 OLIVIA WOODS, having been first duly sworn,
14 testified as follows:

15 (Off the record briefly.)

16 DIRECT EXAMINATION

17 BY MS. ZMROCZEK:

18 Q Ms. Woods, will you tell the jury where you work?

19 A Lexington County DSS.

20 Q And what are your job duties?

21 A I am a child abuse and neglect investigator.

22 Q Okay. And -- and as a child abuse and neglect
23 investigator, do you have training -- or do you go through
24 training for analyzing or evaluating environments for
25 safety and risk assessments?

DIRECT EXAMINATION BY MS. ZMROCZEK - OLIVIA WOODS 82

1 A Yes, ma'am.

2 Q And do y'all do that in -- in every situation in which
3 you're involved?

4 A Yes, ma'am.

5 Q Are you aware that a member of -- that someone that
6 works in your office with you in your area went out to the
7 house at Edmund Highway?

8 A There was nobody from our office before my
9 investigation that went out to the home.

10 Q Okay. Before your investigation?

11 A Correct.

12 Q And -- but then, once that investigation ensued, there
13 are several dates that someone went out to the home,
14 correct?

15 A That -- the mentor program that we had.

16 Q Okay.

17 A A worker went out to the home.

18 Q All right. And if I read the dates to you -- January
19 25th, 2013?

20 A May I look back at the notes -- or ---

21 Q Absolutely.

22 A You said January 29th?

23 Q Yeah. Sorry. Bad handwriting.

24 A There was a member of the -- from the mentor program
25 that did go out to the home.

1 Q Okay. And that -- and that was 2013?

2 A Yes, ma'am.

3 Q And then, what was the next -- what was the date of
4 the next visit?

5 A Then the next visit that she actually made contact ---

6 Q Yes.

7 A --- with the family? It would have been a scheduled
8 home visit on January 30th, 2013.

9 Q Okay. And then, when was the next contact? And when
10 you say "contact with a home visit," she at that time took
11 notes and was able to see that -- she was able to visualize
12 the -- all of the children in the home at that time?

13 A No. I can't speak to what she actually did.

14 Q Right.

15 A I can ---

16 Q Right.

17 A --- only just read the records that we have.

18 Q Okay. Does the report reflect that -- that she would
19 do that?

20 A It does seem that she was in the home and she did
21 observe C.G. and Infant in the home on January.

22 Q Okay. And then, the next one -- what -- what is the
23 next date you have?

24 A February 7th.

25 Q Observation at that time as well?

DIRECT EXAMINATION BY MS. ZMROCZEK - OLIVIA WOODS

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1 A There was.

2 Q Okay. And the next date?

3 A January -- I'm sorry -- February 14th.

4 Q Okay. Observation on that date as well?

5 A Yes, ma'am.

6 Q The next date?

7 A March 13th, 2013.

8 Q Okay. Observation of C.G. and Infant that day?

9 A Yes, ma'am.

10 Q Okay. The next date?

11 A I believe it's February 27th.

12 Q Okay. Yeah. Yeah. I know it went out of order. My
13 -- my records did that as well.

14 So February 27th, and then March 13th, and then the nt
15 date after that?

16 A The next day that I have is April 8th.

17 Q Okay. And observation on that date as well?

18 A Yes, ma'am.

19 Q Okay. And the next day after that?

20 A May 14th.

21 Q Okay. Was there one April 26th?

22 A Yes, ma'am, there was.

23 Q Okay. And April 26th, a face-to-face visit and saw
24 the children?

25 A Correct.

1 Q Okay. And then, May 14th?

2 A May 14th. Yes, there was a -- a home visit.

3 Q Okay. And what -- what's the -- when's the last date
4 that they were discharged from -- from this investigation?

5 A The last time -- well, it wasn't actually an
6 investigation.

7 Q Okay. I mean, a -- or providing services?

8 A The last date in the home was May 14th, 2013.

9 Q Okay. And then, when was the -- when was the case
10 discharged from your office?

11 A From the mentor office, it was closed in the system on
12 June 24th.

13 Q Okay. Throughout the -- seven, eight, nine -- the
14 nine contact visits, was there any reports or indications
15 or concerns of any abuse or neglect to either children
16 noted?

17 A Like I said, I can't speak to what -- what she -- what
18 she saw. Any cases where it's -- like, a low-to-moderate
19 risk, if there is any high-risk concerns, they immediately
20 send it back to our office for investigation.

21 Q And did they ever get sent back to your office?

22 A They did not.

23 Q Okay. And were you subpoenaed by the -- the
24 government to testify in this case?

25 A By the state?

CROSS-EXAMINATION BY MS. MAYES - OLIVIA WOODS

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1 Q Yes.

2 A Yes, ma'am.

3 Q Okay. Please answer any questions they may have for
4 you.

5 CROSS-EXAMINATION

6 BY MS. MAYES:

7 Q Hi. And, Ms. Woods, just I have a few follow-up
8 questions about that.

9 A Okay.

10 Q You were subpoenaed by the state in this case because
11 of your involvement, specifically with C.G.
12 correct?

13 A Correct.

14 Q And because you initially went out to the home of the
15 defendant, Mr. Garcia, and Tracy Roach about nine days
16 after Infants death, correct?

17 A I believe so. The date that we went out was -- I
18 think it was September 9th, I ---

19 Q September ---

20 A --- believe.

21 Q --- 9th?

22 A Yes, ma'am.

23 Q Okay. And so seven days after her death?

24 A Correct.

25 Q And the reason that you went out there was because at

1 that point in time, it was known that even though Mr.
2 Garcia had not been arrested yet, nor had the codefendant,
3 Tracy Roach, it was known that, for C.G. 's safety, he
4 needed to be removed from the home, correct?

5 A That's correct.

6 Q Now, moving on to the questions that were posed about
7 this mentor program, and -- and just to clarify, you're a
8 DSS worker, correct?

9 A Correct.

10 Q The Department of Social Services?

11 And you're actually a -- a social worker or a
12 caseworker in that regard, correct?

13 A That's correct.

14 Q This mentor program that you mentioned that's the one
15 who conducted the checks that Ms. Zmroczek was just asking
16 you about, are they employees of DSS?

17 A They are not.

18 Q Okay. So they're not DSS caseworkers such as
19 yourself?

20 A Correct.

21 Q And the South Carolina Mentor Program is a volunteer
22 program; is that correct?

23 A That's correct.

24 Q And essentially, what happened is there had been a
25 report that did not concern Infant . It was a report of

CROSS-EXAMINATION BY MS. MAYES - OLIVIA WOODS

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1 neglect concerning C.G. , correct?

2 A That's correct.

3 Q And that report would've been about six months or
4 seven months or even nine months before 'Infants' ultimate
5 death, correct?

6 A That's correct.

7 Q And because it was that neglect report concerning
8 C.G. , it was referred to the South Carolina Mentor
9 Program to do home checks, correct?

10 A That's correct.

11 Q And you have with you the records verifying the dates
12 of those?

13 A Yes, ma'am.

14 Q Now, just to clarify, the first actual contact would
15 have been a worker going to the home and leaving a note on
16 the door January 29th, but that was not face-to-face
17 contact, correct?

18 A That is correct.

19 Q So the first, initial contact was January 30th,
20 correct?

21 A Yes, ma'am.

22 Q And then, the last, as you testified to, was May 14th
23 of 2013, correct?

24 A Correct.

25 Q And those were all -- those visits between January and

REDIRECT EXAMINATION BY MS. ZMROCZEK - OLIVIA WOODS 89

1 the last one in May were all prescheduled visits, correct?

2 A Yes, ma'am.

3 Q So ultimately, the family knew or was aware that the
4 DSS worker would be coming that day, correct?

5 A The mentor worker? Yes, ma'am.

6 Q Yes. I'm sorry. Clarify -- yes. The mentor worker.

7 A That's correct.

8 Q Would have been aware that they were coming that day?

9 A Correct.

10 Q So all of these visits being prescheduled, she knows
11 they're coming; they show up; and at some point, they come
12 inside the home and then observe the children, correct?

13 A That's correct.

14 Q Now, these aren't medical exams, are they?

15 A No, ma'am.

16 Q And the last one, I believe your testimony was, was
17 May 14th, 2013. So we're talking about when Infant was 9
18 months old, correct?

19 A That's correct.

20 Q Nothing further.

21 MS. ZMROCZEK: I just have a few follow-ups questions,
22 Your Honor.

23 THE COURT: Yes, ma'am.

24 REDIRECT EXAMINATION

25 BY MS. ZMROCZEK:

REDIRECT EXAMINATION BY MS. ZMROCZEK - OLIVIA WOODS 90

1 Q In the reports that were provided to you, does it
2 specifically address safety concerns? Is there an area
3 that they have to address whether or not there are safety
4 concerns?

5 A They -- the worker pretty much just put in -- into the
6 system what -- what she observed in the home.

7 Q Okay. And so if she saw -- and you referred to her as
8 Infant . If she saw Infant , she would refer to that?

9 A If she saw any concerns?

10 Q No. No. If she saw Infant , she would put Infants
11 name.

12 A Correct.

13 Q Okay. And that did appear in every contact visit?

14 A I believe so. Yes, ma'am.

15 Q Okay. And who was the primary -- who was the -- the -
16 - the primary contact -- who did the mentor-worker program
17 and DSS work with ---

18 A For the ---

19 Q --- to set these visits up?

20 A For the mentor case?

21 Q Yes.

22 A From what I've looked back and saw, she -- the worker
23 contacted -- the telephone that was with -- with Ms. Roach.

24 Q With Ms. Roach?

25 And this concern with C.G. had to do with the

DIRECT EXAMINATION BY MS. ZMROCZEK - PATRICIA LUCAS 91

1 schooling-education issue, correct?

2 A That's correct.

3 Q Thank you.

4 MS. MAYES: Nothing further.

5 THE COURT: All right. You may step down, ma'am.

6 Thank you.

7 (Whereupon, the witness exited the witness stand.)

8 MS. ZMROCZEK: Any objection to them being released,
9 Your Honor?

10 THE COURT: Any ---

11 MS. MAYES: No objection from the state, Your Honor.

12 THE COURT: All right. You're free to go. Thank you.

13 All right. You may call your next witness.

14 MS. ZMROCZEK: Thank you. We call Pat Lucas.

15 (Off the record briefly.)

16 (Whereupon, the witness came forward.)

17 PAT LUCAS, having been first duly sworn,
18 testified as follows:

19 DIRECT EXAMINATION

20 BY MS. ZMROCZEK:

21 Q Ms. Lucas, tell the jury where you work.

22 A I work for a program called BabyNet.

23 Q And will you explain to the jurors what BabyNet is?

24 A BabyNet is the state's early-intervention program,
25 designed to serve children from birth until the day before

DIRECT EXAMINATION BY MS. ZMROCZEK - PATRICIA LUCAS 92

1 their third birthday, if they show significant
2 developmental delay or are at risk for significant
3 developmental delay.

4 Q And were you -- was BabyNet asked to participate in
5 services regarding an infant with the name Infant ?

6 A Yes. I did an intake visit on Infant .

7 Q And who was your primary contact with that intake?

8 A Mother.

9 Q Okay. And did you have any interaction with the
10 father, Mr. Garcia?

11 A No, I did not.

12 Q Okay. Did -- when did that first interaction take
13 place?

14 A I had a telephone contact, I believe, prior to the
15 intake. The intake, which is how we assess children for
16 eligibility, was actually in the home on September 5th,
17 2012.

18 Q And tell the jury about that assessment.

19 A There are two types of assessments in BabyNet. The
20 type of assessment that was completed on Infant was based
21 on her diagnosis of trisomy 21, which we call "Down
22 syndrome." In her case a child -- or any child with Down
23 syndrome is anticipated to need help to reach their
24 developmental milestones. And so I don't need to show that
25 a delay exists. In that case when I have medical

DIRECT EXAMINATION BY MS. ZMROCZEK - PATRICIA LUCAS 93

1 information about the diagnosis, such as trisomy 21, all I
2 did was complete what we call the "intake paperwork."

3 Q And then, explain what happens after -- after someone
4 is taken into BabyNet's services.

5 A After intake a child is seen by an early
6 interventionist/service coordinator. The way that person
7 is determined is based on the parent's reading information
8 that we in BabyNet provide so that the parent can choose
9 which intervention agency they want to use for services.

10 The interventionist goes to the home. Most of BabyNet
11 services are in the home. The interventionist will do a
12 developmental assessment on the child. And then a service
13 plan is set up.

14 And in BabyNet we use the initials I.F.S.P.:
15 individualized family service plan. And that's a way that
16 the interventionist, as she's visiting, can help the child
17 reach developmental goals based on a parent's concern or
18 based on needs that are anticipated because of a medical
19 diagnosis. The interventionist also visiting has her role
20 -- most of them are women -- has her role as service
21 coordinator. In that capacity she would arrange for any
22 kind of therapy that might be needed, such as speech
23 therapy, physical therapy, or occupational therapy.

24 Q And in this -- in Infants case, which service was
25 selected for -- or for you?

DIRECT EXAMINATION BY MS. ZMROCEK - PATRICIA LUCAS 94

1 A If by "service" you mean who came after my intake ---

2 Q Right.

3 A --- visit? And most people don't know all the ins and
4 outs of BabyNet. So the mother selected the intervention
5 agency that goes by the name of "Easter Seals of South
6 Carolina." They were the ones to whom the intake
7 information was sent for them to pick up services after my
8 intake visit.

9 Q So after your intake visit, do you have any more
10 involvement with the -- with the family?

11 A Generally, I do not have any more contact with a
12 family unless the family has some concerns about the
13 services that the child's receiving and they want to talk
14 over that with me.

15 Q Okay. And so that initial intake was in September of
16 2012. Did you have an occasion to do an -- an -- another
17 intake or have a different contact later on after -- after
18 these services from Easter Seals?

19 A The -- the only other contact was when Mom called and
20 asked to have another BabyNet intake completed because
21 services had been closed. And once a child is closed to
22 BabyNet services, the only way to come back through and
23 resume those services is by going through another intake.

24 Q And when was that call made?

25 A I'd have to look at the record.

1 Q Okay.

2 MS. ZMROCZEK: May I approach, Your Honor?

3 THE COURT: Yes, ma'am.

4 A Okay. Thank you.

5 (Off the record briefly.)

6 A Okay. So we received an office in the -- a call in
7 the office and it says: "Mom calls" ---

8 MS. MAYES: Objection to hearsay.

9 THE COURT: Sustained as to any hearsay.

10 MS. ZMROCZEK: Okay.

11 Q Yeah. You can't say what anybody said.

12 A Oh.

13 Q But just tell me the date. Sorry.

14 A Oh. March 23rd, 2013, it looks like.

15 Q And when does your ---

16 A It's not my handwriting.

17 Q And so -- certainly. And when is it indicated that
18 the last contact was made?

19 A On April 12th of 2013, a message was left for me,
20 canceling the appointment that we had set up for an intake
21 and a message was left that she would call to reschedule
22 the appointment.

23 Q Okay. And you kept saying "she." To whom are you
24 referring when you say "she"?

25 A To Infants mother, Tracy Roach.

CROSS-EXAMINATION BY MS. MAYES - PATRICIA LUCAS

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1 Q Okay. To your knowledge, who was the primary
2 caregiver?

3 A The mother ---

4 MS. MAYES: Objection ---

5 A --- was.

6 MS. MAYES: --- to speculation.

7 THE COURT: Sustained.

8 MS. ZMROCZEK: But I asked to her knowledge, Your
9 Honor. She did an intake.

10 THE COURT: If she knows from her intake.

11 Q To your knowledge, who was the primary caregiver?

12 A When I went to the home visit for the intake, the
13 mother indicated that she was the primary caregiver.

14 Q Thank you. Please answer any questions the state may
15 have.

16 A Thank you.

17 CROSS-EXAMINATION

18 BY MS. MAYES:

19 Q And the reason it was indicated to you that she was
20 the primary caretaker is because they didn't even tell you
21 that he was living in the home, correct?

22 A I was told that he lived outside of the area.

23 Q Because they're going to lose their food stamps if
24 they find out -- if ---

25 MS. ZMROCZEK: Objection ---

1 Q --- anybody ---

2 MS. ZMROCZEK: --- Your Honor.

3 Q --- finds out he lives in the home.

4 THE COURT: Sustained.

5 MS. MAYES: I'll rephrase that.

6 Q So the information that you received at intake was
7 that Mr. Garcia wasn't in the home, correct?

8 A Correct.

9 Q And in addition to that, you're the one who actually
10 set up the Easter Seals appointment, correct?

11 A I am not.

12 Q Well, you made the referral for Melissa Juergens from
13 Easter Seals?

14 A We sent the paperwork over to the supervisor. The
15 supervisor assigns the interventionist.

16 Q Okay. So Easter Seals is definitely a referral that's
17 available through BabyNet, correct?

18 A If the parent chooses that intervention agency, yes.

19 Q Okay. So Easter Seals was an option available to the
20 family. And in fact, Easter Seals was there and giving
21 services in the home, correct?

22 A I don't know.

23 Q Oh, you -- okay. So you weren't aware that Easter
24 Seals had been in the home and, in fact, was in the home in
25 -- in December of 2012 and had contact with Mr. Garcia?

REDIRECT EXAMINATION BY MS. ZMROCZEK - PATRICIA LUCAS 98

1 A Correct.

2 Q Okay. And then, all of those canceled appointments
3 that you mentioned in the year 2013, were you aware that he
4 was laid off from work and actually in the home as well?

5 A I don't know anything about canceled ---

6 Q Okay.

7 A --- appointments except the intake appointment.

8 Q Thank you. Nothing further.

9 MS. ZMROCZEK: Just a few follow-up questions.

10 REDIRECT EXAMINATION

11 BY MS. ZMROCZEK:

12 Q Any information that was provided to you about who
13 lived in the home or didn't live in the home would've been
14 provided by Tracy Roach?

15 A Correct.

16 Q Thank you. I have nothing further.

17 THE COURT: All right.

18 MS. ZMROCZEK: I'd ask that this witness be excused.

19 THE COURT: Any objection to this witness being
20 excused?

21 MS. MAYES: No objection from the state, Your Honor.

22 THE COURT: All right. Thank you very much, ma'am.

23 THE WITNESS: Okay. Thank you.

24 THE COURT: You're free to go.

25 THE WITNESS: Okay. Thank you.

DIRECT EXAMINATION BY MS. ZMROCZEK - CHRISTOPHER WATKINS 99

1 THE COURT: Appreciate you being here.

2 (Whereupon, the witness exited the witness stand.)

3 THE COURT: You may call your next witness.

4 MS. ZMROCZEK: Thank you, Your Honor. We call
5 Christopher Watkins.

6 THE COURT: All right.

7 (Whereupon, the witness came forward.)

8 (Off the record briefly.)

9 CHRISTOPHER WATKINS, having been first duly
10 sworn, testified as follows:

11 DIRECT EXAMINATION

12 BY MS. ZMROCZEK:

13 Q Mr. Watkins, can you tell the jury where your
14 employed?

15 A I'm employed at Stillinger Investigations. It's a
16 local private-investigations firm here in Columbia.

17 Q And how long have you been employed there?

18 A Since 2010.

19 Q And how do you become a private investigator?

20 A I'd -- I began working with the president of the
21 company, Brian Stillinger, back in 2010. He's been a
22 licensed private investigator for 18 years.

23 Q And were you retained to assist in the defense in this
24 case?

25 A I was.

DIRECT EXAMINATION BY MS. ZMROCZEK - CHRISTOPHER WATKINS 100

1 Q And are you being paid for your testimony?

2 A I'm not being -- no.

3 Q Okay. So explain to the jury how that works, then.

4 A How -- how ---

5 Q You ---

6 A The assignment?

7 Q Right.

8 A Okay. We -- we have a contract -- or -- yeah --

9 contracted by your office, I believe in 2014, and -- and
10 received -- received the case -- discovery. And we opened
11 a case at our office.

12 Q Okay. And are -- are -- are y'all paid for your time
13 that you've put into -- to the case?

14 A We -- we're paid through the Office of Indigent
15 Defense.

16 Q Okay. And how much do you get paid an hour?

17 A \$50 per hour.

18 Q All right. Tell -- what is digital forensics?

19 A Digital forensics is a area of forensic science
20 dealing in the securing and processing of evidence taken
21 from digital devices, such as laptop -- our computer, cell
22 phones, for the use in all kinds of litigation.

23 Q Is -- in your role at Stillinger Investigations, do
24 you participate in -- in digital-forensic examinations?

25 A I do. I'm a private investigator. And I -- at our

DIRECT EXAMINATION BY MS. ZMROCZEK - CHRISTOPHER WATKINS 101

1 office I specialize in criminal defense and digital-
2 forensic investigations.

3 Q And how many analysis -- digital-forensic analysis
4 have you completed?

5 A Hundreds.

6 Q And are those on -- what kind of devices are they on?

7 A Mostly computers -- computers or cell phones -- smart
8 phones, some tablets here and there.

9 Q Have you ever been qualified as an expert in digital
10 forensics?

11 A I have. I was qualified in South Carolina Family
12 Court, Circuit Court, and United -- United States federal
13 court.

14 MS. ZMROCZEK: Your Honor, at this time we would move
15 this witness as an expert in digital forensics.

16 THE COURT: Any objection?

17 MR. MCNAIR: No objection, Your Honor.

18 THE COURT: All right. Without objection.

19 MS. ZMROCZEK: Thank you.

20 Q What was your role regarding digital-forensics
21 investigation in this case?

22 A In this matter I received -- well -- well, there's a
23 few things that I've done. There were some reports that
24 were produced and provided from Lexington County Sheriff's
25 Department from Investigator Michael Phipps that he had

DIRECT EXAMINATION BY MS. ZMROCZEK - CHRISTOPHER WATKINS 102

1 completed. I had -- and I had also acquired copies of the
2 forensic -- forensic images of a eMachine laptop computer
3 and a SD card that was taken from a Sanyo camera that was
4 found in the home.

5 Q What -- and just briefly on the phone, what -- what
6 review of the phone -- was this the -- I'm showing you
7 State's 60. Is this the phone that you're referring to?

8 A I didn't have the phone itself. I had the report
9 provided by Investigator Phipps.

10 Q Okay. And what did a review of those text message
11 from that phone ---

12 A Okay.

13 Q --- show?

14 A I found that there were a total of -- there were four
15 text messages that were received on the device from a
16 contact listed as Tracy. One -- the first message was
17 dated Tuesday, August 27th, 2013. And it was received at
18 11:31 a.m. from the contact associated with Tracy. And it
19 reads: "Come home at lunch and buy me three Budweiser."
20 The message status on the report indicates that the message
21 was read. It also indicates that the message was deleted.

22 On -- the next message, on Thursday, August 29th,
23 2013, a text message was received at 1:57 p.m. from the
24 telephone number associated with Tracy that states -- that
25 reads: "Buy me a blue 20/20, please." The message status

DIRECT EXAMINATION BY MS. ZMROCZEK - CHRISTOPHER WATKINS 103

1 indicates that the message was not read.

2 On -- on the same date, another message at 2 -- 2:12
3 p.m. -- that's August 29th -- from the same contact
4 associated with Tracy, says -- another message reads: "Buy
5 me a blue 20/20, please." The status of this message
6 indicates that the message was not read.

7 On Friday, August 30th, a text message was received at
8 2:07 p.m. from the contact associated with Tracy. And it
9 reads: "Buy me a blue 20/20, please." Now, a blue 20/20
10 is a type of flavored, fortified wine that -- that was
11 being referred to.

12 Q And does the phone indicate that there was any
13 activity on the date of September 2nd?

14 A There was -- there was no text message or any other
15 communication activity on September 2nd, 2013.

16 Q Okay. Moving to the -- I think you said eMachine --
17 tell the -- the jury what that is.

18 A Okay. I -- I received a report that was completed by
19 Investigator Phipps for the laptop. It was a laptop
20 computer. The make was an eMachine. It was found at the
21 home.

22 And in my review of that report, there was an Internet
23 search that read -- the -- the search term was "how long
24 does trazodone show up in a 2-month infant." The date of
25 this search was October 1st, 2012. Now, trazodone is an

DIRECT EXAMINATION BY MS. ZMROCZEK - CHRISTOPHER WATKINS 104

1 antidepressant prescription drug.

2 Q Okay. When you reviewed the eMachine, were there also
3 photographs on there?

4 A Well, what -- so this -- this was with the -- the
5 report that was provided by Michael Phipps -- or completed
6 by him. What I've -- what I also requested is a copy of
7 the forensic image, so we're talking about a -- a complete
8 -- basically a mirror image of the hard drive that was
9 found in that computer.

10 And what I did is I examined that image to -- to
11 verify a few things. First of all, the report that was
12 completed by Mr. Phipps was -- was done with a software
13 called "Magnet Forensics Internet Evidence Finder," which
14 is a great tool. It's a forensic tool that uncovers
15 Internet evidence.

16 So it's not a complete analysis of a machine. So I
17 wanted to complete a -- a more thorough analysis, because
18 there was a few questions that I had when I saw that
19 particular search term. First of all, is there any way to
20 verify who used the computer. I think that's important.

21 So first of all, I -- I wanted to verify that the date
22 that the -- that search was correct. And I -- I was able
23 to verify it was searched on October 1st, 2012.

24 So then, I wanted to determine who -- who used the
25 computer. I -- referring back to the smartphone report

DIRECT EXAMINATION BY MS. ZMROCZEK - CHRISTOPHER WATKINS 105

1 that I just mentioned with the text messages, there was a
2 -- the number -- or the -- the e-mail address associated
3 with that phone was -- and I'm going to read it to you --

4 @gmail.com. What I did is I -- I ran a
5 keyword search on that machine to see if this e-mail had
6 ever came up on the machine. There were no matches.

7 So then, I also -- I -- I looked to see if there was
8 any other e-mail activity. And there -- I found two e-mail
9 addresses associated with Tracy Roach. And I'll read those
10 out: @yahoo.com; it had Tracy Roach appended to
11 that. And the second was @aol.com.

12 Q Was there any indication that -- that Filiberto Garcia
13 ever used this computer?

14 A There was not.

15 Q Okay. How were the searches completed, in English or
16 in Spanish?

17 A I did not find any Spanish searches.

18 Q Were the English searches -- used words that were
19 spelled correctly?

20 A Say that again? I'm sorry.

21 Q Did the English -- so the searches were done in the
22 English language?

23 A They were, yes.

24 Q Okay. And were they done in a -- a correct -- correct
25 grammatical and spelling of the English language?

DIRECT EXAMINATION BY MS. ZMROCZEK - CHRISTOPHER WATKINS 106

1 A It would appear to be. Yes. I didn't see any -- any
2 common misspellings, anything like that.

3 Q Okay. Did you find any pictures on the computer?

4 A I did. Yes.

5 Q Okay. The pictures -- you said you also reviewed an
6 SD card.

7 A I did.

8 Q Where did the SD card come from?

9 A The SD card came from a Sanyo camera -- digital camera
10 that was found at the home.

11 Q Did the pictures on the computer relate to pictures on
12 the Sanyo camera?

13 A I found pictures on the computer that were also
14 present on the SD card from the Sanyo camera. I found also
15 additional pictures that were taken by a Sanyo camera. I
16 can't verify the model or a serial number with these
17 pictures. But I could see, in the metadata of a lot of
18 these pictures, that they were taken with a Sanyo camera.
19 And these pictures were not present on the SD card.

20 (Whereupon, Ms. Zmroczek and Ms. Mayes conferred.)

21 Q I'm showing you what's been marked for ID purposes --
22 and I'm going to read out a lot of numbers, so bear with me
23 -- Defendant's 30, 27, 22, 26, 20, 21, 16, 15, 14, 13, 42,
24 43, 41, 31, and 32 and ask if you can -- just if you
25 recognize and can identify them.

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1 A Yes.

2 MS. ZMROCZEK: Your Honor, at this time -- I can read
3 the list again or just ask that these be moved into ---

4 THE COURT: Any ---

5 MS. ZMROCZEK: --- evidence.

6 THE COURT: --- objection to those photographs?

7 MS. MAYES: Not to those photographs, Your Honor.

8 THE COURT: All right.

9 THE COURT REPORTER: Ms. Zmroczek ---

10 THE COURT: They're in without -- those photographs

11 ---

12 MS. ZMROCZEK: Oh.

13 THE COURT: --- are in without ---

14 MS. ZMROCZEK: Thank you.

15 THE COURT: --- objection.

16 (Off the record briefly.)

17 (Whereupon, Defendant's Exhibits 13, 14, 15, 16, 20,
18 21, 22, 26, 27, 30, 31, 32, 41, 42, and 43 were
19 entered into evidence.)

20 Q Can you tell the jury what metadata is?

21 A Certainly. Metadata is a technical term that means
22 data about data. An example of this would be time and date
23 stamp appended to -- to the picture ---

24 Q Were you ---

25 A --- to a picture.

DIRECT EXAMINATION BY MS. ZMROCZEK - CHRISTOPHER WATKINS 108

1 Q Were you able to obtain metadata in reference to the
2 pictures that you found on the SD card and the computer?

3 A I was.

4 Q Okay. I'm going to show you what's -- is entered as
5 Defendant's 13. Can you tell the jury what date that
6 picture was taken?

7 A The metadata associated with this picture indicated
8 that this picture was taken on Thursday, March 5th, 2009.

9 Q Okay. And Defendant's 14?

10 A Same date: Thursday, March 5th, 2009.

11 Q And Defendant's 15?

12 A Same date.

13 Q And 16?

14 A Same date.

15 Q Okay. Now I'm going to show you Defendant's 20. What
16 does that -- what date does it indicate that that picture
17 was

18 A All right. There were several photos depicting a --
19 snowfall ---

20 Q Okay. I'm ---

21 A --- like this ---

22 Q --- showing Defendant's 20 and Defendant's 21.

23 A Yes.

24 Q Okay.

25 A Now, there were two dates associated ---

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1 Q Okay.

2 A --- with several -- several of these photos. So these
3 -- the ones you just showed me, that is dated December
4 26th, 2010. And also I wanted to -- to -- to explain that
5 -- I wanted to verify that date, because there was a
6 discrepancy with some of the time and date stamps on these
7 photos. Referring to the Columbia Metropolitan Airport's
8 weather-history records, there was a snowfall reported in
9 West Columbia on December 26th of 2010.

10 Q Okay. All right. And Defendant's 22, what date was
11 that taken?

12 A Date associated with that was June 7th, 2009.

13 Q Okay. Defendant's 26, what date does that indicate
14 that picture was taken?

15 A. That one is dated April 13, 2013.

16 Q Okay. Defendant's 27?

17 A Same date.

18 Q Defendant's 30?

19 A That is dated February 8th, 2013. Now, there were
20 other photos in this sequence of photos where you can
21 clearly see that there is -- there's a birthday cake.
22 There's --

23 Q Defendant's ---

24 A --- that it's ---

25 Q --- 31 and 32, are you referring to the items in the

DIRECT EXAMINATION BY MS. ZMROCZEK - CHRISTOPHER WATKINS 110

1 background?

2 A I am. And ---

3 Q Okay.

4 A --- there were others associated with this that were
5 -- that are not included. But they depict a birthday cake
6 and also a sign that -- that reads: "Happy birthday,

7 C.G. ." And because of this I can say that the time and
8 date stamp on these photos are -- is not correct. They --
9 it indicate -- for all the photos that you just put up,
10 February 8th, 2013. C.G. 's birthday is

11 .

12 Q Okay. So there -- so some of the time and date stamps
13 appear to not line up with the dates ---

14 A Correct.

15 Q --- of the pictures?

16 And explain to the jury how that happened.

17 A Okay. So this is -- these pictures were taken with a
18 Sanyo digital camera. And on this camera, when you first
19 power it on, you are asked to input the date and time. So
20 you're manually entering in a date and time for that
21 camera. So it is subject to user error.

22 Now, I've -- it -- on -- on these cameras, if it goes
23 without power for a -- a certain period of time, the device
24 will actually reset. And next time you -- you power it
25 back on, you'll be asked to input the date and time again.

DIRECT EXAMINATION BY MS. ZMROCZEK - CHRISTOPHER WATKINS 111

1 Q Okay. So this picture was either taken, according to
2 this camera, on February -- February of 2013 or, if it was
3 actually on C.G. 's birthday, in of 2013, correct?

4 A Correct.

5 Q Okay. And that would be seven months after July of
6 2013 -- or 2012? Sorry.

7 A That would be 2013.

8 Q Okay. And Defendant's 41, what date was that taken?

9 A Is there a number associated with that picture? I'm
10 sorry. I found it. It's -- the date of that picture was
11 May 18th, 2013.

12 Q Okay. Defendant's 42?

13 A That picture is dated August 18th, 2012.

14 Q And Defendant's 43?

15 A August 1st, 2012.

16 Q Are you aware of the date of birth of Infant ?

17 A 2012.

18 Q Did -- so did those pictures appear to be similar or
19 at -- they're taken around the appropriate time?

20 A They are consistent with the time of birth. I can't
21 ---

22 Q Thank you. That's word I was looking for.

23 A I can't verify that they were actually taken at that
24 specific time.

25 Q Okay. And were you asked to only select pictures of