

VOLUME THREE 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: Well, I'll be glad to
2 consider any authority that you want to submit
3 on that. I think we're going to have to -- I
4 believe that Rule 611 talks about the order of
5 witnesses. So --- (pause).

6 While we are printing off that
7 curative instruction, -- well, I am just going
8 to wait until we get it.

9 MR. HARBIN: Judge, I wanted to ask
10 what the court was going to charge, if you'd
11 allow us overnight to submit ---

12 THE COURT: Yeah, sure.

13 MR. HARBIN: Thank you.

14 THE COURT: This is the proposed
15 curative instruction, I will let you all look
16 at it -- (tendering).

17 You've reviewed it. I will be glad
18 to hear any commentary on it. Is there any
19 commentary?

20 SOLICITOR RICHARDSON: Not from the
21 State.

22 MR. DEJONG: Your Honor, on behalf
23 of Mr. Morris, we appreciate your comments.
24 Obvious we take issue with it and we renew our
25 Motion for a mistrial. Thank you.

1 MR. HARBIN: Your Honor, I would
2 join in that Motion.

3 THE COURT: All right. Let me say
4 that based on *State v. Price*, 259 S.C. 30,
5 that this trial of course is -- it's the
6 discretionary power of the Court and that it
7 is to be used with the greatest caution for
8 things that are plain and obvious. A mistrial
9 is a drastic remedy. Sometimes it is the only
10 remedy to do justice. It's a tool that should
11 be used only as a last resort after every
12 other avenue has been exhausted. It should be
13 ordered is errors that occurred cannot be
14 cured by other means.

15 Based on *State v. Howard*, I've
16 considered the objectionable testimony, it's
17 character, circumstances under which it was
18 offered, the nature of the case and the other
19 testimony in the case.

20 At the outset of this trial we had a
21 substantial period of time devoted to deter-
22 mining the proper boundaries of admissible
23 evidence in this case based on objections by
24 counsel and the Court's ruling, that boundary
25 was established to be a timeline that

1 coincided with the dates in the indictment.
2 The date of March 14th, which was the Friday
3 that the child, minor was returned to the
4 father's home from the mother's was
5 established to be the boundary of admissible
6 evidence. Everything after that could be
7 testified to. Things before that were
8 prohibited. Specifically prohibited were
9 references to any DSS actions, any state
10 agency actions and any status of the child in
11 regard to is custody.

12 Now, if the Court puts artificial
13 limits on what is naturally historic events in
14 a trial, that's something that often has to be
15 done to adhere to the rules of evidence and it
16 should be clear to all sides to ensure that
17 the jury cannot entertain and become
18 influenced by prejudicial matters; that as
19 they fairly and impartially determine the
20 facts in the case, cannot be led astray by
21 irrelevant or prejudicial matters.

22 When viewed objectively, with the
23 distances and perspective provided by
24 reflection and time and not warped by the heat
25 of the moment, it is clear to me that the

1 boundary in this case has not been materially
2 breached. Reviewing the witnesses who
3 testified in the trial as a whole to this
4 point, I make the finding that based on my
5 review of the record, my sense of the rhythm
6 of this trial, the content of the testimony
7 and firsthand observations of the entire
8 proceedings, I've noted how the objectionable
9 evidence came about, it's character and
10 relationship to the other evidence in the
11 case. I've reviewed my notes and my memory of
12 the witnesses and all the evidence and the
13 majority of the evidence has been related to
14 the child's medical treatment, which of course
15 is within the boundaries established, or
16 interviews by law enforcement with the
17 defendants or lab reporting analysis done by
18 other medical professionals or chemists.

19 In this case, there was -- the record
20 will have to speak for itself, but there was
21 testimony from Patience Johnson, from DSS who
22 was at the hospital, regarding the presence of
23 foster parents in the hospital room, along
24 with the guardian ad litem. This testimony,
25 to my recollection, was not objected to in

1 spite of the earlier ruling *in limine*.

2 Detective Burgess, who testified,
3 testified on either cross or redirect, the
4 record will specify, but she testified, for
5 instance, about how she didn't have any
6 knowledge about Ms. Morris and Ms. Honeycutt's
7 separation or custody or anything -- or their
8 relationship status from a Court Order
9 standpoint. No one objected to that evidence.

10 There was testimony from Michelle
11 Henry, who was a neighbor, who testified about
12 minor's demeanor before March 14th. Of
13 course, no one objected to that evidence
14 either. That certainly would have been
15 something that would have been sustained had
16 it been objected to.

17 Nevertheless, there was testimony
18 from Mr. Morris who mentioned that he had not
19 seen his son for ten months. However, there
20 was also testimony that he had a felony
21 conviction. I don't believe that that was
22 ever specified when that conviction was
23 entered. Of course, had he been incarcerated,
24 that could have explained his absence for ten
25 months other than that child being in the

1 custody of a state agency.

2 Most problematic -- and of course
3 none of this testimony was objected to, by Mr.
4 Morris. The most problematic testimony, of
5 course, came from Ms. Phillips, who testified
6 about the ten-month absence, who testified
7 that the child had been moved from place to
8 place, who testified about a brain injury,
9 which incidentally the brain injury, I
10 believe, had been discussed with and inquired
11 about from at least one of the medical
12 professionals. I believe that it was Dr.
13 Ward. That didn't have anything to do with
14 the cause of death in this case.

15 Ms. Phillips also testified about
16 fosters or foster parents. At that point her
17 testimony ceased. She never mentioned DSS
18 explicitly and of course the concern is that
19 the jury would infer that DSS was involved,
20 that foster parents were involved, or that the
21 defendants, Mr. Morris or Ms. Honeycutt, were
22 otherwise unfit parents.

23 We've already discussed the guardian
24 ad litem witness, Ms. Hartwell and Ms.
25 Rogers. I made the observation then that

1 there was no indication that these witnesses
2 had any involvement with the case prior to the
3 date of March 17th when minor was taken to the
4 hospital and there was no way that the jury
5 could infer that they did, based on the
6 evidence.

7 So when viewed against the entire
8 testimony that we've had now for four days, I
9 find that the objectionable evidence,
10 regrettable as it was, can be cured by the
11 curative instruction that I have already
12 shared with counsel. Instruction to disregard
13 evidence can typically cure trial errors, can
14 cure improper references and safeguard the
15 rights of the parties.

16 Of course, I am familiar with the
17 sentiments expressed by Justice Jackson of the
18 Supreme Court, probably sixty years ago, that
19 any lawyer who has tried a case knows that any
20 instruction to disregard testimony is an
21 unmitigated fiction. Our case law does not
22 share that cynicism however, and no one is
23 entitled to a perfect trial, only a fair one.
24 I think the jury is capable of following
25 instruction and are presumed to have done so.

1 I don't think that it is probable that any of
2 the defendants will remain prejudiced by any
3 objectionable evidence after this instruction
4 is given.

5 Now, before I bring the jury out and
6 give them this instruction, is there any
7 further objections or statements that any
8 party wishes to make?

9 MR. DEJONG: I would just renew what
10 I said a moment ago, Your Honor, that we take
11 exception to the curative instruction and we
12 would renew our Motion?

13 THE COURT: I understand.

14 MR. HARBIN: We would join in and
15 renew our objection.

16 THE COURT: Okay. Bring the jury
17 out, Mr. Teal. Thank you.

18 (JURY IN @ 5:56 P.M.)

19 THE COURT: Ladies and Gentlemen,
20 if you will bear with me just a moment, I want
21 to instruct you on a matter of law.

22 At the beginning of the trial, I told
23 you that you must find the facts of this case
24 solely on the evidence. I told you that
25 evidence consists of sworn testimony and

1 exhibits. Sometimes it happens in trials that
2 there is testimony that is given that is
3 improper. As I told you, as the judge of the
4 law, one of my duties is to rule on whether
5 evidence is proper under the law and the rules
6 of evidence. You may have heard testimony
7 about conduct or activities that occurred or
8 matters that existed, before the date of
9 Friday, March 14th, 2008. I have concluded
10 that this is not proper evidence. I am
11 instructing you that any testimony that you
12 may have heard about anything occurring before
13 March 14th, 2008, is not part of the evidence
14 in this case; therefore, it would not be in
15 keeping with your oath for you to consider it.
16 You are to disregard it, remove it from your
17 mind and you may not consider it, rely on it,
18 discuss it or even mention it in your
19 deliberations. I repeat to you that it is not
20 something that you can consider in any way to
21 determine the facts of this case.

22 The indictments allege conduct that
23 occurred on or about or between the dates of
24 March 14th, 2008, and March 17th, 2008. To
25 repeat, any testimony that you may have heard

1 about anything occurring before Friday, March
2 14th, 2008, is not part of the evidence in this
3 case and you may not consider it for any
4 purpose.

5 Now, I know that it's late in the day
6 and I know that everyone is ready to get on
7 with other responsibilities that they have in
8 their lives, so we are going to adjourn at
9 this time and come back in the morning. We
10 are going to start at 9:15.

11 I hope that you have a nice evening.
12 Don't discuss the case or do any outside
13 investigation. Continue to keep an open mind.
14 We should have the case to you for your
15 deliberations, hopefully near lunchtime
16 tomorrow. Thank you very much.

17 (JURY OUT @ 6:03 P.M.)

18 THE COURT: Anything further for
19 the court before we recess for the evening?

20 I've got the homicide by child abuse
21 charge. I'll let you have that. I added some
22 language about extreme indifference.

23 MR. O'CONNELL: What about the
24 negligence.

25 THE COURT: You read that and let

1 me know. I did work on that, Mr. O'Connell.

2 MR. O'CONNELL: Thank you very
3 much.

4 THE COURT: I'll will tell you, Mr.
5 O'Connell, and all other counsel, that I did
6 not include the reckless disregard or
7 conscious failure to exercise due care or
8 ordinary care. I don't know if you want me to
9 add that or not, but if you -- I'll be glad to
10 hear your argument on it.

11 MR. O'CONNELL: I have no objection
12 to what you've got. Mr. Richardson was
13 getting ready to leave the courtroom, that's
14 why I asked that question.

15 MR. HARBIN: Circumstantial
16 evidence?

17 THE COURT: Circumstantial
18 evidence, (affirmative nod). Okay. Is there
19 anything else about the charges that you want
20 to discuss?

21 SOLICITOR RICHARDSON: No, sir.

22 MR. O'CONNELL: Not at this time.

23 THE COURT: You can have the whole
24 thing, (tendering). You can make copies and
25 give it back to me tomorrow.

1 Let me say one other thing. I have
2 a general intent charge. I don't plan on
3 charging it in light of what I put in the
4 homicide by child abuse charge, but I can. I
5 will let you look at that, too. I am sure
6 there is stuff in there about negligence that
7 I'm not going to charge. I'll see you in the
8 morning at 9:00, 9:15.

9 (COURT IN RECESS)

10 (TRANSCRIPT CONTINUED NEXT PAGE)

11

12 JULY 27, 2012

9:00 A.M.

13

14 (DEFENDANTS PRESENT)

15 THE COURT: Good morning. All
16 right. Anything before we bring the jury in?

17 SOLICITOR RICHARDSON: Nothing from
18 the State.

19 MR. O'CONNELL: We wanted to
20 discuss the charges.

21 THE COURT: Yes, sir?

22 MR. O'CONNELL: Your Honor, the
23 testimony of Mr. Roper ---

24 THE COURT: Sir, could you please
25 tell me exactly what he wishes to testify

1 about at this stage.

2 MR. O'CONNELL: He wishes to
3 testify about that when he got to the house
4 that he says something happened and she says
5 something totally different, then at the
6 hospital she said something happened and he
7 reported something totally different.

8 THE COURT: Well, specifically what
9 -- I understand that -- there's been a lot of
10 testimony, I'm trying to recall specifically
11 what Mr. Roper testified to that ---

12 MR. O'CONNELL: If I understood Mr.
13 Roper, Your Honor, he said that he went to the
14 house and she came out saying, 'Oh, my god,
15 the child is dead' or something. She said
16 that she didn't say that.

17 Then at the hospital he said
18 something about the nurse came out with --
19 whatever and it was said 'he got in my Lortab
20 whatever', and she says that she didn't say
21 that.

22 I'm just trying to remember what he
23 said.

24 THE COURT: Well, here is what we
25 will do. If she wants to testify to those two

1 questions, and those two questions only, and
2 she answers -- you can ask her -- I'll let you
3 ask her questions in a leading manner. She
4 can answer, presumably, yes or no to the
5 questions.

6 DONNA PHILLIPS: (Inaudible).

7 THE COURT: Any word past "yes" or
8 "no" and you're in contempt again and you will
9 taken from the stand.

10 DONNA PHILLIPS: I don't understand.
11 When they ask me something -- okay, I can
12 explain myself about the questions that he is
13 going to ask me.

14 THE COURT: No, we are not getting
15 into explanations. You can answer the
16 question did you say that and you can say yes
17 or no, that's it.

18 DONNA PHILLIPS: So I can't explain
19 what was said?

20 THE COURT: No, ma'am, because your
21 explanations are ---

22 DONNA PHILLIPS: I can't say why ---

23 THE COURT: That's not -- this
24 isn't going to work, I can tell right now.
25 You know, you have a right to testify, a

1 fundamental right. But that certain can be
2 waived like any right can be waived and your
3 conduct in this trial has, regrettably, forced
4 me to determine that you cannot be allowed to
5 be on the witness stand any further because
6 what you're attempting to do is to manipulate
7 and sabotage the proceedings in an intentional
8 manner. You've already defied my Order
9 twice, you're bringing the whole court system
10 disrespect. Part of my job is to make sure
11 that doesn't happen and it's not going to
12 happen any more from you. All right? Thank
13 you.

14 Yes, sir, Mr. DeJong?

15 MR. DEJONG: Your Honor, -- do you
16 have any comments on that? I don't want to
17 horn in if ---

18 MR. O'CONNELL: No.

19 MR. DEJONG: Your Honor, before we
20 get to the charge that you have so kindly
21 given to us last night, on behalf of Mr.
22 Morris, I would ask for a mere presence charge
23 along the lines that mere association with a
24 person who commits a crime does not make a
25 defendant an accomplice of the person

1 committing the crime.

2 THE COURT: Yes, sir, I will charge
3 that.

4 MR. DEJONG: Thank you, Your Honor.
5 With regard to your charge, again that you so
6 kindly gave us last night, uh, I did not speak
7 with the other gentleman but I am not going to
8 request the charge of criminal intent, and I
9 think that you had already indicated that you
10 were inclined not to charge that.

11 THE COURT: I understand your
12 position. My position is that I'm -- I'm
13 certainly willing to be talked out of it, but
14 my position is that with the intent that
15 homicide by child abuse requires, under State
16 v. Gerald, that if I charge general intent --
17 I don't mind telling the jury that criminal
18 intent is something that the State has to
19 prove beyond a reasonable doubt. In the
20 context of these cases, that intent is extreme
21 indifference, which is defined as -- I don't
22 mind doing that, but I think that if I go
23 beyond that and start talking about what's in
24 that general intent charge that it confuses
25 the issues and dilutes the intent. I think

1 that is what they were hinting at in State v.
2 McKnight.

3 MR. DEJONG: I am not asking that
4 you charge that. I'm sorry if I wasn't clear.

5 THE COURT: You were clear. I was
6 just, uh, babbling.

7 MR. DEJONG: I think that the intent
8 is covered in the charge on homicide by child
9 abuse sufficiently, so that we don't need to
10 get into criminal intent.

11 THE COURT: Right.

12 MR. DEJONG: It appears that you
13 have struck through probably about two-third
14 of this page, and I assume that is not going
15 to be charged -- where you talk about the two
16 kinds of evidence.

17 THE COURT: I think you're correct.
18 I know you're correct.

19 MR. DEJONG: My problem is -- I am
20 not just picking on your charge, my problem is
21 that on circumstantial evidence that it was
22 never quite clear to me that the charges --
23 the charges are clear -- but in my opinion,
24 circumstantial evidence, unlike direct
25 evidence, it all has to be beyond a reasonable

1 doubt. There was a recent case on
2 circumstantial evidence -- and I don't have
3 it, I know that Justice Toal wrote it -- that
4 seemed to go back to the old charge on
5 circumstantial evidence; as I recall, the
6 majority did not. I like the part of Justice
7 Toal's, the way she indicated that it should
8 have been charged in that case. I am sorry
9 that I cannot find that case for you.

10 THE COURT: Well, ---

11 MR. DEJONG: I don't have a page
12 number.

13 THE COURT: On what, sir?

14 MR. DEJONG: I don't have a page but
15 at the top of the page it starts out that "I
16 charge you that the three defendants in this
17 case" ---

18 THE COURT: Okay.

19 MR. DEJONG: That goes back to the
20 very argument that I made at the outset of
21 this case. I mean no disrespect to Your Honor
22 but I think that's so vague that when the jury
23 starts looking at that, as to whether or not
24 Mr. Morris is lumped in with Ms. Phillips and
25 Ms. Honeycutt, that it is -- only Mr. Morris,

1 as I understand is charged with -- (inaudible
2 due to traffic noise outside courtroom). Ms.
3 Honeycutt and Ms. Phillips are charged with
4 homicide by child abuse.

5 THE COURT: Well, -- go ahead.

6 MR. DEJONG: My problem is that I
7 think that it goes back to the statue itself.
8 I think that the drafting of a charge -- and
9 it goes into the charge of homicide by child
10 abuse, but again that becomes so vague that I
11 don't know that the jury really understands
12 what they are doing. For the record, I would
13 just renew my Motion that I made at the outset
14 of the case.

15 I'm sorry, but I don't have a page
16 number at the top. Again, the charge goes
17 into what is homicide by child abuse and then
18 it comes in as kind of a tag line that, uh, on
19 aiding and abetting. If Your Honor is going
20 to give that charge, we get into the aiding
21 and abetting, fifth line up from the bottom of
22 the page, where it says "to aid means to
23 help", then I would ask the court to put in
24 the word "knowingly".

25 THE COURT: To "knowingly" help?

1 MR. DEJONG: That to aid means to
2 knowingly help or promote the accomplishment
3 or give assistance to.

4 THE COURT: I will do that.

5 MR. DEJONG: The same thing on the
6 last one, "to abet" means to knowingly
7 encourage or help.

8 THE COURT: Okay.

9 MR. DEJONG: That one might be a
10 little more nebulous than the first one.

11 THE COURT: Okay. As far as the
12 multiple defendants charge, I can just take
13 out the phrase about "each of whom is charged
14 with homicide by child abuse...aiding and
15 abetting homicide by child abuse". You're
16 correct. That is not, uh, how the indictments
17 are structured. I will tell the jury at the
18 beginning how they are structured. That is
19 that Mr. Morris is charged with aiding and
20 abetting and the other two defendants are
21 charged with homicide by child abuse.

22 MR. DEJONG: If you would leave that
23 out, that would be fine. I am not necessarily
24 waiving my entire objection, Your Honor. At
25 least that makes it a bit clear, that

1 situation.

2 THE COURT: Okay.

3 MR. HARBIN: Judge, I believe that
4 you may have discussed one of my concerns and
5 maybe you have already covered this. Is it
6 going to be clear that they know that they are
7 voting Guilty or Not Guilty based on -- not
8 subsection "A" and/or subsection "B", homicide
9 by child abuse, if that makes sense?

10 THE COURT: What is the State's
11 position?

12 SOLICITOR RICHARDSON: Your Honor, we
13 are happy with the indictments as indicted.
14 I don't think that we need to go into anything
15 that is not in the indictment.

16 MR. HARBIN: If there is no
17 objection from the State, my preference is to
18 make it as easy for the jury as possible do
19 they understand that they are voting Guilty or
20 Not Guilty on the subsection.

21 THE COURT: Okay. We can clean up
22 the verdict form.

23 MR. HARBIN: All I am saying is
24 that the "knowing" language, the language for
25 subsection "A" includes "cause", that they

1 caused that, caused this.

2 I think the problem that I have --
3 well not problem, but the concern that I have
4 with the jury charge is that the jury is being
5 asked to find that he knowingly caused the
6 death. Knowingly failed to act. It leaves
7 open the failure to act doesn't have to be a
8 knowing state of mind.

9 THE COURT: Where is that, sir?

10 MR. HARBIN: Your charge, under the
11 paragraph about homicide by child abuse, final
12 paragraph, that the abuse of neglect is the
13 failure to act. I believe that it would be
14 more appropriate to -- I know the way that the
15 statute is written, but for the charge to be
16 the knowing to act, a knowing failure to act.

17 MR. O'CONNELL: Your Honor, I would
18 agree with that statement. We talked about
19 that. This is a crime of intent, as far as I
20 can see, that the defendant intended to do
21 some act. Sometimes if you fail to do
22 something or other, you just forgot to do it.

23 SOLICITOR RICHARDSON: Judge, in that
24 respect, as far as the intent aspect goes, ---

25 THE COURT: Well, I'll be glad to

1 do that.

2 MR. HARBIN: Thank you. And I
3 think, in your one statement with Mr. DeJong,
4 you said that for criminal intent that it
5 would require a criminal intent and that you
6 were inclined to stop right there. If that is
7 that your intention, I think that's absolutely
8 correct.

9 THE COURT: Okay.

10 SOLICITOR RICHARDSON: Judge, I am
11 not sure that I understood what Mr. Harbin
12 just asked.

13 THE COURT: Well, I think what he
14 is asking me to do is what I've suggested that
15 I might do, which is on the second page of
16 this homicide by neglect charge, I would start
17 out by saying that the State has to prove
18 criminal intent beyond a reasonable doubt. In
19 a case of homicide by abuse or neglect, the
20 State must prove beyond a reasonable doubt
21 that the death occurred under circumstances
22 showing an extreme indifference to human life.
23 I think that is essentially what he is asking.

24 SOLICITOR RICHARDSON: Okay.

25 MR. DEJONG: I don't mean to be

1 difficult, Your Honor, but I think criminal
2 intent needs to be explained.

3 THE COURT: Well, I think I am
4 explaining it to them.

5 MR. DEJONG: Sorry, maybe I am just
6 not ---

7 THE COURT: I mean, I can say -- I
8 am just trying to make it concise. I can --
9 in looking at the charge and how the jury is
10 going to be listening to it, and receiving it,
11 I can give the first page of the charge which
12 talks about child abuse and neglect, defines
13 that and defines what "harm" means under the
14 statute, then I could talk about that the
15 State has to prove criminal intent beyond a
16 reasonable doubt.

17 And I can talk about extreme
18 indifference and how that is defined.

19 The criminal intent charges talks
20 about how there is no way to know what someone
21 had in mind, that intent can be proved by
22 actual or circumstantial evidence, that they
23 can take into consideration all the acts of
24 the party, the mental state of a conscious
25 wrongdoing to determine what a defendant

1 intended to do based on the circumstances. I
2 can put that in there is one of y'all request
3 it.

4 SOLICITOR RICHARDSON: I am not
5 requesting it, Your Honor.

6 MR. DEJONG: I am.

7 MR. O'CONNELL: Your Honor, your
8 two pages on the homicide by child abuse will
9 likely go as an explanation into the section
10 on criminal intent.

11 THE COURT: Okay. Well, I would
12 have to agree with that State that that is the
13 law, that it can be proven by circumstantial
14 evidence. I believe that they would be
15 entitled to that instruction, and I will give
16 it. But I am not going into, uh, anything
17 about recklessness or negligence.

18 MR. DEJONG: Okay.

19 THE COURT: I think that is what
20 got everybody in trouble in *McKnight* -- or
21 almost in trouble.

22 SOLICITOR RICHARDSON: Your Honor, I
23 completely do understand that.

24 THE COURT: Okay.

25 SOLICITOR RICHARDSON: Sir, I do

1 have one other issue. In your charge on
2 homicide by child abuse, second page of your
3 charge, first paragraph, that entire sentence
4 -- you have "characterized by a deliberate act
5 culminating in death."

6 THE COURT: Right.

7 SOLICITOR RICHARDSON: I would ask
8 that "inaction" or "omission" be included in
9 there also. It is also the State's position
10 that there was an omission or a failure to
11 act.

12 THE COURT: I think that's an
13 excellent point. I will be glad to do that.
14 I will say a "deliberate failure to act." I
15 don't think "omission" is the correct word in
16 the source.

17 Anything further?

18 MR. HARBIN: I want to renew my
19 Motion for a directed verdict.

20 THE COURT: Yes, sir.

21 MR. DEJONG: The same.

22 MR. O'CONNELL: And I believe there
23 were two pages -- substantial circumstantial
24 evidence.

25 THE COURT: Okay. Yes, sir.

1 MR. O'CONNELL: Am I incorrect?

2 THE COURT: Yes, sir. No. Your
3 not incorrect.

4 MR. O'CONNELL: So I will renew
5 mine also, Your Honor. The State has not
6 proven by substantial circumstantial evidence
7 that anybody did anything in this case. Thank
8 you.

9 MR. DEJONG: And I would renew my
10 Motion for directed verdict on the same
11 arguments previously made.

12 THE COURT: All right. Thank you,
13 gentlemen, for your Motions. Again, viewing
14 the evidence in the light most favorable to
15 the State and weighing all inference -- excuse
16 me -- considering all inferences in the
17 State's favor and without weighing the
18 credibility of the evidence, I find that there
19 is enough in the record to -- whether the jury
20 believes it or not is up to them -- whether it
21 intends to prove guilt by all three
22 defendants, or that guilt could be fairly and
23 likely deduced. I respectfully deny the
24 Motions for directed verdicts.

25 Okay. How long do you think you'll

1 need to do your closings?

2 MR. DEJONG: Your Honor, I always
3 hate it when a judge asks me that questions.
4 Sometimes I get up and don't think I have much
5 to say but, like that old train coming out of
6 the station, once you build up a little steam
7 going you realize that you have a lot more to
8 say. I'd say not more than thirty, probably
9 closer twenty-five, minutes. I'd ask that
10 Your Honor not hold me to that.

11 THE COURT: No, sir, I'm just
12 trying to get an idea.

13 MR. O'CONNELL: Twenty minutes.

14 MR. HARBIN: Twenty, twenty-five
15 minutes.

16 THE COURT: All right.

17 SOLICITOR RICHARDSON: Your Honor,
18 could we maybe take a break after their
19 closings?

20 THE COURT: Are you going to waive
21 your opening?

22 SOLICITOR RICHARDSON: Yes, sir.

23 THE COURT: All right. Maybe an
24 hour and a half, maybe less, maybe just an
25 hour for all -- all three defendants. Yeah,

1 I'll be glad to take a break. Let me sit here
2 and calculate something -- (pause). All
3 right. We will take about a five-minute break
4 and then we will have closing arguments.
5 Thank you.

6 (BRIEF RECESS)

7 (DEFENDANTS PRESENT)

8 THE COURT: If there's nothing
9 else, let's bring the jury in. Anything
10 before we bring the jury in?

11 MR. DEJONG: Nothing on behalf of
12 Mr. Morris, Your Honor.

13 MR. HARBIN: Nothing, Your Honor.

14 THE COURT: Bring the jury in.

15 (JURY IN @ 10:05 A.M.)

16 THE COURT: Good morning, Ladies
17 and Gentlemen. We took care of a few matters
18 this morning. Sorry for the delay, but
19 hopefully that will help streamline things.

20 At this time you've heard all the evidence
21 that you're going to hear in the case. Now is
22 the time for the closing arguments of the
23 lawyers. After you hear the closing argu-
24 ments, I will give you instruction on the law
25 and this case will be in your hands for a

1 decision and for a verdict.

2 At this time, we will have the
3 closing arguments from the defense. Mr.
4 DeJong.

5 MR. DEJONG: Thank you, Your Honor,
6 may it please the Court, Ladies and Gentlemen,
7 Mr. Foreman.

8 At some point on this 911 tape you
9 hear Latasha Honeycutt said, "Is he alive?!"
10 What is Brandon Roper's response? "No! Shut
11 up!"

12 I find that to be a vital and unusual
13 comments based on the circumstances --what I
14 would like to do initially is talk a little
15 bit about the testimony of the doctor and the
16 other doctor, the Ph.D. doctor.

17 Dr. Brewer, who testified for the
18 defense, shared with you that in his expert
19 opinion that the peak time for Oxycodone is
20 four hours. Dr. Loree (phonetic) with A.I.P.
21 Lab and Dr. Ward, the pathologist, opined that
22 this was somehow a overdose. I would suggest
23 to that you that there is no other testimony
24 to support those opinions by those by two
25 individuals. Hopefully I will come back to

1 that.

2 Dr. Brewer testified that there were
3 a lot of omissions in this case. Omissions --
4 that had those omissions not have been
5 omissions or had they done, for want of a
6 better term, what they should have done or
7 what they were supposed to do, your job today
8 may be easier.

9 Now, Dr. Boyd of course has opined in
10 this case that he found that -- he is a
11 certified toxicologist with A.I.P. Labs in
12 this case. When asked about the one report
13 where it showed hydromorphine negative, if you
14 will recall, -- you take it as you recall it,
15 but as I recall, it was like pulling hen's
16 teeth to get him to say that it was negative
17 for hydrocodone and that it was negative for
18 that other word that I never was able to get
19 the doctor to pronounce, but he said that we
20 could called is PPA (sic) but there was no --
21 that even though it was negative, there was no
22 testing that was done as to the metabolites in
23 this case; not in the urine, but in the blood.

24 And I believe that he shared with you
25 -- (coughing), excuse me -- I believe that in

1 the test for hydrocodone and the test for
2 hydromorphone was done at the same time. It's
3 interesting to note that the people who
4 actually did the testing are not here. I am
5 not making a issue with that but what I am
6 taking an issue with is that the first time --
7 number one, he did not want to admit that
8 those two items showed negative. When he
9 finally did admit if it was not negative then
10 that was a mistake.

11 That raises a point in my mind that I
12 would ask you to consider. If that mistake
13 was made, were there other mistakes that were
14 made.

15 Now, also please consider that Dr.
16 Ward, pathologist, based in large part,
17 although he was not the pathologist that did
18 the autopsy, he was reporting for Dr.
19 Christensen's autopsy report. As far as
20 hydrocodone, those items, they did not do any
21 independent testing in this case. "They"
22 meaning the medical examiner's office in
23 Greenville. They did no independent testing.

24 What they do is they take A.I.P.'s
25 word -- which I submit to you, and there is no

1 other way to say it but that it is sloppy work
2 and based the opinion on the medical
3 examiner's work. It was a very unfortunate
4 place to start.

5 Now, obviously there has been a lot
6 of talk about ingestion in this case, whether
7 the child in this case had hydrocodone in his
8 system. I don't think that he had is
9 questioned.

10 Where this hydrocodone came from, I
11 think, is the question.

12 Testimony has been presented from the
13 witness stand that -- I submit to you that
14 Donna Phillips is not the only person that we
15 have that had a prescription for Oxycodone.
16 That's why I asked her about the timeline.

17 I ask you Monday morning, or Monday
18 afternoon, I think, to consider the timeline
19 in this case. The timeline basically
20 considered -- the timeline is, as I recall the
21 testimony, as if I misstate the testimony,
22 Ladies and Gentlemen, I do not do so
23 intentionally. You take the testimony as you
24 heard it from the witness stand. The same
25 thing on the law. If I misquote the law, you

1 take the law not from me or from any of the
2 other lawyers in this room because His Honor
3 will charge you on the law that you have to
4 follow.

5 But basically the timeline that you
6 have to follow is from March 14th, 2008 around
7 1:00 or 1:30 when Jamie Morris and his mother
8 go to -- I think it's [REDACTED] Braden Court in
9 Pickens and pick up this child.

10 From that point on, minor is
11 with his grandmother, his father, I guess his
12 Aunt Laura when his Aunt Laura get here.

13 Not too much but there are some
14 things that we have to consider that weekend.
15 But taking into consideration, Ladies and
16 Gentlemen, I would suggest to you that even if
17 there was a dosing -- if there were a dosing,
18 within four hours of any dose, you would have
19 started seeing the effects of hydrocodone.
20 This child played on Saturday, Saturday
21 afternoon, slept Saturday night, woke up
22 Sunday morning watching cartoons with his
23 aunt, played with PlayDoh, I believe that he
24 went outside, played -- woke up at, I believe,
25 7:30 in the morning. This was not a child

1 that had been given hydrocodone sometime after
2 midnight on March the 15th or the early
3 morning of March 16th. He ate, he played, he
4 went over to -- I believe that it was Mr.
5 Morris' sister's house, played, played
6 outside, did various and sundry things. There
7 was no suggestion in any of that testimony
8 that minor was lethargic, that he wanted to
9 sleep or that if he took a nap that he was
10 hard to awaken.

11 It is a microcosm of time. They are
12 trying to fit their allegations into this
13 microcosm of time.

14 We are not, in one sense, Ladies and
15 Gentlemen, dealing with a microcosm of time.
16 We are in terms of -- I guess that we could
17 say, in terms of this time line, but we can
18 not divorce the child from the timeline. We
19 have a twenty-two month old child that would
20 have been -- twenty-one or twenty-two month
21 old children, I would submit to you, get
22 colds, they get runny noses, they cough, they
23 get ear infections, they get respiratory
24 infections. So I ask you not to take the
25 child away from the child because the child is

1 a child. This child had normal childhood
2 issues just like every other child in the
3 world may have time to time have. So you
4 can't necessarily say, 'Okay, now, we are
5 looking at this period of time.'

6 So they go to the sister's house, Mr.
7 Morris' sister's house in the afternoon of the
8 15th. He does become cranky. I think that he
9 plays that day, that he played harder, I
10 believe that he played outside like any
11 twenty-one month old child would do he got
12 tired.

13 From the sister's house, a brief stop
14 was made at Jamie Morris' residence where he
15 lived with his mother. As I recall the
16 testimony, it was a brief stop, that Mr.
17 Morris stayed in the car with minor as Ms.
18 Phillips and young Laura went in and got a
19 couple of things. I think a teddy bear, some
20 pajamas. Then they went on to minor's mom's
21 house, Latasha Honeycutt's house.

22 Then it is confirmed that he was
23 returned on the evening of March 16th, 2008.
24 I think that is basically clarified that it
25 was still daylight. I will submit to you that

1 on March 19th (sic), close to 7:30, that it
2 was dark, getting dark.

3 There was a little period of time
4 when they got to Latasha Honeycutt's house
5 that minor awoke, but I recall no testimony
6 that he was difficult. Jamie Morris gets him
7 out of the car seat and takes him into the
8 Honeycutt home.

9 At that point in time, Natasha
10 Honeycutt said that he was pitching a fit.
11 There seemed to be some question about what
12 pitching a fit meant. But, anyway, by 7:30 on
13 March the 16th, the child was returned home,
14 to the mother and the boyfriend. At that time
15 there was no indication that there was
16 anything wrong other than a runny nose and a
17 cough.

18 Now, again, I submit to you that it
19 is normal for children to have runny noses, to
20 have colds.

21 Mr. Morris said that he had a concern
22 but that his concern was on the child having a
23 runny nose. If you will remember, and I can't
24 remember who the pediatric was that testified
25 that -- I am not sure. I know that he'd

1 treated him for ear infections. But you take
2 it as you heard it. But, nonetheless, Mr.
3 Morris is concerned about the child. He gives
4 Ms. Honeycutt, by her testimony, the Medicaid
5 card so that she can take the child to a
6 doctor, and asked if she would take him to the
7 doctor at some point on March 17th, 2008.

8 Somewhere, I suggest to you, Ladies
9 and Gentlemen, between 7:30 and 8:00 on March
10 the 16th, 2008, Jamie Morris and Donna
11 Phillips left. They were not longer there.
12 minor was returned to his mother.

13 Now, from 7:30 at night to roughly
14 11:00 or 11:15 in the morning, obviously this
15 child, as I understand it, was under the
16 exclusive care of his mother and the mother's
17 boyfriend. They did have a guest over there
18 for a short period of time but that there was
19 nobody else in the house during that period of
20 time.

21 When Mr. Roper, the boyfriend, gets
22 home, I believe that minor was in the crib.
23 He was crying. I believe at that point in
24 time -- Mr. Roper testified that he'd held his
25 arms out, wanting to be picked up. Now,

1 Ladies and Gentlemen, we are getting into the
2 range around 8:30 or 9:00 o'clock period
3 sometime that night. The child was still not
4 exhibiting appropriate motor skills, his
5 ability to respond, recognized Mr. Roper, held
6 his hands out suggesting that there was no
7 problem with his motor skills.

8 Keep in mind, that hydrocodone
9 effects have a peak of four hours.

10 At that time, Mr. Roper gets him out
11 of the crib, consoles him, he stops crying for
12 a little bit. Mr. Roper decides to put him on
13 the floor and there was testimony of minor
14 stumbling. Mr. Roper said, 'No, he didn't
15 stumble. He started crying again and sank to
16 the floor but that was normal for him to do
17 when he was going to throw a temper tantrum.'
18 According to the mother, that's what he was
19 doing at that point in time.

20 Somewhere, and I am not sure when but
21 just to put it on my time line, I think that
22 it was around 9:00 or 9:30, on March 16th, Ms.
23 Honeycutt and/or Mr. Roper took the child back
24 to the crib and put him to bed.

25 Sometime in that timeline, Ms. Honey-

1 cutt or -- or Ms. HOneycutt asked Mr. Roper to
2 fix the child a sippy cup. Mr. Roper gets the
3 sippy cup, the child take a couple of sips
4 from that sippy cup -- and it's my
5 understanding that at the time the child was
6 holding the cup while he was taking a drink,
7 took sips out of the cup and then the child,
8 by his own motion, put the cup down, set the
9 cup aside. Again, I ask you to remember that
10 the peak time for hydrocodone is four hours.

11 The child ultimately is left in the
12 room, in the crib. Mr. Roper and Ms.
13 Honeycutt stepped out to smoke a cigarette,
14 after which Ms. Honeycutt comes back in,
15 checks on minor and Ava, and there was
16 nothing out of the ordinary going on with
17 them.

18 They watch television, she checks on
19 the children, they go to bed. Throughout the
20 night, I believe three times, she gets up and
21 checks on the child. We didn't get a real
22 good picture of what she did when she checked
23 on the child but at eight o'clock and -- and
24 this is where the two doctors say that they
25 believe, in their opinion, that this child was

1 compromised. Ms. Honeycutt says that she
2 changed the child's diaper. Ms. Honeycutt
3 didn't notice anything at that point in time
4 about minor at that point in time, minor
5 breathing, nothing. She was asked did she
6 have to lift his bottom up to get the clean
7 diaper up under him? 'Well, yes, you have to
8 do that.'

9 'Did you notice any limpness or anything
10 at that time?'

11 'No, everything was normal. He was warm.'

12 Ms. Honeycutt then goes back to bed. I
13 imagine that she was tired. She'd been up
14 three to four nights in the night between
15 Ava and minor There is nothing at that
16 point that indicated to her that something was
17 wrong.

18 I would submit to you that Ms.
19 Honeycutt was -- as I recall there was
20 testimony that the child had, at some point
21 in the night, had turned over on his side.
22 I believe from his stomach to his side, so
23 certainly this child was still moving around
24 in the night and the testimony is that there
25 was nothing wrong with this child at eight

1 o'clock in the morning -- by the mother's
2 testimony. And I submit to you that if
3 anybody would now, that the mother would know.

4 She is tired, she goes back to bed.
5 She has to get to work by eleven o'clock in
6 the morning -- sets the alarm to get up at ten
7 o'clock, she has to be at work by eleven
8 o'clock.

9 That is when, after feeding the other
10 child, having gotten ready for work, getting
11 her pocketbook, putting her makeup on, she
12 goes back in and checks on 'minor That's
13 when she finds 'minor unresponsive.

14 Now, I ask that you remember the peak
15 time for hydrocodone is four hours.

16 911 is called. The call to 911 goes
17 out at 11:15 on Monday morning, March the
18 17th. The EMS workers go in, finds this child
19 by itself laying in the room where there's the
20 crib, on the floor. The mother is not there,
21 the boyfriend is not there. The child is
22 found on the floor. They are not there.

23 EMS workers, in their statement, said
24 when they arrived that the mother was on the
25 front porch. With the child? No. The child

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1 is in the bedroom, laying on the floor by
2 himself.

3 'Did the mother follow you back?

4 No, she did not.' That was their
5 testimony.

6 'Did you see anybody else in the
7 house?

8 There was a male in the house.

9 Where was he?

10 He was off to the left.'

11 Isn't that odd, that this child is
12 not breathing and he's left lying on the floor
13 by himself?

14 The child then goes in the ambulance.
15 The mother doesn't go with him. He is taken
16 to the hospital.

17 He was comatose by eight o'clock, if
18 not comatose before eight o'clock on March
19 17th. I share with you, Ladies and Gentlemen,
20 that there is no evidence that infers -- that
21 I have heard, with the report of anyone, there
22 is no evidence at all that this child was
23 comatose at eight o'clock on March the 17th.
24 By his own mother's testimony he was not
25 comatose.

1 So there is no evidence to support --
2 (inaudible, walking away from jury) -- the
3 14th, the 15th, the 16th, after which Mr.
4 Morris and Ms. Phillips did not see this
5 child.

6 Now, after coming back up, EMS is now
7 at [REDACTED] Braden Court. The child is put in the
8 ambulance. No one asked, as I recall the
9 testimony, to ride with the child in the
10 ambulance. The mother and the boyfriend
11 stayed at [REDACTED] Braden Court. I think that Mr.
12 Roper was scurrying about, moving about the
13 house. Keep in mind that law enforcement was
14 not there either before or after EMS got
15 there. Law enforcement did not come until
16 later, but nonetheless the sister comes in,
17 ultimately, and Mr. Roper and Ms. Honeycutt go
18 to Easley Baptist Hospital.

19 The nurse testified about the conduct
20 of the mother. What I find to be equally as
21 fascinating as her conduct is the fact that
22 her child is being airlifted to Greenville
23 Memorial Hospital and somebody said, 'Oh, you
24 need to go back to the house and ...' -- they
25 live in Pickens, they are in Easley, with a

1 good jump start on getting to Greenville
2 Memorial Hospital. They went back to [REDACTED]
3 Braden Court in Pickens to sign a consent
4 search? Does that make any sense?

5 The AIP Laboratories did no
6 toxicology for six and a half years but there
7 was no testing done on the vomit, on the
8 pillow, on the pillow slip, no samples taken,
9 nothing. Why weren't samples taken from the
10 scene? Isn't that part of their job? They
11 did not do that.

12 Now, there were a couple of bottled
13 -- three bottles of various types of
14 medication, prescription medication bottles,
15 that were -- and two others that were sent to
16 SLED.

17 Interestingly, two of those bottles
18 were sent to SLED. One was child's flavored
19 Tylenol and the other bottle, the Tussinex
20 bottle was taken from the home of Donna
21 Phillips and, as I understand it were sent to
22 SLED, but wasn't tested. And I am not sure
23 but I think that there was another bottle?
24 I'm not sure. I don't know.

25 I apologize, Your Honor, I'm just

1 looking through my notes here. In looking
2 through my notes, I note that nobody, not Dr.,
3 uh, not Dr., uh, not Dr. Brewer, uh, --
4 (pause). He surmised and conjectured on that
5 but there was no -- now, I am going to wind
6 down.

7 I represent Jamie Morris. His charge
8 is not homicide by child abuse. His charge is
9 a little different than the charges against
10 Ms. Phillips and Ms. Honeycutt. He is charged
11 with aiding and abetting. Number one, I
12 submit, Ladies and Gentlemen, that nothing was
13 given to minor certainly not by Mr.
14 Jamie Morris while minor was in Jamie's
15 custody.

16 However, if you find that -- and I am
17 not suggesting that you find this, but if you
18 find that he did, then Mr. Morris' charge is
19 aiding and abetting. You take the law as His
20 Honor gives it to you but aiding and abetting
21 is to knowingly help, promote, support the
22 accomplishment of deed.

23 You saw Mr. Morris testify. It is
24 your job to determine the credibility of
25 witnesses, were they forthright with their

1 answers, did they try to evade questions.

2 I would submit to you that Mr. Morris
3 was forthright, that he did not try to evade
4 answers. I would ask you to consider that
5 when determining his credibility in this case.

6 His testimony was that he certainly
7 did not give the child any type of medication.
8 That as far as he knew, nobody else gave him
9 any medication.

10 So even if you find, Ladies and
11 Gentlemen, that somebody gave minor something
12 over the weekend at that house, I suggest to
13 you that for him, under the law, to be guilty
14 of aiding and abetting, that he would have had
15 to have knowledge of that and he did not.

16 Homicide by child abuse is not
17 necessarily giving someone something, it could
18 also be the failure to do something, failure
19 to give medical attention. I would
20 respectfully say in this case that did not
21 happen. Mr. Morris said there was no reason
22 to give this child medicine, that there was
23 nothing of concern other than he had a runny
24 nose and he had a cough. So I would submit to
25 you that there was no knowledge on his part

1 that this child was in need of medicine or
2 that somebody had given him any medication.
3 Without that knowledge, under the law, he had
4 no knowing to support anyone giving him
5 anything.

6 When he returned the child home, he
7 told the mother that the child had a runny
8 nose, that he had some congestion. He gave
9 the mother the child's Medicad card so that if
10 his condition worsened that she could take him
11 to the doctor, but he told you in his
12 testimony that he did not feel that the child
13 was sick, was feverish, that there was nothing
14 to suggest that he should be taken to an E.R.
15 or a doctor while he was in his care. There
16 was no knowingness on Mr. Morris' part.

17 At eight o'clock in the morning of
18 March 17th, there was no indication that Mr.
19 Morris knew about the condition of minor or
20 that he could have done anything at that time.

21 I asked you, Ladies and Gentlemen, on
22 Monday of this week to pay attention
23 throughout the trial of this case. You have
24 done that. I certainly appreciate that on
25 behalf of Mr. Morris.

1 The fact that Mr. Morris testified in
2 this case does not change the burden of proof
3 required by the State. Mr. Morris is entitled
4 to the presumption of innocence. The
5 presumption of innocence is sometime referred
6 to as a cloak of righteousness that is about
7 the shoulders of a defendant who is charged
8 with a criminal offense and that presumption,
9 that cloak, does not leave the defendant after
10 the first witness testifies, the third, the
11 fourth or the fifth, however many, even after
12 the last witness testifies. That cloak of
13 righteousness is indeed placed about the
14 shoulders of Mr. Morris on this charge until
15 you all walk back into that jury room to
16 deliberate. It is not removed until or unless
17 you, the twelve jurors who must agree in this
18 case, find that the State has proven their
19 case against Mr. Morris here beyond a
20 reasonable doubt.

21 There are three defendants in this
22 case. His Honor is going to charge you on
23 that. You must look at each individual and
24 each individual charge as to whether or not
25 the State has prove their case on each charge

1 as to each defendant.

2 They must prove their case beyond a
3 reasonable doubt. A reasonable doubt is a
4 doubt that would make a conscientious person
5 hesitate to act. If there is any thought that
6 Mr. Morris is innocent of these charges, you
7 must give him the benefit of that thought,
8 that doubt, any reasonable doubt, and find him
9 not guilty.

10 I think that if you look at this case
11 as a whole with regard to Mr. Morris, you will
12 say that he is not guilty. I ask that you
13 return a verdict of Not Guilty. Thank you so
14 much for your time.

15 THE COURT: Thank you, Mr. DeJong.
16 Mr. O'Connell.

17 MR. O'CONNELL: I will take up
18 where Mr. DeJong left off. My client, Donna
19 Phillips, did nothing except be a great
20 grandmother. What she did was to take care of
21 her children, her grandson. To show you what
22 a great grandmother she was, her son is there,
23 living in that house. He's not going out,
24 playing around, he's not going out drinking.
25 He's taking care of his son when he's got his

1 son.

2 The presumption of innocence is --
3 anytime that you have to stop and wonder
4 'hummm?', that's a presumption of innocence,
5 that's a reasonable doubt. The State must
6 prove their charge beyond a reasonable doubt.

7 Let's go back to the timeline. On
8 Friday afternoon they go and pick up this
9 child, the grandmother and the father pick up
10 the child.

11 They come home, they do what people
12 do, they go to bed. They get up. minor is
13 watching cartoons. No one hasn't given the
14 child any medicine. He hadn't needed any
15 medicine.

16 When did they give him any medicine?
17 They have not shown one person in all of these
18 witnesses who has said or who have even hinted
19 at that my client gave this child medicine,
20 any kind of drugs.

21 They say that there was Tussinex in
22 the house. Well, when you look at the bottle
23 and figure out the amount that's in the
24 bottle, she'd got in back in January, the 4th,
25 of '08, seventy days later there are still

1 about seven days left in the bottle. Normal
2 people keep them and use them. But none of
3 that was used on or given to this child.

4 The child gets up on Saturday
5 morning, plays like a child does. They don't
6 go out -- this was a family unit that was in
7 the house. There is nothing that shows any
8 dosing by my client.

9 Then we come to Sunday morning. The
10 child has been up watching TV, the child is
11 interacting with the man who came and they
12 played with the PlayDoh -- whatever his name
13 was. He went outside and was playing on the
14 little tractor, a little John Deere tractor.
15 If a dosing had been given like the prosecutor
16 is saying, that child could not have been up,
17 that child could not have been playing and
18 interacting -- that child would not have been
19 moving around.

20 They went to the sister's in Fountain
21 Inn, the child played hard all day. They come
22 home, the child falls asleep in the car, they
23 stop at the father's house to get his pajamas
24 and a little stuffed bear or some toy, and
25 then they take him to the mother's house.

1 They say that they had the child home no later
2 than 7:30 Sunday night.

3 What happens then? The mother and
4 the boyfriend says that the child is crying
5 when he gets home, but my client is not there,
6 she is out of the picture. What happens then
7 is what I think is the main thing of what we
8 need to focus on in this case.

9 They say that a man come to the
10 house, talked about looking at some movies,
11 came in, saw the baby was there.

12 You heard from their main witnesses
13 that the child would have had no motor skills
14 whatsoever if a dosing had been given like
15 they say that it was. It takes motor skills
16 to kick off a blanket; two, the mother said
17 that the child had rolled over on his side
18 once when she checked on him -- and the doctor
19 said that was motor skills.

20 How could this child have been dosed
21 with anything by my client after the time they
22 returned the child at 7:30, anyway, if the
23 child was acting as a child: breathing, and --
24 -

25 They said that he was tired when they

1 returned him, that he was fussy. You heard by
2 my client's own testimony that the child had
3 been up from about seven o'clock until when
4 they put the child to bed, except for the time
5 that it fell asleep when they were in the car
6 returning from her daughter's in Fountain Inn.
7 The child was tired but otherwise fine. Mr.
8 Roper testified that the child was
9 interactive, raised his arms wanting to be
10 picked up, slumped when he tried to stand him
11 up because he wanted to be picked up, normal
12 child behavior.

13 The mother testified that during the
14 night she went into the child's room, could
15 hear the child breathing. So how could it
16 have been drugged and breathe normally?
17 Wouldn't the child have (making labored
18 breathing/gagging sounds), maybe? I don't
19 know. But I do know that the facts of the
20 case, which have not been disproven by the
21 prosecution, are that -- one, the child was
22 fine when he was returned to the mother; two,
23 that there was no medication given to this
24 child by my client. You know, a twenty-month
25 old, twenty-one month, twenty-two months old,

1 they get cranky if they've been up all day.
2 If I am not mistaken, most little kids take
3 naps every day. So this child was fine when
4 he was taken back to his mother's house.

5 Now, whatever happened at his
6 mother's house, I don't know. I wasn't there.
7 My client wasn't there.

8 But here's the question for all of
9 you: when did the child get the alleged
10 dosing? Not from my client. She never gave
11 him anything. There's no proof of that
12 whatsoever.

13 The second thing is, it has been
14 proven that anything was given to the child,
15 based on what we've heard from the doctors,
16 that child would have been comatose. That
17 child would have been a bag of potatoes -- I
18 believe that I evened asked one doctor would
19 it be fair to say that the would have behaved
20 like a bag of potatoes and he said 'yes.'

21 So this child comes back to their
22 house in good condition, in good health.
23 Guess what? Something happened. We don't
24 know what it was.

25 The mother says that the child

1 behaved just like a regular ole child at that
2 time. So between eight and ten o'clock,
3 something happened.

4 On the 911 call, I heard on the tape
5 and you are going to, hopefully, listen to it
6 again if you need to, "Shut up." I even
7 thought that I heard on the tape "is this
8 happening again?" That's up to you, you can
9 always listen to it.

10 But then he calls the sister to come
11 to the house and they all rush off to the
12 hospital. I asked Mr. Roper on direct what
13 kind of drugs that he was taking. He was
14 taking Lortab, he even said that he either
15 used it up or he flushed it down the toilet.
16 I've been around the block once or twice, and
17 I have sense enough to know that's not likely
18 what happened.

19 Why were this people left at the
20 house when the police weren't there? There a
21 lot of gaps that I would like to understand.

22 I ask that you remember that it has
23 not been proven that my client gave this child
24 any drugs, any kind of medicine. Number two -
25 - nowhere in these facts will you find that my

1 client gave this child any medication.

2 I know you all will go back into the
3 jury room and deliberate. I hope that you
4 haven't make up you minds yet. Go over these
5 facts and you can only determine that my
6 client nothing to give this child any dosing,
7 any kind of medication.

8 One of the doctors has even given a
9 report that the dosing had to occur within six
10 to twelve hours before the death -- and he
11 said, 'Oh, no, no, no, no. I admit him very
12 much that that isn't correct.' O believe that
13 the prosecution cannot say in this case that
14 the experts know ----

15 SOLICITOR RICHARDSON: Your Honor, I
16 object to that. He is telling the jury --
17 improper.

18 THE COURT: Well, ---

19 MR. O'CONNELL: Judge, I apologize
20 if I've done anything wrong, but this is very
21 important to my client.

22 THE COURT: --- the jury will --
23 they heard the evidence. Go ahead.

24 MR. O'CONNELL: You heard the
25 evidence. All I am say is that you're the

1 final arbiters. I hope that you will take the
2 time to go over it and understand that there
3 is no indication or evidence that my client
4 ever dosed this child. If they had dosed the
5 child or given the child anything, if they've
6 even thought anything was wrong with this
7 child, you heard them testify that they
8 wouldn't have given the child anything -- that
9 they would have taken the child to a doctor if
10 he was sick. Children have sniffles, get
11 colds, cough, we all know that children do but
12 my client did not give this child anything.
13 Thank you very much.

14 THE COURT: Thank you, Mr.
15 O'Connell. Mr. Harbin?

16 MR. HARBIN: May it please the
17 court. I want to begin by apologizing for
18 getting a little emotional. I've been
19 involved in this case for some time now, and
20 I've seen the effects the death of her son has
21 had on Ms. HOneycutt. With that said, let me
22 get right to it.

23 minor was brought home that Sunday
24 night with a cold. Nothing more. It is not
25 unreasonable for a mother to not go to the

1 emergency room for a child with a runny nose
2 and congestion. Please keep in mind that
3 while we all know now that the minor was
4 probably suffering the beginnings of a toxic
5 overdose of hydrocodone, the symptoms just so
6 happened to mimic those of a common cold.
7 There was really no way for her to have known
8 any different.

9 I can draw from my own experience as
10 a father, looking back on the numerous times
11 that my children came down with a runny nose
12 or congestion, a cough. In the beginning,
13 like all new parents, we were quick to call
14 the doctor. But after several of the same
15 conversations, you learn pretty quickly,
16 through experience, that these are common
17 symptoms and will resolve in a couple of days.
18 You're advised to watch for further symptoms,
19 for a fever, check their temperature, use
20 Tylenol as needed, make sure that they get
21 lots of sleep and fluids.

22 The Solicitor made a big issue about
23 Latasha's statement about exactly when she got
24 up and when she found minor They do not
25 want you to focus on the fact that that

1 initial statement was given within an hour, or
2 an hour and a half, of minor being taken to
3 the hospital. You can only imagine the stress
4 that Ms. Honeycutt was under at the time.

5 I think that if you read her written
6 statement, her own statement, and listen to
7 her testimony that you will see that the
8 timeline isn't perfect. She recalled that she
9 set the alarm to go off again at ten, that
10 when it went off that she hit Snooze. When
11 the alarm goes off again, she gets up, goes
12 and gets Ava up and changes her, feeds her --
13 keep in mind that Ava was two months old.
14 Feeding is not necessarily a quick thing.
15 You've got to make the bottle, warm the bottle
16 -- or I believe that she testified that the
17 bottle was already made, but that she had to
18 warm the bottle, then feed, then burp, then
19 perhaps feed and burp again. Then she sits
20 Ava in the swing, gets ready for work. She
21 gets on her clothes, does her hair, does her
22 makeup. Then she checks on minor on her way
23 out the door.

24 I believe that her statement to Rita
25 Burgess was her best attempt to recollect the

1 facts. Whether she is off by fifteen minutes
2 here or there, the important part of the
3 statement is that when she changed 'minor' in
4 the morning that he was breathing, that he
5 appeared to be fine at eight o'clock. That
6 when she came back that she found him
7 unresponsive. Every statement that she has
8 given, she has given that timeline.

9 From the moment that she found him
10 unresponsive, she did what any responsible
11 mother would do.

12 There has been a significant effort
13 to make an issue of the rash on 'minor' s rear
14 end. I think that Dr. Ward is the doctor that
15 pointed out that the pressure lesion, as he
16 called it, was caused by laying still --
17 something that a toddler would do if he was
18 feeling the effects of hydrocodone. If he
19 laid still enough for long enough in a wet
20 diaper, throughout the night, then it is
21 perfectly understandable that lesions might
22 appear. Remember that the doctor pointed out
23 that the skin might have been broken down
24 because the hydrocodone was affecting the
25 body's ability to actively deliver oxygen.

1 That if minor laid still for the better part
2 of the night, until eight o'clock, and then
3 even if after a diaper change for another
4 couple of hours, until ten o'clock, if I were
5 to believe the doctor's explanation of how
6 that rash appears, then that would make sense.

7 Ask yourself if the woman that you
8 heard screaming on that 911 tape is a woman
9 who would have simply left her baby to die?
10 No way.

11 If minor was under the influence of
12 Tussinex when Donna Phillips, or the father,
13 returned the child, Latasha had absolutely no
14 way of knowing that. He would have appeared,
15 by all accounts, sleepy. Throughout the
16 night, he would have been "asleep" and that
17 would not have been unusual for a mother
18 checking on her child who she thought to be
19 tried and sleep. Sleep is, after all,
20 encouraged.

21 The Solicitor will have to argue to
22 you that because Latasha did not see the signs
23 of poison in minor's system that she omitted
24 the act of going to the doctor. They will
25 have to ask you to past the obvious, they will

1 have to ask you not to look at the fact that
2 the child simple appeared to have a cold.

3 Latasha was not told that there was
4 something else going on, i.e., that the
5 grandmother had given the child narcotics.
6 Just as crankiness and irritability can appear
7 normal, thus it certainly was nothing
8 something that the child needed to be rushed
9 to the doctor for.

10 If the child had appeared urgently
11 sick prior to or on Sunday night, why would he
12 have not been taken to the doctor by his
13 father or his grandmother? It may well be
14 that his father or grandmother, or both of
15 them, knew something and didn't want that
16 found out in an E.R. themselves. I don't
17 know.

18 Their statements are self-serving and
19 a little strange. On the one hand, they don't
20 want blame for not taking the child to the
21 doctor; while on the other hand they want
22 credit for having suggested that the child may
23 need medical attention.

24 If only Mrs. Phillips had spoken up.
25 I think that she recognized that minor was

1 beginning to have a bad reaction to the
2 Tussinex that she had given him. Instead of
3 speaking up, she hid that fact. Perhaps had
4 she spoken up, minor would still be with us.

5 I have to imagine, however, that
6 initially Ms. Phillips' intention was only to
7 help minor's congestion. But hiding that
8 fact after the child started showing symptoms,
9 that when it crossed the line.

10 Please keep in mind that some of the
11 symptoms he was having indicated that some-
12 thing was wrong, things out of the ordinary,
13 such as his jaws shaking on the ride over, or
14 his having stopped breathing during the
15 weekend. That was never told to Latasha. She
16 never knew that. They were -- somebody, Ms.
17 Phillips and/or her son, never told her that
18 this happened.

19 I can't tell you but I would suggest
20 that you cannot believe anything that Ms.
21 Phillips testified to. But why would Jamie
22 make up the statement that the child had
23 stopped breathing twice in the night? I
24 honestly don't know if it is true at all, or
25 if it had anything to do with medication, but

1 I think that it does indicate that at least
2 Ms. Phillips knew that something wasn't right.

3 You heard testimony from Latasha's
4 neighbor, Michelle Henry, and I would like to
5 address that. I think it becomes clear from
6 all the testimony that Michelle Henry
7 misinterpreted was Latasha's explanation of
8 "minor" 's not wanting to be put down. That
9 testimony explains that he would not stand up
10 but that he could not stand up that Sunday
11 night. It also seems clear that Ms. Henry
12 simply misunderstood Latasha's description of
13 "shaking" "minor" not understanding that she
14 was recollecting the events of the next
15 morning when she found "minor" unresponsive.

16 I think it is fair to say that
17 witnesses have said that Latasha is not
18 necessarily the best communicator. Brandon
19 verified Latasha's memory. He was there. He
20 knows.

21 Please take care not to demand from
22 my client what only hindsight can provide.
23 She has replayed in her mind that night, that
24 morning, a thousand times over and wished that
25 she had done something, anything different.

1 But asking that of anyone is not being fair.
2 That would have required her to know what only
3 Ms. Phillips and/or her son knew, that he had
4 been dosed with drugs.

5 I don't exactly know how all the
6 chemistry works, but I've taken prescription
7 cold medicine before and prescription cold
8 medicines contain hydrocodone. I am sure that
9 some of you have had some experience with that
10 as well. It's safe to say that it is an
11 extremely powerful drug. I'm about six feet,
12 one hundred eight pounds and I can remember
13 how strong that medicine was for me. I can
14 only imagine how strong it would be for a
15 small toddler.

16 I imagine that all that we can do --
17 because no one seems to know exactly how the
18 drug works, but there is no reasonable dispute
19 that the cause of death was hydrocodone.

20 Exactly how it built up in minor s
21 system, how it built up or how much was
22 actually given, or how many times, is unknown.
23 We have to forgive a doctor or a toxicologist
24 for not knowing exactly how large amount of
25 hydrocodone would affect a twenty-pound

1 toddler. But looking at this from a non-
2 medical perspective, it makes sense to me that
3 it would not take a long time for a over dose
4 to build up in a child's system in a very
5 short period of time, even perhaps through
6 multiple doses.

7 It makes sense that a long-standing
8 medication would build up in a toddler over
9 time, perhaps through multiple doses. I can
10 understand that presence of the drug would
11 explain why minor's breathing was reportedly
12 better the following morning than that night
13 when he was brought home.

14 I can also understand that a child
15 under the influence of a narcotic would have
16 appeared to be sleepy or in fact went to
17 sleep, even a deep sleep.

18 Now, the word "comatose" has been
19 used here a number of times but no one has
20 defined it. I don't think that the
21 prosecution wants to admit that if you were
22 simply looking at a child in a crib who
23 appeared to be asleep, would -- if you expect
24 the child to be asleep, you wouldn't
25 necessarily question the fact that the child

1 doesn't wake up.

2 In fact, I've changed my daughter's
3 diaper without disturbing her sleep.
4 Sometimes when my child is out, she is out
5 cold and there's nothing that you can do to
6 wake her up. If she was breathing quietly,
7 all was well. You can certainly use your own
8 experience as a guideline.

9 I believe that there was an effort to
10 make is sound unusual that the mother would
11 only have peeked in on minor during the
12 night. I don't understand that. What exactly
13 was she supposed to have done? When my wife
14 or I check on our daughter, we creep -- I
15 can't say about my wife, but sometimes I've
16 checked on my daughter and I don't even touch
17 the crib.

18 The solicitor also made it a point to
19 ask why after she got up around ten o'clock,
20 fed and changed Ava, why she didn't feed
21 minor I think that's understandable. It's
22 much easier to feed and change a two-month old
23 while a twenty-month old is still sleeping.
24 It makes sense that she'd wait until after she
25 was finished with Ava and ready to go to work

1 to wake 'minor' up. That morning she
2 specifically wanted him to get more rest than
3 normal because he was sick. It also makes
4 perfect sense that Latasha would have let
5 Brandon and 'minor' sleep until she left for
6 work, and Brandon would feed 'minor'

7 Further, they suggested that a baby
8 sleeping for ten, eleven hours straight was
9 somehow bad. I can only speak from my own
10 personal experience again, and you can draw on
11 yours, but my daughter sleeps a solid ten to
12 twelve hours a night nearly every night. I'm
13 lucky. She will sleep longer if we wear her
14 out the night before. She will sleep less
15 something, more sometimes.

16 But allowing 'minor' to remain asleep
17 from nine or ten at night to ten or eleven in
18 the morning is not something that rises to the
19 level of negligence. It most certainly does
20 not rise to the level of extreme indifference
21 to 'minor' 's life.

22 The only criminal act here is the
23 giving of an enormous amount of a dangerous
24 prescription drug never intended to be given
25 to children, much less a small toddler.

1 I do not believe that there is any
2 evidence whatsoever that Latasha acted with
3 extreme indifference to human life. The very
4 act of calling 911 showed that she cared about
5 'minor

6 Secondly, during the night checking
7 on him, changing his diaper, feeding the
8 children, they are all overt acts of caring
9 and love for her children.

10 I submit to you that it took an
11 extraordinary amount of courage for Latasha to
12 get on that stand and admit to you her past
13 history. Although she is still a young woman,
14 she was much younger then. She paid for her
15 mistake and has moved on.

16 There were absolutely no illicit
17 drugs found in that home. More importantly,
18 not even an accusation from anyone including
19 the lead detective, Rita Burgess.

20 Also their house was searched by law
21 enforcement, so we know that there were no
22 medications except Tylenol, nor were there any
23 illicit substances. This was a good, clean,
24 safe home.

25 As to Brandon's misstep with

1 substance abuse, I am not going to choose to
2 judge the man that I heard on that 911 tape.
3 He lost minor then he lost his way but he
4 has had the fortitude to be able to find his
5 way back.

6 We all react to things that happen
7 differently. You may tell yourself that you
8 would have done something differently that
9 Sunday night or that Monday morning. Given
10 what we know now, we know much more than
11 Latasha did at the time.

12 Even if you think her actions were
13 lacking or were negligent, she did not neglect
14 minor with intent. Nothing that we have seen
15 or heard about Latasha, or from Latasha,
16 suggests an indifference to human life, much
17 less extreme indifference.

18 As I said earlier, our courts have
19 defined that phrase to include "intent." I
20 don't believe that anyone here believes that
21 Latasha intended for minor to die. Quite the
22 opposite.

23 The State could have charged Latasha
24 with mere neglect or child endangerment or
25 something that carried with it a burden of

1 proof closer to that. Although I do not
2 believe that Latasha was neglectful, nor I do
3 believe that if her actions amounted to any
4 crime it would be negligence. I think that it
5 is clearly different to accuse someone of
6 being so indifferent as to have intent to let
7 someone die. They are accusing Latasha of
8 caring so little that she intended for minor
9 to die.

10 Let's talk about the 911 tape. It
11 may be enough for me to simply say that the
12 tape speaks for itself. I don't care how
13 aloof an E.R. nurse says Latasha was. That
14 tape showed genuine emotion, and you heard it.

15 I believe Kayla Booker and I believe
16 Jerry Price when they describe Latasha's
17 reaction to family and friends at the
18 hospital. I don't think I've ever heard
19 anything more powerful than when I heard
20 Brandon on the phone with 911. Latasha and
21 Brandon both did absolutely everything that
22 they possibly could that day. I am not sure
23 that it is appropriate to judge someone for
24 how they handle an event as tragic as the loss
25 of a child.

1 Given Latasha's family history, I
2 might even say that it would be expected if
3 she had some difficulty showing emotion --
4 shock, withdrawn, scared, guarded. Everyone
5 grieves in their own way. Not everyone
6 grieves in public. Not everyone behaves in
7 front of strangers the same way that they do
8 in private or with close friends and family.

9 I would suggest to you that the
10 persons who commented on Latasha's demeanor
11 had unfairly formulated an opinion and were
12 trying too hard to help the prosecution and
13 not simply relate the facts. If fact, if you
14 recall Nurse Duffy, the E.R. nurse, portrayed
15 her very harsh judgment of Latasha by noting
16 that some folks won't even come into the room
17 with their child because, she said, they don't
18 want to see their child that way. Latasha was
19 not even one of those people. She did go into
20 the room, she held minor's hand and she cried
21 and prayed. I think Nurse Duffy just became
22 very emotionally involved and allowed that to
23 affect her judgment.

24 Ultimately, we did hear from Brandon,
25 from Sherry, from Kayla that Latasha did

1 indeed grieve in a way that was more of what
2 one would consider "typical". She just did it
3 behind closed doors, with those that she knew
4 and trusted. There is nothing wrong with
5 that.

6 I think that it is remarkable that
7 Mr. Morris and Ms. Phillips were indicted in
8 late 2008. Ms. Honeycutt wasn't indicted
9 until 2009, late 2009, almost a year later.
10 If you recall, I asked the lead investigator
11 what information that she had at the time the
12 first two were indicted, including toxicology
13 reports, doctors' reports, any information
14 that they had along with all the witness
15 statements. She said that she did a complete
16 investigation. Yet, apparently there wasn't
17 enough in late 2008 to indict my client.
18 Without any additional evidence, my client was
19 indicted nearly a year later.

20 I think the first decision not to
21 indict Latasha was the correct one. There
22 wasn't enough evidence about the crime in 2008
23 and nothing changed in 2009. There shouldn't
24 have been an indictment. She should not be on
25 trial.

1 The fact that Latasha was not
2 indicted with Mr. Morris and Ms. Phillips,
3 I believe is reasonable doubt in and of
4 itself. The solicitor could correctly argue
5 that they are not required to indict within
6 any particular timeframe. But just ask
7 yourself, why the delay? I could suggest to
8 you that it was because Mr. Morris and Ms.
9 Phillips are the only ones who could have
10 caused minor 's death, not Latasha.

11 In a former life, I was a prosecutor
12 -- not so long ago. I can recognize the
13 advantage to them of having Latasha in this
14 trial. She has to defend herself and, in so
15 doing, her defense helps to cast doubt on Mr.
16 Morris and Ms. Phillips.

17 You will recall that in my opening to
18 you, I quoted to you the statute for homicide
19 by child abuse; it demands four things, each
20 individual part of which must be proven beyond
21 a reasonable doubt. One, that a person caused
22 the death of a child; two, under the age of
23 eleven; three, while committing child abuse or
24 neglect; and, four, that the death occurred
25 under circumstances manifesting an extreme

1 indifference to human life.

2 The State has failed on the very
3 first element. The coroner told you that the
4 cause of death was an overdose of hydrocodone,
5 specifically Tussinex, provided to the child
6 by Ms. Phillips. There is an overwhelming
7 amount of evidence that that Tussinex was
8 provided to the child by Ms. Phillips while in
9 the care of the father. There is absolutely
10 no evidence that Latasha or anyone in her
11 household had any drugs that could have been
12 ingested. The State has not even alleged that
13 Latasha for providing hydrocodone to minor

14 The solicitor's office is going to
15 have to argue that the causation was the
16 failure to get medical care. But you simply
17 do not 'fail to do' something that you had no
18 knowledge needed to be done, that is not a
19 knowing failure.

20 There may be a question of what
21 condition that minor was in in the early
22 morning hours of Monday, March 17th, but there
23 is really nothing that we know. I think
24 Latasha's story is credible and makes more
25 sense than any other poorly outlined and

1 pieced-together conjecture from the expert
2 witnesses. I know that they are very smart
3 men and I know that they are scientists,
4 learned in what they do. But I think that we
5 are all smart enough to know that at the end
6 of the day they're doing a lot of guessing.
7 We don't guess here about criminal behavior.

8 -For the sake of argument, and only
9 for the sake of argument, let's say for a
10 moment that minor was under some sort of
11 distress at eight o'clock when Latasha found
12 him. Although I don't think that a child
13 being in a state similar to a state of deep
14 sleep is cause that should necessarily create
15 alarm a mother, even if it was, there was
16 nothing about minor that gave cause for
17 Latasha to be alarmed at eight o'clock. None
18 of the doctors can say that with a reasonable
19 certainty. Of course, they would have to
20 prove beyond a reasonable doubt that Latasha
21 did know that minor had been dosed and there
22 is significant doubt that he appeared to be
23 anything other than in a deep sleep. Keep in
24 mind what little was known to Latasha at the
25 time.

1 Also please bear in mind that she
2 changed minor's diaper in the dark at eight
3 o'clock; likely half sleep from being up at
4 least three different times caring for Ava
5 throughout the night. If you have children,
6 you will remember the near permanent daze in
7 which you walk around when you haven't gotten
8 a good night's sleep because of a newborn.

9 Latasha did not cause minor's death.
10 The hydrocodone did.

11 Latasha did not commit child abuse or
12 neglect. She called 911 and for help.

13 She did not act with extreme
14 indifference to human life. Why would she
15 make the 911 call? Why would she call help
16 from Brandon? To say that she was indifferent
17 doesn't make sense.

18 There is contrary evidence that
19 Latasha was a loving, caring mother. She
20 provided a home, clean, comfortable, with
21 clothing and food for her children.

22 I don't think that having an extreme
23 indifference to human life is something that
24 comes and goes. If you have an extreme
25 indifference for human life, you're a killer.

1 Let's talk for a moment about what
2 extreme indifference to human life really
3 means. If we were to start at the bottom of
4 defining when an act or omission has the least
5 amount of culpability and then figure out the
6 next level of culpability, and the one after
7 that, so on, what would it look like?

8 I would suggest to you that the least
9 culpable act is an act -- (marking on board).
10 Then somewhere, way up here is indifference.
11 Then above that, extreme indifference.

12 The judge will tell you that extreme
13 indifference to human life is having the
14 intent -- that extreme indifference equals
15 intent or guilt. That is what the State is a
16 asking you to find.

17 This is a homicide trial. You had
18 the opportunity to hear from Latasha
19 yesterday. Does she look or sound like
20 someone who would intentionally kill anyone,
21 much less her son?

22 Does the 911 tape sound like someone
23 who just committed a crime?

24 I told you at the beginning of this
25 trial that if you listened to the testimony in

State of South Carolina v. Jamie Edward Morris et al
Case No. 08-GS-39-2053
Jury Trial of July 26-27, 2012
Before The Honorable D. Garrison Hill

350

1 this trial carefully that you could only come
2 back with a verdict of Not Guilty. I am
3 urging you to do that now.

4 THE COURT: Thank you, Mr. Harbin.
5 Ladies and Gentlemen, we are going to take a
6 short recess, let you stretch your legs, and
7 then I will give you the instruction on the
8 law. Let's take about a five-minute break.
9 Thank you. Don't talk about the case.

10 (JURY OUT)

11 (BRIEF RECESS)

12 (DEFENDANTS PRESENT)

13 (OFF RECORD DISCUSSION WITH MS. PHILLIPS

14 RE: MEDICATIONS)

15 THE COURT: All right, you can
16 bring the jury in, Mr. Teal.

17 (JURY IN)

18 THE COURT: Yes, sir, Mr.
19 Richardson.

20 SOLICITOR: Thank you, Your Honor,
21 may it please the Court. Good morning, Ladies
22 and Gentlemen. I know that this trial has
23 lasted a good while now, we are in our fifth
24 days now, and I know that you're probably
25 tired. I would just ask that you indulge me

1 for a little bit more of time. I'm going to
2 try not to keep you too long. I do have some
3 important things that I need to hit. If you
4 would indulge me just a few more minutes, I
5 deeply appreciate it.

6 We try to approach a trial in an
7 orderly fashion such that we can bring the
8 facts before you without making it overly long
9 but, in actuality, the law dictates the
10 elements that we must bring before to prove
11 the charges we have brought against a
12 defendant.

13 The judge, that is his job. He is
14 the judge of the law. He is the one that is
15 going to charge you what the law is in this
16 case.

17 Mr. Harmon brought up a few points of
18 the law and I would like to clarify certain
19 things in the law, but certainly the law that
20 you take is what the judge tells you. He is
21 going to talk to you after I finish speaking
22 with you.

23 Homicide by child abuse, we are
24 required by the State to prove that the
25 defendant(s) caused the death of a age under

1 the age of eleven while committing neglect or
2 abuse. It does not have to be both, it can be
3 either/or.

4 It is such that a death under
5 circumstances -- I apologize for looking over
6 here, but I just want to be sure that I've got
7 it right.

8 Now, Ladies and Gentlemen, there is
9 no element or representations that I have to
10 prove any type of intent -- that is not where
11 we are coming from, that is not what this case
12 is about. We are not saying that any of the
13 defendants intended to kill minor however,
14 whatever our boss says, I believe that Mr.
15 Harvey may have stated that to him, and I
16 disagree with him, what we are required to do
17 is to prove to you that there was an intent by
18 these defendants to either abuse or neglect
19 minor and because of that, minor died. That
20 is what the law is.

21 Now, what is abuse and neglect?
22 Abuse and neglect can be an act or a failure
23 to act - either one of those. For instance,
24 in this case the act of giving the child
25 hydrocodone or Tussinex, or a failure to act

1 by failing to give the child medical
2 attention.

3 Now, failing to give the child
4 medical attention is the focus of Ms.
5 Honeycutt. The giving of the hydrocodone or
6 Tussinex is the act that we're focusing on
7 with Ms. Morris (sic) -- excuse me, Ms.
8 Phillips -- but also, that she failed also to
9 give the child, minor medical treatment.
10 The father was involved in that in aiding in
11 an abetting situation, and I'll get more into
12 this in a little bit -- but he was involved in
13 that, aiding and abetting, failing to give
14 medical attention and failing to do anything
15 about this mother giving minor this drug.

16 Now, Ladies and Gentlemen, you have
17 heard the defense talk a little bit about
18 reasonable doubt. The State does have that
19 burden of proof. As solicitors, we accept
20 that burden of proof day in and day out
21 throughout the state and I gladly accept that
22 burden of proof today.

23 I will explain to you a little bit
24 about how I see reasonable doubt, more by way
25 of illustration than anything else. It really

1 comes down to common sense, your common sense.

2 When you all came in here, preferably
3 nobody knows anybody, and sit here. You have
4 different individual things that you do in
5 life: different work, different families,
6 different backgrounds. But today you are all
7 together to, hopefully, use a collective
8 common sense approach to what is going on.

9 Now, by illustration, I am a not a
10 hunter. I don't hunt, but I feel like it is
11 a realistic way to explain where I am coming
12 from. If I am out in a field in the early
13 morning hours and I have these other attorneys
14 with me, we're all out there hunting deer, and
15 I see a buck off in the far distance out
16 there. I pull my gun up and put it to my
17 shoulder and I look through the scope, and I
18 aim it right at the deer. I pull the trigger.
19 Bam! The gun goes off. The gun recoils, it
20 kicks and two seconds later that deer falls.
21 Well, I would say, 'Man, what a great shot
22 that I just made. I just killed that deer.'
23 What a defense attorney maybe say is, 'Hey,
24 you say that you killed that deer but that
25 deer could have died of a heart attack, that

1 deer could have died of snake bite.' But,
2 Ladies and Gentlemen, when I tell you that
3 story, what does your common sense tell you?

4 The defense will offer you
5 explanations that we call Red Herrings to take
6 your attention away from the real facts; that
7 it was the shot from the gun that killed that
8 deer. We will get to that in a few minutes.

9 I want to start with Ms. Honeycutt.
10 She would have the end of the chain for the
11 defense but I want to start with her anyway,
12 just simply because I think it is better to do
13 it that way.

14 I mean, minor is brought to her. I
15 am going to say this about all the defendants.
16 We have statements that were made, written
17 statements, and then we have a lot of oral
18 statements. I am not going to get into every
19 single inconsistency -- there were a lot of
20 them, and I think that y'all can figure out
21 what a lot of them were. I am not going to
22 sit here and go through every single
23 inconsistency in the statements that you
24 heard.

25 The statements made by everybody

1 prior to this trial and heard during this
2 trial talks about this child being sick, this
3 child having problems. When that child goes
4 to Ms. Honeycutt's house, he's sick, he's
5 having problems.

6 Now, I appreciate Brandon Roper
7 getting up here and testifying. I think that
8 he did everything that he could to save that
9 kid's life, and I appreciate that. But the
10 fact of the matter is that he's mitigated how
11 that child was when that child got to their
12 house. He still lives with Latasha. He's
13 going to get up here and he is not going to
14 make it sound like it really was. He gave
15 statements about the child, he's saying that
16 he was stumbling and falling. How was that
17 corroborated? You know, we can say that maybe
18 he didn't mean it to see like that. But how
19 is that corroborated? I think that's what he
20 testified to.

21 How was that corroborated? How was
22 his testimony backed up? I will tell you how:
23 Michelle Henry. Michelle Henry takes the
24 stand and she tells her -- that's the
25 neighbor, I don't know if you remember -- the

1 next-door neighbor of Latasha Honeycutt and
2 Mr. Roper. She gets up to the stand and she
3 says 'yes, that I had a conversation with
4 Latasha a couple of days after this', just a
5 couple of days later. Michelle asked her what
6 happened and he says, 'Well, he came home and
7 he couldn't stand up and we couldn't wake him
8 up.' Those two statements were told two days
9 to an independent witness, the next-door
10 neighbor, who has no reason to lie. It
11 exactly backs up the statement that Brandon
12 Roper said this kid was stumbling and falling.
13 This was more than "a cold."

14 I will get into the experts in a
15 little bit, but at this point in time it is my
16 opinion, having done this job for years and
17 years, that that child was feeling the effects
18 of that Hydrocodone. I will get to that in
19 just a minute. Right now I am just starting
20 with Ms. Honeycutt.

21 So what did she do? The mother of
22 that child gets the child and, by her
23 testimony, takes the child -- Ms. Honeycutt is
24 told that the child is tired, that he may have
25 a cold, she takes the child directly to his

1 crib and puts the child in the crib, then she
2 closes the door. "That's that way that I
3 handle it." That's what she told them.

4 Now, you have to understand -- that
5 she has been told that the child needs to go
6 to the doctor. Then Brandon comes home, he
7 takes the child out (of the crib) -- he
8 doesn't know what's wrong with him, he is
9 stumbling around, he's falling. So he puts
10 the child back to bed.

11 Just like Mr. Harbin, I'm a parent
12 too. I've had three children. They are a lot
13 older now but I think if my child were
14 stumbling around, falling, I think that I
15 would be checking on them a little bit more --
16 I probably would sleep in the same room with
17 them, checking on them a little more often, a
18 little bit harder than just putting my head in
19 the door. That's what she said that she did,
20 just put her head in the door.

21 Because now we've got a problem, the
22 next problem. The next problem is that is
23 eight o'clock, 8:00 a.m., she goes in and
24 changes this child, that he is perfectly all
25 right. No problems.

1 You remember what Dr. Ward said? His
2 testimony is also corroborated by direct
3 evidence. Dr. Ward said it was based upon the
4 bedsore, based on bedsores. Mr. Harbin
5 brought up that you may get a little rash or
6 something. Dr. Ward said that this was a
7 bedsore. Children don't get bedsores. He
8 makes it sound like children get this all the
9 time. The picture is there, you can look at
10 it. He makes it sound like children get this
11 all the time. Ladies and Gentlemen, children
12 do not get bedsores because little children
13 during the night move around in their sleep.
14 They are not laying there without moving.
15 Think about that. In fact, Dr. Ward's
16 testimony was that that child had been laying
17 there still for a lengthy period of time.
18 Admittedly, he couldn't say how long. But he
19 said for a bedsore "a lengthy period of time."
20 They tested it. They don't know how, but they
21 put it under a microscope and somehow figured
22 out that it's a bedsore.

23 So at 8:00 a.m., that child,
24 according to Dr. Ward, is comatose. Now,
25 according to her testimony, she changed that

1 child at 8:00 a.m. Yeah. "He was perfectly
2 fine", is what she testified to. Yet, we have
3 an expert saying that he is in a coma. So
4 either she didn't change that child at 8:00
5 a.m. or she is not telling the truth about
6 that; or, she changed that child and that
7 child was floppy, nonresponsive, and she did
8 nothing about it. That's extreme indifference
9 to human life.

10 Here's another thing about that. If
11 he is fine at 8:00 a.m., remember what the
12 expert said -- and I will get into a little
13 more about the time. The expert talked about
14 repetitive doses over a period of time. Well,
15 if she suggested that he is fine at 8:00 a.m.,
16 where did the Hydrocodone come from? Where
17 did the Tussinex come from after 8:00 a.m.,
18 because there's a huge dose in the child's
19 body. Is she now telling y'all that she gave
20 him that? We know it's Hydrocodone, and yet
21 when they mitigate this thing -- they know now
22 that they are in action -- they say that
23 failure to get medical help is the problem.

24 And whether or not she got up -- got
25 up and change and feed one child, wouldn't you

1 change and feed your other child? You do it
2 all at once or you just do one and not the
3 other? I am not sure that I understand that,
4 but -- she said that she changes one child.
5 She definitely does not change minor or gets
6 involved within minor at ten o'clock when she
7 gets up. The only way that she goes to change
8 minor or even looks in at minor is because
9 -- she admitted on the stand -- Brandon Roper
10 told her to. That's it. That the time that
11 she went in there. I find that very odd.

12 They call 911. Mr. Harbin made a big
13 deal about calling 911. Yes, they called 911.
14 Real late. Remember Dr. Ward's testimony,
15 minor would be with us today if somebody had
16 done something earlier. But as far as her
17 calling, there was nothing else they could do
18 -- of course they called 911.

19 The strange thing about that call is
20 that she gets up at ten o'clock, has to be to
21 work at eleven o'clock. Brandon testified
22 that she had to be to work at eleven o'clock.
23 This is her own witness. She said it was ten,
24 fifteen to twenty minutes away. Well, Ladies
25 and Gentlemen, if you notice, on the CAD

1 sheet, and you will have this in evidence,
2 this sheet right here is when -- this tells
3 you when the call comes in to 911 for EMS
4 help. This says, you will see here, "Brandon
5 Roper's house" and this is the time of the
6 call coming in -- at 11:16 a.m. She is
7 supposed to be work at eleven. She said that
8 she gets up, that she is on her way to work
9 evidently sometime before eleven. Yet the
10 call comes in and that's when she goes in and
11 finds him unresponsive. The call comes in
12 twenty-five minutes later?

13 Let's give her the benefit of the
14 doubt. Let say that she was late and it was
15 eleven o'clock. Fifteen minutes later? I'm
16 sorry, Ladies and Gentlemen, a lot of stuff is
17 going on at this time and I cannot remember
18 everything, so periodically I have to look at
19 my notes.

20 Now, referring to Defendants Morris
21 and Phillips. I want to start out first
22 regarding Mr. Morris. He testified and there
23 was testimony that minor was with him the
24 entire weekend. Okay. So anything that
25 happened to that child, he knew about. He

1 testified that he was with him the entire
2 weekend. And, a little bit, about the child
3 being sick on Saturday.

4 I asked Ms. Phillips and, as you
5 know, she was very difficult to -- have you
6 seen people who don't want to answer your
7 question, they try to avoid what's going on?
8 They go off on tangents to try to avoid
9 answering the question? Just like what she
10 was doing?

11 But I did get out of her that minor
12 would wake up during the nighttime with these
13 "frightmares" and he would spend two hours
14 crying, that he did that on two occasions.
15 Additionally she stated that he was having
16 coughing during the nighttime.

17 They had the child during the weekend
18 and these things are happening, but something
19 happened Saturday that caused -- and you heard
20 the testimony -- Mr. Morris to call to get the
21 Medicaid card on Saturday. Why would you need
22 the Medicaid card if the child is alright?
23 Or, I submit to you, the child not alright,
24 that the child was sick or was getting sick.
25 How do you help that? How do you help the

1 child's cough? Tussinex. How do you get the
2 child to calm down? Tussinex.

3 Ladies and Gentlemen, this is not a
4 situation where there is intent to kill but
5 they're giving this child cough medicine that
6 is prescribed for an adult. Not only was it
7 not prescribed for the child, but you're not
8 supposed to give it to another adult. It was
9 an adult-prescribed cough medicine that was
10 given to that child. Is that an indifference,
11 to you? Is it an indifference if the child
12 doesn't die?

13 You don't give adult cough medicine
14 to a child under two years old, that contains
15 Hydrocodone, a prescribed medicine -- an adult
16 cough medication.

17 I submit to you that giving this
18 medicine to him started Saturday when they
19 needed the Medicaid card. They started self-
20 medicating him by giving him this medicine.
21 They were giving him this medicine to calm him
22 down, to help him sleep. Remember that he was
23 up two hours crying? To help him sleep. To
24 help that cough.

25 But here's the problem. They kept

1 giving it to him. The problem is that they
2 gave it to him the first time, the second
3 problem is that when it gets real bad they
4 kept giving it to him.

5 Then we move into Sunday, the day
6 that they went to Fountain Inn, I believe that
7 it was. I can't remember whose house that it
8 was. I messed up when I kept asking the
9 question. But it doesn't matter whose house.
10 They were down there in Fountain Inn at two
11 o'clock or two, the child is acting funny,
12 getting ill, crying, crying, crying, to the
13 extent that they have to leave. They left the
14 house because the child was crying, crying,
15 crying.

16 Now, Mr. Morris' statement was that
17 he was worried about the child, that it was
18 breathing bad. He gave us the statement also
19 in one statement he said that the child was
20 breathing like he had pneumonia or something
21 like that, and that he was so worried about it
22 that he felt the need to tell Ms. Honeycutt
23 that she needed to take him to the doctor.

24 Okay, so the question is -- they're
25 in Fountain Inn. They drive all the way from

1 Fountain Inn to their home, however long it
2 takes. I think somebody testified that it may
3 be an hour, something like that. How many
4 hospitals did they pass? How many doctor's
5 offices did they pass? I asked Mr. Morris on
6 the stand, 'You said your son was hot. How
7 hot was he?' "I don't know."

8 You know why he doesn't know, he
9 didn't even take the time to feel his son to
10 see if he was hot; or to take the time to go
11 to a drugstore and get a thermometer to see
12 how sick he was. And he certainly didn't take
13 him to the doctor.

14 So what does he do? He simply
15 returns him to his girlfriend, the mother of
16 the child, and -- 'you take him to the
17 doctor.' What is his excuse? His excuse is
18 that he had to go to work on Monday. He had
19 to be at work on Monday and this was 6:30
20 Sunday evening, and he used that as the excuse
21 or his reason why he had to return the child.
22 'I have to work on Monday, so I am not going
23 to take him to the doctor, but he needs to go
24 to the doctor.'

25 Before the child was returned, why

1 did they not take minor to the doctor? Why
2 did they not take him? Maybe they were more
3 nervous about the doctor finding out the way
4 that he was acting, what was going on, that
5 Ms. Phillips have given him the medication
6 maybe she knew what he had in his system and
7 knew that any emergency room would have given
8 him a full examination.

9 Mr. Morris, I do not know who he was
10 protecting. He may have been protecting
11 himself here, or his mother, or both of them
12 -- but he didn't protect minor He didn't
13 protect minor in the least little bit. He
14 was there the entire time to the extent that
15 there was testimony that the child was playing
16 with the Tussinex.

17 Was there testimony that the child
18 was playing with the Tussinex? They were
19 letting the child play with drugs. It all
20 adds up, the puzzle is coming together and the
21 picture is that the Tussinex is on the bed,
22 they get minor on the bed and -- they've
23 admitted this to other people -- not only did
24 they admit it here today. She admitted it
25 when I questioned her. He admitted it when I

1 went back and questioned him. They admitted
2 it.

3 Then Ladies and Gentlemen, we -- we
4 come to another big point. While this is
5 going on with them -- and once again I am
6 going to get to the time, and I will. But
7 while this was given to the child and -- of
8 course they are denying it today, of course
9 they are going to deny it, everybody is going
10 to deny it, but what they can't deny is Ms.
11 Kayla who testified for the defense. She's in
12 the hospital and she overhears Donna Phillips
13 tell Mr. Morris that, "I gave him cough
14 medicine. I hope that's not it."

15 All of a sudden we do have an
16 admission. We didn't have one by her to this
17 police officer. She knew everybody was
18 around, she had to know that somebody heard
19 her admit it. She was sitting with her son
20 right over there with her.

21 Now, Ladies and Gentlemen, Mr. DeJong
22 brought up -- I turned forty-five years old on
23 Saturday. Mr. DeJong brought up about the
24 expert witness and I believe -- while I
25 respect Mr. DeJong's advice, I don't believe

1 that he told you the whole story. He said
2 that if the drug/the medication is time-
3 released, it takes four hours. I believe
4 that's right, that that's what the expert
5 testified to, time released. But what he
6 failed to tell you all or to remind you all is
7 that it takes twelve hours for one dose to be
8 metabolized out of the body. You don't have
9 to keep giving doses before the peak, you can
10 keep giving doses over a twelve-hour period of
11 time and those doses build and build. So you
12 have it metabolizing out in twelve hours, and
13 if you give four does within the twelve hours
14 you haven't gotten rid of the first dose while
15 you still adding doses to it, to a little
16 baby.

17 The experts testified that this was
18 repetitive dosing. Dr. Ward, who has been
19 doing this a long time, he admitted to you
20 that he could not say how many doses that
21 there were but that it had to have been
22 repetitive. Dr. Ward then testified -- there
23 were two experts. Dr. Ward had been doing it,
24 as he said, eighteen years. He testified, he
25 corroborated with Dr. Flores that this had to

1 be repetitive doses, not one big dose.
2 Repetitive doses, which goes to the repetitive
3 doses over the weekend. Of course, we can't
4 say when it started but the doctor, Dr. Ward,
5 said that it could go back as far as thirty,
6 thirty-four to forty hours; which puts minor
7 in Phillips' and Morris' possession. Also in
8 their possession, 'lo and behold, Tussinex.

9 Now, Ladies and Gentlemen, I think
10 that we all know that Lortab is not part of
11 this. The experts testified for Lortab has a
12 specific ingredient, and I can't pronounce it,
13 but that ingredient that is in Lortab was not
14 found in minor's blood. They testified that
15 that ingredient was not found in his blood.

16 Grandma testified that she didn't give him
17 Lortab. I am telling you right now that that
18 didn't happen, I am not accusing her of doing
19 that. I am not accusing her of giving him
20 Lortab. Why did she bring it up to Detective
21 Burgess right from the get-go? Because I can
22 built in an excuse that this could have been
23 an accident. 'May he just got into my Lortab'
24 or 'maybe I dropped it on the floor.' She was
25 already building her excuse up in this case.

1 She founds out this opiates in his
2 system and she says, 'Oh, I gave him some of
3 my cough medicine. I hope it's not that.'

4 But then she doesn't tell that to the
5 detective. What she tells the detective is,
6 'There were a few other people around too. I
7 hope he didn't get my sister's Lortab.' She
8 was even going to blame it on the sister.
9 Already building a defense.

10 Ladies and Gentlemen, the defense put
11 up an expert. He really didn't say much but
12 he made a big deal of hydromorphone not being
13 in the Lortab. Ladies and Gentlemen, you will
14 have this back there, what the toxicologist
15 says. He says that there was not enough blood
16 to get that sample. Well, where was that
17 sample? They make it sound like it was
18 difficult to perform a toxicology test. Well,
19 there were two tests -- a urine test and a
20 blood test. They had the information.

21 The urine had the hydromorphone in
22 it, the metabolites of hydrocodone. They
23 weren't going to talk about that when he was
24 on the stand. It showed up in the urine, we
25 had it in the urine. But was it in the blood?

1 Both the blood and the urine had the
2 hydrocodone in it. The expert had to admit to
3 that.

4 He also, I found this interesting,
5 what he based most of his opinion on was 8:00
6 a.m., that the -- remember the cross-
7 examination about that, that 'your entire
8 examination was based on 8:00 a.m.'?

9 *So if the child is not okay at 8:00,*
10 *would that change your opinion here?*

11 He said, 'Yes.'

12 He said yes, and he didn't know about
13 the bedsores. What he was basing his entire
14 opinion on was the statement of Latasha
15 Honeycutt that the child was fine. I think
16 we've seen how credible she is.

17 Ladies and Gentlemen, I will try to
18 wrap this up now. I know that I've been
19 talking a little while here and I apologize
20 for that but what happened here is that that
21 child got fussy, sleepy, was waking up at
22 night and Tussinex is a drug that will help
23 that child calm down. They calmed him down.
24 They started giving it to him, it worked. So
25 they gave him some more, and it worked again.

1 The time period here is twelve hours, and they
2 gave him some more, some more. You know, with
3 repeated doses in a twelve-hour period the
4 effects are building, building until we get
5 the bad breathing. All the things that their
6 expert said Tussinex would do to a child.
7 He's feeling the extreme effects by the
8 afternoon and he's starting to get sick.
9 minor is under the effect and influence of
10 Hydrocodone and the intoxication is building.
11 Poor little minor an innocent child, has had
12 to feel the effects of this; he started to
13 shake, he falls asleep, he wakes up, by then
14 they are at the parent's house, the mother's
15 house. We don't know when the last dose was
16 given, but they probably gave him a dose at
17 their house before they took him to mama's,
18 and he's just getting worse and worse. When
19 he gets to mom's house, he takes poor little
20 minor who is feeling terrible at this time,
21 and she puts him in the crib. All these
22 affects of the Hydrocodone continue to build
23 and come together, building pressure like a
24 volcano until sometime in the night the
25 volcano exploded and minor went into a coma.

1 Because of the affects of all three of these
2 people's action, and inactions, all of them,
3 minor is no longer here with us. He is not
4 here to enjoy life, to learn, to see the
5 mountains, to see the beach, to see everything
6 that we as adults enjoy growing up.

7 I ask that you come back with the
8 only possible verdicts in this case: guilty,
9 guilty, guilty. All three of them are guilty.
10 Thank you.

11 THE COURT: All right. Thank you,
12 Mr. Richardson. Ladies and Gentlemen, you
13 have heard the evidence in this case and
14 you've heard the arguments of the lawyers.

15 It is now my duty to instruct you on
16 the law that applies to the facts of this
17 case.

18 It is your duty to find the facts
19 from the evidence in this case and to those
20 facts you must apply the law as I give it to
21 you. You should not be concerned with what
22 the law should be but with what it is. You
23 must not be influenced by any personal likes
24 or dislikes or opinions or prejudices or undue
25 sympathy. That means that you must decide the

1 case solely on the evidence and the law. You
2 will recall that you took an oath to do just
3 that when we began the case on Monday.

4 Now, following my instructions, you
5 must follow the law, all of them and not
6 single out some or ignore others because they
7 are equally important. You must not read into
8 these instructions or into anything that I may
9 have said or done during the course of this
10 trial as an indication or suggestion as to
11 what I think the facts are or what verdict
12 that I think that you return. As I told you,
13 our Constitution system of justice gives you
14 the jury the right to determine the facts and
15 I am not going to infringe on your prerogative
16 to do that. You cannot infringe on my right
17 to tell you what the law are that you apply to
18 those facts.

19 Now, how do you decide what the facts
20 are? You do that by weighing and evaluating
21 the evidence that you've heard. There is no
22 way for you to weigh evidence in a literal
23 sense. I certainly am not going to give you a
24 set of scales to take back in the jury room
25 and conduct an experiment. It is a mental

1 process. You weigh and evaluate evidence by
2 using your good, common sense and your sense
3 of judgment; taking the evidence that you have
4 heard and placing it on the scales mentally
5 and determining whether the State has met its
6 burden of proof.

7 Now, there are certain things that I
8 told you at the beginning that I am going to
9 repeat briefly. I know you heard it the first
10 time, but please bear with me. I told you
11 that the evidence from which you are to decide
12 what the facts are consists of two things:
13 first, the sworn testimony of witnesses and,
14 secondly, any exhibits that have been admitted
15 into evidence or any facts that the lawyers
16 have agreed on or have stipulated to.

17 What the lawyers say is not evidence.
18 While what they have told you in their
19 arguments is very important, it is not in and
20 of itself evidence. If your memory of what a
21 witness said or what the evidence was is
22 different from the lawyer's recollection, your
23 memory controls.

24 Likewise, anything that may have been
25 excluded or stricken from evidence, that you

1 have been instructed to disregard, is not
2 evidence in this case and must not be
3 considered by you.

4 Now, Ladies and Gentlemen, there are
5 two types of evidence that are generally
6 presented during a trial. What I am talking
7 about now is direct and circumstantial
8 evidence. Direct evidence is the testimony of
9 someone who claims to have actual and direct
10 knowledge of a fact, such as an eyewitness.
11 It is evidence which, if believed, immediately
12 establishes a fact. Circumstantial evidence
13 is indirect evidence. Put another way,
14 circumstantial evidence is proof of a chain of
15 facts and circumstances, from which you can
16 find that another fact exists, even though it
17 has not been proven to you directly.

18 The law makes no distinction between
19 the weight or value given direct or
20 circumstantial evidence. You are entitled to
21 consider both kinds. There is not a greater
22 degree of certainty required of one over the
23 other. You may consider both direct and
24 circumstantial evidence and if, after weighing
25 all the evidence in the light of reason,

1 common sense and experience you're not
2 convinced of the guilt of a defendant beyond a
3 reasonable doubt, you must find the defendant
4 not guilty.

5 I told you at the beginning that as
6 the judge of the facts that you would have to,
7 by necessity, determine the credibility and
8 gauge the believability of each witness who
9 testified and each exhibit that has been
10 admitted; that you would be the sole judge of
11 that credibility. I know that you heard me
12 when I told you that the first time, when I
13 gave you guidelines that you could use in
14 determining credibility.

15 I will not go over that again, but I
16 will tell you that you may believe everything
17 that a witness says, you may believe nothing a
18 witness says, you may believe parts of what a
19 witness' testimony is, and you may disbelieve
20 other parts. You may believe one witness over
21 several or several over one.

22 You certainly are not going to decide
23 this matter of credibility arbitrarily. I
24 know that you're going to have a good, sound
25 reason for the decisions that you make as to

1 credibility. As I told you, your common sense
2 is something you can certainly use when doing
3 that. You don't determine credibility by
4 placing any emphasis or weight on who calls a
5 witness, because your objective here is to
6 determine whether the State had met its burden
7 of proof and what the true facts are. It
8 doesn't matter whether those true facts come
9 from a witness for the State or for the
10 defense.

11 You've heard testimony from people
12 who have been described and qualified as
13 expert witnesses. There are, you will recall
14 that I told you, people who are by reason of
15 their education, training and experience,
16 achieved some expertise in their field and who
17 are entitled to state their opinions on
18 matters in that field and are entitled to
19 state their reasons for their opinions. But
20 expert opinion testimony must be judged such
21 as any other opinion testimony in this
22 important respect, and that is that you the
23 jury are the sole judges of its credibility.
24 You may accept or reject expert opinion or
25 testimony or give it whatever weight that you

1 think that it deserves.

2 Now, Ladies and Gentlemen, some of
3 you have taken notes throughout the trial. I
4 have also instructed you about that. I want
5 to remind you again that simply because
6 someone is taking notes, the doesn't mean that
7 they have a better memory or grasp of the
8 evidence in this case than someone who did
9 not. As we all know, notes can be taken. I
10 just caution you in that regard.

11 I will also tell you that in this
12 case there are three defendants. The case of
13 each defendant and the evidence and the laws
14 as to that defendant should be considered and
15 must be considered by you separately and
16 individually. Your verdict does not have to
17 be the same for all defendants. Of course,
18 the fact that you may find one defendant
19 guilty or not guilty shouldn't control your
20 verdict as to the other defendants. When one
21 or more person is tried together and charged
22 with a crime, if the evidence warrants it you
23 may convict one and acquit another or you may
24 acquit all defendants or you may convict all
25 defendants. It would depend on your view of

1 the testimony and the evidence. You must take
2 each defendant, consider the evidence, weigh
3 and evaluate it, as to each defendant and my
4 instruction to you on the law, and you must do
5 that separate and specifically for each
6 defendant. You will then write a separate
7 verdict of guilty or not guilty for each
8 individual defendant.

9 Now, Ladies and Gentlemen, in this
10 criminal case there are certain principles of
11 criminal law that I have already gone over
12 with your several times. I will just repeat
13 them again because they are so fundamentally
14 important.

15 You are instructed that the facts
16 that the defendants were indicted is not
17 evidence. The indictment is not an exhibit,
18 it is not a witness and it cannot be
19 considered by you as evidence of guilt. It is
20 not an admission of guilt. It is simply the
21 formal way that a citizen charged with a crime
22 is given notice of what he or she is charged
23 with.

24 The defendants have pled Not Guilty
25 to that indictment(s) and that puts the burden

1 of proof entirely on the State. A person
2 charged with committing a crime is never
3 required to prove themselves innocent or to
4 prove themselves not guilty. It is an
5 important fundamental rule of law that a
6 defendant in a criminal trial, not matter what
7 the charge may be, will always be presumed to
8 be innocent of that charge unless and until
9 guilt has been proven by evidence satisfying
10 you of their guilt beyond a reasonable doubt.

11 This presumption of innocence does
12 not end when your deliberations begin. It
13 accompanies a defendant throughout the trial
14 until and unless you reach a verdict of guilt
15 based on evidence satisfying you of that guilt
16 beyond a reasonable doubt.

17 The presumption of innocence is not a
18 technicality. It is a fundamental right to
19 which everyone is entitled unless you, the
20 jury, are satisfied by evidence that the State
21 has proven guilt beyond a reasonable doubt as
22 to each element of the crime.

23 What is a reasonable doubt? In the
24 law's definition, a reasonable doubt is the
25 kind of doubt that would make a sincere,

1 honest, conscientious person to hesitate to
2 act in an important in their own affairs.

3 Proof beyond a reasonable doubt is
4 proof that leaves you firmly convinced of a
5 defendant's guilt. In criminal cases, the law
6 does not require proof that overcomes every
7 possible doubt. Of course there are very few
8 things in the world that we know with absolute
9 certainty.

10 If based on your view of the evidence
11 you are firmly convinced a defendant is guilty
12 of a crime, you must find him or her guilty.
13 If, on the other hand, you think that there is
14 a real possibility that a defendant is not
15 guilty, you must give the defendant the
16 benefit of that doubt and find him or her not
17 guilty.

18 A reasonable doubt may arise from the
19 evidence or from a lack of evidence. I
20 further tell you that a defendant is entitled
21 to every reasonable doubt that may arise in a
22 case. What that means is that if there is any
23 fact which is essential to a conviction, a
24 verdict of guilty, should you have a
25 reasonable doubt as to how that fact should be

1 resolved, it is your duty to resolve that
2 doubt in favor of the defendant.

3 Now, Ladies and Gentlemen, you've
4 heard evidence that a witness or witnesses
5 were convicted of a crime other than the one
6 for which the defendant is now on trial. The
7 evidence may be considered by you, if you
8 conclude that it is true, only in deciding
9 whether the defendants' testimony is believe-
10 able, and for no other purpose.

11 You may not consider a defendant's
12 prior record as any evidence of the
13 defendant's guilt of the charge we are trying
14 here today.

15 Now, statements alleged to have been
16 made by the defendants have been admitted into
17 evidence. While this court has determined
18 that the statements are admissible, you the
19 jury make the ultimate decision of whether a
20 defendant made the statement. If a defendant
21 did make a statement, you must determine
22 whether the statement was made by the
23 defendant voluntarily and or his/her own free
24 will and choice. That means that the
25 statement was not caused by pressure, force,

1 fear, threats of coercion or intimidation or
2 by hope or promise of leniency or reward(s) of
3 any kind.

4 The State has the burden of proving
5 beyond a reasonable doubt that the alleged
6 statement was voluntary. If you determine
7 that it was, you may give the statement any
8 further consideration you deem proper. You
9 must decide what weight, if any, should be
10 given to the alleged statement.

11 If you determine that it was not the
12 free and voluntary statement of a defendant,
13 you should not consider the statement
14 whatsoever.

15 Now, Ladies and Gentlemen, in this
16 case, as you know, the Defendants Donna
17 Phillips and Latasha Honeycutt are charged
18 with homicide by child abuse or neglect under
19 16-3-85 of the South Carolina Code.

20 The Defendant Jamie Edward Morris is
21 charged with a separate crime and that is the
22 crime of aiding and abetting homicide by child
23 abuse or neglect.

24 Now, in order to convict Donna Lynn
25 Phillips and Latasha Diane Honeycutt of

1 homicide by child abuse or neglect, the State
2 must prove beyond a reasonable doubt that the
3 defendant caused the death of a child under
4 the age of eleven while committing child abuse
5 or neglect and that the death occurred under
6 circumstances manifesting extreme indifference
7 to human life.

8 Child abuse or neglect is a knowing
9 act or a knowing failure to act that causes
10 harm to a child's physical health or welfare.
11 Harm to the child's physical health or welfare
12 means that the defendant(s) either inflicted
13 or allowed to be inflicted on the child
14 physical injuries, failed to supply the child
15 with adequate food, clothing, shelter or
16 healthcare and such failure cause the physical
17 injury or condition that caused death; or
18 abandoned the child, causing the child's
19 death.

20 The State must also prove criminal
21 intent beyond a reasonable doubt. Criminal
22 intent is always a matter that must be
23 determined by the jury from the circumstances.
24 There is no way to prove intent to a
25 mathematical certainty, so the law says

1 criminal intent may be inferred from the
2 circumstances. It is not necessary to
3 establish intent by direct and positive
4 evidence, but intent may be established by
5 inference in the same way as any other fact,
6 by taking into consideration the act of the
7 parties and all the acts and circumstances.
8 Criminal intent is something that may arise
9 from actions or a failure to act. It is up to
10 you to determine what a defendant intended to
11 do based on the circumstances shown to have
12 existed.

13 In the offense of homicide by child
14 abuse or neglect, the State must prove beyond
15 a reasonable doubt that the death occurred
16 under circumstances showing an extreme
17 indifference to human life. Extreme
18 indifference is a mental state akin to intent,
19 characterized by a deliberate act or a
20 deliberate failure to act culminating in the
21 child's death.

22 The State may also prove homicide by
23 child neglect or abuse by proving -- and this
24 -- let me back up just a second. This
25 instruction applies only to Mr. Jamie Edward

1 Morris, charged with aiding and abetting
2 homicide by child abuse or neglect.. In order
3 to prove this offense against Mr. Morris, the
4 State must prove beyond a reasonable doubt
5 that Mr. Morris knowingly and intentionally
6 aided and abetted another person to commit
7 child abuse or neglect that resulted in the
8 death of a child under the age of eleven.

9 To "aid" means to knowingly help, to
10 promote the course or accomplishment of, give
11 support to or to give assistance to. To
12 "abet" means to knowingly encourage or appear
13 to favor or support.

14 Now, Ladies and Gentlemen, mere
15 presence at the scene of a crime is not
16 sufficient to prove someone guilty of the
17 crime. A defendant's presence where a crime
18 is being committed, or mere association with
19 persons who commit the crime, does not make a
20 defendant an accomplice or an aider or abettor
21 of the person committing the crime. The
22 burden is on the State to prove every element
23 of the crime charged. If you find after
24 reviewing the evidence that the State has only
25 proven that the defendant was merely present

1 at the scene and that they have not proven
2 beyond a reasonable doubt that there was any
3 other participation in the crime, then you
4 must find the defendant not guilty. The law
5 is that proof of being at the scene of a crime
6 is not sufficient to find someone guilty of
7 that crime.

8 Now, that covers all the substantive
9 law that applies to this case. I will give
10 you some final instructions on your
11 deliberations and then the case will be in
12 your hands for a decision.

13 First of all, you don't serve as
14 jurors to be advocates for either the State or
15 Mr. Morris, Ms. Phillips or Ms. Honeycutt.
16 You were chosen because both sides believe
17 that you will be fair and impartial and that
18 you will decide this case without bias or
19 prejudice or based on any preconceived ideas.

20 Now, that means that you're not
21 partisans. You are the judge of the facts.
22 I've told you how you judge those facts and
23 how you take those facts, once you have
24 determined what they are, and how you apply
25 the law to those facts. Once you have done

1 that, you will be able to come up with a
2 decision/verdict in this case.

3 If you looked up the word "juror",
4 "jury" it comes from an old word meaning "a
5 company of people formed to render a true
6 answer." Your job is not just to render an
7 answer as to what the true facts are but to
8 determine whether the State has met its burden
9 of proof beyond a reasonable doubt.

10 You further should know that your
11 verdicts must be unanimous. Mr. Allison, I am
12 going to hand to you the verdict forms so that
13 you will see how they are set out. There are
14 three individual verdict forms, because as I
15 told you, the jury must consider each
16 defendant separately and weigh the evidence
17 separate as to each defendant and write a
18 separate verdict as to each. The verdict
19 forms are straightforward, just asking whether
20 you find that individual guilty or not guilty.

21 Don't attach any significance to the
22 order of the verdicts, we had to put them in
23 some order.

24 Of course, you are only authorized to
25 sign when the verdict is unanimous.

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1 Now, the genius of our jury system
2 is, Ladies and Gentlemen, that it allows
3 twelve different people from different
4 backgrounds and walks of life to discuss the
5 evidence that they have heard and ultimately
6 reach a verdict. You each will have different
7 perspectives and points of view. I know that
8 you will listen courteously to each other as
9 you go through the evidence and weigh it.
10 Don't be afraid to change your opinion if the
11 discussion so persuade you and not to be
12 dissuaded if you're of a different mind.
13 However, don't surrender an honestly held
14 belief just to get the case over with because
15 this case is very important to both cases, as
16 you well know.

17 Your vote is just that. It is your
18 vote.

19 Now, I will just ask you to go back
20 to the jury room at this time. Hopefully this
21 is the last time that I will have to say this
22 to you, but don't talk about the case yet.
23 When you get the exhibits, that will be your
24 signal to start deliberating. I may have left
25 something out and, if so, the lawyers will be

1 quick to tell me that I have, so I need to
2 check with them.

3 But the record is closed. You're not
4 going to hear any more witnesses, there be no
5 more exhibits that they want you to see.

6 I will ask the Alternates to just go
7 out in the hall and I will talk with you out
8 here separate from the jury. Do not go back
9 in the jury room at this time.

10 Thank you for your attention. Go
11 back, but don't start talking about the case
12 until you get the exhibits. I took the
13 liberty of ordering you lunch. I must say
14 that I got the time right on -- I can't
15 guarantee that it is any kind of gourmet fare,
16 but I hope that you enjoy it.

17 (JURY OUT @ 12:44 P.M.)

18 THE COURT: Any exceptions or
19 additions?

20 SOLICITOR: No, sir.

21 MR. DEJONG: None on behalf of Mr.
22 Morris, Your Honor.

23 MR. O'CONNELL: None on behalf of
24 Ms. Phillips, Your Honor.

25 MR. HARBIN: No, sir.

1 (COUNSEL REVIEW OF EXHIBITS)

2 THE COURT: All right, we will be
3 at-ease until we hear something. We are going
4 to do some bond hearings or something. If you
5 leave the courthouse, leave your cell number.

6 (JURY IN DELIBERATIONS @ 12:50 P.M.)

7 (NOTIFIED OF JURY QUESTION @ 3:07 P.M.)

8 (DEFENDANTS PRESENT)

9 THE COURT: We have a note from the
10 jury, which we will make a court's Exhibit.

11 (SO ENTERED AS COURT'S EXHIBIT 2)

12 THE COURT: The note says "please
13 define one more time the definition of aiding
14 and abetting homicide by child abuse or
15 negelct."

16 It's signed by the foreperson.

17 I just shared the note with the
18 lawyers in the hall and I believe that the
19 State and the defense wish for me to recharge
20 -- clarify -- do you want me to charge just
21 the portion about aiding and abetting? I
22 mean, that's all that they asked for.

23 MR. HARBIN: That would be my
24 opinion, Your Honor. What they asked for,
25 (affirmative nod).

1 THE COURT: Okay. I think that's
2 right. Bring them in.

3 (JURY IN @ 3:10 P.M.)

4 THE COURT: Okay, Ladies and
5 Gentlemen. I got your note. I am going to
6 define for you one more time the law of aiding
7 and abetting homicide by child abuse or
8 neglect.

9 In order to convict Mr. Morris of
10 this offense, the State must prove beyond a
11 reasonable doubt that he knowingly and
12 intentionally aided and abetted another person
13 to commit child abuse or neglect that resulted
14 in the death of a child under the age of
15 eleven.

16 "Aid" means to knowingly help,
17 promote the course or accomplishment of, to
18 give support to, or to give assistance to.

19 "Abet" means to knowingly encourage
20 or appear to favor or support.

21 That's what you requested me to
22 instruct you on. You can resume your
23 deliberations. Thank you.

24 (JURY OUT @ 3:14 P.M.)

25 THE COURT: Any objection or

1 exception to that instruction?

2 MR. HARBIN: None on behalf of Mr.
3 Morris, Your Honor.

4 SOLICITOR: No, sir.

5 THE COURT: Well, we will be in
6 recess until we hear something further.

7 (JURY IN DELIBERATIONS)

8 (NOTIFIED OF VERDICT @ 4:59 P.M.)

9 (DEFENDANTS PRESENT)

10 THE COURT: All right, I understand
11 that we have a verdict. I don't know what the
12 verdict is, obviously, but I do want to
13 commend the lawyers involved, both for the
14 State and the defense, on the excellent job
15 that they did throughout this trial. Thank
16 you for your courtesies.

17 Bring the jury in, Mr. Teal. Thank
18 you.

19 (JURY IN @ 5:05 P.M.)

20 THE COURT: Mr. Foreman, has the
21 jury reached a unanimous verdict, sir?

22 FOREMAN: Yes, sir.

23 THE COURT: If you would, hand the
24 verdict form to the bailiff. I will ask the
25 Clerk to publish the verdicts.

1 FOREMAN: (Complies)

2 CLERK: In the case of the State of
3 South Carolina versus Donna Lynn Phillips, as
4 to the charge of homicide by child abuse or
5 neglect, we the jury unanimously find the
6 Defendant, Donna Lynn Phillips, guilty.

7 In the case of the State of South
8 Carolina versus Jamie Edward Morris, as to the
9 charge of aiding and abetting homicide by
10 child abuse or neglect, we the jury
11 unanimously find the Defendant, Jamie Edward
12 Morris, guilty.

13 In the case of the State of South
14 Carolina versus Latasha Diane Honeycutt, as to
15 the charge of homicide by child abuse or
16 neglect, we the jury unanimously find the
17 Defendant, Latasha Diane Honeycutt, not
18 guilty.

19 THE COURT: All right. Ladies and
20 Gentlemen, if you can't control your emotions,
21 you need to leave right now -- right now!

22 CLERK: If these are your verdicts,
23 so say you all by raising your right hand --
24 (all jurors raise right hand).

25 THE COURT: Any Motions or matters

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1 before the jury is discharged?

2 MR. DEJONG: On behalf of Mr.
3 Morris, I would move for a new trial. If
4 you'd like to hear that later, that's fine.
5 That's my Motion.

6 THE COURT: Yes, sir, I will be
7 happy to hear that later.

8 MR. DEJONG: Nothing as far as the
9 jury is concerned.

10 MR. O'CONNELL: Nothing as far as
11 the jury is concerned.

12 THE COURT: Do either of you wish
13 to have the jury polled?

14 MR. DEJONG: No, Your Honor.

15 MR. O'CONNELL: No, sir.

16 THE COURT: Mr. Harbin?

17 MR. HARBIN: No, sir.

18 THE COURT: All right. Ladies and
19 Gentlemen, thank you for your service. You
20 now have a three-year exemption from service
21 in Circuit Court jury duty. I want to thank
22 you for your contribution to your community
23 this week. I know it's difficult to spend an
24 entire week on a case. We appreciate your
25 hard work and patience.

1 I don't make any comment on the
2 verdict, but do want to thank you for your
3 time. We don't have professional jurors in
4 this country, so we have to rely on good
5 citizens like you to make difficult decisions.
6 So you have our gratitude.

7 If you want to observe the sentencing
8 portion of this case, you're welcome to do so.
9 You can move to the gallery. Mr. Fields will
10 bring you around if you want to do that. If
11 you need anything for your work, anything to
12 show that you were on the jury this week, the
13 clerk's office will be happy to help you with
14 that.

15 Thank you very much.

16 (JURY EXCUSED)

17 THE COURT: Before we take up the
18 Motions, I am going to say again that if there
19 is anyone in the gallery who does not believe
20 that they can control their emotions for the
21 rest of the proceeding, the time to leave is
22 right now before I have to take care of it.
23 Contempt of court carries up to ten years in
24 prison. I don't want to have to take care of
25 something that, uh, but I will take care of it

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1 if I need to. So you've been warned. Any
2 further outbursts will be dealt with.

3 MR. HARBIN: Your Honor, speaking
4 for my client, may I ask if my client may be
5 excused?

6 THE COURT: Yes, sir.

7 MR. DEJONG: At this point in time,
8 Your Honor, on behalf of my client, Mr.
9 Morris, I would respectfully move for a new
10 trial in that the evidence in this case does
11 not substantiate the death of a child.

12 THE COURT: Thank you, sir. I
13 respectfully deny your Motion. Yes, sir, Mr.
14 O'Connell?

15 MR. O'CONNELL: I would also ask
16 for a new trial in that there is no way that
17 this jury could have found as they found with
18 respect to my client's actions. It's just sad
19 but it was not ---

20 THE COURT: Thank you, sir. I
21 respectfully deny your Motion. Yes, sir?

22 MR. O'CONNELL: I have nothing
23 further. I just didn't sit down, Your Honor.

24 THE COURT: That's fine.

25 SOLICITOR: Nothing further from

1 the State?

2 THE COURT: Are you ready for the
3 sentencing?

4 SOLICITOR: Yes, sir.

5 THE COURT: All right. Be glad to
6 hear from the State?

7 SOLICITOR: Your Honor, of course
8 you have heard the case. The sentence for
9 this is twenty to life, and ten to twenty
10 years. We certainly are seeking jail time and
11 based on the age of this child, we would seek
12 a substantial amount of jail time as indicated
13 by statute.

14 Your Honor, Ms. Scotti is here. She
15 was the foster parent for the child. She
16 would like to address the court if the Court
17 would be pleased to hear from her.

18 THE COURT: Certainly. State your
19 name.

20 MS. SCOTTI: Dionne Scotti. I would
21 just like to say that minor came into our
22 care at about a year. He was a sick child.

23 We watched him grow, we watched his
24 first steps. He seemed a healthy child who
25 was smiling and happy. And it took four days,

1 that's it. I don't understand. His death has
2 created such a hole in my heart. They knew
3 something was wrong. From all the evidence, I
4 could even see that they knew something was
5 wrong, the child crying like that. The fact
6 that the solicitors give back children to
7 homes that are unsafe, the last thing that I
8 said to him was that we were so scared that
9 something like this would happen. When I
10 heard it, I knew that it was -- I told my
11 husband that there was an overdose, that they
12 gave him something to make him sleep.

13 He was our heart and our soul. We
14 would have done anything to save him. He
15 could still be with us today.

16 It's just a tragedy to have such a
17 loss. I hope that they will be held account-
18 able for what they have done.

19 THE COURT: You said that he was
20 sick when you got him?

21 MS. SCOTTII: Yes, he came from the
22 hospital with a brain injury, a subdural
23 hematoma, had been in the hospital for two
24 weeks.

25 When he came into foster care, he had

1 a record of abuse and they put him back in
2 that situation.

3 He couldn't -- when he came, he
4 couldn't walk, he couldn't eat. We nursed
5 that child back. We loved him with all our
6 hearts. We sent home a healthy child. I
7 think I said to him -- he was crying in the
8 car and I said, 'Buddy, it's going to be
9 okay.' But it wasn't. It wasn't even four
10 days. You would think that you could keep a
11 child alive for four days. We begged them to
12 let him stay with us. They didn't.

13 THE COURT: Thank you, ma'am.

14 SOLICITOR: Nothing at this time
15 from the State.

16 MR. DEJONG: In reading the statute,
17 it is not particularly clear to me the way
18 that the legislature -- they put in a "not
19 less", they did not put in a minimum
20 mandatory. Now, I don't know that this
21 statute has been interpreted, in all candor.
22 I know that the Supreme Court did interpret
23 the first statute some year or two ago, maybe
24 longer than that. Is it Your Honor's position
25 that the minimum set forth in the statute,

1 even though it does not say "minimum
2 mandatory" is a minimum mandatory?

3 THE COURT: Does the State have a
4 position on that?

5 SOLICITOR: What I have seen, Your
6 Honor, I don't think that it is a minimum
7 mandatory.

8 THE COURT: I would agree that it
9 is suspendable based on the way that the
10 statute reads.

11 MR. DEJONG: Thank you, Your Honor.
12 With regard to Mr. Morris, Your Honor, he is
13 now twenty-eight years of age. He is still
14 single. Has no other children. He has an
15 eighth grade education, no GED.

16 He has been working, Your Honor. I
17 know shortly after getting out on bond that he
18 worked at auto detailing. My understanding is
19 that he has been working. Initially he had
20 some problems finding employment because he
21 was on electronic monitoring, initially. He
22 has since then, at some time, come off of the
23 electronic monitoring.

24 He -- to my knowledge, Your Honor, he
25 has had no more involvement with the law since

1 this charge came about. There may have been
2 at one point in time a probation violation and
3 that's been taken care of. He is no longer on
4 probation.

5 The only record that I am aware of
6 that he has, Your Honor, back in -- it would
7 appear to be '06, he had two warrants for
8 possession of a controlled substance and
9 possession of marijuana. The only General
10 Sessions Court case that he has had came out
11 of -- they changed the NCIC report and I'm
12 having a hard time finding my date here.
13 That, I believe, was in 2007, Your Honor.
14 That was for a distribution of marijuana. On
15 that charge, he received a YOA, presumptively
16 not to exceed six. The NCIC does not say --
17 suspended but, rather, probation.

18 Other than that, I think that he may
19 have had one or two traffic offenses but no
20 other record.

21 Your Honor, under paragraph (d) of
22 16-3-85, 16-3-85(d), certainly the court can
23 take into consideration mitigating
24 circumstances. You have heard the testimony
25 and the evidence in this trial, you certainly

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1 have had an opportunity to make your own
2 assessment of culpability in this case.
3 I really don't want to dwell on that, in large
4 part, because of family relationships, Your
5 Honor, but none of us -- I certainly think
6 that there are differences even as to these
7 defendants as to culpability.

8 I fully anticipate, Your Honor, that
9 he will get jail time. Of course, I would ask
10 for mercy for Mr. Morris. Again, the jury has
11 found him guilty. We are not arguing with the
12 jury's verdict -- we can't say that we like it
13 but we're not going to stand here and argue
14 with it. But I would certainly ask for mercy
15 from the Court as to sentencing.

16 Mr. Morris, is there anything that
17 you would like to share with His Honor?

18 DEFENDANT MORRIS: No.

19 MR. DEJONG: I believe that the
20 answer was no.

21 DEFENDANT MORRIS: No, sir.

22 MR. DEJONG: The answer was "no,
23 sir," in case the Court did not hear him.

24

25 DEFENDANT MORRIS: Just that

1 they're convicting the wrong person is all.

2 THE COURT: Yes, sir, Mr.

3 O'Connell?

4 MR. O'CONNELL: I'm stunned, Your
5 Honor. As we know, we can't talk about the
6 verdict. I am asking you to be merciful.
7 She's fifty-six, fifty-seven years old. She
8 has breathing problems. A jail sentence would
9 probably be like sentencing her to death.

10 There is something that's not here in
11 this case, because of the fact that everyone
12 has argued there was no intent. Mr.
13 Richardson even said to the jury that there
14 was no intent to harm this child. If you
15 assume the worst, that they gave the child
16 some medicine -- and they didn't, Your Honor.

17 I am asking you to be merciful on
18 these people because I can't see where jailing
19 them is rehabilitative. It is not. Like, I
20 said, Your Honor, -- my client would like to
21 say a few words, Your Honor, but like I said,
22 I'm just speechless.

23 THE COURT: Yes, ma'am?

24 MR. O'CONNELL: Your turn.

25 DONNA PHILLIPS: Sir, I didn't give

1 minor hydrocodone. I just know in my
2 heart -- I've work on this for four, four and
3 a half years, I've been up and down with Mr.
4 O'Connell, he knows that I am not guilty.
5 Everybody around me knows. I mean, I've
6 bared my life taking care of my kids. I've
7 fought for them in this town, I've been
8 slapped down by people, I had a woman that is
9 on the central registry that have got my
10 children. She got my children and it took me
11 a long time to get them back and everything, a
12 and stuff, with my husband. She beat me to
13 the ground, I took a warrant out on her and
14 they didn't they didn't do nothing, then I got
15 beat to the ground by her. Then she said I
16 hit her when I didn't hit her. And I had a
17 little girl, my little baby girl run to the
18 door and say, 'My mama didn't hit her, my mama
19 didn't hit her.'

20 I've done a lot of things in this
21 world that might not have been right. But,
22 you know, I -- I might have done a few things
23 that wasn't right. I got out there and dated,
24 might have went to a few bars and stuff, at
25 one time or another but I'm making it up now

1 because I'm -- I'm saying that I am not that
2 kind of person.

3 God is in my heart. I wasn't brought
4 up that way. I didn't give him nothing. I
5 would never, never, never give a child.

6 THE COURT: Yes, ma'am, if you
7 could just address me.

8 DONNA PHILLIPS: I read in the
9 records where minor was crying. We weren't
10 even told that he had nightmares. We wasn't
11 even told that he acted up in his sleep when
12 he had sleepovers. We just heard about that
13 he had nightmares the whole time that he was
14 gone, the whole year. And I went immediately
15 looking up nightmares. I didn't know about
16 this brain injury stuff so much myself,
17 because I was so busy working, trying to get
18 an apartment, I spent my last month before my
19 disability to try to help to get this baby a
20 place to live, a place of safekeeping.

21 I really didn't want him going to
22 Natasha and Brandon, I really didn't, because
23 he pulled away from her -- and that was the
24 biggest thing that hurt me the most. That was
25 the biggest thing that hurt me the most --

1 (emotional). For Brandon to stand there and
2 say that I said that he wasn't dead, when I am
3 the only one who didn't want to believe he was
4 dead, because I didn't know. They told me
5 that I had to realize that he was dead and
6 said no, I would not. I held onto the last
7 minute. Each and every thing I seen, I loved
8 him, I held him, I rocked that baby.

9 He talked and he ate. He ate table
10 food before, he'd ate baby food. But he was
11 climbing out, he was walking out. Don't they
12 know that brain injuries causes them to have
13 different behavior, that they lose that? I
14 mean, you know, you need to read up on that.
15 Every one of you need to read up on it.

16 THE COURT: Anything further,
17 ma'am?

18 DONNA PHILLIPS: I am just here to
19 tell you that I am not -- that you are putting
20 an innocent little girl and man, too, -- I
21 mean woman and man in jail, for a second time,
22 for a crime they did not commit. Every one of
23 you has blood on your hands that had gotten up
24 and put gags in -- gagged my mouth and
25 wouldn't let me tell the whole thing -- going

1 through the computers, you can see the records
2 and everything. I don't know about all that
3 evidence that you didn't show. I don't
4 understand why you didn't show all the
5 evidence and everything brought back. You
6 know, those records, you could have seen who
7 was telling the truth about each and every
8 step.

9 I told you -- that I even had to look
10 at my own kids, and I didn't want to. I
11 looked at everybody, didn't I? We fought our
12 best, as a whole family, trying to figure this
13 thing out because we didn't know.

14 minor was crying that night and we
15 were just looking at it like, 'well, she'd
16 said, well, he acts up if he gets tired.' We
17 didn't know.

18 He had a runny nose. I didn't say
19 that he was coughing. This woman right here
20 turned my statements around. I don't know how
21 you can do that until you've lost a child of
22 your own.

23 THE COURT: Ma'am! Ma'am! Ms.
24 Phillips, you are to direct your comments to
25 me. You need to sum up what you want to say.

1 I am going to give you about two more minutes.

2 DONNA PHILLIPS: All I know is that
3 I seen -- I feel like they've just -- that
4 everything in this case has been gagged and I
5 haven't even got to, you know, nobody has
6 covered my case. Nobody has covered this
7 case. There are so many -- you know, I don't
8 know. I don't know who done it. But I know,
9 being shown the Hydrocodone, you know, there
10 being that big of an amount in his system that
11 somebody had to give it to him. I know that
12 it wasn't mine. God in Heaven knows that it
13 wasn't mine.

14 THE COURT: Thank you, ma'am.
15 Based on Section 16-3-85(d), I have considered
16 the aggravating circumstances, including the
17 defendants' past pattern of child abuse or
18 neglect of a child under the age of eleven
19 years. I've considered any mitigating
20 circumstances.

21 Before we impose sentence on the
22 child abuse charges, I do want to explain
23 further my rulings on the contempt actions and
24 the limitation of Ms. Phillips' testimony
25 based on her conduct. I am relying on

1 *Illinois v. Allen*, a 1970 United States
2 Supreme Court case; I am relying on United
3 States v. Ives (phonetic), a 9th Circuit case
4 from 1974; and I am relying on State versus
5 Mosley 200 S.W. 3rd 624 from the Tennessee
6 Court of Appeals, 2005; and State v. Chapple
7 from the State of Washington Court of Appeals.
8 All of these cases uphold the right of a trial
9 judge to curtail a defendant in a criminal
10 case from testifying when they display
11 disruptive conduct, contemptuous conduct and
12 refuse to adhere to rulings of the court.

13 I've found that it was necessary in
14 the interest of decorum and justice to take
15 the actions that I did. Ms. Phillips had
16 already testified on direct and for a lengthy
17 period of time on cross examination and had
18 been able to present her side of the story to
19 the jury. But after being warned multiple
20 times about what her conduct would result in,
21 specifically her losing the right to testify,
22 you chose to forfeit that right by her
23 conduct.

24 I even offered her the chance to
25 reclaim the right but she insisted on doing it

1 the way that she wanted to do it rather than
2 the way that I proposed. Therefore she was
3 unable to reclaim her right to return to the
4 stand.

5 Now, as far as the contempt, I find
6 that she violated, willfully and
7 intentionally, my prior Order of Monday to
8 limit her testimony. She did so knowing the
9 consequences. My Order was clear and
10 definite. She told me herself that she
11 understood it, she repeated it in her own
12 words, precisely in the manner that I had
13 explained. It was done in the presence of the
14 court, it was disruptive and an immediate
15 imposition of contempt was necessary to uphold
16 the authority of the court and the respect for
17 the justice system. There was no other
18 alternative.

19 I held Ms. Phillips in contempt twice
20 yesterday. She will be sentenced to six
21 months for those convictions. Those sentences
22 will run concurrent.

23 As to the offense of child homicide
24 by abuse or neglect, I find that based on the
25 statute already referenced, the jury's verdict

1 and all the circumstances, that Donna Lynn
2 Phillips is committed to the South Carolina
3 Department of Corrections for a period of
4 twenty-five (25) years.

5 As to Mr. Morris, I find that he
6 should be committed to the Department of
7 Corrections for a period of twelve (12) years,
8 suspended to eight (8) years, following by two
9 (2) years probation. Credit for time served.

10 Court is adjourned.

11 (TRIAL CONCLUDED)

12 (DEFENDANTS IN CUSTODY)

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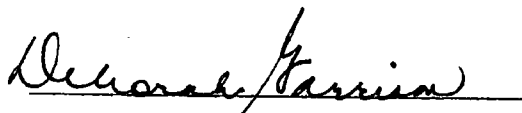
State of South Carolina v. Jamie Edward Morris et al
Case No. 08-GS-39-2053
Jury Trial of July 26-27, 2012
Before The Honorable D. Garrison Hill

415

CERTIFICATE OF REPORTER

I, the undersigned, Deborah Garrison,
official court reporter for the 9th Judicial
Circuit of the State of South Carolina, do
hereby certify that the foregoing is a true,
accurate and complete transcript of the jury
trial held in the above-captioned matter on
July 26-27, 2012, before The Honorable
Garrison Hill as prepared from the audio
recordings of Vivian Cross, Official Court
Reporter;

I further certify that I am neither kin
nor counsel to any of the parties and have no
interest in the outcome of this action.



Deborah Garrison

Circuit Court Reporter

9th Judicial Circuit

Charleston, South Carolina

FORM 5

STATE OF SOUTH CAROLINA

COUNTY OF PickensJamie Edward Morris #351758

Full name and prison number (if any) of Applicant.

v.

State of South Carolina

IN THE COURT OF COMMON PLEAS

2015-CP-39-

299

APPLICATION FOR

POST-CONVICTION RELIEF

2015 MAR 10 PM 11:37
CLERK OF COURT
PICKENS COUNTY
SOUTH CAROLINA**INSTRUCTIONS - READ CAREFULLY**

In order for this application to receive consideration by the Court, it shall be in writing (legibly handwritten or typewritten), signed by the applicant and verified (notarized), and it shall set forth in concise form the answers to each applicable question. If necessary, applicant may furnish his answer to a particular question on the reverse side of the page or on an additional page. Applicant shall make clear to which question any such continued answer refers.

Since every application must be sworn under oath, any false statement of a material fact therein may serve as the basis of prosecution and conviction for perjury. Applicants should, therefore, exercise care to assure that all answers are true and correct.

If the application is taken in forma pauperis, it shall include an affidavit (attached at the back of the form) setting forth information which establishes that applicant will be unable to pay fees and costs of the proceedings. When the application is completed, the original shall be mailed to the Clerk of Court for the County in which the applicant was convicted.

1. Place of detention Waterlee River Correctional Institution
2. Name and location of Court which imposed sentence Pickens County Courthouse, 214 E. Main St. Pickens SC, 29671
3. Name(s) of co-defendant(s) (if any) Donna Lynn Phillips SCDC # 351805
4. The indictment number or numbers (if known) upon which and the offenses for which sentence was imposed:
 - (a) indictment # 2008GS3902053
 - (b) _____
 - (c) _____
5. The date upon which sentence was imposed and the terms of the sentence:
 - (a) 7/27/12
 - (b) 12 years suspended to 8 years with 2 years probation thereafter

- (c) _____
6. Check whether a finding of guilty was made:
- (a) after a plea of guilty _____
- (b) after a plea of not guilty ☒ _____
- (c) after a plea of nolo contendere _____
7. Did you appeal from the judgment of conviction or the imposition of sentence?
yes
8. If you answered "yes" to (7), list:
- (a) the name of each Court to which you appealed:
- i. South Carolina Court of Appeals
- ii. NA
- iii. NA
- (b) the result in each such Court to which you appealed:
- i. Affirmed
- ii. NA
- iii. NA
- (c) the date of each such result:
- i. 3/12/14
- ii. NA
- iii. NA
- (d) if known, citations of any written opinion or orders entered pursuant to such results:
- i. Unpublished Opinion No. 2014-UP-112
- ii. NA
- iii. NA
9. If you answered "no" to (7), state your reasons for not so appealing:
- (a) _____
- (b) NA
- (c) NA
10. State concisely the grounds on which you base your allegation that you are being held in custody unlawfully:

- (a) See attachment #10
- (b) See attachment #10
- (c) See attachment #10
11. State concisely and in the same order the facts which support each of the grounds set out in (10):
- (a) See attachment #11
- (b) See attachment #11
- (c) See attachment #11
12. Prior to this application have you filed with respect to this conviction:
- (a) any petition in a State Court under South Carolina Law? NA
- (b) any petition in State or Federal Courts for habeas corpus or post-convictions relief? NA
- (c) any petition in the United States Supreme Court for certiorari other than petitions, if any, already specified in (8)? NA
- (d) any other petitions, motions or applications in this or any other Court? NA
13. If you answered "yes" to any part of (12), list with respect to each petition, motion or application:
- (a) the specific nature thereof:
- i. NA
- ii. NA
- iii. NA
- iv. NA
- (b) the name and location of the Court in which each was filed:
- i. NA
- ii. NA
- iii. NA
- iv. NA
- (c) the disposition thereof:
- i. NA
- ii. NA
- iii. NA

iv. NA

(d) the date of each such disposition:

i. _____

ii. NA

iii. NA

iv. NA

(e) if known, citations of any written opinions or orders entered pursuant to each such disposition:

i. _____

ii. NA

iii. NA

iv. NA

14. Has any ground set forth in (10) been previously presented to this or any other Court, State or Federal, in any petition, motion or application which you have filed?

NA

15. If you answered "yes" to (14) identify:

(a) which grounds have been presented:

i. _____

ii. NA

iii. NA

(b) the proceedings in which each ground was raised:

i. _____

ii. NA

iii. NA

16. If any ground set forth in (10) has not previously been presented to any Court, State or Federal, set forth the ground and state concisely the reasons why such ground has not previously been presented:

(a) This is the first opportunity I have had to present these grounds.

(b) or ~~the~~ " "

(c) " D) " E) " F) " G) "

17. Were you represented by an attorney at any time during the course of:

- (a) your arraignment and plea? NA
- (b) your trial, if any? yes
- (c) your sentencing? yes
- (d) your appeal, if any, from the judgment of conviction or the imposition of sentence? yes
- (e) preparation, presentation or consideration of any petitions, motions or applications with respect to this conviction, which you filed? NA
18. If you answered "yes" to one or more parts of (17), list:
- (a) the name and address of each attorney who represented you:
- i. John Dejouring, Pickens County Courthouse, 214 E. Main St., Pickens, SC 29571
- ii. Robert M. Pachak, SC Commission of Indigent Defense, Division of Appellate Defense, PO Box 1152
Columbia, SC
29211-1581
- iii. NA
- (b) the proceedings at which each such attorney represented you:
- i. General Sessions / Pickens County Courthouse
- ii. State of South Carolina Court of Appeals
- iii. NA
19. State clearly the relief you seek in filing this application:
Vacate and/or Reverse and Remand for New Trial
20. Are you now under sentence from any other court that you have not challenged?
NA

STATE OF SOUTH CAROLINA)

County of Sumter)

VERIFICATION

2015-CP-39-JP

Jamie Edward Morris
 I, Jamie Edward Morris, being duly sworn upon my oath, depose and say that I have subscribed to the foregoing application; that I know the contents thereof; that it includes every ground known to me for vacating, setting aside or correcting the conviction and sentence attacked in this application; and that the matters and allegations therein set forth are true.

Jamie E. Morris

SWORN to and subscribed before me this 5th
 day of March, 2015.

Pamela D Hatfield (L.S.)
 Notary Public

My Commission Expires: 3/15/2021

2015 MAR 10 AM 11 37
 CLERK OF COURT
 PICKENS COUNTY
 SOUTH CAROLINA

**APPLICATION TO PROCEED WITHOUT PAYMENT
OF COSTS AND AFFIDAVIT
IN SUPPORT THEREOF**

2015-CP-39-219

Janis Edward Morris

I, Janis Edward Morris, hereby apply for leave to proceed in this action without prepayment of fees or costs or security therefor. In support of my application I declare under penalty of perjury that the following facts are true:

- (1) I am the applicant in this action and I believe I am entitled to redress.
- (2) Because of my poverty I am unable to pay the costs of said proceeding or give security thereof.

Janis E. Morris
Applicant

SWORN or affirmed to and subscribed before me this
5th day of March, 2015.
Pamela D Hatfield
Notary Public

My Commission Expires: 3/15/2021

CLERK OF COURT
PICKENS COUNTY
SOUTH CAROLINA

2015 MAR 10 AM 11 38

page 1
(only page)

Attachment #10 (will ammend later)

- A) ineffective assistance of council
- B) ineffective assistance of Appellate Council
- C) Perjury
- D) Violation of rule 6 part (c) disclosure
- E) Violation of rule 403
- F) Violation of rule 402
- G) Violation of the 6th ammendment right of confrontation

2015 MAR 10 AM 11 38
CLERK OF COURT
PICKENS COUNTY
SOUTH CAROLINA

page 1

Attachment #11 (will ammend later)

A)

#1) Where Mr. Dejaung failed to disclose complete discovery to defendant Morris, as well as various other documents, even waiting until after past conviction to disclose some.

#2) Where Mr. Dejaung failed to file motion for continuance based on late disclosure of discovery on behalf of the State.

#3) Where Mr. Dejaung allowed various South Carolina Rules of Criminal Procedure to be violated, as well as ammendments of the Constitution of the United States of America.

#4) Where Mr. Dejaung failed to object to various testimonies on grounds of perjury.

#5) Where Mr. Dejaung failed to better argue grounds for Mistrial, based on violations of rule 403.

#6) Where Mr. Dejaung allowed prosecutorial misconduct, in that; prosecutors asked improper hypathetical questions at trial; prosecutors conduct was calculated to arouse unfair prejudice against defendant; and where prosecutors in closing statement/arguements discussed improper, speculative, statements that were not in evidence, and were calculated to arouse emotions of prejudice and hostility, on behalf of the jury, toward myself and my co-defendant.

#7) Mr. Dejaung failed to allow me to rebut the testimony [perjury] of Kayla Roper, witness for Latasha Honeycutt. Also, he failed to get severance of trials to prevent that in the first place.

page 2

Attachment #11

(will ammend later.)

A) (continued)

8 Where Mr. Dejong failed to uphold the 6th amendment right of confrontation, in that, Dr. Kriger and Medical Examiner Christenson were not present at trial for defendant to front on their findings.

9) Where Mr. Dejong failed to better argue grounds for Directed Verdict, as stated in "rule 19. Directed Verdict", in that, there was a "failure of competent evidence tending to prove the charge in the Indictment", and there was an altogether "non-existence of evidence."

B) Where indigent appellate defense attorney, Robert Pachsk, Chiefly, was a conflict of interest to begin with, in that he is from the same office as my co-defendants indigent appellate defense attorney, LaNelle Cantey Durant. Secondly, in that, he failed to file for a motion of reconsideration.

C) In that, several witnesses; including the coroner James Mahenos, Robert Foery, Rita Burgess and Kayla Roper committed perjury.

D) In that, the AIT List of Chemists Involved With Specimen Analysis (which is a chain of custody) was disclosed excessively late, and certainly not in compliance with rule 6 part (c) disclosure.

page 3

Attachment # 11 (will ammend later)

E) Where probative value of the evidence was vastly outweighed by its prejudice to the defendant, in various testimonies, by the states witnesses and by the defendants Co-defendant.

F) Where various testimonies were not relevant "... as otherwise provided by the Constitution of the United States, the Constitution of the State of South Carolina, statutes, these rules, or by other rules promulgated by the Supreme Court of South Carolina. Evidence which is not relevant is ~~not~~ admissable.

G) In that, Medical Examiner Christensen was not present for me to confront on his finds in the autopsy, and Dr. Kriger was not present for me to confront on his finds.

STATE OF SOUTH CAROLINA
 COUNTY OF PICKENS
 IN THE COURT OF COMMON PLEAS

JUDGMENT IN A CIVIL CASE
 CASE NO: 2015CP3900299

Jamie Edward Morris vs. South Carolina State of

CHECK ONE:

- ☐ **JURY VERDICT.** This action came before the court for a trial by jury. The issues have been tried and a verdict rendered.
- ☐ **DECISION BY THE COURT.** This action came to trial or hearing before the court. The issues have been tried or heard and a decision rendered.
- ☐ **ACTION DISMISSED (CHECK REASON):** ☐ Rule 12(b), SCRCP; ☐ Rule 41(a),
 SCRCP (Vol. Nonsuit); ☐ Rule 43(k), SCRCP (Settled); ☐ Other: _____
- ☐ **ACTION STRICKEN (CHECK REASON):** ☐ Rule 40(j) SCRCP; ☐ Bankruptcy;
☒ Binding arbitration, subject to right to restore to confirm, vacate or modify arbitration award;
☐ Other: _____

IT IS ORDERED AND ADJUDGED:

- ☐ See attached order; ☐ Statement of Judgment by the Court:

Dated at Pickens, South Carolina, this .

Court Reporter:

PRESIDING JUDGE -

This judgment was entered on the , and a copy mailed first class this , to attorneys of record or to parties (when appearing pro se) as follows:

Wmail ✓
 Jamie Edward Morris #351758 Wrci W6-40 Po Box 189
 Rembert, SC 29218

ATTORNEY(S) FOR THE PLAINTIFF(S)

emailed ✓
 Karen Christine Ratigan PO Box 11549 Columbia, SC
 29211

ATTORNEY(S) FOR THE DEFENDANT(S)

Harold P Welborn, Jr.
 Harold P Welborn, Jr. - Clerk of Court

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
	)	C.A. No. 2015-CP-39-0299
COUNTY OF PICKENS	)	
	)	
Jamie Edward Morris,	)	
S.C.D.C. No. 351758,	)	
	)	
Applicant,	)	
	)	RETURN
v.	)	
	)	
State of South Carolina,	)	
	)	
Respondent.	)	
_____	)	

In response to the post-conviction relief application filed March 10, 2015, the Respondent would show this Court:

I.

The Applicant is incarcerated with the South Carolina Department of Corrections pursuant to the Pickens County Clerk of Court's orders of commitment. The Pickens County Grand Jury indicted the Applicant for homicide by child abuse, aiding and abetting (2008-GS-39-2053). John W. DeJong, Esquire represented the Applicant.

After the State called the case to trial, the Applicant was found guilty. On July 27, 2012, the Honorable D. Garrison Hill sentenced the Applicant to 12 years imprisonment suspended upon the service of 8 years and 2 years probation.

A notice of appeal was filed at the South Carolina Court of Appeals. Robert M. Pachak, Esquire of the South Carolina Commission on Indigent Defense, Division of Appellate Defense perfected the appeal. The Court of Appeals affirmed the Applicant's conviction and sentence. State v. Morris, Op. No. 2014-UP-112 (S.C. Ct. App. filed March 12, 2014). The Remittitur was

sent on March 28, 2014.

Attached herewith and incorporated herein by reference are the records of the Pickens County Clerk of Court regarding the subject conviction, the Applicant's records from the South Carolina Department of Corrections, the trial transcript, and the appellate records.

II.

In his application for post-conviction relief, the Applicant alleges he is being held in custody unlawfully for the following reasons:

1. Ineffective assistance of trial counsel.
 - a. Failed to disclose complete discovery to the Applicant.
 - b. Failed to file motion for continuance based on a late disclosure of discovery.
 - c. Allowed rules of criminal procedure and constitutional amendments to be violated.
 - d. Failed to object to various testimony on grounds of perjury.
 - e. Failed to better argue grounds for mistrial based on Rule 403.
 - f. Allowed prosecutorial misconduct.
 - g. Failed to allow the Applicant to rebut testimony of Kayla Roper and failed to request severance.
 - h. Failed to uphold the right of confrontation when two witnesses were not present at trial.
 - i. Failed to argue better grounds for directed verdict.
2. Ineffective assistance of appellate counsel.
 - a. Conflict of interest because works in the same office as the attorney representing his co-defendant.
 - b. Failed to file a motion for reconsideration.
3. "Perjury."
4. "Violation of rule 6 part (c) disclosure."
5. "Violation of Rule 403."
6. "Violation of Rule 402."
7. "Violation of the 6th ammendment right of confrontation."

III.

The Respondent asserts the Applicant's allegation that his trial attorney was ineffective is without merit. The Respondent asserts the Applicant's attorney rendered effective assistance

well within the standard of “reasonableness within professional norms” for a defense attorney.

Where ineffective assistance of counsel is alleged as a ground for relief, the Applicant must prove that “counsel’s conduct so undermined the proper functioning of the adversarial process that the trial cannot be relied on as having produced a just result.” Strickland v. Washington, 466 U.S. 668, 686, 104 S. Ct. 2052, 2064 (1984); Butler v. State, 286 S.C. 441, 442, 334 S.E.2d 813, 814 (1985).

The proper measure of performance is whether the attorney provided representation within the range of competence required in criminal cases. The courts presume counsel “rendered adequate assistance and made all significant decisions in the exercise of reasonable professional judgment.” Strickland, 466 U.S. at 690, 104 S. Ct. at 2066. The Applicant must overcome this presumption in order to receive relief. See Cherry v. State, 300 S.C. 115, 118, 386 S.E.2d 624, 625 (1989).

A two-pronged test is used in evaluating allegations of ineffective assistance of counsel. First, the applicant must prove counsel’s performance was deficient. Under this prong, attorney performance is measured by its “reasonableness under prevailing professional norms.” Cherry v. State, 300 S.C. at 117, 386 S.E.2d at 625 (quoting Strickland, 466 U.S. at 688, 104 S. Ct. at 2065). Second, counsel’s deficient performance must have prejudiced the Applicant such that “there is a reasonable probability that, but for counsel’s unprofessional errors, the result of the proceeding would have been different.” Cherry, 300 S.C. at 117-18, 386 S.E.2d at 625. “A reasonable probability is a probability sufficient to undermine confidence in the outcome of trial.” Johnson v. State, 325 S.C. 182, 186, 480 S.E.2d 733, 735 (1997) (citing Strickland v. Washington, 466 U.S. 668, 104 S. Ct. 2052 (1984)).

The Respondent submits the Applicant cannot satisfy either requirement of the Strickland v. Washington test. However, the allegation of ineffective assistance of counsel probably raises questions of fact that cannot be conclusively refuted by the record. The Respondent requests an evidentiary hearing to fully resolve this issue. See Sharper v. State, 279 S.C. 264, 265, 305 S.E.2d 247, 248 (1983) (citing Norman v. State, 276 S.C. 278, 277 S.E.2d 707 (1981)).

IV.

The Respondent asserts the Applicant's allegation that his appellate attorney was ineffective is without merit. The Respondent asserts the Applicant's attorney rendered effective assistance well within the standard of "reasonableness within professional norms" for an appellate attorney. A defendant is constitutionally entitled to effective assistance of appellate counsel. Evitts v. Lucey, 469 U.S. 387, 105 S. Ct. 830 (1985). In analyzing a claim of ineffective assistance of appellate counsel, the Court applies the Strickland test just as it would when analyzing a claim of ineffective assistance of trial counsel. See Bennett v. State, 383 S.C. 303, 309, 680 S.E.2d 273, 276 (2009); Southerland v. State, 337 S.C. 610, 616, 524 S.E.2d 833, 836 (1999) (noting courts apply the Strickland test to determine if appellate counsel was deficient for failing to raise an issue and whether the defendant was prejudiced from the failure to raise the issue).

The Respondent submits the Applicant cannot satisfy either requirement of the Strickland v. Washington test. However, the allegation of ineffective assistance of counsel probably raises questions of fact that cannot be conclusively refuted by the record. The Respondent requests an evidentiary hearing to fully resolve this issue. See Sharper v. State, 279 S.C. at 265, 305 S.E.2d at 248.

V.

The Respondent submits the Applicant has also raised issues that are cognizable in a PCR action. Rather, these allegations raise direct appeal issues that are procedurally barred by S.C. Code Ann. § 17-27-20(b) (2003). Post-conviction relief is not a substitute for an appeal. Simmons v. State, 264 S.C. 417, 423, 215 S.E.2d 883, 885 (1974). A post-conviction relief application cannot assert any issues that could have been raised **at trial or on appeal**. Drayton v. Evatt, 312 S.C. 4, 8, 430 S.E.2d 517, 520 (1993). The Applicant could have raised these issues on appeal. The failure to do so has waived these allegations as grounds for relief.

VI.

The Respondent denies each allegation not expressly admitted, qualified or explained.

VII.

WHEREFORE, having made its Return, the Respondent requests that a hearing be held and counsel appointed to represent the Applicant.

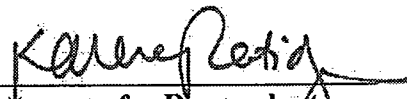
Respectfully submitted,

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By:


Attorneys for Respondent

July 28, 2015

STATE OF SOUTH CAROLINA	)	
	)	IN THE COURT OF COMMON PLEAS
COUNTY OF PICKENS	)	
	)	
	)	2015-CP-39-0299
	)	
JAMIE EDWARD MORRIS, 351758	)	
	)	
Applicant,	)	
	)	
vs	)	AFFIDAVIT OF SERVICE BY MAIL
	)	
STATE OF SOUTH CAROLINA,	)	
	)	
Respondent.	)	
_____	)	

4. I am an employee of the Respondent in the above-captioned action.
5. Regular communication by mail exists throughout the State of South Carolina and that this is a proper circumstance of service by mail.
6. I have this day served a copy of the **Return** in the above-captioned matter on the following person by depositing same in the United States mail, postage prepaid:

**Jamie Edward Morris, 351758
Wateree River Correctional Institution
Post Office Box 189
Rembert SC 29128**

DATED this 28th day of July, 2015.


Judy A. Carey, Legal Assistant
For Respondent

STATE OF SOUTH CAROLINA
COUNTY OF PICKENS

IN THE COURT OF COMMON PLEAS

JAMIE E. MORRIS,)
)
 APPLICANT,)
)
 -VS-)
)
 STATE OF SOUTH CAROLINA,)
)
 RESPONDENT.)
 _____)

2015-CP-39-00299

TRANSCRIPT OF RECORD

DECEMBER 5, 2016
GREENVILLE, SOUTH CAROLINA

B E F O R E:

THE HONORABLE JOHN C. HAYES, III

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

ATTORNEY FOR APPLICANT:

R. MILLS ARIAIL, JR., ESQ.

ATTORNEY FOR RESPONDENT:

PATRICK SCHMECKPEPER
ASSISTANT ATTORNEY GENERAL

SUSAN W. HUDGINS
CIRCUIT COURT REPORTER

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JAMIE MORRIS - DIRECT EXAMINATION BY MR. ARIAIL

1 **MR. SCHMECKPEPER:** May it please the Court, Your Honor?

2 This is Jamie Morris versus the State of South Carolina,

3 2015-CP-39-0299. The Applicant was indicted in Pickens

4 County for homicide by child abuse, aiding and abetting. He

5 was represented by John DeJong.

6 The Applicant proceeded to trial and was found guilty.
7 On July 27th, 2012 he was sentenced by Judge Hill to twelve
8 years imprisonment, suspended upon the service of eight
9 years and to probation.

10 Following a notice of appeal the Court of Appeals
11 affirmed the Applicant's convictions and sentences. The
12 remittitur was sent on March 28th, 2014. This application
13 was filed on March 10th, 2015. Your Honor, at this time I
14 would turn matters over to opposing counsel.

15 **THE COURT:** All right. Yes, sir. You want to call
16 your first witness?

17 **MR. ARIAIL:** Yes, Your Honor. I call Mr. Morris to the
18 stand.

19 **MADAME CLERK:** Mr. Morris, please place your left hand
20 on the Bible and raise your right hand.

21 **Jamie Morris**, being duly
22 sworn testified as follows:

23 **MADAME CLERK:** Thank you. Please state your full name
24 for the record.

25 **MR. MORRIS:** Jamie Edward Morris.

JAMIE MORRIS - DIRECT EXAMINATION BY MR. ARIAIL

5

1 **MADAME CLERK:** Thank you. You may be seated.

2 **Direct Examination by Mr. Ariail:**

3 Q. Jamie, how you doing today?

4 A. I'm okay.

5 Q. Good. I'm going to get you probably to move up as

6 close as you can to that because we've got ---

7 A. Is that better?

8 Q. That sounds pretty good right there. I mean, just

9 speak like that. I want to make sure we get it on the

10 record so that the court reporter can take it down. Now,

11 you were represented by Mr. DeJong in this case, correct?

12 A. Yes, sir.

13 Q. Okay. And how -- did you get out on bond during these

14 charges?

15 A. Yes, sir, I did on the stipulation of house arrest.

16 Q. Okay. And you were -- how long were you out on bond do

17 you think?

18 A. I was indicted in December of 2008. And it wasn't til

19 2012 when I was tried. So I guess about four years.

20 Q. Okay. So four years you were out. And you were

21 charged with homicide by child abuse, aiding and abetting,

22 correct?

23 A. Right.

24 Q. Okay. Now, Mr. DeJong represented you and you went to

25 trial on this, is this correct?

JAMIE MORRIS - DIRECT EXAMINATION BY MR. ARIAIL

6

1 A. Yes, sir.

2 Q. And during this period of time, you know, how many
3 discussions did you have with Mr. DeJong about this case?

4 A. I'm not really certain about that.

5 Q. Well, I mean, you got an estimate? Could it be five
6 times, ten times?

7 A. It's been so long. I got -- I got a real bad memory.
8 I'm not really certain about that.

9 Q. Okay. Well, that's understandable. A while back.
10 Well, let's just go through this. Before you went to trial
11 did you have discussions with Mr. DeJong about the evidence
12 in your case?

13 A. Yes, sir.

14 Q. Okay. Did y'all discuss about what, you know, the
15 State could put up as evidence against you and the charges
16 you were facing?

17 A. I think so.

18 Q. Okay. Did you understand that here's what they've got
19 to prove to be able to ---

20 A. Yeah, yeah. Yeah, I understood that. Yeah.

21 Q. Okay. So did he say, okay, well, this is what they've
22 got to prove and here's the evidence they're going to use to
23 prove it? Did y'all kind of go through that?

24 A. Well, I mean, I kind of had a good idea of that myself
25 from the motion, what I did have of it.

JAMIE MORRIS - DIRECT EXAMINATION BY MR. ARIAIL

7

1 Q. From the motion for discovery?

2 A. Yeah, motion of discovery.

3 Q. Okay. So you got all that to be able to take a look at
4 it, right?

5 A. Well, I didn't never -- I never did have all of it. I
6 had some of it.

7 Q. Okay. But you went over that with Mr. DeJong and had
8 an understanding of that?

9 A. Um-hum (affirmative).

10 Q. Okay.

11 A. Yes, sir.

12 Q. Okay. Now as you went forward I know you have
13 indicated there are things that you think Mr. DeJong did not
14 do that he should have done that was ineffective, okay. And
15 I want to go through those because you put -- I think you
16 listed most of them as your PCR application and then you
17 sent me another document that we'll go through that you want
18 to put there.

19 I want to understand -- and you've got to understand
20 this is -- will be made a part of the record. So what I'm
21 trying to do is get you to explain to Judge Hayes and the
22 Court as to why you believe these issues are -- need to be
23 addressed and why you believe the PCR should be granted,
24 okay?

25 A. Okay.

JAMIE MORRIS - DIRECT EXAMINATION BY MR. ARIAIL

8

1 Q. Let's go through it. Tell me -- and I want to make
2 sure just to go through it. What are the main things that
3 you want the Court to understand about how you believe that
4 Mr. DeJong was ineffective?

5 A. I'm really unprepared here today because I didn't even
6 really know what I could bring today as far -- the
7 correction officer told me to pack everything up. So I
8 didn't bring any paperwork with me. So I don't really have
9 anything to look on, you know?

10 Q. Okay. Well, I'm going to walk you through it to
11 basically understand exactly what you think. You think that
12 -- you had indicated that there was a need for a motion for
13 continuance in your case and Mr. DeJong didn't get that.
14 Why did you need a motion for continuance hearing?

15 A. Well, what does it say there? I mean, like I say, I
16 don't have what you have in front of you, sir.

17 Q. This is your application. If you want to see a copy, I
18 could ---

19 A. Yeah, could I please?

20 (Pause)

21 Q. I'm going to walk you through this. Okay. It says
22 that you -- Mr. DeJong failed to file a motion for a
23 continuance based on late discovery -- late disclosure of
24 discovery on behalf of the State. What's the late discovery
25 of -- disclosure of discovery?

JAMIE MORRIS - DIRECT EXAMINATION BY MR. ARIAIL

9

1 A. Well, my biggest issue was the chemical analysis, the
2 AIT chemical analysis chain of custody, which by Rule --
3 Rule 6 part (c) disclosure says it should be disclosed
4 within eleven days before court, and it was not, sir. So
5 that's what I was arguing on that.

6 Q. Okay. So you -- you're saying you didn't have that
7 information, Mr. DeJong didn't have it, so he should have
8 made a motion to be able to get it continued based on that?

9 A. Yes, sir.

10 Q. And that just applies to the -- was it the AIT? Is
11 that what you said?

12 A. Yes. The AIT chemical analysis chain of custody.

13 Q. Okay. You're saying -- when did y'all get that?

14 A. I don't remember. I think it might be written in some
15 of those notes or it may not. I don't remember exactly when
16 it was disclosed. But I know it was just about -- not even
17 a week before court or about a week before court.

18 Q. Okay. You say there's some rules ---

19 A. And I'm going from the transcript of the record. So
20 that's what I'm going on.

21 Q. Okay. And number 3 you say Mr. DeJong allowed various
22 South Carolina Rules of Criminal Procedure to be violated as
23 well as amendments of the Constitution of the United States
24 of America. What do you mean by that?

25 A. Well, there was a lot of Rule 403 violations that --

JAMIE MORRIS - DIRECT EXAMINATION BY MR. ARIAIL

10

1 that I was concerned about.

2 Q. Okay. When you say a lot, do you have any references
3 to ones?

4 A. Well, ---

5 Q. Is this this new document you gave me?

6 A. Yeah. It's -- a lot of that's in there.

7 Q. Okay. Is this the document that we discussed
8 downstairs that you provided me a copy of today?

9 A. Yes, sir.

10 Q. Okay. Let me show that to opposing counsel.

11 **MR. ARIAIL:** Your Honor, at this time I'd move into --
12 move into evidence an amendment I just received from my
13 client downstairs. He provided it to me. It's a
14 handwritten document that I did not have a copy before
15 today.

16 But it goes into additional detail about some of the
17 allegations he has and some of the perjury that he wanted to
18 be made a part of the record that he believed wasn't
19 addressed. I provided a copy to Mr. Schmeckpeper. And I'd
20 just ask that it be admitted into evidence at this time.

21 **THE COURT:** Any objection?

22 **MR. SCHMECKPEPER:** Your Honor, I'd just object that
23 this isn't timely. This is the first time I've seen it,
24 submitted it today, and I don't think it's filed.

25 **THE COURT:** All right. Well, over objection I'll allow

JAMIE MORRIS - DIRECT EXAMINATION BY MR. ARIAIL

11

1 it in.

2 (Whereupon Plaintiff's exhibit 1 was marked and
3 admitted into evidence)

4 Q. Now that document contains a lot of the information you
5 wanted the Court to be able to review. Now that's made a
6 part of the record. We don't have to go into it. Are there
7 other things that you want the Court to be aware of on
8 perjury or violation of Rules of Criminal Procedure that you
9 want him to be aware of?

10 A. Not that I'm aware of right now. I really wanted to
11 discuss the case further with you as we haven't really had
12 much of a chance to do so yet.

13 Q. Okay. Now I want to go through just to bring all those
14 out because, I mean, we've discussed the case and knew this
15 was coming forward and have put it together the best we can.
16 I want to go into the other items you've got on here to make
17 sure you've got them.

18 You said he failed to -- it looks like 4 and 5 on here.
19 It says you failed to better argue grounds for a mistrial.
20 What do you mean by that?

21 A. I don't -- I don't remember exactly right now. Where's
22 that at?

23 Q. It's number 5.

24 A. Number 5.

25 (Pause)

JAMIE MORRIS - DIRECT EXAMINATION BY MR. ARIAIL

12

1 A. I don't even remember where -- when there was a motion
2 made or whether there was or not.

3 Q. Okay. Now number 6 you say there was -- he didn't
4 object or allowed in improper hypothetical questions at
5 trial from the solicitor. What do you -- are those a part
6 of the document we just presented to the Judge?

7 A. It was -- it was a lot of the stuff they were saying
8 mostly in the closing statements, but there was a lot during
9 the trial too, I mean. And not only within -- also with
10 some of the State's witnesses, some of the things they said
11 I felt -- I felt like the prejudice of it outweighed the
12 probative value, a lot of things that was being said.

13 And one of those was when -- when they said that the
14 Hydrocodone or the Tussionex came from the grandmother's
15 home. There was no -- no evidence to prove that any kind of
16 medicine came from my mother's home. It was -- it was
17 speculation at best, really. It was an allegation, you
18 know.

19 I mean, they said that there was Chlorpheniramine and
20 Hydrocodone, and that's Tussionex, but Fogerty (phonetics)
21 said hisself there was fifty to seventy-five different
22 medicines that contain Chlorpheniramine. And a lot of those
23 are mixed with some type of narcotic. So how many of those
24 have Hydrocodone and Chlorpheniramine in them, you know?

25 Q. All right.

JAMIE MORRIS - DIRECT EXAMINATION BY MR. ARIAIL

13

1 A. So ...

2 Q. But did he do an appropriate job or are you saying he
3 was ineffective in regard to cross examination about those
4 type of issues? What I'm trying to figure out is what did
5 he do that was ineffective about that?

6 A. I don't know. I don't know with this part right here.
7 I mean, I don't really know much about this stuff. As you
8 know, I'm a lay person. So, I mean, I did the best I could.
9 And I don't know how to explain everything.

10 Q. You're doing fine. Let's just keep going through it.
11 I just want to -- number 7 you indicate that you weren't
12 allowed to rebut the testimony of Kayla Roper, who was a
13 witness for Ladacia [sic] Honeycutt. And I want to
14 understand -- y'all discussed about you being able to
15 testify, correct?

16 A. Yes, sir. I did ask to rebut it. And I kept getting
17 shushed every time I asked to rebut it. And no one else was
18 allowed to rebut it.

19 My mom was held in contempt. So she didn't rebut it.
20 And what she said was completely untrue. It was a lie. She
21 just stood up there and lied. And she beared false witness.

22 Q. Tell me -- what did you want to rebut about what Kayla
23 said?

24 A. She said that when we were in the waiting room at
25 Greenville Memorial Hospital that my mom said, what about

JAMIE MORRIS - DIRECT EXAMINATION BY MR. ARIAIL

14

1 the cough syrup I gave him? Surely to God that's not what
2 this is. My mom never said such a thing. I was there in
3 that waiting room with her. She never said that.

4 Q. Okay. Now the severance of the trials prevented that
5 in the first place. What do you -- when you say he didn't
6 make a motion for that, wasn't there some discussion about
7 that in the beginning or you said there was a severance of
8 the trials?

9 A. The severance of the trials, where is that at?

10 Q. It's the last sentence on number 7.

11 A. They were trying to get severances of the trials
12 because -- because of the fact that the judge -- Judge Hill
13 had ruled that there was no testimony before, I believe,
14 March 14th ---

15 Q. Um-hum (affirmative).

16 A. --- of 2008. There was -- that should come in
17 involving anything to do with DSS.

18 Q. All right.

19 A. And these -- these were inevitable to come in at some
20 point. A lot of people did, you know, they mentioned brain
21 injury, DSS, foster parents. And that -- that prejudiced me
22 as a co-defendant. You know what I mean? And that's why I
23 think, you know, we needed a severance.

24 Q. Okay. Now number 8, you indicated that he failed to
25 uphold the Sixth Amendment right of confrontation in that

JAMIE MORRIS - DIRECT EXAMINATION BY MR. ARIAIL

15

1 Dr. Krieger and Medical Examiner Christensen were not
2 present at trial for defendant to confront on their
3 findings. Did you want him to call them?

4 A. Yes, sir, I really did. I wanted to be able to
5 confront both of those. And he did object to Christensen's
6 testimony altogether, but the thing is the judge -- the
7 judge said something about for it to be a non-testimonial
8 document it had to -- it had to be -- not accuse any
9 specific person of any specific crime or anything like that.

10 Q. Um-hum (affirmative).

11 A. Well, the document that -- that we're talking about was
12 the autopsy report. And the autopsy report said that the
13 place of death was the grandmother's house. Well, my son
14 didn't die at my mom's house. He died at his mother's
15 house.

16 And for them to say that, that was accusing a specific
17 person of a specific crime because they're saying that the
18 cause of death happened at her house. And that's not true.

19 Q. So you felt that he should be there to be able to
20 confront him about that and about some of the
21 inconsistencies in his report, is that right?

22 A. Right.

23 Q. Okay. Now, you said he should have argued better for a
24 directed verdict and that there was a failure of competent
25 evidence tending to prove the charge and the indictment.

JAMIE MORRIS - DIRECT EXAMINATION BY MR. ARIAIL

16

1 What ---

2 **MR. SCHMECKPEPER:** Your Honor, I apologize. I'd object
3 to this issue just on the ground -- this is the issue on
4 appeal. Court of Appeals ruled ---

5 **THE COURT:** I'll let him go into it, but if it's
6 already been resolved by the Court of Appeals, of course, I
7 can't do anything about that.

8 **MR. ARIAIL:** Right.

9 Q. That was resolved by the Court of Appeals, wasn't it?

10 A. Yeah.

11 Q. About an issue that -- is there anything ---

12 A. I guess ---

13 Q. --- else that you wanted to bring to the Court's
14 attention about what you believe Mr. DeJong didn't do?

15 A. I'm not really -- I'm not really worried about arguing
16 that here today, really.

17 Q. Okay. Now, we talked about the AIT list of -- being
18 disclosed late. And these other things, I'm not sure if
19 they are applicable. I think I've gotten most of the items
20 that we discussed here.

21 The other things we put as part of the record, the
22 information you have in your PCR application. Is there
23 other things you want to bring up today to make sure they're
24 part of the record?

25 A. Well, right now I'm not sure, you know, because, like I

JAMIE MORRIS - DIRECT EXAMINATION BY MR. ARIAIL

17

1 said, me and you haven't even discussed this case. We
2 talked one time for about three minutes. And it wasn't any
3 detail on the case. So I really would like a chance to be
4 more prepared.

5 Q. Well, we've talked about the case and we've
6 corresponded in regards to it. And these are the items that
7 me and you discussed and things that I've brought up. These
8 are the ones I see and the ones you've told me about. What
9 I'm asking today is are there other items that are there
10 that you haven't disclosed to me or you want the Court to be
11 aware of?

12 A. There -- there was another individual that was over at
13 her house that night. And the only proof I have of that
14 right now -- there could possibly be somebody to testify to
15 something that he -- that this individual said in a public
16 place.

17 But the only other proof that I could get right now is
18 off of social media from Facebook on a site called Justice
19 for minor And he said that he was there ---

20 **MR. SCHMECKPEPER:** Objection, Your Honor, ---

21 A. --- that night.

22 **MR. SCHMECKPEPER:** --- hearsay.

23 **THE COURT:** I'll let him testify to it. I'll take it
24 into, I mean, I'll consider the source.

25 A. His name is Jason Hayes. And he was there that night

JAMIE MORRIS - DIRECT EXAMINATION BY MR. ARIAIL

18

1 at my baby's mother's house. And this never came up in
2 court.

3 And there was another individual there too named Benji
4 Garrett. And that's the one that Rita Burgess said that she
5 didn't take the statement from, which she did. But neither
6 one of these two testified to anything, but they were there
7 that night.

8 And I'm just wondering why, you know, if they were
9 there and they were able to see how my son was acting and,
10 you know, could testify to, you know, as to how -- how his
11 health was at that time and everything, why were they not
12 there?

13 Q. Okay. Was Mr. DeJong aware of these witnesses?

14 A. I'm not sure that he was 'cause I wasn't at then. I
15 mean, I was about Benji, but not Jason Hayes.

16 Q. But ---

17 A. All I knew was that he had told my brother's girlfriend
18 that he was there that night and that he -- that my son was
19 fine at 10:00 that night. And then when I questioned him,
20 he changed it ---

21 Q. Okay.

22 A. --- and said something totally different.

23 Q. Okay. So there was an inconsistent statement by this
24 individual at some time?

25 A. (Affirmative nod).

JAMIE MORRIS - CROSS EXAMINATION BY MR. SCHMECKPEPER

19

1 Q. Did you tell Mr. DeJong about that?

2 A. No, I didn't. So, you know, Mr. DeJong's not culpable
3 in that in, you know, anything about that right there. I
4 just wanted that to be known that there was another person
5 there 'cause I feel like that's new evidence.

6 Q. Okay.

7 MR. ARIAIL: That's all the questions I have, Your
8 Honor.

9 THE COURT: All right. Cross.

10 MR. SCHMECKPEPER: Briefly, Your Honor.

11 **Cross Examination by Mr. Schmeckpeper:**

12 Q. Just to get into the background a little bit to let the
13 Judge know kind of what the allegations were. Correct me if
14 I'm wrong. The State alleged at the trial that, I think it
15 was, that your mother gave the child, gave the victim adult
16 cough medicine, that the child OD'd from that, you and your
17 other co-defendant were culpable in not getting medical
18 care, is that -- is that a fair characterization of what the
19 State alleged?

20 A. Yeah, I guess so.

21 Q. Even if you don't agree that's not what happened,
22 that's what the State alleged. And I think you're saying --
23 one of your allegations was that the State failed to
24 disclose some evidence in a timely fashion?

25 A. Right.

JAMIE MORRIS - CROSS EXAMINATION BY MR. SCHMECKPEPER

20

1 Q. And that was, I think, the autopsy report or some --
2 something -- some of the medical records of the child?

3 A. Yeah, there were several things that -- that weren't
4 disclosed.

5 Q. But they were eventually disclosed. So you don't think
6 they were disclosed timely?

7 A. Timely, right.

8 Q. And one of the things you're alleging that your
9 attorney was ineffective and failed to request a continuance
10 to have more time to look at this?

11 A. Right.

12 Q. Did your attorney ever tell you that he thought he
13 needed more time?

14 A. No, not that I remember.

15 Q. Did he say he wasn't prepared?

16 A. No.

17 Q. I understand you're alleging your attorney failed to
18 object to various things, violations of Rule 403. Is there
19 anything specific you have?

20 A. Well, most of that is with ---

21 Q. In your ---

22 A. --- with Your Honor, the paperwork that my attorney
23 handed to him.

24 Q. And I think you said your attorney was ineffective for
25 failing to allow you to respond to Kayla Roper's testimony?

JAMIE MORRIS - CROSS EXAMINATION BY MR. SCHMECKPEPER

21

- 1 A. Right.
- 2 Q. You did testify at this trial, right?
- 3 A. Right.
- 4 Q. And I think you testified just now Kayla Roper said
- 5 that she heard your mother tell you that she gave the child
- 6 cough syrup?
- 7 A. (No response).
- 8 Q. Now during your testimony you testified that you didn't
- 9 see anybody give the child cough syrup?
- 10 A. Right.
- 11 Q. That you were with the child the entire time? So you
- 12 would have seen someone give cough syrup?
- 13 A. Um-hum (affirmative).
- 14 Q. So is it fair to say that her testimony did conflict
- 15 with what you actually said at trial?
- 16 A. What's that?
- 17 Q. Is it fair to say what she said actually did conflict
- 18 and was refuted by what you said during your testimony?
- 19 A. No. I mean, I didn't get to directly refute that she
- 20 was telling a lie as to what my mom said.
- 21 Q. But you did get to say that you didn't see anybody give
- 22 the child cough syrup and that you would have seen it
- 23 because you were with your child the whole time?
- 24 A. Right. But I wanted to rebut her testimony
- 25 specifically.

JAMIE MORRIS - CROSS EXAMINATION BY MR. SCHMECKPEPER

22

1 Q. And I think the subject of Dr. Christensen came up.

2 Now Dr. Christensen is the doctor who actually did the

3 autopsy, correct?

4 A. Yes, sir.

5 Q. And I think your attorney objected to ---

6 A. He did.

7 Q. --- the autopsy report coming in?

8 A. Yes, sir, I said that. He did.

9 Q. Now Dr. Krieger also did some testing, is that fair to
10 say?

11 A. Um-hum (affirmative).

12 Q. He wasn't at the actual trial?

13 A. Right.

14 Q. And his supervisor testified to some of his actions,
15 right?

16 A. I -- I'm not sure if it was his supervisor or who it
17 was, but, yeah, somebody else testified on his behalf.

18 Q. Now is it fair to say that the first time Dr. Krieger
19 testified and came up it was from your attorney?

20 A. Do what now?

21 Q. Is it fair to say the first time Dr. Krieger's
22 testimony came up during the trial, it was elicited by your
23 attorney?

24 A. I'm not sure about that.

25 **MR. SCHMECKPEPER:** I beg the Court's indulgence.

JOHN DeJONG - DIRECT EXAMINATION BY MR. SCHMECKPEPER

23

1 (Pause)

2 **MR. SCHMECKPEPER:** Your Honor, I don't have any further
3 questions.

4 **MR. ARIAIL:** No redirect, Your Honor.

5 **THE COURT:** All right. You can step down and have a
6 seat with your attorney.

7 **MR. ARIAIL:** Your Honor, that is our case.

8 **THE COURT:** The State have any witnesses?

9 **MR. SCHMECKPEPER:** Your Honor, the State calls John
10 DeJong, the Applicant's trial counsel.

11 **John DeJong,** being duly
12 sworn testified as follows;

13 **MADAME CLERK:** Thank you. And please state your full
14 name for the record.

15 **MR. DeJONG:** First name John, J-o-h-n, William, W-i-l-
16 l-i-a-m, DeJong, spelled D-e-J-o-n-g.

17 **Direct Examination by Mr. Schmeckpeper:**

18 Q. Good morning again, Mr. DeJong.

19 A. Good morning again.

20 Q. If you could briefly for the record state for the Court
21 what your experience as a criminal -- time in law.

22 A. Eleven to twelve years as a prosecutor of juveniles in
23 Greenville County, roughly two years as a prosecutor of
24 adult and juveniles in Pickens County and now Public
25 Defender for Pickens County seventeen plus years.

JOHN DeJONG - DIRECT EXAMINATION BY MR. SCHMECKPEPER

24

1 Q. Now I think the testimony was that the Applicant was
2 out on bond and there were several years between when he was
3 initially arrested and when he was tried for this case.

4 A. There was.

5 Q. Were you representing him that entire time?

6 A. Yes.

7 Q. And the Applicant, I think, just testified that he
8 didn't remember how many discussions or meetings you had.
9 Do you remember roughly how many times you had met?

10 A. I could not put a number on it. I know we met numerous
11 times. He would call, set an appointment to come in.
12 Initially one of the problems we had on this case was his
13 mother who was a co-defendant. She would come in and she
14 would want to do all the talking.

15 Actually I, not to be rude, crude or disrespectful to
16 Ms. Phillips, but I finally banned her from my office. I
17 would not allow her to come in and talk with Mr. Morris.

18 Q. Did you have any problems communicating with Mr.
19 Morris, though?

20 A. No, I did ---

21 Q. Especially ---

22 A. --- not. No. I'm sorry. I did not.

23 Q. Do you think you met with him enough to explain
24 discovery, what the State had to prove in this case?

25 A. Absolutely. I met with him enough times.

JOHN DeJONG - DIRECT EXAMINATION BY MR. SCHMECKPEPER

25

1 Q. Did you go over discovery with him?

2 A. Absolutely. More than once as memory serves me.

3 Q. And I think there was some allegation or one allegation
4 as to whether or not the State committed any Brady
5 violations in failing to disclose anything. To your
6 knowledge was anything not disclosed?

7 A. To my knowledge, nothing was not disclosed. It's kind
8 of the Yogi Berra-ism, I can't know what I don't know, but
9 I'm not aware of anything that was not disclosed.

10 Q. Fair enough. Now I think the allegation also said that
11 some stuff -- some of the evidence was disclosed late.

12 A. Late, I think one of the specific allegations if I
13 understood Mr. Morris' testimony was on the AIT analysis.
14 Looks like that was forwarded to me on July the 11th of
15 2012. I don't really recall the exact date of this trial.

16 Q. And just for the record, the trial occurred July 23rd,
17 24th and 25th of 2012. In getting the AIT report at that
18 time did you feel you were prepared to go forward?

19 A. Yes. In discussion with the solicitor I just wanted to
20 be assured that there was going to be someone there from the
21 lab that had done the testing. And as I recall, there was
22 someone there from the lab to testify.

23 Q. One of the other allegations is that you were
24 ineffective for failing to request a severance of this
25 trial. Did you -- did you ever consider moving for a

JOHN DeJONG - DIRECT EXAMINATION BY MR. SCHMECKPEPER

26

1 severance?

2 A. I did. That was a little tricky. Tricky, well, from
3 two points of view. And number one, Mr. Morris was adamant
4 that I could do -- was to do nothing in his case that would
5 shed his mother, that is Ms. Phillips, in a bad light.

6 The other thing was I did not really want Ms. Honeycutt
7 out of the case because it was my intent to try to throw her
8 under the bus, that is as the guilty party rather than my
9 client. So I think I did -- I don't know that I ever
10 discussed that with Mr. Morris.

11 I think I did toy with the idea, but I really wanted
12 Ms. Honeycutt in the case. And I did not think that I could
13 get Ms. Phillips severed without also getting Ms. Honeycutt
14 severed. I'm not sure I'm making sense here, but I
15 definitely wanted Ms. Honeycutt in the trial.

16 Q. And correct me if I'm wrong, the posture of this case
17 -- the State was alleging everybody was culpable?

18 A. I'm sorry?

19 Q. The posture of this case and understanding the State
20 was alleging everybody was responsible?

21 A. Exactly.

22 Q. But the way the jury ultimately found was that the
23 Applicant and his mother were culpable and the co-defendant,
24 the victim's mother, was not?

25 A. That is correct.

JOHN DeJONG - DIRECT EXAMINATION BY MR. SCHMECKPEPER

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1 Q. And your strategy was kind of to play into that and
2 point to the victim's mother rather than your client?

3 A. Yes. When we use the mother in this case, I've got to
4 be careful to try to cast all the blame on the biological
5 mother of the deceased child.

6 Q. Ms. Honeycutt?

7 A. I couldn't. Mr. Morris tied my hands as far as the
8 grandmother of the deceased child.

9 **THE COURT:** What was her name?

10 A. Donna Phillips, Your Honor.

11 **THE COURT:** Okay. Thank you.

12 Q. And the Applicant testified in this case, correct?

13 A. Yes, sir, he did.

14 Q. And what -- what was his testimony basically?

15 A. As I recall, and I can't honestly say, I haven't
16 reviewed it, he didn't do anything, his mother, Ms.
17 Phillips, did not do anything. As I recall he did not
18 recall having seen any pills or medication.

19 I think I asked -- actually asked him at one point,
20 either myself or the prosecutor, surely there were times
21 that the deceased child would have been out of his view? He
22 said, no, that would not have been possible. Something
23 along the lines that even when the child went to the
24 restroom, the child was there with him.

25 Q. Now do you recall Dr. Krieger?

JOHN DeJONG - CROSS EXAMINATION BY MR. ARIAIL

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1 A. I don't. That's a bit of -- I heard that a few moments
2 ago, but I don't recall Dr. Krieger. Can you help me out a
3 little bit?

4 Q. It's fair to say the record would reflect -- would
5 reflect -- what was elicited considering Dr. Krieger's
6 report?

7 A. I'm sorry?

8 Q. Is it fair to say that the record would reflect what
9 was elicited ---

10 A. Yes.

11 Q. --- considering ---

12 A. Yeah.

13 Q. --- Dr. Krieger's report?

14 **MR. SCHMECKPEPER:** Your Honor, I have no further
15 questions.

16 **MR. ARIAIL:** Your Honor, may it please the Court?

17 **Cross Examination by Mr. Ariail:**

18 Q. Mr. DeJong, how you doing again?

19 A. I am almost well. Thank you, sir.

20 Q. All right. Getting better every second, right?

21 A. I wish I could honestly say that.

22 Q. All right. Let me just make sure I understand. The
23 submission of the AIT chemical analysis late, I think it was
24 July 11th y'all get this, twelve days before trial?

25 A. Something like that, yes.

JOHN DeJONG - CROSS EXAMINATION BY MR. ARIAIL

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1 Q. I mean, the issue -- I just want to make sure -- did
2 you have any expert witnesses that you were using in this
3 case?

4 A. No. Well, I had an expert, a forensic toxicologist I
5 used, but beyond Dr. Brewer, I believe was his name, I had
6 no other expert witness.

7 Q. Okay. Did that tie into that AIT chemical analysis by
8 Dr. Brewer or your forensic ...

9 A. Not so much as to the analysis. It was -- Dr. Brewer
10 was more to try to refute the time of when the medication
11 would have been administered.

12 Q. Okay. I guess -- maybe I'm not answering [sic] the
13 right way. Was there anything -- a part of that record that
14 you got due to getting it late that affected your case?

15 A. No. We knew it was out there.

16 Q. Okay.

17 A. We just got the written lab results late. But based on
18 the pathology report we knew what the allegations were.

19 Q. Okay. So you knew prior to that there was going to be
20 something that was going to be found in that chemical
21 analysis and it didn't take you by surprise, I guess?

22 A. No, it did ---

23 Q. Okay.

24 A. --- not take me by surprise.

25 Q. There was nothing out of that that would have affected

JOHN DeJONG - CROSS EXAMINATION BY MR. ARIAIL

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1 you being prepared for trial or anything in regards to that?

2 A. No, sir.

3 Q. Okay. Did you -- I guess the time-frame of this matter
4 was a question because either it happened while the child
5 was with the grandmother and Mr. Morris or it happened with
6 Ms. Honeycutt, is that ---

7 A. That's correct.

8 Q. --- kind of the theory where we're going with this?

9 A. Yes, sir.

10 Q. Okay. And did you discuss -- I guess my question is --
11 and tell me how you would handle this. I mean, clearly he
12 didn't want to paint a bad picture about his mother?

13 A. That is correct.

14 Q. But your understanding and knowledge about this case is
15 that if he goes that route, it's probably not going to turn
16 out well for him if the jury sides against him and his
17 mother? I mean, that's ...

18 A. (Affirmative nod).

19 Q. Did you explain that to him?

20 A. I did. In fact, he had I know on two separate
21 occasions I passed on to him, the solicitor had offered to
22 -- they had not offered him a deal, but they had offered how
23 they normally do serious consideration, et cetera, et cetera
24 if he would testify against his mother. And both times he
25 adamantly refused.

JOHN DeJONG - CROSS EXAMINATION BY MR. ARIAIL

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1 Q. Okay. And tell me how you handled, I mean, in this
2 case, I mean, you knew it would probably -- he needed to
3 separate himself from both of them is what he needed to do
4 it sounds like.

5 A. Right. Yes, sir.

6 Q. Okay. Because he's getting an aiding/abetting charge,
7 either he's tied with his mother or he's getting convicted?

8 A. Right.

9 Q. Do you ever do where so even though my client has told
10 me to do one thing, I'm not going to go that route, I'm
11 going to do something different as your part of the trial
12 strategy, I guess, just disregard what he says?

13 A. In this particular case or ---

14 Q. Yeah.

15 A. --- in general?

16 Q. No, no, no, in this case. I mean, when you ---

17 A. No.

18 Q. --- saw this coming ---

19 A. No. He was so adamant about it that I felt like it
20 would have totally destroyed our attorney/client
21 relationship had I tried to do that.

22 Q. Okay. So you saw no way around being able to say,
23 look, you need to testify against your mom, you need to do
24 something that'll help your case here?

25 A. I saw no way around that.

JAMIE MORRIS - DIRECT EXAMINATION BY MR. ARIAIL

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1 Q. Okay. This issue in regards to rebutting testimony, I
2 think, from Kayla Roper, he was saying he wanted to testify
3 about something. Do you remember, you know, a discussion
4 about what Kayla had said and why he wanted to rebut that
5 testimony?

6 A. I do not have any recollection of that.

7 Q. Okay.

8 MR. ARIAIL: Your Honor, I have no further questions.

9 MR. SCHMECKPEPER: Nothing from the State, Your Honor.

10 THE COURT: You can step down and be excused. I
11 believe that takes care of you for today.

12 MR. DeJONG: Thank you so much, Your Honor.

13 THE COURT: On this case I don't see that I have the
14 transcript.

15 (Pause)

16 THE COURT: I'm going to take this one under
17 advisement.

18 MR. ARIAIL: Your Honor, if I could just -- my client
19 has got me -- while I sat down at the table he had a couple
20 of more questions he wanted me to ask him if ---

21 THE COURT: All right. Please come back up and take
22 the stand. You're still under oath.

23 Jamie Morris, having been
24 previously sworn testified as follows;

25 **Direct Examination by Mr. Ariail:**

JAMIE MORRIS - DIRECT EXAMINATION BY MR. ARIAIL

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1 Q. Mr. Morris, we just discussed that when I sat back down
2 you had heard some testimony from Mr. DeJong in regards to
3 the testimony about your -- against your mother. You wanted
4 to provide additional information to the Court about that
5 conversation.

6 A. Specifically so it's on the record, I just wanted it to
7 be known that what he had told me is that there was a plea
8 bargain. And I said there is no plea when you're an
9 innocent man. And he said, well, I'm your lawyer, so I have
10 to tell you this. So please take it under advisement or
11 whatever -- however he said it.

12 But he said -- he said, they want you to turn State
13 evidence. And I said, what evidence? And he -- I said,
14 she's innocent. And he said -- he said, well, they're
15 offering you probation if you'll testify against her. That
16 was specifically what was said.

17 Q. Okay. And in regards to the conversation you had with
18 Mr. DeJong about the AIT chemical analysis, you indicated to
19 him -- there was some conversation and I think something was
20 represented during the trial about what Jenny Barwick said,
21 and you wanted to elaborate on that with the Court.

22 A. In the transcript of the record, if you look where
23 Jenny Barwick said -- I don't remember what the date was,
24 but it was certainly not July the 11th when she said it was
25 disclosed. So that's what I was going by. I just didn't

JAMIE MORRIS - DIRECT EXAMINATION BY MR. ARIAIL

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1 want it to look like I'm saying something that's not true
2 because that was going by the record of the transcript.

3 Q. Okay. So you're saying it was later than July 11th is
4 what you're saying?

5 A. (Affirmative nod).

6 Q. And there was a reference in the transcript ---

7 A. Maybe the 17th or something more like that closer.

8 Q. Okay.

9 A. It may have been a little bit before that.

10 Q. Okay.

11 A. I don't know.

12 Q. Those are the questions you asked me to answer, I mean,
13 ask you, is that correct?

14 A. Correct.

15 **MR. ARIAIL:** That's it, Your Honor. No further
16 questions.

17 **THE COURT:** All right.

18 **MR. SCHMECKPEPER:** Nothing from the State, Your Honor.

19 **THE COURT:** You can go back and have a seat with your
20 attorney.

21 A. Thank you, Your Honor.

22 **THE COURT:** All right. Well, I'll take that -- this
23 one under advisement. Did you find the transcript?

24 **MR. SCHMECKPEPER:** Yes, Your Honor. And thank you for
25 bearing with me this morning and being patient. I apologize

2 **THE COURT:** That's okay.

3 (Hearing Ended at 12:02 pm)

4 (End of Requested Transcript of Record)

Certificate of Reporter

I, The undersigned, Susan W. Hudgins, 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 all the proceedings had and evidence introduced in the trial/hearing of the captioned case, relative to appeal, in the Circuit Court for Pickens County, South Carolina, on the 5th day of December 2016.

I do further certify that I am neither of kin, counsel, nor interest to any party hereto.

March 18, 2017

S/Susan W. Hudgins

Circuit Court Reporter

STATE OF SOUTH CAROLINA
COUNTY OF PICKENS

Jamie Edward Morris,
SCDC No. 351758,

Applicant,

vs.

State of South Carolina,

Respondent.

IN THE COURT OF COMMON PLEAS
THIRTEENTH JUDICIAL CIRCUIT

C.A. No.: 2015-CP-39-0299

ORDER

2017 JAN 4 PM 9 17
CLERK OF COURT
PICKENS COUNTY
SOUTH CAROLINA

Applicant filed this application for Post-Conviction Relief March 10, 2015. This matter was heard December 5, 2016. Applicant was represented by Mills Ariail, Esquire. The State was represented by Patrick Schmeckpeper, Esquire.

Applicant is currently incarcerated with the South Carolina Department of Corrections pursuant to the Pickens County Clerk of Court's orders of commitment. The Pickens County Grand Jury indicted the Applicant for homicide by child abuse, aiding and abetting (2008-GS-39-2053). John W. DeJong, Esquire represented the Applicant at trial.

After the State called the case to trial, Applicant was found guilty. On July 27, 2012, the Honorable D. Garrison Hill sentenced the Applicant to 12 years imprisonment suspended upon the service of 8 years and 2 years probation.

A notice of appeal was filed at the South Carolina Court of Appeals. Robert M. Pachak, Esquire of the South Carolina Commission on Indigent Defense, Division of Appellate Defense, perfected the appeal. The Court of Appeals affirmed the Applicant's conviction and sentence.

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State v. Morris, Op. No. 2014-UP-112 (S.C. Ct. App. filed March 12, 2014). The Remittitur was sent on March 28, 2014.

In his application for post-conviction relief, the Applicant alleges he is being held in custody unlawfully for the following reasons:

1. Ineffective Assistance of Trial Counsel
 - a. Failed to disclose complete discovery to the Applicant.
 - b. Failed to file motion for continuance based on a late disclosure of discovery.
 - c. Allowed rules of criminal procedure and constitutional amendments to be violated.
 - d. Failed to object to various testimony on grounds of perjury.
 - e. Failed to better argue grounds for mistrial based on Rule 403.
 - f. Allowed prosecutorial misconduct.
 - g. Failed to allow the Applicant to rebut testimony of Kayla Roper and failed to request severance.
 - h. Failed to uphold the right of confrontation when two witnesses were not present at trial.
 - i. Failed to argue better grounds for directed verdict.
2. Ineffective assistance of appellate counsel
 - a. Conflict of interest because works in the same office as the attorney representing his co-defendant.
 - b. Failed to file a motion for reconsideration.
3. "Perjury."
4. "Violation of rule 6 part (c) disclosure."
5. "Violation of Rule 403."
6. "Violation of Rule 402."
7. "Violation of the 6th ammendment [sic] right of confrontation."

The Court will attempt to address Applicant's arguments as best it can based on the way they were presented at the post-conviction relief hearing. Any grounds for relief not argued at the post-conviction relief hearing are deemed abandoned.

Applicant alleges he is entitled to relief based on a theory of ineffective assistance of counsel. Where ineffective assistance of counsel is alleged as a ground for relief, the Applicant must prove that "counsel's conduct so undermined the proper functioning of the adversarial process that the trial cannot be relied on as having produced a just result." *Strickland v.*

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Washington, 466 U.S. 668, 686, 104 S. Ct. 2052, 2064 (1984); *Butler v. State*, 286 S.C. 441, 442, 334 S.E.2d 813, 814 (1985).

The proper measure of performance is whether the attorney provided representation within the range of competence required in criminal cases. The courts presume counsel "rendered adequate assistance and made all significant decisions in the exercise of reasonable professional judgment." *Strickland*, 466 U.S. at 690, 104 S. Ct. at 2066. The Applicant must overcome this presumption in order to receive relief. See *Cherry v. State*, 300 S.C. 115, 118, 386 S.E.2d 624, 625 (1989).

A two-pronged test is used in evaluating allegations of ineffective assistance of counsel. First, the Applicant must prove counsel's performance was deficient. Under this prong, attorney performance is measured by its "reasonableness under prevailing professional norms." *Cherry v. State*, 300 S.C. at 117, 386 S.E.2d at 625 (quoting *Strickland*, 466 U.S. at 688, 104 S. Ct. at 2065). Second, counsel's deficient performance must have prejudiced the Applicant such that "there is a reasonable probability that, but for counsel's unprofessional errors, the result of the proceeding would have been different." *Cherry*, 300 S.C. at 117-18, 386 S.E.2d at 625. "A reasonable probability is a probability sufficient to undermine confidence in the outcome of trial." *Johnson v. State*, 325 S.C. 182, 186, 480 S.E.2d 733, 735 (1997) (citing *Strickland*, 466 U.S. at 688, 104 S. Ct. at 2052).

Applicant also alleges ineffective assistance of appellate counsel as grounds for relief. A defendant is constitutionally entitled to effective assistance of appellate counsel. *Evitts v. Lucey*, 469 U.S. 387, 105 S. Ct. 830 (1985). In analyzing a claim of ineffective assistance of appellate counsel, the Court applies the *Strickland* test just as it would when analyzing a claim of ineffective assistance of trial counsel. See *Bennett v. State*, 383 S.C. 303, 309, 680 S.E.2d 273,

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276 (2009); *Southerland v. State*, 337 S.C. 610, 616, 524 S.E.2d833, 836 (1999) (noting courts apply the *Strickland* test to determine if appellate counsel was deficient for failing to raise an issue and whether the defendant was prejudiced from the failure to raise the issue).

At the outset, this Court will note that Applicant testified that he was not ready to go forward, and Applicant's counsel made a motion to continue the post-conviction relief hearing to a later date. This Court denied that motion, as this matter has been pending for nearly two years — a sufficient time in which to prepare Applicant's case.

Applicant's application alleges ineffective assistance of appellate counsel as a ground for relief. No evidence or testimony was presented on this issue. As such, it is deemed abandoned.

Applicant testified that he met with trial counsel to discuss the case, but cannot remember the exact number of times. He testified that he thinks he discussed the charges and evidence against him with trial counsel. Further, Applicant stated that he received discovery from trial counsel, but does not believe that he received all of the discovery in the case. Trial counsel testified that he met with Applicant multiple times to go over the discovery in the case.

The first issue addressed by Applicant during his wide-ranging direct examination was trial counsel's failure to move for a continuance based on the chemical analysis report being received late. Trial counsel testified that he received the report 11 days before trial and was already aware of what the report would show. Trial counsel testified that he received the report in enough time that it did not affect his ability to present Applicant's case and, therefore, he did not make a motion for continuance. Trial counsel further testified that he was not aware of any *Brady* violations with regard to the chemical analysis report. Trial Counsel testified that he spoke with the solicitor to make sure that a representative of the lab that prepared the report was

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available to testify. On Cross examination, Applicant testified that he believed the report was only received 7 days prior to trial, but could not recall trial counsel every stating that he needed more time with the report or that he was unprepared for trial. Further, Trial Counsel called an expert in forensic toxicology to refute the findings in the report as to when the substances at issue in the trial were administered to the victim.

Applicant testified that trial counsel allowed multiple violations of Rule 403 and that this serves as grounds for ineffective assistance of counsel. No testimony was given at the hearing as to specific examples of Rule 403 violations. The only instance to which the Court's attention is drawn is presented in a hand-written amendment to Applicant's PCR application. This document states that, during the cross examination of Michael Eugene Ward, M.D., a brain injury previously suffered by the victim in Applicant's case was mentioned. The testimony of Dr. Ward was that the cause of the child's death was a drug overdose. (Trial Record p. 596, ll. 20-25). Dr. Ward specifically the child's prior brain injury as a cause of the infant's death. (Trial Record p. 609, l. 19 through p. 610, l. 2).

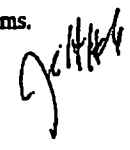
The document further alleges that this statement was made in direct violation of the trial judge's pre-trial ruling on the admissibility of such statements. The testimony at issue was not objected to by trial counsel nor addressed by the court either at the time of the statement or during the jury charge. A review of the record shows that the trial judge did grant a motion in limine as to "the evidence about prior care of the child in the custody of DSS or the foster parents." (Trial Record p. 99, ll. 16-23).

An examination of the statement at issue shows that neither DSS nor foster care were mentioned in relation to the injury suffered by the child. (Trial Record p. 609, ll. 19-25; p. 610, ll. 1-2). Further, the testimony was not given by an individual employed by DSS such that an

inference could be drawn by the jury. Without further testimony as to how this testimony violated Rule 403, trial counsel's failure to object does not serve as adequate grounds for ineffective assistance of counsel.

Applicant also claims that trial counsel failed to object to multiple instances of perjury. Specifically, Applicant alleges perjury by James Mahanes, Robert Foery, Rita Burgess, and Kayla Roper. Applicant further claimed that he was not allowed to rebut the perjury of Kayla Roper during the trial. Applicant claims that he was shushed during trial and that his mother could not rebut the perjury because the trial judge found her in contempt of court. Again, Applicant offered no testimony or evidence on this issue other than a handwritten amendment to his post-conviction relief application. Applicant neither called the purported perjurers to testify as to the truth of his allegations that they committed perjury, nor did Applicant offer testimony which is sufficient for this Court to reach a conclusion that the witnesses at issue did, in fact, commit perjury. With no showing of perjury, this argument cannot serve as adequate grounds for ineffective assistance of counsel.

Applicant further alleges that trial counsel was deficient in failing to "better argue grounds for mistrial." At the post-conviction relief hearing, Applicant testified that he could not remember the reasoning for this ground, and that the reasoning could be found in his application and its amendments. Applicant also testified he could not remember whether a directed verdict motion had been made or not. An examination of the referenced document shows that Applicant believes trial counsel should have moved, or better argued, for a mistrial based on "violations of Rule 403" and because "there was a 'failure of competent evidence tending to prove the charge in the Indictment,' and there was an altogether 'non-existence of evidence.'" Without further testimony or evidence, this Court cannot grant relief on these vague and undeveloped claims.



Next, Applicant argues that trial counsel allowed prosecutorial misconduct by not objecting when "prosecutors asked improper hypothetical questions at trial." At the post-conviction relief hearing, Applicant testified that he believed the prejudicial value of these hypothetical questions outweighed their probative value. Applicant presented no testimony or evidence outside the handwritten amendments at the post-conviction relief hearing to bolster this claim. Without being pointed to a specific example of an improper hypothetical question, this Court cannot adequately examine this claim. As such, this argument is without merit and cannot serve as grounds to show ineffective assistance of counsel.

At the post-conviction relief hearing, Applicant claimed that there were individuals who should have been called as witnesses, as they were at the victim's mother's house at a time when the victim was exhibiting signs of illness. However, Applicant acknowledged that he never made trial counsel aware of these individuals, and stated that trial counsel was not culpable for these individuals not being called. In this regard, Applicant is correct: if Applicant had knowledge of these individuals, but failed to relay that knowledge to trial counsel, trial counsel's failure to call these individuals as witnesses does not constitute ineffective assistance of counsel.

Applicant also claims that trial counsel allowed his Sixth Amendment rights to be violated, as Applicant did not have an opportunity to confront Dr. Kriger or Medical Examiner Christensen about their findings. Applicant claims that the autopsy report created by Medical Examiner Christensen was testimonial, as it claimed his mother's home was the place of the child's death. Applicant asserts that using his mother's address as the place of death is tantamount to accusing his mother of the killing directly. As to Dr. Christensen, it is true that he did not testify at trial. However, Dr. Christensen's supervisor, Michael Eugene Ward, M.D. did testify. Further, trial counsel engaged in a lengthy argument in objection to Dr. Ward testifying

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in place of Dr. Christensen as well as an argument stating that the autopsy report should be considered testimonial. (Trial Record pp. 588, l. 12 through p. 595, l. 23). As such, this portion of Applicant's Sixth Amendment argument is a matter for direct appeal, not a claim of ineffective assistance of counsel. As to Dr. Kriger, it is also true that he did not testify. Dr. Kriger was employed by AIT and performed chemical testing at the AIT lab under the supervision of Dr. Foery, who did testify. (Trial Record p. 556, ll. 3-18). Applicant failed to articulate a reason why trial counsel not objecting to Dr. Foery's testimony constitutes ineffective assistance of counsel, especially given the colloquy between trial counsel and the court during trial counsel's objection to Dr. Ward's testimony.

Finally, Applicant claims that that trial counsel was ineffective because he failed to sever Applicant's trial from those of his co-defendants. Where trial counsel articulates a valid reason for employing a certain strategy, such choice will not be deemed ineffective assistance of counsel. *Stokes v. State*, 308 S.C. 546, 548, 419 S.E.2d 778, 778 (1992). Trial counsel testified that he did not want to sever Applicant's trial from his co-defendants' for two reasons. First, trial counsel's strategy was to shift blame towards the child's mother, Ms. Honeycutt, and away from his client. Trial counsel stated that this strategy would not be possible in the event of a severance. Second, trial counsel stated that Applicant was adamant that his mother not be portrayed in a bad light. Applicant testified at the post-conviction relief hearing that he was aware of a plea deal whereby he would receive a probationary sentence in exchange for testimony against his mother. Applicant further testified that he refused this offer. Trial counsel testified that a trial strategy in the event of a severance would likely cast a bad light on Applicant's mother, ruining the attorney-client relationship between trial counsel and Applicant. As trial counsel articulated two

valid reasons for not moving to sever Applicant's case from those of his co-defendants, this cannot serve as grounds for finding ineffective assistance of counsel.

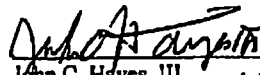
Wherefore, this Court finds that Applicant has not carries his burden of proof as to ineffective assistance of counsel on any of the grounds discussed above.

Therefore, Applicant's Application for Post-Conviction Relief is denied and dismissed with prejudice.

This Court hereby advises Applicant that he must file and serve a Petition for Writ of Certiorari within thirty (30) days of the service of this Order to secure appellate review. See Rules 203 and 243, South Carolina Appellate Court Rules (SCACR). The Applicant's attention is directed to Rule 243, SCACR, for the procedures following the filing and service of the Petition.

IT IS SO ORDERED.

December 16, 2016
Greenville, South Carolina


John C. Hayes, III
Presiding Judge #9

2017 JAN 4 AM 9 17
CLERK OF COURT
PIEDMONT COUNTY
SOUTH CAROLINA

WITNESSES

Rita Burgess

Pickens County Sheriff's Office

ARREST WARRANT NUMBER

DIRECT PRESENTMENT

ACTION OF GRAND JURY

FILED

DEC 16 2008

Kay B. [Signature]

Foreperson of Grand Jury

VERDICT

Foreperson of Petit Jury

Date:

DOCKET NO. 2008-GS-39-2053
WDR

The State of South Carolina

County of Pickens

COURT OF GENERAL SESSIONS

TERM 2008

THE STATE

vs.

JAMIE EDWARD MORRIS

Indictment for

2357

HOMICIDE BY CHILD ABUSE, AIDING AND
ABETTING

VIOLATION § 16-03-0085(A)(2)

STATE OF SOUTH CAROLINA)
)
COUNTY OF PICKENS)

INDICTMENT FOR
HOMICIDE BY CHILD ABUSE

At a Court of General Sessions, convened on

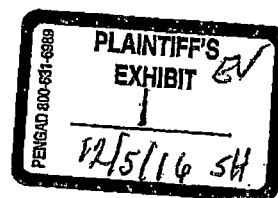
the Grand Jurors of Pickens

County present upon their oath:

That JAMIE EDWARD MORRIS did in Pickens County, on or about, and/or between the dates of March 14, 2008 and March 17, 2008, knowingly aid and abet DONNA LYNN PHILLIPS to commit child abuse or neglect to minor a child under the age of eleven years causing the death of said child, by allowing and/or having knowledge of the said child's ingestion of excessive amounts of opiates and/or the failure to get the said child medical treatment. This is in violation of §16-3-0085(A)(2) of the South Carolina Code of Laws (1976) as amended.

Against the peace and dignity of the State, and contrary to the statute in such case made and provided.


SOLICITOR



Amendments Attachment # 11 (E) explained

In Mr. Oconnell's cross examination of Michael (Eugene) Ward, he asked, "Then you knew about the brain injury of the child about a year or two before, right?" To which Ward replied, "That's correct." He then asks "And that has nothing to do with what we are talking about here today?" Ward replied, "His previous injury has nothing to do with his death." p. 609 (19-25) through 610 (1-2). This was a blatant and defiant violation of Judge Hill's earlier ruling, where Mr. Oconnell specifically asked if he could ask this question, in pretrial motions [p. 96 (20-24)], Judge Hill asked him to explain, or "clarify and elaborate" specifically how this would eliminate any issue in this trial p. 98 (15-18). Mr. Oconnell then fails to substantiate the probative value in a manner that it would not be outweighed by the prejudice that would imminently incur. Judge Hill made his ruling that this would not come in, nor would any thing directly or indirectly about DSS involvement before the date of March 14th, 2008, p. 99 (16-25) through p. 100 (1-12); 100 (23-25) through 101 (1-5). This was a violation of the defendant's rights as promulgated under Rule 403. Mr. Dejong failed to object. Also, this could be an abuse of discretion issue on Judge Hill's behalf. Mr. Dejong's acknowledgement of the prejudiced nature of the testimony was further

Front & Back
see reverse
side

Amendments Attachment #11 (C) explained

Attachment #11
(C) explained

p. 461 (2-7) James Oconnell asked James Mahanes if he had given any previous testimony, in previous hearings, as to the same parties present at trial, Mr. Mahanes replied, "No." Oconnell asked him a second time, once again, he replied, "No." If you go back to the pretrial motions, p. 106 (7-10), it was previously mentioned, and I quote, "But further, they have a list of their witnesses and some of them -- or most of them are DSS and Dr. Mahanes or however you say his name. They all testified at the DSS hearing." Moreover, the hearing that Mr. Oconnell mentioned, was the DSS hearing for custody of Ava Roper, where Mahanes did in fact testify. In fact, his testimony there not only proves that he committed perjury at trial, but also reveals the prejudiced and biased nature of his testimony at trial. In light of the fact that Mr. Dejong, the defense attorney failed to object to this obvious perjurious testimony, the defendant was further prejudiced by his later testimony, which could have injected improper considerations into the jury's deliberations. The testimony which was given on ~~p. 461 (2-7)~~ p. 462 (7-8), he said, "The hydrocodone came from the grandmother's home." Mr. Harbin asked, "And what leads you to be certain that it was Tusstonex and not some other form of hydrocodone?" To which he replied, "Because it was a combination of hydrocodone and Clorpheniramine, and

evidence to prove that it was exclusively, and conclusively, Tussionex. Certainly there are many other medications that contain this same formulation, and Foery himself stated on the record that 3 different formulations of Tussionex exist, p. 549 (8-12), and that is Tussionex, alone. Foery stated that some 50-75 different drugs contain Chlorpheniramine (CPA) p. 562 (11-21). Certainly, some of those 50-75 could also contain hydrocodone. The probative value of his statement was vastly outweighed by the danger of unfair prejudice to the defendant, who also lived at "...the grandmothers home."

Tussionex is prescribed for pulmonary disease, which is why the defendant's mother was prescribed Tussionex. Nothing in the proceedings of the whole trial conclusively proves that the alleged Tussionex was what caused the death of ^{minor}

Also perjury on behalf of Rita Burgess was not objected to by Dejong p. 379 (9-20). Her testimony was perjurious in nature in that she said she did not take a statement from the other gentleman who was at Latasha Honeycutt's home. Specifically, his name was Benjamin Garrett, and that she did take a statement can be proven by the Rule 5 discovery material of the case.

Robert Foery committed perjury, Dejong did not object. p. 559 (19-21)

Richardson / Foery [Transcript of Record (Volume 1)] Foery:
p. 547 (lines 5-8) ... And the confirmation test indicated that
hydrocodone was the opiate present in the blood. And in the
urine, hydrocodone, hydromorphone and chlorpheniramine were found
(no chlorpheniramine in blood)

Dejaung / Brewer

p. 653 (lines 19-23) Brewer: There's not a lot for me to focus
on in terms of the urine. I think the main focus needs to be
on the blood. And, unfortunately-- and I don't know if this
was pointed out. Yes, they had a limited sample to work with.
This happens quite frequently with child deaths... (main focus
on blood)

p. 548 (lines 19-24) Foery: And, also, in the urine, there
was a small amount of salicylate, which is aspirin. In the
blood, there was only enough blood specimen to confirm
the presence of the hydrocodone. There was not enough
blood to confirm the presence of the chlorpheniramine and
the hydromorphone, only the hydrocodone.

(Chlorpheniramine negative in blood)

p. 558 (lines 21-25) through p. 559 (lines 1-2) ~~Foery~~

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

Foery: Well, it wasn't found in the blood because we did
not have enough blood to analyze for the hydromorphone
or the chlorpheniramine. So, unfortunately, the amount
of blood that was submitted with the autopsy specimen
was only enough to do the confirmation on the hydro-
codone.

p. 559 (lines 19-25) ~~REDACTED~~

Dejong: In fact, the reports that came back from AIT showed a blood negative for hydromorphone, and negative for Chlorpheniramine, or whatever it is?

Foery: Chlorpheniramine, it's not negative. T+ was because there was not enough blood to do the test. (Perjury)

Dejong: So rather than say I don't know, you say it's not negative; right? p. 560 (lines 1-10) Foery: I think there's a note on my report, If I may consult it. (no objection)

Dejong: Sure, please do. Foery: On the blood report, it said, Insufficient specimen volume remaining to complete the testing for hydromorphone and for chlorpheniramine.

Dejong: And it, also, says negative for both; right?

Foery: It says that the test was cancelled and the hydromorphone sample was unsuitable, because there was insufficient volume as was the chlorpheniramine.

p. 560 (lines 19-25)

Dejong: Okay, If I can show you what I'm looking at, Dr. Foery, maybe we are or maybe we aren't on the same sheet of music. Is that a copy of an AIT lab report? Foery: Yeah. This is a -- this is a specimen. This is a different specimen. The specimen I'm referring to is 40073125. That is the specimen that was analyzed. It is the one that, I believe, was drawn at the hospital.

p. 561 (lines 1-23) Foery: This specimen is 4075551. This is a lavender topped tube as well, but it's a different specimen number. So it's a different tube. And there was -- I don't know whether they took blood from that tube and added it to the...

Kayla Roper (partial transcript) pp. 144 (9-25)

through 145 (1-8) She committed perjury, in that her statement was not true. The defendants mother did not say anything about giving the defendants son cough syrup. Dejong failed to let the defendant rebut the testimony, and failed to let the defendants witness Renee Burgess, who was in the waiting room, rebut it as well.