

VOLUME TWO OF THREE

STATE OF SOUTH CAROLINA

IN THE SUPREME COURT

Appeal from Pickens County

Honorable John C. Hayes, Circuit Court Judge

JAMIE EDWARD MORRIS,

PETITIONER

V.

STATE OF SOUTH CAROLINA,

RESPONDENT

APPELLATE CASE NO 2017-000104

APPENDIX

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1 THE COURT: All right. Thank you, Ms. Henry.

2 You may call your next witness.

3 MR. RICHARDSON: Thank you, Your Honor.

4 The State would recall Detective Burgess to the
5 stand.

6 THE CLERK: Place your left hand on the Bible and
7 raise your right hand.

8 WHEREUPON,

9 RITA BURGESS,

10 after first having been duly sworn, testified as follows:

11 THE CLERK: Have a seat.

12 And state your name for the record.

13 THE WITNESS: Rita Burgess.

14 DIRECT EXAMINATION

15 BY MR. RICHARDSON:

16 Q Detective, you've testified that you had given
17 Miranda rights to the Defendants on an occasion back in, I
18 believe, it was March and April; is that correct?

19 A That's correct.

20 Q Okay. Did there come an occasion when you, again,
21 had Defendant Morris and Defendant Phillips come to your
22 office?

23 A Yes, sir.

24 Q Okay. And do you recall when that was?

25 A Mr. Morris came to my office on May the 29th, 2008.

1 And Ms. Phillips came to my office on June the 4th, 2008.

2 Q Okay, ma'am. And did you, again, advise them of
3 their Miranda rights at that time?

4 A Yes, sir, I did.

5 Q Okay. Let me hand you what's been marked as State's
6 Exhibit No. 18. What is that?

7 A It's the Miranda rights for Jamie Edward Morris.

8 Q And is it signed by him?

9 A Yes, sir, it is.

10 MR. DEJONG: Without objection, Your Honor.

11 THE COURT: What exhibit is that?

12 MR. RICHARDSON: This will be State's Exhibit No. 18,
13 Your Honor.

14 THE COURT: Okay. It's in evidence.

15 (WHEREUPON, State's Exhibit No. 18 was admitted into
16 evidence.)

17 BY MR. RICHARDSON:

18 Q Let me hand you back State's Exhibit No. 18. And, on
19 that form, what rights did you give to Defendant Morris?

20 A It reads, Before we ask you any questions, you must
21 understand your rights. You have the right to remain
22 silent. Anything you say can be used against you in
23 court. You have the right to talk to a lawyer for advice
24 before we ask you any questions and to have him or her
25 with you during questioning.

1 If you have no money to pay a lawyer's fee, the Court
2 will appoint one to represent you without cost, if you
3 wish.

4 If you decide to answer questions without a lawyer
5 present, you still have the right to answer -- I'm sorry,
6 you still have the right to stop answering at any time.
7 You, also, have the right to stop answering at any time
8 until you talk to a lawyer.

9 Q Okay. And did he initial each and every one of those
10 rights?

11 A Yes, sir, he did.

12 Q Okay. And did he waive those rights?

13 A Yes, sir.

14 Q Okay. Is there a waiver of that form?

15 A Yes, sir.

16 Q Would you, please, read that to the jury?

17 A I have read this statement of my rights and I
18 understand what my rights are. I am willing to make a
19 statement and answer questions. I do not want a lawyer at
20 this time. I understand and know what I'm doing. No
21 promises or threats have been made to me. No pressure or
22 coercion of any kind has been used against me.

23 Q Okay, ma'am. Now, did you, also, have -- at a later
24 date, you testified that you had Donna Phillips come to
25 your office; is that correct?

1 A Yes, sir.

2 Q Let me hand you what's been marked as State's Exhibit
3 No. 19. And what is that?

4 A It's her Miranda rights.

5 Q Okay. And did she sign that?

6 A Yes, sir, she did.

7 MR. O'CONNELL: Your Honor, I'm objecting on the same
8 grounds we objected to before.

9 Thank you.

10 THE COURT: Your objection is noted. And it's in
11 evidence.

12 MR. RICHARDSON: It's State's Exhibit No. 19.

13 (WHEREUPON, State's Exhibit No. 19 was admitted into
14 evidence.)

15 BY MR. RICHARDSON:

16 Q Let me hand that back to you, Detective. And,
17 likewise, when were those Miranda rights given?

18 A June the 4th, 2008.

19 Q And what are the rights you gave the Defendant?

20 A Before we ask you any questions, you must understand
21 your rights. You have the right to remain silent.
22 Anything you say can be used against you in court. You
23 have the right to talk to a lawyer for advice before we
24 ask you any questions, and to have him or her with you
25 during questioning.

1 If you have no money to pay a lawyer's fee, the Court
2 will appoint one to represent you without cost, if you
3 wish.

4 If you decide to answer questions without a lawyer
5 present, you still have the right to stop answering at any
6 time. You, also, have the right to stop answering at any
7 time until you talk to a lawyer.

8 Q And did Defendant Phillips initial those rights?

9 A Yes, she did.

10 Q And did she waive those rights?

11 A Yes, sir.

12 Q Can you read the waiver to the jury, please?

13 A I have read this statement of my rights and I
14 understand what my rights are. I'm willing to make a
15 statement and answer questions. I do not want a lawyer at
16 this time. I understand and know what I'm doing. No
17 promises or threats have been made to me. No pressure or
18 coercion of any kind has been used against me.

19 Q Okay, ma'am. After those rights were given, did you
20 then have a -- did Michael Lark speak to them?

21 A Yes, sir.

22 Q To each Defendant?

23 A Yes, sir.

24 Q And was this just after those rights were given?

25 A Yes, sir.

1 MR. RICHARDSON: Thank you.

2 That's all the questions I have. Please answer any
3 questions Defense counsel may have.

4 CROSS-EXAMINATION

5 BY MR. DEJONG:

6 Q As to Mr. Morris, was it your request that he come
7 in?

8 A I believe it was, yes, sir.

9 Q All right. And then you spent some period of time
10 with Mr. Morris prior to him talking to Mr. Lark; correct?

11 A On this date, we talked briefly. And he agreed to
12 talk to Mr. Lark. And I called Mr. Lark to come to our
13 office.

14 Q Well, what time did Mr. Morris -- well, let me ask
15 you this. Was this done at the law enforcement center?

16 A Yes, sir.

17 Q What time did he get to the law enforcement center?
18 "He" being Mr. Morris.

19 A It would likely have been around 2:00, because we
20 spoke very briefly.

21 Q And what time did he leave the law enforcement
22 center?

23 A I don't have a record of what time he, actually,
24 left.

25 Q Do you know how he left?

1 A Yes, sir.

2 Q How did he leave?

3 A I drove him home.

4 MR. DEJONG: All right. Thank you, ma'am.

5 Nothing further.

6 MR. O'CONNELL: Nothing from us, Your Honor.

7 THE COURT: Anything further?

8 MR. RICHARDSON: Nothing further of this witness,

9 Your Honor.

10 THE COURT: Thank you, ma'am.

11 MR. RICHARDSON: The State would call Michael Lark to
12 the stand.

13 MR. O'CONNELL: Your Honor, may I ask that the sound
14 be elevated? Because I and my client are having a hard
15 time hearing.

16 THE COURT: Okay.

17 THE CLERK: Place your left hand on the Bible and
18 raise your right hand.

19 WHEREUPON,

20 CHARLIE MICHAEL LARK,
21 after first having been duly sworn, testified as follows:

22 THE CLERK: Thank you, sir.

23 If you would, have a seat.

24 And state your name for the record, please.

25 THE WITNESS: My name is Charlie Michael Lark.

DIRECT EXAMINATION

BY MR. RICHARDSON:

Q Mr. Lark, you are an investigative consultant; is that correct?

A Yes, sir, I am.

Q And did you have an occasion to speak with the Defendant, Jamie Morris, and, also, the Defendant, Donna Phillips?

A Yes, sir, I did.

Q Okay, sir. And do you recall the date that you spoke to the Defendant Morris?

A Pardon?

Q I'm sorry. Do you recall the date that you spoke --

A Oh, yes, sir. I talked with Mr. Morris on May the 29th, and Ms. Phillips on June the 4th, 2008. I'm sorry. Both of them, May 29, 2008, and June 4, 2008.

Q Okay, sir. And let's speak -- let's talk about Defendant Morris first. Did you enter into -- did you ask him some questions?

A Yes, sir. We had a conversation about 'minor

Q Okay. Can you relate to the jury what he told you about that incident?

A Mr. Morris told me that the only medication that he had given 'minor was Equate medication, which he had given on Sunday afternoon. And that was following a -- there

1 was a coughing spell that he was having.

2 Also, he said that his mother had a prescription for
3 hydrocodone, and had a prescription for cough medication.
4 He said that his mother kept the hydrocodone in her purse,
5 and that he did not see his mother give her -- give minor
6 any medication during the weekend. And, again, he did
7 state that the only medication he was aware of that minor
8 had gotten that weekend was on Sunday afternoon around
9 2:30, 3:00 while he was at his sister's house. And this
10 was the Equate medication.

11 Q Okay, sir. And did he tell you how many dropper
12 fulls of the Equate that he gave?

13 A Yes, sir. He told me that he had given minor two
14 dropper fulls of the Equate, which he told me was the
15 prescribed dosage.

16 Q Okay, sir. And what, if anything, did he relay about
17 he and his mother together the entire time that they had
18 the child?

19 A Would you repeat the question? I apologize.

20 Q Did he relate to you whether he and his mother were
21 together the entire time they had the child?

22 A Yes, sir. He told me that he and his mom were
23 together the entire weekend, from Friday afternoon to
24 Sunday afternoon.

25 Q And what, if anything, did he tell you about how long

1 the coughing had lasted?

2 A He told me that the coughing had been -- he had been
3 coughing throughout the weekend, but it wasn't anything
4 that he considered very serious.

5 Q Okay, sir. And did he relate when the coughing took
6 place mostly, whether it was daytime or nighttime?

7 A Could I look at my report, sir?

8 Q Yes, sir.

9 A Mr. Morris informed me that the coughing was mostly
10 at night.

11 Q Okay, sir. And did he -- regarding the -- did you
12 talk to him about the Tussionex medication?

13 A He told me that the Tussionex -- that his mom kept
14 the Tussionex medication in a pumpkin in her closet. He
15 said he had a hard time reaching this, where the pumpkin
16 was kept.

17 And he said that his mom got the medication down on
18 about two occasions while minor was in the room. But he
19 did not see minor get any of the medications that was in
20 the pumpkin.

21 Q When she got the medication down while minor was in
22 the room, did he reveal to you where the -- where minor
23 was, and where the medication was?

24 A Yes, sir. He said that the tops were on the
25 medication, but minor was playing with the bottles. But,

1 to his knowledge, none of the medication had come out of
2 the bottles, because the tops were on the medication
3 bottles.

4 Q Okay, sir. And did he talk about going to his
5 sister's house?

6 A Yes, sir. He talked about going to his sister's
7 house on Sunday afternoon.

8 Q Okay. And did he relate to you whether he and his
9 mother were with minor the entire time they were at this
10 house?

11 A Yes, sir. He said that they were -- that he and his
12 mom were with minor while they were at the house.

13 Q Okay, sir. Now, I take your attention to Defendant
14 Phillips. You, also, had a conversation with her; is that
15 correct?

16 A Yes, sir. I had a conversation with her on June the
17 4th, 2008.

18 Q Okay. And did she reveal to you anything regarding
19 nightmares that minor may have had?

20 A Yes, sir.

21 Q Sir?

22 A Yes, sir. She told me that minor was having
23 nightmares during the night. And that she was wanting
24 Jamie to try to take care of him, because minor was
25 Jamie's son. And she wanted him to try to take care of

1 him. But there was times during the night when he was
2 still having the nightmares that she would hold him, and
3 he would go to sleep.

4 She said that she did look on the computer for
5 remedies for the nightmares. But, you know, she said,
6 basically, she just held him, and he would fall asleep.

7 Q Okay. And, likewise, did Defendant Phillips talk
8 about the medication being in the possession of the child?

9 A Yes, sir. She talked about that she had gotten the
10 pumpkin down from the shelf in the closet and --

11 Q I don't mean to interrupt you. But the pumpkin
12 you're talking about, is that where she said she kept the
13 medicine?

14 A Pardon me.

15 Yes, sir.

16 Q I just wanted to explain --

17 A Yes, sir. The pumpkin was where she told me she kept
18 the medication.

19 Q And then what did she say?

20 A That she had gotten the medication down. She did not
21 see minor get any of this medication. He did play with
22 the bottles. The tops were on the bottles.

23 She told me her only concern was she had accidentally
24 dropped one on the floor, and minor could have picked it
25 up. But she said she did not see how that was possible,

1 that the tops were on the bottles. And she didn't see
2 minor get any medication.

3 MR. RICHARDSON: I beg the Court's indulgence.

4 (Pause.)

5 MR. RICHARDSON: Thank you, sir.

6 Please answer any questions Defense counsel may have.

7 THE WITNESS: Yes, sir.

8 CROSS-EXAMINATION

9 BY MR. DEJONG:

10 Q Mr. Lark, with regard to Mr. Morris. Now, he shared
11 with you that he and his mother were together the entire
12 weekend; right?

13 A Yes, sir.

14 Q But, certainly, not that they were on top of each
15 other 24/7?

16 A No, sir. No, sir. I didn't assume that that's what
17 he was talking about.

18 Q All right. Well, I just wanted to clarify that.
19 Certainly, the child could have been out of Mr. Morris'
20 view and sight and been with the grandmother?

21 A What I was thinking -- what I interpreted him to mean
22 was that they were both in the same household, that they
23 were not apart.

24 Q Yes, sir.

25 A They were not -- he did not, specifically, say they

1 were in eyesight of each other all weekend.

2 Q Yes, sir. And I just wanted to clarify.

3 A Yes, sir.

4 Q They were in the same household and same environment?

5 A Yes, sir.

6 Q But not on top of each other for 24 hours a day?

7 A No, sir. I didn't interpret him -- that to mean
8 that.

9 Q All right, sir. Now, with regard to this medication.
10 Mr. Morris said he knew the medication was there; correct?

11 A Which medication are you referring to?

12 Q I'm talking about Tussionex.

13 A Yes, sir.

14 Q All right. And that it was kept in a pumpkin; right?

15 A Yes, sir.

16 Q Now, Mr. Morris, other than two droppers of Equate,
17 never said anything to you about giving this child any
18 other medication, did he?

19 A That is correct.

20 Q And, indeed, Mr. Morris shared with you that he
21 didn't know about anybody else giving this child
22 medication?

23 A That's true, sir.

24 Q And, actually, the cough that he described to you, he
25 said that cough was not persistent; right?

1 A Yes, sir.

2 Q And, actually, that he started becoming ill around
3 2:30 or 3:00 on Sunday afternoon?

4 A Yes, sir.

5 Q Okay. Now, let's switch over to Ms. Phillips for
6 just a moment. In talking with her, she said that she had
7 gotten the medications down, as I gather, to take the
8 medication?

9 A That's what I assumed, too, sir.

10 Q Right. And that was Tussionex; correct?

11 A I could not -- I don't know that for sure, sir. I
12 don't know if there was any other medications in there in
13 the pumpkin --

14 Q All right. I didn't mean to cut you off, Mr. Lark.

15 A No, you're fine.

16 Q But you have been, as I understand it, specifically,
17 referring to the Tussionex, and the Tussionex was in the
18 pumpkin; right?

19 A Yes, sir.

20 Q And she said she got the pumpkin down to take her
21 medications; right?

22 A Yes, sir.

23 Q Okay. Now, likewise, she didn't say anything about
24 that she ever gave the child --

25 A Yes, sir. That's true. She did not say she gave the

1 child -- minor any medication that weekend.

2 Q All right. And what day was this, if it came up in
3 your conversation, that she got the pumpkin down?

4 A I'm not sure if that's in my notes or not, sir.

5 Can I refer to my notes?

6 Q If you want to refer to your notes, feel free to do
7 so, sir.

8 A Sir, my notes do not refer to a particular date.

9 And, you know, I'm not sure what day it was.

10 Q Well, excuse me. Your notes do indicate that the
11 child was with Mr. Morris and Ms. Phillips from Friday
12 through Sunday evening; correct?

13 A Yes, sir.

14 Q So, certainly, in trying to put the pumpkin in
15 context, that could have been any time within that,
16 roughly, 60 hours?

17 A True. Yes, sir.

18 Q Did Mr. Morris ever indicate to you that he got the
19 pumpkin down this particular --

20 A I don't recall if he said he got it down. He said it
21 was hard for him to reach, that it was high.

22 Q Right. But he never said anything about getting the
23 pumpkin down on this particular weekend?

24 A No, sir, not -- may I refer to my notes again,
25 please, sir?

1 Q Yes, sir.

2 A He did not refer to getting the pumpkin down, no,
3 sir. He did state it was high, and it was hard for him to
4 reach.

5 Q Yes, sir. And when the medication was down,
6 according to Ms. Phillips, minor was under constant
7 supervision at that point in time; correct?

8 A That's what I was told, yes, sir.

9 MR. DEJONG: The witness is with you, Mr. O'Connell.

10 MR. O'CONNELL: Thank you, Your Honor.

11 CROSS-EXAMINATION

12 BY MR. O'CONNELL:

13 Q Let me ask you this. When you were talking with
14 Ms. Phillips, my client here, did she tell that the Lortab
15 falling on the floor happened -- if it happened at all,
16 occurred the same time as the Tussionex was in the little
17 pumpkin thing, or were there, actually, two different
18 days?

19 A She did not specify any dates, sir. She said she was
20 concerned that it could have fell, but she did not know of
21 any time that it did fall. Because the tops were on the
22 bottles. And she was concerned about -- she was just
23 worried about how minor got the medication. And she said
24 she was just concerned that it could have fell. But she
25 did not know of any time in particular. She did not see

1 him picking up any medication, and she did not know of any
2 time when it did fall on the floor.

3 Q From your notes, did she, also, tell you that if the
4 child got any kind of medication, they would have rushed
5 the child to the doctor?

6 A I don't believe that's in my notes. But I'm sure she
7 would have taken care of her child -- her grandchild.

8 MR. O'CONNELL: Thank you very much.

9 MR. HARBIN: May it please the Court.

10 CROSS-EXAMINATION

11 BY MR. HARBIN:

12 Q Did either Mr. Morris or Ms. Phillips ever express to
13 you that after they had discovered minor was sick,
14 congested, whatever, that they told anybody that let's
15 double-check and make sure he didn't get into any
16 medication? Did they express any concern to anyone that
17 that is a possibility that something could have happened?

18 A No, sir. I was not told that.

19 MR. HARBIN: Thank you.

20 No further questions.

21 REDIRECT EXAMINATION

22 BY MR. RICHARDSON:

23 Q Sir, just briefly. When you were referring to
24 Mr. Morris being at the sister's house, what he told you
25 was that he and minor were together the entire time; is

1 that correct?

2 A Yes, sir. He and minor were together.

3 MR. RICHARDSON: Thank you, sir.

4 That's all I have.

5 THE COURT: Redirect -- recross?

6 MR. DEJONG: No, Your Honor.

7 MR. O'CONNELL: Nothing from us, Your Honor.

8 THE COURT: Thank you, Mr. Lark.

9 All right. You may call your next witness.

10 MS. BARWICK: Thank you, Your Honor.

11 The State would call Kathy Hartzell to the stand.

12 THE CLERK: If you'll place your left hand on the
13 Bible and raise your right hand.

14 WHEREUPON,

15 KATHY HARTZELL,

16 after first having been duly sworn, testified as follows:

17 THE CLERK: Thank you, ma'am.

18 If you would, have a seat.

19 And state your name for the record, please.

20 THE WITNESS: My name is Kathy Hartzell.

21 DIRECT EXAMINATION

22 BY MS. BARWICK:

23 Q Ms. Hartzell, did you get involved in the minor
24 Morris case?

25 A Yes, ma'am.

1 Q What was your involvement?

2 A I was called as a guardian ad litem in July of 2008.

3 Q And did you have a conversation with Latasha
4 Honeycutt about what happened to minor

5 A Yes, I did.

6 Q And did she tell you anything about minor's
7 condition the Sunday night before he was found
8 unresponsive on Monday?

9 A Yes, she did.

10 Q And what did she tell you?

11 A She told me that he came home and that she put him to
12 bed at about 8:00. And he was sort of pitching a fit.

13 Q Right.

14 A And she put him down and left him there for a while,
15 came back at about 8:30, gave him a sippy cup of milk.
16 And he took a few sips and quit. And she put it in the
17 refrigerator and put him down for bed.

18 Q Did she say anything about his ability to stand, or
19 anything like that?

20 A She said they had set him down and he stepped back a
21 little bit, but that was all.

22 Q Let's talk about Monday morning. Did she tell you
23 anything about the events on Monday morning?

24 A Yes, she did.

25 Q And what did she say?

1 A She said on Monday morning, they had answered their
2 alarm, woken up to their alarm at 8:00. She had gone to
3 check on minor

4 Q Yes, ma'am.

5 A And he was sleeping fine. She changed him sort of in
6 the dark, and went back to bed, set their alarm for 10:00,
7 got up at 10:00 and found him unresponsive.

8 Q And did she say -- well, okay. And did she say
9 anything about the sleeping arrangements for minor and
10 Ava? Did she say anything about where minor slept?

11 A Yes. minor had his room in the other end of the
12 trailer with his crib. And she was keeping Ava in the
13 living room so they could hear her.

14 Q Would the living room be between the two bedrooms?

15 A Yes.

16 Q And did you ask her anything about Ava being in the
17 living room, yet minor being back in the bedroom?

18 A That was just the usual arrangement.

19 Q And did she say why Ava was in the living room and
20 minor in the bedroom at all?

21 A Not specifically. But that was her usual arrangement
22 for minor in his own room. And because Ava was the new
23 baby, she wanted her closer so she could hear her.

24 Q Did you ask her if she was concerned about hearing
25 minor

1 A No. I didn't ask that question.

2 Q And you said she set her alarm for when?

3 A They woke up to the alarm being set from the night
4 before at 8:00.

5 Q Yes, ma'am.

6 A And after she changed minor diaper, he did not
7 wake up. So she put him -- left him alone and went on
8 back and set the alarm again for 10:00. She said she had
9 to get ready for work.

10 Q So he slept through the diaper change?

11 A He did.

12 MS. BARWICK: No further questions.

13 MR. DEJONG: May it please the Court.

14 CROSS-EXAMINATION

15 BY MR. DEJONG:

16 Q When did this conversation take place, Ms. Hartzell?

17 A September the 6th, 2008.

18 Q So that was some six months after the fact; correct?

19 A Yes, sir.

20 Q All right. And that would have been, if you know,
21 after Ms. Honeycutt had talked to law enforcement?

22 A I don't know that for sure.

23 Q Okay. But, nonetheless, it was six months --

24 A I would assume.

25 Q And, at that point in time, if you know,

1 Ms. Honeycutt was aware of the cause of death of the
2 child?

3 A Yes, sir.

4 Q All right. Which was a hydrocodone overdose?

5 A Yes, sir.

6 Q And you were aware of that, too; right?

7 A Yes, sir.

8 Q So when you had this conversation, everyone was aware
9 of the cause of death?

10 A Yes, sir.

11 Q Okay. Now, did she tell you about getting up three
12 or four times during the night on Sunday night, or Monday
13 morning to check on minor

14 A She said she did that to change Ava.

15 Q Okay. But did she, also, tell you she checked on
16 minor at the same time?

17 A I asked her if she checked on minor And she said
18 she had looked at him and he had not kicked off the
19 blankets, but she did not touch him.

20 Q So 8:00, 8:30 on Monday, the 17th, she gets up and
21 changes minor's diaper?

22 A Yes, sir.

23 Q She saw nothing wrong with the child?

24 A She saw nothing wrong with the child. I asked if he
25 was not floppy, asleep. And she said, no, she didn't

1 know. He just didn't wake up.

2 Q He was asleep?

3 A Uh-huh.

4 Q Okay. Did she register any concern with you at that
5 point in time in September about his breathing at that
6 point in time?

7 A No, sir. She did say that Jamie said he had a cold,
8 but she didn't really see any signs of anything serious.

9 Q Okay. But she wasn't concerned about a cold?

10 A No.

11 Q Okay. And then she gets back up at what time?

12 A 8:00, and then 10:00.

13 Q Okay. So 8:00 was the diaper change?

14 A Yes, sir.

15 Q Everything is fine?

16 A Yes.

17 Q Okay. 10:00, she gets up. Does she share with you
18 that she immediately goes and checks on minor

19 A No. She didn't give me a time frame.

20 Q Pardon me?

21 A She didn't give me a time frame. But she did
22 say when the alarm went off, she got up and went to
23 minor

24 Q And she indicated that after Mr. Morris brought him
25 home, he was pitching a fit?

1 A Yes, sir, several times.

2 Q I'm sorry. I don't quite follow. I'm not trying to
3 be rude.

4 A Yes. It surprised me in our conversation about this
5 child that, oh, four, five, six times in the conversation,
6 he was pitching a fit, he was pitching a fit, he was
7 pitching a fit.

8 Q Was he pitching a fit on more than one occasion?
9 That's what I'm having a bit -- she told you that he was
10 pitching a fit several times, or that he pitched a fit
11 several times?

12 A He pitched a fit twice.

13 Q Okay. Did she give you a time frame on that?

14 A Yes. He pitched a fit when they first put him down.
15 And then he pitched a fit again. And Brandon came in to
16 comfort him before he went to sleep. So that would have
17 been once about 8:00, and once about 8:30, according to
18 their timeline.

19 Q So pitching a fit about 8:00?

20 A About 8:00 --

21 Q In the evening?

22 A -- when they put him down. And 8:30, when she went
23 the second time to put him down for the last time. She
24 thought he went to sleep about 9:00. And they went to
25 sleep about 11:00.

1 Q So the child went to sleep about 9:00?

2 A That's what she said she thought.

3 Q And then it's not really clear whether she did
4 check on him or didn't check on him through the night;
5 correct?

6 A Right.

7 MR. DEJONG: One moment, please, Your Honor.

8 (Pause.)

9 MR. DEJONG: The witness is with you, Mr. O'Connell.

10 MR. O'CONNELL: Thank you very much, Your Honor.

11 CROSS-EXAMINATION

12 BY MR. O'CONNELL:

13 Q Ms. Hartzell, did you have any occasion to talk to my
14 client that day?

15 A Yes, sir, I did.

16 Q And what did she inform you?

17 A About which subject? We had many conversations.

18 Q About the minor -- anything concerning minor

19 A That Sunday night, specifically?

20 MS. BARWICK: Judge, I'm going to object. She can't
21 testify to what his client said.

22 MR. O'CONNELL: Your Honor, I have no further
23 questions.

24 Thank you.

25 MR. HARBIN: May it please the Court.

CROSS-EXAMINATION

BY MR. HARBIN:

Q I've read your report. And it seems like you spent a great deal of time talking to Latasha and trying to get involved in this case, as best you could?

A Yes, sir, three hours that day.

Q And, in one particular section, you noted that you were trying to get -- this is going to be my terminology.

A Yes, sir.

Q But you were trying to dig into her emotional state and trying to get her to open up. And is it fair to say that you found it was difficult to crack that egg?

You had to dig and dig and dig and, finally, got some tears. But it took you a while to get that deep into her, to get her comfortable enough to share with you. Is that a fair assessment from the report I read?

A No, sir. It wasn't exactly comfortable enough. I was rather shocked at the lack of emotion.

Q And she, actually, shared with you that she was anxious around people; is that true?

A No.

Q Can I hand you your report that I have?

A Sure.

Q Okay. Can you read for yourself what I underlined there?

1 A Yes. She did say that. That slipped my memory.

2 Q Yes, ma'am. It's been a long time.

3 A It has been.

4 Q It's been a very long time. In that same
5 conversation, she kind of went on to describe that she
6 gets sweaty and nervous. Is that akin to your
7 recollection?

8 A May I look at my notes?

9 Q I'll let you read as much as you want.

10 A I was focusing on facts versus impression.

11 Yes, sir. I can agree with that.

12 MR. HARBIN: Yes, ma'am.

13 Thank you very much.

14 No further questions.

15 THE COURT: Redirect?

16 MS. BARWICK: No, sir, Your Honor.

17 THE COURT: Thank you, ma'am.

18 You may step down, Ms. Hartzell.

19 Okay. You may call your next witness.

20 MS. BARWICK: The State would call Nancy Rogers to
21 the stand.

22 MR. HARBIN: Judge, may we approach, please?

23 THE COURT: Sure.

24 (WHEREUPON, a bench conference was held.)

25 THE COURT: Ladies and gentlemen, we're going to take

1 a short recess. Just don't talk about the case. And
2 continue to keep an open mind.

3 Thank you.

4 (WHEREUPON, the jury was excused from open court at
5 approximately 10:44 a.m.)

6 THE COURT: Yes, sir.

7 MR. HARBIN: I'm sorry, Judge. I was sharing the
8 order I just got.

9 THE COURT: Oh, all right.

10 MR. HARBIN: If I could have one moment to share it
11 with them before I tell the Court.

12 (Pause.)

13 MR. HARBIN: Judge, once again, we've worked it out.
14 Thank you.

15 THE COURT: Anything else, for the record, at this
16 time?

17 MR. DEJONG: I don't think so. I need to see what
18 they worked out.

19 THE COURT: All right. We'll take another
20 five-minute break while we have the opportunity.

21 (WHEREUPON, a break was taken.)

22 THE COURT: Anything before we bring the jury back
23 in?

24 MR. RICHARDSON: Nothing from the State.

25 MR. DEJONG: Not on behalf of Defendant Morris,

1 Judge.

2 THE COURT: Okay. Bring the jury in.

3 (WHEREUPON, the jury came into open court at
4 approximately 10:54 a.m.)

5 THE COURT: You may call your next witness.

6 MS. BARWICK: Thank you, Your Honor.

7 The State would call Nancy Rogers to the stand.

8 THE CLERK: Place your left hand on the Bible and
9 raise your right hand, if you would.

10 WHEREUPON,

11 NANCY ROGERS,

12 after first having been duly sworn, testified as follows:

13 THE CLERK: If you would, have a seat.

14 And state your name for the record, please.

15 THE WITNESS: Nancy Rogers.

16 DIRECT EXAMINATION

17 BY MS. BARWICK:

18 Q Ms. Rogers, you work for the guardian program as
19 well; correct?

20 A Yes, ma'am. I'm a volunteer.

21 Q Yes, ma'am. And did you have a conversation with
22 Latasha Honeycutt about what happened the morning minor
23 Morris was unresponsive?

24 A Yes.

25 Q And did she tell you what time she woke up that

1 morning?

2 A Yes.

3 Q What time did she say she needed to be up that
4 morning?

5 A 10:00.

6 Q And why did she -- did she say why she needed -- or
7 why she woke up at 10:00?

8 A She had to be at work at 11:00.

9 MS. BARWICK: No further questions.

10 MR. DEJONG: No questions of this witness, Your
11 Honor.

12 MR. O'CONNELL: No questions, Your Honor.

13 MR. HARBIN: No questions, Judge.

14 THE COURT: All right. Thank you.

15 You may call your next witness.

16 MS. BARWICK: Dr. Michael Ward.

17 THE CLERK: Place your left hand on the Bible and
18 raise your right hand.

19 WHEREUPON,

20 MICHAEL EUGENE WARD, M.D.,

21 after first having been duly sworn, testified as follows:

22 THE CLERK: Thank you, sir.

23 You may have a seat.

24 And state your name for the record, please.

25 THE WITNESS: Michael Eugene Ward.

DIRECT EXAMINATION

BY MS. BARWICK:

Q Dr. Ward, where do you work?

A I'm employed by Pathology Associates of Greenville in Greenville County, and as the chief medical examiner for Greenville County.

Q Okay. And do you have familiarity with the practices over at Greenville Memorial Hospital?

A Yes, I do.

Q And over at Greenville Memorial Hospital, was minor Morris' blood drawn?

A Yes, it was.

Q And what date would that blood have been drawn?

A The blood was drawn on the date of his admission, which was March the 17th, 2008.

Q Can you tell the jury what procedures that blood would have gone under before it made its way down to the lab?

A To us, the lab, or to the lab lab [sic]?

Q To the lab at the hospital.

A The orders are requested by the physicians to draw blood on a certain patient. When those orders are confirmed, then a label is printed, and a request is sent to a phlebotomist or a person who draws the blood. That person would then go and remove those labels and apply

1 them to the tube that the blood will be drawn into.

2 The tube is then taken to the patient. The label on
3 the tube is confirmed with the patient's arm band before
4 the blood is drawn. Then the blood is drawn. And then
5 the tubes with the drawn blood would be taken to the
6 laboratory for analysis.

7 Q And minor blood was drawn for what purpose?

8 A It was drawn for medical purposes. In this case,
9 likely a CBC -- or complete blood count, which would tell
10 information about the blood and a basic metabolic profile,
11 which would be electrolytes, glucose, renal function,
12 things like that.

13 Q And the blood, once it gets down to the lab, what is
14 done with it at the lab?

15 A The blood is analyzed and then kept in a refrigerator
16 for a certain number of days after the draw. So I believe
17 it's four days that the blood is kept -- all blood is kept
18 for four days after the draw in case there's need for
19 reanalysis.

20 Q And is the lab a secure facility?

21 A Yes, it is.

22 Q And I don't know if you mentioned it before or not.
23 Is the blood stored in a refrigerator?

24 A Yes. It is refrigerated.

25 Q And does Dr. Christensen work with your office?

1 A He did.

2 Q Back in 2008 when this happened?

3 A In 2008, Dr. Christensen was the deputy medical
4 examiner for Greenville County.

5 Q And did Dr. Mahanes bring that blood to
6 Dr. Christensen in your office?

7 A Yes. The records indicate that on the date of
8 minor autopsy, which was March 21st, 2008, that
9 Dr. Mahanes brought urine, which had been recovered from
10 Baptist Medical Center Easley, and blood, which
11 Dr. Mahanes had recovered from the laboratory at
12 Greenville Memorial Hospital, and gave those to
13 Dr. Christensen.

14 Q And what did Dr. Christensen do with that blood at
15 that point?

16 A The blood was packaged in our usual fashion, which in
17 my file is a form which is a request from AIT
18 Laboratories, which is a toxicology laboratory. And the
19 blood was labeled with their number. We -- each sheet has
20 individualizing laboratory numbers from AIT.

21 So one of those labels is removed, and attached to
22 the sample. In this case, a sample of blood from Easley
23 dated March 17th, 2008, and a sample of blood from
24 Greenville Memorial Hospital drawn at the time of his
25 admission on March 17th, 2008. Each of those was labeled

1 with the AIT label, packaged and mailed through a carrier
2 service to AIT Laboratories.

3 Q And, Dr. Ward, let me back you up. I don't know if I
4 heard you correctly or not. You said the blood was from
5 where?

6 A Greenville Memorial.

7 Q And what did you get from Easley to send off?

8 A Urine.

9 Q Okay. I don't know if I heard you say blood. And it
10 was urine from Easley?

11 A It's urine from Easley, and blood from Greenville
12 Memorial.

13 Q And those are both sent off to AIT?

14 A That is correct.

15 Q Do you recognize this form?

16 A Yes, I do.

17 Q And what is that form?

18 A This is a photo copy of the form that I have in my
19 file, which is the AIT Laboratory request form that has
20 the unique laboratory number indicating the label that
21 would have been applied to the tube of urine and blood
22 with Dr. Christensen's signature.

23 Q Thank you, Dr. Ward.

24 Now, when it gets sent off to AIT Laboratories, is it
25 sealed? How is that handled?

1 A The blood is in a sealed stopper container, which,
2 basically, means it's airtight and liquid tight, so
3 nothing else is done with that. The urine is in, most
4 likely, a screw-type container that is a pill proofer.
5 It's placed inside of a mailer box, along with the
6 request. That box is then sealed and initialled by the
7 physician, Dr. Christensen, and sent via through a carrier
8 to AIT.

9 MS. BARWICK: I'm just waiting on the Defense to
10 review it so I can enter it into evidence.

11 (Pause.)

12 MS. BARWICK: Your Honor, at this time, the State
13 would like to introduce State's Exhibit No. 27 into
14 evidence.

15 MR. DEJONG: Without objection, Your Honor.

16 MR. O'CONNELL: Without objection.

17 MR. HARBIN: No objection.

18 THE COURT: Okay. It's in evidence.

19 (WHEREUPON, State's Exhibit No. 27 was marked for
20 identification and admitted into evidence.)

21 MS. BARWICK: Your Honor, at this time, the State has
22 no more questions for Dr. Ward, but we would like leave to
23 recall him as a witness.

24 THE COURT: Any cross-examination?

25 MR. DEJONG: I'm sorry, Your Honor?

1 THE COURT: Cross-examination?

2 MR. DEJONG: With reference to this, obviously, not
3 waiving down the road. It's my understanding they're
4 going to recall him.

5 CROSS-EXAMINATION

6 BY MR. DEJONG:

7 Q So, Dr. Ward, as far as -- well, let me back up. Are
8 you aware that Easley Baptist did a drug screen?

9 A A urine drug screen, yes.

10 Q And that was on urine; correct?

11 A Correct.

12 Q Now, as far as further testing on the urine and the
13 blood, that was done by AIT Labs; is that correct?

14 A That is correct.

15 MR. DEJONG: The witness is with you, Mr. O'Connell.

16 CROSS-EXAMINATION

17 BY MR. O'CONNELL:

18 Q Dr. Ward, what time was the Greenville blood taken
19 from the child?

20 A I do not know. It was after his admission to the
21 hospital, which was approximately 12:30 p.m. It would
22 have been drawn within a few hours of that admission, but
23 I do not know the exact time.

24 MR. O'CONNELL: Okay. Thank you very much.

25 MR. HARBIN: Judge, I have no questions for Dr. Ward

1 at this time.

2 THE COURT: Any redirect?

3 MS. BARWICK: No, sir.

4 We would like to recall him, though.

5 THE COURT: Thank you, Dr. Ward.

6 You may call your next witness.

7 MR. RICHARDSON: Thank you, Your Honor.

8 The State calls Dr. Foery to the stand.

9 THE CLERK: Place your left hand on the Bible and
10 raise your right hand.

11 WHEREUPON,

12 ROBERT F. FOERY,

13 after first having been duly sworn, testified as follows:

14 THE CLERK: Thank you.

15 If you would, have a seat.

16 And state your name for the record, please, sir.

17 THE WITNESS: Robert F. Foery, F-O-E-R-Y.

18 DIRECT EXAMINATION

19 BY MR. RICHARDSON:

20 Q Sir, where are you employed?

21 A Currently, I am a consultant in forensic toxicology.

22 Q Okay, sir. And what kind of education have you had
23 in forensic toxicology?

24 A I received a Bachelor's Degree in Chemistry from --
25 in Syracuse, New York; a Master's Degree in Chemistry from

1 Province College in Providence, Rhode Island; and a PhD in
2 analytical chemistry from the University of Iowa.

3 Subsequent to that, I had postbaccalaureate training
4 in clinical chemistry, analytical chemistry, and
5 toxicology, both at the State University of New York in
6 Buffalo and Valentine Sacred Heart Medical Center, where I
7 had a fellowship in chemistry and toxicology.

8 Q Okay, sir. And subsequent to your educational
9 background, did you have -- is there any particular
10 training you've had in forensic toxicology?

11 A I've worked in toxicology laboratories, both as an
12 undergraduate and a post-graduate. In addition to that, I
13 worked in the private sector and, actually, built two
14 laboratories in Memphis, Tennessee.

15 And I have worked, subsequently, in drug and alcohol
16 forensic toxicology, as well as post-mortem toxicology.
17 And I had a short period of time in addiction medicine.
18 So I've had a fairly broad background in understanding
19 prescription drugs and drug abuse.

20 Q Okay, sir. And so just to narrow it down, how many
21 years have you spent working in the field of forensic
22 toxicology?

23 A I've, actually, spent about 30 years in the area of
24 clinical chemistry and forensic toxicology.

25 Q Okay, sir. And part of that work experience, was

1 that at a place called AIT?

2 A That's correct.

3 Q Okay, sir. And how long did you work at AIT?

4 A I worked at AIT pretty much full-time from 2005 until
5 2010. In 2008, I began to travel quite a bit for the
6 laboratory giving talks and doing testimony. And still to
7 this day, even though I'm partially retired, I do get
8 involved with cases I've worked on earlier in the
9 laboratory.

10 Q Okay, sir. And have you ever been qualified
11 in states of this country as a forensic
12 toxicologist?

13 A Yes. I've been qualified as a forensic toxicologist
14 in approximately 30 states. And, also, I have been
15 certified to testify in both civil cases, legal cases, and
16 arbitrations.

17 Q Okay, sir. And you said 35 states. Do you have any
18 idea how many --

19 MR. DEJONG: Your Honor, I'm sorry. I cannot hear
20 Mr. Richardson.

21 MR. RICHARDSON: I'm sorry.

22 MR. DEJONG: I've got this machine behind me. If you
23 could, speak up just a little bit.

24 MR. RICHARDSON: Yes, sir. I'll be more than happy
25 to.

1 BY MR. RICHARDSON:

2 Q I believe the last question I had for you is, do you
3 have any idea how many times you've been qualified as a
4 forensic toxicologist in the United States?

5 A Yes, sir, probably too numerous to count, more than
6 1,000.

7 MR. RICHARDSON: Your Honor, at this time, I'd offer
8 Dr. Foery as an expert in forensic toxicology.

9 MR. DEJONG: No voir dire, Your Honor.

10 MR. O'CONNELL: None from us.

11 MR. HARBIN: Nothing, Judge.

12 THE COURT: All right. He's qualified.

13 MR. RICHARDSON: Thank you, Your Honor.

14 BY MR. RICHARDSON:

15 Q Sir, can you explain to the jury what a forensic
16 toxicologist is?

17 A A forensic toxicologist wears a number of hats. The
18 primary hat, I guess, is to interpret both clinical and
19 chemical results of the analysis, in this particular case,
20 an autopsy analysis, and determine what the effect of the
21 drugs or poisons, if present, would have on the condition
22 of the decedent. And so that interpretive area is what
23 forensic toxicologists do most.

24 In the laboratory scene, a forensic toxicologist is
25 often responsible for setting up and maintaining the

1 methods of analysis that are used to determine what
2 poisons or drugs might be present, and to do that within
3 the context of a forensically correct and admissible test
4 result. And there is a forensic standard that the
5 laboratory must follow in order to have its results
6 entered in as evidence in a legal proceeding.

7 So the forensic toxicologist has the responsibility
8 for setting up and maintaining those methods, training
9 folks that do the work in the laboratory, and evaluating
10 their performance, and then evaluating the results for
11 every forensic test that is released by the laboratory.

12 So I am the final certifying officer before the
13 results leave the laboratory and it is then communicated
14 to the medical examiner, to the hospital, to attorneys, or
15 whoever has requested the testing. So those are the
16 primary responsibilities of a forensic toxicologist.

17 Q Okay, sir. And as far as AIT is concerned, you
18 were -- and I believe it's called a certified scientist?

19 A A certifying scientist is the role of the individual
20 who provides the final review before the result leaves the
21 laboratory and goes out to the public sector.

22 Q Okay, sir. Now, you were employed with AIT back in
23 March of 2008; is that correct?

24 A That's correct.

25 Q And are you familiar with their procedures at that

1 particular time?

2 A Yes, sir.

3 Q Okay, sir. And in -- can you explain to the jury in
4 receiving it -- and I'll ask you before I go to that a
5 question -- let me back up.

6 You said your analysis of -- is it of blood and urine
7 that you develop it and analyze?

8 A Yes. Those are quite normal samples that are
9 submitted to the laboratory. In addition to that, the
10 physician that does the autopsy may send aqueous humour,
11 which is eye fluid, may send stomach contents, may send
12 tissue. But, in this particular case, the specimens that
13 were analyzed were blood and urine.

14 Q Okay, sir. Now, when you receive a sample of blood
15 and urine, how does that come to AIT?

16 A The specimens are collected and packaged by the
17 physician who does the autopsy. They go into a little
18 kit. The kit goes into a box. The box is sealed. And it
19 then comes to the laboratory either by Fed Ex, or UPS, or
20 DHL, or the post office. Some of them are, actually,
21 mailed in or courier service. They can get to the
22 laboratory any number of ways.

23 As soon as it gets to the laboratory, there is an
24 individual, a toxicology assistant, who examines the
25 package and makes sure it is sealed. And then they open

1 up the seals. They take out the specimens and they begin
2 to look at the specimens, put demographic information
3 about the patient or the decedent into the computer, and
4 start ordering the tests that have been requested by the
5 physician.

6 So that's done in a secure area. All of the
7 laboratory is separated by locked doors, which are open
8 with key card access. So only individuals who are
9 responsible for working in a certain area of the
10 laboratory can go into the laboratory. Specimens are kept
11 under lock and key, as well as any portions of the
12 specimens that have been removed for analysis. That's a
13 forensic standard for handling a specimen.

14 So if you've got a full -- what we would call
15 litigation package on a specimen, it would have noted on
16 it everyone who touched the specimen, the date and time in
17 which they touched it, and for what purpose. To take out
18 a portion for analysis, to subject it to a certain kind of
19 analysis, and all of that is documented right up to my
20 final review when the -- in this case, my final review
21 when the result was distributed.

22 Q Okay, sir. And have you reviewed this case -- or
23 reviewed the chain in this case?

24 A I have reviewed the chain in this case. And I have
25 reviewed the medical examiner's autopsy report. And all

1 of the reports that we -- AIT generated to send back to
2 Pickens County.

3 Q Okay, sir. And, as far as the chain is concerned,
4 were all policies and procedures of AIT followed?

5 A To the best of my knowledge, it was a routine test.
6 And the handling of the specimen and the analysis met the
7 forensic standards that the laboratory has.

8 Q Okay, sir. And you stated that these samples would
9 come to you sealed; is that correct?

10 A That's correct. They come in a sealed container.
11 Open it up, and inside the container would be various
12 tubes containing fluids, or tissues, or materials that
13 were recovered at autopsy.

14 Q Okay, sir. And would your -- would you form a test
15 on tubes that were not sealed -- that you received not
16 sealed?

17 A No. We would not perform a test on tubes that were
18 not contained in a sealed container, that's correct.

19 Q And that record is kept in the chain in your
20 computers where everybody is available to the chain?

21 A Yes. A complete litigation package might be 75 or 80
22 pages long.

23 Q Okay, sir. Now, sir, in this particular case
24 involving minor how were you involved in the
25 testing procedures?

1 A I first get involved in the test when the results are
2 ready to be reviewed and then released to the medical
3 examiner. And, at that time, I look at how the sample was
4 processed, and who did the processing, and who did the
5 testing on the sample, and then what was found.

6 The forensic standard for testing to identify and to
7 determine how much of a particular substance might be
8 present involves, essentially, two procedures. The first
9 procedure is called a screening procedure. That is a
10 relatively rapid test that is performed on a sample to
11 determine whether or not there might be a drug or foreign
12 substance. It's a very quick yes/no answer. And the
13 result is not admissible in court. It's a screening
14 procedure only. Yes, there's something there. No,
15 there's nothing there. If there's nothing there, then the
16 laboratory does not proceed further with analysis. The
17 report is negative and turned out as a negative report.

18 If there is something there, the forensic standard
19 requires that the laboratory do what is called a
20 confirmation test. And this test is one which is more
21 sensitive and more specific than the screening test so
22 that that test, when carried out correctly, can give an
23 unequivocal determination of the presence of a particular
24 drug and the concentration of that drug in the fluid or
25 tissue that was analyzed.

1 So, in this particular case, there was a screening
2 test done. And the screening test indicated the presence
3 of some drugs. And then the drugs were confirmed. And
4 the screening test indicated the presence of opiates and
5 chlorpheniramine. And the confirmation test indicated
6 that hydrocodone was the opiate which was present in the
7 blood. And in the urine, hydrocodone, hydromorphone, and
8 chlorpheniramine were found.

9 Q Okay, sir. Now, once that determination is made, do
10 y'all develop a report?

11 A Yes.

12 Q Okay, sir. Let me hand you what's been marked as
13 State's Exhibit No. 28. If you can, review that for me,
14 please, sir.

15 A Yes, sir. This is a report, which was generated by
16 the laboratory and was reviewed by me prior to release to
17 the Pickens County Coroner's Office. And this indicates
18 the results of a random urine test and the -- it's called
19 a random urine because it was collected prior to the
20 autopsy. But it was packaged up by the medical examiner
21 or by the coroner.

22 And that urine sample was positive for hydrocodone,
23 which is an opiate, and for its primary metabolite. And
24 that is oxymorphone. And the relationship between the
25 oxycodone and oxymorphone is the following. If you take a

1 particular drug and the drug gets into the bloodstream --
2 the bloodstream flows to the liver. And the liver is like
3 a clean up area for the body. The liver detoxifies the
4 body from any foreign substances.

5 In this particular case, one of the ways that the
6 body gets rid of hydrocodone is to transform it into
7 another more water soluble substance called hydromorphone.
8 And that helps the body to eliminate the drug in the
9 urine. So it goes into the kidney and then, eventually,
10 into the urine, and that's how we identify it in the
11 urine.

12 So the urine was positive for the parent drug, which
13 is hydrocodone and for its metabolite, hydromorphone. And
14 that's consistent with the baby receiving this drug
15 somehow and metabolizing the drug to a primary metabolite.
16 And then, also, found in that urine were chlorpheniramine,
17 which is an anti-Tussin. That means it's given to try to
18 control coughing and wheezing for respiratory problems.

19 And, also, in the urine, there was a small amount of
20 salicylate, which is aspirin. In the blood, there was
21 only enough blood specimen to confirm the presence of the
22 hydrocodone. There was not enough blood to confirm the
23 presence of the chlorpheniramine and the hydromorphone,
24 only the hydrocodone.

25 Q Okay, sir. In -- and I think Mr. DeJong said this

1 before. I cannot pronounce these words very well. That's
2 the reason I went to law school. The chlor --

3 A Chlorpheniramine.

4 Q Okay. Thank you, sir.

5 Is that a substance that's, also, found in Tussionex?

6 A Yes. Those -- both of those two substances are found
7 in a pharmaceutical preparation called Tussionex. And
8 there are three kinds -- three formulations of Tussionex.
9 There's something called Tuss, T-U-S-S, which is a liquid.
10 And then there are Tussionex capsules. And then there is
11 Tussionex, which is a time-released liquid. And those
12 substances are found in all three of those formulations.

13 Q Okay, sir. And if I may have that report.

14 MR. DEJONG: May I have just a moment, please, Your
15 Honor.

16 THE COURT: Yes, sir.

17 (Pause.)

18 BY MR. RICHARDSON:

19 Q And, sir, while Mr. DeJong is reviewing that, let me
20 ask you so we can be clear. I'm going to hand you what's
21 been marked as State's Exhibit No. 41. Do you know what
22 that is?

23 A Yes. This is a bottle of Tussionex. It is a liquid
24 suspension. That means that everything was not dissolved
25 completely, that it was a mixture which contained some

1 solid material and liquid material. And it contains both
2 hydrocodone and hydromorphone, as well as chlorpheniramine.
3 And this is prescribed for a half a teaspoon two times a
4 day. And with this suspension -- it's called Pennkinetic
5 suspension. It means it's a time-released medication.

6 So when you take it, it's not all absorbed at once in
7 the stomach. It is absorbed over a period of time so as
8 to provide more continuous relief of coughing, and
9 wheezing, and symptoms such as that for individuals who
10 have some kind of pulmonary problem.

11 And this is a bottle which was prescribed to Donna
12 Phillips by CVS pharmacy.

13 MR. RICHARDSON: Your Honor, at this time, the State
14 would move to introduce State's Exhibit No. 28.

15 MR. DEJONG: Without objection.

16 MR. O'CONNELL: Same here.

17 MR. HARBIN: No objection.

18 THE COURT: It's in evidence.

19 (WHEREUPON, State's Exhibit No. 28 was marked for
20 identification and admitted into evidence.)

21 BY MR. RICHARDSON:

22 Q On the report that I've handed back to you, I believe
23 it was State's Exhibit No. 28, does that include the urine
24 and blood samples?

25 A Yes, sir.

1 Q And, in particular, with the blood, was there a
2 particular level that is denoted on there for the amount
3 that was found in the blood?

4 A The concentration of hydrocodone in the blood was
5 found to be 102 nanograms per milliliter. The therapeutic
6 range for an adult would be 10 to 40 nanograms per
7 milliliter. So it was quite a high dose compared to the
8 normal for an adult. And, in this particular case, we're
9 dealing with a child.

10 Q Yes, sir. And my question would be that would be --
11 102 would be high for an adult?

12 A It would be high for an adult. And I think it would
13 be very high for an adult.

14 Q Now, you testified that the Tussionex, State's
15 Exhibit No. 41, had a time release aspect to it?

16 A Yes.

17 Q Okay. You may have explained that to the jury, but
18 if you -- how does that exactly work?

19 A The drugs are attached to something which is
20 relatively slow to dissolve, or slow to release the drug
21 for absorption into the bloodstream. And the idea is to
22 provide a more constant flow of drug into the body to
23 counteract the symptoms or why the drug was taken so that
24 it doesn't have to be taken repetitively, and the dosage
25 levels don't get too high over the course of taking the

1 drug.

2 Q Okay, sir. And is there a particular time that you
3 can testify to as to how that would release?

4 A The formulation says, Repeat every 12 hours. I'm not
5 sure that when you manufacture something like that it
6 exactly takes 12 hours to get into the bloodstream. But
7 it takes some period of time, let's say, 10 or 12 hours to
8 be completely absorbed by the body.

9 Q And so when you say 10 or 12 hours, that's from the
10 time that that particular dose is taken?

11 A Is given, correct.

12 Q Excuse me, given. Yes, sir.

13 Okay, sir. Now, based upon that and the levels that
14 were found in minor blood, do you have an opinion as to
15 dosage?

16 A An opinion to dosage. I would not have an opinion to
17 dosage. There have been methods published to calculate a
18 dose based on the weight and volume of distribution, and
19 some other factors. But they're extremely unreliable.

20 Q Okay, sir.

21 A And so I would not be comfortable in stating a dose,
22 how many -- in other words, how many milligrams the baby
23 ingested. I couldn't do that accurately so that we would
24 know for certain that -- you know, what the dosage was.

25 As far as the time at which the drug was given, from

1 the presence in the urine and presence in the blood, it
2 would look like to me -- it would be my opinion to a
3 reasonable degree of scientific certainty that that drug
4 was given sometime on Sunday.

5 Q Okay, sir. And do you have an opinion as to how far
6 back the first dose could have possibly been given?

7 A Yes. Based on the half life of the drug, I would say
8 that it was probably given sometime between midnight on
9 Sunday up until the time in which the baby was found. So
10 approximately 24 or 36 hours before the blood was drawn.

11 Q And when you refer to midnight on Sunday, are you
12 referring to midnight Saturday going into Sunday?

13 A Yes.

14 Q Okay. Thank you.

15 From your analysis of the amount in the drug and,
16 also, of the time released aspect of the Tussionex, do you
17 have an opinion as to whether this was a repetitive dose,
18 or a single dose given to the child?

19 A I don't think I can state unequivocally that it was a
20 repetitive dose. But, based on the behavior of the child
21 on Sunday and the fact that the child was given medication
22 on Sunday, I would think that it could very well have been
23 a repetitive dose. But at the bare minimum, it was a
24 dose.

25 Q And, in this particular case, is it -- was there a

1 test done to show if there was any Tylenol in the child's
2 system?

3 A Yes. Tylenol is the brand name for a drug called
4 acetaminophen. And acetaminophen is an analgesic drug.
5 And it is often given in place of aspirin.

6 So these days, children often get acetaminophen if
7 they have a temperature, or if they have a cold, instead
8 of salicylate. But, in this case, a small amount of
9 salicylate was found, a small amount of aspirin was found.
10 And there was no acetaminophen found in the specimen. It
11 was analyzed for that and there was no acetaminophen.

12 MR. RICHARDSON: I beg the Court's indulgence.

13 (Pause.)

14 BY MR. RICHARDSON:

15 Q And do you -- what are the substances found in
16 Lortab?

17 A Lortab contains hydrocodone and acetaminophen. And I
18 believe that that was available in 2008, but it's not
19 available now. It has been taken off the -- it has been
20 taken off the market. But it contains hydrocodone and
21 acetaminophen.

22 So if someone had taken that drug, you would expect
23 to find hydrocodone, hydromorphone, and acetaminophen in
24 the blood and in the urine. In this particular case, we
25 did not find acetaminophen in either the blood or the

1 urine. So acetaminophen was not ingested by the child.

2 Q Okay, sir. And if the Tussionex is given on
3 several -- three, four, five different occasions on
4 Saturday -- or going into Sunday with the time release,
5 would that build up into the child's body?

6 A I think it would build up in the child's body. And I
7 think it would build up when the child is in distress. It
8 appears from the narratives of the witnesses that the
9 child was in some distress late Sunday night and early
10 Monday morning.

11 I would suspect -- a physician would have to testify
12 to this. But I would suspect that the baby under stress
13 like that might begin to slow down its ability to
14 metabolize the drugs. And, therefore, the levels might
15 increase in the bloodstream.

16 MR. RICHARDSON: Okay, sir. Thank you for your
17 testimony.

18 Please answer any questions that Defense counsel may
19 have for you.

20 MR. DEJONG: Thank you.

21 May it please the Court.

22 CROSS-EXAMINATION

23 BY MR. DEJONG:

24 Q Dr. Foery?

25 A Foery.

1 Q Am I pronouncing that correctly?

2 A Yes, sir.

3 Q So, actually, the testing was done by other people in
4 the AIT lab; right?

5 A That is correct.

6 Q Under your supervision?

7 A Correct.

8 Q Now, at that point in time, was a Dr. Scott
9 Kreiger [phonetic] or Kriger, K-R-I-G-E-R, with AIT?

10 A Yes. He was with AIT. For a period of time, he was
11 a colleague of mine. And then when my job duties changed
12 and I did more work on the road, if you will, he took over
13 that position.

14 Q Okay. So, in 2008, which position were you in?

15 A In 2008, at the time at which this report was done, I
16 was a certifying scientist, forensic toxicologist. And he
17 had been hired for some months. I'm not exactly sure how
18 many months, but he was my colleague.

19 Q All right, sir. Now, let's talk a little bit
20 about -- well, first, there is a difference between a
21 urine test and a blood test. Would you agree with that?

22 A Yes.

23 Q And, indeed, a urine test is not as confirmatory,
24 shall we say, as a blood test?

25 A I wouldn't agree with that. The difference between

1 the urine test and the blood is a matter of time.

2 Q All right, sir. Now -- and if I mispronounce these,
3 please, straighten me up. You've been saying them for
4 years, I haven't been.

5 A Yes, sir.

6 Q Number one, when we start talking about medications,
7 drugs, and the human body, the body starts breaking those
8 drugs down. I think you alluded to that earlier; correct?

9 A That's correct.

10 Q And those are what's called metabolites; correct?

11 A Yes.

12 Q Now, hydrocodone is the drug itself; right?

13 A It would be called the parent drug.

14 Q Right. Okay. Now, hydromorphone -- if I'm
15 pronouncing that right -- that is a metabolite; correct?

16 A That is correct.

17 Q Now, timing, you indicate, is the difference between
18 urine and blood; right?

19 A Yes. The urine is an indication of what an
20 individual has ingested and metabolized, and put out into
21 the urine. The blood is what is circulating in the blood
22 at the time at which the blood was drawn.

23 Q Right. But now metabolites can, also, get into the
24 blood?

25 A Yes.

1 Q And, again, hydromorphone is a metabolite of
2 hydrocodone?

3 A That's correct.

4 Q All right. Now, in this time frame that we're
5 talking about, the liver almost immediately starts
6 metabolizing into the urine. You're going to find them in
7 the urine before blood?

8 A I would disagree with that.

9 Q You would disagree with that?

10 A Yes. There will be some resorption of the metabolite
11 into the blood probably before it gets into the urine.

12 Q Okay.

13 A So a urine test probably would take -- depending on
14 the half life of the drug, some hours before you could get
15 a detectible amount of the drug in the urine. So the time
16 frame is going to be longer.

17 Q To get into the blood?

18 A To get into the urine.

19 Q Than the blood?

20 A Yes.

21 Q Well, in this case -- and correct me if I'm wrong --
22 I don't see that any hydromorphone was found in the blood?

23 A Well, it wasn't found in the blood because we did not
24 have enough blood to analyze for the hydromorphone or the
25 chlorpheniramine. So, unfortunately, the amount of blood

1 that was submitted with the autopsy specimens was only
2 enough to do the confirmation on the hydrocodone.

3 Q Well, on this timing issue, whether or not there was
4 hydromorphone in the blood would be significant, would it
5 not?

6 A It might be significant. But the fact that there is
7 hydrocodone and the concentration that it's in in the
8 blood is very significant.

9 Q Right. But, again, if we're going into time,
10 hydrocodone is the parent drug; right?

11 A We don't know that the hydromorphone was not there.
12 We just didn't have enough specimen to analyze for it.

13 Q By the same token, we don't know that it was there?

14 A Well, it was in the urine. So my assumption is if it
15 was -- if the parent drug was in the blood and the urine,
16 and the metabolite was in the urine that there was some
17 metabolite in the blood. But we, unfortunately, did not
18 have a sufficient specimen to test for it.

19 Q In fact, the reports that came back from AIT showed a
20 blood negative for hydromorphone, and negative for
21 chlorpheniramine, or whatever it is?

22 A Chlorpheniramine, it's not negative. It was because
23 there was not enough blood to do the test.

24 Q So rather than say I don't know, you say it's
25 negative; right?

1 A I think there's a note on the report, if I may
2 consult it.

3 Q Sure, please do.

4 A On the blood report, it said, Insufficient specimen
5 volume remaining to complete the testing for hydromorphone
6 and for the chlorpheniramine.

7 Q And it, also, says negative for both; right?

8 A It says that the test was cancelled and the
9 hydromorphone sample was unsuitable, because there was
10 insufficient volume as was the chlorpheniramine.

11 Q Right. I understand that part of the report. But
12 right above that where you have hydromorphone, it says,
13 Negative?

14 A It says, Hydrocodone positive, hydrocodone quant, 102
15 nanograms per mL, hydromorphone unsuitable. The note,
16 Insufficient specimen volume remains to complete testing.
17 And then other opiates, which are in that panel, the
18 substances which were in that test panel were negative.

19 Q Okay. If I can show you what I'm looking at,
20 Dr. Foery, maybe we are or maybe we aren't on the same
21 sheet of music. Is that a copy of an AIT lab report?

22 A Yeah. This is a -- this is a specimen. This is a
23 different specimen. The specimen I'm referring to is
24 40073125. That is the specimen that was analyzed. It was
25 the one that, I believe, was drawn at the hospital.

1 This specimen is 4075551. This is a lavender topped
2 tube as well, but it's a different specimen number. So
3 it's a different tube. And there was -- I don't know
4 whether they took blood from that tube and added it to the
5 original tube. But it shouldn't say negative, because it
6 said the testing was -- it said, Insufficient volume.

7 Q Doesn't it say something was added to it? And I
8 realize that's not a very good copy.

9 A It says, Confirmation tested added to this additional
10 sample due to insufficient volume of other samples. But
11 this sample wasn't analyzed.

12 Q But my point is the report --

13 A It shouldn't say negative.

14 Q But it does say negative, does it not? It says,
15 Hydromorphone negative?

16 A Well, it says that, but the indication is quite clear
17 on the other copies of the reports that there was an
18 insufficient volume. So the sample wasn't tested. So
19 there's -- the fact that it says negative is -- it says
20 negative, but there's no -- the sample was not tested.

21 Q Well, are you saying that is an error that they have
22 "negative" there?

23 A It could very well be.

24 Q Okay. Now, you say this Tussionex was a time
25 release; right?

1 A Yes.

2 Q And -- well, I'm going to learn how to say this
3 before this trial is over. Chlor --

4 A Chlorpheniramine.

5 Q Chlorpheniramine?

6 A Chlorpheniramine.

7 Q Chlorpheniramine.

8 A How about if you just call it CPA?

9 Q CPA?

10 A Yes.

11 Q If that works for you, it works for me. Because I
12 still can't get the other one.

13 You found CPA in the urine?

14 A Correct.

15 Q And we're not going back through that litany we just
16 did on the other one, but that stands. Are there other
17 substances or drugs that have CPA in them?

18 A Yes.

19 Q Such as?

20 A Oh, I think there are 50 or 75 different drugs.

21 Q Okay. Not all of them would have hydrocodone in
22 them, or whatever. That could be just CPA, or it could be
23 mixed with some other drug that is not a narcotic?

24 A That's correct.

25 Q Now, hydrocodone, what is -- if you know, Dr. Foery,

1 what is a peak time of -- how long does it take
2 hydrocodone to reach its peak?

3 A Do you mean for a single dose?

4 Q Yes, sir.

5 A I would say it takes between an hour and a half and
6 two and a half hours.

7 Q Right. So you take a dose of hydrocodone, and it's
8 going to reach its peak in roughly one and a half hours;
9 correct?

10 A Roughly.

11 Q Okay. Now, you cannot say, as you have already
12 testified, that there was any repetitive testing -- any
13 repetitive dosing -- dosage in this case?

14 A I can't rule it out or rule it in.

15 Q Right. So that becomes -- to that regard, that
16 becomes a doubt. You just can't say; right?

17 A Right.

18 Q Nor can you say -- let's assume it was one dosage,
19 nor can you say how much that dosage was?

20 A That's correct.

21 Q All right, sir. Now, on time release, you say 12 --
22 some 12 hours; right? You're saying this dose could have
23 been given back up to 12 hours?

24 A If it was time released, then that would mean that
25 the -- that the estimation of an hour and a half for peak

1 dosage wouldn't hold. Because we're controlling the rate
2 at which the drug is absorbed by the body.

3 Q Well, I understand that aspect. But it's not
4 manufactured to where you take a prescribed dosage and
5 you're going to overdose on it, is it?

6 A No.

7 Q The dosage, even as it's released -- and that's why
8 they do it is because the dosage reaches a peak. It
9 starts to fall off and then that time release, rather than
10 taking another dose, a little more hydrocodone kicks in,
11 it hits its peak, it starts to fall off, and so on and so
12 on?

13 A I don't believe that's an accurate way of depicting
14 it. But what happens is the hydrocodone level goes up to
15 some point. And then it stays there. Because the
16 hydrocodone level is being maintained at the rate by which
17 the drug is being absorbed by the body.

18 Q Right. But, by the same token, if you're saying that
19 you take a dose of that time release, it's not going to
20 keep going up?

21 A It should end sometime relative to 10 or 12 hours.

22 Q Right, or less?

23 A I didn't say or less.

24 Q I did.

25 A I disagree with less.

- 1 Q Six to four?
- 2 A Six to four?
- 3 Q Hours?
- 4 A No.
- 5 Q Okay.
- 6 A For the time release?
- 7 Q Uh-huh.
- 8 A No.
- 9 Q Now, would you characterize this, Dr. Foery, as a
10 high level of hydrocodone?
- 11 A The level of 100 in a baby, I would say, it was high.
- 12 Q Okay. Now, maybe we've covered this, maybe we
13 haven't, so we'll cover it again if we haven't. If
14 hydrocodone was given 12 hours in advance of the blood
15 draw -- are we together so far?
- 16 A Uh-huh.
- 17 Q Would you expect to find hydromorphone in there?
- 18 A In where?
- 19 Q In the blood.
- 20 A Yes.
- 21 Q But, in this case, we cannot say there was
22 hydromorphone in the blood?
- 23 A And we can't say there wasn't.
- 24 Q Right.
- 25 A Because we didn't test for it.

1 Q Right. So that's a toss up, a coin flip. How long,
2 Dr. Foery, after this hydrocodone was taken would it be
3 before the effects would become felt, or visible?

4 A Are you assuming here that the -- that a time release
5 was given?

6 Q That's what you're testifying to, so I have to assume
7 that, yes, sir.

8 A Okay. If the time release was given, I would suspect
9 that there would be some effect of the drug felt, perhaps,
10 within an hour.

11 Q All right.

12 A But not a peak level of the drug. I'm just saying
13 some effects would be felt.

14 Q Okay. Well, when is the peak going to be, even on
15 the time release?

16 A Well, it's not going to be the same peak that you
17 would get if you did not give a time release. In other
18 words, if you gave an injection or a bolus -- okay -- it
19 would be faster and more -- the absorption of the drug
20 would be not as controlled as it is in the time release.

21 Q Well --

22 A So the drug is going to be absorbed slower. And so
23 the levels are going to stay higher for a longer period of
24 time. But the levels would not necessarily become toxic
25 levels.

1 Q Run that by me one more time.

2 A In other words, the drug is designed not to produce a
3 toxic level of --

4 Q Right.

5 A But a therapeutic level.

6 Q Right.

7 A So a therapeutic level is going to be in the range of
8 10 to 40 for an adult.

9 Q So you say that the effects would be felt and -- I'm
10 not trying to put words in your mouth, but it would
11 visible within an hour?

12 A Yes, some effects.

13 Q Right. Okay. Well, certainly, then the effects
14 would be more visible after 12 hours, would they not?

15 A No. I think the effects are constant. The idea of
16 the time release is to provide a continuous dosage of the
17 medication.

18 Q Well, if it's a toxic dosage, then you're going to
19 see the toxicity in one hour?

20 A It's not a toxic dosage.

21 Q Well, was that a toxic level in this child?

22 A It was a toxic level, yes.

23 Q That level had to come from some place?

24 A But it didn't come from a single dose of time
25 release.

1 Q But you've already said you couldn't testify to that,
2 you don't know?

3 A That's correct. I don't know how many doses were
4 given. My opinion, to a reasonable degree of scientific
5 certainty, was that there was more than one dose given.

6 Q Right. So that would have had to have been over a
7 period of time?

8 A I can't tell that you, sir. I wasn't there. I don't
9 know how the baby was dosed, if the baby was dosed.

10 Q Well, when we're talking about doses, you don't --
11 well, I guess you're saying tomato and I'm saying tomato,
12 so maybe I'll say it your way. When we talk about dose,
13 we're talking about a prescribed dose.

14 So you're saying you don't know if more than one dose
15 was given at the same time, or if it was over a period of
16 time?

17 A Well, first of all, sir, this drug is rarely
18 prescribed for a two-year-old. So the use of the word
19 "prescription" is not appropriate here. And it wasn't
20 prescribed for the baby, as far as I know. It was
21 prescribed for some other person.

22 So -- and I don't know what, you know, the dosage is.
23 All I know is that the data indicates that the
24 concentration of the drug in the blood is somewhere
25 between two and a half and five times higher than it

1 should be for a therapeutic dose, if it were given to an
2 adult. And this drug shouldn't be given to children.

3 If it is given to children, it has to be given under
4 a doctor's care. And so the only conclusion I can have as
5 to why the level got higher than that is because more than
6 one dose was given. I didn't say how many doses or when,
7 but more than one dose was given.

8 Q But not time frame. That's what we're talking about;
9 right?

10 A The time frame -- my opinion is based on a time frame
11 that I kind of discovered from the records of the witness
12 narratives, and given the baby's behavior on Sunday night
13 and into Monday morning. My time frame is that the drug
14 was given to the baby on Sunday after midnight -- on
15 Sunday morning.

16 Q Now, again, let's talk about effects. So given a
17 21-month-old child, male, who has been given Tussionex,
18 under your testimony, which I don't agree with, but for
19 purposes of this cross-examination was given Tussionex
20 sometime after midnight on Saturday -- Sunday morning is
21 what we're talking about --

22 A Correct.

23 Q -- or what you're talking about. That child then is
24 brought home -- basically, a timeline here, brought home
25 by the father somewhere between 6:30 and 9:00 at night

1 pitching a fit, crying. Is that indicative of a
2 hydrocodone overdose?

3 A No.

4 Q Huh?

5 A First of all, I don't know what "pitching a fit"
6 means. I don't know whether the child was -- I mean, if
7 the child was crying, that isn't necessarily pitching a
8 fit. I don't know what the personality of this child is.

9 But what I based it on was the fact that the child
10 begins to exhibit some unusual symptoms starting Sunday
11 afternoon, as I recall from the testimony of the father.
12 And the child is cranky, ornery, falls asleep, fighting
13 sleep, wakes up again. And so the child is -- and, again,
14 I'm not a pediatrician. The child is in some sort of
15 distress. It seems obvious to the father that the child
16 is in some sort of distress.

17 And then the child gets something from the father.
18 And then the child goes home. And the child is somewhat
19 cranky, goes home, but, eventually, goes to bed at 9:00 at
20 night and seems out of it. And it seems like out of it
21 immediately, and the baby didn't want to eat anything. I
22 think the mother's testimony was that she wanted to give
23 the baby some milk. And the baby didn't drink from the
24 sippy cup, put the sippy cup down, and then, basically,
25 was out of it.

1 And so from 9:00 on Sunday night until the baby was
2 discovered Monday morning, the baby was out of it at bed
3 time. So it's -- I'm thinking the baby received the drug
4 prior to that.

5 Q The baby was fine at 8:00 Monday morning.

6 A The baby was fine at 8:00 Monday morning?

7 Q You're talking about the mother's testimony. That's
8 what comes in is that the baby was fine at 8:00 on Monday
9 morning.

10 A The baby did not wake up when the baby was changed.
11 And then at 10:00, I think the baby had severe respiratory
12 distress. And so I'm thinking that one of the reasons
13 that the baby was in some kind of distress on Sunday
14 afternoon was that possibly the baby had received that
15 drug as early as Sunday afternoon.

16 Q I like the word "possibly." It is possible. But
17 there are other explanations for that as well, are there
18 not?

19 A Well, I'd have to evaluate them.

20 Q Okay. Well, it's March, children catch colds; right?

21 A Yes.

22 Q They get cranky when they catch a cold?

23 A Some do.

24 Q They have runny noses. They cough; correct?

25 A I'm sure that babies do that, yes.

1 Q And there can be respiratory problems totally
2 unassociated with any kind of drug usage or anything else,
3 can't there?

4 A I couldn't testify to that accurately. I think a
5 physician would have to testify as to what sort of
6 respiratory problems you have with a cold. But,
7 certainly, they would be less than the respiratory
8 problems you would have with pneumonia, or something like
9 that.

10 Q I believe we have talked about -- well, I don't know
11 that we have talked about it or not. Maybe we need to
12 talk about it. We've talked about peak times of
13 hydrocodone, which we agreed was about an hour and a half
14 for -- and I know we're not talking time release on that.

15 A Okay.

16 Q That wasn't a trick question. Okay. Now, even
17 getting -- well, let's talk about half lives. Is a half
18 life and a peak time any more or greater? In other words,
19 is a half life longer or shorter than this peak time we're
20 talking about?

21 A The half life should be longer than the peak time.

22 Q What is a half life?

23 A It's the time that it takes for the concentration of
24 drug in the blood to drop 50 percent.

25 Q Okay. Now, how is that half life affected by a time

1 release?

2 A Well, in a time release, you're controlling the
3 absorption of the drug. So you don't have a peak time.
4 And you have the drug being absorbed somewhere around the
5 rate at which it is being metabolized so that you've
6 stretched out that period for 10 or 12 hours.

7 Q Okay. Would you agree, Dr. Foery, that given the
8 extremely elevated dose of hydrocodone in the blood in
9 this case that it is very possible that the last dose of
10 the drug would have been consumed prior -- consumed
11 shortly before the collection of the specimen?

12 A Say that again.

13 Q Given the extremely elevated level of the drug in the
14 blood, is it possible the last dose of the drug would have
15 been consumed shortly before the collection of the
16 specimen?

17 A To the best of my recollection, the specimen was
18 collected sometime between --

19 Q I don't mean to be rude to you, Doctor. Would you
20 give me a "yes" or "no" answer, and then you can explain
21 your answer?

22 A The answer is no.

23 Q Okay.

24 A And the reason is that if it was given a couple of
25 hours before the blood was collected, that indicates to me

1 that it would have to have been given in the hospital.

2 And I don't believe that the drug would be given to the
3 baby in the hospital if the baby was already being
4 intubated.

5 Q You said you supervise the lab at AIT. You were in a
6 supervisory -- or you certified?

7 A Yes.

8 Q And so you certified the tests, and all that; right?

9 A Yes.

10 Q Did you certify Dr. Kriger's findings?

11 A No.

12 Q Okay. So whatever Dr. Kriger may have said or not
13 said, you did not certify?

14 A I did not certify.

15 Q Okay. You did not say, Doctor, you found any
16 acetaminophen; correct?

17 A Correct.

18 Q But you did find that other thing?

19 A Chlorpheniramine.

20 Q No.

21 A Salicylate.

22 Q Yeah. That's the one I'm talking about. And that is
23 consistent with acetaminophen; right?

24 A No, absolutely not.

25 Q Okay. What is it?

1 A Salicylate, it is an entirely different drug.

2 Q Okay. I misunderstood what you said.

3 A Tylenol is the trade name for acetaminophen.

4 Q Right.

5 A Acetaminophen is a drug, which is an antipyretic.

6 And it's, also, an analgesic that can lower temperature

7 and help control coughing to a certain degree. Aspirin

8 and acetaminophen are not necessarily strong drugs. And

9 they are not related at all. One is not the metabolite of

10 the other. They're two entirely different substances.

11 Q Salicylate?

12 A Yes.

13 Q You figured out what I was saying. Is that aspirin?

14 Is that what we're talking about?

15 A Yes.

16 Q And you did find some of that; right?

17 A Found a little aspirin, yes.

18 Q Does that come from anything other than aspirin?

19 A No.

20 Q Aspirin only?

21 A Well, it could come from something else, but it's

22 unlikely that the baby would -- it could come from oil of

23 winter green --

24 Q I'm sorry?

25 A It could come from oil of winter green, but that's

1 not around much anymore. So I'm assuming that somewhere
2 along the line, the baby got a little aspirin.

3 MR. DEJONG: The witness is with you, Mr. O'Connell.

4 MR. O'CONNELL: Thank you, Your Honor.

5 CROSS-EXAMINATION

6 BY MR. O'CONNELL:

7 Q Doctor, did you do the testing on the drugs before
8 you knew the facts of the case?

9 A Yes.

10 Q So after getting the facts of the case, this is when
11 you're talking about what you believed the dosage is, when
12 it was given, so on and so forth?

13 A Yes.

14 Q Okay. Dr. Kreger --

15 A Kriger.

16 Q -- would you be surprised to know that he wrote,
17 however, given --

18 MR. RICHARDSON: Your, Honor I'm going to object --

19 MR. O'CONNELL: Your Honor, they work at the same
20 place.

21 THE COURT: Hold on a second.

22 What's the objection?

23 MR. RICHARDSON: Hearsay.

24 MR. O'CONNELL: Your Honor, these are his reports.

25 He says he has them.

1 THE COURT: Well, you can ask him further questions
2 to establish a foundation for that.

3 BY MR. O'CONNELL:

4 Q I'm asking you, you worked with this Dr. Kriger;
5 right?

6 A I did work with him for a period of time, yes.

7 Q Was he a good doctor, a good forensic scientist like
8 you?

9 A I think he was a fine forensic scientist, yes.

10 Q Would you oppose or go against any kind of reports he
11 had written?

12 A I, certainly, could. It depends on the circumstances
13 under which they were written. But, certainly, I could.

14 Q Do you hold him in high esteem?

15 A Well, yes, of course, I do.

16 Q And he was the first person, toxicologist, involved
17 in this case from your laboratory; is that right?

18 A No, sir. I don't think he was. I think I was. I
19 think he wrote his -- did his -- what is the date of
20 his -- he wrote his report on May 20th.

21 Q Of 2008?

22 A Pardon me?

23 Q Of 2008?

24 A May 20th, yes.

25 Q Of 2008?

1 A Yes.

2 Q Okay. And, in that report, the last paragraph, the
3 last sentence, would you report that to the Court?

4 THE COURT: Let me see the lawyers up here real quick
5 for just a second.

6 (WHEREUPON, a bench conference was held.)

7 BY MR. O'CONNELL:

8 Q Doctor, again, did you review that letter at any
9 time?

10 A I did not review the letter, no.

11 Q You have never reviewed this letter?

12 A Oh, I have reviewed this letter. Because it was sent
13 to me in the packet of information that I received from
14 the Solicitor.

15 Q And, after reviewing the letter, did you use it to
16 make any kind of statements that you made in court today?

17 A I did not, no.

18 Q And so the last line of that sentence -- that report
19 means nothing to you?

20 A Well, it means -- and it probably meant nothing to
21 Dr. Kriger. Because I don't think I knew until I reviewed
22 the case with the district attorney when the blood was
23 drawn. There is no record of when the blood was drawn --
24 the blood we analyzed when it was drawn.

25 So Dr. Kriger didn't know whether the blood was drawn

1 when the baby first got to the hospital, or under what
2 conditions the blood was drawn. But I learned today that
3 the blood was drawn at approximately 2:00 in the afternoon
4 after the baby was admitted.

5 And I don't think Dr. Kriger would have made that
6 statement had he known the blood was drawn in the
7 hospital. I don't think he was privy to that information,
8 but I was. So I don't think this -- in light of the fact
9 that the blood was drawn at 2:00 in the afternoon, I don't
10 think the statement is appropriate.

11 Q Sir, doesn't it state and reference the AIT
12 laboratory case, and it gives the number of the case,
13 538519, subject Morris minor.

14 A The sentence reads, Given the extremely elevated
15 level in the blood, it is possible that the last dose of
16 the drug would have been consumed shortly before
17 collection of the specimen. But he did not know that the
18 specimen was collected after the baby was in the hospital.
19 So I don't think that the sentence itself is referring to
20 the data as we knew it when we did the testing.

21 Q But you hold him in high esteem and you made the
22 statement. So either his statement is incorrect or your
23 statements are incorrect; is that true?

24 A His statement is not incorrect if he does not know
25 when the blood was drawn.

1 Q I --

2 A If he knows when the blood was drawn, he would not
3 have made that statement. He said that it is possible.
4 He didn't say it was.

5 Q But that's what -- or you're saying it's possible,
6 you don't know exactly?

7 A Excuse me. What am I saying is possible?

8 Q About the dosage and everything. You don't know when
9 this happened, you weren't there. So you're saying it's
10 possible; is that true?

11 A With respect to my testimony, yes. With respect to
12 this testimony, the blood was drawn in the hospital.
13 Therefore, I do not believe that the baby was given the
14 last dosage a few hours before the blood was drawn.
15 Because the baby was under medical supervision at that
16 time. And I don't think anybody in the medical profession
17 would have given that baby that drug two, three, four,
18 five hours before the blood was drawn.

19 Q A medical professional. You're stating that you
20 reviewed the file --

21 A I did not review this letter. I did not make the
22 statement. Dr. Kriger read the letter -- Dr. Kriger,
23 excuse me, wrote the letter. And he did not know when the
24 blood was drawn.

25 Q He was corresponding with the coroner?

1 A I can't comment on that. I don't know that.

2 Q And you're telling this jury you reviewed two things,
3 the analysis and then the record, witness statements, and
4 everything, to come up with your statement about when this
5 occurred; is that right?

6 A That is correct.

7 Q Thank you.

8 One other question. You said -- what did you say,
9 hydrocodone -- the Lortab had nothing to do with this; is
10 that right?

11 A Lortab contains acetaminophen. And there was no
12 acetaminophen found in the baby.

13 MR. O'CONNELL: Okay. Thank you.

14 THE COURT: Mr. Harbin.

15 MR. HARBIN: No questions at this time.

16 Thank you, Judge.

17 THE COURT: Redirect?

18 MR. RICHARDSON: Nothing further from us, Your Honor.

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

20 MR. DEJONG: May we approach, Your Honor?

21 THE COURT: Sure.

22 (WHEREUPON, a bench conference was held.)

23 THE COURT: All right. You may call your next
24 witness.

25 MR. RICHARDSON: Thank you, Your Honor.

1 The State calls Dr. Ward.

2 WHEREUPON,

3 MICHAEL EUGENE WARD, M.D.,

4 after first having been duly sworn, testified as follows:

5 THE CLERK: Thank you, sir.

6 State your name again for the record.

7 THE WITNESS: Michael Eugene Ward.

8 DIRECT EXAMINATION

9 BY MR. RICHARDSON:

10 Q Doctor, where are you employed?

11 A I am employed in Greenville County by Pathology
12 Associates in Greenville, and by Greenville County as the
13 chief medical examiner.

14 Q And how long have you been employed as such?

15 A 18 years, since 1995.

16 Q And what is your educational background?

17 A I received my Bachelor's Degree in Biology from the
18 University of Alabama. I have a Masters Degree in
19 Forensic Science from the University of Alabama in
20 Birmingham. I received my medical degree from the
21 University of South Alabama, which is in Mobile.

22 I did a four-year anatomic pathology residency at the
23 Medical University of South Carolina in Charleston, and a
24 one year fellowship in forensic pathology at the
25 University of Mexico. I'm board certified by the American

1 Board of Pathology in both anatomic and forensic
2 pathology.

3 Q Okay, sir. And other than your education, what kind
4 of training do you have to be a forensic pathologist?

5 A Well, the pathology is, basically, the study of
6 disease processes and how they affect man. The
7 fellowship, the subspecialty training is the training that
8 we receive in forensic toxicology, one, the interpretation
9 of toxicology in determining cause and manner of death.
10 Subsequent to that, there is a yearly requirement of 40
11 hours of continuing medical education that we undergo to
12 maintain that certification.

13 Q Yes, sir. And have you previously been qualified in
14 the courts of South Carolina as an expert?

15 A Yes, sir.

16 Q In what field?

17 A In anatomic and forensic pathology.

18 Q And how many times have you been so qualified?

19 A Well over 100 times.

20 MR. RICHARDSON: Your Honor, at this time, I offer
21 the Doctor as an expert in those fields.

22 MR. DEJONG: No voir dire, Your Honor.

23 MR. O'CONNELL: None from us.

24 MR. HARBIN: Nothing from us, Judge.

25 THE COURT: All right. He's qualified.

1 MR. RICHARDSON: Thank you, Judge.

2 BY MR. RICHARDSON:

3 Q Can you explain, Doctor, what a pathologist does?

4 A Certainly. A pathologist is a medical physician
5 whose training is to diagnose disease processes, primarily
6 either on tissues removed from a person at the time of
7 surgery, or during the time of autopsy. A pathologist --
8 I'm sorry, a forensic pathologist takes that one step
9 further with training in not only disease and disease
10 processes that affect man, but wounds, wound
11 interpretation, toxicological interpretation in
12 determining cause of death, manner of death, and then
13 presentation of that information in the court of law.

14 Q Yes, sir. Now, did your office perform an autopsy on
15 minor

16 A Yes, they did.

17 Q Okay, sir. And when was that done?

18 A The autopsy was performed on March 21st, 2008.

19 (WHEREUPON, State's Exhibit No. 29 was marked for
20 identification only.)

21 BY MR. RICHARDSON:

22 Q Let me hand you what's now been marked as State's
23 Exhibit No. 29. Can you identify that, please, sir?

24 A Yes. State's Exhibit No. 29 is a photo copy of the
25 autopsy report generated by our office on minor

1 Q Thank you, sir.

2 Now, as they are looking at that, have you -- prior
3 to today, have you reviewed that autopsy report?

4 A Yes, I have.

5 Q Okay. And was it -- there was an associate in the
6 office that, actually, did the autopsy; is that correct?

7 A That is correct.

8 Q And who is that?

9 A Dr. Eric Christensen.

10 Q Okay. And where is he today?

11 A He's, currently, the associate medical examiner in
12 the State of Utah.

13 Q Okay, sir. And did he work under your supervision?

14 A He did.

15 MR. RICHARDSON: Your Honor, at this time, I would
16 move State's Exhibit No. 29 into evidence.

17 MR. DEJONG: May I ask -- I'm a little out of order.
18 May I ask a point of clarification either of
19 Mr. Richardson or the good Doctor?

20 THE COURT: Yes.

21 CROSS-EXAMINATION

22 BY MR. DEJONG:

23 Q So Dr. Christensen, actually, did the autopsy?

24 A Yes, sir. That is correct.

25 Q So that I understand, you're testifying from

1 Dr. Christensen's notes?

2 A That is correct.

3 Q And findings?

4 A Yes, sir.

5 MR. DEJONG: I object, Your Honor.

6 THE COURT: You object to the exhibit?

7 MR. DEJONG: Yes, sir. Actually, I object to the
8 Doctor's testimony.

9 THE COURT: Let me see the exhibit, please, sir.

10 (Pause.)

11 THE COURT: Mr. Richardson, I'll give you the
12 opportunity to develop further foundation for the
13 document.

14 MR. RICHARDSON: Thank you, Your Honor.

15 REDIRECT EXAMINATION

16 BY MR. RICHARDSON:

17 Q This, the autopsy report itself, is this something
18 that's done in the regular course of business?

19 A Yes, it is.

20 Q Okay, sir. And in doing that, is it, also, kept as a
21 document, a business record in your office?

22 A It is.

23 Q Okay, sir. And in that sense, are you in control of
24 such business records?

25 A I am, yes.

1 Q Okay. And, in fact, sir, these reports of death, are
2 they made for public record?

3 A They are a public record, yes.

4 Q And are you required to keep such reports?

5 A We are.

6 MR. RICHARDSON: Your Honor, at this time, I would
7 move the document into evidence.

8 MR. DEJONG: I renew my objection, Your Honor.

9 MR. O'CONNELL: And I'll join that, Your Honor.

10 Thank you.

11 THE COURT: All right. Overruled. It's in evidence.

12 MR. DEJONG: Would you hear argument, Your Honor?

13 THE COURT: Yes. Sure.

14 Ladies and gentlemen, I'm just going to ask you to go
15 back to the jury room for a few moments. And don't talk
16 about the case. And continue to keep an open mind.

17 (WHEREUPON, the jury was excused from open court at
18 approximately 12:30 p.m.)

19 THE COURT: What's that beeping that keeps going off?

20 MR. DEJONG: We've got a breathing machine back here,
21 Your Honor.

22 THE COURT: But it hasn't been beeping before.
23 What's causing it to beep?

24 MR. DEJONG: That, I don't know.

25 DEFENDANT PHILLIPS: Because we can't hear, and I

1 have to cut it off. Everything is so low. I have to cut
2 it off to hear. And I have to cut it back on because I
3 have to breathe.

4 THE COURT: Well, don't -- if you're having trouble
5 hearing, you need to let me know. We can't have the
6 beeping going on.

7 DEFENDANT PHILLIPS: We've all -- we can't --

8 THE COURT: I said if you want me to speak up or you
9 want a witness to speak up, you need to let your lawyer
10 know. We don't need any kind of editorial right now.

11 Go ahead.

12 MR. DEJONG: Your Honor, I'm not sure where the State
13 is going with Dr. Ward. I can only gather that they don't
14 have him here simply to introduce the autopsy report.
15 Now, even if they do, I have issues with that.
16 Dr. Christensen did the autopsy. I don't think there's
17 any question about that at this point in time. Dr. Ward
18 did not do the autopsy.

19 I think we're in a situation both -- well, starting
20 out with Crawford, right of confrontation, then
21 Melendez-Diaz, which gets into testing, lab reports, and
22 that type of thing. We have a right to have the person
23 here that did those reports.

24 Now, there is a recent case, in all honesty with,
25 Your Honor, I think it came out within the last, probably,

1 three to four months, I think that is Illinois v.
2 Williams. They did modify both -- well, I think
3 indirectly Crawford, and they modified somewhat
4 Melendez-Diaz.

5 THE COURT: They just broke Justice Scalia's heart
6 when they did that, didn't they?

7 MR. DEJONG: I'm sorry, Your Honor.

8 THE COURT: They just broke Justice Scalia's heart
9 when they did that, didn't they?

10 MR. DEJONG: Broke our hearts, yes, it did.

11 THE COURT: Broke Justice Scalia's heart.

12 MR. DEJONG: Yes, it did. Indeed, it did.

13 But, Your Honor, I think this is a different
14 situation than even in Illinois v. Williams. I'll be very
15 candid with the Court. I have not had time to sit down
16 and read that entire opinion. But it's my understanding
17 of Illinois v. Williams that there was a lab report
18 generated by somebody else. And they allowed somebody
19 else to testify. Because it really wasn't the substance
20 of the lab report, as I understood the case, that was
21 being testified to.

22 I think this case is different. Dr. Ward is here to
23 testify solely based on the findings of Dr. Christensen.
24 And I think under the Sixth Amendment right of
25 confrontation, we have a right to confront Dr. Christensen

1 in this case about his procedure, his protocols, and
2 everything else that he used, and his findings, and this
3 autopsy not coming in secondhand through Dr. Ward. And I
4 would, therefore, respectfully move that it be suppressed,
5 Your Honor.

6 THE COURT: All right. What's the State's position?

7 MR. RICHARDSON: Your Honor, as far as the document
8 itself coming in, it comes in under a business record and,
9 also, public record. It's an exception to the hearsay
10 rule. He, also, will be basing his opinion based on that
11 report. And that's covered in State v. Hutto, which
12 allows an expert to base his opinion upon such hearsay
13 evidence. That's 325 S.C. 221.

14 In that particular case -- I don't know which one I'm
15 arguing. Am I arguing to get it into evidence, or that he
16 can rely on it?

17 But if we're talking about reliance, in that
18 particular case, they had a specific scenario where they
19 had somebody that did a test and put it into a report.
20 And then another expert based his opinion on that in
21 trial. That was appealed. And the Supreme Court upheld
22 the Court allowing that testimony to come in. And that's
23 the basis. I think the law is clear on this.

24 Your Honor, we have a memo, if you like, that we can
25 pass to you and everybody else.

1 THE COURT: Well, how do you -- let me ask this,
2 Mr. DeJong. How is this report testimonial?

3 MR. DEJONG: The autopsy was done with a view towards
4 prosecution, obviously.

5 THE COURT: Well, in State v. Cutro, the Supreme
6 Court said a public record much like a business report is
7 not testimonial, and its admission similarly does not
8 violate the Defendant's confrontation rights.

9 I mean, it's a public record, isn't it, in addition
10 to possibly a business record?

11 MR. DEJONG: I didn't know they were. I might find
12 me some fireside reading in the future. I might get me
13 some autopsy reports. I didn't know they were public
14 record until just now.

15 THE COURT: Well, aren't -- I don't know. Aren't
16 they required to be undertaken in certain circumstances?

17 I'm sure somebody in the courtroom might have some
18 information on that.

19 THE WITNESS: Yes, sir.

20 We are required by law to, at the time of autopsy,
21 generate a report, and keep that report on record. And it
22 is a public documentary releasable upon request.

23 MR. O'CONNELL: Your Honor, if I may.

24 THE COURT: Yes, sir.

25 MR. O'CONNELL: The reason I'm joining is, one, I was

1 told I couldn't present some evidence because it was
2 hearsay. And this is, obviously, hearsay, because he
3 didn't do the report.

4 But, number two, I could always be mistaken, but
5 didn't Dr. Mahanes say he did the autopsy? I could be
6 wrong about that, but I thought that's what I heard him
7 say.

8 THE COURT: I don't remember that precisely. I don't
9 remember him saying that, but the record will speak for
10 itself.

11 But I believe Cutro stated that autopsy reports are
12 not hearsay under Rule 803(8). So I would have to
13 overrule that objection.

14 As far as Illinois v. Williams, I will look at that
15 case. I was aware of it, but I haven't had the
16 opportunity to completely analyze it.

17 But what is your position, specifically, in regard to
18 that in light of the Cutro case, Mr. DeJong?

19 MR. DEJONG: I'm sorry, Your Honor. I couldn't hear
20 you.

21 THE COURT: I'm sorry. What is your position about
22 Crawford and the Sixth Amendment confrontation and
23 Illinois vs. Williams in light of the Cutro decision,
24 which said that they weren't testimonial, autopsy records
25 aren't testimonial?

1 MR. DEJONG: I don't agree that they're not
2 testimonial, Your Honor. But, unfortunately, you have the
3 advantage on me. No disrespect. I don't have a computer
4 here. Okay. But -- and I'm not disputing what Your Honor
5 is telling me. If that's what the law says, then that's
6 Your Honor's ruling and, certainly, I have to abide by it.
7 But I still believe it is testimonial in nature.

8 THE COURT: All right. Well, I'll tell you what. I
9 understand the importance of this to the case. I'm going
10 to go -- I think we're just going to go ahead and break
11 for lunch right now, probably to Dr. Ward's frustration.
12 But, nevertheless, I do think this is important. And I
13 want to take the time to do everything right.

14 So we're just going to recess until 2:00.

15 And if you'll tell the jury to come back at 2:00.

16 THE BAILIFF: Yes, sir.

17 THE COURT: Thank you.

18 (WHEREUPON, a lunch break was taken.)

19 THE COURT: Any further argument?

20 MR. DEJONG: No, not on my behalf.

21 MR. O'CONNELL: No, Your Honor.

22 MR. RICHARDSON: Not from the State, Your Honor.

23 THE COURT: Based on the Cutro case, our Supreme
24 Court has ruled that autopsies are non-testimonial.

25 Mr. DeJong makes an appealing and compelling argument to

1 the contrary. But, nevertheless, our Supreme Court has
2 spoken on that.

3 The Williams v. Illinois case, which I've had the
4 opportunity to review during the break, was just decided
5 June 18th of this year. And it came out with somewhat of
6 a new slant on the definition of testimonial that is
7 markedly more narrow than what Justice Scalia first stated
8 in Crawford. Although in Crawford itself, he did say that
9 business records were an example of non-testimonial
10 evidence.

11 But, in the Williams case, they -- a five to four
12 decision, the test included a requirement that the
13 evidence in order to be testimonial and be subject to
14 Crawford and the requirement of confrontation guaranteed
15 by the Sixth Amendment, it would have to, specifically,
16 accuse a specific individual of a crime. And this autopsy
17 report doesn't do that. It is simply a finding. And it's
18 not making accusations against any specific individual.
19 While it might be considered testimonial under the old
20 test, if it were not a business record, under this new
21 test, it would be another ground for finding that Crawford
22 did not apply. It's not an accusatory document.

23 So, with that, anything further before we have
24 Dr. Ward resume the stand?

25 MR. DEJONG: Your Honor, with that, it's my

1 understanding that that's kind of where we stopped before
2 breaking for lunch. I think Mr. Richardson had
3 reintroduced it -- or requested again that it be
4 introduced. I objected. Your Honor took it under
5 advisement. And I'm not arguing with your ruling.

6 THE COURT: Right.

7 MR. DEJONG: I gather you're letting it in. And if
8 it's coming in, certainly, that's Your Honor's ruling.
9 But if it's going to happen, then I would ask that it
10 immediately come in when Dr. Ward gets back on the stand,
11 so I don't have to sound more litigious than I normally
12 sound and object to it again.

13 THE COURT: I'll be glad to state when the jury comes
14 back in the room and he's on the stand that State's
15 Exhibit No. 29, the pathology report, is admissible.

16 MR. DEJONG: And if you want to say that, that's fine
17 with me, just so I don't have to object and we have to go
18 through all that to reserve my objection.

19 THE COURT: I understand.

20 Thank you.

21 Anything further?

22 MR. RICHARDSON: Nothing from us.

23 MR. DEJONG: Nothing further, Your Honor.

24 THE COURT: Dr. Ward. You can come on back up, sir.
25 Bring the jury in, please.

1 (WHEREUPON, the jury came into open court at
2 approximately 2:05 p.m.)

3 THE COURT: All right. Ladies and gentlemen, I hope
4 you had a nice lunch.

5 For the record, State's Exhibit No. 29, the Pathology
6 Associates of Greenville report, is in evidence subject to
7 previous objections and exceptions.

8 (WHEREUPON, State's Exhibit No. 29 was admitted into
9 evidence.)

10 THE COURT: With that, you may continue your
11 examination.

12 MR. RICHARDSON: Thank you, Your Honor.

13 CONTINUED REDIRECT EXAMINATION

14 BY MR. RICHARDSON:

15 Q Doctor, I'm going to hand you back State's Exhibit
16 No. 29 that's now in evidence. And excuse me if I've
17 asked the question, because I'm not sure exactly where we
18 left off. But have you reviewed that report?

19 A Yes, I have.

20 Q And, in your review of that report, do you -- can you
21 render an opinion as to how minor died?

22 A Yes, I can.

23 Q And what is that opinion?

24 A minor died as a result of a drug. And that
25 drug would be hydrocodone overdose.

1 Q Okay, sir. Now, in addition to the toxicology aspect
2 of that, did -- was a full autopsy done?

3 A It was, yes.

4 Q Okay, sir. And, in doing so, you -- I assume that
5 y'all as pathologists would check all areas that are
6 possible that could cause death?

7 A That is correct.

8 Q And that was done in this case?

9 A It was.

10 Q Okay, sir. And, also, would you, also, check for
11 other abrasions, or sores, or things of that nature?

12 A Yes, we would.

13 Q Okay, sir. In this particular case, did minor
14 Morris have any abrasions, or sores, or anything of that
15 nature about his body?

16 A He had what would be described as a lesion on the
17 lower back just above the natal cleft, which is,
18 basically, your crack. So he had about a hand-sized area
19 of redness there on his lower back, which at the time
20 of -- initially, looking at the photographs, you're
21 uncertain if that's a bruise, is it a burn. But reviewing
22 the microscopic slides, this is an area of skin that's an
23 early -- what we would call a pressure ulcer. There is
24 ischemia, or this part of the skin has gone without blood
25 flow and without blood supply, so it has started to die.

1 So the skin -- the superficial skin layer and then
2 the underlying components of the skin are now beginning to
3 die, because they were without blood flow for a period of
4 time.

5 Q Okay, sir. And I believe there was -- I believe you
6 said you took a sample of that and looked at it under a
7 microscope. Is that the way it went?

8 A That is correct.

9 Q And what does that tell you -- I should ask, how
10 would that come to be? What does that tell you about this
11 child?

12 A This is a change that is relatively frequently seen
13 in comatose patients where they lay in one position for a
14 prolonged time without movement, and the pressure of the
15 body on that portion of skin, basically, occludes or
16 prevents blood from flowing into that area and allowing
17 the skin to die.

18 Q Okay, sir. In addition to that, was -- the stool of
19 minor was that, also, checked as part of the autopsy?

20 A The portion of the large intestine that remained
21 after organ harvesting was examined. And there was a
22 fairly large amount of firm knot-like stool. So it wasn't
23 the usual soft consistency that you would expect to see,
24 or hope to see. But this was more firm stool consistent
25 with a period of constipation.

1 Q Okay, sir. And regarding constipation, if the death
2 is caused by hydrocodone, how would that relate to a
3 hydrocodone overdose?

4 A Well, hydrocodone is a narcotic. And narcotics
5 are -- one of the known complications of taking a
6 narcotics for pain relief is the development of
7 constipation.

8 Q Okay, sir. And can you get the constipation from a
9 single dose? Is that possible?

10 A I guess it's possible, but I wouldn't think you would
11 have this degree of constipation.

12 Q So what does this degree of constipation indicate to
13 you, in your expert opinion?

14 A To me, it indicated this was more of a multiple dose,
15 longer than just a single dose of narcotic exposure.

16 Q Okay, sir. Now, can you explain to the jury, when a
17 child starts feeling the effects of the hydrocodone to the
18 extent that intoxication is onset, what symptoms he may
19 show?

20 A From a narcotic overdose from hydrocodone, this level
21 of drug is going to suppress minor central nervous
22 system to the degree that he will not have the usual
23 respiratory drive. So he's not going to unconsciously
24 breathe like we do.

25 So, as that happens, there's a build up of carbon

1 dioxide in the blood. As we just exist, we break down
2 sugar for energy, and we produce carbon dioxide. This
3 carbon dioxide is in the blood, and it's transported to
4 the lungs. And when we exhale, we exhale carbon dioxide.

5 When minor is not breathing enough to blow off all
6 of the CO₂, then that begins to build up. And CO₂ mixed
7 with water is a gas. And it's an acidic -- I'm sorry.
8 It's an acid. So it drops the PH balance of our blood,
9 which is normally 7.3, 7.35. It starts to go down.

10 Having an elevated acid level in your blood causes
11 you to become irritable. It can alter your mental status
12 so you're not thinking normally. If you're able to judge
13 a person's mentation, they may be confused. The drug
14 level would, certainly, make them sleepy, lethargic, such
15 that, ultimately, they would, essentially, pass out. And,
16 in this case, a high enough level that he would,
17 basically, become comatose.

18 Q Okay, sir. If minor had been given medical
19 treatment at sometime prior to EMS coming, would he have
20 lived?

21 A Well, if he had been given medical treatment on
22 Sunday night when he was being put to bed, yes. If at
23 8:00 on Monday morning, I don't know. I suspect that he
24 had already been exposed to this decrease in PH so that
25 he's now in an acidotic state. He most likely has already

1 aspirated and is developing pneumonia, and probably has
2 some degree of brain injury from not getting enough
3 oxygen. Whether he would be able to be revived at 8:00
4 a.m., as opposed to 10:00, I don't know.

5 MR. RICHARDSON: Thank you, Doctor.

6 That's all the questions I have. Please answer any
7 questions Defense counsel has for you.

8 THE COURT: Yes, sir, Mr. DeJong.

9 MR. DEJONG: Thank you, Your Honor.

10 May it please the Court.

11 RECROSS-EXAMINATION

12 BY MR. DEJONG:

13 Q Well, Dr. Ward, we don't know that he was comatose at
14 8:00 on the morning, do we?

15 A I believe he was, yes.

16 Q You believe he was?

17 A Yes.

18 Q Okay. But, other than your belief, we don't know
19 that he was comatose at 8:00 in the morning?

20 A Let me rephrase. In my opinion, I think he was
21 comatose at 8:00 a.m. in the morning.

22 Q Well, when breathing becomes more shallow, it becomes
23 noticeable, does it not?

24 A No, sir. It becomes less noticeable.

25 Q Do you mean people would look at you and your

1 breathing would become shallow, and it would become less
2 noticeable that it's shallow?

3 A My understanding is that at 8:00 in the morning, from
4 previous testimony, that the lights were off. The mother
5 had just awoken. She did not notice this area of redness
6 on his lower back. He doesn't awaken after 12 hours of
7 sleep to have his diaper changed. In my opinion, he is
8 comatose.

9 Q But there was nothing that was reported out of the
10 ordinary either?

11 A That's correct.

12 Q So that leaves us -- that's your opinion; right?

13 A Yes.

14 Q Now, a drug overdose would, also, slow urination,
15 would it not? You would not urinate as often?

16 A Having a narcotic on board might make it more
17 difficult to urinate. Because the same smooth muscles
18 that don't allow you to have a bowel movement, also, make
19 it difficult for you to urinate, the same sort of
20 sphincter control. But formation of the urine would
21 probably not be impeded. So he's still making urine. He
22 may not be urinating.

23 Q Well, the point of that is, he peed sometime before
24 8:00?

25 A There's nothing about being in a comatose state that

1 would keep from you urinating.

2 Q And, also, constipation in a child is not merely
3 caused by drug use?

4 A No, sir.

5 Q There are many explanations for constipation?

6 A There are some, yes.

7 Q Okay. Let's assume in some cases a child might have
8 an allergy to a food. Does that create constipation?

9 A I would anticipate -- it, certainly, could. Most
10 food allergies would probably cause a loose stool, as
11 opposed to a constipation. But I would say that's
12 possible.

13 Q Now, the report you are referring to, obviously, you
14 didn't generate the report?

15 A That's right.

16 Q And you didn't do the autopsy?

17 A I did not.

18 Q Okay. And the findings with regard to drug levels
19 was not done by either you or Dr. Christensen; right?

20 A That is correct.

21 Q That was all done by AIT Laboratories?

22 A Yes, sir.

23 Q Okay. You're not a toxicologist, I gather; right?

24 A I am not.

25 Q Well, I'll ask you -- and if you don't know, you can

1 tell me. Do you know the peak times of hydrocodone?

2 A My understanding of the literature is that it's
3 within an hour and a half to two hours or so after
4 ingestion of a non-timed released dose. The peak time of
5 the time released dose, I do not know.

6 Q Okay. Fair enough. Now, what we -- he was comatose
7 somewhere -- well, we know he was comatose at 11:15 in the
8 morning?

9 A Yes, sir.

10 Q But as to exactly when he went comatose, no one can
11 say, can they?

12 A Exactly when, no.

13 Q Right. And not being a toxicologist, you can't say
14 whether it was a single dose or a multiple dose, can you?

15 A It's my opinion that this was not a single dose.

16 Q If I understood you correctly, you said your theory;
17 is that correct?

18 A I said my opinion.

19 Q Your what?

20 A I said, in my opinion, this is not a single dose.

21 Q All right. And, as to the time of those doses, that
22 we don't know either?

23 A That's correct. I do not know when he received any
24 of the doses.

25 Q We don't know if it was before 8:00 or 9:00 on Sunday

1 the 16th, or after that time, do we?

2 A It's my opinion that he, certainly, had received the
3 narcotics agent hydrocodone before the description of his
4 actions at the time they put him to bed, which is when
5 he's very sleepy, near lethargic, irritable, and without
6 significant appetite.

7 Q As I understand it, he was more than irritable,
8 Dr. Ward. We use the good old southern expression he was
9 pitching a fit.

10 A Is that a question?

11 Q Well, I think there's a difference between irritable
12 and pitching a fit. Would you agree with that?

13 A Again, it goes to, I guess, the definition of the
14 child. But if he's acting out in such a way that is
15 unusual for him, then, yes, maybe he was pitching a fit.
16 I don't know.

17 Q And in this autopsy, was the stomach contents -- did
18 you check for stomach contents?

19 A No, sir.

20 Q You did not?

21 A The stomach and entire small intestine, and a portion
22 of the large intestine were removed at post-mortem
23 harvesting of organs.

24 Q So we're clear about that. Organs were taken for
25 other uses, is that a bottom line statement?

1 A That's correct. The liver, the kidneys, pancreas,
2 which is why they take the stomach and small intestine,
3 were harvested for use in other individuals.

4 Q But there was nothing that would lead you to believe
5 that the liver wasn't functioning properly, or any of
6 those things; correct?

7 A When he was admitted to the hospital, there were
8 alterations of blood tests that were performed to such
9 that, one, his blood gas was very low. It was well into,
10 I believe, 6.7, which is significantly below the 7.3 that
11 we would expect.

12 He had an elevated blood urea and an elevated
13 creatinine indicating he was not having good renal blood
14 flow. And he had elevated liver enzymes, again,
15 indicating that there's an alteration in blood flow as a
16 result of the comatose state that he was in.

17 Q But, again, as to the time of that, we don't know
18 either, do we? That's the way he was when he came into
19 the hospital, presumptively?

20 A Yes, sir. But the presence of that area of redness
21 indicate -- which was present when he was admitted to the
22 hospital indicates that he had been in that position for
23 several hours prior to being found, or moved.

24 Q Six hours?

25 A It could be, at least, six, eight, 12 hours.

1 Q Okay. So that could have developed after -- what
2 you're saying, if I understand you correctly, is that
3 could have developed -- well, I'm pointing at nothing out
4 here. I thought I had a timeline out here, but I don't.
5 That could have developed after 6:00 Monday morning?

6 A No, sir. It happened, in my opinion, before 8:00
7 Monday morning when he was moved.

8 Q Aside from being a pressure point, were there other
9 explanations for that redness?

10 A No, sir.

11 MR. DEJONG: The witness is with you, Mr. O'Connell.

12 MR. O'CONNELL: Thank you, Your Honor.

13 CROSS-EXAMINATION

14 BY MR. O'CONNELL:

15 Q If the organs had not been used, would your opinion
16 be any different if you were able to check those organs?

17 A No, sir.

18 Q Okay. So because they took the liver, and kidneys,
19 and stomach, no one tested them for anything?

20 A Except that they were transplanted into other
21 individuals and were functioning. Other than that, they
22 were tested for nothing.

23 Q So they were working fine?

24 A That's correct.

25 Q So when they were removed and working fine, does that

1 change anything in the scenario you're talking about?

2 A No, sir.

3 Q Okay. Now, if the child had lasagna or some kind of
4 meat, say, an hour or two before the child was returned to
5 the mother, which is between 7:30 and 8:00 on Sunday
6 evening, would that have any bearing on your statement?

7 A I'm sorry. My statement with regard to?

8 Q As to when the child started to expire. You're
9 giving us a scenario of the child's systems. If this is
10 correct, it started shutting down, like A shut down first,
11 B shut down next, so on and so forth; is that right?

12 A As a result of the drug-induced state from the
13 hydrocodone that, yes, he's having central nervous system
14 depression such that he's not breathing. He develops this
15 acidosis. This acidosis begins to affect other organ
16 systems, including renal blood flow, hepatic blood flow,
17 or liver.

18 And I would, also, anticipate that whatever was in
19 his stomach at that time was not being processed and was
20 likely -- if it had not been donated would have still been
21 in his stomach at the time of autopsy.

22 Q Doctor, would your testimony here today be any
23 different if you hadn't discussed the case with the
24 Prosecution before testifying?

25 A No, sir.

1 Q So when they gave you this information about the
2 timeline and statements from other people, and so on and
3 so forth, you had already formed your basis and that was
4 it. And you never talked to the Prosecution about who did
5 what, and when they did what, and what was said, like the
6 mother had the child at 8:00, the mother got up. You knew
7 none of that before you made your statement?

8 A The basis of my opinion is on the review of the file
9 that we have in our office. In that file is the autopsy
10 report. I have reviewed the microscopic slides, the
11 photographs from the autopsy, the toxicological findings,
12 and investigative reports that were provided to us by the
13 Coroner's Office. In those reports are indications of
14 what medications were found, and who had those
15 medications, and a description of the child by witnesses
16 at the time he was put to bed. All of that
17 information, certainly, was incorporated into my opinion
18 today, yes.

19 Q Then you knew about the brain injury of the child
20 about a year or two before; right?

21 A That's correct.

22 Q And that has nothing to do with what we're talking
23 about here today?

24 A His previous injury has nothing to do with his death.

25 Q What happened -- if it happened 10 months or less

1 than a year?

2 A It had nothing to do with his death on that day.

3 MR. O'CONNELL: Okay. I have no further questions at
4 this time.

5 MR. HARBIN: Thank you.

6 May it please the Court.

7 CROSS-EXAMINATION

8 BY MR. HARBIN:

9 Q Doctor, I just want to make sure I have a clear
10 understanding of your previous testimony. And I'll do it
11 by way of singular questions that, hopefully, make more
12 sense than not.

13 Hydrocodone has, as I understand it, a general effect
14 of slowing the body's metabolic rate. Is that a fair
15 statement? It slows things down in general, and has that
16 ultimate effect? And I'm trying to repeat what you said
17 and make sure I'm understanding it correctly.

18 A At a normal dose, no. At what we would consider to
19 be a therapeutic dose, hydrocodone would have no effect on
20 your metabolism, on your respiratory rate, on anything.
21 It might make you sleepy. And that's why you don't take
22 it and drive, and why you take it before you go to bed.
23 At this dose, which is a lethal dose of hydrocodone, then
24 many things are going to be affected. And I'm not sure
25 that metabolism is the right word, but systems processing

1 is.

2 So anything that has to do with his central nervous
3 system is going to be depressed, his respiratory drive,
4 anything that has to do with smooth muscle function.
5 Because narcotics, basically, inhibit smooth muscle
6 movement. They're going to be depressed. So bowel
7 movements, spontaneous urination. I mean, it's going to
8 be hard to start your stream flow, because smooth muscles
9 are not going to want to relax. Stomach emptying, all of
10 those things are going to be affected by this level of
11 narcotic.

12 Q I think you're much better at answering questions
13 than I am of asking. I think you just about answered my
14 next question.

15 The reason I use the word "metabolism" is that when
16 you say the word "depressed," do you mean slow down,
17 you're not being as fast, you're not being as productive,
18 blood is not flowing quite as effectively and carrying
19 nutrients as it normally would because of the depressed
20 state of body? Is that -- I know I'm misusing terms. But
21 is that a general --

22 A That's a fair statement, yes.

23 Q And as the dose -- or as the body is processing more
24 and more amounts of hydrocodone, such as -- I'm asking you
25 such as would be possible in a time-released drug, that

1 depression increases, and increases, and increases? Is
2 that a fair statement?

3 In other words, I'm using the wrong words, but
4 there's more and more depressed states of what you just
5 described as the levels of hydrocodone rise in the body.
6 And you can correct me whatever --

7 A That would be correct. That as minor is sleeping or
8 in his early comatose state, I think his drug levels are
9 continuing to stay at that level, or to rise. I mean,
10 with this time-release medication, it makes it a little
11 more difficult to explain. But he, eventually, comes to a
12 level that suppresses his brain functions. It inhibits
13 his ability to control things, his gag reflex, such that
14 while he's asleep, instead of swallowing to clear the
15 secretions out of his mouth, they're now going into his
16 lungs, which is why he has pneumonia when he gets to the
17 hospital.

18 So he, certainly, reaches a peak, a certain level.
19 We won't call it a peak. He reaches a certain level.
20 Whether it's maintained at that level because of the time
21 release or if it continues to go up because he just
22 received medication before he was dropped off at home, I
23 do not know. Only that when he got to the hospital and
24 blood was drawn at roughly between, say, 1:00 and 2:00,
25 that that drug level was at a lethal dose.

1 Q And, Doctor, as you were describing the lesion on his
2 backside, as your body becomes more and more depressed,
3 the systems in your body become more and more depressed.
4 Are you physically moving slower, or less?

5 For example, if a toddler normally tosses and turns,
6 is he less likely to do that -- more likely to lie still
7 in -- well, still, I guess that's the best word I can
8 think of?

9 A Yes. At this level of intoxication, I would expect
10 minor to just lay there and not move at all.

11 Q And that goes to your point about how the lesion was,
12 actually, formed by a steady pressure on the same point in
13 his body. If he's laying still, that's kind of how you
14 get -- as opposed to you and me that go to sleep every
15 night, but we don't wake up every night because we're
16 moving around a little bit?

17 A That's correct.

18 MR. HARBIN: Thank you.

19 No further questions.

20 MR. RICHARDSON: Nothing further from the State, Your
21 Honor.

22 THE COURT: Thank you, Dr. Ward.

23 MR. O'CONNELL: Your Honor, may I ask a follow-up
24 question?

25 THE COURT: Sure.

RECROSS-EXAMINATION

BY MR. O'CONNELL:

Q One question. There's been testimony he was laying in a bundle of vomitus -- or there was vomitus, what would that mean? What would that be?

A I'm sorry?

Q The child threw up -- on the 911 tape, he threw up in the mouth of the man giving the CPR. Is that a natural reaction, or what?

A That's not an uncommon phenomenon when someone is having CPR. The respirations that are given, not only do they go down into the trachea, but they go down into the esophagus. And if enough stomach -- I'm sorry, if enough air is forced into the stomach, then it's not an uncommon phenomenon during resuscitation to vomit.

Q Do you know if anybody checked that vomitus out?

A No, sir. I would anticipate they did not.

Q Okay. What about if the child was brought back or showed signs of life in the ambulance going to the hospital?

A Well, I'm not sure what you mean by "showed signs of life." It would not be -- I would anticipate and do anticipate that they were able to get cardiac activity back on minor. They were never able to get him to where he could breathe on his own. He was placed on a

1 ventilator and remained on the ventilator. And he was,
2 subsequently, declared brain dead in the hospital.

3 Q And you're saying that the child had pneumonia at the
4 hospital, even though I think the previous doctor said he
5 didn't have pneumonia at the hospital?

6 A He had pneumonia at the time of autopsy, bilateral
7 pneumonia consistent with aspiration pneumonia. Whether
8 they were able to see it radiographically, which is the
9 only way another clinician would be able to tell, I don't
10 know. But, at autopsy, he had pneumonia.

11 Q Okay. Would any of the medications given at the
12 hospital trying to revive the child or anything change
13 your opinion, or have anything to do with your opinion as
14 you're stating here today?

15 A No, sir. My review of the records indicate he was
16 not given a narcotic drug.

17 Q I didn't say that. I said any of the medications,
18 could they have worked together?

19 A No, sir. That would not change my opinion. He was
20 not given hydrocodone. minor died as a result of a
21 hydrocodone overdose. And those are the only medications
22 we found at toxicology.

23 Q But that's only your opinion; is that right?

24 A That is my opinion, yes.

25 MR. O'CONNELL: Okay. Thank you.

1 MR. RICHARDSON: Still nothing further from the
2 State.

3 THE COURT: Thank you, Dr. Ward.

4 Yes, sir, Mr. Richardson.

5 MR. RICHARDSON: Your Honor, at this time, the State
6 rests.

7 THE COURT: Ladies and gentlemen, the State has
8 concluded their presentation of testimony and evidence.
9 And, at this time, I have to take up a matter with the
10 lawyers. And I'm just going to ask you to go back to the
11 jury room.

12 Don't discuss the case with anyone. And continue to
13 keep an open mind. We'll resume, hopefully, in 10 or 15
14 minutes.

15 (WHEREUPON, the jury was excused from open court at
16 approximately 2:36 p.m.)

17 THE COURT: Any motions at this time?

18 MOTIONS

19 MR. DEJONG: May it please the Court.

20 Your Honor, on behalf of Mr. Jamie Edward Morris, I
21 would respectfully move for a directed verdict at this
22 point in time. I realize we have to -- the Court has to
23 look at the evidence in the light most favorable to the
24 State. However, in this case, Your Honor, I submit there
25 is no evidence that the State has presented which would

1 show that Jamie Edward Morris aided and abetted in
2 homicide by child abuse.

3 At best, they have shown two things, both of which
4 are, basically, the same, that his mere presence and,
5 basically, guilt by association. The only thing they have
6 shown is he was with minor on the weekend of March
7 the 14th through the 16th, 2008.

8 There is no proof that he in any way conspired with,
9 aided, or abetted if Donna Phillips did give the child
10 Tussionex, which I'm not conceding. But, for purposes of
11 this argument, there is nothing to say he did that. There
12 is nothing to say he had any knowledge that it was done.
13 There is no evidence in this case which would indicate
14 that he knew or should have known that this child needed
15 medical care at that point in time, other than the fact
16 that he had a runny nose and was coughing. There's no
17 evidence to go to the jury at all.

18 And what the State is asking the Court and the jury
19 at this time to do is exactly what Ms. Barwick said in her
20 opening statement, which is read between the lines,
21 conjecture, speculation. And we know a verdict is not
22 proper based on conjecture and speculation.

23 So I submit, Your Honor, there is no evidence at all
24 in this case as far as Mr. Morris is concerned that could
25 go to the jury from which they could find a verdict

1 factually based on the facts and the evidence in this case
2 under their oath, looking at the light most favorable to
3 the State, which they could find that he is guilty of
4 aiding, abetting -- or homicide by child abuse by aiding
5 and abetting. There is nothing. I, therefore,
6 respectfully move for a directed verdict.

7 THE COURT: Okay. What's the State's response?

8 MR. RICHARDSON: Thank you, Your Honor.

9 As Mr. DeJong pointed out, this is a situation which
10 it is the light most favorable to the State. It's not a
11 mere presence situation. We have a drug that was in the
12 possession of the grandmother. And the father was, also,
13 in the home and in possession of it, and knew of the drug.

14 The -- although we're talking about circumstantial
15 evidence, there's, certainly, enough circumstantial
16 evidence to establish that they gave the drug to the
17 child, and that he was there. And there's been testimony
18 that he was with her the entire time, which
19 circumstantially indicates that there is a failure to take
20 any action.

21 That being, Your Honor -- and we don't have to have
22 just action here, we can have omission under this statute.
23 So in that light -- I would, also, point out State v.
24 Smith, which, actually, addresses that issue where they
25 speak of there's -- the only people that were with the

1 child at a particular time, along with other evidence,
2 establishes enough to get it to the jury. And that was,
3 actually, an appeal, which the Court of Appeals heard and
4 disagreed with the Defense on their claim that the issue
5 be a directed verdict.

6 So, Your Honor, with the evidence that's accumulated
7 now, albeit a lot of it is circumstantial, there's,
8 certainly, enough to go to the jury.

9 THE COURT: What's the citation on that Smith?

10 MR. RICHARDSON: Smith is 359 S.C. 481.

11 THE COURT: Okay.

12 MR. RICHARDSON: And I will say just to follow-up on
13 that. There was, also, a charge of aiding and abetting in
14 that. And that case was, also, a physical injury case,
15 not a drug case.

16 THE COURT: All right. Well, certainly, I have to
17 view the evidence in the light most favorable to the
18 State. I can't weigh the evidence, or decide any
19 credibility issues. There is in the record -- in my view
20 and construing all the inferences and ambiguities in the
21 State's favor, as I'm required to do, there is direct and
22 substantial circumstantial evidence reasonably tending to
23 prove the crime, including the crime of aiding and
24 abetting. And, therefore, I would respectfully deny the
25 motion.

1 MR. DEJONG: Thank you, Your Honor.

2 MR. O'CONNELL: Your Honor, may it please the Court.

3 THE COURT: Yes, sir, Mr. O'Connell.

4 MR. O'CONNELL: I will respectfully make a motion to
5 have a directed verdict as to Defendant Phillips here, the
6 grandmother. There's been no evidence shown whatsoever
7 that she gave any drugs to anybody. There's no evidence
8 to determine that she did it in the manner the code says
9 to do it, in a manner with extreme indifference to human
10 life.

11 All they've said is there's been some medicine in her
12 house that she, actually, went and gave to the police.
13 And there's testimony that somehow this child got an
14 overdose. But it's never been directed and said she gave
15 it to him. I don't even think circumstantial evidence
16 goes that far. They've just proved, as far as I can see,
17 that there was some Tussionex in the house. And that's
18 it. They haven't proven who gave it to him, or anything
19 like that. There are other people involved in this that
20 could have gave the child stuff and done other things,
21 Your Honor.

22 But the bottom line is the second part of it is where
23 is the showing of extreme indifference? I haven't seen
24 any of that. There's been no testimony -- not one iota of
25 testimony saying they did anything, that my client or

1 Mr. Morris had any extreme indifference.

2 To me, that means -- and I think the part I gave you
3 up here about how it is, they had to have the intent to
4 harm this child. Where has that been shown by the State's
5 witnesses, Your Honor? I'm asking for a directed verdict
6 on behalf of my client.

7 THE COURT: All right, sir. I believe under the
8 crime charged that harm to the child's physical health or
9 welfare could mean that the Defendant failed to supply the
10 child with adequate food, clothing, shelter, or health
11 care. And this failure caused an injury or condition that
12 caused death.

13 I think there was testimony we just heard that there
14 was a lethal dose of hydrocodone in the child's system.
15 It is revealed by the autopsy. There was, also, evidence
16 of the existence of pneumonia, constipation, and a
17 pressure sore that was consistent with the child being
18 left unattended to the point that blood flow was ceasing
19 to be delivered to the child's backside.

20 So I think all of that viewed in the light most
21 favorable to the State would demonstrate extreme
22 indifference, if believed by the jury. And, of course,
23 I'm not making any credibility determinations. It's up to
24 the jury to determine credibility. I simply find that
25 there's enough for this statutory crime to go to the jury

1 as to your client, Ms. Phillips.

2 MR. O'CONNELL: Thank you, Your Honor.

3 MR. HARBIN: Judge, may it please the Court.

4 THE COURT: Yes, sir.

5 MR. HARBIN: A similar motion for directed verdict,
6 but I've got a bit more specific claim. As I read the
7 statute -- I'll read it through and then go, A person is
8 guilty of homicide by child abuse if a person causes the
9 death of a child under the age of 11. And it goes -- and
10 it says, While committing child abuse. It goes on to
11 define child abuse or neglect means an act or omission by
12 any person that causes harm. Harm has gone on to be
13 defined. It says, Harm to a child's health or welfare
14 occurs when -- and it says either, A, inflicts or allows
15 to be inflicted upon the child physical injury, which I
16 don't believe was, actually, alleged here. Including
17 injuries sustained as a result of excessive corporal
18 punishment. The part B is, I believe, interesting, it
19 says, Fails to supply the child with adequate food,
20 clothing, shelter, and health care. And the failure to do
21 so causes a physical injury or condition resulting in
22 death.

23 We've had, at least, three doctors get up on the
24 stand and testify explicitly as to the cause of death.
25 Each one of them said the explicit cause of death was a

1 hydrocodone overdose, explicitly. I believe there's been
2 no evidence -- no medical evidence in any way that there's
3 anything she could have done. It's conjecture to say if
4 something would have happened, then maybe. But even the
5 most recent witness, Dr. Ward, said he couldn't tell you
6 that had she called at 8:00 that that would have changed
7 anything. Conjecture, I believe, doesn't amount to a
8 level of evidence that should satisfy this Court.

9 Judge, I'll, also, point to State v. Arnold. And I
10 understand the State wants to argue circumstantial
11 evidence, and that's fine. But it has to be substantial
12 and it has to be reasonable. In this case, I believe
13 they've had their witnesses, basically, directly
14 contradict their pursuit of this case.

15 If the State wants to argue that my client should
16 have been more attentive to the child and taken the child
17 to a hospital earlier, that's fine. That would be
18 neglect. This statute demands it several times with
19 explicit language, it says that they want a causal effect.

20 She did not administer the hydrocodone. It has not
21 been the State's position at any moment that I can tell
22 that she ever administered the hydrocodone, allowed it to
23 be administered, or knew it was administered, only that
24 the child had a cold. And by morning time, the Doctor
25 told the Court in open court that there's no way to know

1 if that would have helped.

2 So, by that definition, I believe she could not have
3 caused the death. And I believe she deserves a directed
4 verdict respectfully, Judge.

5 THE COURT: Thank you.

6 What's the State's position?

7 MR. RICHARDSON: Your Honor, once again, I'm back to
8 the omission, circumstantial evidence on omission. We
9 have testimony in the record through their own statements
10 even that the child came to the house and was put to bed.
11 And, in fact, I believe Mr. Harbin's Defendant
12 testified -- or had it put in her statement that she had
13 awakened at 8:00 and changed the diaper of the child, and
14 the child never woke up.

15 Dr. Ward just testified that it is in his expert
16 opinion that the child was in a coma at that time. That
17 is an extreme indifference to the child's life. No
18 medical attention was given. The child was under the care
19 of her for a period of approximately 12 hours in which the
20 point -- that, at one point in time, she admits that the
21 she was told that the child needed to go to the doctor.

22 Your Honor, there's plenty of circumstantial evidence
23 to establish that she omitted getting health care for the
24 child, as required under the statute.

25 THE COURT: But doesn't that failure to get the

1 health care have to cause the death? I mean, that's what
2 his argument is that by the time -- if the jury were to
3 believe that the child received a fatal dose of
4 hydrocodone before returning to the mother, it didn't
5 matter what the mother did, because there was no way to
6 reverse that.

7 I mean, what medical evidence is there that her act
8 or omission caused the death?

9 MR. RICHARDSON: Well, Dr. Ward testified that if the
10 child had gotten healthcare, he would have lived. And we
11 have a 12-hour period of time where she has the child.

12 THE COURT: Did he say that flat -- I mean, I
13 remember him saying that. But I, also, remember there was
14 some hesitation about the way he phrased it.

15 So what --

16 MR. RICHARDSON: I think what he said, Your Honor --
17 and I don't want to misquote -- is that at 8:00 a.m., the
18 child may or may not have been -- have lived if he had
19 gotten medical attention. But, certainly, before that, if
20 he had gotten medical attention.

21 We have -- we have testimony -- albeit, it's all over
22 the place that she's coming in checking him during the
23 night. And we have testimony that she didn't come in and
24 check on him through the night. Her statements in and of
25 themselves are contradictory to each other. That's

1 evidence that needs to go to the jury, albeit
2 circumstantial.

3 MR. HARBIN: Judge, the contradictory statements that
4 he wants to paint, I think that's a little bit absurd.
5 She's off 15 minutes here or there. There are consistent
6 statements throughout that when she discovered the child
7 unresponsive, she reacted appropriately.

8 I believe the crux of this argument should start at
9 8:00 a.m. And that's what Dr. Ward addressed. You're
10 allowed to take into account a reasonable amount of
11 circumstantial evidence, not any. I don't mean to say
12 there's none, just there's not a reasonable amount.

13 And I believe that the jury, and Your Honor, and
14 everybody here understands if you receive a child in a
15 state in which somebody says he's congested, he's got a
16 cold, you check on them. And that's what she did. That's
17 what all the testimony has been. She checked on him. She
18 was feeding him -- or attempted to feed him. He didn't
19 eat. She clothed him, put him in a crib, and checked on
20 him throughout the night. I mean, I don't touch my kid at
21 night if I check on her. And then in the morning, the kid
22 was breathing, according to her.

23 But even in the morning at 8:00, Dr. Ward has told us
24 that there's no evidence that that would have saved the
25 child's life. So in order to get around the State's

1 concern, I would say, as of 8:00, there's nothing in the
2 record that says that my client could have done anything
3 to save the life of the child.

4 Prior to 8:00, I believe it is reasonable for the
5 Court to consider that the only evidence available to my
6 client had nothing to do with hydrocodone. She,
7 certainly, was totally unaware of that. And she was only
8 responding to symptoms that all of us have seen dozens of
9 times with children, irritability, runny nose,
10 sleeplessness, and that's it. I think the reasonableness
11 portion of your discretion, Judge, would demand that this
12 be a directed verdict.

13 MR. RICHARDSON: Your Honor, if I may.

14 THE COURT: Yes. Go ahead.

15 MR. RICHARDSON: I don't want to play a tennis match
16 here. There was, also, testimony in the record from a
17 neighbor that she told her that the child couldn't stand.
18 And there's, also, testimony that the child was stumbling.
19 These are things that the jury could take into
20 consideration that she should have taken her child to the
21 doctor at that moment, not to mention some other people
22 suggested she should take him.

23 THE COURT: All right. Well, again, viewing
24 everything in the light most favorable to the State, I
25 think there's sufficient evidence for the case to go to

1 the jury in light of Dr. Ward's testimony about the
2 possibility of remedial action that could have been taken
3 on Sunday, and what it's possible success would have been.
4 And in light of all the testimony about the child's
5 physical condition, I would have to allow the case to go
6 forward.

7 And I'm not doing so on the ground of just
8 circumstantial evidence. I think there is sufficient
9 evidence of both kinds, circumstantial and direct. Again,
10 I'm taking into account the pressure sore. There's enough
11 for the jury to have more than just speculation and
12 conjecture.

13 So anything further?

14 MR. RICHARDSON: Your --

15 MR. DEJONG: Your Honor, just for --

16 I'm sorry, Mr. Richardson. I didn't mean to
17 interrupt you.

18 I -- just kind of a scheduling note.

19 THE COURT: Yes.

20 MR. DEJONG: I anticipate putting up an expert.

21 THE COURT: Yes.

22 MR. DEJONG: And then what I would ask for is a brief
23 recess after that for -- or let me rephrase that, then let
24 you voir dire my client as to testifying, and then a brief
25 recess so I can chat with him, just very briefly. I'm not

1 asking for a long period of time. So he can make his
2 final decision as to whether or not he wishes to testify.
3 So I just share that with the Court that that's where I'm
4 headed.

5 THE COURT: Well, what I was planning to do is to
6 question all three of the Defendants about their rights to
7 testify right now.

8 MR. DEJONG: Okay.

9 THE COURT: And then I'll be glad to give you a
10 break.

11 MR. DEJONG: Well, I would still like that break.

12 THE COURT: Yes, sure.

13 MR. DEJONG: But that is depending on how this expert
14 testifies, it may have some bearing on everybody's
15 decision whether to testify or not testify. I,
16 certainly, don't mind offering my client for voir dire
17 right now.

18 THE COURT: I completely understand that. I just
19 would prefer to advise them now, so they've got time to
20 think about it. I know they've already been told all this
21 stuff anyway. But let me just go ahead and do that.

22 MR. DEJONG: Okay.

23 THE COURT: I'll just ask the Clerk to swear in all
24 three.

25 THE CLERK: If y'all would raise your right hands.

1 WHEREUPON,

2 JAMIE EDWARD MORRIS,

3 DONNA LYNN PHILLIPS,

4 LATASHA DIANE HONEYCUTT,

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

6 THE COURT: Let me just ask -- they can have a seat.
7 You just stay right where you are. I'm just going to go
8 over with you some questions about your right to testify,
9 and your right not to testify, and make sure you
10 understand your rights in that regard, and the
11 consequences of your choice about whether to testify or
12 not testify.

13 MR. O'CONNELL: Your Honor, my client turns to me and
14 says she wants to testify.

15 The Judge has to ask you do you understand your
16 rights. Listen to the Judge. Please, listen to the Judge
17 and answer the Judge's questions.

18 THE COURT: So if at any time you don't understand
19 anything I'm saying, or you want me to repeat something,
20 or if I'm not being clear, or just not making sense to
21 you, or if you can't hear me, just let me know. You can
22 raise your hand --

23 Yes, ma'am.

24 DEFENDANT PHILLIPS: This is to testify here with us;
25 right?

1 THE COURT: No, ma'am. This is testify in front of
2 the jury is what I'm talking about.

3 DEFENDANT PHILLIPS: Okay.

4 THE COURT: And if you need to stop and talk to your
5 lawyer at any time, I'll be glad to give you the
6 opportunity to do that. I just need to know that you want
7 to do that, so let me know.

8 DEFENDANT PHILLIPS: Okay.

9 THE COURT: First of all, you have the right to
10 testify and take the stand and tell your version of the
11 events to the jury, and you can, certainly, do that. You
12 have the absolute right to do that.

13 But I just need to make sure you understand that if
14 you do take the stand, you will be subject to being
15 cross-examined, just as all the other witnesses have been
16 cross-examined in this case by your lawyers. You would be
17 cross-examined by the Solicitor. The Solicitor could ask
18 you anything about the case that might be relevant, and
19 could ask you anything that might bear on your
20 credibility, or show any kind of bias or prejudice, just
21 as any other witness is subject to being cross-examined on
22 those things.

23 Is there any prior record that the State would try to
24 use to --

25 MR. RICHARDSON: As to Mr. Morris and Ms. Honeycutt,

1 there are two distributions. Each of them has a
2 distribution of marijuana conviction.

3 MR. DEJONG: And, Your Honor, with regard to
4 Mr. Morris, I don't dispute that he has a prior conviction
5 of distribution of marijuana. I would dispute and ask
6 that the Court, as for impeachment purposes, that the
7 State not be allowed or myself to go into the distribution
8 of marijuana.

9 I realize this is not a marijuana case, but there
10 are, certainly, allegations of drugs in this case, a lot
11 of allegations of drugs in this case. And I think that
12 that would be in such close proximity, albeit he's been
13 convicted of marijuana that that would be so close that it
14 would be highly prejudicial to my client. If it were to
15 come in, if Your Honor allows it to come in, I would
16 simply ask that it be limited that he has a prior
17 conviction --

18 One or two?

19 MR. RICHARDSON: He has one.

20 MR. DEJONG: One. A prior conviction for an offense
21 that carried in excess of one year. I think that would be
22 in line with the Fourth Circuit Court of Appeals case that
23 some day I'm going to memorize the name of that case. I
24 haven't memorized it yet. But I notice Your Honor nodded
25 in the affirmative. So I think you know which case I'm

1 talking about, Your Honor.

2 THE COURT: Yes, sir.

3 MR. HARBIN: Judge, I would join in the same motion,
4 and suggest the same remedy.

5 MR. O'CONNELL: Your Honor, the only -- My client
6 says she wants to testify. There are previous DSS cases.
7 I don't know if they're going to bring them up. If they
8 say they won't, that's fine. But I don't know what
9 they're going to do.

10 He said there were no criminal charges. Is he going
11 to use that against my client when I try to prove my
12 client has cared for the child so much that she would have
13 taken the place of the child. I have to worry about what
14 Mr. Richardson might do about a case almost eight years
15 ago.

16 MR. RICHARDSON: I'm not real sure what he's
17 referring to, Your Honor. Right now, we're talking
18 about --

19 MR. O'CONNELL: I was just letting everybody know
20 that my client doesn't have a record.

21 MR. RICHARDSON: His client does not have a record.
22 I do not have anything to impeach her on at all.

23 MR. O'CONNELL: Okay. Thank you.

24 THE COURT: Well --

25 MR. RICHARDSON: But in the -- I'm sorry.

1 THE COURT: Go ahead.

2 MR. RICHARDSON: I apologize. I interrupted you. I
3 didn't mean to.

4 THE COURT: No. You didn't.

5 MR. RICHARDSON: I was just going to respond to this
6 is not a drug case. Marijuana is an illicit drug. This
7 is an illicit drug. Anyway, the conviction for what he
8 was convicted for, I think, should come in.

9 THE COURT: Well, the only way it comes in anyway is
10 to impeach credibility; right?

11 MR. RICHARDSON: Yes, sir.

12 THE COURT: And didn't the Supreme Court say that
13 drug offenses have little probative value as to -- I mean,
14 the nature of that has little probative value?

15 Isn't that what the Dunlap case said?

16 MR. RICHARDSON: The one I was always referring back
17 to -- what Mr. DeJong was referring to is like and kind
18 cases coming in as impeachment.

19 THE COURT: Right.

20 MR. RICHARDSON: And, Your Honor, I apologize. I'm
21 not familiar with the case you're referring to.

22 THE COURT: Well, I'll think about how to handle it.
23 I think under Rule 609, the analysis I have to use under
24 Colf, C-O-L-F, I'm inclined at this point just to allow
25 it. I'm assuming it meets the other criteria of 609, but

1 would only be referred to as a prior felony conviction.

2 Now, Mr. Morris and Ms. Honeycutt may not want me to
3 do it that way, but that's what I would be inclined to do.

4 You're telling me that's what you want me to do?

5 DEFENDANT MORRIS: Sir --

6 THE COURT: I'm talking to your lawyer.

7 MR. DEJONG: I'm not really understanding your
8 question, Your Honor.

9 MR. HARBIN: Your suggestion was what you wanted him
10 to do?

11 MR. DEJONG: I'm sorry.

12 MR. HARBIN: Your suggestion was what you wanted him
13 to do, just saying a one year felony, as opposed to --

14 THE COURT: You wanted it to be restricted to just
15 saying they have a prior felony conviction?

16 MR. DEJONG: Yes, sir.

17 And I don't care if it's in excess of one year.
18 Under 609, you can cut it off after that is what I'm
19 saying.

20 THE COURT: Okay. And that's what you want me to do?

21 MR. HARBIN: And, Judge, I just ask whether or not
22 the Court would consider -- and I don't know what the
23 State's position is -- to be allowed to tell the jury that
24 she received and successfully completed six months
25 probation as part of this. I don't know if they would

1 consider that opening some kind of door that I don't know
2 about. But I figured better here now than later.

3 MR. RICHARDSON: Well, at that point in time, I think
4 it does open the door.

5 MR. HARBIN: And what door would that be?

6 MR. RICHARDSON: I'm going into --

7 THE COURT: Well, I'm going to tell the jury that if
8 they decide to testify, and if I limit it to a felony
9 conviction without any other description, which I think if
10 I did limit it to that, I wouldn't let you go into
11 anything about the background of the offense. That's why
12 I asked. You may not want me to do it that way. You may
13 want the jury to know exactly what it is, instead of some
14 unspecified felony. You can think about it.

15 MR. HARBIN: Yes, sir.

16 MR. DEJONG: Could we get back to you on that, Your
17 Honor?

18 THE COURT: Sure.

19 Going back to the questions I was asking the
20 Defendants about their right to testify, and the
21 consequences of the choice to testify or not. As I was
22 saying, if you did testify, you would be subject to
23 cross-examination about the things I told you about.

24 Furthermore, the State intends to bring out before
25 the jury the fact that Mr. Morris and Ms. Honeycutt,

1 should they testify, they would be asked or it would be
2 admissible to bring out that they have a prior felony
3 conviction that may not be, specifically, described, or it
4 may be. Nevertheless, it's either going to be told to the
5 jury that it's a prior felony conviction, or is the actual
6 conviction for distribution of marijuana.

7 So do you understand that, Mr. Morris?

8 DEFENDANT MORRIS: Yes.

9 THE COURT: Ms. Phillips?

10 DEFENDANT PHILLIPS: Yes.

11 THE COURT: Ms. Honeycutt?

12 DEFENDANT HONEYCUTT: Yes, sir.

13 THE COURT: And if you chose not to testify, the
14 Court will tell the jury that you have the absolute right
15 guaranteed by the Constitution to remain silent. And they
16 can't draw any conclusion from the fact that you didn't
17 testify, or take it into account whatsoever in determining
18 whether you're guilty or not guilty. They can't even
19 discuss that in the jury room. And I will tell the jury
20 that -- as I've already told them that you don't have to
21 produce any evidence or explanation. The burden of proof
22 is entirely on the State.

23 Now, whether you testify or not is a personal
24 decision. Because it's your right to testify or not
25 testify. And you don't have to tell me at this time what

1 your decision is. But I just want to make sure you
2 understand your rights and the consequences of your
3 choice.

4 And do you feel like you understand those things,
5 Mr. Morris?

6 DEFENDANT MORRIS: Yes, sir, Your Honor.

7 THE COURT: Ms. Phillips?

8 DEFENDANT PHILLIPS: Yes, I do.

9 THE COURT: And Ms. Honeycutt?

10 DEFENDANT HONEYCUTT: Yes, sir.

11 THE COURT: Did you understand all of my questions,
12 Mr. Morris?

13 DEFENDANT MORRIS: Yes, Your Honor.

14 THE COURT: Ms. Phillips?

15 DEFENDANT PHILLIPS: Yes, sir.

16 THE COURT: And Ms. Honeycutt?

17 DEFENDANT HONEYCUTT: Yes, sir.

18 THE COURT: Do you have any questions of me about
19 your right to testify or not to testify, Mr. Morris?

20 DEFENDANT MORRIS: No, sir.

21 THE COURT: Ms. Phillips?

22 DEFENDANT PHILLIPS: I'd like to ask a question.

23 THE COURT: All right. One second.

24 Ms. Honeycutt?

25 DEFENDANT HONEYCUTT: No, sir.

1 THE COURT: Yes, ma'am, Ms. Phillips.

2 DEFENDANT PHILLIPS: In regards to testifying,
3 anything past March the 12th, anything can be brought back
4 up past March the 12th?

5 THE COURT: I didn't say that. If you're going to
6 testify, we --

7 DEFENDANT PHILLIPS: So I can --

8 THE COURT: -- will have a discussion about the scope
9 of testimony that's allowed before you testified. We're
10 not going to have it right now. But I just needed to make
11 sure you understood about your rights to testify or not
12 testify.

13 DEFENDANT PHILLIPS: I just want -- I don't want to
14 mess up and say something that I'm not supposed to say.

15 THE COURT: Right.

16 DEFENDANT PHILLIPS: In regards to what part.

17 THE COURT: Yes, ma'am.

18 So thank you for your attention.

19 And I'm sure you've already talked with your lawyer.
20 But you can talk with your lawyer further about the
21 strategy of testifying or not testifying, and let me know
22 your decision at the appropriate time.

23 MR. DEJONG: Before you bring the jury out, could I
24 run and get my witness?

25 THE COURT: Yes.

1 We'll take about a five-minute recess.

2 (WHEREUPON, a break was taken.)

3 THE COURT: Yes, sir. You can bring the jury on in.

4 (WHEREUPON, the jury came into open court at
5 approximately 3:19 p.m.)

6 THE COURT: Ladies and gentlemen, we've reached the
7 stage of the trial where the State has concluded their
8 presentation of evidence. And, now, the Defense has the
9 opportunity, but, again, not the obligation, to present
10 any evidence they wish to.

11 So, Mr. DeJong.

12 MR. DEJONG: Thank you, Your Honor.

13 May it please the Court.

14 We'd call Dr. William E. Brewer to the stand.

15 Dr. Brewer, if you would, come around and be sworn.

16 THE CLERK: Place your left hand on the Bible and
17 raise your right hand.

18 WHEREUPON,

19 WILLIAM EDWARD BREWER, PhD,
20 after first having been duly sworn, testified as follows:

21 THE CLERK: Thank you, sir.

22 Have a seat.

23 And, if you would, state your name for the record,
24 please.

25 THE WITNESS: My name is William Edward Brewer.

DIRECT EXAMINATION

BY MR. DEJONG:

Q And are you a doctor?

A I have a PhD in chemistry.

Q All right, sir. Let's talk a little bit about your background. You say you have a PhD in chemistry. Where did you do your undergraduate work?

A I have a Bachelor of Science in Chemistry from North Carolina State University, and a PhD in chemistry from the University of South Carolina.

Q When did you get your undergraduate degree?

A In 1987.

Q When did you get your PhD?

A In 1991.

Q All right, sir. Tell us a little bit about -- well, let me ask you this. Where do you work now?

A I, actually, work at the University of South Carolina. I teach forensic chemistry, including forensic toxicology. I, also, own a couple of companies. I have a consulting company that has been in business since 2002. We review about half the deaths in the State of South Carolina. We review the toxicology reports currently. We've been doing that for about 10 years.

I -- just to back up a little bit, I worked at the South Carolina Law Enforcement Division as a forensic

1 toxicologist for six and a half years. And then I left
2 there and worked as a veterinary toxicologist for Clemson
3 University. And I left there to teach full-time at the
4 University of South Carolina. I'm board certified in
5 forensic toxicology.

6 Q Do you belong to any professional associations or
7 organizations?

8 A Yes, sir. I'm a member -- a full member of the
9 Society of Forensic Toxicologists. I'm a member of the
10 American Academy of Forensic Scientists.

11 Q All right, sir. And I'm not asking you to name it,
12 but have you been established --

13 A Yes, sir.

14 Q -- in the area of toxicology?

15 A Yes, sir.

16 Q On more than one occasion?

17 A Yes, sir.

18 Q And have -- prior to today's date, have you testified
19 in South Carolina courts as an expert witness?

20 A Yes, sir.

21 Q Do you know how many times?

22 A I'd say approximately 40 or more.

23 Q And was that as a forensic toxicologist?

24 A Yes, sir.

25 Q I believe you -- maybe you shared with us, but you

1 worked for SLED for a period of time?

2 A Yes, sir.

3 Q And how long was that?

4 A Six and a half years.

5 Q And what did you do for SLED?

6 A Analyzed biological specimens for the presence of
7 drugs and alcohol, poisons, and analyzed and quantitated
8 those levels to help assist in death investigations. I
9 was, also, involved in driving under the influence cases
10 as well.

11 MR. DEJONG: Your Honor, at this point in time, I
12 would move to have him qualified as an expert forensic
13 toxicologist.

14 THE COURT: Any voir dire?

15 MR. RICHARDSON: No voir dire.

16 THE COURT: All right. He's qualified.

17 Yes, sir.

18 MR. DEJONG: Thank you, Your Honor.

19 BY MR. DEJONG:

20 Q Dr. Brewer, at my request, did you review the
21 documents and records in this case?

22 A Yes, sir.

23 Q All right. And with particular regard to the
24 toxicology report?

25 A Yes, sir.

1 Q Toxicology aspect of it?

2 A Yes, sir.

3 Q And you have reviewed the records?

4 A Yes, sir.

5 Q Did you review all of the records?

6 A I reviewed all the records you sent.

7 Q In part, what we're probably going to look at mostly
8 is the AIT reports, but maybe a couple of other things.
9 Let's before we get into that look at a timeline that has
10 been, basically, established before you got here. And I
11 don't know if you can read this or not?

12 A I can.

13 Q On March the 14th of 2008, the child in this case was
14 picked up between 1:00 and 1:30 by his father, Jamie
15 Morris, and his grandmother, Donna Phillips. The child
16 was there until -- there's a fairly large window there,
17 but between 6:30 and 9:00 on Sunday evening. After that
18 time, the child was totally with the mother and/or her
19 boyfriend. So that's kind of the timeline that has been
20 established.

21 Now, in looking at -- or let me ask you this,
22 Dr. Brewer. Let's talk a little bit about metabolites.

23 A Sure.

24 Q I'm sure you can cover volumes -- can you give us a
25 basic definition of what a metabolite is?

1 A Liver is your primary organ for metabolism. The
2 function is to make drugs that are present, foreign
3 objects more water soluble so you can excrete it out of
4 your body and remove it from your body. And, in this
5 case, we're talking about hydrocodone. It's primary
6 metabolite is hydromorphone.

7 Q All right, sir. In reviewing the records from AIT
8 Laboratory, did you find any indication of hydromorphone,
9 if I'm pronouncing that correct?

10 A No. There was no indication of hydromorphone.

11 Q Either in the urine or the blood?

12 A In the urine, there was an indication. But that's --
13 well, not trying to digress, but that would be expected in
14 the urine sample.

15 Q Why would that be expected in the urine?

16 A Because of the fact your liver is metabolizing it,
17 and it's more water soluble. You're going to get some
18 urine excretion of the primary metabolite.

19 Q Would we say that metabolites -- well, do metabolites
20 get in the urine faster than the blood?

21 A You would expect to see higher concentrations in the
22 urine.

23 Q So, really, to make an accurate assessment in this
24 case, the metabolites in the blood would be important?

25 A Correct. Blood levels are really what you have to

1 look at. Urine levels are really irrelevant.

2 In this case, I do want to point out that the
3 hydrocodone level was much higher than the hydromorphone
4 found in the urine. That may or may not be relevant. But
5 blood levels are, for certain, what you look at. That's
6 what you're interpreting, the blood levels.

7 Q If we had the test for hydromorphone, would that give
8 any indication as to the time of ingestion of the
9 hydrocodone?

10 A Yes, sir. Typically, on an acute overdose of recent
11 exposure, you'll find the main drug is present in the
12 blood, but maybe low or negative for its metabolite,
13 because it doesn't have a chance to metabolize. Does that
14 make sense?

15 So it takes time to metabolize the active ingredient.
16 So sometimes in acute death, the recent exposure, you
17 would see high levels of a drug, but not necessarily
18 anything of the metabolite. And, over a period of time,
19 the metabolite starts to accumulate as the parent drug
20 starts to decrease in concentration.

21 Q All right, sir. Now, let's look at just a timeline
22 here. Well, let's back up. The allegations are that this
23 child died of a hydrocodone overdose?

24 A Yes, sir.

25 Q And, specifically, I gather at this point in time the

1 State said that the hydrocodone came from Tussionex. Are
2 you familiar with Tussionex?

3 A I am.

4 Q And does Tussionex have hydrocodone in it?

5 A It does.

6 Q Okay. Now, can you share with the jury a little bit
7 about what Tussionex is?

8 A Well, it's a medication that contains both
9 hydrocodone and chlorpheniramine. It's, actually, used as
10 a time-release formula. So, typically, dosing is,
11 generally, every 12 hours, as opposed to every four to six
12 hours. So you dose it less frequent. And that's the
13 advantage of it.

14 It's actually -- and I don't want to get into the
15 chemistry of it.

16 Q All right. So the basic difference is you don't have
17 to dose as often; correct?

18 A Correct.

19 Q All right. Now, does -- well, the hydrocodone and
20 the time release, does it have a peak time?

21 A Yeah. Typically, the peak hydrocodone concentration
22 that would be achieved is about four hours. Actually, in
23 the literature, it's 3.6, or 3.7, or something like that.
24 So the peak hydrocodone level still peaks, you know,
25 within a few hours.

1 Q Would that be whether or not it is time released or
2 any other --

3 A If it's not time released, hydrocodone is, generally,
4 one and a half hours where the concentration would peak,
5 where you would get your maximum hydrocodone
6 concentration.

7 Q So that peak time is, you said, four to six hours?

8 A I think the peak time is less than four hours for the
9 time released.

10 Q Okay.

11 A That's the peak.

12 Q And that would be -- well, let me ask you this. In a
13 situation where there are allegations of repetitive
14 dosing, would that make any difference?

15 A Yes. It could be in a sense that -- there's too many
16 variables to find in that regard about -- you know,
17 because it's going to accumulate if you do repeat dosing
18 of it. It depends on how frequent and how much the dosing
19 is. And those are variables we don't know.

20 Q Okay. Well, not knowing those variables and not
21 having the benefit of knowing whether there were any
22 metabolites in the blood, I'm going to ask you to look at
23 this timeline. And looking at that timeline, even with
24 Tussionex time release, when would, in your opinion,
25 Dr. Brewer, you see the effects of the hydrocodone?

1 A You should see it within -- probably within three
2 hours, but the maximum concentration being achieved, let's
3 say, four to six hours. So the symptoms are going to be
4 within a few hours.

5 Q Well, let's say someone -- let's back up here on the
6 timeline and say the child was dosed -- or given Tussionex
7 somewhere early, early Sunday morning, shortly after
8 midnight on Saturday, and that would have been -- or
9 Sunday would have been the 16th, but the early morning
10 hours. Would you have expected to see the child being
11 comatose prior to 11:15 on Monday, March the 17th?

12 A Oh, absolutely. I mean, by the afternoon.

13 Q All right, sir.

14 A Several hours after the dosing, if we're dealing with
15 a hydrocodone death overdose.

16 Q All right. Now, if the child -- well, let me ask you
17 this. Does hydrocodone affect urination at all.

18 A It does. Opiates tend to cause urine retention.

19 Q Now, in this case, I believe there was an indication
20 that the diaper had been changed at 8:00 in the morning?

21 A There is a note on that.

22 Q And that he had urinated?

23 A Yeah. I don't want to get -- there's variables.

24 But, yeah, that doesn't necessarily mean he wasn't
25 hydrocodone before or after. It's just a comment that I

1 made that -- a note, basically.

2 Q Right.

3 A There is urine there. Could it still be there if
4 hydrocodone is present? It's possible. But a lot of
5 times, you don't see urination, depending on the levels of
6 hydrocodone.

7 Q Okay. And if the child's diaper was changed and he
8 did not awaken, that does not necessarily indicate he was
9 comatose, does it?

10 A No. I guess that's my biggest problem in reviewing
11 these records. There's a lot of things in this,
12 unfortunately -- and it makes the case pretty challenging.
13 The biggest problem I have is if the scenario is that the
14 child was given the drugs the night before, the child,
15 certainly, would not be fine at 8:00 a.m. That's just a
16 given. And there's some indication that the child was in
17 a deep sleep.

18 But there's, also, a record where she indicates that
19 he rolled over. But there's multiple records where it is
20 stated that the child was fine at 8:00 a.m. And that's
21 the only problem that I have with the inconsistency of
22 saying the dosing was the night before. That is a
23 problem -- I'm not -- you know, that you guys will have to
24 sort out.

25 Q Well, aside from 8:00 a.m. on Monday the child being

1 fine, there's, also, testimony -- or it's in the record
2 that several times during the night he had been checked on
3 and he was fine. Would that indicate --

4 A You know, it depends on the degree of checking on.
5 And I'll be the first to say I've never changed a diaper
6 in my life. So if a child is in a really deep sleep and,
7 let's say, there's the effects of hydrocodone, would you
8 expect the child to -- would you know that he's in a deep
9 sleep and cannot be woken up? Would you know that as a
10 parent? And I can't answer that personally.

11 As I said, I -- actually, I tried to make a couple
12 phone calls to see if I could get some feedback from
13 people that would be knowledgeable in this area, and I'm
14 not one. So saying a child is fine, I don't know what
15 that extent means. If the child is normally a deep
16 sleeper, is it possible that he's in a deep sleep and is
17 fine? Or is the scenario, you know, that he was fine,
18 literally fine, and then all a sudden two hours later,
19 he's in respiratory depression. So that's -- you know,
20 that's the debate.

21 Q Would you -- I'm sorry. Could you quantitate for us
22 to some degree the level of hydrocodone in this particular
23 case?

24 A We could do some calculations. The level that was
25 found was 102 nanograms per milliliter in the blood. And,

1 without question, I agree with what everyone else has
2 stated so far that that is the cause of death. I agree
3 with the pathology results.

4 There is another toxicologists that made a comment
5 about it as, well, the toxicity of -- and what his thought
6 was about the hydrocodone level. So I feel confident. In
7 adults, I've seen reports at 120 to 150 nanograms per
8 milliliter as being the cause of death in an adult. It's
9 an opiate intolerant, meaning exposure to the drug. But
10 doing a dosing, it's a little hard to deal with a child.
11 Because most of these values we use for pharmacology
12 purposes on dosing is based on an adult and not a child
13 for obvious reasons. And so it's a little hard to say.

14 I don't think that the child being so small received
15 a very large dose. I think it was a very small dose. And
16 I would venture to say -- and I didn't hear the
17 toxicologist before me, but that he would concur with
18 that. Because I think that's important for the jury to
19 realize, too. We're not talking about a large dose. To
20 me, looking at this, being completely unbiased, this is
21 not an intent to cause harm to the child, you know. It's
22 not a large dose.

23 If I do a calculation based on adult numbers, we're
24 only looking at four milligrams as a dose. It's not a lot
25 of drug. But you're looking at a small child, so it

1 doesn't take much to lead to toxicity.

2 Q Based on the timeline and the level of hydrocodone
3 that AIT found in the urine, do you find anything
4 troubling about that at all in terms of time, and the
5 level of the drug, and the urine?

6 A I don't know if I follow you. I think that the --
7 I'm not sure if I follow your question. I'm sorry.

8 Q Okay. Well, I guess what I'm saying is time-wise,
9 the closer to the time that the drug was administered and
10 the urine specimen, would there be any correlation between
11 those two?

12 A Again, we can't really focus on the urine results so
13 much. Just noting that there's a lot more hydrocodone
14 found than hydromorphone indicates that the child is
15 metabolizing the drug for one, which the toxicologist
16 pointed out in the records. But I don't think there's a
17 lot of --

18 Q I'm sorry?

19 A There's not a lot for me to focus on in terms of the
20 urine. I think the main focus needs to be on the blood.
21 And, unfortunately -- and I don't know if this was pointed
22 out. Yes, they had a limited sample to work with. This
23 happens quite frequently with child deaths. And I see it
24 all the time.

25 As a matter of fact, I'm working with a case right

1 now that involves a limited specimen, and that's not
2 surprising. But you're dealing with a child, especially a
3 two-year-old.

4 But what may not be pointed out is when they test it
5 for hydrocodone, they, also, test it for hydromorphone.
6 They test it for both simultaneously. And they had an
7 error in the analysis. I'm not sure why the error
8 occurred. Sometimes things happen. And whether it was an
9 effect caused by the -- the problem is they go back to
10 retest for hydromorphone and there's no specimen left over
11 in the original specimen. So they tested another specimen
12 later. And they found no hydromorphone and they found no
13 chlorpheniramine either in that later specimen. So
14 there's a lot of variables there.

15 And another thing that's missing that is alarming to
16 me is that the vomitus was never tested. And, as a
17 toxicologist, I would have pinpointed that that's one of
18 the first things I would look at because that's recent.
19 The vomitus -- the child vomited while being given CPR.
20 And I would want to know was hydrocodone present in that
21 vomitus material and what was the concentration, how much
22 was there?

23 Q And I think you said, but if you could clarify, why
24 would that be so important?

25 A Because it would give us an idea if there was a

1 recent exposure. Was the child given hydrocodone two, or
2 three, or four hours prior to being found in respiratory
3 distress? Or was it given 12 to 14 hours prior? And then
4 I would expect to see a very low amount, if not negative,
5 in the vomitus.

6 Q So that would, basically, be testing the contents of
7 the stomach?

8 A Exactly. Exactly. And hindsight is always 20/20.
9 You can always go back and look at something and wish you
10 would have done something. But that's my perspective on
11 this case.

12 Q Anything else that is absent that you find troubling?

13 A That's really it. You know, again, it all boils down
14 to, in my opinion, what the definition of fine is.

15 Because if the baby was fine at 8:00 a.m., I don't believe
16 this exposure occurred have the night before. If the baby
17 is comatose and a parent can believe that the child was
18 fine, that's possible. And I don't know. I'm not placing
19 judgment one way or another. Then it's possible.

20 Q If the child were comatose because of a hydrocodone
21 overdose, can you share with the jury what those symptoms
22 might be?

23 A I would expect the child to be extremely limp and not
24 moving, obviously. I would expect shallow breaths.

25 Because we're talking about respiratory depression that

1 may or may not have been noticed. No response to touch,
2 those type of things.

3 Q And those are fairly noticeable things, would you
4 agree?

5 A Again, I'm not a parent. I'm not going to pass
6 judgment. But I would think so. But I don't know. I
7 have no experience in that area.

8 MR. DEJONG: One moment please, Your Honor.

9 (Pause.)

10 MR. DEJONG: Thank you, Dr. Brewer.

11 I'm not sure which order we're going to go in. But,
12 if you would, answer these gentlemen's questions, I would
13 appreciate it.

14 THE COURT: Mr. Richardson.

15 MR. RICHARDSON: Thank you, Your Honor.

16 CROSS-EXAMINATION

17 BY MR. RICHARDSON:

18 Q Good afternoon, Doctor.

19 A Hi.

20 Q Let me ask you, you spoke about this particular
21 medicine being a time-release type of medicine?

22 A Yes, sir.

23 Q And you know, in fact, that the Tussionex we're
24 dealing with today is a time release type of medicine?

25 A Yes, sir.

1 Q And I assume you found that out through your viewing
2 of the records?

3 A Correct.

4 Q And I believe it was your testimony that -- I'm
5 referring to one dose. If you take one does of the
6 Tussionex, then that's going to have a -- and correct me
7 if I'm wrong. But that's going to have a 12-hour period
8 of time?

9 A What that means is at 12 hours, you're going to need
10 your next dose, because your concentration has decreased
11 over time. So you get your next dose. On a standard drug
12 which you would, generally, get that's not time released,
13 then they say every four to six hours, as an example. It
14 means after four hours, you start losing the effect of the
15 drug and you need another dose of that drug.

16 Q Okay. Fair enough. So four hours is the peak on
17 that; is that right?

18 A That's what the literature says. And you can even go
19 to the website. And that's where I pulled some of this
20 information from, and a pharmacologist that I contacted.

21 Q Okay. Well, let me ask you this. If a person is
22 medicating a child with this Tussionex and gives multiple
23 doses within, say, every four hours, do you agree with me
24 that that would build up into the child?

25 A Yes, it would, certainly.

1 Q So, in other words, whatever the child's metabolizing
2 now -- and I hope I'm using the word correctly.

3 A That's fine.

4 Q In actuality, you could be adding to it. In other
5 words, you can add more than what's being metabolized out?

6 A Yes and no. Yes, I'll agree to that to some extent.

7 Q Okay. So, at some point in time, if you're giving
8 multiple doses of a time release and you're giving -- and
9 I agree with you. We don't know how many doses were
10 given. But if you're giving multiple doses over a period
11 of time and it's not done within the time that that drug
12 has metabolized out of the body, then, ultimately, that
13 could get you to a failed position; is that true?

14 A Yes. My only problem in dealing with a two-year-old
15 now is I think even a single dose is going to lead to
16 problems. So, you know, the multiple dosing -- and, of
17 course, it depends on how much. I'm not trying to take us
18 on a different road. But it's not dealing with an adult
19 again. So it's a little bit challenging how you interpret
20 this, but I agree with what you say.

21 Q Now, I guess in this particular case, we -- the
22 figure 102 of the hydrocodone, I guess you reviewed that.
23 And did you testify that's very high in a child?

24 A Yeah. I would say in a two-year-old that's the cause
25 of death. I would, certainly, concur.

1 Q And is it fair to say that if someone gave multiple
2 doses over a Sunday, and those multiple doses could very
3 well become critical sometime after the person had gave
4 them those doses and had given the child over to somebody
5 else?

6 A It's possible, yes. But, remember, you're going to
7 start showing symptoms two hours after your first dosing.
8 You're going to start having symptoms after your first two
9 hours of dosing. And everything depends on how much is a
10 dose, also, how much is being given.

11 Q And would you agree that some of those symptoms would
12 be respiratory problems?

13 A Absolutely.

14 Q Difficulty breathing?

15 A Yes.

16 Q Become lethargic?

17 A Yes.

18 Q Sleepy?

19 A Yes.

20 Q The child would be -- have problems standing and
21 walking?

22 A Yes.

23 Q And I think your statement is that one of your real
24 problems is that -- is the 8:00 a.m. hour; is that
25 correct?

1 A Yes, sir.

2 Q Because -- it is?

3 A Yes, sir.

4 Q Okay. Because from your interpretation of what you
5 read, the child was fine at 8:00 a.m.?

6 A Yes, sir.

7 Q And that came from the Defendant, did it not?

8 A It came from -- yes, it came from the -- well,
9 there's three Defendants, I guess. But it came from the
10 mother.

11 Q Defendant Honeycutt, the mother, yes. So your
12 opinion is based upon what she said, what a layperson said
13 at 8:00 a.m.?

14 A Essentially, yeah. I'm looking at notes that
15 indicate the fine part. Yeah, absolutely. You're saying
16 the baby is fine at 8:00. There's no way the baby is fine
17 at 8:00 and then -- from an exposure 12 to 14 hours being
18 the last exposure, and then goes into respiratory
19 depression two hours after that with no dosing between
20 those times. That's my problem. How do you define
21 "fine" --

22 Q If -- I'm sorry. I didn't mean to interrupt. I
23 apologize. Go ahead and finish.

24 A So yeah, exactly.

25 Q Well, if the child was comatose at 8:00 a.m., would

1 that change your opinion?

2 A If the child was comatose, I would not call that
3 fine. I think we would all agree with that. So that
4 definitely changes my opinion for certain, you know.

5 Q And, in your review of the record, you did review
6 that it was stated that the child did not wake up at 8:00
7 a.m. when the child was changed?

8 A Yeah. It did say that in one statement. In one
9 statement, it said that the baby rolled over on his
10 stomach. And he was turned over back on his back and he
11 was fine. That was one of the statements I read. And
12 there was another statement that stated that the baby was
13 asleep and wasn't awoken. That was another statement.
14 And there was another statement related to this, too, that
15 indicated the baby was fine. And I think there was
16 another statement that suggested that as well.

17 Q Well, there's a lot of different statements?

18 A A lot of different statements, yeah.

19 Q The bottom line is at 8:00 a.m., we don't have a
20 doctor or an expert in here that says that baby was fine
21 at all, do we?

22 A Yeah. There's no expert testimony, obviously.
23 Because nobody was there as an expert to review this at
24 8:00.

25 Q And if, in fact, the baby wasn't checked on all

1 night, would that, also, change your opinion?

2 A If the baby was not checked on all night?

3 Q Yes.

4 A I guess I'm a little confused. Because there's
5 indications that the baby was checked on periodically
6 throughout the night. So if the baby was not, it just
7 means that we don't know. That's all that means.

8 Q You say "indications." And, once again, that was the
9 Defendant Honeycutt saying she had checked on the baby all
10 night; right?

11 A Oh, yeah. I can only base it on the information I'm
12 given to review. Obviously, I wasn't there. So yes, I'm
13 basing it on the information I'm given, correct.

14 Q Well, you worked for the State Law Enforcement
15 Division?

16 A Yes, sir.

17 Q Is it fair to say that people charged with crimes
18 don't always tell it exactly as it is?

19 MR. DEJONG: I'm going to object to that, Your Honor.
20 He may have worked for the State, but it still calls for
21 speculation on his part.

22 THE COURT: Overruled.

23 THE WITNESS: The way I look at it, which is as a
24 forensic toxicologist with a chemistry background, the
25 most important evidence to me is the toxicology report.

1 And that's what's so disappointing to me. It isn't the
2 records of the interviews. Because I agree sometimes
3 mistruths can be misstated. I'm not saying necessarily
4 they're lies. Sometimes, people remember different things
5 differently, et cetera.

6 But what bothers me is not having a hydromorphone
7 level to compare. If I had a hydromorphone level, I would
8 feel a little bit more definitive about my reasoning about
9 the time of exposure of the drug. But that's not given.

10 BY MR. RICHARDSON:

11 Q Correct me if I'm wrong. You did testify that the
12 fact that the child was fine at 8:00 a.m. was a big part
13 of your testimony and your opinion?

14 A Yes, sir. If the child was fine at 8:00 a.m., I
15 don't see how he died two hours later, if the exposure was
16 12 to 14 hours prior.

17 MR. RICHARDSON: Okay. Thank you, sir.

18 I appreciate it.

19 THE COURT: Mr. O'Connell.

20 CROSS-EXAMINATION

21 BY MR. O'CONNELL:

22 Q Doctor, if they had taken the vomitus and then
23 checked it over and everything, would that have helped you
24 at all?

25 A It would have given us an idea, in my view. And I've

1 been doing forensic toxicology for over 20 years. I would
2 have liked to have looked at that specimen. Because that
3 would give me an idea of a level of hydrocodone that could
4 show whether there was a recent exposure or not.

5 And if it's negative, if the concentration is really,
6 really low, that would suggest that we're not dealing with
7 a recent exposure. Because what we have here is we have
8 just one drug level with no metabolite being tested, as we
9 can't even look at its metabolite. One drug level at one
10 point in time that we're trying to base this on toxicity.
11 And it's hard to determine acute toxicity and chronic
12 toxicity. And if we're talking extended periods of times
13 of dosing, all those things with just one analysis, that's
14 problematic.

15 So I would like to see the vomitus. I would have
16 liked to have seen it tested.

17 Q Do you have any idea why the vomitus wasn't taken in
18 this case?

19 A I have no idea. There's nothing in these records to
20 suggest, you know, whether it was -- I think there was a
21 statement made that there was a picture showing the
22 vomitus. So that means to me that, obviously, it could
23 have been collected and analyzed.

24 Q They did collect it. They have a record showing they
25 collected it. They just never tested it. If I remember

1 the testimony, did they -- one or two of the officers
2 said, well, they couldn't get anything from the vomitus;
3 is that true?

4 A I would say, no. I would have tested it, but I
5 wasn't the toxicologist.

6 Q Some of the organs of the child were taken out
7 because they farmed the organs to other children. Would
8 it have given you any kind of clue as to the amount of
9 drugs in the child's system, or anything else?

10 A From what I can gather, the child lived a long period
11 of time, I guess, on life support. So I don't know. I
12 think that considering the fact that they had very limited
13 blood specimen, I probably would have chosen to test the
14 liver and, at least, get an examination of the liver to
15 see if we could see something relating to the hydrocodone
16 and hydromorphone levels.

17 But even then, it's still such an extended period of
18 time on life support. There's a lot of variables there.
19 So I don't know how beneficial it would have been.

20 Q Okay. The child, we all know and believe, was
21 returned between 7:30 to 9:00 on Sunday evening. The
22 child is said to have been up, moving, throwing a fit, or
23 being very irritable. If that child had been dosed even
24 one time prior to that, would that be how the child would
25 be acting?

1 A Typically, these drugs are central nervous system
2 depressants, so a description of drowsiness and lethargy.
3 But fussiness -- sometimes, these drugs are given to
4 prevent fussiness. So it is a little contradicting in
5 that regard --

6 Q So -- excuse me. Go ahead.

7 A Anyway, so I would not expect fussiness and
8 alertness. I would expect -- and that maybe depends on
9 how you define fussiness. But I would expect more of a
10 quiet and calming, lethargy, drowsiness.

11 Q So if there had been an earlier dose, say, like one
12 of the witnesses said they believed -- or they opined that
13 the child had been given a dosage on what we call Saturday
14 morning -- or Saturday after midnight, Sunday, on the
15 16th, the child was given a dose then and then another
16 dose, say, by 8:00 to 12:00, how would that child be when
17 the child was taken to the emergency room?

18 A Again, it depends on the doses, which we don't know,
19 and if given enough to cause effects. It won't take much
20 to cause effects. I would expect the child to be real
21 drowsy.

22 Q Well, would you expect the child to be up, irritable,
23 fussy?

24 A I would expect him to be lethargic and drowsy.

25 Q There's a report that the child was standing -- or

1 stumbling. Would that have occurred?

2 A Again, it depends on how high the level is. So
3 there's just variables that you can't control. I mean,
4 it's possible.

5 Q Would there be -- this -- what was it -- 102
6 nanograms per milliliters, would that have been there if
7 the child had been given drugs, say, right before the
8 child was returned at 8:00 on Sunday evening, 7:30, 8:00?

9 A No, no. The child would have been -- at 102
10 nanograms per milliliter, the child would have been like
11 the child was found in respiratory depression.

12 Q So the child would have been like, you know, a sack
13 of wheat or a bag of potatoes?

14 A Yes, sir.

15 MR. O'CONNELL: Thank you very much.

16 MR. HARBIN: May it please the Court.

17 THE COURT: Mr. Harbin.

18 CROSS-EXAMINATION

19 BY MR. HARBIN:

20 Q Doctor, you referred several times to the variables.
21 And I think you used many variables. There's a lot of
22 variables involved in the calculations you're talking
23 about?

24 A Yes, sir.

25 Q And can you briefly tell us what effects the body's

1 ability to absorb and process drugs -- and, specifically,
2 I'm referring to -- you testified as to how long it takes.
3 What's the accuracy -- or what's the peak time? How long
4 does it take to take effect? What is going to make that
5 either a shorter period of time or a longer period of
6 time? What variables could you consider as a toxicologist
7 to make those numbers change?

8 A It's really not a lot to make it a shorter period of
9 time, per se. Because this drug -- if we're talking about
10 Tussionex and not talking about other drugs. It's
11 designed to be a time release. And there's -- anyway, the
12 design in the drug, we don't need to get into and how it
13 works. But food in the stomach could, certainly, slow
14 some of that process down. So it's possible that a lot of
15 food that's ingested could slow it to some extent.

16 Q Well, let me ask you this. Does the actual metabolic
17 rate of the body -- I'm probably misusing that term. But
18 the rate at which you're breathing, the rate at which your
19 heart is pumping, does that effect how quickly you use up
20 a drug?

21 A It can.

22 Q Now, if you have a drug that depresses the rate at
23 which your heart is beating or your lungs are -- the
24 volume of your lungs or the rate at which your lungs are
25 breathing, would that then tend to lengthen the amount of

1 time that the drug remains in your body because it's not
2 being processed as fast?

3 A Yes. I would agree with that.

4 Q So if you start off with a drug that is depressing a
5 system and then add that same depressant to the system,
6 theoretically, it would take even longer for that second
7 dose to get out of the body than the first dose, because
8 of the depressed nature of the system that it's going
9 through?

10 A I would agree with that.

11 Q Okay.

12 A So the concentration would be accumulating.

13 MR. HARBIN: Yes, sir.

14 Thank you very much.

15 REDIRECT EXAMINATION

16 BY MR. DEJONG:

17 Q Dr. Brewer, when Mr. Richardson was asking you
18 questions, I think it was about the repeated dosage, if
19 that would increase, I think, the concentration. If I
20 recall correct, you said you agreed in part and disagreed
21 in part, I believe?

22 A Well, I think what you have to be careful of is that
23 no doubt that it's going to cause an increase going
24 forward. But even with repeat dosing, we're still getting
25 repeat plasma concentration still from the last dose, you

1 know, four hours prior. Still that's going to be your
2 peak. So, yes, it is building up. And you would expect
3 the concentration to continue to build up. But then
4 you're still going to have a peak from your last dosage.

5 Q Like within four hours?

6 A I would say within four, even stretch it out to six
7 hours.

8 MR. DEJONG: Thank you, Dr. Brewer.

9 MR. RICHARDSON: Nothing further, Your Honor.

10 THE COURT: Any further questions for the witness?

11 MR. O'CONNELL: Your Honor, I was just going to ask
12 one.

13 RECROSS-EXAMINATION

14 BY MR. O'CONNELL:

15 Q I've heard the term "salicylate"?

16 A Salicylates.

17 Q What would that have to do with your opinion?

18 A It's an aspirin metabolite found from ingesting
19 aspirin. So the child, obviously, got aspirin. It came
20 from aspirin -- or a medication that contained aspirin,
21 let me rephrase that.

22 Q It wouldn't have to do with metabolites or metabolic
23 rates?

24 A It doesn't have anything to do with the metabolic
25 rates, or anything. It indicates that the child was

1 exposed to or ingested aspirin, or something that contains
2 aspirin.

3 MR. O'CONNELL: Okay. Thank you.

4 MR. RICHARDSON: I would like to follow-up.

5 THE COURT: Yes, sir.

6 RECROSS-EXAMINATION

7 BY MR. RICHARDSON:

8 Q In light of that, that particular substance that
9 Mr. O'Connell just questioned you about, is that found in
10 Tylenol?

11 A Tylenol is acetaminophen, so, no, it is not found in
12 Tylenol.

13 Q I apologize.

14 A That's okay.

15 Q Did you see anywhere that Tylenol was found in this
16 child?

17 A I did not. But I'm still a little skeptical of the
18 tox results. And a lot of it has to do with the limited
19 amount of blood that they tested. But, no, I did not see
20 anything.

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

22 MR. DEJONG: Your Honor, I would request that he be
23 excused.

24 MR. RICHARDSON: Without objection.

25 MR. O'CONNELL: No objection.

1 THE COURT: Thank you.

2 You're excused, Dr. Brewer.

3 Okay. We'll take a short recess. Don't talk about
4 the case. And continue to keep an open mind.

5 Thank you.

6 (WHEREUPON, the jury was excused from open court at
7 approximately 4:02 p.m.)

8 (WHEREUPON, a break was taken.)

9 THE COURT: Are you ready to proceed? '

10 MR. DEJONG: I'm ready to proceed, Your Honor.

11 THE COURT: All right. Bring the jury in.

12 (WHEREUPON, the jury came into open court at
13 approximately 4:25 p.m.)

14 THE COURT: Yes, sir, Mr. DeJong.

15 MR. DEJONG: Thank you, Your Honor..

16 May it please the Court.

17 We'd call Ms. Karen Renee Shelton to the stand.

18 Come around, please, ma'am, and be sworn.

19 THE CLERK: Place your left hand on the Bible and
20 raise your right hand.

21 WHEREUPON,

22 RENE E SHELTON,

23 after first having been duly sworn, testified as follows:

24 THE CLERK: Ma'am, if you would, have a seat.

25 And state your name for the record, please.

1 THE WITNESS: My name is Renee Shelton.

2 DIRECT EXAMINATION

3 BY MR. DEJONG:

4 Q Ms. Shelton, if you will, kind of keep your voice up.
5 You don't have to swallow the microphone. Just stay close
6 to it so we can hear you.

7 A Okay.

8 Q Ms. Shelton, where do you live?

9 A [REDACTED] Lake Road in Pickens.

10 Q And are you related to Jamie Morris?

11 A He's my stepson from my first marriage.

12 Q And you say your "first marriage," who were you
13 married to?

14 A George Edward Morris, Jr., his dad.

15 Q All right, ma'am. And I believe his father is
16 deceased; is that --

17 A Yes.

18 Q But you and Jamie have maintained a relationship,
19 even after his father's death?

20 A Yes.

21 Q Do you see each other quite frequently?

22 A Yes.

23 Q Can you describe for the jury the relationship Jamie
24 had with minor

25 A minor was his whole world.

1 Q All right. What do you mean by that?

2 A minor was everything to him. He loved that baby. I
3 mean, that's all he talked about was minor

4 Q I'm sorry.

5 A That's all he talked about was minor

6 Q And, to your knowledge, did he provide medical care
7 for this child?

8 A Yes. If minor got a runny nose or a cough, he
9 thought minor had to go to the doctor for anything.

10 Q All right. And did you have occasion to see Jamie
11 and minor on March the -- I believe it would be March the
12 15th, Saturday?

13 A Saturday.

14 Q How did you come about seeing them on Saturday?

15 A They had come to my house. Because I had been sick
16 with heart surgery and stuff.

17 Q Okay. I don't know about the jury, ma'am, but I'm
18 having a little hard time hearing you. Could you speak up
19 a little?

20 A I had been sick a lot. And they had came to my house
21 to let me see minor

22 Q Okay. Did Jamie's mother come with him as well?

23 A Yes.

24 Q All right. And how long did they stay at your house,
25 Ms. Shelton?

1 A Approximately four and a half hours.

2 Q Okay. Was that morning or afternoon?

3 A Afternoon.

4 Q What did minor do while he was at your house?

5 A He ate very good. I fixed homemade lasagna --

6 THE COURT: Hold on just a second. I'm sorry.

7 Mr. Teal, could you take that cell phone and those
8 keys for her while she's up here?

9 I'm sorry to interrupt. Go ahead.

10 MR. DEJONG: Getting feedback.

11 BY MR. DEJONG:

12 Q Go ahead.

13 A I had fixed homemade lasagna. And he had played with
14 toys in the floor. I even ask minor one time, I said,
15 come here and give Nana -- that's what he called me, Nana.
16 So I asked him to come give me a hug. He got out the
17 middle of playing with the toys and gave me a hug, and
18 went back to playing with his toys.

19 Q As far as his physical condition over that four, four
20 and a half hours, were you able to observe that?

21 A Yes.

22 Q What did you see?

23 A He was fine. There was nothing wrong with that baby.

24 Q All right. Did he exhibit any illnesses at all?

25 A Just a little bit of a runny nose.

1 Q At that point in time, was he coughing?

2 A No.

3 Q All right. Was he -- in any way, did he appear to be
4 lethargic?

5 A No. He was fine.

6 Q An active child?

7 A Active.

8 Q Did you see minor at all, or Jamie, on Sunday, the
9 16th?

10 A No.

11 MR. DEJONG: The witness is with you, Mr. Richardson.

12 MR. RICHARDSON: Thank you, sir.

13 May it please the Court.

14 THE COURT: Yes, sir.

15 CROSS-EXAMINATION

16 BY MR. RICHARDSON:

17 Q I'm sorry, ma'am. Is it Shelton?

18 A Shelton.

19 Q Ms. Shelton, you testified they were at your house on
20 Saturday?

21 A Yes.

22 Q Okay, ma'am. I'm not sure, you may have testified to
23 this. What time were they at your house?

24 A Approximately between 2:00 and 6:30.

25 Q So they got there at 2:00, and then left at 6:30?

1 A Somewhere around then.

2 Q Okay, ma'am. And you stated that he would -- that if
3 he had a cough or anything of that nature that he would --

4 A Jamie would take him to the doctor. He's just --

5 Q Without doubt?

6 A I'll be honest, I've always called my stepson a
7 hypochondriac. Because if a baby sneezes or coughs, he
8 thinks they need to go to the doctor. And I had even
9 commented that day that he probably had a runny nose
10 because he might have an ear infection, or may be cutting
11 teeth. Because I have two small ones myself.

12 Q Okay, ma'am. And after they left at 6:30, you don't
13 know where they went, do you?

14 A They said they were going to her sister's house, I
15 believe.

16 Q And, certainly, you weren't there Saturday night at
17 their house, were you?

18 A No.

19 Q So you don't know if he was coughing or sick Saturday
20 night, do you?

21 A Not Saturday night.

22 Q And there's no question that he would take that child
23 to the doctor if he was coughing?

24 A Yes. That's his first reaction is to go to the
25 doctor.

1 Q If he's having a hard time breathing, he would take
2 him to the doctor?

3 A Oh, yeah. He'd definitely do that.

4 Q No question about that?

5 A Oh, yeah.

6 MR. RICHARDSON: Thank you.

7 That's all the questions I have. No further
8 questions.

9 THE COURT: Mr. O'Connell.

10 CROSS-EXAMINATION

11 BY MR. O'CONNELL:

12 Q Ms. Shelton, you described Jamie as a hypochondriac;
13 is that correct?

14 A Yes.

15 Q In your mind, what is a hypochondriac?

16 A If you cough or sneeze, he thinks you need to go to
17 the doctor, to see the doctor. He's always worried about
18 illnesses.

19 Q So he wouldn't let the child go with a sniffle, or
20 even a congested chest, or anything?

21 A No.

22 Q Was he always around this child when he had the
23 child?

24 A Yes.

25 Q Did he ever leave the child with you and run off and

1 go play ball or sports, or go to the drag races, or
2 anything of that nature?

3 A No.

4 Q So he was a great father?

5 A He was a full-time father. He loved minor

6 Q Since the death of the child, how would you describe
7 Jamie?

8 A Jamie is not the same. He still mourns over his son.

9 Q He's done what now?

10 A He still mourns over his son.

11 Q Ma'am, how would you describe the grandmother?

12 A The grandmother?

13 Q Ms. Phillips, Donna Phillips?

14 A She loved minor with all her heart.

15 Q Would she have done anything to hurt this child?

16 A No.

17 Q Would they have given the child any medicine?

18 A No, other than Tylenol is all they would have given
19 him.

20 Q Would they have given some Tussionex to calm him
21 down --

22 A No.

23 Q -- so they could go play ball, or whatever people do
24 nowadays, like cars or movies?

25 A No.

1 Q They would never do that; right?

2 A No.

3 Q Did you have any occasion to speak to him by
4 telephone or otherwise on Sunday, the 16th of March?

5 A No.

6 Q What, ma'am?

7 A No.

8 MR. O'CONNELL: Thank you very much.

9 Wait a minute.

10 BY MR. O'CONNELL:

11 Q Okay. Did a detective -- Officer Rita Burgess
12 contact you in any way?

13 A No.

14 Q Did Ms. Burgess ever send any of the statements to
15 you about taking up for their own, or anything?

16 A Oh, she said that in the past.

17 Q About what?

18 A They take up for their own.

19 Q Who takes up for their own?

20 A Law enforcement.

21 Q And why did that come about? Tell me what that
22 means. Tell the jury.

23 A I don't know.

24 MR. RICHARDSON: I'm going to object to this
25 testimony. It's not relevant. It's hearsay.

1 THE COURT: Sustained.

2 MR. O'CONNELL: Thank you, Your Honor.

3 MR. HARBIN: No questions, Judge.

4 MR. DEJONG: Step down, please, Ms. Shelton.

5 And I ask that she be excused, Your Honor.

6 THE COURT: All right. She's excused.

7 MR. DEJONG: Your Honor, we call Jamie Edward Morris
8 to the stand.

9 THE CLERK: Place your left hand on the Bible and
10 raise your right hand.

11 WHEREUPON,

12 JAMIE MORRIS,

13 after first having been duly sworn, testified as follows:

14 THE CLERK: Sir, if you'll have a seat.

15 And state your name for the record, please.

16 THE WITNESS: Jamie Morris.

17 DIRECT EXAMINATION

18 BY MR. DEJONG:

19 Q How old are you, Mr. Morris?

20 A 28 years old.

21 Q In March of 2008, how old were you?

22 A 24.

23 Q Okay. In March of 2004 [sic], where did you live?

24 A I lived at [REDACTED] Ivey Hayes Road in Pickens, South
25 Carolina.

1 Q And did anybody live with you there?

2 A My mother.

3 Q And did you have a son?

4 A Yes, sir.

5 Q And what was your son's name?

6 A minor minor

7 Q And who was minor 's mother?

8 A Latasha Honeycutt.

9 Q How long had you and Ms. Honeycutt been separated
10 prior to March the 14th of 2008?

11 A I think about five [sic] years.

12 Q Well, did you and she ever live together?

13 A Yes, we did.

14 Q Okay. Let's talk a little bit about March the --
15 well, let's start with March the 14th for the moment. Did
16 you pick Jaidon up on March the 14th?

17 A Yes, my mother and I did.

18 Q Do you know what time it was?

19 A It was around 1:30.

20 Q And that was on what day of the week?

21 A It was on Friday.

22 Q Okay. And how long did you have minor

23 A I had him up until about 7:30 Sunday evening.

24 Q Now, as far as you visiting with minor did you
25 visit him under any kind of court order, or was that just

1 agreed upon between you and Ms. Honeycutt?

2 A No, sir. That was just me wanting to spend time with
3 my son.

4 Q Was there a time on Sunday that you were supposed to
5 have him back?

6 A No. There was no time agreed upon.

7 Q Were you supposed to have him back on Sunday?

8 A Yes, sir.

9 Q Okay. And was that by agreement with Ms. Honeycutt?

10 A No. That was because I had to work Monday morning.

11 Q Okay. Now, what time did you get him back on Sunday
12 evening?

13 A I got him back around 7:30.

14 Q And does 7:30 particularly stick out in your mind, or
15 how do you arrive at that time?

16 A Because it was still like dusk outside. And I just
17 remember it being like right around 7:30.

18 Q All right. When you got back to -- or let me back up
19 here a little bit. On the 16th, was minor sick?

20 A No, he was not.

21 Q Okay. And did you go visit your stepmother on
22 Saturday, the 16th?

23 A Yes, I did.

24 Q Now, on the 17th, was minor sick?

25 A No.

1 Q On Sunday?

2 A He was showing signs of a runny nose. He had just a
3 little cough every now and then. And there was one point
4 where when we were going down the road, he breathed a
5 little funny. And I shifted him in his car seat. And he
6 was breathing fine after that.

7 Q Was that Saturday or Sunday?

8 A That was Sunday.

9 Q What did you do on Sunday?

10 A On Sunday, we went to my aunt's house.

11 Q Okay. Who's your aunt?

12 A Cindy --

13 Q And where does she live --

14 A -- Stevens.

15 Q I'm sorry.

16 A Cindy Stevens.

17 Q Where does she live?

18 A She lives at Woodland Drive in Liberty.

19 Q All right. And how -- what time did you get to your
20 aunt's house?

21 A It was evening time.

22 Q Okay. What time, if you remember, did you leave your
23 aunt's house?

24 A It was dark. It was probably around 8:30, 9:00.

25 Q On Sunday?

1 A No, no.

2 Q Okay. When did you go see your aunt?

3 A No. It was about 6:30, I guess, when we left. I'm
4 not even sure really.

5 Q And she lives in Liberty?

6 A Yes, sir.

7 Q Okay. Now, what did minor do while he was at your
8 aunt's house on Sunday?

9 A He played in the floor with my two little cousins.
10 My cousin -- my first cousin has two kids named Levi and
11 Connor. And he played with them. They was pushing Tonka
12 trucks around. He was scooting around on it using his
13 legs. He was sitting on top of it pushing himself around.

14 Q Was he active?

15 A He was very active.

16 Q Did he take a nap that day?

17 A Yes, he did.

18 Q What time was that?

19 A On Sunday?

20 Q Yes, sir.

21 A From -- he took a nap in the car. He took an hour
22 nap in the car from my sister's house -- going to my
23 sister's house, he took about an hour nap. And then
24 coming back from my sister's house, he took about an hour
25 nap.

1 Q So you went to your aunt's house and your sister's
2 house?

3 A Right.

4 Q On Sunday?

5 A Right.

6 Q Which one did you go to first?

7 A I went to my aunt's -- my -- I can't even remember.
8 I've been so upset with everything.

9 Q Okay. Well, at any time over the weekend, did you
10 give minor any medications?

11 A No.

12 Q Anything at all?

13 A Nothing, except on Sunday, I gave him Tylenol, two
14 droppers full.

15 Q What time was that?

16 A It was around 2:30 to 3:00.

17 Q All right. At any time over the weekend, did you
18 have any knowledge of anyone else giving him any
19 medication?

20 A No.

21 Q Either your mother, your aunt, or your sister?

22 A No.

23 Q Now, when you took him back on Sunday evening, you
24 said around 7:30; right?

25 A Right.

1 Q How was minor acting then?

2 A minor was acting fine. I mean, at my sister's
3 house, he got a little fussy, you know. And then after we
4 left there, he had his nap. And we got back to Latasha's.
5 And I took him out of the car. He woke up as I picked him
6 up out of the car seat. We went inside. And, you know,
7 he seemed all right then to me. I didn't --

8 Q Did -- I'm sorry. Go ahead.

9 A I didn't really want to take him home at that time.
10 I wanted to keep him, but I had to work.

11 Q Okay. Well, did he appear to you to be alert?

12 A Yes, he was alert.

13 Q Okay. Was he responding to you?

14 A Yes.

15 Q Let's back up. When he was at your aunt's on Sunday
16 afternoon, you said he was a little fussy. Apparently,
17 we're having some problems with words here. What do you
18 mean he was a "little fussy"?

19 A That was at my sister's house. Well, he ate some
20 Beanie-Weenies over there and some cereal. And then he
21 was playing around with my nephews. And then about --
22 like I said, about 3:30 or so, he started just acting like
23 he was ill, you know.

24 Q Ill tempered or sick?

25 A Just ill.

1 Q Okay. And what do you mean by "ill"?

2 A I mean, like he was crying and fussy.

3 Q Did he go off into any kind of deep sleep?

4 A No.

5 Q Okay. Other than the naps he took in the car, did he
6 sleep any other time?

7 A No.

8 Q Okay. Well, after -- well, let me ask you this. How
9 long were you at -- when you took minor back at
10 approximately 7:30 on Sunday, how long did -- let me back
11 up again. Did your mom go with you when you took minor
12 back on Sunday?

13 A Yes.

14 Q And how long did y'all stay at Ms. Honeycutt's house
15 when you returned minor

16 A I think we were there about maybe 20 minutes.

17 Q Okay. So that would put you leaving pretty close to
18 8:00; right?

19 A Right.

20 Q But you're pretty sure you --

21 A It was just about to get dark when we left.

22 Q All right. Now, after you left him on Sunday, the
23 16th, did you see him conscious again?

24 A No.

25 Q Now, there's been talk that there was Tussionex at

1 your mother's house?

2 A Yes, there was.

3 Q And there was hydrocodone as well; right?

4 A Well, that's found in Tussionex, so, yes.

5 Q Okay. Now, the Tussionex, did you ever see minor
6 get any Tussionex?

7 A No.

8 Q Did you ever give him any Tussionex?

9 A Absolutely not.

10 Q To your knowledge, did your mother?

11 A No.

12 Q Okay. Other than the Equate, did you give him
13 anything at all?

14 A Nothing.

15 Q All right. Were you ever served with an arrest
16 warrant in this case?

17 A I believe it was a direct presentment.

18 Q And when was that?

19 A It was on December the 18th. I had received a call
20 from somebody. I can't remember who. They told me that
21 somebody had a warrant for my arrest.

22 So I called the Pickens County Sheriff's Department
23 and I asked them if they had a warrant for me. And they
24 said, to their knowledge, at that time, they didn't. So I
25 told them that I was at my stepmother, Renee's house and

1 that I wasn't going to turn myself in if they did have a
2 warrant, because I'm not guilty. But I said, If you have
3 a warrant for my arrest, this is where I am.

4 Q Okay. And were you -- did you ask them about a bench
5 warrant or just a warrant?

6 A I just said warrant.

7 Q Were you ever arrested under any kind of warrant?

8 A I don't understand. It was a direct presentment,
9 from what I understand.

10 Q Did you ever go to jail?

11 A Yes, I did.

12 Q Okay. When did you go to jail?

13 A I went to jail on December the 18th.

14 Q And when did you say the direct presentment was?

15 A December the 18th.

16 Q Let's just do something parenthetically. Do you have
17 a prior criminal record?

18 A Yes, sir, I do.

19 Q Have you been convicted of a felony that carried in
20 excess of one year?

21 A No.

22 Q Okay. Well, I'm not asking you what penalty you got,
23 but was the possible punishment more than one year?

24 A Sir?

25 Q Was the possible punishment more than one year?

1 A I don't recall. It's been so long ago. It was like
2 six years ago.

3 Q But you do have a prior conviction; right?

4 A Yes, sir.

5 Q Okay. Now, you went to jail in December -- well,
6 that was December of 2008; right?

7 A Right.

8 Q Okay. And prior to that time, though, you had talked
9 to some law enforcement officials; right?

10 A Right.

11 Q And, mainly, Ms. Burgess; correct?

12 A No. It was somebody at the Pickens County Sheriff's
13 Department when I called on December the 18th.

14 Q Well, I understand that.

15 A Or the 17th is when I called. I'm sorry.

16 Q I'm sorry. I shifted gears on you and didn't tell
17 you I was shifting gears. After that -- no, no. Before
18 that, way before that, let's go back to when minor was in
19 the hospital. That time frame and shortly thereafter, did
20 you talk to people with the Sheriff's Office?

21 A When he was in the hospital?

22 Q Well, around there or shortly after that.

23 A Do you mean when he passed away?

24 Q Yeah.

25 A Yes.

1 Q Okay. Who did you talk with?

2 A I talked to Rita Burgess.

3 Q And how many times did you talk to Ms. Burgess?

4 A Several times.

5 Q Okay. By the way, are you related to Ms. Burgess?

6 A She is my stepmother's sister-in-law.

7 Q Okay. When you -- the first time you talked to
8 Ms. Burgess, do you recall when that was?

9 A I don't recall.

10 Q Do you remember talking to her at Greenville Memorial
11 Hospital?

12 A Yes. I do remember talking to her.

13 Q Okay. And when you were talking -- well, did you
14 approach her to talk to her, or did she approach you to
15 talk to you?

16 A I believe she approached me in the waiting room.

17 Q And what was your mental state at that point in time?

18 A I was in complete shock.

19 Q But, nonetheless, you talked with her; right?

20 A Yes.

21 Q Did you in any way try to withhold anything from her,
22 or not tell her the truth?

23 A No, sir.

24 Q Now, after Greenville Memorial Hospital, did you talk
25 to her again?

1 A Yes, I did.

2 Q And do you recall when that was?

3 A No. I've had a lot of traumas. I don't remember
4 dates well.

5 Q Well, let's see here. They say you talked to her on
6 April the 4th of 2008, would that probably be right?

7 A Yes.

8 Q Okay. When you talked to her that time, do you
9 remember where you talked to her?

10 A It was at the Pickens County Sheriff's Department.

11 Q Okay. And how was it that you went in to talk to
12 her? Did she call you, or did you just volunteer to talk
13 to her?

14 A I think I just volunteered to talk to her. I cannot
15 recall at this time.

16 Q And, of course, that was before you were ever
17 charged; correct?

18 A Correct.

19 Q And then you talked with Ms. Burgess for a while; is
20 that right?

21 A Right.

22 Q And then you gave a written statement; right?

23 A Yes, I did.

24 Q Okay. And have you had a chance to look at this
25 written statement? Do you need to look at it?

1 A Yes. I'd like to look at it.

2 Q By all means.

3 A At this time -- can I speak?

4 Q Yes.

5 A At this time, I was so traumatized. I already notice
6 one mistake in this statement. I said he took a nap
7 between 12:00 and 1:00 on Sunday. He didn't have -- I
8 don't know if he had a nap between 12:00 and 1:00, because
9 I didn't pick him up until 1:30. I was in so much shock.
10 I meant to put Saturday there. Because he did have a nap
11 between 12:00 and 1:00 on Saturday.

12 Q But not on Sunday?

13 A Not on Sunday, not that I'm aware of.

14 Q Okay. Anything else in that statement?

15 A What do you mean? Do you have a question for me?

16 Q You said you noticed that was an error. Were there
17 any other errors in that statement?

18 A Not that I'm aware of.

19 Q Now, there was some talk at one point in time that
20 you gave him two droppers -- one dropper of Equate,
21 Tylenol, I believe. And then you gave him --

22 A I gave him two.

23 Q And when was that?

24 A At my sister's house. My brother-in-law, Donnie, had
25 some Equate grape-flavored Tylenol in a bottle about this

1 big. It was infant Equate.

2 Q Now, after -- well, other than that change you said
3 you made an error in, was everything else, as you read it,
4 accurate?

5 A Yes, sir.

6 Q Okay. And was it truthful?

7 A Yes, sir.

8 Q Now, when you took minor back home on Sunday, March
9 the 17th, who all was at Ms. Honeycutt's house?

10 A It was just Latasha and Ava there at the time.

11 Q Okay. Did anybody else come while you were there?

12 A No.

13 Q Do you know Michelle Henry?

14 A Brandon came as we were leaving. He was pulling in
15 the driveway.

16 Q Do you know Michelle Henry?

17 A Yes, I do.

18 Q Where did she live, if you know, in relationship to
19 Ms. Honeycutt?

20 A She lived directly across -- the trailer -- their
21 trailer was the last one on the left, hers was the one on
22 the hill directly across.

23 Q Did you see Michelle Henry on Sunday evening when you
24 took minor home?

25 A No, I didn't see her. But when I was in the house,

1 Latasha received a phone call from her telling her that I
2 was pulling up in the yard.

3 Q Okay. There's been talk about a Medicaid card.

4 A Correct.

5 Q Did you call DSS about a Medicaid card?

6 A Yes, I did.

7 Q Why did you call them?

8 A Because I misplaced my Medicaid card -- my copy of
9 minor Medicaid card. And then shortly after -- well,
10 he had, you know, a runny nose and a little -- just a
11 little cough every once in a while. So I called them and
12 asked them about the Medicaid card. And, shortly after, I
13 located it.

14 Q Okay. That was minor Medicaid card?

15 A Yes.

16 Q And did you -- well, once you -- when did you
17 realized you misplaced the Medicaid card?

18 A I realized it when I -- before I called them.

19 Q Well, did you find the Medicaid card -- well, do you
20 remember what day of the week it was you found the
21 Medicaid card?

22 A I found it on the Sunday, I guess, that I called
23 them.

24 Q And did you give Ms. Honeycutt that Medicaid card?

25 A Yes, I did.

1 Q And, at that point in time, did you ask her to take
2 him to the doctor?

3 A Yes, I did.

4 Q All right. Why didn't you take him to the doctor?

5 A Because I didn't feel his symptoms were severe enough
6 that I should take him right away.

7 Q When you took him back on Sunday, the 17th, did
8 you -- well, let me -- how old was minor in March of
9 2008?

10 A In March of 2008, minor was 22 months old.

11 Q Was he walking?

12 A Yes.

13 Q Was he talking?

14 A Yes, he was.

15 Q Okay. When you took him back on Sunday, March the
16 16th of 2008, did you notice anything wrong with his
17 speech?

18 A No.

19 Q Did you notice anything wrong with his walking?

20 A No.

21 Q What did you notice anything that was wrong with him?

22 A Like I said, the only thing was he had a little
23 breathing trouble just right there before we got him home.

24 Q Did you go to Easley Baptist Hospital?

25 A Yes, I did.

1 Q And did you go to Greenville Memorial Hospital?

2 A Yes, I did.

3 Q How did you get from Easley Baptist Hospital to
4 Greenville Memorial Hospital?

5 A I clocked out of work at 12:00 noon. And Brandon
6 came squealing tires up into the parking lot at my
7 workplace. And he was hysterical, you know, crying and
8 shaking. And he told me, Get in the truck.

9 And I said, Well, you know, I have to go tell my boss
10 that -- what's going on, you know?

11 He said, Get in the F'ing truck now.

12 So I got in the truck. And he took off towards
13 Easley Baptist.

14 Q Did you get from Easley Baptist to Greenville
15 Memorial with Brandon?

16 A No, sir.

17 Q How did you get to Greenville Memorial?

18 A Well, when I was at Easley Baptist, they said they
19 were going to airlift minor And I told them -- I asked
20 them if I could go with him in the helicopter. And they
21 said, No, you cannot.

22 So I told my mom immediately after, I said, Let's go
23 now. And we went by her car.

24 Q Okay. During this weekend -- or there's been talk
25 about this pumpkin where the Tussionex was kept.

1 A Yes.

2 Q Did you get the pumpkin down that weekend?

3 A Yes.

4 Q For what reason?

5 A I got it down for my mother. I frequently had to get
6 it down for her because it was so high up.

7 Q Are you taller than she is?

8 A Yes, I am.

9 Q Did she take Tussionex during the weekend?

10 A I believe she did. She had potassium and all kinds
11 of other stuff in there that, you know, she would ask me
12 to get for her.

13 Q All right.

14 A All of her medications were in that pumpkin. It was
15 a wire that -- had like a wire structure to it. And it
16 had a mesh around it. And you could see through the mesh.

17 Q Over this weekend -- and I'm speaking of the weekend
18 of March the 14th, through the 16th, you and your mother
19 were together; right?

20 A Yes, we were.

21 Q But, certainly, you weren't under each other's feet
22 24 hours a day, were you?

23 A No. We weren't under each other's feet. But I was
24 around minor the whole time, you know. Because, like we
25 said, the house was under some construction at the time.

1 And we were afraid that something might be -- we had
2 plywood stood up on the wall. And we were afraid
3 something could fall over on him, or something.

4 Q When you had minor how long would he sleep?

5 A Like a normal baby does, through the night. He'd go
6 to sleep around 10:30 and get up at 6:30 to 7:00.

7 Q All right. If minor had been, in your opinion, very
8 ill, would you have taken him to the doctor?

9 A Yes. I most, certainly, would have.

10 Q Is there anything else you would like to tell this
11 jury?

12 A Is there -- can I --

13 Q As to what happened?

14 A What do you mean?

15 Q Well, did you love minor

16 A Of course, I did.

17 Q All right. Have you shared with them what happened
18 on that weekend of March the 14th, through the 16th?

19 A Have I shared with who?

20 Q These 14 people.

21 A No.

22 Q Anything you want to add?

23 A To my statement, nothing -- yeah, I could add a few
24 things.

25 Q Go ahead.

1 A Well, when we were at my sister's house, he said --
2 he was, you know, talking a lot saying Daddy and Nanny,
3 and all.

4 Q And that was on Sunday?

5 A Yeah.

6 Q Okay. What else?

7 A Well, when we got back with him -- well, when we went
8 to my sister's house after the Beanie-Weenies, we went
9 outside. And there was this rocking horse out in the
10 playground. We took him out to the playground with my
11 nephews and my brother-in-law, Donnie. He got on the
12 rocking horse and played on the playground with my
13 nephews.

14 Q Okay.

15 A And then when we left and came back to my house --
16 before we left there to take him back home, I remember he
17 had a Teddy bear and he had a duck. And he wouldn't sleep
18 without them. He wouldn't go anywhere without them.

19 Well, before we left, minor had a confused look on his
20 face in the backseat. And, I said, What's wrong, son?

21 And he said, Where is Teddy?

22 Q Was Teddy with him?

23 A No. So, I said, Hold on a minute. And I went inside
24 the house. And I found his Teddy bear. It was a green
25 florescent Teddy bear. I guess they have it in evidence.

1 I gave it to him. And he was ready to go then.

2 Q All right. From the time on Sunday when you left
3 from your aunt or sister's house, whichever was first or
4 last, did you go back to you and your mother's house?

5 A Yes, we did.

6 Q Did you ever get the pumpkin down between the time
7 you got back there until you went and took minor back to
8 Ms. Honeycutt?

9 A No, sir. minor sat in the car, in fact. Like I
10 said, he was in the backseat.

11 Q Over the weekend, how many times did you get the
12 pumpkin down, if you know?

13 A Maybe twice.

14 Q Okay. What days?

15 A I don't remember exactly. I think it was on
16 Saturday, Friday and Saturday.

17 Q Okay. Anything else?

18 A No.

19 MR. DEJONG: The witness is with you, Mr. Richardson.

20 MR. RICHARDSON: Thank you, sir.

21 May it please the Court.

22 CROSS-EXAMINATION

23 BY MR. RICHARDSON:

24 Q Sir, back in March of 2008, where did you reside?

25 A I resided at my mother's house on [REDACTED] Ivey Hayes,

1 Pickens, South Carolina.

2 Q Okay, sir. And how far is that from the Defendant
3 Honeycutt's residence?

4 A I'd say approximately 20 minutes.

5 Q Okay. Now, let me take your memory back to, March
6 the 13th. That would be the Thursday before you got the
7 child. Do you recall going to Latasha Honeycutt's house?

8 A Yes, sir.

9 Q Okay. And that was for the purpose of?

10 A To take her the car seat.

11 Q Okay, sir. And do you recall when you went -- do you
12 recall what time it was?

13 A I don't recall what time it was.

14 Q Was it day or night?

15 A It was afternoon, I think.

16 Q Okay, sir. Do you recall at that time minor being
17 sick?

18 A No. He greeted me when I pulled up in the driveway.
19 He came running up to me with his arms wide open.

20 Q Do you recall him crying, and ill acting, and sleepy
21 on that Thursday?

22 A No, not on Thursday.

23 Q Are you sure about that?

24 A I don't recall him being sleepy or ill on Thursday.

25 Q Okay.

1 A I know they did say he had an ear infection and had
2 been taking Amoxicillin, which I didn't understand because
3 he was allergic to Amoxicillin, to my knowledge.

4 Q So, on Friday, you picked up minor from Defendant
5 Honeycutt's house. Your mother was with you; is that
6 right?

7 A Right.

8 Q Okay. And, as you stated, at that time, y'all were
9 living together; is that right?

10 A Right.

11 Q Okay. And I believe you testified that the entire
12 weekend you were with minor is that correct?

13 A (Witness nodded.)

14 Q I'm sorry. You have to say "yes" or "no."

15 A Yes.

16 Q Okay. And although -- so it's fair to say that you
17 were -- every time your mother was with minor you were,
18 also, with minor is that correct?

19 A I followed him around everywhere he went. He played
20 out in the yard with the John Deere Jeep thing.

21 Q Okay. Now, regarding -- you testified about the
22 Medicaid card. You called about that Saturday, the 15th;
23 is that right?

24 A I guess so. I'm not good with dates, like I said.

25 Q Okay. And so at that time, the reason you called was

1 because minor was either getting sick or was sick; is
2 that right?

3 A Correct. He had a runny nose. And he was coughing
4 just a little bit in the daytime.

5 Q Okay.

6 A And he coughed a little more at night.

7 Q He was coughing at night, also?

8 A Uh-huh.

9 Q So he was coughing and sickly on Saturday, wasn't he?

10 A Yes. But not to the extent that it was anything you
11 would worry about.

12 Q All right. But his -- and was he waking up at night?

13 A Waking up, yes. He would wake up approximately every
14 two hours on the dot. He would wake up screaming and
15 crying. And I think -- I don't know, but I think he may
16 have had separation anxiety. Because I had minor for a
17 time period of three months by myself raising him on my
18 own. And the mother never even contacted me.

19 Q Okay. So Saturday, not only was he sick and
20 coughing, but he was, also, waking up at night every two
21 hours; is that correct?

22 A Not every two hours, sir.

23 Q Okay. But he was waking up at night?

24 A Two hours after I put him to sleep.

25 Q So you got the Medicaid card because you thought he

1 needed to go to the doctor; is that right?

2 A Correct.

3 Q Now, let's go to Sunday. Okay. You stated you went
4 to your sister's house; is that right?

5 A Right.

6 Q And you've testified that there were no visitation
7 orders, there were no agreements on when you needed to
8 have the kid back on Sunday; is that correct?

9 A Right.

10 Q Okay, sir. And when you were at your sister's house,
11 at some point in time, minor got so bad that you had to
12 leave her house; is that right?

13 A Yes. He was acting fussy and crying a lot.

14 Q To the extent that you felt like you needed to leave?

15 A But he wouldn't go to sleep.

16 Q But to the extent you felt like you needed to leave;
17 is that correct?

18 A No. We just left because he was getting fussy.

19 Well, I guess you could say that. But, as soon as we got
20 in the car, he took a nap. My mom said I was the same way
21 when I was a kid, every time we took a car ride that I
22 would nap.

23 Q And, at that time, when you were at your sister's,
24 you -- would you agree you felt his head and neck and he
25 felt hot?

1 A Yes. I would agree.

2 Q Okay, sir. And do you know how hot he was?

3 A I don't know exactly how hot. I just know he was hot
4 and he was irritable.

5 Q Did you take his temperature?

6 A No, sir. I didn't take his temperature.

7 Q Did you stop anywhere and get a thermometer maybe and
8 take his temperature when you got home?

9 A No. Because he acted -- he slept and rested on the
10 way back. I figured he was fine after that.

11 Q And, in fact, at that time, you stated he was
12 breathing bad; is that correct?

13 A Well, right when we -- almost -- when we were almost
14 to Latasha's house, he started breathing a little funny.
15 And I got upset. And I asked my mom, Do you think we
16 should carry him to the hospital now, or give her the card
17 and have her do it? And like I said, I had to be at work
18 on Monday morning. So I thought I would leave that
19 responsibility with her.

20 Q But you didn't have to be at work on Sunday evening,
21 did you?

22 A You said Saturday.

23 Q Sunday evening.

24 A Sunday evening?

25 Q Yes.

1 A Can you backtrack to the question you asked me first.

2 Q Sure. What I'm asking you is that Sunday evening,
3 when you took minor to Latasha Honeycutt's house, at that
4 time, you didn't need to be at work, did you?

5 A No, not yet. I had to be at work on Monday morning.

6 Q Okay. And, as you stated in your statement, you got
7 very upset about how he was breathing, didn't you?

8 A Yeah, I got upset. I hadn't seen him in 11 months.
9 He had been in other care.

10 Q Okay. And although you were very upset about it, you
11 never took him to the hospital or to the doctor, did you?

12 A No. We were right there at her house. Like I said,
13 I was going to leave that responsibility with her.

14 Q Well, there's been testimony that you would always
15 take your child to the doctor with a runny nose?

16 A Well, one time when he was an infant, he had a
17 cold -- like cold-like symptoms. And I gave him some -- I
18 tried giving him Tylenol first. And it didn't work as
19 well. So I gave him Motrin. And if the Motrin didn't
20 work well, I'd go back to the Tylenol.

21 But I got him some decongestant and all. And I gave
22 it to him. He seemed like he could fight a cold on his
23 own. So I called Easley Pediatrics and told them he had a
24 cold. And I didn't really feel that he needed to get
25 medical attention right then because he seemed like he was

1 fine on his own.

2 Q Okay, sir. Well, it's fair to say you're not a
3 doctor; right?

4 A No. I'm not a doctor.

5 Q And you wanted to --

6 A But they told me on the phone, they said that if they
7 can fight it on their own, then that's better for their
8 immune system than to give him an antibiotic.

9 Q You were so bad upset, but you didn't feel so bad
10 upset about your child's health that you didn't feel you
11 should take the child to the hospital, or the doctor?

12 A No. Like I said, it was just briefly.

13 Q You stated you didn't want to take that
14 responsibility, you put that responsibility in somebody
15 else's hands; is that right?

16 A Right, at the time. Because I didn't -- it was just
17 momentarily.

18 Q And a doctor --

19 A Now, if he would have consistently kept on breathing
20 like that, then, of course, I would have taken him to the
21 doctor.

22 Q And you're very aware that if you had taken him to
23 the hospital and taken him to the doctor, they would have
24 given a full examination of that child; right?

25 A Yes, sir.

1 Q And any doctor or hospital would have seen everything
2 that was going on with that child at that time?

3 A Yes, sir.

4 Q And you felt -- although you didn't have to have him
5 back Sunday at any particular time, you felt it was not
6 necessary for you to take that child to the doctor, even
7 though you were upset about his breathing?

8 A No. At that time, I didn't feel like it was
9 necessary. Because, like I said, it was just momentarily.
10 It was like a three or four second thing. He was
11 breathing funny. And I shifted in the car seat.

12 He had been crying, may I remind you, for, like an
13 hour at my sister's house. So I figured the congestion
14 from all the snot, and crying, and tears, and all, that
15 may have been what it was. And his jaw was shaking a
16 little. So I figured he was about to start crying again,
17 or something.

18 Q All that was taking place. And what you did is you
19 went and told somebody else to take your child to the
20 doctor?

21 A Yes, I did.

22 Q That's what you did?

23 A Absolutely.

24 Q And so that we're clear. The prior conviction you
25 have, that's a felony; right?

1 A Yes, sir.

2 MR. RICHARDSON: I think that's all the questions I
3 have.

4 MR. O'CONNELL: Thank you, Your Honor.

5 CROSS-EXAMINATION

6 BY MR. O'CONNELL:

7 Q Jamie, let's go back to Friday afternoon when you
8 picked up your son. You picked up your son with your
9 mother being present; is that correct?

10 A Yes.

11 Q Give us a run down of what happened that afternoon,
12 and then what happened that evening.

13 A Friday afternoon?

14 Q Yeah, Friday afternoon.

15 A Friday afternoon, when we picked him up, we went to
16 her residence, got him and we went back home.

17 Q So your mom's house?

18 A Right.

19 Q Okay. Who was with her and you at that time? Was
20 anybody else with you?

21 A No.

22 Q Okay. At her home, did anybody give the child any
23 medicine --

24 A My sister, Laura, may have been with us. I can't
25 remember.

1 Q And how old is Laura?

2 A Laura, she's 15 now.

3 Q Okay. And you stayed at home. You didn't go out
4 drinking, or anything of that nature, you stayed at
5 home --

6 A Of course not.

7 Q When did the child go to bed that night? Friday
8 night, what time did your child go to bed?

9 A I can't remember. I can't remember.

10 Is it okay if I refer to my statement?

11 Like I said, I'm not really good with times. It
12 wasn't any later than 10:00. It was by 9:30 or 10:00.

13 Q And how did the child go to sleep? Did the child
14 sleep with you, or in a separate bed, or what?

15 A He slept with me on the couch.

16 Q Is that normal? That's what you both do?

17 A Yeah. He slept right beside me.

18 Q So during the night, you would know if something were
19 happening to him; right?

20 A Yeah.

21 Q What time did you get up Saturday morning?

22 A 6:30.

23 Q Was minor up at 6:30?

24 A When I woke up, usually, he woke up there with me.

25 Q Okay. What did you do Saturday? Tell us what you

1 did all day Saturday.

2 A Well, we played outside in the yard.

3 Q You didn't leave the child alone at all? You didn't
4 go to the grocery store, or anything else? You stayed
5 with your child?

6 A I was with him the whole time, yes.

7 Q Okay. That evening, what did y'all do? Saturday
8 evening, what did y'all do?

9 A Saturday evening, we went to my step-momma's house.

10 Q Did anybody give the child any kind of medicines,
11 anything, any kind of medications, anything?

12 A No. He was fine, playing around, you know, acting --
13 playing with her kids and toys. They would come up and
14 jerk a toy out of his hand. And minor was the type, he
15 loved to share. So he wouldn't even cry if somebody took
16 a toy out of his hand. He wouldn't even cry if he had a
17 dirty diaper on usually.

18 Q That evening, tell everybody what happened that
19 evening?

20 A That evening?

21 Q Saturday evening, what happened?

22 A We went to her house. And he played, like I said,
23 with her kids. And then he -- she had made some lasagna.
24 And I had a big plate full of lasagna. And he ate
25 probably half of that plate. And then I fixed another

1 plate. And he was begging for more. He just loved it.

2 Q Okay. Did you stick around for a little while
3 longer, or did you go home?

4 A We went home after about four -- four and a half
5 hours.

6 Q What happened then? Did you go straight to bed, take
7 a shower, bed? What happened?

8 A I don't recall exactly, you know, when we got back.
9 It was about, I guess, 7:00, or a little before 7:00 when
10 we got back.

11 Q Was your child acting funny, any problems with the
12 child at that time?

13 A Huh-uh.

14 Q When did you help your momma get some of her
15 medicine?

16 A I helped her get medicine on Saturday, and I believe
17 maybe Friday.

18 Q So you go to bed Saturday evening through Sunday
19 morning. What time did you get up Sunday morning?

20 A Sunday morning, we got up at like 7:30.

21 Q Was minor up?

22 A Yes. He was looking me right in the eye.

23 Q How was he acting?

24 A He acted fine.

25 Q No one gave him any drugs, or medicine on Sunday -- I

1 mean, early Sunday morning; right?

2 A No.

3 Q Okay. Did he have any kind of like diaper rash, or
4 anything?

5 A Well, I noticed when we had picked him up -- he had a
6 soiled diaper on when I picked him up. It was weighed
7 down real heavy with urine. And I changed his diaper as
8 soon as I picked him up. And he had a rash on him then.

9 Q What did you do for the rash?

10 A I put some Desitin, or something, you know, diaper
11 rash cream on it.

12 Q Okay. Did you change his diaper normally?

13 A Yes, frequently.

14 Q Not your mom or anybody else; right?

15 A No. I wouldn't let nobody take care of him but me.

16 Q Okay. So you changed his diaper?

17 A Yeah.

18 Q Did you change his diaper on Sunday?

19 A Or course, I did.

20 Q Did he have a rash on Sunday?

21 A No. The rash was very clear by then, gone.

22 Q Okay. Sunday morning, what did you do Sunday morning
23 after getting up? Did you eat breakfast?

24 A Yeah. We ate -- I think I had gotten minor some
25 little -- they were like little children's meals. They

1 were pre-sealed in a plastic container. And he ate some
2 of that at about noon. I don't remember if he ate -- he
3 drank a bottle -- I mean, his sippy cup. And he ate some
4 of the Chef Boyardee or whatever it was that I had gotten
5 him, the plastic thing you put them in the microwave.

6 Q So he was okay around noontime; right?

7 A Uh-huh.

8 Q Did he play, go outside? What did he do?

9 A Yeah. We played a lot.

10 Q You then go to somebody else's house; right?

11 A Yes.

12 Q And that's who? Who did you go to see?

13 A When was this? Sunday?

14 Q Sunday afternoon, what did you do?

15 A Sunday, we went to my sister's house.

16 Q Okay. And where is that?

17 A That's in Fountain Inn.

18 Q Okay. How long were you at your sister's house?

19 A I want to say a couple of hours, about three hours.

20 Q During that whole time, did you give the child any
21 medication?

22 A Yes. I gave him the Equate brand grape-flavored
23 infant --

24 Q Did your mother, the grandmother of this child, give
25 him any medication?

1 A No.

2 Q Okay. How do you get -- where did this Tussionex
3 come from?

4 A I have no idea.

5 Q Okay. What time did you leave to go take the child
6 back to Ms. Honeycutt?

7 A We left Sunday at about 7:00 to 7:10 from the house.

8 Q From whose house?

9 A After we went -- we came back from my sister's house
10 and arrived at my house at about 7:10. And I believe we
11 got there about 7:30.

12 Q You stopped at your house on the way home?

13 A Yes.

14 Q Did minor get out of the car?

15 A No. He stayed in the car the whole time.

16 Q Did anybody give minor any kind of drugs, or
17 anything?

18 A No, sir.

19 Q Okay. Do you have a problem with blocked memory
20 since this incident?

21 A Yes, sir. It's been very traumatic.

22 Q Like what have you been doing? What happens to you?

23 A Sometimes, my mind just goes completely blank in the
24 middle of a statement. Sometimes, I can't even complete a
25 statement. Like if somebody chimes in on me when I'm

1 talking, I'll just forgot what I'm saying.

2 Q What about minor do you forget about him, or what
3 happened, or anything?

4 A No.

5 Q Does your mother -- your mother still loves minor
6 is that correct?

7 A My mom loved minor with all of her heart.

8 Q Would she have done anything to harm this child?

9 A Never.

10 Q There was no written agreement or any type of
11 agreement to take the child back to Latasha Honeycutt?

12 A No.

13 Q Why did you take him back if there wasn't an
14 agreement?

15 A Because, like I said, I had to work on Monday
16 morning. I had just got a new job. Because I wanted to
17 get him back. I wanted custody of him back.

18 Q You were doing that because that's what you thought
19 was the right thing to do?

20 A Yes.

21 MR. O'CONNELL: Answer any questions the other
22 attorney may have.

23 THE COURT: Mr. Harbin.

24 MR. HARBIN: May it please the Court.

25 THE WITNESS: May I have some water, please?

1 (Pause.)

2 THE WITNESS: Thank you, sir.

3 CROSS-EXAMINATION

4 BY MR. HARBIN:

5 Q Tell me when you're okay.

6 A I think I'm good now.

7 Q Mr. Morris, do you think your mom did anything here?

8 A No, absolutely not.

9 Q Has she told you that she did anything?

10 A No.

11 Q Has she ever mentioned anything at all?

12 A No.

13 Q Has she ever mentioned anything might have happened?

14 A (Witness shook head.)

15 Q You're certain?

16 A Well, she had some concern that maybe he may have
17 picked something up, or something like that, but she was
18 pretty certain he hadn't. And all of her bottles were
19 sealed and everything, so there's no way he could have.

20 Q Do you think there's a possibility that something
21 happened, even if she didn't know?

22 A I don't think there's even a sheer possibility.
23 There's no doubt in my mind that he didn't get it while he
24 was with us, period.

25 Q Do you believe everything your mother says?

1 A Yes, I do.

2 Q Your mother never made a statement to you at Easley
3 Hospital?

4 A I don't recall. Like I said, my memory has been --
5 will you be more specific, please?

6 Q I, certainly, can. Would you remember if she had
7 told you she had given the boy cough syrup?

8 A Yes, I would remember.

9 Q And she did not tell you that at Easley Hospital?

10 A Never.

11 Q She did not tell you that in the waiting room at
12 Easley Hospital?

13 A Never.

14 Q Now. That was -- was that your aunt that testified
15 before you? Is that your relationship?

16 A That was my stepmother.

17 Q Stepmother. I apologize. I'm a little bit confused.
18 Because she got up on the stand and described you very --
19 in detail as somebody that's a hypochondriac that can't
20 stand, basically, for any runny nose. You run to the
21 doctor if anything is wrong. Yet, you get up here and
22 respond in what, I think, is a perfectly reasonable
23 fashion to say a runny nose and congestion is nothing to
24 get upset about?

25 A Right. That's perfectly normal with any child to get

1 upper respiratory infections, and colds, and stuff like
2 that on a frequent basis.

3 Q And I, certainly, agree with that. But why would
4 your stepmother say you're going to run to the doctor at
5 the drop of a hat if you're not?

6 A Because she's always known me to be a hypochondriac.
7 When I lived with her, I was always complaining about
8 backaches and stuff like that, and wanting to go to the
9 doctor myself.

10 Q So you were a hypochondriac, and now you're not a
11 hypochondriac?

12 A No, sir. The circumstances didn't change any.

13 Q You told Detective Rita Burgess that --

14 A Except by the fact --

15 Q I apologize.

16 A -- that I know he was okay when I had him.

17 Q You knew he was okay. But when you dropped him off
18 at my client's house, you told the Court that you told her
19 to take him to the doctor. So he wasn't okay, or he was
20 okay. Tell us which one is right.

21 A Well, like I said, he was breathing funny
22 momentarily. But he had been crying for hours at my
23 sister's house. So, yes, I didn't think it was anything
24 to rush straight to the hospital about at that time, no.

25 Q So is that okay or not? I'm still confused. Was he

1 okay when you dropped him --

2 A Well, you're confusing me, too.

3 Q Was he okay when you dropped him off at Latasha's
4 house?

5 A Yes, he was okay. I mean, he was acting like a
6 perfectly normal child, other than just those few moments.

7 Q Okay. You testified -- or you gave a statement to
8 Detective Rita Burgess, and you were in court when she
9 told the Court that you told her that on the way over
10 there, minor jaw was shaking and that he had difficulty
11 breathing to the point that you had to move him --

12 A His jaw was shaking as if he was about to start
13 crying. That's the way he usually did when he was about
14 to cry, but he didn't start crying.

15 Q So he started to cry, but then stopped himself before
16 he started crying. So he only had the --

17 A Well, I picked him up out of the car seat as we was
18 driving. Like I said, it happened right before we got
19 there. And I shifted him a little bit, and he was fine.
20 And then we pulled up in the driveway. And I picked him
21 up out of the car seat and consoled him, and he was fine.

22 Q When you told, I believe it was Detective Burgess,
23 that you gave minor a dropper full of Tylenol, and then
24 you later told her that you gave him two dropper fulls. I
25 don't know that I heard --

1 A It's like I told you, sometimes my memory don't serve
2 me well, especially when something just happened to my
3 son.

4 Q You realize that was, of course, a pretty important
5 question to be answering at the time. And, at the time, I
6 believe it was less than two weeks since -- or, actually,
7 even closer in time than that from when everything
8 happened. So your memory was fairly fresh back then, or
9 no?

10 A What now?

11 Q When you gave -- this is four years later; right?
12 It's difficult to remember things today?

13 A Right.

14 Q Yes?

15 A No, not when my son was with me. I mean, besides the
16 timelines, I remember everything.

17 Q Except -- beside the timeline, you remember
18 everything, except you don't know how much Tylenol you
19 gave him, or do you even know if you gave him Tylenol?

20 A I did give him Tylenol.

21 Q Why is it not in the tox screen?

22 A I have no idea. Like those doctors came up here and
23 testified theirselves [sic], there wasn't sufficient testing
24 for anything. This all just seems crazy to me. I mean,
25 they said his liver should have been tested. The vomit

1 should have been tested. I don't understand. Why did
2 they not do that?

3 Q I can't answer that. But I can -- you testified that
4 you gave the child medicine, and that the medicine was
5 Tylenol?

6 A It was.

7 Q And, yet, medicine was found in the child's system,
8 but it wasn't Tylenol.

9 A I can't be accountable for that. I don't know why
10 anything other than Tylenol would be in there.

11 Q And it was the exact medication that was at your
12 mother's house?

13 A No. I never said he got Tylenol at my house. It was
14 the Equate brand grape-flavored infant -- Equate brand at
15 my sister's.

16 Q I'm referring to the medication that was in minor
17 system. That was the exact same kind of medication that
18 your mother had; right?

19 A What about it?

20 Q You heard the toxicologist say that there was
21 Tussionex found in minor system; right?

22 A Right.

23 Q You know your mother has Tussionex in her house;
24 right?

25 A I know she has Tussionex, yes.

1 Q And the Tussionex was ingested sometime that weekend;
2 right? It had to be.

3 A I don't know when it was ingested.

4 Q And the kid was with you the entire time; right?

5 A He was with me the entire time that weekend, yes,
6 until I dropped him off Sunday evening.

7 Q And he never left your sight for a second?

8 A No.

9 Q So if the child did consume Tussionex, it would have
10 been in front of you --

11 A When I would go to use the bathroom, he would follow
12 me in there and watch me, and try to use the bathroom by
13 himself.

14 Q So if minor consumed Tussionex over the weekend, it
15 would have been right in front of you?

16 A He didn't consume any Tussionex over the weekend.

17 Q Do you recall seeing Brandon at 'minor 's funeral?

18 A Yes, I do.

19 Q Do you recall having a conversation with Brandon?

20 A I don't recall what the conversation was, if we did
21 have a conversation.

22 Q Do you recall, specifically, stating that you know
23 that your -- that something may have happened with your
24 mother's medication?

25 A Never. He used to always try to convince me. Your

1 son had nine times the lethal dose of an adult, and your
2 mom had to give it to him. And I would tell him, no, she
3 would never do that.

4 Q When you told Latasha that you thought that minor
5 ought to go to the doctor, she told you that she already
6 had an appointment on Wednesday for his ear infection,
7 didn't she?

8 A I believe so.

9 Q And you just testified that you didn't think it was
10 urgent. And, yet, you still urged her to take him to the
11 doctor?

12 A I told her if his symptoms got any worse to take him
13 to the doctor. And she said, I don't have his medical
14 records, and they will not see him without them. So I
15 told her, Well, if it gets any worse, you can always take
16 him to the emergency room. They don't need no medical
17 records.

18 Q Why would you assume his symptoms would get worse?

19 A I just told her if it got worse to take him.

20 Q Were you anticipating that his symptoms were going to
21 get worse because you knew something?

22 A No, sir.

23 Q When you and your mother were at Easley Hospital, you
24 overheard the nurse tell a doctor they found opiates in
25 his system. Why did you and your mother immediately leave

1 the area?

2 A When we were at the hospital, I don't recall ever
3 hearing that there was opiates in his system. But when
4 Brandon came to my mother's house and knocked on the door,
5 she told me he had asked her did somebody give him
6 something.

7 Q I'm sorry. I thought you were still talking. You
8 had mentioned -- you went out of your way, I thought, to
9 mention that Latasha didn't -- excuse me. That you kept
10 minor for a period of time; is that right?

11 A Right.

12 Q About three straight months?

13 A Right.

14 Q And that was because Latasha was unemployed and you
15 were able to take care of him, and you wanted to and did;
16 is that right?

17 A That's because she left me at that time for Brandon,
18 which used to be my best friend. And I told her she
19 wasn't taking minor And she didn't really want to take
20 him, to my knowledge. So she left him with me.

21 Q And why did she leave you?

22 A Huh?

23 Q Why did she leave you?

24 A I don't know.

25 Q You were abusive towards her, weren't you?

1 A She was abusive towards me, sir.

2 Q She was abusive towards -- so tell me about that,
3 please.

4 A Like she was very jealous about any kind of attention
5 from any other women. We could be going down the road --
6 okay, for instance, one day we was going down the road and
7 a red Honda came by us with about three or four blonds in
8 it and they said, Whoo, just hollered out. And I just
9 turned my head and looked. And before I could even turn
10 my head back around, she had done slapped me in the face.

11 Q So every one that said she's unemotional here,
12 they're wrong. She's, apparently, very emotional.

13 A She is very emotional. In fact, she has some pretty
14 bad anger management problems. And she used to get a
15 social security check for it.

16 MR. HARBIN: No further questions.

17 MR. DEJONG: Nothing on redirect, Your Honor.

18 Step down, Mr. Morris.

19 THE COURT: Thank you.

20 THE WITNESS: Thank you.

21 THE COURT: All right. Ladies and gentlemen, we're
22 going to go ahead and recess for the evening. Just be
23 back in the jury room at 9:15 in the morning.

24 Don't talk about the case. Don't do any kind of
25 outside investigation. And keep an open mind. 9:15 in

1 the morning.

2 Thank you.

3 (WHEREUPON, the jury was excused from open court at
4 approximately 5:36 p.m.)

5 THE COURT: See you in the morning.

6 Thank you.

7 *****END OF TRANSCRIPT OF RECORD*****
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CERTIFICATE OF REPORTER

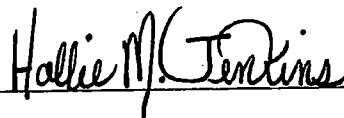
STATE OF SOUTH CAROLINA)

COUNTY OF GREENVILLE)

I, HOLLIE JENKINS, Official Court Reporter for the Thirteenth Judicial Circuit of the State of South Carolina, do hereby certify that the foregoing is a true, accurate, and complete Transcript of Record of the proceedings had and the evidence introduced in the trial of the captioned case, relative to appeal, in the Court of General Sessions for Pickens County, South Carolina, on the 23rd, 24th, and 25th days of July, 2012.

I do further certify that I am neither of kin, counsel, nor interest to any party hereto.

January 14, 2013



Hollie M. Jenkins, Court Reporter

My Commission Expires: 09/24/20

STATE OF SOUTH CAROLINA	)	
	)	COURT OF GENERAL SESSIONS
COUNTY OF PICKENS	)	
State of South Carolina,	)	
	)	
Plaintiff,	)	
	)	
vs.	)	Case No. 10-GS-39-2053
	)	
Jamie Edward Morris,	)	
Donna Lynn Phillips, and	)	
Natasha Honeycutt,	)	
	)	
Defendants.	)	

PARTIAL TRANSCRIPT OF JURY TRIAL

The within Jury Trial was held July 26-July 27th, 2012, before
The Honorable D. Garrison Hill in the Court of General Sessions for Pickens
County, Pickens, South Carolina; attended by counsel, as follows:

APPEARANCES:

Doug Richardson, Assistant Solicitor
Jenny Barwick, Assistant Solicitor
13th JUDICIAL CIRCUIT SOLICITOR'S OFFICE
Pickens, SC 29671
Appearing for State of South Carolina

John DeJong, Esq.
Appearing for Jamie E. Morris

James O'Connell, Esq.
Appearing for Donna Phillips

Chase Harbin, Esq.
Appearing for Latasha Honeycutt

VIVIAN CROSS - CIRCUIT COURT REPORTER

Transcribed by Deborah Garrison
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1

2

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(Continued - see prior transcript)

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1 (NOTE: JULY 23-25, 2012

2 COURT REPORTER HOLLIE JENKINS -

3 SEE SEPARATE TRANSCRIPT)

4 JULY 26, 2012 9:00 A.M.

5 (DEFENDANTS PRESENT)

6 THE COURT: Good morning. Anything
7 before we begin?

8 MR. DEJONG: Your Honor, I've just
9 been handed a letter from Mr. O'Connell

10 THE COURT: How does that feel?

11 MR. O'CONNELL: I've sent black and
12 white pictures, because I don't have the means
13 to make them in color. I don't know how many
14 years ago -- three years ago? Your Honor, I've
15 been involved in this case since early 2009 and
16 I thought that I had sent them this pictures.

17 These pictures show that that child was
18 on that tube on that on that Sunday. I believe
19 that they are very important. There are some of
20 them that are taken -- I think it's very
21 important to my client.

22 MR. DEJONG: Somehow I walked out of
23 my house this morning without my hearing aids.
24 I don't want to be rude if I say 'excuse me' a
25 lot, because -- I just wanted to let you know.

1 I've already asked Mr. Richardson to speak up.

2 I had a hard time hearing him yesterday with my
3 hearing aids.

4 THE COURT: We will try the best that
5 we can.

6 MR. DEJONG: Thank you, Your Honor. I
7 just wanted you to be aware of that.

8 THE COURT: Yes, sir?

9 SOLICITOR: I think I've got an
10 objection to these. In all fairness, -- my
11 position would be that some of them have notes n
12 them and I would ask that those notes be taken
13 off; some of them have handwritten dates on
14 them, and I would ask that those not be on them.
15 Your Honor, if they want to admit it on cross-
16 examination and take off these notes, that's --
17 that would be ---

18 MR. O'CONNELL: Your Honor, these
19 notes, they were all taken by my client -- I
20 agree with the -- I just want to see what notes.

21 THE COURT: All right.

22 (SIDEBAR BETWEEN COUNSEL)

23 MR. DEJONG: I would object because I
24 don't know what the probative value is. I don't
25 know that the State has tried to insinuate that

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1 the child was not -- I think just as you can
2 explain to the jury one way, you can also try to
3 -- but eventually showing -- I object to them.
4 I don't think that there is any probative value
5 to them.

6 MR. DEJONG: The question is, Your
7 Honor, how was this child, if I have heard all
8 the evidence correctly -- from Saturday to
9 Sunday night midnight all the way through to
10 eight o'clock in the morning on Monday morning,
11 and I am trying to show by these pictures that
12 these people had that child that Sunday morning
13 and these are pictures of how the child looked
14 that Sunday morning. You have to give the
15 context to the jury so that the jury can see --
16 actually I -- everybody said the child was fine
17 by seven thirty or eight o'clock and I believe
18 that these would show ---

19 THE COURT: May I see the pictures:

20 MR. DEJONG: (Tenders).

21 THE COURT: (Upon review), -- ma'am,
22 I can't conduct a trial with a party speaking
23 out and interrupting -- ma'am! I'm talking to
24 you. I cannot conduct a trial with you in here
25 if you're going to be speaking out all the time,

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1 interrupting not only your lawyer but
2 interrupting me and everybody else in this
3 courtroom. Okay? Do you understand that?

4 FEMALE DEFENDANT: I apologize.

5 THE COURT: If you need to talk to
6 your lawyer, you write him a note. Go ahead.

7 (Upon review), I think the pictures
8 without the notes are basically the same as the
9 ones with notes, that the notes have been taken
10 out. It appears to be duplicates. So the ones
11 without notes, I overrule the objection and
12 they're in evidence. They show the condition of
13 the child during the relevant time. They aren't
14 unduly prejudicial. Okay. These are the ones
15 that are coming in.

16 COUNSEL: Shall we go ahead and get
17 those marked?

18 COURT REPORTER: Your Honor, do you
19 want it marked as a cumulative exhibit or
20 individually?

21 THE COURT: Whatever is easiest for
22 you, ma'am.

23 (SO ENTERED AS DEFENDANT'S EXHIBIT 1)

24 THE COURT: Anything further before
25 we bring the jury out? Are you intending to

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1 call any more witnesses?

2 MR. DEJONG: Yes, sir.

3 THE COURT: How long is the witness?

4 MR. DEJONG: I don't think real long.

5 THE COURT: Mr. O'Connell, how many
6 witnesses do you intend to call, sir?

7 MR. O'CONNELL: Elaine Plumber,
8 Laura Phillips. Time-wise, they should be short
9 -- and my client, Your Honor.

10 THE COURT: Mr. Harbin?

11 MR. HARBIN: I just have two short
12 witnesses and then, depending, my client.

13 THE COURT: Bring the jury on in.

14 (JURY IN @ 9:35 A.M.)

15 THE COURT: Good morning, Ladies and
16 Gentlemen. Mr. Dejong, you may call your next
17 witness, sir.

18 MR. DEJONG: Your Honor, if it may
19 please the Court, we call Ronnie Anders to the
20 stand.

21 (WITNESS TAKES STAND)

22 RONNIE ANDERS, being duly sworn to tell
23 the truth, the whole truth and nothing but the
24 truth, testified, as follows:

25 DIRECT EXAMINATION

1 BY MR. DEJONG:

2 Q. Where do you live, Mr. Anders?

3 A. [REDACTED] Calico Lane.

4 Q. Pickens? Easley?

5 A. (Affirmative nod), Pickens.

6 Q. All right.

7 A. Well, it's Easley. Pickens County.

8 Q. Do you know Jamie Morris?

9 A. Yes, I do.

10 Q. Do you know Donna Phillips?

11 A. Yes, I do.

12 Q. How do you know them?

13 A. Donna Phillips, she was our mail carrier
14 for several years, you know,. That's how I met
15 'em down there.

16 Q. Did you and Ms. Phillips have any kind of
17 relationship?

18 A. No.

19 Q. Okay. How would you describe -- you said
20 no relationship. How would you describe your
21 relationship?

22 A. We were just friends.

23 Q. About how long have you -- well, let me ask
24 you this, how long have you known Jamie Morris?

25 A. Oh, god. Probably fifteen years or longer.

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1 I'm guessing.

2 Q. All right. I want to take you back, Mr.
3 Anders, to March of 2008, more particularly
4 March 16th of 2008. Did you see Jamie Morris
5 and Donna Phillips and minor that day?

6 A. Yes, I did.

7 Q. Where did you see them?

8 A. I went to their house. I called her that
9 morning about 8:30, talked to her on the phone,
10 and then I -- I asked her could I go look. I
11 went up there. It was about ten o'clock.

12 Q. How long did you stay there?

13 A. About two and a half hours.

14 Q. All right. So that would have put you to
15 about twelve?

16 A. Twelve, twelve thirty. Yeah.

17 Q. All right. Now, when you left, was minor
18 and Jamie and Ms. Phillips still at their house?

19 A. While I was there, her daughter called and
20 -- Brandi, her daughter, called and invited them
21 over to come to their house. Well, I stayed
22 there. When they left, I left.

23 Q. Okay. So ---

24 A. That was around twelve thirty.

25 Q. So if I understand your testimony

1 correctly, they left and then you left but you
2 went separate ways?

3 A. Right. I went home.

4 Q. Were they actually physically leaving when
5 you left?

6 A. No, not yet -- oh, right when I left?

7 Q. Yeah.

8 A. Yes, sir.

9 Q. Okay.

10 A. I left right before they did.

11 Q. Now, that two or two-and-a-half hours that
12 you were there on March 16th of 2008, did you see
13 'minor

14 A. Yes, I did.

15 Q. Can you describe for this jury what minor
16 was doing?

17 A. Well, when I got there they was taking him
18 outdoors. Okay? He got a little green John
19 Deere tractor/fourwheeler thing. He, Jamie,
20 Donna and them all were out there. He was
21 sitting on it. I spoke -- I bent down on my
22 knees and I was going to push the button. I
23 couldn't do that, that was killing my knees.
24 Anyway, he sat on that a little bit. Then he
25 got out and he walked across the yard, it was a

1 good ways -- the length of the trailer. There's
2 a big old tree. We walked out there, we was all
3 with him, following him, seeing what he was
4 doing. And he came back behind the trailer and
5 wanted to get on the riding lawnmower. Well,
6 there was a big anthill sitting there, so he
7 couldn't do that. Jamie got him and brought him
8 back around. Sat him down in yard. He walked
9 back to the tractor. We all went back in the
10 house.

11 In a little while, Jamie got out this
12 machine that made all different things out of
13 PlayDoh; you know, you put different little
14 things. Well, minor was sitting there playing
15 with that. He threw one at me. Well, I wadded
16 it up in a ball, give it back to him. He
17 throwed it, hit me in the face. We laughed
18 about it.

19 But when we were outside, he was
20 struggling, he wasn't bawling or anything. He
21 was normal.

22 Q. How about in the house?

23 A. In the house, same way. Well, in the
24 meantime, in the house that's when Donna's
25 daughter called and invited them to her house.

1 Well, -- and Jamie got minor ready, changed
2 diapers, put clean clothes on and everything.
3 We sat around there for a little bit until
4 everybody got ready and then when they left, I
5 left.

6 Q. All right. Did minor appear to you to be
7 sleepy, at all, while you were there?

8 A. No, sir.

9 Q. Did he appear to you -- was he alert, not
10 alert, or how would you describe minor

11 A. He was alert.

12 Q. Was he responding or not responding, how
13 was he acting?

14 A. He was responding fine.

15 Q. All right. While you were there on March
16 the 16th, 2008, did you see any kind of
17 medication around the house?

18 A. What?

19 Q. Any kind of medicine?

20 A. What date was this -- you just said the
21 16th? When, the 16th? Or when?

22 Q. Yes, on the 16th.

23 A. I thought you said the 8th.

24 Q. Did you see anybody give minor any
25 medication or medicine while you were there?

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1 A. No.

2 Q. Did y'all eat while you were there?

3 A. No.

4 Q. All right. Did you notice whether or not

5 minor had any coughing going on at that point

6 in time?

7 A. (Negative gesture).

8 Q. I'm sorry, you have to answer.

9 A. No, sir.

10 Q. Did you notice whether or not he had any

11 problems with his breathing at that point in

12 time?

13 A. No, sir.

14 MR. DEJONG: Thank you.

15 CROSS EXAMINATION

16 BY MR. RICHARDSON:

17 Q. Mr. Anders?

18 A. Yes, sir.

19 Q. How long have you known Donna Phillips and

20 Mr. Morris?

21 A. I'd say probably fifteen years but I've

22 known the family, her aunt and them, I picked up

23 their trash for nineteen years. I've been

24 knowing the family. But I probably been knowing

25 her for, like, fifteen years.

1 Q. So when you were at the house, was that a
2 social visit?

3 A. Yeah. Yes, sir.

4 Q. I'm sorry?

5 A. Just went over there, yeah.

6 Q. I'm sorry?

7 A. Visiting. Yeah.

8 Q. And you say that you were there about two
9 hours?

10 A. Yes, sir.

11 Q. You have to say "yes" or "no" so that she
12 (court reporter) can take it down.

13 A. Yes, sir.

14 Q. You were there about two hours?

15 A. About two, two-and-a-half hours.

16 Q. After -- you said that they left before you
17 left?

18 A. No, we all pretty well left about the same
19 time.

20 Q. That was about noon or twelve thirty?

21 A. Twelve thirty, yeah.

22 Q. After noon, did you ever see minor again?

23 A. Not until Monday, Monday evening. But Lynn
24 -- Donna called me up from the hospital and
25 wanted me to pick up Lori at her house when she

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1 got off the school bus, because I guess she
2 didn't have nobody to call. I don't know. I
3 took her to her daddy's house.

4 Q. Okay.

5 A. Then late that evening me and my
6 granddaughter -- I have custody of two of my
7 grandkids. Okay? Me and my granddaughter,
8 later that evening, about six or seven o'clock,
9 we went to the hospital.

10 Q. So you saw minor in the hospital?

11 A. (Affirmative nod), at the hospital.

12 Q. That was Monday evening?

13 A. Yeah.

14 Q. But between twelve thirty on Sunday and
15 that time, did you see minor

16 A. I didn't talk to them no more or nothing.

17 Q. And the night before, that would be
18 Saturday night before ---

19 A. Um-humm.

20 Q. Were you over at the house that night?

21 A. No.

22 Q. So you didn't see what was going on at ---

23 A. I didn't talk to them all week until Sunday
24 morning.

25 Q. So you don't have any idea whether he was

1 coughing or anything at night?

2 A. He wasn't in that two and a half hours I
3 was there.

4 Q. That's all that you know?

5 A. That's all that I know.

6 Q. Is that correct?

7 A. (Affirmative nod).

8 Q. And certainly you don't know what happened
9 after you left, do you?

10 A. No, sir.

11 MR. RICHARDSON: Thank you. That's
12 all the questions that I have.

13 DIRECT EXAMINATION

14 BY MR. O'CONNELL:

15 Q. The events you're talking about were Sunday
16 morning, the 16th; is that correct?

17 A. Sir?

18 Q. The time that you went ---

19 A. Yes, sir.

20 Q. And at that time the child was actively
21 moving around?

22 A. He was doing perfect?

23 Q. Threw something at you?

24 A. Yeah, moving around, playing with his
25 PlayDoh.

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1 Q. Did he speak any?

2 A. (No verbal response).

3 Q. Did he talk to you any?

4 A. Well, he jabbered. Yeah, he was talking.

5 He was jabbering but I don't know what he was

6 saying.

7 Q. You don't have any kind of special

8 relationship with Donna Phillips?

9 A. No.

10 Q. You testified that you're a friend, that

11 you've known her; right?

12 A. Right.

13 Q. Did you do anything, do any work for her,

14 do any construction work, mow grass or anything

15 like that?

16 A. No. Well, I've got a business, a clean up

17 service. I went and hauled the little John

18 Deere for her in the truck 'cause she didn't

19 have no way to get it home. She called me up

20 and asked me would I get it and haul it for her,

21 and I said 'sure.' She was doing some

22 remodeling on her house and stuff, she had to go

23 to Lowe's and pick up some stuff and I hauled

24 that for her. But that's about it.

25 Q. They remodeling in their house?

1 A. Yeah.

2 MR. O'CONNELL: Thank you very much.

3 MR. DEJONG: Nothing on redirect, Your
4 Honor. I asked that this witness be excused.

5 THE COURT: Thank you, Mr. Anders.

6 (WITNESS STEPS DOWN)

7 THE COURT: Call your next witness.

8 MR. DEJONG: On behalf of Mr. Jamie
9 Morris, Your Honor, the defense rests.

10 THE COURT: All right. Mr.
11 O'Connell.

12 MR. O'CONNELL: May it please the
13 court, I would like to call Laura Phillips.

14 (WITNESS TAKES STAND)

15 LAURA PHILLIPS, being duly sworn to
16 tell the truth, the whole truth and nothing but
17 the truth, testified, as follows:

18 DIRECT EXAMINATION

19 BY MR. O'CONNELL:

20 Q. What is your relationship with Jamie
21 Morris?

22 A. Jamie is my brother and Donna is my mother.

23 Q. The weekend of the 15th and 16th, starting on
24 the 14th, where were you?

25 A. I was with my brother and my mother.

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1 Q. During that weekend, was minor present?

2 A. Yes, he was.

3 Q. He was there the whole time?

4 A. Yes.

5 Q. Except -- you're a young girl. How old
6 were you at that time?

7 A. I was in the fifth grade at that time, so
8 about eleven.

9 Q. And at this time you were doing the things
10 that an eleven year old girl does; is that
11 right?

12 A. Yes, sir.

13 Q. Were you on your cell phone?

14 A. At the time I don't believe that I had a
15 cell phone.

16 Q. You talked on the phone?

17 A. Possibly.

18 Q. Well, when you say that you was there the
19 whole time, you don't mean that you saw him
20 twenty-four/seven?

21 A. No, sir.

22 Q. What do you mean?

23 A. I mean, I was present but I may not have
24 been right in the room all the time.

25 Q. But minor was there, right?

1 A. Yes, sir.

2 Q. And he was there the whole time? They
3 didn't go out to McDonald's or to the park or
4 anything of that sort?

5 A. No, sir.

6 Q. And Jamie was there the whole time that you
7 were?

8 A. Yes, sir.

9 Q. During that whole time while you were
10 there, describe how minor was, how he acted,
11 what he did, what did the little baby do?

12 A. Well, he -- he was fine. He acted like a
13 normal baby. He acted -- I have other nephews
14 and nieces and he acted as a normal kid, would
15 play around and play with his toys or -- just
16 like a normal baby would.

17 Q. Let me take you to Sunday morning. Were
18 you up when minor got up?

19 A. I do believe that I was watching cartoons
20 with him that morning.

21 Q. And how was he acting while he was watching
22 cartoons?

23 A. He was fine, alert, watching them.

24 Q. Do you recall the rest of the day, what
25 happened the rest of the day? Can you give us

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1 a timeline on what happened?

2 A. I don't know the times. I do know that we
3 went to my sister's, Brandi's, that day.

4 Q. About what time was that?

5 A. Around noon or a little after noon, maybe.
6 I am not sure. I don't know the time, like I
7 said.

8 Q. Did you eat anything while you were at your
9 sister's house?

10 A. Some Beanie-Weenies.

11 Q. How long were you at your sister's house?

12 A. We were there for a few hours, I do
13 remember, because I remember whenever we did
14 leave that we went straight back to my house.
15 If I recall, we got his pajamas and then took
16 him straight back to Tasha's.

17 Q. When you got to Tasha's house, who was
18 there?

19 A. Tasha, Ava, me, my mother and Jamie and
20 minor

21 Q. And what happened? Did you all go in, or
22 did they just hand the child to her, leave, or
23 what?

24 A. We went in.

25 Q. How was he acting when he got to his

1 mother's?

2 A. He was -- I remember that he was awake and
3 -- I don't remember if he walked in or not, but
4 I know that he was awake. He was kinda crying
5 and stuff but he didn't -- he seemed like a
6 normal kid, other than maybe coughing and things
7 like that. But he wasn't -- he didn't act sick
8 like he would have something that needed to
9 checked right away.

10 Q. How long were you in the mother's house,
11 Ms. Honeycutt's house?

12 A. Just briefly, not but a few minutes.

13 Q. Is that the last time that you saw minor

14 A. Yes. And, uh, what really hurt and kinda
15 concerned me after all this was her shutting the
16 door to him and saying, 'This is the way I do
17 it.' And saying, 'I'll go back in there twenty
18 to thirty minutes and check on him to see if
19 he's done crying and stuff, if he is still
20 fussing.' That really upset me and stuff. And
21 then after the death of him, at the funeral and
22 stuff, no emotion from her -- like other people
23 have said, I seen that and witnessed that
24 myself. That really hurt me, you know, knowing
25 she was the mother of him.

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1 Q. Did you recall stopping at Wendy's or
2 anything ---

3 A. I do believe that we did on the way back
4 home from my sister's house.

5 Q. Do you know if minor ate anything?

6 A. I don't remember him eating anything.

7 Q. How about drinking?

8 A. I can't remember.

9 MR. O'CONNELL: Thank you very much.
10 Answer any questions that the other attorneys
11 may have.

12 THE COURT: Cross examination?

13 SOLICITOR RICHARDSON: Yes, sir.

14 CROSS EXAMINATION

15 BY SOLICITOR RICHARDSON:

16 Q. Good morning.

17 A. Good morning.

18 Q. I'm sorry, Miss Phillips, how old are you?

19 Did you state that?

20 A. At the time?

21 Q. Right now.

22 A. Fifteen.

23 Q. At the time you were eleven years old?

24 A. Yes, sir.

25 Q. I guess I could have done that calculation.

1 That's why I went to law school, I can't count.

2 Now, let me ask you this -- well, where are you
3 living now?

4 A. With my mother.

5 Q. What is your mother's name?

6 A. Donna Lynn Phillips.

7 Q. And back when this -- back in 2008, were
8 you also living with Donna Phillips at that
9 time?

10 A. Yes, sir.

11 Q. And you stated that you were watching TV
12 with minor at some point in time; is that
13 right?

14 A. Yes, that Sunday morning.

15 Q. What else did you do that day, that Sunday?

16 A. I do remember going outside. As was said
17 before in someone's testimony, he was outside
18 playing on the John Deere little jeep.

19 Q. I'm sorry. What were you doing?

20 A. I went to my sister's with them, and I was
21 there -- as far as I remember, I went outside
22 and I was out there playing with him in the
23 yard, with the jeep, John Deere jeep-thing.

24 Q. And when you -- you were in the car when
25 y'all left your sister's house, is that right?

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1 A. Yes, sir.

2 Q. And at that time, y'all started noticing
3 that something was wrong with minor That's
4 why you left your sister's house?

5 A. Well, he was fussy like a normal baby, like
6 whenever they are fighting sleep.

7 Q. Okay. What do you mean by "fighting
8 sleep".

9 A. Like any -- most babies that I've been
10 around, when they are sleepy -- most of the
11 time, they don't want to take a nap, would not
12 prefer to take a nap most of the time. But
13 they, uh, -- (pause) -- they just fight it,
14 like they don't want to go to sleep, they fight
15 against that, want to stay up and know what is
16 going on, be around everyone.

17 Q. You would agree that the reason that y'all
18 left your sister's house was because he was not
19 feeling well; right?

20 A. I wouldn't say he was not feeling well but
21 he was kinda fussy like he was fighting sleep.

22 Q. And have you spoken to Donna Phillips about
23 this case prior to this?

24 A. No, sir. I have tried to stay to myself
25 and think about it, because it has hurt me and

1 -- (pause), -- because he was like a brother to
2 me. He lived with us half of his life,
3 basically. So at the time, I didn't feel like
4 talking about it.

5 Q. So Donna Phillips has never said anything
6 to you about the case?

7 A. No, sir, she hasn't -- (pause) -- I don't
8 know if you're implying that she may have some
9 ---

10 Q. I am just asking if y'all have talked about
11 the case?

12 A. No, sir.

13 Q. Now, when you -- at some point in time, is
14 it fair to say that you got worried about
15 minor when he was in the car?

16 A. I was not worried about him when he was in
17 the car. The only time that I did get kinda of
18 worried upset and kinda worried was when we were
19 at Tasha's house and she shut the door,
20 responded to him that way. That didn't seem
21 right to me at the time.

22 Q. Do you remember telling -- do you remember
23 talking to this detective here?

24 A. Yes.

25 Q. You do?

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1 A. (Affirmative nod).

2 Q. Do you remember telling her at that time
3 that he was in the car that he was wheezing?

4 A. Yes. He was kinda congested sounding but
5 it wasn't crucially like he needed to be seen at
6 the time, I don't believe. It didn't seem very
7 serious, like it needed to be checked right
8 then. It seemed kinda like a cold or something
9 maybe.

10 Q. Of course, you were eleven years old at the
11 time; right?

12 A. Right.

13 Q. And do you also remember telling the
14 detective that you were worried about minor

15 A. It has been four years and, no, I don't
16 remember. I may have been. I was very
17 concerned about the way that Tasha shut the
18 door, once again.

19 Q. Do you remember -- do you say that you do
20 or you don't remember telling Detective Burgess
21 that you were worried about him.

22 A. I don't remember. I may have.

23 Q. If I showed you something to refresh your
24 memory, maybe that would help you. Do you
25 remember giving a written statement?

1 A. Yes.

2 Q. I hand you -- (tendering). Is that your
3 written statement, your signature on the
4 signature line?

5 A. Yes.

6 Q. And do you see where it is highlighted
7 here?

8 A. (Reviewing).

9 Q. Does that refresh your memory a little bit?

10 A. Yes. I may have said that we were worried
11 about him because of the cough and he was
12 congested sounding. Yes.

13 Q. So you were worried about minor when y'all
14 dropped him off?

15 A. (Affirmative nod).

16 Q. Okay. Let me ask you this, you did state
17 that when you got him there that Latasha
18 Honeycutt took the child and put him in a room?

19 A. Yes.

20 Q. And you said that she closed the door?

21 A. Yes.

22 Q. And after that, did you see anything else
23 happen or did y'all leave after that?

24 A. We left very soon after that.

25 SOLICITOR RICHARDSON: Thank you for

1 being here.

2 MR. DEJONG: Your Honor, may it please
3 the court.

4 DIRECT EXAMINATION

5 BY MR. DEJONG:

6 Q. Ms. Phillips, do you know Ronnie Anders?

7 A. Yes.

8 Q. Did you see him there this weekend of March
9 the 14th?

10 A. Yes.

11 Q. Do you remember what day that you saw him?

12 A. Sunday morning.

13 Q. Were you up when he got there?

14 A. Yes.

15 Q. Okay. Now, you lived with your mother at
16 that time; right?

17 A. Yes.

18 Q. On Saturday, how was minor acting?

19 A. Like a normal baby.

20 Q. Did he act any kind differently on Sunday
21 than he did on Saturday?

22 A. Not really. It didn't seem like he acted
23 any different. Maybe at the time he was going
24 home he sounded congested, coughed, had a cold
25 -- like I said before.

1 Q. Well, Sunday morning, do you remember about
2 what time that you got up?

3 A. I don't remember the time.

4 Q. But minor was up when you got up?

5 A. Yes.

6 Q. Was Jamie up when you got up?

7 A. Yes, I do believe that he was.

8 Q. Understanding that you weren't on top of
9 your mother or Jamie or minor all weekend, he
10 was there all weekend; right?

11 A. (Affirmative nod), yes.

12 Q. Okay. Now, do you know Renee Shelton?

13 A. Yes.

14 Q. During this weekend, did you see Renee
15 Shelton?

16 A. Yes, I do.

17 Q. Do you remember what day that was?

18 A. I believe that was Saturday.

19 Q. And was that Saturday morning or Saturday
20 afternoon, or do you remember?

21 A. I don't remember the time. I remember going
22 to my aunt's that day as well, but I don't
23 remember the certain timeframe.

24 Q. Who is your aunt?

25 A. Cindy Stephens.

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1 Q. Where did you live?

2 A. I don't know the address. In Liberty.

3 Q. She lives in Liberty?

4 A. Yes.

5 Q. And Ms. Shelton, where did she live?

6 A. Pickens.

7 Q. All right. Share with me now what 'minor'
8 was doing Sunday morning when you got up?

9 A. Watching cartoons with me.

10 Q. Was he awake?

11 A. Yes.

12 Q. Did 'minor' talk at this point in time?

13 A. I -- he wasn't very close to me at the time
14 when we had him then, this weekend he wasn't
15 very close to me, but I don't really remember
16 him talking much. He said like -- tried to.

17 Q. Do you know how long you watched cartoons?

18 A. I am not sure. Maybe an hour or two.

19 Q. During that hour or two that you were
20 watching cartoons, did he fall asleep or did he
21 stay awake?

22 A. He was alert, watching cartoons.

23 Q. Did he laugh or say anything about the
24 cartoons?

25 A. I can't remember.

1 Q. That was Sunday morning. Then sometime, I
2 gather, after lunch you left to go see your
3 sister?

4 A. Sister, (affirmative nod).

5 Q. Where does she live?

6 A. Fountain Inn.

7 Q. How long a drive, if you know, how long of
8 a drive or how long did it take you to get
9 there?

10 A. About forty-five minutes to an hour.

11 Q. On the way to your sister's house, was
12 'minor' awake?

13 A. I think he may have fell asleep.

14 Q. Do you remember when you got to your
15 sister's house, did anybody have any problem
16 waking him up?

17 A. No, sir.

18 Q. And once you got to your sister's house --
19 I guess I got the cart before the horse, but
20 once you got to your sister's house, did he wake
21 up?

22 A. Yes.

23 Q. What did he do after he woke up?

24 A. Well, we got him out of his car seat. He
25 woke up and then -- as I remember, we went in

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1 and he was playing with my other nephew, Clay.

2 Q. Were they playing inside or outside?

3 A. Inside.

4 Q. Do you remember what they were playing
5 with?

6 A. No, I don't remember.

7 Q. Were they playing with toys?

8 A. They -- most likely, I do believe that they
9 were. I am not sure about that either.

10 Q. Did minor seem to have any problems
11 playing with your other nephew?

12 A. No. He was always willing to share, play
13 and be around other kids.

14 Q... Okay. Would you say that minor played
15 normal, that he played hard? What would you
16 say?

17 A. He played normal. He played like a normal
18 baby was.

19 Q. Did they play all afternoon?

20 A. I guess it depends on the timeframe. I do
21 believe that he was playing most of the time
22 that we were there, until the end when he kinda
23 got fussy like he was fighting sleep.

24 Q. Do you remember what time you left your
25 sister's house?

1 A. Like I said, I don't remember the times.

2 But it wasn't -- it was -- I know that we went
3 straight there, went to my house and got his
4 pajamas and went to Tasha's.

5 Q. When you got to your house -- your mother's
6 house, right?

7 A. Yes.

8 Q. When you got to your house, did minor go
9 into the house?

10 A. No, sir.

11 Q. So y'all went into the house?

12 A. I believe that it was me and my mother.

13 Q. Where was Jamie?

14 A. In the car.

15 Q. How long did -- if you know, how long did
16 you stay at your house?

17 A. Briefly, long enough to go in and get his
18 pajamas.

19 Q. And do you remember what time -- well, let
20 me ask me. When you left your house -- and that
21 was on Sunday evening, I guess. Correct?

22 A. Yes.

23 Q. Okay. When you left your house on Sunday
24 evening, where did you go?

25 A. We went to Tasha's.

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1 Q. Do you remember if it was still daylight or
2 dark?

3 A. It was still daylight.

4 Q. I'm sorry?

5 A. It was still daylight.

6 Q. About how long did it take you to get from
7 your house to Tasha's house?

8 A. I don't know an approximate time but from
9 -- to, like, Pickens.

10 Q. Well, when you got to Tasha's house, was it
11 still daylight or was it dark?

12 A. It was daylight.

13 Q. How long did you stay at Latasha's?

14 A. Briefly. I don't know the time.

15 Q. Did you go inside Latasha's house on Sunday
16 evening?

17 A. Yes.

18 Q. Were you there when minor was in the house
19 on Sunday evening?

20 A. Yes.

21 Q. Did you -- once minor got into the house
22 Sunday evening, what happened?

23 A. He was kinda crying and fussy, as a child
24 would act when they're fighting sleep. And he
25 was -- he was awake and alert to everything that

1 was going on around him.

2 Q. Did you see him walk in the house?

3 A. I can't remember.

4 Q. When you were at your sister's house, you
5 all -- when you left to go to your sister's
6 house it was sometime in the afternoon; correct?

7 A. Yes.

8 Q. Did you eat while you were at your sister's
9 house?

10 A. Beanie-Weenies, I do believe.

11 Q. Did minor eat anything, that you remember?

12 A. I believe that he ate some Beanie-Weenies.

13 Q. While you were -- well, you went with your
14 mom and Jamie to pick minor up on Friday?

15 A. I don't remember. I don't remember that.
16 I don't know if I did or not.

17 Q. You don't remember the 14th?

18 A. I know that I was home on the 14th. I don't
19 remember if I was at school when they went to
20 pick him up or what, I don't remember that.

21 Q. Because you were in school at this point in
22 time, right?

23 A. I do believe, (affirmative nod).

24 Q. All right. Well, anytime that you were
25 with you -- sometime on the 14th or sometime on

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1 Sunday evening, did you see anybody give minor
2 any medicine?

3 A. No, sir.

4 Q. Especially did you see anybody give minor
5 any medicine while you were at your house?

6 A. No, sir.

7 MR. DEJONG: Thank you, Ms. Phillips.

8 MR. O'CONNELL: I don't have any
9 further questions.

10 THE COURT: Thank you, Ms. Phillips.

11 (WITNESS STEPS DOWN)

12 THE COURT: Yes, sir?

13 MR. O'CONNELL: I would like to call
14 Donna Phillips to the stand. Excuse me, Your
15 Honor. Elaine Simmons.

16 (WITNESS TAKES STAND)

17 SOLICITOR RICHARDSON: Your Honor, may
18 we approach?

19 THE COURT: Sure.

20 (OFF RECORD BENCH CONFERENCE)

21 THE COURT: Ladies and Gentlemen, we
22 are going to take a recess. Don't talk about
23 the case. Keep an open mind. Thank you very
24 much.

25 (JURY OUT @ 10:15 A.M.)

1 THE COURT: You may step down, ma'am.

2 BAILIFF: Jury is secure, Your
3 Honor.

4 THE COURT: We will take about a
5 five-minute recess. Thank you.

6 (BRIEF RECESS)

7 (DEFENDANTS PRESENT)

8 THE COURT: Mr. O'Connell, your
9 next witness is Ms. Phillips; is that correct?

10 MR. O'CONNELL: Yes, sir.

11 THE COURT: Ms. Phillips, have you
12 made the decision that you wish to testify,
13 ma'am?

14 DEFENDANT PHILLIPS: Yes, sir.

15 THE COURT: Now, you -- I am going
16 to go ahead and put you under oath right now,
17 then we will go it again in front of the jury.

18 (WHEREUPON DONNA PHILLIPS SWORN)

19 THE COURT: Ma'am, you indicated on
20 Monday that you weren't going to abide with my
21 ruling about the scope of the testimony. Is
22 that still your position?

23 DEFENDANT PHILLIPS: I didn't
24 understand.

25 THE COURT: On Monday, you said

1 that you were not going to abide by my ruling
2 that you could not testify about or bring up
3 anything about any prior DSS involvement. Is
4 that still your intention?

5 DEFENDANT PHILLIPS: I don't recall
6 saying that I wouldn't abide. I'll abide with
7 the truth.

8 THE COURT: So you understand that
9 the ruling of the Court in this trial is that
10 there is to be no mention, no suggestion, no
11 statement, no evidence whatsoever about the
12 fact that this child was in DSS custody before
13 or that there were foster parents at one or
14 anything of that nature. Do you understand
15 that?

16 DEFENDANT PHILLIPS: Can I ask you
17 one question?

18 THE COURT: Sure. But first I want
19 to know yes or no, do you understand what I
20 just said?

21 DEFENDANT PHILLIPS: Yes, sir, I
22 do.

23 THE COURT: All right, go ahead.

24 DEFENDANT PHILLIPS: It's important
25 to tell about the things that were said, as

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1 far as -- in court, about 'minor' being sick.

2 THE COURT: I don't know anything
3 about that. Do you know what she is talking
4 about Mr. O'Connell?

5 MR. O'CONNELL: Your Honor, ---

6 DEFENDANT PHILLIPS: It shows that
7 minor was sick at the time.

8 MR. O'CONNELL: When the child was
9 returned on that Wednesday, the child was --
10 that the child was sick on that Wednesday.

11 THE COURT: Yes, sir, Mr. Harbin?

12 MR. HARBIN: It was my understanding
13 that the child was delivered to my client on
14 Wednesday. I am not certain why she is
15 speculating as to the health of the child when
16 she received the child on Friday. She would
17 perfectly be able to testify as to the time
18 that she was with the child, but anything else
19 would be hearsay. She has no ability to
20 testify about the medical condition of the
21 child until they actually received the child,
22 so I think it would be appropriate for the
23 Court to continue the limited instruction and
24 not get into some prior ---

25 MR. O'CONNELL: My client advises

1 me that -- she will only testify as to the
2 health of the child when he was received on
3 Friday to that Sunday.

4 MR. HARBIN: I would have no
5 objection to that.

6 MR. O'CONNELL: From Friday, when
7 you picked up the child.

8 DEFENDANT PHILLIPS: (Sidebar with
9 Mr. O'Connell), after that time that he was
10 returned. They called on that ---

11 THE COURT: I don't understand what
12 she's saying. Who is "they"?

13 DEFENDANT PHILLIPS: They called to
14 check on him that night.

15 THE COURT: What night?

16 DEFENDANT PHILLIPS: Wednesday
17 night. They called and asked if we wanted to
18 come get the car seat. James said if they
19 wanted to come get the car seat, fine, let
20 them borrow it. We can get another car seat.
21 If we needed to get another car seat, you
22 know, we would so that we could get the child
23 -- (emotional), that's all that I've got to
24 say.

25 THE COURT: I understand that there

1 was some testimony about the exchange of a car
2 seat, but what's the relevance of that to this
3 case?

4 DEFENDANT PHILLIPS: Because ---

5 THE COURT: I am not asking you. I
6 am asking Mr. O'Connell.

7 MR. O'CONNELL: Your Honor, when I
8 went over with my client about what was said
9 about the car seat, ---

10 THE COURT: What?

11 MR. O'CONNELL: The ---

12 THE COURT: Ma'am, this isn't going
13 to be some big surprise. Okay? I want to
14 know what you're going to say.

15 DEFENDANT PHILLIPS: We didn't have
16 a cell phone, and that's why he -- when he
17 came that day, because we didn't have a
18 telephone. If we didn't have a telephone, how
19 did they get in touch with us? Okay?

20 THE COURT: Okay. That's no
21 relevant. The testimony that you're going to
22 give, ma'am, -- the testimony that you're
23 going to give, if you want to testify, is
24 going to be limited to evidence that you have
25 about the condition of the child, statements

1 that were made and activities that occurred
2 after the child was returned to your son on
3 that Friday. Now, do you understand that?

4 DEFENDANT PHILLIPS: I can only
5 talk about Friday?

6 MR. O'CONNELL: Friday, Saturday,
7 Sunday. You can't talk about anything back o
8 that.

9 DEFENDANT PHILLIPS: I understand.
10 It kinds disappoints that the other ---

11 THE COURT: Ma'am, you understand
12 that you can't talk about DSS or ---

13 DEFENDANT PHILLIPS: Can I ask you
14 this, can I put it this way, that on Friday --
15 or on Sunday, -- be on Wednesday they said
16 that they wanted to come get the car seat.
17 Can I do that?

18 THE COURT: I am not sure what she
19 is ---

20 MR. O'CONNELL: I am not sure
21 either.

22 DEFENDANT PHILLIPS: I want to go
23 to Sunday, when he came to our house, he said
24 that we had -- we had no phone for him to get
25 in touch with. That's why he came to our

1 house, to tell us. He said that we didn't
2 have no phone.

3 THE COURT: I understand but I
4 don't think ---

5 DEFENDANT PHILLIPS: And what I am
6 saying is that he is lying because if we did
7 have a phone they wouldn't have had to call to
8 come get that car seat.

9 THE COURT: That is not something
10 that we are ---

11 DEFENDANT PHILLIPS: That's shows
12 the time period ---

13 THE COURT: Shows what?

14 DEFENDANT PHILLIPS: Shows the time
15 period of when we left the house. I don't
16 know if that -- that shows the time period.

17 THE COURT: I don't understand her.

18 DEFENDANT PHILLIPS: I feel like I
19 am being tied down every way. You don't
20 understand what I'm saying.

21 MR. O'CONNELL: Part of what she is
22 trying to -- I don't have any memory of any
23 telephonic conversation. There will be
24 testimony that upon EMS -- that the first
25 thing she did was to go to the hospital and

1 then she went to look for Jamie. But I don't
2 have anything about any lack of telephone
3 communication or anything, just that they went
4 from Point A to Point B. I am not sure what
5 the relevance is.

6 THE COURT: All right. The ruling
7 of the Court is that you can talk about
8 activities that occurred and what you observed
9 from that Friday when the child, minor was
10 brought back to your son until the time that
11 -- from that point forward, you can talk about
12 things that are relevant to the case.

13 DEFENDANT PHILLIPS: One more
14 question, Your Honor.

15 THE COURT: Yes, ma'am?

16 DEFENDANT PHILLIPS: I've got a
17 timeline, too, that shows the investigation.
18 It's not DSS, it goes back to the home, how
19 many hours -- it shows ---

20 THE COURT: Is it something that is
21 written out?

22 DEFENDANT PHILLIPS: Yes.

23 THE COURT: I would have to see it.

24 MR. O'CONNELL: (Sidebar with
25 client).

1 THE COURT: He will give it to me.

2 MR. O'CONNELL: (Tenders).

3 THE COURT: (Upon review), so you
4 want to say, basically, Ms. Honeycutt was only
5 with the child eight and a half hours from
6 Wednesday to Friday?

7 DEFENDANT PHILLIPS: Right.

8 SOLICITOR RICHARDSON: I am not aware
9 of statements made to that effect, what
10 relevance that is to the case to take an
11 arbitrary date, like Wednesday, -- I'm not
12 sure but that's not the situation that we've
13 been trying to avoid.

14 THE COURT: Well, I understand the
15 timeline. Your fine lawyer, Ms. Phillips, is
16 certainly capable of making the argument
17 during closing arguments about the limited
18 contact without running the risk of opening
19 the issue of DSS, which frankly has been shut
20 off to ensure that everyone, particularly your
21 son and Ms. Honeycutt, receive a fair trial
22 without the jury being unduly influenced about
23 the previous investigation by a State agency.

24 So this, uh, -- this timeline from
25 Friday is of limited relevance. I think

1 certainly Mr. O'Connell can touch on that in
2 his closing argument (sic) about her work
3 responsibilities. It seems to be to be what
4 you're getting at. That is already in the
5 record. I find that any probative value that
6 it may have is outweighed substantial by the
7 prejudice.

8 All right. So, again, you understood
9 the testimony has got to be limited from the
10 time on Friday when the child was received by
11 your son forward? That there is to be no
12 mention of DSS, no suggestion of any prior
13 action(s) by any State agency regarding the
14 welfare of this child or the custody of this
15 child? Or of any prior court action? Do you
16 understand that

17 DEFENDANT PHILLIPS: Okay.

18 THE COURT: Is there anything
19 unclear about that?

20 DEFENDANT PHILLIPS: I want you to
21 explain to me how I can get testimony in about
22 how much I love this baby, what I've done for
23 him throughout all this. I worked for four
24 and a half years and -- two lawyers. I've
25 begged and prayed for this paperwork and

1 stuff, everything, and I've been shut out on
2 everything. I want to know how I can show my
3 -- they don't understand why I'm getting so
4 frustrated about all of this. It has caused
5 my family a whole lot of grief -- (emotional)
6 -- for murder! And my son, it's caused him --
7 (emotional), he couldn't remember this, he
8 couldn't remember that, (emotional).

9 THE COURT: Ma'am, nobody is going
10 to ---

11 DEFENDANT PHILLIPS: And we --
12 (emotional).

13 THE COURT: Go ahead.

14 DEFENDANT PHILLIPS: We're
15 innocent.

16 THE COURT: This isn't the time to
17 have these kinds of conversations. My ruling,
18 that you told me that you understood, and I am
19 going to repeat it, then I am going to get you
20 to repeat it to make sure that you understand
21 it. All right? My ruling is that your
22 testimony is going to be limited to things
23 that you observed, the activities that you
24 saw, heard or otherwise sensed from the time
25 that the child was brought back on that Friday

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1 until -- you know, from that point on.

2 DEFENDANT PHILLIPS: Okay.

3 THE COURT: You can testify about
4 that, but there is to be no testimony, no
5 reference to, no suggestion of, no hint about
6 any prior DSS custody or actions, court
7 hearings, or any other proceedings concerning
8 the custody of this child or actions taken
9 against the parents. Do you understand that?

10 DEFENDANT PHILLIPS: Yes, sir.

11 THE COURT: All right. Now I want
12 you to tell me in your own words what your
13 testimony is limited to.

14 DEFENDANT PHILLIPS: I am here to
15 tell them about my character, ---

16 THE COURT: I didn't say anything
17 about that. Wait a minute. Back up. What
18 you're doing is running the risk of not being
19 able to testify at all.

20 DEFENDANT PHILLIPS: Okay. I will
21 not ---

22 THE COURT: I want you ---

23 DEFENDANT PHILLIPS: --- talk about
24 anything prior. Other than Friday, I can't
25 talk about any of this. I can't talk about

1 anything prior to Friday, at all. Anything
2 prior to Friday.

3 THE COURT: Okay.

4 DEFENDANT PHILLIPS: I have to
5 leave DSS and all that out.

6 THE COURT: That's right. Any
7 activity by any State agency, DSS, ---

8 DEFENDANT PHILLIPS: State
9 agencies, guardians, ---

10 THE COURT: Law enforcement,
11 whatever.

12 DEFENDANT PHILLIPS: Law enforce-
13 ment.

14 THE COURT: Now, you mentioned
15 about Prednisone. Are you -- have you
16 understood all of our conversation here this
17 morning?

18 DEFENDANT PHILLIPS: I understand
19 what the Court is telling me, that I can't say
20 anything about -- I would ask the Court to
21 tell them to not try to trick me into saying
22 anything so you'd lock me up. I think that's
23 only fair.

24 THE COURT: Well, nobody is going
25 to mention that. If anybody mentions it,

1 there's going to be consequences because it
2 would be a violation of my Order and would be
3 contempt of court. That goes for everybody,
4 not just you. Do you have any problems
5 understanding what is happening here today?
6 Have you had any difficulty in understanding
7 my questions?

8 DEFENDANT PHILLIPS: No.

9 THE COURT: You're not under the
10 influence of any alcohol, drugs or medications
11 at this time?

12 DEFENDANT PHILLIPS: (No verbal
13 response).

14 THE COURT: I understand that you
15 told me that you took medication. I just need
16 to ensure that you're clearheaded.

17 DEFENDANT PHILLIPS: I understand
18 what you're saying. I don't understand why
19 but I know what you're asking me to do. I
20 know what you're asking me to do. I'll put it
21 that way.

22 THE COURT: Are you under the
23 influence of any alcohol, drugs or medication?

24 DEFENDANT PHILLIPS: No, I am only
25 on Prednisone. I can't take pain pills. I

1 took them for like for four and half years and
2 then at the hospital, with that last attack, -
3 - gosh, for two years, I haven't had anything.
4 I can't take anything for pain. I've never
5 wanted to take a lot of pills for pain. I
6 take my Beriva, my Lipitor, I take my inhaler,
7 my oxygen, vitamins sometimes, you know,
8 things like that. No drugs, no alcohol.

9 THE COURT: Okay, ma'am. I under-
10 stand. I know this trial is very important to
11 everyone. I'm just trying to ensure that it
12 is done fairly and that there are no improper
13 matters brought before the jury that would
14 allow them to focus on something other than
15 the real issues in this case. I am going to
16 vigilantly ensure that that doesn't happen.
17 So I appreciate your cooperation. Anything
18 else before we bring the jury in?

19 SOLICITOR RICHARDSON: No, sir.

20 THE COURT: Bring in the jury.

21 (JURY IN @ 10:51 A.M.)

22 THE COURT: Ladies and Gentlemen,
23 before we have the next witness, you may have
24 noticed that we have a new face in the crowd
25 today. That's Ms. Vivian Cross. She is the

1 court reporter that replaced Ms. Jenkins, who
2 is on vacation. So, just to explain that.
3 Mr. O'Connell, you may call your next witness.

4 MR. O'CONNELL: Thank you, Your
5 Honor, may it please the court -- Your Honor,
6 I would like to ask the Court, please, that if
7 I get tired standing if I may sit down?

8 THE COURT: Yes, sir.

9 MR. O'CONNELL: If you would please
10 take the stand.

11 (WITNESS TAKES STAND)

12 DONNA LYNN PHILLIPS, being duly sworn
13 to tell the truth, the whole truth and nothing
14 but the truth, testified, as follows:

15 DIRECT EXAMINATION

16 BY MR. O'CONNELL:

17 Q. Ms. Phillips, where do you live?

18 A. Sir?

19 Q. In what county do you live?

20 A. I live in Pickens County. I am a postal
21 worker of fourteen years, retired disability
22 in 2008.

23 Q. Were you born in Pickens County?

24 A. Yes, sir.

25 Q. I am going to take you back to the -- I

1 may say the date wrong, like most of us here,
2 but I think it was Friday the 14th, in the
3 afternoon.

4 A. Yes, sir.

5 Q. What occurred that afternoon that you want
6 to tell the jury about?

7 A. Okay. Friday, we got up kinda early that
8 morning. It's kinda hard for me to remember
9 the exact time. I know that it was probably
10 about ten or eleven when we headed towards
11 Ingles -- we want going to get out minor
12 We had not got to see him in like ten months.
13 We was going to see him. We went to Ingles.
14 I don't have a cell phone, I have only a home
15 phone -- at the time, the money situation -- I
16 was the oldest of five children and, uh, we --
17 we headed out toward Ingles and I think that I
18 had to go to the grocery store to get some
19 stuff. We called if we could get minor now
20 -- I kinda tried to talk him out of him, so --
21 being that it was ---

22 THE COURT: Hold on just a minute.
23 Ladies and Gentlemen, we are going to take a
24 short recess. Don't talk about the case, keep
25 an open mind.

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1 (JURY OUT @ 10:56 A.M.)

2 DEFENDANT PHILLIPS: I'm not
3 referring to anything.

4 THE COURT: Ms. Phillips, you told
5 me under oath that you understood my ruling
6 and that it was clear to you. I don't know if
7 you think you're being cute or if you think
8 that you're going to outwit everybody around
9 you, but what you've done is violating my
10 Order. So you're in contempt of Court.

11 So I can do one of two things at this
12 point. I can go ahead and proceed with the
13 contempt or you can indicate to me whether
14 you're going to refrain from that conduct and
15 we'll bring the jury back in and you'll be
16 allowed to continue testify. But if tell me
17 that you're to make indirect references to the
18 child being moved around or not seeing the
19 child in months -- now, you just wait until I
20 finish. Okay? If you can't refrain from
21 doing that, you're not going to be able to say
22 another word from this witness stand. Do you
23 understand that?

24 DEFENDANT PHILLIPS: Yes, sir, I
25 understand.

1 THE COURT: We will handle the
2 contempt later on. Okay?

3 DEFENDANT PHILLIPS: I've got ADHD
4 and it's just kinda hard to ---

5 THE COURT: You understand what's
6 going on. I can tell from your demeanor.

7 MR. O'CONNELL: Your Honor, if I
8 may say it one more time, -- everything from
9 the 13th on, nothing backwards. Stop trying to
10 bring in other stuff. Stop trying to -- I
11 don't know if it is editorializing or whatever
12 you call it, but just state the facts from the
13 13th on. Your Honor, I would like that on the
14 record just to cover myself.

15 THE COURT: Well, you ask the
16 questions. Ma'am, you just answer the
17 questions and not go off on tangents.

18 DEFENDANT PHILLIPS: Okay, let's
19 just get to it. I'm going to try to -- I'm
20 just going to answer the questions.

21 THE COURT: If it happens one more
22 time, you're off this witness stand. Do you
23 understand that?

24 DEFENDANT PHILLIPS: Yes, sir.

25 MR. DEJONG: Judge, can I note my

1 objection to her testimony for the record.

2 THE COURT: Yes, sir. Does anybody
3 wish for me to give any kind of instruction to
4 the jury?

5 SOLICITOR RICHARDSON: I do, but I
6 don't know what it would be.

7 THE COURT: Bring in the jury.

8 MR. DEJONG: I would ask that they
9 disregard the testimony, Your Honor, but I
10 have a little problem with that. That rings
11 the bell twice.

12 SOLICITOR RICHARDSON: I do have an
13 objection. There was no question and answer
14 that would complete a narrative, so if Your
15 Honor would instruct the jury that the witness
16 has been instructed not to testify *ad nauseam*,
17 to only answer the questions, I think that
18 alleviate any concern.

19 THE COURT: Just answer his
20 questions.

21 MR. O'CONNELL: Your Honor, I
22 appreciate what everybody is saying but
23 sometimes you have to ask a question that
24 includes a narrative. If everything was only,
25 'What happened next? What happened next?'

1 We would be here because then we'd have to do
2 every minute of almost every hour. I have
3 instructed my client to come to this court-
4 room, again, just to tell the facts about the
5 circumstances of that afternoon.

6 THE COURT: All right. Thank you.
7 You can bring the jury back in.

8 (JURY IN @ 10:59 A.M.)

9 THE COURT: You may continue, Mr.
10 O'Connell.

11 DIRECT EXAMINATION CONTINUED

12 BY MR. O'CONNELL:

13 Q. Ms. Phillips, what happened after you
14 and Jamie Morris picked this child up Friday
15 afternoon, the 14th?

16 A. Okay. We got to Ingles. I tell him
17 'okay, to go ahead' because he was like 'I'm
18 going to get him.' He calls -- he gets on the
19 pay phone and he calls -- I don't know, he
20 called three or four times. I got onto him.
21 I said, 'Jamie, you can't just keep calling,
22 you know, aggravating, you can't just keep
23 calling them.' And he said, 'Mama, please let
24 me call one more time.'

25 So he had called Latasha Honeycutt

1 and, uh, he had, uh, spoke with her. Brandon
2 had told him one time that she was wanting to
3 pack a bag for him, you know, and that made me
4 feel good because, I thought, that's like a
5 mother would care, like she wanted to pack a
6 bag for the child. You know? That really
7 made me feel good because it made me feel
8 like, you know, that it was confirmed.

9 When he called her, she said sure, to
10 go ahead and get him but she didn't mention no
11 bag packing and stuff.

12 So Jamie got back in the car and he
13 didn't tell me that he'd called her. He said
14 "we can go get him now." I said, "Really?"
15 He said "Yeah."

16 So we go that way, because Jamie had
17 told 'em we didn't need no clothes, we had
18 everything -- except his tennis shoes. I had
19 bought him some little Nike tennis shoes that
20 were real nice and he wanted them to have
21 those.

22 So we went to -- (emotional, crying)
23 -- we went over to pick him up (emotional).

24 Q. Ma'am. Ma'am. Would you bring the
25 microphone closer to you?

1 A. We went and picked minor up that day and
2 -- I don't know, I just -- I don't know if
3 Latasha knew that we was coming, or if she
4 wanted to pack a bag or not, I just know that
5 when we got there -- I asked Jamie -- we were
6 wondering, you know, why the delay. And, uh,
7 Brandon never would come to the door when we
8 got out to knock on the door. But Jamie said
9 that he called her and I told him, 'Well, you
10 should've have done that. You shouldn't have
11 called her at work.' There was a little
12 conflict going on about things that had ---

13 Q. Just tell what happened when you picked
14 him up.

15 A. Okay. We went in -- we stood in front of
16 the door and we knocked and knocked, we
17 couldn't get nobody to the door. I didn't
18 hear no sound or anything. I couldn't hear
19 anything. And, uh, so we walked back away
20 from the house and we went and sat in the car
21 for a few minutes. Then we went back and
22 knocked, because we thought maybe he was using
23 the restroom or maybe -- things. We didn't
24 know. Is there a certain way that I need to
25 sit with this (microphone)?

1 Q. Tel us your story.

2 A. Maybe he needed to change the baby's
3 diaper or something. So we sat there, we went
4 back and we knocked again. Still no answer.

5 I guess that it was about, I don't know,
6 thirty minutes or so we tried to get him to
7 the door. I finally got to where I said,
8 'Jamie, let's just go.'

9 I'm not thinking -- I don't even think
10 that there would be a Court Order because I --
11 okay. I wasn't thinking, trying to -- (pause)
12 -- and, uh, I said 'Well, I don't understand.
13 If we got to see him, you know, ---

14 Q. Ma'am, did you pick the child up Friday
15 afternoon?

16 A. Yes, we did.

17 Q. How did you ---

18 A. We started to turn away from the door and
19 as we did, he finally opened the door. We
20 stepped inside, he let us inside. minor was
21 awake. You could tell that he was not -- had
22 not been sleeping, his eyes was alert and
23 everything, he was awake. But he just -- he
24 seemed to be fine, walking around in his
25 pajamas. He had some long-john pajamas on,

1 there was some little airplane and stuff, she
2 had some cute little pajamas on him. This is
3 -- I don't know, somewhere around two o'clock.
4 I'd have to see my paperwork to say for sure,
5 but somewhere around two o'clock.

6 You know, I think it was a little bit
7 after two when we went in. While we was in
8 there, I think Jamie went back outside at one
9 point to buckle up minor's car seat, to get
10 it tight in there. We had it already but we
11 hadn't buckled it in.

12 So, uh, he, uh, -- while he was out there,
13 I asked Brandon -- I looked around and I
14 looked back towards the back bedroom, it's
15 down a hallway, and the bedroom that minor
16 stayed in was over here on this side
17 (gesturing). Like here is the door, you go in
18 -- you come in the door, you're sitting on the
19 couch and the hallway is this way and the
20 bedroom to where minor was out was right
21 where the front door had got kinda -- like
22 this, like an L-shape.

23 minor kinda come from the bedroom, you
24 know, walking when we come in. Jamie hugs
25 him, picks him up. You know? He had a little

1 pen/pencil thing in his hand. When Brandon
2 looked at me, I just said -- because I figured
3 that might start a fuss, you know, if he made
4 a big deal of it. And Jamie just said, 'Ooh,
5 minor you don't need this.' You know. So
6 he took the pencil.

7 I looked around and I didn't see no baby
8 monitors. I knew that they had an eight-week
9 old and I know that with my eight-week olds
10 that I always ---

11 Q. Ma'am, please don't reminisce on what
12 y'all did.

13 A. I'm sorry.

14 Q. What did you do after picking the son up.
15 What did you do then?

16 A. When I, uh, -- when we got him, we had to
17 get -- we had to get some clothes because he
18 had stated that we wasn't over ten minutes,
19 but Jamie -- I'd asked him if he could see Ava
20 (phonetic) -- he went back there in the back
21 bedroom and we had reasons that -- (pause) --
22 that he wanted to see Ava.

23 MR. DEJONG: Your Honor, could I ask
24 that she speak into the microphone. I am
25 having trouble hearing her.

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1 THE WITNESS: He had reasons --
2 can I adjust it maybe? Would that help? Who
3 does this (microphone). Am I doing something
4 wrong.

5 DIRECT EXAMINATION CONTINUED

6 BY MR. O'CONNELL:

7 Q. You're okay.

8 A. I can do this, I can breathe better with
9 that. Will -- I forgot the question.

10 Q. The question is, what did you do after you
11 picked the child up? After you picked the
12 child up, what did you do? Did you go home?
13 Did you go to Wendy's or McDonald's or
14 something like that? What did you do?

15 A. We stayed for a minute. I don't directly
16 remember going anywhere but home, because I --
17 I am pretty sure that we went straight home
18 because it was right at the time for my
19 daughter to get out of school. She's in
20 elementary. She come in shortly after we got
21 there, so we was kinda rushed about that.

22 Q. That evening, did you go anywhere or did
23 you do anything, or did you stay home?

24 A. I wanted to mention one thing about ---

25 Q. Ma'am, just answer my question, please.

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1 A. Okay.

2 Q. That evening, where did you go? Did you
3 go anywhere?

4 A. (No verbal response).

5 Q. Did you stay home?

6 A. We stayed at home with minor We took
7 him outside. We had construction going on at
8 my house. I had a tub in the back room that
9 was sitting outside, had a new one and I had
10 to have a wall took out -- it'd been out for a
11 while. So I had to put my bed in my
12 daughter's bedroom, so we had to kinda live
13 out of three rooms at the time since I was
14 doing work. That's the reason that I wanted
15 somebody to come by and look at my house, you
16 know, the law to come out there -- I asked
17 them 'please do come out there and look at my
18 house', nobody had come out there. So my
19 house had plywood up and down the walls and I
20 had to put stuff ---

21 MR. DEJONG: Your Honor, ---

22 DIRECT EXAMINATION CONTINUED

23 BY MR. O'CONNELL:

24 Q. Ms. Phillips, ---

25 A. Okay.

1 Q. So you had the child that night. Did
2 anything happen that night to make you think
3 the child needed any kind of help or anything?

4 A. No.

5 Q. Where did you go ---

6 A. We did notice just a little runny nose
7 that day; but, no.

8 Q. Okay. The next morning, where was Jamie
9 and the child, minor

10 A. (No verbal response).

11 Q. Saturday morning, where were they?

12 A. Saturday morning?

13 Q. (Affirmative nod).

14 A. Saturday morning. We were asleep Saturday
15 morning. We got up, ---

16 Q. What time does the child normally get up
17 at your house?

18 A. Oh, he woke up like clockwork, just like
19 my child, had a routine, wake up like clock-
20 work. He work up like clockwork on Saturday
21 morning. It's my recollection, I remember and
22 I know this because I am used to waking up
23 early myself, 5:45 most days.

24 Q. Okay. Saturday morning, what did you do?

25 A. Saturday morning?

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1 Q. (Affirmative nod).

2 A. Okay. Well, we had planned on going to
3 Renee and my sister's house that day because
4 we -- I had rather stay at home with him but
5 on account of the construction I got him out
6 to whoever's house so that he wouldn't have to
7 -- so that he could get down and enjoy
8 himself. And everybody wanting to see him,
9 you know.

10 Q. Okay. Saturday ---

11 A. So we go, get up, we eat breakfast and
12 all. We started getting ready, preparing to
13 -- you know -- go and everything. I think that
14 I was on the bed and I was taking my medicine,
15 that's where I usually do -- I sit down on the
16 bed and I have this pumpkin, and I have my
17 stuff on the bed.

18 Jamie came in there and he sat him down on
19 the bed and I said, 'Jamie, why did you set
20 him down here? You seen me taking my
21 medicine.' I said, 'Lord have mercy.' And
22 I said, 'you know he's going to be grabbing,
23 because you know how children love rattley
24 bottles and stuff.'

25 And that's the first thing that he did, he

1 reached in there and grabbed a bottle. He
2 started to take it out of his hand and I said,
3 'No, no. Just let him hold it for a minute.'
4 And I said, 'Laura, go get him a toy.'

5 I had this little wooden toy like this and
6 it makes these little cranky sounds. She
7 found it and she brought it back to him. She
8 handed it him and gave the bottle back. That
9 was the end of that story, but he did reach
10 his hand down in that ---

11 Q. Okay. Was the child okay, acting like a
12 child -- a twenty-one month old child? He was
13 moving around, ---

14 A. He did except the nights that he woke up
15 -- like waking up with nightmares. He was a
16 little bit different in his behavior than he
17 was when he was -- he was a lot different in
18 his behavior than, uh, -- he'd cry, you know.
19 He'd wake up and he would start crying, and
20 he'd cry and cry. You couldn't hardly soothe
21 him. And -- and what I'm talking about is
22 that he would push away. He was so used to
23 being held, you know, but he would push away
24 from us. I couldn't understand that because
25 -- we'd seen that a couple times.

1 Q. Ma'am.

2 A. He woke up around -- probably around -- we
3 couldn't get him to sleep for -- he didn't get
4 to sleep until like 10:00 something, living
5 out of these two rooms. So it was probably
6 about ten before we got to sleep. We would
7 start trying to but we couldn't -- so it was
8 like, uh, he would -- he would wake up --
9 seems like it was around eleven or twelve and
10 he would have his frightened (sic).

11 He did that two nights. I don't remember
12 -- I don't recall. I'm pretty sure that it was
13 Friday night, that first night, because he
14 cried and cried so that we couldn't soothe
15 him.

16 I asked him, I hollered up from my bedroom
17 and -- Laura's bedroom -- and I hollered, I
18 said 'Son, do you want me to see if I can get
19 him quiet?' He said, 'Mama, he's not going to
20 be quiet for you if he's not going to be quiet
21 for me.' And I said, 'Well, let me just try.'

22 Q. Okay.

23 A. And, uh, so I got him. I have an
24 oversized chair. Jamie was right here on the
25 couch and the oversized chair is right here

1 across the living room. I got up in that
2 chair and the oversized pillow, I put one in
3 my lap and I laid him over in it and, uh, --
4 and I, uh, laid my little head down on his
5 head and I hummed to him -- (emotional) -- and
6 went off to sleep.

7 Q. Okay. Did you do anything ---

8 A. I said to Jamie, I said 'Jamie, you're
9 going to have to come over here and get him
10 because I can't pick him up, 'cause he's on my
11 legs.'

12 He said, 'He's going to wake back up.'

13 So -- but he come and got him.

14 No more than had I got back to bed he did
15 kinda rouse up and he cried for just a few
16 minutes, but he went right back to sleep then.

17 Q. What did y'all do Saturday afternoon?

18 A. Saturday afternoon?

19 Q. Yeah.

20 A. Did we go into Saturday morning? First we
21 went to Cindy's and then we went to Renee's.

22 He played at my sister's, Cindy's, home on
23 Sunday -- I mean on Saturday. Saturday when
24 we went over to Cindy's, he played over there.
25 He played with my niece. My niece, her

1 husband, my two nephews, her two children, my
2 sister, her husband and her son. He just had
3 a ball. Everybody. It was like he was
4 greeting everybody that weekend with open
5 arms. He was so loving, such a loving child.

6 Q. What happened Saturday night then?

7 A. I love him, and I miss him.

8 Q. What happened Saturday night?

9 A. Saturday night?

10 Q. (Affirmative nod).

11 A. We came home. We wanted to try to get him
12 to bed like his normal time. We thought that
13 maybe he will go to bed with us tonight.

14 Jamie wanted to cut his hair and he -- he
15 was all -- he wanted to cut his hair. He got
16 him in the bathroom and he had him standing on
17 the commode. I could see him, you know, and
18 he started cutting his little hair and he got
19 him -- he done a good job, it looked real cute
20 because it was kinda thin-like and it made it
21 looked thicker. I thought he looked so cute.

22 Q. Ma'am, did you ---

23 A. And he --

24 Q. --- give the child any medication?

25 A. No. I would never -- I was not raised

1 that way. I would never give a child any kind
2 of medicine that was not prescribed for them.
3 I would never give a child anything under the
4 age of two years old. Anybody in my family
5 has better sense than to give a child -- my
6 daughter, even now I won't let her have
7 aspirin and certain things, you know. I never
8 -- I didn't know when all this happened what
9 in the world happened. I -- we'll go on to
10 Sunday. I mean, you go on to whatever you
11 want to go on to.

12 Q. I just want you to answer the questions
13 about this pumpkin.

14 A. Okay.

15 Q. Could the child have got into the pumpkin?

16 A. Okay.

17 Q. Could the child have got into the pumpkin?

18 A. No, because I set it up on the top shelf
19 in my closet. When I got through taking that
20 medicine, that pumpkin went on that top shelf.

21 Q. Was there any time that either you or
22 Jamie could have left the child alone where
23 the child could have gotten in the pumpkin?

24 A. No.

25 Q. In other words, ---

1 A. No, he couldn't even have gotten the
2 pumpkin if we had have left him alone; but,
3 no, we didn't leave him alone. We had him in
4 our eyesight the whole time. We had an evil
5 eye on him, the evil eye.

6 Q. Okay. Now, Sunday morning, I heard that
7 the child was up watching TV with your
8 daughter; is that correct?

9 A. Sunday?

10 Q. Sunday morning, the child was up watching
11 cartoons with your daughter; is that right?

12 A. Yes, sir.

13 Q. Okay. Was any ---

14 A. Sunday morning?

15 Q. Sunday morning, (affirmative nod). Was
16 anything administered to the child then? Any
17 kind of drugs, medications, anything.

18 A. When they were in there watching TV, I --
19 I woke up and -- actually he -- you know, I
20 just heard someone in there and I said, 'Who
21 is it? Who's up?'

22 Laura said, 'It's me.'

23 I said, 'What are you doing?'

24 She said, 'Me and minor in here, sitting
25 watching TV.'

1 I said, 'You are? Well, what's Jamie
2 doing?'

3 And he said, 'I'm awake.' He was on the
4 couch.

5 I said, 'Okay.'

6 I think that they were watching Sponge
7 Bob. He loved Sponge Bob. He even made the
8 motions in some of these pictures, he had his
9 eyes turned sideways, you know. So ---
10 Q. Did somebody come over to your house that
11 Sunday morning, or -- did you see anybody?

12 A. (No verbal response).

13 Q. Did somebody come to your house to visit
14 you Sunday morning?

15 A. Yes.

16 Q. Who was it?

17 A. It was -- well, it was kinda like ten or
18 so, it was Ronnie Anders.

19 Q. Did y'all go outside and play in the yard
20 or such, or whatever did you all do?

21 A. Yes, we were out in the yard. We were
22 playing with minor on the John Deere. That -
23 - I kinda noticed and it kinda hurt me a
24 little bit -- he looked kinda sad because --
25 but he was on the John Deere.

1 Q. Did you go to anywhere around that, or
2 what did you do after that -- after he come
3 over there?

4 A. He -- sir?

5 Q. After Mr. Anderson, Anders or whatever his
6 name is, was there, what did you do then?

7 A. We were there and he went running around
8 the trailer. He loved that riding lawnmower
9 but we had to get him down because it was
10 right there at the ant hill, so we moved him.
11 We finally got him to come back in the house.
12 It was kinda warm.

13 So I fixed him an area -- a little area
14 rug because, see, I didn't have no flooring
15 down. I was fixing to put wood flooring and
16 stuff. So I had a rug laid out on the floor
17 and I put a little box there and -- Laura went
18 and got his PlayDoh. I was going to make him
19 a little man. He didn't like it. He didn't
20 like it because I got the PlayDoh and he got -
21 - he jumped up and he went running towards the
22 kitchen.

23 I told Jamie, I said, 'Don't run after
24 him, let him go.' I have heard, you know, if
25 they are having a little fit or something you

1 kinda let them go and sometimes they get over
2 it easier. He did.

3 He run to the kitchen -- but I said, 'keep
4 an eye on him.' So he stood up and he peeked
5 around the corner. He seen all this. He
6 peeked around the corner and about that minute
7 he come running back in there. By that time,
8 I'm the one that had the ball rolled up. I
9 handed him the ball because I couldn't get
10 nothing but the head done before he come back
11 in there. When he got that ball, he janked
12 and he throwed it and it bounced and Ronnie
13 went like (illustrating). It tickled minor
14 to death and we all got tickled, because we
15 started laughing about it.

16 Q. What happened after that?

17 A. After that, it was about twelve thirty and
18 we drove -- well, my daughter had called.
19 When she called she said that, uh, she wanted
20 to know if we could come over there. I said,
21 'I don't know, Brandi. I don't know.' I
22 said, 'I will have to let you talk to Jamie
23 about that.' Then he said that he didn't
24 know, you know. I am, like, so he went ahead
25 and he said, 'yeah.' So we decided that we

1 would go over there. Ronnie was going to go
2 with us, so he had called to see if his child
3 had -- by the way, Ronnie's got his grandchild
4 and ---

5 Q. Ma'am, please ---

6 A. He takes care of his. He's got custody.

7 Q. Please just tell us what happened.

8 A. He, uh, -- he -- (pause) -- we went right
9 -- we went on over there. We left at twelve
10 but Ronnie had to get back, he couldn't get in
11 touch so that he could make plans. So we went
12 on over to my daughter's house.

13 Q. And ---

14 A. It takes like -- I go on Pelham Road and
15 it takes like forty-five minutes on Pelham,
16 and they lived on the Fountain Inn exit, right
17 off the exit to Fountain Inn. There's a
18 church there, there's two apartment complexes
19 and they live in -- in both. But these
20 apartments, it takes an hour, approximately an
21 hour to get there.

22 On the way there, we all got in the car,
23 we all left at the same time and, uh, -- and
24 Ronnie, uh, left and went home. We left to go
25 there. As we were going out the door, we all

1 left. He went to ---

2 Q. How was minor at this time when you were
3 leaving out to go to your daughter's?

4 A. Fine. Fine.

5 Q. Okay.

6 A. Like I said, just a little runny nose.

7 Q. When you got down to -- did you stop
8 anywhere before getting down to your sister's
9 house?

10 A. Did we stop before getting -- no, I don't
11 -- I don't recall.

12 Q. What happened at the sister's house?

13 A. We was supposed to grill out and we got
14 over there and my daughter, she's got sporadic
15 arthritis. I have it. It inflames you real
16 bad. All of her dishes in the kitchen was
17 dirty. And he had chemo therapy and he
18 couldn't touch the dishes hisself. She was
19 trying to work and -- and, uh, -- so I decided
20 that I would wash the dishes for them while I
21 was there, because I could see -- like their
22 little apartment -- to show you how -- to
23 demonstrate how their apartment is, so that
24 you'll know how we can see each other.

25 Q. Did you have anything to eat while you

t

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1 were there?

2 A. Yes, sir.

3 Q. What did you eat?

4 A. When -- did we have anything?

5 Q. (Affirmative nod).

6 A. No. Not while we was there, (negative
7 gesture). But minor did.

8 Q. What did minor have to eat?

9 A. He had some cereal, two different kinds of
10 cereal. They put it in a bowl and we sit it
11 on the coffee table. And she had fixed some
12 Beanie-Weenies prior and later on, maybe an
13 hour or so later I said -- you know, he had to
14 have a little something else, couldn't wait
15 that long. I said, you know, 'he needs
16 something else because we had eaten early.'
17 So she said, 'Do you think he would like
18 them?'

19 I said, 'I don't see what it would hurt if
20 you smash the beans up and stuff, you know.'

21 Q. Did he eat the Beanie-Weenies?

22 A. Yes, he did.

23 Q. Did he have any problem eating the Beanie-
24 Weenies, like throwing up, gagging?

25 A. Oh, no, he never got sick, never gagged

1 up, never nothing.

2 Q. While you were there at your sister's
3 house, did anybody give this child any
4 medication while at the sister's house?

5 A. No. Except that ---

6 Q. Okay. What time did you leave ---

7 A. Can I -- except some baby Equate Tylenol
8 later that evening, that Sunday.

9 Q. When you left the place, where did you go?

10 A. Well, can I finish saying this about
11 Sunday? About -- can I explain this? When he
12 ate, they went outside and they played for a
13 little while, playground. They put him on one
14 these rocking horses -- you know, like the
15 ones at McDonald's that they used to -- I
16 don't know if they've still got them but that
17 have got the hard springs, kinda? He sit on
18 that and they went out there and played with
19 him, that's what Jamie said.

20 They came back in -- it wasn't too long
21 after they came back in and I was still
22 washing dishes, I was still drying silverware,
23 I was still talking to because it's just a
24 little kitchen and you're right there at the
25 door to the living room and everything. He

1 started crying -- and this is how he was
2 fussy. Everybody says that he was crying but
3 they don't say how much he cried. He cried
4 and cried and cried. We couldn't console him,
5 we could not console him. He was crying. And
6 I thought, 'Lord, he must be sleepy, you know,
7 he must be sleepy.' That worries me, you
8 know, worry about his brain injury and his
9 behavior, you know, crying and waking up at
10 night and stuff.

11 So, anyway, they -- Jamie said,
12 'Reckon he's getting sick? Réckon he's
13 hurting?' Think we ought to give him some
14 Tylenol. And I said, 'Well, you know, I don't
15 see that it would hurt.' Because they said
16 that he felt, you know, a little hot. So they
17 did.

18 And when they brought him back in
19 there, Jamie had went -- they was
20 talking/discussing about how to give it to
21 him. I said, 'you just read the directions.'
22 Brandi has to give her baby some, but had to
23 give it smaller doses. So he had to read for
24 minor 's size, you know. So Brandi and Jamie
25 was all in there and they gave him, I think, a

1 bottle back in the bedroom -- Brandi took him
2 to the bedroom. Then they brought him back
3 into the room immediately. I felt his head
4 and I said, 'Well, he don't seem that hot to
5 me. You know, 'he don't really.' And I said
6 -- and Brandi said, 'He's not that hot' or
7 warm. And I said, well, you know, if he's
8 hurting maybe that will help him, you know.

9 Q. Then what happened? What did y'all do
10 next?

11 A. So he was still fussing, he was still
12 fussing, fussing and crying. I mean, it
13 wasn't fussing. Fussing and crying, the same
14 are the two.

15 Q. Did this fussing and crying -- in all
16 these years, I might know a little bit, not
17 all that much, but could this have been like
18 he was just tired?

19 A. Sure.

20 Q. Don't babies get, after they've up hours,
21 don't they get ---

22 A. Sure.

23 Q. What was the word that they were using the
24 other day? Cranky? Is that what the word
25 "cranky" kinda means to you?

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1 A. (Affirmative nod), acting up.

2 Q. Acting up?

3 A. (Affirmative nod).

4 Q. And they don't want to go to sleep but
5 they have to go to sleep; is that right?

6 A. Yes.

7 Q. So y'all go back in the car, and what do
8 you do after you get back in the car?

9 A. We get back in the car. We decide to go.
10 I say, 'Jamie, we need to go. I don't think
11 that we need to stay because, you know, we've
12 got to get going down the road. It's time to
13 get him back home, plus getting close to his
14 bed time.' Excuse me for a second -- my mouth
15 is so dry.

16 So when we get in the car, Jamie sits
17 there. He grunts, he's crying and stuff. You
18 know, we start going down the road a little
19 piece and -- I don't know at what point, I
20 don't know where we stopped, at a light or
21 what, but he said something about his
22 breathing sounds funny. My son -- you just
23 have to know my son. He's like a worry wart,
24 I guess they call it -- like a hypochondriac.
25 He worries about every little thing because he

1 -- I could give you an example but I might
2 embarrass some people, but ---

3 Q. Ma'am, let me ask you, did you stop
4 anywhere before you got to your house? Where
5 did y'all go? Tell me what you were doing.

6 A. No. I was talking about that we were
7 stopping at the red light and he told me this.
8 I'm turned around looking, trying to look
9 back. He said, 'Oh, no, his jaw is shaking.
10 His jaw is shaking.' I looked back and I seen
11 it quivering and I said, 'Jamie, that's how
12 babies do when they cry. They will cry in
13 their sleep and their jaws will quiver.' Has
14 anybody ever noticed, you know, their baby,
15 their jaws quiver if they cry a long time
16 you'll see the little jaws quiver. My mama
17 told me about that one time because I seen my
18 sisters and brothers do that, you know, some
19 times if they were crying, their little jaws
20 would quiver or something.

21 Q. Did you stop anywhere after leaving ---

22 A. And -- sir?

23 Q. Did you stop anywhere after leave your
24 sister's house?

25 A. Yes. We did.

1 Q. Where did you stop?

2 A. And I'd forgotten about this. If I could
3 find, I might even could still find it -- like
4 it might be in a bag, because I save my
5 receipts. I save everything. I've got awards
6 that I saved for my children and everything
7 else. But, uh, we went to a Wendy's. We
8 hadn't eat, so we pulled in a Wendy's. It's
9 on White Horse. We come down by the Bi-Lo
10 Center and got through White Horse that way,
11 back towards Pickens. So, uh, I just -- I'd
12 say fifteen, twenty minutes at Wendy's drive-
13 thru, however long it takes to get, you know,
14 our food, you know.

15 And so we go straight on home. We don't
16 go nowhere else. We got the house. minor
17 was still sleeping. At the time, Jamie didn't
18 mention but I told him to prop his head up
19 when he starts acting like that. I said,
20 'He's been crying so long' -- Lord, children
21 do not blow their nose, you know? They don't
22 blow their noses. So I felt like it was the
23 drain (sic) going down into his chest and
24 making his sound wheezing. And I said -- like
25 I said, I was up front, the air/heat was going

1 -- I guess it was heat, because it caused on
2 the 15th. It was kinda cold in March. He --
3 (pause).

4 Q. Ma'am, did you go by your house?

5 A. Yes, that's what I am -- I got lost. We
6 went straight to the house and me and Laura --
7 Jamie said that he would stay out there since
8 'minor' was asleep, because I had to get his
9 pajamas out of the -- they had requested for
10 them back, I wanted to get his pajamas. I
11 went in there and I had to get his pajamas for
12 him. Then I went to use the restroom, me and
13 Laura had to use the restroom, we both did --
14 given another ten minutes or so, fifteen, I
15 don't know. We run back, I don't think it was
16 -- anyway, we run back out.

17 Q. Did you give the child any medications or
18 any kind of thing from your house at that
19 time?

20 A. No. He was asleep. He didn't go back in
21 my house. He was asleep.

22 Q. Let me ask you to look at these pictures
23 here. I believe they're already been entered
24 into evidence as Defendant's Exhibit 1.

25 A. Yes, this is 'minor

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1 Q. I would like you to go through and
2 describe each picture to the court.

3 A. This is 'minor' on Sunday. I tell you the
4 reason that we can remember so well is because
5 of what he is wearing. We will just never
6 forget these days.

7 This is ---

8 SOLICITOR RICHARDSON: Your Honor, if
9 we could identify it for the court.

10 THE WITNESS: I will turn it around
11 for everybody.

12 MR. O'CONNELL: I would like to offer
13 these in evidence.

14 THE COURT: They're in evidence.

15 DIRECT EXAMINATION CONTINUED

16 BY MR. O'CONNELL:

17 Q. Ms. Phillips, look at the pictures. Tell
18 me who took the picture and when they were
19 taken, only at this time.

20 A. Well, I don't know if Laura took them or I
21 took them. I am not quite sure if I took them
22 or if Laura took them. I just know that we was
23 all in there when we was taking them. I said,
24 'Get one of him now.'

25 Q. Please ---

1 A. If she was taking them.

2 Q. --- listen. Are those pictures from the
3 weekend?

4 A. Yeah, from our weekend with minor our
5 last weekend with minor

6 Q. Explain the pictures to the court.

7 A. Okay. This is Sunday. The reason that we
8 know it's Sunday is because Jamie always give
9 him -- he wanted to give him his first
10 haircut. That's the first haircut, because he
11 had his hair cut that Saturday night. I had
12 got him this little Buzz Lightyear pajamas and
13 -- and he had them on.

14 This one right here is minor on his
15 little John Deere that I had purchased for
16 him. He is kinda puzzled looking, he's kinda
17 looking like -- ain't he pretty?

18 And this one -- (emotional), I think this
19 was Friday when we carried him out -- yeah, it
20 had to be Friday. This back of the wagon, he
21 had two little things like his little security
22 blankets.

23 This is minor Friday when we went to pick
24 him up. This is the little long-johns that he
25 had on.

1 Q. What is the next picture?

2 A. You can kinda tell ---

3 Q. Ma'am, just ---

4 A. Okay. This is 'minor' Friday. Oh, he was
5 a bundle of joy, just full of life. He was
6 not a bit of trouble. It was nothing we could
7 get to console that baby.

8 Q. The next picture?

9 A. He doesn't matter if he cried ten hours,
10 because we loved him.

11 Q. Okay.

12 A. I can't show this.

13 Q. Why? Aren't those from the weekend?

14 A. I hate -- can I -- (whispering).

15 Q. Tell me why you can't show these?

16 A. These are -- (whispering).

17 Q. Okay. Which one are from the weekend.

18 SOLICITOR RICHARDSON: Your Honor,

19 I ---

20 MR. O'CONNELL: No, I am not
21 apologizing -- I am asking her -- may we ask
22 the court a question here? Would y'all
23 approach, please? Can we do this ---

24 THE COURT: Sure.

25 (OFF RECORD BENCH CONFERENCE)

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1 DIRECT EXAMINATION CONTINUED

2 BY MR. O'CONNELL:

3 Q. Okay. You were up to, I believe, -- I
4 think you've gone through all the pictures, is
5 that right?

6 A. Okay.

7 Q. Okay.

8 MR. O'CONNELL: Your Honor, I will
9 just put them up here as evidence.

10 DIRECT EXAMINATION CONTINUED

11 BY MR. O'CONNELL:

12 Q. Okay, ma'am. Did you at one time have a
13 bottle of Tussionex medicine?

14 A. Yes, I did.

15 Q. Had some -- it's been suspended or
16 something like that?

17 A. (No verbal response).

18 Q. Let me show you the bottle?

19 A. That was mine.

20 SOLICITOR RICHARDSON: Objection,
21 leading.

22 MR. O'CONNELL: Your Honor, that is
23 State's Exhibit 41.

24 THE WITNESS: When I had this
25 medicine, I was brought to the police station

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1 because they wanted to give me ---

2 DIRECT EXAMINATION CONTINUED

3 BY MR. O'CONNELL:

4 Q. Let me ask first. What is the fill date
5 on it? When did you get that medicine?

6 A. (Upon review), the date that I got it
7 refilled was -- I can't tell. I am so shaky.

8 Q. Would you be surprised if it says 1/4/08?

9 A. I know it was January 4th, that I've had
10 this bottle since January 4th. I had a lot of
11 coughing going on, working and stuff and all.
12 They would prescribe it to me. I sure can't
13 take it now, you know. Not with the breathing
14 state that I'm in now, I can't take it,
15 because it really shows down the respiratory
16 system bad.

17 Q. Did you ---

18 A. It ---

19 Q. Did you ever ---

20 A. I took just a dose. Did I ever?

21 Q. Did you ever give any of the medicine to
22 minor

23 A. No, I would never give this medicine or
24 any medicine to minor

25 Q. Do you know if Jamie Morris ever gave that

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1 medicine to minor

2 A. No, he wouldn't. I know my son knows
3 better than that. Like I said, my whole
4 family, they had better sense. Nobody gave
5 minor anything ---

6 Q. How this medicine come into possession of
7 the Pickens County Police Department?

8 A. Well, Ms. Rita Burgess has called us in
9 for a test.

10 Q. Okay.

11 A. Then before that, the test, something ---

12 Q. Ma'am, just ---

13 A. We had to take, you know, -- they took us
14 in a big room, a big long room ---

15 MR. DEJONG: Your Honor, this ---

16 THE COURT: All right. Hold on.

17 DEFENDANT'S EXHIBIT

18 BY MR. O'CONNELL:

19 Q. How did it come ---

20 A. That's what I am getting at.

21 THE COURT: Hold on. There's an
22 objection. Come on up here.

23 THE WITNESS: That's what I am
24 trying to say.

25 MR. O'CONNELL: Ma'am, be quiet.

1 (OFF RECORD BENCH CONFERENCE)

2 THE COURT: All right, we are going
3 to take a brief recess, Ladies and Gentlemen.
4 Don't talk about the case, keep an open mind.

5 (JURY OUT @ 11:45 A.M.)

6 MR. O'CONNELL: Don't say anything.

7 THE COURT: Yes, sir, Mr. Dejong?

8 MR. DEJONG: Your Honor, my concern
9 and fear is that we are so far into this trial
10 that -- my impression is that Ms. Phillips has
11 "polygraph" on the tip of her tongue. We have
12 already talked about that.

13 THE COURT: Right.

14 MR. DEJONG: I am not saying that
15 Ms. Phillips is doing anything wrong.

16 THE COURT: Sure.

17 MR. DEJONG: I am just trying to
18 make sure that she understands that the words
19 "polygraph", "lie detector", "truth test" or
20 anything else is not supposed to come out. If
21 she wants to talk about the legal consultant
22 or this investigative -- something else,
23 that's fine. I just don't want the word
24 "polygraph" to come out.

25 THE WITNESS: I understand.

1 THE COURT: Do you understand that,
2 Ms. Phillips?

3 THE WITNESS: I understand.

4 MR. O'CONNELL: I just asked her
5 how this got to the Police Department.

6 DEFENDANT: I understand.

7 THE COURT: The other day I ruled
8 that was not to come out, so that still
9 applies.

10 MR. O'CONNELL: Your Honor, may I
11 go over and sit? I'm getting tired.

12 THE COURT: Okay. We will take a
13 break, a ten-minute break.

14 (BRIEF RECESS)

15 (DEFENDANTS PRESENT)

16 THE COURT: Bring in the jury back
17 in, please. Thank you.

18 (JURY IN @ 11:47 A.M.)

19 MR. O'CONNELL: Can I sit, Your
20 Honor?

21 THE COURT: (Affirmative nod), as
22 long as we can hear you.

23 DIRECT EXAMINATION CONTINUED

24 BY MR. O'CONNELL:

25 Q. Ms. Phillips, after taking minor home,

1 what happened next on Sunday evening?

2 A. After taking the child home? Sorry, I
3 didn't hear you. Sorry. My microphone is not
4 working again.

5 Q. Sunday evening, when did you take the
6 child back to Ms. Honeycutt?

7 A. As we proceeded down the road, like I
8 said, we stopped at Wendy's, went by the home,
9 got his pajamas, we stayed there just a few
10 minutes, then we went to her house.

11 When we pulled up in her driveway, the
12 door, as I remember, was open -- the door,
13 they had a storm door on the trailer.

14 I got out first, me and Laura got out and
15 walked to the door because Jamie was getting
16 minor out. He was trying to keep from waking
17 him because he was asleep and so on.

18 We got -- we walked in and -- I asked
19 Tasha if we could come in and she said 'yeah.'
20 I said Jamie was getting minor out of the
21 car. She was feeding Ava when we come walking
22 in. She had her wrapped in a big brown robe,
23 like one of them king-sized robe, green or
24 something, whatever color, and the couch is
25 that kinda wavy-like material. She got Ava --

1 Ava seemed to be satisfied with her feeding
2 and she put her in her sling.

3 I asked her, I said, 'Can I use that
4 blanket to spread out?' I said, 'Jamie is
5 coming, you know', to put minor on it. She
6 said sure. So I reached down to reach for it
7 and it was soaking wet, all over, like she's
8 broke out in a sweat or something. Anyway, I
9 laid him down across the -- I mean, I didn't
10 lay him down. Jamie laid him down across the
11 couch. I was sitting on one side. She came
12 back and sat on the other side.

13 Jamie kind of sat down and he started
14 telling her, you know, about he was worried
15 about his breathing. I'm like 'oh, good
16 gracious, would you stop this.' He kept
17 telling her about it, going on and on about
18 it. But we talked about that minor had had a
19 good day all day long. You know, he'd played
20 all weekend. We told her about the whole
21 weekend, how much we enjoyed it.

22 Then he was telling her about his concern.
23 I told her yeah, I was concerned too about his
24 crying because you know, because he was crying
25 and he could be getting sick. I never once

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1 said that he was congested. I said that he
2 sounded like he was a little wheezy, that he
3 sounded like he might be getting congested,
4 that his nose was running.

5 It was wrote down by Ms. Rita Burgess
6 that, several times, that there was one word
7 that made it a whole different story. God as
8 my witness, I put this hand on this Bible
9 today, that is the truth.

10 Q. Put your hand on the Bible and say that.

11 A. (Putting hand on Bible), God as my
12 witness, I figure the Lord knows I am telling
13 the truth today.

14 Q. Did you give the child Tussin, Tussionex
15 or whatever that stuff is?

16 A. No, I did not.

17 MR. O'CONNELL: Answer any
18 questions that the other attorneys may have.

19 THE COURT: Solicitor?

20 SOLICITOR RICHARDSON: May it please
21 the Court, Your Honor.

22 THE COURT: Yes, sir.

23 CROSS EXAMINATION

24 BY SOLICITOR:

25 Q. Ma'am, do you live in a house or a mobile

1 home?

2 A. I live in a mobile home.

3 Q. The same mobile home that you lived in
4 back in March of 2008?

5 A. Yes, sir, it is.

6 Q. How many bedrooms in that mobile home?

7 A. There's one, two -- two bedrooms. We use
8 the living room as a bedroom also.

9 Q. When minor was with you, where did he
10 sleep?

11 A. He slept with Jamie. And my couch -- it's
12 a let down couch. He didn't let it down
13 because it's real wide, and he wanted to be
14 close to be his son at night, he wanted to
15 cuddle him. He didn't feel the need to let it
16 down. He just wanted to hold him, you know.
17 Be right there, cuddle and sleep with him. So
18 he would cuddle -- he was real close where he
19 could hear him, you know. One night he said
20 he kinda stopped breathing twice, like he had
21 some kinda sleep apnea or something. He
22 almost quit breathing twice. He said ---
23 Q. Excuse me. What night was it that he
24 stopped breathing?
25 A. I think that was Friday.

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1 Q. The first night that you had him?

2 A. Yes, I'm almost positive that was Friday.

3 I am positive that was Friday.

4 Q. Okay. And was it also Friday night that
5 he was have nightmares?

6 A. He had them both nights.

7 Q. And let's talk about Friday night. How
8 many times did he have nightmares Friday
9 night?

10 A. Around once or twice.

11 Q. I believe that you testified that ---

12 A. Being such a central ---

13 Q. Excuse me, ma'am. I am asking the
14 questions right now.

15 A. Okay. Sorry.

16 Q. I believe that you testified that he would
17 cry and cry and cry. Is that the way that you
18 characterized it?

19 A. He cried for a longer period of time than
20 -- well, sometimes -- some children cry more
21 than others.

22 Q. Ma'am, I am asking ---

23 A. It caused -- it's kinda hard to tell you.

24 Q. Excuse me, ma'am. My question to you was
25 specifically, did you testify that he would

1 cry and cry and cry? Did you not just testify
2 in front of this jury today?

3 A. I said that he cried for about two hours
4 or so Sunday.

5 Q. So ---

6 A. I don't remember how long he cried. But
7 he didn't cry Friday.

8 Q. Ma'am, the way that it works -- okay? I
9 want to ask a question, you answer it --
10 answer yes or no, then you have the right to
11 explain it. Okay?

12 A. I am trying to do that, sir.

13 Q. Okay. Now, ma'am, you testified when your
14 attorney was questioning you that he was
15 crying, crying, crying to the extent that you
16 could not solace him. Did you not?

17 A. Could not what?

18 Q. Could not soothe him?

19 A. Oh, no. We did soothe him. Not Sunday
20 until we got him in the car, then he was
21 soothed. But babies that know they are going
22 to soothed, when they're going home, going to
23 their own bed, most babies want their own bed
24 when they're sleeping and they're tired. He
25 was sleep and tried and wanted his own bed.

1 Q. Are you denying that you told this jury
2 just a few minutes ago that you could not
3 soothe him?

4 A. Do what?

5 Q. Are you denying that you told this jury
6 just a few minutes ago that you could not
7 soothe him when he woke up with those
8 nightmares?

9 A. I said that as far as the consoling -- I
10 did not say that. I ---

11 Q. Excuse me.

12 A. --- said that he was hard to console. We
13 had no problem with soothing him. I -- I told
14 you it didn't matter if we had to soothe him
15 ten hours, we didn't mind.

16 Q. Okay. The jury knows what you told them.
17 You also stated ---

18 A. I ---

19 Q. --- he was having difficulty sleeping?

20 A. Sir?

21 Q. That he was continually having difficulty
22 sleeping; right?

23 A. Continually having trouble/difficulty
24 sleeping?

25 Q. Yes.

1 A. One time each night, nightmares.

2 THE COURT: We're going to take a
3 brief recess. Don't talk about the case,
4 continue to keep an open mind.

5 (JURY OUT @ 12:21 P.M.)

6 THE COURT: All right. We are just
7 going to take a break. Ms. Cross (court
8 reporter) has someone that she needs to check
9 on.

10 THE WITNESS: I was just
11 wondering if you were going to ask me any more
12 questions.

13 MR. O'CONNELL: I can't talk to you
14 when you're testifying.

15 THE WITNESS: Oh, all right. I
16 was just wondering if you'd ask me a question.

17 (BRIEF RECESS)

18 (DEFENDANTS PRESENT)

19 THE COURT: Bring the jury on it.

20 (JURY IN @ 12:30 P.M.)

21 THE COURT: Mr. Richardson, you may
22 continue.

23 SOLICITOR RICHARDSON: Thank you.

24 CROSS EXAMINATION RESUMED

25 BY MR. RICHARDSON:

1 Q. Ma'am, I believe when I left off that I
2 was asking you about nightmares that the
3 child had Saturday and Sunday. Now, you also
4 testified that you went to your sister's
5 house; is that correct?

6 A. That's correct. On Saturday, (affirmative
7 nod).

8 Q. That's down in Fountain Inn, is that
9 correct?

10 A. My sister's house is in Liberty.

11 Q. Excuse me. Where did you go Sunday?

12 A. My daughter's house.

13 Q. To your daughter's house on Sunday?

14 A. Yes, and also Rita Burgess said that if
15 she wanted her -- that she wanted to get the
16 prescription records. And so she ---

17 SOLICITOR RICHARDSON: Your Honor, I
18 didn't ask her about the prescription records.

19 THE WITNESS: They never were
20 brought up. Those prescription records ---

21 THE COURT: All right. Okay, just
22 a minute.

23 SOLICITOR RICHARDSON: I move that be
24 stricken from the record. It's nonresponsive.

25 THE COURT: The jury is to

1 disregard that. Now, when somebody is
2 talking, please respect the other person and
3 don't talk over them. That goes for
4 everybody, every lawyer and every witness.
5 The court reporter can't keep up with it
6 and ---

7 THE WITNESS: Yes, sir.

8 THE COURT: Go ahead.

9 SOLICITOR RICHARDSON: Thank you,
10 Your Honor.

11 CROSS EXAMINATION CONTINUED

12 BY SOLICITOR RICHARDSON:

13 Q. Now, ma'am, when you went to Fountain Inn,
14 what time was that?

15 A. When I went to Fountain Inn?

16 Q. Yes, ma'am.

17 A. We left at 12:30, as I testified.

18 Q. And at some point when you were in
19 Fountain Inn, again minor started crying; is
20 that right?

21 A. Towards the middle part of the evening,
22 sorta, somewhat.

23 Q. In fact, your testimony was that he was
24 crying, crying again; isn't that correct?

25 A. No, I didn't say "again" on Sunday. I

- 1 said that he cried on the night that he had
2 the nightmares. No, he was happy other than
3 his nightmares them two days. Well, I can't
4 -- he was happy on them days. Except the two
5 nights that he had the nightmares, he cried a
6 little bit harder with it, but it wasn't that
7 bad. It weren't so bad that, you know, -- it
8 wasn't that bad at all. But he did cry for a
9 little bit and we did see a part of him that
10 we had not seen before, his sort of pushing
11 away, because he always loved to be cuddled.
12 He hummed a little song with me when I --
13 (pause)-- he hummed in the same tune that I
14 hummed. He was smart. He loved music.
- 15 Q. Ma'am, let me ask you -- you said pushing
16 away. That's what you were talking about,
17 that you couldn't console him. Right? That
18 he was pushing away. Right?
- 19 A. Pushing away?
- 20 Q. (Affirmative nod).
- 21 A. I don't know if it was just the -- I don't
22 know -- I don't know. Like I said, he was
23 just with us.
- 24 Q. You testified that he was pushing away,
25 right? That you couldn't console him?

1 A. He pushed away. Yes, he pushed away. He
2 didn't want to be held up close at times.

3 Q. Okay.

4 A. But he had -- he didn't want to be held up
5 close at times. He pushed away and he would
6 cry, but he came back to that when you loved
7 on him, laid there calmly, and you'd lay your
8 head down on -- I hummed to him and gently
9 showed him that love. Okay?

10 Q. And he cried two hours?

11 A. Yes. No, I didn't say two hours. No,
12 nope. Wait. I don't know how long he cried
13 that night. It wasn't no two hours. I don't
14 think so. This was on Sunday when he cried
15 for two hours. No, this -- when we said,
16 'This ain't good, we gotcha get him home, he's
17 sleepy, he's tired, he's been playing hard all
18 weekend. He hasn't got his sleep, on his
19 schedule, he needs to be...' -- so we carried
20 him home.

21 Q. Yes, ma'am.

22 A. Yes.

23 Q. Let me ask you, what you testified to is
24 that -- that at the Fountain Inn residence
25 that he was crying, crying, crying, getting

1 sick and that you couldn't console him, so you
2 took him home?

3 A. Well, Tasha and Brandon said that he cried
4 at their house, too, had nightmares there
5 too, each night. They said that he had
6 nightmares three nights that night and four
7 times the next night, which was Sunday night.
8 He had four times Sunday night, three or four
9 nights, one at three, one at four.

10 Q. My question to is, did you just testify
11 that he was crying, crying, crying and that
12 you couldn't console him, so you -- that he
13 was getting sick, so you left Fountain Inn?

14 A. (No verbal response).

15 Q. Yes or no?

16 A. I said that we didn't know what was going
17 on with him, is what I actually said.

18 Q. You said ---

19 A. I said that he could be getting sick. He
20 could be doing anything. We didn't know. We
21 didn't know. We'd seen nothing to the point
22 like it was danger signs, you know. Like when
23 you hold him, feeling congested -- you can
24 feel him congested in his chest, when his
25 throat was rattling and stuff like that, the

1 rattling, you can feel them. You can feel the
2 rattling in the chest. He'd been crying for a
3 while. He had all this congestion. His head
4 was down like this, when he was sitting in the
5 car seat when he went to sleep and his little
6 jaws started quivering and Jamie was like,
7 'Oh, he is wheezing.' I said, 'Good lord,
8 Jamie, he's got his head down. He's got his
9 head down. Raise it up and prop it up with
10 his little..' -- so he did, and that helped
11 some like, you know. But he still had this
12 little drainage. He said he was still kinda
13 sounding like that.

14 After he got to the house, he never did
15 mention him doing that at the house. I went
16 out to the car, he said that he was fine then.
17 You know, he seemed to be alright.

18 We got to the house, at Latasha's and he
19 laid there on the couch and he seemed fine
20 while he was laying there.

21 He woke up on his own. I did not wake him
22 up, Jamie did not wake him up. But he had
23 slept approximately two hours. He woke up on
24 his own.

25 He stood up on that couch and I -- I

1 reached to get him because he was between me
2 and Laura, Jamie and Latasha was in the
3 bedroom, all alone, and I didn't know what was
4 going on. I had asked him afterwards what was
5 going on and he said that they changed the bed
6 sheets, that she had changed the bed sheets
7 and ---

8 Q. Ma'am, this is not what I asked you.

9 A. I'm sorry.

10 Q. I am going to move on. Now, when you
11 spoke with Rita Burgess, you -- you remember
12 doing that, is that right?

13 A. When is that?

14 Q. This would be on the ---

15 A. I spoke with her several times on the
16 phone until I got cut off.

17 Q. Let me clarify. This was on April the
18 10th when you gave the written statement, do
19 you remember that?

20 A. April 10th ?

21 Q. Yes, ma'am, of 2008.

22 A. April the 10th, 2008? I don't recall that
23 day, no. You'll have to refresh me what went
24 on that day and then maybe I well, because
25 there were several days. There were several

1 days that I talked to you -- on the phone and
2 -- tried to get answers, wondering why you
3 didn't get all the prescription records from
4 everybody around. Wondering why they didn't
5 get the computer that was carried back to
6 WalMart. Wondering why they didn't get the
7 phone records.

8 Q. Ma'am, that is not my question. You gave
9 a written statement in this case, did you not?

10 A. What are you talking about? Which time?

11 Q. You filled out -- let he hand you this.
12 This is a State's exhibit. Do you recognize
13 that?

14 A. I will have to read it. (Upon review),
15 yes, this is one where I didn't have my
16 glasses. She insisted on writing it for me
17 and I -- I really needed to go get my glasses
18 and she insisted that it was -- but it was
19 after we had been told, for the first time,
20 that he had drugs in his system for an adult,
21 a lethal dose that was so strong that it would
22 kill an ox. Even one could see that in a
23 urine test. I don't see why Ms. Landis didn't
24 see. I don't know why they tested for
25 hydrocodone instead of hydromorphone.

1 Q. I am asking ---

2 A. You know, that don't make good sense to
3 me.

4 SOLICITOR RICHARDSON: Your Honor, if
5 I ---

6 THE COURT: Just answer the questions,
7 ma'am.

8 CROSS EXAMINATION CONTINUED

9 BY SOLICITOR RICHARDSON:

10 Q. Regarding that statement, ma'am, you told
11 Ms. Burgess at that time that you took the
12 child home, on Sunday, that you talked to
13 Latasha about him being sick. Do you remember
14 doing that?

15 A. (No verbal response).

16 Q. That's what you wrote?

17 A. I did what?

18 Q. You wrote in that statement that when you
19 carried him home, that being minor on that
20 Sunday, that you talked to Latasha about him
21 being sick.

22 A. Of course I did.

23 Q. And ---

24 A. I didn't talk to them about him being
25 sick. I talked to her about he may be getting

1 sick. You want me to -- I will tell you the
2 exact words that I said. Can I tell you the
3 exact words that I said? Okay.

4 When we got -- he got to crying and he
5 wouldn't let me hold him then because he was
6 waking up and you couldn't console him. He
7 went back to crying continually. Never
8 stopped. From the time that he woke up to the
9 time that we went out that door, he was still
10 crying.

11 And I think Brandon even said, he comes
12 in, he is still crying when he comes in. He
13 still fixes him a drink of something and he is
14 still crying. She says -- because Ava starts
15 crying, so she gets Ava. She gets Ava and he
16 gets -- he goes in there and gets minor

17 Q. Ma'am, my question to you was what ---

18 A. And -- okay, okay, I will get to the
19 point, that point.

20 Q. My question to you is, you wrote that in
21 that -- excuse me. You said that to Rita
22 Burgess to put in that statement, and you
23 signed that statement; isn't that correct?

24 Yes or no?

25 A. I was in shock.

1 Q. Ma'am, ---

2 A. She was taking -- they had a recorder
3 there and she took notes on it and I was in
4 shock. I couldn't read it. When I got home,
5 I couldn't even see through it. I didn't even
6 know what it said until I got in jail. And I
7 told her, I said ten times, ten years, fifty
8 years from now, I can tell the same story --
9 over and over -- because it is a time that I
10 will never forget in my lifetime.

11 Q. Ma'am, ---

12 A. Never.

13 Q. Moving on from that statement, you stated
14 to Mike ---

15 A. I honestly ---

16 THE COURT: Let him finish asking
17 the question.

18 THE WITNESS: I'm sorry.

19 CROSS EXAMINATION CONTINUED

20 BY SOLICITOR RICHARDSON:

21 Q. You stated to Mike Warren (phonetic) that
22 you left medications on the bed, that you
23 allowed minor to play with those medications;
24 did you not?

25 A. No, I've never said no such a thing. I

1 said that he -- I told the court here what I
2 -- I told him exactly what I told the court
3 today, exactly. I said that I can remember it
4 word for word, it has never left my memory. I
5 have lived that day every day for four and a
6 half years, trying to get justice for my
7 grandson. I've not got records, I've fought
8 to get records in this case and they have not
9 -- they have not helped me. My own lawyer
10 said that his hands was tied.

11 THE COURT: Just answer the
12 questions, ma'am.

13 THE WITNESS: I don't feel like -
14 --

15 THE COURT: Ma'am, this is not the
16 time for that. Answer his questions. You've
17 got a lawyer that can ask you questions.

18 THE WITNESS: I'm sorry.

19 CROSS EXAMINATION CONTINUED

20 BY SOLICITOR RICHARDSON:

21 Q. So you -- ultimately you and Mr. Morris
22 take minor to Tasha's house that Sunday;
23 correct?

24 A. We take him there to go home.

25 Q. Yes.

1 A. Jamie, me and my daughter, Laura, who has
2 testified.

3 Q. At that particular time, you were worried
4 about minor were you not?

5 A. (No verbal response).

6 Q. You were worried about his breathing,
7 worried about the way he was acting, were you
8 not?

9 A. Well, a little but not so much that, you
10 know, -- it wasn't so much until after I got
11 him there.

12 Q. Was it so much that y'all said that he
13 needs to go to the doctor?

14 A. Of course.

15 Q. So, so much that he needed to go to the
16 doctor. Let me ask you something, do you
17 trust Latasha Honeycutt?

18 A. He needed to be checked up on to see --
19 we'd never seen this behavior.

20 Q. Do you trust Latasha Honeycutt?

21 A. (No verbal response).

22 Q. Do you trust her?

23 A. I did.

24 Q. You trusted her that time?

25 A. I still don't know what's going on. Let

1 me tell you something. I am not the judge and
2 I don't judge her. I don't understand some of
3 her ways. I don't know if it was the guardian
4 -- they were doing drugs, and they were
5 worried about that. I don't know if Brandon
6 put something into minor's mouth when he was
7 giving -- because he told me that he'd threw
8 up. I don't know that that might not have
9 happened. I know that we didn't -- I was
10 thinking sometimes that it might have been his
11 brain injuries that made him die, because of
12 things. Brain injuries is a serious, serious
13 thing. He had two brain injuries. He bled
14 both times in his head, he was showing many
15 signs on that.

16 SOLICITOR RICHARDSON: Your Honor,
17 ---

18 THE COURT: All right. Nobody can
19 keep up with this back-and-forth. I've told
20 you several times to let them ask the
21 questions and you answer them. All right?
22 Do you understand that?

23 THE WITNESS: Yes, sir.

24 CROSS EXAMINATION CONTINUED

25 BY SOLICITOR RICHARDSON:

1 Q. My question was, do you trust Latasha
2 Honeycutt?

3 A. Yes, sir, at the time, I did. They were
4 doing good, they had a truck, they was paying
5 -- a brand new truck, they had kept their
6 home. I had doubts about the fosters --
7 nobody can take care of this -- I asked her if
8 she would only keep him and -- until we --

9 THE COURT: All right.

10 CROSS EXAMINATION CONTINUED

11 BY SOLICITOR RICHARDSON:

12 Q. minor was taken to that home ---

13 A. He was to be under supervision.

14 THE COURT: Ma'am, you're not
15 letting him finish. Okay?

16 THE WITNESS: Okay. Sorry.
17 Go ahead.

18 CROSS EXAMINATION CONTINUED

19 BY SOLICITOR RICHARDSON:

20 Q. When y'all took minor to the home, you
21 stated that he was taken into a room and that
22 the door was closed; right?

23 A. Yes.

24 Q. Let me finish my question. Because he was
25 crying? Did you see that? Is that what

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1 happened?

2 A. Yes, sir.

3 MR. HARBIN: Judge, may we approach,
4 please?

5 THE COURT: Yes.

6 (OFF RECORD BENCH CONFERENCE)

7 THE COURT: Continue, Mr.
8 Richardson.

9 SOLICITOR RICHARDSON: Thank you.

10 CROSS EXAMINATION CONTINUED

11 BY SOLICITOR RICHARDSON:

12 Q. And you saw that happen, and it made you
13 uneasy; is that correct?

14 A. Yes, sir, it did. It did. It made me
15 very uneasy because she was smiling when she
16 said but -- I didn't know why she was smiling
17 when she said it. It made me so uneasy
18 because she was smiling and -- well, I can't
19 -- and she shut that door and -- (pause).

20 SOLICITOR RICHARDSON: Your Honor,
21 that's all the questions that I have.

22 THE COURT: Any further questions.

23 MR. DEJONG: I have no questions of
24 the witness, Your Honor.

25 THE COURT: All right.

1 MR. HARBIN: I have a few questions.

2 THE COURT: Yes, sir.

3 CROSS EXAMINATION

4 BY MR. HARBIN:

5 Q. I believe that you testified that you said
6 that you found out that Brandon -- I'm sorry
7 -- that minor stopped breathing twice that
8 weekend. Is that what I heard you say, that
9 he stopped breathing ---

10 A. I said on Friday Jamie thought he did.

11 And I, you know, 'oh, Jamie, ---

12 Q. I ---

13 A. --- that's' but -- somehow I felt bad.

14 THE COURT: Just a minute. Y'all
15 are interrupting each other. Okay?

16 Now, he asks the questions.

17 Ms. Phillips was answering it and you
18 interrupted her, so let her finish explaining
19 her answer and then you can ask your next
20 question.

21 Ms. Phillips, you just respond to the
22 questions. Okay?

23 THE WITNESS: Okay.

24 THE COURT: Don't go into any other
25 areas.

1 THE WITNESS: I felt so bad about
2 -- I forgot the question.

3 CROSS EXAMINATION CONTINUED

4 BY MR. HARBIN:

5 Q. My question was why didn't you think it
6 was important that your grandson stopped
7 breathing twice during the weekend?

8 A. I felt kind bad, you know, after I read
9 more and more and -- seen that apnea sometimes
10 is in the center of the brain and sometime --
11 with brain injuries, if one is having fright-
12 mares, it's hard to detect until you know your
13 injury and you know what's going on. Even
14 many times in a normal child that's normal but
15 they are having brain injuries problems and
16 stuff. They can only take certain medications
17 like immunizations/shots, different things
18 that they can't have, you know, that might
19 them to -- that might cause them -- that
20 causes respiratory failure and it will cause
21 them to start shut down their system and it
22 can cause them to die and stuff. There's
23 several several several things out there with
24 brain injuries. It's very very very very
25 important. It's something that people need to

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1 look at. Not to have a day without any
2 medical records, because she said that she
3 didn't have any medical records. She had to
4 wait to get them. Went hours without medical
5 records.

6 Q. Did you tell Latasha or Brandon when you
7 dropped minor off that he had stopped
8 breathing sometime during the weekend; yes or
9 no, please.

10 A. No, sir, because I didn't know. I didn't
11 think about telling them that. Jamie was the
12 one that was talking to her some. I was
13 thinking about the immediate thing, about him
14 crying, and I was worried and concerned about
15 her putting her in the crib and him crying. I
16 didn't want to walk out that door and him
17 crying.

18 And she said, 'Well, I can't do that until
19 I get his medical records.' And she said,
20 'No, I don't.' So he said 'Well, here, he
21 reached in his back billfold and he pulled out
22 his Medicare card and he handed it to her.' I
23 was standing there and I said, 'Yeah', I said,
24 'Tasha, he may be getting sick. He may feel
25 -- he may have an ear infection or something.'

1 You know, upper respiratory because they
2 said both them had upper respiratory. So I
3 thought -- you know, it could be that and them
4 just starting up. And, so, uh, I -- I was
5 concerned about him mentioning the folders.
6 You know, he had been with them as long as he
7 had been. You know? I'm like -- I just felt
8 like not having a child for ten months, that
9 they should be sued. You know. I couldn't
10 directly -- and see if she couldn't comfort
11 him first. That did bother me, her standing
12 there at that door ---

13 MR. HARBIN: Your Honor, may we
14 approach again?

15 THE COURT: Yes, sir.

16 (OFF RECORD BENCH CONFERENCE)

17 THE COURT: Ladies and Gentlemen,
18 we are going to go ahead and break for lunch
19 at this time. Please be back in the jury room
20 at two o'clock and we will resume the case at
21 that time. Thank you.

22 THE WITNESS: Jamie. Jamie.

23 (JURY OUT @ 12:45 P.M.)

24 THE COURT: All right. You have
25 again intentionally and willfully violated my

1 clear Order. You're in contempt of court.
2 You're not going to be allowed to testify any
3 further in front of the jury. We'll impose
4 sentence on the contempt at the end of the
5 case. You're taken into custody. Your bond
6 is revoked. Thank you very much. We will
7 resume at two o'clock.

8 (DEFENDANT PHILLIPS INTO CUSTODY)

9 (LUNCH RECESS)

10 (DEFENDANT MORRIS PRESENT)

11 THE COURT: Good afternoon.

12 Anything further before we continue. Mr.
13 Harbin?

14 MR. HARBIN: Yes, sir, Your Honor.
15 In light of the testimony -- I do not want to
16 make this Motion but I feel like I have to.
17 Judge, I think that I need to move for a
18 mistrial. At the beginning of this trial, I
19 made a Motion for severance. The concern at
20 that time was pretty much what has now
21 happened.

22 THE COURT: Wait a minute, she's
23 not in the courtroom. Ms. Phillips.

24 (DEFENDANT PHILLIPS INTO COURTROOM)

25 THE COURT: All right. Everybody

1 is present. Yes, sir, Mr. Harbin?

2 MR. HARBIN: Judge, at the beginning
3 of this trial, I made a Motion for severance
4 based on concern that Ms. Phillips would
5 present testimony that would otherwise be
6 inadmissible. The Court reviewed that and
7 it's was the court's instruction that DSS
8 and/or foster care would not be mentioned.
9 Throughout the trial there's been a couple of
10 slip ups. Ms. Phillips referenced being away
11 for ten months and mentioned foster care or
12 the foster parents a couple of times. Judge,
13 I don't know that -- my concern at the
14 beginning of the trial has been confirmed.
15 I don't know that the jury has picked up on
16 her references but it would be hard to imagine
17 that they haven't. I think that affect our
18 ability to have fair and impartial trial and
19 at this time I move for a mistrial.

20 THE COURT: Thank you, sir.

21 MR. DEJONG: Your Honor, I join in
22 that Motion. Certainly not as to the
23 severance because we did not ask for a
24 severance, but at the very beginning of this
25 trial I, likewise, joined in that Motion that

1 there be no comment, no anything about DSS or
2 anything else.

3 My problem is this, and I would not
4 deny that -- and I think the record reflects
5 that my client while on the witness stand made
6 reference to some of the same thing, and
7 that's not particularly my concern. My
8 concern is that this went much further, if I
9 heard correctly, in talking about foster
10 parents, being a foster parent. I don't know
11 how much further it went before Your Honor cut
12 it off.

13 Now, my client is of course more of a
14 codefendant to Ms. Phillips than Ms.
15 Honeycutt, but some of that -- everybody's
16 interest in this case is different. My client
17 is the biological father of the child. I
18 think obviously these comments relating to
19 foster care, that type of thing, are certainly
20 prejudicial to my client. Obviously he did
21 not have custody of that child. I think that
22 raises all sorts of issues before the jury as
23 to speculation, conjecture, -- I would throw
24 in a couple of more words if I could think of
25 them right now.

1 But I just think that bell has been
2 rung and I don't think that it can be unrung.
3 I would respectfully join in Mr. Harbin's
4 Motion for a mistrial on somewhat different
5 grounds, but nonetheless join in that Motion.

6 MR. HARBIN: Judge, ---

7 THE COURT: Yes, sir?

8 MR. HARBIN: She also mentioned the
9 child being moved around. As a result of her
10 not being allowed to continue to testify, and
11 I certainly understand why, but I have lost
12 the ability to confront the witness. On that
13 basis as well, I'd ask for a mistrial.

14 MR. O'CONNELL: Your Honor, if it
15 please the Court, ---

16 THE COURT: Yes, sir, Mr.
17 O'Connell?

18 MR. O'CONNELL: One, I respect Mr.
19 Richardson, I've known him for a long time but
20 I believe that she tried to respond. Some of
21 the questions were open-ended questions asking
22 for a response, which she was trying to give.
23 He cut her off. I believe based on that, her
24 not being allowed to continue to testify,
25 being able to watch the proceeds or being

1 here, being involved, limits her ability to
2 defend herself. So I am asking you to declare
3 a mistrial also, because she was more of less
4 goaded into giving that testimony. Even
5 though the jury -- even thought you told her
6 not to say anything, like I call it, backwards
7 from that date, from the 12th backwards, I
8 believe that she was goaded into that. By
9 goading her, that puts us in the scenario that
10 we have right now.

11 THE COURT: Thank you. Mr.
12 Richardson?

13 SOLICITOR RICHARDSON: Of course, I
14 want to respond to that. I did not goad
15 anyone with questions. The question that I
16 asked her that she didn't respond to, the
17 question about when she was at Latasha
18 Honeycutt's, the question about her being --
19 she went off on tangents.

20 I believe that she violated the
21 Order. However, in taking all the testimony
22 that the jury has heard, she never said "DSS".
23 I think the way that she addressed the foster
24 situation, she said "fosters". I don't know
25 that prejudices anybody here, her saying

1 "fosters". I don't see how that gets us to
2 this.

3 Your Honor, I don't think that
4 anything that she said on the stand prejudices
5 any of the other codefendants to the extent
6 that that -- first of all, to the extent
7 they'd be prejudiced by "DSS."

8 So I would ask that you deny the
9 motion for a mistrial.

10 MR. HARBIN: , My recollection is that
11 she did say fosters but that she actually said
12 foster parent. That's my recollection.

13 THE COURT: Is there anything that
14 the Court could instruct the jury on that
15 might alleviate the concerns of counsel for
16 Ms. Honeycutt or Mr. Morris? Is there any way
17 to cure it, in your opinion?

18 MR. DEJONG: I don't think that
19 there is, Your Honor. Again, you know, we get
20 into curative instructions -- not that that is
21 what Your Honor is saying, but saying
22 something to the jury -- you know at this
23 point in time, we certainly don't know what
24 they are thinking. Now if we drive two more
25 nails into the coffin, to me that simply

1 exacerbates the whole situation. I can't
2 think of anything, no.

3 MR. HARBIN: Your Honor, I discussed
4 the matter with Mr. DeJong during the break
5 and I believe -- I don't think that there is
6 anything that can be said that would explain
7 it.

8 SOLICITOR RICHARDSON: Your Honor,
9 the only curative is that if the court
10 instructs the jury not to take into account
11 any testimony about any event that took place
12 prior to that Friday, March 14th; to not take
13 into account any of that testimony, that might
14 alleviate the concern. You don't have to
15 bring up DSS, foster parents or anything of
16 that nature. It's all about that weekend.

17 MR. HARBIN: I certainly don't think
18 that the jury willfully disregards what you
19 tell them to do, but our system is set up that
20 they don't hear certain things. We as lawyer
21 have the ability to parse things out, because
22 that's what we do for a living. We can't
23 expect them to be able to do that. That's why
24 we eliminate the possibility of things in the
25 record. I don't know that we could come back

1 and say that they're simply to follow the
2 instructions.

3 THE COURT: Well, is there anything
4 in the record that -- other than Ms. Phillips
5 and the reference by Mr. Morris to, uh, -- is
6 there anything in the record about any conduct
7 or occurrence that happened before that Friday
8 that would be admissible?

9 MR. HARBIN: You said that would or
10 would not be?

11 THE COURT: That would be admissible.
12 In other words, if I tell them to disregard
13 anything that occurred before Wednesday, March
14 12th, or whatever the date was, would I in
15 effect be keeping them from considering
16 physical evidence that is already in the
17 record?

18 MR. HARBIN: Judge, I forgot to
19 mention that one of the questions from the
20 State was about a DSS worker in the case. The
21 very first thing out of her mouth was that the
22 foster parents were in the hospital room with
23 minor It came quickly and went and I hope
24 that it -- it wasn't said again, but that is
25 something that I -- you can tell them to

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1 disregard certain portions of Ms. Phillips'
2 testimony, because she would tend to be biased
3 witness, because she has her own sense of
4 self-protectiveness but that witness, Ms.
5 Johnson, blurted out about the foster parents,
6 I am not sure but what you don't lose the
7 ability to cure it. I'm sorry, I apologize, I
8 don't know the answer to your other question.

9 THE COURT: Mr. Dejong?

10 MR. DEJONG: Your Honor, I did not
11 recall that testimony but Mr. Harbin jogged my
12 memory that the -- what I thought about that
13 was that, wow, the solicitor really had the
14 witness prepared. But that came and went. I
15 think what we're doing now is that we're
16 getting to a cumulative effect. Again, I find
17 that it would be difficult, based on Ms.
18 Phillips testimony, -- and juries don't live
19 in a vacuum, they live in the same world that
20 the rest of us do. They might not be around
21 courtrooms like we are but -- in addition to
22 Ms. Johnson testifying about foster care,
23 there were two witnesses that testified not as
24 to DSS but about the guardian ad litem, now
25 we're adding foster care. It's a cumulative

1 effect. Again, jurors are not dumb. They
2 start piecing things together, reading between
3 the lines and certainly they could see that
4 DSS was involved in this case.

5 THE COURT: In regard to those two
6 witnesses -- I believe that you're referring
7 Mr. Hartsell and Ms. Rogers, ---

8 MR. DEJONG: That would be correct,
9 I believe, Your Honor.

10 THE COURT: They did both identify
11 themselves as guardian ad litem -- guardians
12 ad litem. My notes show that Ms. Hartsell
13 said that she was called in in 2008. She
14 testified about conversations that she had
15 with Ms. Honeycutt. Ms. Rogers also testified
16 about conversations that she had with Ms.
17 Honeycutt. I don't know how the jury would
18 have any basis to determine that the child had
19 a guardian ad litem before this incident.
20 They would have to be -- have some knowledge
21 that that appointment occurred before this
22 incident.

23 MR. DEJONG: I'm sorry, Your Honor?

24 THE COURT: How did they know that
25 the guardian wasn't called in after this

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1 incident occurred?

2 MR. HARBIN: Judge, we may have to
3 check the record -- I spoke with Mr. Dejong
4 and we're not certain, but I believe that they
5 were described as foster parents and guardians
6 ad litem for 'minor I would think that if
7 you have a guardian at the hospital an hour
8 and a half after a trauma that they're going
9 to wonder how did the child get appointed a
10 guardian in that time.

11 THE COURT: I don't know. I mean,
12 I don't know. Well, ---

13 MR. HARBIN: I believe that the
14 remark about the guardian was not just at the
15 hospital. That was Ava's. Judge, if I could
16 add one more thought.

17 THE COURT: Yes, sir.

18 MR. HARBIN: In addition, Ms.
19 Phillips mentioned a brain injury and she did
20 not refer directly to the DSS case but it is
21 not at all a leap of -- it doesn't require any
22 legal education to assume that a guardian's
23 presence immediately after a traumatic injury
24 would involve some previous injury.
25 In fact, that's true. The reason 'minor had

1 a guardian was because of an accident that
2 occurred, oddly enough, with Ms. Phillips' son
3 -- son-in-law.

4 THE COURT: All right, we are going
5 to take a brief recess while I consider this.
6 Thank you.

7 (BRIEF RECESS)

8 THE COURT: Keep your seats. Okay,
9 I -- I understand that the Motion is a serious
10 Motion. I am going to take it under
11 advisement. You ready to call your next
12 witness?

13 MR. O'CONNELL: If it please the
14 Court, we don't have any other witness.

15 THE COURT: All right. How about
16 you, Mr. Harbin?

17 MR. HARBIN: Ready, Your Honor.

18 THE COURT: Bring the jury back in.

19 (JURY IN @ 2:51 P.M.)

20 THE COURT: All right. Mr.
21 O'Connell, ---

22 MR. O'CONNELL: Your Honor, we have
23 no further witnesses.

24 THE COURT: Thank you, sir. Mr.
25 Harbin?

1 MR. HARBIN: Thank you, Judge, may
2 it please the Court, we call Sherry Price to
3 the stand.

4 (WITNESS TAKES STAND)

5 SHERRY PRICE, being duly sworn to
6 tell the truth, the whole truth and nothing
7 but the truth, testified, as follows:

8 DIRECT EXAMINATION

9 BY MR. HARBIN:

10 Q. Speak up a little bit. You might have to
11 lean into the microphone.

12 A. Sherry Price.

13 Q. Thank you, Ms. Price. Can you tell the
14 jury how you know my client, Latasha
15 Honeycutt?

16 A. She's my niece.

17 Q. She is your niece?

18 A. (Affirmative nod).

19 Q. Does that mean that you've known her since
20 she was born?

21 A. Yes, sir, I'm like her mother.

22 Q. I am going to cut right to it. Did you
23 have an opportunity to visit Latasha in the
24 hospital with minor

25 A. Yes, I did.

1 Q. Have you had an opportunity to hear some
2 of the testimony that's been presented, that
3 Latasha had an unemotional response or a flat
4 affect?

5 A. Yes, I did. That's not true.

6 Q. Can you comment specifically on what you
7 saw in the hospital and how it relates to that
8 prior testimony?

9 A. When I got to the hospital, she was in the
10 room. She was shaking, she wasn't crying. I
11 went over to her and she held me and started
12 crying. I was consoling her, and Brandon was
13 too.

14 Q. You heard that she had this appearance of
15 being unemotional. Do you have any
16 experience, personal experience, with Latasha
17 that would address that perception?

18 A. She appears to be unemotional in front of
19 people, but in front of family she's very
20 emotional.

21 MR. HARBIN: Thank you, Ms. Price.
22 I appreciate you coming. I have no further
23 questions. Please answer any questions that
24 Mr. Richardson may have.

25 SOLICITOR RICHARDSON: Your Honor, I

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1 have no questions for Ms. Price.

2 MR. DEJONG: Just one, Your Honor.

3 DIRECT EXAMINATION

4 BY MR. DEJONG:

5 Q. Which hospital did you see Ms. Honeycutt
6 in?

7 A. Greenville.

8 MR. O'CONNELL: No questions from
9 us.

10 THE COURT: Thank you, Ms. Price.

11 (WITNESS STEPS DOWN)

12 MR. HARBIN: We would call Kayla
13 Roper, please.

14 (WITNESS TAKES STAND)

15 KAYLA ROPER, being duly sworn to tell
16 the truth, the whole truth and nothing but the
17 truth, testified, as follows:

18 DIRECT EXAMINATION

19 BY MR. HARBIN:

20 Q. Could you tell the jury how you know
21 Latasha Honeycutt?

22 A. Latasha is my brother's girlfriend.

23 Q. How long have you known Latasha?

24 A. I would say a good six years.

25 Q. Did you have an occasion to see Latasha on

1 the day that minor went into the hospital?

2 A. Yes, I did.

3 Q. Can you tell us the first -- do you
4 remember the first moment that you made
5 contact with Latasha, or went to ---

6 A. Yes, my brother actually called me that
7 morning. He was really upset. He said that
8 something had happened to minor that they
9 were going to the hospital and he wanted me to
10 come and get Ava, come and babysit Ava.

11 I got in my car. It took me -- I hate to
12 say it, but it probably wasn't even five
13 minutes to get there because I was speeding to
14 get there.

15 Q. Do I understand you correctly that Brandon
16 called you, was this immediately after Brandon
17 had discovered minor

18 A. Yes.

19 Q. And how -- did you see -- who did you see
20 when you got to the house? Did you see EMS,
21 did you see police officers ---

22 A. EMS was leaving right as I went in, as I
23 was pulling into the driveway.

24 When I got out and went into, Tasha and
25 Brandon was there. Both of them were very

1 upset, Tasha was shaking, she looked like she
2 was more in like a state of shock than
3 anything. She was getting Ava's stuff
4 together.

5 As I was standing there, I can't remember
6 if it was a man or a woman that came up and
7 they asked had they gave (sic) 'minor' any kind
8 of medication. Tasha looked up and said no,
9 they hadn't.

10 MR. O'CONNELL: Objection, Your
11 Honor.

12 MR. HARBIN: Let me rephrase the
13 question for you.

14 DIRECT EXAMINATION CONTINUED

15 BY MR. HARBIN:

16 Q. Did you see Latasha or Brandon hand over
17 anything to the EMS worker?

18 A. Yes, I did.

19 Q. What was that?

20 A. It was the little bottle of Tylenol, the
21 infant drops.

22 Q. What happened -- after you got there, what
23 happened? Excuse me. What happened with you
24 and Ava? You were there to pick up Ava, is
25 that right?

1 A. Yeah. Tasha and Brandon, they got all of
2 Ava's stuff together and then, uh, they
3 immediately -- right after they got all the
4 stuff together, they left. Then I got Ava and
5 -- everybody had already left. I went ahead
6 and went to the house.

7 Q. How many minutes were you at the house
8 before Brandon and Latasha left the house to
9 go to the hospital?

10 A. Not long at all. Probably ---

11 Q. Was this a rush in/rush out type of thing?

12 A. Yes.

13 Q. Okay. All right. So you went back to
14 your house with Ava?

15 A. Yes.

16 Q. What happened after that?

17 A. Well, I went in, I fed Ava and got her all
18 situated. Then I recognized that I didn't
19 have all the stuff that I needed for a couple
20 of nights, so I called my grandmother and I
21 was asking her -- you know, trying to get an
22 update on what had happened. Then I started
23 thinking, I said, 'dang, did I lock the door?'
24 So I went ahead and got in my car and rode
25 back to my brother's house. That's when I saw

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1 my brother's truck there and the police
2 officers were there.

3 Q. Can you do your best to guess how long you
4 were at your house before you drove back to
5 Brandon's and Tasha's house?

6 A. I'd say a good -- maybe thirty minutes,
7 something like that. I mean, enough time to
8 go back home and get -- you know, get Ava out
9 and get her situated. You know, get her fed.
10 Then I was noticing that, well, I needed a
11 couple more things, you know, if she was going
12 to stay a couple more days.

13 Q. Okay. And when you got back to Brandon's
14 and Tasha's house, what did you observe?

15 A. I saw that there was a police officer and
16 everything. They were already inside. So I
17 just walked in and -- uh, I went in there and
18 was getting Ava's stuff together. Then they
19 had -- they were signing a paper for them to
20 be able to search the house. I stayed --
21 Brandon and them, they both left. I stayed
22 there while they searched the house.

23 Q. So they left before you did?

24 A. Yes.

25 Q. Okay. Do you know where they were headed?

1 A. To the hospital.

2 Q. In Greenville?

3 A. (Affirmative nod).

4 Q. Now, did you -- did you ever go to the
5 hospital in Greenville?

6 A. Yes, I did. It was later.

7 Q. What did you -- what did you do between
8 then and later? Did you leave Brandon and
9 them's house and go to the hospital?

10 A. I waited on the cops to leave first.

11 Q. Okay.

12 A. Then I went back to my house.

13 Q. Okay.

14 A. Then I got ready, got everything -- you
15 know, all of Ava's stuff situated. Then I got
16 her ready and we all went to the hospital, me
17 and Ava.

18 Q. And when you got to the hospital, where
19 did you go?

20 A. I went to the waiting room.

21 Q. Did you not try to go to minor room?

22 A. No, there was only a few people that could
23 be back there at a time and I knew that Tasha
24 and Jamie and Brandon and all them, I knew
25 that they wanted to be right there with him.

1 Q. Thank you. Who was in the waiting room
2 with you?

3 A. When I first got there, it was just me and
4 Ava. Then a black lady, she came in and
5 introduced herself as, uh, Patricia -- it was
6 a lady from DSS. That's when Jamie -- Jamie
7 Morris, his girlfriend at the time and Ms.
8 Phillips, they came in.

9 Q. Okay. And while you were in, could you
10 describe where -- were you sitting or
11 standing?

12 A. I was sitting. I had Ava.

13 Q. The other folks that you say were there,
14 were they sitting or standing?

15 A. They were standing.

16 Q. Can you describe, as best you can, where
17 you were sitting and where the folks in the
18 waiting room were sitting?

19 A. I was sitting -- they had a couch over
20 here but nobody was sitting there. They had
21 like another area of chairs over here. There
22 was two chairs here and there was chairs along
23 here. I was sitting here. The black lady
24 from DSS, she was sitting right here. I had
25 Ava. And it was Jamie's girlfriend, Jamie and

1 Ms. Phillips.

2 Q. How many -- what proximity were you and --
3 you said that the chairs were kinda facing
4 each other. How far away were the chairs?

5 A. These were close together. These right
6 here, they were close together. I mean, it
7 wasn't that far. It was probably from me --
8 me to her (court reporter).

9 Q. While you were in the waiting room, did
10 you hear Ms. Phillips say anything?

11 A. Yes, I did.

12 Q. Did you share with us what you heard her
13 say?

14 A. You know, I was sitting there and I was
15 talking. I was like, 'I wonder what happened.
16 How did this happen?' I heard her say that she
17 had gave him some cough medicine over the
18 weekend and "surely to God that's not what is
19 wrong."

20 Q. Did she say that to you?

21 A. No.

22 Q. Who did she say that to?

23 A. She was talking to Jamie.

24 Q. Did anyone from law enforcement interview
25 you prior to this trial?

1 A. No, sir.

2 Q. When was the first time that you and I
3 spoke about this?

4 A. Day before yesterday.

5 Q. Okay.

6 MR. HARBIN: Thank you. Please
7 answer any questions that Mr. Richardson or
8 the others may have for you.

9 CROSS EXAMINATION

10 BY SOLICITOR RICHARDSON:

11 Q. Ms. Roper, you said that Ms. Phillips said
12 -- I wrote it down, but correct me if I am
13 wrong, that she had gave some cough medicine
14 over the weekend, to minor

15 A. Yes, sir.

16 Q. Which hospital was that, when she said
17 that?

18 A. Greenville Memorial.

19 Q. Okay.

20 A. Up in the waiting room.

21 Q. Up in the waiting room?

22 A. (Affirmative nod).

23 Q. Were you sitting close to her or ---

24 A. (Affirmative nod).

25 Q. You have to say yes or not.

- 1 A. Oh, "yes." Yes, sir.
- 2 Q. You may have testified to this, but who
- 3 did she say it to?
- 4 A. Jamie.
- 5 Q. Jamie?
- 6 A. Yes.
- 7 Q. Defendant Morris?
- 8 A. Yes. It was him and his girlfriend at the
- 9 time.
- 10 Q. Did he respond?
- 11 A. (Negative gesture).
- 12 Q. You have to say yes or no.
- 13 A. I'm sorry. No. No, sir.
- 14 Q. Thank you, ma'am.
- 15 A. No problem.
- 16 MR. DEJONG: Your Honor, may it
- 17 please the Court?
- 18 THE COURT: Yes, sir.
- 19 CROSS EXAMINATION
- 20 BY MR. DEJONG:
- 21 Q. I wasn't quite clear on that last, Ms.
- 22 Roper. I believe that Mr. Richardson was
- 23 asking you about the statement that you say
- 24 that Ms. Phillips made; is that correct?
- 25 A. Yes, sir.

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1 Q. And Jamie didn't respond?

2 A. No, sir.

3 Q. Where was he?

4 A. He was sitting beside her.

5 Q. Now, I'm a little confused on the sequence
6 of events. Do you recall what time that you
7 got to -- well, I guess you went first to [REDACTED]
8 Braden Court. Is that where you went?

9 A. (Affirmative nod).

10 Q. Do you know what time you got there?

11 A. No, I don't.

12 Q. Okay.

13 A. To be honest, I really wasn't looking at
14 my watch when all this was going on. It was
15 really hectic.

16 Q. Well, at any rate, when you got to [REDACTED]
17 Braden Court, Latasha and Brandon were still
18 there?

19 A. Yes, the first time.

20 Q. The first time?

21 A. (Affirmative nod).

22 Q. When you got there, was the ambulance
23 there?

24 A. The ambulance was just leaving.

25 Q. Then -- this is where I start getting

1 confused. Are you saying then they left?

2 A. After we got Ava's stuff together.

3 Q. Okay. Now, did you stay there or did you
4 go elsewhere?

5 A. I stayed for a few minutes and then I did
6 leave to go to my apartment, but then I
7 returned later.

8 Q. Where was your apartment?

9 A. Right there -- you know where City Hall is
10 in Pickens? It's right there near the museum.
11 You go straight across at that red light, then
12 new apartments right there.

13 Q. You live pretty close to [REDACTED]?

14 A. Yes, sir.

15 Q. When did you leave your apartment to go
16 back to Braden Court?

17 A. It was about thirty -- I would say a good
18 thirty to forty-five minutes I left from there
19 and went back to Braden Court to get more of
20 Ava's stuff, because I figured that I wouldn't
21 have enough stuff at the house for that time.

22 Q. So at that point in time, when you went
23 back, then both your brother and -- or
24 Brandon, Brandon was at the house, right?

25 A. (Affirmative nod).

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1 Q. So Mr. Roper and Ms. Honeycutt were at
2 Braden Court when you got back?

3 A. Uh, -- yes, sir, and two police
4 officers/detectives.

5 Q. Now, what time then, if you know, did they
6 leave Braden Court next?

7 A. It was right after they signed the consent
8 for them to search.

9 Q. Now, you know how long -- if you know --
10 how long Brandon and Ms. Honeycutt had been
11 there before you got there?

12 A. I don't know.

13 Q. Do you know if they arrived before the
14 police officers got there or got after they
15 got there?

16 A. I don't know. When I pulled up, both of
17 them were there.

18 Q. I'm sorry?

19 A. When I pulled up, both of the police
20 officers and them was there.

21 Q. So that I am clear -- you got there, Ms.
22 Honeycutt and Mr. Roper left?

23 A. Yes, right after they signed the consent
24 form.

25 Q. Then in about thirty or forty-five minutes

1 later, somewhere thirty to forty-five minutes

2 later, they came back to Braden Court?

3 A.. Yes, somewhere around there. Yes.

4 MR. DEJONG: Thank you.

5 MR. O'CONNELL: Your Honor, I don't

6 have any questions.

7 MR. HARBIN: Judge, I have just a

8 couple of questions.

9 THE COURT: Yes, sir.

10 REDIRECT EXAMINATION

11 BY MR. HARBIN:

12 Q. When you first came to Latasha's house,

13 you were there to pick up Ava?

14 A. Yes.

15 Q. So that they could go to which hospital?

16 A. So they could go to the -- to pick up Ava

17 and then -- they were going to go to Easley.

18 That's right when they were -- they were

19 taking minor straight to Easley.

20 Q. So they left and went to the Easley

21 Hospital?

22 A. Yes.

23 Q. Then they had come back from the Easley

24 Hospital by the time that you got back to the

25 house to get more things for ---

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1 A. Yes. Then they left and went to
2 Greenville because they had flew him to
3 Greenville.

4 Q. Did they sign the consent to search form
5 the first time that you went to the house or
6 the second time?

7 A. Second time.

8 Q. Thank you. No further questions.

9 THE COURT: Anything further? (No
10 response). All right, you may step down,
11 ma'am. Thank you.

12 (WITNESS STEPS DOWN)

13 THE COURT: Call your next witness.

14 MR. HARBIN: Thank you, Judge. Call
15 Brandon Roper to the stand, please.

16 (WITNESS TAKES STAND)

17 BRANDON ROPER, being duly sworn to
18 tell the truth, the whole truth and nothing
19 but the truth, testified, as follows:

20 DIRECT EXAMINATION

21 BY MR. HARBIN:

22 Q. Brandon, ---

23 A. Yes, sir?

24 Q. --- can you tell the jury how you know
25 Latasha Honeycutt?

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1 A. I met Latasha through Mr. Morris and we
2 got to become friends. Eventually our
3 feelings start to rose and -- I met her
4 through Mr. Morris.

5 Q. How long have you known Latasha?

6 A. Seven, eight years.

7 Q. You said that you met her through Jamie.
8 Was she in fact dating Jamie once upon a time,
9 at the time that ---

10 A. Yes, sir, she was.

11 Q. Now, are you aware -- were you aware of
12 the nature of Latasha's and Brandon's (sic)
13 relationship?

14 A. That's with Jamie?

15 Q. Sorry?

16 A. You said Latasha and Brandon. You talking
17 about Jamie?

18 Q. I apologize. I'm talking about her
19 relationship with Jamie?

20 A. Yes, sir.

21 Q. Were you friends with just Jamie or ---

22 A. Jamie.

23 Q. --- with Jamie and Tasha?

24 A. I was friends with both of them.

25 Q. Did you have any time that you witnessed

1 any abuse from or to either of them?

2 A. Yes, sir. Several.

3 Q. Would you tell the court about that,
4 please.

5 A. I witnessed -- Mr. Morris had -- and I
6 apologize but he had a pornography problem and
7 he ---

8 MR. DEJONG: Your Honor, ---

9 THE COURT: Hold on.

10 MR. HARBIN: I will rephrase the
11 question, Judge.

12 DIRECT EXAMINATION CONTINUED

13 BY MR. HARBIN:

14 Q. Are you aware of the reasons for why
15 Latasha eventually left Jamie?

16 A. Yes, sir.

17 Q. Could you please tell ---

18 A. He was abusive.

19 Q. When Latasha left Jamie, where did she go?

20 A. She come to my home.

21 Q. And is it true that you actually -- well,
22 were you friends or was there another type of
23 relationship?

24 A. We were both. I mean, you know, after --
25 when she come to me and told me that

1 basically, uh, you know, at that time she had
2 nothing and no one and Jamie, you know, was
3 being abusive, so she come to me afraid and I
4 took her in.

5 Q. Did you witness, yourself, any evidence of
6 abuse? No what Latasha may have told you or
7 alleged, but did you witness abuse?

8 A. Yes.

9 Q. What was that? What did you witness?

10 A. I seen -- they rented a mobile home in
11 Easley. We were there on occasion. Jamie's
12 cousin -- and I don't even know if it was his
13 cousin -- was at their place, had made a
14 comment. I don't know how it escalated but
15 the next thing I know, Tasha is being pushed
16 down the hill because she was basically
17 defending herself from his cousin.

18 MR. DEJONG: Judge, I object to all
19 of this. What does this ---

20 THE COURT: Hold on, hold on.
21 Sustained. Move on to something else. The
22 jury is to disregard all the testimony. It's
23 not relevant to the case, it's not part of the
24 evidence in this case.

25 DIRECT EXAMINATION CONTINUED

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1 BY MR. HARBIN:

2 Q. Latasha moved in with you, correct?

3 A. Yes.

4 Q. And Latasha brought Jamie with her,
5 correct?

6 A. Yes, sir.

7 Q. How long was she able to stay with y'all,
8 as soon as she moved in?

9 A. As soon as she moved in?

10 Q. (Affirmative nod).

11 A. Around a week and a half, two.

12 Q. Where did minor go after that short
13 period?

14 A. To Mr. Morris.

15 Q. Why did he go to Mr. Moriss' house instead
16 of staying with y'all?

17 A. I, at that time, had a roommate and he
18 wasn't completely comfortable with Latasha
19 coming in with a child. I eventually had him
20 evicted. My grandmother owned the park that
21 we were staying in and, therefore, I bought
22 minor into our home and raised him like he
23 was my own.

24 Q. Was ---

25 A. But it wasn't no three months. It was

1 more like a month, month and a half, long
2 enough to get an eviction on him.

3 Q. You are referencing the amount of time
4 that minor ---

5 A. Yeah.

6 Q. --- stayed with Jamie?

7 A. Yes.

8 Q. Let's fast forward to Friday, March 14th.

9 A. Okay.

10 Q. Jamie and his mother came and got minor
11 from you, is that correct?

12 A. Yes, sir.

13 Q. There was testimony that they were
14 knocking on the door, basically forever.

15 A. Uh-huh.

16 Q. Do you remember that?

17 A. Yes, sir.

18 Q. Why did you take so long to get to the
19 door?

20 A. Well, sir, the 'thirty minutes' comment
21 kinda blew me out of the water because they
22 knocked twice. I was using the bathroom.
23 They knocked once, I heard it. You know, I
24 finished using the bathroom. I had him in the
25 little bathinett kind of thing there. I

1 immediately walked out of the bathroom and
2 opened the door.

3 He didn't have on a dirty diaper, he
4 wasn't -- hold the pen (sic) off a pen -- the
5 head off of a pen. He was perfectly fine. We
6 were sitting there watching cartoons.

7 She had called me from work stating that
8 Mr. Morris and Ms. Phillips were going to come
9 and pick minor up. So I had maybe thirty
10 minutes to an hour's warning. I worked third
11 shift. I got up, me and minor were kicked
12 back watching cartoons. I fed him a peanut-
13 butter and jelly sandwich. He had a glass of
14 milk with me. The next thing I know, I get a
15 call, 'Hey, Jamie and them is going to come by
16 and pick minor up. Be ready from them.'

17 So by the time I made -- sorry, but go
18 ahead. Yea. Yeah, that's it.

19 Q. So you got a call from who saying that
20 Jamie was going to come?

21 A. I got a call from Latasha. Yes, sir.

22 Q. She said that Jamie was going to come pick
23 up minor

24 A. Yes, sir.

25 Q. To you knowledge, was there any kind of

1 custody arrangement between Jamie and Latasha,
2 or did they just sort of have this worked out
3 between themselves?

4 A. I believe that they had it worked out
5 between themselves. Yes, sir.

6 Q. Latasha would just say that's fine, Jamie
7 is coming.

8 A. Yeah, being adult about it.

9 Q. So when you gave minor over to Brandon --
10 sorry. To Jamie. I apologize. When was he
11 in good health?

12 A. Yes, sir, he was.

13 Q. Were you aware that he might have had an
14 ear infection?

15 A. Yes, sir.

16 Q. Is it true that you did not see minor
17 until he was brought back Sunday evening; is
18 that correct?

19 A. Yes, sir.

20 Q. When is the first time that you saw minor
21 or Jamie or Ms. Phillips or Latasha that
22 evening?

23 A. Well, I ---

24 Q. When is the first time that you saw minor
25 that Sunday?

1 A. When I arrived back at the home, Mr.
2 Morris and Ms. Phillips was pulling out of the
3 driveway. I walked in, me and my cousin
4 Jeremy, we walked inside and, uh, -- the door
5 was open. Latasha, she was -- at that time
6 she was getting ready to feed Ava. Ava was
7 crying, minor was crying. I walked in, she
8 sat down on the couch to feed Ava. I asked
9 her what was wrong with minor She stated
10 that his father had just dropped him off.

11 Q. What door are you referred to that was
12 open?

13 A. minor's door.

14 Q. minor's door?

15 A. Yes, sir.

16 Q. You can continue.

17 A. Okay. And I walked in there to talk to
18 him. He was standing up in his crib, holding
19 onto the side and he was crying. I went in, I
20 picked him up. I patted him on his back, was
21 telling it that it was okay, okay. He did
22 have a runny nose, he was congested -- not to
23 the point where you would jump up and rush him
24 to the E.R.

25 I did walk into the living room and I did

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1 state to Latasha at the time, you know,

2 'What's wrong with him?'

3 She stated that Jamie had just dropped him
4 off, that he had mentioned to her that he had
5 a cold over the weekend. Nothing was ever
6 said about any type of breathing problems.
7 You know, he was congested. I could see that
8 for myself. But it was nothing, you know, to
9 where you would just freak out about it.

10 I did -- you know, after he quit crying, I
11 asked him if he wanted to stand down -- you
12 know, to sit down. So I went to stand him
13 down and when -- the closer that he got to the
14 ground, the more he started back crying. The
15 closer that I got, you know, he wanted to pick
16 his little legs up and all. I said, 'Come on,
17 stand up.' When he -- when he put his feet on
18 the ground, he took a step back like he was
19 just going to hit the ground and just start
20 pitching a fit. You know, so I picked him up.
21 I was like, 'Boy, you're tired.' I patted him
22 on his little back. He wiped his nose off on
23 my shirt. I told him it wasn't a wash rag. I
24 said, 'My shirt ain't no washrag.'

25 Latasha, she got done feeding Ava and, uh,

1 -- I remember walking minor over to her. She
2 held him around ten, I'd say five, ten,
3 fifteen minutes. I can't remember. Maybe she
4 changed his diaper on the couch, or not. I
5 know she checked it. I don't think that he
6 had a soiled or pee diaper on.

7 She took him in his room, she requested
8 that I make a sippy cup of milk. I went in
9 there, I made a sippy cup. I walked in the
10 room with her. She was laying him down there.
11 I handed her the sippy cup, she handed it to
12 him. He did drink a couple of drinks and then
13 he did set it off to the side. You know, at
14 that time I -- you know, do you expect him to
15 chug it all at once? I didn't -- looking
16 back, it wasn't ---

17 Q. Brandon, let me ---

18 A. At that time, he set it off to the side.
19 She asked me to put it back in the
20 refrigerator. That's what I did.

21 Q. When she put minor down in his crib, what
22 -- there has been testimony that the door was
23 closed.

24 A. I keep hearing that.

25 Q. Can you address that?

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1 A. The door was not closed, we kept the door
2 open.

3 Q. What did you normally -- I'm sorry. What
4 did you normally do when you put 'minor' down?

5 A. We would lay 'minor' down, shut the light
6 off of course, and we would crack the door --
7 and by "crack", I mean we'd leave it at least
8 a foot open, not shut him up in the door. We
9 wouldn't just shut him up in the door. The
10 mobile home we were staying in at that time,
11 it was not a big mobile home. I promise you
12 that if someone burped in 'minor' 's room, you
13 could hear it. It just was not that big of a
14 mobile home.

15 Q. How many bedrooms was there in that ---

16 A. Two bedrooms.

17 Q. Describe the trailer for the jury for me.
18 Where were things, where was -- as you walk in
19 the front door.

20 A. When you walk in the front door, you can
21 literally -- if the front door was open, you
22 could stand on the porch and put your right
23 arm inside that room. There was no hallway.
24 There was no hallway. You open the door and
25 you could literally put your hand in that

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1 room. In front of you was ---

2 Q. Sorry, Brandon. What room?

3 A. That's the room to the right, that --
4 minor's room.

5 Q. Okay.

6 A. The living room is in front of you as you
7 walk in, the kitchen is to the left, the
8 bathroom is right here, the back door is right
9 here, our room is right here.

10 Q. How many feet is your room from 'minor's
11 room? How far was your door from 'minor's
12 room?

13 A. Fifteen feet, ten or fifteen feet -- about
14 fifteen feet.

15 Q. In fact, is there a light of sight from
16 your door to 'minor's door?

17 A. Yes, sir.

18 Q. You just testified that you did appear to
19 notice that 'minor had a runny nose?

20 A. Yes, sir.

21 Q. And that he was congested?

22 A. Yes, sir.

23 Q. Were you alarmed at that?

24 A. No, sir.

25 Q. Do you recall that Latasha had told you

1 that Jamie had told you that they needed to go
2 to the doctor, that he was sick?

3 A. She mentioned to me that when he was
4 dropped off that Jamie handed her the Medicaid
5 card, had said that 'minor' had come down with
6 a cold over the weekend, that 'you might would
7 want to take him to the doctor.' It was
8 Sunday nights. The doctor's offices were
9 closed. If I had felt in any way whatsoever
10 that he'd had a lethal dose of anything, he
11 would have been taken to the E.R. so --
12 considering no matter what time they brought
13 him back.

14 We laid him down that night. I did not
15 see no signs of a lethal dose of anything. I
16 seen a child with a cold and congestion.

17 Q. How long after you put 'minor' down did
18 you'all go to sleep, how long after that did
19 you'all go to bed?

20 A. It's been four years. I'd say we laid
21 'minor' down no later than nine o'clock. We
22 went to bed no later than ten thirty or
23 eleven. Because all we did after we got him
24 down and got Ava to sleep, we stepped out on
25 the back porch, because I did not smoke

1 inside, stepped out on the back porch, smoked
2 a cigarette. Come back in, checked on minor
3 and Ava before we went back to bed. I'm
4 sorry, when we come back in from smoking a
5 cigarette, we checked on them, watched TV.
6 Before we went back to bed, before we went to
7 sleep, she walked in there and checked on them
8 and we went to bed.

9 Q. At this time you had a daughter, correct?

10 A. Yes, sir.

11 Q. She was how old?

12 A. She was two months old.

13 Q. And there's been testimony that Latasha
14 had gotten up in the night. Do you remember
15 Latasha getting up anytime during the night?

16 A. Yes, I do.

17 Q. To your knowledge, what does she do when
18 she gets up -- is that a regular routine or
19 what? What's going on?

20 A. I mean, a two-month old child, she is
21 basically still a newborn. I mean, she has to
22 be checked on, she has to be fed throughout
23 the night. I know I remember -- I worked
24 third shift at Ingles in Liberty at that time.
25 She was kinda taking care of that for me. I

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1 knew that she had to go to work the next
2 morning. She did get up several times
3 throughout the night. What times, I can't set
4 here and say because I don't know, but I do
5 Riley Road cracking my eyes open as she -- I
6 slept on the right side, she slept on the left
7 side of the bed. She would have to kinda wake
8 me up as she got up.

9 Q. So Latasha handles the responsibility of
10 feeding Ava in the middle of the night?

11 A. At that time she did.

12 Q. There's been testimony that Latasha got up
13 at 8:00 the next morning. Were you asleep or
14 awake, or do you remember that?

15 A. I don't -- I remember her -- I remember
16 waking up and -- you know, just for a brief
17 moment, I remember her getting up and just
18 immediately falling back asleep. She, you
19 know, she'd evidentially come back in and laid
20 back down. The next time I woke was basically
21 to her screams, with the alarm going off, of
22 course, and I kinda dozed back off for a
23 moment.

24 Q. Let's back up just a little bit. There is
25 testimony that there was an alarm clock, do

1 you ---

2 A. Yes, sir, that's what I was referencing.

3 Q. Did the alarm clock wake you up enough to
4 figure out what time it was?

5 A. Not really.

6 Q. Did the alarm clock go off more than once?

7 A. It seems like it did, sir.

8 Q. Why would it go off more than once?

9 A. Because we hit Sleep. Snooze. I'm sorry.

10 Q. Okay. So after that, you go -- after the
11 alarm goes off a couple of times, you go back
12 to sleep; is that right?

13 A. Yes, sir.

14 Q. Fall back asleep?

15 A. Yes, sir.

16 Q. Then the next thing that you remember is
17 what?

18 A. Well, her screaming. It was a scream that
19 I will never forget. When a mother finds a
20 child basically nonresponsive, it's -- that's
21 all that I can say. It was a scream that I
22 won't forget. It shot through me like a
23 billion rusty nails.

24 I jump up. He said that he wasn't
25 responding. My dad has epilepsy my entire

1 life, five and six seizures a days. In my
2 mind, at that time I thought that maybe
3 possibly, you know, he was having some type of
4 seizure.

5 So I rush in there -- I run in there, you
6 know, I -- I looked down and his little eyes
7 were open, his lips were blue. And she said,
8 'Is he breathing?' And I knew that he was
9 dead. I knew that he was dead at that point,
10 I knew that he was not breathing.

11 I reached down -- I told her to get back.
12 I said, 'please get back, call 911, he's not
13 breathing.' I reach over in the crib and I
14 gave the first breath of air in the crib.
15 When I gave that breath, vomit -- projectile
16 vomit -- came back in my face. His little
17 head was still on the pillow -- if you've seen
18 the pictures, that's why it was on that
19 pillow, because I gave him the first breath in
20 the crib.

21 I picked little minor up, I laid him in
22 the floor. Every single time that I would
23 give him a breath, vomit would projectile back
24 in my face. She made the statement that I
25 threw up on him. The first time that he threw

1 up on me, it went in my mouth and I did turn
2 around and I went to throw up, but I realized
3 that minor didn't have the three seconds that
4 he was going to take me to throw up, so I got
5 back down on my knees and I just continued to
6 give CPR. Every single time I would give him
7 a breath, vomit would come out. I would move
8 him each time I would give chest compression
9 and breath, I would move him every single time
10 and wipe the vomit off his face, wipe the
11 vomit off his little face. I just did it
12 until the ambulance got there, until she said
13 "they're here."

14 Q. What happened when the ambulance got
15 there?

16 A. When the ambulance got there -- and,
17 again, she said "They're here." So this room
18 was about a six by eight room. When she said
19 that they are here, I'm expecting a gurney to
20 come flying in the door, four or five EMS
21 workers. There were two people that come in
22 there and I -- I stepped out of their way so
23 that they could get to the child. That's -
24 you know what I mean? That's it. I got out
25 of their way. They said that I was standing

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1 off to the side and he was laying there by
2 hisself. That's a lie. He was not in there
3 by hisself. I was just giving him CPR for
4 fifteen minutes, waiting for them to get
5 there.

6 Q. You were in the courtroom when the 911
7 tape was played.

8 A. Yes, sir.

9 Q. Was it an accurate portrayal of what you
10 remember?

11 A. Yes, it was.

12 Q. All right.. EMS comes in and tends to
13 minor

14 A. (Affirmative nod).

15 Q. They take him, put him in the ambulance,
16 and then what do you do?

17 A. Well, after minor was put in the
18 ambulance, after I got off the phone with 911,
19 I immediately called my grandmother. I asked
20 her, because she lived literally across the
21 road from me, if she could come and sit with
22 Ava while we went, you know, with minor
23 Because at that point they still hadn't got
24 him out of the home yet, and I was on the
25 phone with her. She said, 'Well, your

1 grandfather, it's going to take him a minute
2 to get up.' He has emphysema, COPD. So I
3 immediately called my sister afterwards -- you
4 know, immediately after and said, 'please, we
5 found minor I don't know what's going on,
6 can you please come and sit with Ava while we
7 go up here to the hospital.' She agreed.

8 Q. Did she in fact come?

9 A. She did, (affirmative nod).

10 Q. What happened when she got there?

11 A. Well, when my sister arrived, I was
12 continuing to grab Ava's stuff up. I was, you
13 know, I was just getting up the quickest, the
14 best way that I could, what I thought that she
15 would need for, you know, a period of maybe a
16 day or two. I wasn't sure at that time what
17 in the world was going on or how long it was
18 going to take. So as soon as she got there,
19 you know, I told her, 'we are going to
20 Easley', minor went to Easley; so, you know,
21 'we're gone.'

22 Q. Let's back up.

23 A. Okay.

24 Q. You're tending to minor until the EMS
25 workers get there?

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1 A. Yes, sir.

2 Q. After you stopped tending to minor were
3 you able to focus any attention on Latasha?

4 A. Yes. Oh, yes.

5 Q. Can you describe what you saw?

6 A. Tasha was bawling like a baby, she was
7 shaking uncontrollably. I couldn't -- you all
8 have to understand. She's lost everything.
9 She's lost her mother, her grandmother, her
10 father, her son. She has no family. For
11 these people to sit up here and throw out
12 allegations that she wouldn't do something if
13 she knew that he was -- that he had some type
14 of dose, it blows my mind. I cannot fathom it
15 that they would even consider that. I
16 apologize, but I'm ---

17 Q. Understandable. How long did it take you
18 from the moment that the ambulance left for
19 you and Latasha to get on the road to the
20 hospital?

21 A. I would say from the time the ambulance
22 left until the time we got on the road, no
23 more than around five or six minutes.

24 Q. Where -- what -- where did you go
25 immediately. Where is the first place that

1 you went?

2 A. I took Tasha to Easley, Easley Hospital.

3 Q. What was going on in the truck? Were you
4 and Latasha talking or ---

5 A. Holding hands and praying, man.

6 Q. All right. What happened when you got to
7 the Easley Hospital?

8 A. I gave Natasha a nice firm hug and I told
9 her that I felt like the father should be
10 here, that he needed to know that this son may
11 not make it. I let her out and I told her,
12 'Go sit with minor I'm going to go get
13 Jamie. I feel like he should be here.'

14 Q. So instead of going in with Latasha, you
15 volunteered to tell Jamie?

16 A. Yes, sir, I did.

17 Q. Why didn't you -- well, -- where -- I'm
18 sorry. Where did you go after that?

19 A. That is when I rushed -- when I say speed,
20 I'm talking about ninety-five miles an hour on
21 back roads. I had no regards for my life at
22 that point. I was out of mind, just -- and I
23 mean out of my mind, just on the road trying
24 to process what just had happened, why and how
25 could it have possibly happened to us.

1 I'm on the road -- I'm sorry, I'm just
2 trying to tell you what was going through my
3 mind. I went immediately to Jamie's mother's
4 home.

5 Q. Looking for Jamie or ---

6 A. Looking for Jamie.

7 Q. What happened when you got to her house?

8 A. When I arrived at Jamie's home, I knocked
9 on the door. Stevie, his brother, had come to
10 the door. As you can imagine, I was frantic,
11 you know.

12 I asked immediately, 'Where's Jamie,
13 Where's Jamie?'

14 "Jamie is at work?"

15 I asked, 'well, where's Lynn?'

16 "She's in here."

17 I said, 'Well, get her. Get her. Hurry.'

18 Lynn, she come out there, 'What is it,
19 Brandi, what is it?'

20 I said, 'something has happened to minor
21 I don't know -- Tasha found him nonresponsive,
22 he wasn't...' --

23 "Is he dead?"

24 I said, 'I don't know. I done CPR. He
25 wasn't breathing when I left. The ambulance

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1 took him. I don't know. I didn't find out.
2 I didn't go into the hospital, I come here
3 first.'

4 She immediately, she turned, grabbed her
5 shoes, she run out the front door, collapsed
6 to the ground as she kept screaming, "Jamie's
7 going to blame me. Jamie's going to blame me.
8 Jamie's going to blame me."

9 I said, 'What are you talking about?'

10 She said, "Well, I was told that we should
11 have took him to the doctor yesterday and he
12 said that he didn't know...", da, da, da, da,
13 on and on.

14 Finally his brother said, 'Mama, shut up.'

15 At that time, I am just thinking, 'What in
16 the heck is going on here?' You know?

17 Go ahead. Sorry.

18 Q. Did you and Ms. Phillips ride together
19 after leaving the house?

20 A. No, sir.

21 Q. Where did you go after you left the
22 Phillips house?

23 A. I went to Jamie's place of employment.

24 Q. Tell us about that.

25 A. Again, ninety miles an hour. I shot up

1 178. He worked at the -- it was some type of
2 shirt company off of 178, right there at the
3 Liberty airport. The old county (sic)
4 building. I don't know if that is relevant,
5 but -- (pause).

6 I pull in, I run in to the front door and
7 I screamed the words, 'Where's Jamie at?' The
8 bossman just looked at me. I said, 'His son
9 may be dead. Where is Jamie at?' That is
10 when his eyeballs went like that and he went
11 and got Jamie.

12 Jamie come out and he asked me, "What's
13 wrong?" You know.

14 I said, 'Jamie, get in the truck, I will
15 tell you on the way.'

16 'I need to know what's wrong.'

17 'I -- get in the truck.'

18 Jamie got in the truck. I grabbed Jamie
19 by the hand and I -- took a good firm hand,
20 and I said, 'Man, we need to pray.'

21 He said, 'Brandon, please tell me what's
22 going on.'

23 I said, 'Man, your son wasn't breathing
24 this morning. I don't know why. I don't know
25 what could have caused it. I don't know.'

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1 'Is it alive?'

2 'I don't know, Jamie. I don't know.'

3 And, uh, I said, 'Let's just pray.' I
4 held his hand we just went. I got pulled over
5 on the way for going down the median at a
6 hundred and ten.

7 Q. You and Jamie arrived at the hospital,
8 though?

9 A. (Affirmative nod).

10 Q. What did you do when you got there?

11 A. (Affirmative nod).

12 Q. What did you do when y'all got there?

13 A. I let Jamie out at the door. I parked my
14 truck, I run inside, ran through triage, I
15 come to minor's room.

16 minor he's laying there hooked up to a
17 bunch of monitors. Latasha is standing up
18 there at the head of the bed, patting him on
19 the head, saying 'my baby, my baby.' Jamie
20 was doing basically the same.

21 Jamie, after a few moments, Jamie stepped
22 out of the room -- you know, nurses and -- it
23 was frantic. I remember Ms. Burgess coming up
24 and asking us, said she needed to talk to both
25 parties before we left the parties. I know --

1 I don't know whether or not Ms. Phillips heard
2 that or not, but I'm standing there -- and,
3 again, they're in the room.

4 Jamie is wanting to talk and consult with
5 the nurse and maybe a doctor at that time,
6 Latasha is in the room, Lynn is standing out
7 beside me just asking if I knew and -- a nurse
8 had come up, there was a doctor standing right
9 over here. A nurse come up and she whispered
10 that they had found opiates in minor 's
11 system. I looked at Lynn and I said, 'What?
12 Opiates?' I thought, what is opiates.

13 Thirty seconds later, I look up and she's
14 done got Jamie by the arm and is dragging him
15 out the back door of the hospital. I told her
16 this.

17 Q. After you went to the room, you saw that
18 and at some point, I believe, at that location
19 you spoke with Detective Burgess, is that
20 right?

21 A. Yes, sir.

22 Q. And that is the statement that -- that
23 would be Latasha's statement, that she's
24 related to the court? At that same time?

25 A. Yes, Latasha and me both spoke with Rita.

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1 Q. All right. Where did you go from Easley
2 and why? I'm sorry, from the Easley Hospital
3 -- did you leave the hospital?

4 A. Eventually, yes.

5 Q. Where did you go immediately from the
6 hospital?

7 A. Ms. Burgess informed us that there was a
8 detective at the house and that we needed to
9 sign a consent to search, to search our home.
10 So me and Latasha hightailed it back to my
11 house. I arrived. There was an officer
12 sitting there, waiting on me. I walked in my
13 home, they followed me in behind. I said,
14 'Where is the consent to search?' They handed
15 it to me, me and her both signed it.

16 About that time my sister comes wheeling
17 in, if I remember correctly, and me and her
18 jetted to Greenville Memorial.

19 Q. How was Latasha handling this at the
20 house, throughout what we've been talking
21 about the last couple of minutes?

22 A. It's been so hard for me to hear the
23 things said, but Latasha was hysterical. She
24 was just -- she was in a deep state of shock.
25 I'm telling you. She was crying, she was cry

1 one minute, she would be silent the next, but
2 shaking -- shaking. I mean, just literally
3 just shaking.

4 Q. Okay. When you got to the Greenville
5 Hospital, what do you remember when you got to
6 the Greenville Hospital?

7 A. I remember pulling into Greenville and,
8 uh, going up there. The doctors were there.
9 Lynn, she was out in the hallway. She was
10 kinda mumbling on to herself that he wasn't
11 going to make it, that the doctors had said
12 that he had been without oxygen too long, that
13 he wasn't going to pull through. But she
14 wasn't like saying it like directly to us.
15 She was having a -- like as she went down the
16 hallway, she was kinda saying, 'He ain't gonna
17 make it, he just ain't gonna make it.'

18 Well, me and Latasha went to minor She
19 broke down. I broke down. We wanted to
20 consult the doctor. So, you know, the doctor,
21 he pulled us in to the little waiting room
22 right here. So I asked him, straight up, I
23 said, "Sir, have you received any good news?"
24 He said ---

25 MR. DEJONG: Objection to what the

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1 doctor said, Your Honor.

2 THE COURT: Sustained.

3 DIRECT EXAMINATION CONTINUED

4 BY MR. HARBIN:

5 Q. What did Latasha do when she found out
6 minor's prognosis?

7 A. Actually the -- after we got a zero
8 percent chance of him surviving, she collapsed
9 into my arms and said, "God, please, please
10 don't take my baby." Crying frantically,
11 shaking worse than ever. It finally hit her,
12 I believe, that he wasn't going to make it
13 through it.

14 Q. Brandon, did Latasha love her son?

15 A. Yes, she did. She loved her son very,
16 very much. She loved her daughter.

17 Q. Did she care for and provide for minor
18 and Ava?

19 A. Yes, very well.

20 Q. Did you do everything that you could to
21 help minor that morning?

22 A. I did.

23 Q. Did Latasha do everything that she could?

24 A. She did.

25 MR. HARBIN: Please answer any

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1 questions that the Solicitor or any of other
2 attorneys may have.

3 CROSS EXAMINATION

4 BY SOLICITOR BARWICK:

5 Q. Are you and Latasha still dating?

6 A. Yes, ma'am.

7 Q. Do you still live together?

8 A. Yes, ma'am.

9 Q. Back on that Monday morning, if I heard
10 you right, you said that Latasha woke up at
11 8:00 and checked on Ava and Brandon? I'm
12 sorry. Ava and minor

13 A. Yes, ma'am. Like I said -- (pause) -- you
14 know.

15 Q. Well, go ahead and say it.

16 A. Like I said to his question there, I
17 remember the alarm going off. I do remember
18 her getting up, I went back to sleep.

19 Q. Did you get up before Latasha at eight
20 o'clock?

21 A. No.

22 Q. So it was really like you don't know the
23 condition of minor at that time, do you?

24 A. I can't say that.

25 Q. I respect that. Then the alarm went off

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1 again, right?

2 A. Yes, ma'am.

3 Q. It went off at ten o'clock?

4 A. As far as I remember, yes.

5 Q. That is what you wrote in your statement?

6 A. Yes, it is.

7 Q. And it went off at ten o'clock because you
8 had to be at work at eleven?

9 A. As far as we know.

10 Q. Let's talk a little bit about that night.

11 It's been talked about a whole lot during this
12 trial. Will you please tell the jury what you
13 mean about minor stumbling back?

14 A. When I made the reference that I had went
15 to set minor down -- and I will repeat it
16 again, -- the closer that he got to the ground
17 the more upset that minor started to get.
18 Well, finally, I said, 'Buddy, stand up.'

19 I went to stand him up and he -- he --
20 when I say "stumbled back", I mean more like
21 he was about to pitch a fit. He didn't want
22 to be stood up. He wanted to be held. I
23 mean, please understand that. That is all
24 that I meant by that. I didn't mean that he
25 was falling around, bouncing into walls. All

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1 I meant was that the simple fact that he
2 didn't want to be stood up. That's it.
3 That's all.

4 Q. Brandon, and I keep calling you Brandon,
5 and I mean no disrespect.

6 A. No, no.

7 Q. Mr. Roper, ---

8 A. Go right ahead.

9 Q. Did you not put in your statement, "I
10 put him down, he stumbled backwards like he
11 couldn't keep his balance, acted drowsy."

12 A. Yes.

13 Q. "I called Latasha what was wrong with him
14 and she said he had been playing all day and
15 he acted like he had a cold."

16 A. Yes.

17 Q. So, he fell back like he was drowsy?

18 A. No, I didn't mean it like that. He
19 stumbled back and acted like he was drowsy.

20 Q. Yes, sir.

21 A. Yes.

22 Q. When Latasha ---

23 A. That could be interpreted in several
24 different ways.

25 Q. Yes, sir, but you did write it in your

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1 statement ---

2 A. Oh, I wrote it. I am just telling you
3 honestly ---

4 Q. And your memory was probably better four
5 years ago of the incident than it is now?

6 A. Well, to be honest with you, that was
7 pretty traumatic, so ---

8 Q. And Ms. Honeycutt, she called 911
9 immediately?

10 A. Yes, ma'am.

11 Q. Immediately?

12 A. Yes, ma'am.

13 Q. Immediately upon finding him unresponsive?

14 A. Yes, ma'am.

15 SOLICITOR BARWICK: No further
16 questions.

17 MR. DEJONG: Your Honor, may it
18 please the Court.

19 THE COURT: Yes, sir.

20 CROSS EXAMINATION

21 BY MR. DEJONG:

22 Q. At the time opiates were mentioned, you
23 said 'what opiates' or 'what are opiates'?

24 A. I'm sorry, sir?

25 Q. At some point in time when you were

1 talking to Mr. Harbin, you said opiates were
2 mentioned and you said ---

3 A. I said, "What are opiates?"

4 Q. What are opiates?

5 A. Yes, sir.

6 Q. You're not a stranger to opiates, are you,
7 Mr. Roper?

8 A. Sir, when we arrive at the hospital and
9 you have a twenty-two month old child laying
10 there that wasn't breathing and I was told --
11 I wasn't told anything. I overheard a nurse
12 to the doctor, say that they had found opiates
13 in his system. That's when I then turned to
14 Lynn and said, "What are opiates?" I didn't
15 know. Opium? Heroin? What?

16 Q. Isn't it true, Mr. Roper, that on March
17 the 4th, 2008, at CVS here in Pickens that you
18 had a prescription filled for Lortab?

19 A. Yes, sir.

20 Q. So you certainly know what opiates are.

21 A. I know what Lortabs are. I didn't know
22 they was referred to as opiates.

23 Q. All right. And also you had been a
24 patient at that time at the methadone clinic,
25 hadn't you?

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1 A. No.

2 Q. Now, let's go to March the 14th. Did

3 'minor' have an allergy to peanuts?

4 A. Did 'minor' have an allergy to peanuts?

5 Is that what you ---

6 Q. Yeah.

7 A. (Negative gesture), I'm not -- I'm not
8 sure.

9 Q. Pardon me?

10 A. I'm not sure, sir. I can't answer that.

11 Q. You're not sure?

12 A. No. I mean, I wasn't aware of any
13 allergies.

14 Q. But at that point in time, that being
15 March the 14th of 2008, how long had you and
16 Ms. Honeycutt lived together?

17 A. At the time of the accident?

18 Q. Well, March the 14th, the time that we're
19 talking about?

20 A. Let's see, we had been living together for
21 -- it seems like -- to be give an honest
22 answer, I can't really answer that question.
23 I don't remember exactly how long.

24 Q. Had it been for an extended period of
25 time, or just a few days?

1 A. Oh, more than just a few days. You know.

2 Q. And during the time that you and Ms.

3 Honeycutt was living together, minor was
4 there; wasn't he?

5 A. Yes, sir.

6 Q. And you took care of minor didn't you?

7 A. Yes, sir.

8 Q. So you knew minor

9 A. I knew minor yes.

10 Q. All right. Now, you said on March the
11 17th -- that this times all run together. On
12 March the 16th, you came home and Ms. Phillips
13 and Mr. Morris were leaving; is that correct?

14 A. Yes, sir.

15 Q. Do you recall what time of day that was?

16 A. I remember it being dusky dark. I can't
17 -- I know that when I took my computer back to
18 WalMart on White Horse Road that it was around
19 6:45. When I pulled in the parking lot to
20 drop the computer off.

21 Q. Okay.

22 A. And then we went to McDonald's and then
23 come home.

24 Q. Okay.

25 A. So I would imagine, you know, that at

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1 least by eight o'clock.

2 Q. 7:30 or 8:00 or something like that?

3 A. Yeah. It's all been ---

4 Q. So I think we could say that it was fairly
5 well before nine o'clock, right?

6 A. I would agree with that. I think that it
7 was before nine.

8 Q. All right. Now, then, you went
9 immediately into the house?

10 A. Yes, sir.

11 Q. And your testimony is that Ms. Phillips
12 and Mr. Morris were already gone?

13 A. They were pulling out of my driveway; yes,
14 sir. They were gone from my residence.

15 Q. You didn't see them, talk to them ---

16 A. No, sir.

17 Q. --- that night at all?

18 A. No, I didn't.

19 Q. Now, let's back up a little bit to March
20 the 14th. To your knowledge did minor have
21 some sort of respiratory infection or issues?

22 A. I didn't hear that.

23 Q. Maybe I didn't talk loud enough. The
24 acoustics in this courtroom are ---

25 A. Yes, sir. Go right ahead.

1 Q. On March the 14th, around that time, did
2 minor have a respiratory infection?

3 A. I don't believe that minor had a
4 respiratory infection. He had an ear
5 infection.

6 Q. Had he been on Amoxicillin?

7 A. It wasn't -- he had just finished the
8 Amoxicillin around the 14th. But, you know.

9 Q. For an ear infection or some type of ---

10 A. Yes, sir.

11 Q. All right. And, uh, -- now, when you get
12 into the house, where is minor

13 A. He's in his crib.

14 Q. Where?

15 A. He's in his crib.

16 Q. In his crib?

17 A. Yes, sir.

18 Q. Okay. Sometime between the time that Mr.
19 Morris and Ms. Phillips brought him back until
20 the time that you got home, Ms. Honeycutt had
21 put minor in his crib?

22 A. That is what I was told. I can't testify
23 to that.

24 Q. Okay.

25 A. I wasn't there.

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- 1 Q. But he was in his crib when you got there?
- 2 A. He was in his crib, but I'm not aware of
- 3 who put him there.
- 4 Q. Who got him out of the crib?
- 5 A. I got him out of the crib.
- 6 Q. When you got him out of the crib, you took
- 7 him where?
- 8 A. Into the living room.
- 9 Q. Now, when you got him out of the crib, was
- 10 he crying?
- 11 A. Yes.
- 12 Q. Was he standing?
- 13 A. He was standing up, holding onto the side
- 14 of the bars there.
- 15 Q. Was he moving about?
- 16 A. I wouldn't say that he was -- you know, he
- 17 was standing holding onto the bars. I mean, -
- 18 --
- 19 Q. When you went in there, did he respond to
- 20 you?
- 21 A. Yeah, he held his arms up for me --
- 22 (emotional) -- I promised myself I wouldn't do
- 23 that. He held his arms up for me.
- 24 Q. You said that he had a runny nose?
- 25 A. Yes, sir.

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1 Q. And that he had some congestion?

2 A. Yes, sir.

3 Q. That led you to believe, if I understood
4 you correctly, that he had a cold?

5 A. Yes, sir.

6 Q. And is the first child that you've been
7 involved with helping to rear?

8 A. Yes, sir.

9 Q. Of course you and Ms. Honeycutt have a
10 child together, right?

11 A. Yes, sir.

12 Q. Ava.

13 A. (Affirmative nod).

14 Q. And minor

15 A. Yes, sir.

16 Q. Well, you don't have minor

17 A. minor was older than Ava.

18 Q. So now you get minor out of the crib,
19 pick him up, and what -- you take him to the
20 living room. What happens next?

21 A. I continued to comfort minor I was
22 patting him on his back, telling him that it
23 was going to be okay. He eventually stopped
24 crying.

25 Q. One he stopped crying, what did you do?

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1 A. That's when I proceeded to ask him if he
2 wanted to stand up. And he didn't. He didn't
3 want to stand up. He didn't want to be sat
4 down.

5 Q. He could have stood up but he didn't want
6 to stand up. Right?

7 A. Right.

8 Q. There was no indication at that point in
9 time that there was anything wrong with his
10 ability to walk or ---

11 A. No, sir, not that I could see.

12 Q. Certainly nothing to indicate at that
13 point in time that he -- well, let me back
14 up. So you put him down?

15 A. Yes, sir.

16 Q. Nothing other than a runny nose and a
17 cough or cold that you saw?

18 A. Yes, sir.

19 Q. Now, you put him down. What happens next?

20 A. When I went to put him down?

21 Q. Right.

22 A. Like I said, he took a step back like he
23 was going to sit down and start crying. The
24 closer that he got -- but he never made it
25 because I picked him back up. I said, 'Okay,

1 buddy, you must be tired.' I patted him on
2 his back. You see, minor never actually in
3 our custody got to actually stand up and walk
4 around because he was laid down, I picked him,
5 up, you know she took care of him, laid him
6 back down, and he went to bed, we went to bed.

7 Q. All right. So then you comforted and
8 consoled him some more?

9 A. (Affirmative nod).

10 Q. You picked him back up?

11 A. Yes.

12 Q. He quit crying, again?

13 A. He did, (affirmative nod).

14 Q. Did minor fight sleep?

15 A. Sometimes. Sometimes he wouldn't. It
16 just depended.

17 Q. When he would fight sleep, would he cry?

18 A. He would cry sometimes, sometimes he would
19 just toss and turn.

20 Q. At one point in time, I think when you
21 were talking to Mr. Harbin, you said that he
22 was pitching a fit; right?

23 A. Pitching a fit as in crying.

24 Q. Pardon?

25 A. Pitching a fit as in crying.

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1 Q. Right. Being ornery?

2 A. Being ornery.

3 Q. Now, this would have been around -- would
4 it be safe to say between eight and nine
5 o'clock on Sunday evening?

6 A. Yes, sir.

7 Q. Now, did you or Ms. Honeycutt fix minor
8 anything to eat?

9 A. At that time, I believe that I had -- that
10 she requested me to fix him -- she requested
11 me to fix him a sippy cup of milk. That's
12 what I did.

13 Q. But not solid food?

14 A. I believe that she had mentioned something
15 about they had -- that wherever that they'd
16 come from that he'd eaten.

17 Q. All right. Then you and Ms. Honeycutt go
18 out -- is that when you got out and smoke a
19 cigarette, or do you watch TV first?

20 A. After we laid minor down?

21 Q. Right.

22 A. Right. Yes, sir, we laid minor down.

23 We come back out -- and, like I say, Ava, I
24 can't -- it's been four years. I can't

25 remember if she was in her swing. I remember

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1 Latasha laying her down, too. Me and her, we
2 walked on the back porch, left the door open
3 so that we could hear them, we walked out
4 there and smoked, then come back in and
5 watched TV.

6 Q. When was minor given the sippy cup?

7 A. minor was given the sippy cup before --
8 as soon as we laid him down -- she had
9 requesting, as she took minor into his room,
10 for me to get the sippy cup.

11 Q. Did you take the sippy cup down to the
12 room?

13 A. Yes, sir.

14 Q. Did he drink out of the sippy cup?

15 A. Yes, sir, he did.

16 Q. Did he spit it up?

17 A. No, sir.

18 Q. Do you know how much he drank?

19 A. I'd say probably two sips.

20 Q. Pardon me?

21 A. Two to three sips.

22 Q. Okay. And once he took those two to three
23 sips, what did he do next?

24 A. He set it off to the side like he didn't
25 want it. You know, like he -- like he was

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1 done.

2 Q. That is what he would do when he was done?

3 A. A normal child, that's what they do when
4 they're down with something, they sit it to
5 the side; yes, sir.

6 Q. So you and Ms. Honeycutt go outside and
7 smoke a cigarette.

8 A. (Affirmative nod).

9 Q. When you come back in from smoking a
10 cigarette, do y'all go straight to bed?

11 A. No, sir.

12 Q. What do you do then?

13 A. Well, we come in, look over the children
14 kinda briefly, we sat in the living room and
15 we watched TV until around, I'd say, probably
16 ten thirty or eleven. She did a final check
17 on them and then we went to bed. That's the
18 last ---

19 Q. Did you go a check at that point in time?

20 A. I walked in there with her.

21 Q. Did you notice anything out of the
22 ordinary?

23 A. Other than him sleeping, that he was
24 sleeping pretty hard. You could tell that he
25 was -- it just looked like, from what I would

1 described, that he'd been playing all day, he
2 was tired, fussy, he was sleeping real good.

3 Q. Now, as I understand it, Ms. Honeycutt got
4 up three or four times during the night?

5 A. I know that she got up at least three
6 times.

7 Q. To your knowledge, did she check on minor
8 that three times that she got up?

9 A. I can't testify anything to that. I
10 wasn't awake.

11 Q. Well, let me ask you this. There were no
12 alarms that went off those three times that
13 she got up to check him?

14 A. No, sir. Ava would wake us up, you know,
15 either Ava or minor

16 Q. Then she got up, I gather the fourth time
17 would have been at eight o'clock in the
18 morning.

19 A. Yes, sir. If she got up four times, the
20 fourth time would be that time.

21 Q. Now, you described this mobile home a
22 little bit. When you went to bed, were any
23 lights left on?

24 A. The kitchen -- the exhaust fan thing, the
25 light there, we leave that on.

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1 Q. A fairly small area, so it would light up
2 the area; right?

3 A. Well, not -- as far as minor's room goes,
4 no. As far as my two-month old little girl's,
5 yeah.

6 Q. Well, at --

7 A. It was a little bitty tiny bulb in the
8 kitchen.

9 Q. And at eight o'clock there was no alarm
10 sounded by Ms. Honeycutt, right?

11 A. At eight o'clock, I heard nothing.

12 Q. You kinda woke up?

13 A. I woke up just briefly as she got out of
14 the bed.

15 Q. Then you went back to sleep?

16 A. Yes, sir.

17 Q. I gather as far as you know, she came back
18 to bed?

19 A. Yeah, she come back to bed.

20 Q. Now, ten o'clock is when you get the
21 alarm; right?

22 A. Yes, sir.

23 Q. Now, you say that you went in there and
24 you knew that he was not breathing.

25 A. Yeah.

1 Q. How was it that you knew that he wasn't
2 breathing?

3 A. His lips were blue, his eyes were barely
4 cracked open from where she'd trying shaking
5 to wake him up and he didn't respond. An
6 unconscious child, it barely cracked his eyes
7 open a little bit. I walked in and I seen
8 him, I immediately checked for his pulse, put
9 my ear down to his mouth, I heard nothing and
10 I felt like ---

11 Q. Were there windows in that particular
12 room?

13 A. There was one window that had blinds and
14 curtains.

15 Q. Were they closed?

16 A. Yes, sir, they were.

17 Q. To keep the room dark?

18 A. Yes, sir.

19 Q. So even at ten o'clock in the morning, the
20 lighting in that room was not particularly
21 good.

22 A. I mean -- it wasn't the best, no.

23 Q. All right. So -- who actually called 911?

24 A. She -- I told her to call 911, that I
25 hadn't got a pulse and that he wasn't breath-

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1 ing. She -- like I said, I heard the scream,
2 I run in there. I looked down, realized that
3 he was not breathing. I screamed to her, you
4 know, "Call 911, he's not breathing."

5 Q. At ten o'clock -- well, let's back up a
6 little bit. Through the night it was only
7 you, Ms. Honeycutt and the two children that
8 were in that residence?

9 A. I'm sorry, -- sir? I couldn't hear you.

10 Q. Through the night ---

11 A. Through the night -- yes.

12 Q. No guests, no visitors?

13 A. I think we had Wayne Guest that had
14 stopped by to bring some movies, but I pretty
15 much met him at the door.

16 Q. Let's say after you went to bed, was there
17 anybody else in the house ---

18 A. No, sir.

19 Q. --- other than you, Ms. Honeycutt and the
20 two children?

21 A. No, sir, there wasn't.

22 Q. At ten o'clock when you got up, was there
23 anyone in the house other than you, Ms.
24 Honeycutt and the two children?

25 A. No, sir.

1 Q. When EMS arrived, was there anybody in the
2 house other than you, Ms. Honeycutt and the
3 two children?

4 A. When EMS arrived?

5 Q. (Affirmative nod).

6 A. No, sir.

7 Q. So at the point when EMS gets there,
8 that's when you call your grandmother?

9 A. Yes, sir, as soon as I heard Latasha
10 scream "they're here, they're here" and I
11 heard the door close and I heard them get to
12 the porch, I stood up, I backed out of their
13 way, I stood beside Latasha and I immediately
14 called my grandmother.

15 Q. Now, -- so I believe that you said that it
16 wasn't five minutes later that somebody showed
17 up to take care of Ava, right?

18 A. Well, like I said, I called my grand-
19 mother, she stated my grandfather was going to
20 need some more time. So I just hung the phone
21 up and called Kayla. She come.

22 Q. So you and Ms. Honeycutt go to Easley
23 Baptist?

24 A. Yes, sir.

25 Q. From Easley Baptist, you come back to ■■■

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1 Braden Court?

2 A. When I dropped Tasha off at Easley
3 Baptist, I went to get Mr. Morris.

4 Q. I jumped ahead.

5 A. That's quite alright.

6 Q. I am not trying to ---

7 A. That's okay.

8 Q. When you went back to Easley Baptist
9 Hospital with Jamie, ---

10 A. Yes, after I picked him up.

11 Q. Let me ask you about that. Jamie got in
12 your truck and he said, "What's wrong?"

13 A. Yes, he asked what was wrong with minor

14 Q. Not 'what's wrong' in general?

15 A. No, 'What's going on? Why are you at my
16 job screaming at me?'

17 Q. A total shock to him, right?

18 A. Of course.

19 Q. Okay. So you go to Easley Baptist, you
20 drop Ms. Honeycutt off and then you go looking
21 for Jamie?

22 A. Yes, sir.

23 Q. How long have you known Jamie?

24 A. Sixteen years, maybe twenty years --
25 twenty years.

1 Q. Well, you said -- if I recall correctly,
2 and correct me if I am wrong, the reason that
3 you wanted to go get Jamie was because his son
4 may not make it. Right?

5 A. That's just the way that I perceived it at
6 the time, sir.

7 Q. But at that point in time, other than what
8 you'd seen at ten o'clock, you had not idea
9 whether he would make it or not; did you?

10 A. I mean, -- well, sir, he wasn't breathing.
11 I gave him CPR for fifteen minutes, I begged
12 for God to help me and nothing every happened,
13 so I assumed that he wasn't going to make it.

14 Q. But that was your testimony, that he was
15 not going to make it?

16 A. Yes, sir. And wouldn't you say the same?

17 Q. Now you get Jamie back to Easley Baptist,
18 ---

19 A. Yes, sir.

20 Q. And at some point in time you and Ms.
21 Honeycutt leave Easley Baptist; correct?

22 A. Yes, sir.

23 Q. Now, when you and Ms. Honeycutt leave
24 Easley Baptist, you go back to [REDACTED] Braden
25 Court -- Drive, or whatever.

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1 A. Yes, sir.

2 Q. At that point in time, did you know that
3 minor was being airlifted to Greenville
4 Memorial?

5 A. I did.

6 Q. But rather than going straight to
7 Greenville Memorial, you went back to [REDACTED]
8 Braden Court?

9 A. Yes, sir.

10 Q. When you got to [REDACTED] Braden Court, were the
11 cops already there?

12 A. Yes, sir.

13 Q. How long did you stay at [REDACTED] Braden Court?

14 A. No longer than five minutes. Long enough
15 to pull out a pen and sign that form and
16 leave.

17 Q. Well, at that point in time you didn't
18 know that's what the cops wanted?

19 A. I did, sir.

20 Q. Well, not until you got there.

21 A. No. She told me that's what they wanted,
22 to go back there, that they were waiting on me
23 until I got home to sign the consent to
24 search. So we left and went.

25 MR. DEJONG: One moment, please,

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1 Your Honor.

2 CROSS EXAMINATION CONTINUED

3 BY MR. DEJONG:

4 Q. You know a Sidney Morris?

5 A. Yes, sir.

6 Q. Did you have Mr. Morris -- when you went
7 by where Ms. Phillips lived, did you see
8 Sidney Morris?

9 A. Yes, sir.

10 Q. At that point in time, you didn't know
11 anything was in the child's system; did you?

12 A. No, sir.

13 Q. Pardon me?

14 A. No, sir.

15 Q. But you asked Mr. Sidney Morris what the
16 child had been given. Right?

17 A. That was after his mother collapsed to the
18 ground, sir, saying that Jamie was going to
19 blame her.

20 Q. I'm sorry?

21 A. That was after his mother collapsed to the
22 ground, started screaming that Jamie was going
23 to blame her, over and over. So I asked,
24 'Did you give him anything? What are you
25 talking about, Jamie is going to blame you?'

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1 Q. Jamie wasn't there at that point?

2 A. No, Jamie was not there.

3 MR. DEJONG: Thank you very much.

4 CROSS EXAMINATION

5 BY MR. O'CONNELL:

6 Q. Mr. Roper, ---

7 A. Yes, sir?

8 Q. --- you testified that you know what an
9 unconscious child looks like?

10 A. I'm sorry? Say what now?

11 Q. You said that you knew what an unconscious
12 child looked like?

13 A. I couldn't hear you.

14 Q. You said that the child was in the crib or
15 bed, that his eyes were open and that he had
16 blue lips?

17 A. Well, sir, when I walked in and looked
18 down, it was pretty obvious.

19 Q. You said you knew what a child looks like
20 when it is unconscious.

21 A. Right.

22 Q. Had you had prior experience with
23 unconscious children?

24 A. No, sir. I had prior experience with my
25 father having seizures, being unconscious.

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1 Other than that, no. No children.

2 Q. You testified that you know nothing about
3 methadone or ---

4 A. I testified that I wasn't in a methadone
5 clinic at that time.

6 Q. Have you ever been in a methadone clinic?

7 A. How is that relevant?

8 THE COURT: Answer the question.

9 THE WITNESS: Yes, sir.

10 CROSS EXAMINATION CONTINUED

11 BY MR. O'CONNELL:

12 Q. Prior to or after this occasion?

13 A. I believe it was around a year and a half
14 or two years later.

15 Q. Do you know anything about opiates?

16 A. I do now.

17 Q. Were you prescribed Lortab at one time?

18 A. Was I prescribed?

19 Q. Yes, were you prescribed Lortab at one
20 time?

21 A. Yeah. I mean, it was -- I've been
22 prescribed medication before.

23 Q. Were you prescribed Lortab on March 4th,
24 2008?

25 A. (Affirmative nod), that was for a neck

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1 injury, sir.

2 Q. Please answer. Were you prescribed Lortab
3 on ---

4 A. The answer is 'yes.'

5 Q. And you took twenty-one Lortab, right.

6 A. I took them as prescribed, sir.

7 Q. You had twenty-one Lortab, is that right?

8 A. If that's what I was prescribed.

9 Q. What is Tramadol, do you know what that
10 is?

11 A. I believe that it is a light pain
12 medicine, non-narcotic.

13 Q. And those were prescribed through 3/08?

14 A. If that's what it says, sir.

15 Q. And you had twenty of those?

16 A. If that's what it says, sir.

17 Q. You had none in your house on the 17th
18 when they searched your house?

19 A. Did they find anything? No, I did not
20 have anything.

21 Q. You'd used them all up?

22 A. I either used them or flushed them.

23 Q. You flushed your ---

24 A. You throw away medication that you're not
25 using.

1 Q. That you'd just received?

2 A. I just stated that if I did not use them
3 that I disposed of them.

4 Q. So maybe minor took something at your
5 house?

6 A. There would be no possible way for that.
7 None of what you just brought up was in
8 minor's system.

9 Q. Did you call your sister over to get any
10 kind of evidence out of your house before the
11 police got there?

12 A. No, sir.

13 Q. Do you claim to have been a father figure
14 to minor

15 A. Yes, sir.

16 Q. Were you trying to replace Jamie Morris?

17 A. No, sir, I did not.

18 Q. Did you ever tell Ms. Honeycutt that you
19 only wanted one child, that you didn't want
20 any more than one child?

21 A. I don't remember ever saying that.

22 MR. O'CONNELL: Thank you. I have
23 no further questions.

24 MR. HARBIN: Redirect, Your Honor?

25 THE COURT: Yes, sir.

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REDIRECT EXAMINATION

1

2 BY MR. HARBIN:

3 Q. You said that you were prescribed Lortab
4 for a neck injury?

5 A. Yes, sir.

6 Q. What was the neck injury from?

7 A. I worked for The Cliffs. I had an eighty
8 pound of Flex that is used for hydro sealant
9 dropped on the top of my head from about four
10 foot difference.

11 Q. And you said that you used all of it?

12 A. Yes, sir.

13 Q. Did you have any Lortabs in your house?

14 A. No, sir, I did not.

15 Q. Did you have any Tussinex in your house?

16 A. No, sir, I did not.

17 Q. And you previously testified when the
18 solicitor asked you about the time line of
19 when you got up. You said that at ten --
20 that after eight, the first thing that you
21 heard was the scream.

22 A. Yes.

23 Q. Do you remember asking Latasha to change
24 minor before she went to work?

25 A. Yes, sir.

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1 Q. When did you do that?

2 A. Well, it was -- she come in the room, she
3 was dressed for work and she -- she pretty
4 much come in there, was giving me a kiss
5 goodbye, telling me that she was about to
6 leave. I said, 'Would you please change
7 minor diaper before you take off to work?'
8 She agreed.

9 Q. Then what happened after that?

10 A. That's when I heard the scream.

11 Q. What happened first and what happened
12 second? You have to be sure about this.

13 A. (No verbal response).

14 Q. Did she scream before or after you asked
15 her to change the diaper?

16 A. She screamed after I asked her to change
17 the diaper.

18 Q. And you said that she was on her way to
19 work. Did she go to work the same time every
20 day?

21 A. No, sir, it was swing shift.

22 Q. Okay. Did you give minor any medication?

23 A. No, I didn't.

24 Q. Did you see Latasha give minor any
25 medication?

1 A. No, sir, I did not.

2 Q. Thank you.

3 MR. HARBIN: No further questions.

4 THE COURT: Any further questions?

5 SOLICITOR BARWICK: Not from the

6 State, Your Honor.

7 MR. DEJONG: No, sir.

8 MR. O'CONNELL: None from us.

9 THE COURT: All right, thank you,
10 Mr. Roper.

11 (WITNESS STEPS DOWN)

12 THE COURT: Ladies and Gentlemen,
13 we will take a brief recess. Don't talk about
14 the case, keep an open mind.

15 (JURY OUT @ 4:20 P.M.)

16 THE COURT: We will take about a
17 five-minute break.

18 (RECESS)

19 (DEFENDANTS PRESENT)

20 THE COURT: Bring the jury back in.

21 (JURY IN @ 4:39 P.M.)

22 THE COURT: Call your next witness.

23 MR. HARBIN: We call my client,
24 Latasha Honeycutt, to the stand.

25 (WITNESS TAKES STAND)

1 LATASHA HONEYCUTT, being duly sworn
2 to tell the truth, the whole truth and nothing
3 but the truth, testified, as follows:

4 DIRECT EXAMINATION

5 BY MR. HARBIN:

6 Q. Good afternoon, Latasha. I want to start
7 out by you telling the jury how you met Jamie.

8 A. We met on the internet. It was the South
9 Carolina chat room. We got to know each other
10 for a while and then we decided to meet each
11 other. We had a first date, we liked each
12 other and we continued to date. That's pretty
13 much it.

14 Q. Did you move in with Jamie?

15 A. I did.

16 Q. How old were you when you moved in with
17 Jamie?

18 A. I was seventeen.

19 Q. And how old are you now?

20 A. I am twenty-six.

21 Q. So if my math is right, that was in 2003?

22 A. Yes, sir.

23 Q. Give or take?

24 A. (Affirmative nod).

25 Q. Okay. Did you -- well, what was your

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1 relationship like? Did you love Jamie?

2 A. I did.

3 Q. And y'all have had some problems
4 throughout your relationship, is that right?

5 A. We did.

6 Q. All right. Did Jamie -- Jamie is
7 obviously the father of minor

8 A. Yes, sir.

9 Q. You eventually broke up with Jamie?

10 A. I did.

11 Q. Why did you break up with him?

12 A. At the time we were having a lot of
13 arguments, a lot of problems and I just felt
14 like it was the best thing to do at the time.

15 Q. In fact, did y'all even try couples
16 counseling?

17 A. We did.

18 Q. At what point, post or pre-breakup did you
19 have minor

20 A. (No verbal response).

21 Q. Did you have minor before -- was minor
22 born before you broke up with Jamie?

23 A. Yes, sir.

24 Q. What kind of father was Jamie?

25 A. He was a great father.

1 Q. Okay. Latasha, I have spoken with you and
2 have told you that you have to tell the jury
3 if you have anything on your criminal record.

4 A. Yes, sir.

5 Q. What do you have on your criminal record?

6 A. I pled guilty to selling thirty dollars
7 worth of marijuana to my mother's boyfriend at
8 the time.

9 Q. Okay. Now, let's fast forward to March
10 16th, Sunday night. Okay?

11 A. (Affirmative nod).

12 Q. That is the night that has been testified
13 to that minor was returned to your house?

14 A. Yes, sir.

15 Q. Do you remember that night?

16 A. I do.

17 MR. DEJONG: Your Honor, could I ask
18 Mr. Harbin to speak up just a little bit.

19 MR. HARBIN: Yes, sir. I apologize,
20 Mr. Dejong.

21 DIRECT EXAMINATION CONTINUED

22 BY MR. HARBIN:

23 Q. You remember the night of March 16th.

24 A. Yes.

25 Q. And March 16th, what do you remember in

1 relation to Jamie bringing minor back home?

2 A. Well, at the time, -- I was on the phone
3 with Michelle Henry and we were talking about
4 -- she had some kind of -- there was some kind
5 of party or something coming up and she was
6 making brownies. Jamie and his mother come
7 pulling up, and I was still on the phone with
8 Michelle Henry. She said, 'Your baby is
9 home.'

10 Q. That is the same Michelle Henry that
11 testified earlier?

12 A. Yes, sir.

13 Q. And in fact you -- Michelle Henry was your
14 neighbor?

15 A. Yes, sir.

16 Q. Did you consider her a friend?

17 A. I did.

18 Q. You actually babysat for her kids?

19 A. I did.

20 Q. How many times?

21 A. Over several months.

22 Q. Now, when minor was returned home, who
23 dropped him off? Who came in and what
24 happened when they came in the house?

25 A. When they knocked on the door, I was still

1 on the phone with Michelle.

2 She said, 'Jamie is getting minor out of
3 the car, can we come in?'

4 I was like, 'sure', you know.

5 I was still on the phone. I got off the
6 phone with Michelle.

7 She -- Jamie sits minor in the middle of
8 the couch, Lynn is over on the side -- the
9 other side -- and if I am correct, Donna was
10 sitting in the reclining chair. Jamie stooped
11 down on the floor in front of minor and he
12 said, 'minor had a good weekend, he played
13 all weekend.' You know, 'He's tired, and I
14 think he is coming down with a call. You may
15 want to take him to the doctor. Here's his
16 Medicaid card.'

17 At that time I said 'okay.' He actually
18 had a doctor's appointment for that Wednesday.
19 But I felt like if his cold had progressed by
20 Monday morning, I would make an earlier
21 appointment.

22 Q. What did you notice -- what did you see
23 that -- he told you that minor had a cold,
24 but what did you see with your own eyes?

25 A. He sounded a little congested. He had a

1 runny nose, he acted sleepy and fussy.

2 Q. Now, what did you do -- did you do
3 anything with minor before Jamie left, or is
4 that about all that happened when they were
5 there?

6 A. Me and Jamie went in minor's room. I did
7 change the bed sheets because I did that
8 regular and, uh -- we then went back into the
9 living room. Jamie picked up minor he was
10 crying. We both went in there. Jamie set him
11 in the crib and was, you know, saying his
12 goodbyes, that he would see him later, that he
13 loved him. We went back into the living room.
14 At that time, Laura and Lynn were standing up
15 and they started to leave.

16 Q. And after they left, what happened?

17 A. Well, as they were pulling out of the
18 driveway, I walked to the door and Brandon was
19 pulling in the driveway. I had Ava in my
20 arms. I had fixed her a bottle while they
21 were there -- I left that out. I had fixed
22 her a bottle while they were there and had
23 started to feed Ava.

24 Q. Let's back up just a second. When you and
25 Jamie set minor down in the crib, did you or

1 Jamie shut the door on minor.

2 A. I did not.

3 Q. Is it your practice to shut the door?

4 A. No, sir.

5 Q. What is your practice to do, if anything?

6 A. I pull the door slight to, not all the way
7 to the doorframe. I leave it open maybe this
8 much (gesturing).

9 Q. Okay. There was testimony earlier that it
10 worried somebody that you didn't have a

11 monitor. Can you hear from minor's room --
12 from your room or from the living room or the
13 kitchen?

14 A. You can, (affirmative nod). It's a very
15 small trailer.

16 Q. Again, how many bedrooms in that trailer?

17 A. Two.

18 Q. All right. So minor is in the crib and
19 you're feeding Ava. What happens after that?

20 A. Well, Brandon comes walking in the door,
21 him and his cousin, Jeremy. Jeremy sits in
22 the reclining chair. Brandon asks me what's
23 wrong with minor I told him that Jamie had
24 just left, you know, he'd said that he had a
25 cold, that he was fussy, that he had been

1 playing all day, had a pretty big weekend.

2 Q. If minor is already in the crib, why did
3 Brandon ask what was wrong with minor

4 A. Because he was crying.

5 Q. He was still crying?

6 A. He was.

7 Q. Did I understand correctly that it was
8 your assessment that he was crying because his
9 daddy was leaving, that he was upset?

10 A. Yes.

11 Q. Okay. Once Brandon asked you what
12 happened and you told him what Jamie had said,
13 what did you do or what did Brandon do?

14 A. After I told him that, Brandon patted him
15 on the back, said 'Baby, you're sleepy.' And
16 he said, 'minor do you want to stand up?'
17 That's when he started to set him on the floor
18 and minor just acted like he was going to
19 collapse and pitch a fit, which was no
20 uncommon for him to do.

21 Q. Okay.

22 A. That's when Brandon picked him back up and
23 continued to pat him on the back.

24 Q. So at this point had you seen anything,
25 any symptoms, any signs, anything that made

1 you worry about 'minor' about his health?

2 A. No, sir.

3 Q. At what point did you put 'minor' back down
4 to sleep?

5 A. It was between twenty and thirty minutes
6 later. I held him maybe ten, fifteen minutes.
7 Brandon held him for a minute. Then I went to
8 go into his room to lay him down and I asked
9 Brandon, 'Will you make him a sippy cup of
10 milk?' I was continuing to lay him down.
11 Brandon come back in with the sippy cup of
12 milk. 'minor' drank a little bit of it and set
13 it to the side like he was trying to hand it
14 back. He put it in our direction. So I got
15 the sippy cup and asked Brandon if he would
16 put it back in the refrigerator, or to put it
17 in the refrigerator.

18 Q. Was there anything that indicated to you,
19 as you laid him down to sleep, that there was
20 anything wrong?

21 A. No, there was not.

22 Q. Now, I believe that Brandon testified that
23 'minor' had been put down, give or take, around
24 nine o'clock. Is that your recollection?

25 A. As far as I can remember, (affirmative

1 nod).

2 Q. Okay. What did y'all do after you put
3 minor down to sleep?

4 A. Well, that's when I laid Ava down and we
5 went outside to smoke a cigarette.

6 Q. And what did you do after you went outside
7 to smoke a cigarette?

8 A. I came back in, checked on minor and Ava,
9 and we sat there and watched TV for a while.

10 Q. Did you go to bed after that?

11 A. I checked on them once again before I went
12 and laid down.

13 Q. All right. Now, once you go to bed, did
14 you have occasion to wake up at any time
15 during the night?

16 A. I did. Ava would wake me up several times
17 a night because she was two months ago.

18 Q. How often, how long would she normally
19 sleep?

20 A. Two or three hours.

21 Q. At that time, were you breast feeding or
22 did you use formula?

23 A. Formula.

24 Q. So when she wakes up, you would have to
25 make formula and ---

1 A. Sometimes. I'd premake it and put in the
2 refrigerator. Other times I would have to
3 make it.

4 Q. Approximately when do you think, if you
5 have any recollection, when did Ava wake up
6 and/or how many times did she wake up that
7 night?

8 A. I can't really remember exact times. I
9 just know that she woke me up at least three
10 or four times that night.

11 Q. In one of your statements you had
12 mentioned that you had -- that minor was on
13 the side and that you had turned him over?

14 A. Yes.

15 Q. What do you remember about that?

16 A. He was still kinda of a little congested.
17 I figured that maybe if he was on his side
18 that it would -- that it was a lot of pressure
19 on his lungs to lay the way he was lying on
20 his side, you know. I turned him over and his
21 breathing kinda eased out for him, he didn't
22 sound quite as congested.

23 Q. Was that the -- what time of night was
24 that? Was that early evening?

25 A. That was early evening.

1 Q. At the time, where were you working?

2 A. I was working at Wendy's.

3 Q. And were you a fulltime employee?

4 A. I was.

5 Q. What is the definition of a Wendy's

6 fulltime employee?

7 A. Thirty-five to forty hours a week.

8 Q. Now, did you have a set schedule at

9 Wendy's?

10 A. It was swing shift.

11 Q. What does swing shift mean?

12 A. I could come in early in the morning, mid-

13 afternoon or at night. It just depended.

14 Q. Does it change from day to day or week to

15 week?

16 A. Week to week.

17 Q. How did your schedule work with Brandon's

18 if he was working on the third shift?

19 A. My manager would work around it. After I

20 had Ava, he really would work around it.

21 Sometimes I couldn't work because Brandon had

22 to work that night and he would just change it

23 to a different day or give me hours on a

24 different day to make up the hours.

25 Q. Okay. All right. Let's fast forward to

1 -- well, actually, during the night when you
2 woke up to change and/or feed Ava, did you do
3 anything other than feed Ava?

4 A. I checked on 'minor

5 Q. Did you do that each time that you got up
6 with Ava?

7 A. I did.

8 Q. So to your recollection, that would be
9 either three or four times?

10 A. Yes, sir.

11 Q. Now, when you say that you checked on
12 'minor what does that actually mean?

13 A. I would step in his room and lean towards
14 his crib and make sure, you know, that he
15 seemed okay.

16 Q. You didn't touch him?

17 A. I'd just see him.

18 Q. All right. You have given a statement
19 that Ava woke you up at eight o'clock.

20 A. It was around eight o'clock, (affirmative
21 nod).

22 Q. Do you know for sure that it was eight
23 o'clock exactly?

24 A. No, I don't.

25 Q. It could have been 7:30, it could have

1 been 8:30?

2 A. I know that it was at least eight o'clock,
3 maybe between 8:00 and 8:30.

4 Q. Okay. What do you remember about getting
5 up at 8:00 or 8:30?

6 A. Well, I went in there and fed Ava, changed
7 her -- because newborns are often to go. At
8 that time, I decided to go in there and check
9 minor's diaper. The room was kinda dark. I
10 sat down. I was real, real quiet because of
11 the fact that I had been told that possibly he
12 had a call, I didn't want to wake him up
13 changing his diaper. I wanted him to get his
14 sleep because I thought he was sick. I very
15 carefully changed his diaper.

16 Q. Did you notice anything out of the
17 ordinary at that changing?

18 A. No, not at that change.

19 Q. Now, what did you do after you changed
20 minor

21 A. I went back to bed.

22 Q. And you had to work later in the day?

23 A. (Affirmative nod), I did.

24 Q. And I believe that in your statement that
25 was presented to the court that you set your

1 alarm?

2 A. I did.

3 Q. Did your alarm go off?

4 A. It did.

5 Q. Did you get up as soon as your alarm went
6 off?

7 A. I didn't.

8 Q. All right. What did you do when you got
9 off -- when your alarm went off, what did you
10 do?

11 A. The second time that the alarm went off, I
12 turned it out and I got up. I ---

13 Q. Can I stop you for a second?

14 A. Yes.

15 Q. You said the second time that your alarm
16 went off. What happened the first time?

17 A. I hit Snooze after -- well, at ten o'clock
18 when it went off, I hit Snooze.

19 Q. How long is your snooze button, do you
20 know?

21 A. I don't remember.

22 Q. So you hit Snooze, so it went off
23 technically twice?

24 A. Yes.

25 Q. So you only got up once?

1 A. Yes.

2 Q. What did you do when you got up? What is
3 the first thing that you do when you get up?

4 A. I went in there and got Ava's bottle out
5 of the refrigerator that I had previously
6 made, that way when I got ready for work
7 everything would be in a row. I heated it up,
8 checked it on my arm to make sure that it
9 wasn't too hot. That's when I got Ava up,
10 changed her diaper and fed her.

11 Then I went and got my work clothes. I
12 changed into my work clothes. I went to the
13 bathroom and put my makeup on, did my hair.
14 I went back into the kitchen, made me a
15 sandwich.

16 Q. Okay, let me back you up a little. I
17 didn't ask you specifically when I asked about
18 feeding Ava before. Can you describe what you
19 do when you change Ava's -- I mean, she is two
20 months old.

21 A. Right.

22 Q. What is your routine. You changed the
23 baby's diaper, you put on your work clothes,
24 did you hair and makeup and then what do you
25 do before you actually leave for work?

1 A. I went to the kitchen, I made myself a
2 sandwich. I sat on the couch and ate it.

3 Q. Do you remember what kind of sandwich that
4 it was?

5 A. Peanut butter and jelly.

6 Q. Okay.

7 A. That's when I went back in the bedroom to
8 get my pocketbook and tell Brandon bye, and he
9 asked me if I would get the kids changed
10 before I left so that he -- you know, because
11 he won't get up with them. I guess he thought
12 I'm the mother and that would be something
13 that would help out.

14 Q. When you're leaving for work, who is going
15 to watch the kids when you leave for work?

16 A. Brandon.

17 Q. So it is correct that Brandon is supposed
18 to be getting up by the time that you're
19 leaving?

20 A. Yes.

21 Q. Basically Brandon just didn't want to have
22 to change the diaper when he got up?

23 A. Yes.

24 Q. Once Brandon asked you to change the
25 diaper, what happened next?

1 A. That's when I went into minor's room. I
2 thought he was sleeping. I started to shake
3 him, I said, you know, 'Jaidon, honey, wake
4 up.' He didn't have any response. So I shook
5 me and that's when I realized that something
6 was wrong.

7 Q. When you realized that something was
8 wrong, what did you do?

9 A. I screamed, 'Brandon, please come in here.
10 Something's wrong.'

11 Q. What do you remember happening next?

12 A. Brandon came running in the room, started
13 getting minor out of his crib and he screamed
14 for me to "Call 911, he's not breathing."

15 Q. What did minor look like, that you could
16 tell when you went in the room?

17 A. His lips was blue, his -- it's an image
18 that I'll never get out of my head.

19 Q. When Brandon asked you to call 911, did
20 you call 911?

21 A. I did.

22 Q. Did you get anyone to answer?

23 A. I did.

24 Q. Was it you that stayed on the phone with
25 911?

1 A. I did for awhile.

2 Q. Did you see what Brandon was doing?

3 A. He started CPR on him. When he breathed
4 for him, vomit came out. He put him on the
5 floor and every time he's breath into him the
6 vomit would come out, so he would move him
7 over. He was pushing me out of the room the
8 whole time, you know. I was screaming,
9 'What's going on? He would continue to push
10 me out of the room, wouldn't tell me what was
11 happening; said, 'You don't need to be in the
12 room.'

13 Q. How long did that go on before someone got
14 there?

15 A. At least ten or fifteen minutes.

16 Q. Now, I believe that I heard on the 911
17 tape that you were on the phone when -- well,
18 let me ask you. Were you on the phone when
19 the ambulance arrived?

20 A. I was not.

21 Q. Did you see the ambulance arrive at your
22 house?

23 A. I had to go outside to flag them down.

24 Q. What did you do to flag them down?

25 A. I was waving my arms like 'over here, over

1 here.'

2 Q. And what -- what happened when you flagged
3 them down at your house?

4 A. They came in, put him on a stretcher and
5 took him in the ambulance.

6 Q. Now, there's been testimony that you
7 didn't get into the ambulance with him, so is
8 there any reason why you didn't get into the
9 ambulance?

10 A. Well, Ava was there. We had to make sure
11 we had somebody to take care of her. We told
12 called separate people and Brandon's sister
13 showed up. That's when we started to pack
14 Ava's stuff and -- we left, and he took me to
15 the Easley Hospital, dropped me off, and
16 that's when he went to go pick up Jamie.

17 Q. Let's back up a little bit. Who made the
18 call to Ava and his mother?

19 A. You mean Kayla?

20 Q. His grandmother?

21 A. Brandon.

22 Q. Not Ava. I mean Kayla. I apologize.
23 Brandon?

24 A. (Affirmative nod).

25 Q. Okay. When Brandon and you went to the

1 hospital, did both of you get out and go into
2 the hospital?

3 A. No.

4 Q. What happened?

5 A. He dropped me off at the emergency part
6 and he said that he was going to get Jamie.

7 Q. And what did you do when you got dropped
8 out at the ---

9 A. I went in there, told them who I was and
10 who I was there for. They took me back.

11 Q. Give us a better timeline. When you
12 walked into the hospital, do you know what
13 you were doing? What were you looking at?

14 A. It was a room-like that had a window, and
15 I went up there and told her what I was there
16 for, that I needed to know where to go.

17 Q. What did they tell you?

18 A. A nurse came and got me and took me.

19 Q. Did he take you to minor s room?

20 A. He took me to a waiting room and asked a
21 couple of questions.

22 Q. What happened after that?

23 A. After that I went to minor s room. At
24 first I when I looked in the door there was
25 people all around him and I didn't want to get

1 in their way. I stepped back -- like if you
2 come in here, ---

3 Q. I apologize. When you said the nurse --
4 there was a nurse that testified earlier that
5 you were unable to give answers. Was that the
6 nurse that asked you the questions? Do you
7 remember?

8 A. I can't remember.

9 Q. Can you describe what you were -- of you
10 can kinda of step outside yourself, what were
11 you -- what was your state of mind when you
12 were at the hospital?

13 A. I was out of my mind.

14 Q. Do you remember the questions that you
15 were asked?

16 A. I do not.

17 Q. Do you remember how long you were talking
18 to the nurse?

19 A. I do not.

20 Q. You were taken to minor 's room?

21 A. (Affirmative nod).

22 Q. You said that you saw a lot of people in
23 the room and you stood at the door?

24 A. (Affirmative nod).

25 Q. What happened as you were standing at the

1 door?

2 A. A nurse said, 'Come in here, stand up
3 here.' She said, 'We've got everything pretty
4 much set.' That's when I got ---

5 Q. Tell me what you saw when you went into
6 the room?

7 A. He was hooked up to a bunch of machines,
8 they were still giving him medications. I was
9 standing there rubbing his head, holding his
10 hand, and I started praying.

11 Q. Did someone tell you that you had to go
12 back out to the waiting room?

13 A. Yes.

14 Q. Who did? And why? Do you remember?

15 A. Actually I think Rita Burgess came in and
16 she said she wanted to question us, and that
17 that is when we went out to the parking lot.

18 Right before that, we was told that he was
19 about to be airlifted to Greenville.

20 Q. When Detective Burgess asked to speak with
21 you, do you remember the conversation with
22 Detective Burgess?

23 A. I just remember her happening about how it
24 happened and I told her everything that I
25 knew, and then she wanted me to write the

1 statement.

2 Q. You wrote a statement at Easley Hospital?

3 A. I did.

4 Q. Now, you said we. At what point did
5 Brandon arrive?

6 A. Actually he arrived right before I was
7 asked by Rita Burgess to be questioned.

8 Q. So when she asked, she asked both of you
9 at the same time?

10 A. She did, (affirmative nod).

11 Q. Now, Brandon testified earlier that
12 Detective Burgess had asked if y'all could go
13 back to the house to sign a consent to search
14 form. Is that your recollection, or do you
15 remember?

16 A. That's what I recall, (affirmative nod).

17 Q. Did y'all do that?

18 A. We did.

19 Q. So you left Easley Hospital and -- did you
20 leave before, after or as they were airlifting
21 minor

22 A. I believe that it was right before.

23 Q. So you went back to the house?

24 A. I did.

25 Q. Did Detective Burgess tell you that there

1 would be somebody waiting on you there?

2 A. Yes.

3 Q. Was there?

4 A. There was.

5 Q. Do you remember how many officers there
6 were there?

7 A. I believe that it was two.

8 Q. Was one of the officers an officer that
9 testified earlier, I believe Lieutenant
10 Robinson?

11 A. Yes.

12 Q. Did you sign the consent to search?

13 A. I did.

14 Q. He didn't make you sign the consent to
15 search, did he?

16 A. No.

17 Q. You signed it ---

18 A. Yeah, I signed it on my own.

19 Q. How long were you at the house when you
20 signed -- when you went back to the house to
21 sign the form, how long did you stay there?

22 A. Not long at all.

23 Q. When you left the house, where did you go?

24 A. Straight to Greenville.

25 Q. To the hospital in Greenville?

1 A. Yes.

2 Q. Do you remember the car ride there with
3 Brandon?

4 A. Vaguely.

5 Q. What do you remember about getting to
6 Greenville, getting to the hospital?

7 A. I just remember him holding my hand on the
8 way, he said that 'we need to pray.'

9 When we got there, we did the same thing
10 that I did in Easley: went to the E.R., told
11 them who I was, what I was there for, and that
12 I needed to know where to go.

13 Q. And they told you where ---

14 A. (Affirmative nod), they took me back.

15 Q. Did you and Jamie -- I'm sorry. Did you
16 and Brandon go into the room?

17 A. At first we were both going in but they
18 only allowed two people. Jamie and Jamie's
19 mother was already in there. They asked them
20 to come out, that the mother and father needed
21 to be in the room, and she left the room.

22 Q. So Ms. Phillips volunteered to allow you
23 and Jamie to be in the room?

24 A. Yes.

25 Q. Did you see Jamie caring for minor -- or

1 at his bed?

2 A. I did, (affirmative nod).

3 Q. At some point were you asked to go to the
4 waiting room to talk to the patient counselor?

5 A. I was.

6 Q. Did you?

7 A. I did, (affirmative nod).

8 Q. Do you recall who you saw in the waiting
9 room when you were asked to talk to the
10 patient counselor?

11 A. I remember that it was patient care, Ava,
12 Lynn, Kayla, -- I can't remember who all was
13 there.

14 Q. You said that you worked at Wendy's but
15 that you didn't have a steady schedule. Did
16 you stay at the hospital with minor with he
17 was in the hospital?

18 A. I did.

19 Q. How often or how long did you stay with
20 minor

21 A. At that time, I was there a lot of time.
22 Actually my manager called me to come in to
23 work and I quit.

24 Q. Was Jamie also there with minor with you,
25 with his son?

1 A. He was.

2 Q. After this incident, after the ambulance
3 came to your house, did you ever spend another
4 night in that house?

5 A. I did not.

6 Q. Where did you go?

7 A. We went to his cousin's, Jeremy's house.

8 Q. Why didn't you spend another night in that
9 house?

10 A. I couldn't. I couldn't bring myself to go
11 back in there.

12 Q. Since this has happened, have you noticed
13 anything about yourself?

14 A. I have not been able to hold a job, I have
15 not married, I've lost a lot of weight because
16 it's hard to eat, it's hard to sleep and I
17 wake up many times during the night. It's so
18 hard to get out of bed every day. There's
19 some days that I just lay in the bed all day
20 until Brandon is coming home, then I'll get up
21 -- (emotional), I just want him to lay in the
22 bed with me. It's just so hard -- (crying).

23 Q. Were you asked to donate minor organs?

24 A. We was.

25 Q. You said you would?

1 A. I did.

2 Q. Latasha, did you give minor any
3 medication?

4 A. No, I did not. I wouldn't do something
5 like that.

6 Q. Did you do everything that you could to
7 help your son?

8 A. I did.

9 Q. Did you know that he was in distress and
10 needed medical attention before you found him
11 and screamed for help?

12 A. No, sir.

13 MR. HARBIN: Just a second, Your
14 Honor.

15 THE WITNESS: (Emotional).

16 MR. HARBIN: No further questions.
17 Please answer any questions that the solicitor
18 or these other gentlemen may have.

19 THE COURT: Cross examination?

20 CROSS EXAMINATION

21 BY SOLICITOR RICHARDSON:

22 Q. You need some water?

23 A. No, I'm fine.

24 Q. Are you all right?

25 A. No. I'm -- I'm okay.

1 Q. You stated that you worked at Wendy's, is
2 that right?

3 A. Yes, sir.

4 Q. Which Wendy's was that?

5 A. The one in Easley.

6 Q. Is that -- how far is that from your home?

7 A. About fifteen, twenty minutes.

8 Q. So -- I'm talking about the home that you
9 were living in at the time that ---

10 A. Yeah, it was fifteen or twenty minutes.

11 Q. All right. Okay. Now, you testified that
12 you got up at eight o'clock -- a.m., is that
13 correct?

14 A. Around eight o'clock, yes, sir.

15 Q. At that time, you changed Ava?

16 A. I did.

17 Q. And you fed Ava?

18 A. I did.

19 Q. And then you also changed minor

20 A. I did.

21 Q. You didn't feed minor

22 A. No.

23 Q. During that changing, he didn't wake up;
24 right?

25 A. He didn't, but I was -- I made it a point

1 not to wake him up.

2 Q. The fact of the matter is that he did not
3 wake up, right?

4 A. He did not.

5 Q. And you testified that then you got up at
6 -- set your alarm again for ten o'clock; is
7 that right?

8 A. Yes, sir.

9 Q. And you got up at ten or five after?

10 A. I am not exactly sure. I know that it was
11 ten o'clock and that I'd hit the snooze.

12 Q. So the snooze was five minutes?

13 A. (No verbal response).

14 Q. You hit the snooze one time?

15 A. Yes, sir.

16 Q. All right. At that time when you got up
17 at ten, you went in and you changed Ava again;
18 right?

19 A. Yes, sir.

20 Q. Fed her again?

21 A. I did, (affirmative nod).

22 Q. And before you went to work, -- you said
23 that you started getting ready for work?

24 A. Yes, sir.

25 Q. And that before you went to work, Brandon

1 asked you to change 'minor' is that right?

2 A. Yes, sir.

3 Q. So you get up at ten o'clock, change one
4 child but not the other?

5 A. I was going to change him.

6 Q. The testimony was that Brandon had to ask
7 you to change 'minor'

8 A. He did ask me but he didn't have to ask
9 me.

10 Q. I believe that your testimony was he
11 wanted you to do the motherly thing. Is that
12 right?

13 A. Yes.

14 Q. The fact of the matter is that before you
15 got ready for work, you in fact did change
16 Ava?

17 A. I did.

18 Q. Now, you do recall -- I believe that it
19 was Mr. Morris -- telling you that the child
20 needed to go to the doctor?

21 A. Yes, sir.

22 Q. And you testified that you checked on the
23 child during the night?

24 A. Yes, sir.

25 Q. By "the child", I mean 'minor'

1 A. Yes, sir.

2 Q. You looked at him, right?

3 A. Yes, sir.

4 Q. But you didn't go up and touch him or
5 anything of that sort?

6 A. No, sir.

7 SOLICITOR RICHARDSON: That's all the
8 questions that I have.

9 THE COURT: Mr. DeJong.

10 MR. DEJONG: Thank you, Your Honor.
11 May it please the Court.

12 CROSS EXAMINATION

13 BY MR. DEJONG:

14 Q. Ms. Honeycutt, at this point in time you
15 were working at Wendy's in Easley?

16 A. Yes, sir.

17 Q. And eleven o'clock was your time to go to
18 work?

19 A. It was either eleven or eleven thirty. I
20 believe that it was eleven. I know that I put
21 in my statement eleven o'clock but -- I put
22 eleven.

23 Q. Let's go right to Sunday when Mr. Morris
24 and Ms. Phillips brought minor home. Brandon
25 wasn't there, correct?

1 A. That's correct.

2 Q. And do you recall what time that they
3 would have brought minor back?

4 A. It wasn't dark but it was about to get
5 dark.

6 Q. Would 7:30 or 8:00 be accurate, or would
7 it have been earlier than that?

8 A. That time of year, I'm not sure.

9 Q. Okay. But you do remember that on March
10 16th, 2008, when he came home that it wasn't
11 dark yet?

12 A. Yes, sir.

13 Q. Now, I am not trying to be funny or
14 anything else but you are minor's mother?

15 A. Yes, sir.

16 Q. When minor come home, did you notice a
17 runny nose?

18 A. I did.

19 Q. Was he coughing at all?

20 A. He was not coughing.

21 Q. Had he had any respiratory illnesses
22 recently?

23 A. Not that I am aware of.

24 Q. He had an ear infection, I think?

25 A. He did.

1 Q. All right. And that was treated with
2 Amoxicillin?

3 A. Yes, sir.

4 Q. How long did -- well, let me ask you this.
5 When minor came into the house on Sunday
6 evening, March the 16th, was he awake?

7 A. (Affirmative nod), he was.

8 Q. Did he appear to be alert?

9 A. He seemed perfectly normal.

10 Q. Then how long did Laura, Jamie and Ms.
11 Phillips stay, as you recall?

12 A. Not very long.

13 Q. Were they there when Brandon came home?

14 A. They were pulling out of the driveway as
15 he pulled in.

16 Q. So as I recall your testimony, Laura and
17 Ms. Phillips came in first; is that right?

18 A. Yes, sir.

19 Q. Then Jamie brought in minor

20 A. Yes, sir.

21 Q. When he brought in minor was he put on
22 the floor or what was going on with minor at
23 that time?

24 A. He sat him on the couch inbetween me and
25 Laura.

1 Q. Was he sitting up?

2 A. He was.

3 Q. On his own steam?

4 A. He was.

5 Q. While they were there, did he get off of
6 the couch?

7 A. No, he sit up on the couch.

8 Q. And I wasn't quite clear, but you went
9 back to change the sheets on the crib?

10 A. Yes. I had washed them and I hadn't put
11 them back on the bed.

12 Q. Who went back in the room? Did you go by
13 yourself?

14 A. It was me and Jamie.

15 Q. Okay. When you came back out of that
16 bedroom, what was minor doing at that point
17 in time?

18 A. Playing with Laura.

19 Q. Was he awake?

20 A. He was.

21 Q. Let me ask you, was the television on?

22 A. I can't really remember. I believe that
23 it might have been.

24 Q. Now, did you take minor and put him in
25 his crib before Jamie and Laura and Ms.

1 Phillips leave, or after they live?

2 A. Before. Actually Jamie is the one that
3 sat him in the crib.

4 Q. After you and Jamie changed the sheets on
5 the crib, is that when Jamie sat down in front
6 of minor

7 A. It was before, not after.

8 Q. Before. All right. Other than indicating
9 that he thought that he was catching a cold,
10 was anything else shared with you?

11 A. No, sir.

12 Q. And did you see anything other -- to
13 indicate that he was catching a cold?

14 A. That's all that it looked like to me.

15 Q. Now, you put him down, I guess shall we
16 say, to go to sleep at what time?

17 A. I am not really sure.

18 Q. Well, when you put him down to go to sleep
19 was he still -- did you carry him to the crib
20 asleep or was he awake?

21 A. He was awake.

22 Q. Did he seem to be alert?

23 A. (Affirmative nod), he seemed fine. He
24 seemed a little sleepy.

25 Q. Let me back up a little bit. At some

1 point in time after Brandon came home, did he
2 start crying or was he crying?

3 A. He actually was crying when Brandon came
4 in the door.

5 Q. Was he crying when Jamie left?

6 A. He was.

7 Q. So is he in the crib when Brandon comes
8 home?

9 A. He was.

10 Q. Who goes back to the crib to get him?

11 A. Brandon.

12 Q. Are you in the living room when Brandon
13 brings minor out?

14 A. I was sitting on the couch feeding Ava her
15 bottle, because she wouldn't take it all at
16 one time.

17 Q. Other than minor crying, did you notice
18 anything out of the ordinary with him?

19 A. No, just a runny nose and seemed a little
20 congested.

21 Q. When Brandon put him down on the floor, as
22 I understood, you said that he was kinda
23 squatting down?

24 A. He was.

25 Q. He wasn't stumbling?

1 A. No.

2 Q. Throwing a temper tantrum?

3 A. In the process, yes?

4 Q. I believe that you said that wasn't
5 unusual for him, when he was throwing a temper
6 tantrum, that he would kind squat or sit down.

7 A. It was not unusual.

8 Q. Before you and Brandon go to bed, after
9 having put minor down, how many times did you
10 check on him?

11 A. Before I went to bed?

12 Q. (Affirmative nod).

13 A. Twice.

14 Q. Twice?

15 A. (Affirmative nod).

16 Q. At that point in time, those two times,
17 did you notice anything out of the ordinary
18 about minor

19 A. I did not.

20 Q. Through the night, you got up, I believe
21 -- well, I don't know ---

22 A. Three or four times, (affirmative nod).

23 Q. Three or four times?

24 A. (Affirmative nod).

25 Q. That was mostly to check on Ava, I gather?

1 A. She would wake me up every two or three
2 hours.

3 Q. Now, every time that Ava woke you up,
4 would you go check on minor

5 A. I did.

6 Q. When you checked on minor did you go
7 into his room?

8 A. I would. The way that his crib was set --
9 the door was right here and all you had to do
10 was step in the doorway and there was his
11 crib.

12 Q. When you got -- well, this was in March;
13 right?

14 A. Yes.

15 Q. It was still chilly outside?

16 A. Yes.

17 Q. Did he need -- was he covered?

18 A. Yes, he had the covers on.

19 Q. Each time that you went in?

20 A. The first time I checked on him,
21 (affirmative nod).

22 Q. How about the second time?

23 A. No.

24 Q. The third time?

25 A. No.

1 Q. When you went in to change him at eight
2 o'clock, were the covers moved?

3 A. It looked like they were moved like closer
4 to him, like maybe he had tried to snuggle
5 into the covers.

6 Q. So minor was twenty-one months on March
7 16th, twenty-one or twenty-two months on March
8 16th of 2008?

9 A. I believe that the was actually twenty-two
10 months.

11 Q. So, we won't quibble. Okay?

12 A. Okay.

13 Q. When you went in to change 'minor -- if I
14 may ask, did you use cloth diapers or ---

15 A. No. Disposable diapers.

16 Q. Like Pampers or -- something like that?

17 A. Yeah.

18 Q. minor was twenty-two months, so you'd
19 still have to lift him to get a diaper under
20 him, right?

21 A. I believe so, but not very much. I kind
22 slid it up under him.

23 Q. Did you put him on his back to change the
24 diaper or was he already on his back?

25 A. He was already on his back.

1 Q. So when you put him to sleep, was he on
2 his stomach or on his back?

3 A. He was on his back and later turned on his
4 side.

5 Q. He turned on his side?

6 A. He did.

7 Q. Was that one of the three checks or was
8 that at eight o'clock in the morning?

9 A. That was maybe the third time that I
10 checked on him.

11 Q. So -- but nonetheless, when you changed
12 his diaper, was the diaper soiled?

13 A. It had just a little bit of pee in it. It
14 wasn't like overly wet.

15 Q. Did that cause you any alarm?

16 A. No, it didn't.

17 Q. When you had to lift him, albeit a little
18 bit, was his body rigid?

19 A. It was warm.

20 Q. But when you lifted it up, did his little
21 rear end come up and back stay straight and
22 all that?

23 A. It was just normal-like.

24 Q. Normal-like?

25 A. Yes.

1 Q. The point of that is, you didn't notice
2 any limpness or anything else different about
3 his body?

4 A. I did not.

5 Q. And at eight o'clock you found nothing
6 that caused you any alarm?

7 A. I did not.

8 Q. You changed his diaper -- it's been a
9 while since I've changed one. How long does
10 it take to change a diaper?

11 A. Maybe two minutes.

12 Q. Did his breathing seem to be normal during
13 that period of time?

14 A. It did.

15 Q. You didn't notice any shallowness or
16 anything like that?

17 A. Not at that time.

18 Q. We're talking about at eight o'clock,
19 ma'am?

20 A. No, I did not.

21 Q. So you then go back to bed at eight
22 o'clock?

23 A. I did.

24 Q. You would have been up three or four, five
25 times during the night, counting the eight

1 o'clock check?

2 A. Yes.

3 Q. And you had to be at work between 11:00
4 and 11:30?

5 A. Yes.

6 Q. So it is some time after the eight o'clock
7 diaper change, sometime shortly after eleven
8 o'clock that you go check on minor again?

9 A. Yes.

10 Q. Now, at that time -- let's back up a
11 little bit. Did you have any house guests
12 during the night of March 16th and Monday, the
13 17th?

14 A. We had someone come for maybe five
15 minutes.

16 Q. Did they spend the night?

17 A. They did not.

18 Q. So when the 911 call was made, it was only
19 you, Brandon and the two children in the
20 house?

21 A. Yes, sir.

22 Q. I believe that you've heard the 911 tape;
23 is that correct?

24 A. Yes.

25 Q. Now, basically on your end you hear two

1 voices, one of which is you?

2 A. Yes.

3 Q. Is the other one Brandon?

4 A. I believe so, because we were the only
5 ones there.

6 Q. I'm sorry but I've got to back up here a
7 little bit. When Jamie was sitting down in
8 front of minor on the night of the 16th, the
9 evening of the 16th I should say, did he
10 suggest to you that minor probably needed to
11 go to the doctor and get checked?

12 A. He did.

13 Q. Did he give you the Medicaid card?

14 A. He did.

15 Q. As far as taking minor to his doctor,
16 were you the primary person that took him to
17 the doctor?

18 A. Usually I was.

19 Q. So at eleven o'clock, that's the first
20 time that you ever noticed anything was wrong?

21 A. Yes.

22 Q. Then you called 911?

23 A. I did.

24 Q. Who was doing the CPR?

25 A. Brandon.

1 Q. Now, were y'all on a cell phone or a land
2 line phone or ---

3 A. A land line phone.

4 Q. So at some point in time Brandon is on the
5 phone, he is holding the phone and doing CPR?

6 A. He is, holding it kind of with his
7 shoulder.

8 Q. Now, when EMS gets there, they leave and
9 Brandon's sister ---

10 A. (Affirmative nod), Kayla.

11 Q. Kayla. --- comes over.

12 A. (Affirmative nod).

13 Q. Who is actually packing a bag, you or
14 Kayla?

15 A. It was kinda of a combination of me and
16 Brandon.

17 Q. Of you and what?

18 A. Me and Brandon. We were putting in
19 different stuff.

20 Q. Not really Kayla?

21 A. No, not really Kayla but -- (pause).

22 Q. Then you go to Easley Baptist?

23 A. Yes, sir.

24 Q. While at Easley Baptist, you talked to
25 Rita Burgess.

1 A. Why did I? What was the question?

2 Q. While at Easley Baptist, you talked to
3 Rita Burgess?

4 A. I did.

5 Q. Now, did you know at that point in time
6 that your child was going to be airlifted to
7 Greenville?

8 A. I did.

9 Q. At that point in time, you're at Easley
10 Baptist, so you've got a pretty good start on
11 getting to Greenville Memorial. Right?

12 A. Yes, sir.

13 Q. Ms. Burgess asked you to go back to
14 Pickens to sign a consent?

15 A. Yes, sir.

16 Q. You didn't tell her to go jump off a
17 cliff, that your child was being airlifted to
18 Greenville Memorial Hospital and you were
19 going to the hospital to see your child?

20 A. I wanted to do what would help, and I had
21 nothing to hide.

22 Q. I understand that. But your child was
23 also very, very ill at that point in time.
24 You come back to Pickens to sign a consent
25 to search rather than going to Greenville

1 Memorial?

2 A. I did.

3 Q. Your relationship with Brandon -- well,
4 let me ask you this, are you and Brandon still
5 in a relationship?

6 A. We are.

7 Q. Okay. Is he jealous?

8 A. He's not.

9 Q. Do you recall on one occasion sharing with
10 Jamie that Brandon had told you that he would
11 take care of one child, his, but not two?

12 A. I do not.

13 Q. When you went to the hospital, Greenville
14 Memorial, was Jamie there also?

15 A. Right.

16 Q. Did Jamie stay, to your knowledge, all the
17 time?

18 A. He did. He didn't have a vehicle at the
19 time, so even if he had wanted to go anywhere
20 he couldn't have gone unless he caught a ride.

21 Q. But you recall that he said that he didn't
22 want to go anyway?

23 A. He didn't.

24 MR. DEJONG: Thank you.

25 THE COURT: Mr. O'Connell.

1 CROSS EXAMINATION

2 BY MR. O'CONNELL:

3 Q. Let me ask you this, were you on the cell
4 phone at any time during the 911 call?

5 A. I was not. We did not have a cell phone
6 at that time.

7 Q. You heard Mr. Roper on the stand, did you
8 not?

9 A. I did.

10 Q. He said that he flushed medicine down the
11 toilet, is that what he did?

12 A. That is not what he said, sir. He said
13 that if he had any left over, that that is
14 what he would do.

15 Q. So he used all the medication?

16 A. He did.

17 Q. All twenty of them?

18 A. He did. He used that, to the best of my
19 knowledge.

20 Q. And he used twenty-three of the Lortab?

21 A. To the best of my knowledge.

22 Q. So he took about sixty pills in a ---

23 A. Sir, he was hurt very bad in that
24 incident. He was instructed to take both
25 medication.

1 Q. But he testified that he did ---

2 A. I can't hear you.

3 Q. He testified that he went to a methadone
4 clinic?

5 A. That was a year and a half after the
6 incident.

7 Q. And methadone is a substitute for ---

8 A. Medicine. After that happened to minor
9 he developed a problem and he went there for
10 help. Actually that is personal medical
11 information that is not supposed to be
12 released.

13 Q. So he was taking methadone for taking
14 medicine?

15 A. Sir, when he was on the methadone he had
16 to go every single day to get treatment.

17 Q. Sir, did my client -- excuse me. When my
18 client was at your house, did Jamie go into
19 the child's bedroom?

20 A. Me and Jamie did.

21 Q. Did my client go in the bedroom?

22 A. No, sir, she did not.

23 Q. How big was the room?

24 A. I don't know, sir, by measurement. It was
25 a small room.

1 Q. So you could stand in the door and see in
2 the crib?

3 A. You could. It was probably three feet
4 from the door this way.

5 Q. When you would go to check on the child,
6 you would just look in, or walk in the room,
7 walk out?

8 A. Pretty much.

9 Q. You didn't check his diaper, to see if he
10 had a wet diaper?

11 A. Sometimes I would.

12 Q. When did you change minor's diaper and
13 put on his bed clothes?

14 A. I did that after Brandon had held him, and
15 handed him to me.

16 Q. So you put him back in the crib and he had
17 ---

18 A. I changed his diaper -- well, actually the
19 diaper was dry when I put him in the crib.

20 Q. And all he had on was a diaper, right?

21 A. When I put him in the crib.

22 Q. During the night, all you did was poke
23 your head around and he was sleeping?

24 A. Yeah.

25 Q. How was he sleeping?

1 A. I could hear him, sounded like he had a
2 cold.

3 Q. He was breathing okay?

4 A. Yes, sir.

5 Q. Then at eight o'clock in the morning you
6 changed his diaper again?

7 A. Yes.

8 Q. How was his breathing at that time?

9 A. It was normal.

10 Q. So you then get up about ten o'clock?

11 A. Around ten o'clock.

12 Q. When you were putting makeup on or getting
13 ready, did you change Ava first or minor
14 first?

15 A. I changed Ava first.

16 Q. You made her bottle?

17 A. Yes, then I did my hair, put my work
18 clothes on. Then I went to the kitchen, made
19 me a sandwich and sat on the couch and ate it.
20 Then I went to go check on minor -- actually
21 then I went to the bedroom to get my
22 pocketbook and to tell Brandon bye, and -- I
23 was actually going in there to change his
24 diaper already before I was asked to, but
25 Brandon asked me to change his diaper. I also

1 was going to tell him that I loved him and
2 goodbye, before I went to work.

3 Q. So at no time were you worried about your
4 child?

5 A. No, sir.

6 Q. And one of the things you said was that
7 the child was on his side sometime during the
8 night?

9 A. Yes, sir, earlier in the morning.

10 Q. He could turn over on this side?

11 A. Yes, sir.

12 Q. And, again, the child was -- correct me,
13 but Brandon Roper started CPR while the child
14 was in the crib?

15 A. He started to do CPR in the crib but
16 realized it would not work that way, and
17 that's when he put him on the floor.

18 Q. The child's head was on a pillow?

19 A. Yes, it was.

20 Q. And that's how vomit got on the pillow?

21 A. Yes.

22 Q. What did you do with the pillow?

23 A. I left it there.

24 Q. You changed his diaper at about eight
25 o'clock.

1 A. I checked his diaper and it was dry.

2 Q. You waited another twelve hours to change
3 it?

4 A. Sir?

5 Q. (No verbal response).

6 A. I sometimes did have to change his diaper
7 in the middle of the night. A lot of time he
8 would wake up. But that night he was sick,
9 sounded like he had a cold and I didn't want
10 to wake him up in the middle of the night.

11 Q. At some time in the middle of the night
12 when you checked on him, did you pull the
13 blankets up over him?

14 A. I did. He'd kicked the blankets off after
15 maybe the first time I'd checked on him.

16 Q. So you'd pull them back on him?

17 A. He had kicked it to the side. It wasn't
18 far -- you know, it wasn't like he had kicked
19 it far away from him or anything. It was just
20 kicked off.

21 Q. You would do the things that a mother
22 would do to check on a child?

23 A. Yes, sir.

24 MR. O'CONNELL: That's all the
25 questions that I have.

1 THE COURT: Further direct examina-
2 tion?

3 MR. HARBIN: Yes, sir.

4 REDIRECT EXAMINATION

5 BY MR. HARBIN:

6 Q. You were asked specifically about waking
7 up after the alarm clock at ten o'clock and
8 changing Ava but not changing minor Was it
9 your intention to allow him to sleep until you
10 were ready to go to work?

11 A. It was.

12 Q. Okay. Did you change minor as often as
13 you do Ava?

14 A. No, because she was two months old and she
15 went every time that she had a bottle.

16 Q. And Mr. Dejong, and perhaps Mr. Harbin,
17 asked you about Brandon.

18 A. Yes.

19 Q. And they asked Brandon directly had he
20 ever gone to a methadone clinic. I believe
21 that you might have started to explain that.

22 A. (Affirmative nod).

23 Q. Brandon developed a substance abuse
24 problem after minor

25 A. He did.

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1 Q. Then he went to a methadone clinic to get
2 clean?

3 A. He did.

4 Q. Did he?

5 A. He did.

6 MR. HARBIN: No further questions.

7 SOLICITOR RICHARDSON: Nothing
8 further.

9 THE COURT: Thank you, Ms.
10 Honeycutt.

11 (WITNESS STEPS DOWN)

12 THE COURT: All right, Ladies and
13 Gentlemen, I am going to ask you to go to the
14 jury room briefly. Don't talk about the case.
15 I will give you further instructions in just a
16 few minutes. Thank you.

17 (JURY OUT @ 5:37 P.M.)

18 MR. HARBIN: For the record, we
19 rest.

20 THE COURT: State have any reply
21 witnesses?

22 SOLICITOR RICHARDSON: No, sir.

23 MR. O'CONNELL: Your Honor, my
24 client and I discussed the right to rebut the
25 statement made by Mr. Roper. I would like to

1 call her as a rebuttal witness as to some
2 statements by Mr. Roper.

3 THE COURT: Statements made by Mr.
4 Roper?

5 MR. O'CONNELL: Yes, about what was
6 said when they got to their house, then at the
7 hospital and then at the over night.

8 THE COURT: I can't hear you, Mr.
9 O'Connell.

10 MR. O'CONNELL: Sorry.

11 THE COURT: She has already
12 repeatedly But I'm not inclined to do that
13 right now. What I am inclined to do, though,
14 is to give the jury a limiting instructions,
15 which I will let you all look at.

16 (OFF RECORD CONFERENCE)

17 THE COURT: I have decided that I am not
18 going to declare a mistrial, for reasons which
19 I will state in just a few minutes when we get
20 back on the -- as soon as it prints out, I
21 will let you look at it.

22 SOLICITOR RICHARDSON: The State's
23 position is that they cannot call a reply
24 witness for another defendant. I think that's
25 improper.