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STATE OF SOUTH CAROLINA

IN THE COURT OF APPEALS

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SC Court of Appeals

Appeal from Newberry County

Honorable Frank R. Addy, Circuit Court Judge

THE STATE,

RESPONDENT,

V.

THEIA DARION MCARDLE,

APPELLANT

APPELLATE CASE NO 2016-000843

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bottom. "Okay. So did he have a good appetite to your recollection that night?" And your last line on that page, "I do remember."

A "I do remember he ended up throwing up because he was trying to hold stuff down."

Q "After he ate?"

A "Yeah, after he ate."

Q "Where did he throw up?"

A "He threw up in our bed."

Q Now, my question to you is, how much throw up? Was it like a cereal bowl full, a small cup full, just a little bit?

A I didn't really measure it at the time.

Q Well, I mean, was it a lot of like would fill a cereal bowl or was it just a little bit of like hacking type throw up, or was it continuous throw up?

A It wasn't continuous like him just sitting there dry heaving.

Q Were the sheets or bedspreads stained on the bed? Did it leave stains on the bed?

A I don't remember. I cleaned up. Wiped the stuff up. That's why there's stuff on the clothes and everything.

Q So you did wipe up where he threw up?

A Yes, sir.

Q And the investigators says, "What was he doing in your

all's bed?"

A "He was eating in there with us watching a movie."

Q "So you all eat in the bed?"

A "Yeah."

Q "So he ate and then he began throwing up?"

A "He puked up a little bit."

Q Two lines down from that. "So doing dinner is when he's throwing up and pooping. Tell us about what he said about his groin."

A "He said owe."

Q "What made him say that?"

A I don't know."

Q "He was just eating and he was saying owe?"

A "He didn't say it while we were eating. He said that earlier throughout the day while we were watching our movie. He didn't mention it."

Q So he was complaining about his groin while you were watching a movie after he -- after dinner?

A No. It was before. Earlier, before.

Q Did you watch the movie before dinner or after movie -- after --

A We watched a movie before dinner and we wanted one while we were eating dinner. He had complained about it before we had ate dinner that night.

Q And the investigator says, "What time was that." And

your answer was, "We were watching --"

A "We were watching -- and he probably -- after I had made my sandwich and all."

Q Which sandwich?

A The second one that I made myself.

Q So again you had grilled yourself two sandwiches that day?

A I had one for at lunchtime and one other one afterwards.

Q And the investigator says, "So around 2:00?"

A "Yeah. I remember him mention it. He was like owe and he grabbed himself, and I was like, hey, you need to go talk to your mom about that. I don't know anything about that."

Q Okay. Well, I'm asking you now. He -- G.M. according to your story, is complaining about pain to his penis --

A Yes, sir.

Q -- at 2:00 in the afternoon?

A Yes, sir.

Q Did he have any head injuries that you saw at that time? Any bruises on his face or head?

A Besides the one that was there on his eye.

Q Under his eye he had something, but nothing else that you saw?

A Yeah. He had a scratch on his neck.

Q And this is -- this is just me asking. What was G.M. wearing at that time?
A I don't remember off the top of my head, sir.
Q Was it warm in the home or was it cold in the home?
A I don't even remember that off the top of my head, sir.
Q What did -- what would G.M. normally wear during the day? Was he in preschool at this point?
A She didn't even have him in school at this point.
Q Well, he was two-years-old. Just about to turn -- he died the day he turned three, right?
A Yes, sir.
Q So he wasn't yet in preschool or kindergarten. I'm just curious what a child that age wears during the day.
A Whatever he was put on. And --
Q Did you dress him?
A I didn't always dress him or help dress him. His mother picked out stuff for him to wear at the time.
Q Could he have been wearing a shirt that said Coogi, C-o-o-g-i?
A I don't know, sir.
Q Could he have been wearing a shirt that said Puma?
A He was wearing a Puma shirt when we came to Newberry that night.
Q Was that a shirt that he had slept in or was that a shirt that you had changed him into?

A No. It was a shirt that I changed him into whenever we came to Newberry.
Q That was the shirt that you had changed him into?
A Yes, sir.
Q Did he have a coat or anything over that shirt?
A I don't remember that night, sir.
Q When he sleeps what does G.M. wear? Does he wear overnight diapers or diapers when he sleeps at night?
A He wears diapers, yes.
Q Does he wear pajama bottoms underneath those diapers or --
A No. He normally wears the clothes that he was wearing that day when he goes to sleep.
Q Start from your -- the investigator says, "So around 2:00?" Your answer is the last two lines.
A "Yes. I informed him that he needed to go talk to --"
Q No. It says, "Yeah, I remember mentioning that." "I remember him mentioning that." It's the last two lines on that page, right where the investigator says, "So around 2:00."
A So around 2:00. Hold on.
Q I think it's the line you just read before. "He was like owe and he grabbed himself, and I was like, hey, you need to go talk to your mom about that. I don't know nothing about that -- or I don't know anything about that."

A "Yeah. I remember him mentioning that. He was like owe and he grabbed himself. And I was like, hey, you need to go talk to your mom about that. I don't know anything about that."

Q And on the next page the investigator asked you, "How long you had known G.M. and he says -- about halfway down that page, "Four or five months I guess you had known him?"

A "Yes, sir."

Q And then the investigator says, "That's kind of what I thought about you, too. Why, when he was complaining about his crotch you didn't kind of ask him what's going on?" Your answer?

A "Well, I didn't feel comfortable doing that, I mean."

Q "Why?"

A "I molested as a kid and hopefully that's not going to be coming out in court. But when I went through my own stuff as a child, that's the reason why certain stuff I didn't do. I was molested by my sister as a child. So, I mean, certain things I won't get into like that."

Q And is that the reason why you didn't look at naked children?

A Yes, sir.

Q Even when you were bathing with them?

A Yes, sir.

Q Bottom line. "Okay. So you all are eating and he's just kind of vomiting and pooping on himself?"

A Yeah.

Q "And what happens then?"

A "I tell him to get up and we go get him changed. While I go get him changed and whatnot and help him -- or clean up and whatnot, she spanked him because he pooped on himself. He'd thrown up and whatnot. I'm like chill out. Just wash the sheets. It's not like we don't have clothes to wash him with. So she's still -- and everything and that led into the argument of, well, you're still talking to Heather. You're still doing this, you're still doing that, and I'm like this has nothing to do with anything. Why are we arguing over something that's stupid right now."

Q So it was the sheets that had been stained?

A I'm guessing so, sir.

Q You're saying you told Theia that it was -- that we can just wash out the sheets?

A I was saying that we could just wash the vomit or whatever that was on the sheets. It's not that big of a deal.

Q Are we talking about a garment or are we talking about sheets?

A Sheets.

Q And then two lines down from that the investigator

says, "But how was he acting though? He sounds pretty ill if you lose control and all that." Your answer?

A "He started to try to eat food again. I was like, Gabe, let's clean up and whatnot. His mom put it to him like he needs to actually finish his food and whatnot. But during the process of us still bickering I'm cleaning up from where he puked up everything, trying to take his plate from him and whatnot. And I was going to set it aside for him if he was hungry later on."

Q Is that true, that you and Theia had been arguing that day?

A We'd been arguing several days.

Q Part of it was about you were talking to at least a woman named Heather?

A A friend of mine named Heather. And it was also along other things as well.

Q And this was about a week since the time that she had moved out and moved to the hotel?

A It had been going on since before then.

Q Okay. Then the investigator, in the middle of the page, says, "Okay. And then you take him to the bathroom?" And your answer was, "Yeah, and we clean up."

A "Yeah, and we clean up and whatnot. I did -- I myself did actually get sick that night, too. I actually threw up in the toilet." That's supposed to be toilet.

Q Well, read your answer and then you can --
A Threw up in the bathtub. Not the bathtub, but the toilet myself.
Q And you testified that the vomit -- the photograph of the vomit in the toilet is actually yours?
A Yes, sir.
Q And that is the bathroom that you were cleaning G.M. -- which bathroom did you clean G.M. up in?
A The very same one that had the vomit in it. He was cleaned up in the bathtub.
Q I'm kind of curious now because the master bedroom has a bathroom in it, doesn't it?
A Yes, sir. It does.
Q The -- you have to walk all the way across the other side of the house to get to the other bathroom?
A Yes, sir.
Q Why would you use that bathroom?
A She wanted us using the other bathroom because she wanted the big bathroom that had the big tub in it to herself.
Q The child has -- I assume he had thrown up on himself, too?
A Yes, sir.
Q Where was he stained?
A What do you mean about where was he stained?

Q Well, you said you cleaned him up. Did you just have to wipe off his clothes or did you take the shirt off and wipe off his chest?

A No. He just had a little bit on his shirt.

Q So that's all? You didn't take any clothes off? You just wiped off his shirt?

A Yes, sir.

Q Now, was there a cold going on around, or do you know what caused you to get sick? Was it food sickness or do you think like you caught the flu or a stomach bug?

A I'm not sure. I'm not sure. I didn't have a fever or anything or get a flu bug either, fever and diarrhea and everything.

Q I'm just curious what made you throw up like that.

A I'm not sure.

Q Had you been sick the day before?

A No.

Q So this was just something that snuck up on you that same day?

A I'm guessing.

Q The investigator's last paragraph on that page he says, "Here's the thing that's confusing. I understand you had some issues happen when you were a child, but you've showered with this child before and you've helped him bathe before. In fact, you were just about to tell me about

bathing the poop off of him. So how come sometimes you're comfortable with him and other times you're not?"

A "I get him into the bathtub. I don't -- I don't never actually sit there watching him. I'll come in there and check on him and be like, G.M. are you in there. Are you done. He'll say okay. And I'll say I'm about to come in and check and see. I'll look in there and see if he's got everything on. If you look like you still got some on you, make sure you get that off. There's only like -- been like one or two times I've actually sat and bathed with him."

Q "Tell me about this time. Whenever you went in there to wash the poop off of him."

A I told him that he's got poop on him and he got the rest of the poop off, and popped his butt and his head banged off the toilet, or whatever."

Q I thought you just told us today he didn't actually poop on himself?

A He did poop on himself in the bathtub.

Q In the -- was this while you're cleaning him up from the --

A No. While he was taking a bath. I said that earlier, too. He pooped in the bathtub.

Q So before dinner or -- because you said he threw up at dinnertime, right?

A Yes, sir.
Q So before dinner you had given him a bath?
A No, after dinner.
Q So the child --
A When he threw up. I took him in there to take a bath.
Q The child throws up during dinner?
A Yes, sir.
Q You take him to the bathroom, clean him up?
A Yes, sir.
Q And then later that night is when you give him the bath?
A No. The very same time while cleaning him up he takes a bath.
Q Well, you just told us you just wiped his shirt off.
A Yeah, I wiped his shirt off to clean him up. You said did he throw up on himself at all. I said no, I cleaned off his shirt. I took him in there to take both though still.
Q Well, did you help him take his shirt off?
A Whenever he got to the bathroom?
Q Have you ever seen a two-year-old, three-year-old boy take his own shirt off before?
A Yes. He's actually taken his own shirt off before.
Q So he's proficient at that?
A Yes.
Q He gets it over his head and everything without having

to have a parent help him?

A Yes, sir. He has.

Q So you do strip him down naked, or he strips himself down naked?

A I help him strip himself down naked while he's in there.

Q Okay. So you should have been able to see the injuries to his groin, right?

A Yes, sir.

Q And now today you're saying that you did see them?

A Yes, sir.

Q Have you ever told anybody that before?

A Before today?

Q Yes, sir.

A The lieutenants that was there.

Q The investigator says, "He was sick, wasn't he, and you were sick, too?"

A Yeah, but the tub or toilet was right there. But it wasn't really hard. It wasn't nothing that was like -- cause our bathtub is made out of plastic and his head like mainly from right here to the bathtub."

Q So at this point your admission -- your initial admission to Chief McClurken where you had given him a hard hit on the butt is now just a blow that's not detrimental to his health?

A A hard pat and still hitting a plastic tub would still not be detrimental to your health.

Q "And what did you notice about his naked body then?"

A "I did notice that he had like a discoloration on his butt, but --"

Q "Tell me about his groin."

A "I didn't look at his groin."

Q But you're saying that's untrue?

A I did say he had discoloration on his testicles.

Q Is that not -- am I missing something? Is that not the groin?

A Yes, sir. It is.

Q The testicles aren't the groin?

A Yes, they are.

Q Are you saying it is -- when you told the investigator just two weeks ago or so, I didn't look at his groin, is that true or not true?

A It is true. And I did inform the investigator as well that I did see the discoloration on his testicles and his penis, if you've actually read all this.

Q So in your mind groin and penis are two different -- and testicles are different things?

A No, they're not different things.

Q Well, the investigator says, "That makes no sense to me. I mean, I've tried to. I want you to explain this to

me. You're not doing a good job."

A "I'm telling you I saw discoloration on his butt and I saw something in that area but didn't actually sit there and just like try to look at his stuff like that, because after he got back up he got into the bathtub and I went back -- I went back there to the livingroom and whatnot because she was getting ready to leave and she was talking to me and whatnot."

Q So your testimony is when you took him back into the bathtub that is when Theia was leaving?

A At that point in time, yes.

Q And the boy is still able to bathe himself at that point?

A Yes, sir.

Q He's not in pain when he's in the bathtub?

A I didn't notice at that point in time he was in pain. He didn't look like he was in pain when I left him.

Q So he's got these injuries, you're saying, to his groin at that point and he doesn't wince or complain when he sits down in that hot water in that bathtub?

A It wasn't hot hot. It was like lukewarm. And he didn't wince or anything from what I saw.

Q Was G.M. a pretty tough boy or did he kind of complain at kind of small injures?

A It depends, I guess, at times.

Q And the investigator says, "Where are those pictures we've got? Do we have them printed out?"

A "I seen those pictures. Me and him have been over the pictures."

Q By me and him who are you talking about?

A Me and my attorney.

Q So you had seen all these photographs that the prosecutors are --

A Yes. A few days before we came over here.

Q Well, this is obviously back in March. March 10th.

A Yes, sir.

Q The investigator says, "How did you miss that?"

A I said, "I seen some of the bruises on him but a lot of them looked old, so I didn't really pay any attention to them. I talked to her then -- talked to her then how this happened or how did that happen. Because I pointed out the stuff on his ear one time and she was like, well, I popped him on the ear one time. And I'm like, so why are you hitting him. I said I seen this when I saw the discoloration on his rear end and I guess -- I saw, I guess, you would call it taint or his gootch -- I saw, I guess, you would call it taint or gootch, or whatever it is. The spot between the testicles."

Q So -- well one, you're saying that when you saw some bruises on his ears in the past you did stand up to Theia at

that time and say why did you hit him?

A I asked her what happened there.

Q But at other times you wouldn't ask her about that?

A I did stand up for him on occasions, but not every time, yes.

Q But you're saying when he was in the bathtub -- I'm not real smart about this. But I guess the taint or the gootch would be that area of skin between your testicles and your anus?

A Yes, sir.

Q And that's where you're saying you saw the discoloration?

A Yes, I saw some discoloration there.

Q Well, I mean, isn't that attached to his scrotum?

A Yes, sir. It is.

Q And you didn't notice that they were dark blue at that time, or purple?

A Yes.

Q You're not telling that to the prosecutors are you?

A I did explain that to him. As I said, if you keep reading through it, it's in there.

Q All right. Well, we're going to, trust me. The investigator said, "How are you seeing that part without seeing his crotch?

A Because he was bent over.

Q So when G.M. -- why is G.M. bending over?
A When I patted his butt.
Q That's after he pooped and you -- did you tell him to bend over so I can spank you?
A I told him to just bend and he bent and I popped his butt.
Q Which propelled him into the bathtub?
A Yes, sir.
Q At the moment that you hit him like that, that's when you noticed the discoloration and the skin area between the anus and the testicles?
A I hadn't noticed it before.
Q First time you saw it?
A Yes, sir.
Q The investigators says, "I feel like you're trying to." Your answer?
A "I'm not trying to cover her. I'm telling you everything I saw. He was bent over."
Q And that's true. You're not trying to cover for Theia, are you?
A I wasn't.
Q You're trying to cover for you?
A No, I'm not trying to cover for me. I'm telling you everything that happened.
Q The investigator says, "It's impossible to have missed

that -- his crotch. I mean, I've never seen anything like that."

A "He was bent over at the time."

Q "And he's not complained about that?"

A "He didn't complain at that time. He did complain earlier at like 2:00 or 3:00 whenever he said ouch. But I never took the time to actually stop and look at his groin. I can show you on here the ones that I've seen. I can show you the ones I believe are from where his head hit off the coffee table, too."

Q So at this time you've got these photographs of G.M. body that you're pointing out bruises that you're saying I did see and didn't see?

A Yes, sir. They asked me about the ones --

Q The investigator says, "What about the bathtub?"

A "He didn't have anything on his head from the bathtub. Our bathtub is made out of plastic in the trailer."

Q So you're telling the investigator at the time you hit him he didn't have any bruises?

A No, sir.

Q If he had any bruises, it had to be somebody else. Investigator says, "Okay. So tell me about the bathtub though. What happens after he gets washed off?"

A "He gets out of the bathtub and puts on a diaper. Puts on his clothes. He comes out there and I'm like, Gabe, do

you want to watch a movie. He said no, he was tired. I said, do you want to watch a movie or you want to go lay down. He said lay down. He went to go lay down. He was laying down by the time she came and whatnot. She came back with the cat first off and I was like why would you bring another cat. We've got enough cats. Like why are you bringing more animals when we can barely take care of the stuff we have to deal with anyways right now. Well, she left -- but she left that in the house. She ended up going back to Spartanburg County. She well went to go back towards -- heading towards Spartanburg. She was gone, I remember -- I think we left to come to Newberry around 11:00 or 12:00, I think, if I remember correctly."

Q Well, here you're saying that at the time the child was in the bathtub Theia had already gone to the gas station.

A Uh-huh.

Q So while you're alone with the boy and he's taking a bath Theia has already gone?

A He'd gotten out of the bathtub at that point in time.

Q Does G.M. wear Pull-Ups or diapers?

A He wears diapers.

Q And diapers have like the two Velcro strips that you can do on the sides to secure?

A Yes, sir.

Q And this two-year-old boy could put on his own diapers?

A He could -- well, you said -- the diaper, the ones with the things on the side, they were Pull-Ups I guess you would call them.

Q Well, I'm asking the question. Are they Pull-Ups or diapers?

A I'm guessing the ones that you just pull right up are Pull-Ups. Those are Pull-Ups. Yes, he wore Pull-Ups.

Q And does G.M. just happen to know where they're stored in the house, or how does he get them?

A Yes, he knows where they are stored in the house. We actually showed him where we put those diapers in the house. They're underneath the sink in his bathroom.

Q So he opens up the sink in his bathroom --

A Yes, under the --

Q -- pulls his Pull-Up out of the box?

A Yes, sir. He learned how to do that, so.

Q He's just a fairly self -- all right. End of that page. The investigator says, "Okay. What time do you think she, Theia, got back?"

A "I remember she left around 7:00 or 7:00 to go towards the gas station. I guess she went to go get gas, but she was supposed to be heading for Spartanburg. She stopped at the gas station. She brought the cat back. She left again like a couple of minutes after she brought the cat back. So it wasn't that long she was at the house after bringing the

cat back she left to go.

Q So Theia went to the gas station. She came back for just a few minutes to give you the cat and then she left immediately or shortly thereafter?

A Yes, sir.

Q So she's gone from 7:00 or 8:00 in the evening until she comes back around 11:00 or 12:00 when you all head to Newberry?

A Yes, sir.

Q Who's with G.M. from 7:00 in the evening until 11:00 -- until she comes back at 11:00 or so?

A Myself.

Q Just you?

A Yes, sir.

Q So it's from 8:00 to 12:00, that's four hours. Or from 8:00 to 11:00 would be three hours that you were with the child alone?

A Yes, sir.

Q Any visitors come by?

A No, sir.

Q Any strange -- nobody strange? No family members? Did you take the child anywhere?

A No, sir.

Q Well, you couldn't do that because the car was broken, right?

A The car -- the other car she had.
Q When did she get back from the call?
A She got back from the call around 11:00 or 12:00 because that's when we sat down. She was like I don't know if I want to go out to Spartanburg or to Newberry. I said I don't know where Newberry is. I've never been out there. She was like, do you think I should go. I'm like I don't know. I was telling her I really don't care what you do. That's your stuff. Because we had been into a big argument over this whole -- her doing.
Q Well, I thought you told earlier that you had been trying to get her out of prostitution?
A Yeah, I did.
Q But at this night you were saying you do what you got to do?
A. I told her I don't care what she does. That's on her. I've told her before if she decided to continue to do that, that's on her.
Q But she asked your advice on whether she should go or not?
A Yes, sir. I told her, I said, if you don't feel comfortable with doing it, don't go. But I don't care what you do.
Q And the -- had you ever been to Newberry before?
A No, I hadn't.

Q Do you know if Theia had ever been to Newberry before?
A I don't know.
Q What time did you put G.M. to bed? Because we know that Theia leaves between 7:00 and 8:00.
A Yes, sir.
Q What time -- does G.M. have a bedtime? Does he put himself to sleep?
A Normally?
Q Yes, sir.
A No. Normally he stays up with us most times. He'll stay up until like 8:00 or 9:00 most times.
Q So he's got a general bedtime but not a --
A Not a general one.
Q Well, I mean, it's just generally between 8:00 and 9:00? It's not like at 8:00 you have to go to bed, or 9:00 you have to go to bed?
A There's no set time.
Q And that's when Theia is with you and that's when you're on your own?
A Yes, sir.
Q Is it just the child just starts getting drowsy and puts himself to bed or did somebody actually take him to bed?
A I told him to lay down and he went to go lay down.
Q And you rely on a two-year-old just doing that?

A I mean, it's not like he had to climb into a bed or anything with the mattress on the floor.

Q And then you watch TV in the master bedroom?

A And dozed off. Yes, sir.

Q Now, when you all sleep does the master bedroom door get closed or do you sleep with the door open?

A It gets closed. There's a few times that it stays open, but most of the time it's closed.

Q That doesn't get a little bit cold since the heater is in the livingroom and if you close the door it kind of gets cold in the bedroom, particularly on December 30th, doesn't it?

A Yes, sir. But I normally have the AC on anyways.

Q You didn't run the heat during the winter?

A Not really. I leave the AC running.

Q In winter?

A Yes, sir.

Q Okay. And the investigator said, "So how long has she been home before you all go down to Newberry?" And then I think about seven to 10 lines own it starts off -- your answer was --

A "How long was she doing that?"

Q Your answer was, "We were probably home for like 15 to 20 minutes." Do you see that?

A "We were probably home for like 15 to 20 minutes trying

to debate to come out to Newberry, and the whole time I told her I really don't -- I don't really care what you do. Like it's on you. I've told her -- I've told you from the start I'd like -- I really don't feel comfortable with you doing this. I'd rather you not do this. I don't really want a part in it."

Q And then on the -- your first line on the next page.

A "I know I had woke him up. He was crying --"

Q Stop right there. You just told this jury less than two hours ago she woke up G.M. She dressed him. She put him in the car. Your statement two and a half weeks ago is that you woke him up.

A Yes, sir.

Q And your statement to Investigator McClurken was that you put him in the car and dressed him?

A Yes, sir.

Q Which is the true answer?

A She woke him up whenever she came into the house. She was already loud when she came into the house.

Q So your answer two and a half weeks ago to their investigator was "I know I had woke him up" is another incorrect or untruthful statement?

A What I meant by that is when I came in to get him out of the bed I had actually woke him up. He was already kind of awoke when she came into the house making noise coming

back from Spartanburg.

Q Keep reading.

A "He was crying and complaining, upset and whatnot. I was trying to help him get in the carseat and everything. We get him in the carseat. She's telling him to shut up because she's in a bad mood. Still I'm like chill out. Like don't -- like don't take it out on him."

Q "I was trying to help him get in the carseat." So you're saying now that that's not actually correct? Theia was the one putting him in the carseat?

A He was in the carseat. I sat him in the carseat. He didn't buckle up. She had turned around and popped him for not buckling up correctly.

Q Well, when did you tell us that? I mean, you didn't tell the jury that just within the last two hours.

A I had told them --

Q It just came to your head a second ago?

A No. I did tell the jury that she struck him whenever he didn't buckle up correctly.

Q Then the investigator says, "Back up, because you were -- you didn't want to go to Spartanburg earlier and you stayed home. But on this time you said you just go ahead and do whatever you need to do. How do you get from there to riding down with her and brining G.M.

A "She wanted me to come with her because she didn't feel

comfortable coming to -- or coming to Spartanburg -- or not Spartanburg but Newberry. She'd been to that call in Spartanburg before. It was some dude she called Papi, or Papi Chula or some craziness. She'd been -- she'd been seeing him before, so she didn't really feel the need for me to go out there, and I didn't want to go out there."

Q And Papi was a guy that she'd been seeing for a while, right?

A For like a month, I guess. Yeah.

Q And the investigator says, "All right. How did she talk you into coming down here?"

A "She said she didn't feel comfortable. She said that she'd like for me to come with her. I tried to stay at home and she was like, well, I've never been to there before. I don't feel comfortable. Something in me. I feel weird about something. If I go down there something might happen. I'm like fine, screw it, I'll go. I really don't want to. But you're going to keep bugging me about it and you're going to keep arguing -- arguing with me about this. So if you want to go, let's get up and let's go. I'd rather stay home and go to sleep. But the only reason why I ever went on any of her calls with her was due to the fact she felt, I guess, scared to go or if it was new for her or whatever the case may be.

Q So you agree that you had been on other calls with her

before?

A A few ones, yes. If it was new for her and she'd never been out there before.

Q And that's why you all keep a knife in the car, incase she gets attacked?

A I don't know. It's not my knife.

Q Well, how do you protect her? How do you propose to protect her if she gets attacked? Just with your fist?

A I never really considered that in all honesty.

Q So you're going with a prostitute to meet a stranger at night and she asks you to ride with her for safety --

A Yes, sir.

Q -- and you never considered what you were going to do incase she got jumped?

A I never really took it into consideration in all honesty.

Q So that's not why the knife was in the car?

A It wasn't my knife. My knife got taken back in Spartanburg during an incident that happened there. So that's the only knife that I had.

Q You knew how to use that knife then, didn't you?

A It never got used.

Q You didn't cut up a guy named Michael Brown?

A I didn't cut a guy named Michael Brown with a knife. That happened in Asheville, and that was a cup that I

already told you earlier.

Q What about the -- the pepper spray in your car wasn't for defense?

A That was her friend's Tiffany's that she left for her.

Q And the gun under the front seat wasn't for scaring --

A I don't know.

Q -- at least scare people away?

A I don't know. I didn't even know she had a gun.

Q Okay. Then the investigator says, "Did you or Theia express any concerns about G.M. being sick for dinner -- from dinner?"

A "I did ask her, like you got a feeling why he's throwing up and whatnot. She was like he's thrown up before. And I'm like, okay, I mean, he's your son. I really can't make you do anything for him. But that's kind of weird he threw up and pooped on himself. But we had been trying to potty train him for a while, so he has pooped on himself before. So it wasn't really too strange that he had pooped on himself."

Q Now, I thought you just told us that when the child threw up on himself in the bedroom --

A Yes, sir.

Q -- and you took him, you wiped off the clothes --

A Yes, sir.

Q -- and then you ran the bath for him?

A Yes, sir.

Q And while that was happening Theia went to the gas station?

A Yes, sir.

Q Well, how are you having this discussion about him pooping on himself --

A That was --

Q -- if you took the child to the bathroom to wash him off?

A That was on the way down here to Newberry. This conversation. It said that in there.

Q So when the investigator asked if you expressed any concerns about being sick, that wasn't until after you were in the drive -- after you had agreed to go to Newberry?

A Yes.

THE COURT: I apologize for interrupting. Solicitor, Mr. Verner, would y'all approach briefly, please?

(Whereupon, a sidebar was held outside of the presence of the jury.)

THE COURT: Ladies and gentlemen of the jury, it is approximately 7:25. I will tell you that I've been trying cases for about 23 years now and you guys are some very good sports and some hardworking individuals. If you ever need a reference from an employer about how dedicated you are, I'll be more than happy to provide my card to you and you can

offer it at your convenience. What we're going to do is take a break for the evening because we still have some more work to do with regard to this witness. If I am fading and I do this professionally then y'all may be fading as well. Obviously, it's important to pay as close attention as possible to the witnesses who testify. I'm going to ask that you be back in the jury room in the morning at 9:00. Counsel will be out here and everybody will be out here and we will start promptly at 9:00. I'm not seeing anybody object to that so we're going to go with that. See you at 9 in the morning. Same rules apply. Don't talk about the case. Have a great evening. You've earned it. See you in the morning. Thank you.

(Whereupon, the jury exited the courtroom at 7:25 p.m.)

THE COURT: Sir, no discussing your testimony with anyone over the evening.

MR. BOWMAN: Understood.

THE COURT: If I could see the attorneys in chambers and Mr. Brown, join us too. We'll be at ease.

Trial Day 4

THE COURT: One housekeeping matter. The Clerk of Court called me this morning explaining that juror number 179, Ms. Miller, had basically woken up with a rather extreme case of vertigo and that she was unable to sit up. The Clerk then called her back after speaking to me and asked her to make

all reasonable efforts to get here. I told the Clerk to instruct her that if it was not possible and she was not able to function or sit up erect then we would be inclined to use the alternate. Ms. Miller called back subsequently and explained that she was not in any position to serve any longer and she very much wanted to address this. Obviously she was invested or she felt very invested in this case. If I'm not mistaken, Ms. Miller is the white female who has been sitting on the back row with the black hair and somewhat slender build. So we're going to be substituting Mr. Lominick who is the alternate. We will be substituting him for Ms. Miller. I will explain that when they come out. Nothing further before the jury comes out? Let's have the jury, please.

(Whereupon, the jury entered the courtroom at 9:05 a.m.)

THE COURT: Ladies and gentlemen of the jury. Welcome back. Good morning. We had a few problems this morning. One of which was Ms. Miller, Juror 179. Unfortunately, she suffers from vertigo. As someone who actually had to try and hold court with vertigo myself I sympathize with her. She is simply unable to continue to serve. She can't even sit up, is what she related to us. I've excused her from further responsibility concerning this case, which means Mr. Lominick, you'll be the -- you will substitute for her. We

have to have at least 12 jurors, so you will be now a full member of the jury. This happens about half the time, Mr. Lominick. Consider yourself now a full member of the jury and you will participate in deliberations once we get this case to you. We are still involved in the cross-examination of the last witness. Again, thank you for being here this morning. We also had a logistical issue with transport from SCDC which I had to resolve, but that's now been resolved. We are now going to continue with the cross-examination of this witness. Sir, I'll remind you that you're still under oath. Mr. Verner, you are recognized, sir.

MR. VERNER: May it please the Court.

RESUME CROSS-EXAMINATION

BY MR. VERNER:

Q Good morning, Mr. Bowman.

A Good morning, sir.

Q I think let's just get to where we both know the questions are going.

A All right.

Q You told Investigator McClurken, Chief McClurken, and the SLED investigator that on the evening -- on the date that G.M. was dead and you saw the two investigators, that when you started hitting or beating the child that Theia was not in the home; is that true?

A Yes, sir. And I didn't tell I was hitting or beating.

I spanked him.

Q You're going to have to speak up. I cannot hear you.

A I said I did not say I was beating him. I just spanked him.

Q You testified when he made you angry because of the poop in the tub and the throw up and you hit him, that Theia was not at the home; is that true?

A Did I tell that to the SLED agent, you asked me?

Q Yes, sir. And the investigator.

A Yes, that night. Yes. And it wasn't under anger.

Q At times you had Theia have had a violent relationship? Physically violent?

A Yes, sir.

Q At times you have been a controlling boyfriend?

A No, sir.

Q You didn't disable the car so she couldn't leave the home?

A No, sir. That was not me.

Q You've been in lockup, in custody, for over a year facing this charge; is that correct?

A Yes, sir. We both have.

Q You've had access to all of the State's case for a substantial period of that time?

A Yes, sir.

Q You've seen the evidence?

A Yes, sir.
Q You read the autopsy reports?
A I didn't read the autopsy reports, but I've seen everything else. Yes, sir.
Q Well, you told the prosecutors just a month and a half ago you read the autopsy reports, didn't you?
A No. But I still -- I don't understand the stuff in it.
Q You browsed through it but you didn't understand them?
A Yes.
Q But you understand G.M. dead and he got beaten to death, don't you?
A I understand that there was two different things inside the autopsy report. The doctor said he had vomit in his lungs and the autopsy report says something different.
Q Now, you understand you're in jail charged in some way for the killing of G.M. don't you?
A Yes, sir.
Q And you've had the benefit of two lawyers during this time, haven't you?
A Yes, sir. One that I fired prior because he wouldn't see me.
Q I don't care. I'm not getting in your business. But you've had legal advice over that period of that last year, right?
A Yes, sir.

Q You were aware you were going to trial this month, right?

A Yes, sir.

Q At some point somebody must have told you, or you figured it out yourself, that you're in a bad position. That your stories just don't work and that you better change your strategy. Is that fair to say?

A No, sir. It was no change in strategy. They asked me -- I was asked to come forth with what happened that day.

Q The -- and, in fact, it would be fair to say that you've given just so many different side tails and stories that it's just almost impossible to figure out what you're even talking about?

A Only two stories. Yes, sir.

Q You had a meeting with members of the prosecution about two and a half weeks ago, right?

A Yes, sir.

Q You admit the stories -- you admit giving confessions or statements to the police on December 30th of 2014, but you're now saying that I lied at that time?

A Yes, sir.

Q In fact, the stories you gave the prosecutors just two and a half months ago were so unbelievable they walked out of the room on you, didn't they?

A Two -- you said two and a half months ago?

Q On March 10th.
A Okay.
Q The stories were so unbelievable they left you and your attorney alone; is that correct?
A We were going over the story about what happened that night, yes.
Q And then you all -- you met with your attorney and you called him back and changed your story and agreed to testify today?
A I didn't change my story, but just gave him the full story.
Q So you initially just gave them part of the story, but they walked out on you, and then you said, okay, I'll give you the rest of what you want, and they came back. Is that --
A They asked me about what happened on the 29th. I had to explain the 27th and 28th as well.
Q And you spoke to them for about three hours, or 72 pages, which I'm just too tired to go over anymore with you line by line. Is that fair to say?
A I'm not sure how long the time was, but --
Q You've seen the case file?
A Yes, sir.
Q You're aware that a lot -- in fact, all the evidence points at you, right?

A No, actually it doesn't, sir. I've seen the full case file and the other parts that weren't brought up in this trial, I guess.

Q G.M. would have been dead at least 15 minutes, up to two hours, before you even took him to the emergency room with Theia; is that correct?

MR. DANIEL: Objection, Your Honor. That would be speculation.

THE COURT: Sustained.

Q How long was G.M. dead before you took him to the emergency room?

A I figured out he wasn't responding when she got in the car.

Q How long was that before he's not responding, how long before you took him to the emergency room?

A We took him immediately to the emergency room. We were trying to drive towards it. She wanted to go to Laurens and I said we need to find a hospital right then and there.

Q So how long did it take you to go from the man's house in Newberry to the hospital?

A I honestly couldn't say, sir. I didn't have a watch on and I wasn't timing it.

Q It's a panic situation and time just moves at different speeds in that type of situation, right?

A Yes, sir.

Q Is it possible it took you 15 minutes to get to the hospital?

A I'm not sure, sir.

Q How long had G.M. been unresponsive before you took him to the hospital?

A We took him immediately once he was non-responsive, as I just stated, sir.

Q How long was he non-responsive in the car? Because you told Theia something concerning. You said he's -- he had stopped waking up in the car. How long had that been?

A He had stopped breathing, but I woke him up and he was breathing again, and I went to sleep myself.

Q And then you said I panicked and I started honking -- well, you didn't say panic, but you said I started honking the horn.

A And honked the horn, yes.

Q How long -- I assume, if you're honking the horn while she's entertaining a gentleman, that you think it's an emergency situation enough to get her out of that house?

A Yes, sir.

Q But not enough of an emergency to actually knock on the door or call 911 yourself, right?

A I didn't have a phone at the time. Her phone was inside with her. And it would be kind of strange for me to just go in some random guy's house that he didn't even know

I was outside the house.

Q You understand -- you've seen the autopsy report. I understand you said you don't completely understand it. But you've been over it, haven't you?

A Bits and pieces of it. Yes, sir.

Q But you understand that G.M. died within minutes of that head wound? Do you not understand that?

A I didn't understand that.

MR. DANIEL: Objection, Your Honor. That would be assuming something that's not in evidence.

THE COURT: Overruled.

MR. VERNER: I believe the doctor --

THE COURT: I'll let the question stand.

Q Do you know that there's blood -- is there blood in that car?

A I'm not sure, sir.

Q Well, let's get this straight. We know that Theia arrived at that man's house about 12:22 from that phone call. Is that about -- you all made a phone call from outside that home?

A I didn't make a phone call. She did.

Q And you left Laurens -- or Spartanburg for Newberry about what time?

A I'm guessing around 11:00, or maybe 10:00-ish. I'm not sure, sir.

Q Maybe even closer to 12:00?
A I'm not sure, sir.
Q You testified that you -- well, you've given statements that you're the one who woke up G.M. dressed him and put him in the car to go to Newberry.
A Yes, sir. That's the statement I gave.
Q Prior to that time Theia had been gone on a call for -- since about 7:00 or 8:00 with only one time quickly to come back and bring that kitten that she found?
A The cat back. Yes, sir.
Q So that leaves Richard Bowman alone with G.M. McArdle from somewhere between 7:00 and 8:00 p.m. until you reach the hospital? That child is in your continuous presence from somewhere between 7:00, 8:00, 9:00, 10:00, 11:00, 12:00, 1:00, 1:35 at the hospital. What, about seven hours is that?
A Yes, sir.
Q Continuously that child was in your presence?
A Yes, sir.
Q And the question I want to know is, either that child did something that made you so angry in Spartanburg while Theia was gone that you got too angry and lost control and hit the child and he went to bed, or you put him in bed. You know the vomit is in the child's bed, not in your bed, right?

A Yes, sir. And I already explained to you about that yesterday, sir.

Q Well, explain it to me again.

A Some of his stuff was in our room when he was eating and his vomit did go on his stuff as well. I had wiped the vomit off his stuff that was on it, put it in his bed -- and I put it on his bed when he went to go to sleep. And I wiped off the stuff in our room as well. And no, to answer your question. I didn't get mad at him at all.

Q When you beat him like that, did it make you physically unwell that you threw up?

A No, sir. I threw up before that, sir.

Q You told the investigators that when you first hit him, you're saying the only time, but Theia had already gone to the store. So your story to the jury yesterday that Theia was with you and she's the one who told you to hit him would not be true, right?

A That is true.

Q Either G.M. because he defecated in the toilet or threw up, made you so angry that you hit him so hard --

A He didn't throw up in the --

Q -- or beat him and then put him to bed that he did not recover the rest of the night?

A We established yesterday the vomit in the toilet, that was my vomit.

Q We established that yesterday --
A Yeah, you asked --
Q -- or you said that yesterday?
A You asked me that. We established that yesterday. And the reason why he got popped on the butt was just the fact that he defecated in the bathtub. That was stated yesterday as well, sir.
Q Theia had left at 7:00 or 8:00 and when she came home it's almost 11:00, because you all only spent a few minutes before you decided to go to Newberry, right?
A We spent a couple of minutes trying to decide whether she wanted to go or not. And I really wasn't trying to go because I was tired.
Q G.M. would have been, for all intents and purposes, long asleep ordinarily by the time Theia came home at 11:00 to 12:00 at night?
A He had actually woken up from her coming inside being loud.
Q And that if you put the child in the car, she wouldn't have seen the condition of that child at that time. She would have assumed he's sleeping, right?
A He was actually awake whenever he got in the car. He was wining and whatnot. I stated yesterday when I told the Solicitor when he asked me about that.
Q Well, let's go to that theory. That G.M. still

conscious when you put him in the car.

A Yes, sir.

Q You've had no testimony that Theia punched that child in the head or -- other than you're saying that at times you put the child in the carseat and then at times you're saying she got frustrated and putting him in the carseat and hit him in the stomach.

A Yes, sir.

Q But when she drove with the child directly behind her from Spartanburg to Newberry --

A Yes, sir.

Q -- that child's not hitable if you're driving down the road.

A She wasn't driving at the time, as I stated yesterday. We were still in our parking -- our driveway. She wasn't driving.

Q You were driving?

A No, she was driving.

Q Right.

A Mean, we were still parked. He was trying to put on his seatbelt -- or his buckle. We weren't driving at that time. So it's kind of easy to turn around if you're in the driver's seat.

Q And then you said that she hit him in the stomach?

A Yes, sir.

Q And you've also told us before that you were at some guy named David's house and she hit him or -- hit him in the crotch because he grabbed his crotch --

A Yes, sir.

Q -- conveniently that nobody saw even though it was at somebody's house?

A Yes, sir. David was inside the kitchen making dinner and cooking.

Q He was inside the kitchen, but you told the prosecutors in March 10th that it might have happened in the car and that's the reason. When they asked you why he didn't see it you said, well, maybe it happened in the car.

A I didn't say it happened in the car. I said it happened in his house. That might have been a typo. Or not a typo. Not a typo. But it might not have been. But it happened inside the house.

Q So if you told the prosecutors two weeks ago that the reason David didn't see it was maybe it happened in the car at this house, that would be a mistake on your part or an untruthfulness?

A It was a mistake being said on my part, yes. We were inside his house at the time when that happened.

Q And then you also told the prosecutors that -- well, there was an incident the day beforehand, or something about going to McDonald's and --

A Yes, sir.
Q -- and G.M. had punched or hit a child and Theia had slapped him in the back of the head?
A Yes, sir.
Q Again, that was in a day or two of G.M. dying?
A The 28th. Yes, sir.
Q And it didn't occur to you to tell the police the day that G.M. died, did it?
A No, sir.
Q And your testimony then was only that she slapped him in the back of the head, right?
A Yes, sir.
Q And again, there's nobody to corroborate what your story is, right?
A The investigators asked me that day when he talked to me about what happened that day, not two days prior.
Q So you wouldn't have had any reason to tell him what happened the day before --
A When I did try to establish --
Q -- if it's significant?
A When I did try to go off and explain they said what happened within 24 hours, because they said all the stuff that happened to him happened within 24 hours.
Q And you also told the prosecutors that you actually had gone to Laurens to the cell phone, because Theia had broken

your phone or done something with it because you were talking to a woman. And then you went to a cell phone store in Laurens to get it replaced.

A It's not in Laurens. It's in Spartanburg County.

Q The Cellular One place, or what's the place called again?

A I'm not sure the name of the place. It's like Cellular One or something, I believe.

Q Cellular One. And again, you're saying that he -- G.M. aggravated her and so she hit G.M. at the cell phone store, right?

A I didn't say the cell phone place. I said the laundry mat.

Q At the laundry mat? Well, you did say the cell phone place because they asked you did the store clerk see it, and you said, well, he must have been busy stocking phones or something. Is that correct?

A That was a completely different incident. We didn't go to a cell phone place that day. We went on the 27th. Not the 28th.

Q So the cell phone place happened two days beforehand?

A Yes, sir.

Q And that was where?

A In Spartanburg County at the Cellular One place.

Q And then you also said on the 27th that you had gone

with Theia to court to Asheville on the 27th, right?
A Yeah. That was my initial --
Q Because you had court there?
A Yes, sir. That was my initial report. Yes, sir.
Q And then they asked you about what kind of court opens up on a Saturday and you said, well, I remember we did court but I can't really -- your details fell away again, right?
A I didn't even remember exactly which day we went up there for court, but we had been up there at court -- or to court between one of those days. The day prior, whichever. I'm not sure. We had to go to Henderson County as well as Asheville.
Q So you've got -- what you've decided to say is that Theia must have hit the child in the past or spanked him too hard that killed him on the 29th? Just that these were lingering wounds that just finally got to this child over time?
A Is that what I'm saying? I don't know.
Q I don't know what you're saying.
A I don't know medically anything about how that works, so I couldn't really tell you if it was over the time or what.
Q Well, let's go back to your story that G.M. was still conscious or alive when you put him in the carseat and you all took him to Newberry.

A Yes, sir.
Q Because you've also indicated at times he was talking to you during that ride down there. You said he was whiny and cranky at times.
A He was cranky throughout the time we was going down there. I wasn't talking to him. I was talking to her.
Q At times you said he started snoring?
A Yes. He had started snoring once we hit the Clinton exit. He fell asleep at that point.
Q Snoring so loud that you thought he might have sleep apnea like you have?
A Yes, sir.
Q Okay. And then at times you said when he stopped breathing that you asked him if he was okay and he said uh-huh?
A We were in the parking lot -- or the driveway of the gentleman's house. Yes, sir.
Q So that makes that boy conscious and thinking and alive while we know Theia had been gone. That theory means that that child threw up or did something in the car, or you got impatient or angry at Theia and took it out on the child and hit him in the car.
A No, sir.
Q Well, I mean, it's either somebody beats him in Spartanburg and puts him to bed or somebody beats him in

Newberry.

A No, sir.

Q It's one or the other, isn't it?

A No, sir.

Q What's the third option?

A I'm not sure, sir. But I didn't put my hands on him inside the car. I was actually asleep in the car. I told that to the investigators when they asked me, too. They said what time was it. I said I wasn't paying attention. The clock in the car wasn't working. I didn't have my phone. I didn't have a watch, and I was asleep.

Q But you've said you had gone on the 27th to get your phone replaced.

A It was still broken, sir. I didn't have a phone. I said that yesterday like twice.

Q Then what's the point of going to the phone store on the 27th?

A We went to a cell phone place to see if he can repair it, but he wasn't able to repair it.

Q Were there any other phones found in your home?

A I'm not sure. I think one was a T-Mobile that belonged to her, but it wasn't mine. That was G.M. play phone.

Q Do you know if it was blood in the backseat of that car?

A Somewhere. But I cleaned up his face and gave him CPR.

There was the stuff that came out of his nose. I'm not sure if it was blood or vomit.

Q Do you know at times that -- your initial story was I was in the backseat the whole time with G.M. when we were in Newberry. But that was kind of bad because that puts you next to that child, doesn't it?

A Yes, sir.

Q So your story today is I was actually in the front seat the whole time, because that puts you a little bit further away from that child, right?

A I was in the passenger seat for the drive down. And remember I got to the backseat because I was trying to resuscitate him with CPR.

Q You were in the front seat sitting on those Strawberita beer cans.

A They were underneath the seat, if I saw the pictures correctly from what my attorney showed me.

Q You understand the injuries to that child are more serious than just punching him in the groin several days beforehand?

A If I was looking at the autopsy report correctly and it was explained to me. Yes, sir.

Q The reason you said you didn't see bruises in Spartanburg while -- from the -- when the prosecutors and many investigators asked you for days did you see any

bruises on the child and you said no. And at times you said, well, I'm squeamish. I don't like looking at naked bodies.

A Days? It was only the very first day that the investigator ever talked to me. And I did inform him that I saw a bruise on him from whenever her and her son were at the hotel alone. And whenever she came to get me with the client to bring me out there, due to had repaired the argument that we had gotten into, and I saw a bruise on his stomach. It was me as well as a young lady named Tiffany that saw the same bruise and I asked her what happened. She said he had fell into the bed. And I stated that yesterday as well, sir.

Q So that was the bed that he fell on when she had left you to leave her mobile home and move into a hotel in Spartanburg?

A Yes, sir.

Q And a car that she or her mother had gotten because you wouldn't fix --

A Her mother --

Q -- and locked off the other car?

A Her mother -- I didn't lock off that car, first off. She locked it. Her mother took her to that hotel, and then she bought herself another car while doing whatever she was doing with her son while he was in the room.

Q The reason that you give a child a bath and you don't see bruises on him on the 29th is because at that point the child didn't have those bruises on him?

A He did have bruises on him on the 29th.

Q Well, how do you give a bath without seeing bruises like that on him?

A And I didn't bathe him. I had already explained yesterday as well, sir.

Q How do you put a naked child -- or how do you have a naked child sit in the bathroom with you, run the bathtub for him, wash him off, watch him run through the house and not see profound bruises? There's only one of two options. I lied because I'm covering for somebody, or at that time there were no bruises on G.M.

A Sir, my initial statement I did lie to cover for her. But I just gave my statement yesterday and stated he was in there by himself and gave himself a bath. He took off his own clothes, his own pull up and get in the bath. I stated that yesterday when you asked me this question.

Q Well, I'm curious because you never seemed to have lied to cover up for her before.

A Actually I did from the initial whenever I was questioned by the investigators and everything, sir.

Q Well, just -- you've already made an agreement that the prosecutor is going to try to help you if you testify today,

correct?

MR. DANIEL: Objection, Your Honor.

A No. I did not say anything -- sorry. Go ahead.

THE COURT: Go ahead. Go ahead. Answer.

A No, that was not said by me whatsoever. I believe you're putting words in my mouth. The prosecution asked me yesterday was I promised anything and I stated no. You asked me the same question. So you're putting words into my mouth.

Q Okay. Well, I'm going to let you argue. Under any hope that perhaps your testimony and cooperation with the prosecution will help you in our dire situation today?

A No, sir. None what --

Q You don't think that possibly a conviction, getting these charges put over on G.M. mother, will help out Richard Bowman in a big way?

A I don't even know, sir.

Q You don't even know that?

A No, I don't.

Q You're going to let the next jury decide that? And you're not going to try to point fingers? You're just going to let the chips fall where they may?

A Yes, sir. If it comes down to that, yes, sir. I will.

Q That's right. I'm sure you will. And I suggest this. That you've got a much better chance, don't you, of -- at

the next trial showing that that baby was killed in Spartanburg and not Newberry, because then they won't have jurisdiction of you, right?

A You're the lawyer. I wouldn't know that.

Q Nobody's told you that?

A No, sir.

Q That they got to prove it happened here in Newberry?

A No, sir. As I said, you're the lawyer.

Q Well, just tell me which is it. G.M. died in Spartanburg or G.M. died in Newberry?

A Whenever he was non-responsive he was in Newberry. Whenever he was non-responsive we were inside the man's driveway.

Q So your testimony is that G.M. was still alive and talking, responsive here in Newberry?

A Yes, sir.

Q Well, then you're in some legal trouble, aren't you?

A I'm guessing so.

Q And at that time that boy had not been out of your custody for seven or so hours?

A On the 29th?

Q That's right.

A He was in both of our care throughout that day. He was solely in my care towards 7:00 and 8:00 whenever she went to her first call. And then when she came back he was in our

care -- both of our care yet again. Then when she went to the man's house at 12:00, as she kindly said, that's when he was in my care. So he was in both of our care throughout the day.

Q That's right. And since 7:00 or 8:00 that night the only time Theia had been around him was once when you she -- you said she briefly dropped off a stay cat she found and then she left again.

A No, throughout the morning. There's more than 7:00 to 8:00 to 12:00 at night. There's 9:00 in the morning all the way to that time as well, sir.

Q So your testimony now is that this child was in that physical condition since the morning?

A I wasn't saying he was in that physical condition since the morning. What I am saying and stating is that he was in our care throughout that whole day.

Q That's right.

A You're trying to say that he was solely in my care. He was around me for 24 hours. That was not the case. He was around me and his mother.

Q That's right. But he was exclusively with you from about 7:00 to 8:00 on?

A Yes, sir. Until the time --

Q And during that time we know that Theia had been out of the home on at least the gas station, visiting a customer in

Spartanburg, you said she came back just a few minutes before you all decided to go to Newberry, she drove, she immediately went into the house, and then you all immediately took that child back to the doctor. So for seven hours that doesn't give Theia any time alone or any time -- extended time at all with the child, right?

A Yes, sir.

Q So you understand I'm suggesting that you got angry either in Spartanburg or in Newberry because the child had been driving you crazy and messing on himself, throwing up, and you lost your temper for whatever reason. I'm not suggesting in intentionally killed that child. I'm suggesting that you lost your temper either in Spartanburg, or you lost your temper, you'd been arguing with Theia on the ride over to Newberry, you're sitting in that car for about an hour with that child who's cranky --

MR. DANIEL: Your Honor, he's testifying. He needs to do it in the form of a question.

THE COURT: We need a question.

Q Did you kill G.M.

A I've already answered this question before. No, I didn't.

Q So all your statements before are wrong?

A The ones that I gave previously to the investigators on December 30th, yes, they are.

Q And any medical reports that might suggest that you're suspect are just incorrect?

A I'm not sure what medical statements are but -- or what the medical statements are saying. But okay.

Q I'm sure we'll see them soon.

A Yes, sir.

Q And as Theia points out, even by your own story out of your own words, you're saying Theia didn't even wake up until 11:00 or 12:00.

A Yes, that day.

Q So even for that better part of that morning she would have been -- the child would have been in your custody and care, not Theia's?

A From 8:00 to 10:00, yes. But if I'm going to point this out, like you can point out things. If there was anything done to that child his mother would have woken up, I'm pretty sure, to crying and/or screaming of a child.

Q If she was there. Thank you.

A She was there.

THE COURT: Redirect?

REDIRECT EXAMINATION

BY MR. DANIEL:

Q Mr. Bowman, I'll try to be as concise as I can with my redirect, but I'm going to cover some ground Mr. Verner asked you on cross-examination and I'm going to clarify some

points. Mr. Verner, I think initially yesterday on his examination, showed you some stuff off your Facebook account, correct?

A Yes, sir.

Q And it was, what?

A A zombie baby from a toy maker that makes toys online or --

Q This picture right here?

A Yeah, that's one of them. That one.

Q Defense No. 4.

A Yeah. It's a Voldemort baby from Harry Potter, if anybody knows who Harry Potter is.

Q This is from Harry Potter?

A Yes, sir.

Q It's a doll?

A Yes, sir.

Q Do you have a morbid obsession with death?

A No. No, sir.

Q Do you have a proclivity to seeing dead babies?

A No, sir.

Q What's Defense No. 3?

A That's supposed to be like a zombie apocalypse baby that they made, as I said, the toy maker online. A friend of mine from Ohio was sharing that stuff and she showed it to me.

Q Zombie babies?
A Yes, sir.
Q Is Walking Dead a popular zombie show?
A Yes, sir. It is.
Q Is Harry Potter popular?
A Yes, sir. It is.
Q Does watching Twilight make you a vampire?
A No, sir.
Q Going back to your Facebook account again.
A Yes, sir.
Q I'm going to show you a printout from your Facebook account. Do you recognize this posting? This highlighted area?
A Yes, sir. I do.
Q Tell us the posting. What's it about? And what are you referring to in that posting?
A Would you like me to read it off?
Q Sure.
A "I swear some folk be --"
Q Speak up. I can't hear you.
A "I swear some folks be fake as hell these days. Talk about folks and when they see them they like, oh, hey, baby momma, or blah blah. Be fake just all around. It's sad they think that folks don't see through their bull-ish and then expect to keep friends and people in line. Shake my

head. Wake up. We know and see through it. You're still the same bad person and parent that you were when they first took him away. You'd think you'd learn a lesson and foster it, but some folks are just stuck on dumb and being a kid. All I did -- all I can do is sit back and shake my head and smile because you think you fool people. You're as transparent as plastic wrap. Grow up and get over it. TND. You got him back so act right." And then --

Q What day is that posting?

A That's December 19th, 2014.

Q And did you post that?

A Yes, sir. I did.

Q And that's your Facebook account?

A Yes, sir. It is.

Q What are you referring to there?

A I'm referring to the fact of the incidents of where G.M. been taken from the numerous times back in North Carolina from [redacted] -- or [redacted], my bad, all the way till whenever she just recently got him back June -- August of 2014.

Q Let me stop you. You said [redacted]. He would have been one day old, correct?

A Yes, sir. The hospital reported her for that.

Q Let's back up. Let me go back to another point Mr. Verner brought up in his cross-exam. He was talking about

-- Mr. Verner asked you about domestic incidents --

A Yes, sir.

Q -- between you and Ms. McArdle, correct?

A Yes, sir.

Q And you've described some of them?

A Yes, sir.

Q I believe you mentioned a October 2014 incident at a motel in Spartanburg County, correct?

A Yes, sir.

Q Tell us about that incident.

A The incident happened where we initially got into an argument and she left with a young woman named Brie and a gentleman -- I forget what his name is off the top of my head. She left. And I had a friend of mine that was in Spartanburg County at the time. She came by and was talking to me. She -- we were talking.

Q Let me stop you. Let me just get to the point, because you're a little long-winded.

A Oh, I'm sorry.

Q Spartanburg Sheriff's Office --

A Yes. They --

Q -- came out to the hotel on October 5th, 2014, correct?

A Yes, sir. They came because she pulled a knife on me and tried to cut me with my own knife, because I told her to leave because I wasn't going to sit and argue with her while

she was being drunk and trying to start an argument and fight with me. I told her to stop.

Q Let me stop you. And you told deputies that you were trying to get Theia out of the hotel room because she was bringing clients there, correct?

A Yes, sir. She had left a condom on the bed from one of her clients. The very same bed that her son slept on. And I had got on to her about that.

Q So you were upset that she was bringing clients to the room where you and Gabe --

A Yes, sir. There was an incident where there was a client that came there while Gabe was sleeping and she gave him a service while Gabe was still in bed.

Q And then, so you were moving Theia's stuff out of the hotel room. You were kicking her out essentially?

A Yes, sir.

Q And she attacked you in some way?

A Yes, sir.

Q What did she do?

A She pulled my knife and she cut me with my knife. And I did defend myself that day.

Q And you and Theia were both arrested by the deputy, correct?

A Yes, sir.

Q And you all were both charged --

A Yes, sir.
Q -- with criminal domestic violence, correct?
A Yes, sir. They had to take me to the hospital to get my hand cleaned up and whatnot from where I was cut.
Q So, in other words, the officer couldn't determine who the primary aggressor was, correct?
A Yes, sir.
Q So they charged you both?
A Yes, sir.
Q And those charges are still pending against you and Theia in Spartanburg County, correct?
A Yes, sir.
Q Let's go through your criminal history. Is it accurate to say nearly all of your arrests have no dispositions, meaning those charges have been dropped, dismissed?
A Yes, sir. They all have.
Q And most of them are from Buncombe County, which is Asheville area North Carolina, correct?
A Yes, sir. During the course of time I've lived with Ms. McArdle.
Q And they all relate pretty much to domestic violent incidents between you and Ms. McArdle, correct?
A Yes, sir.
Q Or you were trying to get back to the apartment and she had you on trespass notice, correct?

A Yes, sir. No, the housing had me on trespassing notice. I was trying to get my stuff to get out of the apartment. She wouldn't allow me to get my stuff. She either sold my stuff, or trashed my stuff, or got rid of my stuff somewhere somehow.

Q But Ms. McArdle didn't want to prosecute you for that?

A No, sir.

Q She told the police up there she wanted to drop the charges.

A She just didn't show up for court. And she knew that there was court. They did subpoena her a lot of times to try and get her to come and she refused to come to court.

Q And she was charged as well several times, too, correct?

A Yes, sir. For assault, larcenies, child abuse in North Carolina.

Q Well, let's stop you there. We'll get to that in a second.

A All right.

Q And you said -- I believe the testimony yesterday was she blacked your eye one time?

A Yes, sir. That was the very first incident that we had gotten to. She punched me in my eye, that I explained to Mr. Verner. It was she broke my phone, so I took her phone and broke hers and she ended up punching me in the eye.

Q All right. Let me stop you. I don't care about that. So she hit you hard enough to black your eye, correct?

A Yes, sir.

Q And was it visible the mark, obviously?

A Yes, sir. The police actually took a picture of it. It was on the mug shot. My eye was swollen.

Q So you've got to hit somebody with a lot of force to black their eye, correct?

A Yes, sir.

Q Would she hit Gabe as hard as she hit you?

A Yes, sir.

Q And you witnessed her hit Gabe with the same amount of force as you, correct?

A Yes, sir.

Q Mr. Verner -- it was long yesterday obviously. He was going through this so called transcript when you and I met March 10th.

A Yes, sir.

Q So we didn't even meet a month ago?

A Yes, sir.

Q We sat right here, correct? This table?

A Yes, sir. We did.

Q Myself, Deputy Solicitor Dale Scott --

A Yes, sir.

Q -- who's the other prosecutor here in Newberry?

A Yes, sir.
Q He's my supervisor.
A Yes, sir.
Q Your attorney Russell Brown was here at that interview?
A Yes, sir.
Q We had his permission to talk to you?
A Yes, sir.
Q Investigator Bentley, who's behind the TV, was there?
A Yes, sir.
Q And Investigator Moore was there. Chief McClurken was there?
A Yes, sir. And the county -- or the courthouse officers as well.
Q Okay. And it was a lengthy interview, correct?
A Yes, sir. I believe it was.
Q And we did record it?
A Yes, sir.
Q For note taking purposes?
A Yes, sir.
Q And then we provided that recording to Mr. Verner?
A Yes, sir.
Q And then Mr. Verner made a transcript of it?
A Yes, sir.
Q And he was showing you that yesterday, going through it line by line essentially?

A Yes, sir.
Q But there's two parts to that interview, correct?
A Yes, sir. There are two parts to that interview.
Q And he was showing you part one yesterday?
A Yes, sir. And skipping over a lot of it as well.
Q Okay. And I think just now today Mr. Verner said that the prosecutors got upset with you and walked out?
A Yes, sir.
Q Is that fairly accurate?
A That was during the first part of the questioning.
Q Why did we get put out with you?
A Because Mr. Dale Scott said it sounded like I was reciting to him from the motion of discovery.
Q He said you're telling us what's already in the file?
A Yes, sir.
Q And the reason we had the interview was because we were under the impression you were going to tell us stuff that we didn't know that led up to the death, correct?
A Yes, sir.
Q Specifically things that happened before you all got to Newberry?
A Yes, sir. And my lawyer also explained to you guys that I needed to talk to you and let you know what happened days prior that led up to the 29th as well.
Q So specifically December 27th, 28th and December 29th

is what we cared about?

A Yes, sir.

Q And you'll admit that when you were interviewed by Chief McClurken that you only told him part of the truth?

A Yes, sir. About what happened that day.

Q And you didn't tell him about December 27th and the December 28th stuff?

A No, sir.

Q And you didn't tell Chief McClurken about Theia hitting on G.M. --

A No, sir.

Q -- that 72 hours leading up to Gabe's death, correct?

A No, sir. I did not.

Q So you withheld that?

A Yes, sir. I did.

Q Because you're in love with this woman?

A Yes, sir.

Q In fact, she wrote you a note from the jail not too long ago.

A Yes, sir.

Q She still has feelings for you?

A Yes, sir.

Q And you were trying to protect her?

A Actually, she wrote that to me while I was in Laurens County, when I was out there back in August.

Q And so, you really obstructed this investigation, didn't you?
A Yes, sir. I did.
Q That's a crime. Do you realize that?
A Yes, sir.
Q Well, let's go to this transcript and I'll be very brief. I promise you. This is part two when we decided to come back, correct? Part two.
A Yes, sir.
Q And that's when you told us about the days leading up to Gabe's death?
A Yes, sir.
Q And that's what Mr. Verner didn't share with the jury yesterday, correct?
A Yes, sir. Like I said, some other stuff in part one that he didn't mention as well.
Q Okay. Let me get to my place in the transcript I want to show you. If you could, read out the highlighted portion of page four on part two of that interview we had a few weeks ago.
A (Reading transcript)
Q That's why you were afraid to stand up to Theia, correct?
A I have a history of being arrested because of stuff of standing up and dealing with Theia and trying to tell her

not to do stuff with her child.

Q So that's why you were too weak to stop her from hitting on Gabe, right?

A Yes, sir.

Q Let's go to page eight of the transcript. And when I asked you questions on direct yesterday --

A Yes, sir.

Q You didn't tell me everything that you told me a few weeks ago on part two of that interview?

A I didn't.

Q Let me show you page eight, the highlighted portions.

A Yes, sir.

Q See if you recall that. And read it out loud, please.

A (Reading transcript) Do you want me to read the next one?

Q Go to. All right. That's all that's on page eight that's highlighted?

A No, there's two more.

Q On page eight?

A Yes, sir.

Q Continue to read that.

A (Reading transcript)

Q So again, you left that out when I was questioning you yesterday, correct?

A Yes, sir. It wasn't intentionally.

Q So right there you're describing multiple blows to the stomach around lunchtime on December 29th.

A Yes, sir.

Q Read off page nine, please, what's highlighted.

A (Reading transcript) Do you want me to read from 10?

Q Please. No, excuse me. That's all on page nine that's highlighted?

A Yes, sir.

Q Go to page 18 and read out what's highlighted.

A (Reading transcript)

Q That's all that's highlighted?

A Yes, sir.

Q I'll take that from you. Why didn't you tell me that yesterday on direct when I asked you about all the times you witnessed her hitting him on December 29th?

A It wasn't intentional, sir.

Q Really?

A It was nervousness, sir. I've never had to deal with this stuff before.

Q You seem pretty calm up there. Is that accurate? I mean, you seem calm. Are you calm on the inside?

A No, not really.

Q Are you still protecting Theia McArdle?

A No, sir. I'm not.

Q So was it relevant to talk about you hearing a

commotion around lunchtime and you walk in and she's striking her son repeatedly in the stomach with a fist?

A Yes, sir. That's relevant.

Q Hitting him so hard he falls to the ground and hits his head?

A Yes, sir. That's relevant.

Q Well, why didn't you tell me that when I asked you?

A As I said, it wasn't intentional, sir. I was nervous.

Q But you're talking about specific details from spark plugs with Mr. Verner but you don't tell us that?

A He accused me of messing with a car that I didn't mess with.

Q Moving on to -- Mr. Verner asked you a lot of questions about the vomit in the house on December 29th and Gabe being sick from right after supper, correct?

A Yes, sir.

Q He didn't finish his food, did he?

A He didn't finish his food.

Q Because he started throwing up?

A Yes, sir.

Q And there was throw up throughout that house, correct?

A Yes, sir. There was some on our room -- in our room, some that was on the stuff that he had in our room in his bed as well.

Q And Theia is at home while Gabe is throwing up?

A Yes, sir.
Q Because she made supper?
A Yes, sir. And it was still some time before she went to her call as well.
Q So Theia is aware that her son is ill?
A Yes, sir.
Q Very ill?
A Yes, sir.
Q And Theia knows where the Laurens County Hospital is?
A Yes, sir. She had actually been there to get a staff removed off her stomach.
Q She'd been there?
A Yes, sir. And to take a friend of hers. So she's been there twice.
Q In fact, we saw a receipt from Laurens County Hospital in the car that had Theia's name on it?
A Yes, sir.
Q And Laurens County Hospital is about 11 miles away from Enoree.
A Yes, sir. It's not that far.
Q Newberry Hospital is over 30 miles away?
A Yes, sir.
Q But you all load Gabe up in the care for a prostitution care?
A Yes, sir.

Q When he's puking his brains out?
A Yes, sir.
Q You're aware that's aiding and abetting, correct?
A Yes, sir.
Q What you're doing?
A Yes, sir.
Q What you did? So you're here today admitting to a crime?
A Yes, sir.
Q We didn't offer you immunity to testify? You know we can use that against you in your trial?
A Yes, sir.
Q But you're doing it anyway?
A Yes, sir.
Q Let's go through some of these pictures. If you could, just look on the TV, Mr. Bowman. What's that?
A That's the laundry --
Q Speak in the microphone, please.
A That's the laundry hamper and the kitchen area with there.
Q Okay. A bunch of clothes with throw up was found in that hamper, correct?
A Yes, sir.
Q Okay. That's a toilet bowl that's full of vomit, correct?

A Yes, sir.
Q And you're saying that's your vomit?
A Yes, sir. I threw up that night as well.
Q Was there a stomach bug going around Enoree?
A I don't know. I didn't -- I don't think there was a stomach bug.
Q So you and G.M. just simultaneously throwing up?
A Yes, sir.
Q Is that strange?
A Yes, sir.
Q G.M. air mattress, correct?
A Yes, sir.
Q And you said he got sick on some of the linens, correct?
A Yes, sir. That was in our room.
Q And that's Gabe's pillow case?
A Yes, sir.
Q Are you aware there's vomit on that?
A Yes, sir. That was a pillow that was in our room he was sitting on when he was sitting on our bed eating.
Q So you brought that -- that pillow was in y'all's bedroom when he got sick?
A Yes, sir.
Q But then somehow he goes back to bed, correct, later that night?

A I put it on the bed that night. I had tried to get some of the vomit off of it.

Q So you take that same pillow that was on y'all's bed that he got sick on in your bedroom?

A Yes, sir.

Q And you bring it back to the air mattress, correct?

A Yes, sir.

Q And he goes to sleep on it?

A Yes, sir.

Q So that's why they didn't find any vomit in y'all's bedroom?

A Yes, sir.

Q Because you brought that same pillow case to the air mattress?

A Yes, sir.

Q That's got vomit on it, too. That's a grey hoodie, correct?

A Yes, sir.

Q That's an adult male's hoodie?

A Yes, sir.

Q That's your hoodie?

A Yes, sir.

Q That's your -- you seem unsure about it. Does Gabe wear an adult male hoodie?

A No. But she has hoodies of herself as well. But that

-- I believe that is one of my hoodies.

Q So Theia does wear your hoodie from time to time?

A Yes, sir. She does.

Q Did Theia get sick that night?

A No, sir.

Q So you didn't have enough time to make it to the toilet where you threw up on your own hoodie?

A Yes, sir. Some of it had got onto my hoodie as well. But as I said, I used some of the clothes that was in the hamper to clean up some of the throw up.

Q I thought you made it to the toilet to throw up?

A I did throw up in the toilet, but some of it still get on me -- got on me, sir.

Q Isn't vomit projectile? It's not necessarily runny.

A Not necessarily for me, sir.

Q Okay. Coogi. What's Coogi. Coogi.

A Coogi is a name -- a brand -- label brand of clothing, I guess.

Q Is that Gabe's tee shirt?

A Yes, sir. It is.

Q And you're well -- you see that discoloration around the collar?

A Yes, sir.

Q Is that vomit?

A I believe so. It is, sir. As I said, I used some of

the clothes to clean up the vomit in the room.

Q Was he wearing that tee shirt that night when he got sick, or did you just use to clean up the vomit? Which one?

A I'm not sure. I do know that he -- we did put the Puma shirt on him. That was the one that was in the car. That might have been the one he was wearing. I'm not sure off the top of my head, sir.

Q You don't use paper towels or something to clean up vomit, or a mop or something? You use articles of clothing to clean up vomit?

A We didn't have a mop in the house and we didn't have paper towels.

Q Did you all have a washing machine in the house?

A No, sir. We didn't. We took our clothes to the laundry mat.

Q So you're going to use clothes -- and it's not necessarily easy for you to wash them without leaving your house. You're going to use that to clean up vomit?

A Yeah, because we were going to -- plan on cleaning the clothes the next day.

Q What's that? A towel with stains, correct?

A Yes, sir.

Q Did you use that to clean up vomit?

A Yes, sir.

Q Why didn't you just use that to clean up the vomit?

It's still got unsaturated parts on there. Why would you use clothes if you've got a towel?

A I just grabbed a bunch of stuff to clean stuff up.

Q It must have been a lot of throw up --

A Yes, sir.

Q -- from Gabe?

A Yes, sir. And I had some in the bathroom on the floor, and I cleaned up in there too, and on the toilet seat as well.

Q That's a 28 pound baby throwing up a lot.

A Yes, sir.

Q That didn't concern you and Theia?

A It did concern me. I'm not sure if it concerned her. I didn't think to call the police or -- not necessarily the police, but the ambulance or anything.

Q But Theia was there at the time he's throwing up?

A Yes.

Q She's aware he's sick, correct?

A Yes, sir.

Q And after supper she leaves to go on that Spartanburg John call?

A Yes, sir.

Q Didn't discuss seeking medical treatment at that time, did you, before she left Spartanburg?

A No, sir.

Q That's a white tee shirt. That appears to be an adult size.

A Yes, sir. That's my shirt.

Q Those are stains all over that.

A Yes, sir.

Q Was that vomit stains?

A Yes, sir. I believe that they are.

Q Why are there vomit on so many articles of clothing? How many layers did you have on?

A That was something I actually used out of the dirty hamper. I didn't have it on.

Q Why didn't you use the rest of that towel to wipe down? Why do you keep going through clothes to get more vomit on?

A I was picking this stuff up, the vomit, trying to clean up off the floor and off the bed and off this -- or not mattress but pillow.

Q Theia wears your clothes sometimes, correct?

A Yes, sir. She does.

Q And I'm not trying to be disrespectful to Theia, but she is a larger size woman, correct?

A Yes, sir.

Q And she can wear adult male clothes, broader shoulders? It would fit her, correct?

A Yes, sir.

Q So G.M. throwing up all over you and Theia though,

correct? He's puking everywhere?

A Yes, sir.

Q Really? Okay. And again, what time is he throwing up? That's around supper time. He didn't finish his meal as you testified to, correct?

A Yes, sir. That was around 5:00 to 7:00, I believe. Somewhere in that --

Q Somewhere in that range?

A Yes, sir.

Q All right. What's that again? I know you identified it once. Discussed it.

A That's the hoodie, I believe.

Q No, no, no. The yellow.

A Oh, it's a towel.

Q That's the backseat of Theia's Chevy Malibu?

A Yes, sir.

Q And that's got stains on it?

A Yes, sir.

Q Did you use that to wipe -- wipe anything up with?

A That was inside. Whenever we were in the back of the car when I was trying to give him CPR and I cleaned the stuff off his mouth to try to do the CPR and whatnot.

Q And that's after -- that's after Theia's back in the car from the Newberry service call?

A Yes, sir.

Q And so, there's vomit -- or you said brown ooze substance coming from his nose and mouth area?
A Yes, sir. That was while we were trying to drive to get back home and I told her we needed to get to a hospital. And she was intent on trying to go to the Laurens County Hospital instead of the one in Newberry. And I told her, I said, there has to be a hospital that's closer instead of going all the way to Laurens. I said your son's not responsive. There's stuff coming out of his nose. We need to get to a hospital.
Q All right. Stop. I don't want to know that yet. And you all took I-26 down to Newberry? That's the quickest way from Enoree to get to Newberry? I-26 east?
A I'm guessing, sir.
Q But you were on I-26? You were on the interstate?
A Yes.
Q You told me that earlier?
A Yes, sir. I-26.
Q Are you aware that the first Newberry exit says Hospital?
A No, sir.
Q In big bold letters, blue. And then when you get off that exit there continues to be H all down Highway 121.
A I didn't know that, sir.
Q But Theia doesn't know there's a hospital in Newberry,

correct? She seemed unaware of that at first?

A Yes, sir. She was trying to get back towards Laurens County because she said it was closer to home.

Q But when you all initially get off on exit 72, which is the first exit for Newberry, she hadn't been to the John's house yet at that point?

A No, sir.

Q So it was more important to go to the service call to make $120 first before taking G.M. to the hospital?

A Yes, sir.

Q Because he was still responsive then, wasn't he?

A Yes, sir. He was.

Q Right.

A She didn't even mention to the nurse at that time that he was responsive before -- like 10 minutes prior to getting to the hospital. She said that to the nurse.

Q She's aware he's puking his guts out in Enoree around supper. He's 28 pounds and he's throwing up everywhere. Throw up on multiple articles of clothing. Towels, bed, and it's more important to go to the service call first before seeking medical treatment; is that correct?

A Yes, sir.

Q Again, is that a child sized tee shirt?

A Yes, sir. That's the shirt that he had on inside the car at that time?

Q And you were in the backseat performing CPR at this point?

A Yes, sir. While we were trying to get to the hospital.

Q And you removed his tee shirt?

A Yes, sir. To get the stuff off of us his face so I could properly get to his mouth and try to do CPR and whatnot.

Q Doing chest compressions and all that?

A Yes, sir.

Q Do you know that from the military as part of your first aid training?

A COS. Yes, sir.

Q And I'm going back here. I need to cover this. What's significant about the TV on this cover table here and the laptop computer?

A That's the very same coffee table when it was in the bedroom that she had hit him and his head hit off of that. And also, he head had hit it as well before when he was in the room due to her.

Q Is that when you heard commotion around lunchtime on December 29th?

A Yes, sir.

Q Is that because G.M. had knocked that laptop off that coffee table?

A Yes, sir. He had messed with the laptop and had messed

it up. She had got it set over there. She never wanted him to touch the laptop.

Q And that was the reason you walked in and she was hitting him in the stomach?

A Yes, sir.

Q Knocked him on the ground she hit him so hard?

A Yes, sir. And she also claimed that he bit her as well.

Q And caused him to bump his head when he hit?

A Yes, sir.

Q And why didn't you share that with me yesterday when I'm asking you? Again, you skipped over that entire part. But you told us that a few weeks ago, correct?

A Correct.

Q I'm not going to ask you any conversations you've had with your attorney. I mean, I appreciate the sanctity of attorney/client privilege. But are you aware -- have you read the statute your charged under? The law?

A Yes, sir. My first attorney gave me the statute for it.

Q So you know kind of the elements of that offense? What kind of conduct or acts or omissions constitute that crime, right?

A Yes, sir.

Q And you realize everything you just testified to, that would constitute guilt?

A Yes, sir.
Q By your own admission?
A Yes, sir.
Q And you haven't been offered anything in exchange to testify. You reached out to us and said you wanted to tell us some things, correct?
A Yes, sir.
Q And we told you we weren't offering you anything.
A Yes, sir.
Q So just to recap. December 27th you saw Theia hitting on him?
A Yes, sir.
Q I think you said she slapped him on the head and hit the coffee table on December 27th?
A Yes, sir.
Q Did you see her punch him in the stomach on December 27th?
A Yes, sir. I did.
Q Multiple times?
A Yes, sir.
Q A lot of force?
A Yes, sir.
Q As hard as she would hit you sometimes?
A Yes, sir. As hard as I've seen her hit other people as well.

Q And did you tell us she hits as hard as a man?
A Yes, sir. She does.
Q And she would hit G.M. as if he were a grown man?
A Yes, sir. That was -- that was in reference to an incident that I had saw that happened in North Carolina.
Q December 28th you told us about the groin punch.
A Yes, sir.
Q After G.M. mimicked something you did?
A Yes, sir.
Q And then she punched him with a closed fist in the groin?
A Yes, sir.
Q Did she hit him as hard in the grown as she hit you when she blacked your eye?
A It seemed like she did, sir. Yes, sir.
Q And he winched and cried in pain?
A Yes, sir. He said owe.
Q And he was crying?
A Yes, sir.
Q December 28th?
A Yes, sir.
Q About what time on December 28th?
A That was around, I'm guessing, 5:00. It was in the afternoon. Like late afternoon, evening. Because we were at David's. He was cooking dinner and whatnot.

Q So that -- that injury had at least 24 hours or so to set in --

A Yes, sir.

Q -- by the time he's at the hospital?

A Yes, sir.

Q And a bruise gets darker?

A Yes, sir.

Q Because initially when you get hit it's red, right, a lot of times?

A Yes, sir.

Q And then eventually the next day it might be dark purple?

A Yes, sir.

Q And then a few days later a bruise turns like yellow maybe. Is that your experience?

A Yes, sir.

Q December 29th you see first thing in the morning, December 29th, she wakes Gabe -- or Gabe wakes her up and she punches him in the stomach, right?

A Yes, sir.

Q And then around lunch you have your earphones on cleaning up and you hear commotion in the bedroom, correct?

A Yes, sir.

Q You walk in there and you find Theia punching him in the stomach repeatedly?

A Yes, sir.

Q And then you see her knock him to the ground on December 29th?

A Yes, sir.

Q Around lunchtime?

A Yes, sir.

Q And he bumps his head when he hits the ground, too?

A Yes, sir.

Q And you all have an argument over that?

A Yes, sir.

Q But you don't do anything about it, do you?

A No, sir.

Q Lastly Mr. Verner said he opened the door to talk about something in North Carolina.

A Yes, sir.

Q I think first you testified to -- about when Gabe was taking from Theia. What are you talking about?

A The one incident that I know of that he was taken was whenever I first initially met her. I hadn't known Gabe that long at that point in time. May have been like maybe two weeks whenever I first initially met G.M. But during that course --

Q Don't -- don't go into all that. Just tell us what happened to cause Gabe to be taken.

A She smacked him for breaking four cigarettes of her --

four Newport cigarettes of hers. She slapped him across the face with an open hand, and then continued to smack him on his behind and his back while he was screaming and crying. I wasn't the only one who witnessed this. Makayla also witnessed this as well. And --

Q And did Justin Madore witness this?

A Justin Madore was informed about this and he called DSS, as well as Megan Cody. And --

Q Megan Cody witnessed that?

A Megan Cody was also -- she didn't witness this, but she was informed of what happened as well. But she's been a witness to other incidents that have happened with G.M. and --

Q And when was this incident, smacking G.M. in the face for breaking cigarettes? When was this?

A This was back in 2013. I do not remember the exact date.

Q Does April 23rd, 2013 sound about right?

A It sounds about right. Yes, sir.

Q And how old would Gabe have been?

A G.M. would have been around one. Less -- well, not even around one at that time, in all honesty, I don't think.

Q He would have been a little over one-years-old? One-year-old?

A Yes, sir.

Q Barely able to walk and talk?
A He wasn't walking or talking at that time really.
Q Right.
A Yes, sir.
Q Or not even, right, you say?
A Yes, sir.
Q Not even or barely is fair to say at that age? Not even?
A Yes, sir.
Q And so, that was the incident that opened up the DSS -- North Carolina DSS investigation?
A Yes, it is. DSS was called because of that. And also they reported it about the bed. The child waking up eating his own feces. Her beating on him. Him being in the room with two adults while they were having sex and a gun being underneath the mattress.
Q Okay. And eventually was Ms. McArdle arrested by the Asheville Police Department?
A Yes, sir. Arrested twice. One time she was on the run and they finally caught her. And another time they came to a hotel where we were at and --
Q Just be -- you don't have to elaborate. Just answer the question directly. Was she arrested for that incident?
A Yes, sir. She was.
Q She was child with misdemeanor child abuse in North

Carolina?

A Yes, sir.

Q She was convicted of that?

A Yes, sir.

Q And that was the reason North Carolina DSS took her child away from her?

A Yes, sir. And put him in kinship.

Q But she eventually regained custody of him, correct?

A Yes, sir. Under stipulations, as least.

Q And that's why you all left North Carolina, right? Once she got him back?

A She wanted to leave because a young individually that she met named Ms. Brie -- or I don't know what her full name is. It's Brie, convinced her to go to Spartanburg because she could make more money selling herself. And she wanted to leave North Carolina due to those incidents that happened as well.

Q She didn't tell you she wanted to escape North Carolina because of all the drama?

A Yeah. She said she wanted to get away from all the drama because she has a record and she can't get a job and she can't work. She just had people calling DSS on her and calling her a bad parent, and her --

Q She's running from North Carolina DSS?

A Yes, sir.

Q She wanted a fresh start?

A Yes, sir.

Q So she regains custody of G.M. about when?

A Only in August, I believe. Around June, August. And then we immediately ended up moving down to Spartanburg. But it was under stipulations that she --

Q Stop. Just --

A I'm sorry.

Q Just answer the questions.

A Sorry.

Q When did she get -- just tell me approximately when she regained custody. The day and the year.

A It was 2014, August or June timeframe. One of those two days -- months.

Q And she initially loses custody of him in spring of 2013?

A Yes, sir.

Q And then she regains custody of them in the summer of 2014?

A Yes, sir.

Q A few months later he's dead?

A Yes, sir.

MR. DANIEL: I don't have further questions, Your Honor.

RECROSS-EXAMINATION

BY MR. VERNER:

Q You've had access to all the DSS files in North Carolina, haven't you?

A Yes, sir.

Q There was an incident while you were with Theia in April of 2013 where she slapped G.M. for breaking cigarettes?

A Yes, sir.

Q You were with her at the time?

A Yes, sir.

Q DSS investigated. She went through a treatment plan, and they returned the child to Theia. But then you moved in and DSS took the child again?

A I was already moved in at the time. And they did not return G.M. What they did do is they told her that she would be under watching terms, and the person that they had her being watched by did not want to watch her because she said by herself that she needed -- Ms. McArdle did not deserve to have her child due to the things she was doing to her child.

Q And the fact that they considered you violent and wouldn't give her the child back and you all were living together didn't play a part in that?

A The reason why they considered me violent was due to the fact of a previous incident that happened. The whole --

when she punched me in the eye and the strangulation. That was one incident.

Q And the reason she didn't hit Gabe like she hit you, because Gabe wasn't threatening her with a knife or choking her out? You were?

A She did hit G.M. like she hit me. He had a mark on his face. I have the picture right here. I'm pretty sure it's inside your motion as well, from the mark that he took.

Q I'm sure the prosecution can introduce anything that they think is relevant. Let's go to this -- the Solicitor had you read your Facebook quote on December 19th?

A Yes, sir.

Q It says, you got him, so act right.

A Yes.

Q That's basically, you left. You took him. You got him. And that's when she left you. Her mother took them away from you. And you wrote an angry post on your Facebook saying, well, you got him. Now act right.

A No.

Q That's what that means, doesn't it?

A No. What I was saying is, you had him returned back to you. Stop beating on him and act right. Stop being a prostitute and everything else if you're so concerned for your child.

Q So you got him doesn't mean you took him away?

A No.

Q Okay. May 2014 is actually when G.M. came back. Would you dispute that the records show that May of 2014 was when the child was returned?

A I thought it was between August and June timeframe. I'm really not sure when he officially came back. I know whenever she officially, officially got him back and I saw him we were living in hotels and we did eventually move down to North Carolina. He was still in Janice's care around May time because she did not want to deal with him, because she was doing the whole prostitution ordeal, and doing drugs as well at that time as well.

Q Now, you told the prosecutor just a few minutes ago that you saw her him on the 27th, right?

A Yes, sir.

Q But that's when you all went to Asheville to visit her mother, right?

A Yes, sir.

Q But then you had mistakenly thought that that was the court date, right?

A Yes, sir.

Q And then the 28th is when you said she hit him in the groin at David Maroochi, or whatever his name's house is, right?

A Moscerelli, yes, sir.

Q Who was conveniently in the kitchen and didn't see it and wouldn't have heard, or you wouldn't have been able to tell him about that?

A He heard crying.

Q You think if he had seen that he'd be here? You think from Laurens County they would not have had him in here to court?

A Well, there's a lot of people that weren't subpoenaed in the motion of discovery, so I'm not sure.

Q That's right. There are amazingly a lot of people who weren't subpoenaed to corroborate what you're saying. You told the prosecutor just a second ago that G.M. started vomiting about 5:00 that day?

A Yes, sir.

Q Just about a couple of minutes ago?

A Yes, sir.

Q But you also told us earlier this week that you normally eat dinner -- that you estimated you ate dinner with Gabe between 6:00 and 8:00?

A And she started cooking dinner around 5:00 or whatnot. And he ended up vomiting while we were eating. He didn't finish everything.

Q So he vomited before Theia even made dinner?

A No. She was cooking at the time and he had ate. While we were eating dinner.

Q And the Solicitor said that you seemed to have forgotten about when she hit him in the stomach because you didn't testify to that yesterday, right?

A Yes, sir. And I explained to the Solicitor it wasn't a matter of trying to protect anybody. I was honestly nervous. I still am nervous. I've not done this before.

Q Is it possible that you had forgotten about that because you have given so many stories you forgot that you -- that's one of the stories you had said?

A No, sir.

Q And then you also forgot about this incident to testify yesterday about this incident involving the computer because, again, that is just one of the many pages of stories that you've given that didn't happen and you forgot to mention it. And he reminded you, well, didn't you mention that?

A No, sir. It wasn't due to many pages of stories I said. I'm actually nervous.

Q I understand that. And you've just given so many stories that you can't remember which ones you've given before and which ones you've retracted, right?

A Yes, sir.

Q I believe you testified, or you told the Solicitors you don't like DSS; is that right?

A I said I didn't like them trying to take her child and

everything instead of trying to help her.

Q I think you told the Solicitor that DSS has a bad habit of blaming you for things. If I could, page 73. Read for me what you told the Solicitor about whether you like DSS.

A (Reading transcript)

Q And that's one of the times that you said I just don't trust DSS because they tend to blame me?

A What I did state is DSS -- as it says right here, DSS tried to get on me, too, for that situation and I had nothing to do with it. I didn't strike the child or do anything. DSS was getting onto me because I didn't place a call to them reporting what happened. It says that right there, too.

Q And you also told the prosecutor when you met with them that you couldn't hear her hurting G.M. because you were wearing your earphones listening to music?

A I said I heard a noise and I ended up taking my earphone out. I didn't have it in all the way. I didn't hear everything that happened. I only heard a bit piece of it. I heard a quick like yell or loud noise and I went to go see what happened.

Q You couldn't hear anything until you took your earphone out and then you heard it?

A Yes, sir.

Q Do you remember what music you were listening to?

A Yes, sir.

Q You do? Tell me.

A It was a song I've actually sang while I've been in jail this whole time. It's by I See Stars. It's called Airplane.

MR. VERNER: Thank you.

THE COURT: All right, sir. You may step down.

(Whereupon, the witness stepped down from the witness stand.)

THE COURT: Ladies and gentlemen, this is a good point for a break. If you want to step outside, feel free to do so. So discuss the case. I want to talk briefly with the attorneys about where we stand. I think your next witness should be here?

MR. STUMBO: Yes, sir.

THE COURT: It's the one we were discussing, the doctor or --

MR. STUMBO: Actually we have a shorter lay-witness, which will be the mother, first and then I think we can get done with that one fairly quickly.

THE COURT: Very good. Take a break. Don't talk about it. See you back in a few moments. Thank.

(Whereupon, the jury exited the courtroom at 10:41 a.m.)

THE COURT: Did you all work out a stipulation with

DNA?

MR. VERNER: Not stipulation. But I'm agreeing that they lay the foundation for the -- I don't want to be accused of stipulating anything, but they've served the notice of foundation.

MR. STUMBO: Right.

THE COURT: We don't need the analyst or we do need the analyst?

MR. VERNER: I think they've already released him, so we're not --

MR. STUMBO: Well, we sent him to Columbia. They can get back here quickly. But it's my understanding if Chief McClurken can -

MR. VERNER: They already served the notice 10 days before trial of what they intended to introduce.

MR. STUMBO: We attended to just introduce the SLED reports through the Chief --

THE COURT: Chief McClurken.

MR. STUMBO: -- as part of their investigative file. Yes, sir.

THE COURT: That will be perfect. All right. Let's be at ease for a few moments.

(Whereupon, a recess was held from 10:41 a.m. to 11:02 a.m.)

THE COURT: We should go back on the record. Let's

have the jury out, please.

(Whereupon, the jury entered the courtroom at 11:02 a.m.)

THE COURT: The record will reflect the jury is back and seated. At this point, Solicitor, please call your next witness.

MR. DANIEL: Thank you, Your Honor, the State calls Patrice McArdle.

PATRICE McARDLE, having first been duly sworn, testified as follows:

DIRECT EXAMINATION

BY MR. DANIEL:

Q Ms. McArdle, where are you from?

A I'm from Canton, North Carolina.

Q Speak up, Ms. McArdle.

A Canton, North Carolina.

Q Say that town again?

A Canton, C-a-n-t-o-n.

Q Canton, North Carolina?

A Yes.

Q That's in the mountains?

A Yes, it is.

Q How far from Newberry is that?

A It is about 85 miles, maybe 90.

MR. VERNER: I apologize. I'm still struggling to her

Ms. McArdle.

THE COURT: Ms. McArdle, why don't you just step back a little bit from the microphones. Speak a little bit louder. Okay?

THE WITNESS: Okay.

Q Okay. And what do you do for a living?

A I'm a staff accountant at Carolina Alliance Bank.

Q Do you have any children?

A Yes, I do.

Q Who are your children?

A Theia Darion McArdle.

Q Theia McArdle?

A Yes.

Q Seated right there?

A Yes.

Q Is that your only child?

A Yes.

Q And do you have any grandkids?

A Yes, I did.

Q You did?

A Yes, I did.

Q G.M.

A Yes.

Q Who died on December 30th, 2014?

A Yes, he did.

Q And were you in G.M. life?
A Yes, but not as much as I would like to have been.
Q And for the first, what, couple of his life he was closer to you? Living closer to you, correct?
A Yes. I lived with Theia and G.M. from the time that he was born until October of 2012.
Q So you did live with him for a little bit?
A Yes, I did.
Q And so, you were here for the testimony of Richard Bowman, correct?
A Yes, I was.
Q So you understand the things we discussed and the history that they were in Asheville and then how they came to Spartanburg, correct?
A Yes.
Q And did you know that your daughter was working as a prostitute?
A She had told me, but I didn't believe her.
Q Did you express concerns about this kind of lifestyle?
A I didn't believe her. But I told her, I said, if you are, that's a very dangerous lifestyle. But she told me other things that she was engaging in as well with Richard that I didn't approve of either and I expressed my opinion. And she's a grown person, so I didn't have any control over it.

Q So Theia told you she was working as a prostitute, you just didn't believe her?

A No, I didn't.

Q Well, I'm going to fast-forward to when is the -- when is the last time you saw G.M. alive?

A That was Saturday, December 27th, 2014.

Q Saturday, December 27th, 2014 --

A Yes.

Q -- was the last time you saw G.M.

A Yes.

Q And you saw G.M. with his mom as well, with Theia?

A Yes, and Richard came along.

Q Where did you all -- where did you meet?

A At Malvern Hills Park in West Asheville, North Carolina.

Q So you all met up at a park in Asheville?

A Yes, Malvern Hills.

Q Were you all exchanging Christmas presents?

A It was combination Christmas and his birthday.

Q So early birthday?

A Yes.

Q What did you get him for Christmas slash birthday?

A For Christmas I got him a VTech computer and for his birthday I got him roller skates, and the skates came with pads and a helmet.

Q And G.M. tried out those skates in front of you at the park that day?

A He did. Yes. I put them on him myself, and all the pads first. And then his helmet. And then we helped him skate around some.

Q Was he able to maintain his balance or did he fall a little bit?

A He fell a little bit. You know, we -- his mother and I had a hold of him, you know, one on each, holding up like this, and he was balancing more and more. And then when he fell close to where the -- Malvern Hills has a pavilion where you can skate, and here's the red clay mud, and this is where he fell. Where some red clay mud came onto the concrete. And he did something to either this finger or this finger. But he said, owe, my hand, you know. So Theia and I just got him back up and we said, you know, you've just got to keep on going. It's fine. And Richard made a show of kissing his hand, and I thought there's no way I would do that because it's red clay mud and it's right near a trash can.

Q So Richard was kissing his hand, like kissing a booboo, like adults do to kids?

A Yes.

Q So it's kind of a display of affection by Richard to G.M.

A I thought it was an overly inappropriate display. I think he was just trying to get across that he had some kind of good feelings for my -- for my grandson. I never liked Richard. I told my daughter that many, many times.

Q But Theia considered Richard G.M. father figure. The only father figure he's ever known, correct?

A That's what I've heard here.

Q Theia's never told you that?

A No.

Q Really? Okay. So he's trying his roller skates. You said he had on a helmet, pad, all that for protection?

A He sure did.

Q And he fell a little bit but not injuries?

A Yes.

Q Wait. Yes or no to the injuries? Did he have --

A He did not have any injuries. I mean, he like -- I think he jammed maybe one of his joints or -- I don't really know. But he didn't make any more fuss about it. He got back up and skated some. And then I realized that I put the skates on the wrong feet, because they're the ones that strap onto your shoes. And so, I sat him down and reached around him and put the skates on the right feet.

Q Did you observe any injuries that day on G.M.

A No.

Q Did he appear healthy?

A Yes.
Q Happy?
A Yes. The sun shining. He sat right beside me in the sunshine. It was a very arm day for the end of December. It was about 55 maybe.
Q And tell me just generally, was G.M. an energetic kid, low energy? I mean --
A He was pretty steady energy. I don't think he had nearly as much energy as Theia had when she was his age. But --
Q Was he a talkative kid? Was he able to talk?
A Yeah. He was really good at expressing himself.
Q So did you -- anything out of the ordinary when you saw him December 27th?
A No.
Q You all had lunch that day or something?
A We did. I brought pizza, they brought the sodas, and we sat down. You know, I gave Theia her gift, and G.M. his gifts and his card. And we went to play at the little play area which is just up from the pavilion.
Q But you did see G.M. eat lunch that day?
A Yes. He ate plenty of pizza.
Q So he wasn't sick, vomiting, anything like that at any point?
A No. He also --

Q Did he complain of any pain in his abdomen?
A No.
Q Groin?
A No.
Q And did you observe any injuries whatsoever --
A No.
Q -- aside from the skate injuries?
A No. He did fine. He had a great time. And we went to McDonald's afterwards and Theia and I and G.M. went in and he had Sundaes. And he was just giggling and he was like -- I remember he was curled up on the seat itself with his little hoodie that fell over and he was just giggling away just like he would do. Just like any three-year-old would do when they have a fit of giggles.
Q Did you ever observe, and it's been testified to already, about G.M. having her son taken away from her? Losing custody of him in North Carolina?
A She did. I think it was in April. I don't remember the exact date, in 2013. And I heard that she struck him across his face. And so, she began classes. She also went for a mental health evaluation to make sure she was up-to-date on her meds, because she is medically disabled and she is bipolar, and --
Q You said that causes mood swings, bipolar?
A Not just that. But with hers it's been confirmed

through two different EKGs she has random slowing of her theta waves in the back of her brain, which causes -- bipolar disorder is a medical condition. And it is my understanding through various psychiatrists whose gone over this with me, that it's a lot like epilepsy. Seizures in the brain where --

Q We don't have to go into all of it, but --

A Well, that was part of her --

Q Well, let me ask you the next question. So you all had lunch together. He skates that day, December 27th?

A Yes.

Q So how long did you visit with him that day?

A Well, it was a couple of hours. And then they left about 2:00 or 2:30.

Q I'm going to fast-forward. Did you hear from your daughter? When's the next time you hear from your daughter, see your daughter, what, after December 27th?

A She called me the night of December 28th, it was a Sunday. And she and G.M. had gone from Walmart and she said she needed to get away from Richard. And she had I had discussed many times how she was trying to get away from him and go to be with Poppy. And she and G.M. were at Walmart and she gave him the phone to talk with me, like she always did, and he was talking with me but he was also chattering and singing. He loved to sing to himself. So he

was busy with that.

Q So she calls you on the phone December 28th --

A Yes.

Q -- and you talk to Theia and G.M. on the phone?

A Yes. About 35 minutes.

Q And tell us after December -- after that phone call on December 28th when's the next time you hear from your daughter?

A That was the morning of G.M. birthday -- or what would have been his third birthday.

Q So you're talking about the early morning hours of December 30th?

A Right.

Q You receive a phone call from Theia?

A I did. I want to say it was 10 or so until 2:00. And she said I'm about ready to go in here, and they're going to try to resuscitate him. I need you to wake up because, you know, I need you, and they may not be able to resuscitate him. He has asphyxiated.

Q She said -- Theia told you he asphyxiated?

A Yes. Said that he had vomited and then aspirated and then just choked.

Q Where had he vomited? Where -- what location did she say G.M. vomited?

A First of all, during that phone call she said he was in

the bed and Richard went to check on him. And so, my question to her was why would Richard do that, because in my mind G.M. bedroom was over here. Their bedroom was over here. Here was G.M. bathroom, and here was the livingroom and kitchen. I've only been in that place once.

Q So Theia had told you that G.M. had vomited in his bed --

A Yes.

Q -- in Enoree?

A Yes.

Q And that Richard went to check on him in his bed?

A Yes. And then he tried to resuscitate him but he wasn't able to, so they came to the emergency room.

Q Where? What emergency room?

A In Newberry.

Q Have you ever heard of Newberry?

A I've never heard of it.

Q And did you question why they -- how they ended up at the Newberry ER?

A I did. But I said -- my question was why was Richard even anywhere near G.M. room because he had beaten on Theia so very badly, and he had been so controlling of her and I was very suspicious. And that boy was healthy as a horse. I didn't have any life insurance on him simply because he was so healthy. I mean, what was the point. He

was going to live a very long life.

Q G.M. wasn't prone to eat food and vomit?

A No.

Q Acid reflux, anything like that?

A No. And he could eat almost anything. He would even eat Greek salad. He would eat the little peppers that were --

Q So he had a strong stomach?

A Oh, yeah.

Q So it would be really unusual for him to vomit?

A It would be very unusual. And, you know, to aspirate it like that, I mean, I didn't expect it. I said this doesn't make any sense.

Q Is she crying, hysterical at this time?

A No. She sounded -- to me she sounded like she was either angry with me or that she was desperate for me to believe what she was trying to tell me.

Q And this was around -- you said around 2:00 a.m.?

A It's about 10 until 2:00.

Q So 1:50 a.m. on December 30th?

A Somewhere around that.

Q So she calls you and says G.M. -- we're at the Newberry ER. They're trying to resuscitate him but they might not be able to?

A She's like I'm about to go in here and they may tell me

that my child is dead.

Q Anything else significant about this particular conversation?

A That was about it. And she said I need to go so I can go talk with the doctor.

Q Did she call back, or you call her back? Did you all talk again?

A The next person who called me was Dr. Holaday, and that was about -- I want to say 12 minutes after.

Q Dr. Duncan Holaday who testified on Tuesday?

A The ER doctor, yeah.

Q He called you?

A Yes, he did.

Q How did he -- how did he get your information?

A I guess Theia gave it to him.

Q And why did he want to talk to you?

A He said that he -- he started off by saying, you know, I'm sorry to have to have this conversation with you but, you know, your grandson -- he started telling me they brought him in. This boy has asphyxiated, and he went through almost exactly what Theia was trying to tell me. And I --

Q Asphyxiated just means you don't have any oxygen. You're deprived of oxygen really.

A And he said that he had aspirated the vomit and stopped

breathing and they tried to revive him. And I don't remember all the medical terms that he used. But that's when I finally said, look, can you do an autopsy, can you do a scan, are there any bruises, because --

Q Why did you ask him that? He's the doctor. Wouldn't he know?

A Because he was telling me the story that my daughter had told me that I didn't believe, and I was suspicious because of what Richard had done to Theia. And I had expressed to Theia, I said, this guy is so dangerous you need to get away from him.

Q But isn't that true though, that Theia has assaulted Richard and been charged for assaulting Richard as well? That they -- in other words, it was a toxic relationship on both parties, correct?

A It probably was. And I have urged her many times over the years to get away from him.

Q And I'm not disputing Richard may have hit Theia. But it was toxic, correct?

A All I know is I've had to come and get her and help her on more than one occasion.

Q But yet Richard was a babysitter for G.M. correct?

A I know. I never approved. But what can I do. It's her own free will, and I can't -- I didn't even know where they lived in Enoree until December 12th.

Q Going back to that conversation with Dr. Holaday. You asked him to perform an autopsy or something? You asked him about bruises?

A I said is there something -- see if there are any bruises, anything. Because he was just going down the line. Well, he just -- you know, he breathed in his vomit. He's dead, he's gone, I'm so sorry, and that's it. And I was like, no, you need to look at this. Look at it further. Can you do an autopsy. I've never had somebody call me like that and be the one to be responsible enough to say I want further testing. My mind has absolutely been blown away.

Q What time did Dr. Holaday call you approximately?

A It was about 2:12.

Q So you hear from him first that G.M. was officially pronounced dead, correct?

A Yes.

Q Did he call from Theia's cell phone number?

A No. And Theia did not call from her cell phone number either. It was a number that I didn't recognize. It was a completely different area code.

Q Were you expressing disbelief to Theia when she told you G.M. was in the ER?

A I said, well, I don't know. I mean, I can pray. But, you know, what happened. And then she told me the whole thing. Started to tell me and I was like why would he go in

G.M. room. Why would he have any business of just suddenly going in and checking on G.M.

Q And so, you found it so odd that a kid with a strong stomach would have vomited in his bed?

A Absolutely.

Q And not been able to make it to the toilet?

A That's exactly right.

Q So did Theia tell Dr. Holaday to talk to you to confirm her story?

A I don't know. He called me on his own I believe.

Q And that was about 2:12 a.m.?

A Yes.

Q Did you talk to Theia? So that was the extent of your conversation with Dr. Holaday, correct?

A Yes.

Q Did you talk to Theia again after you talked with Dr. Holaday?

A Let me say that Dr. Holaday was there any history of abuse and I told him that Theia was on the verge of leaving Richard, and that I was on standby to come down and help her move. You know, her and G.M. into Poppy's house. But he said we had state of the art pathology department here even though we're a small town and he did go on like that. And that's when I think he got really, really serious. And in the background of that call I could hear Richard trying to

tell the same story that Theia was telling to whoever he was talking to.

Q So Dr. Holaday was assuring you that somebody would examine --

A Yes.

Q -- G.M. and determine the cause of death?

A Yes.

Q After that do you hear from Theia again in any way?

A Yes, I do. I do.

Q She called you or you call her or what?

A She called me a few minutes later and she seemed very angry.

Q Angry or upset?

A She was upset. And upset. But anyway, she was like, "Mom, you know, this happens all the time." And I told her, I said, "I've never heard of this happening before."

Q What happens all the time?

A The aspiration of his vomit and his dying. And I said this boy is so strong -- I mean, he would climb anything, just like most three-year-olds. He had physical strength to -- if he was really sick -- if he were really sick in his bed vomiting massively, or even partially, he could get up and go. There's no reason why he should have just laid there and just died.

Q Theia didn't tell you Richard knocked G.M. out --

A No.
Q -- and was beating on him in the backseat of the car --
A No.
Q -- and knocked him into the bathtub?
A No.
Q Theia didn't tell you any of this?
A No. And no one else did either.
Q She just said he -- G.M. had vomited in his bed and Richard tried to revive him?
A Exactly. Oh, and another thing that the doctor told me. He said they were traveling during the night going through Newberry and the child vomited and aspirated in his -- regurgitation and that's how he died.
Q So the doctor told you that they had told the doctor that --
A They were traveling during the night through Newberry.
Q -- he had gotten sick in the car?
A Yes.
Q But Theia told you he had gotten sick in Enoree?
A Yes.
Q So she sounded angry on the phone?
A Yes.
Q And she said this is just something that -- what was the --
A It was -- she was saying this is something that happens

all the time. You know, like I had a problem. I didn't understand. What's the deal. And I was furious, you know. And I just -- I just said I've got to go. I've got to go. And then I just cried and cried. And I just said to myself, G.M. what did they do to you. What did they do to you. And, you know, I found out from the deputy coroner when I finally came down on the 31st, some of it. The rest of it I found out just this week.

Q And I know this is -- I can't even imagine how difficult this is for you and I'm not going to pretend that I know how you feel. So what time -- the last conversation with Theia that you just described, what time was that approximately?

A I want to say it was just a few minutes after I got off the phone with Dr. Holaday.

Q So around 2:30 or -- 2:30 a.m.?

A I would say it was even before 2:30. Because his phone call did not last that long, because he was anxious to get off once I asked him, you know, please -- I mean, I was desperate myself. I wanted to know what happened to my grandson. Who did this.

Q And you felt like Theia was telling you --

A Oh, absolutely not. And I was so angry.

Q Tell us the next time you heard from Theia. Did you hear from her again after this?

A I think she finally called me collect, I want to say it was almost two weeks later.

Q Two weeks later?

A Maybe a week and a half to two weeks. I don't have the cell phone records. I'm just going by my memory.

Q She calls you two weeks later?

A Correct.

Q January 2015 at that point.

A Yes.

Q Was that from the jail?

A Yes. And I accepted just one collect call to tell her I want to know who killed my grandson, and I didn't say it that nicely. And I said, you know, there's no Richard tried to revive him. There's no he choked on is vomit and aspirated and just asphyxiated like that and died. That doesn't -- that's not what happened to him. Somebody beat him to death, and I want to know who killed my grandson. And you need to tell what you know, or you're going to spend the rest of your life in jail, or maybe just -- I don't know. Maybe they'll give you the death penalty.

Q You told her all that?

A Yes, I did. And I was so angry.

Q And at that point she told you Richard did it?

A I don't remember what she said, except that I need to believe in her innocence. All along it's like you need to

believe me that I didn't do this. I couldn't do this to my son.

Q But she never gave you any real specifics other than he was sick?

A Huh-uh. That's it.

Q Are you friends with your daughter? Do you have a Facebook account?

A I do.

Q Are you friends -- or were you friends with your daughter on Facebook at the time of this?

A I was and I still am. I just don't get on Facebook anymore really.

Q What's your daughter's Facebook account? Is it under her real name or does she use an alias?

A Yeah, she does use an alias, but then the address bar it always says the real name. So it says the address is -- bar is Theia D. McArdle.

Q What was her alias?

A Sally Daniels.

Q Sally Daniels?

A Uh-huh.

Q How did she come up with that?

A I have no idea. She never did answer that question. I was like, why would you call yourself that.

Q Did she -- did she have Internet on her phone? Did she

have a Smart Phone?

A Yes.

Q So she had that Facebook app and she would get on Facebook on the phone and all that?

A Yes.

Q Was she using Facebook at the time she's at the hospital?

A Apparently so, because she made some posts.

Q I'm going to hand you what's been marked for ID purposes as State's 148. This is State's 148. Do you recognize this printout?

A Yes, I do.

Q What is that?

A This is when Theia posted at 2:33 a.m..

MR. DANIEL: Your Honor, I would offer State's 148 for admission into evidence.

THE COURT: That's already been offered for admission. I have not ruled on the other attachments involved in the matter of the 403. We can argue that later. We just didn't have a chance to do it last night. So subject to the 403 objection, I will give him parts of that. But let me -- let me address -- do you intend to refer to all of photos again?

MR. DANIEL: No, sir. Actually, I told Mr. Verner.

MR. VERNER: What he showed me just a second ago I don't have any objection to, which I think were the first

two pages of that.

MR. DANIEL: Yes, sir.

THE COURT: Very good.

MR. DANIEL: And, Your Honor, the first two pages, if His Honor would like to see them.

THE COURT: If he has no objection, I have no need to see it.

MR. DANIEL: Thank you, Your Honor.

Q So you recognize State's 148?

A I do.

Q And what is that?

A This is Theia's Facebook posts. A timeline. And apparently she published that from her Smart Phone or someone else's at 2:33 a.m., right after G.M. had been pronounced dead.

Q And you observed that posting that night?

A I did the next morning. Well, later in the morning at about 6:30. I didn't have Wi-Fi at home, so I went down to McDonald's to Wi-Fi.

MR. DANIEL: Permission to publish this, Your Honor.

THE COURT: You may as far as that post.

MR. DANIEL: Mr. Bentley, just this one.

Q And so, what we're looking at is Sally Daniels, correct?

A Correct.

Q With the Court's permission, if you could step down Ms. McArdle, for just a second.

(Whereupon, the witness stepped down from the witness stand.)

Q And please keep your voice up for Ms. Scott.

A Okay.

Q Point to the posting and read it out loud, please, ma'am.

A "Rest in peace, Angel. Mommy will meet you in heaven one day. Let Jesus, something, you until then."

Q Let Jesus keep you until then?

A Probably so.

Q Okay. It might be cut off by the printout. And what time -- date and time was this posting?

A It's 2:33 a.m. It says yesterday here. So I don't see a date stamp on here.

Q But you observed that when you woke up later that morning on December 30th?

A Yes.

Q Okay. And she's posting that from the Newberry hospital, correct?

A Yes, apparently so.

Q Because you talked to her around that same time?

A Yes. But not on her cell phone.

Q Not on -- but she had her cell phone?

A Apparently so, or she got some kind of Internet connection.

Q So she's posting on Facebook just after she's learning of the death of her son?

A Yes.

MR. DANIEL: And then the next page, Mr. Bentley.

Q And do you recall seeing this posting? I know it's cut off from the printout.

A I do. And I don't -- I don't know exactly what the time stamp is on this. But this was at 4:33 a.m. that same morning.

Q If you could, read out the postings.

A Okay. This top one?

Q Start from the top, please.

A Okay. "I just got your message. I don't have the messenger app on my phone so I have to wait until I check my, period, FB on actual browser. Yes, I still want you to claim us both. And as long as you have no more allegations toward my parenting or BS abuse, which by the way was an iron deficiency which G.M. was not prescribed medication has monthly labs for, you may call my phone --" this is a new number she got. I didn't have contact with them for two weeks.

Q That's an older posting, correct?

A Yeah.

Q It looks to be -- I see it looks to be 12/20, around December?

A I'm not really sure, to be completely honest, because she contacted me in early December.

Q I'm sorry. Read the next posting.

A Okay. This is from 4:33 a.m. on 12/30.

Q Correct. My apologies. I looked at the wrong one.

A It's okay. "The police are searching my house and just took my keys. I don't know if they are going to check my car or not. If anything happens and you don't hear from me in 24 hours, please get my clothes and valuables from my house. Call James to help if needed, 828-691-5194. He will be glad to. They may arrest for escort."

Q So that posting is 12/30 at 2:33 a.m.?

A At 4:33 a.m.

Q 4:33 a.m. My apologies. So she was still on her phone a couple hours after her son was pronounced dead and she's talking about the police searching her house?

A Yes. Do you want me to read mine next?

Q Yes, read -- and you posted at this time?

A Then I posted -- I went down to McDonald's to Wi-Fi, because that's what I do. Wi-Fi for free because I want to save money.

Q And is this posting later in the morning when you woke up on --

A This is when I -- well, I was awake, but I finally went down to McDonald's after crying for hours.

Q Read that posting, please.

A 6:36 a.m. "I've been trying to call you since just after we got off the phone. How is it that you can post a Facebook update but cannot answer my calls. I need to know what happened. The hospital will only tell me that he expired."

MR. DANIEL: You can have a seat, please ma'am.

(Whereupon, the witness returns to the witness stand.)

Q So that whole string of postings -- I'm sorry. It looked like a 20 to me. But that was all from 12/30?

A Yes.

Q December 30th?

A Yes.

Q And you remember all those postings a few hours after learning the death of your grandson?

A Yes.

Q And so, you seem to be put out with the fact that she's Facebooking but yet not telling you what happened?

A It was just even more reason for me to be incredibly livid with her. Furious.

Q So she's not giving you answers about the cause of her son's death?

A No one's giving me any answers --

Q But she's --
A -- especially not her.
Q But she's on Facebook talking about --
A Right.
Q -- unrelated matters?
A Right.

MR. DANIEL: No further questions. Please answer anything Mr. Verner has.

THE COURT: Mr. Verner.

CROSS-EXAMINATION

BY MR. VERNER:

Q When you first heard about G.M. death --
A Yes.
Q -- you came to Newberry yourself?
A I came on December 31st.
Q The day after the death?
A Yes.
Q So would you have had to take off of work and make arrangements to come from Asheville to --
A Yes.
Q And you had been to Theia's home in Enoree?
A Once.
Q Once?
A No, I'm sorry. Twice. Excuse me.
Q About how long of a drive is it from Enoree to

Asheville?

A It's probably less than Newberry. I want to say it's about a couple hours drive, depending on how fast I go.

Q More than two?

A More than two?

Q Asheville is kind of in the middle of --

A Well, I'm coming from Black Mountain at that point in time because that's where I was living. So it may have been a little bit around two and a half.

Q So it's between two to three house --

A Yes.

Q -- each way then?

A Yes.

Q So if I wanted to drive from Enoree to visit you and spend a Christmas day or a birthday with you, I would have been on the road about five hours of the day both coming and going?

A Probably so, yes.

Q And longer if I stop somewhere?

A Probably.

MR. VERNER: Mr. Bentley, may I have part two of number 233. The second page. Which one was -- is that 133 or 233?

THE COURT: That's 148, I think.

MR. VERNER: 148.

Q To me that looks like using the messenger service. But

is that actually on the Facebook account? It doesn't really matter to me but I'm just -- are those direct messages or is that on the --

A This is -- when you go onto Facebook and you pull it up it can be messages or it can also be a chat if the person is present at the same time. Or at least that's the way it was then.

Q So the chat is like there are a bunch of your Facebook friends are on kind of like the side of it and it'll be like a green light will come up --

A Right.

Q -- or something like that?

A Right. And then whatever messages come up in a little box on my laptop -- I don't know how it is -- I don't have a Smart Phone. I have a very old phone, because I have a laptop. I don't need a fancy phone.

Q Well, I'm on Facebook on my computer, too. So like a little box will pop up --

A Right.

Q -- in the bottom right-hand corner?

A Right.

Q is that what those are?

A Yes. And it's -- that's taken from the message. I pulled up my own Facebook account and got those.

Q So these were basically messages directly to you. They

weren't posted just on Facebook for the public? These were --

A Yeah. This was directly to me.

Q And the first page where she said "My angel's dead. I hope Jesus keeps him --"

A That was her Facebook feed for all to see.

Q That was a public posting?

A Yes. Yes.

Q But these were messages directly to you?

A That's exactly right.

Q And did you all often contact using the Facebook app?

A Sometimes we did.

Q I want to just make sure I'm clear. The top message, that's a message from 12/30 or that's a message from earlier that --

A That's from around the first week in December of 2014.

Q So she hadn't contacted you -- as I recall, Facebook pretty much saves all your messages, even when they give you new messages today you can scroll up and see older messages?

A Yes.

Q So there's really no Facebook direct messages between you -- between early February -- early December and late December?

A Right.

Q So it would have been telephone call or personal

visits?

A That's exactly right.

Q The at that time that she -- at 2:33 in the morning Theia thinks -- she indicates to you that she thinks she's going to be arrested?

A Yes.

Q But at that time she thinks it's for prostitution?

A Yes.

Q There's no indication to you at that time, at least from what she expresses to you, that she thinks she's going to be arrested for harming G.M.

A Yes.

Q Just so I know. Who have you met to discuss this case with?

A I have met with Sergeant Allison Moore, Kellie Williams and --

Q Kellie Williams would be the SLED Agent?

A Yes. And then Chief -- is it McClurky?

Q McClurken.

A I'm sorry. And then there was another gentleman in there and I don't remember his name. He worked for the police department, I thought. And then also the deputy coroner.

Q And these were all on your own?

A Yes.

Q And I take it from your testimony you believe that Theia is responsible for the beating death of G.M. and she should be punished for it?

A If she is responsible, yes. I think ever who -- even if it involves both of them, I want them punished to the fullest extent of the law.

Q And you've made that clear to law enforcement and to Theia from the beginning?

A Yes, I have. I have not wavered.

Q Now, my understanding is you were Theia -- you were a single mother to Theia?

A Yes.

Q How old was Theia before she was living on her own?

A She was 16.

Q Could she have been 17? 16, 17 range?

A Yeah.

Q How old was she when G.M. was born?

A She was 18, I believe. Yes, she had just turned 18.

Q So she would have been pregnant at 17 --

A Right.

Q -- had the child at 18?

A Exactly.

Q Do you know where she was living when she was 17?

A She was living with Michael Brown out -- they had a little rondette in north Asheville, and then when they got

-- I don't know if they were thrown out or they just decided to leave because of a dispute with the landlord, he and she moved out to Leicester at a house off of Newfound. And I came to pick her up on Christmas Eve of 2014 because she'd had enough of Michael Brown. And I brought her to my home on Aiken Street in Asheville at that time.

Q And then Michael Brown was replaced as a boyfriend by Richard Bowman?

A Yes.

Q Did you know Richard Bowman when -- how long were they together -- were Theia and Richard Bowman together when you first met Richard?

A I want to say it was a couple of months. I mean, she had told me about him when we were at Long Horn Steakhouse. I want to say that was in maybe April. And I want to think -- I want to say that it was in June that I first met him, and Makayla, her friend. And G.M. was along and we went to Asheville Pizza and Brewing Company on Merrimon Avenue in Asheville.

Q And by that time they were already living together?

A I presume so, yes.

Q Did she move into Richard's home or he moved into her home?

A He moved into her home. She had an apartment in Erskine that I paid the deposit on. I also gave her my

washer and dryer and all my furniture, except for a few lamps. Yeah.

Q And Theia would have been about, what, 19, 20 at that time?

A Let's see. That was in spring of 2013. I'm sorry. Well -- yeah. It was still spring and early June.

Q And we know that Richard was coming out of six years of military?

A That's what she told me.

Q But he moved in with her?

A Yes, he did.

Q Did you ever know him to work?

A No. She told me that he got a few jobs. Like one at the Grove Park Inn and one at Walmart. But he was just done in about a week or less.

Q Did you ever know -- did you know that Richard was also an escort or a prostitute?

A No.

Q You saw G.M. on December 27th?

A Yes, I did.

Q And that's when you had the picnic at the skating rink, or the park?

A At Malvern Hills Park in west Asheville, yes.

Q And you said that G.M. and Richard and Theia all came together?

A Yes.
Q In which car?
A In Theia's Malibu.
Q Was that a fairly new car for Theia?
A It would for her. I think it was like a 2005 model.
Q Do you know how she got that Malibu?
A I bought it. I gave her the money to buy it and she met with the lady. But I had to get back to Asheville so I could go to my bank job the next morning.
Q But it was just a -- I'll call it a fairly cheap used car?
A Yeah, it was a beater. I mean, I hate to use that expression, but it really was like eight, $900, you know.
Q Why did you have to buy her a -- didn't she have a purple --
A She did. She had a Nissan Sentra and she told me -- do you want the whole story about December 12th or just how she acquired -- why she had to acquire a second car?
Q I just want to know why she had to acquire a second car.
A Because he had disabled her car and locked her out of not only the car but her house, and he had G.M. inside the trailer.
Q Well, did you just hear that from ear or did you come -- do you have firsthand knowledge of that?

A She called me and told me, you know, he really hurt my back. I'm hiding in the woods outside of my trailer. I need you to come help me. So I left work and I came to -- and she's --

Q Do you remember what day that was?

A Yes. That was Friday, December the 12th, 2014. I'd never been to her home before. I didn't even know where they lived.

Q So that's the first time you'd ever come to Enoree?

A Yes.

Q And then what happened when you got to Enoree?

A I got to where her driveway is, and sure enough there she was barefoot in the woods waiting for me. So she got in the car with me and we drove up, and magically the door opened and here's G.M. putting on his shoes.

Q But when you say magically the door opens, does that mean G.M. opened it or that --

A No. Richard opened it, I believe, because G.M. was sat down putting on his shoes ready to go.

Q So when you say magically, you're just kind of saying right when I approached the door --

A Yeah.

Q -- it kind of automatically opened as if somebody was watching for me.

A He saw me coming up the driveway probably. And so,

immediately I was -- I was like let's just get the carseat and go. And she said he won't give me the keys. He said I don't have the keys. And I said, look, we need the carseat. I had bought a carseat - as a matter of fact, I bought three carseats, but this one was really nice.

Q The carseat in the purple car?

A The carseat in the purple car. And he would not give us the keys. He said he didn't have them. But he had disabled the car. He had pulled spark plugs, and I don't know if it was something with the distributor or the alternator, something. She's like he's a mechanic. He knows how to disable and he knows how to repair, and I can't make the car run. So -- and all I knew was I'm getting my daughter and my grandson out of here, because I've never liked this guy to begin with. But especially after he had beaten Theia, and especially this time when he was alone with my grandson in her trailer, disabling her car that she had paid for with money that she had saved up in Asheville. I went with her in Asheville. Actually it was out --

Q We're talking about the purple car?

A Yeah, the purple car she got from Fletcher, which is an outskirt of Asheville.

Q To your knowledge, did Richard bring in any kind of possessions into the relationship?

A No. And she got disability each month of like over

$700. That has never been mentioned. I mean, she had -- she had money coming in, and she had support from her mom. I mean, I didn't just buy her anything she wanted. But she knew that she could call upon me for anything, and she did. And that's fine because I'm G.M. grandmother. I'm her mother. That's what I do.

Q So she had a relatively small but steady check coming in?

A She sure did, absolutely. For years.

Q Since you knew them Richard was basically living --

A Yes.

Q -- off of her?

A Yes.

Q Would you kind of call that leaching off of her?

A I'd call it -- she was his cash cow, yeah. And leaching. He's a parasite. He's a disgusting individual.

Q What happened after you -- you said that you -- the door opened. G.M. was --

A Putting his shoes on, yeah.

Q -- came out, and what happened next?

A And so --

Q You asked Richard for --

A I asked Richard for it, and Theia went to try and talk with him, and I was just like come on out. You know, if he's not going to get it, that's fine. We'll put him in the

backseat. And Theia was really, really paranoid about that. And I said, look, you know, if they pull me over I'll explain it and they can come ask him for the carseat, you know.

Q Theia's concern at that time is if you get caught driving without a seat you're in trouble?

A Right. And I said, you know, that's on me. That's okay. We did this in the '70s. We all survived it, before carseats were even invented.

Q So where did you all go?

A So we went to the nearest Walmart and we get a carseat and some Pull-Ups and some clothes for him, a few clothes for her, some wipes. You know, just basic toiletries. And I was trying to convince her the whole time, you know, you need to just come back with me to Asheville. Just get away from this guy. If he really did disable the car I don't know how you're going to get back up to Asheville. But at that point in time he didn't know where I lived. So I was like he's going to have a hard time finding you. You need to be safe. And I lived in a little cottage in Black Mountain. It was a one bedroom but they could have stayed with me. It was a safe place to be. But she decided that she wanted to stay. And so, after having dinner at Ryan's we got her -- she said I've stayed at the Roadway before and stayed at my friend's house. And we actually went and

picked up one of her friends. I don't remember his name, but he was very nice. And she was like he'll protect me, you know, should Richard show up. Meanwhile, someone's blowing up her phone, texting --

Q What do you mean by blowing up her phone?

A Texting, trying to call her. She's like, well, this is my other friend. She didn't want me to know who it was, but I kind of figured it was Richard, and it was, because that's what he did. Anytime that she went to meet with me for dinner, you know, shopping, whatever, she couldn't get a moment's peace. He would be just constantly messaging her, calling her, you know. And we're talking about maybe an hour or an hour and a half of time, you know, just mother and daughter. Or, you know, mother, daughter and grandson. And then finally it got to the point where he just came along with her. He was just that controlling. So anyway, she -- I paid for her -- I think it was -- that was Friday. I paid through the following Thursday at the Roadway off of exit 17, I think, Spartanburg.

Q In South Carolina or in North Carolina?

A In South Carolina. She said she had friends here that she -- you know, that she could maybe get an apartment with. Maybe a roommate that she would need to call around, et cetera -- and so, I was like, okay. But call me anytime. I will come and get you both. I mean, I'm short of hog tying

her, there wasn't anything that I could do.

Q And that was on December 12th?

A That was on December 12th, a Friday.

Q After that time did you all ever talk about a fellow named Poppy?

A We did, yes.

Q Who was Papi?

A Papi was a Mexican guy that she met. And the way that I remember it, her describing him, is he was a contract laborer. He was Hispanic. He was originally from Alabama. And so, my question, of course, was, well, is he illegal or is he legal? We don't need more, you know, going out of the frying pan into the fire kind of thing. You know, is he good to you. Is he a legal worker. What do you think. Does he have any family of his own. Because I'm just like, could you, please, for the life of you, just get away from bad men.

Q You were looking for a more steady person?

A Yes. Yes. And she wanted me to meet him. She's like he speaks Spanish. And, of course, I speak Spanish and a little bit of German, so she thought that that was rather quaint. And, you know, it's pretty -- it's pretty scary to even contemplate, you know, yet another guy in her life after what she went through with Richard, you know.

Q Did she indicate that she was making plans to move in

with Papi?

A She absolutely was. She was ready to move. And she was like, I may need to call you like even in the middle of the night because Richard has just become so controlling and so violent. And I was like, Theia, I'm really scared that someone's going to get killed. I'm really scared. Please just come with me.

Q Have you seen Theia on other occasions where she's had indications of being beaten?

A Yes.

Q While she was with Richard?

A Yes. In Asheville --

Q What were some other occasions? When you actually seen what appeared to be beaten marks?

A That was -- I don't remember which night it was, and you may have it in your notes. But it was -- she called me at work and she said I'm up here at Michelle's house in 29A and her voice was shaking and she was just almost screaming. And so finally Michelle got on the phone. And where Theia lived was here and Michelle lived up here at Erskine. So she had run in her underwear and her shirt, bleeding from her face, bleeding from her leg, where he had attacked her.

Q Erskine was public housing?

A Yes. Yes. Through HUD. And so, I came out to Michelle's and so did the cops. They arrived right after

me. And so, we took Theia's statement, and I was like -- you know, her door was wide open to her apartment. So I was like, I'm afraid to even go back down here. But we did with police escorting us. And the whole place was just completely trashed. She said that he was taking a bath and that he just --

Q Richard was taking a bath?

A Uh-huh. And she came in. I don't think he was supposed to be there. But somebody had shattered -- there's a window -- like here's the front door. Here's a window to where the dryer and washer were. And somebody had shattered a storm window. I'm not talking about like thin glass. I mean, it's a very strong window. And that's what he would crawl through to get in, and that's what he did. And she was like you're not supposed to be here, you know. And he went off on her is what she told me.

Q Did you participate in her filing charges against him with the police?

A I don't know if she followed up with that or not. I know that they came back down to the apartment with us. And I don't know if they --

Q And they, you're talking about the police did?

A Yeah. I don't know if they filed the report or if she did the following day. She did not ask me to take her to the magistrate's. He had her keys to her car, keys to her

house, keys to her mailbox. He would not give them back.

Q And the incident that you're talking about on Erskine?

A Yes.

Q Do you remember the date?

A I do not unfortunately. I really don't know.

MR. VERNON: Beg the Court's permission, Your Honor.

A I know it was warm enough for her to be so clad without freezing. So I want to say that it was maybe sometime in late summer. Perhaps in September.

Q Late summer of what year?

A This was --

Q Could it have been in September of 2013?

A Yes. Because it definitely was in September of 2014 she was already gone from Erskine.

Q Did the -- what did the housing authority do? What actions did they take?

A They had -- I thought that they had already told him he couldn't be there for trespassing reasons.

Q Did they do anything physical to the apartment?

A I think that they came and fixed the locks definitely. I'm not sure if they repaired the window. I would hope that they would have. But that was something that Theia followed up on. I don't really know. See, the housing authority couldn't speak with me without Theia's permission.

Q Have you seen Theia other times where she's been

physically roughed up or are those the --

A She would call me on occasions. And my mother has concurred with this, but she's not here, of course. My mother is 80.

Q Well then, don't -- don't -- is it your opinion that this has just been a recurring physical --

A It has been ongoing.

Q Almost from the beginning?

A Yes.

Q And yet Theia just keeps going back to him?

A And it's just -- he's contributed nothing. Nothing positive.

Q Did Richard know you didn't like him?

A I'm sure he's very well aware of it.

Q What about when you said he kissed the hand of G.M. When you're talking to Theia and everybody does Richard like come and sit in the crowd and joke with everybody and --

A He nearby for me -- Theia and me. Like when we met at Arby's. And he just was constantly nearby to just monitor the conversation. He wasn't part of the conversation necessarily. He may make a comment here and there, but it was never like loquacious or talkative.

Q And I apologize. I'm going to go back. On the 27th, which was the birthday/Christmas --

A Yes.

Q -- exchange.

A Yes.

Q What time did Theia and G.M. and Richard arrive in Asheville?

A It was a little bit after 12:00.

Q So they would have had to leave -- if they came straight away they would have had to leave about 7:30 in the morning to -- well, I'm sorry. About 9:30 in the morning, I guess?

A I think they got a late start that morning, because we were supposed to meet at 12:00 and she said we're going to be a little bit late. We're a little delayed. And I was like it's okay. It's no big deal. I didn't care.

Q But roughly when do you think that they did arrive?

A They did arrive a little bit after 12:00. It wasn't quite 12:30, so it wasn't that late.

Q And so, it would have been about a two and a half hour ride?

A Probably so, yes.

Q So if they arrived at 12:30 they would have had to leave about 10:00?

A At least, yes.

Q And if they left around 2:30 they wouldn't have gotten home until after 5:00?

A Uh-huh, probably, or maybe later because of whatever

traffic.

Q And then if they had stopped along the way, too?

A Yes.

Q So for the better part of the day of the 27th you were with them, that they were either on the road or with you or back on the road going home?

A That's exactly right, yes.

Q So the daylight hours of the 27th, they would not have even been at home?

A Not only that. But I believe that Theia told me they went out to Fletcher to see either Junior or some other friends -- not Fletcher, Fairview. Fletcher and Fairview are connected like this.

Q They were from -- they lived in Asheville for a while. So not only you in that area --

A Yeah.

Q -- they had other friends?

A So they went to see, I want to say, at least Junior. If not Junior, as well as James, out in Fairview.

Q And do you remember them coming from court or going to court?

A No.

Q The 27th was a Saturday, wasn't it?

A It was a Saturday. Yes, absolutely.

Q Asheville's in a different state. They do things a

little different. But do they run criminal courts on the weekends?

A They do not.

Q So that will be an unlikely --

A That's exactly right. Yes, sir.

Q And then I think you had indicated that Theia had called you on December 28th from Walmart?

A She did. It was about 8:00 p.m.

Q And that was a call about Papi?

A Yeah, mainly about Papi, and like -- she was like, I'm just suffocating. He just won't let me be. You know, I've got to get away. And I was like, well, do you want me to come down now? Do you want me to come get you both and move you to Papi's now? I was like, I am ready. So ready for you to be away from him.

Q And you heard G.M. chattering in the background?

A Yeah. She wanted him to talk with me on the phone. And that was normal, of course, because I'm his grandmother. But he -- and he did for a little bit. But then he was busy trying to sing. He just wanted to sing. He's a lot like his mom. She sings.

Q Now, G.M. was a small -- he was about three feet tall, I guess?

A Yeah.

Q And he was fairly small framed?

A He was. But he was -- for a kid he was solidly built because he was just so active and strong. You know, really strong.

Q Now, when you said that he was good with words, what would be a kind of sentence that G.M. could say?

A Well, he was very conversational. For example, during that last meal that we had together he'd take a bite of his pizza and he'd say, "Hmm, this is good." And he would say -- you know, like if I dropped something he would say, "Oh, my goodness," or, you know, if I sneezed he would say, "Bless you, Mammaw." And he was just really a polite kid and he would say please and thank you and excuse me. I mean, some kids do and some kids don't. But my daughter definitely worked with him to make sure that, you know, he was on it. That's why she wanted me to get the VTech for him. It was one of the more advanced models that she had not been able to afford, although she bought him toys for Christmas, and I said sure. Because she wanted him to learn more and more.

Q Let me turn to the day of December 30th. You're saying that Theia called you from the hospital?

A Yes.

Q Is it possible she was giving you what she knew from Richard about what had happened?

A It is possible.

Q That she was relaying what she thought was going on?
A It was almost like she was programmed to say this explanation that to me didn't fly at all. But she -- it is imperative that she make me understand it. And apparently it was imperative that they make the ER doctor understand it because he said the same thing.
Q And she didn't talk about beating or bruising? Her concern at that time was the vomit and the choking?
A That's exactly right. That he stop breathing.
Q Do you think if she had indicated that he had been beat or stuff like that, that you would remember that today?
A I absolutely would, yes.
Q So Theia's concern when she first called you is my child's choking, he's vomiting in his mouth --
A Right.
Q -- and he's -- we're taking him to the emergency room?
A Right.
Q And we're taking hm to the emergency room?
A Right.
Q And then she gave you kind of a summary of what happened?
A Yes.
Q But just because you had seen G.M. two days before and, in fact, talked to him briefly the day before, something just didn't sound right to you?

A It was not anywhere near right, no.
Q And you're well aware of the tumultuous relationship?
A Yes.
Q And, in fact, you're the one who asked Dr. Holaday to look into the case more thoroughly?
A Yes, I am.
Q And then you said Theia later on called you that same morning, early in the morning --
A Yes.
Q -- while this was all going on?
A Yes.
Q And she made the statement, "This happens all the time"?
A Yes.
Q Did she specifically say what she was talking about, or you were just kind of testifying how you took --
A No, she really told me. She said, "You need to accept this. It has happened. It happens all the time." She was explaining it to me --
Q Was she talking about children choking or just that --
A That certain condition of child choking on their vomit and there you go. Like it was something like SIDS that was just happening all over the place all the time. And I thought, no, I do not have to accept it and I'm not going to.

Q And she was still at that time just talking about that the child had vomited in his mouth and --

A And breathed it in, yeah.

Q -- and had died?

A Yes. And also, by that time I had heard the doctor's version. And I think I also told her, you know, I've heard a different version completely from the doctor. Which one is it? You know, were you traveling in the night, or did Richard come in? And that's when she had just got pretty flustered and I said, you know what, I got to go. I got to go.

Q And you could hear Richard in the background talking to some police officer --

A Somebody, trying to explain --

Q -- or somebody explaining the same?

A -- the first story that I heard.

Q And you sat through this trial today? All week?

A Yes.

Q And that was what your understanding of what Richard had told her was that the child was choking?

A Yes.

Q So that's consistent with what you heard him saying then?

A That is consistent, yes. He was saying that he'd come into his room and found him that way. And again, this time

-- until this week I didn't know that they had moved rooms. I thought here were the two bedrooms, like totally opposite.

Q And Theia's been in custody since December 30th of 2014?

A Yes.

Q And during that time you've only accepted one collect call from her?

A That's exactly right.

Q Which we know because the jail recorded it?

A Yes.

Q And you explain to her that you just wanted to know what -- you weren't overly sympathetic --

A No.

Q -- and indicated you wanted to help her, did you?

A No, I was not.

Q In fact, you said something like "If I think you are guilty, you know, you will pay for it."

A Absolutely. I probably did. I don't remember it verbatim what I said. But yeah, I was not polite.

Q And you said words to the effect this might even be a death penalty case?

A I'm sorry, what?

Q You indicated to the prosecutor you said that they might even put you to death for this?

A They might. And I don't know. I don't know what the

laws dictate in South Carolina, or really even in North Carolina for that sort of thing. To me --

Q But that was just you acting out of emotion?

A Oh, yeah.

Q Speaking out of emotion?

A Just furious.

Q Do you believe that your daughter beat G.M. to death?

A I don't think that she did based on what I've heard this week. I wasn't sure before.

MR. DANIEL: Objection, Your Honor. I mean, this matter is the fact of the jury.

MR. VERNER: That is -- I agree with the Solicitor, Your Honor.

THE COURT: Sustained.

MR. VERNER: Just beg the Court's indulgence one second, Your Honor.

Q And you met with Investigator Moore, the officer in the middle --

A Yes.

Q -- on December 31st of --

A Yes, I did.

Q -- 2014?

A Yes.

Q And you voluntarily came to Newberry to speak to her?

A I did.

Q And, in fact, you were in favor of a full investigation at that time?

A Absolutely.

Q Whether it implicated Theia or whether it implicated Richard or whether it implicated both of them?

A Exactly right, yes.

Q But you were suspicious something wrong had happened?

A I sure was.

Q On the issue of the -- what we heard the skating incident. But that is true that the child had fallen during the skating incident?

A Yeah, he fell. And I didn't even see the mark on his hand. I saw red clay mud and I saw Richard make a big show of kissing his booboo. And I thought, I don't even know what kind of germs are on that. There was no way I would do that. I mean, it wasn't enough of an injury for me to even reach into my purse, that probably weighs 50 pounds, and has antibacterial and band-aids, you know. I mean, it really -- it was not that big of a deal. And he wasn't crying. He just said owe, of course.

Q And as of the 27th that was the only injury that you were aware of --

A Exactly right.

Q -- that G.M. would have had?

A He also -- he also went to the bathroom when we were at the McDonald's. And it was -- I don't know how the McDonald's are here, but their bathrooms are about this wide, unless you go into the handicapped. And he was in that one. Theia was standing at the door to give him some privacy. I was on my cell phone talking about a dog that I was, you know, dealing with. But he went to the bathroom easily. And, I mean, I could -- I just glanced, but I didn't see anything out of the ordinary when he was pulling up his Pull-Ups and pants.

Q And he was fairly potty trained at that point?

A Pretty much. He was doing a good job. Which I think is normal for a little boy that's about to turn three. I don't know. I've never raised a little boy before. I was the baby of my family.

Q And I believe you also, in addition to -- or maybe at the same time that you met with Investigator Moore, you also met with the SLED Agent to her left?

A I did.

Q The photograph -- did you see the Facebook photograph of you holding --

A G.M.

Q -- G.M.

A Which one? There are more than one.

Q The one I put into evidence in this case?

A Okay. The one of me holding him when we were at Arby's. Yes. Yes.

Q And that was taken in November of -- at Biltmore in November 2014?

A Yes. Biltmore Arby's. And I don't know the exact day. I want to say November -- it was later than November 14th, I think. It wasn't quite Thanksgiving, but I don't remember the exact day. And it was taken on Theia's phone. Otherwise I would have it in my phone and then I would know exactly.

MR. VERNER: I'm sorry you had to be here, but I thank you, Ms. McArdle. The Prosecutor may have some more.

MR. DANIEL: Very briefly, Your Honor. We have Dr. Ross up there.

THE COURT: I don't know that we're going to get to her before lunch. I'll tell you that right now.

REDIRECT EXAMINATION

BY MR. DANIEL:

Q Ms. McArdle, would you agree that no parent wants to think the worst of their child, correct?

A That is correct.

Q And we talked about Theia's past in North Carolina with DSS taking G.M. away for about a year, correct?

A That's correct.

Q And it's because of the incident involving Theia

slapping him in the face for breaking cigarettes, correct?
A That's what I'm told, yes.
Q And do you accept the fact that she did that?
A I'm not happy with it, no.
Q But do you accept it?
A Do you mean I accept it as a fact?
Q Yes. Do you --
A Yes, it is a fact, absolutely. Undisputable.
Q And she was convicted?
A She was. And she went through the treatments that they said she had to go through, the classes, et cetera, to make her a better parent. More responsible.
Q But wouldn't it be nice if you didn't have to accept something like that, correct?
A Oh, yeah. Very much so.
Q And is it fair to say you're holding out hope that Richard Bowman was the one who did this to G.M.
A I --
Q That you'd like to think that in your head?
A I would actually like to think that nobody could do that to my grandson, to be completely honest. But if you're asking me if I want him to be guilty instead of her then my answer remains the same as it was the day that my grandson died. I want whoever did this to my grandson to be punished to the fullest extent of the law. I don't care who it is.

I mean that. I am still -- I have a fury in me that has not died. It is still there. I am so angry.

Q And I understand. And it's difficult to see your daughter on trial for this crime?

A Well, the most difficult thing of all is imaging. I can't even imagine how somebody could do that to my grandson. And I want -- to be completely honest, I'm not a physically violent person. But I want them to suffer.

Q Well, it's inconceivable that something like this could happen, correct?

A Yes.

Q Especially your own child could commit such a heinous act?

A Exactly right. And to me it's like I did everything that I could within my means to support them. And short of hog tying them and bringing them back to North Carolina, which is totally against the law, I couldn't do anything else. I felt very helpless.

Q But sometimes children go astray, correct?

A Yes, they do.

MR. DANIEL: I don't have any further questions, Your Honor.

THE COURT: Any recross?

MR. VERNER: No, Your Honor.

THE COURT: Very good. Ma'am, you may step down.

(Whereupon, the witness stepped down from the witness stand.)

THE COURT: Solicitor, do we have -- I believe we cannot get to Dr. Ross at this point in time. I don't want to break her testimony up. So we'll have her after lunch. I know she's still out there. So if you want to come back around 2:00 or so, that's fine. I apologize for the inconvenience to you.

MR. STUMBO: Judge, if we could, maybe take an earlier lunch today, now. And I wouldn't mind her being the next witness right after we eat lunch.

THE COURT: My impression was that the gentleman back there was from SLED and I thought that we could do him. And that should not be too long.

MR. STUMBO: He is.

THE COURT: I'm assuming he's the telecommunications guy.

MR. STUMBO: He is. That's Chris Johnson, correct. We can put him on. I mean, assuming -- it shouldn't take long.

THE COURT: That has been an assumption throughout that this trial.

MR. STUMBO: Yes.

THE COURT: Let's go ahead and call him and maybe --

MR. STUMBO: Well, fortunately, Mr. Johnson lives in Newberry, Judge. He is a resident here.

THE COURT: Let's call him.

MR. STUMBO: All right. The State calls Chris Johnson.

CHRIS JOHNSON, having been first duly sworn, testified as follows:

DIRECT EXAMINATION

BY MR. STUMBO:

Q Good afternoon, Detective Johnson. You're a SLED Agent?

A Yes, sir.

Q You from Newberry; is that correct?

A Yes, sir.

Q Born and raised?

A Yes, sir.

Q Before you went to SLED you worked for the Sheriff's Department in Newberry?

A I've worked dispatch as a reserve officer while I was going to college. Yes, sir.

Q And how long have you been with SLED?

A Twelve and a half years as a sworn agent.

Q You being a sworn agent, that means after you go to the Academy and --

A Yes, sir. I worked --

Q -- have arrest powers and that kind of thing.

A Yes, sir. I worked non-sworn for about six years prior to.

Q And you worked with their computer crime at SLED?
A Yes, sir. My first four years was in computer crimes.
Q And what kind of training did you get to be a SLED agent working computer crimes?
A Anything from basic detective to a lot of the intrusion training as far as computer networks were concerned. Computer exams. Phone technology as far as examinations of phones. Doing analysis on call records. That type thing.
Q And as part of that training did you learn how to take a computer or a phone, some kind of device, that has data on it and extract that data for the purposes of analysis?
A Yes, sir.
Q And that's been your job for the last how many years at SLED?
A I've been doing exclusively the phone side for the last eight to nine years.
Q So your job -- what's your job title there at SLED?
A I'm currently a Lieutenant supervisor Special Agent over one of our fugitive teams.
Q But you've been working cell phone investigation --
A Yes, sir.
Q -- basically the last eight?
A We specialize in that side of it as far as the fugitive operations or intelligence based policing.
Q You have specialized training classes to learn how to

do this stuff? How many hours of training have you had?

A Probably in the hundreds. I've got a notebook full of certificates at this point in my career.

Q And just give me a really rough estimate. How many computers or phones have you analyzed over the last eight years?

A Probably two, 300 easily. Maybe more than that.

Q As part of that you also -- you extract data. And can you compare those with call records from cell phone companies?

A It's a little bit different. What we do as far as the extractions from the phone provides you with a different set of data than what we actually get from the phone companies. Some of it is a little bit the same as far as the call. Incoming, outgoing calls. That type of thing. But what we can do with the legal process to the phone companies, it allows us to get location information as far as cell tower usage, that type of thing, sectors.

Q So basically you can extract the information off the phone, law enforcement can subpoena records from the cell phone companies --

A Yes, sir.

Q -- and you can kind of interface those records and look at them?

A Yes, sir. Yes, sir.

Q In comparing those are you able to ascertain where a person might have been using a cell phone at any given time?
A Generalized. Yes, sir. We can do -- it doesn't give an actual thumb print as far as where the phone is exactly at in most cases. But what it will do is give you the sector or the tower. Each tower is made up out of normally three sectors. Sometimes there's only what they call an omni-directional tower which is just one. One entire circle. But you can break it down based off the -- and it gets -- it kind of kind of gets a little technical. But basically you can tell the footprint of the tower and that particular geographic sector is about as close as we normally get.
Q Is that -- you said you can hit off of three coordinates or sectors basically?
A Yes, sir. Each tower is normally made up -- each antenna on the tower is normally made up into three sectors.
Q And is that what is known as triangulation?
A No -- well, triangulation gets into when you start looking at measurements off of three different towers. This is just, you know -- you'll see on the call records that it hit this tower, and then it'll tell you that it was on, you know, either sector one or sector two. And that's telling you what face of the tower, as far as the compensating goes, is how we map them out.

Q And those records come from the cell phone companies?
A Yes, sir. Yes, sir.
Q They provide you --
A They maintain that.
Q -- what towers they own --
A Yes, sir.
Q -- that that phone hit off at any given time?
A Right. Yes, sir.
Q It gives you times that those calls were made?
A Yes, sir.
Q Are you able to -- as part of your job there at SLED were you able to analyze a cell phone in relation to this case?
A Yes, sir.
Q And that was a phone that was identified as one belonging to the Defendant McArdle?
A Yes, sir. I believe it was -- the model of it -- or the make of it was a Blu phone. A B-l-u.
Q A B-l --
A B-l-u. It's called Blu. It's a manufacturer of cell phones.
Q Is that one of the ones you kind of get at Walmart? Kind of pay by the month --
A I believe so. It's not a very common phone. I think that was probably only the second or third one that I had

seen. Not as popular as, you know, your Apple, your Samsung, Galaxies, that type of thing.

Q Now, when you get a device, a type of cell phone, what generally at SLED -- you take that back to the computer crime center which is on Bush River Road in Columbia, correct?

A Sometimes. Sometimes we can do it in the field. It just depends on the phone itself. This particular phone -- a lot of times -- we've got basically a suitcase that we carry that's called a Cellebrite system. This particular phone was not compatible with Cellebrite, so we did take it back to computer crime and used a program called XRY. A new program that they had that we were able to extract the data from this phone with.

Q So XRY was compatible with this phone?

A Yes, sir.

Q Cellebrite was not?

A That's right.

Q And you had to take it to the computer crime center to use the --

A Yes, sir.

Q -- XRY system?

A Yes, sir. It's not quite as portable.

Q Did you do an extraction of Theia McArdle's phone?

A Yes, sir. I was present during the extraction. It was

myself and the computer crimes agent. But I was present during the entire time.

Q And were those extractions, that data, was it transferred to a digital format to give to --

A It was.

Q -- law enforcement?

A It was. We -- basically it works the same way as the Cellebrite system. You basically identify the make and model of the phone. You tell the computer software what it is. And then it will tell you which wire connection, which plug to pull out of your box and use. And then from that you just basically hit start and it dumps it into a folder. You tell it what you want. You know, my search warrant says I can get call records, emails, that type thing, but it says I can't get, you know, app data or something, then you don't select that box. And you go through and select, you know, what you're allowed to get based on the search warrant that was signed, and then it extracts it and puts it into a folder that we can burn to a disk or a thumb drive or --

Q Okay. Now, why do you extract the information and then analyze that instead of just flipping through the phone?

A Just like with computers. Once you start accessing anything on the phone then you've got the capability of changing date and times as to when a file was created, when it was last accessed. You have -- and then at that point

you start altering evidence, which is obviously something you never want to do. You want to always -- even when we're doing computer crimes, you would image the actual hard drive and then work off of the image so that you maintain the security of the actual evidence without making any alterations to the files.

Q So once you image it you put the phone to the side and --

A Yes, sir.

Q -- maintain the -- preserve the evidence?

A Yes, sir. You always work off of that working copy or that evidence file.

Q So it's an exact -- when you say image --

A Yes, sir.

Q -- there's not one bit change --

A Yes, sir. In some of the phones, the Smart Phones, you can do that with, like with the computers. It's what they call a hashtag. And it was -- basically it's a 10 to 12 digit number, letter number, that you can go back and look and it is able to show that it is a mirror copy. I looked at that hashtag on it.

Q Right. So it's better than DNA?

A Yes.

Q It's basically the exact --

A Yes, sir. That same thing. It's just a computerized

version.

Q And after you used the software to extract the data and put it into a report, I'm assuming XRY has the ability to --

A Yes, sir. It just --

Q -- get you a report?

A Right. Just like with computers. Everything coming off that phone is basically zeros and ones. It's all written in computer language. But it's taken it and put it -- in the same way that you see it on the phone it's putting it into that report so that, you know, it makes sense. It looks like what you would see on the phone. It's not just computer language.

Q I'm going to hand you --

MR. STUMBO: If I may approach, Your Honor.

Q State's 142.

A Yes, sir.

Q And you were able to review this particular disk in preparation for court today?

A Yes, sir.

Q And you initialed the --

A I did.

Q Is it fair and accurate copy of your report of the cell phone?

A Yes, sir. The actual folder name is the same, CJ, my initials, that we created. It's the exact same.

MR. STUMBO: Judge, we'd move the cell phone data, State's 142 into evidence.

THE COURT: Any objection?

MR. VERNER: Your Honor, do they have specific things they want to bring in? Not --

MR. STUMBO: We do, Judge. We have a exhibit that's --

MR. VERNER: That seems more appropriate than -- I don't even know if that's like a disk you can put in and you know how to run automatically.

THE COURT: Do you have the data broken down?

MR. STUMBO: We plan to publish, Judge, the printed out version, which I've got right here. And I think Mr. Verner has already cross-examined one of the witnesses on it.

MR. VERNER: This is the information on it?

THE COURT: That's the printout of what's on the disk?

MR. STUMBO: This is phone records, Judge. It's a little bit different from the cell phone companies. But, of course, data from the disk itself -- or from the cell phone itself, as we talked about before, we have to cross-reference times and that sort of thing between the phone records and the phone itself.

MR. VERNER: I don't have a problem -- the disk is what's in the Solicitor's written package in his hand?

MR. STUMBO: Correct.

MR. VERNER: Okay. Just -- I don't have any problem

with both or --

THE COURT: What's the exhibit number again?

MR. STUMBO: 142, Judge.

THE COURT: State's 142 is in evidence.

MR. STUMBO: And, Judge, I believe 136 is in. But if could check with --

MR. VERNER: Well, Your Honor, actually the Assistant Solicitor is telling me it's somewhat different from the --

MR. STUMBO: Right. The phone records need to be compared with the actual phone data, which is the disk. Does that make sense?

MR. VERNER: That's not the way I'm understanding it fro the Assistant.

MR. DANIEL: That is --

MR. VERNER: Okay.

MR. STUMBO: And all this has obviously been given in discovery, Judge.

MR. VERNER: I don't have a problem. Just before it goes back to the jury, if I could access on the computer just to make sure what it's -- we're talking about just the phone calls and dates and stuff like that.

THE COURT: 136 is in evidence as well, and I'll allow 142 into evidence subject to Mr. Verner's opportunity to review same.

(Whereupon, State's Exhibit No. 136 and 142 were

admitted into evidence.)

MR. STUMBO: Now, I'm going to -- I've I may approach, Your Honor.

THE COURT: Please.

Q Agent Johnson, I'm going to hand you what's already State's 136.

A Yes, sir.

Q This is -- what is this?

A This is T-Mobile's -- basically their version of the call records, call location information.

MR. STUMBO: If we could pull that up, Mr. Bentley, 136.

Q And if you could, Agent Johnson -- can you see that? Do you need to step down?

A I would prefer.

Q You can step down. Just keep your voice up for the court reporter.

A Yes, sir.

(Whereupon, the witness stepped down from the witness stand.)

Q If you could, just as an example on the top line there, explain to me where it says first tower latitude and longitude. What does that -- can you explain that to the jury?

A Basically what it's giving you is the actual GPS

coordinates of the tower where it sits. Most of them will have an address, but the address is not always exact. Whereas that coordinate, as you can see, is a lot longer than most normal coordinates. It's an exact thumb print. You can drive to those coordinates and you'll find that tower.

Q And so, you can actually pull up a Google map and put a pin right on where that tower --

A Yes, sir. You're going to see the tower on Google map.

(Whereupon, the witness returns to the witness stand.)

Q I'm going to hand you what's been marked as State's 144 for ID.

A Yes, sir.

Q You had an opportunity to look at this before today?

A Yes, sir.

Q And is this a fair and accurate representation of the area around the Enoree location where the Defendant lived?

A Yes, sir. That tower is the one that most likely would service her house.

Q And the little yellow pin on there was dropped at the location. That's just the computer -- you can put a little pin on the exact spot?

A Yes, sir. That would be the coordinates that would correspond with that tower, or that particular call.

Q And the other pin there is in the exact location of the

address where --

A Yes, sir.

Q -- Theia McArdle and Richard Bowman lived?

A That was her address on Union Highway, yes.

Q And both of those are reflected on State's 144.

MR. STUMBO: Judge we would just move State's 144 into evidence to show location on the Google map.

MR. VERNER: 144?

MR. STUMBO: That's correct.

MR. VERNER: Without objection, Your Honor.

THE COURT: It is admitted without objection.

(Whereupon, State's Exhibit No. 144 was admitted into evidence.)

(Whereupon, the witness stepped down from the witness stand.)

Q Look at -- pull that up. 144. Agent Johnson, if you could, just let the jury know what we're looking at here. What area.

A Okay. Again, this is the coordinates for that tower, where it's mapped out at. Again, if you zoom in you'd probably be able to see the tower there on the map. These are, I believe, the times that were associated with that tower as calls were made. And then our pinpoint here is the actual address where the McArdle home is located.

Q And this is right off I-26 exit 49, or the Highway 49

exit right here?

A Yes, sir.

Q That's the home right off the exit and this is the cell phone tower.

A Yes, sir.

Q How many -- just an estimate. Is that a mile away, two miles away?

A It's probably, without drawing it out -- the software we use can actually draw the circle out to the exact mile. I would say it's probably a mile and a half to that location as far as the crow flies, as you would say.

Q So when calls are made from the phone, from Theia McArdle's phone which you were able to ascertain using the records that you have up on the bench there, which is State's 136 --

A Yeah.

Q -- you could see the exact times from those records that you -- we got from T-Mobile that it hit off of this tower right by the home in Enoree, correct?

A Yes, sir.

Q And listed on 144 are these times. And I'm assuming this is -- this one says p.m. on December 29th. Could you just publish for the jury and read what times her phone hit off of that tower?

MR. VERNER: Has the witness identified what those even

are yet, Your Honor? It's probably appropriate to let the witness say what those stand for instead of the Solicitor telling.

MR. STUMBO: That's fine.

Q On this creation here, what do those times stand for?

A Those were times that the calls were made on that date associated with that tower.

Q And you were able to ascertain those using the records and --

A Yes, sir. It's just a matter of looking at the call records and matching that date and time up and you can go over and find that tower number as well as those coordinates were the same.

Q And then you could create the summary which is State's 144 that reflects what you're getting off of the records, correct?

A Yes, sir.

Q What times of Theia McArdle's phone hit off of this tower by the house in Enoree?

A Again, as far as the date of December 29th, 2014 in the p.m., it was at 1:13 p.m., 3:53 p.m., 6:32 up through 7:39 p.m., 8:04 p.m., 8:15 p.m., 8:35 p.m., 11:19 p.m. 11:30 p.m., 11:34 p.m. and 11:41 p.m.

Q So up through 8:35 p.m. in the evening her phone is hitting off this tower?

A Yes, sir.

Q And then the next time 8:35 in the evening is 11:19 p.m. at night?

A Yes, sir.

Q So there's a little bit of a gap there.

MR. STUMBO: You can return to your seat.

(Whereupon, the witness returned to the witness stand.)

Q Based on the records -- and, of course, I just took them from you. I need to give them back to you. What other towers were you able to ascertain locations where Theia McArdle's phone bounced off of that day? The day of December 29th.

A Yes, sir. Can we pull it back up on there where we can see the whole thing?

Q Sure.

MR. STUMBO: If we could pull up 136, Walter.

A These Excel spreadsheets aren't small enough to fit on these pages. Do you mind if I step down?

(Whereupon, the witness stepped down from the witness stand.)

A So we can scroll down -- again, for text messages which is indicated by the SM message, a short message service, those will not go to cell sites. Most companies don't show that. Verizon and all of them don't report a cell site.

Q Let me stop you there. You say show SMS. Does that

mean a text message?

A Yes, sir. The text messages, or the MMS, which is the multimedia service messages, they don't show cell site information. Most all the phone companies report that same way. They don't report the location.

Q So let me just ask this question. So it's showing you the text messages. And that's when you see an SMS that's a text?

A Yes, sir. That's a text message that was sent.

Q And this same column where it says voice -- and maybe -- I don't want to ask you a dumb question. But that means it's an audio voice connection?

A That's an actual -- it's a voice connection.

THE COURT: If you don't mind, please. She's having trouble taking this down. Don't talk over each other. Okay?

MR. STUMBO: Yes, sir.

THE COURT: So when he's talking I need you to be quite, please, Solicitor. Go ahead.

MR. STUMBO: Yes, sir.

Q Can you explain to the jury what we're looking at here, Mr. Johnson?

A Yes, sir. These are the call records for the phone. Again, on voice call it would indicate not only the telephone number but for DSM calls, which is T-Mobile, it

indicates the IMSI number and the IMEI number. Those are basically the serial numbers for the SIM card inside the phone and the actual serial number for the device itself. A lot of times in fugitive cases they will swap those numbers, so it allows you to make sure that you're keeping everything accurate as far as calls goes. And you've got the voice again showing incoming or outgoing. And it will indicate the party receiving or making the call, whichever way the phone calls go. And it'll show you the caller ID. And then again, as we indicated, T-Mobile will also give you the actual make and model of the phone which is matched up to the Blu phone that we downloaded. Here, this should be probably the LAC, which is the local area code. Basically what that is, is with cell phones, you know, you may have -- they may number a tower the same in Columbia and number a tower the same in Greenville. If you don't know what that LAC number is then that's the only way to separate the towers to make sure that you're mapping the tower correctly, that it's in the location it's in. You know, particularly in Enoree versus being at Myrtle Beach. So those all go into making sure that the call location matches. And then again, T-Mobile goes one step further. It goes ahead and puts the actual GPS coordinates into this spreadsheet. Your other companies put it on a completely separate spreadsheet where you have to kind of cross-reference. But T-Mobile

makes it a little bit easier for you to bring it together.

Q Was there another tower or series of towers that this phone hit off of between 8:35 --

A There were.

Q -- and 11:19?

A Yes. If we can scroll down. So you asked if it changes and it does. You see at 8:15 we're at the 41703 tower, which is the GPS coordinates for 34.60333492 and then -81.8827899. We see that that tower stays the same. Again, you can cross-reference it back to the LAC and the cell ID number until we get down to, I believe it was, 8:52 and then those coordinates change. At 8:52 p.m. and at 10:58 those numbers have changed.

Q At 8:52 it's hitting off a different tower that's reflected in the records, correct?

A Yes, sir.

Q And were you able to determine, or were you able to determine through your investigation where that tower was located?

A This one here, if I can access my notes, if that's okay?

Q Yes, that's fine.

A 8:52 was hitting -- that tower is located off of I-26 and Highway 221.

Q And so that's -- is that close to Spartanburg?

A Yes, sir.

Q So if you're heading up I-26, the 221 exit is closer to Spartanburg from Enoree?

A Yes, sir.

Q And at 10:58 was that the same tower or a different tower?

A No, sir. That tower was located at -- I believe it was Harper Road and I-26.

Q Is that in Spartanburg or closer to -- closer to Enoree?

A I believe that is closer to Spartanburg.

Q And then at 11:19, as we reflected before on Exhibit 144 her phone's hitting again on the tower by the house at 11:19 p.m.?

A Yes, sir.

Q And if we could -- is that reflected on this chart?

A It is, sir. Right here in grey.

Q After 11:41 are there any other towers that night that Theia McArdle's phone hit off of?

A Yes, sir. At 12:22 a.m. on December 30th it accessed a tower here at these coordinates which on the map it showed up in Newberry, which was the area consistently downtown, or in the city.

Q So close to the city in Newberry --

A Yes, sir.

Q -- her phone is hitting off a tower at 12:22 p.m.?
A A.m.
Q I'm sorry. And that would be on -- at that point, December 30th, so it's crossed over into the next day, right?
A Yes, sir.
Q And the call to that number, it's -- could you just publish for the jury what number Theia McArdle's phone called?
A Yes, sir. It made an outgoing call to 1-803-940-3790.
MR. STUMBO: You can return to the stand. I'm almost done.
(Whereupon, the witness returns to the witness stand.)
MR. VERNER: Not a problem. 145 without objection. If the State offers it, it's without objection.
MR. STUMBO: Judge, we would offer it into evidence at this time.
THE COURT: Without objection, State's 145 will be in evidence.
(Whereupon, State's Exhibit No. 145 was admitted into evidence.)
Q I'm going to set this here. Agent Johnson, if you could look at that and tell me, do you recognize this area?
A Yes, sir. This is downtown Newberry. This is actually Main Street running down the middle in red. And then the

cell tower that we just talked about at 12:22 a.m. is to the far left corner of that map.

Q So this is Main Street running down in red here, right?

A Yes, sir.

Q This red running back up is Nance Street, correct?

A I believe that's either Nance or College Street. I believe that is Nance Street. Yes, sir. You're right. It's Nance Street.

Q Nance Street is the street the police -- city police department and fire departments are?

A Yes, sir.

Q And so, the cell tower that Theia McArdle's phone is hitting off of at 12:22 p.m. is there a cell tower right kind of in that area behind the police department?

A Yes, sir. It is. It's right off of Alexander Street is where the tower is located. Right in the corner and Alexander and Fair Street.

Q And that's collected in State's 136 in those call logs?

A Yes, sir. 12:22 a.m. Yes, sir.

MR. VERNER: Just for my record keeping. Did you all offer that in?

MR. STUMBO: We did.

MR. VERNER: And it's number what?

MR. STUMBO: 145.

MR. VERNER: 145 is the blowup map?

MR. STUMBO: Yes, sir. Beg the Court's indulgence. Thank you, Agent Johnson. No further questions. Please answer any questions Mr. Verner may have for you.

CROSS-EXAMINATION

BY MR. VERNER:

Q Are you from the Whitmire, Prosperity or --

A Newberry.

Q -- Newberry?

A Newberry, sir.

Q Now, I understand that learning how to run these programs and the technical stuff is pretty complicated, but actually looking at the map and seeing different locations for towers, that's fairly common sense, isn't it?

A Not completely. Again, what you have to run into when you start getting into the sectors is looking at the compass headings and what they call a ping, which tells you what size the sector is so that you can narrow down whether that tower is, you know, a strength of a mile, three miles, 15 miles. It just depends on the network area.

Q That's the question I had. These -- when you said the towers, basically the radars are kind of triangular --

A Yes, sir.

Q -- and you will get a signal --

A No. It'll be a cone.

Q A cone?
A Yes.
Q But you'll get a signal off of one of the three sides of it --
A Yes, sir.
Q -- or sectors?
A Yes, sir.
Q Is it possible that -- I don't know. Do telephone signals hit at a harder streak the closer they are to the tower and the further away they're like waves? They're lighter the further away they are, or do they -- it just detects a ping from that side?
A It depends on the environment, whether it's tall buildings, pine trees, water. Anything like that can make a signal go further, make it go shorter.
Q So even if it is a harder signal it could be misleading because of the topography of the ground?
A Well, there's not really a -- it doesn't give you a signal strength.
Q Okay. That's my question. Does it give you a signal street how close?
A No, sir.
Q Are you familiar with where the house is in Enoree?
A Yes, sir.
Q There's a Valero gas station, we heard, about a mile

down the street from that?

A I haven't mapped it out to see exactly where it falls within that sector.

Q If phone calls -- do you know how far apart these cell phone towers are planted?

A They -- again, they vary. I would have to map all the other towers in the area to get -- to give you a good reasonable information.

Q If a call were made from the Valero gas station which is about a -- which is on the interstate --

A Yes, sir.

Q -- near that house, could that also be hitting off of that same cell tower 34.603?

A Again, without mapping it and being able to see where it actually falls within that sector I couldn't tell you. Because it could hit that same tower but be a separate sector of the tower.

Q Okay. My question right now is, is it possible that you could be about a mile away and still hit the same side of the sector?

A Again, without mapping it I have no way of knowing for sure. Some towers yes, some towers no.

Q I'm not asking you in this particular case. I'm just asking you in general could you hit the same tower and be as far apart as a mile away?

A Possible.
Q And you analyzed the cell phone records from the evening of December 28th -- I mean, December 28th?
A Yes, sir. 29th and --
Q Well, it seems to start around 10:30 in the evening on December 28th.
A It may be. I think the only thing that I mapped was for the night of the 29th and 30th.
Q But the records from T-Mobile start --
A Yes, sir. They go back.
Q And that might just be kind of like bank records. That's their closest date that that file -- particular style --
A Right. It depends -- you know, a lot of times we'll ask for, you know, a few hours, or a day ahead of what we're actually looking at to make sure that we gather -- some companies will report their times in UTC time versus eastern standard time. So to make sure your timeframes are correct you may go a day ahead of what you're actually looking for.
Q And longitude and latitude are just basically ways to determine map location?
A Yes, sir.
Q Generally everywhere on the map will have a slightly different longitude and latitude --
A Yes, sir.

Q -- than everywhere else?
A Yes, sir.
Q From my review of the records, the cell tower with the longitude -- I just call it 34.603. That's the one that you have listed next to the home?
A For the one for today. Yes, sir.
Q I show records that that tower was pinged at 1:13 p.m. on the 29th.
A Okay.
Q Is that -- well, I mean, you can put them on there. Do you have the records where you can -- and you can step down if --
A I'd rather do it from here because it shows the entire --
Q You're absolutely welcome to. And basically, unfortunately, if you look at it my way you kind of have to use three separate pages to --
A Yes, sir. They just don't fit.
Q But T-Mobile still does it better than the other people?
A Yes.
Q Okay. I show the first 34.303 --
A 34.603.
Q -- 603 was pinged at 1:13 p.m.?
A Yes, sir.

Q And then it was pinged again at 3:53 p.m.? And is pinged the right term to use, or do you at least understand what my point of that term is?

A I understand what you're saying. It's actually access. Because the only time you're actually accessing a tower is during a voice call, or -- it's not that the tower is reaching out to the phone, per se.

Q Well, that would be my question. While you're looking at that, SMS on the T-Mobile records means a text message?

A Yes, sir.

Q What does the MMS stand for?

A That's a multimedia message -- or multimedia service.

Q So that means more than one recipient?

A No. It's just Facebook - like if you're sending pictures or videos or something like that. Yes, sir.

Q So typically SMS is just a simple text message of however many characters?

A Yes, sir.

Q And MMS is I sent you a picture of my dog out in the yard?

A Yes, sir.

Q Or anything.

A Some type of video. Some type of -- some file other than a standard message.

Q Something that's attached to the text?

A Yes, sir.
Q Again, I show that the second time that tower was pinged was at 3:53 p.m.?
A Yes, sir.
Q And then it was pinged at -- is it 5:33 or 6:33?
A 6:33, sir.
Q 6:33. And then it was pinged at 7:25?
A Yes, sir.
Q And 7:39?
A Yes, sir.
Q 8:04?
A Yes, sir.
Q 8:11?
A Not on that same tower. Those coordinates changed the numbers as well as coordinates changed at 8:11. It may be the same -- it may be the same area. But if you look, your minutes to your seconds -- well, this is in digital format. But the 34.689 is not that far off from the 603. Depending on where that maps out and where that tower is located it could be the same location. It could be what they call a handoff area.
Q There was an outgoing voice call at 8:11:53, right?
A Yes, sir.
Q I'm sorry. You're right. That actually hit 34.629, which would be close but different?

A Very close. Very most likely.
Q And that's the 8:11 call?
A Yes, sir.
Q And then at 9:35 -- or is it 8:35 or 9:35?
A Can you scroll down a little bit? 8:35 we have a call.
Q 8:35 it pings again.
A Yes.
Q And then 11:19 would be the next time that tower is pinged?
A Yes, sir.
Q 11:19, 11:30, 11:34 and 11:41?
A Yes, sir.
Q Okay. So those are the times, assuming the owner of the phone keeps hitting the same tower, would be in the same general area?
A Yes, sir.
Q But the phone -- that phone is used at different locations at 1:54 in the afternoon on the 29th?
A They very well may. Yes, sir.
Q And that would be the tower that has the 491 longitude?
A 496.
Q 496?
A Yes, sir.
Q And that's at 1:54 p.m.?
A Yes, sir.

Q So we know that sometime between 1:13 in the afternoon and the next time that tower 34.603 is hit, which is 3:53 -- well, actually there's another call at 2:25 which pings off of tower 545, right? So there are two calls at 2:25?

A Yes, sir.

Q And that's the tower that's beyond decimals 545?

A Yes, sir.

Q And then the next -- so between 1:13 and 3:53, which is the next time tower 603 was hit we know that somebody was gone from at least 1:54 to 2:25?

A Possibly, yes.

Q And theoretically as long as 1:13 to 3:53?

A Possibly. Yes, sir.

Q Then the next time a tower other than the one closest to the home is hit is at 8:11, and that's tower 629?

A Yes. The coordinates 6289.

Q And so we -- unfortunately text messages and other files don't trigger location readings?

A Yes, sir.

Q So it's possible that somebody might have been away even when the -- that's not using the phone. So 8:11 we know that person was at a different location, and we know that the person was at a different location at 8:15 p.m., right?

A Possibly. Yes, sir. It could be a different location.

Q But then the tower is pinged again -- the tower closest to the home is pinged again at 8:35 p.m. So that puts the person back in the original -- if I assume that is the home of Theia McArdle, she's back home at 8:35?

A Consistent with the -- yes.

Q But then between 8:35 and 11:19 p.m. the owner of that phone, which is Theia McArdle, assuming she has the phone, we know at least twice between 8:35 and 11:19, for a fact, that between 9:52 p.m. and 10:58 p.m. Theia would not have been at home, or would have been at least a different tower location?

A She was servicing a different tower. 659 and 603 is probably close enough they could service the same area. But again, without mapping the handoff area I couldn't tell you for sure.

Q But it's consistent with her being at a different location?

A It is a different tower. Yes, sir.

Q So it is possible between 8:35 p.m., which is when the closest tower to the home was hit, and 11:19 p.m. when it was hit again, knowing that there were two separate towers in between there, that Theia could have been away from that home?

A Yes.

Q And then we know that there was a phone call to

Newberry. You're aware that 940 is typically a Newberry cell phone number?

A Yes.

Q Used to be just 276, but now there's a host of them. At 11:41 p.m. there was a call made from what appears to be the tower closest to Theia McArdle's home?

A Yes, sir.

Q And then at 2:22 the same phone is used in Newberry?

A 12:22.

Q Okay. And so, how long is the -- did you actually have to drive to the home in Enoree, or to the tower to --

A No, sir. No, sir. I was able to map it.

Q Do you have a ballpark idea of how long -- how far away Enoree is from Newberry?

A No. It's not

Q You can sit down, Agent Johnson.

(Whereupon, the witness returns to the witness stand.)

Q Do you know is Enoree closer to Spartanburg than to Newberry from Spartanburg or

--

A I would venture to say it's closer, yes, sir, from experience.

Q And I believe when the Solicitor asked you about a couple of those calls that you indicated they were close -- they were made from areas -- the towers were at least closer

to the Spartanburg area than the Newberry area?

A Yes, sir.

Q Are you familiar with the Roadway Inn in Spartanburg?

A No, sir. I'm not.

Q So you didn't test the locations of the towers? The other towers that got hit?

A No, sir. I did not.

Q So basically from your records -- at least from your maps, we know if Theia -- assuming Theia is the one using her own phone --

A Yes, sir.

Q -- you can tell us pretty much when we believe she's home, or somebody using her phone is home?

A Yes, sir.

Q But you didn't make any maps about when that person would not have been at home?

A No, sir. Not prior to the night of the 29th I did not.

Q But -- and I'm going to sum up with this, Agent Johnson. But you would agree with me just -- and this is summary, what I believe you agreed with earlier, that it's possible between 1:13 p.m. and 3:53 clearly Theia was out of the home at least some portion of that period of time?

A Possibly, yes.

Q Assuming she's the one using her own phone?

A Yes.

Q Likewise, between 8:04 and 8:35 Theia pinged from a location other than the home?

A Yes.

Q Between 8:35 and 11:19 Theia pings twice from a -- or whoever's using her phone pinged twice from outside the home?

A Yes, sir. An area consistent with outside.

Q And then 11:41 would be the last time Theia McArdle had been at that -- or whoever used that phone has been at that residence?

A It appears. Yes, sir.

MR. VERNER: Thank you, Agent. I appreciate it.

THE WITNESS: Thank you.

MR. STUMBO: Nothing further.

THE COURT: Agent, thank you very much. You may step down. You are free to go.

(Whereupon, the witness stepped down from the witness stand.)

THE COURT: Ladies and gentlemen, we are at a lunch break. I'm going to ask that you be back, please, at 2:00 to get started as quickly as possible after everybody is assembled.

Again, don't discuss the case over lunch. And I'm going to be straight with you. I'm a little bit concerned that -- I'm going to discuss with the attorneys in a moment

how much longer we have in the State's case in chief. Obviously the Court has tried to be fair to all concerned and to both sides, and I'm trying to be fair to you guys, too. We may not get this case to you tomorrow though. Okay? I don't know if that means come back on Saturday or if it means come back on Monday. I know, like you all, I've got plans for the weekends. You all probably got plans for the weekend. We'll think about that. We'll talk about that and we'll see where we are. Okay? I was promising you we'd be done with this by Friday. I've never, ever had this happen before where I've had to break that promise. So I'm sorry if I do have to break it. But I'm just giving you fair warning. Okay? Have a pleasant lunch and I'll see you all back at 2:00

(Whereupon, the jury exited the courtroom at 12:58 p.m.

THE COURT: We're at ease until 2:00

MR. STUMBO: Judge, we only have two witnesses left, so.

THE COURT: All right. Which will take us until 5:00. And I'm not going to cause Mr. Verner to cram his entire case in one day when you have had four. So that's where we are.

(Whereupon, a lunch recess was held from 12:59 p.m. to 2:00 p.m.)

THE COURT: Let's have the jury out, please.

(Whereupon, the jury entered the courtroom at 2:19 p.m.)

THE COURT: Let the record reflect that the jury is back and seated. At this point in time, Solicitor, if you'll call your next witness, please.

MR. STUMBO: Thank you, Judge. The State calls Dr. Janice Ross.

THE COURT: Doctor, if you'll come forward, please, and have a seat.

DR. JANICE ROSS, having first been duly sworn, testified as follows:

DIRECT EXAMINATION

BY MR. STUMBO:

Q Good afternoon, Dr. Ross.

A Good afternoon.

Q You are a pathologist operating out of Newberry, South Carolina?

A That is correct.

Q And how many years have you been a pathologist?

A Forty years.

Q And so, you went to medical school. Where did you go to medical school?

A Yes, I went to -- I got a Bachelor's degree from the University of South Carolina and I received my MD from

Upstate Medical Center in Syracuse, New York where I did further training in pathology. Pathology is a discipline in medicine, as opposed to surgery or pediatrics, where we learn how to diagnose diseases by looking at tissue under the microscope and using the laboratory blood work. We also learn how to do autopsies to find a cause of death. And I did further training there in Syracuse in the field of forensic pathology which is a field -- forensic means legal. So we use our medical knowledge on legal matters in dealing with homicides, suicides, accidents, and even rape cases. That kind of thing. We do a forensic autopsy. We learn how to identify patterns of injury and how to document injuries for the court of law and how to take specimens from the person, from the patient, in order to proceed with toxicology and other studies.

Q And so, I'm assuming it's a residency in pathology?

A Correct.

Q And have spent your career doing pathology work, and particular autopsies?

A Yes.

Q In a forensic setting?

A Yes.

Q How many autopsies have you done in your career?

A At least 10,000.

Q And you work very closely with county coroners across

the state?

A Yes, I do.

Q And so, not just deceased folks from Newberry are brought to you, but bodies are brought from coroners all over the state of South Carolina, correct?

A Yes. We do probably about 20 counties of the 46 of South Carolina.

Q Have you ever testified in a court as an expert in forensic pathology?

A Yes.

Q How many times?

A About 200 in South Carolina.

MR. STUMBO: Judge, we offer Dr. Ross as an expert in forensic pathology.

THE COURT: Any objection?

MR. VERNER: No objection, Your Honor.

THE COURT: Again, ladies and gentlemen, as I explained, I guess it was on Tuesday with Dr. Holaday, normally when a witness testifies they have to testify about something they observed, heard, et cetera, and they're not allowed to give opinion testimony, but an exception to this rule exists for experts. In this case, the State and the Defense agree that Dr. Ross is an expert in the field of forensic pathology, therefore she can give opinions in that area. She can give opinion testimony and also state the

reasons for her opinion. It doesn't mean you have to accept it, but it is evidence that you may use as you deem appropriate.

Additionally, ladies and gentlemen, let me instruct you, and I started doing this when the pathologist testifies, but very often, and I anticipate during the course of Dr. Ross' testimony, certain photographs may be shown to you depicting the injuries to the three-year-old that's involved in this particular case. Sometimes people have a difficult time with those images. Understand that these images are being displayed solely to demonstrate the injuries sustained by the child in this case. Okay? That is the only reason that these images are being shown to you. And obviously sometimes they do evoke a emotional or an unsettling reaction in those people who have viewed them. Okay? And very often that reaction, it's tempting to blame the person on trial for that reaction or to try to do that or consider doing that because you're having that kind of an emotional reaction. That would be inappropriate. Okay? Again, these images are simply going to be shown to you for purposes of explaining the injuries that the child in this case suffered. All right?

Solicitor, you may continue, sir.

MR. STUMBO: Thank you, Your Honor.

Q Dr. Ross, as part of your job as a forensic pathologist

did you have occasion to do an autopsy on a little toddler named G.M. back in 2014?

A Yes, I did.

Q And that was 8:00 in the morning on December 30th, 2014?

A Correct.

Q When you do an autopsy do you take pictures?

A Yes, sir. We receive the body in the morgue at Newberry County Memorial Hospital in a body bag. We open the body bag and we do external photographs, take inventory of what clothing or personal belongings there are, and then we take the clothing off and do an external examination front and back.

MR. STUMBO: If I may approach Dr. Ross.

THE COURT: Please.

Q Dr. Ross, I'm going to hand you what's been marked for ID as State's No. 85 through State's No. 120 in sequential order. If you could, just take a look at those photographs.

A Yes, these are photographs of -- at the autopsy, and it looks like maybe in the emergency room, of G.M.

Q These would document the external injuries, Dr. Ross, that you had just discussed. The pictures that were taken off the body?

A Yes.

Q And if you could, Dr. Ross, make sure you speak up in

the microphone.

A Yes.

Q Do they fairly and accurately depict the body of young G.M. the morning you conducted the autopsy?

A Yes, it does. They do.

Q Pictures are taken for the purpose of the exterior of showing bruises or other contusions, injuries on the outside of the body before you do the internal examination?

A That's correct.

MR. STUMBO: Your Honor, at this time we'd offer State's 85 through 120 into evidence.

THE COURT: Have you shown the -- I assume you've already looked at these, Mr. Verner, and --

MR. VERNER: I think those are the ones we talked about, Your Honor. But the State's -- I think I objected to one of them and we --

MR. STUMBO: I think that's in the next set. That's in the next set of pictures.

THE COURT: Right.

MR. VERNER: I think the Court ruled, Your Honor, on that.

THE COURT: Without objection, 85 through 120 are in evidence. I think the only one that the Court had concern with is in the next batch.

MR. STUMBO: Correct.

THE COURT: All right. Go ahead.

MR. STUMBO: Thank you, Judge.

(Whereupon, State's Exhibit Nos. 85 through 120 were admitted into evidence.)

Q Dr. Ross, we're going to --

MR. STUMBO: And permission to publish to the jury at this time.

THE COURT: Please. And, Dr. Ross, if you need to step down so that you can view the monitor right behind you, go right ahead.

Go ahead, Solicitor.

(Whereupon, the witness stepped down from the witness stand.)

Q Starting on State's 85, Mr. Bentley. Dr. Ross, the first photograph. If you could, just as we go through the photographs, explain to the jury relevance and what you see in the picture that is of note.

A Yes. Basically here we see a bruise on the left forehead, a little bit of an abrasion on the left cheek, and there is an abrasion under the chin here.

Q Any injury that you see on the outside of the body is something that you want to document via photograph?

A Exactly. And there are some bruises around the eyelids also.

Q This one over the left eye appears to be -- would that

be a bruise, Doctor?

A Yes.

Q 86.

A Again, it's an abrasion of the -- which is a little scruff of the surface of the skin on the left cheek. There's no pattern to it. It could be from a fist or something like that. And there's a little scratch there.

Q 87.

A This just shows again the bruise, the abrasion. There's bruising here around the left eyelids and the right eyelids.

Q 88.

A Here we see the same bruises, plus another bruise on the right forehead up towards the hairline.

Q 89.

A There's some bruising here. I think we'll see it better in --

Q 90.

A -- a photograph. Bruising here. There's no pattern to it. Again, it could be a fist or a kick. A small bruise here.

Q Okay. Doctor, and correct me if I'm wrong, but the bruise closer up to the rib cage is the same one we saw on the last picture?

A Correct. There's some small bruises here.

Q 91.

A This is the penis, which is purple, and the scrotum. The left scrotum is purple and bruised. There's bruising that continues around here. And internally there was bleeding and bruising around the urinary bladder.

Q And in the internal examination we have some photographs that you took depicting that as well?

A Yes.

Q 92.

A This is the belly button, of course. This bruise on the left -- on the right side. I'm sorry. And a little bit of bruising here.

Q 93.

A This is how we received him in the morgue with the shorts and a diaper underneath. Bruising here, and here, and here.

Q 94.

A A small bruise on the knuckle of the right hand.

Q 95.

A It's some irregular abrasion here that's -- it looks almost like it has a pattern to it, but it's nothing specific that I could tell.

Q 96.

A This is the buttocks. The right side. Shorts pulled down. This is over the right hip area. Again the bruising

without a specific pattern. When I'm talking about pattern, I talk about like a line. If you were hit with a baseball bat you end up with lines, or something that's squared. There's no specific pattern.

Q 97.

A 97, the back. There's a little bruising here, here, and up here on the right shoulder. When somebody has some pigmentation it's difficult to see bruises a lot. So when we cut into it and look at the fatty tissue underneath you can see a couple more small -- smaller bruises.

Q And just -- just for the jury's education here. This large dark area right above G.M. buttocks, is that --

A No.

Q -- is that a bruise or is that something else?

A That's the coloration. But no, it's not a bruise.

Q 98.

A Small punctate abrasion, and one up here. This is the right ear and chin. Nothing specific. No pattern again.

Q 99 looks like a duplicate of what we saw before, so I'm sorry for that.

MR. STUMBO: Go to 100, please, Walter.

Q And this is just the other side? The left side of G.M.

A Yes.

Q This marker now by his left forearm, are those markers

that you all use?

A This is out number. Autopsy number. It means forensic autopsy 2014 and it's number 977 for the year.

Q It has a little ruler at the top for you to measure?

A Yes. Give you an idea of -- and this is six inches.

Q 101.

A There you can see the bruising around the penis and the scrotum and the left groin.

Q 102.

A Same thing.

Q 103.

A Same thing.

Q 104.

A It's the left elbow area. There's some bruising there which may be -- may or may not be a defense wound. A defense wound is just what it says. Somebody who sees something coming and they're trying to defend themself.

Q And that would be something you look for as a normal human reaction to protect themselves would be use the forearm?

A That's correct.

Q 105.

A It's a face shot. Again, you can see some bruising around this part of the eyelids. The right eyelids. A bruise here and a bruise here.

Q 106.

A Again, the back. I think some of this is livor mortis. Blood pools by gravity when you die. It's not circulating, obviously, so it will settle down according to gravity. So if you're found dead on your back then the livor mortis is going to be on the back.

Q That's sometimes called lividity?

A Correct.

Q And that's this large dark area right above --

A That's why it looks dark.

Q 107.

A This is on the top of the right shoulder. Again a bruise without specific pattern.

Q 108.

A That is on -- this is the buttocks again, the right side. This is the bruise on the right buttocks here and here. A slight scratch there also.

Q And I believe 109 appears to be --

A The same thing, but it shows the -- usually the person's upside down. The buttocks here, the head would be down that way. This is along the right rib cage area, and this is the right hip.

Q 110. That would just be a -- we saw this bruise earlier, but you have the little ruler up there now to see the size of it? Is that why that's there?

A Yes. We place our little rulers, when you take a closeup shot, such that the head is above the number, so we can orient where we are. Same thing.

Q 111.

A This gives you an idea of where the bruises are.

Q And 112.

A This is an abrasion of the skin underneath the chin.

Q Did you all kind of put his head back to be able to see the full --

A Yes.

Q -- neck?

A Yes.

Q 113.

A That's a scar. I believe it was on the left side of the -- one side of the neck. It's just a scar I think.

Q No way to tell how old that is?

A No. Well, a scar is either a month old or three years old.

Q 114.

A Again, the penis and the scrotum. The groin area.

Q 115.

A It's a little scar. Those are the scars that -- again, it's hard to -- we don't know how old they are.

Q 116.

A This is G.M. back and buttocks. We can see a

little bit of bruise here and here.

Q 117.

A Upper back. A bruise here on the right shoulder. A smaller one on the left. Over the left shoulder blade. One down toward the buttocks.

Q 118 is the next one.

A Again, this is the left leg, the right leg, the penis, the scrotum. And this is around the left groin area.

Q The size and coloration of this bruise, is that significant to you, Dr. Ross?

A It's large. Again, it covers a lot of area. I can't -- there was no pattern to tell what it was.

Q Would it have required a large amount of trauma to this area to cause this kind of bruising?

A Yes.

Q 119.

A Another closeup shot of the left side of the face. There's bruising here and here. There's a little abrasion on the left cheek.

Q And 120.

A It shows the bruising on the right side of the forehead.

MR. STUMBO: Okay. You can return to the stand briefly, Dr. Ross. Just a couple of questions.

(Whereupon, the witness returned to the witness stand.)

Q After you'd done the external -- external examination of G.M. what is remarkable to you about the injuries that you find at that stage?

A Just the fact that there were multiple of them and on different parts and sides of the body. In other words, if you fall you're only hitting one part of the body. But because he had bruises back and front, head, chest, abdomen, back and groin area, it means multiple blunt force injuries.

Q And the fact that there's multiple injuries in the torso area and the head, as far as your analysis of whether these injuries were caused accidentally or non-accidentally, what's the relevance of injuries to the torso?

A It could be -- with this many bruises in different areas of the body I cannot put it together as an accident.

Q In other words, when you have an accident, typically it's to maybe the limbs or the head?

MR. VERNER: Your Honor, I would -- respectfully, that's a leading question.

THE COURT: Sustained.

MR. STUMBO: I'll rephrase.

THE COURT: You can rephrase that.

Q If you have an accident which causes a great amount of injury, where would you expect to find those on the body for a fall, for example?

A A fall you would find just one side of the body, one

part of the head. For instance, if you hit your head, you're going to hit it on one side. Not back and front. And the head -- to explain that further. I'm sorry.

Q That's fine.

A You can see it from the outside. But once you saw the skin underneath you could tell there was a lot of bruising on the left side of his head and on the top of the head.

Q As far as the large -- I think we covered this briefly. You've done a lot of autopsies in your career. Is this normal for a child to have genitals that are just what appear to be swollen?

A No.

Q Dr. Ross, after conducting this thorough examination of G.M. at that point did you go to get inside of the body to figure out what's going on there?

A Yes.

Q I'm going to hand you what's been marked as State's 121 through 126, and 128 through 131. So I believe it's 10 pictures overall. If you could just briefly look at those, Dr. Ross. Are these a fair and accurate representation of the internal pictures -- or some of the internal pictures that you took of G.M. body?

A Yes.

MR. STUMBO: Judge, we'd offer 121 through 125 -- or, excuse me, 121 through 126 and 128 through 131 into

evidence.

MR. VERNER: Can I just quickly double check those, Your Honor?

THE COURT: Yes. Give me those numbers again. 121 through --

MR. STUMBO: 121 through 126 and 128 through 131.

THE COURT: Mr. Verner, let me see you and the Solicitor up here real quick sidebar, please.

(Whereupon, a sidebar was held.)

THE COURT: Subject to Mr. Verner's earlier motion, 121 through 126 and 128 through 131 are in evidence.

(Whereupon, State's Exhibit Nos. 121 through 126 and 128 through 131 were admitted into evidence.)

MR. STUMBO: Thank you, Your Honor. Dr. Ross, if you could just step down briefly again.

(Whereupon, the witness stepped down from the witness stand.)

MR. STUMBO: 121, Mr. Bentley.

A This is an example of one of the bruises we could see better once we lifted up the skin. This is the fat underneath the skin. This is on the right abdomen. This shows, again, a non-patterned bruise.

Q 122.

A When we open up the stomach area, what we call the abdomen, You know it as the stomach in general, we have --

you can see the liver, part of his stomach, and these are intestines. And this bloody area is what we call the mesentery. It supports the intestines, and there's a lot of blood vessels going back and forth through this -- this mesentery to feed the intestines. Now, behind all this is the backbone. So if somebody is hit in the abdomen, what you all might say stomach, you might not get a big bruise on the stomach itself, but what you do is you're pushing the organs inside against a stiff backbone and you cause crushing of blood vessels. We had actual tearing of part of the intestines. And further on you see some other bruising.

Q Does it appear that the intestine area, this area of the mesentery, the blood there, I believe it's -- would be hemorrhaging, or internal bleeding for lack of a better term?

A Yes. Yes.

Q And I believe you said that it appeared as if the intestines had maybe ruptured against the spine?

A There -- it's hard to see. But this is like pancreas. There's -- within here is the bladder. The first part of the small intestine comes after the stomach. The stomach empties into the duodenum, and the duodenum sits right against the backbone. And when that was pushed in it actually lacerated that organ. So the duodenum was torn, yes.

Q Any other bruising in this area that was significant?
A No.
Q 123.
A Again, this is the liver, this is the gallbladder. It just shows the bleeding in that same area.
Q 124.
A This is the stomach wall that's bruised. And I don't -- I've never seen the stomach bruised.
Q You've done 10,000 autopsies?
A I've never seen the stomach bruised before.
Q You actually had internal bruising of the stomach. 125, what are we looking at here?
A Well, it's not a good picture. But it's part of the duodenum of the small intestines that I took out and it shows the tear.
Q The tear is --
A After I washed it off.
MR. STUMBO: We're going to go to 126 now, Mr. Bentley.
A This is the inside of the scalp just to show some bruising here. Some bruising over here. This would be the left side. This would be the right side. The top of the head here.
MR. STUMBO: 128, Mr. Bentley.
A This is the back. The scalp on the back of the head and it shows some bruising here and here.

Q 129.

A A little bit there.

Q Oh, I'm sorry. Go ahead. What did you say, Dr. Ross?

A A little bit there. The back -- this would actually relate to closer to the top of the head. This would be left under -- behind the ear area.

Q 129.

A This is the brain. This is the top of the skull that was taken off. And this is blood that would be on top of the brain in what we call the subdural space.

Q Can you explain to the jury what subdural means?

A Yes. You can tell there's a little membrane here. It's a thick membrane and -- let me back up. There's the brain and there's the arachnoid membrane, which is like Saran Wrap covering your brain. And then there's a space, which is called the subdural space. And then you have the dura -- dura mater, the thick membrane that's right next to the skull. So the subdural space is between the brain and the arachnoid membrane and the subdural membrane.

Q Does subdural mean below the surface closer to the brain?

A Yes.

Q And the term subdural hematoma, what is that? Or subdural --

A It means that a pool of blood that has been released

from blunt force injury of the head. It tears little blood vessels in this space and causes hemorrhage. The brain is in a closed spot. It's in the skull, and there's no room for anything extra. So if you get extra volume like blood, you're putting a lot of pressure on the brain, and you go through a series of -- probably you have headache, and then you might go into having nausea and vomiting, and then you go unconscious.

Q So as you get blood coming out onto the brain it's a slower process of the body reacting to that? Is that kind of maybe --

A It's -- that's the reaction as more and more pressure gets on the brain.

Q 130. What is this, Dr. Ross?

A This probably won't mean much to you. But this is the top of the skull turned upside down. Again, this is the dura membrane, and these are pools of blood in there. It shows again subdural hemorrhage.

MR. STUMBO: And I believe the last one is 131, Walter.

A Yeah, this is the back after we looked under the skin. These little areas of hemorrhage are just from pulling the fat way. But this is the real hemorrhage. It's a real bruise. And I thought -- I think there was one up here.

MR. STUMBO: You can return to your seat.

(Whereupon, the witness returns to the witness stand.)

Q Now, Dr. Ross, you've mentioned before in reference to the injury to the genitals that there was internal injuries that, I believe, were associated with that; is that correct?

A Yes. The force was hard enough so that there was actually bleeding around the urinary bladder under -- under the skin there and in the pelvic area.

Q You mentioned injuries to the abdomen. There was actual tearing of the small intestines, correct?

A Yes.

Q I believe you mentioned that there was -- and we saw the picture of the bruising on G.M. stomach which was very unusual to you, correct?

A Yes.

Q Was there any bruising on any other internal organs?

A There was bruising in the pancreas, yes.

Q The pancreas is located right by the liver; is that --

A It goes right along with the duodenum.

Q So close to the small intestine and the duodenum?

A Yes.

Q Let's get now to injuries to the head. You talked a little about subdural hematoma. What is cerebral edema? Could you explain that term to the jury?

A That's swelling of the brain. It's after -- it's a reaction after the injury, the blunt force injury to the head, and the subdural hemorrhage.

Q Is that -- what's the relationship of that to the hematoma bleeding that's happening in the brain? Is there any relationship?

A Well, just all -- both of them indicate a blunt force injury to the head.

Q And you found both the bleeding on the brain as we observed earlier, correct?

A Yes.

Q And also some cerebral edema which, you know, the brain had been swelling as well?

A Correct.

Q Is there way you can tell, Dr. Ross, how long the brain -- there had been bleeding on the brain at that point?

A No. It would be --

Q Or before death.

A It would be recent. It would be minutes to maybe as much as an hour. The time of death -- the time of injury is difficult. It's very difficult to age a bruise, even microscopically. Although all the bruises looked to be about the same. They were very, very recent. So the only thing that I could analyze as far as time of death or time of injury is the fact that he had food in his stomach still, and he had some -- 100 CCs of liquid and corn kernels.

Q So the fact that that material, and the corn kernels, had not yet stated the digestive process -- you found those

in the stomach; is that correct?

A That's correct.

Q So the fact that those had not evacuated the stomach into the digestive tract would indicate to you that the injuries to that area occurred shortly after dinner had been -- that food had been consumed. Is that fair to say?

A Yes. Your stomach usually empties within an hour. And there's movement of muscles in the stomach and the intestines called peristalsis. It's a wave of muscles pushing food through. And under good -- normal circumstances it pushes food through the stomach within an hour and then it goes through the small intestine and then the large intestine. If there's any injury to cause pain or any injury in the abdomen it can stop that peristalsis. It can stop that motion. And so, the stomach would stay full of food because it wasn't emptying. You can also get a similar result with head injury. It may stop the peristalsis. So I would -- I feel that the injuries at least started probably within a half an hour of his eating.

Q So within a half hour of his eating we have these injuries showing up that potentially could cause his digestive muscles to shut down and not move food through?

A At least some injuries would have happened at that time, yes.

Q There's no way for you to tell as the pathologist

whether it's the head injuries or the internal organ injuries that caused that to happen?

A Correct.

Q Could have been combination of head injuries and internal injuries?

A It could be, yes.

Q Let's go into more of injuries to the head. How much subdural hematoma did you find in the -- on the brain?

A Twenty-five CCs.

Q Twenty-five CCs of blood on the brain. Is that -- tell -- if you could, tell the jury what's the significance of that.

A Well, it's not huge, but it's enough to, again what I said, cause enough pressure on the brain to cause the brain to be unable to function well.

Q I believe you testified earlier if you receive a blunt force trauma to the head that the small blood vessels and the subdura break and that's what causes the bleeding to kind of slowly come out; is that right?

A Yes.

Q Is there any way to time with certainty how long before the time of death the blunt force trauma occurred to the head?

A No. No.

Q Did you generate a report after you got done with the

autopsy?

A Yes, I did.

Q And is that the report that you provide to the coroner and to law enforcement?

A Yes.

Q And that becomes a public record, I guess, at some point through the coroner's office?

A It's not a public record, but it's --

Q It's a medical record?

A Correct.

Q You produced one in this case though, correct?

A Correct.

Q I'm going to hand you what's been marked as State's 149 for ID.

MR. VERNER: What number?

MR. STUMBO: 149.

Q Is that your complete report, Dr. Ross?

A Yes, it is.

MR. STUMBO: Your Honor, we'd offer 149 into evidence.

MR. VERNER: How many pages is that report?

MR. STUMBO: I believe it's five.

MR. VERNER: Let me see the autopsy. No objection.

THE COURT: Without objection, 149 is in evidence.

(Whereupon, State's Exhibit No. 149 was admitted into evidence.)

Q Do you have a copy of this?
A Yes, sir.
Q Dr. Ross, the front page of your report, is that a summary diagnosis of the cause and manner of death?
A Yes.
Q And you list, Dr. Ross --
MR. STUMBO: If we could pull up 149, Mr. Bentley.
Q Dr. Ross, you indicate that G.M. was age three at the time. In fact, were you able to find out that his birthday was the day you were doing his autopsy?
A Yes.
Q His third birthday. You indicate here at the top this A through F. If you could read to the jury the types of blunt force injuries that you found.
A Yes. They were subdural hemorrhage of the cerebrum. That's the subdural hemorrhage in the skull. Cerebral edema, swelling of the brain. Subgaleal contusions. Subgaleal refers to the tissue underneath the scalp. Bruising of the stomach and pancreas. Hemorrhage around the bladder. Perforation of the duodenum with hemorrhage into the mesentery. And then there were contusions of the face, abdomen, back and upper extremities, and contusion and edema of the external genitalia.
Q Based on these multiple blunt force injuries what was your manner of death?

A Homicide.
Q And cause of death was what, Dr. Ross?
A The primary cause of death was respiratory depression. When you have that pressure on the brain, that swelling, it causes pressure on the areas, on the basal -- the base of the brain where there's centers for breathing and heartbeat. So we have respiratory depression because of that, due to the subdural hemorrhage, due to the blunt force trauma to the head, due to the beating.
Q And the beating is kind of nondescript here. By beating you're referring to all of those blunt force injuries that we saw above?
A Correct.
Q Does that include not only the injuries to the head, the beating of the head, the beating throughout the body, including the internal?
A Well, on the cause of death it's mostly beating of the head. That was the thing that would be fatal. The abdominal injury could by itself be fatal but would have -- may have taken longer. Maybe minutes to hours.
Q You just mentioned minutes to hours. Here on the right side where it says interval, Dr. Ross, you've got just this thing as one after the other. You have minutes listed four times there on the interval. You testified earlier that really from your examination there's no way to really time

this with any certainty?

A No.

Q And that's why you don't have any actual number of minutes listed there? Would that be accurate?

A Correct. You have to correlate it with the clinical pattern. I mean, what time he ate. What time he started getting -- if he complained of a headache. What time he started having nausea and vomiting. What time he went unconscious. And then once you're unconscious then death would follow shortly.

Q Would these types of injuries -- I believe we've touched on this a little bit earlier. And just again, I would ask. These types of injuries to the interior -- internal organs, would they cause vomiting in a child?

A They could, yes.

Q Or a person?

A Yes.

Q Injuries to the head, would they cause this type of vomiting?

A Correct.

Q The best time that you really have here, I believe you said within 30 minutes of eating earlier, and that's based on the food in the stomach, correct?

A That's when I believe the injury began, and very likely the abdominal injury.

Q To a reasonable degree of medical certainty, Dr. Ross, was G.M. McArdle's death accidental or non-accidental?
A Non-accidental.
Q To a reasonable degree of medical certainty, are these the types of injuries that would cause a child to suffer in the minutes to hours preceding his death?
A Yes.
MR. STUMBO: Beg the Court's indulgence.
THE COURT: Yes.
Q Just wrapping up here, Dr. Ross. If -- just to a reasonable degree of medical certainty based on your training and experience and expertise, a body that's received this number of multiple blunt force injuries, you said the body could be slowly shutting down. Could the body -- is the body continuing to breath during that time?
A Yes.
Q And once the breathing stops, obviously you have respiratory depression, and that's what will cause you to die because you can't breath anymore, correct?
A Correct.
Q Would it be possible for a child to during this time be snoring as they're slowly dying from these types of injuries?
A Yes.
Q Making kind of small noises even though he's

unconscious?

A Yes.

Q And to the layman, they may look from the outside like they're sleeping?

A Correct.

MR. STUMBO: No further questions, Dr. Ross. Thank you. Please answer any questions that Mr. Verner has.

CROSS-EXAMINATION

BY MR. VERNER:

Q Good afternoon, Doctor.

A Good afternoon.

Q Now, you're familiar with Dr. Holaday, aren't you?

A Yes.

Q And you're aware that he's actually the emergency room primary physician in this case?

A Yes.

Q Just out of curiosity, how long have you had a working relationship with Dr. Holaday?

A Well, I've known him since -- probably for at least 10 years. I came to Newberry in May of 2000.

Q And actually I'm going to ask you questions from this side so we can hear you.

A Sure.

Q So you've known Dr. Holaday, I assume that's in a professional setting, for about 10 years? It might have

been collegial, too, but primarily professional?

A Primarily professional, yes.

Q Now, Dr. Holaday, you're aware he testified in this case?

A Yes.

Q Just out of curiosity, have you been following any of the testimony in this case this week?

A Shortly, but I don't know what he testified to.

Q Well, he was sort of critical of your report where you -- when your interval, the minutes --

MR. STUMBO: Judge, I'm going to -- he's pitting the witnesses.

MR. VERNER: She's an expert talking about another expert witness.

THE COURT: Let me hear the question first and then we'll see where we are. Go ahead.

Q You're aware that Dr. Holaday was qualified as an expert witness in emergency medicine?

A Yes.

Q And that would probably an appropriate qualification?

A Yes.

Q He criticized the autopsy report for using the minutes in the interval standards. He said that was kind of an arbitrary timing. And I'm sure that's not an attack personally. But is there a reason that you used the term

minutes?

A Minutes can be one minute or 120. The South Carolina death certificate form asks for an interval of how long between the injury and the death. And as I say, it's very difficult to pin it down because you can't document the clinical course, when he became -- maybe he had a headache, went to nausea, vomiting, went unconscious. We can't document that. But minutes is a general term that's used by all the medical examiner systems.

Q Well, that's my question. If another pathologist were to review your report and see the term minutes, is that a term that's standard throughout pathology that another pathologist or a person in that particular area would understand the timeframe?

A Absolutely.

Q Now, Dr. Holaday indicated that when he sees the term minutes as a doctor he thinks it's 10 minutes or less. Is that what you meant by that?

A That's not correct.

Q And certainly his focus on medicine is different than your focus of medicine?

A Yes.

Q I'm asking you, if I were another pathologist in your area and I saw the interval of death between respiratory depression and the hemorrhage and it's minutes, that could

be up to two hours?

A Yes.

Q But at least a minute, but anywhere between two hours. Is there any -- in Exhibit 149 the --

MR. VERNER: May I have 149, Mr. Bentley.

Q But basically the first page of your autopsy report is really kind of broken down into three parts, isn't it? The kind of top, middle and bottom?

A Yes.

Q The top is just really biographical information of who did what on what day and whom?

A It just has the name of the patient, the descriptors --

Q Okay.

A Descriptors, yes.

Q The middle is basically a broad or general overview of all the injuries to the body of the child that you're doing the autopsy on?

A Correct.

Q And then the specific findings are the ones on the very bottom?

A Yes.

Q And those are specific to cause of death?

A Correct.

Q And again, the term homicide doesn't necessary mean murder, does it?

A The use of homicide -- the manner -- the manners of death are five. There's natural death, whether you have a heart attack, accident, suicide, homicide or undetermined, if you can't determine. Homicide just means a life taken by another through an act or through inactivity.

Q It primarily means that somebody was killed by another person?

A That's correct.

Q If somebody -- and I'm not applying this at all in this case, but homicide is justified and sometimes they're not? Such as self-defense would be a homicide that would be legally justified?

A That's correct.

Q But you found nothing in this case to show self-defense or any kind of justification? This was just a beating of a small child?

A I found one self-defense wound. But no, I can't tell intent from the autopsy.

Q You've got minutes written four times in the intervals. The minutes between the respiratory depression, the minutes between the subdural hemorrhage due to the blunt force trauma to the head, and then due to the beating.

A Correct.

Q Those aren't compounded? That's basically -- that's one minute to two hours between number one and number four?

A Could be, yes.
Q If there was something that caused another injury at another timeline you would indicate that in your report?
A Well, this is what we put down, because the coroner's sign death certificates. And the way that this death certificate is laid out you can't put two things on one line. So as I said, without the head injury, the abdominal injury could have been fatal by itself.
Q To a reasonable degree of medical certainty, would the child have died from the abdominal injury?
A Yes.
Q How long?
A It depends on whether they got medical help or not.
Q Well, I mean, if he didn't get medical help how long reasonably could a child survive ?
A It could have been minutes to hours.
Q What do you mean by hours? What would be a reasonable range of hours?
A Well, if you got -- with a perforated intestine you can get peritonitis and you may -- may succumb from that within 24, 48 hours.
Q The injuries to the body that that child had left untreated, two days would be a possible life expectancy?
A Possible.
Q Could be one day?

A Possible.
Q Possible to a reasonable degree of medical science --
A Correct.
Q -- or certainty probably. But the head -- the injuries to the head is a different matter?
A Yes.
Q And that's why you distinguish the head injury from the rest of the injuries?
A Correct.
Q Because that was G.M. immediate cause of death was the injury to the head?
A Correct.
Q Now, when I saw G.M. head, I saw the bruise, I guess, above his left eye --
A Correct.
Q -- on the forehead?
A Yes.
Q And then I saw the bruise just short of his scalp on the right side of his forehead.
A Yes.
Q And then I think you testified in the refraction of the skin that there was a bruise toward the top of his skull?
A That was in that one picture. There was another -- there was a picture that I have that wasn't shown -- that showed bruising pretty much on the whole left side of the

head.

Q In a small pattern or kind of a wide pattern?

A Well, two of them. There's one towards the side of the head and one more towards the back of the head.

Q My interest is which -- is it possible to show which one of those bruises caused the fatal injury? Which one are you talking about?

A No. It's not possible to tell which one was the --

Q We heard an officer testify that there was a knot -- when he saw the child shortly after his death, there was a knot the officer estimated was about the size of his thumb print, I assume over the left eye, that was swollen. That in itself would not have been necessarily the fatal blow?

A No.

Q My question is, could it have been one of those blows, or you're pretty sure it was all of the blows he had that caused the hemorrhaging in the head?

A It could have been one, the large one on the left side of the head, or the combination of all of them.

Q Are you not able to look at the brain and see kind of like the center point of the bleeding on the skull?

A No. The bleeding was outside the brain. Sometimes you get contusions or bruising of the brain itself, but those -- that was not there. Which is not -- not uncommon.

Q So the bleeding was on the outside of the skull, or

outside of the brain?

A Outside of the brain, inside the skull.

Q But it was kind of spread out. It looked to kind of go wherever it can find space, so it spreads out throughout the edge of the skull?

A It's in that subdural space.

Q But it's not just in one particular area that it's --

A No. It does not tell me which injury actually caused that.

Q Now, Dr. Holaday, who was the emergency room treating physician, pronounced G.M. dead at 2:06 in the morning.

A Yes.

Q He indicated that he probably came in the hospital about 1:38, 1:35 -- they started treating him at about 1:38 in the morning.

A Yes.

Q Now, Dr. Holaday testified in his opinion the child was dead on arrival. Would you agree that that's reasonably possible?

A Yes.

Q He also opined that the child had been dead at least 15 minutes to two hours. Would that be -- and base that on the tone, can you kind of tell how long the body -- the heart has been beating by the color of his skin? Does the skin change color?

A Well, it's going to have livor mortis, what we talked about. When circulation stops blood will by gravity go -- well, towards gravity. If you're on your back, it's going to settle down on your back. If you're on your stomach it's going to settle on your stomach. And that's what makes the skin a little purple color.

Q Now, he also indicated that the tone of the skin -- is tone different than color?

A I'm not sure what he's talking about.

Q And he also indicated that he basis his opinion on softness of the skin and body. Would he be talking about rigor mortis?

A I assume he's talking about rigor mortis. I don't know.

Q But if his testimony -- that is his testimony. But if his opinion was the child was dead 15 minutes but no more than two hours prior to arrival, that would be consistent with your opinion?

A It's possible. Something like rigor mortis is very inexact. Rigor mortis has to do with the use of energy inside the cells of the muscle. If -- for instance, if you're running from somebody because they're going to shoot you, and they do shoot you, and you've used up all the energy inside your muscles because you've been running, then you can go into rigor mortis within 10 minutes. If you die

in your sleep from a heart attack or something, then generally it takes 12 hours to go into full rigor and then another 12 hours to come out of it. So you can't judge by rigor mortis, or livor mortis.

Q So you would disagree with Dr. Holaday, or just that you would let him -- you would let him stand on his own feet?

MR. STUMBO: It's pitting.

MR. VERNER: Again, they're expert witnesses, Your Honor.

THE COURT: I think the witness is capable of answering that question. I understand your point. I'll allow the question.

A Well, this is my expertise in reviewing -- doing 10,000 autopsies, and knowing the clinical history to judge what I see in the body.

Q Now, but how long after G.M. death did you -- when did you first come into contact with the body?

A At 8:00 a.m. that morning. That same morning.

Q So that would be six hours after the cause of death?

A Yes.

Q Or six hours after the pronouncement of death?

A Yes.

Q If a child -- three-year-old child is bleeding like that, is it possible the child could have lain either

unconscious or gone to sleep?

A With that head injury they usually go unconscious for some period of time until they finally die, yes.

Q With that head injury, would that have knocked the child out almost on contact, or is that something that just kind of would have set in with dizziness and -- or is it possible that child was knocked out with the blow to the head?

A It could have gone either way. I mean, you get hit on the head you sometimes have a concussion and blackout, sometimes you don't.

Q And is it fair to say that if I slapped the child with my open hand that wouldn't cause injuries to that degree to the head, would it?

A If you hit him hard enough it would, yes.

Q If it was extremely violent --

A Yes.

Q -- it could?

A Yes.

Q More likely would be a closed fist?

A Either one.

Q So the child would have gone unconscious or semi-conscious fairly quickly after the head injury?

A Yes.

Q Is there any way to tell with certainty whether the

head injuries came first or the body injuries?
A No.
Q If a child had been beaten to that degree of -- exactly like G.M. and I didn't see it and the child had been laid in bed or gone to bed on his own, could he appear to be sleeping?
A Yes.
Q Particularly if it was about midnight?
A Yes.
Q So unless I was aware of those injuries or saw those bruises I could walk right by a bed with my child with those injuries and not observe it?
A Yes.
Q And it's fair to say that all the -- just about all of the injuries to the child's body would have been under the normal clothes pattern?
A Yes.
Q Are you familiar with what Mongolian spots are?
A Yes.
Q What are Mongolian spots?
A They're little extra pigmentation areas usually around the buttocks or the sacral area.
Q Are you aware of whether G.M. Mongolian spots?
A I did not see one.
Q Are those more prevalent on biracial children?

A I don't know.
Q Or you don't know?
A I don't know.
Q Dr. Ross, assuming there's evidence -- we know that G.M. vomited.
A Yes.
Q Do you know for a fact that the vomiting was caused by the beating?
A By the -- I'm sure -- I'm sorry. By the what?
Q Well, if there is evidence introduced that another person at that home was also vomiting that night, if the police have DNA evidence or other evidence of other people vomiting in the same room or the same home, is it possible that G.M. had picked up a stomach bug or some kind of contagion that the other person had?
A It's a possibility, yes.
Q So if we have vomit that by DNA they can prove is of a third party, is it possible that some of the at least initial vomiting could have been independent of the beating?
A Yes.
Q And then the beating would just make it worse, wouldn't it?
A Correct.
Q If a baby was sleeping -- if a child like G.M. three-year-old child had been beaten like that and then be

put back in his bed or found his way back to bed and was sleeping, if I picked him up to put him in a carseat would he remain in that sleep state or would he kind of be in a semi-awake --

A He would probably remain that way. He would probably be limp. And he may have that snoring breathing.

Q He might make sounds, but he wouldn't be making comments like I'm fine or answering direct questions?

A No.

Q So if somebody said I was asking him questions and he was answering me, after a beating like that you would find that inconsistent with your opinion?

A Depending on the time. I would suspect not.

Q And he certainly wouldn't be struggling with anybody about putting him in the child restraint seat, would he? He would be comatose, or dead or non-reactive, wouldn't he?

A If it's -- yeah. If it was minutes or hours after the beating, yes.

Q If it had been some time after a beating like that and I was putting him in a child safety seat in a car, he wouldn't be kicking at me, would he?

A No.

Q He wouldn't be resisting getting in the car, would he?

A Not likely, no.

Q And he certainly wouldn't be verbally saying he didn't

want to go or I'm fine?

A Correct.

Q And he wouldn't have off and on spells where he kind of was sleeping and then woke up and was responsive and then went back into -- he was incapacitated when he first went to sleep?

A Yes.

Q By sleep I mean unconscious.

A Correct.

Q Did you take slides of the tissues, Doctor?

A Yes, I did.

Q Did you examine them microscopically?

A Yes.

Q Did you find any kind of cold or virus or any kind of illness in G.M.

A No. The only thing I saw were the bruises as we described before in the different organs.

Q Did you see any of the injuries that would have been bleeding injuries?

A I'm not sure what -- I saw bruising which means bleeding into tissue.

Q I'm talking bleeding as it's normally understood. Bleeding out of the body. Bleeding on the bed, bleeding on the carseat, bleeding wherever that body was laying?

A I wasn't at the scene. I don't know.

Q I'm just asking if the injuries were the type that could cause external bleeding.

A No.

Q So if there was blood it would almost all be internal?

A Yes. There might have been a little bit of blood from some of the abrasions, but not a lot.

Q So it's possible that the forensic team could have found small blood spots, but you wouldn't expect large bleeding like a bullet wound or a knife wound?

A There might have been some bleeding in the urine if he urinated.

Q That's another point. There could have been minor bleeding then?

A Yes.

Q But there was no evidence the child had substantial bleeding on his body?

A I don't --

Q Externally?

A Correct.

Q And, in fact, when you got the body the body was still partially clothed?

A Yes.

Q But even after the doctor had been treating the child he was still at least in his pants and underwear?

A Yes.

Q Was there feces in the underwear, or in the -- was it a Pull-Up or was it a diaper, or do you recall?

A A disposable diaper that we described. No, there was no fecal material.

Q Do you recall whether it was a Pull-Up or a regular disposable diaper?

A I don't recall.

Q Is there any way for you to medically tell how long a beating like that could have taken?

A The beating of the head and the abdomen and the genitals altogether?

Q Yes, ma'am. If there's a way -- is there a way for you to determine if that would have taken a considerable amount of time or is it something that could have happened pretty rapidly?

A It could have happened rapidly.

Q Or it could have been stretched out, too?

A Yes.

Q Is there any way for you to testify to a reasonable degree of medical certainty which one of those is accurate?

A No, there's not.

Q So your guess would be just as good as anybody else's guess in here?

A Yes. Yes.

Q You would have to rely on the other evidence,

non-medical evidence of a witness or other evidence to make that determination?

A That's correct.

Q And you'd have to look at timelines, too?

A Yes.

Q There's been some testimony that the child may have hit his head, back of his head two days earlier that caused his death. Is that possible?

A No.

Q So if I was telling the police I saw the child bump his head on a coffee table two days prior, that would be, in your opinion, incredible?

A I don't believe that would be a cause of death, no.

Q It's possible it happened, but it's not what killed G.M.

A Yes, correct.

Q The injury to the child's scrotum and penis.

A Yes.

Q The severe swelling.

A Yes.

Q Is it possible that was caused by grabbing or punching, or a combination, or can you tell what the cause of the groin was?

A There's no pattern, so it could be a fist, it could be a kick, it could be -- there was no pattern to it.

Q Were there several injuries to the groin, like a beating, or was all that caused by one blow?

A It's hard to tell.

Q It could have been all one blow?

A Correct.

MR. VERNER: Mr. Bentley, may I have 91, please? You can step down, Doctor, if you can.

(Whereupon, the witness stepped down from the witness stand.)

Q On the child's left leg --

A Yes.

Q -- it appears to me that there's kind of a roundish bruise, kind of like a tennis ball shaped bruise.

A Yes.

Q Is that apparent to you, too?

A Yes.

Q Does that appear to be an independent bruise, or are you saying it's just too inclusive to determine?

A It's hard to tell, but it could be two separate ones.

Q Do you see any other possible break points in the bruising to that child's testicles?

A No.

Q Is it possible these are finger marks or separate bruising?

A I wouldn't say it -- they could be separate. I

wouldn't say fingers, but --

MR. VERNER: May I have No. 90, Mr. Bentley.

Q Is it possible that these are hand or fingerprints from severely grabbing a child?

A It could be. It's hard to say.

Q But those would at least be consistent with squeezing a child very hard with strong fingers or --

A Well, that's one way it could happen.

Q Well, if that's not an accurate, at least, conjecture of it, please tell me. But is that reasonably possible?

A It's possible.

Q But it can also be -- could it possibly be two separate injuries or that all appears to be one consistent injury?

A It looks like one.

MR. VERNER: Thank you, Mr. Bentley. Thank you, Doctor. You can sit down.

(Whereupon, the witness returned to the witness stand.)

Q If a child had injuries like that and I gave the child a bath, is it reasonably possible, in your opinion, to overlook those bruises?

A No, it would not.

Q Now, G.M. had slightly darker complexion than a Caucasian person, but they are still very evident bruising?

A Correct.

Q Was there any bruising to his buttocks? The butt

cheeks, the buttocks, that you saw that was part of this --

A Just one small one. On circular one.

Q Was that injury to the -- could that have been a separate injury done at a different time or could it have been possibly part of the same thing?

A It could have been done at a separate time.

Q But your general examination of the child's body indicated to you that all the -- all the significant bruising seemed to have come at generally the same time period?

A Yes.

Q And that's based on your medical -- not just a hunch on how things happened? That's actually looking at the skin and, I guess, whatever patterns you were looking for as a doctor?

A Yes.

Q So you would be comfortable saying this wasn't a little abuse inflicted over a long period of time? This was a single incident?

A Yes.

Q Certainly nothing in 2013 would have contributed to his death?

A Correct.

Q I know I asked you this, but I just want to make sure. Did you check for other symptoms such as viruses or colds or

chicken pox or anything like that --

A We took --

Q -- when you look at the slides?

A Oh, yes. We look for anything and everything.

Q So the child was in good health?

A Yes.

Q And again, after a beating like that, after the final blow is struck, how long is G.M. still able to walk?

A After the head injury?

Q And you agree that the head injury was probably the final blow --

A It could --

Q -- or the fatal blow?

A Yeah, the fatal blow. I can't say it came first.

Q Is it possible the head injury came first and somebody continued to beat on that child after the head injury?

A That's a possibility, yes.

Q Are any of those injuries consistent with performing CPR --

A No.

Q -- on the child?

A No.

Q You wouldn't expect to see that?

A There were no -- no injuries around the mouth.

Q If the hospital had put a -- I call it a trach tube or

a breathing tube down the child's throat, that would not have caused the damage to the duodenum?

A No, it would not.

Q And pronounce that word for me one more time?

A Duodenum.

Q Duodenum.

A Yes, sir.

Q G.M. was pronounced dead at 2:06 a.m. You understand that?

A Yes.

Q But you would agree that that would just be a legal time and not really the actual time of his death?

A Correct.

Q Can you tell us how many hours before that beating G.M. would have been in a different -- in a healthier state?

A No.

Q Could he have been eating dinner, beaten like that around 5:00?

A Yes, he could have.

Q With those -- with that beating?

A Oh, no.

Q Prior to the beating -- even with that beating it's possible G.M. was still in a healthy state at 5:00 p.m. that evening?

A Yes.
Q Up to how late do you think would be the latest time likely that G.M. would be --
A I can't tell that.
Q Now, would G.M. be vomiting with large amounts of vomit like a cereal bowl full or would it be smaller amounts kind of like gagging amounts?
A It could be either way. He still had 100 CCs which is probably a couple cups of fluid in his stomach.
Q And no question in your mind he had eaten corn?
A There were corn kernels in this stomach, yes.
Q But they would have been gone by the time of his death if he'd eaten them the day beforehand?
A Correct.
Q The stomach evaporates -- should be completely evaporated -- be empty within about an hour after eating?
A That's correct.
Q Does that apply even on a three-year-old child?
A Yes.
Q So in your opinion, most likely G.M. was beating within an hour give or take a little bit of minutes of either side, but he would have been beaten after dinner within about an hour?
A Within about a half an hour probably.
Q More likely a half an hour?

A Yes.

Q And then he would have been in a comatose situation from that point on?

A At some point, yes.

Q Well, I mean, after that head blow, depending on how long the beating took -- you said the food stopped -- had stopped digesting in his body. And so, you were guessing that it took about 30 minutes for him to die after that. Is that what you're saying?

A No, sir.

Q Or at least for his muscles, the Peridinium to stop pushing the food further?

A The injury probably to the abdomen occurred probably within a half an hour of his eating, and that stopped the movement of food flow so that he had food still left in his stomach.

Q So if the blow to the head didn't occur close in time to the blow to the abdomen he could have possibly been alive even longer?

A Yes.

MR. VERNER: I think I'm through. But just let me check my notes.

THE COURT: Certainly.

Q I did want to ask -- now, you looked at G.M. teeth, too?

A Yes.

Q Did they appear -- I take your report indicates them in natural and fair repair. So none of the teeth had been knocked loose?

A Correct.

Q And unfortunately, there's no way in your medical report to determine who inflicted the wounds to G.M. McArdle?

A That's correct.

MR. VERNER: Doctor, the Solicitor may have some follow-ups.

THE COURT: Can I borrow one or two --

MR. STUMBO: Sure. Yes.

THE COURT: -- and then let you go and let him go again, please? I just need clarification on something.

The last series of questions, Doctor. Are you saying the abdominal injury caused the food to stop digesting, not the cranial injury? Am I understanding that right?

THE WITNESS: Either one could do it. But to stop it that quickly I think the abdominal injury would be the primary.

THE COURT: And that goes to the bruise on the stomach that you said you've never seen before?

THE WITNESS: Correct.

THE COURT: Second question. Dr. Holaday testified

that when initially -- when the child initially presented to the ER there was some vomit in his mouth but the vomit was not as runny as one would normally expect, but it, I'm going to say, coagulated, although that's probably not the right word. It was thickened in some way. That he found that in the child's mouth. Is that medically significant to you in any way, shape or form in determining time of death or anything?

THE WITNESS: It sounds like he's talking about it was partially dried which means it had been there for, I don't -- sometime. Long enough to dry a little bit. I'm not sure what he's saying.

MR. VERNER: Your Honor, I don't want to interrupt. But I believe that his precise words were it was like congealed broth.

THE COURT: Congealed --

THE WITNESS: Well, just thickened. It could be mixed with mucus.

THE COURT: So there's nothing medically significant to that that you can think of?

THE WITNESS: No, sir.

THE COURT: Thank you. Sorry, Solicitor. Go ahead, please.

MR. STUMBO: Not a problem, Judge. Thank you. Just a couple on redirect.

REDIRECT EXAMINATION

BY MR. STUMBO:

Q Dr. Ross, Mr. Verner asked you if there was blood at the residence would that be significant. I believe you testified that blood could be in the urine, correct?

A Correct.

Q Could there also be blood mixed in with the vomit?

A Well, some of the -- fluid in his stomach was a dark brown, and sometimes if it's thrown up it appears to be dried blood. So it's -- you know, I didn't see any blood in the stomach.

Q With the material of food that was left in his stomach?

A That's correct.

Q Is it possible though that with the bruising on his stomach that there could be some blood mixed in with vomit?

A I didn't - I didn't see any break in the inside of his stomach. It was just a bruise on the -- in the wall of the stomach. So no, I would not expect to be blood in the stomach content.

Q Thank you, Dr. Ross. The other -- last question. Mr. Verner asked you --

MR. STUMBO: If you could pull up 149 again, Mr. Bentley.

Q This area here, Mr. Verner was asking you about the minutes. I believe you said that's the form that you use

here. It just has minutes on it, correct?

A Yes. I mean, if somebody dies of a heart attack that occurred three days ago then we would put days. But the way the death certificate is -- we do this to give an idea to the coroner who signs the death certificates what to put on it. So when you put time interval in it, it's your best judgment, based on your experience, of how long it took between the time of the injury to the time of death.

Q Would you say it could be up to 120 minutes or two hours?

A Yes. I mean, and that's just an example. That doesn't -- I mean, minutes just mean minutes.

Q And some of these injuries that occurred, 240 minutes, or four hours --

A Yes.

Q -- from the time of death?

A Yes.

Q 360 minutes, or six hours from the time of --

A It could be. Again, you'd have to -- I'd have to know the clinical correlation.

Q Very difficult for you to determine or hint towards that with any medical certainty, correct?

A Exactly. But once that injury -- the bleeding starts in the head then you're talking minutes, whether it's five or 60.

Q Five or 100.

A You know, it's hard to say.

MR. SOLICITOR: No further questions.

MR. VERNER: Just --

THE COURT: Go ahead.

RECROSS-EXAMINATION

BY MR. VERNER:

Q After the head injury, I assume you're using the term minutes because you think that's the most accurate time between injury and death?

A Yes.

Q And again, just so the jury knows, in your opinion as a pathologist to a reasonable degree of medical certainty, what do you mean by minutes? What range do you think is consistent?

A Well, in this type of injury --

Q Yes, ma'am.

A -- bleeding in the head, when I said one to -- I was just giving an example. It could be five minutes in this particular case. A subdural hemorrhage could be five minutes. It could be 60 minutes.

Q So if you felt it had been dragging out over a period of hours you would have used the term hours?

A That's correct.

Q So logically in your opinion, the child died 60 minutes

or less?

A After the head injury, yes.

MR. VERNER: Thank you, Doctor.

THE COURT: No further questions, Doctor. You've been here three times and on the third time you got to testify. I apologize --

THE WITNESS: Third time's the charm.

THE COURT: -- so much for disrupting your day. Thank you though for your willingness to be here, and you are free to go.

THE WITNESS: Thank you.

(Whereupon, the witness stepped down from the witness stand.)

THE COURT: Ladies and gentlemen, we're going to take a brief break for about 10 minutes, if you want to step outside. My understanding is the State has one final witness. We're going to take that testimony after our break. Again, don't discuss the case, but feel free to move about. I'll see you all shortly, thank you.

(Whereupon, the jury exited the courtroom at 3:51 p.m.)

THE COURT: Let's go ahead and bring the jury back in, please.

(Whereupon, the jury entered the courtroom at 4:28 p.m.)

THE COURT: Ladies and gentlemen, sorry for the delay.

I had to do a couple -- take a couple housekeeping matters. Take care of those in the back. We are, of course, still in the State's case in chief.

Solicitor, if you'll call your next witness, please.

MR. STUMBO: Thank you, Judge. The State calls Chief Roy McClurken.

CHIEF ROY McClurken, having first been duly sworn, testified as follows:

DIRECT EXAMINATION

BY MR. STUMBO:

Q Good afternoon, Chief.

A Good afternoon.

Q You are currently the chief of police over here at the Newberry Police Department?

A I am for the past 10 months.

Q How long have you been with the police department?

A Thirty-two years.

Q And before you were put in the Chief's position what was your rank there?

A I was Captain.

Q Were you a Captain at the time of this incident when G.M. was brought to the hospital in Newberry deceased?

A Yes, I was.

Q Did you help work this case with Detective Moore who's

here in the courtroom?

A I did.

Q Who else in the department worked the case with you all?

A Lieutenant Kevin Goodman. The chief at that time, Chief Brown was there, Kellie Williams with SLED, Nikki Cantrell with SLED, crime scene officers Oliphant and his partner.

Q Who made the decision to call SLED in for assistance?

A It was actually Chief Brown at the time that actually requested they come in, but I was the contact person for SLED that morning once I arrived on scene.

Q So initially Officer Wood from the hospital police department is the first one on scene from law enforcement, correct?

A That's correct.

Q Shortly thereafter Detective Moore, you, Lieutenant Goodman get involved in the case as well?

A That is correct.

Q It took a little while for SLED to get from Columbia during the middle of the night up here?

A That's correct.

Q And were you able to respond to the hospital and observe G.M. McArdle's body?

A Yes, I did.

Q This was after the doctor -- ER doctor had declared him to be deceased?

A Yes. I'd gotten to the hospital at approximately 4:15 a.m.

Q And you've been in the courtroom. You've seen those pictures, I believe, State's 1 through 7. Those pictures of G.M. when he was laying in the ER are the same thing you observed that night as well?

A Yes, they were.

Q Describe for the jury your observations of his body.

A I arrived at the hospital, like I said, at 4:15. I was briefed by the officers who were already on the scene about what they had observed, and I walked into room 3 and I observed G.M. body lying on the gurney inside there. He was only in his shorts. I observed the bruising to his body, bruises on his head. The one on is side. And then they began to show me other bruises by pulling his little Pamper down and his pants down and the bruising around his genitalia area.

Q And you said bruising of the genitalia. Was it swollen?

A Yes, it was very swollen.

Q Immediately upon seeing the injuries to G.M. body what was your next reaction in terms of your investigation?

A That this young child had gone through a severe

beating.

Q That was right off your first impression?

A Right off the bat.

Q Now, the Defendant, Theia McArdle, she's in the courtroom here today, what was your first interaction with the Defendant?

A At the hospital I just went back into the area where they had them separated. But that was after some time because what happened right when I got there. I went into the room and then saw what was going on. Saw the injuries to the child. At that point I was the contact person for SLED, so I had to actually call the captain with SLED and let him know the resources that I needed. So I proceeded to go out there and talk with him and tell him that I needed a crime scene unit. And he in turn told me that he was also sending two agents, who were with the child fatality division, up to assist me also. At that point in went back inside and they told me where they had Ms. McArdle at and where they had Mr. Bowman at. I walked back in that area and saw both of them and saw they were separated, and at that time told them that we were going to take both of them to the police department to keep them separate.

Q Did you have any conversation with them or interview at that time?

A No, sir. I did not.

Q Did you ultimately participate in the interview of either one of the suspects?

A I interviewed, along with Agent Cantrell, Mr. Bowman at the police department sometime later.

Q And so, that was -- Agent Cantrell -- Agent Williams has been in the courtroom this week?

A Right.

Q And you were with her during that interview?

A That is correct.

Q Did you participate in any search warrants in this case?

A Yes. I participated in one search warrant. The search warrant that was executed on the residence in Spartanburg County.

Q So did you go obtain the search warrant?

A No, I did not. What happened was is when I found out what their address was in Enoree, South Carolina, being familiar with the area, I contacted Laurens County -- well, I had my dispatch Laurens County first and ask them if that address [redacted] Highway -- Union Highway was in Laurens County, and they in turn told dispatch no, it was not in Laurens County. So I had dispatch contact Spartanburg County and I found out that address was in Spartanburg County. So the on duty supervisor in Spartanburg County for the sheriff's office that night called me and I told him what we had.

That we had a child here that was dead by beating and I told him that I was probably -- I was going to need a search warrant to actually search the residence in Spartanburg County. He told me he would assist me by getting that warrant in Spartanburg County for me. I gave him the actual specifics of what was going on, specifics for the search warrant, and he in turn had a search warrant prepared and got a judge in Spartanburg County to sign that search warrant.

Q You accompanied Agent Oliphant, who testified earlier in the week --

A That is correct.

Q -- to the house?

A I did.

Q And you've been in the courtroom all week. You've seen those pictures of the residence during the search warrant, correct?

A That's correct.

Q And those are accurate?

A Those are accurate and true pictures of pictures taken at that residence that morning -- or that afternoon.

Q Ultimately there at the house there were items of physical evidence collected that we've seen pictures of from the house, correct?

A That's correct.

Q There were also items collected from the vehicle by Agent Oliphant as well?

A That is correct.

Q And from the house I believe we had a pillow case, in particular, a yellow Coogi tee shirt, correct?

A That's correct.

Q I'm going to hand you what's been marked in as 162 and 163. You've had a chance before Court today to review some of this in the SLED reports, correct?

A That is correct.

Q And these are cuttings that SLED took from that tee shirt and that pillow case in the house?

A That's correct.

Q That would be 162 and 163 for the record. Ultimately those were analyzed and submitted for DNA, correct?

A That's correct, to SLED.

Q I hand you what's been -- 8.1 SLED item and 10.1, which is Exhibits 160 and 161. It looks like 160 is marked as a tee shirt. 161 is marked as a towel. Those items were also collected -- or cuttings from items that were collected and submitted to SLED?

A That is correct.

Q And of the shirt -- these four items that we just talked about were ultimately tested by the DNA analyst at SLED?

A That's correct.
Q And then she submitted a report to you for your all's case file?
A She did.
Q Was there a blood standard that was taken as part of th investigation by SLED from the autopsy?
A Yes.
Q I'm going to hand you State's Exhibit 164. And is that a swab from the blood standard that was taken from G.M. at the autopsy?
A That is correct.
Q And ultimate it was taken to SLED for comparison to these physical items?
A Yes.

MR. STUMBO: Judge, we would offer 164 -- excuse me, 160, 161, 162, 163 and 164 into evidence.

THE COURT: Without objection?

MR. VERNER: Could he just call out which each item is?

MR. STUMBO: I can, Judge.

THE COURT: 160, I think, is the tee shirt cutting. 161 is the towel. I missed the 162, 63 and 64 myself.

MR. STUMBO: 162, Judge, is the yellow shirt from the house, from the front collar area. A cutting. 163 is a cutting from the pillow case that came out of the residence. 164 is the swab from the blood -- from the sample from the

autopsy of G.M. blood for DNA comparison.

MR. VERNER: Now, 161 is the towel from the home? The Union or the --

MR. STUMBO: No, the towel from the backseat of the car.

MR. VERNER: Okay. No objection, Your Honor.

THE COURT: Very good. All are into evidence.

(Whereupon, State's Exhibit Nos. 161 through 164 were admitted into evidence.)

Q And you did say you received a report from SLED -- or reports, I should say. I'm going to hand you first what's been marked Exhibit 151 from SLED analyst Corky Thompson. Was that sent to the police department as part of your all's file?

A Yes. It was actually sent to me at 1507 Nance Street at the Newberry City Police Department.

Q And it's addressed to you?

A Yes, sir.

Q And then 152, which is from DNA analyst at SLED, Jennifer Claycomb. Is that addressed to you as well?

A Yes. It was addressed to the Newberry Police Department, Roy McClurken, at 1507 Nance Street here in Newberry.

Q And these became a part of the case file here. And the analysts, we consulted with them this week in preparation

for trial, correct?

A That's correct.

Q Now, 151, his is a serology analysis. Was any blood found on these items out of the house or out of the car? Were any of those positive for blood?

A Yes. Five -- item five that's on this list, which was the -- a blood standard. It was the victim's blood. And that was -- well, that was the one that was taken by the SLED agent during the autopsy.

Q And they developed ultimately a DNA --

A Right.

Q -- profile from that blood --

A Right. And that was from the towel in the backseat, the item number eight, tested positive for blood and matched the victim's DNA.

Q Any of the other items other than the towel in the backseat?

A Item 10 was a cutting from the tee shirt, the Puma tee shirt, in the backseat tested positive for blood and matched the victim's DNA.

Q How about the tee shirt from the house?

A The Coogi tee shirt, which would have been item 16 found in the clothes hamper in the Enoree trailer matched the victim's DNA.

Q But no blood on the --

A No.
Q -- Coogi tee shirt?
A No, sir.
Q And item -- the pillow case.
A Yeah, the tan pillow case would have been item 17. Found the victim's -- found on the air mattress where the victim slept, tested positive for blood and matched the victim's DNA, G.M.
Q So the Puma tee shirt, towel from the car and the pillow case from the house had blood on them and all of that matched to the DNA of G.M.
A That is correct.
Q The Coogi tee shirt just had his DNA in the fluids but it was not positive for blood?
A That is correct.
Q Thank you.
MR. STUMBO: Judge, I believe -- did I offer in 151 and 152?
THE COURT: You did not, but --
MR. STUMBO: We would put those in at this time.
MR. VERNER: Without objection, Your Honor. I think he did but I'm not 100 percent sure. But without objection either way.
THE COURT: 151 and 152 are in evidence.
(Whereupon, State's Exhibit Nos. 151 and 152 were

admitted into evidence.)

Q Now, Chief, would did you walk through this residence in Enoree?

A I did.

Q And what -- can you just describe for us the -- we've seen the layout of the house in the SLED report. But tell us, where's G.M. sleeping in the house?

A He's sleeping on an air mattress I guess you would consider the livingroom over in a corner. If you walk through the backdoor of the house, to your left is -- when you first walk in it's the kitchen. If you continue walking straight that's what I consider to be the livingroom area. There's a air mattress over on the left side near a window up against a wall. That is where he's sleeping.

Q And the bedroom on the -- there's two bedrooms on either end of the house?

A That is correct. One bedroom to the right when you walk in the door at the end of the trailer. The second one is to your left when you walk in the door all the way at the end.

Q What's -- which is which? What's in each of those bedrooms?

A The one on the right when you first walk into the door, I call it the bedroom the far end of the trailer. That is the room where you heard testimony where the cats were.

That is the room that contains cats that used to be G.M. bedroom. The one on the far end on the left side when you walk through the door, that is the bedroom where Theia McArdle and Richard Bowman sleeps.

Q Those areas of the house were photographed?

A That is correct.

Q Was that significant in your investigation?

A Yes.

Q Why?

A Because it shows -- I had already had -- during that day I had interviewed Richard Bowman at the police department prior to going to Spartanburg, and he had told me that Theia had moved G.M. out of that bedroom to place cats in there and move him into the livingroom to sleep. Basically he told me that she had evicted him out of that room and placed cats in there and he didn't think that was right. So I had that knowledge prior to getting there. So I made sure we photographed that that was true and accurate as to what he was telling me, that cats were now in that bedroom instead of the child.

Q I'm going to back up a little bit and take us back to the hospital. Did you observe the Defendant's car, Ms. McArdle's car, at the hospital?

A I did.

Q Where was it -- where was it parked?

A It was parked at the -- if you're familiar with Newberry Hospital, and I can show you on a diagram, you've got the canopy there where you go in the emergency room. But at the far end up there where the walking track is and over there where the gazebo is, that's where the car was parked. That's, I would say, a good distance from the ER entrance, but not all the way at the end of the hospital property. But far away from the ER entrance.

Q And I'm going to show you what's been marked as 143 for ID. Do you recognize this map --

A I do.

Q -- in this overhead? What is this?

A This is the area or shot of Newberry Hospital, the parking lot. This would be Evans Street behind the hospital. This would be Kinard Street in front of the hospital. This street down here, this is Pond Field Road. That's actually White Oak Manor Hospital. And this is what they call the Atrium that has doctors offices and so forth in it. Out of this area here would be over towards Wilson Road.

Q It had the shopping there as kind of the front of the hospital?

A That is correct. Food Lion and all of that.

Q So you obviously have a very good familiar knowledge of the hospital and it's surroundings?

A Thirty-two years worth.

Q Yes, sir. And this fairly and accurately depicts that area?

A That is correct.

MR. STUMBO: Judge, we'd offer 143 into evidence.

MR. VERNER: Without objection, Your Honor.

THE COURT: Without objection, 143 is in evidence.

(Whereupon, State's Exhibit No. 143 was admitted into evidence.)

MR. STUMBO: Now, Chief, if you could step down. And just keep your voice up for the court reporter.

Q I believe one of the pictures in evidence, I think -- I don't have it in front of me, as the gazebo at the hospital. Where is the gazebo?

A The gazebo is right in this area here. You can see the top of it here.

Q The gazebo is in this corner?

A That is exactly correct.

Q And where is the car Theia McArdle parked in that parking lot?

A It would be right in this area here.

MR. VERNER: Could I ask them just to more centralize the exhibits so we can see what he's pointing to?

THE COURT: If you need to step over next to the Solicitor, go ahead. Yeah, you're fine.

Q You pointed right here in kind of the middle between this red car and where the gazebo is in this --

A Yeah, right in this area here.

Q Now, this is an overhead satellite image. It's not of the exact date and time of this incident, correct?

A That is correct.

Q Now, tell me though. This parking lot, you were out there in the early morning hours of December 30th when G.M. was deceased inside the ER. Was the parking lot full that night?

A No, sir. I didn't count the cars, but the parking lot was not full.

Q All these parking places here around the entrance of the ER on this side, were they filled out with cars?

A No, sir. Because I actually parked over in this area when I came to the hospital that morning.

Q And how was Ms. McArdle's car positioned in the parking lot when you found it?

A It was backed into a parking space over here.

Q Backed into a parking place. And about how far is that -- 100 feet, 200 feet? Can you estimate the distance between the door and where the car was found?

A Probably around two to 250 foot.

Q And backed into the parking space?

A Pardon? Backed into a parking spaces, yes.

MR. STUMBO: Thank you. You can step back onto the stand.

(Whereupon, the witness returned to the witness stand.)

Q Was that significant to you?

A Yes, sir. That's -- in an investigation we're looking for things that are not necessarily -- seem out of place to us. That's what we're looking for. That's what I'm looking for. When I get to the -- when I got to the hospital that morning and I'm being briefed as to what is going on and what has happened, and then I go in and see a child in that condition, then that starts me to thinking, okay, what has happened here. What was -- what happened before we got here. So all that's running through my head as to the demeanor of the people bringing the child into the hospital. What did they say. Who did they interact with. Who brought the child into the hospital. What was their demeanor when they brought the child into the hospital. So that's got all of my senses starting up as to what happened before we got there.

Q And you all were able to pull the surveillance video in the hospital?

A That is correct.

Q And those pictures are in evidence. We saw them earlier. That depicts about two minutes 20 seconds between the time Mr. Bowman walks in with G.M. and there's that

delay, and then she walks in a little bit after that, correct?

A That is correct.

Q After Richard Bowman and Theia McArdle were interviewed you all had an opportunity to review Dr. Ross' autopsy findings the next day. What was the decision of the investigator team as far as charges?

A We had ran down a timeline in talking to both of them, and the timeline show that those two individuals were the only people in the past 48 to 72 hours who had contact with that child, so they were both arrested for homicide by child abuse.

Q Were the statements that were given by both of them, did they give you all any explanation as to how this child was beaten to death?

A No, sir. None whatsoever.

Q And neither one of them?

A Neither one of them.

Q Both of them in their statements put themselves in this vehicle coming to Newberry, correct?

A That is correct.

Q Based on their statements alone, both of them were at the house in Enoree during that day, correct?

A That is correct.

Q And found out through their statements that it was some

time that Theia left and took a call in Spartanburg?

A That's correct.

Q And other than that, during that day they were in the house, correct?

A That is correct.

Q And you all were able to obtain the phone records as well, correct?

A That's correct.

Q And after the totality of your investigation it was determined to charge both Theia McArdle and Richard Bowman with homicide by child abuse, correct?

A That is correct.

MR. STUMBO: Beg the Court's indulgence, Your Honor.

THE COURT: Yes.

Q Now, Chief, you all also pulled records from the prior incidents between Ms. McArdle and Mr. Bowman, the domestic incidents, right?

A That is correct.

Q You also pulled DSS information and criminal charges against Ms. McArdle in North Carolina?

MR. VERNER: I understand that's been objected to, but that's -- but I object to that April 2013 incident. It's 403. It's not relevant. It's character evidence. It's already been testified to, and it's not part of the -- unless the State is charging some kind of conspiracy that

goes from 4/13. But my understanding is the indictment says the child was killed on December 30th, 2014, so I object.

THE COURT: Sustained.

Q You did other work on this case to gather information for purposes of your investigation, correct?

A That is correct.

MR. STUMBO: No further questions, Your Honor. Please answer any questions Mr. Verner has for you, Chief.

CROSS-EXAMINATION

BY MR. VERNER:

Q Chief, good afternoon.

A Good afternoon.

Q So you went with Agent Oliphant to Union -- or to Union Highway in Spartanburg, the Enoree address, to execute the search warrant?

A I did.

Q And it's clear that the only items of value for this DNA were the Coogi tee shirt from the home and then the pillow case that was on the air mattress that the child slept on?

A Yes.

Q Now, you also found the adult hoodie with vomit on it from the hamper, too, right?

A Yes.

Q And SLED also analyzed that vomit?

A I am not sure that is --
Q Is that not 18 -- 16.1? Item 16.1?
A No. Item 16.1 is the cutting from the Coogi shirt.
Q I'm sorry. 15.1. There was vomit on that grey hoodie sweatshirt which is -- SLED calls it item 15.1.
A Yes, sir. They did analyze that.
Q And they did a DNA test on it?
A Yes, sir.
Q And your same report indicates that G.M. the child, is positively excluded as the source of that vomit on that sweatshirt?
A That is correct.
Q Another male vomit but not G.M.
A That's correct.
Q And who was the only other male who lived in that home?
A Richard Bowman.
Q And it's also true that you took a DNA sample of the toilet vomit? The vomit in the toilet?
A That's correct.
Q But it's fair to say that that was a contaminated sample that they could not determine?
A I'm not sure. But they couldn't determine. Yes, sir.
Q Well, the report says it's male DNA but can't --
A Determine.
Q -- determine whose?

A That's correct.
Q And it's always disturbing to investigate the death of a child, small child, isn't it?
A That is correct.
Q But you have been investigating deaths of people of all ages for many years?
A I have.
Q And you're looking for important details?
A I am.
Q It is -- and you interviewed Richard Bowman the day at the -- where did you interview Richard Bowman?
A At my office at the police department.
Q On Nance Street?
A That's correct.
Q And the SLED Agent Cantrell was with you?
A She was.
Q And you made some notes and who -- did you both participate in the interview or just you?
A We both participated in the interview. But I had to leave at certain points to check on other stuff and then come back.
Q Richard Bowman, when you first spoke to him, indicated that he and G.M. were alone at the residence and Theia left to go to the store, and that is when G.M. had the incident about pooping in the bathtub?

A That was his initial statement to me. Yes, sir.
Q And, in fact, that was also -- you've seen the notes that Cantrell made contemporaneously with yours?
A Correct.
Q That was also her recollection of --
A Yes.
Q On December 30th Richard Bowman said, "When I hit the child G.M. had already left for the night -- or gone to the store"?
A You mean Theia.
Q Theia. I'm sorry.
A Yes.
Q Who did I say?
A G.M.
Q And that's something when you have two suspects in a crime, I would imagine that is something that would stand out to an investigator and that's one of the reasons you noted it in your report?
A That's correct. Anything that they tell us in an interview is important to us.
Q Particularly who was there at what time?
A That's correct, because we're trying to establish a timeline and who's with the child.
Q Is there any direct evidence that you have that Theia -- other than the testimony of Richard Bowman, that Theia

McArdle, mother of G.M. is the one who inflicted these wounds?

A No, sir.

Q Now, you've got the circumstantial evidence of the timelines and the fact that the car was parked backwards in a parking lot. But that's not direct evidence that Theia is the one who inflicted these wounds, is it? That's just one individual fact that you've taken in basically consideration of everything?

A It brought some concern to me. Yes, sir. That's why I noted it. Yes, sir.

Q But you would consider that more circumstantial evidence? Just a few of all the circumstances of what's going on?

A. Yes, sir.

Q That's just one fact to be weighed among many?

A Correct.

Q If I could -- if the Solicitor doesn't mind, could you mark with this pink, just a little circle where Theia's -- well, circle the gazebo first.

A (Witness complies)

Q So the Gazebo is on this part of the edge of the parking lot?

A That's correct.

Q And this looks like this might be a playground or

something behind there?

A Yes, that is a playground.

Q And then draw an X where you recall Theia's car was parked.

A Okay. This is not exact. I'm just going area.

Q I know you don't know the exact parking space, but just --

A (Witness complies).

Q If you could draw just a slightly bigger X.

A (Witness complies).

Q So the T shaped building is the hospital?

A Yes.

Q And the parking lot appears to be four rows of cars?

A In both areas, yes.

Q On both areas?

A Yes.

Q And Theia was on the fourth row away from the main entrance?

A That's correct.

Q Parked backwards?

A Backed into the parking space.

Q And, in fact, when I looked at those photographs there seemed to be several cars that were kind of parked backwards in there.

A That's correct.

Q Did you ever run the tags on Theia's car?
A I don't know if I ran the tag on her car, but somebody had to at some point.
Q If people had expired or improper tags are they more likely to park -- this is just as your experience as a 30 year police officer. But when people have expired tags are they more likely to park a little bit more -- I don't want to say secretively. But could that be a factor in how somebody parks a car?
A Not in a parking lot. No, sir. Because we wouldn't do anything about a car parked in a parking lot with expired tags. They would try to conceal it if they were driving it or something like that.
Q So it would be -- you would think it would be unlikely that somebody who knew they had improper tags would kind of conservatively, or consciously park where they wouldn't be seen?
A I wouldn't think a mother's whose child is in the ER would take time to back a car in a parking space to conceal a tag if that child is unconscious in the hospital. I would think they wouldn't be worried about that.
Q Yes, sir. I understand that. But the -- at the time -- well, you don't know what was going through Theia's mind at all at the time?
A No, sir. I do not. But, I mean, you brought up that

point.

Q I'm just asking you whether -- I don't know. But I'm just asking you whether something who was driving around with improper tags would think that maybe I don't want -- I might get in trouble if the police see my tags.

A Well, if somebody's whose child is not in the emergency room unconscious might think of that. But somebody who was -- has a child that just went in the emergency room unconscious, I wouldn't think they would be trying to conceal that tag from law enforcement.

Q If they knew the condition of the child was serious, deathly, they'd certainly be more likely, wouldn't they?

A Possibly.

Q Did you take part in the video -- my understanding is Richard Bowman performed one of these reenactments with Agent Cantrell with you at the police station and he indicated what he did that evening?

A You're talking about the one back at the fire department similar to the one that Theia did?

Q Yes, sir.

A No, sir. I was not back there for that reenactment.

Q So you -- that was not park of your interview?

A That part of that reenactment was not done in front of me. That day I was actually -- as captain of the police department over investigations I was actually talking with

other people to put things in place that were needed. So that happened while I was actually talking with the investigator in Spartanburg about whether the warrant was ready for the trailer and all that. So I was having to do dual roles.

Q Have you seen it?

A Have I seen that reenactment? No, sir. I have not seen --

Q Do you think that that reenactment might be beneficial to the jury to see Richard, what Richard said at the time?

A I didn't see the reenactment. I don't know.

Q Or his demeanor? Richard -- now, when you did your interview with Richard he was not technically under arrest at that point in terms of in handcuffs or in legal custody?

A No, sir. He was not in handcuffs or in custody or anything like that.

Q But he was, I assume, in your office in a conference room at the police station?

A He was actually in my office.

Q And it was you and the SLED agent?

A Me and Nikki Cantrell. Yes, sir.

Q He told you that he hit the child and the child went head first into the bathtub, didn't he?

A That is correct.

Q Then at some point he said he gave Theia -- I mean,

G.M. a bath and then the child went to bed. Do you have your report in front of you?

A Yes, sir. I do.

Q And it says, "And G.M. was fine. Bowman stated that he went to the other room to watch TV and left G.M. in the bathtub by himself."

A Yes, sir. That's in my notes.

Q "He seen that G.M. finished his bath and got into bed."

A Yes, sir.

Q And then he says that's when Theia came home after the job --

A That's correct.

Q -- in Spartanburg.

A Yes, sir.

Q And then that's when she said we wanted to go -- she wanted to go -- or should she go to Newberry?

A That is correct.

Q So Richard Bowman's initial story puts Theia out of the home, at least during the -- when Richard says he hit the child?

A That is correct.

Q He also indicated to you that he didn't park at the house of the young man here in Newberry. That they kind of parked down the street a little bit?

A Up the street is what he said.
Q Up the street?
A Yes, sir.
Q And Bedenbaugh is not a particular long street, is it?
A No, it is not.
Q Richard indicated to you that he had noticed the child stop breathing several times why Theia was in the house alone with the man?
A That's correct.
Q But that the child woke and said he was fine?
A That is what he told me. Yes, sir.
Q Richard indicated to you that he honked the horn several times?
A Yes, sir.
Q And that when Theia came out she talked with the man for a little bit?
A That's correct.
Q And that's when he first told Theia that there was something wrong with her child?
A That is correct.
Q Now, when Theia looked back and said oh shit when she saw the stuff coming out of the child's nose?
A Yes, sir.
Q Was the child restraint seat -- did you take any part in the search of the Chevy Malibu?

A No, sir. I did not.
Q So the photographs were done by another officer?
A The photographing of the vehicle and the processing of the vehicle was done by Agent Oliphant and his partner, yeah.
Q But you did in the very beginning, or at some point, walk out to see how far the -- where in the parking lot Theia's car was?
A Yes. That was still at the hospital. When they processed the vehicle it was at the police department inside the fire department bay out of the rain.
Q And I suppose you probably do that in a lot of crimes, burglary, larcenies, if there's a shoplifting at Walmart, you might walk out in the parking lot and see where the people parked?
A That is correct.
Q And there might be other people with them or there might be other stuff. That's just something that's kind of routinely done?
A It is.
Q Other than that it's suspicious, is there any other value of the location to where she parked?
A You mean as a totality of everything?
Q She parked backwards in a spot and it was on the furthest row -- the fourth row from the hospital. Other

than that does it have any --

A No, sir.

Q And, in fact, in the car -- well, you didn't search the car, right?

A No, sir.

Q Did Richard Bowman ever come back and correct his story with you?

A I was here when they did that other interview when him. But now, he never came -- I only interviewed him once, and it was that morning at the police department.

Q But you participated to some extent about a month ago when he came in, March 10th?

A I was here for a little while. Yes, sir.

Q Do you know if you searched Theia's hands or fingernails for bruises or blood?

A I did not. I didn't interview her.

Q Did you all do that for Richard?

A I checked Richard's hands. Yes, sir.

MR. VERNON: I think that's about it, Your Honor.

Q Richard indicated -- Richard Bowman indicated to you that the child G.M. threw up while he was sitting on the master bed. The bedroom and the master room -- bedroom. Did you hear him testify to that?

A I heard him testify to that. Yes, sir.

Q Do you recall asking him at that time -- or that might

have been a detail at that initial interview that wasn't --
A I didn't know anything about the throwing up at the house when I interviewed him. No, sir.
Q But when you did go to the house in Spartanburg you were looking for signs of that type?
A I was looking for signs of throw up and any other stuff when we went to the house. Yes, sir.
Q Did you find any vomit or blood on the master -- the bed in the master bedroom?
A No, sir. Apparently there wasn't. I was there as an assisting person. Agent Oliphant and his partner collected everything.
Q Did you see Oliphant search the bed?
A Yes, sir. I saw them go throughout the house.
Q Your confident that the bed was examined as well as every other room in the house?
A That is correct.
Q And, in fact, the items that had vomit on them were the pillow case on the child's bed and clothes that had been put in the hamper?
A That is correct.
Q And then the other stuff is the stuff in the backseat of the car that was taken to the hospital?
A That is correct.
Q How long did it take you to drive from Newberry to

Enoree?

A Approximately probably 20, 25 minutes or so.

Q Do police always drive the posted speed limit, or are you all like us that goes slightly over? About 20, 25 minutes?

A Police time, yes.

Q And is it fair to say that it was raining that evening?

A No. It was not raining when we went to Spartanburg.

Q I meant the evening of December 30 -- the 29th.

A When I came out to come out at 4:15 it was not raining. As we were in the hospital it started to rain. When Agent Oliphant and them arrived at the police -- at the hospital it had started to rain then and then it progressively got harder, yes.

Q Well, obviously we can see the photographs of the car in the parking lot of the hospital --

A Right. There's rain on it.

Q -- and it has clearly rained. Is it possible it had been raining the evening of the 29th and you just don't remember, or you're confident it wasn't raining?

A I'm confident when I came out of my house it was not raining. And when I got to the hospital it was not raining. But at some point while we were still at the hospital and came out when Agent Oliphant and them got there, which would have been around 6:30 or 7:00 --

Q It had started to rain?
A -- it had started to rain. Because he talked about the amount of rain they were getting on the way up from Columbia.
Q And tell me again what time you arrived at the hospital?
A About 4:15 a.m.
Q I'm assuming it certainly would have been at least overcast?
A Yes, sir. It was -- it was overcast and warm for that time of year.
Q Warm for December 30th?
A Yes, sir.
MR. VERNER: Your Honor, if I could just double check my notes.
THE COURT: Yes, sir.
Q Now, Chief, when you say that there was no evidence that anybody had been in contact with the child up to 72 hours --
A Forty-eight to 72 hours is the timeline that I had in speaking with Mr. Bowman.
Q Seventy-two hours would be the 27th, right?
A That would be correct.
Q And we know that Patrice McArdle -- but she didn't come until the following day?

A I believe so.

Q So you didn't have the benefit at that time of what she knew?

A No, sir. I did not. We didn't talk with her until the 31st.

MR. VERNER: Chief, I appreciate your testimony. The Prosecutor may have some follow-up.

THE COURT: Redirect?

MR. STUMBO: Yes, Judge.

REDIRECT EXAMINATION

BY MR. STUMBO:

Q Chief, Mr. Verner brought up the reenactment from Mr. Bowman. Did you all record that?

A There was one that was recorded in the fire department. But he one in my office, I don't know if that's the one he was speaking to. That one was not recorded. That's where he showed us how he hit the child while the child was near the bathtub and went forward and struck his head.

Q Were you at the reenactment - his reenactment in the bay of the fire department?

A No, I was not.

Q If you could, Chief, both -- at the time the next day, after both of the suspects had given statements, at that point, based on the injuries you had seen, you didn't believe you were getting the full truth of either one of

these suspects, did you?

A No, sir. I did not.

Q Anybody on the investigative team think you all were getting the full story?

MR. VERNER: Your Honor, I think that's improper to ask what other people think.

MR. STUMBO: Withdrawn, Judge.

THE COURT: Sustained.

MR. STUMBO: No further questions, Chief. Thank you.

THE COURT: Chief, you can step down. Thank you very much.

THE WITNESS: Thank you, Judge.

(Whereupon, the witness stepped down from the witness stand.)

THE COURT: I know the State had a proffer that they wanted to present. But at this point in time I think it's a good time to take a break for the evening.

MR. STUMBO: Yes.

THE COURT: So you formally have not rested at this point in time. Mr. Verner, Solicitor, let me see you all over here real quick. Just two seconds.

(Whereupon, a sidebar was held.)

THE COURT: Ladies and gentlemen of the jury, we're going to go ahead and take a break for the evening as far as you all are concerned. I need court personnel to stick

around. I'm going to want you guys back tomorrow morning at 9:30 if you would. I'll need Court personnel and everyone else in here those at 9:00 so that we can address the stuff I was talking about over there at the sidebar. Okay?

I'm telling you, ladies and gentlemen, after speaking with the attorneys it's looking more promising to get this case to you all sometime tomorrow. So I'm crossing my fingers. I hope you guys have a lovely evening. Okay? Thank for your continued patience, your continued attention and your continued hard work and enjoy your night, but don't talk about the case. See you in the morning. 9:30, please. When you report back they're probably going to hold you downstairs or some other area or just kind of hang out around the front of the courthouse. They'll find some place for you to be comfortable. Okay? In case we're not done. Thank you. See you in the morning.

(Whereupon, the jury was released for the day at 5:17 p.m.)

THE COURT: The record should reflect that the jury was out. The Solicitor wanted to proffer some witnesses who, I believe, traveled from North Carolina. We did discuss this in chambers. And I'm more than happy to hear the proffer at this particular point in time, Solicitor.

MR. DANIEL: Yes, sir, Your Honor. We'd proffer the testimony of Justin Madore.

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THE COURT: Let's go back on the record, if we may. The record, of course, should reflect that the Defendant is present with counsel. At this point in time the State rests, I assume, Solicitor?

MR. STUMBO: We do. Can we do that officially on the record in front of the jury?

THE COURT: You can. You can do it -- we're going to do it officially on the record now and then you can rest again in front of the jury --

MR. STUMBO: Yes, correct.

THE COURT: -- when they come back in. Mr. Verner, motions?

MR. VERNER: The State as defacto rested, just -- but we'll do it formally in front of the jury?

THE COURT: Right. Well, I'm kind of considering this the formal resting, and then the resting in front of the jury will be window dressing.

MR. VERNER: Your Honor, does the Court have the indictment in this case?

THE COURT: I did, and I imagine it is --

MR. VERNER: Does the Court have the indictment in this case?

THE COURT: Mr. Verner.

MR. VERNER: I would move for a directed verdict on the

homicide by child abuse count, Your Honor. I would note, if the Court has the indictment, the State has elected to indict Theia for the killing of the child. She has not been indicted as an aider and abetter and she was not indicted as -- under the third prong which is the omission to perform. The Courts have already looked at that. If she's not indicted as an aider and abetter then the State is bound by the allegations of the indictment is to prove that she killed the child, maliciously killed the child during an act of child abuse. The State -- one of the cases I'll be referring to is *State vs. Smith* which is a 2013 case, S.E.2nd -- 750 S.E.2nd 612. The indictment alleges that the Defendant violated the statutory provision of homicide by child abuse as a principal. Did not notice how -- homicide by child abuse as aider and abetter, and thus Defendant cannot be convicted of homicide by child abuse as aiding and abetting as it is not a lesser included offense. It is one of the elements of that crime. And there are other cases as well that when I was really researching the lesser included offenses portion of this case, Your Honor. In this case, Your Honor, the State must prove that Theia McArdle killed the child. If we just look at the medical testimony, that the expert witness, the pathologist, and the Court knows very well that Dr. Ross is an esteemed pathologist, testified in her opinion the child died less than an hour

after the injury. Probably 30 minutes. That the injuries were one -- there were no injuries that killed the child other than the severe beating, which the doctor indicated was one incident. Because of the injuries to the internal organs the child would have stopped digesting food within 30 minutes, and the head wound the child, in her opinion, would have been dead within an hour. It is undisputed that Theia McArdle -- there's been no evidence at all that Theia McArdle hit the child on the 29th in the head. The co-defendant testified that she hit him on the 27th. He said she hit him on the 28th. And then she said -- he said that she -- he hit him in the morning of the 29th when the child popped the cap gun. The co-defendant said that she hit him in the stomach, and had been beating her earlier in the day at the time the child was given dinner. That there's been no testimony from any source, even the co-defendant, that Theia was even there in the home. That there are no other injuries to the child.

And the second problem for the State's case, Your Honor, if the Court accepts the pathologist expert opinion, the State has failed to prove that this happened in Newberry County. It's undisputed that Theia didn't even leave Spartanburg until after 11:41 p.m. We know that by the phone records. Wouldn't have arrived in Newberry County -- Newberry until after the midnight hour. If you bootstrap

that on to Dr. Holaday, the emergency room physician's testimony, that the child was dead for two hours, two hours from 11:38 when the child was first brought into the emergency room -- 1:35 technically to the hospital, 1:38 from the emergency room, the two hour window still leaves the child, at the time the child died, in Spartanburg County.

Your Honor, the Defense would ask for a directed verdict on this count.

THE COURT: With regard to the second aspect of your motion, the jurisdictional aspect or the venue aspect, that's actually one of the first things that the Court double checked. And --

MR. STUMBO: Judge, I believe it's 17-21-10.

THE COURT: Give that to me again. I've already -- I looked that up Monday.

MR. STUMBO: 17-21-10 --

THE COURT: Yes. It's actually 20 -- 17-21-20. Venue where person causes injury in one county and death occurs in another. The language of this section has really not changed since 1880, so it's a little bit anachronistic the way it's written. But essentially that section provides that jurisdiction or venue would lie in any county where if someone is killed as a result of the beating, wounding, poisoning or otherwise, if they're injured in one county and

yet they pass away in another county, the venue and jurisdiction would lie in -- as I read it, pretty much any county where --

MR. VERNER: I read that, Your Honor. But the venue -- if there was evidence that the child was still alive when he was brought to Newberry, I would agree. But the pathologist testified within 30 minutes after eating dinner. So no more than an hour the child was dead. At the latest, that would leave the child dead at 9:00 in Spartanburg County three hours before they even brought the child to -- and what I said about Dr. Holaday, the emergency room physician, he said two hours. Two hours would still leave the child, he said, dead before the child arrived at the hospital. Even under his window the child is still dead before he even comes -- before they even leave. According to the phone records the last -- at 11:41 we know they're in Spartanburg because it pings off the Spartanburg -- the home tower. That is still within the doctor's -- and it's three and a half hours or more within the pathologist's estimate of death. So this is not a case where the baby was harmed in one county and then died in Newberry County. Newberry County emergency room says that child was dead on arrival, and the doctor said that he thought two hours. The pathologist said an hour after that baby ate dinner at the latest.

THE COURT: I understand your position. In the light most favorable to the State on that issue, the child was pronounced dead in Newberry County. There has been some evidence presented that the child was alive while the Defendant was making the call here in Newberry. The credibility of that we can address at a later point in time when I deal with the first part, or I deal with other aspects of your motion. So there is some evidence that would indicate -- and again, the doctor pronounced the child dead here in Newberry. So there is some evidence that would indicate that the fatality took place, or the death took place in Newberry County. So the second part I would -- respectfully I'll have to disagree with you on that in the light most favorable to the State.

The first part, Solicitor, do you want to speak to that? He's been indicted -- sorry. Ms. McArdle has been indicted -- I'm just reading the indictment. "That she did willfully and unlawfully cause the death of a child under the age of 11, to wit, G.M. while committing child abuse or neglect as defined --" and then it gives the code section citing subsection B for the definitional aspects, "and the death under circumstances manifesting an extreme indifference to human life in violation of 85(a)(1)." So --

MR. STUMBO: That's correct, Judge. And we would just

rely on the definition of child abuse or neglect. It says it means, "Act or omission by any person which causes harm to the child's physical health and -- or welfare." And then subsection two it defines what harm is, Judge. I would point you to both -- I think both subsections could be applicable here under the facts of the case as have been presented. There is evidence in the record of both. That subsection A says, "The Defendant inflicts or allows to be inflicted upon the child physical injury, including injuries sustained as a result of excessive corporal punishment." Subsection B, "Fails to supply the child with adequate food, clothing, shelter or healthcare, and the failure to do so causes a physical injury or condition resulting in death."

Judge, I think, based on what we've heard in this case -- and, of course, we believe subsection (a)(1) is the most applicable here because of that very language, "acts or omissions." We think that even if the co-defendant, who testified, inflicted blows that were fatal to this child, even under that theory, in light most favorable to the State the way the evidence as been presented, that Ms. McArdle is an act or omission. I think there's plenty of evidence in the record at this point of the abuse. And quite frankly, both of them are together at the time they leave the house. Even in Ms. McArdle's own statement to law enforcement, which is in the record, she essentially says that G.M.

was alive. She admits that G.M. was alive when she gets out of the car in Newberry and goes service the John. So according to her though she had no idea he was sick whatsoever, which obviously we believe it would be very difficult for a reasonable jury to conclude that based on his physical condition.

So, Judge, I think there are jury issues here. Certainly Mr. Verner will be arguing, I'm sure, to the jury that she was completely clueless to G.M. condition. I think that based on, you know, the light most favorable to the State reasonable inferences can be drawn by the jury. Even in the absence of Mr. Bowman's testimony, for omitting and failing to render healthcare and medical -- or try to get some help for her own child who was dying right in front of her in the car. Right in front of her in the house before she left. I mean, with the phone records we think it's pretty clear that they were there at the house at a minimum 30 minutes, maybe even up to 45 if you look at the timeframe and where her phone is pinging off the tower. They're there at the house between about 11:00 and 11:45 before they leave for Newberry. And during that time there's vomit in the house. There's vomit on his tee shirt, Judge, which, of course, she denies. She tells law enforcement in her interview that he's fine.

So, Judge, at the end of the day, you know, even if

this jury were to conclude best case scenario for Ms. McArdle, that she didn't inflict any of these injuries on the child and didn't punch him or didn't hit him, which are multiple injuries, that, Judge, under the language of this statute she can still be guilty of homicide by child abuse. So, Judge, I think the language in the statute is plan as to that apply the law to the facts of this case, in light most favorable to the State. Judge, there's sufficient evidence. And there again, I think Mr. Bowman's testimony obviously is not circumstantial evidence here and it's a fact question for the jury. If they were to believe his testimony, which is in the record. They may believe none of his testimony. They may believe bits and pieces. They may believe all of it. And that's ultimately a question for the jury here, Judge. And there again, if that evidence were to be believed, they would also find Ms. McArdle guilty of actually inflicting the acts themselves of -- beg the Court's indulgence.

Judge, she admitted to law enforcement in her statement as well, she said she called her mother and talked about how -- and her mother testified to this, how Theia had called her from the hospital and said that G.M. had been throwing up in Enoree and was sick there. And then now, you know, he may not be revived. So there's plenty of evidence even from her own mouth and her statements that show she had

knowledge that G.M. was very sick and even dying at the house and on the way to Newberry.

MR. VERNER: My only rebuttal, Your Honor, is that the -- one, it sounds awfully a lot like the State is kind of now vouching for the credibility of the co-defendant. But even assuming they argue that he is believable to the jury, that he did not testify that Theia struck the child after dinner. His best testimony was she gave me permission to strike the child after dinner, which would be aiding and abetting liability. And my understanding -- but he did not testify to any striking of her at any time other than that morning when the child scared her out of bed and she said he hit her in the stomach that morning, which the pathologist, if you believe the pathologist, said the injuries occurred within an hour of death. So that would be --

MR. STUMBO: Judge, just in response to that, that is incorrect. On redirect Mr. Bowman -- Mr. Daniel confronted him with the statements that he had made before about -- about the Defendant hitting the child after dinner. Not only after dinner, but when he was put in the car to go to Newberry that she struck him again. So that evidence is there. He did say on redirect, yes, that is correct. So there again, I think he --

THE COURT: Let me just get this straight then. So we're in agreement that essentially the Court will not be

charging the aiding and abetting language. The Court will simply charge Ms. McArdle's -- will charge the law as Ms. McArdle as a principal as opposed to an aider and abetter. So the Court won't be charging subsection (a)(2) of 85, and the Court will provide the definition concerning fails to supply the child with adequate food, clothing, shelter or healthcare, and the failure to do so causes a physical injury or condition resulting in death. So we're in agreement with that, Mr. Verner, Mr. Stumbo?

MR. VERNER: If the Court is inclined to charge it, yes, that the aiding and abetting. And just I will note on the second part on the omission.

THE COURT: Yes, sir.

MR. VERNER: My reading of the statute is that omission had to be a cause of the -- an omission --

THE COURT: Cause is cause.

MR. VERNER: -- which causes harm to the child. Now, I'll recognize I've seen a case where failure to take a child to the hospital can be such an omission, but there has to be prove in the record that she knew the child was in a dying condition.

THE COURT: Correct, there has to be actual knowledge.

MR. VERNER: Actual knowledge that the child was -- I wouldn't go as far to say dying, but in a life-threatening --

MR. STUMBO: Well, I think, Judge, based on her call to her mother at the hospital, that would be evidence in the record.

THE COURT: Perhaps.

MR. STUMBO: Judge, on the question, I think, *State vs. Smith*, and Mr. Verner has already cited that case, as Ms. McArdle is indicated, I believe *State vs. Smith* would prohibit a charge of the aiding and abetting if she's not indicated. So that's --

THE COURT: Right. I do agree. I do agree.

MR. VERNER: Secondly, Your Honor, the -- I take it that the Court -- well --

THE COURT: The Court's going to -- the Court's going to need to modify its instructions to eliminate the aiding and abetting language that we simply included as a matter of course because it was part of the standard charge in the bench book. Secondly, the Court will need to add an actual knowledge aspect and approximate cause charge to the instructions.

MR. VERNER: Your Honor, I would ask for a lesser included charge, should this case go to the jury, on unlawful conduct towards the child. As I read unlawful conduct I see no elements that would not be included under the homicide by child abuse. Homicide by child abuse is committing child abuse or neglect which is an act or

omission which causes harm to the child's physical health or welfare, which is section 1, subsection (a)(1) of the unlawful conduct, unreasonable risk of harm to the child's life or safety. The causes -- unlawful conduct is "causes to be done unlawfully or maliciously any bodily harm so that the child's health or life is in danger or likely to be in danger." And finally, homicide by child abuse. The third element is "Abandons the child which results in death." The unlawful conducts third element is "abandons the child" but does not include the "which causes death." It tracks it into three parts.

THE COURT: What is your theory on why there's evidence in the record which would justify the lesser included?

MR. VERNER: There's, Your Honor, that she didn't take the child to the hospital after the injuries. They frankly got no evidence that child -- that she killed the child.

THE COURT: Correct.

MR. VERNER: Their best case is that she saw the injuries. And I would assume that they've got this newly established theory that she would rather go prostitute than take the child to the hospital despite the evidence that she, you know, would stand up to him. They had domestic violence. But their -- it would have to be kind of a newly created theory that she was aware the child had been beaten to death or was dying, and then she decided that she would

rather make two prostitution calls than take the child to the hospital. Which, of course, flies in the face of the fact that she did take the child to the hospital when the co-defendant said -- he told her about the injuries. This case if very similar to the Palmer case where the co-defendant -- there were injuries. The child was put to bed. The co-defendant's -- or the Defendant's story was that I could not have seen those injuries because the child was sleeping. And that really tracks our defense in this case, Your Honor.

THE COURT: All right. What I was getting at, the way I'm reading the statutes, a homicide by child abuse applies when you have actual death of the child.

MR. VERNER: Yes, sir. This is why this -- I'm saying this would be a lesser --

THE COURT: Right. And I understand your argument that it tracks. Honestly, Mr. Verner, I was somewhat surprised that you were seeking a lesser included on this in light of the way the case has been going.

MR. VERNER: Judge, I've got a guy doing 26 years where we made a joint decision not to go for a lesser included offense.

THE COURT: You're not going to make the same mistake twice.

MR. VERNER: My understanding from my very case that

went on appeals on that was that that decision is in the lawyer's judgment. I have discussed it with Theia and she indicates she would not plead to that charge regardless. My question as her lawyer is whether I think that there is evidence in the record that could support that charge. And if the State has the theory that she didn't take the child to the hospital in time.

THE COURT: But that it was not proximate cause of her death.

MR. VERNER: But it was not proximate cause of the death. And I think under the facts of this case, if the State argues that that is what the -- if the State -- if the State argues to the jury that she should have taken the child to the hospital, and the jury found that that would have been reasonable but that she might not have known that the child was dying, it could be unlawful --

THE COURT: Well, one thing that just occurred to me. We do have two separate injuries. The injury to the abdomen the doctor testified would have resulted in death within --

MR. VERNER: Two days.

THE COURT: -- maybe a day or 48 hours, right. 48 hours at the outset. The fatal blow that was the immediate approximate cause of the child's passing on the 30th was, of course, the blow to the head. It's entirely possible that she may have been privy to the abdominal injury and the

injury to the groin and that the -- as you correctly point out, Mr. Verner, and that the evidence indicates that the blow to the head took place at a later point in time when your client wasn't even present and would not have been privy to it. So we're getting a little beyond what I was going to address as far as motions. But we may as well keep talking about it.

Does the State have any firm position on the unlawful conduct lesser?

MR. STUMBO: Judge, the concern I have, and we've had cases recently with the Supreme Court -- in fact, we got kind of mixed messages from them. And in one case -- I don't have this one in front of me --

THE COURT: You're being generous by saying we've gotten mixed messages.

MR. STUMBO: Yes. We've been chastised for asking for lesser included offenses, I guess to try to hedge all bets, for lack of a better term. But recently a case that Mr. Verner and I tried right here in Newberry was reversed by the Court of Appeals, even though neither one of us was really arguing the theory, and it's going to the Supreme Court now. I don't know what they'll do with it. But they reversed the case for the judge failing to charge voluntary manslaughter on a murder case.

THE COURT: That's the Manny Smith thing you were

talking about?

MR. STUMBO: It is. It had been repudiated by Ms. Smith during the trial. And really Mr. Verner's theory and my theories in closing were not in any way, shape or form consistent with a voluntary, because the Defendant had repudiated on the stand that there had been some kind of deep passion. So all that to say, Judge, I'm very skittish in how it comes to asking for lesser included because I don't want to be, you know, smacked around by the Supreme Court for trying to hedge our bets. But by the same token, if something's not charged, maybe later they'd say, well, we're going to reverse it because it should have been. I really don't know, Judge.

One case -- I would say the Palmer case. I was reading that one as Mr. Verner was addressing Your Honor. Both defendants were convicted in the Palmer case of homicide by child abuse, aiding and abetting homicide by child abuse.

THE COURT: Is this the one that took place in the hotel in Myrtle Beach?

MR. STUMBO: Correct.

THE COURT: Okay, I know the case.

MR. STUMBO: And unlawful conduct towards the child. So apparently in that case -- and I want to say Ms. Lively, who's running for Solicitor down in Lexington right now, tried this when she was working with the Solicitor over in

Horry County. And she discussed this with me at one point in the past. But the fact that they indicated for all three offenses and the Defendants were convicted of all three offenses tells me if there was -- if it was truly a lesser included offense then there'd be a double jeopardy issue. And I don't think you can be convicted for the primary offense and a lesser. Particularly under the Blockburger test it would appear to me that unlawful conduct towards a child was not a lesser included. So I'm just arguing that in the Palmer case, under the theory I'm looking at here, in applying the Blockburger test to it, and the elements being different -- in other words, there's a -- there's an element in the lesser -- because the element is a person who has charge or custody of the child. That element in the lesser offense is not present in the homicide by child abuse. So I think under the Blockburger test, Judge, it's not a lesser included. So -- because the homicide by child abuse statute does not require the element of the Defendant being a custodial caretaker of the child. So I just -- looking at the strict language there. And the fact that I would think that the Supreme Court would have addressed the issue, or at least it would have been raised about that being double jeopardy for the defendants to be convicted of both -- on both indictments for the same operative set of facts.

THE COURT: I do understand your position and I've

followed this line of cases that deal with homicide by child abuse, and again the Supreme Court is still refining, I think, the law in this particular area, especially when it comes to the issue of accomplis liability and liability of a principal. If you were to engage Rauch Wise in this discussion he'll explain to you in detail, in great detail, if he has not already, the peculiar aspect of unlawful conduct towards a child involving a parent, guardian, employee, caregiver of a daycare, et cetera, or an adult who stands in the role of in loco parentis. That's included in the unlawful conduct statute. But the homicide by child abuse statute is much more broad and cast a net much, much, much wider. It doesn't include that language. You're correct to point that out. Under the peculiar facts of this case, however, in light of the different injuries, I'm going to go ahead and charge that, the unlawful conduct, because there is evidence that's been produced over the last day or two that would warrant, in my opinion, that charge. If I'm not -- if I'm mistaken and those elements simply are not present, then the jury is very intelligent, they've been very engaged and they can flush that out.

I'm assuming, Mr. Verner, you're also raising -- or you're also making a motion for a directed verdict based upon the lack of any direct or circumstantial or substantial circumstantial evidence from which a jury could reasonably

conclude that the Defendant is guilty. Is that correct as well?

MR. VERNER: Yes, sir. I thought that -- the directed verdict was on the whole statute for that reason. But then as the Court -- and I thought that was my first motion. And then I kind of went to the aiding and abetting portion of it. But yes, sir. It's the -- the Court's correct.

THE COURT: The Court -- I will say for the record that the Court does have some serious concerns over some of the testimony that which has been presented in this case, specifically the testimony of Mr. Bowman. I have not made those concerns public yet, but I have voiced those privately in chambers to the attorneys. There are serious, serious, serious concerns with his credibility. If you look at the Hepburn case it almost invites the Court, because the Supreme Court in Hepburn, I think it's on page 24, basically states to the effect that because the Supreme Court is not in the position to judge credibility we're just going to throw our hands up. And clearly the jury in Hepburn did not believe the defendant in that case, and because the Supreme Court is not in a position to judge credibility, they're not going to take into account the failure of the jury to believe Ms. Hepburn's version of events. The Supreme Court finds that troubling. I'm going to help them out if need be, because the court, in this particular case, had an

opportunity to review the cross and the direct of Mr. Bowman, and if this court had that power, as a matter of law the court would conclude that his testimony, with the exception of when he gave his name, and even then I probably should have asked for identification, as a matter of law the court had the power to do so, the court would find his testimony incredible. He was impeached numerous times. His versions of events don't line up in any way, shape or form. But as the Supreme Court has often reminded this Court, the obligation of judging credibility falls to the jury and not to the Court. Then it becomes the question of under Rule 19 of the criminal rules whether there's a failure of any competent evidence, whether there's any evidence which reasonably tends to prove the guilt of the accused. But there is obviously, if the Court were to discount Mr. Bowman's testimony, there is no direct evidence of the Defendant's guilt in this particular case. And as Cherry points out, *State vs. Cherry*, the Court should grant a directed verdict when the evidence merely raises a suspicion that the accused is guilty. We now have the substantial circumstantial evidence that's standard at this particular stage. And, of course, the case that came out two weeks ago, the name of which escapes me, reiterates that the court is not supposed to weigh the evidence, but the court still has an obligation to determine whether there is substantial

circumstantial evidence. I don't know how to find out if something is substantial other than to weigh it. I don't know what the court means by that. And the court then says that this is an evolving area of jurisprudence and distinguishes some other cases that you would have thought would have been on all fours. And again, this is just a case that came out two weeks ago.

The Court is going to send this to the jury. The Court will conclude that there is circumstantial evidence from which the jury could reasonably infer the Defendant is guilty of one or both charges. Perhaps they would believe Mr. Bowman. Perhaps all 12 of these individuals will believe what the Court believes to be Mr. Bowman's incredible testimony, unbelievable testimony. Maybe all 12 of them will buy it. I don't know. But at the very least the Court would find, for purposes of the record, that there is circumstantial evidence sufficient -- substantially sufficient in this case to send to the jury on these different charges. And so, for that reason, your motion is denied.

MR. STUMBO: Judge, briefly, just to address -- and I understand the Court's feeling about Mr. Bowman. But one thing that was consistent that never changed in his testimony from the time he talked to officers the day after this happened was that he spanked the child in the tub and

he fell down and hit his head. That's about the only consistent thing I've heard the entire case from Mr. Bowman or Ms. McArdle. I just want to point that out to the Court.

Your jury charge, Judge, you will say, "You may believe part of the testimony of a witness and reject the remaining part of the testimony of that same witness. You may believe the testimony of a witness in its entirety or reject the testimony of a witness in it's entirety." So, Judge, I just want to make clear for the record that the State's position from the beginning of this case has never been that Richard Bowman has at any point come in and given the full story of what happened. The bottom line is though, under the Hepburn case, quite frankly, if he comes forward and gives some version of the events that some of which match the evidence, which I think here his consistent testimony from the beginning that he spanked the child and he hit his head on the tub, that's never really changed, Judge. He said that in the beginning. He came in and didn't hedge on that this week. And quite frankly, he hung himself, Judge. He came here -- there's nothing in his testimony, quite frankly, that would lead me to believe that he's not guilty of homicide by child abuse, too.

THE COURT: He admitted as much on the stand.

MR. STUMBO: So he said that. So I guess what I'm saying, Judge, is I understand your position on the

credibility of Mr. Bowman. But just for the record for future purposes, I do think there's things that the jury can look at in his testimony and try to put the pieces of the puzzle together, which is what they do. I don't think there's any case I've ever tried where there hadn't been the truth somewhere in the middle of a bunch of stuff, and that's what, you know, the jury has a very difficult job of having to ascertain what the facts are and how it plays out. But just so the Court knows that it's the position of the State that both of these Defendants are guilty of homicide by child abuse.

THE COURT: I do -- I fully understand your position, Solicitor, and please do not take my comments as a criticism of the manner in which this case has been investigated or prepared for trial. I'm well aware that the State has to play the cards that are dealt them, and with the current case law dealing with joint trials in cases of this nature, essentially the edict from the Supreme Court has been severe the trials, try the defendants separately. You had Hepburn in there. You add Bruton in there. You add Crawford in there. And invariably you have to, or the State has to find someone to testify in these -- in these situations where there's two individuals equally suspicious. The State has to find someone, make a deal with someone, or otherwise elicit testimony from one of those two individuals, and

that's where you are. Fifteen years ago both individuals would be on trial and the jury would sort it out as the finders of fact. And for the entire time that South Carolina jurisprudence has existed, being the finders of fact, that made it their responsibility. It wasn't the responsibility of the State to try and figure out in these situations where both people could equally be culpable. It wasn't the job of the State to figure that out. It was the job of the jury, and for whatever reason we have now moved away from that. I am not in a position to take issue with the -- obviously with the jurisprudence on that particular question.

My point concerning Mr. Bowman though, Solicitor, is I'm quite certain having tried cases, many, many cases yourself, you've had witnesses that were more substantial more credible than Mr. Bowman testify, and this Court has -- and I'm minimizing. This Court has had the opportunity to hear testimony from substantially more credible witnesses as well. So while I am slamming Mr. Bowman, I do appreciate your point that he has at least been consistent in that regard. So I guess that's two things. His name and the slapping of the tub thing that he has perhaps been consistent of all this time.

Mr. Verner, I anticipate that you want to call the doctor who is coming from Charleston who was supposed to be

here about 25 minutes ago. Do I need to review with your client -- I imagine that you've already reviewed with your client extensively her right to testify. Would you like for me to go over that with her, or do you feel that's necessary?

MR. VERNER: I told her, Judge, that you would admonish her. Quite frankly, I haven't made that -- she hasn't made the final decision yet.

THE COURT: Certainly.

MR. VERNER: But traditionally I would ask the Court to admonish her on her rights. Not to admonish her, but just advise her or restate the rights. I'm not rearguing -- I'm just arguing in Hepburn, Your Honor, but the fact that the -- and I appreciate the Court's recitation. But that the co-defendant was an interested, that the fact that he was a co-defendant, and that was the only testimony -- direct testimony --

THE COURT: That concerns --

MR. VERNER: -- was important to the court -- the Appellate Court in Hepburn was not just that he was incredible, but also he had the interest -- his own penal interest. But I would offer Ms. McArdle to the Court, Your Honor, if the Court's ready to do that now.

THE COURT: Sure.

MR. VERNER: And I think my pathologist indicated to me

that she would be here about 10:00. She's coming from Charleston.

THE COURT: That won't be a problem.

MR. VERNER: Step up here.

THE COURT: She can stay where she is if she wants to.

MR. VERNER: Stand up, please.

THE COURT: You are Theia McArdle. Is that correct, ma'am?

THE DEFENDANT: Yes, sir.

THE COURT: I need just to put you under oath just for purposes of making sure that you understand what I'm saying to you and that you give me truthful answers. Okay?

THEIA McARDLE, having first been duly sworn, testified as follows:

THE COURT: Again, you are Theia McArdle, correct?

THE DEFENDANT: Yes.

THE COURT: Ms. McArdle, we've reached that point in the trial where the State has rested and you have an opportunity to present a defense in this case. Mr. Verner has indicated to me that you do anticipate calling the doctor from Charleston. And understand, Ms. McArdle, that you also have the right to testify if you choose to do so. Do you understand that, ma'am?

THE DEFENDANT: Yes.

THE COURT: At the same time, ma'am, you have the right

to claim the protections guaranteed to you under the Fifth Amendment to the United States Constitution as well as the similar amendment under the South Carolina Constitution. That amendment basically says, or that provision of law basically says, that no person can be compelled to be a witness against themselves in any trial where that person is a Defendant. Do you understand that, ma'am?

THE DEFENDANT: Yes.

THE COURT: Now, Ms. McArdle, this is a personal right. It belongs to you. And what this right means is that no one can force you to testify in this particular case. Obviously the Solicitor cannot, I cannot, not even Mr. Verner can. Do you understand that?

THE DEFENDANT: Yes, sir.

THE COURT: And if you choose to testify, you understand, Ms. McArdle, you'll be subject by cross-examination by the Solicitor. You'll have to answer any questions that are put to you. And if you have any convictions for crimes that carry more than a year or for crimes involving dishonesty the Court may determine that the Solicitor can cross-examine you on those particular offenses. Do you understand that, ma'am?

THE DEFENDANT: Yes, sir.

THE COURT: Ms. McArdle, if you decide not to testify, then I will instruct the jury they're not to hold that

against you, they're not to consider it, they're not even to talk about it in the jury room. That you have the right not to testify and no inference of guilt should arise from your exercise of that right. Do you understand that?

THE DEFENDANT: Yes, sir.

THE COURT: But if you chose to testify, Ms. McArdle, you understand that this choice will have to be made by you. It's a personal choice and it will have to be made knowing the protections that are given to you under the Fifth Amendment to the U.S. Constitution. Do you understand that?

THE DEFENDANT: Yes, sir.

THE COURT: Now, you can talk to whoever you want to about this decision, friends, you can talk to family members. Truthfully, I would suggest you talk to Mr. Verner more than anyone else about this because he has expertise in this particular area. Ultimately though whatever decision you make has to be yours and yours alone as to whether you testify. Do you understand that?

THE DEFENDANT: Yes, sir.

THE COURT: Have you understood all the rights that I've gone over with you with regard to the Fifth Amendment?

THE DEFENDANT: Yes, sir.

THE COURT: And is there anything that you need to ask me about that?

THE DEFENDANT: No, sir.

THE COURT: The way I usually leave it, Ms. McArdle, is if you choose to testify and Mr. Verner calls you to the stand, I'll simply assume that you've automatically waived your right under the Fifth Amendment. Is that okay?

THE DEFENDANT: Yes, sir.

THE COURT: Is it all right to handle it that way, Mr. Verner?

MR. VERNER: I think that's the perfect way, Your Honor.

THE COURT: Good enough. I think we've covered all the basis as far as motions are concerned. The jury is probably on its way in, and you can check to see if your doctor from Charleston is coming.

MR. VERNER: Thank you.

THE COURT: Very good. We'll be at ease for a few moments.

(Whereupon, a recess was held from 10:00 a.m. to 10:19 a.m.)

MR. STUMBO: Judge, can I address something briefly?

THE COURT: Go right ahead. Yes, sir, please.

MR. STUMBO: Before we bring the jury in. Just after reading the Palmer case again and the Smith case over the break, I just wanted to put on the record I am very concerned about the lesser included charge. Well, I say lesser included, because Smith is very clear that unlawful

conduct is not a lesser included. I don't now that that's not going to create major appellate issues, and I just -- I think under the -- just strictly under the Blockburger test this -- the scenario, Judge, if the jury were to return a verdict of guilty on unlawful conduct, I don't know how that survives appeal in -- that case was never presented to the Grand Jury and it's not a lesser included offense, if that makes sense. I don't know if there's --

MR. VERNER: I think the Solicitor is right.

MR. STUMBO: -- jurisdiction here. I guess that's just -- Judge, I --

MR. VERNER: It would have to be a lesser included offense.

MR. STUMBO: I want to be -- I'd rather be safe than sorry on that, you know. And there again, I don't want to make it look like I'm fighting one way or the other. I just think under the law with it being clearly under the Smith case and the under the Palmer case not a lesser included, and I think if you apply Blockburger that's accurate. The fact -- you know, certainly as the Solicitor we could have indicted unlawful conduct and called that this week, too, but we chose not to. And we stand by that decision not choosing to do that, and we'll just see what -- you know, see what the jury does. But I just wanted to bring that up to the Court. I know we're not charging yet. We still have

the defense. But I wanted to address that. I think that maybe -- before I didn't strongly indicate enough, and after I've read the cases I think it's just legally I don't know that we can charge that at this point.

THE COURT: I'm looking at Smith now. I haven't reviewed Palmer again because I thought I was sufficiently familiar with it. I don't see where Smith says that unlawful conduct isn't a lesser included. Is that in Palmer?

MR. STUMBO: It's in Smith, Judge. I was looking at a head note, but I can find the exact place in Smith.

MR. VERNER: And just factually I don't know if Palmer, Your Honor, included like a -- I thought Palmer was more like a series of abuse. But I would agree with the Solicitor. If it's not a lesser included offense, the jury cannot consider it. But we would argue that it is a lesser included offense.

MR. DANIEL: And, Your Honor, in Palmer, Palmer was convicted of both, unlawful conduct and homicide by child abuse. So clearly that would not be a lesser included by that very fact alone.

MR. VERNER: Well, just -- he's correct if it was the same actions. Off the top of my head, I don't know if that was a course of conduct where they were saying it was a separate incidence or if it was the same. But I agree with

both Solicitors on that, if they're facts are right.

MR. STUMBO: There again, I think we can probably discuss it further, Judge. I know we're not charging yet. But I have the Smith case out and I'll find it in here.

THE COURT: I'll review Palmer while we work with the jury. I'll bring the jury out. Solicitor, you rest. We'll go straight to your case. And for the record, Mr. Verner, you also renew all previous objections, all previous motions, correct?

MR. VERNER: I do, Your Honor. And I would ask after -- I do think know, just for the Court's knowledge, we're probably going to put the Defendant on. I would just ask for maybe a five minute break between doctor -- the pathologist. I would guarantee the Court I will have very short directed questions. The length of her testimony will be entirely, you know, up to the Solicitor. But both would be relatively short witnesses. I would just ask for just a quick break in between.

THE COURT: I'll be more than happy to give that to you.

MR. VERNER: And that way I can pretty much assure the Court that we can give it to the jury by lunch.

THE COURT: Very good. Let's have the jury, please.

And, of course, same ruling on all prior motions by the Court.

(Whereupon, the jury entered the courtroom at 10:28 a.m.)

THE COURT: The record should reflect the jury is back and seated. Ladies and gentlemen of the jury, thank you for your continued patience. We were here at 9:00. We started work here at 9:00, and it's about an hour and a half, even though we took a brief break for ourselves. So thank you for your continued patience and your continued attention. I've talked to the attorneys and we still would hope of the Court that this case will be submitted to you sometime prior to lunchtime today. Okay?

With that, Solicitor, you're recognized, sir.

MR. STUMBO: Thank you, Your Honor. At this time the State rests its case.

THE COURT: Very good. Mr. Verner, your case, sir.

MR. VERNER: Your Honor, I raise the motions the Court addressed.

THE COURT: All motions renewed, all issues renewed. Same ruling as before.

MR. VERNER: Your Honor, I would call Dr. Ellen Riemer.

DR. ELLEN RIEMER, having been first duly sworn, testified as follows:

DIRECT EXAMINATION

BY MR. VERNER:

Q Doctor, you're a little bit soft spoken, so I'm going

to ask you to kind of turn that microphone or just speak up a little bit more.

A Okay.

Q And I'm going to ask you questions from over here to make sure that people who need to hear you can hear you. Okay? Where are you employed, Dr. Riemer?

A I'm employed at the Medical University of South Carolina.

Q In what city?

A In Charleston, South Carolina.

Q And you drove up from Charleston this morning?

A Yes.

Q What is your occupation?

A I'm a forensic pathology, which is a licensed medical doctor with speciality and certification in forensic pathology.

Q Now, the medical university, are you a professor? A teaching professor at the University?

A Yes. I have a title as Associate Professor of Pathology and Laboratory Medicine.

Q Do you also practice as a pathologist?

A Yes. It's an academic institution. So I'm practicing pathology medicine and also have responsibilities as an academic -- academician, teaching medical students who go to the university.

Q Do you perform autopsies --

A Yes.

Q -- as part of your practice at MUSC?

A Yes. That goes with my job.

Q May I ask you where you went -- what was your undergraduate college?

A I went to Bryn Mawr College, which is a small liberal arts school in Pennsylvania, and I graduated from there in 1985.

Q And then where did you go to medical school?

A Well, actually I didn't go directly to medical school. You want to hear what I did in between?

Q Just where you went to --

A I went to medical school at Tel Aviv University in Israel.

Q And when did you get your medical degree?

A 1997.

Q Are you board certified as a pathologist?

A Yes.

Q And you've got -- obviously you've got your medical license?

A Yes.

Q Do you have any other certifications or licenses?

A Yeah. I'm board certified in anatomic pathology, which is the basic pathology before a subspeciality in forensic

pathology. And I'm licensed to practice medicine in addition to South Carolina, also in North Carolina and New York.

Q Are you published?

A Yes. I published many articles. I'm the co-author on approximately 23 articles on -- in pathology.

MR. VERNER: Your Honor, I would offer Dr. Ellen Riemer as an expert witness in the area of forensic pathology.

THE COURT: Any objection?

MR. STUMBO: I do have just a few voir dire questions.

THE COURT: Go ahead.

VOIR DIRE EXAMINATION

BY MR. STUMBO:

Q Good morning, Dr. Riemer. I'm David Stumbo.

A Hi.

Q I believe we've met before today. I hope you had a nice trip up from Charleston. I believe you said you've been published about 23 times. Is your primary practice area doing autopsies or --

A Yes.

Q -- mainly doing research?

A Yes. My primary practice area is doing autopsies.

Q About how many have you done in your career?

A In my career, approximately 4,700.

Q And so, you've been qualified as an expert before?

A Many times.

Q In South Carolina?

A Yes.

MR. STUMBO: No further questions. No objection.

THE COURT: Very good. Ladies and gentlemen, as I explained yesterday with the other forensic pathologist, in this case the parties agree that Dr. Riemer is an expert in the field of forensic pathology, so she can give opinion testimony. She's not limited to testimony about things that she saw or observed. Of course, that is evidence that you may use as you deem appropriate. She can also, of course, state her reasons for her opinions.

Mr. Verner, you may continue, sir.

MR. VERNER: Thank you, Your Honor.

Q Now, Dr. Riemer, I would assume that there are fewer pathologists -- there aren't a whole lot of them running around the state, are there?

A Well, I don't know -- I don't know the exact number. There are five forensic pathologists at the Medical University of South Carolina in Charleston, but I don't know who's practicing elsewhere.

Q I guess I should have -- are you familiar with Dr. Ross? Janice Ross?

A I've heard of her, but I don't know her personally.

Q I sent you the medical records from the autopsy. Well,

the medical records for the child G.M. in this case, haven't I?

A Yes.

Q Have you had time to review the medical files in this case?

A Yes.

Q Now, you did not participate in the actual autopsy itself of the child, did you?

A That's correct.

Q Your investigation, or your review of the case is solely limited to reviewing the medical records and the autopsy records?

A Yes.

Q Did that include the photographs that the pathologist in the -- that were included in the medical file of the child's body?

A Yes.

Q Did that include the autopsy photographs of the child's internal injuries?

A Yes.

Q Do you think that you've had sufficient medical records and photographs and other materials where you can make an opinion in this case as to cause of death issues and injury to the child?

A Yes.

Q Now, you are aware that the child was declared dead at 2:06 a.m. on December 30th?

A Yes.

Q And that was 2014?

A Yes.

Q What were your findings as to G.M. McArdle's cause of death?

A In my opinion, the cause of death is blunt force injuries to the head.

Q Now, the -- well, tell me just briefly -- and we've had benefit of Dr. Ross --

A Yes.

Q -- but just tell us just briefly --

A Yes.

Q -- how the blunt force injuries caused the child's death.

A The blunt force injuries to the head, which are basically impacts to the head, caused bleeding around the brain and on the surface of the brain, which causes -- the head is a fixed space. You know, it can't like expand when there's bleeding inside the brain because it's a bony structure. So with accumulation of blood around the brain between the brain and the skull there's basically no place for the brain that's kind of compressed, and that compresses the respiratory centers of the brain and the brain stops

working and the patient stops breathing. So the impacts to the head cause bleeding in the brain, and as a result of that, death to the child.

Q And when you say blunt force trauma, what are you talking about? The term blunt.

A Yes. Well, in forensic pathology when we describe injuries we frequently make distinctions between blunt force and sharp force objects. So if -- and then there are some penetrating injuries, such as like a blow would be a penetrating injury. A sharp force object would be like an ax or knife. And in this case there wasn't any disruption like through the skin, as if like from a knife or, you know, anything sharp. So it's clear -- and it wasn't a penetrating injury by bullet. It's from blunt force. So impact from an object. And though we can't tell what the object is, but it's some kind of a blunt object without a sharp edge.

Q Did the blunt -- there was bruising throughout the child's body. Is that fair to say?

A Yes.

Q In your opinion, where was the substantial bruising?

A Well, there was bruising in multiple occasions. But the bruising on the head that caused bleeding to the brain is the significant impact that caused the death of this child.

Q Now, did you examine the shapes of the bruises and patterns of the bruises?

A There were no pattern. So that was -- a feature of these bruises is that they didn't have a specific pattern to them. So sometimes we're able to look at bruises and impact sites on the body and tell that it was a specific object. For instance, if somebody was struck with a tennis racket that had like the netting, you would -- you might be able to see a pattern of that netting on the skin because that would create a pattern of a bruise that would resemble the tennis racket. And also if there was a belt then we might see edges of a belt. It would have a shape. These were very amorphous. They didn't have a any specific shape to tell us what object it was that caused the injury.

Q Would that be consistent with my fist, or a fist rather?

A Yes. A fist would leave that kind of amorphous bruise.

Q Now, is it sometimes -- are hard slaps sometimes recognizable as opposed to the patternless injuries?

A They may be. If there's specific finger marks it could look like that.

Q So slapping the child is possible that you might see kind of bruises that appear to be kind of in a finger shape or --

A Yes, that's possible. You don't necessarily get that.

Depending on how the hand hits the -- just like we might have with the tennis racket. If there's significant impact with fingers we might see outline of fingers on the body.

Q Did you see any injuries that appear to be slap marks on this child?

A Yes. In the flank region it looked like there were.

MR. VERNER: Is Mr. Bentley behind the TV?

THE COURT: He is.

MR. VERNER: Mr. Bentley, No. 90, please. You can step down, Doctor, if that would help you see this photograph I'm going to publish.

(Whereupon, the witness stepped down from the witness stand.)

Q What are we looking at in this photograph, Doctor?

A Yes.

Q And you don't have a microphone, so just --

A That's fine. So we can't be 100 percent sure. But you can see that there's sort of elongated structures that you can imagine being a hand and fingertips either once or a couple of times in that location. So, you know, we don't get -- it's like you can lift fingerprints off, or it doesn't necessarily look like an exact hand. But that kind of elongated pattern is -- would be consistent with being slapped firmly by a hand.

Q Could it also be consistent with grabbing somebody and

squeezing them?

A Yes. Anything that's going to, you know, cause bruising from fingers.

Q But that is consistent but not to a medical degree of -- you wouldn't say that's conclusively --

A Yeah. I think it's very compelling but not conclusive.

MR. VERNER: Thank you, Doctor. I'm sorry. You may sit down. Thank you, Mr. Bentley.

(Whereupon, the witness returned to the witness stand.)

Q How many injuries -- and I'm going to talk about G.M. injuries to his head and then to his body separately, if I can. Dr. Ross testified that in her opinion the bruises throughout the child's body appeared to be consistent in time. Have you made a finding on --

A I did agree with that.

Q So obviously all the hits can't occur at the exact same time, but they would be of the same general --

A Yes.

Q And you were confer -- what is the doctor, the pathologist, who actually performs the -- is it prosector?

A Prosector is a word for meaning the person that does the dissection. Which when I do autopsies I'm the prosector and the pathologist. So the doctor and the prosector. The prosector just means like the person who's examining the body. But it --

Q It's not necessarily always the pathologist?
A That's right. The pathologist might have an assistant.
Q But you would agree to a reasonable degree of medical certainty that the bruises are the same general time and --
A Yes. Of the same age.
Q How many different head wounds are you aware of that the child G.M. had?
A Well, it looked like there were three to four impacts.
Q In the same part of the head, or is it different --
A No. Different parts of the head.
Q Is it possible he could have gotten hit more than one time in the same location?
A Yes.
Q Are you able to look at the medical records and the autopsy records and determine if any of those blows are the single cause of death?
A Well, any one of them may have been sufficient, or all of them, all four of them may have contributed to the sum total of the bleeding in the brain. We don't know, you know, which -- if there's only one or if it's a combination of all of them would have been sufficient to cause the abundant bleeding over the brain that was present. And so, we don't necessarily say it was one impact versus another. We group them together.
Q For instance, and I don't want to be graphic, but if

there were a bullet wound to the head you could specifically say that was the one injury that caused the death even if there were other bruises?

A Well, if there's -- if there's -- if it was a bullet wound and this kind of injury?

Q Yes, ma'am.

A I would say that there was a blunt force and gunshot wound to head, because they would both -- the blunt force injuries alone would be sufficient.

Q Right. I really shouldn't have gotten off track, I guess.

A Right.

Q But my point is it could have been all four of these blows to the head or it could have been just one individual with -- but these all could have been -- in other words it could have been just a combination of all of them?

A That's correct.

Q And I apologize for getting off point. Were any of the wounds to the head -- well, when I say bleeding I'm talking externally, bleeding? Would any of them have been bleeding wounds?

A Well, they weren't bleeding on the outside.

Q I'm sorry?

A They were not bleeding through the skin. They caused internal bleeding, not bleeding like from the skin like

you'd put a band-aid on.

Q Now, would bruises like that be immediately apparent?

A Sometimes they are. And they're not all -- they may not always be apparent.

Q Do bruises usually get darker over time?

A Frequently they do. Sometimes you know you might bang your forearm or close the car door on your arm and you're like ouch, and then a couple hours later it looks like, you know, this major bruise. So we -- the reason that happens is because when there's a bruise or a contusion, what it really is is blood vessels are breaking underneath the skin and blood seeps out of the blood vessels underneath the skin and then it looks sort of like a bruise when you're looking at the skin. But sometimes the blood doesn't always poor out immediately. It can happen slowly. So depending also on the pigmentation of the person, you know, it may not be apparent until a little bit later on.

Q So sometimes bruises are -- in this case are you able to a medical degree of certainty determine that the bruises would have been readily apparent or over time?

A I can't really say 100 percent sure.

Q Now, the child had significant injuries on other parts of his body, too, didn't he?

A Yes.

Q What were the most serious injuries that you recall to

the other parts of the body?

A Well, there were significant internal injuries to the gastrointestinal tract that tore the gastrointestinal tract, and that's significant, because if left untreated that would have led to the child's death. That's one injury that's significant.

Q Was that the tear in the duodenum?

A Yes. Duodenum is part of the gastrointestinal tract that's after -- it's distal to the stomach.

Q Between the stomach and the intestines?

A Yes.

Q And you agree with the medical report that it appears that that was torn?

A Yes.

Q What would have torn the duodenum?

A A blunt force impact, or punch or bruise -- significant bruising to the abdomen.

Q Now, would the punch itself have torn the duodenum, or could it have been the organ hitting the spine or a bone in the back?

A Yeah. Well, it's all, you know, a result of an impact. It's -- it could have been significant stretching of it or, you know -- like it just doesn't happen without an impact, so --

Q So it's --

A The exact mechanism of how it tore it's hard to know exactly.

Q But it had to be hit hard?

A Yes.

Q Were there other injuries that were life-threatening to the child?

A With that there's other internal injuries where there was some bruising on the bladder as well, and that was also from impact to the outside of the body.

Q Were the injuries -- you've testified to a reasonable degree of medical certainty that the injuries to the head were fatal?

A Yes.

Q Had there been no head injuries, were the injuries to the body fatal?

A They would not have been fatal as quickly. They would have resulted, in my opinion, in death probably in a couple days time. The reason being, because the duodenum and the intestines have -- we have bacteria that live inside of our intestines, and they belong in the intestines. But once they have a chance to escape the tube of the duodenum, or the intestinal wall, and go out into the surrounding tissue it causes a great deal of infection and could lead to a systemic infection that -- not quickly, but it would have led to -- because that's really a terrible injury when

there's a defect in the lumen of the bowel that causes the bowel contents. It's -- you know, it's filled with bacteria that belong in the bowel but not outside the bowel. So a tear in the bowel wall is going to allow those bacteria into the abdominal cavity, which would have caused a peritonitis and then a sepsis.

Q If I had a tear in my abdomen that was releasing the bacteria in my body would it cause me pain or discomfort?

A Yes.

Q Intense pain or just --

A I don't know. Some people -- historically when I know that people have died of that, sometimes there are people who have -- who report a lot of pain in the days prior to their death, and then don't go to the doctor because they figure they just had a stomach ache. And then some people are like in extreme pain, and then some people don't even realize it until they're virtually on the -- on death's doorstep. So I don't know the degree of pain he may or may not have been experiencing.

Q And, in fact, because of the head injury, he -- G.M. wouldn't have been going through the --

A Right. That's right.

Q That would have been down the line, had it not?

A Right. If he had them in sequence and about the same time, the head injury would have resulted him not

complaining. He would have passed out really very quickly after the head injury and not experienced the abdominal pain.

Q That leads to my next question. After a head injury like that -- we'll do it backwards. After a body injury like that would the child be conscious during the body injuries? Well, is there any way to determine whether the head injuries occurred before the body injuries or the other way around?

A No. They're approximate to each other in time.

Q They're at the same time but --

A Yeah, very close to each other, so that I can't -- we can't tell.

Q No way to tell?

A There's no way to tell which one actually came first and which one came second. But they're in the same time span.

Q So is it possible the child had been hit in the head first and then kicked while he was on the floor not responsive? Would that have cause the same -- or hit?

A Repeat the question, please.

Q It's possible the injuries to the body occurred first and the injury to the head occurred last?

A Yes.

Q Is it possible that he was hit in the head first and

then continued to be beaten while he was laying down or unconscious on the ground?

A Yes.

Q As long as it was close enough in proximity, which these were --

A Yes.

Q -- that he could have been beaten while he was laying down on the ground or he could have been beaten while he was standing up?

A That's correct.

Q Would the child have been in pain -- assuming the beating to the body occurred first, would he have been in pain?

A I would think that would have caused significant pain.

Q Would he be crying out?

A Yes.

Q No question he'd be suffering?

A Yes.

Q How long after he took -- G.M. took that head injury, or all of them together, how long would he have remained conscious?

A It's hard to know exactly, but I believe it would have been very quickly that he would have lost consciousness. Like --

Q Is it possible he could have stumbled a few steps or

even gone to another room?

A Well, you know, I don't think he's going to be going out playing ball. Let's put it that way. He might have collapsed, passed out immediately, or it may have been, you know -- he may have potentially be able to walk to another room.

Q But not much beyond that?

A Right. Because, remember, these impacts caused bleeding in the brain, and bleedings happen fairly quickly. So once there's enough blood in the head -- it doesn't take that much to cause somebody to lose consciousness.

Q Does that cause dizziness?

A Well, before -- from him being fully awake to his being passed out, probably he would have had a period where he felt subjectively dizzy. I mean, I don't -- sometimes people pass out immediately from those. So we can't say that he definitely was able to walk afterwards, but he potentially could have been.

Q Would that have caused vomiting?

A Yes. And I'll explain to the jury why head injuries cause vomiting. One of the -- one of the things we know is that when there is bleeding in the brain -- and remember, the head is a closed space. Right? So we don't have a lot of room for the brain to start swelling. Between blood accumulation and swelling of the brain that happens from the

impact, there's something called increased intracranial pressure. Okay? Because it's a fixed space, there's more pressure in the head then there's supposed to be. And whenever there's increased intracranial pressure it's a physiologic response that causes vomiting.

Q So the short answer is yes, that head injuries like this could very well lead to vomiting?

A Yes. It would be expected.

Q Now, there was food found -- undigested food found in the child's stomach. Is that consistent with your investigation?

A Yeah, I read that there was.

Q From the doctor's report?

A Yes, from the autopsy report.

Q What would that indicate to you?

A Well, that the beating to the head occurred sometime after the food was eating, because the child's not going to be eating after the head injury. But close enough to the mealtime so that the food did not clear the stomach yet.

Q How long does it take a normal person to clear food from their stomach into their intestines?

A Usually by a couple of hours it's passed out of the stomach.

Q Now, could the injury -- the internal injuries also have shut down the digestive tract? Now, what is the muscle

called that pushes food out of the stomach? I can't really -- it starts with a P or something.

A Yeah, the pyloric sphincter.

Q Out of the stomach?

A Oh, yeah. Well, the -- what's the muscle called that --

Q I just remember Dr. Ross talking about a muscle that moves food through the body and I can't remember. So I was just --

A It's okay. I don't know what specifically she was talking about. I mean, the stomach is actually a muscular organ. So stomachs can -- can contract on its own. So between that and also the digestive enzymes in the stomach it helps force it through.

Q Dr. Ross indicated that it could have been his internal injuries, not just the head injuries but the internal injuries could have shut down the digestion of the food. Was that --

A Yes, that can happen as well.

Q There was significant internal bleeding of this child, wasn't there?

A Yes.

Q And, in fact, there was bruising even on the stomach?

A Yes.

Q Have you ever seen bruising on the stomach before?

A Unfortunately, yes.
Q But it would be rare?
A Well, it's from impact.
Q How long after G.M. was struck in the head did he live, just to a degree of -- reasonable degree of medical science -- certainty.
A Yeah. Within a period of minutes he would have been dead.
Q Now, we seem to have been debating what minutes means in this case. What does minutes mean to you as a pathologist?
A Well, we don't -- we don't know exactly, but it could have been anywhere from a couple of minutes until he really died up until potentially, you know, up to an hour or so, because he's not going to be conscious but there may have still been some heartbeat until he actually stopped breathing. So it's hard to know exactly how many minutes. But within an hour he would have been expired.
Q And that is to a reasonable degree of medical certainty --
A Yes.
Q -- as a pathologist?
A Yes.
Q And what's the bottom? I don't want to trap you down to a specific number.

A Yeah.
Q But to a degree -- reasonable degree of medical certainty, what's the quickest he could have been dead after that injury?
A Well, the quickest could have been immediately actually.
Q Almost immediately?
A Yes.
Q No more than an hour?
A Yes, sir. It could have been any time in that period. I mean, the injuries themselves were fatal and non-reversible. But until somebody gets them and actually dies, it could be several minutes or even more than a few minutes.
Q Because the other organs would still be working possibly as well?
A Well, that's right. I mean, it depends on what your definition of death is as well. Right? I mean, if these are non-survivable injuries, if they happened in the emergency room, well, maybe he's not -- he may not have been dead yet, but they still are irreversible and would lead to death even -- the head injuries even with attention.
Q Well, that would be my question. If I actually saw the wounds being inflicted on the child myself, I'm in the room, I see the child being beaten, could I have then taken him to the hospital after the head wounds and he would have a

chance?

A He would have a chance, yes.

Q But every minute passes --

A Every minute passes is significant because there's no blood flow that's -- the brain is swollen and there's blood accumulation and anoxia to the brain, lack of oxygen, that causes the brain tissue to die very quickly.

Q Would you agree with Dr. Ross that G.M. death should be classified as a homicide?

A Yes.

Q Now, Dr. Ross finds that the cause of death would be respiratory depression. What does that mean to you?

A Well, respiratory depression is just a mechanism of death, which means basically he stopped breathing. The respiratory center is being shut down. But the respiratory depression isn't very specific. It doesn't -- it's just there's a -- it's a result of the blunt force injuries to the head that caused him to stop breathing. But it's a mechanism of death. It's not the actual underlying cause.

Q So respiratory depression is really almost every time somebody dies, or every time somebody dies they stop breathing?

A That's right. So sometimes we say -- like people died of cardiac arrest. Cardiac arrest is nonspecific. Before everybody dies they have cardiac arrest. It just means the

heart stopped. So in this case, respiratory depression, cardiac arrest, they all basically mean that somebody's dying and there's usually an underlying cause. To say respiratory depression wouldn't have been sufficient to explain why he died. It has to be -- that's a mechanism of death. So for somebody who may be -- just theoretical -- you know, theoretically, if somebody takes a heroin overdose they also die of respiratory depression but it's from a different underlying cause.

Q So what was the cause -- the actual direct cause of G.M. McArdle's death?

A Blunt force injuries to head.

Q He had significant other injuries, but the blunt force injury to his head killed him?

A Yes.

Q To a degree of -- to a reasonable degree of medical certainty?

A Yes.

Q That's the pathology?

A Yes.

Q Now, you've seen the location of G.M. bruising on his body?

A Yes.

Q Is it fair to say that all of the bruises would have occurred under clothing locations?

A Yeah, their clothing normally is -- if somebody's wearing usual clothes those bruises would have been hidden by clothing.

Q And if the child were laying in bed and I came by and looked at the child in the bed, is it possible I would not have been able to see those injuries?

A That's possible.

Q What about if the child were under a blanket or --

A Yeah. Well, injuries are obscured by clothing or a blanket.

Q And you saw the images of G.M. at the -- when G.M. was treated by the emergency room he was still in his clothing, wasn't he, or some portion of it?

A Yeah. I don't see images -- yeah, I don't remember if I remember seeing images of the -- what he wore when he came into the emergency room.

Q We've heard some evidence that stuff may have been coming out of G.M. nose or throat, vomit liké material while he was in the carseat. Is that possible after death?

A Yes.

Q Just -- I don't want to go into -- could it be the body being jostled?

A Yeah. Well, also if somebody has blunt force injuries to the head that are sufficient enough to cause bleeding on the surface of the brain you can imagine somebody might have

some blood coming out of their nose as well. Right? It doesn't take that much to get a bloody nose. And also, in combination with vomiting. So between the vomiting -- and some of that bloody nose could have dripped into the mouth and between the vomit. So, you know, just by gravity it could be coming out of the nose and mouth after -- after he's already died.

Q And if the child is sitting up in the carseat and I say he's stopped breathing and I start doing chest compressions, or what I call CPR on the child, could that also --

A Yes. That could -- that could definitely cause more secretions and vomit to emerge from the nose and mouth.

Q So if I said, my God, this child's got sleep apnea or is not breathing and I start pushing on his chest or stomach it could push up the fluid from his stomach?

A Yes. That happens quite frequently actually.

Q Is it significant to you that the emergency room physician observed that the vomit appeared to be thicker or what he called congealed?

A Well, you know, that's kind of an objective finding of theirs. I don't really know --

Q Subjective or --

A Yeah, subjective of theirs. So I wouldn't necessarily know what that --

Q You didn't see it?

A I didn't see it. I really don't know if it's significant. It doesn't sound significant to me at all.

Q As a pathologist you can't say to a reasonable degree of medical science that doesn't indicate it might have been sitting in his stomach for --

A Yeah, I have no idea.

Q Assuming G.M. took this beating and then he got put in bed or went to bed on his own, would he be getting up after he went to bed from this injury at all?

A No.

Q You don't have moments where you're lucid and then go back into unconsciousness and then you're lucid again?

A Not from this kind of injury. This kind of injury he would have been out. He's not getting up to go to the bathroom or do anything else.

Q When he closes his eyes in bed, he's never opening them again?

A That's what I believe.

Q To a reasonable degree of medical science?

A Yes.

Q So if I had picked this child up from his bed and put him in a carseat he wouldn't be fighting me or kicking at me trying to --

A Not at all.

Q And he wouldn't be protesting don't wake me up or --

have you seen kids -- sometimes they don't even speak, but when you wake them up they still kind of --

A Yeah, he's not -- he's not interacting with anybody.

Q Whether he's alive or not, he's as lifeless as a doll in terms of moving him?

A Well, I believe -- I mean, in my medical opinion, after suffering injuries like that to the head, he's not able to interact or express, you know, his opinions or say I don't want this or want that, or fight.

Q So several after hours -- after the fact, if I kind of hit him on the shoulder and say are you all right, kid, he's not going to say I'm fine?

A No. No. He will not respond.

Q Could he appear to be sleeping if he's put in a carseat? What we have here is we know that the -- Theia and her boyfriend --

MR. STUMBO: Judge, objection.

THE COURT: Form it as hypothetical.

MR. STUMBO: He's testifying.

MR. VERNER: I'll withdraw it as I --

MR. STUMBO: He's not asking a question.

THE COURT: Do it as a hypothetical.

Q Hypothetically if I woke the child up at midnight to take the child for a drive to Columbia from Newberry and the child was put in the carseat with the restraints on it,

could it appear that the child was still sleeping, if I'm not the one who --

A Oh, if you put him in -- if you took him from bed or --

Q Yes, ma'am.

A You could potentially -- that could have been misinterpreted by adults as being asleep.

Q Was there anything else, significant, Doctor, about G.M. injuries that you were given pathology notes on?

A Nothing that hasn't already been discussed.

Q Bottom line is G.M. had died within an hour after the blow to the head?

A Yes.

Q Bottom line is that the injuries to the head and the other injuries of the body were in the general -- same general timeframe?

A Yes.

Q Possibly as one beating?

A Yes.

Q Were there any other causes of death, other injuries that could have contributed to the child's death beyond the head injury?

A No. The head injuries were responsible for his death.

Q He would not be lucid after he lost consciousness initially? He would never come back and -

A That's correct.

MR. VERNER: The prosecutor might have questions for you.

THE COURT: Solicitor.

MR. STUMBO: Thank you.

CROSS-EXAMINATION

BY MR. STUMBO:

Q In your practice as a pathologist do you do forensic pathology that interacts with law enforcement more, or would you characterize that as natural deaths, both? I mean, of the 3,700 you've done.

A Yeah. Forensic pathology, these autopsies are all autopsies that are performed because somebody was not expected to die. So they're -- frequently they turn out to be homicides. Frequently forensic cases turn out to be natural. Frequently they're undetermined. Frequently suicide. We have all sorts of causes of death. But these are forensic pathology cases.

Q Well, how many children who have alleged to have been abused have you conducted autopsies on?

A Many, unfortunately. A lot.

Q Many --

A Or dozens.

Q Now, you have a law degree, too; is that correct?

A Yes.

Q And you've practiced -- practiced law, correct?

A I did.
Q And was that practice in criminal defense firms?
A No. I was doing ERISA litigation.
Q Have you ever represent --
A No, I never really. I wasn't a very good lawyer and I did that straight from college and I was -- I left law to go to medical school. So it was kind of an intermediary step.
Q You never -- let's get back as far as this case. You never actually participated in the autopsy in this case, correct?
A That's correct.
Q When did you get involved in this case?
A Mr. Verner called me approximately a month ago and asked me if I would review the autopsy material and records on this case.
Q So your experience with this case was Mr. Verner asking you to review Dr. Ross' autopsy results?
A That's correct.
Q The pictures as well?
A Yes.
Q Did you generate any kind of report or anything --
A No.
Q -- for Mr. Verner? So you just looked at Dr. Ross' results and you're here today, correct?
A Yes.

Q Did Mr. Verner share with you his legal theory of the case? I mean, you are an attorney, so did you all talk about that?

A No. I don't think he did.

Q You don't think he did or he didn't?

A I don't remember if he did. I mean, I told him the child died of blunt force injuries to the head.

Q Which Dr. Ross had already concluded in her autopsy, right?

A Yes. So he sent me her -- her report and the pictures and everything, and I agreed with her conclusions.

Q You agree with her autopsy report?

A Yes.

Q Now, you testified earlier about -- at one point you said injury to the head, blunt force injury to the head caused the death as opposed to injuries or impacts to the head. Is it -- was it multiple impacts or just one?

A Well, we don't -- we don't know. I mean, it could have been a single one that caused the bleeding. But each one of them could have led to the bleeding in the brain. So it could have been any combination of the impacts to the head. Impact, injury, same thing.

Q You're comparing the bruises found on the outside to what's going on on the inside, correct?

A Yes.

Q Is it possible for there to be bleeding on the brain with no bruising on the outside? Could that cause subdural hematoma?

A Could what cause subdural hematoma?

Q Something other than what causes an exterior bruise. Let me give you a hypothetical, doctor. If an adult comes up to a child, grabs the head, throws it against a soft surface, which doesn't cause an external injury but it causes the brain to rattle inside of the head and causes those little blood vessels to burst, that's possible that you could have subdural hematoma that's not directly connected to an injury on the outside, right?

A In my experience subdural hematomas in somebody who's skull has already formed, such as a three-year-old, wouldn't be associated with a skull contusion. It's not as common for -- like an acceleration, deceleration type injury to cause bleeding on the surface on the brain in an injured child.

Q But it's possible?

A I believe it would be possible, but not -- there were bruises on the head.

Q Well, and speaking of those bruises on the head, is there any way scientifically to age any one of those bruises?

A Visually, they -- scientifically they -- if they were older than a certain time period you could potentially age

them by looking at tissue under the microscope. But in this case that wasn't -- I don't have any -- I wasn't provided any of that.

Q So there's a way, you're telling me, scientifically to day exactly how old a bruise is?

A No, I didn't say that it was scientifically possible to say exactly how old. But if it's older, let's say, than, you know, a day, or 36 hours actually, then hemosiderin, which is the blood cells, start to break down and there's some pigment. Within between zero and 36 hours we wouldn't be able to tell if it was new.

Q But you indicated earlier that all of these injuries -- I think Mr. Verner asked you this. These injuries to G.M. body -- which were multiple? You'd agree with that? Multiple injuries?

A Yes.

Q Did they all happen in the same timeframe?

A Well, they could have.

Q Could have.

A Yeah.

Q But there's no way to really tell that?

A Well, let me tell you why I believe that they were. Because if there was injury to the abdomen that caused this duodenum tear, and the child was continuing to live with the leakage of the bacteria found in the GI tract from the

duodenum, there would start to be some inflammation of the peritoneum because of the bacteria leaking out. And that wasn't apparent at the autopsy as described by Dr. Ross. Nor did -- I saw the inner surface of the body in the autopsy pictures and it did not look like there was any peritonitis developing. And so, I think it makes the most sense that this would all have been in approximate time period.

Q Yeah, approximate time period. It's possible this could have happened over a series of hours, correct?

A It's possible, yes.

Q So in other words, throughout that day --

A So it's possible it could have been from the same beating event or it could have been over a period of time.

Q There's no way medically you can testify that it all happened in the same beating?

A That's correct.

Q It could have happened in a series of beatings over a course of hours, correct?

A That's correct.

Q I just wanted to make sure, because you said to Mr. Verner all the injuries in your medical opinion happened around the same time.

A Well, there was nothing to indicate otherwise.

Q I just wanted to make sure that I'm correct on this

though. You did testify that they could have happened -- it's medical possible that they could happen over a longer period of time.

A Well, you know, after the -- if the beating to the abdomen came first, that would have resulted in, you know, crying and pain, and that would have been apparent to somebody.

Q The one thing, and I believe Mr. Verner asked you about the fact that there was food still in the stomach, correct?

A Yes.

Q That we can use that as kind of a benchmark for when either an injury to the head or the body that created the digestive system to slow down.

A Yes.

Q That we can kind of date from the time he got the injuries that caused his digestive system to slow down in relation to when he ate the food, correct?

A That's correct. So really it's -- so the question is, yes, if once the beating to the stomach occurred or the beating to the head occurred it would have caused the food to not have been readily digested.

Q If there was testimony that suggested that the beating that caused the digestive system to shut down happened within 30 minutes of the time a child ate, then would you agree with that medically?

A It would make sense medically.
Q So that would seem to indicate that it happened -- at least some of this beating that occurred to cause his body to shut down occurred sometime around dinnertime, right?
A After dinner.
Q Shortly after dinner?
A Right. Sometime before food cleared from the stomach which could have been up to a couple of hours.
Q Because if it was a long time after dinner the food would have already been digested through the system?
A Through the system.
Q So food in the stomach does give us somewhat of a benchmark on some of these injuries, correct?
A Yes.
Q Now again, let's go back to the injuries on the head. You said that -- you did testify you agreed with Dr. Ross that the blunt force injury that caused the subdural hematoma was what was the cause of death here?
A Yes.
Q Timeframe-wise you said that could have happened within minutes of which -- which impact?
A Any of them.
Q Do we -- is there any way for us to tell exactly when this child died? We know what the legal -- declared dead at the hospital at 2:06.

A Right.
Q But do you know how long before that 2:06 point that he actually passed away?
A No. No.
Q And there's no way scientifically to narrow that down?
A Well, it's not that there's no way. But I don't -- you know, somebody in the emergency room might have been able to assess the temperature of the child. You know, a child who was cold already, that wouldn't have happened immediately. After somebody dies it takes a while for temperature to equalibrate with environmental temperature. I mean, you can actually figure that out scientifically, but I don't have that information. So I can't make a decision on -- I can't -- I don't really have an opinion on how long the child had actually died prior to the arrival at the emergency room.
Q Dr. Riemer, did you have -- you said you didn't have the information. Did you have the ER notes from Newberry Hospital? Dr. Holaday's medical records?
A Yes. Yes.
Q And that indicates when the child was brought in he was cold to the touch --
A Yes.
Q -- right away, correct?
A Yes.
Q So you did have that information? That would indicate

that --

A Yeah. It didn't happen immediately prior to -- it was enough time for his body to have cooled off.

Q How long scientifically does it take the body to cool off after death?

A Well, that can actually be calculated. But I did not calculate it in this case. It depends on the surface area and -- but probably within a couple of hours.

Q Within a couple of hours of the time that he hits the ER and is cold to the touch to the ER doctor, correct?

A Yes, approximately. I don't know exactly how long it would have taken.

Q You indicated earlier, you know, that you said the injuries were compelling, not conclusive, and I can't be 100 percent sure.

A That was when he was -- Mr. Verner was asking me about the hand marks on the body. That I thought those strongly resembled a hand slap, or a squeezing. So I did -- that's what I was referring to. So ask me -- please ask me whatever you wish.

MR. STUMBO: Mr. Bentley, could you pull up State's No. 1, please. If you need to step down, Doctor, you can, or if you can see it. Either way.

(Whereupon, the witness stepped down from the witness stand.)

Q When did these injuries occur? Can we -- or do we know?

A No, I don't know. Yeah, that doesn't have a hand pattern. There's no fingers in that.

Q And I believe earlier you testified there was bruising on the bladder. But Dr. Ross's report actually says that there was hemorrhage -- or hemorrhaging or bleeding around the bladder, right?

A That is the same thing. Bruising and bleeding. Bruising only occurs when bleeding.

Q Right. But there was actual hemorrhage or hematoma or a section of blood around there, too, right?

A Yes.

Q And she said it was a bruise on the stomach, right?

A Yes.

Q And a bruise on the pancreas.

A Yes. These are all the same things as hematomas or hemorrhages.

Q But she specified that there was blood. And there was actually pictures of that.

A Yes.

Q You reviewed the autopsy photos, right?

A Yes.

Q And there's bleeding around the bladder area?

A Yes.

Q So bleeding internally?
A Yes.
Q But there's no way to tell when this injury occurred in relation to when the injuries occurred on the head, right?
A Well, not -- they could have all been at the same time, but I can't say for sure.
Q Could this have been caused the day before he died?
A Potentially, yes.
Q Is it possible that if this happened right before death or within a short time period before death that this much bruising would already be apparent on the exterior?
A Well, if he's wearing clothes it's possible that it may not have been apparent.
Q Well, I don't mean by --
A But this bruising --
Q -- someone else. I mean, medically -- and maybe I'm just speaking from layman's terms. If somebody comes up and punches me --
A Yes.
Q -- on the arm, the bruise doesn't show up right way. It comes sometime later, right?
A Frequently.
Q Most of the time?
A Yes.
Q That's just my experience.

A And here, this could have happened -- until the bleeding started to accumulate it could have been a little while.

Q Have you ever seen a child's genitals this swollen, Dr. Riemer?

A No.

Q So there was obviously extreme trauma --

A Right.

Q -- to this child's genitals?

A This was a terrible injury.

Q Based on the darkness and severity of this, this could have happened, as you just said, hours before?

A Potentially, yes.

Q Maybe even the day before?

A I can't tell.

Q The bruise on his stomach.

MR. STUMBO: If you can pull up -- Mr. Bentley, if you could pull up State's 124.

Q This is the bruise to the stomach, right, Dr. Riemer?

A Yes.

Q Is there any way for us to tell when that bruise -- when the injury, or the trauma happened to cause this bruise?

A Not by looking at the bruise. But you remember the belief that there wouldn't be clearing of food from the

stomach once that happened. So this bruise most likely happened after eating.

Q So if we had a timeframe of dinnertime, the last meal --

A Right.

Q Then we could -- we could somewhat narrow down when that injury occurred, within --

A Right. I mean, all of these injuries, even the injuries to the genitals, would have been sufficiently traumatic that the food would have basically not been digested. So even that would have -- I don't believe it was the day before, because he's eating food. I mean, I think he would have been in severe pain. He's not eating food after that. And that food would have not been able to be digested after that. So I don't think that the bruise to either the genitals or the stomach occurred prior to his eating.

Q You don't think the injuries to the genitals happened prior to dinner?

A Well, prior to his eating.

Q To him eating dinner?

A Well, yeah, because I believe that there would have been significant slow down of the gastric -- of the stomach digestion. That's a very severe injury. And, you know, whether he'd even be able to eat after that is questionable, because he would really be in pain.

Q What if it happened many hours before, the day before, the bruising shows up the next day but then he eats and he gets hit on the stomach?

A Well, I guess that means those things are possible.

Q I mean, in other words --

A I guess any of those things are possible. To me, a child would be in severe pain after these injuries and would not be eating dinner quietly.

Q The punch to the stomach could have happened even a day apart from the punch to the genitals possibly?

A Well, I think the -- anything is possible. This is all possible. And I don't believe that a punch to the stomach or the injuries to the genitals are going to lead to the child being like, you know, able to eat in a normal manner. I think he would have been in pain. I mean, it's possible that he carried on and ate dinner and with these kinds of injuries, but I don't think that's likely.

Q Caused him to vomit possibly after he tried to eat with those kind of injuries?

A Well, it's possible, yes. I mean, I think maybe he wouldn't have even wanted to eat. It's possible he could have vomited after eating. But it makes more sense that he would have eaten. I mean, it's not -- it's not -- what you're saying isn't possible. It's absolutely possible. But I think a child who had sustained that kind of injury to

the stomach and the genitals and internal bleeding is not going to be eating a meal. It just doesn't make quite so much sense. I mean, it's possible, yes. He -- maybe it's possible that he could have done that and he was not really feeling as much pain as we would imagine he would. But I think that those kinds of injuries would have -- would have caused him not to be acting normally afterward.

Q But he could have? He could have been sluggish --

A Well, it's always possible, yes. I don't think a child would -- in so much pain is going to be eating his dinner. So it makes the most sense to me that this -- the beating to the abdomen and the -- if they -- it occurred around the same time, that it occurred after eating. And that makes the most sense. And the food isn't going to be leaving the stomach. It's just -- like these kinds of injuries. I mean, somebody gets beaten up is not going to be standing and eating his dinner. I think he's going to be in pain and not going to be eating.

Q But you said if the injuries occurred all at the same time. But we don't know. We can't tell that medically, right?

A Well, medically I can. But, you know, we can sort of -- we can't say with certainty. But I do not believe he would have sustained these sorts of injuries and been playing and eating and interacting normally after sustaining

them. I think he would have been in pain. The duodenum injuries and the genital injuries are going to be significantly painful for him that I don't think he's going to be sitting down and -- they're not -- they're going to be apparent because he's going to be screaming. If they happened a significant time period before the head injury he's going to let people know he's in pain. He's not going to be eating and like oh, my, how did you get that. It happened -- it happened after eating.

Q But you can't medically tell us that? That's just speculation?

A Well, you know, we know about human behavior. I'm not -- I mean, I'm a physician and people in severe pain don't carry on normal activities. So I would say it's more likely than not. I can't say for sure to a reasonable degree of medical certainty. But I would certainly, in my expert opinion, he would have eaten and then suffered these injuries. Because I don't believe he would be eating his meal after sustaining all these injuries.

Q Just another hypothetical then, Doctor. How about if it's a child that had been abused over a long period of time repeatedly since he was young and it was just normal -- normal every day life for him.

A This could have been his normal every day life. But these kinds of injuries would not -- if somebody had these

sorts of injuries I think he may have died previously. I mean, he had internal bleeding to the duodenum. I don't think that this kind of beating is compatible with somebody with life. And he does go to the doctor. He does go see a doctor. I don't think he -- I think it would have been observed -- observed, or he would have complained. Even if it's his everyday abuse, he's in pain and I think there's a physiologic response to that.

Q Is there any way for you to be able to tell medically which person caused these injuries to this child?

A Absolutely not.

Q So you can't say if there were two people there during this time period which one it could have been?

A I have no idea. That's correct.

MR. STUMBO: Thank you, doctor. You may return to the witness stand.

MR. VERNER: Just a few follow-up.

MR. STUMBO: No, I'm not --

(Whereupon, the witness returned to the witness stand.)

MR. STUMBO: I'm almost done, Your Honor.

Q You testified for -- you said you've been qualified as an expert in the state. Is that typically under a retainer from either the State or the Defense?

A No. No. I testify in Court. It's when I -- when I do an autopsy. I do a lot of forensic autopsies for many

counties in the eastern half of the state, and I'm frequently called by the Solicitor to testify as to my autopsy findings and to the cause and manner of death. It's not a retainer situation.

Q When you do the autopsy. But I'm referring to when you come in as in this one. You review records and testify --

A Well, that's very rare. I actually haven't done that before. So I don't -- I'm not, you know, going out and doing this as part of my -- I'm not reviewing other peoples' cases and being admitted as an expert. This is actually the first time I've ever done this.

Q But you're getting a fee in this case?

A Well, not -- my department is actually charging and my -- it's not coming directly to me. My department is charging for my time, not -- in my opinion, I said this is a homicide and blunt force, and I gave them -- I have my opinion and my opinion is not being purchased.

MR. STUMBO: Thank you, Doctor.

THE COURT: Any redirect?

REDIRECT EXAMINATION

BY MR. VERNER:

Q And really your opinion is the same as the State's witness, the pathologist?

A That the cause of death is blunt force injury to the head.

Q Just a few items. Does it sometime take food -- food clears from your stomach usually in about an hour or --

A It actually depends on the various factors. So to pin it down to an exact timeframe is very difficult. It depends on the kind of food, the volume of food. Eating a very small meal it actually would clear more quickly than a large volume of food. And, you know, food that's fattier also takes longer to clear.

Q So if we all eat like steak where it just sits on your stomach, food doesn't always clear at the same --

A That's right. It's not like it's all there and two hours it's gone. It's sort of a gradual digestive process.

Q So it takes sometimes longer than an hour to clear out the stomach?

A Yes.

Q But what's the most that's reasonable?

A Usually by a couple of hours, if a meal is really massive.

Q So two or three hours is when the stomach clears completely?

A Approximately.

Q And we're not just talking about -- if this injury happened the day before and we're talking about, you know, the supper beforehand, breakfast the next day, lunch. We're not just talking about one meal that you're saying he

wouldn't eat. We're talking about multiple meals this child would have had to eat, assuming he was eating? The Solicitor's question that you answered if the injury happened a day beforehand, how many meals would people typically eat in a day?

A Three.

Q And you don't have to be a pathologist to know that, do you?

A No.

Q So we're talking multiple meals that this child would have eaten after these injuries if they happened --

A That's right, and if he was eating.

Q But have you seen anything to suggest that these injuries did not happen as Dr. Ross testified as part of the same incident?

A Yeah, I'd have no reason to think that they did not. Yeah, they're perfectly consistent. And again, as I mentioned, if the abdominal injuries were significant -- were prior to his eating, I don't think he would have been eating. If he had these abdominal injuries and the groin injury he's not going to be eating meals. So I believe that it makes most sense that he -- that it was -- the injuries all occurred after.

Q After dinner?

A Yes.

Q Because he was -- he went to the hospital at some point about 1:30 in the morning the following day. So the last meal we're talking about would have been dinner the night beforehand?

A Yes.

Q So we can break down the timeframe that sometime 30 minutes to a couple hours after dinner until he was found dead at the hospital?

A Yeah. I nothing to think that that wouldn't -- that wouldn't be accurate.

Q Did you see -- the Solicitor just raised this allegation. But we know Theia slapped the child and had a DSS intervention in April of 2013. Did that cause G.M. McArdle's death?

A No.

Q Did it contribute to G.M. McArdle's death?

A No.

Q Did you see any other injuries, broken bones, cracked teeth, any other injuries on that child's body that were separate and apart from the injuries that were inflicted as part of his death?

A Well, I didn't -- I didn't see any recorded by the pathologist.

Q Do you think a pathologist doing a study of the child would have noted other -- more injuries?

A Yes, definitely.

Q Have you seen anything from the medical records indicating a pattern of ongoing beatings over the course of the last year?

A No.

Q So that would -- it's fair to say it's just pure speculation?

A Yes.

Q I don't know the answer to this, but the child's groin is severely discolored. Could the penis have gotten that swollen from a punch or would it have taken other type of -- could it have been grabbed real hard and that caused it? Is there any way for you to tell? I don't know. That's my question.

A Well, it probably -- I don't know if it's a single event that caused that. It could have been grabbed and punched, because there is bleeding around the bladder. So it could have been that there was a punch and a second punch or -- I don't know exactly. But --

Q But it's severe?

A Yes.

Q And I don't know the -- I would think the duodenum would be kind of up closer to the stomach, but is the injury to the abdomen, could that have contributed to the bleeding on the inside or would it have had to be the child would

have been beating kind of further up the abdomen?
A Well, what exactly -- you're asking me about the abdominal tear?
Q Yes, Doctor. The internal injuries --
A Yes.
Q -- were those caused from hitting the child in the groin area or would those have been caused from strikes further up in the child's body, or it's just impossible?
A Well, I would think the bladder bleeding, the bladder hematoma, was associated with injury to the brain area, and the injury to the duodenum and the pancreas could have been from other -- I mean, he's a child. So it doesn't necessarily -- I can't say specifically from what injury. They're kind of all mixed together.
Q But the most severe beating would be the groin area?
A Now, that's very -- I mean, most -- it depends on what you mean by most severe. The injuries that killed him are the blunt force injuries to the head. But those certainly are horrible.
Q But by injury I just meant patterns of bruising.
A Well, they're very severe. But, you know, the internal injuries to the duodenum are also significant that may not have been associated with a severe visually on the external part of the body. So, you know, I can't say, well, one was worse than the other. I mean, they're all there. And

sometimes a significant internal injury, or something that appears really bad on the outside isn't necessarily associated with as severe an internal injury. But we have significant internal and external injuries here.

MR. VERNER: Doctor, I appreciate you coming to Newberry. The Solicitor might have --

MR. STUMBO: Very brief, Judge.

RECROSS-EXAMINATION

BY MR. STUMBO:

Q Dr. Riemer, would it be fair to say -- would you agree with this statement, that the more severe the trauma to the head the more quickly death would occur?

A Well --

Q Well, let me back up.

A -- you know, that's actually -- you can't -- you would never disagree with that because severity would be judged by how quickly it would occur. So you would say though it had caused somebody to die quickly then it was very severe, and if it didn't, then it would be less severe. So it's kind of impossible. It's almost like a truism that the more severe it was the more quickly somebody would have died. It's not -- I can't say -- it doesn't make sense to me to disagree with that.

Q The amount of blood on G.M. head, based on your review of the autopsy, did that indicate a significant

amount of blood on the head, or on the brain, excuse me?

A Yes.

Q I believe that was approximately 25 CCs?

A That's what she said.

Q No skull fractures?

A That's correct.

Q Small bruising on the head, correct?

A Well, there was bruising, yeah. I mean, the size of the bruise doesn't necessarily -- the size of the bruise on the skin doesn't necessarily say how great an impact it was.

Q Twenty-five CCs though is not a massive hemorrhaging on the brain though?

A Well, that actually is quite a bit.

Q And that could come out slowly over a period of time or --

A Well, 25 CCs is really -- that was measured -- sometimes there's a little bit of blood that's lost when the skull is open, but that's actually a lot of blood in a child's head. There's a closed structure. In a fully grown adult the general accepted thought is that -- medical thought is that 50 milliliters is blood on the brain that accumulates acutely, as opposed to like over years or days -- that accumulates acutely would be enough to cause herniation of the brain which is pushing the brain through some of the bony spaces at the base of the brain. So 28, or

very close to 30 in a child who's not fully grown, it's actually quite a significant amount. So it doesn't sound significant if you're going to have a glass of, you know, water or put it in a glass. It's going to be a couple tablespoons. But it's actually -- for a head that's a lot of blood to accommodate.

Q Is it possibly medically, Doctor, for that 25 CCs to accumulate on the brain over a period of time?

A Well, no, because we would have been able to see that there was some organization of the blood and some yellowing of the blood. It looks all like acute hemorrhage. So I disagree with that. Based on my viewing of the pictures it looked like it all occurred and it was from a -- it was a single time. It wasn't bleeding, and then more bleeding and then all bleeding. It all looked about the same age. We don't have areas where there's clotted blood. It's all fresh blood.

Q Right. But what I'm saying those is that bleeding could have happened -- acutely, what do you mean by that? I mean, could you explain that to the jury? What do you mean?

A Yes. Like -- we're talking like not over days.

Q But possibly over hours? Acute injury could be over hours, correct?

A Potentially.

MR. STUMBO: No further questions, Judge.

REDIRECT EXAMINATION

BY MR. VERNER:

Q But you testified and you agree with Dr. Ross that the child died within minutes of that --

A Yes. I believe that once the head injuries occurred there's bleeding on the brain. The child is not responding after that.

MR. VERNER: Thank you, Doctor for coming.

MR. STUMBO: Nothing further, Judge.

MR. VERNER: Thank you, Doctor.

THE COURT: I was trying to get clarification. You were kind of standing -- the jury, I'm sure, heard you when you were standing over there. I had some difficulty hearing some of what you said. And just so I'm straight on what you're testifying to. To a reasonable degree of medical certainty, it's your opinion that all the injuries took place together and would have taken place within two or three hours? Assuming he ate -- assuming that the child ate steak, some bread and some corn for supper, those injuries would have taken place within two to three hours after -- or 30 minutes to three hours after having eaten supper?

THE WITNESS: After eating, yes.

THE COURT: Very good. Thank you, Doctor. No follow-up based on these questions?

MR. STUMBO: No follow-up, Your Honor.

THE COURT: None from the State. Doctor, thank you for coming. You are free to go. Pleasure to meet you.

All right. Ladies and gentlemen, we're going to take a brief -- well, 10 minute break. If you want to step outside, that's fine. Just be back in here, if you would, at 12:00 and we'll resume at that particular point in time. Don't talk about the case yet. Thank you.

(Whereupon, the jury exited the courtroom at 11:48 a.m.)

THE COURT: I'm assuming, Mr. Verner, that your client is still intending to testify at this point?

MR. VERNER: Yes, sir. But I was going to take a last five minute break, or two minute break, to find out --

THE COURT: No, that's fine. I just wanted to -- let me know what you all decide when I come back then.

MR. VERNER: Your Honor, if I can, I'm going to take her back to --

THE COURT: Certainly.

MR. VERNER: -- my office.

(Whereupon, a recess was held from 11:48 a.m. to 12:05 p.m.)

THE COURT: We'll go back on the record then. Mr. Verner just informed the Court that he does intend to call the Defendant as a witness. You understand the ramifications of this, Ms. McArdle, correct?

THE DEFENDANT: Yes, sir.

THE COURT: Let's have the jury, please.

(Whereupon, the jury entered the courtroom at 12:05 p.m.)

THE COURT: The jury is back and seated. At this point, Mr. Verner, call your next witness, please.

MR. VERNER: Your Honor, I call Theia McArdle.

THE COURT: Come forward, please, ma'am.

THEIA McARDLE, having been first duly sworn, testified as follows:

DIRECT EXAMINATION

BY MR. VERNER:

Q Theia, I'm going to ask you questions from here to make sure that everybody can hear you. Okay?

A Okay.

Q How old are you, Theia?

A Twenty-two now.

Q Were are you from?

A Asheville, North Carolina.

Q You're the mother of the child G.M.

A Yes.

Q How old were you when G.M. was born?

A Eighteen. I just turned 18, I think.

Q So I assume you were pregnant when you were 17 then?

A Yes.

Q Is Richard Bowman the father of your child?
A No.
Q When did you and -- so G.M. was born when again?
A [redacted]
Q Where did you live when G.M. was born?
A The day he was born I was living with my mother off of -- I think it was Aiken Road was a place. Less than a month after that I got my own apartment which my mother moved into with me in --
Q In Asheville?
A Yes. In public subsidized housing.
Q I'm going to move forward a little bit. When did you move to South Carolina?
A August or September of 2014.
Q Where did you move to in South Carolina?
A Originally it was Spartanburg. I was -- the first hotel I stayed at was a pay by the week place by the name of Royal Inn & Suites off of Boiling Springs Road in Spartanburg, South Carolina.
Q Who came with you to South Carolina?
A My son, G.M. and my co-defendant Richard Bowman.
Q He would be your boyfriend at the time?
A Pimp.
Q Did you also have a relationship with him?

A If you could call it that, but yes.
Q Well, how did you support yourself?
A I was a prostitute.
Q How did you come into being a -- what lead you to that life?
A I had lost my apartment in Asheville, North Carolina due to so many police incidents with Richard Bowman and his destruction of property inside of my apartment. And at that point I had no way to go. And I didn't have enough money just with my disability income by itself so sustain an apartment. Cost of living in Asheville, North Carolina is pretty high. And a friend of mine by the name of Jurissa Waits, whose also a friend of Bri Yarborough introduced me to Back Page.
Q A friend of yours introduced you to --
A Back page.
Q And what is Back Page?
A It's a website that can advertise adult entertainment services. Anything from escort strippers, massage therapists, erotic massages, et cetera.
Q Well, I mean, do you start meeting guys first, or just you start advertising to see guys? You start Back Page first?
A You advertise, and people contact you from that advertisement.

Q And then you started doing that?
A Yes.
Q And then how old were you when you started doing that?
A I think I was 20 then.
Q Now, do you -- is this before or after you got into a relationship with Richard Bowman?
A This is in the midst of the relationship.
Q So you had started doing that even prior to Richard or after you had started --
A When I first met him I was not -- I didn't have to escort. But it was in the middle of the relationship when I was about to be homeless with a child.
Q How long after you started seeing Richard did you two move in together?
A It would have been very long. It would have been maybe two weeks.
Q Did he move in with you or did you move in with him?
A He moved in with me. The apartment was solely in my name.
Q Well, you obviously let him move in, didn't you?
A Yes.
Q And you had the child G.M. with you?
A Yes, at that point.
Q What was Richard doing to support himself?
A Nothing.

Q Well, we heard he was also on Back Page. Did he start after the relationship, too, or was he doing it before?

A He started after I began, and he, you know, asked is there male section, and I said, well, there is, but most of the clientele was male.

Q But he started doing that, too?

A Yes.

Q Did he continue to do that through your relationship?

A No. He made approximately a total of seven calls, but the amount of money which he made compared to the amount of time that he had to spend, compared to the amount of money and time that -- I could make much more than he could in a very short period of time.

Q Women, make more money as escorts than men do?

A Immensely.

Q And the market for men is mostly other men?

A Yes.

Q Would he bring these guys back into your home or was it going to meet them?

A We did business within the room that we stayed in, which was a double bedroom at that point in time.

Q Are you talking about the hotel room?

A Yes.

Q Did you continue to be a Back Page escort throughout the relationship?

A Yes, I did.
Q So even as of the date of December 30th, 2014 you were still an escort on Back Page?
A Yes, I was.
Q So you'd been doing that about, what, two or three years?
A No.
Q Were you doing that prior to G.M. birth?
A No. Again, until I was removed -- well, evicted from my apartment in Asheville I didn't have to be an escort.
Q At some point why did you move to the mobile home in Enoree?
A Because I actually wanted, you know, to establish a home. When you're in a hotel room you really can't decorate. You can't make it your home. I mean, you can buy furnishings like bed covers, some decorations, but you really can't make it an actual home. I wanted to cook. I wanted to do things.
Q How did you find the home in Enoree?
A It was an ad off of Craigs List.
Q And Richard and the child moved in with you again?
A Yes.
Q Did you receive any clientele into the home in Enoree?
A Yes, I did.
Q At other times would you go and meet people?

A Yes. Those are considered out calls.
Q How long have you -- prior to December 30th -- when do you think you moved into the mobile home?
A I want to say it was at the beginning of November.
Q So you'd been in the home about a month or two months?
A Yes.
Q Is it fair to say you had -- other than just two mattresses and various scant furniture it wasn't very furnished?
A Yes. There was no place that delivered furniture and you can't put a couch or a mattress or anything on top of a Chevy Malibu.
Q Well, you had another car, didn't you, when you first over, didn't you?
A Yes, but that one was immensely smaller. Yes.
Q Did you have another car?
A Yes, I did.
Q What was that?
A It was a '93 Nissan Sentra.
Q What happened to the Sentra?
A At a point Richard and I had argued and I told him he was not taking off in my car, and he unplugged the distributor cap which connects to the spark plug, I believe is what it's signal or electricity into the engine itself. And when he did that and proceeded to start the car, I guess

he forgot he unplugged it or something, the pistons smashed in the engine which disabled it.

Q That was Richard who did that, not you?

A Yes.

Q Have you ever seen Richard beat the child prior -- had you ever seen Richard beat the child, G.M.

A I had not seen him beat him, per se, but I had seen him be very harsh in words with him.

Q And you had an incident in April of 2013 when you slapped him across the face, didn't you?

A Yes, I did.

Q And DSS intervened --

A Yes.

Q -- in North Carolina?

A Yes.

Q Was Richard with you at that time?

A Yes, he was.

Q And for some period of time the child was removed from your custody?

A Yes.

Q And when did G.M. come back to your custody?

A May of 2014.

Q And he'd been in your custody ever since?

A Yes.

Q Again, I'm not sure you answered my question. Had you

seen Richard strike or physically harm the child?

A No.

Q If you had seen that what would you have done?

A I probably would have struck him.

Q Tell me about the day December 29th, 2014.

A December 29th --

Q You still have a memory of that -- the night G.M. died? A pretty clear memory?

A Unfortunately, yes. I don't think I will ever forget that.

Q You've had a lot of time to think about it?

A Not just that, but I lost the only good thing I was able to do in my life.

Q How did the day December 29th -- do you remember what day of the week that was?

A Monday, I think.

Q Tell me what --

A We had started off the morning -- I had woke up approximately 9:00-ish and I had -- I had made a call -- a couple calls to a couple different Internet providers trying to sustain Internet service for the trailer, because one of the main things we did, because it's in rural -- very rural area was watch movies, which I downloaded illegally off of a website called Utorrent. So my intent was that day to try to establish some sort of Internet to be installed into the

trailer. I was the one who got up and made breakfast for G.M. Not Richard. Richard was, I think --

Q Let me stop you. You and Richard had your own bedroom?

A Yes.

Q Was it a posted bed or was it a mattress on the floor?

A It was just a mattress on the floor. We didn't even have a box spring.

Q What else is in the master bedroom?

A A coffee table which supports a pretty large flat screen TV, a laptop computer and various clutter.

Q What's in the livingroom?

A G.M. air mattress and a lamp, and a vacuum.

Q What's in the far room, what we've heard as the cats' room?

A There's -- a lot of his toys were stored in the closet itself just to be kind of out of the way so that, you know, like -- I mean, he could always take them out and play with them. It wasn't like to keep them away from him. It was just to keep them kind of like from being strung all over the place.

Q The toys were in the closet?

A Yes.

Q What else was stored in that room?

A Just the litter box, because it emits a smell, clearly, and that was to keep it out of the main part of the house.

Q Did the cats sleep in that room?
A The cats slept wherever they wanted to, unless we were going out of town.
Q If you were leaving out of town what did you do?
A We shut them in there because of two different reasons. Number one, they were indoor cats. Number two, they kind of like -- there were two instances which we came back and the cats had tore up not only -- it had knocked off a big vase full of colorful beads that I had as a decoration and they were strung all over the place. And there was another time we came back and my son's diapers were ripped all to shreds.
Q So when you left you kept the cats in that room?
A Yes.
Q Was there any other furniture in that room?
A Not to my knowledge.
Q How was the mobile home heated?
A There was one central air, slash, heat unit, and that was a window unit and that was in the kitchen.
Q Did that heat the entire mobile home?
A Yes. Not well, but yes.
Q Why was G.M. sleeping in the air mattress in the livingroom?
A I couldn't hear him, number one, from the -- way on the other side of the trailer, and that was disturbing to me because I want to know, if he wakes up before me, if he's

getting into something, what he's getting into, because the trailer is not baby-proofed. And when it's that time of year it's very cold. And even our bedroom, which was slightly close to the window unit, with the door open was not heated all the way. So it was easier for him to be closer to the heat and on -- just on the other side of the wall with the door open so that I could hear him.

Q So it was to put him in the room where the heat was?

A Yes.

Q And it was to put him close to your bedroom?

A Yes.

Q It wasn't -- how many cats did you have living in the mobile home?

A At that time we had -- well, including -- minus the one that I had brought later that night we had four. Two which were kittens that you could fit in the palm of your hand. They were not entirely potty trained.

Q Was the reason to give the cats their own room or was -- that G.M. slept in the livingroom, or was --

A No.

Q I think you indicated you woke up and you made G.M. breakfast --

A Yes.

Q -- on the 29th?

A Yes.

Q What happens next?
A I mean, at one point -- at one point I had gone to Dollar General to obtain a Green Dot card, which --
Q Can you just quickly tell us what a Green Dot card is?
A A Green Dot card is a prepaid Visa card which can be used for online shopping, online bill pay, or just as a Visa debit card. The reason --
Q So you -- where did you go to get the Green Dot card?
A I believe it was Family Dollar in Laurens.
Q At some point there was a receipt in your car?
A Right.
Q For what time did you go to --
A I can't give you an exact time. I know it was that morning. I'm sorry.
Q And what store did you go to?
A Family Dollar, I believe.
Q Where's Family Dollar? How far away from the home was that?
A I think it was about 13 miles. Thirteen, 14, something like that.
Q In what town?
A Laurens.
Q Are you closer to Laurens than you are Spartanburg?
A Immensely.
Q Who goes with you to the Family Dollar?

A G.M. and Richard both.
Q Then what do you all do after that?
A From there we went back to the house. I was on the phone with --
Q Let me ask you this. Did Richard have a phone? A cell phone?
A No, not at that point.
Q Did you let him use your phone?
A No.
Q What happens after Family Dollar?
A We went back to the house. I had been on the phone with, I think, Direct TV and -- because they said it would be a $21 charge, I think, via credit card to install -- have services installed -- I think the day was the following Wednesday. So that was what the Green Dot card was to secure.
Q So you were trying to get Internet put in the house?
A Yes.
Q I assume you needed that for your business and maybe for personal reasons, too?
A Among other things, yes. I mean, my phone had Internet. So, I mean, it wasn't just sole purpose.
Q Did you do anything after that time up until about lunchtime?
A I mean, mainly we were just watching movies. It was a

very boring day.

Q And the only TV set in the house was the bedroom?

A Yes.

Q Where do you guys eat meals?

A Typically in the bedroom. We didn't have a table. We didn't have chairs.

Q And, in fact, in one of the photographs of your mobile home it appears that you're using like school trays to eat on? Was that --

A It depends on like if I was in the mood to actually wash dishes, or if we had something that needed to be cut with a knife. Sometimes we would use Styrofoam trays because it was more efficient just for time purposes and it was less to clean up. But if we had something that you actually had to cut up, like chicken or steak or something, we had actual plates. That was more just for convenience purposes.

Q Do you remember eating lunch that day?

A Vaguely. I'm pretty sure it was just sandwiches. We had a lot of cold cuts. That was generally what -- it was just an easy fix.

Q Did Richard cook the meals?

A Richard can burn water. I cooked.

Q So the answer is no?

A Yes. No.

Q Did Richard clean the house as part of his living there? Did Richard clean the house as part of his living there?

A No.

Q What chores in the home did Richard do?

A The only thing that Richard really did was babysit. God's honest truth.

Q Did Richard drink? By drink I mean, alcoholic drinks.

A No.

Q What would Richard do during the day while you were with him?

A Typically if -- if I didn't have a call, he would watch movies with us, take God knows how long frickin baths. Just kind of dawdle around the house, you know. I mean, he didn't really have a life, per se, I mean, outside of --

Q Were you sick that day?

A No.

Q Were you vomiting?

A No.

Q Do you remember Richard being sick that day?

A Richard is bulimic. He was sick every day.

Q What do you mean by that?

A Richard has -- I'm not sure why he didn't tell you this. But he has an eating disorder known as bulimia where he gorges --

Q I know what bulimia is. Just answer what are the symptoms of that, Theia?

A He gorges himself on food and makes himself vomit.

Q Why?

A Could be a mental thing. I'm not sure exactly why.

Q How long had he been doing that?

A Ever since I met him.

Q Was that to keep in shape or was that just for health reasons?

A It could be. In the Army I know there are certain standards that you have to have weight-wise. And I guess the way he eats, you can't really eat like that and meet those standards.

Q Well, I mean, which toilet would he go throw up -- I assume he's throwing up in the toilet.

A Both boys, unless G.M. was in the room with us watching, you know, TV would use the bathroom down the hall simply because men don't like to put the toilet seat back down. Sorry guys. You don't.

Q So you'd use the one in the bedroom the most? You used the bathroom?

A Yes.

Q What about to take baths that we've heard about and the shower?

A To take baths they used -- both of them, again,

typically G.M. bathed with Richard and they used the one down the hall, because the bathtub in the master bedroom is -- it's not a garden tub, but it's like over two feet deep. So if the tub is filled up even halfway it's almost over G.M. head, and he can't get in and out of that tub by himself.

Q Well, did G.M. take showers or -- I mean, did Richard take showers with the child or did they bathe together?

A Typically it was baths. I don't think I've seen Richard take a shower except for like maybe twice when we were running late.

Q How long would Richard sit in the bathtub?

A It would be anywhere from 45 minutes to an hour and some change.

Q Well, I mean, I'm sure -- is G.M. sitting in there with him the whole time?

A I honestly don't know. To be honest, that's probably bad parenting, but I didn't pay attention.

Q Was that every day that the child would bath --

A Virtually, yes.

Q So part of Richard's home responsibilities were he'd bathe G.M. Did G.M. bathe in the morning or at night?

A I can't -- I don't know. Just whenever -- whenever

Richard decided to get in there with him.

Q Well, I mean, how often are you on calls? I mean, it's not a 9:00 to 5:00 job, is it?

A No. But generally whenever I do have to respond to the calls it's whenever they set the time. So it could be are you available now, or are you available in 15 minutes, or are you in -- and sometimes I would literally wake up, brush my teeth and take a call.

Q So you would take -- I don't know. But the calls start in the morning?

A Whenever I wake up and start answering them, yes.

Q I would think traditionally calls would be in the evening, wouldn't they?

A Calls from Back Page run at any time of day because you also have truckers which are at any given point in time traveling down I-26, or 385 which is a few miles down the road.

Q Did you have a client, or a patron named Papi Chulo?

A That was my nickname for him, yes. Papi Chulo which means beautiful papi in Spanish.

Q How long had you been seeing him?

A Ever since I first moved to Spartanburg. He --

Q A couple of months?

A Yes. He was a very, very good -- he was very good to me.

Q In fact, had you all made plans to move in to his place?

A We had definitely -- we were on the cusp of becoming together. He talked to me the day before the 29th and said why don't you let me take you away from this life. And I said, well, I have a son, and he said I don't care, you know. And I was like, well, what are we going to do about a place. And he said I'll have to put it in your name, but as long as it's $1,000 a month, you know, I can pay the rent, and you have a car and we get it legal, and I said okay. I said, well, let me get my stuff together and make a way.

Q Well, I mean, it sounds to me like you're not really romantically involved with Richard.

A No. The only reason at that point that I was still with Richard was because I had to have someone to watch my son while I made the calls to pay the bills.

Q Well, was Richard still attracted to you, or was he pretty much self -- moved on, too?

A I'm not -- he claimed he cared. But if somebody bought me anything I wanted, and paid for everything I asked for, no matter how stupid it was, I'd probably say I cared about them, too.

Q So you're saying basically he was just staying with you because you were paying for everything?

A Yes. That was my belief.

Q What happened after lunch on December 29th?
A After lunch Richard and I were fighting. I had gone the previous night and bought new clothes for myself and G.M. and shoes, and other things I really hadn't had the time or, you know, the expenses to do because -- Richard said you already have clothes. And he was very controlling about the finances.
Q What did you do after lunch, Theia?
A After lunch I was very much so arguing with Richard, the greater part of the rest of the day up until G.M. and I made dinner. And the argument was -- and I had told him several times I hate you. There is no love left for you. I'm tired of your cheating. I'm tired of your lies. I'm tired of your abuse. I'm tired of your verbal abuse, you know. And I pretty much made it clear that there was no love left for me. I didn't tell him that I was leaving, because every time I brought up the issue of leaving some thing, including myself, would get harmed in the process. So --
Q So he would damage property sometimes?
A Damage property, damage me. He destroyed the car. Destroyed, you know, various items of clothing, electronics. There were holes all in my old apartment in Asheville.
Q Did you leave the house after lunch?
A If I did, I don't remember. I'm sorry.

Q Well, I mean, did you -- between lunch and dinner do you remember whether you left?

A I'm sorry. I really -- I don't remember.

Q Do you remember making dinner the night of --

A Yes, because G.M. and I cooked together.

Q What do you mean? He's only three, or not quite three. So what do you mean you cooked together?

A He had a little stepping stool, which if you put -- if you put it close enough to the counter he could be at eye level, literally. But he could reach up over the counter and sprinkle on the seasoning for the steak. And I tenderized it, which was the process of taking the fork and stabbing it repeatedly. And G.M. put the seasoning on while I, you know, tenderized the steak. And, you know, I let him, you know, stick it a couple of times with the fork because he was like I want to do it, I want to do it, and, you know, I let him. And the corn was on the back burner boiling, so he had absolutely nothing to do with that. Besides, I wouldn't let him near the stove anyway. And as far as just the bread, I was like, here, open this. And he was standing on the ground at that point. And he knew how to open like bags of chips. And the bread itself was a Pepperidge Farm loaf, which is just in a plastic container that you can just open very easily. So that was -- I mean it --

Q Let me back up, Theia. It appears that you made a call at 1:54 from a -- that hit a cell tower that was no longer at your home. Do you know where you went around 2:00? And, in fact, you made another call around 2:25, or someone using your phone? Did anybody else use your phone that day other than you?

A Richard did not have my password to my phone.

Q Was that for a reason? I don't need the reason. Just was that --

A Yes, it was.

Q It appears you made you a call at 1:54 and at 2:25 from locations that were outside of the home. Do you remember where you went slightly after lunch?

A To be honest with you, I don't know. If I could see the contact numbers I could possibly tell you, but I don't -- I don't know. I'm sorry. I really don't.

Q But it appears you had gotten home by at least 3:53 because there's a call at your home. And so, what time do you all normally eat dinner?

A It can be between 6:00 and 8:00 generally is when there's, you know, a slow period where I definitely don't have calls, or if I do it's like in preparation for the next hour or so, you know. So I had that time to actually make dinner, or whatever it is we're going to do for dinner, even if it's going out. So between 6:00 and 8:00.

Q Between 6:00 and 8:00?
A Uh-huh.
Q Would you all have eaten as early as 5:00?
A No.
Q Did you see G.M. throwing up?
A No.
Q Do you remember going the day beforehand to a guy named David Moscerelli's house?
A David and I were not in --
Q It's just a yes or no question --
A No.
Q -- Theia.
A No.
Q You deny that you went to David's house the night before?
A Yes.
Q Now you can tell me why.
A David and I have not spoken at all since the day that the -- the Sentra was disabled, which was at his house. Do you want the reason why?
Q How long was that prior to December --
A Huh?
Q How long had that been prior to December 29th?
A It would have been way -- two weeks at least, more. Like it would have been before the 12th, that's for sure.

Q So you would not have gone to David's house the day beforehand?

A No.

Q But you did go to Asheville on the 27th?

A Yes.

Q Did you go to court?

A On a Saturday? No.

THE COURT: Hold on.

(Whereupon, a brief pause was held.)

Q So I asked you what time you normally ate dinner and you said between 6:00 and 8:00.

A Yes.

Q That's every day?

A Virtually, yes.

Q Do you remember making dinner -- well, what's the latest you all typically eat dinner?

A If a call could get in the way, or if travel could get in the way, 9:30 at the latest.

Q But ordinarily 6:00 to 8:00?

A Yes.

Q Who made dinner?

A Me, or sometimes restaurants, but --

Q Or sometimes you'd go out to restaurants --

A Yes.

Q -- sometimes you'd make it. Were these cooked meals or

were these also cold cuts?

A No. No, no, no. I typically cooked either breakfast and dinner, or breakfast, lunch and dinner. It just depends on the day.

Q Do you remember what time you had dinner on the evening of December 29th?

A I want to say I started cooking at either 6:30 or 7:00. With all total of every -- the preparation, the tenderization, thawing out the steak, I think we got done at like 7:00 --

Q By done you mean cooking dinner or eating?

A Yes. Cooking dinner and started to eat at about 7:30, 7:40.

Q Who ate dinner that night?

A All three of us, G.M. Richard and myself.

Q In the bedroom --

A Yes.

Q -- on the bed?

A Yes.

Q Did you all typically eat while you all watched TV together?

A Yes.

Q Were there any marks apparent on G.M. at that time?

A None.

Q Was he acting abnormal?

A Not at all.

Q At some point you had to leave, didn't you?

A I barely even finished my own food, and G.M. was, I think, still eating like the last couple of bites of his food.

Q So G.M. was eating dinner?

A Yeah. He had finished almost everything on his plate by the time that I left.

Q What did you all have for dinner?

A Steak, corn, garlic bread.

Q Where did you go -- did you clean up the meal or --

A No. I left that to Richard because I had to go.

Q Were they still eating or had they finished their meal, too?

A G.M. was still eating. Richard and I were bickering. I don't -- I don't know if he had finished his food or not. He -- you know, the last thing that I had said to him before I walked out of the trailer was I hate you. Don't touch me, because he tried to grab me. And he was like, but -- and I'm like no, don't touch me. I have a call to go to. And I looked at my son and I was like I love you baby, mommy's got to go get this money. And those were the last words that I spoke to my son, as he sat on the bed with his plate still in front of him.

Q Where did you go?

A I went -- well, I had to stop and get gas at the Valero station which is exit 44, 41.

Q How far is that from your home?

A Two, three miles.

Q Do you remember what time you left? Could it have been by 8:11 p.m.?

A It could have been.

Q Well, we know that --

A It was around 8:00. I do know that much.

Q We know there was a phone call made outside of the home at 8:11.

A Right.

Q So is it possible that you had left by 8:11?

A It's very possible.

Q How long were you at the gas station?

A I was there -- I think I might have picked up a pack of cigarettes, too. But when I came out there was a little cat and it came up to me and started rubbing around my leg and I was like, awe, you're so cute. And then it like -- it rolled around on the ground and dropped down in like a puddle of oil, and I was like, okay. So I asked the guy, I was like who's cat is this outside. The clerk. And he was like it's a stray. If you want to take it, take it. And I'm like, well, do you have anything in can put it in. So he gave me a cardboard box to put the cat in. And I ended

up taking it back to the house.

Q So you went straight back to the house?

A Uh-huh. After getting gas, yes.

Q And there appears to be a phone call from your house at about 8:35 p.m.

A Sounds about right.

Q Do you know who you were talking to?

A Could have been Papi. I don't know.

Q What was the purpose of going out and getting gas? Were you just getting it for the week or had you already had a call to go out?

A No. But I wanted to make sure I had enough to get to Spartanburg and back.

Q Had you had a preset arrangement to go to Spartanburg that day?

A I had spoke to him like right before cooking dinner.

Q Who is him?

A Papi Chulo.

Q Did you know this man's real name?

A I can't remember it. I'm sorry.

Q Where did you -- well, I mean, how did you -- you came back from the gas station with the cat in the box.

A Well, when I came --

Q Describe --

A When I came back Richard swung open the back door. He

was like, what are you doing. And I was like, here, take this inside. He was like, what the hell is this. I was like, it's a cat. And he was like, why did you bring back another cat. And I was like, because it was rolling in a puddle of oil and I felt bad for it, and we have enough food and liter, you know, so. And he was like, okay. And I was like I've got to you, you know, Papi's waiting. And I went back to the car and drove off.

Q And where did you meet Papi Chulo?

A I had to drive to the Royal Inn off of Boiling Springs Road which is, I think, exit 19 off of I-26.

Q And how far is that from your home?

A It's about almost 30 some odd minutes away.

Q So it's about a 30 minute drive from your mobile home?

A Give or take, depending on traffic.

Q Well, we know there's a call from your phone at 9:52 p.m. that's away from your home. Was that while you were with -- at 10:00 in the evening would you have been with Papi Chulo?

A Yes.

Q There's also a call at 11:00 p.m. that's also, as I think you heard the SLED agent, in the Spartanburg area. Was that the same?

A I don't know if I was in the vicinity.

Q How long did you stay with Papi Chulo that night?

A I'd say for a good little minute. It was maybe an hour or two, possibly two and a half. I'm not --

Q And this was a sexual encounter with Papi, or was --

A It was not.

Q -- it just to talk, or what was it?

A It was not. Like I said, he was very good to me. When he paid for my time he would give me body massages and everything, but it didn't always result in sexual intercourse. He actually cared about me, which is very rare for any prostitute to experience. I don't even experience that in my home with my boyfriend, so...

Q How long did you stay with Papi Chulo, as best you remember.

A It could have been an hour to two and a half. I don't remember. It seemed like a while, but --

Q So at 10:00 -- how long would it take you to drive home again? About 30 minutes?

A Give or take depending on traffic.

Q At 11:19 it appears you're home because that's when your home cell tower pings again.

A Uh-huh.

Q So were you home by 11:19?

A Sounds about right, yes.

Q I assume that at 11:19 at night it's pretty dark by then?

A Very.

Q You all typically leave the lights on in the home in any particular rooms?

A No. We sometimes leave an outside light on. And when I came in that night the TV in the bedroom -- master bedroom was on, but that was the only light.

Q There's no TV in the living room where the child slept, was there?

A There's nothing in the livingroom besides a lamp that wasn't on.

Q Does the lamp stay on when that child sleeps?

A No. No.

Q After it gets dark how is the master bedroom usually lit?

A If we're still awake there's the TV and the laptop on.

Q The TV and the laptop are generally the lights?

A Yes.

Q G.M. sleeps -- doesn't sleep with the lights on in the house?

A No.

Q Do you remember coming home from the Spartanburg motel?

A I do.

Q Tell me -- had you received any other calls from people?

A I had -- I had received a call. I had texted going

down the highway, but when I stopped to -- I stopped to get something to drink and I stopped -- I got a Peace Tea and a bag of lifesavers -- gummy lifesavers for Richard Bowman. And I had received a call, which the guy was like, you know, I live in Newberry. And I'm like, well, how are the police because my car's not legal.

Q What time did he call you?

A I couldn't tell you.

Q We know he'd been texting. From the cell phone records he had texted you as early 2:00 that day, hadn't he?

A Right. Honestly if I text somebody and they break -- they take a break in texting between like 20 and 30 minutes and they haven't set an appointment I usually erase the text messages because they a lot of times won't followup with an appointment.

Q But it still shows up on your -- the phone company does. It might not show up on your phone.

A Yeah, that's what I'm saying.

Q So you don't remember him texting you as early as 2:00?

A He could have is what I'm saying. Because I erased the text messages doesn't mean I didn't text him. It means that I probably had erased those messages because he had more than 20 to 30 minute break in texting me.

Q Do you remember when the man from Newberry first called you?

A The first time that I remember when I was actually considering going up there -- up here would have been on the way back from Spartanburg. Because I was like, well, I'm free. I need the money for the move tomorrow.

Q Is it possible he had texted you as early as 12:53?

A Could be.

Q But when did you make arrangements or decide that you were going to -- well, I guess back up. When did he contact you by telephone that you remember?

A The first time that I spoke on the telephone with him that I recall was when I was at the gas station. And I told him, I was like, well I have GPS on my phone but I need to make sure that I'm not going to get stopped because, again, I have no license. Don't recall if I had insurance. And the tags were stolen. They belonged to a Tahoe. A very much different car than a Malibu.

Q So he called you while you were at the gas station? That's at the Valero gas station?

A Yes.

Q And you all spoke?

A Yes.

Q I mean, what kind of conversation do you have when somebody calls and asks for --

A He said are you available to come to Newberry and I said, boy, where is that, you know, because I'd never of it.

It sounded like Mayberry. And, you know, I asked what's your age, what's your age, you know, what -- what language do you speak. Clearly English. But, you know, just get a little bit of feel for who it is I'm going to meet. And the red flag when he popped up when he contacted me was she said I'm 26. Anybody who is under 30, by my standards, is dangerous, because they're young and reckless and they're male.

Q So what does that mean? I mean, that he's younger?

A That means that any time I feel that I might be in a predicament where I could either be robbed, beat, raped, something of the sort I will usually take Richard Bowman with me. I mean, he has no problems beating the crap out of me. He can beat the crap out of somebody else, too.

Q I didn't ask you that. You would take Richard with you?

A For protection, yes.

Q That wasn't something he just did once or twice, was it?

A No. That was quite often if I felt I was in danger.

Q I'm assuming he doesn't go and introduce himself?

A Typically he'll stay --

Q Or does he?

A No. Typically he'll stay with himself in the backseat so that the client can't see him, but he's within earshot

should I meet him.

Q Well, are there ever times when he kind of comes and meets the guy first just to let the other guy know --

A No. God no.

Q Why not? That would just kind of intimidate the other man, or what?

A Yes, extremely.

Q So Richard would provide protection?

A Yes.

Q You didn't pay him for this though, did you?

A I paid all his bills.

Q Not directly though?

A No.

Q But that was one of the things he did for you?

A Uh-huh.

Q What would you do about the child if you were going on a call like this after dark and Richard was with you?

A We would always take G.M. with us when both of us had to leave. There was never a point in which I would leave my child by himself. He's three.

Q And it appears the man from Newberry called you about 8:04 p.m.?

A Could have been. I'm not --

Q If the phone records show that there was a call in from his number about 8:04 would you agree it's possible that's

when he called you?

A Yes.

Q How many times did you speak to him before you made an agreement to come down to Newberry?

A That I remember, once.

Q So you -- it appears to be that there were several, several text messages but only one real phone call that you recall.

A But he could have -- that could have been when he called and said will you be available later tonight, because a lot of people will call and they'll say are you available between such and such time and such and such time, and they'll lay a base foundation for an appointment.

Q And it appears that you called him about 11:30 --

A Yes.

Q -- that night?

A Yes. That was then to let him know that I am, in fact, underway. However, can you trail me, you know, once I reach the Newberry exit so that, you know, I don't get pulled and my tag doesn't get run by the police, to which he responded I don't have a car.

Q So he wouldn't meet you and show you the way in?

A No.

Q And then what was the point -- you also called him at 12:22?

A At that point my GPS had started to go haywire and it was -- it wouldn't say anything at all. And I couldn't see the numbers on the houses because I'm supposed to wear corrective lenses. And so, I called him and I was like, you know, where is your house. And he was like are you on Bedenbaugh, and I was like, I think so. And he's like, is that you. You just went around a sharp curve. I'm like yes. And he's like you just passed my house. I'm like, crap. So I turned around and he was like right here. And he was like -- I stopped when he said here, and I saw the camper and I parked beside it.

Q So you apparently made a call from your house about 11:41 p.m.?

A Uh-huh.

Q No, I'm sorry. That was -- you made a call from your house at about 11:41 p.m. to a number 864-327-6269. But then -- but your last call to this guy was about 11:30 in the evening, and that was to say that you're coming?

A I think so, yeah.

Q And asked him if he could meet you?

A Yes.

Q And then you called him at 12:22 when you were in Newberry to --

A Yes.

Q -- find the address? What happened when you

approached?

A When I approached --

Q But we know you would have been home from 11:19 p.m. to 11:41 p.m.?

A Right.

Q Because there are two phone calls made from your house --

A Right.

Q -- between 11:19 and 11:41. What were you doing in your home?

A When I came in I walked by G.M. bed, and straight into the master bedroom. And I flung the Peace Tea and the lifesavers on top of him and I was like, get up. I need you to come with me.

Q Pasty?

A Peace Tea. It's Arizona brand.

Q Tea, okay. I'm sorry.

A And I slung them -- he was sleeping on his back, and I slung them on top of him and I was like get up. I need you to come with me. And -- because he was used to me just being like, yo, get up. Come on. I was like I need you to come with me. And he was like, why. Where are we going. And I was like Newberry. And he was like, why. And I was like, because the guy's young and I've never been there and I don't know the lay of the land. Plus, you don't have a

phone. You don't have a car. It's like 11:00 at night. And, you know, should anything happen. So --

Q You had no way to call him because Richard didn't have a phone?

A Exactly. So he said --

Q And he was a young clientele?

A Yes. And I was like, go ahead get G.M. ready. Put him in the carseat. I've got to go wash up, because I had just come from another call.

Q Well, did you -- when you came home you didn't -- the first thing wasn't how's G.M. doing, or how was your evening, like that?

A I mean, my son as asleep, so I assumed -- I assumed he was asleep. I assumed he was fine.

Q I mean, it's not typically what you would come home and say is how's everybody doing?

A No.

Q Did you all do any -- like I come home from work and say, you know, did you all have any kind of -- what did you all kids do. That's not how you greeted Richard?

A No.

Q Then what else did you do? You just basically said, Richard, you're coming with me to Newberry?

A Right. I washed up. He -- he went to go and, I guess, get G.M. up and put him in the carseat. I washed up and

freshened up my makeup and proceeded out to the car.

Q I'm assuming that at times you can come to a client and if you look grungy or bad that the client might not want to use your services?

A The client will typically say something to the effect of you don't look like your pictures. Thanks, but no thanks.

Q So part of your job is you have to come across --

A To keep up appearances.

Q -- as attractive as you can?

A Yes.

Q So did you -- did you wear the same outfit that you had worn with Papi Chulo? And that was that pink outfit that we saw?

A Yes.

Q What were you doing -- I understand you wake Richard up and say, come on. We're going to Newberry.

A Right.

Q But when you and Richard travel who drives?

A I do.

Q Does Richard ever volunteer to drive?

A He has before.

Q But typically when you get to a scene anyway he has to sit in the backseat to avoid --

A Yes.

Q Does he ever sit in the front seat with kind of a dark coat?

A No. Because my -- my side and back window are tinted on the Malibu but the front is not, to my knowledge.

Q Did he -- what did you do when you came home? It would have to be after 11:00 at night, because we know you're not at home at 10:58.

A Uh-huh.

Q But we know you're home by 11:19.

A Uh-huh.

Q So between 11:19 and when you left at 11:41 what were you doing?

A As I said, I was cleaning up, freshening up my makeup in the master bath.

Q What do you mean master bath? You actually took a bath or you just --

A No. At the -- in the master bathroom.

Q But just kind of --

A Washing up what I do, would be the best term to put it without saying --

Q Putting on makeup and stuff like that.

A -- what I want to say.

Q I understand. Just kind of cleaning up and putting on makeup?

A Yes.

Q I think we understand. And I guess you were cleaning up your private parts, too, to put it --

A Essentially, yeah. Don't really want to go there, but...

Q How long does it take you to drive down from Enoree to Newberry?

A I think the GPS said 38 minutes. But again, I had trouble finding his house. So probably would have been slightly more than that.

Q Who put -- did you wake up the baby --

A No.

Q -- or G.M.

A No.

Q How did G.M. get in the car?

A Richard. I told him when I came in, I was like, get up. Get G.M. ready, you know. And he said, fine. You know, that was his typical response.

Q And then you went to the master bathroom?

A Yes.

Q Was there a carseat in the home that you just -- I've seen some of these seats that they've got little carry on and you can take it and walk around with it and kind of flip it in a seat.

A The carseat was already in the car.

Q So you had the -- so that's more for like a baby, isn't

it, when you carry them around?

A Yeah, that's -- I think that's for like newborn through nine months maybe.

Q So you didn't -- ordinarily G.M. would get in the car, or walk in, I would assume, if this was daytime?

A Typically, yes.

Q And then what kind of carseat - well, we've all seen the carseats.

A It was just a -- I would consider it a regular sitting up restraint seat. I mean, it had the buckle right here and the buckle in the crotch area.

Q There's a buckle in the crotch area and there's a buckle across the chest?

A Yes.

Q It's not like a booster, is it?

A No. No it is not. He wasn't big enough for one of those, I don't think.

Q Was your carseat buckled in?

A To my knowledge, the last time that he was riding in it, it was. Now, that's not to say that it could have been -- it couldn't have been unbuckled. You know, it could have or couldn't have. I didn't honestly check. That would have been Richard's job as he was the one putting him in there.

Q Well, I mean, when you go on a call do you unbuckle the carseat so the client can't see it, or --

A No. It doesn't matter if they see the carseat.
Q Did you go and make sure G.M. was properly clothed, or what did you do?
A No. I just sat in the car.
Q And how did you find the location?
A I had typed -- I copy and pasted the address from the text message into my GPS, which you can do on BLU Studio, and pulled it up by a -- I think it was --
Q Did you use your cell phone?
A Yes. It was the Google Maps application.
Q So you were driving while you were holding your cell phone?
A No. I had the cell phone -- I think there was a center console, if I'm not mistaken.
Q Well, what's the -- what are you all doing during the car ride to Newberry?
A He was just still on the same subject as earlier, you know. I care about you but, you know, you got to understand I have friends and I have needs. And it was just --
Q So you all were having kind of a relationship talk down this -- was it argumentative or unpleasant, or was it just --
A I mean, I really just kept telling him I don't want to hear this, you know. And at one point I tried to turn on music to tune him out and he turned it back down. And I was

just like, okay. So, I mean --

Q What was the baby doing during the car trip, Theia?

A I had heard him snoring, you know, or at least making sleep sounds at that point, you know.

Q You heard noises coming from the --

A Yes.

Q Did you ever see any bruising on the baby?

A I didn't look.

Q Did you examine him when he was in the bed when he came home?

A No. I walked right past him.

Q Was he clothed?

A To my knowledge, yes.

Q Did you turn on the lamp in the livingroom when you came home?

A No. I did nothing. I walked literally through the kitchen, through the livingroom, into the master bedroom throwing the crap on top of Richard.

Q Was the light even on in the master bedroom? Was the TV still running?

A The TV was on, but not the light.

Q Well, what happens when you get to the John's house?

A Once I finally figured out where it was I got out of the car. I went to meet the John, who was standing just at the very back of the camper itself. And I walked into the

house with him. We -- I asked him for some water. And we stood talking for a good amount of time, 15, 20 minutes.

Q Is that typical?

A Yes.

Q You don't just meet somebody and rush into the bedroom and kind of --

A No. Part of what my services entail is not just being a prostitute, which is why I say there's a difference between an escort and a prostitute. But typically --

Q Nobody appreciates it. You talk to people before to break the ice?

A Yes.

Q And I don't want to be rude. But, I mean, it's still ultimately prostitution, but part of your services are to be friendly and entertain the man?

A Yes.

Q We understand that, Theia. But you don't just go into a back room with a man -- well, I guess some people might get straight to business, wouldn't they?

A Some people. Not many.

Q Not usually?

A No.

Q But usually there's a little bit of getting to know each other beforehand?

A There's conversation. What do you like. What do you

not like. What do you do, you know. You know, just general small talk, you know.

Q How long do you think you were with the man?

A I can't give you an exact timeframe.

Q There's no clock that gets set or anything like that?

A No. No.

Q Could it have been -- how long did he pay you to be with him?

A The session for the sex itself was 30 minutes. It does not include talking. This does not include cleanup. This is not --

Q You charge for talking or anything like that?

A No, I do not.

Q So that -- he's not on the clock while you're just getting to know him or having a drink?

A No.

Q But he paid for 30 minutes with him?

A Yes.

Q Did you all spend 30 minutes together?

A In actual sex or just with small talk?

Q In actual sex.

A I would have said it would have been close to it.

Q Maybe not 30 minutes but --

A Roughly 25. I mean, it wasn't off by far.

Q And how long do you think you spent talking with him?

A Before or after?

Q Before.

A Like I said, roughly 15, 20 minutes.

Q How long after?

A That's hard to estimate, because I did end up cleaning up in his bathroom, as did he.

Q So after sex you go to his bathroom and kind of --

A Yes.

Q -- clean up?

A Yes. I also stayed in the kitchen, and I had noticed he had some Straw-Ber-Ritas and I was like, can I buy some of those off of you for when I get home, because I don't drink and drive. And he was like, yeah, sure. And I was -- I told him, you know, these are my favorites, et cetera, and we discussed, you know, what types of Ritas that they had, and a few other things before I left.

Q Were you aware prior to arriving at the man's house that G.M. was hurt?

A No.

Q Were you aware at the time you arrived at the man's house that G.M. was hurt?

A No.

Q Did you ever hear Richard honking the horn out in the driveway?

A No.

Q When is the first that you learned that G.M. wasn't right?

A The first time that I had learned that something was not right with my son was when I got into the car and Richard said, and I quote, "Does your son have sleep apnea?" I said, no. Why would you ask that. Not that I'm aware of.

Q Where is Richard when -- where is Richard?

A In the backseat. And at that point I'm backing out of the John's house and he -- you know, he's telling me, he's like, because he stopped breathing in his sleep. And I do that sometimes and I have sleep apnea. And I'm like, he's never done that before. And, you know, he's like, well, he's not breathing right now. And I'm like, okay, well try to shake him, tickle him, get a response from him, something. And meanwhile I'm trying to pull up on my phone the address to what I presumed was the nearest hospital, which would have been Laurens County, to my knowledge.

Q Why didn't you call 911?

A Honestly, I really didn't think about it. I didn't think -- before I saw the vomit come out of his nose, which would have been mid-drive, I didn't --

Q Well, you started looking for directions to a hospital -- you started looking for the directions to a hospital before you saw the vomit or --

A Yes. Yes, I did.

Q Just when he said he'd been --
A He had stopped breathing, yes.
Q Was it raining this night, Theia, or was it just overcast?
A I don't remember. Sorry.
Q Was there trouble getting a signal on your phone?
A Extremely.
Q Now, you heard the SLED agent say you didn't have like a familiar model of phone. What kind of phone did you have?
A It was a BLU Studio 5.5. The electronic equivalent of a Galaxy Note 4.
Q So it's a Smart Phone?
A Yes.
Q Do you pay a plan every month or do you have to kind of prepay?
A Yes. It was T-Mobile prepared service.
Q It was prepared?
A Uh-huh.
Q So it's a prepaid qualify phone? It's not one of the nicer end --
A I mean, it was a very nice phone. The service just sucks because it's Newberry.
Q You're looking for the hospital on your phone.
A Yes.
Q Richard tells you the baby's not breathing?

A At that point I do spot a hospital this away sign in the middle of the road and I begin to follow the signs. Richard then --

Q Had you ever been to Newberry before?

A No.

Q What time did you arrive to Newberry? This was after midnight?

A Yes.

Q Do you know what time you left the man's house?

A I couldn't tell you.

Q Is there a clock -- digital clock or some --

A There's a clock in the car, but I didn't really see the necessity to --

Q You don't remember seeing --

A -- note the time. At that point Richard, in his responses with G.M. when I keep telling him to try to get a response from him, he's trying to get a response from him. And he asked me, he's like, should I try CPR. And I said, do you know how to do CPR. And he said no. And I said no, because you can break his sternum or his ribs if you don't know what you're doing.

Q And you're driving?

A Yes.

Q And the baby's directly behind you in the --

A Yes.

Q Was that still where the baby was sitting at the time --

A Yes.

Q Was he still in his carseat?

A Yes. Because I told Richard not to take him out of his carseat. You can --

Q Was he wearing a shirt or --

A I think he was wearing a shirt at that time.

Q So you talked about CPR?

A Uh-huh.

Q And then you see the hospital sign and you start following the signs?

A I had -- yes. I had already been following the signs after I had first seen it, maybe --

Q But your plan was to go to the Laurens Hospital first?

A Yes.

Q And that's the hospital that you were familiar with?

A Yes.

Q Did you -- did you notice that Newberry had a hospital sign when you came in on the interstate?

A I honestly wasn't looking for the sign. I was following the GPS. Why would I look for a hospital if I don't think that I need a hospital.

Q How long did it take you to -- how fast did you drive to the hospital?

A I broke a few laws. I actually ended up flipping a left turn and running a red light, and thank God nobody hit me when I reached -- I can't tell you exactly where it's at, because again, I don't know about anything in Newberry. But there was a point in which I had flipped a left turn running a red light.

Q Were you handling this pretty calmly or how were you handling this?

A I was trying. I didn't really start freaking, freaking until Richard was like what is this brown shite, but he didn't say shite, coming out of his nose. And being that I was driving, I did just like this and glanced, all of one second or two, and saw that there was ooze coming out of his nose. And at that point it registered in my brain --

Q G.M. nose?

A Yes. At that point it registered in my brain something is seriously wrong because his airway is blocked. At that point I think I broke a couple of speeding laws.

THE COURT: Mr. Verner, let me interrupt. About how much longer do you think you're going to be on direct? Really it's going to be necessary that we take a break before cross.

MR. VERNER: Judge, I thought I'd be through by now. Just a few more minutes. We're at the hospital.

Q You get to the hospital. Is there a decision made on whether Richard should take him out, or how do you all make the decision who --

A I had already told Richard go ahead -- as we were pulling in. I was like, go ahead and take him in. I will park the car. Because to my knowledge every hospital has a sheriff on duty. Sheriff in North Carolina run license plates for out of state cars. Hence why I parked away from -- with stolen tag, no insurance, no license, away from the entrance, backed in.

Q Did you know G.M. was dying or dead at the time you parked backwards in the lot?

A I did not. I knew that something was obstructing his airway, but I didn't know that it was a life or death situation. I knew it was a serious situation. Hence why we were at the hospital.

Q When did you first learn it was a life-threatening?

A As soon as I walked in.

Q Did you cause any of those bruises on G.M.

A No, I did not.

Q Did you see Richard cause any of those bruises on G.M. body?

A Honest to God, I did not. I did not even know he had struck him back at the house.

Q If you had seen Richard cause those bruises, what would

you have done?

A Hit him and probably got the tar beat out of me again.

Q Well, did you see Richard inflict those bruises and not get involved because you didn't want to get beat up?

A No.

Q Did you see Richard in this condition and then just decide to go out on a prostitution run knowing that G.M. -- I'm sorry. Did you see G.M. hurt like this and decide I'm just going to go prostitute while this baby was in this condition?

A No, I did not.

Q Would you have gone on this call had you seen G.M. in this condition?

A I would have gone nowhere but the hospital had I seen G.M. in this condition. I wouldn't have gone anyway. Actually then I would have called 911 had I seen G.M. in this condition.

Q If you were at home you would have called 911?

A Yes. Had I realized anything -- anything like what I have seen in the last few days was wrong with him, I would have called 911.

Q Did you see the child get hurt accidentally that might have caused injuries like this?

A No. No. There is no accident that could cause anything like this.

Q You would agree that somebody beat G.M. to death?

A This is a homicide. There is no doubt in my mind that this is a homicide.

Q Did you participate in any way in the beating of that child?

A No, I did not.

MR. VERNER: I'm sure the Prosecutor is going to have questions for you.

THE COURT: Ma'am, you can step down. Don't discuss your testimony with anyone. We're going to go ahead and take a lunch break. Sorry about lying to you about having this case to you by lunch. I was more optimistic perhaps that I should have been. Don't discuss the case. If you would, be back in an hour at 2:15 and we'll resume with Ms. McArdle's testimony. Have a pleasant lunch. We'll see you in an hour. Thanks.

(Whereupon, the jury exited the courtroom at 1:15 p.m.)

THE COURT: The jury is out. We'll be at ease for an hour. See you all at 2:15.

(Whereupon, a lunch recess was held from 1:15 p.m. to 2:15 p.m.)

THE COURT: We'll go back on the record. We were in the middle of the testimony of Ms. McArdle. Is there something you need to bring up?

MR. STUMBO: Just briefly, Judge. We put a copy of

this on Charles' -- Mr. Verner's desk as well. Mr. Scott did a little bit of legal research. We have a written memo on the lesser included. And regarding the application of unlawful conduct there's a lesser conduct of child abuse. It's actually a written memorandum of law that relates back to the motion -- or not the motion made earlier but --

THE COURT: Let me review it actually -- this at lunch. I have given it more consideration I had a chance to talk with Judge Griffith. After our conversation, I'm sort of leaning away from charging unlawful conduct. But I'll look at the memorandum for some more consideration while Ms. McArdle is testifying.

MR. STUMBO: Thank you, Judge.

THE COURT: And we'll see where we are after that. Ma'am, if you'll come on back up, please, and have a seat. And let's have the jury out, please.

(Whereupon, the jury entered the courtroom at 2:25 p.m.)

THE COURT: The jury is back and seated, ladies and gentlemen. We're still in Ms. McArdle's testimony. Ma'am, I'll remind you you're still under oath. Solicitor, your cross, sir.

MR. STUMBO: Thank you, Your Honor.

CROSS-EXAMINATION

BY MR. STUMBO:

Q Now, Theia, you all talked several times about Richard's phone being broken during this time period.
A Yes.
Q It's broken because you broke it, right?
A That is correct.
Q You broke it because you were furious at him and you lost your temper, right?
A I was irritated. I didn't lose my temper.
Q You were just irritated and you broke his phone as a result, is that what you're saying?
A I threw it in the toilet.
Q You broke it because you were mad?
A Yes.
Q Now, you indicated that you had already been considering going on the cusp of having a relationship with this Poppy Chula up in Spartanburg, right?
A Yes.
Q You were ready to go move in with him?
A Yes.
Q And you can't even remember his name today?
A He was not legal.
Q So, ma'am, you didn't even know his actual name and you were ready to go move in with him and start a new life with your son, G.M.
A Yes.

Q So you hated Richard at the time, right? That's your -- that's what you're telling this jury here today. You said I hate you, I don't want anything to do with you?

A At that point in time, yes, I could -- I could compare what I felt toward him as hate.

Q But since you -- since then -- since you've been charged with this together you love him again, right?

A No.

Q Well, you wrote him a letter saying -- called him my beloved, right?

A Staying in good graces with your co-defendant is usually a good idea, especially when they're a notorious liar.

Q So you just called him my beloved and wrote him a five page letter to stay in his good graces --

A Yes.

Q -- is that what you're saying? That is your handwriting, correct?

A Yes.

Q But in actuality, even though you said you loved him, my beloved, you really hated him?

A Yes.

Q So you were lying to him?

A Absolutely.

Q You told him at the time you were tired of his cheating

and manipulation, right? You said you screamed that at him that day on the 29th?

A I don't think I said manipulation but I did say cheating, yes.

Q Tired of his cheating. And you're about to split with him to end up with Papi Chulo, right?

A Yes.

Q So you're cheating, too?

A Essentially, yes.

Q So hold on a second. Straighten this out of me. You are mad at him for cheating on you --

A Yes.

Q -- but you're ready to leave him anyway?

A Yes.

Q Well, why did it matter that he was cheating on you?

A I cheated for money.

Q Not just money. You were going to live with Papi Chulo, right, and take G.M. with you?

A Yes.

Q That wasn't just for money. You were going to go live with him permanently.

A It had occurred yet.

Q It would be fair to say your and Richard's -- your relationship with Richard Bowman was extremely toxic, correct?

A I believe that's a fair statement.
Q You all had had incidents where you had mutual combat with each other, right?
A Incident.
Q What's that?
A Incident, singular. Yes.
Q So one time. One in Spartanburg when you all were in the hotel, right?
A No, sir. In Asheville. The one in Spartanburg was completely fictitious.
Q So it's fictitious that the police came out and Richard had had a cut on his hand?
A He had a cut on his hand but it wasn't me. I was rendered unconscious at the time.
Q Where was G.M. while all this was going on?
A When I woke up, when I came back to consciousness after he had knocked me out, my son was cowering in the corner of the hotel room.
Q He was in the hotel room?
A Yes.
Q So it wasn't true that he was outside --
A No.
Q -- and being observed by the hotel staff --
A No.
Q -- running around the parking lot?

A At the point in time which I woke back up, no. He was in the hotel room.

Q You testified earlier that Richard was harsh towards G.M. You saw him be harsh towards him, right?

A Yes.

Q Well, that's not what you told the officers, Detective Moore and Agent Williams? You didn't tell them that, did you?

A I don't recall, honestly.

Q I believe you told them, when they asked you how did Bowman treat G.M. you said always kind. He treated him no different than his own. Do you remember telling them that?

A It's possible I could have said that.

Q So you're not disputing that you said that?

A I said it's possible I could have said that.

Q Why didn't you tell them that he had treated him harsh?

A Because it really didn't seem pertinent at the time. I didn't know this was actually a homicide.

Q Didn't seem pertinent after G.M. was dead?

A Again, I did not know the details. I did not know it was a murder at that point.

Q But at that point you told them repeatedly that you had never -- you had always -- you had seen him be kind of G.M. correct?

A If that's what the statement says.
Q And that you did not ever see him lay hands or hit him, right?
A That is true.
Q Let's go back to the day of the 29th of -- say after breakfast that morning you all end up going to Laurens to Family Dollar, right?
A Yes.
Q And you said that was in the morning time, right?
A I'm fairly certain it was.
Q But, in fact, the receipt shows you all going there about 1:00 in the afternoon, correct?
A Could be.
Q You wouldn't dispute you all went early afternoon and not in the morning as you testified earlier?
A It seemed like morning time to me, because that's when I was on the phone with the actual company that provided the Wi-Fi. I think it was Direct -- or, God dammit. Direct TV, excuse me.
Q And you went there to get Internet service; is that right?
A To try and get Wi-Fi connected to the trailer, yes.
Q How much money was that going to cost?
A All I knew was a $20 deposit. I believe that's what they said. It might have been 20 and some change. I don't

remember exactly. I remember it was about $20 for a deposit for them to come and do the installation, I believe it was the following Wednesday.

Q When did you buy that big flat screen TV?

A The actual purchase itself would have been made on Black Friday. As to when it was picked up, that was a different day.

Q Black Friday, meaning the day after Christmas?

A No. The day after Thanksgiving.

Q How much money did you spend on the flat screen?

A Two hundred without tax.

Q You decided that was a better purchase than maybe buying a real bed for G.M.

MR. VERNER: Your Honor, objection, the point of relevance.

MR. STUMBO: Judge, I think it's relevant as to how this child was treated in the house. That's what this is about.

MR. VERNER: If she's charged with child neglect, I would agree. She's charged with killing the child.

THE COURT: Sustained.

MR. STUMBO: I can move on, Judge.

Q What did you spend the money on? How much did you spend? You said $200?

A Yes, sir.

Q How much did you spend on the laptop?
A That was actually a gift from Papi Chulo.
Q Throughout the day when you would go to Family Dollar how's G.M. acting at that point?
A He's actually very energetic.
Q He was normal?
A He's his normal chipper self.
Q What did he eat for lunch?
A I believe cold cuts.
Q When was that, before or after you left?
A I honestly can't remember.
Q You said he's energetic and happy and trying to help you cook while you're cooking steak?
A Uh-huh.
Q Had no problem eating his dinner, and that was sometime between 6:30 and 7:30 when you all were cooking and eating dinner, right?
A I believe we would have finished cooking around 7:30, 7:45.
Q Now, you told the officers the day after this happened that you went to your call in Spartanburg to Papi Chulo.
A Uh-huh.
Q Then you came back and cooked dinner for G.M.
A That is not correct.
Q But you told the law officers that.

A If that was said, it was probably mixed up. That was a very traumatic day for me.

Q That you got back from the prostitution call and made dinner.

A That's not right.

Q So it was earlier --

A Yes.

Q -- that you made dinner --

A Yes.

Q -- and then you went to Spartanburg later?

A Yes.

Q You also testified earlier that G.M. never threw up?

A No.

Q Never got sick?

A No.

Q Never observed G.M. sick whatsoever?

A No.

Q That's not what you told your mom when you called her after G.M. passed away in the hospital, right, that night?

A I believe my exact words to her were that G.M. was sleeping and Richard went to check on him. I did not say where we were. I did not say where he had to go to check on him. But I also didn't want to elaborate on the fact that while my child had stopped breathing I was having sex with a

man for money while my child was in the car in the middle of the night in a very strange town. It's not something you want to admit to your parent.

Q But you told her that he had been throwing up and was sick at the Enoree house, correct?

A No, that's not what I said. What I said was he had stopped breathing -- he had suffocated on his vomit, which I had learned at that point. I said that Richard had gone to check on him. I did not say where we were. I did not say where he had to go to check on him. That is what I said.

Q So what you told your mom was just stuff you learned later on, right? And this was just shortly after the doctors told you that he was deceased?

A I believe that is the timeframe. I am not entirely sure. Again, that night was very traumatic.

Q But you're testifying here today you never witnessed him sick at all? When you witness the house he's happy, he's --

A The only time that I witnessed vomit coming out of him was coming out of his nose when he was in the car. When Richard said was is this brown shite coming out of his nose, and I turned around for all of two seconds, just like that, and witnessed him coming out of his nose and oozing down his chin.

Q You didn't leave for Spartanburg until around closer to

9:00, correct?

A That is very incorrect.

Q Well, tell me what is correct?

A I left shortly after 8:00.

Q What time exactly?

A I would venture 8:10, 8:15.

Q How is your phone pinging off the tower by your house at 8:35 then?

A Because again I had to stop to go -- well, when I first initially headed toward Spartanburg I stopped at the gas station. Got gas. Picked up the cat. I had to coax the cat into getting into the box. So that in itself was a feat. Mind you, the gas station is only maybe two miles from my house, which neither side has yet to prove whether or not it could still be the same cell tower.

Q Well, hold on a second. But you don't dispute that you were using the phone at your house at 8:35, correct?

A What I am letting you know is, once I had gotten the gas and the cat, went back to the house to drop the cat off, I believe I did call Papi Chulo at some point to let him know I am now on my way. Sorry, I had to make a pit stop.

Q And that was after you brought the one-eyed cat back to the house, right?

A Very certain that was.

Q You brought the cat into the house?

A I did not bring the cat into the house. I brought the cat to the house. Richard was the one who had swung open the back door when he heard the car come back up and he was like, what are you doing. And I had got out and handed him the box. And he said, what is this. And I'm like, it's a cat, and I explained.

Q So what's G.M. doing at that point? Is she still fine?

A I have no idea. I didn't see G.M. at that point. I didn't even see G.M. at that point. So I assumed he was still in the bedroom.

Q So between 8:35, when the phone's hitting at the house, and sometime before 9:00 you're on your way to Spartanburg?

A Yes.

Q You return. The phone's hitting off a tower very close to your house in Spartanburg around 10:52 p.m., correct?

A If that's what the phone records show, yes.

Q So you get home there around 11:00, correct?

A Sounds fairly correct, yes.

Q And your testimony is that you come in the house. You immediately throw this drink down on the bed at Richard Bowman. And you say, come on. Get up. Let's go. Get G.M. up. We're going to Newberry. Is that how you did it?

A I think what my words were is I need you to get up. I

need you to come with me. And he's like, where are we going and why. And I said Newberry. I have a call there and the guy is young. I don't want to go by myself. I'm unfamiliar, and you don't have a phone or a car that works.

Q This is a man you've described as being controlling and domineering towards you, right?

A At times, yes.

Q But here you are barging in the house telling him he's got to get up, get G.M. up. We're going to Newberry right now. You're demanding it?

A You see, when it came to making money he didn't put up too much of a fight.

Q But you're telling him? You're not asking him? You're telling him you're going to Newberry with me?

A Yes.

Q Did he argue with you at all?

A He grumped and grumbled just a little bit. But finally he was like fine. That was, you know, his response.

Q So sometimes he was the controlling and domineering one and then sometimes you were?

A Some of the rare instances I was adamant because I needed the money to get away.

Q And you testified earlier -- Mr. Verner asked if you need to go clean off your private parts when this call occurred.

A Uh-huh.
Q Didn't you say you didn't have sex with Papi Chulo?
A It doesn't mean I didn't get fluids on them. It could be lotion. It could be oil. I did say that I do erratic massages. That does not qualify as sexual intercourse.
Q So what did you all do? You and Papi Chulo?
A An erratic massage is what he gave me.
Q And that doesn't qualify as sexual activity to you?
A No, because there is no penetration.
Q But you still needed to clean up your private parts to go to your next call?
A Yes.
Q Because you had lotion down there?
A Oil.
Q Well, during this time you never once even look at G.M. or even check on him?
A No.
Q You just walk right by him?
A He had been fine. You know, I didn't feel like there was a need for me to check on him. I didn't feel like an instance like this would ever arise in my or my child's life.
Q So you had never seen him abused or struck traumatically?
A No.

Q Not even when you did it?
A It was not traumatically, but it was a strike.
Q Explain to me what you did to get arrested and convicted for that?
A It was a slap.
Q Just a slap?
A Yes.
Q Didn't roll up a newspaper or a magazine and beat him?
A No.
Q And there were people that witnessed that, right?
A There were no people there besides Richard and one other girl.
Q Justin Madore wasn't there?
A No.
Q Megan Cody didn't witness that?
A Megan Cody, who is Richard Bowman's ex-lover, was not speaking to me at that point because he had left her for me.
Q So that's the only time you ever laid your hands on G.M.
A That is the only time since the DSS call itself that I had used any type of punishment even similar to that. I have -- I have popped him on his butt maybe once or twice since then.
Q So what's your philosophy of corporal punishment then? Tell us, Ms. McArdle?

A I'm still not even sure -- I don't understand what corporal punishment is. I've never heard this term before.

Q Discipline. Disciplining your child. How do you do that?

A Stick him in a corner. Depending on where we're at. You know, I mean, if we're in the car then there's not really much I can do.

Q Stick him in a corner how? Describe that to me.

A Stick him in a corner.

Q Stick him in a corner. Is he facing the wall in the corner --

A Yes, facing the corner. Facing the corner.

Q What else? You ever use your hands?

A There's only once or twice that I've actually had to pop his butt since the DSS case.

Q You were convicted of that, of abusing G.M. right?

A I pled guilty.

Q He was gone from you for how long? A year?

A A year, yes.

Q And Ms. Janice Hollaway had him for that time, right?

A Yes.

Q When you get him back that's when you move to South Carolina?

A It was a few months after that.

Q And you believe the best way to support him and your

all's family was for you and Richard to be escorts on Back Page dot com?

A I did not make Richard become an escort. I decided to become an escort because the money was exactly what I was able to do to support not only us, but the bills, the car, food, shelter, clothing. Everything that we needed. It was fast money. It was easy. And when you don't have any proof of identification of who you are, you don't really have to have that to do something illegal.

Q And G.M. was in the room with you at times? These hotel rooms as you were having sex with these men?

A No. That is completely fictitious.

Q You know you talked -- testified earlier, Ms. McArdle, Richard never did anything, is that right, at the house? He just sat around and hung out, right?

A I mean, for the most part, yes.

Q And then you proceeded to talk about how you left him to clean the dishes that night when you went to Spartanburg, correct?

A That is correct.

Q So he did do stuff around the house?

A The dishes were still there the next day.

Q And then you also described about how you didn't really know about G.M. taking baths because Richard was always the one that he took a bath with?

A But I did say his only job was to babysit G.M. That, in my opinion, entails childcare.

Q And that qualifies as nothing? Earlier you said he didn't do anything to help in the house? He just hung out?

A Okay. Let me rephrase what I said.

Q Sure, explain.

A The only thing, generally, which he would do is help take care of G.M. Mainly when I was working. Sometimes just because.

Q You talked about this letter you sent Richard earlier. You remember telling him that you're going to get back into the game and start stacking as much money as you can when you get out?

A Yes, I do.

Q I think throughout this letter you talk about sexual fantasies that you were having?

A I don't honestly remember what all I put into that letter.

MR. VERNER: Your Honor, one -- I object for one on relevance. Two, I don't think she was talking about sexual fantasies with Richard in the letter. Three, it's been asked and answered that she wrote him a letter. We don't know the date of the letter --

MR. STUMBO: Judge, I'm about to wrap up on this point.

Q Five pages of this letter, and not until the very end

you mention anything about your son who had been killed, correct?

A Again, trying to stay in the good graces of the man who could have possibly murdered him. At that point hadn't seen the Rule 5. Didn't know what exactly the details of the case was, was something that I was trying to do. Clearly he still shows no remorse whatsoever for actually murdering him.

Q You're pretty good at putting on acts, aren't you?

A Can I ask what you're referring to?

A Isn't that what you told the investigators, that you could -- if you wanted to emotionally move them you could put on act and put them on their f-ing feet, right?

A Meaning, if I wanted to lie, I could. Yet I had no reason to. It could have been said better, admittedly.

Q And that's the same act that you're putting on for this jury today, right?

A No, sir.

Q So today, unlike what you told the investigators, you're not explaining these injuries by G.M. falling down on his skates in Asheville a couple days before, right?

A There is no way that these injuries could have been created by anything accidental.

Q Nor Richard doing CPR on him in the car? Because that was the only explanation to the investigators the day after

when it happened, correct?

A That is correct.

Q It's your theory today that you're still clueless and absolutely have no knowledge of how these injuries occurred to G.M.

A My theory today is that my statements to Richard of I hate you was enough to drive him over the top and for some reason he took it out on my child while I was gone.

Q But you're just speculating that, right?

A Absolutely.

Q You have no idea that that happened?

A No. But I wasn't there and my son didn't harm himself.

Q And for a man who had been living with you and G.M. for the last almost year, going back to May of 2014, or at least multiple months, you had never seen him lay his hands on this child, correct?

A Just because I had never seen him doesn't mean he never did.

Q There was never any concern with you leaving your child with him?

A No.

Q And then all of a sudden because you get mad with him one night -- and he had already been talking with another girl anyway, right, in Asheville?

A That was throughout the entire relationship.

Q You were ready to leave at that point?
A Yes.
Q So you're telling me in that entire time you've never seen Richard be violent whatsoever toward your son?
A Toward my son, no.
Q To the point where you had no problem leaving G.M. with him multiple times?
A That is correct.
Q And then all of a sudden one night, because you get mad at him and tell him you hate him, he beats G.M. inexplicably to death?
A I can't tell you for sure that that is why he did it. I can only speculate.
Q And the only time you ever laid your hands on him was when you slapped him when he was a little baby, hardly walking yet? One-year-old, right?
A He was walking.
Q He was walking. He was one year and what, three, four months? April --
A He was walking.
Q Okay, walking. But he's a toddler. He's just starting to walk, right?
A Uh-huh.
Q You slap him like a grown man as hard as you can across his face, right?

A That is incorrect.
Q You didn't do that?
A The force which you are trying to describe is incorrect. Was it a slap? Absolutely. Was it that hard of a slap? No.
Q Well, explain to me just with your hand how hard you hit him.
A (Demonstrating.)
Q That's it? For that you pled guilty to abusing your child and had your child taken away from you for over a year?
A Yes.
Q But now these injuries have nothing to do with you --
A That is correct.
Q -- today? That's what you're telling this jury?
A That is correct.

MR. STUMBO: No further questions, Your Honor.

THE COURT: Redirect?

MR. VERNER: Your Honor, if it may please the Court. Just a few to clarify.

THE COURT: Certainly.

REDIRECT EXAMINATION

BY MR. VERNER:

Q What you -- this charge you were charged with at DSS, or the North Carolina equivalent invested in April of 2013

for slapping G.M.

A Yes.

Q You participated in their plan? Their family plan?

A Yes.

Q And you also pled guilty to a charge of child abuse?

A Yes.

Q Was that a court like this or was that like a traffic court?

A It is the equivalent of driving without a license, pretty much.

Q It wasn't a felony conviction. It was a traffic court conviction?

A It was a misdemeanor, yes.

Q And that's the only time you've been in trouble with G.M.

A Yes.

Q And was one of the reasons DSS wouldn't return the child to you because they were worried that Richard was living with you?

A Yes. Actually, that would have been the reason for which G.M. was actually put into kinship. Originally he was only supposed to be supervised until the investigation was over, at which point they would allow me to resume parenting. When the woman who was supposed to be watching us saw that Richard was coming back because he had nowhere

to go, that is when she left and called DSS and said I don't feel comfortable while this man is here watching over her and G.M.

Q And that is in the North Carolina DSS file?

A Yes.

Q Which you've had access to and the state provided to you?

A Yes.

Q And when you say the term Rule 5, you're basically talking about the evidence --

A The motion of discovery.

Q -- in the case?

A Yes.

Q My understanding is the only time you've spoken to the police was not the day after G.M. died, the day --

A Yes.

Q -- in fact within hours after G.M. died?

A That is correct.

Q And the Solicitor indicated you made dinner after the run with Papi Chulo, but didn't you actually say on the way back I stopped by and got gas, picked up a stay cat and went back home. There G.M. helped McArdle cook supper which consisted of steak, corn on the cob and garlic bread. So that is, you're saying, after you got gas you cooked dinner.

A I honestly --

Q I'll hand you your statement to the -- is that not what you told the -- on the way. That's what you told Officer Moore on the day G.M. was killed.

A That is what it appears to say.

MR. VERNER: Your Honor, I would -- not in this form, but I would offer that statement as a prior consistent statement for the jury, in that redacted form.

MR. STUMBO: Judge, I would say instead of that form, we -- he could go to the police -- in the transcript. We have it on audio. We can go to that tape and just play it. It's already in evidence, State's 1. The recording.

THE COURT: We have the entire statement on the record. If you want to reference that particular part of the statement --

MR. VERNER: I have no idea where it is in the audio. I'll just leave it at the fact that --

Q Would you agree that her statement reflects that you said you cooked dinner after you got back home from the gas station, or do you remember? If you don't remember --

A I agree that it reflects that it was before the actual call itself.

Q Now, the Solicitor says you made a call at 10:52 p.m. but that -- the cell phone records would agree that you weren't home until 11:19 p.m.? If the cell phones records are accurate?

A That sounds correct.

Q And if the records indicate that you were out of the home between 8:11 to 8:35 where were you at that time?

A Could have been the gas station.

Q The run prior to going to see Papi was --

A Yes.

Q -- the gas station run?

A Yes.

Q And then you dropped the cat back off and then you left again to go see --

A Papi Chulo, yes.

Q -- Papi Chulo.

A Yes.

Q And then you got -- you came back home to clean up and then went back to Newberry?

A Yes.

Q You agree you were the only one using that cell phone?

A Yes.

Q On December 30th were you aware, even after you had gone to the hospital and taken the child off -- when the child was delivered to the hospital G.M. was still clothed, wasn't he?

A I'm fairly certain he was, yes.

Q When did you first become aware that G.M. had suspicious bruises on him?

A I didn't know that he had any bruises at all until the time when -- which Ms. Moore took me into the police station and began to question me. A few hours later she said there are some bruises. She did not say what. She did not say where. She did not say to what extent. She never --

Q And you never had any pictures or anything?

A No. And she never actually said to what extent.

Q How long were you in jail before you actually got some of the evidence that you could go over it yourself?

A I never got the -- I never seen the pictures until just the other day. But as far as actual autopsy report, findings, et cetera, that would have been September.

Q So you had been in jail for a couple of months?

A I had been in jail for a year.

Q And during that time you wrote Richard a letter before you had seen anything?

A Yes.

Q By the way, has he been sending you letters, too?

A He has sent me a total of three, one of which I could not find. Actually, he's passed me a few notes, too, that --

Q I didn't ask you that.

MR. VERNER: I'll rest with that. Thank you.

MR. STUMBO: Just one, Your Honor.

THE COURT: Yes, sir.

RECROSS-EXAMINATION

BY MR. STUMBO:

Q Maybe I misheard this, Ms. McArdle, but did you just compare slapping your child across the face with a traffic ticket?

A The offense time that you can actually get for it, like time you spend in jail, is comparable with a South Carolina traffic ticket offense. Meaning 30 to 60 days.

MR. STUMBO: No further questions, Your Honor.

THE COURT: Ma'am, you may step down.

(Whereupon, the witness stepped down from the witness stand.)

THE COURT: Mr. Verner, your next witness.

MR. VERNER: Your Honor, we'll rest the Defense's case.

THE COURT: Very good. Nothing in reply, Solicitor?

MR. STUMBO: Judge, can we approach?

THE COURT: Sure.

(Whereupon, a sidebar was held.)

THE COURT: Ladies and gentlemen of the jury, the State rests at this point in time, correct?

MR. STUMBO: Yes, subject to the Court's ruling, Judge.

THE COURT: Subject to the Court's ruling. Very good. All right. Ladies and gentlemen of the jury, here's where we are. By law the State requires me to have a very brief charge conference with the attorneys concerning the law that

I'm going to instruct you on. This is actually something that we have been working on the last couple of days and my law clerk emailed our instructions to them last evening. I've been getting feedback on that throughout the morning, last night and even before we resumed at lunchtime. So I need to clarify just a few points of those instructions with the attorneys, and at that point in time we'll be in the position to proceed with the closing arguments and my instructions to you on the law. I am presuming that even though it is 3:00 you all would much rather go ahead and begin deliberations. The lawyers are going to be limited to about 30 minutes each, if they actually use that much time, in their closings. My instructions will take 15 minutes. That'll put us to right around 5:00 when you all receive this case. But I'm assuming that you all would rather deliberate today than come back tomorrow or Monday. Am I seeing anyone wanting to come back Monday? No, I am not. Okay. You all go back to the jury room or step outside. Well, I tell you what. You all just adjourn to the jury room for a few moments. Let me see if I can get this squared away. And if it takes longer than five minutes I'll let you all move outside if you want to. Okay? Don't talk about the case yet. Thank you.

(Whereupon, the jury exited the courtroom at 3:02 p.m.)

THE COURT: Housekeeping matters. I want to go ahead

and address those. The Solicitor suggested calling the two witnesses from yesterday who were proffered in light of the testimony of Ms. McArdle. Obviously those witnesses are not here at this particular point in time. The transcript of their testimony has not been prepared. And quite honestly, I think that their testimony may be too remote. We have gone into -- we have gone into the North Carolina incident at least a couple of times each and every day, and anything that they have to offer, even though their details were -- they detailed a few other incidents that weren't in the official report, I'm ruling that that information is simply too remote. It's cumulative to other evidence that we've had. And most importantly the State's case does not rise or fall based on their testimony. And Solicitor is nodding.

MR. STUMBO: Yes, sir.

THE COURT: He may disagree with me on the record, but he knows where I'm coming from.

MR. STUMBO: I agree with that assessment, Your Honor. Because it's relatively collateral as to a cross-examination impeachment matter. Yes, sir.

MR. VERNER: And I would also note the DSS file itself would be available to be introduced if the parties were interested.

THE COURT: My clerk will be handing you the instructions. I want, if you would, please, and I'll take a

brief break while you all have a chance to review these. But the most pertinent language that I want you all to look at and give me your thoughts on would be on pages 12 through 13 where it really defines homicide by child abuse. And I've added knowing requirement as it relates to a defendant having actual knowledge of the injuries sustained by the child. Otherwise, the charge contains the standard language about abuse or neglect, failure to act, et cetera. It's pretty much stock. But I think we agree that a defendant cannot be held responsible for failure to take a kid to a doctor for injuries that the Defendant was unaware of. That simply seems reasonable to me.

I also eliminated kind of that other verbiage about abandoning a child, because that's not alleged here. And also failure to provide food, clothing or shelter for the child, because obviously that's not alleged here. This is a physical assault as opposed to more passive conduct. So I just pulled that from the instruction to prevent confusion to the jury.

I see you getting up. I did not charge -- or I've asked my law clerk to remove the unlawful conduct toward the child charge. I do not believe that's a lesser included. After speaking with Judge Griffith and giving it some more thought and some more reflection, I concur with the State that that is not a proper lesser included to charge in this

case.

MR. STUMBO: Judge, I would agree with you on the abandonment. I think it's a subsection ©.

THE COURT: Right.

MR. STUMBO: But I would prefer if you did read subsection (b). I think it's -- in its entirety. I mean, I --

THE COURT: Just to give it the flavor of the statute? What it's getting at?

MR. STUMBO: Yes.

THE COURT: Is that what you're thinking?

MR. STUMBO: Yes. I think that is the law as a statute. We just ask that if subsection © is not applicable, but --

THE COURT: Do you feel strongly about that either way, Mr. Verner?

MR. VERNER: I don't think it's alleged in the indictment, Your Honor. If the Court's inclined to do it, it would be over my objection. But it's part of the statute --

THE COURT: I'm not charging accomplish liability or aiding and abetting. But I think that under the definition under 85(b), 85(b) sub(2), sub(b), "Fails to supply the child with adequate food, clothing, shelter," et cetera. So I think it would be contained in the indictment, because

they did specifically reference 16-3-85 capital B in the indictment.

MR. VERNER: The Court has spoken.

THE COURT: They're a smart jury. They've been paying attention. I'll do it the way that you suggested, Solicitor.

MR. STUMBO: Thank you, Judge.

THE COURT: I'll need to modify the charge or have my clerk do it one more time. But that language will be added. And go ahead and --

MR. STUMBO: Judge, and I don't if this is appropriate for -- this has just kind of come to us today. Mr. Daniel just reminded me of this. There was a question asked in exchange between Mr. Verner and the Defendant's mother when she was on the stand about the death penalty. I didn't really address that in redirect at cross. I don't know though that that being out there, maybe there needs to be a curative instruction at the time.

MR. VERNER: Your Honor, it's going to be -- I understand the Solicitor's concern. I think the mother backed away from that. But regardless --

THE COURT: I think with the co-defendant, Mr. Bowman, Mr. Verner, if I'm not mistaken --

MR. VERNER: Precisely.

THE COURT: -- you did speak to him about the penalty

range on this. That it carries --

MR. VERNER: Twenty to live.

THE COURT: -- 20 to live, and --

MR. VERNER: And I was probably going to bring that in my closing that not that she faces it, but one reason for him cooperating might be that he's facing 20 to live.

MR. STUMBO: Once upon a time I would have objected to the sentencing range of the co-defendant, but there's a case right on point on that --

THE COURT: Right.

MR. STUMBO: -- that was reversed. So that's --

MR. VERNER: That's why -- that's why I took that door, Your Honor. I agree with the Solicitor. The Appellate Court has opened that door when a co-defendant testifies. I put it out there for purposes of showing what the co-defendant was facing and, as the Court noted, it's a smart jury.

THE COURT: My clerk is emailing this to Judge Griffith's assistant asking her to print out a couple more copies. And the really relevant portion that I'm giving you all, or that I'm going to let you all take a look at and share, are pages, again, 12 and 13 of the old copy. The new copy will say, "Knowingly failed to supply the child with food, clothing, shelter or adequate healthcare, and that this failure caused physical injury or condition which caused death." Okay? So you all take a quick look at the

knowing definition that I've added in there. You all can ruminate on that for a few moments while we get those copies made for you.

MR. VERNER: Are you going to make extra copies?

THE COURT: Yes, I am. We'll be at ease for a few moments while you all just look at that.

MR. VERNER: I have looked at the email version, Judge, but I didn't have access to print one out. Although they're -- 90 percent of it is pretty --

THE COURT: The emailed version does not include -- the emailed version does not include the knowingly part. That was added either last night or this morning.

MR. STUMBO: Judge, just out of curiosity -- we don't have to be on the record for this. But the knowingly definition, is that in the charge book? Is there a case on point for that or is that -- I'm just asking where that's coming from.

MR. VERNER: There were a couple of cases on -- is that -- the knowingly is when you have the duty to take the child to the hospital after injury?

THE COURT: Right. And we'll need to do this on the record, guys. But you all look at it, think about it, and let Mr. Verner show you -- he's probably looking at what I'm looking at. I was looking -- I think --

MR. VERNER: The cases I saw said ordinarily there

wouldn't be a legal duty to take the child to get medical care or to prevent further abuse unless you had the mens rea of --

THE COURT: Actual knowledge. That's what I found last night. I'm not -- I can't cite the chapter and verse, and I was actually looking for it here, but the code isn't quite up-to-date upstairs. But you all just think about that and we'll talk about it in a sec.

MR. STUMBO: Sounds good.

MR. VERNER: One of the cases I'm talking about, Your Honor, is *State vs. Smith* where they refer to the -- that you had to prove beyond a reasonable doubt that he knew about the injuries and failed to seek the medical care. And then there's another case. But the --

THE COURT: Is that the Smith case of 2008 or the one from 2015?

MR. VERNER: 2011 is when it went through the Court of Appeals.

THE COURT: That's the 2014 case.

MR. VERNER: There's a *State vs. Smith*, I'm sorry, from 2013. And then there's a *State vs. Smith* from 2011. I'm not sure --

THE COURT: The one from -- there's a *State vs. Smith* from 2015 that came out in -- it came out last year that deals with the appeal -- Court of Appeals' decision in 2013

I thought.

MR. VERNER: I think there are two different Smith cases, because one talks about chest injuries and the other talks about an overdose of medicine or --

THE COURT: The four times the adult dosage of --

MR. VERNER: Pseudoephedrine.

THE COURT: Yeah. Talk to the Solicitor about those and we'll be back in a moment.

MR. STUMBO: Yes, sir.

(Whereupon, a recess was held 3:24 p.m.)

THE COURT: We are back on the record. Have you all had a chance to review the pertinent instruction, or the primary one that I was asking you to draw your attention to?

MR. STUMBO: Yes, sir. We did. And were you able to find where you pulled that from, Judge, to --

THE COURT: I actually was not. I just -- based on the stuff I looked at last evening and some of the material this morning, I cobbled it together. There is not a -- there is not a stock actual knowledge charge in the bench book with the exception of in the context of constructive possession of drugs and that kind of a thing. And so, I just used somewhat of an amalgam of the actual knowledge from the civil bench book and --

THE STUMBO: And what case was it -- that was the only thing. One is I've got a case on point that requires actual

knowledge, because --

THE COURT: Well, you read the language from Smith, Mr. Verner, on the healthcare issue.

MR. VERNER: Judge, and again, I printed up the Westlaw that's kind of the synopsis points and not the actual text. But the *State vs. Smith*, which is 391 S.E. 353, 705 S.E.2nd 491 Court of Appeals 2011 the State could still find the Defendant guilty if the State proved beyond a reasonable doubt that he knew about the injuries or about the pseudoephedrine but failed to seek medical attention for the victim. There was an actual -- the other case was the Palmer case, which is apparent that the -- where they talk about that the co-defendant, or the defendant, may not have seen the injuries because the sleeping victim's injuries would not have been immediately apparent. 776 S.E.2nd 558. And that's 2015. But the only way you can logically read that, that the injuries were not readily apparent to seek medical attention is knowledge of the injuries. And I will -- you know, I went through a bunch of cases. Some of them I read portions of and some of them I just looked at the Westlaw summaries of. But there's no question that it requires the knowledge. The only issue in my mind, would it be circumstantial or constructive knowledge or actual knowledge. But that's really more of a drug possession type differentiation. And because of the criminal standard of

mens rea required, that the guilty knowledge, Your Honor, that the -- you know, the mens rea itself would require guilty knowledge.

THE COURT: Well, the mens rea under subsection (2) where you're talking about aiding and abetting of that statute, that clearly requires that someone knowingly -- and as I think I've explained, I don't see how if -- let's assume for the moment that we have one parent that's aware of a physical condition which is serious and likely threatens the health or well being of the child and the other parent is oblivious simply because they both have custody of the child, it's the knowing parent who would be legally culpable as opposed to the parent that does not know. And that's kind of where I get the knowingly from. I think it was Palmer that I was thinking about when I said it was Smith. The 2015 Smith decision which had been appealed. Smith went through the Court of Appeals and it was reversed in part by the Supreme Court, or at least what I'm thinking of. And my clerk is pointing at something. Hold on.

MR. VERNER: And it stands to reason, Your Honor, that I find it hard to believe that you could be found guilty of a crime if you didn't have actual knowledge of the underlying crimes.

MR. STUMBO: Well, Judge -- and I understand Your Honor's logic on this, and we'll trust the Judge's ruling.

Typically if the statute itself is silent as to the mens rea it falls back to the default of the general criminal intent. I think I remember -- I know -- I can't --

THE COURT: That is -

MR. STUMBO: -- the case, chapter and verse. The cite. But because the statute doesn't really address that here, I don't know if we're adding an additional burden on the State here that's not in the law. But --

THE COURT: I'm only adding it with -- if the jury believes that she assaulted that child, I'm not -- you know, that's an independent -- you don't have to demonstrate that you knowingly. That's an intention tort. I mean, you're doing what you intend. I'm only adding the knowingly aspect of it to the healthcare, shelter portion --

MR. STUMBO: To the subsection --

THE COURT: To the subsection, yes. Because it makes no sense that you could be held criminally responsible for something that you have no direct knowledge of. And that becomes a jury issue where -- I don't know what you guys are intending to argue. I was halfway assuming that you were going to argue that no reasonable parent could allow those injuries to go unnoticed. I was thinking that might be where you were going on your argument. But some of the questions we heard from yesterday, that any reasonable parent -- or that those injuries would have been readily

apparent to any reasonable parent and that's where the knowing aspect -- that's when I started playing with that in my mind. I am fairly confident that that is a correct statement of the law as it related to that second section under the definition of it. But obviously the knowingly has no bearing whatsoever. General criminal intent is sufficient for the first part, if she actually did inflict the injuries. I think that's where we're at.

Final housekeeping matter before we begin closings. Exhibit 148 was the one that I promised that I'd rule on the 403 objection to. Page 359 is a profile picture of the Defendant with pink hair and a leopard outfit. Page 344 is money that is placed on a bed to spell out "Look at me now." 278 is apparently taken of what looks like a hotel bathroom with the Defendant with her hand on her hip. And 281 is the same hotel bathroom with the Defendant facing away from the camera and then looking over her left shoulder. And 161 is just a pile of money. Page 145 is a picture of the child in the backseat of the car. I'll be sustaining the relevancy objection concerning pages 259 through 161, the piles of money and the Defendant posing. I really can't see where there's -- perhaps there is something relevant. But the prejudicial affect of the posing, et cetera, in my opinion outweighs the probative value of those photographs. And money spelling out "Look at me now," and just a pile of

cash, quite honestly I don't see what's terribly relevant about those. Her vocation is not an issue in this case. So the Court will sustain the Defendant's objection with regard to those pages. And 141 will constitute the cover page of the Facebook, the next page which has already been shown to the jury, and then the final page showing G.M. in the back of the red car in his carseat. So that's where I am on those.

MR. STUMBO: And, Judge, I believe Mr. Verner and I discussed this. I know we're still under the common law rule. I think there's been a proposed rule change that's being debated in the Legislature this session. I'm perfectly content to open on the law and close on the facts, kind of under the traditional rule. I've talked to Mr. Verner. He said he doesn't -- it's not requiring the first and the second. And I have no problem with him just going first and me going last. That would help us be more efficient.

MR. VERNER: I will go on record, Your Honor. In no case from now until through the future, I'll be bound by this in the future, I will never require the Solicitor to open on the law in any case that I intend to be part of.

MR. STUMBO: But we do intend to discuss the law in our closing.

THE COURT: Certainly.

MR. VERNER: And I understand the Court said about 30 minutes?

THE COURT: Actually precisely 30 minutes.

MR. VERNER: Is there some way, Your Honor -- I don't intend to hit that mark. But is there some way maybe your clerk could cough or hit on the table or something like every 15 minutes, or the Court could even call out a time.

THE COURT: We're going to let the Solicitor's office investigator, since he's already sitting kind of close to the jury. He'll be our official timekeeper. He and I will keep time together and --

MR. VERNER: He can just kind of clear his throat or --

THE COURT: Yeah. When you're at five minutes he's going to give you the five minute thing like this. And he can sort of sit over -- once the jury comes in he'll sit over next to the bailiff and be the official timekeeper.

Both of you all are very brief normally in your closing, so I don't think it's going to be a problem. But I'm still going to limit you to 30 minutes nonetheless.

Let's have the jury, please.

(Whereupon, the jury entered the courtroom at 3:35 p.m.)

THE COURT: Ladies and gentlemen of the jury, thank you very much for your -- one other housekeeping matter, Mr. Verner, for the record. You review all previous motions as

well as the DV, correct? You review all previous motions --

MR. VERNER: Yes, sir. I apologize.

THE COURT: -- including the motion for directed verdict?

MR. VERNER: I do.

THE COURT: All right. Same rulings as before.

Ladies and gentlemen of the jury, we've reached that portion in the trial where the attorneys will give you their closing arguments. I'll let you know that it's pretty normal, it's pretty customary for the attorneys to reference facts or testimony or evidence during the course of their closings. Obviously, ladies and gentlemen, since you are the judges of the facts, if anything that they say about the facts differs from what you recall those facts being, whether that's testimony, exhibits, what have you, go with your recollection, because obviously you are the judges of the facts. For example, of the attorneys were to say that yesterday they recall the weather being cold and wet and miserable and rainy, and yet you recall that weather yesterday being a perfect -- picture perfect screen day, go with your recollection of the weather as opposed to what they say it was. All right?

Each side is being limited to 30 minutes. Mr. Verner is not requiring the State to open on the law. So Mr. Verner will proceed first and the Solicitor will have the

final argument in this particular case. Okay?

Mr. Verner, at your leisure, are you recognized for your closing, sir.

MR. VERNER: It's not at my leisure. It's 30 minutes, Judge.

THE COURT: Very good.

MR. VERNER: If it please the Court.

THE COURT: Yes, sir.

MR. VERNER: May it please the Court.

THE COURT: Very good.

MR. VERNER: Solicitor Stumbo.

CLOSING ARGUMENT

BY MR. VERNER: If I could, I'm just going to briefly open on the law. This is a homicide by child abuse case. It's not a DSS case. It's not a neglect case. This is you kill your baby case. Those are the consequences of the case.

Theia is 22. She's had a lot of time since she's been in custody since December 30th to finally have her day in court, and we hope it's going to end here one way or the other. And I will tell you, I've been a public defendant, or a lawyer here in Newberry since '99. I've tried a lot of cases. I've never held a verdict against a jury guilty or not guilty. You've got no friends to reward. No enemies to punish. They try a lot of cases. They move on, too.

You've just got to decide the right verdict without worrying about criticism.

Homicide by child abuse. This is how it's divided. This is how it's charged by the State. This is the indictment. The indictment is just written notice that they're going to trial. That's all it means. It comes from the prosecutor to the Defendant. It's not evidence. It's just basically you're going to trial for this crime on this day, and it's just giving the Defendant fair notice for whichever crime.

"Theia McArdle, on December 29th, 2014 to December 30th, 2014 in Newberry County willfully and unlawfully caused the death of a child under the age of 11, to wit, one G.M. date of birth [redacted] while committing child abuse or neglect as defined by the section 16-3-85(b) as amended, and that the death occurred in circumstances manifesting extreme indifference to life -- human life." That's basically just a looking of the statute. They're just defining the dates and the Defendant's name. Homicide by child abuse. All our crimes in South Carolina, some are more complicated than others, but they all require kind of what they're called elements. The State has to require whatever the elements are. Like grand larceny. You have to prove that someone stole property from another and it had to be of a certain value. All four of those targets have to be

hit by the State. If one of them is not met, it's not guilty of that child. Here it is homicide by child abuse. A person is guilty of homicide by child abuse if the person causes the death of the child under the age of 11 while committing child abuse or neglect and a death occurs under circumstances manifesting in extreme indifference to human life. And child abuse or neglect is specifically defined. It means you act -- it's the act or omission by a person which causes harm. It's the omission which causes harm, or the act which causes harm to the child's physical health or welfare. And harm is defined as inflicting or allowing to be inflicted upon the child physical injury or injury sustained as the result of excessive corporal punishment that results in death.

In one regard this is a very simple case. This is the easiest case that I can think of in this regard. If you get back there and you think -- you are certain that this child was killed by Richard Bowman, she's entitled to a not guilty verdict on that portion of causing the child's death. If you think it's more likely than not that the death was caused by Richard Bowman, she's entitled to a not guilty verdict. If you think even if it's less likely than not that the child was killed by Richard Bowman, but it is still reasonably probable -- possible, she's still entitled to a not guilty verdict on that portion of the statute. And I

think it's clear to you Richard Bowman killed that child. I don't even think that's really going to be seriously argued anymore. I think there are going to be insinuations that now maybe she let it happen or maybe she didn't take him to the hospital soon enough. I think they're going to be, well, maybe she did it, too. But I think the case has shifted to Richard Bowman. There's no question about that. He as much admitted on the day the child died -- I don't know how many different stories he gave just the Solicitor. You remember when Richard Bowman testified? You know, you're facing 20 years to life, Richard, and you talked to us on March 10th, but here's two other injuries you didn't even bother to mention today. And the Solicitor reminded Richard Bowman of what Richard Bowman said that Theia had done to the child, because Richard has given so many contradictory accounts that he can't even remember. Even when prepped for a trial he still had to be reminded. Well, what about this? What about this? And even with all of Richard's stories, medically none of them could have resulted in the death of the child. He says that some incidents she hit him in the groin at some guy named David's house the day beforehand. You know, just David can't be here at trial. No way to prove that. Even if that were true -- and it's not because he's a liar. But even if it was true, the pathologist said, huh-uh. That child wasn't