

STATE OF SOUTH CAROLINA
IN THE SUPREME COURT

Certiorari to Spartanburg County
Paul M. Burch, Circuit Court Judge

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DEC 27 2017

S.C. SUPREME COURT

DAVID ANTHONY TYRE,

PETITIONER

V.

STATE OF SOUTH CAROLINA,

RESPONDENT

APPELLATE CASE NO 2017-001141

APPENDIX

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1 STATE OF SOUTH CAROLINA)
2 COUNTY OF SPARTANBURG) IN THE COURT OF GENERAL SESSIONS

3 The State,)
4 -vs-) TRANSCRIPT OF RECORD
5 David Anthony Tyre,) 2009-GS-42-4508;4509
6 Defendant.) October 8, 2010
7) Spartanburg, South Carolina
8
9

10 B E F O R E:

11 HONORABLE J. DERHAM COLE, JUDGE; and a jury
12

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

14 HAROLD GOWDY, ESQUIRE
15 BARRY JOE BARNETTE, ESQUIRE
16 CINDY CRICK, ESQUIRE
Attorneys for the State

17 DOUG BRANNON, ESQUIRE
18 Attorney for the Defendant
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21 Linda D. Moffitt
22 Circuit Court Reporter
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No sworn testimony; no exhibits entered into evidence.

Motion

1 (Proceedings October 8, 2010)

2 THE COURT: This is the matter of the State vs. David
3 Anthony Tyre.

4 Is he here?

5 MR. BRANNON: He is, Your Honor. I need to have him
6 brought in.

7 THE COURT: Okay.

8 (Pause.)

9 THE COURT: All right. This is State vs. David
10 Anthony Tyre -- Tyre?

11 MR. BRANNON: David Anthony Tyre.

12 THE COURT: Mr. Brannon represents Mr. Tyre; Solicitor
13 Gowdy, Solicitor Crick, Solicitor Barnette are present.

14 This is the defendant's motion to require the state to
15 elect on one or more of several indictments the defendant
16 is charged --

17 MR. BRANNON: Two different indictments, yes, Your
18 Honor.

19 THE COURT: Okay.

20 MR. BRANNON: Your Honor, on Indictment 09-GS-42-4509
21 my client is charged with abuse to inflict great bodily
22 injury upon a child. And on Indictment 09-GS-42-4508 he is
23 charged with homicide by child neglect.

24 Your Honor, the first indictment, the incident alleged
25 to have -- is alleged to have occurred on or about June the

Motion

1 22nd of 2009.

2 In the second indictment, the murder -- or homicide by
3 child abuse, Your Honor, that incident is alleged to have
4 occurred on July 5 of 2009.

5 Your Honor, I base the motion on two cases, State vs.
6 Whitener and State vs. Tate.

7 Your Honor, I would direct the Court to headnote No. 2
8 in the Whitener case. That is the -- I guess the basis or
9 the initial basis for the motion.

10 It says that the rule in South Carolina is that the
11 state offenses, felonies and misdemeanors may be charged in
12 separate counts of the same indictment, whether growing out
13 of the same transaction or not. If the several offenses
14 charged do not grow out of the same transaction, then the
15 proper practice is to require the prosecuting officer to
16 elect upon which count he will proceed.

17 Your Honor, clearly we've got two separate dates here.
18 We've got June the 22nd and July the 5th.

19 Your Honor, while we do have the same victim --
20 obviously we have the same defendant -- Your Honor, we're
21 talking about two and a half weeks between the parts --
22 between the incidents.

23 Your Honor, there would be different witnesses
24 required to prove the facts of each case, different medical
25 providers. And so that would be the different witnesses.

Motion

1 However, Your Honor, what the rule also says is that
2 it's within the Court's discretion, but it must consider
3 the prejudicial effect versus the probative value.

4 Your Honor, clearly if these matters are allowed to be
5 tried together and if the jury hears evidence of the
6 incident that took place on June the 22nd they can simply
7 infer that something similar was going on on July the 5th,
8 which brings me to the second case that I rely upon, Your
9 Honor, that being State vs. Tate.

10 And, Your Honor, State vs. Tate is a case where
11 Mr. Tate was charged with two separate counts of check
12 fraud, or fraud.

13 Your Honor, in that case Mr. Tate did the same thing
14 twice. He took -- he had a stolen check that was a
15 governmental check. And he would take a woman in both
16 cases or both incidents. It was a different woman, but he
17 would take a woman into a liquor store, and he would say
18 that this is the payee on the check. And then they would
19 sign the back of the check and cash it. The first check
20 was for \$221. The second one was for \$88.

21 In the trial of Mr. Tate he was actually charged on
22 two separate indictments. In the trial of the case just
23 before the trial began the solicitor or the prosecutor
24 amended one of the indictments to include both counts, and
25 the judge approved that over the objection of defense

Motion

1 counsel.

2 The case went forward. And after the defendant
3 presented his evidence defense counsel made a motion for a
4 mistrial based on misjoinder of the two cases. Both of
5 those motions were denied. But when it went on appeal it
6 was returned because the court of appeals found that that
7 case -- those cases should not have been tried together.

8 And, Your Honor, the reason I rely on Tate is because
9 it's very similar to this situation. While Mr. Tate was
10 not accused of child abuse he was doing something that was
11 very similar but that different witnesses were going to be
12 required to prove those cases by the state.

13 Again, the same facts are true here. Your Honor,
14 while my client is charged with child abuse in the first
15 indictment and homicide by child abuse in the second
16 indictment, Your Honor, they were two and a half weeks
17 apart.

18 The first injury had nothing to do with the second
19 injury, and there were different medical professionals that
20 were -- will be called as witnesses.

21 Your Honor, clearly, the prejudicial effect of
22 allowing both of these charges to go to trial on the
23 same -- in the same trial on the same day far outweighs the
24 probative value. One injury doesn't prove homicide by
25 child abuse.

Motion

1 Your Honor, they're using this to try and show some
2 kind of pattern. There is no pattern. It is not a
3 pattern.

4 But, Your Honor, the state needs the first incident
5 for its prejudicial effect upon the jury to get a verdict
6 on the second incident.

7 Your Honor, based on Tate and Whitener I ask that you
8 require the solicitor's office for the 7th Judicial Circuit
9 to elect which of the indictments it intends to proceed to
10 trial on next week. Thank you.

11 THE COURT: All right. So your position is that there
12 is no connection between the two charges.

13 MR. BRANNON: Well, yes, Your Honor. And forgive me.
14 I didn't go into it.

15 But there is actually a 4-prong test in Whitener.
16 And, Your Honor, I believe if you -- if you apply the
17 different dates, the different witnesses, then the state
18 can't meet the 4-prong test in Whitener and that these
19 matters should be. But to answer your question, yes, that
20 is the truth.

21 THE COURT: Okay. Mr. Barnette.

22 MR. BARNETTE: Your Honor, they're closely related. I
23 don't know where Mr. Brannon -- of course that's his
24 version of it and so forth.

25 But if you look -- and we've included the four

Motion

1 exhibits with -- with the return that we have filed in this
2 case. They're related, because you look at the statement,
3 attachment No. 1. You go through that.

4 He talks about the arm, how it's in there. He
5 argues -- he's going to argue either intent or absolute
6 mistake in this situation.

7 And if you look at Harvey and Melissa Jones -- that's
8 the case I handed up from -- it's 325, South Carolina, 310,
9 479 S.E. 2d, 517, Your Honor, it's a 1996 case.

10 In that case, Your Honor, I was one of the prosecutors
11 in it. Judge Westbrook tried it. We had three counts of
12 CSC, two counts of CSC second, five counts of criminal
13 conspiracy -- and they came from three different
14 instances -- December of 1991, January of 1992 and
15 September 1992.

16 They had the same victim, both of them the same victim
17 in there. It involved the same hotel; involved the same
18 defendants in that case.

19 We asked Judge Westbrook to consolidate them and try
20 them together. He did that because he felt like they were
21 closely connected. And the language in the case -- and the
22 court of appeals upheld that.

23 When the offenses that are charged in separate
24 indictments are the same general nature of all of the
25 connected transactions closely related in time, place and

Motion

1 character the trial judge has the power in his discretion
2 to order the indictments to be tried together if the
3 defense's substantial rights would not be prejudiced.

4 In this case, Your Honor, everything is intertwined.
5 The cases that Mr. Brannon talks about, especially the Tate
6 case, you've got two different victims. You actually have
7 two different women presenting that.

8 You don't have this here. You have everybody the same
9 thing. I know he argues there will be other witnesses.
10 Most of the doctors and medical professionals are the same.
11 They went to the same hospital, Spartanburg Regional
12 Medical Center, for the treatment. So therefore a lot of
13 the same witnesses will be called for both trials in this
14 situation.

15 And, plus, I know we -- nothing's been talked about,
16 but if you look at the res gestae part of it there's no
17 question. And of course you're participating defenses or
18 whatever, that the defense is going to argue that this is a
19 mistake, absence, accident, whatever from that standpoint.
20 And this crime would show the difference.

21 If you look on attachment No. 2 -- attachment No. 1 he
22 admits to breaking the victim's arm in the case.

23 He also in attachment No. 3 talks about shaking her
24 too hard on the second incident. And we have the
25 investigator notes. That's attachment No. 3.

Motion

1 Now, if you look at attachment No. 2, we have the
2 grandmother of the victim. She comes in, finds the victim
3 on the floor. He later admits he broke her arm and he
4 didn't fall out of the floor -- fall into the floor.

5 So you've got instances that's going to show that this
6 crime occurred, the second crime, and the first crime.
7 They're combined together, Your Honor, in this case. And
8 we feel like both cases should be tried together based off
9 that.

10 Plus, I didn't go through the whole detail the whole
11 brief covers. There's another case that talks a lot about
12 that, and that's State vs. Martucci, 380, South Carolina,
13 232, 669 S.E. 2d, 598, Your Honor.

14 That was a homicide child abuse case also, Your Honor.
15 If you go through that you'll see the whole analysis. That
16 also talks about the 404(b) that may be brought up too, and
17 it's contained in our brief also, Your Honor.

18 I don't know if you want any more discussion on that
19 or not, Your Honor, but I think the brief goes to
20 mentioning that also.

21 I don't know. Mr. Gowdy may want to address the
22 404(b) if you want that analysis also, Your Honor.

23 THE COURT: Well, I'm just here to listen to what
24 y'all want to present. I'm not demanding addressing any
25 issue.

Motion

1 MR. GOWDY: Could I have just -- the Court asked
2 specifically about the intertwineness or the relatedness,
3 or that issue came up. And I think we've put the Court in
4 a very difficult position because the Court doesn't know
5 the chronology perhaps as well as the parties do.

6 It was an allegation. This defendant called. And
7 these are his own admissions. He called 9-1-1 on June the
8 22nd and said that this little girl had rollen out of bed
9 and broken her arm. All right.

10 And that's what everybody believed -- the health care
11 providers. Everybody believed. This girl had cerebral
12 palsy. And so she can't say what happened -- that she
13 rolled out of bed and broke her arm.

14 So on June the 5th when she re-presents to the
15 hospital this defendant continually asked the physicians
16 could it have been when she rolled out of bed, could these
17 injuries have been caused when this girl rolled out of bed
18 and broke her arm.

19 It was later that he admitted she didn't roll out of
20 bed, I shook her and broke her arm on June the 22nd, I
21 staged it to look like she rolled out of bed and called
22 9-1-1.

23 So all of the questions related to her, that she died
24 due to a traumatic brain injury, and the question then
25 becomes when did this injury occur, how could this injury

Motion

1 have occurred, he was the only one with her both times.
2 There was no one else in the house. The broken arm and the
3 traumatic head injury, he's the only one there.

4 And this defendant continually asked doctors could it
5 have been when she rolled out of bed and broke her arm,
6 could that have been when this injury took place.

7 So the -- we think the jury -- Judge, the jury has to
8 know that's a lie. She didn't roll out of bed and broke
9 her arm. He shook her until she broke her arm. And he
10 staged it to look like an accident.

11 So they are intertwined because when she died there's
12 repeated reference back to the day she broke her arm by
13 this defendant. That I think is the interconnectivity of
14 those two incidents.

15 MR. BRANNON: Your Honor, first off, forgive me. I
16 misspoke -- I misspoke.

17 The 4-prong test is not in Whitener. It is in Tate,
18 Your Honor. And what the Court says there is that
19 different charges can be joined in the same indictment and
20 tried together when they arise out a single chain of
21 circumstances, are proved by the same evidence or of the
22 same general nature and no real right of the defendant has
23 been jeopardized.

24 And then it goes on to say offenses do not arise out
25 of a single change of circumstance when they are not in

Motion

1 substance a single course of conduct or connected
2 transactions.

3 There's -- there's ten days, two-and-a-half weeks,
4 between these incidents, Your Honor. It doesn't matter
5 what he says. It matters what happened.

6 There's -- there's June 22nd to July 5th, is the
7 difference in time here, Your Honor. These are not a
8 single transaction. It's two separate incidents, and
9 therefore they should not be tried together.

10 Your Honor, I mean, I think the rules here -- I've --
11 jeopardized the case. And it says offenses do not rise out
12 of a single chain of circumstances when they are not in
13 substance a single course of conduct.

14 You've got the 22nd of June through July 5th when
15 these two incidents occurred. You put them together the
16 broken arm is going to prejudice the jury on the second
17 offense. It's going to. It has to. That's what they want
18 it to do. Thank you, Your Honor.

19 THE COURT: Well, did the -- what was the case you
20 referred to, Mr. Barnette, about the three criminal sexual
21 conduct defenses?

22 MR. BARNETTE: Your Honor, that's Harvey and Melissa
23 Jones. That happened in 1996, and that's good law.

24 THE COURT: Which one was it?

25 MR. BARNETTE: It's Harvey and Melissa Jones.

Motion

1 THE COURT: Jones?

2 MR. BARNETTE: Yes, sir. I think I handed a copy to
3 the Court too, Your Honor.

4 THE COURT: All right. Mr. Brannon, did the Jones
5 court address the Tate case in that opinion?

6 MR. BRANNON: Your Honor, forgive me. He handed it to
7 me this morning, so.

8 THE COURT: Oh, okay, because I'm just thinking it
9 sounds like to me in the Jones case those were unconnected
10 offenses but were tried together, I mean, had to have some
11 connection, obviously, but they appeared to be like this,
12 unconnected, I mean, just separate events. But obviously
13 they were permitted to be tried together. And I haven't
14 read the case, or at least if I've read it I don't remember
15 it. But I will read it.

16 MR. BRANNON: And if the Court would allow me the
17 opportunity --

18 THE COURT: Oh, sure, yeah. That will be fine. Do
19 you want to -- well, how do you want to handle that? Do
20 you want to read it and give me a reply brief, or how do
21 you want to handle it?

22 MR. BRANNON: Well, Your Honor, I'm going to let you
23 direct. I want to do whatever you tell me to do. If you
24 want me to read it now and respond to you in an hour, I'm
25 going to do that, but the Court's --

Motion

1 THE COURT: Well, I'm not going to do that, but I'll
2 let you respond obviously if you want to. In other words,
3 they've -- they've submitted a brief.

4 MR. BRANNON: I understand.

5 THE COURT: I don't know if you want to respond to
6 that and include a discussion of the question I just asked
7 if that's -- if that is an issue or if the case is
8 addressing it.

9 MR. BRANNON: Your Honor, I would like the
10 opportunity --

11 THE COURT: Well, let's ask this.

12 Mr. Barnette, do you know if the Jones court addressed
13 the Tate case?

14 MR. BARNETTE: I don't think they did, Your Honor,
15 from looking through it. I looked through it real quickly,
16 but I don't even remember that being an issue in the case.

17 THE COURT: You don't remember it being an issue?

18 MR. BARNETTE: No. They do talk -- I -- let me go
19 back here. They did talk about Tate if this is the same
20 case.

21 THE COURT: Okay.

22 MR. BARNETTE: State vs. Tate. Let me look at the
23 number to make sure. They did address it, Your Honor.

24 THE COURT: Okay.

25 MR. BARNETTE: They addressed it. It's on page 305,

Motion

1 State vs. Tate, 286, South Carolina, 462. So they did
2 address that.

3 THE COURT: All right. Well, let's do this.

4 Mr. Brannon, I'm going to read the cases, and you can
5 read it too. And if you need to enlighten me as to how
6 Tate and Jones are in agreement or are not applicable, then
7 I'll let you do so.

8 MR. BRANNON: All right. And I'll have that response
9 to you today, Your Honor.

10 THE COURT: Okay. That's fine.

11 MR. BRANNON: I'm assuming the Court is not going to
12 want to continue this trial from next week, so, I mean,
13 I've got to get it to you today.

14 THE COURT: Yeah, I need it today. But if the case is
15 set for trial next week, I mean, that's the purpose of
16 having this hearing today, is to address it.

17 MR. BRANNON: That's right.

18 THE COURT: I'm just giving you an opportunity to
19 address Tate in its relationship to Jones since you've just
20 been provided the Jones case and haven't had that
21 opportunity.

22 MR. BRANNON: Thank you, Your Honor.

23 THE COURT: If you want the opportunity, I'm giving it
24 to you. If you don't, I'll read it myself and decide.

25 MR. BRANNON: I'm asking for the opportunity and will

Motion

1 take advantage of that.

2 THE COURT: Okay. All right.

3 MR. BRANNON: Thank you, Your Honor.

4 THE COURT: Okay. Anything else?

5 MR. GOWDY: No, sir, Your Honor.

6 THE COURT: All right. I'll just wait and hear from

7 y'all.

8 I was just thinking. How are you going to address

9 that. Are you going to address it in a written memo?

10 MR. BRANNON: I will put it in writing, yes, Your

11 Honor, yeah.

12 THE COURT: Oh, okay. That's fine.

13 MR. BRANNON: Thank you.

14 THE COURT: Okay. Court is adjourned.

15 END OF PROCEEDINGS OCTOBER 8, 2010

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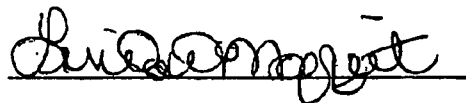
Certificate

CERTIFICATE

I, the undersigned Linda D. Moffitt, Official Court Reporter for the Seventh Judicial Circuit of the State of South Carolina, do hereby certify that the foregoing is a true, accurate and complete Transcript of Record of all the proceedings had and evidence introduced in the trial of the captioned cause, relative to appeal, in the Court of General Sessions for Spartanburg County, South Carolina, on the 8th, 11th, 12th and 13th days of October 2010.

I do further certify that I am neither of kin, counsel nor interest to any party hereto.

February 18, 2010



Linda D. Moffitt
Circuit Court Reporter

1 STATE OF SOUTH CAROLINA)
 2 COUNTY OF SPARTANBURG) IN THE COURT OF GENERAL SESSIONS

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 Circuit Court Reporter

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1	<u>EXHIBITS</u>		
2	<u>NO.</u>	<u>DESCRIPTION</u>	<u>ID.</u> <u>EV.</u>
3	D-1	Voluntary statement of Kevin Lee Gibbs	129 130
4	D-2	Voluntary statement of Nicholas W. Ray	140 143
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Motion

1 (Proceedings October 11, 2010)

2 THE COURT: All right. Previously the Court
3 entertained a motion by the defendant to require the state
4 to elect on which indictment they would proceed with to
5 trial in the matter of -- where are the indictments, by the
6 way? Have you got them?

7 (Pause.)

8 THE COURT: Mr. Tyre was charged or is charged with
9 homicide by child abuse and in violation of Section
10 16-3-85(a).

11 He's also charged in a separate indictment with abuse
12 and infliction of great bodily injury upon a child, the
13 child being the same alleged in both indictments.

14 The Court entertained a motion to require the state to
15 elect. And during the course of that motion there were
16 several cases that were presented to the Court. And
17 Mr. Brannon indicated that he had just received the state's
18 brief and cases relying upon in their request of the Court
19 to deny the motion and to allow the cases to proceed and be
20 tried together.

21 Mr. Brannon, have you had sufficient time now to
22 review each of the cases that the state has asked me to
23 consider in making my decision?

24 MR. BRANNON: Yes, Your Honor.

25 The first of those cases -- and when I say first I

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1 don't know if it was the first case that the Court looked
2 at, but it was the Jones case, Your Honor. And I believe
3 that that case is clearly distinguishable for several
4 reasons, Your Honor.

5 One, because in Jones it was not a child abuse. It
6 was not a -- it was a case of child sexual abuse
7 perpetrated by a husband and wife. And it also included,
8 Your Honor, a conspiracy charge.

9 I believe that case is clearly distinguishable. But,
10 more importantly, Your Honor, the Court asked specifically
11 about the Martucci case, which is a South Carolina case
12 decision rendered and filed on September the 24th of 2008.

13 That, Your Honor, is a physical abuse case. In fact, Your
14 Honor, it is a homicide by child abuse case.

15 In that case, Your Honor, Mr. Martucci was living with
16 the mother of the child. And, Your Honor, at trial the
17 state was able to put forth evidence of prolonged physical
18 assault allegedly perpetrated by Mr. Martucci. And they
19 did that through photographs, Your Honor, of bruising at
20 different stages.

21 They had doctors that testified in the Martucci case
22 about the differing states of healing of bruises to the
23 face, back and abdomen of that child.

24 Not only that, Your Honor. They had photographs of
25 bruises that were not present at the time of death of the

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1 child in that case. So, Your Honor, they were able to show
2 a prolonged history of physical abuse perpetrated by the
3 defendant in that case.

4 Your Honor, what differentiates the two cases, that
5 Martucci and the case at bar, is that in this case, Your
6 Honor, we had separate and distinct incidents, one that
7 occurred on June the 22nd and one that occurred on July the
8 5th.

9 Your Honor, there's -- there are two -- there are two
10 very sad and horrific incidents, but they're clearly
11 different incidents.

12 Your Honor, there's no indication of any injury
13 between the June 22nd broken arm and the July 5th incident
14 that led to Minor being taken to the hospital and
15 subsequent dying.

16 There's no allegation of abuse perpetrated by my
17 client or anyone else prior to June 22nd. So you've got an
18 unfortunate incident that occurs on June the 22nd that
19 leads to a broken arm, and then 13 days later you've got an
20 incident that occurs that leads to her death.

21 It's not a constant and consistent pattern of abuse as
22 it was in Martucci. I believe that the cases are
23 distinguishable. And even the evidence in this case is
24 going to be two separate and distinct incidents, Your
25 Honor. They're not provable by the same evidence, by the

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1 same witnesses. And I believe given the 4-prong test that
2 I provided to the case -- the Court in my motion on Friday
3 these matters should be tried separately and would ask the
4 Court to grant our motion to elect. Thank you.

5 THE COURT: Who wants to address it?

6 MR. BARNETTE: Your Honor, he keeps talking about two
7 separate incidents.

8 If you read the autopsy report and also the doctors'
9 notes -- I know you don't have that available to you -- but
10 autopsy report there's other bruising, there's other
11 evidence. That's why we made the motion, part of the
12 404(b) type situation.

13 I don't know if the Court will allow it all in, but
14 obviously there's other injuries other than just these two
15 that were shown through the records from the nurses' notes
16 and everything else.

17 We have alleged there's probably more than two
18 instances in this situation. These are the two that we're
19 talking about on the indictments, and that's the reason we
20 addressed them in that situation.

21 But if you look at the autopsy report of Dr. Wren and
22 so forth he goes through, and talking about some of them
23 that appeared to be healing, possibly healing, in that
24 situation, in his autopsy, which is Exhibit No. 4 in the
25 packet we handed up.

Motion

1 Plus, if you look at Martucci, Your Honor, basically
2 these incidents have to be proved by the same type
3 evidence -- it's the res gestae in the case and so forth --
4 to show, because obviously he's going to argue intent,
5 absence, mistake, those types things, I'm assuming, which
6 it's in his defense. Obviously, it goes to that and proves
7 that it did not occur -- that this was no accident and he
8 intended to do that, this crime.

9 MR. BRANNON: Your Honor, there are two separate and
10 distinct incidents in this case -- June 22nd and July 5.
11 There's no evidence of any prolonged pattern of abuse put
12 upon this child by my client. Thank you.

13 THE COURT: Okay. The -- the infliction of great
14 bodily injury was alleged to have occurred on June the
15 22nd and the homicide by child abuse was alleged to have
16 occurred on --

17 MR. BRANNON: July 5.

18 THE COURT: -- July the 5th. I mean, I don't consider
19 that to be a tremendous break in any sort of chain. They
20 are close, close in relation to time.

21 Now, whether they're close and connected is a
22 different issue altogether. However, in these types of
23 cases it's clear that prior bad acts of the defendant are
24 admissible where they are admitted in order to prove
25 intent, absence of mistake or accident or a common scheme

Motion

1 or plan embracing the commission of two or more crimes that
2 are so closely related to one another that one tends to
3 establish the other.

4 There might -- you may argue that's a little bit
5 tenuous so far as a common scheme or plan, but I think it's
6 certainly a reasonable argument to make. But I think
7 clearly under the facts of this case the prior bad act
8 tends to establish intent on the part of the defendant, as
9 well as absence of mistake or accident.

10 What was presented to me on Friday was that the
11 defendant in committing a battery upon this child on June
12 the 22nd initially indicated that it was simply an accident

13 that was not his fault, it was not an event that I think
14 fault was attributed to anyone other than the child fell.

15 It was later admitted to by the defendant that he, in
16 fact, inflicted the harm.

17 Intent in that case is clearly an issue of fact for
18 the jury to decide. I believe in the statement he said he
19 didn't intend to hurt her. But I think from the evidence
20 in the case the jury could find differently, and reasonably
21 so.

22 So intent is clearly an important element in this
23 case, as it is in most cases of this type.

24 I've read Martucci, and I've read it more than once.
25 And it appears to me to be almost on all fours with the

Motion

1 case we have.

2 Because the defendant has admitted to being at fault
3 in causing the injury on June the 22nd, and the event on
4 July the 5th being one, again, of evidence of being abuse
5 resulting in her death, I believe that the two events are
6 clearly connected, and they're clearly proof of the
7 June the 22nd event -- tends to establish intent and lack
8 or absence -- lack of mistake or absence of mistake on the
9 part of the defendant.

10 So under the reasoning as set forth in State vs.
11 Martucci I do find that the defendant's motion to require
12 the state to elect should be denied.

13 The case will be permitted to proceed on both
14 indictments as previously requested by the state. And
15 also, and it's also addressed in Martucci, I do find that
16 both tend to be part and parcel of res gestae in the case.
17 And establishment of the June 22nd event is clearly
18 connected with the July the 5th, or can reasonably be
19 argued and can reasonably be established.

20 So I do find that that event is also relevant as part
21 of the res gestae and that the admission of that evidence
22 is probative. It's relevant, it is probative, and it is
23 not substantially outweighed by any potential unfair
24 prejudice resulting to the defendant.

25 Okay. Anything else on that point?

Motion

1 MR. BRANNON: Not on that point, Your Honor. I'll be
2 stepping out for just a moment.

3 THE COURT: Okay. All right. What's the next matter
4 we need to address?

5 MR. CAMPBELL: Your Honor, at this time I believe it's
6 important for a Jackson vs. Denno hearing regarding the
7 statements made by my client.

8 THE COURT: Okay.

9 MR. BARNETTE: Your Honor, there is other statements
10 made. We'll deal with the one that was made to law
11 enforcement in the Jackson vs. Denno hearing.

12 THE COURT: Okay.

13 MR. BARNETTE: Your Honor, I'd like to call Tracy Moss
14 to the stand, please.

15 THE COURT: Let me ask this.

16 How many statements are intending to be introduced?

17 MR. BARNETTE: Just one to law enforcement, Your
18 Honor. There's several others statements made.

19 THE COURT: And the defense is aware of all of the
20 statements?

21 MR. GOWDY: Yes, sir, Your Honor. They're all in
22 discovery.

23 These are primarily conversations between this
24 defendant and the physicians who were trying to determine
25 what had happened to her. And they're false exculpatory

Tracy Moss (In-camera)
Direct examination by Mr. Barnette

1 statements that were made by Mr. Tyre allegedly.

2 THE COURT: All right. Mr. Campbell, you're aware of
3 all the statements attributable to the defendant the state
4 intends to introduce?

5 MR. CAMPBELL: I am, Your Honor.

6 THE COURT: The purpose of this hearing is to address
7 the voluntariness of any statement made to law enforcement.

8 MR. CAMPBELL: That's correct, Your Honor.

9 THE COURT: Okay.

10 TRACY MOSS, having been first
11 duly sworn, testified as follows:

12 DIRECT EXAMINATION BY MR. BARNETTE

13 MR. BARNETTE: Just one second, Your Honor. I need to
14 give the court reporter one thing.

15 (Pause.)

16 Q If you would, ma'am, please give your full name,
17 please.

18 A Tracy Moss.

19 Q And where do you work at, ma'am?

20 A Spartanburg County Sheriff's Office.

21 Q And what's your position there, ma'am?

22 A I'm an investigator.

23 Q And what kind of cases do you work on, ma'am?

24 A Child abuse cases, sexual assault cases.

25 Q Did you meet the defendant, David Tyre?

Tracy Moss (In-camera)
Direct examination by Mr. Barnette

- 1 A I did.
- 2 Q And before talking to him did you -- where did you
- 3 talk to him at, ma'am?
- 4 A At the sheriff's office.
- 5 Q And who was present with you, ma'am?
- 6 A Two employees of the coroner's office.
- 7 Q And who were they, ma'am?
- 8 A Mike Shaw and Robin Forrest.
- 9 Q And before talking to him did you give him his Miranda
- 10 rights, ma'am?
- 11 A I did.
- 12 Q And let me show you what's been marked as Court's
- 13 Exhibit 21 for purposes of this hearing, or State's Exhibit
- 14 21. Is that the copy of the waiver form that you gave to
- 15 Mr. Tyre?
- 16 A Yes, sir.
- 17 Q And did you go through the rights with him?
- 18 A I did.
- 19 Q And as you went through the rights with him did he
- 20 initial them?
- 21 A He did.
- 22 Q Did he appear to understand everything?
- 23 A Yes, sir.
- 24 Q Did you ask him what grade he had went through in
- 25 school?

Tracy Moss (In-camera)
Direct examination by Mr. Barnette

- 1 A Yes, sir.
- 2 Q What grade did he go through?
- 3 A He finished 12 years.
- 4 Q And did you witness all of this and was it being
- 5 witnessed too while you was giving it to him?
- 6 A Yes, sir.
- 7 Q And who witnessed it, ma'am?
- 8 A Mike Shaw with the coroner's office.
- 9 Q And as you went through each right -- and I'm not
- 10 going to have her read them because we've handed it up to
- 11 the Court -- did the defendant sign that he understood
- 12 these rights?
- 13 A He did.
- 14 Q Did he also sign where he understood what he was being
- 15 asked about?
- 16 A Yes, sir.
- 17 Q And what was you asking him about, ma'am?
- 18 A I was going to ask him about Minor
- 19 Q And what happened to her?
- 20 A Yes, sir.
- 21 Q And he understood that.
- 22 A Yes, sir.
- 23 Q And did you tell him what grade, and wrote down the
- 24 grade and everything? And did he sign under that, ma'am?
- 25 A He did.

Tracy Moss (In-camera)

Direct examination by Mr. Barnette;

- 1 Q And was that witnessed by Investigator Shaw?
- 2 A Yes, sir, it was.
- 3 Q And did you notarize it, ma'am?
- 4 A Yes, sir.
- 5 Q Afterwards did he talk to you and give you a
- 6 statement?
- 7 A He did.
- 8 Q Did you promise him anything?
- 9 A No.
- 10 Q Did you threaten him in any way?
- 11 A No, sir.
- 12 Q Did he understand that he had a right to talk to you
- 13 and didn't have to talk to you?
- 14 A Yes, sir.
- 15 Q And he understood all of those rights.
- 16 A Yes, sir.
- 17 Q Let me show you what's been marked as State's Exhibit
- 18 22. Is that a copy of the statement or is that the
- 19 statement that was given by the defendant?
- 20 A Yes, sir, it is.
- 21 Q And who wrote the statement, ma'am?
- 22 A Tony Tyre.
- 23 Q So he wrote this statement himself.
- 24 A Yes, sir.
- 25 Q Any corrections that was made on it, was that done by

Tracy Moss (In-camera)
Direct examination by Mr. Barnette

- 1 him?
- 2 A Yes, sir.
- 3 Q Who witnessed the statement, ma'am?
- 4 A Mike Shaw of the coroner's office.
- 5 Q And was also Investigator Forrester -- Forrest there
- 6 also?
- 7 A Yes, sir.
- 8 Q And did you notarize this statement?
- 9 A I did.
- 10 Q Did he sign it in front of you?
- 11 A He did.
- 12 Q Did he fill this information out in front of you,
- 13 ma'am?
- 14 A Yes, sir. Well, he did not write the statement in
- 15 front of us.
- 16 Q Okay. So he wrote it. But he wrote this. This is
- 17 his statement, right?
- 18 A Yes, sir.
- 19 Q And he wrote it, and he indicated that that was his
- 20 statement.
- 21 A Yes, sir.
- 22 Q You didn't promise him anything.
- 23 A No, sir.
- 24 Q Didn't threaten him in any way.
- 25 A No, sir.

Tracy Moss (In-camera)
Cross-examination by Mr. Campbell.

1 Q He gave that to you freely and voluntarily.

2 A Yes, sir.

3 Q He volunteered and gave you this information.

4 A Yes, sir.

5 MR. BARNETTE: One moment, Your Honor, please.

6 (Pause.)

7 Q Please answer any questions that Mr. Campbell or the
8 Court may have for you, ma'am.

9 MR. BARNETTE: And, Your Honor, I'd like enter for
10 purposes of this hearing that statement and waiver.

11 (Waiver of defendant marked State's Suppression
12 Exhibit No. 21; written statement of defendant marked

13 State's Suppression Exhibit No. 22.)

14 CROSS-EXAMINATION

15 BY MR. CAMPBELL

16 Q Ms. Moss, you state that Mr. Shaw and Ms. Forrest were
17 in the interview room at the same time, is that correct?

18 A Yes, sir.

19 Q Were you aware of any prior relationship that Tony had
20 with Mr. Shaw and Ms. Forrest?

21 A Say that again..

22 Q Were you aware of any type of relationship Tony may
23 have had with Mike Shaw or Robin Forrest?

24 A No, sir.

25 Q Okay. So did they inform you that they had had

Tracy Moss (In-camera)
Cross-examination by Mr. Campbell

1 interactions with Tony during his duties as a fireman or an
2 EMT?

3 A Not prior to that.

4 Q Okay. Was this interview videotaped?

5 A No, sir.

6 Q Do you have the capabilities of videotaping
7 interviews?

8 A Yes, sir.

9 Q Okay. And why was -- why were those capabilities not
10 utilized in this case?

11 A This was a preliminary interview, and when we started
12 interviewing him we had built a rapport. And we weren't
13 going to stop an interview to go get a video tape or audio
14 tape to set that up. We didn't want to interrupt anything.

15 Q So do you have the capability of setting that up
16 before the interview begins though?

17 A We do.

18 Q Okay. And yet you chose not to utilize that at this
19 point, correct?

20 A No, sir..

21 Q And I believe you stated that you weren't present when
22 Tony gave this statement. You weren't in the room when he
23 wrote the statement.

24 A When he was writing it, physically writing the
25 statement, no, I was not in the room.

Tracy Moss (In-camera)
Cross-examination by Mr. Campbell

- 1 Q Was anybody in the room at that time?
- 2 A No, sir.
- 3 Q Did -- did you tell Tony that you know he didn't
- 4 intend to do this and that just tell you what happened?
- 5 A No, sir.
- 6 Q You never made the statement that you know that he
- 7 didn't intend to hurt Minor and he should just give y'all a
- 8 statement?
- 9 A No, sir.
- 10 Q Do you know if Mike Shaw or Robin Forrest indicated
- 11 that to him?
- 12 A No, sir.
- 13 Q You don't know or they did not do that?
- 14 A When I was in there with them we were all in there
- 15 together. I never heard that.
- 16 MR. CAMPBELL: Beg the Court's indulgence.
- 17 (Pause.)
- 18 Q At any point did you leave the room and Mike and Robin
- 19 remain?
- 20 A Yes, sir.
- 21 Q Okay. Is it possible during that portion of the
- 22 interview that they -- they promised or told Tony that they
- 23 didn't know that he committed -- that he did not intend to
- 24 hurt Minor
- 25 A Well, I wasn't in there, so it's possible.

Tracy Moss (In-camera)
Redirect examination by Mr. Barnette
Recross-examination by Mr. Campbell

1 MR. CAMPBELL: No further questions for this witness,
2 Your Honor.

3 MR. BARNETTE: Just one question.

4 REDIRECT EXAMINATION

5 BY MR. BARNETTE

6 Q Wasn't this statement given before you left the room
7 with them, the written statement?

8 A We had left when he was writing the statement, and
9 then we came back in there.

10 Q But when you left and left Investigator Forrest and
11 Investigator Shaw there, he'd already written the
12 statement, hadn't he?

13 A This statement was already written then, yes, sir.

14 RECROSS-EXAMINATION

15 BY MR. CAMPBELL

16 Q Investigator Moss, Tony came back a couple of times,
17 is that not correct, during, I believe, this interview?
18 Did he not -- you asked him some questions, and then he
19 come back, you said, after giving more thought and gave you
20 additional information?

21 A He did.

22 Q Okay. Do you know the time period between when that
23 was, how long of a time period?

24 A Not off the top of my head, no.

25 Q Was it 15 minutes, 30 minutes, an hour, can you

Tracy Moss (In-camera)
Redirect examination by Mr. Barnette

1 guesstimate for me?

2 A He came in at 2:00 o'clock. I know he finished
3 writing his written statement at 3:45.

4 Q Okay. So he came in at 2:00 and finally give a
5 written statement at 3:45.

6 A Yes, sir.

7 MR. CAMPBELL: No further questions for this witness,
8 Your Honor.

9 MR. BARNETTE: Just one question, Your Honor, I have
10 to ask.

11 REDIRECT EXAMINATION

12 BY MR. BARNETTE

13 Q Because later on did he give an oral statement also?

14 A Yes, sir, he did.

15 Q And what did he tell y'all after the written
16 statement?

17 A He had advised us that he -- he did not intend to --
18 can I look at my notes to look at it --

19 Q You can.

20 A -- before I say something that's not exact how I have
21 it?

22 Q And this is not in the written statement, is it?

23 A No, sir. It's separate.

24 MR. BARNETTE: Your Honor, may I approach the bench
25 and hand this up to you?

Tracy Moss (In-camera)
Redirect examination by Mr. Barnette

- 1 THE COURT: Yes.
- 2 A He had -- he had advised me that -- he said, "I must
3 have shaken her too hard, and I didn't mean to." And he
4 also talked about how he must have waited too long to call
5 9-1-1.
- 6 Q Did he also talk to you about what he was facing?
- 7 A Yes, sir.
- 8 Q And what did you tell him, ma'am?
- 9 A I told him at that point we didn't know.
- 10 Q So he made those statements after the fact.
- 11 A Yes, sir.
- 12 Q Okay. And-but he had been Mirandized?
- 13 A Yes, sir.
- 14 Q And, as a matter of fact, when you said -- did he come
15 to the sheriff's department himself?
- 16 A He did.
- 17 Q Did you go get him?
- 18 A No, sir.
- 19 Q Did you force him to come to the sheriff's office?
- 20 A No, sir.
- 21 Q Was he in custody at that point?
- 22 A No, sir.
- 23 Q Was he free to go at that point?
- 24 A Yes, sir.
- 25 MR. BARNETTE: Hold on one second, Your Honor.

Tracy Moss (In-camera)
Recross-examination by Mr. Campbell

1 (Pause.)

2 Q And prior to giving the written statement did he give
3 you this information orally also that's contained in the
4 written statement?

5 A Yes, sir.

6 Q And he had been Mirandized before that also.

7 A Yes, sir.

8 MR. BARNETTE: Thank you, Your Honor.

9 THE COURT: Let me be sure I understand.
10 You provided him with Miranda warnings twice.

11 THE WITNESS: Just one time at the very beginning of
12 the interview.

13 THE COURT: Okay.

14 MR. CAMPBELL: I have additional questions based on
15 your questions, Your Honor, and Mr. Barnette's.

16 RECROSS-EXAMINATION

17 BY MR. CAMPBELL

18 Q So you Mirandized Tony at approximately 2:00 p.m., is
19 that correct?

20 A Yes, sir.

21 Q And you asked him, I guess, several oral questions,
22 and he answered orally?

23 A Yes, sir.

24 Q And then approximately 3:45 he gave you a written
25 statement, is that correct?

Tracy Moss (In-camera)
Recross-examination by Mr. Campbell

1 A That's when he completed the written statement, yes,
2 sir.

3 Q And it was notarized. And are you saying -- when did
4 you leave when he gave the written statement, right before,
5 or how long before?

6 A Prior to him writing the statement all three of us
7 left the room. And then once he completed the statement we
8 came back in there.

9 Q And afterwards did you ask him additional questions?

10 A We did.

11 Q And you did not Mirandize him again after you left the
12 room or anything like that.

13 A No, sir.

14 Q Okay. How long of a period of time were you out of
15 the room?

16 A Maybe -- when he was writing his written statement?
17 Is that the time you're asking me?

18 Q How long of a period of time were you out of the room
19 from the time you left until the time you came back?

20 A Well, during the time that he was writing his written
21 statement it was probably about 30 minutes.

22 Q And you're stating you did not re-Mirandize him after
23 you questioned him again.

24 A No, sir.

25 Q Okay. Now, did Tony ask you what he was looking at,

Tracy Moss (In-camera)
Recross-examination by Mr. Campbell

- 1 what he was facing? Is that correct?
- 2 A He did.
- 3 Q And I believe you told him you had no idea.
- 4 A At that point, no.
- 5 Q Well, he'd already given you a statement, hadn't he?
- 6 A He did.
- 7 Q Okay. Well, at what time was he placed under arrest
- 8 for homicide by child abuse?
- 9 A I'd have to look at the booking sheet for the exact
- 10 time.
- 11 Q Did he leave the -- did he leave the office? Was he
- 12 placed under arrest immediately?
- 13 A He was placed under arrest.
- 14 Q So you did know actually what he was facing.
- 15 A After the fact he was placed under arrest. It was
- 16 like 5:00 something. I don't know the exact time.
- 17 Q So did you mislead Mr. Tyre when you told him you
- 18 didn't know what he was facing?
- 19 A No, sir.
- 20 MR. CAMPBELL: No further questions, Your Honor.
- 21 MR. BARNETTE: No further questions of this witness,
- 22 Your Honor.
- 23 THE COURT: You may step down.
- 24 MR. BARNETTE: Your Honor, that would be the state's
- 25 showing at this point in this case about this motion.

Mike Shaw (In-camera)
Direct examination by Mr. Campbell

1 THE COURT: Mr. Campbell.

2 MR. CAMPBELL: Your Honor, we would call Mike Shaw.

3 MIKE SHAW, having been first
4 duly sworn, testified as follows:

5 DIRECT EXAMINATION BY MR. CAMPBELL

6 Q Mr. Shaw, you're employed by the coroner's office, is
7 that correct?

8 A Yes, sir.

9 Q And you're an investigator?

10 A That's correct.

11 Q Okay. And as part of your duties you were present on
12 July the 9th of 2009 for an interview of Tony Tyre.

13 A That's correct.

14 Q Who else was in the interview room at that time?

15 A Myself, Detective Moss and Chief Investigator Forrest.

16 Q Okay. And prior to this interview did you have any --
17 any type of -- I wouldn't say close relationship -- but did
18 you know Tony Tyre prior to this incident?

19 A Yes, sir. I was familiar with him.

20 Q And what was -- how did that familiarity occur?

21 A He and I went to the emergency services academy
22 together -- and for OSHA firefighter.

23 Q Okay. And had you been on any calls with Tony?

24 A Yes, sir.

25 Q So you did have a relationship with him, you say.

Mike Shaw (In-camera)
Direct examination by Mr. Campbell

- 1 A Working relationship, yes, sir.
- 2 Q Working relationship. At any point during this
3 interview did Ms. Moss leave the interview room and you and
4 Robin behind?
- 5 A Yes, sir.
- 6 Q And I believe Ms. Moss indicated that this interview
7 was not videotaped. Do you have any knowledge of whether
8 or not this interview was videotaped?
- 9 A No, sir. It was just a preliminary interview.
- 10 Q Okay. And I believe you actually witnessed the
11 notarized -- the Miranda forms.
- 12 A Correct.
- 13 Q Okay. At any point during this interview did you tell
14 Tony that you know he didn't intend to commit this and you
15 just need to give a statement?
- 16 A No, sir.
- 17 Q At any point did you rely upon your working
18 relationship on Tony to coax this statement out of him?
- 19 A No, sir.
- 20 Q And you didn't -- you didn't ask these questions or
21 tell Tony that you know he didn't do it when Ms. Moss left
22 the room.
- 23 A No, sir.
- 24 Q You actually recognized Tony at the hospital on
25 July 7th of 2009, correct?

Mike Shaw (In-camera)
Cross-examination by Mr. Barnette

1 A Yes, sir.

2 Q And at that point did you interview Tony during -- on
3 July the 7th?

4 A No, sir.

5 Q You didn't ask him any questions or anything about
6 what had happened or anything?

7 A No, sir. I spoke primarily with Minor mother.

8 MR. CAMPBELL: No further questions, Your Honor.

9 MR. BARNETTE: Just one.

10 CROSS-EXAMINATION

11 BY MR. BARNETTE

12 Q Did he freely and voluntarily give this statement to
13 y'all?

14 A He did.

15 Q Okay. And did he make the oral statement freely and
16 voluntarily to y'all too?

17 A Yes, sir.

18 MR. BARNETTE: That's all the questions I have.

19 THE COURT: Step down.

20 MR. CAMPBELL: Your Honor, I call Robin Forrest.

21

22

23

24

25

Robin Forrest (In-camera)
Direct examination by Mr. Campbell

1 behind?

2 A Yes, sir.

3 Q Okay. And when this occurred did you tell Tony that
4 you know he didn't intend to cause any harm to Minor and he
5 should just tell y'all what happened?

6 A No, sir.

7 Q And how long did this interview take place?

8 A I don't know the exact time.

9 Q Well, Tony arrived sometime approximately 2:00 p.m. on
10 the day of the 9th. Would you agree with that?

11 A Yes, sir.

12 Q Okay. And I believe he gave a written statement
13 sometime around 3:45.

14 At what point did you leave the interview room with
15 Tony?

16 A When did I leave with him? I didn't leave with him.

17 Q When did you leave the interview room that Tony was
18 in?

19 A When all three of us left.

20 Q And can you give me an approximate time that was?

21 A No, sir, I cannot.

22 Q Okay. Well, he signed his voluntary statement
23 sometime around 3:45.

24 Can you estimate how long previously to giving that
25 voluntary statement in written format you had left?

David Anthony Tyre (In-camera)
Direct examination by Mr. Campbell

- 1 A Approximately 30 minutes before that.
- 2 Q Okay. And I believe you reentered the room with
- 3 Ms. Moss and Mr. Shaw afterwards.
- 4 A That's correct.
- 5 Q And at any point was Tony re-Mirandized?
- 6 A No, sir.
- 7 MR. CAMPBELL: No further questions, Your Honor.
- 8 MR. BARNETTE: No questions of this witness, Your
- 9 Honor.
- 10 THE COURT: Step down.
- 11 MR. CAMPBELL: Call Tony Tyre, Your Honor.
- 12 DAVID ANTHONY TYRE, having
- 13 been first duly sworn, testified as follows;
- 14 DIRECT EXAMINATION BY MR. CAMPBELL
- 15 Q Tony, you were interviewed about the incident we are
- 16 here for today sometime on or about July 9th of 2009,
- 17 correct?
- 18 A Yes, sir.
- 19 Q And did you attend that interview voluntarily?
- 20 A Yes, sir.
- 21 Q Who called you to tell you to come down to the
- 22 courthouse?
- 23 A Detective Moss did.
- 24 Q To the office.
- 25 A Detective Moss.

David Anthony Tyre (In-camera)
Direct examination by Mr. Campbell

1 Q Detective Moss. Now, previous to that had you had any
2 interaction with Mike Shaw or Robin Forrest?

3 A Yes, sir, I had.

4 Q When was that?

5 A With Investigator Shaw -- I had gone through the OSHA
6 firefighter classes he has mentioned. I seen him on
7 several calls, and including a house fire.

8 Investigator Forrest -- I had seen her one time I
9 clearly remember in May at the scene of a -- of a
10 unattended death. And I assisted in removing the -- the
11 body from the truck.

12 I believe Investigator Forrest was actually right
13 within proximity to me when we were doing that.

14 Q Okay. Now, on July the 7th of 2009 did you have the
15 chance to interact with Investigator Shaw or Investigator
16 Forrest?

17 A Yes, sir, I did.

18 Q Where did that take place?

19 A At the hospital.

20 Q Did they ask you any questions or talk to you at that
21 time?

22 A When they walked in the room they initially were
23 talking to Minor mother. And I believe Investigator Shaw
24 looked up and recognized me, and he acknowledged that he
25 knew me, and just brief conversation. And I believe

David Anthony Tyre (In-camera)
Direct examination by Mr. Campbell

- 1 Investigator Forrest also recognized me at that point and
2 referenced the previously mentioned call to me.
- 3 Q Okay. Now, did they ask you any questions about what
4 had happened to Minor on July the 7th?
- 5 A No, sir.
- 6 Q Okay. Now, you got a call from Ms. Moss on July the
7 9th and she asked you to come down?
- 8 A I believe it was actually July 8th.
- 9 Q Okay. And you came down the following day?
- 10 A Yes, sir.
- 11 Q And did you have an attorney present during that
12 interview?
- 13 A No, sir, I did not.
- 14 Q And I believe they gave you your preinterrogation
15 Miranda waiver form and you initialed and signed all of
16 that.
- 17 A Yes, sir.
- 18 Q At that point was Mike Shaw and Robin Forrest in the
19 room with Ms. Moss?
- 20 A Yes, sir.
- 21 Q Who asked, initially who asked, all of the questions
22 of you in the interview room?
- 23 A Detective Moss did.
- 24 Q Detective Moss. At any point did Mike Shaw or Robin
25 Forrest indicate to you that they knew you did not do this

David Anthony Tyre (In-camera)
Direct examination by Mr. Campbell

1 and you just needed to tell them what happened?

2 A They -- after Detective Moss had left after they had
3 been told what the -- the cause of death was -- I believe
4 it was after I had given my written statement -- they
5 mentioned the fact that they -- you know, if I had done
6 something they knew -- they didn't think any worse of me
7 for it, they knew it wasn't intentional based on, you know,
8 my work history, the line of work that I was in.

9 They repeated that again, I believe, saying, you know,
10 if -- you know, we're not going to think any worse of you.
11 You know, if it was an accident, then it was an accident,
12 or I can't remember the exact wording, but it was along
13 those lines.

14 Q And after that did you give additional statements to
15 them?

16 A After I thought a little bit after I'd been told the
17 cause of death, and after I thought a little bit, then I --
18 then I made a statement that I -- I must have -- I must
19 have shaken Minor too hard and I didn't know it. And I -- I
20 believe I said, you know, if you'll get the detective in
21 here I'll tell her. I believe Investigator Shaw got up and
22 brought Detective Moss back in.

23 Q But was the I-must-have-shaken-her-too-hard, was that
24 in response to anything or --

25 A No, sir. I -- after being told the cause of death and

David Anthony Tyre (In-camera)
Direct examination by Mr. Campbell

1 looking at every -- reliving that day -- I felt that --
2 that must have been it.

3 Q And when you say you must have shaken her too hard,
4 can you describe what you meant when you say that?

5 A When I -- when I was holding her by her legs,
6 swinging, playing with her, I -- I felt maybe I had maybe
7 had swung her too hard or -- or something along that line,
8 that I had shaken her in that -- that manner.

9 Q So when you say I must shaken her too hard, it was not
10 in a I-abused-this-child-physically shaking her like a
11 doll.

12 A No, sir.

13 Q Did you feel coerced to give a statement because of
14 your relationship with Mr. Shaw and Ms. Forrest?

15 A Not -- not coerced, no, sir, not like I felt like I
16 had to do it. But given -- given what I -- I -- I was
17 being told that what the cause of death was and the fact
18 that it could have been an accident I -- I said what I
19 said.

20 Q And they were telling you it could have been an
21 accident?

22 A It seems to me like something along that terminology
23 or phrasing was, yes, sir.

24 Q Okay. And who used that phrasing?

25 A Both of them.

David Anthony Tyre (In-camera)
Direct examination by Mr. Campbell

1 Q When you say both of them do you mean Mike Shaw and
2 Robin Forrest?

3 A Yes, sir.

4 Q At any point did you ask Ms. Moss what you were
5 facing?

6 A Yes, sir.

7 Q And why did you make that inquiry?

8 A I -- I don't -- to be honest with you I don't know. I
9 just with my responsibilities at home with my family and
10 what not I was just concerned for them and just -- it was
11 just -- it was something that came into mind. My -- I
12 can't really explain my thinking at that time there were so
13 many thoughts racing through my head at that time.

14 Q You knew -- at that point you thought you were the
15 main suspect though.

16 A Yes, sir.

17 Q And you knew they were looking at you.

18 A Yes, sir.

19 Q And when you asked Ms. Moss that question how did she
20 respond?

21 A At one -- I believe she said I'm not exactly sure,
22 or-but she said we're looking at one of three charges. And
23 she -- she listed three charges off that I was facing.

24 Q And what were those charges?

25 A I believe one was manslaughter. The second one was

David Anthony Tyre (In-camera)
Cross-examination by Mr. Barnette

1 the one that I'm currently charged with. And the third one
2 was, I believe, murder or homicide.

3 Q Okay. And you were eventually charged with homicide
4 by child abuse?

5 A Yes, sir.

6 MR. CAMPBELL: No further questions, Your Honor.

7 MR. BARNETTE: May I approach the Court -- approach
8 the bench for a second, Your Honor, to get the statement?

9 CROSS-EXAMINATION

10 BY MR. BARNETTE

11 Q Mr. Tyre, you voluntarily came down to the police
12 station, is that correct?

13 A That's correct.

14 Q And you weren't forced to come down there. She just
15 asked you to come down.

16 A That's correct.

17 Q And when you got there and everything did she give you
18 your Miranda rights to you?

19 A Yes, sir, she did.

20 Q Let me show you State's Exhibit No. 21. Was those the
21 rights that she gave to you?

22 A Yes, sir, those, that's it.

23 Q And did you sign that you understood these rights?

24 A Yes, sir, I did.

25 Q Did you sign that you understood this about Minor

David Anthony Tyre (In-camera)
Cross-examination by Mr. Barnette

1 and about you was -- received up to -- education up
2 to 12 years, 12th grade?

3 A Yes, sir, I did.

4 Q And afterwards did you write a written statement?

5 A I did.

6 Q Let me show you State's Exhibit 22. And is that your
7 handwriting, sir?

8 A Yes, sir, it is.

9 Q And you wrote that whole statement?

10 A Yes, sir.

11 Q And you made any corrections or anything in it.

12 A I made the corrections, yes, sir.

13 Q And you voluntarily gave this statement to Ms. Moss.

14 A That's correct.

15 Q And they didn't threaten you in any way.

16 A No, sir. They did not.

17 Q They didn't promise you anything.

18 A No, sir. They did not.

19 Q And you understood all of your rights before you gave
20 this statement.

21 A That's correct.

22 Q And when you talked to them about what could occur,
23 what could happen to you, they didn't force you to give
24 that information or anything like that, did they?

25 A No, sir.

David Anthony Tyre (In-camera)
Cross-examination by Mr. Barnette

- 1 Q You voluntarily gave it to them.
- 2 A Yes, sir.
- 3 Q And you even admitted. I think you added on page two
- 4 of your report that you admitted that you broke her arm on
- 5 June the 22nd.
- 6 A Can I?
- 7 Q Yes, sir, you can.
- 8 A Yes, sir. That's -- that's correct.
- 9 Q So you admitted breaking her arm then.
- 10 A Yes, sir.
- 11 Q Even though you had told people that she had fell out
- 12 of bed.
- 13 A Yes, sir.
- 14 Q That wasn't true.
- 15 A No, sir. It was not.
- 16 Q And during that time everything you told her was the
- 17 truth -- Investigator Moss, Investigator Shaw?
- 18 A Yes, sir.
- 19 Q So everything you told them was the truth.
- 20 A Yes, sir.
- 21 Q About holding her up by her feet.
- 22 A Yes, sir.
- 23 Q About swinging her.
- 24 A Yes, sir.
- 25 Q And you knew she was in a wheelchair obviously.

David Anthony Tyre (In-camera)
Cross-examination by Mr. Barnette

1 A Yes, sir.

2 Q And you knew that she was mentally and physically in a
3 very bad condition.

4 A She was handicapped, yes, but she wasn't as you say in
5 a very bad condition in my -- my line of thinking.

6 Q In your line of thinking?

7 A Yes, sir. From what I observed in caring for her,
8 from what I had been told, she was not fragile.

9 Q She was physically and mentally disabled, is that
10 right?

11 A Yes, sir.

12 Q She couldn't talk.

13 A Correct.

14 Q She couldn't take care of herself.

15 A Correct.

16 Q But you still did this to her.

17 A I didn't do it with any malice or intent to her.

18 MR. BARNETTE: Thank you, Your Honor. That's all the
19 questions for now for the purposes of this hearing.

20 THE COURT: Mr. Campbell, have you got anything else
21 you want to ask him?

22 MR. CAMPBELL: Nothing further, Your Honor.

23 THE COURT: Step down.

24 MR. CAMPBELL: Nothing further, Your Honor.

25 THE COURT: Any reply?

1 MR. BARNETTE: No, sir.

2 THE COURT: Any statements?

3 MR. CAMPBELL: Your Honor, I would just add that it is
4 our belief that the law enforcement used a prior working
5 relationship with Mr. Tyre to influence him into giving
6 this statement and influences the voluntariness of that
7 statement, Your Honor.

8 THE COURT: Well, where -- what testimony did he
9 provide that says it's not voluntarily made?

10 MR. CAMPBELL: Your Honor, he states that he did give
11 this statement voluntarily.

12 It is our argument and belief that law enforcement's
13 use of the working relationships of Mike Shaw and Robin
14 Forrest had influenced his thinking in regards to that.

15 Just because he gave a statement voluntarily and he
16 believes it to be voluntarily given doesn't mean, in fact,
17 it was actually voluntarily given. I think you can coerce
18 and influence an individual to give a voluntary statement
19 to the fact where they're not -- they do not realize that
20 they are being coerced at the time.

21 THE COURT: I think I heard what you said. In what
22 way was his will overborne?

23 MR. CAMPBELL: Your Honor, I believe that they did use
24 Mike Shaw and Robin Forrest, their prior working
25 relationship, the fact they indicated to him according to

1 his testimony that we understand that this was an accident,
2 this could be an accident, that based on our history that
3 you may not have intended to do this. And he further gave
4 statements based on those comments, Your Honor.

5 THE COURT: Voluntarily?

6 MR. CAMPBELL: I would argue that they were not
7 voluntarily given. My client says otherwise.

8 THE COURT: Okay. Anything else?

9 MR. CAMPBELL: Nothing further, Your Honor.

10 THE COURT: Mr. Barnette.

11 MR. BARNETTE: Your Honor, there is no evidence. I
12 mean, it's all voluntary. Even he admits he gave a
13 voluntary statement.

14 He came down to the police station. He wasn't brought
15 down by the police. He voluntarily came down to them. She
16 gave him Miranda out of an abundance of caution. He
17 understood that.

18 I -- I don't see where the defense is going with this
19 argument, and I ask you. Obviously, the statement should
20 come in.

21 THE COURT: All right. Well, in considering the
22 voluntariness of the statement the standard to apply is
23 whether or not voluntariness has been established by the
24 greater weight or preponderance of the evidence. The
25 burden is on the state to establish that fact.

1 I find in this case that the evidence establishes
2 beyond a reasonable doubt that the statement was
3 voluntarily made.

4 He was advised of his Miranda warnings even though he
5 didn't have to be. He was not in custody, but he was
6 advised nevertheless. He understood them. He waived them.
7 He talked to the officers in his own words. He discussed
8 it with them freely and voluntarily. So the statement is
9 admissible.

10 Anything else?

11 MR. BARNETTE: Just one matter.

12 We'd like to approach the bench, Your Honor, with

13 regards to jury selection. That would be the only thing.

14 THE COURT: Okay.

15 (Bench conference held off the record.)

16 THE COURT: All right. Any other matters we need to
17 address?

18 MR. GOWDY: No, sir, Your Honor.

19 MR. BRANNON: No, Your Honor.

20 THE COURT: All right. Court is in recess until 2:30.

21 (Whereupon, a recess was taken.)

22 (Photographs marked State's Exhibits Nos. 1, 2 and 3
23 for Identification.)

24 THE COURT: All right. Any matters that need to be
25 addressed before the jury panel is brought around?

Jury qualification

1 MR. GOWDY: Not from the state, Your Honor.

2 MR. CAMPBELL: None from the defense, Your Honor.

3 THE COURT: All right. Bring them around, please,
4 sir.

5 (The following takes place in the presence of the jury
6 venire.)

7 THE COURT: Good afternoon, ladies and gentlemen of
8 the jury panel.

9 We are ready to begin with jury selection in the first
10 case that's going to require some of your participation.
11 And the title of the case is the State vs. David Anthony
12 Tyre.

13 Mr. Tyre has been accused by the prosecution -- he is
14 accused by the prosecution with having committed two
15 separate and distinct offenses.

16 One indictment charges the defendant with the
17 infliction of great bodily injury upon a child. And they
18 allege by way of that indictment that the defendant, David
19 Tyre, did here in Spartanburg County on or about June the
20 22nd of 2009 inflict or cause to be inflicted great bodily
21 injury upon victim , a child under the age of 11
22 years, while committing child abuse or neglect.

23 He's also charged in a separate indictment with having
24 committed the crime of homicide by child abuse or neglect.
25 And they allege in that indictment that David Tyre did here

Jury qualification

1 in Spartanburg County on or about July the 5th of 2009
2 cause the death of Minor a child under the age of
3 11 years, while committing child abuse or neglect, and that
4 the death of Minor occurred under circumstances
5 manifesting an extreme indifference to human life.

6 Now, as to those allegations and as to each of the
7 charges contained in each of those indictments the
8 defendant has entered a plea of not guilty. And as I have
9 previously told you, a plea of not guilty places upon the
10 state the burden of proving the allegations that they have
11 set forth in each of those indictments, the burden of
12 proving each of the essential elements of the crimes

13 alleged in each of those indictments; and therefore the
14 burden is upon the state to establish the defendant's guilt
15 to the satisfaction of 12 jurors beyond a reasonable doubt
16 before a verdict of guilty could be returned as to either
17 of the separate indictments.

18 Now, we're going to begin with jury selection.
19 Thirteen jurors will be selected. Before we select those
20 13 I'm going to be asking you some questions.

21 The purpose of the questions is to determine whether
22 or not there is a reason why any one of you jurors should
23 not be selected to participate in the trial of this
24 particular case. In other words, do you have any reason
25 why you could not be fair to both sides in the case if you

Jury qualification

1 were selected to serve in it.

2 So as these questions are asked should they apply to
3 you and you need to respond, I'll ask that you please
4 stand. And I'll address those matters with you
5 individually.

6 The first thing I'll do is introduce some people to
7 you. Those people will include the lawyers involved in the
8 trial of the case; they will include the defendant, also
9 perhaps some members of Minor family so
10 that you'll know who Minor was; and I'll
11 also recite a list of all of the potential witnesses to be
12 called during the trial of the case.

13 Obviously, the purpose of identifying all of these
14 people for your benefit is to find out if any juror knows
15 any of these people. In other words, do you have any
16 connection with them -- family connection, blood or
17 marriage; personal connection; social connection;
18 professional connection. Or do you just happen to know
19 them? Have you met them somewhere? Do you know them in
20 any fashion?

21 So as these people are introduced should you have any
22 connection or you know the person introduced I'm going to
23 ask that you please stand, and then I'll address the
24 connection that you have and whether or not it would affect
25 your judgment in the case.

Jury qualification

1 Now, first of all, as I told you, the person who is
2 accused of having committed the infliction of great bodily
3 injury upon a child and homicide by child abuse is David
4 Anthony Tyre.

5 Mr. Tyre, if you will, stand and face the jury panel
6 please, sir.

7 (Whereupon, the defendant and defense counsel stood.)

8 THE COURT: Mr. Tyre is being represented by Doug
9 Brannon and Shawn Campbell. They are his lawyers. They'll
10 be assisting him in the trial of the case.

11 The child who is alleged to have been the victim of
12 each of these events is victim

13 Is -- is there a family member present?

14 MR. GOWDY: Yes, sir, Your Honor, the mother.

15 THE COURT: All right. Well, let's -- she'll have to
16 come up. I can't have the witnesses sitting with the jury.

17 MR. GOWDY: These are witnesses, Your Honor, but
18 they're not familial witnesses. I can have them stand. I
19 can have them go outside.

20 THE COURT: Well, let's just have them -- well, they
21 can -- how many do we have?

22 MR. GOWDY: The back row is family. There are three
23 potential witnesses among that group and there are three
24 potential witnesses right here, Your Honor.

25 THE COURT: You mean with you here.

Jury qualification

1 MR. GOWDY: Yes, sir.

2 THE COURT: All right. Let me ask those who are
3 family members or are potential witnesses if you'll come
4 out into the aisle there.

5 All right. Now, let me -- if you will, please
6 identify any witness. Identify yourself if you are a
7 relative of Minor , and what that connection
8 is.

9 LARRY MONDAY: My name is Larry Monday. I'm her
10 grandfather.

11 THE COURT: All right. Larry Monday is the
12 grandfather.

13 All right. Who else?

14 FRIEDA MONDAY: I'm Frieda Monday. I'm the
15 grandmother.

16 THE COURT: Frieda Monday. That's the grandmother.
17 All right.

18 KRESZENA GIST: Kreszena Gist. I'm the mother.

19 THE COURT: Kreszena Gist is the mother.

20 Okay. Is there anybody else?

21 All right. If you three will please just step outside
22 for the moment, you can come back in once we begin with the
23 jury selection process, or if you want to sit them up here
24 somebody will have to move but --

25 MR. GOWDY: Your Honor, a moment of the Court's time.

Jury qualification

1 (Pause.)

2 THE COURT: All right. And presenting the case on
3 behalf of the state are Trey Gowdy, the Solicitor for the
4 7th Judicial Circuit, Barry Barnette who is the Principal
5 Deputy Solicitor for the 7th Judicial Circuit, and Cindy
6 Crick who is an Assistant Circuit Solicitor for the
7 7th Judicial Circuit.

8 Other persons who are potential witnesses -- now, all
9 of these people may not be called, but they are potential
10 witnesses, and so they could be called. And I'll identify
11 them for you.

12 Again, the purpose is to find out if you know any of
13 them or have any connection with them or you've met them in
14 any fashion.

15 David Wren who is a pathologist with the Spartanburg
16 Regional Medical Center; Richard Byrd, physician,
17 Spartanburg Regional Medical Center; Hannah Sahhar,
18 physician, Spartanburg Regional Medical Center; Phillip
19 Esce, Spartanburg Neurosurgical Institute; Michael Bell,
20 physician, Spartanburg Regional Medical Center; Kevin
21 Gibbs, a resident of Boiling Springs; Nick Ray, a resident
22 of Boiling Springs; Sharon Niedermeyer, a resident of
23 Boiling Springs; Diane Thornton, a resident of Clinton,
24 South Carolina; Elfrieda Monday who you've just been
25 introduced to you; Robin Forrest with the Spartanburg

Jury qualification

1 County Coroner's Office.

2 If you're present go ahead and stand so the jury can
3 see you.

4 Larry Monday who has previously been introduced to
5 you; Tracy Moss with the Spartanburg County Sheriff's
6 Department; Mike Shaw with the Spartanburg County Coroner's
7 Office; Suzy Shealy, a registered nurse with the
8 Spartanburg Regional Medical Center; William Joyce,
9 physician, Upstate Radiology; Deputy Tillinghast with the
10 Spartanburg County Sheriff's Department; Kimberly Norris, a
11 registered nurse with the Spartanburg Regional Medical
12 Center; Billy Haguewood, physician, Palmetto Eye and Laser
13 Center; Neal Parnes, physician, Spartanburg Radiology;
14 Jenny Johnson, a resident of Spartanburg; Jeff Holt, a
15 resident of Boiling Springs; Brian Helms with Spartanburg
16 Regional Medical Center; Jamie Pruitt, a resident of
17 Spartanburg; and Kreszena Gist who you've been previously
18 introduced to.

19 Are there any other potential witnesses on behalf of
20 the state?

21 MR. GOWDY: No, sir, Your Honor.

22 THE COURT: The defendant?

23 MR. CAMPBELL: None, Your Honor.

24 THE COURT: All right. Now, that's the list of all of
25 the witnesses. And I've introduced the defendant to you,

Jury qualification

1 and the person and the family -- the person who is alleged
2 to be the victim and the family members, and all of the
3 lawyers involved in the trial of the case.

4 So I need to know if any juror knows any of these
5 people in any fashion whatsoever -- personal, professional,
6 familial or just met them somewhere. If so, please stand.

7 All right. I'll start to my right and I'll work to my
8 left if you'll give me your name and juror number, please.
9 And then tell me who it is that you know.

10 JUROR NO. 39: Chris Foster, No. 39. And Detective
11 Moss. I know her.

12 THE COURT: I'm sorry. You said you were Juror No.

13 39.

14 JUROR NO. 39: Thirty-nine.

15 THE COURT: And the person you know is who?

16 JUROR NO. 39: Detective Moss.

17 THE COURT: And how do you know Detective Moss?

18 JUROR NO. 39: A friend of mine -- friends.

19 THE COURT: Okay. Would it have any bearing upon your
20 decision in the case?

21 JUROR NO. 39: No, sir.

22 THE COURT: All right. Thank you. Be seated.

23 Yes, sir.

24 JUROR NO. 65: I work with Mr. Monday and his wife --
25 drive bus. I don't hardly see him much because he drives a

Jury qualification

1 different area than I do, but he's been at the bus
2 department I guess two or three years. I've been there 17.
3 I wouldn't say we're friends or anything, but, you know, I
4 see them in the morning and say hello. But I did know --
5 did not know anything about this.

6 THE COURT: All right. And your name and juror number
7 is?

8 JUROR NO. 65: Sixty-five, juror number, Tom Huesman.

9 THE COURT: And is there anything about your
10 connection with Mr. Monday that would have any bearing upon
11 your decision in this case?

12 JUROR NO. 65: No, sir. I don't feel so.

13 THE COURT: Okay. Thank you. Be seated.

14 Yes, ma'am.

15 JUROR NO. 27: Susan Coffey, Juror No. 27. I know
16 Tracy Moss.

17 THE COURT: And how do you know Detective Moss?

18 JUROR NO. 27: She is a friend.

19 THE COURT: And would it have any bearing upon your
20 decision in the case?

21 JUROR NO. 27: No, sir.

22 THE COURT: Okay. Thank you. Be seated.

23 Yes, sir.

24 JUROR NO. 151: James H. Walsh, Juror 151. And I know
25 the attorneys on both sides just through the Bar.

Jury qualification

1 THE COURT: Would it have any bearing upon your
2 decision in the case?

3 JUROR NO. 151: No, sir, not at all.

4 THE COURT: Thank you. Be seated.

5 Anyone else know anybody that's been introduced?

6 Yes, ma'am.

7 JUROR NO. 49: I know Mr. Brannon.

8 THE COURT: All right. Give me your name and number,
9 please.

10 JUROR NO. 49: Christy Gillie. I'm Juror No. 49.

11 THE COURT: And how do know Mr. Brannon?

12 JUROR NO. 49: I am a friend of his. I know his --

13 THE COURT: You have a case that's presently pending
14 involving Mr. Brannon?

15 JUROR NO. 49: No.

16 MR. BRANNON: May we approach, Your Honor?

17 THE COURT: Well, I mean, he's presently representing
18 you in a matter today.

19 JUROR NO. 49: Could I come up?

20 THE COURT: Well, sure, if you need to.

21 (Bench conference held off the record with Juror No.
22 49 and counsel.)

23 THE COURT: All right. Now, ladies and gentlemen, as
24 I told you -- or at least I provided some information by
25 reading the allegations in the indictments -- these are

Jury qualification

1 events that the state alleges occurred back on June the
2 22nd of 2009. And on that date they allege the defendant
3 inflicted great bodily injury to Minor

4 And a separate event on July 5th of 2009, they allege
5 that the defendant caused the death of Minor by
6 committing child abuse or neglect under circumstances
7 manifesting an extreme indifference to human life.

8 These events are alleged to have occurred on the dates
9 as I've stated, and they're alleged to have occurred at the
10 residence of the child's mother who's been introduced to
11 you -- Kreszena Gist.

12 And that residence is located at in
13 the Boiling Springs community of Spartanburg. It's a road
14 that's been Highway No. 9 and Valley Falls Road.

15 Is there any member of the jury panel that thinks you
16 might have seen, heard, read or have any information or
17 been exposed to any type of information from any source
18 that relates to the case? If so, please stand.

19 (No response.)

20 THE COURT: If you think you've received any
21 information about this case from any source, whether it be
22 television, radio, newspaper or individuals talking about
23 the case if there were -- I need to know if you've been
24 exposed to any type of information that relates to this
25 particular case. If so, please stand. All right.

Jury qualification

1 JUROR NO. 64: Just I'm from Boiling Springs.

2 THE COURT: Okay. Tell me your name and number,
3 please.

4 JUROR NO. 64: Steven Hill, 64.

5 THE COURT: All right. And your last name is what?

6 JUROR NO. 64: Hill.

7 THE COURT: Hill. Yeah. Mr. Hill, tell me what
8 source that you believe you received information from.

9 JUROR NO. 64: Source-wise just people in the area.

10 THE COURT: Just people talking.

11 JUROR NO. 64: Yeah.

12 THE COURT: All right. And is there anything about

13 what you've heard about this case that would in any way
14 interfere with or impair your ability to be fair and
15 impartial if you were called upon to serve as a juror?

16 JUROR NO. 64: No, sir.

17 THE COURT: Could you put aside anything that you've
18 heard about the case and not allow it to influence your
19 decision and base a decision solely upon the testimony and
20 other evidence received during the trial?

21 JUROR NO. 64: Yes, sir.

22 THE COURT: Okay. Thank you. Be seated.

23 Anyone else think you've been exposed to any type of
24 information that relates to the case? If so, please stand.

25 (No response.)

Jury qualification

1 THE COURT: Is there any member of the jury panel or
2 any members of your immediate family who have ever been the
3 victim of or have ever been accused of the commission of
4 any type of crime that could be described as an unlawful
5 homicide, an assault and battery or a child abuse or
6 neglect -- homicide, battery, child abuse or neglect?
7 Anyone ever been the victim of such or some member of your
8 family ever been the victim of such, or you or some member
9 of your family ever been accused of having committed those
10 types of offenses? If so, please stand.

11 All right. Tell me your name and juror number please,
12 sir.

13 JUROR NO. 25: Cody Clark.

14 THE COURT: Your number?

15 JUROR NO. 25: Twenty-five.

16 THE COURT: Twenty-five. And if you would -- if you
17 prefer to respond to the question down here, feel free to
18 do that. If you want to stay there, you feel free to do
19 that.

20 (Bench conference held off the record with Juror No.
21 25 and counsel.)

22 THE COURT: All right. Anyone else need to respond to
23 that question, you or a family member having been the
24 victim or accused of commission of those offenses I've
25 described? If so, please stand.

Jury qualification

1 (No response.)

2 THE COURT: Is there any member of the jury panel who
3 is now or who has ever been -- and I also need to know if a
4 family member of yours is now or has ever been -- employed
5 as a law enforcement officer, as a firefighter or as an
6 emergency medical technician. You or a family member now
7 employed or ever been employed as a law enforcement
8 officer, a firefighter or an emergency medical technician.

9 And when I refer to law enforcement officers I'm
10 talking about not just sheriff's deputies and city
11 policemen. I'm talking about any law enforcement officer.
12 That includes parole officers, probation officers,

13 corrections officers, county detention facility officers,
14 state law enforcement division, federal bureau of
15 investigation, military or civilian police departments.

16 Okay. All right. I've got several standing. So what
17 I'm going to do is I'm going to start to my right. I'll
18 work, start on the front row. If you'll give me your name
19 and your juror number when I address you, and then tell me
20 how the question relates to you. And I'll go row by row,
21 right to left. And then I'll do this side, and I'll skip
22 the aisle and do the other side.

23 JUROR NO. 6: Bishop -- James Bishop.

24 THE COURT: And your number?

25 JUROR NO. 6: Six.

Jury qualification

1 THE COURT: All right. How does that question relate
2 to you?

3 JUROR NO. 6: My son-in-law, Allen Freeman, detention
4 center.

5 THE COURT: Okay.

6 JUROR NO. 6: And I don't believe I could be fair in
7 this case.

8 THE COURT: Okay. We'll excuse you from serving.

9 And that's Juror No. 6. He is excused.

10 But don't leave yet. You can just have a seat.

11 Next row. Yes, ma'am.

12 JUROR NO. 31: Bessie Dawkins, No. 31. My son is a
13 police officer.

14 THE COURT: Your son is a police officer?

15 JUROR NO. 31: Yeah.

16 THE COURT: And what department?

17 JUROR NO. 31: He's chief --

18 THE COURT: Woodruff.

19 JUROR NO. 31: Yeah, Woodruff.

20 THE COURT: Woodruff city police. Okay. Thank you.
21 Be seated.

22 Yes, ma'am.

23 JUROR NO. 84: Kim Leming, Juror 84. My
24 brother-in-law worked for the Spartanburg County Detention
25 Center, but it's been a long time ago.

Jury qualification

1 THE COURT: Thank you. Be seated.

2 Yes, sir.

3 JUROR NO. 47: David Gee, No. 47. My grandfather's a
4 Cherokee County policeman.

5 THE COURT: Thank you. Be seated.

6 Yes, sir.

7 JUROR NO. 139: John Syring, Juror No. 139. My
8 grandfather was a -- is a retired sheriff's deputy from
9 Palo, Texas, and I have an aunt who is a police officer in
10 Waco, Texas.

11 THE COURT: Thank you. Be seated.

12 Yes, sir.

13 JUROR NO. 64: Steve Hill, 64. I've got three members
14 of the family work for Spartanburg Regional Medical Center.

15 THE COURT: Working for the Spartanburg Regional
16 Medical Center?

17 JUROR NO. 64: Yes, sir.

18 THE COURT: As security officers?

19 JUROR NO. 64: Yeah. And the one's a security
20 officer, and two are physicians.

21 THE COURT: Okay. Well, I'm just working on security
22 right now, law enforcement. Okay.

23 JUROR NO. 64: Yeah.

24 THE COURT: Yes, sir.

25 JUROR NO. 103: Brian Moore, No. 103. And my brother

Jury qualification

1 was a parole officer for the State of Tennessee.

2 THE COURT: Thank you. Be seated.

3 Yes, ma'am. Either one.

4 JUROR NO. 44: Karen Freeman, No. 44. I had a
5 brother-in-law that worked for Spartanburg County years
6 ago.

7 THE COURT: Thank you. Be seated.

8 Yes, ma'am.

9 JUROR NO. 131: Michelle Smith, No. 131. My
10 brother-in-law was first lieutenant with Sheriff Smith
11 about 18 years ago.

12 THE COURT: Thank you. Be seated.

13 Next row.

14 JUROR NO. 123: Juror 123, Ladislao Santiago. My
15 brother served with the San Diego police force in the K-9
16 patrol and presently serves DEA as an agent.

17 THE COURT: Thank you. Be seated.

18 Yes, sir.

19 JUROR NO. 156: Mark Winterhoff, 166.

20 THE COURT: 156?

21 JUROR NO. 156: 156. My uncle a retired police
22 officer with New Jersey and my wife is an EMT.

23 THE COURT: Thank you.

24 Next row. Yes, ma'am.

25 JUROR NO. 150: Angela Waldrop, 150. My brother works

Jury qualification

1 for the city as a traffic cop, sir. And my -- and he's
2 Police Officer Gordon. And then my other brother, David,
3 worked for the correctional facility, Spartanburg County,
4 but it was in 2002.

5 THE COURT: Are you talking about the county jail or
6 are you talking about Cross Anchor Correctional?

7 JUROR NO. 150: County jail.

8 THE COURT: Okay. Thank you. Be seated.

9 Yes, sir.

10 JUROR NO. 158: Kenneth Woodward, 158. I was in the
11 Air Force law enforcement '84 through '88.

12 THE COURT: All right. Thank you. Be seated.

13 JUROR NO. 25: My father was a cop at the Cowpens
14 police department, and my mother is an EMT.

15 THE COURT: And you're Juror 25?

16 JUROR NO. 25: Yes, sir.

17 THE COURT: Your father was and your mother is an EMT?

18 JUROR NO. 25: Yes, sir.

19 THE COURT: Okay. Thank you. Be seated.

20 Anyone else need to respond to that question?

21 (No response.)

22 THE COURT: Has any member of the jury panel ever been
23 involved in a case, a criminal case, that was being
24 prosecuted by the 7th Judicial Circuit Solicitor's Office
25 and that you were called to be a witness to testify in the

Jury qualification

1 trial of that case, whether it be as a witness for the
2 state or a witness for the defense? Anyone ever been
3 involved as a witness in the trial of a criminal case here
4 in Spartanburg County? If so, please stand.

5 (No response.)

6 THE COURT: Does any member of the jury panel think
7 because of the nature of the allegations and the nature of
8 the charge that you could not be fair and impartial?
9 Anyone believe that you could not be fair and impartial
10 based simply upon the nature of the case or what the
11 allegations are that have been made? If so, please stand.

12 All right. You're Juror No. 6. And you've already
13 been excused, so you won't need to stand any further. But
14 thank you.

15 Anyone else?

16 (No response.)

17 THE COURT: Any juror know of any reason whatsoever
18 why you think you could not be fair and impartial if you
19 were called upon to serve as a juror in this particular
20 case? If so, please stand.

21 (No response.)

22 THE COURT: Any other questions requested by the
23 state?

24 MR. GOWDY: No, sir, Your Honor.

25 THE COURT: By the defendant?

Jury qualification

1 MR. CAMPBELL: None, Your Honor.

2 THE COURT: All right. Draw us a jury please, ma'am.

3 All right. Now, the way a jury is selected in
4 criminal court is different than civil court. But in
5 criminal court your names are going to be called. You'll
6 be selected randomly by a computer. You'll be asked to
7 come forward individually however.

8 And if you're towards the center aisle, just come up
9 the center aisle and take a stand right there about two
10 steps past the desks towards me. If you're towards the
11 outside wall you can simply come around the desks where the
12 lawyers are seated. Again, take your stance there about
13 two steps past where the desks are.

14 Each side has an opportunity to have you excused from
15 service in the case or to have you seated. If either side
16 asks that you be excused from serving you simply go back --
17 and I guess they'll probably put you on the back row. So
18 just have a seat on the back row.

19 If both agree to have you seated for service in the
20 case, then you'll be sitting in the jury box to your right
21 and to my left.

22 So if you'll simply come forward as your name is
23 called you'll be informed as to whether you've been
24 selected or excused from service.

25 THE CLERK: Juror No. 60, Randolph (sic) Harper.

Jury qualification

1 What say the state?

2 MR. GOWDY: Present the juror.

3 THE CLERK: What say the defense?

4 MR. CAMPBELL: Please seat this juror.

5 THE CLERK: Juror No. 64, Steven Hill.

6 What say the state?

7 MR. GOWDY: Present the juror.

8 THE CLERK: What say the defense?

9 MR. CAMPBELL: Please excuse this juror.

10 THE CLERK: Juror No. 123, Lasado (sic) Santiago.

11 What say the state?

12 MR. GOWDY: Present the juror.

13 THE CLERK: What say the defense?

14 MR. CAMPBELL: Please excuse this juror.

15 THE CLERK: Juror No. 108, Christopher Newman.

16 THE COURT: Mr. Barnette, will you pull that cord out
17 of the way while you're down there -- computer cord?

18 MR. BARNETTE: Yes, sir.

19 THE CLERK: What say the state?

20 MR. GOWDY: Please excuse the juror from service in
21 this case.

22 THE CLERK: Juror No. 131, Michelle Smith.

23 What say the state?

24 MR. GOWDY: Present the juror.

25 THE CLERK: What say the defense?

Jury qualification

1 MR. CAMPBELL: Please seat this juror.
2 THE CLERK: Juror No. 69, Annie Jackson-Maynard.
3 What say the state?
4 MR. GOWDY: Present the juror.
5 THE CLERK: What say the defense?
6 MR. CAMPBELL: Please excuse this juror.
7 THE CLERK: Juror No. 158, Kenneth Woodward.
8 What say the state?
9 MR. GOWDY: Present the juror.
10 THE CLERK: What say the defense?
11 MR. CAMPBELL: Please seat this juror.
12 THE CLERK: Juror No. 35, Kenneth Durham.
13 What say the state?
14 MR. GOWDY: Please excuse the juror from service in
15 this case.
16 THE CLERK: Juror No. 109, Michael O'shields.
17 What say the state?
18 MR. GOWDY: Present the juror.
19 THE CLERK: What say the defense?
20 MR. CAMPBELL: Please seat this juror.
21 THE CLERK: Juror No. 65, Thomas Huesman.
22 What say the state?
23 MR. GOWDY: Present the juror.
24 THE CLERK: What say the defense?
25 MR. CAMPBELL: Please seat this juror.

Jury qualification

1 THE CLERK: Juror No. 84, Kimberly Leming.
2 What say the state?
3 MR. GOWDY: Present the juror.
4 THE CLERK: What say the defense?
5 MR. CAMPBELL: Please seat this juror.
6 THE CLERK: Juror No. 51, Mark Goodrich.
7 What say the state?
8 MR. GOWDY: Present the juror.
9 THE CLERK: What say the defense?
10 MR. CAMPBELL: Please seat this juror.
11 THE CLERK: Juror No. 25, Cody Clark.
12 What say the state?
13 MR. GOWDY: Present the juror.
14 THE CLERK: What say the defense?
15 MR. CAMPBELL: Please seat Mr. Clark.
16 THE CLERK: Juror No. 31, Bessie Dawkins.
17 What say the state?
18 MR. GOWDY: Please excuse the juror from service in
19 this case.
20 THE CLERK: Juror No. 151, James Walsh.
21 What say the state?
22 MR. GOWDY: Present the juror.
23 THE CLERK: What say the defense?
24 MR. CAMPBELL: Please seat Mr. Walsh.
25 THE CLERK: Juror No. 12, Joanne Borry.

Jury qualification

1 What say the state?

2 MR. GOWDY: Present the juror.

3 THE CLERK: What say the defense?

4 MR. CAMPBELL: Please excuse this juror.

5 THE CLERK: Juror No. 90, Dennis Lovingood.

6 What say the state?

7 MR. GOWDY: Please excuse the jury from service in

8 this case.

9 THE CLERK: Juror No. 17, Pashaun Burgess.

10 What say the state?

11 MR. GOWDY: Present the juror.

12 THE CLERK: What say the defense?

13 MR. CAMPBELL: Please seat this juror.

14 THE CLERK: Juror No. 48, Joshua Gilliam -- Juror No.

15 48, Joshua Gilliam.

16 THE COURT: I think he had car trouble or something.

17 He called. Is he supposed to be here? I mean, you don't

18 have him checked in, do you? You might possibly. I think

19 that's the one Cindy said had a problem.

20 THE CLERK: Juror No. 156, Mark Winterhoff.

21 What say the state?

22 MR. GOWDY: Present the juror.

23 THE CLERK: What say the defense?

24 MR. CAMPBELL: Please excuse this juror.

25 THE CLERK: Juror No. 160, Walter Wyatt.

Jury qualification

1 What say the state?

2 MR. GOWDY: Present the juror.

3 THE CLERK: What say the defense?

4 MR. CAMPBELL: Please seat this juror.

5 THE CLERK: Juror No. 23, Sherry Cheek.

6 What say the state?

7 MR. GOWDY: Present the juror.

8 THE CLERK: What say the defense?

9 MR. CAMPBELL: Please seat this juror.

10 THE COURT: All right. This will be for the
11 alternate.

12 THE CLERK: Juror No. 46, Virginia Gasswint.

13 What say the state?

14 MR. GOWDY: Present the juror.

15 THE CLERK: What say the defense?

16 MR. CAMPBELL: Please seat this juror.

17 THE COURT: All right. Those who have been selected,
18 I'll ask you to please go with a bailiff to a jury room,
19 and I'll bring you back in just a few minutes to begin with
20 the trial of the case.

21 (The following takes place outside the presence of the
22 jury.)

23 THE COURT: Are there any matters that need to be
24 addressed regarding jury selection by the state?

25 MR. GOWDY: Not from the state, Your Honor.

1 THE COURT: By the defense?

2 MR. CAMPBELL: Not from the defense, Your Honor.

3 (Whereupon, the remaining members of the jury venire
4 were excused.)

5 THE COURT: All right. Any matters that need to be
6 addressed before the jury is brought in?

7 MR. BRANNON: Your Honor, we moved to sequester, and
8 the state has already complied with that. So apparently it
9 was without objection.

10 THE COURT: So no witnesses are in the courtroom?

11 MR. GOWDY: Your Honor, the grandparents and the
12 mother. The defense agreed to let them stay in. And we

13 designated Detective Moss as the case agent.

14 THE COURT: Anybody left?

15 MR. GOWDY: There are a couple that are left outside,
16 Your Honor.

17 MR. BRANNON: Thank you, Your Honor. That's it.

18 THE COURT: Okay. All right. Bring the jury in and
19 ask Ms. Smith, Michelle Smith, to take the foreperson's
20 seat.

21 (The following takes place in the presence of the
22 jury.)

23 THE COURT: Ladies and gentlemen, we are ready to
24 begin with the trial of the case for which each of you have
25 been selected.

1 Ms. Smith, I'm going to ask you to serve as the
2 foreperson of the jury. And as the foreperson you'll have
3 three specific duties than none of the other jurors will
4 have.

5 No. 1, you're going to be asked to serve as the
6 spokesperson for the jury. And that just means if
7 something arises during the course of the trial that needs
8 to be brought to my attention -- you or a fellow juror has
9 some difficulty, problem or question -- if you'll let the
10 bailiff know or in some way let me know I'll address those
11 issues or answer those questions.

12 Secondly, you'll be called upon to preside over jury
13 deliberations when the time comes at the trial's
14 conclusion. That of course won't be until after all of the
15 evidence has been received and I've instructed you on the
16 law that's applicable in a case such as this one is.

17 But when the time does come for jury deliberations
18 you're going to be called upon to preside over that process
19 in the jury room simply to ensure that those deliberations
20 are carried out in some orderly fashion.

21 And, thirdly, you'll be actually writing the decisions
22 of the jury. You'll do that a verdict form that I'll
23 provide you at the trial's conclusion on which you will
24 indicate the jury's unanimous decision.

25 Now, the foreperson has those specific duties that

1 I've just indicated. That does not however mean that she
2 is any more important than any of you other jurors, because
3 the decision of a jury is the unanimous consensus opinion
4 of all 12 jurors. And so each of you will have an equal
5 say and an equal vote in what the ultimate decisions will
6 be in the case.

7 Someone simply has to be delegated those
8 responsibilities that I have just indicated, and I have
9 delegated those to Ms. Smith in appointing her as the
10 foreperson.

11 But each of you jurors are equally important so far as
12 the ultimate decisions are concerned, because as I've

13 stated, the verdicts have to be unanimous. All 12 of you
14 must be in agreement.

15 Now, Ms. Gasswint, you've been selected as an
16 alternate juror. And the function of an alternate juror is
17 to take the place of one of the original 12 jurors if
18 during the trial of this case one of these original 12
19 cannot continue to serve for some reason. And so if one is
20 called away because of an emergency or an illness or some
21 other circumstance that precludes their continuing as a
22 juror you would be called upon to take that person's place.

23 In that event you would become the 12th juror. And in
24 that event you would participate throughout the trial
25 including the jury deliberations at the trial's conclusion.

Jury sworn

1 If however when the time does come for jury
2 deliberations if the original 12 jurors are able to
3 participate your service would end, and you would not
4 participate any further, because the decision of a jury is
5 that of 12. And no more than 12 are permitted to engage in
6 that deliberation process.

7 But it is important that you pay just as careful
8 attention as we ask of all of the jurors in the case
9 because it does occur from time to time for one reason or
10 another one of these original 12 may be unable to continue.
11 And in that event you would be called upon to become the
12 12th .

13 So we do appreciate your participation as an alternate
14 juror, just as we appreciate the participation of each of
15 you jurors who have been selected for the purpose of
16 deciding the verdict in this particular case.

17 You may swear the panel.

18 (Whereupon, the jury was duly sworn.)

19 THE COURT: Ladies and gentlemen, as you know, you
20 have been selected to decide the verdicts in the case of
21 the State vs. David Anthony Tyre.

22 These are criminal cases. Criminal cases are brought
23 into this courtroom by way of documents which are called
24 indictments. The indictments are those legal documents
25 that I referred to prior to your selection and that I read

1 from in order to inform you as to what the charges are that
2 have been brought against the defendant.

3 The indictments however are not evidence of anything.
4 They're not proof of anything. They do not establish
5 anything.

6 The state has the burden of proving the allegations in
7 the indictment and proving the guilt of the defendant
8 beyond a reasonable doubt. And these indictments are
9 simply the charging papers. They simply serve to bring a
10 person accused of a crime into this court and to put them
11 on notice as to what the state claims they did by way of
12 the commission of a criminal offense.

13 In this case, as you've also been told, the defendant
14 is charged with two separate and distinct offenses. And
15 you will be rendering separate and distinct verdicts as it
16 relates to those indictments.

17 Your verdicts may be the same as it relates to the
18 indictments; your verdicts may be different. That of
19 course will depend upon your determination of fact as it
20 relates to this particular charge and then your application
21 of the law as I will have provided it to you to the facts
22 as you determine them to be in order to arrive at your
23 decision.

24 But the defendant is charged in one indictment with
25 having committed the crime of the infliction of great

1 bodily injury upon a child, the state alleging that he did
2 here in Spartanburg County on or about June the 22nd of
3 2009 inflict great bodily injury upon victim , a
4 child under the age of 11 years, while committing child
5 abuse or neglect in violation of a particular statute.

6 He's also charged in a separate indictment with
7 homicide by child abuse, the state alleging that on
8 July the 5th of 2009 the defendant did cause the death of
9 Minor a child under the age of 11 years, while
10 committing child abuse or neglect and that the death of
11 Minor occurred under circumstances manifesting an
12 extreme indifference to human life.

13 As to those allegations and as to each of those
14 charges the defendant has entered a plea of not guilty. As
15 I've told you, that plea of not guilty therefore places
16 upon the state the burden of proving the allegations that
17 they have set forth in each of those indictments, the
18 burden of proving each of the essential elements of the
19 crimes alleged against the defendant; and therefore the
20 burden is upon the state to establish the defendant's guilt
21 to the satisfaction of you 12 jurors beyond a reasonable
22 doubt before a verdict of guilty could be returned as to
23 either of the indictments.

24 Every person accused of a crime is presumed to be
25 innocent of that charge. That presumption of innocence

1 remains with any defendant, as it does with this defendant,
2 from the time that he is placed under arrest and throughout
3 the course of the criminal process and even throughout the
4 course of the actual trial in the case.

5 That presumption of innocence will be with this
6 defendant even as you go back into your jury room to begin
7 with your deliberations at this trial's conclusion. That
8 presumption of innocence will be with him in that jury
9 room, and it'll be with him forever unless you 12 jurors
10 unanimously determine that he is no longer entitled to that
11 presumption of innocence.

12 That is after you've carefully considered all the
13 evidence in the case, and from that evidence you've decided
14 the facts, and upon deciding those facts you apply the law
15 that I will have provided you, if you 12 jurors unanimously
16 determine that his guilt has been proven beyond a
17 reasonable doubt, then he would no longer be entitled to
18 the presumption of innocence as it relates to that
19 particular charge. But it's only if, unless and until you
20 are satisfied of his guilt as to a charge beyond a
21 reasonable doubt that the presumption of innocence would no
22 longer be applicable.

23 Now, the way the trial will proceed is that in a
24 moment the lawyers are going to address you in what are
25 called opening statements. There are two occasions in the

1 trial of a case where the lawyers are permitted to address
2 the jury. And that is at the beginning of the trial before
3 any evidence has been introduced, then again at the
4 conclusion of the trial after all of the evidence has been
5 received.

6 Keep in mind, as I have just indicated, the lawyers'
7 statements are not evidence. You can't consider the
8 statements of the lawyers as any evidence upon which you
9 will base your decision, and that's because the lawyers
10 aren't witnesses to anything.

11 They don't know anything about this case of their own
12 personal knowledge or experience like a witness will
13 testify to. They're not going to take the witness stand.
14 They're not going to testify under oath. They won't be
15 subjected to direct and cross-examination like witnesses
16 will be. And so what they tell you is not to be considered
17 by you as any evidence upon which you will base your
18 decision. But you should listen to what the lawyers have
19 to say in their statements because those statements do
20 serve a purpose.

21 The opening statements serve to provide you with a
22 basic understanding as to what this case is about from the
23 perspective of the state and from the defense so that
24 you'll have some context in which to place the evidence
25 that we will be receiving shortly thereafter.

1 The closing statements occur after all of the evidence
2 has been received. And, again, while those statements are
3 not evidence it does afford the lawyers an opportunity to
4 discuss with you the evidence that you have seen and heard
5 during the trial. Through that discussion each will have
6 an opportunity to try to persuade you or to convince you
7 that that evidence does or does not support a particular
8 decision.

9 And, as I told you, it's between the opening and the
10 closing statements of the lawyers that we actually receive
11 the evidence upon which you will base your decision.

12 The state has the burden of proof. They have brought
13 these charges against another person; and therefore because
14 they make the accusations they have to establish the
15 defendant's guilt beyond a reasonable doubt. And so the
16 state will go forward first in its presentation of
17 evidence.

18 Once the state has concluded in its presentation a
19 defendant has the same opportunity to testify or to present
20 evidence if he or she wished to do so. But understand that
21 the burden is never upon a defendant to testify or to call
22 any witnesses or to produce any evidence. A defendant does
23 not have to prove anything, because in some cases that
24 might not even be possible.

25 So while the state does have a burden to present

1 evidence because they have to prove a defendant's guilt,
2 the defendant in a criminal case is not under any burden or
3 obligation to present any evidence whatsoever.

4 If a defendant doesn't testify in a case or doesn't
5 call any witnesses the jury can't hold that against him or
6 her. You can't consider it in any way. You can't allow it
7 to influence your decision, because the burden is not upon
8 a defendant to prove that he or she is not guilty or to
9 prove that he or she is innocent.

10 The burden is on the state to prove that he or she is
11 guilty of the crime alleged against him or her. But, as I
12 say, a defendant is always afforded an opportunity to
13 testify or present evidence should he or she wish to do so.

14 So after all of the evidence has been received, after
15 I've -- or after you've heard the final summations of the
16 lawyers, I will then instruct you fully on the law as it
17 relates to the criminal law generally and as it relates to
18 these crimes particularly, after which you'll be asked to
19 go back and begin with your deliberations.

20 Through that process you'll examine all of the
21 evidence, you will decide the facts, you will apply the
22 law, and you will arrive at a fair and just decision,
23 whatever that decision might be.

24 Now, all that we're going to ask for you to do is to
25 pay careful attention throughout the course of the trial.

1 Sometimes as human beings we have a natural tendency to
2 listen to the first thing that we're going to hear or
3 perhaps the last thing that we're going to hear. And
4 sometimes we kind of doze off or lose interest or daydream
5 during the middle of something unless it gets real
6 exciting.

7 You've been selected for a special purpose, and your
8 special purpose is to decide a fair decision, a fair
9 verdict in these cases. So you're not sitting around at
10 home daydreaming and wondering about things.

11 You've got to pay attention from the beginning until
12 the end. You've got to listen to every witness that
13 testifies from the state and from the defense if they call
14 witnesses, because there might be facts established in the
15 middle of all of the evidence presented just as important
16 as those that are at the beginning or at the end, and so
17 it's important that you focus on each witness as they
18 testify and give them -- give each witness the same fair
19 consideration.

20 Now, that doesn't mean that you're going to give every
21 witness the same -- their testimony the same degree of
22 weight. In fact, that's one of your prerogatives. You get
23 to decide the credibility of witness testimony just like
24 any other evidence in the case.

25 You decide what evidence to accept and what evidence,

1 if any, to reject. You have to determine the most credible
2 and believable evidence. And the only way you can do that
3 is to give every witness the same degree of attention as
4 they testify so that you'll be in a proper position at the
5 trial's conclusion to fairly assess each witness'
6 credibility and reliability in light of not just that
7 witness' testimony but in light of all of the testimony and
8 all of the evidence received during the trial.

9 And of course it's important that you keep an open
10 mind throughout the course of the trial. That simply means
11 that you are not to begin making up your minds or
12 formulating your opinions as to what you think the ultimate
13 decisions in this case ought to be until all of the
14 evidence has been received and until I have instructed you
15 on the law that's applicable in the case and until you've
16 been asked to go back into your jury room and to begin with
17 your deliberations at the trial's conclusion.

18 That is the process that is designed for you 12 jurors
19 to arrive at a fair and just decision in this case and in
20 any case.

21 I do want to thank you in advance for your
22 participation, as well as for your careful attention. I
23 would ask that you please give the lawyers your attention
24 now as they give you their opening statements.

25 Ms. Crick.

Opening statements

1 MS. CRICK: Thank you, Your Honor. May it please the
2 Court.

3 THE COURT: Yes.

4 MS. CRICK: In many ways Minor was like a whole
5 lot of other ten-year-old little girls. You'll find out
6 that she liked to laugh; she liked to smile when she was
7 happy; and she liked to watch her favorite cartoons and
8 movies on T. V.

9 But you're also going to find out that Minor was also
10 very different from a lot of other ten-year-old little
11 girls. She suffered from a condition called cerebral
12 palsy. So Minor was basically confined to either her
13 wheelchair or her bed.

14 She couldn't walk, crawl or really even sit up by
15 herself. She had to wear diapers that were changed by her
16 caregivers, had to eat through a tube. And she couldn't
17 talk at all. So she was really more like an infant who was
18 completely and totally dependent on the care of other
19 people.

20 And she did have people in her life that took care of
21 her. Her mom when she wasn't working would take care of
22 Minor And when she was working there were a couple of
23 nurses that would come by, one during the week and some --
24 one on the weekends.

25 And when there were gaps between the mom's work

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1 schedule and when the nurses' shifts would start or end
2 family members would pitch in and fill in those gaps and
3 take care of Minor

4 Everything seemed to be going well. And then someone
5 new came into Minor life. You're going to find out that
6 somewhere around December of 2008 Minor mom got a new
7 boyfriend, the defendant. And before too long you're going
8 to find out that he started agreeing to pitch in and fill
9 in those gaps between the mom's work schedule and when the
10 nurses would come on or off of duty.

11 June 22nd of 2009 was one of those few occasions when
12 he was alone at the house taking care of Minor The nurse
13 got off that day, finished her shift and left, and left the
14 defendant alone and Minor in his sole custody.

15 And it wasn't too long before Minor mom got a call
16 from the defendant saying that Minor had rolled out of her
17 bed and hurt herself.

18 So you're going to find out they took her to the E. R.
19 and learned from the doctors that her upper right arm was
20 broken. The doctors bandaged her up, put her in a sling,
21 bandaged her body and hoped that the arm would heal. It
22 was an accident, is what the defendant was saying. And
23 really Minor couldn't tell anybody anything different.

24 Well, it wasn't but a little over a week and a half or
25 two weeks later on July the 5th of 2009 that Minor ended up

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1 right back there in the emergency room at Spartanburg
2 Regional Medical Center.

3 She had received another injury while in the sole care
4 of the defendant. That ten-year-old immobile little girl
5 who was still recovering and coping with a broken arm was
6 brought back to the emergency room unresponsive, breathing
7 erratically, pupils fixed and dilated with virtually no
8 sign of brain activity.

9 Her brain was bleeding. It was swollen. And you're
10 going to find out the CT scan showed that her brain had
11 shifted from one side to the other. There were bruises and
12 marks on her arms, on her neck area, her face and on her
13 ears.

14 The last person to see her alive and well, the only
15 person that was with her when she sustained those injuries,
16 was the defendant.

17 And, once again, it wasn't his fault. He said she had
18 just had a seizure. And, once again, Minor wasn't able to
19 tell anybody what actually happened. She never recovered
20 from whatever she endured at the hands of that defendant.
21 And you'll find out that she died without ever having
22 regained consciousness at the pediatric intensive care unit
23 at Spartanburg Regional Hospital.

24 My name is Cindy Crick. And I along with Trey Gowdy
25 and Barry Barnette work for the solicitor's office here in

Opening statements

1 Spartanburg. And it's going to be our jobs during the
2 course of this trial to bring forth all the important
3 evidence in this case and present it to you.

4 What do I mean when I say evidence? Well, really
5 mainly I'm talking about testimony from people who know
6 something about what happened or can give you their opinion
7 about what happened.

8 So what can you expect to hear during the course of
9 this trial? You're actually going to hear from the very
10 first people who got to the scene that day. These were
11 rescue workers from Boiling Springs Fire Department.

12 They were actually called directly by the defendant.
13 He didn't call 9-1-1. He called them because he knew
14 people there. And they came out to the house and found
15 Minor slumped on the sofa. The only two people in the house
16 were Minor and that defendant. And they're going to tell
17 you that her condition was so bad they called 9-1-1 so that
18 they could get her the help that she needed.

19 You're also going to hear from those doctors at
20 Spartanburg Regional Medical Center. There were several.
21 You're going to hear from the very first doctor that saw
22 Minor when she came into the ER, and he's going to tell you
23 her condition was so bad he had to call in a pediatric
24 critical care specialist to take care of her. And that was
25 Dr. Sahhar. And Dr. Sahhar is going to come and testify

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1 and tell you exactly what her injuries were and what his
2 opinion is as to what happened to her.

3 And then you're going to hear from the last doctor
4 that saw Minor Dr. Wren. And he performed the autopsy on
5 Minor And he's going to tell you very specifically
6 what her injuries were and that she died as a result of
7 brain damage caused by blunt force trauma.

8 And you're going to hear from some investigators from
9 the sheriff's office and the coroner's office. They're
10 going to tell you about their investigation, but they're
11 also going to tell you about a conversation, an interview,
12 that they had with the defendant.

13 And you're going to find out that during the course of
14 that conversation he admitted to them that, you know what,
15 on June 22nd Minor didn't actually roll out of the bed, I'm
16 the one that broke her arm. And now that I'm thinking
17 about it I may have shaken her a little bit this last time
18 on the 5th, and I was swinging her by her legs, and her
19 head may have hit the carpeted floor.

20 Well, ladies and gentlemen, you're going to hear very
21 vivid detailed descriptions of what her injuries were. You
22 may even get to see some photographs.

23 And it may be very difficult to listen to all of that.
24 But I'm going to ask you really to listen hard and listen
25 to what bruises and marks were found on her body.

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1 Listen to the horrific damage that was done to her
2 brain. And then you decide if you think her injuries were
3 caused by a little shaking and a bump to the head on a
4 carpeted floor.

5 That's your job. You know what your job is. You know
6 what the defense's job is. But your job is truly the most
7 important job of anyone else in this courtroom today
8 because you alone have to decide what happened. You have
9 to decide what caused a ten-year-old dependent disabled
10 child to end up in the morgue.

11 And we're going to give you almost every single thing
12 you need to make that decision. But there's one thing
13 we're not going to be able to give you. Luckily though
14 it's something you already have, and it's common sense.
15 Truly common sense is the tool that will serve you best as
16 you sit on this jury and listen to the testimony and look
17 at the evidence and then deliberate.

18 If you use common sense justice will be done in this
19 case. And that is all we're asking of you. We're asking
20 that you be fair to the defendant; we're asking that you be
21 fair to the state and simply do justice.

22 THE COURT: Mr. Brannon.

23 MR. BRANNON: May it please the Court.

24 Ladies and gentlemen of the jury, my name is Doug
25 Brannon. We were previously introduced. Today my

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1 colleague, Shawn Campbell, and I have the opportunity to
2 represent Mr. Tyre. His name is David Anthony Tyre, but
3 throughout the trial you're going to hear him called Tony.
4 So when you hear Tony, this is him.

5 I heard Ms. Crick talk. And one of the things that
6 she said -- and she said it twice -- was that Minor couldn't
7 tell. And I'm sorry, but I beg to differ with Ms. Crick.

8 Tony Tyre is 33 years old. He is a fireman and an
9 EMT. He started a relationship with Minor mother sometime
10 in about December of 2008. And through that relationship
11 Tony met Minor mother and her children. She had three
12 children. Minor was the oldest.

13 Tony had been involved with people obviously all of
14 his life, but through his professional experience he was
15 more deeply involved. He was involved in the care of
16 individuals.

17 Something that was impressed upon him by Minor
18 mother, Kreszena, was that while she suffered from cerebral
19 palsy she was not fragile. She was a person. She had a
20 personality. You knew when she was happy; you knew when
21 she was sad.

22 She did enjoy watching movies. In fact, on July the
23 5th she was watching a movie. She enjoyed watching her
24 younger siblings play. She enjoyed hearing people when
25 they were happy. She enjoyed going to church and hearing

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1 the choir sing. She enjoyed those things, and you knew
2 when she was happy.

3 All of those things were told to Tony by Kreszena. He
4 was also told that it was difficult for her with -- with
5 her adult relationships, with relationships with other men,
6 because when you saw Minor she was in a wheelchair.

7 She was different than everybody else, and it was
8 difficult for those people, those people that she might
9 have had a relationship, to deal with Minor because Minor was
10 different. She didn't ask to be, but she was. She was
11 different.

12 And what Kreszena told Tony was don't treat her
13 differently. She can laugh. She has emotion. Give her
14 the opportunity to have those emotions.

15 When Tony would play with the younger children Minor
16 would laugh. And there were people Tony included that
17 played with Minor And Minor would let you know if she was
18 angry or if she was happy, if she enjoyed it.

19 You could tickle her feet. She would pull back. You
20 could hold her arms and she would get -- she would tense
21 up. Minor was actually quite amazing.

22 Minor had the ability to take her left arm, left hand,
23 and touch her left eye. But she could do it by wrapping
24 her arm around her neck and around her head. So she could
25 do this and touch her left eye with her left hand.

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1 Her arms were the most mobile parts of her body and
2 they -- she could put them behind her back. She could put
3 them behind her neck. And because they were the most
4 mobile part of her body she enjoyed that freedom, she
5 enjoyed that movement.

6 And one of the ways that people would interact with
7 Minor was to hold her arms. And Minor knew that you were
8 playing with her. Minor would get frustrated, and Minor
9 could let you know that she was frustrated.

10 So Ms. Crick was right in one extent. Minor couldn't
11 say hello. Minor couldn't say good night. But Minor could
12 sure tell you that she was happy or that she was upset.

13 Minor had the ability to communicate. And those people
14 that knew Minor and had spent great deals of time with her
15 knew when she was happy, knew when she was sad, knew when
16 she hungry and knew what she wanted. Minor couldn't tell.

17 My client is charged with two separate crimes. The
18 first one, he's accused of causing great bodily injury to
19 Minor

20 On or about June the 22nd Minor arm was broken. My
21 client was babysitting. He was keeping Minor that day. On
22 that day Minor was playing and doing the things that she
23 could do with her arms.

24 My client, again, was doing as he was told by the
25 mother and other family members. She's not fragile. You

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1 can interact with her. You can play with her. You can do
2 things with her. She's a person.

3 Tony was holding her arms as she was trying to flail,
4 as she was trying to pull her arms. He heard a pop. He
5 immediately called her mother and told her of the injury.

6 He's an EMT. He knew to lay her on a flat ground. He
7 describes it as something akin to a backboard, a solid
8 surface. He laid her on a wooden floor. She was then
9 taken to the hospital and her arm was set.

10 Now, I'm going to tell you my client didn't admit that
11 he had -- was pulling her arm. He didn't admit that that's
12 how it happened. He told the mother that it was because
13 she fell out of the bed. But he called her immediately.
14 He didn't hide it from the mother. And they went to the
15 hospital immediately.

16 But there's something more to it. I said they went to
17 the hospital and they set her arm. That's not exactly what
18 they did because, you see, because of her ability to move
19 her arms a sling wouldn't work.

20 So what they did to help the arm heal was they wrapped
21 her arm to her body with ace bandages so that she couldn't
22 move it, because in a sling she would still move her arm.
23 And they were concerned that the arm wouldn't heal because
24 she had the ability to move it. So they put her arm to her
25 body with ace bandages.

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1 Now we get back to the part where Ms. Crick said Minor
2 couldn't tell. Minor could tell. Minor could tell you when
3 she was hurt; Minor could tell you when she was afraid. And
4 that's the key because, you see, between June the 22nd when
5 Minor arm broke and July the 5th when she suffered another
6 injury Minor never told anybody that she was afraid of Tony.

7 Minor mother saw her every day; nurses saw her every
8 day; grandparents saw her almost every day. If Tony was
9 there and if Minor was afraid of Tony one of those people
10 that I just mentioned to you would have known that Minor was
11 afraid of Tony.

12 Minor knew that on June 22nd that Tony was playing with
13 her. He was treating her like a person. Quite frankly, he
14 was treating her like other people couldn't or wouldn't
15 make themselves. I'm not talking about breaking her arm.
16 I'm talking about truly interacting with her, truly
17 treating her like a person. That's what Tony would do when
18 others wouldn't.

19 But after June the 22nd and up until July the 5th Minor
20 never told anybody that she was afraid of Tony. So, you
21 see, for the state to prove that my client is guilty of
22 causing great bodily injury to Minor on June the 22nd they
23 have to prove that he intended to break her arm. They have
24 to prove that he intended to cause bodily injury. I have
25 to tell you interacting with, playing with, treating like a

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1 real person is not intent to cause great bodily injury.

2 You're going to hear that the state has the burden to
3 prove beyond a reasonable doubt that my client intended to
4 cause great bodily injury.

5 The judge will tell you what all the law in this case
6 is, but reasonable doubt is the kind of doubt that would
7 make a reasonable person hesitate to act. It's that kind
8 of doubt that would make you go h'm. If you go h'm, he's
9 not guilty.

10 Then on July the 5th Minor suffered another injury.
11 Now, the state -- and you've already heard it -- they want
12 you to think that this injury occurred while Minor was in
13 the sole care and custody of Tony Tyre.

14 Something they didn't tell you but you will hear later
15 is that one of the doctors told the family -- told the
16 family that the injury that Minor suffered occurred from
17 between four and 20 hours before she got to the hospital --
18 four and 20 hours. Please keep that in mind.

19 You see, the nurse got off of work at about 3:30 on
20 July the 5th. Tony had care and control of Minor from
21 3:30 on July the 5th until she got to the hospital. You're
22 going to hear those times -- 3:30 and about 7:00 o'clock.

23 But the doctor said the injury that Minor suffered
24 occurred, happened between four and 20 hours. My client
25 had care and control of Minor from 3:30 until she got to the

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1 hospital.

2 Now, again, on July the 5th my client was treating
3 Minor like a real person. Kreszena has two other children.
4 Her other children didn't have cerebral palsy. They
5 were -- they were unafflicted.

6 They loved to be played with, to be roughhoused. They
7 loved -- they were -- they were tough. One of the things
8 that the two-year-old just loved to do was to have you pick
9 him up by the -- by the legs, right by the ankle, and not
10 spin him around like a helicopter but just hold him upside
11 down and do this. And he would laugh and laugh and laugh.
12 And guess who else would laugh when that's happening? Minor
13 in her wheelchair. She would just laugh and laugh because
14 somebody else was laughing, somebody else was happy.

15 On July the 5th my client did that with Minor He held
16 her by the legs. She was ten years old, but she wasn't
17 heavy. He held her by the legs and he swung her like this,
18 side to side, not around in a circle but side to side. But
19 again this man is an EMT. He's a firearm. And he's
20 sensitive.

21 Minor didn't like it. Minor let him know. Minor told
22 him that she didn't like it. So he stopped. He put her
23 down on the ground.

24 When he put her down on the ground obviously one arm
25 is bandaged and the other arm, although she can move it,

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1 she really has no control over it. When he put her down on
2 the carpeted floor the first part of her body to touch the
3 floor was her head.

4 Sometime after he was swinging Minor she was sitting
5 up. He had her movie on. He noticed that Minor was having
6 a seizure. Now, you're going to hear that Minor suffered
7 from seizures from birth until July the 5th. Now, there
8 were periods of time when the medication controlled the
9 seizures, but Minor suffered seizures from birth until July
10 the 5th.

11 As soon as he noticed that Minor was having a seizure
12 he called mother. He said she's having a seizure. And he
13 described the seizure to the mother. Kreszena said that
14 sounds exactly like Minor typical seizure, give her a
15 little bit of time and she'll be okay.

16 He kept an eye on her. And shortly after that phone
17 call grandma, Ms. Monday, came in. She came in from church
18 to get a pair of nylons for one of the other children and
19 went back out. But she checked on Minor And she said
20 she's having one of her seizures but she's coming out of
21 it, she'll be okay. Grandma was comfortable enough to
22 leave the house and go back to the church because she'd
23 seen it before. She went back to church.

24 But she wasn't bouncing back the way mom and the way
25 grandma had explained it to Tony. So he calls mom back

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1 again, and he said she's not breathing right, it doesn't
2 sound right. And so Kreszena said put the phone to Minor
3 let me hear her breathe. He did that, and mom said it
4 sounds okay, I've been through this before, she'll be all
5 right.

6 Now, y'all are probably thinking call 9-1-1. In EMT
7 training -- and you will hear this -- when you are called
8 to respond and the patient or the person to whom you are
9 responding is a special-needs person one of the things that
10 EMTs are trained to do is to deal with the parent. You
11 have to talk to the parent to find out is this normal with
12 this special-needs person or not, because, because they're
13 special needs you treat them differently. Sometimes they
14 can't talk to you. Sometimes their illness causes symptoms
15 that lead you in the wrong direction. So you are taught as
16 an EMT to rely on the parent or the caregiver.

17 Tony did exactly as he was trained. He called mom.
18 He talked to grandmother. He did exactly what he had been
19 trained to do. But then that wasn't enough.

20 Now, Ms. Crick wants you to think that he called some
21 friends at Boiling Springs Fire Department because he
22 didn't want to go through 9-1-1 or something like that.
23 That's absolutely untrue.

24 He called his friends because he wanted them to bring
25 Minor some oxygen. She was having trouble breathing. Mom

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1 said it was okay; grandma said it was okay. But he wanted
2 to go further. So he calls his friends at the paramedics
3 office, at the EMT office, and he asked them can y'all
4 bring some oxygen. They did.

5 When they got there they gave her the oxygen, and then
6 Tony and those two EMTs decided, you know something, we
7 need to transport this child to the hospital. And they
8 did. They called Kreszena and said we're taking her to the
9 hospital.

10 Now, again, that's after mom said it'll be okay. It's
11 after grandma said it looks just like her other seizures,
12 she's going to come out of it.

13 My client didn't do that. He didn't wait. He didn't
14 say it was okay. He called his friends at EMT, and then
15 they transported her to the hospital.

16 You see, the second charge is homicide by child abuse.
17 And the law says that a person is guilty of homicide by
18 child abuse if the person causes the death of a child under
19 the age of 11 while committing child abuse or neglect and
20 the death occurs under circumstances manifesting an extreme
21 indifference to human life. Get that. Extreme
22 indifference to human life.

23 The state has to prove beyond a reasonable doubt that
24 Tony Tyre did something on July the 5th that caused -- that
25 caused Minor to die and he did it with extreme indifference

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1 to human life.

2 You know something? I'm not going to tell you that
3 taking a child with cerebral palsy and holding her by the
4 legs and swinging her back and forth is the smartest thing
5 in the world. I'm not going to tell you that. Y'all have
6 common sense. I'm sure y'all thought that when I told you
7 that. But you know something? That's not extreme
8 indifference to human life.

9 If you do something with an extreme inference to human
10 life you don't call the mom. You don't ask the
11 grandmother. You don't call your friends at EMS. You
12 don't take the child to the hospital. You don't do those
13 things because, you see, that -- that mom, grandmother, EMS
14 and taking to the hospital shows compassion --

15 MS. CRICK: Your Honor, I'm going to object at this
16 point. I think this is more argument, which is for
17 closing.

18 THE COURT: Sustained.

19 MR. BRANNON: The state has the burden to prove beyond
20 a reasonable doubt that my client acted on July the
21 5th with extreme indifference to human life beyond a
22 reasonable doubt.

23 Tony was told by mom she's a real person, she has
24 emotion, treat her like that, treat her like she's a real
25 person. And that's what he did.

Kevin Lee Gibbs
Direct examination by Mr. Barnette

1 Ladies and gentlemen, at the end of this case you're
2 going to be asked to render a verdict on the evidence in
3 this case.

4 I ask that you please listen to all of the witnesses.
5 Pay attention to each one of them. And remember that
6 you're in a state courtroom with people who work for the
7 state prosecuting my client. And the burden is on the
8 state to prove beyond a reasonable doubt that my client
9 intended to cause great bodily injury and acted with
10 extreme indifference to human life on July the 5th.

11 Ladies and gentlemen, I submit to you at the end of
12 this trial you will find that they haven't proven either of
13 those cases. Thank you.

14 MR. BARNETTE: The state would like to call Kevin
15 Gibbs to the stand, Your Honor.

16 KEVIN LEE GIBBS, having been
17 first duly sworn, testified as follows:

18 DIRECT EXAMINATION BY MR. BARNETTE

19 Q Sir, if you would, give us your full name, please.

20 A Kevin Lee Gibbs.

21 Q And where do you work at, sir?

22 A Boiling Springs Fire Department.

23 Q What's your position there, sir?

24 A Shift captain.

25 Q And how long have you been in this type of work, sir?

Kevin Lee Gibbs
Direct examination by Mr. Barnette

- 1 A About 21 years.
- 2 Q And are you also EMT, sir?
- 3 A Yes, sir.
- 4 Q Let me take you back to July the 5th of 2009, sir.
- 5 Was you working that day?
- 6 A Yes, sir.
- 7 Q Did you receive a phone call from the defendant in
- 8 this case?
- 9 A Yes, sir.
- 10 Q If you would, tell the jury about that phone call you
- 11 received, sir.
- 12 A He called the station and wanted to know if we could
- 13 bring some of the oxygen down for his girlfriend's
- 14 daughter, she's having difficulty, having some problems
- 15 breathing.
- 16 Q Okay. Did he ever tell you about a seizure in that
- 17 phone call?
- 18 A No, sir.
- 19 Q Did he say anything? He just said bring some oxygen?
- 20 A Wanted to know if we could bring some down there.
- 21 Q But he never said anything about a seizure.
- 22 A No, sir.
- 23 Q Who went with you?
- 24 A Sergeant Nick Ray.
- 25 Q Okay. And did y'all go to in

Kevin Lee Gibbs
Direct examination by Mr. Barnette

1 Boiling Springs?

2 A Yes, sir.

3 Q About how far away are y'all from there?

4 A Roughly a mile or a mile and a half.

5 Q And this -- this is at Spartanburg County, is that
6 right.

7 A Yes, sir.

8 Q When you arrived there could you tell the jury what
9 you saw, sir?

10 A He was flagging us down on the porch. And Sergeant
11 Ray got out of the truck and went inside. And I grabbed
12 the bags and the radios, and I radioed and went in.

13 Q What happened after that?

14 A Sergeant Ray and Tony was at the -- like the far end
15 of the couch where she was at and they -- they set her off
16 in the floor. They started having -- I started handing
17 Nick equipment.

18 Q So she was sitting up on a couch?

19 A Well, yeah. She was like pretty slumped on a couch,
20 on the end of the couch.

21 Q And when you got in there what was her condition?

22 A Sergeant Ray had already started, was putting her in
23 the floor to start giving her oxygen and...

24 Q And what did y'all -- what happened once he put her
25 down in the floor? What did he indicate to you?

Kevin Lee Gibbs
Direct examination by Mr. Barnette

- 1 A He indicated that she was in some kind of respiratory
2 distress.
- 3 Q Okay. And was it a critical situa -- or developing
4 into a critical situation?
- 5 A Yes, sir.
- 6 Q Who called 9-1-1?
- 7 A I did. I stepped out, back out, on the porch with my
8 portable radio and called dispatch advised them to dispatch
9 me an ambulance, priority traffic.
- 10 Q And what happened after that, sir?
- 11 A I stepped back inside and assisted Ray, Sergeant Ray,
12 with whatever he needed.
- 13 Q And did EMS come?
- 14 A Yes, sir.
- 15 Q You know the defendant.
- 16 A Yes, sir.
- 17 Q How do you know the defendant, sir?
- 18 A He joined Hilltop Fire Department when I was the
19 assistant chief at Hilltop Fire Department back some years
20 ago.
- 21 Q So he's been an EMT.
- 22 A Yes, sir.
- 23 Q And what is an EMT, sir?
- 24 A It's an emergency medical technician.
- 25 Q So he knows the same thing that you know.

Kevin Lee Gibbs
Direct examination by Mr. Barnette

- 1 A Yes, sir.
- 2 Q Same thing Sergeant Ray knows.
- 3 A Yes, sir.
- 4 Q So he could assess or whatever at that time, is that
- 5 right?
- 6 A Yes, sir.
- 7 Q And y'all realize -- how soon did you call 9-1-1 when
- 8 y'all got there?
- 9 A As soon as we got in there, I mean, right then.
- 10 Q So you knew it was a bad situation.
- 11 A Uh-huh.
- 12 Q Isn't it common for those type of people, you
- 13 immediately lay them in the floor, or a person in her
- 14 condition?
- 15 A You have to get them, you know, where you can work on
- 16 them. And if the floor is it, that's where you put them.
- 17 Q But you said she was slumped on the couch.
- 18 A Yes, sir. She looked like she was just kind of like,
- 19 kind of propped in the corner, kind of like a slumped look.
- 20 Q So she was slumped down.
- 21 A Just kind of, just, just laid back in the corner.
- 22 Q Let me show you what's been marked as State's
- 23 Exhibits 1, 2 and 3, sir. Do you recognize those
- 24 photographs, sir?
- 25 A Yes, sir.

Kevin Lee Gibbs

Direct examination by Mr. Barnette

1 Q Do they fairly represent what you saw that day, or
2 close to it?

3 A Yes, sir.

4 MR. BARNETTE: Your Honor, I'd like to enter State's
5 Exhibits 1, 2 and 3 into evidence at this time.

6 Q And, sir, was there only two people at that residence
7 when y'all arrived there?

8 A Yes, sir.

9 Q And who was those two people, sir?

10 A Her and Tony Tyre.

11 Q There was nobody else in the residence.

12 A No, sir.

13 Q Show you State's Exhibit No. 1.

14 THE COURT: Let me get the bailiff to take that rope
15 down.

16 MR. BARNETTE: Permission to publish these to the
17 jury, Your Honor.

18 THE COURT: No objection to one, two and three?

19 MR. CAMPBELL: None.

20 (Photographs marked State's Exhibits Nos. 1, 2 and 3.)

21 Q Okay. Was this the residence and the front of the
22 residence, sir? If you would, just turn around. There's
23 the picture up there. Can you see it, sir?

24 A Yes, sir.

25 Q Was this the front of the residence where the mail box

Kevin Lee Gibbs
Direct examination by Mr. Barnette

1 is?

2 A Yes, sir.

3 Q That was State's Exhibit No. 1. State's Exhibit
4 No. 3, was this the couch that she was on?

5 A Yes, sir.

6 Q And if you would, come down for a second.

7 (Whereupon, the witness left the stand.)

8 Q If you would, sir, just point to where she was located
9 on the couch.

10 A Just kind of in this area, just kind of like she was
11 just propped up towards -- towards that corner.

12 Q And where did Sergeant Ray place her in the floor at?

13 A Right out here in the floor.

14 Q If you would, please have a seat, sir.

15 (Whereupon, the witness returned to the stand.)

16 Q Sergeant Ray was the one that assessed her primarily,
17 is that right?

18 A Yes, sir.

19 Q And you just helped get this information.

20 A Yes, sir.

21 Q Make the calls and everything like that.

22 A Yes, sir.

23 MR. BARNETTE: One moment, Your Honor, please.

24 (Pause.)

25 Q This rug right here, sir, is that just a rug over

Kevin Lee Gibbs
Cross-examination by Mr. Campbell

1 there or is that padded carpet?

2 A I think it was just padded carpet.

3 Q Okay. So was it thin or whatever in going through it?

4 A Do what, now?

5 Q Was it thin, a thin carpet?

6 A Well, it was just carpet right -- right in here.

7 Q Okay. And there was a hard floor underneath that --

8 hard. Please answer any questions that the defense may

9 have for you, sir. Thank you.

10 CROSS-EXAMINATION

11 BY MR. CAMPBELL

12 Q Is it Captain Gibbs? Is that correct?

13 A Yes, sir.

14 Q Captain Gibbs, I just want to be certain. It was Tony
15 Tyre that called you, correct, and said he needed oxygen --

16 A Yes, sir.

17 Q -- for Minor is that correct? And when you arrived he
18 was actually waving you to come on in?

19 A Yes, sir. He was to the porch, you know, like, you
20 know, here we -- this is where you're supposed to be.

21 Q And I believe Mr. Barnette asked you if Tony had
22 informed you about Minor and whether or not she had had a
23 seizure. Did Tony tell you that she had had a seizure?

24 A No, sir. All he had -- all he told me was he needed
25 some oxygen for his girlfriend's daughter, she was having

Kevin Lee Gibbs
Cross-examination by Mr. Campbell

1 some difficulty breathing.

2 Q All right. Captain Gibbs, do you remember giving a
3 statement on or about July the 8th of 2009 to the
4 solicitor's office?

5 A I think so.

6 (Voluntary statement of Kevin Lee Gibbs marked
7 Defendant's Exhibit No. 1 for Identification.)

8 Q Okay. Captain Gibbs, what I'm showing you is labeled
9 a voluntary statement. Can you look at this and identify
10 this for me, please?

11 A It's a statement that I wrote.

12 Q Statement that you wrote. That's your name at the
13 top.

14 A Yes, sir.

15 Q And that's your signature at the bottom.

16 A Yes, sir.

17 Q Can you read that statement for me, please? Go ahead.

18 A Are you ready? "Had call into station one from Tony
19 Tyre stating that he was at his girlfriend's house
20 babysitting her daughter, stated that she had had a seizure
21 and that she would -- needed to give her some oxygen. I
22 got Sergeant Ray and we went to Tony
23 Tyre was standing in the doorway. We walked in with him
24 and found the female child laying on her left side. And
25 Sergeant Ray started patient care. I called dispatch for

Kevin Lee Gibbs
Cross-examination by Mr. Campbell

- 1 WT for EMS to transport. Sergeant Ray rolled patient on --
2 patient over. Patient on her -- and it was" -- I'm having
3 trouble reading some of this.
- 4 Q That's fine.
- 5 A It didn't copy well.
- 6 Q But you'd agree with me in your statement --
- 7 A In my statement that's --
- 8 Q You say that Tony told you she had a seizure.
- 9 A Yes, sir.
- 10 Q And you wrote this statement more closer to the time
11 of the incident, correct?
- 12 A Yes, sir.
- 13 Q So would you agree with me now that Tony had actually
14 told you she had had a seizure?
- 15 A That is my statement.
- 16 Q Okay.
- 17 MR. CAMPBELL: Your Honor, at this time I would
18 introduce Defense Exhibit 1 into evidence.
- 19 MR. BARNETTE: No objection, Your Honor.
- 20 (Voluntary statement of Kevin Lee Gibbs marked
21 Defendant's Exhibit No. 1.)
- 22 Q In addition, Captain Gibbs, I believe you stated she
23 was laying on her left side, is that correct? Can you come
24 down again and point to the jury exactly where she was
25 sitting on the couch?

Kevin Lee Gibbs
Cross-examination by Mr. Campbell

1 (Whereupon, the witness left the stand.)

2 A She was -- she was right here.

3 Q Okay. Now, in your statements you say she was on her
4 left side. How was that possible if she was propped in the
5 corner for her to be on her left side?

6 A That's -- that's where she was laying when we went in.

7 Q Okay. Now, I understand that. I guess my question to
8 you is was it -- was she on her right side or her left
9 side?

10 A It must have been -- I must have got it backwards, but
11 that's where she was laying, I mean.

12 Q Okay. And was the arm chair -- I guess the arm of the
13 couch and the back supporting her --

14 A Yeah.

15 Q And I guess you would say she was essentially propped
16 in the corner. She wasn't slumped over.

17 A Well, she was just kind of --

18 Q Laying against the arm?

19 A Yeah.

20 Q Okay. No further questions for this witness, Your
21 Honor.

22 MR. BARNETTE: No further questions, Your Honor. We
23 would ask the witness be excused.

24 THE COURT: He may be.

25 (Whereupon, the witness was excused.)

Nicholas Ray
Direct examination by Mr. Barnette

1 MR. BARNETTE: Your Honor, I would like to call Nick
2 Ray to the stand please.

3 NICHOLAS RAY, having been
4 first duly sworn, testified as follows:

5 DIRECT EXAMINATION BY MR. BARNETTE

6 Q If you would, sir, give your full name for the record,
7 please.

8 A Nicholas Ray.

9 Q And where do you work at, sir?

10 A Boiling Springs Fire Department.

11 Q And what is your position there, sir?

12 A Currently I'm a sergeant and EMT intermediate.

13 Q And you are an EMT, is that right?

14 A Yes, sir, EMT intermediate.

15 Q How long have you been in the fire department, and EMT
16 working there, sir?

17 A Since about 2003 total.

18 Q Going back to July the 5th, 2009, was you working that
19 day, sir?

20 A Yes, sir. I was on shift.

21 Q And did Captain Gibbs come and talk to you about a
22 call that you received, or did y'all answer a call?

23 A Captain Gibbs received a telephone call, yes, sir, and
24 came to me and told me that we had a medical call we needed
25 to run.

Nicholas Ray
Direct examination by Mr. Barnette

1 Q Okay. And did y'all go to 203 Kenneth Drive there in
2 Boiling Springs?

3 A Yes, sir.

4 Q If you would, tell the jury what you saw once you got
5 there.

6 A Once we got there Captain Gibbs and myself exited the
7 truck and went on inside.

8 Mr. Tyre was at the door. We went in. Found a girl
9 sitting on the corner of the couch. Did basically just a
10 quick assessment of her. And she was sitting kind of in a
11 slouched, sluggish manner. And just based off my training
12 that made me want to move her to the floor so I could go
13 ahead and deliver a little bit more advanced care to her.

14 Q Okay. You say when you got there. The way she was,
15 you wanted to move her?

16 A Yes, sir.

17 Q Why is that?

18 A When we got there he told us that she had a past
19 medical history of cerebral palsy and of seizures. And
20 just the way she was sitting and the nature of her illness
21 and just the way she presented to me, just through my
22 training basically indicated to me that I needed to move
23 her to the floor to better treat her, because the way she
24 was breathing she had some -- she was full of fluid in her
25 lungs.

Nicholas Ray
Direct examination by Mr. Barnette.

1 She had basically just some -- called bronchi, but
2 it's just a rattling in her breathing, which is obstructed
3 breathing. So the best treatment for that is to go ahead
4 and move her to the floor. So I put her down in the floor
5 and laid her flat and than began my treatment there.

6 Q Would most EMTs know that?

7 A Yes, sir.

8 Q And when you laid her in the floor was it a padded
9 carpet or a soft carpet?

10 A I believe it's carpet if I'm not mistaken, yes, sir.

11 Q Something soft for her to lay on?

12 A It was a better position for her than being on the
13 couch, yes, sir.

14 Q And you laid her down?

15 A Yes, sir.

16 Q Did you continue your assessment of her?

17 A I did.

18 Q If you would, tell the jury what you did, sir.

19 A I was -- the first thing I was concern concerned about
20 was her airway and her breathing. I put her on a monitor.
21 She was showing 78 percent oxygen level, which is a very
22 deficient level when we're looking for anywhere between 96
23 percent to a hundred percent being best. She was
24 78 percent on room air.

25 So I gave her supplemental oxygen via basically a

Nicholas Ray
Direct examination by Mr. Barnette

1 breathing mask and almost immediately got results out of
2 that and moved her from 78 percent, up to 98 percent, up to
3 saturation in her body. That's a good result. That's a
4 good, good medical treatment. So I didn't see any need to
5 go past that.

6 I kept assessing her. She did -- I did note that she
7 had a broken arm. I don't recall whether it was the left
8 or right, but it was a broken arm. It was out of the shirt
9 and underneath it and in a sling.

10 Further assessing her, basically we do what's called a
11 gag reflex test. And that's to see if she does have a
12 compromised airway. Do that my flicking eye lashes. If
13 you have a reaction to that, you have a good airway. She
14 had no reaction. So I went ahead and put in an airway
15 adjunct. It's basically just a piece of plastic to hold
16 her tongue up so it keeps an open airway.

17 At the time I was EMT basic. That's the highest level
18 of treatment I could give until paramedics off an ambulance
19 showed up. So that's what we did, and just kept monitoring
20 her throughout until EMS got there.

21 Q Let me ask you a question. Did you check her
22 fingernails?

23 A I did, yes, sir. I did a capillary refill test.
24 Basically, what we do is just pinch the fingernail. If you
25 get good return of the pink pillar in the nail within one

Nicholas Ray
Direct examination by Mr. Barnette

1 to two seconds that's showing good profusion, good
2 circulation of flood through the body. Hers was delayed
3 four to five seconds. So that's showing some deficiency in
4 the blood circulation throughout her body.

5 Q And what's that telling you when she has a deficiency
6 or she's having that problem?

7 A She had some sort of internal, you know, problem. You
8 know, without being a doctor or having an x-ray, you know,
9 there's no way for me to tell. But that is a sign of some
10 sort of, you know, internal problem with the circulatory
11 system.

12 Q Did you assess her eyes?

13 A I did. I did what's called a PERL test. Basically,
14 it's just a -- to see if the eyes will react to light. And
15 you put a light in their eye and move-it-away type of
16 thing. I did that, and there was no reaction to the light.
17 One eye was constricted and one eye was dilated. That's
18 usually indicative of, based off my training --

19 MR. BRANNON: Objection, Your Honor. He's not been
20 admitted as an expert. I would -- his opinion is not
21 yet -- object to him giving any diagnoses or opinion
22 testimony, Your Honor.

23 THE COURT: Overruled.

24 BY MR. BARNETTE

25 Q If you would, tell what's indicated in your training,

Nicholas Ray
Direct examination by Mr. Barnette

1 sir.

2 A Based off my training basically what it indicates is
3 you're looking at possibly either a stroke or some sort of
4 head trauma. And the eyes, again, were -- one was
5 constricted and one was dilated.

6 Q And these are tests you do as an EMT?

7 A Yes, sir, on the basic level.

8 Q Any EMT should be able to do that.

9 A Yes, sir.

10 Q When you assessed her how soon did you ask for the
11 captain to call 9-1-1?

12 A As soon as I moved her from the couch and realized
13 that she was having such difficulty breathing, I
14 immediately requested Captain Gibbs to go ahead and have an
15 ambulance sent to the location.

16 Q So it was obvious to you that she was --

17 A Yes, just based off her breathing it was -- it was a
18 problem.

19 Q And you knew the defendant.

20 A Yes, sir.

21 Q And how did you know him, sir?

22 A We were coworkers at Hilltop Fire Department. I
23 worked there part time on my days off from Boiling Springs.

24 Q Was he an EMT there, sir?

25 A Yes, sir, there and also with Spartanburg EMS.

Nicholas Ray
Cross-examination by Mr. Campbell

- 1 Q Obviously he would -- an EMT would know to do the
2 finger test.
- 3 A Yes, sir.
- 4 Q He would know to assess the eyes.
- 5 A Yes, sir.
- 6 Q But you did that.
- 7 A Yes, sir.
- 8 Q And as soon as you realized that y'all took action.
- 9 A Yes, sir.
- 10 Q Afterwards did the EMS arrive?
- 11 A Yes, sir, they did.
- 12 Q And did they transfer her to Spartanburg Regional?
- 13 A I believe that was the hospital they went to.
- 14 Q And this residence is in Spartanburg County.
- 15 A Yes, sir. It's in the community of Boiling Springs.
- 16 Q Please answer any questions the defense may have for
17 you sir. Thank you.
- 18 CROSS-EXAMINATION
- 19 BY MR. CAMPBELL
- 20 Q Sergeant Ray -- is that correct?
- 21 A Yes, sir.
- 22 Q I just want to get that right. I didn't want to call
23 you anything improper.
- 24 I believe it's your testimony Tony called Captain
25 Gibbs, and Gibbs came to you and said we got to go, we got a

Nicholas Ray
Cross-examination by Mr. Campbell

- 1 call about somebody needing some oxygen, correct?
- 2 A Yes, sir.
- 3 Q Did he tell you at that point that it was Tony who had
- 4 called?
- 5 A I believe so, yes, sir.
- 6 Q Okay. And I believe when you arrived on the scene --
- 7 was Tony on the porch?
- 8 A He was standing in the doorway.
- 9 Q And was he waving you in?
- 10 A I don't remember exactly. I just remember he was
- 11 standing in the doorway.
- 12 Q Okay. And-but you knew you were there to give
- 13 somebody oxygen.
- 14 A Yes, sir.
- 15 Q And were you the first individual in the house?
- 16 A Yes, sir.
- 17 Q Okay. Now, when you arrived inside the house where
- 18 was Minor
- 19 A She was sitting on the couch.
- 20 Q You're saying she was on the couch.
- 21 A Yes, sir.
- 22 Q Okay. Now, do you remember giving a statement in this
- 23 case?
- 24 A To whom?
- 25 Q Do you -- do you remember providing a written

Nicholas Ray
Cross-examination by Mr. Campbell

1 statement on or about July the 8th of 2009?

2 A Yeah. Somebody from the sheriff's office came by,
3 yes, sir.

4 Q Okay. And...

5 (Voluntary statement of Nicholas W. Ray marked
6 Defendant's Exhibit No. 2 for Identification.)

7 Q Now, I'm going to show you, hand you a document. I
8 believe it's two pages.

9 A Yes, sir.

10 Q The top of it's labeled voluntary statement. I want
11 to see if you can identify that for me, please.

12 A Yes, sir. That's my signature at the bottom.

13 Q That's your signature at the bottom?

14 A Yes, sir.

15 Q And that's your name at the top, correct?

16 A That's mine.

17 Q Can you do me a favor and read that?

18 A "I received a telephone call at Boiling Springs Fire
19 Department on 7/5/2009 for citizen needing some oxygen. I,
20 Nicholas Ray, was working on shift paperwork. Captain
21 Kevin Gibbs came to me and said he needed to -- for me to
22 go with him to give some oxygen. Captain Gibbs and I took
23 Squad One to While en route Captain
24 Gibbs stated the patient was a ten-year-old girl that was
25 having breathing problems. We responded nonemergent due to

Nicholas Ray
Cross-examination by Mr. Campbell

1 the caller did not seem very distressed on the phone. Upon
2 arrival at the home all we saw was a white Ford Ranger in
3 the driveway. And Tony was standing in the doorway.
4 Captain Gibbs and I grabbed the medical bags and went into
5 the house. The house was very clean and organized.
6 Patient was laying on her left side, and demonstrating no
7 response to myself entering the house. I rolled her on her
8 back and began my assessment. Tony said that she had a
9 seizure and he had set her in the floor."

10 Q Okay. I'm going to stop you right there.

11 A Yes, sir.

12 Q In your statement you state that she was on her left
13 side and you rolled her onto her back, correct?

14 A Yes, sir.

15 Q And that Tony had already sat her on the floor.

16 A Yes, sir.

17 Q So when you got there at the house was she on her left
18 side on the floor already or did you place her there?

19 A I remember moving her to the floor.

20 Q Okay. But you -- you wrote this statement on July the
21 8th of 2009, correct?

22 A Yes.

23 Q When did you respond? I mean, what was the day you
24 responded -- July the 5th of 2009?

25 A Yes, sir, July the 5th.

Nicholas Ray
Cross-examination by Mr. Campbell

1 Q Would you agree with me your recollection was probably
2 better on July the 8th of 2009 than it was -- than it is
3 today, some 15 months later?

4 A Sure.

5 Q Okay. And in your statement you state that she was on
6 her left side and you just rolled her over, correct? And
7 can you step down for me, please?

8 A Yes, sir.

9 (Whereupon, the witness left the stand.)

10 Q I'm pointing on the couch, I believe, where you
11 identified or you stated previously she was.

12 A Yes, sir.

13 Q If she's sitting right there how in the world is she
14 on her left side?

15 A That's where I moved her to the position.

16 Q And I believe you stated when you arrived that she was
17 on her left side, and-but you stated she was right there.
18 How can she be on her left side if she's seated right
19 there?

20 A I moved her there.

21 Q As a matter of fact, she was already on the floor,
22 wasn't she?

23 A No, sir.

24 Q Continue.

25 A Up here?

Nicholas Ray
Cross-examination by Mr. Campbell

1 (Whereupon, the witness returned to the stand.)

2 Q However, in your statement you stated that you just
3 rolled her over. What is correct? Did you pick her up and
4 place her or did you just roll her over?

5 A I picked her up and sat her on the floor on her left
6 side into what's called a recovery position.

7 Q You say you picked her up and put her on her left
8 side?

9 A I put her down on the floor on her left side. Then I
10 move her to her back.

11 Q Well, you stated -- you state in your statement -- and
12 I can have you read it again -- that she was already on her
13 left side.

14 A Yes, sir. I understand that.

15 Q Okay.

16 MR. CAMPBELL: Your Honor, at this time I would move
17 Defendant's Exhibit 2 into evidence.

18 MR. BARNETTE: No objection, Your Honor.

19 (Voluntary statement of Nicholas W. Ray marked
20 Defendant's Exhibit No. 2.)

21 MR. CAMPBELL: Beg the Court's indulgence.

22 (Pause.)

23 BY MR. CAMPBELL

24 Q Did Minor need oxygen when you arrived?

25 A Yes, sir.

Nicholas Ray
Redirect examination by Mr. Barnette

1 Q And was placing her on her left side the proper thing
2 to do?

3 A It was at the time because, again, she was full of
4 fluid in her lungs. So I put her into what's called a
5 recovery position initially.

6 Q Okay. So it was the proper thing to do, is that
7 correct?

8 A Yes, sir.

9 Q Okay. So if Tony called and she needed oxygen and he
10 told you she needed oxygen and she was on her left side
11 when you arrived, then Tony had done the proper procedure,
12 correct?

13 A That would have been the proper positioning, yes, sir.

14 MR. CAMPBELL: No further questions, Your Honor.

15 MR. BARNETTE: I have a couple, Your Honor.

16 THE COURT: Okay.

17 REDIRECT EXAMINATION

18 BY MR. BARNETTE

19 Q According to your statement you said due to the caller
20 didn't seem very distressed on the phone.

21 A Say that again, sir. I couldn't hear you.

22 Q Let me hand this statement back to you, sir, if I
23 could.

24 After the code one right -- I think it's on the fifth
25 line. Y'all responded.

Nicholas Ray
Redirect examination by Mr. Barnette

1 A Yes, sir.

2 Q You responded nonemergent.

3 A Yes, sir.

4 Q And basically that was due to the caller didn't seem
5 very distressed on the phone.

6 MR. BRANNON: Objection. Hearsay.

7 MR. BARNETTE: They entered it in.

8 THE COURT: Y'all -- it's his witness, but y'all
9 introduced it. So he can examine him about it.

10 But Mr. Campbell will have to take this witness.

11 MR. BRANNON: Yes, Your Honor.

12 BY MR. BARNETTE

13 Q Let me just put it on the screen. If you would, step
14 down for a second.

15 (Whereupon, the witness left the stand.)

16 Q I'll put this. Y'all responded as a nonemergent code
17 one.

18 A Yes, sir.

19 Q And that was due to the caller did not seem very
20 distressed on the phone.

21 A Yes, sir.

22 Q And that's what happened. He wasn't very distressed.
23 Y'all answered it as a code one, nonemergent.

24 A That's because it's a decision that Captain Gibbs and
25 I made based off the information that was received, yes,

Nicholas Ray
Redirect examination by Mr. Barnette

- 1 sir.
- 2 Q When you arrived there you decided you had to call
3 9-1-1.
- 4 A We had to bring in a transport, yes, sir.
- 5 Q Let's make sure. When you got there you did notice
6 she had a feeding tube in her stomach.
- 7 A Yes, sir.
- 8 Q She had bluish-red patches around her eyes, nose,
9 mouth and cheeks.
- 10 A Yes, sir.
- 11 Q She was spitting up lots of mucus, is that correct,
12 sir?
- 13 A Yes, sir.
- 14 Q And I'm assuming as it was presented -- or I guess as
15 it was -- I guess, I mean, she had a lot of mucus, like you
16 said.
- 17 A Right.
- 18 Q All right. So it was obvious to you she was in
19 distress.
- 20 A Yes, sir.
- 21 Q And you or y'all called 9-1-1. It was an emergency
22 call.
- 23 A Yes.
- 24 Q Should an EMT know that?
- 25 A Yes, sir.

Nicholas Ray
Recross-examination by Mr. Campbell

1 Q Sir, please have a seat.

2 (Whereupon, the witness returned to the stand.)

3 Q Thank you, sir. Please answer any other questions the
4 defense may have for you.

5 RECROSS-EXAMINATION

6 BY MR. CAMPBELL

7 Q Did you talk to Tony on the phone?

8 A No, sir.

9 Q So you have no idea whether or not he was distressed
10 or not, do you?

11 A No, sir.

12 Q Do you know how many times Tony called the Boiling
13 Springs Fire Department wondering where y'all were?

14 A No, sir. I have no clue.

15 Q So you would have no knowledge of the fact that he had
16 called twice asking what's taking so long.

17 MR. BARNETTE: Your Honor, I'm going to object at this
18 time. This is speculation. He's already answered the
19 question.

20 THE COURT: Sustained. He said he didn't know. You
21 can't testify.

22 MR. CAMPBELL: No further questions, Your Honor.

23 THE COURT: Step down.

24 MR. BARNETTE: Ask the witness be excused, Your Honor.

25 THE COURT: He may be.

1 (Whereupon, the witness was excused.)

2 THE COURT: Ladies and gentlemen, we are going to
3 recess for the afternoon.

4 Before I let you go let me caution you. Now that
5 you've been selected in the case you are not permitted to
6 talk about this case with any person whatsoever in any
7 fashion whatsoever.

8 Now, I know you might have a husband or a wife or
9 children or friends or whoever. They might know that
10 you're serving as jurors this week, and they may ask you
11 what you're doing, did you get picked in a case. You can
12 say you got picked, and then that's it.

13 That's because you can't talk about it. You can't
14 tell them what the case is about; you can't tell them the
15 name of it; can't tell them the witness' name; can't tell
16 who the lawyers are. You can't tell anything. You can't
17 discuss the case at all in any fashion.

18 Also, do not permit yourselves to be exposed to any
19 type of media coverage that might relate to the case. I
20 don't know if there'll be anything on the television. I
21 don't know if there'll be anything on the radio. I don't
22 know if there'll be anything in the newspaper about the
23 case. Oftentimes the media covers what goes on at the
24 courthouse.

25 So you are to avoid any type of exposure to any type

1 of media coverage that might relate to it -- television,
2 radio or newspaper. And that's because your decision has
3 to be based upon what you see and hear during the trial of
4 the case. You can't be influenced by anybody else's
5 interpretation or their observations or what they think
6 they saw or heard during the trial of the case.

7 There are 12 of you. Y'all are going to be able to
8 discuss it when you go back to deliberate. So don't permit
9 yourselves to be exposed to any type of information about
10 the case outside of this courtroom.

11 And you are also never permitted to conduct your own
12 research or do your own investigation into any issue. You
13 have to base your decision upon what you see and hear, or
14 the lack of information for that matter. But you can't
15 supplement your knowledge of the facts that relate to this
16 case by you conducting outside research or doing your own
17 investigation into any issue that might arise during the
18 trial.

19 Okay. So during the overnight recess and throughout
20 the course of the trial no discussions. Do not permit
21 anyone to try to discuss it with you. No exposure to any
22 type of media coverage or information that relates to the
23 case. Do not conduct any research or do your own
24 investigation into any issue that might arise.

25 Do have a good evening, and please report to your jury

1 room at 9:30 in the morning, 9:30 in the morning. Have a
2 good afternoon.

3 Just follow the bailiff. If you're not sure how to
4 get back to the jury room just talk to the bailiff.
5 They'll show you how to get back there.

6 (The following takes place outside the presence of the
7 jury.)

8 THE COURT: All right. Court is in recess until 9:30
9 in the morning.

10 END OF PROCEEDINGS OCTOBER 11, 2010
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1 (Proceedings October 12, 2010)

2 (The following takes place outside the presence of the
3 jury in chambers with counsel and Juror No. 160.)

4 THE COURT: We're on the record with -- for the
5 purpose of an interview with a juror in the case of the
6 State vs. David Anthony Tyre. Juror 160 is Walter Wyatt.
7 Counsel for both sides are present. Counsel for the
8 defense, Brannon and Campbell; for the state, Gowdy,
9 Barnette and Crick.

10 You are Walter Wyatt.

11 THE JUROR: Yes, sir.

12 THE COURT: Mr. Wyatt, this morning prior to us coming
13 back into the courtroom I understand that you contacted one
14 of the bailiffs for the purpose of providing him with
15 information to relate to me regarding your knowledge of a
16 relative of the defendant. Is that true?

17 THE JUROR: Yes, sir.

18 THE COURT: And I'm going to ask you some questions.
19 And if I say something incorrectly or misstate something,
20 you correct me, and you state it for the record so that
21 we'll be certain that all of the facts are accurate.

22 Previously you had indicated that you were a neighbor
23 to a relative of Mr. Tyre, the relative being John Harper
24 who was the great uncle of the defendant, David Anthony
25 Tyre, is that correct?

1 THE JUROR: Yes, sir.

2 THE COURT: And as I understand it the reason that you
3 knew that Mr. Harper was Mr. Tyre's great uncle is that
4 some months ago, perhaps a year ago, you and Mr. Harper,
5 who you considered to be a friend --

6 THE JUROR: Yes, sir.

7 THE COURT: -- had a discussion about a relative of
8 his having been arrested for a homicide or a child abuse.

9 THE JUROR: Yes, sir. And one of the neighbors, a
10 lady that lived there, she told me about it, who it was,
11 who the --

12 THE COURT: Another neighbor.

13 THE JUROR: That it was John -- that it was John's.

14 THE COURT: That it was John's nephew.

15 THE JUROR: Yeah.

16 THE COURT: Or great nephew.

17 THE JUROR: Yes, sir.

18 THE COURT: At the time up until this week did you
19 know that that nephew was, in fact, David Anthony Tyre?

20 THE JUROR: I had no idea.

21 THE COURT: And the way that you learned that that
22 must be the nephew that had been arrested was the fact that
23 you saw Mr. Harper here at court.

24 THE JUROR: I seen him yesterday evening late when we
25 got ready to go.

1 THE COURT: And where did you see him?

2 THE JUROR: He was sitting back about third from the
3 wall.

4 THE COURT: In the courtroom.

5 THE JUROR: In the courtroom, yes, sir.

6 THE COURT: He was seated in the courtroom. And
7 that's how you put the connection together.

8 THE JUROR: Yes, sir.

9 THE COURT: And you made the connection that the
10 nephew that you had heard about who had been arrested must
11 be the person that was now on trial.

12 THE JUROR: Yes, sir.

13 THE COURT: All right. And have you discussed that
14 fact with Mr. Harper or anybody else?

15 THE JUROR: No, sir.

16 THE COURT: Do you believe that that connection and
17 your friendship with Mr. Harper would impair or impede your
18 ability to render a fair decision in this case?

19 THE JUROR: I'd want to think it wouldn't, but I
20 don't -- I see John every day, every week, you know, and
21 we're in the neighborhood.

22 You know, there's about ten houses where I live.
23 That's it. It's kind of small. And I'd hate to face him
24 every day, you know, if he's found guilty or whatever and I
25 had something -- you know, I ain't saying I had anything to

1 do with it, but I'd have to put a yes, you know, put down,
2 and I don't know. It'd just be kind of odd, you know.

3 THE COURT: Do you think there's a reasonable
4 probability that your friendship or your connection with
5 John Harper would interfere with your ability to be make a
6 decision?

7 THE JUROR: It could. You know, I wouldn't want him
8 to have hard feelings at me for something regardless.

9 THE COURT: Well.

10 THE JUROR: I just wouldn't want, you know, I wouldn't
11 want.

12 THE COURT: When you say it could, now, obviously
13 could means, you know, anything's possible. But what I'm
14 trying to determine if you believe that your friendship
15 with Mr. Harper and the fact that he is the great uncle of
16 the defendant in this case, that there is a reasonable
17 probability that that connection would impair your ability
18 to be fair or to render a decision.

19 THE JUROR: Yes, sir.

20 THE COURT: Okay. All right. Let me ask you to just
21 step out for one second. Mr. Wyatt, if you'll just step
22 outside the door for just a second, don't leave me. Just
23 stand right there.

24 (Whereupon, the juror was excused from chambers.)

25 THE COURT: Anybody have any other questions you want

1 to ask him?

2 MR. GOWDY: It may not matter, Judge, and the Court
3 may have already inquired as to whether or not he shared
4 that information with his fellow jurors.

5 THE COURT: He just told me that he didn't. I have
6 asked him that. He's told me he did not discuss it, but
7 I'll ask him that for the record.

8 MR. BRANNON: Your Honor, would you ask him? And this
9 has nothing to do what you've already asked him. But would
10 you ask him simply is it possible for him to render a fair
11 verdict given the relationship that he has with his
12 neighbor.

13 THE COURT: He's already told me it would impair his
14 ability to come to a decision. And that's enough for me.

15 MR. BRANNON: I understand.

16 THE COURT: Well, I mean, in other words, the point
17 being if I make him stay and make him render a decision,
18 I'm sure he will, but that doesn't mean he can be fair.

19 He's told me his connection would impair his ability
20 to reach a decision, and I'm satisfied that that means he
21 can't be an impartial juror.

22 MR. BRANNON: I agree, Your Honor. I'm sorry.

23 (Whereupon, the juror was returned to chambers.)

24 THE COURT: Mr. Wyatt, step back in here, please, sir.
25 You can just have a seat right there. Let me ask you one

1 other thing.

2 THE JUROR: Yes, sir.

3 THE COURT: I know that you relayed the information to
4 the bailiff this morning so he could relate it to me about
5 your connection with Mr. Harper. Have you discussed that
6 fact with any juror in this case?

7 THE JUROR: I mentioned it to a lady that's over the
8 jury.

9 THE COURT: The forelady.

10 THE JUROR: Right. I mentioned it to her, and she
11 said I needed to talk to...

12 THE COURT: And what did you mention to her?

13 THE JUROR: That I knew one of the people on there,
14 you know, and pretty much that's about all I said. I said
15 I know one of the guys, you know, nephew of my neighbor.
16 She said you need to tell one of these other guys.

17 THE COURT: And I know that you didn't -- you weren't
18 preserving it for prosperity or thing like that. But do
19 you remember specifically what you told her this morning?

20 THE JUROR: No, just pretty much that I -- that I knew
21 one of them, that he was my neighbor. That's pretty much
22 all.

23 THE COURT: You say you knew one of them. What does
24 that mean?

25 THE JUROR: Well, like Mr. Harper. I knew. I told

1 her, I said, but the guy that's on trial, I said, I know
2 his uncle, you know.

3 THE COURT: His great uncle.

4 THE JUROR: Yeah. You can talk to her. I'm sure
5 it's -- you know, may be a word different or whatever, but
6 I just thought it was the thing to do. I mean, I didn't
7 know. I didn't know it would cause all of this problem.

8 THE COURT: Well, I understand that. I'm just trying
9 to be certain that I understand what you -- the information
10 you shared. And is it specifically the information you
11 shared, was only with the foreperson, and it was the fact
12 that you knew someone that was connected with the
13 defendant.

14 THE JUROR: Right.

15 THE COURT: And then she told you we need to tell the
16 Court.

17 THE JUROR: Yes, sir.

18 THE COURT: Okay. Was there any other discussions?

19 THE JUROR: No, sir.

20 THE COURT: Okay.

21 THE JUROR: I, you know, I thought it was the thing to
22 do. Like I say I wouldn't have -- this is a lot of trouble
23 here. I'm sorry.

24 THE COURT: Well, I want you to understand. It is the
25 appropriate thing to do. In fact, you should not do

1 anything else. You've done exactly what you should have
2 done.

3 Okay. Anything else?

4 MR. BARNETTE: No.

5 THE COURT: Okay. Mr. Wyatt, we're going to excuse
6 you from further service in the case. That's simply
7 because if everyone had had that information they may have
8 seated you anyway, but they may not have. We just don't
9 know.

10 It would have depended upon the information, but there
11 probably would have been further inquiry. And because we
12 didn't have that opportunity because you didn't know it at
13 the time, that's why just out of an abundance of caution
14 we're going to excuse you from any further participation.
15 Okay.

16 THE JUROR: I'm sorry.

17 THE COURT: That's all right. That's not a problem.

18 So you can leave. You'll need to call back after
19 6:00 o'clock this evening to find out about further
20 reporting. Okay. All right. Thank you, sir.

21 THE JUROR: Thank you. Like I say, I'm sorry.

22 MR. GOWDY: You did the right thing.

23 (Whereupon, the juror was excused from chambers.)

24 THE COURT: Anything else y'all need to put on the
25 record?

1 MR. BRANNON: Your Honor, I would ask you to inquire
2 of the foreperson to determine the extent of that
3 conversation.

4 THE COURT: Okay.

5 (The following takes place outside the presence of the
6 jury in chambers with counsel and Juror No. 131.)

7 THE COURT: Good morning. You are Michelle Smith.

8 THE JUROR: Yes, sir.

9 THE COURT: And you're the forelady in the case of the
10 State vs. David Anthony Tyre.

11 THE JUROR: Yes, sir.

12 THE COURT: I have talked earlier with Mr. Wyatt who
13 was a juror in the case.

14 THE JUROR: Yes, sir.

15 THE COURT: He has indicated that he is connected with
16 a relative of the defendant.

17 THE JUROR: Uh-huh.

18 THE COURT: And he also indicated that he had relayed
19 that information to you this morning.

20 THE JUROR: Yes, sir. I know.

21 THE COURT: And that's the reason that we had that
22 discussion with Mr. Wyatt.

23 THE JUROR: Right.

24 THE COURT: What I want to know from you is what
25 exactly as you recall it Mr. Wyatt told you this morning

1 when he reported for jury service.

2 THE JUROR: He just said that he needed to speak with
3 me about a matter, and I was thinking I didn't know what
4 that was about.

5 But he told us on the bus that he is -- I think he has
6 lived beside the uncle or great uncle of Tony's for like 30
7 years. And he -- he just said that if -- he didn't think
8 he could have a fair judgment in the case, you know, like
9 if he said that he was guilty he couldn't -- he couldn't
10 live with -- you know, his uncle probably wouldn't forgive
11 him or something -- Tony's uncle wouldn't forgive his
12 neighbor if he said guilty.

13 But, you know, he said either way, you know, it would
14 be bad basically. He didn't say he was going with guilty
15 already or anything. He just said either way, no matter
16 what, it's just uncomfortable for me, you know, I've known
17 the man for 30 years.

18 THE COURT: And so he didn't feel like he could be
19 fair in the case because of his connection.

20 THE JUROR: Right. I -- I guess that's what he was --
21 I don't think he wanted to be put in that situation. I
22 don't know if he felt like he couldn't be fair. He just
23 didn't want to have to do that because he has to live with
24 the relative.

25 THE COURT: Okay.

1 THE JUROR: That's what I was -- you know.

2 THE COURT: All right. Well, I'm sorry. Maybe I
3 misunderstood. I thought you said earlier he said he
4 didn't believe he could render a fair decision because of
5 that connection.

6 THE JUROR: He -- well, okay. Maybe -- maybe he said
7 that because he's lived with this man -- lived by, with
8 this man for 30 years.

9 I don't know if Tony ever came to the man's house or
10 not. I didn't -- you know, I didn't ask any questions
11 about that. But he said that he don't know if he could,
12 because he knows the man maybe he wouldn't -- yeah, maybe,
13 maybe he was leaning on because I know him, that he didn't
14 feel like he wanted to be put in that position. Maybe he
15 wasn't sure if he could be fair --

16 THE COURT: Okay.

17 THE JUROR: -- because of the connection.

18 THE COURT: Right.

19 THE JUROR: The neighbor.

20 THE COURT: And that's what he told you this morning,
21 or he did he have that discussion with any other juror that
22 you're aware of?

23 THE JUROR: I mean, he said -- he said that on the bus
24 when we were going over.

25 THE COURT: And who was he talking to?

1 THE JUROR: I mean, everybody was in there.

2 THE COURT: Oh.

3 THE JUROR: But he just said -- you know, everybody
4 was on the bus. He said that he's the neighbor of the
5 uncle of Tony. And that's basically what I was saying, is
6 what he said on the bus. He didn't say that to me in
7 private. He said that on the bus.

8 THE COURT: And was there any discussion by any other
9 jurors about the comment he made?

10 THE JUROR: No, sir, not that I recall.

11 THE COURT: Okay. Thank you. Don't -- don't discuss
12 anything we've discussed here with any juror in this case.

13 THE JUROR: Okay.

14 THE COURT: Okay. Thank you. You can go back to the
15 jury room.

16 (Whereupon, the juror was excused from chambers.)

17 (The following takes place outside the presence of the
18 jury in chambers with counsel and Juror No. 60.)

19 THE COURT: Good morning. Come in. Have a seat right
20 there if you don't mind. You are Rudolph Harper.

21 THE JUROR: Yeah.

22 THE COURT: Mr. Harper, of course you're a juror in
23 this case, State vs. Tyre. And I have had a discussion
24 this morning with Juror Wyatt and also with the forelady,
25 Ms. Smith.

1 I understand that Mr. Wyatt made some comments about
2 his knowing someone related to someone in this case during
3 the transport back and forth to the garage.

4 THE JUROR: Well, I didn't hear that.

5 THE COURT: Okay.

6 THE JUROR: I didn't hear anything like that.

7 THE COURT: All right. So you don't -- you don't have
8 any knowledge --

9 THE JUROR: No.

10 THE COURT: -- of any comments made by Mr. Wyatt --

11 THE JUROR: No, I don't.

12 THE COURT: -- relating to a relative in the case.

13 THE JUROR: No.

14 THE COURT: Okay. And so then there's nothing that
15 you have been exposed to that would have any impact upon
16 your decision to continue to be a fair and impartial juror?

17 THE JUROR: No.

18 THE COURT: Okay. That's all I need from you.

19 THE JUROR: Okay.

20 THE COURT: Don't discuss it with any juror. Don't
21 discuss our comments here with any juror. Okay.

22 THE JUROR: Well, I can tell you one thing before I
23 leave.

24 THE COURT: Okay.

25 THE JUROR: When I came in this morning the young lady

1 in there, she mentioned that. I didn't know anything about
2 it.

3 THE COURT: What young lady?

4 THE JUROR: I don't know what her name is.

5 THE COURT: A juror?

6 THE JUROR: Yeah, a juror.

7 THE COURT: And what did she say?

8 THE JUROR: She said that he was a neighbor or
9 something to -- a neighbor lived beside him that was an
10 uncle or something like that, and then that's it.

11 THE COURT: Okay.

12 THE JUROR: I didn't know anything about that, and I
13 didn't hear anything else about that.

14 THE COURT: All right. Well, if that were, in fact,
15 true, if there was a relative of the defendant that was a
16 neighbor of Mr. Wyatt --

17 THE JUROR: Right.

18 THE COURT: -- would that have any bearing on your
19 decision in the case?

20 THE JUROR: No, not with me. No, no, no, not at all,
21 not at all.

22 THE COURT: Okay. All right.

23 THE JUROR: All right.

24 THE COURT: Don't discuss it with any other jurors.
25 Thank you.

1 (Whereupon, the juror was excused from chambers.)
2 THE COURT: Any objection to Mr. Harper remaining?
3 MR. GOWDY: No, sir, Your Honor.
4 MR. BRANNON: No.
5 (The following takes place outside the presence of the
6 jury in chambers with counsel and Juror No. 158.)
7 THE COURT: Good morning. Come in, please, sir. Have
8 a seat right there in that chair if you don't mind.
9 THE JUROR: Okay.
10 THE COURT: You are Kenneth Woodward.
11 THE JUROR: Yes, sir.
12 THE COURT: You're also a juror in the case of the
13 State vs. Tyre.
14 THE JUROR: Yes, sir.
15 THE COURT: Mr. Woodward, this morning I was contacted
16 by the bailiff who had had some discussion with the
17 forelady about some comments that might have been made by
18 Mr. Wyatt who is a juror in the case. Do you know who
19 Mr. Wyatt is?
20 THE JUROR: Right. I know who you're talking about.
21 THE COURT: And there was some discussion about him
22 being a neighbor to someone related in this case.
23 THE JUROR: Right.
24 THE COURT: Were you -- or did you hear any of that
25 discussion or conversation?

1 THE JUROR: Yes, sir.

2 THE COURT: What -- what is it that you heard and from
3 whom did you hear it?

4 THE JUROR: I heard -- overheard him telling the --

5 THE COURT: Him being Mr. Wyatt?

6 THE JUROR: Right. Telling the forelady or foreperson
7 about he was neighbors to the uncle of the man on trial.

8 THE COURT: Okay.

9 THE JUROR: Yes, sir.

10 THE COURT: And where did you hear that?

11 THE JUROR: We were standing at the bus stop out
12 there.

13 THE COURT: Okay. And is there anything else you
14 heard besides him telling the forelady that information?

15 THE JUROR: That's about it.

16 THE COURT: And is there anything about that
17 information that would have any bearing upon your decision
18 in the case?

19 THE JUROR: No, sir.

20 THE COURT: You could still be fair and impartial?

21 THE JUROR: Yes, sir.

22 THE COURT: Okay. Thank you. Don't discuss with any
23 juror our conversation here. Okay.

24 THE JUROR: Right.

25 THE COURT: Thank you. You can go back to the jury

1 room.

2 (Whereupon, the juror was excused from chambers.)

3 THE COURT: Any objection to Mr. Woodward remaining?

4 MR. GOWDY: No, Your Honor.

5 MR. BRANNON: Your Honor, if another juror says that
6 they heard the conversation -- and I understand you don't
7 want to ask any leading questions -- but we need to know if
8 they heard him say that he was uncomfortable continuing as
9 a juror because of that relationship.

10 THE COURT: Well, I understand that.

11 (Whereupon, the door was opened.)

12 THE COURT: Just a minute.

13 (Whereupon, the door was closed.)

14 THE COURT: Well, do you understand I don't want to
15 plant seeds in the juror's mind? That's why I'm asking
16 them what they heard, not did you hear this, because if I
17 asked them did you hear this, then they've heard it. And
18 I'm trying to determine what they did hear without telling
19 them what I wondering they heard.

20 MR. BRANNON: Would you ask if he heard the entire
21 conversation -- if they heard the entire conversation?

22 THE COURT: Well, I'm asking. Okay. I'm asking what
23 they heard.

24 (The following takes place outside the presence of the
25 jury in chambers with counsel and Juror No. 109.)

1 THE COURT: Mr. O'Shields, come on in. Thank you.
2 Just have a seat right there please, sir. And you are
3 Michael O'Shields.

4 THE JUROR: Yes, sir.

5 THE COURT: Mr. O'Shields, you're a juror in the State
6 vs. -- case of the State vs. Tyre.

7 The reason I've asked you to step in, this morning I
8 have been informed by the bailiff that the forelady
9 contacted the bailiff to tell me that there has been some
10 discussion in some form about the case by Mr. Wyatt with
11 Ms. Smith. And perhaps other jurors may have heard some
12 comments Mr. Wyatt made. And those comments related to his

13 being a neighbor of someone that's connected in this case
14 in some fashion. Did you hear any discussions about that?

15 THE JUROR: I'm not really sure which one Mr. Wyatt
16 is, but one guy when he did come in, he talked to one of
17 the guys in the red jackets and said he wanted to talk to
18 you because he knowed something, but.

19 THE COURT: Okay. And have you heard any discussions
20 about this case or any person connected to this case by any
21 juror?

22 THE JUROR: Not at all, no.

23 THE COURT: Okay. Is there anything that you know of
24 that would impair your ability to continue to serve as a
25 fair and impartial juror?

1 THE JUROR: No, sir, not at all.

2 THE COURT: Okay. Thank you. You can go back to the
3 jury room. Do not discuss with any juror our conversation
4 here.

5 THE JUROR: Okay. Yes, sir.

6 THE COURT: Thank you.

7 (Whereupon, the juror was excused from chambers.)

8 THE COURT: Any objection to Mr. O'Shields continuing?

9 MR. GOWDY: No, Your Honor.

10 MR. CAMPBELL: No, sir, Your Honor.

11 MR. BARNETTE: I am going to step out, Judge.

12 (The following takes place outside the presence of the
13 jury in chambers with counsel and Juror No. 65.)

14 THE COURT: Good morning.

15 THE JUROR: How are you?

16 THE COURT: I'm good. Thank you. You can just have a
17 seat right there if you don't mind.

18 THE JUROR: Yes, sir.

19 THE COURT: You're Thomas Huseman.

20 THE JUROR: Huseman.

21 THE COURT: Huseman. All right. Mr. Huseman, of
22 course you're a juror in the case of the State vs. Tyre.

23 The reason I've asked you to step in this morning is
24 that one of your fellow jurors, Mr. Wyatt -- do you know
25 who I'm referring to?

1 THE JUROR: No, sir. I don't know. I don't know any
2 of their names.

3 THE COURT: Okay. Well, Mr. Wyatt contacted Ms.
4 Smith, the forelady, to let her know that he was a relative
5 of somebody that was connected in the case in order to let
6 me know.

7 THE JUROR: Right.

8 THE COURT: And what I'm trying to find out is if you
9 were in any way exposed to that conversation.

10 THE JUROR: Not that I know of.

11 THE COURT: Okay.

12 THE JUROR: We were standing down waiting for the bus

13 to run and so forth, and everybody was chitchatting, and
14 I -- I really wasn't paying attention. I talk a lot
15 myself.

16 THE COURT: Sure.

17 THE JUROR: So I was rambling with somebody else, not
18 paying attention.

19 THE COURT: So you didn't hear. Is it fair to say
20 that you have heard no one, no juror in this case, have a
21 discussion about being related, excuse me, about being a
22 neighbor to a person related to a party in the case?

23 THE JUROR: No, sir.

24 THE COURT: Okay.

25 THE JUROR: Not that I can pinpoint. Like I said, I

1 was talking a lot this morning. I -- I love to talk to
2 people, so I don't really pay a lot of attention to what's
3 going on around me when I'm carrying on a conversation.
4 But I do not remember hearing anything about that.

5 THE COURT: Okay. Can you think of any reason why you
6 can't continue to be fair and impartial?

7 THE JUROR: No, sir.

8 THE COURT: Okay. Thank you, Mr. Huesman.

9 THE JUROR: Thank you, sir.

10 THE COURT: And do not discuss with any other juror
11 our conversation here.

12 THE JUROR: Yes, sir. No problem.

13 THE COURT: Okay. Thank you.

14 (Whereupon, the juror was excused from chambers.)

15 THE COURT: Any objection to Mr. Huesman remaining?

16 MR. CAMPBELL: None, Your Honor.

17 MR. GOWDY: No, sir. But given the fact that he says
18 he loves to talk a lot my fear is he may be related to
19 Ms. Crick.

20 MR. BRANNON: What about the I-don't-pay-attention-to-
21 what-goes-on-around-me?

22 THE COURT: You understand this is the very reason why
23 juror deliberations are secret.

24 (The following takes place outside the presence of the
25 jury in chambers with counsel and Juror No. 84.)

1 THE COURT: Good morning, good morning. If you will,
2 have a seat right there, please, ma'am.

3 THE JUROR: Yes, sir.

4 THE COURT: And you're Kimberly Leming.

5 THE JUROR: Yes, sir.

6 THE COURT: Ms. Leming, you're a juror in the case of
7 the State vs. Tyre.

8 And the reason that I've asked you to step in is
9 because this morning I was made aware that one of your
10 fellow jurors, Mr. Wyatt, had contacted the forelady,
11 Ms. Smith -- and perhaps he had discussions with other
12 jurors -- about his being a neighbor to someone connected

13 to someone in this case. Were you exposed to that
14 conversation?

15 THE JUROR: I was in the parking lot when we were
16 right outside the parking deck, and I was exposed to that
17 conversation.

18 THE COURT: And what did you hear?

19 THE JUROR: He said that the neighbor --

20 THE COURT: He being Mr. Wyatt?

21 THE JUROR: Is that the older gentleman, the one that
22 I heard talking about it?

23 THE COURT: Yes, ma'am.

24 THE JUROR: What he said was that he wanted to talk to
25 the judge because he thought that the neighbor behind him

1 was -- I think he said -- a great uncle of the boy. And at
2 that point I just cut myself off of it and didn't say
3 anything more.

4 THE COURT: Okay. And did you hear anything else that
5 Mr. Wyatt said?

6 THE JUROR: No, sir. He was just concerned that he
7 would have to look at that man every day, and he didn't
8 think he could be fair and impartial considering if that
9 man was the great uncle of the boy, that he didn't think
10 that he could look at him every day if he felt like that he
11 convicted him.

12 THE COURT: Okay. And would the fact that you have
13 been exposed to that conversation or that information have
14 any bearing upon your ability to continue to be fair and
15 impartial?

16 THE JUROR: No, sir, not at all.

17 THE COURT: Could you put it aside --

18 THE JUROR: Absolutely.

19 THE COURT: -- and not allow it to influence your
20 decision in any way?

21 THE JUROR: Absolutely, absolutely.

22 THE COURT: Okay. And are you aware of any other
23 jurors that he may have talked to about it?

24 THE JUROR: No, sir, not -- not to my knowledge. When
25 we were there standing for the bus, of course the

1 foreman -- the foreman was on my left. I was in the
2 middle. And he said that to her. And, you know, she just
3 said you need to talk to the judge. And that was it.
4 Nothing else was said to my knowledge.

5 THE COURT: Okay. Thank you, ma'am. You can step
6 back in the jury room. Do not discuss this conversation
7 with any juror.

8 THE JUROR: Yes, sir. Absolutely.

9 THE COURT: Thank you, ma'am.

10 (Whereupon, the juror was excused from chambers.)

11 THE COURT: Any objection to Ms. Leming continuing?

12 MR. BRANNON: Yes, Your Honor.

13 THE COURT: All right. What's the objection?

14 MR. BRANNON: The objection is that Mr. Wyatt's
15 conversation may have implied that he was leaning towards a
16 guilty verdict. He expressed that to this -- this juror in
17 that he didn't think that he could look his neighbor in the
18 eye if Tony were convicted. And that impression, while she
19 says she can remain impartial --

20 THE COURT: Just a minute.

21 (Whereupon, the door was opened.)

22 THE COURT: Just a minute, please. I'll be right with
23 you.

24 (Whereupon, the door was closed.)

25 MR. BRANNON: His implication that he may be leaning

1 towards guilty may affect her judgment after hearing all of
2 the evidence in the case.

3 THE COURT: Okay. Note your exception.

4 (The following takes place outside the presence of the
5 jury in chambers with counsel and Juror No. 51.)

6 THE COURT: Mr. Goodrich --

7 THE JUROR: Yeah.

8 THE COURT: -- come in please, sir. Just have a seat
9 right there if you don't mind. You are Mark Goodrich.

10 THE JUROR: Yes, sir.

11 THE COURT: And you're a juror in the case of the
12 State vs. Tyre.

13 The reason I've asked that you step in here is that I
14 was informed this morning that one of your fellow jurors,
15 Mr. Wyatt, had contacted the forelady, Ms. Smith, and had
16 indicated to her that he believed that one of his neighbors
17 was connected to someone in this case. And I'm just trying
18 to find out if you were exposed to that discussion or
19 conversation.

20 THE JUROR: No, because I don't even know who that
21 juror is. I don't know any of the people's names. So, no,
22 I wasn't, sir.

23 THE COURT: Okay. Well, the fact that you don't know
24 who the juror might be -- have you heard any discussions
25 since your selection in this case from any juror about that

1 juror being a neighbor of someone connected to someone in
2 the case?

3 THE JUROR: No, nothing at all.

4 THE COURT: Okay.

5 THE JUROR: Once we left, left here, I -- I had no
6 contact with anybody until, you know, I walked right back
7 in this morning. So nothing at all.

8 THE COURT: And so you didn't hear any conversations
9 similar to what I have described while you were standing at
10 the stop waiting for the shuttle to pick you up.

11 THE JUROR: No, nothing at all. It's been your normal
12 talking about the weather, you know, type of conversation,
13 nothing related to anything to this, or.

14 THE COURT: Okay. Do you know of any reason why you
15 can't continue to be a fair and impartial juror?

16 THE JUROR: No. I can't give you any now.

17 THE COURT: Okay. All right. You can step back in
18 the jury room. Do not discuss with any other juror the
19 conversation we've had this morning. Okay.

20 THE JUROR: Okay.

21 THE COURT: All right. Thank you, Mr. Goodrich.

22 (Whereupon, the juror was excused from chambers.)

23 THE COURT: Any objection to Mr. Goodrich continuing?

24 MR. CAMPBELL: None.

25 MR. GODFREY: No, sir, Your Honor.

1 (The following takes place outside the presence of the
2 jury in chambers with counsel and Juror No. 25.)

3 THE COURT: Good morning. How are you doing? If
4 don't mind, just have a seat right there.

5 You're Cody Clark.

6 THE JUROR: Yes, sir.

7 THE COURT: Mr. Clark, you're a juror in the case of
8 the State vs. Tyre.

9 The reason I've asked you to step in here is that this
10 morning I was informed that one of your fellow jurors,
11 Mr. Wyatt, had contacted the foreperson, Ms. Smith, to let
12 her know that he believed that he was a neighbor of someone
13 connected to someone in this case.

14 THE JUROR: Okay.

15 THE COURT: Did you hear any discussion like that?

16 THE JUROR: No, sir. It wasn't going on while I was
17 around.

18 THE COURT: Okay. Have you heard any juror talk about
19 another juror being a neighbor of someone connected to
20 someone in this case?

21 THE JUROR: No, sir.

22 THE COURT: Okay. Can you think of any reason why you
23 could not continue to be a fair and impartial juror?

24 THE JUROR: No, sir.

25 THE COURT: Okay. Thank you. You can step back in

1 the jury room. Do not discuss with any other juror the
2 conversation we've had. Okay?

3 THE JUROR: Yes, sir.

4 (Whereupon, the juror was excused from chambers.)

5 THE COURT: Okay. Any objection to Mr. Clark
6 continuing?

7 MR. CAMPBELL: None, Your Honor.

8 MR. GOWDY: No, sir, Your Honor.

9 (The following takes place outside the presence of the
10 jury in chambers with counsel and Juror No. 151.)

11 THE COURT: Come in. Have a seat right there if you
12 don't mind.

13 THE JUROR: Okay.

14 THE COURT: You are James Hayes Walsh.

15 THE JUROR: Yes, sir.

16 THE COURT: And you're a juror in the case of the
17 State vs. Tyre.

18 THE JUROR: Yes, sir.

19 THE COURT: The reason I've asked you to step in here
20 is this morning Mr. Wyatt -- do you know who Mr. Wyatt is,
21 one of your fellow jurors?

22 THE JUROR: Older gentleman wearing a hat?

23 THE COURT: He might have been. He wasn't wearing a
24 hat in here.

25 THE JUROR: Oh, okay.

1 THE COURT: He may have been. In any event, he had
2 contacted the foreperson, Ms. Smith, to inform her that he
3 believed that he was a neighbor of someone who is connected
4 to someone in this case. And I'm simply -- I have asked
5 you to step back here to find out if you were exposed to
6 that conversation or any such discussion.

7 THE JUROR: When we were leaving the courthouse
8 yesterday when he was going towards the vans he made some
9 offhand comment that he may have thought he recognized
10 somebody or may have known somebody. But I didn't --
11 wasn't paying attention and was trying to get back to the
12 office.

13 THE COURT: And was that the extent of what you heard
14 from that juror?

15 THE JUROR: Yes, sir.

16 THE COURT: Have you heard any other comments or any
17 recanting of any discussion that he may have had with
18 someone else on the panel?

19 THE JUROR: No, sir, no, sir, not at all.

20 THE COURT: Do you know of any reason why you can't
21 continue to be a fair and impartial juror?

22 THE JUROR: No, sir.

23 THE COURT: Okay. Thanks. If you will, step back in
24 the jury room. Don't discuss this conversation with
25 anybody else. Thank you.

1 (Whereupon, the juror was excused from chambers.)

2 THE COURT: Any objections to Lawyer Walsh remaining?

3 MR. CAMPBELL: None, Your Honor.

4 (The following takes place outside the presence of the
5 jury in chambers with counsel and Juror No. 17.)

6 THE COURT: Come in. How are you?

7 THE JUROR: Okay.

8 THE COURT: Have a seat right there, please, ma'am.

9 You are Pashaun Burgess.

10 THE JUROR: Pashaun.

11 THE COURT: Pashaun Burgess.

12 THE JUROR: Uh-huh.

13 THE COURT: And, Ms. Burgess, the reason I've asked
14 you to step in here is this morning I was informed that one
15 of your fellow jurors, Mr. Wyatt, had had -- or contacted
16 the foreperson, Mr. Smith, and had told her that he
17 believed that he was a neighbor of someone who is connected
18 to someone in the case.

19 THE JUROR: Uh-huh.

20 THE COURT: Did you hear any discussion about that?

21 THE JUROR: I heard them telling him. That was it.

22 THE COURT: Well, that's what I'm trying to find out.

23 THE JUROR: Tell the bailiff.

24 THE COURT: You heard who tell the bailiff?

25 THE JUROR: The guy who was in there on the jury.

1 THE COURT: All right. Mr. Wyatt?

2 THE JUROR: Yeah.

3 THE COURT: I'm trying to -- what I'm trying to find
4 out, was it Mr. Wyatt or Ms. Smith that you heard talk to
5 the bailiff?

6 THE JUROR: Mr. Wyatt.

7 THE COURT: Okay.

8 THE JUROR: Yeah.

9 THE COURT: Okay. And what did you hear him tell the
10 bailiff?

11 THE JUROR: He said that he wanted to speak with you
12 concerning that guy, the defendant's uncle, being his
13 neighbor.

14 THE COURT: Okay. And have you heard -- other than
15 that, did you hear anything about that particular fact or
16 issue?

17 THE JUROR: No.

18 THE COURT: Okay. And is there anything about that
19 that would affect your ability to continue to be fair and
20 impartial in this case?

21 THE JUROR: No.

22 THE COURT: Can you put it aside and not allow it to
23 influence your decision in any way?

24 THE JUROR: Yeah.

25 THE COURT: And you don't know any of those people, do

1 you?

2 THE JUROR: No, I don't.

3 THE COURT: And did you -- do you know if Mr. Wyatt
4 had that discussion with any other jurors?

5 THE JUROR: I don't -- I don't know.

6 THE COURT: You don't know.

7 THE JUROR: No.

8 THE COURT: You didn't hear any such discussion.

9 THE JUROR: No.

10 THE COURT: Okay. And you can continue to be fair and
11 impartial?

12 THE JUROR: Yes, sir.

13 THE COURT: Okay. Thank you. Please go back to your
14 jury room. Do not discuss our conversation with any juror.

15 THE JUROR: All right.

16 (Whereupon, the juror was excused from chambers.)

17 THE COURT: Any objection to Pashaun Burgess
18 continuing?

19 MR. GOWDY: None from the state.

20 MR. CAMPBELL: None, Your Honor.

21 (The following takes place outside the presence of the
22 jury in chambers with counsel and Juror No. 23.)

23 THE JUROR: Good morning. How are you doing?

24 THE COURT: I am fine. Thank you. Have a seat right
25 there, please.

1 You are Sherry Cheek.

2 THE JUROR: Yes.

3 THE COURT: Ms. Cheek, the reason I've asked you to
4 step back here is you are a juror in the case of the State
5 vs. Tyre.

6 This morning the bailiff told me that one of your
7 fellow jurors, Mr. Wyatt, had contacted either the bailiff
8 and-or the forelady and had indicated that he was -- that
9 he believed that he was a relative -- that he was a
10 neighbor of someone who is connected to someone in this
11 case.

12 THE JUROR: Yes.

13 THE COURT: And I'm just trying to determine whether
14 or not you heard such a conversation.

15 THE JUROR: I heard it this morning.

16 THE COURT: Okay. And where did you hear it?

17 THE JUROR: When we were at the parking lot waiting
18 for the bus.

19 THE COURT: And what did you hear?

20 THE JUROR: Just basically that they lived in the same
21 neighborhood, very close vicinity.

22 THE COURT: And who was saying that?

23 THE JUROR: The gentleman you were talking about.

24 THE COURT: Okay. Mr. Wyatt?

25 THE JUROR: Yes.

1 THE COURT: And what exactly do you recall him saying?

2 THE JUROR: All I know, I think he said that the guy
3 was the defendant's great uncle or something like that.

4 THE COURT: And that he lived in the neighborhood with
5 him?

6 THE JUROR: Yes.

7 THE COURT: And was there anything else said?

8 THE JUROR: I think he mentioned that he lived there
9 for like 40 years and the guy must have lived there for
10 about 30.

11 THE COURT: Okay.

12 THE JUROR: Something like that.

13 THE COURT: Anything else you can recall?

14 THE JUROR: That's basically it.

15 THE COURT: All right. Is there anything about that
16 discussion or that conversation that would have any bearing
17 upon your decision in this case?

18 THE JUROR: Not one bit.

19 THE COURT: Can you continue to be fair and impartial?

20 THE JUROR: Yes.

21 THE COURT: Okay. Thank you, ma'am. You can step
22 back in the jury room. Do not discuss with any other juror
23 the conversation we've had. Okay?

24 THE JUROR: Okay.

25 THE COURT: Thank you.

1 (Whereupon, the juror was excused from chambers.)
2 THE COURT: Any objection to Ms. Cheek continuing?
3 MR. CAMPBELL: None, Your Honor.
4 MR. GOWDY: Not from the state, Your Honor.
5 (The following takes place outside the presence of the
6 jury in chambers with counsel and Juror No. 46.)
7 THE COURT: Good morning. How are you doing?
8 THE JUROR: Fine. Thank you.
9 THE COURT: If you don't mind, have a seat right
10 there. You are Ms. Gasswint.
11 THE JUROR: Yes, sir.
12 THE COURT: Ms. Gasswint, you are a juror in the case
13 of the State vs. Tyre.
14 The reason I've asked you to step back here is this
15 morning I was contacted and was told that one of your
16 fellow jurors, a Mr. Wyatt, had had a conversation with the
17 forelady, Ms. Smith, or perhaps had relayed some
18 information to her that was relayed to the bailiff that was
19 relayed to me. And it related to the possibility that
20 Mr. Wyatt was a neighbor of someone who might be connected
21 with someone in this case.
22 I'm trying to find out from each of the jurors if you
23 have been exposed to that conversation or that information
24 from Mr. Wyatt.
25 THE JUROR: I just heard when he came into the -- this

1 room here. I heard him say that he knew an uncle or
2 something of that type.

3 THE COURT: Okay. And had you heard anything about
4 that before --

5 THE JUROR: No.

6 THE COURT: -- you came back to the jury room this
7 morning?

8 THE JUROR: No, sir.

9 THE COURT: And do you recall specifically what --
10 what he said?

11 THE JUROR: He said that he figured out last night
12 that he lived next door to the uncle or great uncle of the

13 person in the -- in the case. And I wasn't quite sure who
14 he was speaking of.

15 THE COURT: Okay. And was there anything else said
16 that you recall?

17 THE JUROR: No. Just that.

18 THE COURT: Is there anything about that conversation
19 that would affect your ability to be fair and impartial in
20 the case?

21 THE JUROR: No, sir.

22 THE COURT: It wouldn't have any impact upon your
23 decision?

24 THE JUROR: No, sir.

25 THE COURT: Okay. Thank you. You can step back into

1 the jury room. Do not discuss with any other juror our
2 conversation. Okay.

3 (Whereupon, the juror was excused from chambers.)

4 THE COURT: Any objection to Ms. Gasswint continuing?

5 MR. CAMPBELL: None, Your Honor.

6 MR. GOWDY: No, sir, Your Honor.

7 THE COURT: All right. Anything else you need to put
8 on the record?

9 MR. BRANNON: No, Your Honor.

10 We would move for a mistrial in this matter based on
11 the conversations and the possibility that Mr. Wyatt's
12 statements could lead the jurors to believe that he was
13 already favoring a guilty verdict and could not -- did not
14 believe he could face his neighbor if he was forced to
15 render that verdict. And that would be an improper
16 conversation or improper implication being placed in the
17 minds of the other jurors.

18 THE COURT: All right. Well, that's the purpose of
19 the interview with all of the jurors.

20 They have each indicated that they can be fair and
21 impartial, that they are not connected with anyone involved
22 in the case, and the fact that Mr. Wyatt was a neighbor of
23 someone who is connected with the defendant was not
24 something that would have any impact upon their decision.

25 So your motion for a mistrial is denied.

1 Anything else? Okay.

2 (The following takes place in the courtroom outside
3 the presence of the jury.)

4 THE COURT: All right. Any matters we need to address
5 before the jury is brought in?

6 MR. GOWDY: None from the state, Your Honor.

7 MR. CAMPBELL: None from the defense, Your Honor.

8 THE COURT: Okay. Bring them in.

9 (The following takes place in the presence of the
10 jury.)

11 THE COURT: Let me ask the five jurors on the back row
12 to move to your right one seat. And I'm going to ask the

13 last juror on the front row if you'll move back one seat.

14 And then the remaining six move down one seat.

15 The reason I do that, it doesn't really matter except
16 for the fact that it gives everybody a better opportunity
17 to see the screen when they show something, so rather than
18 having that uneven balance.

19 Good morning, ladies and gentlemen. Ms. Gasswint, as
20 I told you at the time of your selection, you are an
21 alternate juror. And you would take the place of one of
22 the original 12 if in the event one of these jurors could
23 not continue to serve. And that event has occurred. One
24 of your fellow jurors has been excused from further
25 service. So you're now the 12th juror. And so you'll

Sharon Irene Niedermeyer
Direct examination by Ms. Crick

1 participate fully throughout the trial, including the juror
2 deliberations.

3 So we are now ready to continue with the state's
4 presentation of evidence.

5 Ms. Crick.

6 MS. CRICK: Thank you, Your Honor. The state calls
7 Sharon Niedermeyer.

8 SHARON IRENE NIEDERMEYER,
9 having been first duly sworn, testified as follows:

10 DIRECT EXAMINATION BY MS. CRICK

11 Q Ms. Niedermeyer, could you make sure you speak into
12 the microphone so that everybody can hear you? And tell
13 the jury what your full name is.

14 A Sharon Irene Niedermeyer.

15 Q Do you work, Ms. Niedermeyer?

16 A Yes, I do.

17 Q What do you do right now?

18 A Right now I just opened up a restaurant.

19 Q What's your restaurant?

20 A MeeMaw's.

21 Q And before opening up your restaurant what did you do?

22 A I was a nurse, an LPN, for 16 years.

23 Q And did you have to have special training to become a
24 nurse?

25 A Yes. I went to school a whole year.

Sharon Irene Niedermeyer
Direct examination by Ms. Crick

- 1 Q Are you still certified to be a nurse?
2 A Yes.
3 Q Even though you're running a restaurant.
4 A Yes.
5 Q At some point when you were a nurse did you take care
6 of Minor
7 A Yes.
8 Q Do you remember about what time you started taking
9 care of Minor
10 A Early December of '09. No. I'm sorry. That would be
11 '08.
12 Q December of '08?
13 A Uh-huh.
14 Q Now, when you started taking care of Minor do you
15 remember the defendant, Mr. Tyre, being in the picture at
16 that time or --
17 A Not at that time. A couple of months later.
18 Q You remember him being around or coming around.
19 A Yes.
20 Q So that would have been in early 2009?
21 A Yes. Approximately February, March.
22 Q When you worked with Minor what days did you work and
23 what hours did you work?
24 A It depended when she went to school. Then I came
25 right after the school bus, approximately 3:30, and I

Sharon Irene Niedermeyer
Direct examination by Ms. Crick

- 1 stayed until 9:30 at night.
- 2 Q During the school year.
- 3 A Yes. And during the summer I would come at 9:00 a.m.
- 4 and leave at 5:00 p.m.
- 5 Q So in June and July you would have been on the summer
- 6 hours from 9:00 to 5:00.
- 7 A Yes, ma'am.
- 8 Q Did Minor mom work as well?
- 9 A Yes.
- 10 Q When did she work?
- 11 A She worked baler, which is on the weekends.
- 12 Q Okay.
- 13 A And then she was picking up some 3:00 to 11:00's.
- 14 Q Okay. So when you would be with Minor during the week
- 15 days would the mom sometimes being around as well?
- 16 A Yes.
- 17 Q Were there other children in the home?
- 18 A Yes.
- 19 Q Did you take care of them as well, or just you were in
- 20 charge of Minor
- 21 A I was in charge of Minor but if I seen they needed a
- 22 little bit of help I would help out.
- 23 Q But your primary purpose was to be there to take care
- 24 of Minor and help the mom out with the care of Minor
- 25 A Yes, ma'am.

Sharon Irene Niedermeyer
Direct examination by Ms. Crick

1 Q Can you explain to the jury what Minor personality
2 was like?

3 A Oh, she was a wonderful child. She would -- she would
4 smile all of the time. She loved to watch cartoons. And
5 we would dance in the chair. And she was -- she was a
6 wonderful child.

7 Q And when you say dance in the chair I don't -- you
8 don't meant literally.

9 A No. I'm sorry.

10 Q How would you do it?

11 A No. I would take her arms and we would -- we would
12 do -- she loved the Amy movie. And whenever they would

13 sing, we would get to going.

14 Q That's okay. So what kind of care did you have to
15 provide for her?

16 A When she came off the school bus I would take off her
17 braces and get her comfortable, check her diaper to make
18 sure she was clean. And then I would give her her
19 medicine. And she was a tube-feed. So I would feed her.
20 And then in the evening I would bathe her and get her ready
21 for bed. And she had nighttime braces we would put on.

22 Q Was she able to talk to you?

23 A No, no.

24 Q Was she able to walk or crawl or anything like that?

25 A No, no.

Sharon Irene Niedermeyer
Direct examination by Ms. Crick

1 Q Basically, not a lot of control over her body.

2 A Not -- no. You had to have her strapped in in the
3 wheelchair or she would have fell out unless you had it
4 backed.

5 Q So she was not a child who would be able to sit up by
6 herself on a sofa or even on the floor.

7 A No, not at all.

8 Q And in the wheelchair there is some kind of harness
9 that you would on her.

10 A Yes, the chest harness that you put on her.

11 Q During the time you were with Minor do you ever
12 remember seeing her have a seizure?

13 A No.

14 Q Do you remember ever picking her up and swinging her
15 by her legs?

16 A No. That would be inappropriate.

17 Q Is that something you would ever fathom doing?

18 A No, no.

19 Q Did you ever sit her up on a sofa by herself?

20 A No.

21 Q I'm going to go back a little bit to June 22nd of
22 2009. Do you remember learning that Minor had a broken arm?

23 A Yes.

24 Q Can you tell the jury what happened? Had you been
25 there earlier that day?

Sharon Irene Niedermeyer
Direct examination by Ms. Crick

1 A Yes. I had gotten off at 5:00 o'clock. I had gotten
2 Minor all ready, changed her diaper, fed her, gave her her
3 meds, clean clothes. And then I brought her out into the
4 living room.

5 Q So everything that needed to be done as far as
6 feeding, diaper --

7 MR. BRANNON: Objection. Leading.

8 THE COURT: Overruled.

9 Q All that had been done. When you were getting ready
10 to leave your shift you had already done all of that.

11 A Yes, ma'am.

12 Q And so where did you leave Minor before you left?

13 A In the living room.

14 Q And she was in her wheelchair?

15 A Yes, ma'am.

16 Q Who did you leave her with?

17 A Mr. Tyre -- Tony -- what I know him by.

18 Q So when you left your shift at about 5:00 --

19 A At 5:00 o'clock.

20 Q -- you left her with Tony Tyre.

21 A Yes.

22 Q And when did you find out that she had a broken arm?

23 A 6:30. I received a phone call. And to be honest, I
24 don't remember if Tony called me or Kreszena called me.

25 But one or the other called me and told me she was in the

Sharon Irene Niedermeyer
Direct examination by Ms. Crick

1 ER with a broken arm.

2 Q And that was about 6:30. So about an hour and a half
3 after you left her with Mr. Tyre.

4 A Yes, ma'am.

5 Q Were you aware of how that happened?

6 A I -- I was told that he left the side rail down and
7 she had fell out of the bed.

8 Q When you say he -- Mr. Tyre?

9 A Yes.

10 Q So at that point your understanding was she had
11 accidentally rolled out of the bed.

12 A Yes, ma'am.

13 Q Did you care for her after she got the broken arm?

14 A Yes.

15 Q And how was she? Was she different? What did you
16 have to do that was different?

17 A Just be real careful when I bathed her and kept her
18 arm to her side and tried to keep Tylenol in her so she
19 didn't hurt.

20 Q So she did have some pain.

21 A Yes.

22 Q Had to receive some medication for the pain.

23 A Yes, ma'am.

24 Q And you took special steps to make sure you didn't
25 cause additional pain.

Sharon Irene Niedermeyer
Direct examination by Ms. Crick

- 1 A Yes, ma'am.
- 2 Q And that would be when you moved her, when you bathed
- 3 her, that kind of thing.
- 4 A Yes, ma'am.
- 5 Q Was she in a cast?
- 6 A They put her in a sling to start with. And then after
- 7 we took her in for a checkup he changed it to an ace
- 8 bandage.
- 9 Q And it was wrapped.
- 10 A To her side.
- 11 Q To her side. I'm going to now skip ahead a little bit
- 12 to July 5th of 2009. Did you find out about the incident,
- 13 this last incident, where she ended up in the emergency
- 14 room again?
- 15 A Yes. My last day at work -- well, that week was
- 16 July 3rd. That was a Friday. And then I wasn't supposed
- 17 to go back until Monday. And I got a phone call saying she
- 18 was in intensive care. So I didn't return to the home.
- 19 Q After that --
- 20 A Uh-uh.
- 21 Q -- at all.
- 22 A No.
- 23 Q In the week prior to that when you were taking care of
- 24 her with the broken arm were there any other issues besides
- 25 the broken arm that you noticed?

Sharon Irene Niedermeyer
Cross-examination by Mr. Brannon

1 A Not at that time.

2 Q Okay. And the last time you saw Minor would have been
3 on the 3rd when you left and the weekend nurse took over.

4 A Yes, ma'am.

5 Q Did you ever talk to Mr. Tyre again after that?

6 A Not that I remember, no.

7 MS. CRICK: Beg the Court's indulgence.

8 (Pause.)

9 MS. CRICK: Nothing further of this witness.

10 CROSS-EXAMINATION

11 BY MR. BRANNON

12 Q Ms. Niedermeyer, hi. How are you today?

13 A Good.

14 Q You said that Minor was a wonderful person, that she
15 was happy, right?

16 A Yes, sir.

17 Q Could you tell -- even though she couldn't speak words
18 could you tell when Minor was happy?

19 A Yes, I could because she would laugh and smile.

20 Q Did you know when she was upset?

21 A Yes, sir.

22 Q And you could tell when she was hurting, right?

23 A Yes.

24 Q Because you said she had some pain from the arm,
25 right?

Sharon Irene Niedermeyer
Cross-examination by Mr. Brannon

- 1 A Yes, sir.
- 2 Q So even though she couldn't speak words she could
- 3 communicate with you, couldn't she?
- 4 A To a degree.
- 5 Q Okay.
- 6 A To a degree.
- 7 Q I mean, you knew what her favorite movie was, right?
- 8 A Yes, sir.
- 9 Q And how would you know that?
- 10 A Because her mother told me.
- 11 Q Okay. But did she -- could you tell she was enjoying
- 12 the movie as well?
- 13 A Any cartoon, any singing, she enjoyed.
- 14 Q Okay. So she had an ability to communicate.
- 15 A To a degree.
- 16 Q Okay. And you last worked on July the 3rd.
- 17 A Yes, sir.
- 18 Q So that's the last time that you saw her, right?
- 19 A Yes, sir.
- 20 Q Thank you.
- 21 MR. BRANNON: One second, Your Honor.
- 22 (Pause.)
- 23 MR. BRANNON: One follow-up question.
- 24 Q Can you tell me what meds Minor was on?
- 25 A I honestly don't remember which they are now. It's

Diane Thornton
Direct examination by Ms. Crick

1 been over a year ago. I'd have to refresh my memory. But
2 she was on seizure medicine. And that's about all I
3 remember about her medicines.

4 Q Okay. And did you -- did you give those medicine --
5 those meds intravenously? I mean, did you shoot them into
6 the --

7 A Well, it is called bolus where you put it in a tube
8 and it goes down into her belly.

9 Q So she wasn't taking pills.

10 A No.

11 Q Or anything like that.

12 A No, sir.

13 Q Okay. Thank you so much, ma'am. You have a good day.

14 MS. CRICK: Nothing further.

15 THE COURT: You may step down.

16 MS. CRICK: Your Honor, the state calls Diane
17 Thornton.

18 DIANE THORNTON, having been
19 first duly sworn, testified as follows:

20 DIRECT EXAMINATION BY MS. CRICK

21 Q Ms. Thornton, I'm going to ask you the same thing I
22 asked Ms. Niedermeyer. Could you make sure you speak into
23 that microphone so everybody can hear you? And tell the
24 jury what your full name is.

25 A My name is Diane Thornton. I recently married, and

Diane Thornton
Direct examination by Ms. Crick

1 it's Thompson but...

2 Q So currently are you -- is it correct to call you Ms.
3 Thompson or Ms. Thornton?

4 A Either one is fine.

5 Q Okay. Do you work currently?

6 A I do.

7 Q Can you tell the jury what you do and where you work?

8 A I'm employed as a licensed practical nurse at the
9 Whitten Center.

10 Q What is the Whitten Center?

11 A It's a state institution for the developmentally
12 disabled.

13 Q And you're a nurse there?

14 A Yes.

15 Q How long have you been a nurse?

16 A Since March of 2004.

17 Q At some point before you were working at the Whitten
18 Center did you work with Minor

19 A I did.

20 Q Do you recall about when you started working with
21 Minor

22 A In February of -- I don't have my record. I think it
23 was the -- February of '09.

24 Q How long were you with her? Let me ask it that way.
25 That might be easier to remember.

Diane Thornton
Direct examination by Ms. Crick

1 A About a year and a half.

2 Q Okay. So if this incident happened in '09 you
3 probably -- it probably would have been 2008.

4 A Yes. I'm sorry.

5 Q That's okay. So about February of 2008. And you
6 worked what days and what times?

7 A I worked on Saturdays and Sundays for ten hours each
8 day.

9 Q Every single weekend?

10 A Every single weekend.

11 Q For about a year and a half or so?

12 A Yes.

13 Q Was the defendant, Mr. Tyre, in the picture the whole
14 time that you were working with Minor

15 A No.

16 Q Do you remember about what time you began seeing him
17 or meeting him, or just generally?

18 A In the spring of last year.

19 Q 2009?

20 A Yes. I'm sorry.

21 Q What were your specific hours, 8:00 to 6:00 on
22 Saturday and 8:00 to 6:00 on Sunday? Did you already say
23 that?

24 A That had been for some time. I was looking at my
25 paperwork, and because of Kreszena's work schedule I

Diane Thornton

Direct examination by Ms. Crick

- 1 started coming in earlier. So at the time I was working
2 6:30 in the morning until 4:30 in the afternoon.
3 Q Okay. And in the morning before you got there who
4 took care of Minor
5 A Well, Kreszena would be there.
6 Q That's her mom?
7 A Yes.
8 Q And when you would leave at 6:00 or when your schedule
9 changed to 4:30 or so, who would relieve you?
10 A It varied.
11 Q Okay. Who could it be?
12 A It might be Minor grandmother; it might be a cousin.
13 Usually the grandmother.
14 Q When Mr. Tyre started coming on the scene when Minor
15 mom started dating him did he begin to relieve you on some
16 occasions?
17 A On occasion, yes.
18 Q Okay. Can you describe for the jury Minor
19 personality and what she was like to take care of?
20 A Minor developmental level was about six months. So
21 although she was a -- a big little girl, she was basically
22 a baby. She would just sort of laugh or cry like a baby
23 would. And that was how you took care of her -- picked her
24 up and changed her and just took care of her like you were
25 taking care of an infant. She was bigger.

Diane Thornton
Direct examination by Ms. Crick

1 Q What kind of capabilities did she have? Did she have
2 any?

3 A No. She could do almost nothing really.

4 Q So she was basically either in a wheelchair or the
5 bed.

6 A Yes.

7 Q You were responsible for changing her diapers, doing
8 the feeding tube and that kind of thing?

9 A Right.

10 Q Did she bathe herself or did you have to do that, or
11 were you ever required to do that?

12 A Oh, yes. There was a special bathing chair, and you
13 would sit her in the tub in the bathing chair just like you
14 would bathe an infant except it was a larger setup.

15 Q Now, could she sit up on her own, like could she sit
16 on the sofa or the floor by herself at all?

17 A No.

18 Q Could she talk at all?

19 A No.

20 Q So the only way you could interpret her feelings were
21 through laughter or crying, some kind of emotion.

22 A Right. That's correct.

23 Q Did you ever sit her up on the sofa?

24 A No.

25 Q Why not?

Diane Thornton
Direct examination by Ms. Crick

- 1 A She couldn't sit up unsupported.
- 2 Q So not a lot of control as far as her body was
3 concerned.
- 4 A No.
- 5 Q How about in the wheelchair? Did she sit in there
6 with some sort of a device to hold her in there, or was she
7 able to sit in there on her own?
- 8 A No. She had a harness that fastened over her torso to
9 hold her in place.
- 10 Q Did you take her out of her chair or the bed a whole
11 lot?
- 12 A No. I would let her play in the bed sometimes so that
13 she could stretch and move around, but it was difficult to
14 get her in and out of any other furniture, those things.
- 15 Q So putting her on the floor, is that something you
16 would do on a regular basis?
- 17 A I would not ever put her on the floor because I
18 couldn't pick her up off the floor.
- 19 Q So she was -- while she was maybe mentally and
20 physically like a six-month-old, still had the body of a
21 larger child, a ten-year-old?
- 22 A Yes.
- 23 Q So she was long.
- 24 A Yes.
- 25 Q And do you know about how much she would have weighed?

Diane Thornton
Direct examination by Ms. Crick

1 A I -- I know I estimated roughly 70 pounds. That's a
2 rough estimate.

3 Q So that's not something you would do, put her on the
4 floor and pick her back up, anything like that.

5 A No.

6 Q Would you swing her by her legs for any reason?

7 A No.

8 Q Why not?

9 A There was no way I could have done something like that
10 safely.

11 Q Had you ever seen anyone else in the family swing her
12 by her legs?

13 A No.

14 Q Did you ever try to just, quote, aggravate her for any
15 reason?

16 A No, no.

17 Q I think you told us a little bit about the care you
18 took. But what was the average day like for her when you
19 were there?

20 A I would get there and set up her feeding supplies and
21 load the feeding pump. And a lot of times when she didn't
22 have to get up and go any place soon on the weekends I'd
23 let her stay in bed for a while with the feeding running.
24 And she got medications in the morning.

25 Eventually we'd get dressed, put the clothes on her,

Diane Thornton
Direct examination by Ms. Crick

1 sit her up in her wheelchair. She'd watch some videos. If
2 it was nice weather we'd go out for a walk in the
3 neighborhood in a wheelchair.

4 I at some point bathed her daily. Sometimes if her
5 grandmother was going to take her to church I'd need to
6 change her later and put on some other clothes instead of
7 her play clothes.

8 Q So would you describe her really as a total care
9 client? I mean, you did everything for her.

10 A Yes.

11 Q In the two years that you were with Minor did you ever
12 see her or know her to have a seizure?

13 A No.

14 Q Do you remember finding out sometime in June of 2009
15 that Minor had gone to the ER and had a broken arm?

16 A Yes.

17 Q How did you find out about that?

18 A I found out --

19 MR. CAMPBELL: Objection, Your Honor. Hearsay.

20 THE COURT: The question is how did you find out.

21 Just tell -- don't say what -- excuse me -- do not say
22 what was told to you. Just say how you became aware of it.

23 In other words, without stating the information, tell us
24 from what source you gathered that information.

25 A From her mother.

Diane Thornton
Direct examination by Ms. Crick

1 Q And that was June 22nd of 2009. Had you worked with
2 Minor earlier that day? Do you know?

3 A No.

4 Q Okay. Did you take care of her after that day?

5 A Yes.

6 Q So the next time you saw her she had what? How was
7 her arm?

8 A It was immobilized with one or two ace wraps in a
9 sling.

10 Q Did you take different care of her or did you treat
11 her differently after the arm was broken?

12 A I made the decision not to totally unwrap and undress
13 her and put her in the tub because it was hard to keep the
14 arm immobilized.

15 Q So you maybe were a little more careful with what you
16 did with her after she had the broken arm?

17 A Yes.

18 Q I'm going to go now to July 5th of 2009, the next time
19 she went to the ER. Was that on a Sunday when you had been
20 working?

21 A Yes.

22 Q What -- did you work your normal hours that day, do
23 you remember?

24 A I was only there for nine hours because I had stayed
25 11 the day before.

Diane Thornton
Direct examination by Ms. Crick

- 1 Q And you could only work so many hours.
2 A Right.
3 Q Okay. So you worked a little bit different hours that
4 day?
5 A 6:30 in the morning until 3:30 in the afternoon.
6 Q Okay. And how was Minor doing that day with her broken
7 arm?
8 A She seemed a little uncomfortable.
9 Q And you could just tell by her demeanor.
10 A She wasn't as lively and playful as she was sometimes.
11 Q So what did you do? What -- what kind of things did
12 you do with her that day?
13 A She stayed in bed a lot of the day. She slept a lot
14 of the day. And I figured if she was uncomfortable I'd
15 just let her sleep.
16 Q And you were again trying to be careful because of the
17 broken arm?
18 A Yes.
19 Q When you saw her that day was there anything besides
20 that, anything unusual, notice any bruising on her ears or
21 anything like that? Did you notice any of that that day
22 that you were there?
23 A Not -- no, not to her ears. I think there was a small
24 bruise on the other arm.
25 Q Okay. And her arm was broken. So obviously there

Diane Thornton
Direct examination by Ms. Crick

1 would have been bruising there. So nothing was unusual.

2 Everything seemed fine?

3 A Yes.

4 Q And what time did you leave?

5 A 3:30.

6 Q Who did you leave Minor with? Who relieved you?

7 A Tony.

8 Q So when you walked out that day at 3:30 you left Minor
9 in the sole care of Tony Tyre.

10 A Yes.

11 Q What was Minor doing when you left?

12 A She was sitting in her wheelchair in front of the TV
13 in the family room.

14 Q Had she already been fed?

15 A The feeding pump was still running, I believe.

16 Q And she seemed okay when you left her in the
17 wheelchair in the living room.

18 A Yes.

19 Q When did you hear that something had happened to Minor

20 A Later that evening after I got home.

21 Q Did -- did you get a phone call?

22 A I did.

23 Q Who called you?

24 A Tony.

25 Q The defendant?

Diane Thornton

Cross-examination by Mr. Campbell

- 1 A Yes.
- 2 Q And what did he say?
- 3 A He said that Minor was in the hospital, she had had a
4 seizure and that they said that she had head injuries as if
5 she had been in a car accident and did I know of anything
6 unusual that had happened that day.
- 7 Q What did you tell him?
- 8 A I said no.
- 9 Q Did he accept that?
- 10 A He said if I thought of anything please let them know.
- 11 Q Did you ever see or talk to them again -- Mr. Tyre
12 or --
- 13 A I never talked to Mr. Tyre again, no.
- 14 MS. CRICK: Your Honor, I have no further questions at
15 this time.
- 16 CROSS-EXAMINATION
- 17 BY MR. CAMPBELL
- 18 Q Ms. Thompson, I have just a few questions for you.
19 On July the 5th I believe you say you arrived at
20 approximately 6:30 a.m. That's correct?
- 21 A That's correct.
- 22 Q And when you were there did you notice whether or not
23 Minor breathing was unusually rapid on that morning?
- 24 A It was a little bit faster than usual.
- 25 Q About 30 per minute, I believe, is what you stated.

Diane Thornton
Cross-examination by Mr. Campbell

- 1 A I think I wrote down 28, yes, sir.
- 2 Q But you noticed it was different than normal on that
3 morning.
- 4 A Slightly faster than normal, yes, sir.
- 5 Q And I believe you also just stated that she seemed
6 uncomfortable and wanted to sleep a lot that morning, is
7 that correct?
- 8 A Yes, yes, that's correct.
- 9 Q Do you remember asking Tony if Minor had had a late
10 night because she seemed sluggish that morning?
- 11 A I don't recall that, no.
- 12 Q But is it possible you asked him that question?
- 13 A It's possible, yes, sir.
- 14 Q Okay. Ms. Thompson, at the date of the incident -- I
15 believe it was July the 4th -- do you know what your cell
16 phone number or telephone number would have been?
- 17 A It would have been the same as I have now.
- 18 Q Can you tell me that number please?
- 19 A It's 357-1732.
- 20 Q Now, after, I believe, Minor passed did you have the
21 opportunity to talk with an Investigator Moss?
- 22 A I don't recall the investigator's name, but yes.
- 23 Q Okay. And did you indicate to her that Minor is long
24 and she sometimes bangs into things?
- 25 A I said that it was possible that as you were carrying

Diane Thornton
Cross-examination by Mr. Campbell

- 1 her through a doorway you might bump her into the edges of
2 the doorway because of her length.
- 3 Q And are the rails of Minor bed -- were they padded?
- 4 A No.
- 5 Q Okay. And when Minor was in the bed could she roll at
6 all?
- 7 A She could roll.
- 8 Q She could roll. So she had some ability to move in
9 the bed.
- 10 A Yes.
- 11 Q Now, I believe you stated you did not -- you didn't
12 ever put her in the floor. And I think that's because you
13 could not personally get her there, is that correct?
- 14 A That's correct.
- 15 Q Minor weighed approximately 70 pounds.
- 16 A That's a very rough estimate.
- 17 Q Anywhere between 50 and 70 pounds.
- 18 A Yes.
- 19 Q And obviously no disparaging, but you're a smaller
20 lady, correct?
- 21 A Yes.
- 22 Q And 70 pounds would be -- 50 to 70 pounds would be
23 more difficult for you to carry and maneuver down to the
24 floor.
- 25 A Yes.

Diane Thornton
Cross-examination by Mr. Campbell

1 Q Had you ever -- had you ever seen in your -- while you
2 were at the home Minor placed in the floor by her mother or
3 anybody else?

4 A I don't think so.

5 Q But you can't remember?

6 A I know her mother would talk about them doing that
7 when she was smaller, but I don't recall it while I was
8 there.

9 Q Would you ever scratch Minor back for her? And I
10 guess I mean gently, in a gentle, gentle way.

11 A Possibly.

12 Q And would Minor roll over for you when she would see
13 you coming so you could scratch her back?

14 A I don't remember her having that behavior, no.

15 Q Okay. And just a couple more, Ms. Thompson.

16 Do you remember telling Detective Moss that you
17 remember seeing a bruise come up on Minor eye?

18 A Yes.

19 Q But you told her that you weren't concerned about it
20 because she often poked herself in the eye, correct?

21 A I don't think I would have said she often poked
22 herself in the eye. She may have -- she had some toys.
23 She may have been able to poke herself.

24 Q Do you remember telling Investigator Moss that she
25 would do that to herself and you were not concerned about

Diane Thornton

Redirect examination by Ms. Crick

1 the bruise?

2 A I -- I don't recall that.

3 Q That's fine.

4 Now, when Minor was in the ace bandage, I guess she was
5 bandaged to her body, is that correct?

6 A Yes.

7 Q Would she like to hold a rattle or a doll in that arm
8 that was bandaged close to her?

9 A I don't think she could do that with the wrap on it.

10 Q So you're saying she would not hold the rattle in her
11 bandaged arm?

12 A No, I don't think so, no.

13 Q You don't remember.

14 MR. CAMPBELL: Beg the Court's indulgence.

15 (Pause.)

16 MR. CAMPBELL: Nothing further for the witness, Your
17 Honor.

18 MS. CRICK: Your Honor, just very briefly.

19 REDIRECT EXAMINATION

20 BY MS. CRICK

21 Q Did anything happen at all on July 5th that would
22 cause Minor to have traumatic brain injury while she was
23 with you?

24 A No.

25 Q Nothing you can think of.

Frieda Monday
Direct examination by Mr. Gowdy

1 A No.

2 Q And when you left her she was sitting in a wheelchair
3 and she was fine.

4 A Yes, ma'am.

5 MS. CRICK: Nothing further, Your Honor.

6 THE COURT: You may step down.

7 MR. GOWDY: May it please the Court, Your Honor. The
8 state would call Ms. Frieda Monday.

9 FRIEDA MONDAY, having been,
10 first duly sworn, testified as follows:

11 DIRECT EXAMINATION BY MR. GOWDY

12 MR. GOWDY: May it please the Court.

13 Q Good morning, ma'am.

14 A Good morning.

15 Q I want you to speak in a good strong, clear voice
16 where the last two gentlemen in the jury box can hear you.
17 Okay?

18 A Yes.

19 Q Tell the jury who you are and where you work.

20 A I'm Frieda Monday. I am Minor grandmother. I work
21 at McCarthy Tezler, a special needs school.

22 Q You are Minor grandmother.

23 A Yes.

24 Q How? You are her maternal grandmother. You are
25 Kreszena's mother, is that correct?

Frieda Monday

Direct examination by Mr. Gowdy

- 1 A Yes.
- 2 Q In July of 2009 how old was Minor
- 3 A In 2009 she was -- ages are hard for me to remember.
- 4 She was -- she was ten.
- 5 Q She was ten years old when she died, correct?
- 6 A Yes, sir, yes.
- 7 Q Okay. All right. I want you to give the jury a
- 8 sense -- they've already heard a little sense, but I want
- 9 you to give them a sense of what Minor was capable of doing
- 10 and what she was not capable of doing. Could she talk?
- 11 A No.
- 12 Q Could she walk?
- 13 A No.
- 14 Q Did she have control over her fine motor skills?
- 15 A No.
- 16 Q Could she comb her hair?
- 17 A No.
- 18 Q Could she brush her teeth?
- 19 A No.
- 20 Q Could she feed herself?
- 21 A No.
- 22 Q Did you ever sit her on the couch by herself
- 23 unsupported on either side?
- 24 A No.
- 25 Q Did you ever sit her in the floor by herself

Frieda Monday
Direct examination by Mr. Gowdy

1 unsupported on either side?

2 A No.

3 Q Ma'am, did you ever hold Minor by her ankles and swing
4 her around?

5 A I never held her by her ankles.

6 Q Why not?

7 A Because she was a special needs child.

8 Q Even when you were playing with her you didn't hold
9 her by her ankles and swing her around the room?

10 A No.

11 Q Did you ever see anyone hold her by her ankles and
12 swing her around the room?

13 A No.

14 Q And if you had seen it what would you have done?

15 A I'd have said put her down.

16 Q She couldn't comb her hair; she couldn't brush her
17 hair; she couldn't feed herself. Could she operate a
18 remote control?

19 A No.

20 Q Was she totally dependent upon whomever was providing
21 care for her?

22 A Yes.

23 Q I want to go to July 5th of 2009. That was a Sunday,
24 correct?

25 A Yes.

Frieda Monday

Direct examination by Mr. Gowdy

- 1 Q Did Minor traditionally attend church with you on
2 Sundays?
- 3 A On Sunday evenings, yes.
- 4 Q Sunday evenings. And just so the jury has a
5 perspective, your husband is a pastor, is that correct?
- 6 A Yes.
- 7 Q All right. So she would attend church with you and
8 your husband.
- 9 A Yes.
- 10 Q All right. On July the 5th of 2009 did she attend
11 church with you?
- 12 A No.
- 13 Q And why not?
- 14 A Her mother called me and asked me -- said that she
15 would prefer her not go to church that day so that we
16 wouldn't transfer her from the wheelchair to the car. She
17 rode in a car seat, and you'd then have to put her back in
18 the chair to get her into church, and then transfer her
19 once again to get her home.
- 20 Q So the jury has a clear sense, she didn't go to church
21 on July 5th because you wanted to limit the amount of
22 movement she was going through.
- 23 A Right.
- 24 Q And that was because she had --
- 25 A Her arm.

Frieda Monday
Direct examination by Mr. Gowdy

- 1 Q -- a broken arm, correct?
- 2 A Yes.
- 3 Q And tell the jury how that arm was bandaged or fixed.
- 4 A She was bandaged to her body. The upper arm was
- 5 bandaged around much like you would do if an older person
- 6 was -- had a broken arm or dislocated shoulder or
- 7 something.
- 8 Q Okay. So on July the 5th her arm is bandaged to her
- 9 body. You're not taking her to church that night because
- 10 you don't want the movement from the wheelchair to the van,
- 11 back to the wheelchair.
- 12 A Right.
- 13 Q Okay. Did you stop by the house on July the 5th?
- 14 A Yes, I did.
- 15 Q For what reason?
- 16 A Kreszena's two-year-old that I had care of that day
- 17 that normally went to church with me had tore her panty
- 18 hose that morning, so I went to get a new pair.
- 19 Q Tell the jury when you walked into that home on July
- 20 the 5th of 2009 on your way to church, where did you find
- 21 Minor When you walked in where was she?
- 22 A She was laying on the floor on her right side.
- 23 Q Well, it couldn't have been her right side because she
- 24 had a broken right arm, didn't she? Was it her right side?
- 25 A It was her right side.

Frieda Monday
Direct examination by Mr. Gowdy

1 Q She's out of the wheelchair laying on the floor on the
2 side where she has a broken arm when you walked in.

3 A Yes.

4 Q Can you describe for the jury what her symptoms were
5 that you witnessed?

6 A When I came in she was -- her body was jerking and
7 she -- that was basically what I saw until I got closer
8 down to her. And in a few minutes she seemed to slow down
9 her jerking, and she started kind of heavy breathing
10 (demonstration by witness), that kind of breathing.

11 Q So you checked her. Are you a nurse or do you just
12 work at McCarthy Tezler?

13 A I am not a nurse.

14 Q Okay. So your lay perspective was that her breathing
15 was somewhat labored.

16 A It was heavy.

17 Q Heavy. All right. She's in the floor laying on her
18 right side. You check on her. And you conclude that she's
19 well enough for you to go on to church, correct?

20 A I don't -- I don't know that she was well enough, but
21 I felt comfortable enough because of Tony's training and
22 his job that he does and because it seemed -- he said he
23 could handle it if anything else happened. I felt like it
24 was getting better but if anything else developed I could
25 trust him to take care of it.

Frieda Monday
Direct examination by Mr. Gowdy

1 Q You had mentioned the defendant. Was anyone else in
2 the home other than Minor your granddaughter, and the
3 defendant?

4 A No.

5 Q Just the two of them.

6 A Yes.

7 Q I want to go with you to June the 22nd of 2009, less
8 than two weeks prior. We're going in inverse chronological
9 order, July 5th back to June 22nd of 2009. Did you receive
10 a phone call to go to your daughter and granddaughter's
11 home?

12 A Yes, I did.

13 Q And from whom did you receive that phone call?

14 A From my daughter.

15 Q Did you go?

16 A Yes, I did.

17 Q And where did you find your granddaughter, Minor on
18 June the 22nd of 2009?

19 A She was laying on the hardwood floor in her bedroom.
20 She was at the foot of the bed. Her head was at the foot
21 of the bed and -- and her arm was placed -- it was behind
22 her, twisted behind her.

23 Q Her arm was behind her on the floor.

24 A Yes.

25 Q And did you ask this defendant what happened to her?

Frieda Monday

Direct examination by Mr. Gowdy

- 1 A Yes.
- 2 Q And what did he tell you?
- 3 A That she rolled out of bed.
- 4 Q That she rolled out of bed. Did you call EMS?
- 5 A No.
- 6 Q Was EMS called?
- 7 A Yes.
- 8 Q Was she taken to the hospital?
- 9 A I was told that they had already been called.
- 10 Q She was taken to the hospital?
- 11 A Yes.
- 12 Q And the explanation that you were given by this
- 13 defendant was that she had rolled out of bed.
- 14 A Yes.
- 15 Q I want to go back to July 5th of 2009 in the waiting
- 16 room. Were you present when physicians were asking family
- 17 members and others what could have happened to Minor on
- 18 July the 5th?
- 19 A Yes.
- 20 Q Were you present when this defendant asked any of
- 21 those healthcare providers who were trying to provide
- 22 treatment for your granddaughter whether or not it could
- 23 have been something that had happened earlier? Were you
- 24 present when he asked that question?
- 25 A Yes.

Frieda Monday
Cross-examination by Mr. Brannon

1 Q Did he ask the doctors on July the 5th of 2009 whether
2 or not her present condition could have come from rolling
3 out of bed on June the 22nd of 2009?

4 A Yes.

5 Q Did you ever pull Minor hands up over her head in an
6 effort to play with her or to aggravate her?

7 A No.

8 Q And you never swung her by her ankles.

9 A No.

10 MR. BRANNON: Objection. Asked and answered.

11 THE COURT: Overruled.

12 Q Did you ever see any other family members swing her by
13 her ankles?

14 MR. BRANNON: Objection. Asked and answered.

15 THE COURT: Overruled.

16 A No.

17 Q Please answer any questions the defense attorneys may
18 have for you.

19 CROSS-EXAMINATION

20 BY MR. BRANNON

21 Q Good morning, Ms. Monday.

22 A Good morning.

23 Q When you came into -- withdraw that. You work at
24 McCarthy Tezler, right?

25 A Yes.

Frieda Monday

Cross-examination by Mr. Brannon

- 1 Q Please tell the jury what McCarthy Tezler is.
- 2 A It's a special needs school.
- 3 Q Okay. And do you have some students at McCarthy
- 4 Tezler that live there or that stay there on a regular
- 5 basis?
- 6 A No.
- 7 Q Is it an overnight school?
- 8 A No.
- 9 Q No. So they all come in the morning and go in the
- 10 afternoon.
- 11 A Yes, sir.
- 12 Q Okay. What do you do there?
- 13 A I'm a teacher's assistant.
- 14 Q So you're actually in the classroom with these
- 15 students, is that right?
- 16 A Yes.
- 17 Q And so you see each of their special needs and the
- 18 special treatment or care that they need, correct?
- 19 A Yes.
- 20 Q Okay. And then of course you saw the needs and the
- 21 care that Minor required, right?
- 22 A Yes.
- 23 Q Okay. Where was Minor when you came in the house on
- 24 July the 5th, that evening?
- 25 A She was laying on the floor.

Frieda Monday
Cross-examination by Mr. Brannon

- 1 Q Okay. In the living room -- the jury has seen
2 pictures of the living room.
- 3 A Yes.
- 4 Q Where in the living room was she?
- 5 A In front of the couch.
- 6 Q Okay. And -- and you say she was laying on her right
7 side.
- 8 A Yes.
- 9 Q Okay. So at which end of the couch was she lying?
- 10 A It was kind of in the middle.
- 11 Q Okay. So was she -- when you walked in could you see
12 her face or did you see her -- the back of her head or part
13 of her back side?
- 14 A I saw the side of her face. It was this side. She
15 was on her right side, so I could see just the top of her
16 face.
- 17 Q Okay. So could you see this side of her face?
- 18 A Uh-huh.
- 19 Q So then her head would have been at the left end of
20 the couch, is that right, if you're looking at the couch?
- 21 A If you're looking at the couch, yes, it would have
22 been toward the left end.
- 23 Q Okay. All right. Did you ever tell Tony to move her?
- 24 A No.
- 25 Q Okay. Now, you had seen Minor have seizures in the

Frieda Monday
Cross-examination by Mr. Brannon

- 1 past, right?
- 2 A A long time ago, yes.
- 3 Q Okay. Did you recognize when you came in that she
- 4 was, in fact, having a seizure?
- 5 A That's what I thought she was having.
- 6 Q Okay. And while you were there to get the pantyhose
- 7 was there a phone conversation between you and Tony and
- 8 Kreszena?
- 9 A Yes.
- 10 Q So who made that phone call, do you know?
- 11 A No. He was on the phone when I came in.
- 12 Q Okay. And he was on the phone with Kreszena, right?
- 13 A Yes.
- 14 Q And did you have a part of that conversation as well?
- 15 A I'm trying to think. I don't think I really talked to
- 16 my daughter. I think it might have been on the speaker
- 17 phone, or if it's loud enough where I could hear it.
- 18 Q Right.
- 19 A He didn't have it to his ear.
- 20 Q Right.
- 21 A It was down here.
- 22 Q Okay. And when -- when that conversation was going on
- 23 was Tony relaying what he saw and what he heard and what
- 24 was going on with Minor to Kreszena?
- 25 A Mostly she was talking.

Frieda Monday
Cross-examination by Mr. Brannon

1 Q Okay. All right. And was she giving him directions?

2 A She was asking him what was happening.

3 Q Okay. All right. But you told Ms. Moss, the
4 investigator, that you believed -- you told her she was
5 coming out of the seizure and you felt that Minor was going
6 to be okay. Do you remember telling the officer that?

7 A Yes.

8 Q Okay. And, in fact, you went ahead and you got
9 Jordon's panty hose and you went on to church, right?

10 A Yes.

11 Q So you were comfortable enough leaving Minor and going
12 on to church because you believed that she was recovering,
13 correct?

14 A That's what I put on paper, but it was because I felt
15 Tony could take care of it. And he told me he could.

16 Q Okay. I want to talk to you about Tony's demeanor
17 during that few minutes that you were there. Was he calm?

18 A He was a little frustrated.

19 Q Okay. Was he answering questions that were asked by
20 Kreszena?

21 A Yes.

22 Q Okay. And you were comfortable enough to leave
23 Chris -- Minor in his care, correct?

24 A Yes.

25 Q Okay. Now, let's back up. And do you know about the

Frieda Monday
Cross-examination by Mr. Brannon

- 1 miracle league baseball program?
- 2 A Yes.
- 3 Q Was Minor involved in that?
- 4 A Yes.
- 5 Q Okay. Did Tony accompany Kreszena and Minor to those
- 6 ball games?
- 7 A Sometimes, yeah.
- 8 Q Okay. Did you have family functions where Kreszena
- 9 and her children and Tony would be there?
- 10 A A few.
- 11 Q A few. And did he interact with all of the family
- 12 members? Did they get along? Did everybody get along?
- 13 A Basically, yes.
- 14 Q Okay. All right. One second.
- 15 (Pause.)
- 16 Q Just one follow-up question to something Mr. Gowdy
- 17 asked you.
- 18 On June the 22nd when you got a phone call you went to
- 19 Kreszena's house, right?
- 20 A Yes.
- 21 Q And you said that when you walked into Minor room she
- 22 was laying on the floor --
- 23 A Uh-huh.
- 24 Q -- such that her head would have been closest to the
- 25 foot of the bed, correct?

Frieda Monday
Redirect examination by Mr. Gowdy

1 A Yes.

2 Q Now, forgive me. I don't know the answer to this
3 question. But does Minor have a pillow? Did she have a
4 pillow in her bed?

5 A Yes.

6 Q And was the pillow at the other end of the bed --

7 A Yes.

8 Q -- from her head?

9 A Yes.

10 Q Okay. And was she -- I know that you said her arm was
11 behind her, but was she lying flat?

12 A Yes.

13 Q Okay. She was not on her side or anything like that.

14 A No.

15 Q Okay. Thank you so much.

16 MR. GOWDY: Very briefly, Your Honor.

17 REDIRECT EXAMINATION

18 BY MR. GOWDY

19 Q Ma'am, how long had it been going backwards from
20 July the 5th of 2009 that Minor had had a seizure?

21 A I -- I don't know how many years.

22 Q Years.

23 A Yes.

24 Q And let me go back to June the 22nd of 2009. He told
25 you that she rolled out of bed, correct?

Frieda Monday

Recross-examination by Mr. Brannon

1 A Yes.

2 Q And she's lying on the floor with her arm behind her.

3 A Yes.

4 Q Right? Thank you.

5 MR. BRANNON: Follow-up question to that.

6 RECROSS-EXAMINATION

7 BY MR. BRANNON

8 Q Minor had seizures when she was an in -- when she was a
9 baby, right?

10 A Yes.

11 Q And-but they were able to control those seizures with
12 medication, right?

13 A Most of the time. She still had episodes.

14 Q She still had episodes, right?

15 A Yes.

16 Q And then isn't it true that there was a time when the
17 doctors were trying to wean Minor off of that seizure
18 medication?

19 A That I don't know personally. I was told that.

20 Q Okay. You were told that. Okay. And isn't it true
21 that they found a safe level at which -- they were able to
22 bring the medication down in dosage, but there was a level
23 below at which she would start to seize again. Is that --
24 do you remember that?

25 A Years ago, yes.

Frieda Monday
Recross-examination by Mr. Brannon

1 Q Years ago. Okay. And so long as they were able to
2 regulate that medication she -- the seizures were under
3 control, right?

4 A Yes.

5 Q But, now, Minor -- Minor was an infant from a mentality
6 standpoint, but she was still growing, right?

7 A Right.

8 Q And as her body got bigger as she grew the need for
9 medication increased, correct?

10 A Yes.

11 Q So as she grew sometimes that dosage for that seizure
12 medicine would need to be increased, right?

13 A Yes.

14 Q And if they didn't catch it in time she might have a
15 seizure again, right?

16 MR. GOWDY: Your Honor, I'm trying to be as patient as
17 I can. That might be a little speculative to ask the
18 grandmother whether or not something with 4-10 had seizure
19 or --

20 MR. BRANNON: She answered the question.

21 THE COURT: Well.

22 A I mean, from what the doctor told me.

23 THE COURT: Well, Ms. Monday, let me say this.

24 When you're asked a question don't rely upon what
25 somebody else may have told you.

Dr. Richard Grant Byrd
Direct examination by Ms. Crick

1 THE WITNESS: Okay.

2 THE COURT: Rely upon what you know of your personal
3 knowledge based upon your training and experience.

4 THE WITNESS: Okay.

5 THE COURT: So if you know the answer to that
6 question, you may answer it. If you don't know the answer
7 of your own personal knowledge based upon your experience
8 and education, then just say you don't know.

9 MR. BRANNON: I withdraw the question.

10 THE COURT: Okay.

11 MR. BRANNON: Nothing further. Thank you.

12 THE COURT: All right. Thank you. You may step down.

13 MS. CRICK: Your Honor, the state calls Dr. Richard
14 Byrd.

15 DR. RICHARD GRANT BYRD, having
16 been first duly sworn, testified as follows:

17 DIRECT EXAMINATION BY MS. CRICK

18 Q Good afternoon, Dr. Byrd. I'm going to ask you to
19 speak into that little black microphone there as much as
20 possible. And tell the jury your full name and where you
21 work.

22 A Yes. My name is Richard Grant Byrd. I work at
23 Spartanburg Regional Medical Center.

24 Q And what do you do at Spartanburg Regional?

25 A I'm not of the ER doctors there.

Dr. Richard Grant Byrd
Direct examination by Ms. Crick

1 Q How long have you been an ER doctor?

2 A Since 1981.

3 Q Could you give the jury just a brief explanation of
4 your background as far as education and training to be an
5 ER doctor?

6 A Yes. I went to medical school at the University of
7 Louisville. I did a residency at Spartanburg Regional
8 Medical Center. That was in family medicine.

9 After that I went into practice as an emergency room
10 doctor. I was able to complete my boards in emergency
11 medicine in 1986 and have maintained those since then.

12 Q Have you ever been qualified as an expert in court?

13 A I have.

14 Q Was it in Spartanburg County?

15 A Yes.

16 Q Were you qualified as an expert in emergency medicine?

17 A Yes.

18 MS. CRICK: Your Honor, at this time I'd move to
19 qualify Dr. Byrd as an expert in emergency medicine.

20 MR. BRANNON: No objection, Your Honor.

21 THE COURT: He is so qualified.

22 MS. CRICK: Thank you, Your Honor.

23 BY MS. CRICK

24 Q Dr. Byrd, were you working at the ER at Regional on
25 the July 5th of 2009?

Dr. Richard Grant Byrd
Direct examination by Ms. Crick

- 1 A Yes, I was.
- 2 Q Did you see a patient named Minor
- 3 A Yes.
- 4 Q Did she come to you by ambulance that day?
- 5 A She did.
- 6 Q Can you tell the jury what the main complaint was?
- 7 A The main complaint when she came in was seizures.
- 8 Q And you got that information from?
- 9 A I got that information from the EMS, as well as one of
- 10 the -- I don't remember if it was her mother or --
- 11 Q Family member?
- 12 A Family member.
- 13 Q When you first saw Minor can you describe for the jury
- 14 what sort of condition she was in?
- 15 A Yes. I'd like to refer to my notes.
- 16 Q That's fine.
- 17 A When I first saw Minor she was in a severe distress.
- 18 She was not responding or was mentally responsive. She was
- 19 not breathing well. Her pupils were dilated and not
- 20 reacting.
- 21 Q What did you that tell you, all of that information?
- 22 What kind of condition was she in generally?
- 23 A She was in very critical condition. She wasn't
- 24 breathing adequately. She wasn't responding. She had very
- 25 poor brain function.

Dr. Richard Grant Byrd
Direct examination by Ms. Crick

1 Q Was that consistent with a seizure in your opinion?

2 A It could be if there was a prolonged seizure, if
3 during the seizure she became -- she had some lack of
4 oxygen. So at that point it was -- it could -- consistent
5 with a complicated seizure.

6 Typically with a seizure you would expect a person to
7 have the seizure after a -- some period of time, sometimes
8 not very long, to come back around and become more
9 responsive over time and then come back to a normal mental
10 status.

11 She didn't seem to be following that pattern, so there
12 was something complicating the seizure.

13 Q So in your mind at that time you thought there was
14 something maybe more going on. Did you consult another
15 doctor?

16 A Yeah. At that point I -- she was in critical
17 condition. I realized that she would need to be admitted
18 to our intensive care unit.

19 We were able to accomplish some things in the
20 emergency department to stabilize her condition to a point.
21 I did a consult with Dr. Sahhar as the pediatric
22 intensivist, to admit Minor

23 Q In addition to seeing her condition did you also order
24 a CT scan of her brain?

25 A Yes.

Dr. Richard Grant Byrd
Cross-examination by Mr. Brannon

- 1 Q Did you look at that yourself?
- 2 A Yes. I looked at it at a later time.
- 3 Q What did you observe?
- 4 A I observed that she had some bleeding inside the skull
- 5 around the brain.
- 6 Q And you got that information later, I guess, after you
- 7 had transferred her to Dr. Sahhar.
- 8 A Yes. Dr. Sahhar was already present when we got the
- 9 results of the CAT scan and we got the images of the CAT
- 10 scan.
- 11 Q So at that point you turned care of Minor over
- 12 completely to Dr. Sahhar?
- 13 A That's correct, yes.
- 14 Q I have no further questions at this time.
- 15 CROSS-EXAMINATION
- 16 BY MR. BRANNON
- 17 Q Good morning, Dr. Byrd.
- 18 A Good morning.
- 19 Q What is a prolonged seizure?
- 20 A Well, that would be a seizure that would last for a
- 21 prolonged time. I'm not quite sure what you're asking
- 22 there.
- 23 Q Well, and honestly I don't know what I'm asking
- 24 either.
- 25 But you said that in response to one of the questions

Dr. Richard Grant Byrd
Cross-examination by Mr. Brannon

1 that her breathing -- that the breathing pattern that you
2 detected when she was admitted or brought to the ER could
3 have been the result of a prolonged seizure. How long is a
4 normal seizure and how long is a prolonged seizure?

5 A Okay. Seizures are quite variable lasting from
6 seconds to minutes. A prolonged seizure could last for
7 hours. So it's difficult to be specific about a timeframe.

8 During a seizure a person has abnormal respirations.
9 So one of the problems is not breathing, not getting enough
10 oxygen, that type of thing.

11 And so in Minor case it was unclear with the
12 diagnosis of seizure why she wasn't becoming more
13 responsive as expected. So that was part of the
14 differential diagnosis -- why is she not becoming
15 responsive, did she have a prolonged seizure that's hypoxic
16 or is there some metabolic problems, was there some sort of
17 brain problem that we didn't know about.

18 So trying to explain how a seizure could lead to an
19 unresponsive state I think is the reason that I use that
20 term prolonged.

21 Q All right. But understanding that a seizure could
22 last seconds to hours, with the hours obviously being the
23 longest, would a seizure of ten or 20 minutes -- could that
24 be classified as a prolonged seizure?

25 A Ten or 20 minutes. Again, I guess I'm having trouble

Dr. Richard Grant Byrd
Cross-examination by Mr. Brannon

1 with maybe a word that I did use, prolonged, but that's not
2 an abnormally long seizure.

3 Q Okay. All right. What about someone who maybe hasn't
4 had a seizure for a period of time and then does have a
5 seizure?

6 Does that -- does that sometimes have a greater impact
7 on the body than someone who is unfortunately seizing on a
8 regular basis?

9 A Would you ask that again, please? I didn't quite --

10 Q Yes. If an individual has a history of seizures but
11 goes for a period of time without a seizure and then -- and
12 then has another one is it -- is it possible that that

13 recurring seizure after a period of being free from those
14 seizures, could that seizure have a greater impact upon the
15 body than -- than maybe a person who's having seizures on a
16 regular basis?

17 A I don't think so. My opinion would be no.

18 Q One second.

19 (Pause.)

20 MR. BRANNON: No further questions.

21 MS. CRICK: Nothing further from the state, Your
22 Honor.

23 THE COURT: Okay. You may step down.

24 MS. CRICK: Your Honor, the state calls Detective
25 Tracy Moss.

Tracy Moss
Direct examination by Ms. Crick

1 TRACY MOSS, having been first
2 duly sworn, testified as follows:

3 DIRECT EXAMINATION BY MS. CRICK

4 Q Detective Moss, could you please tell the jury your
5 full name and where you work?

6 A Tracy Moss. I work at the Spartanburg County
7 Sheriff's Office.

8 Q Can you give them a brief description of what your job
9 title is and what that entails?

10 A My job title -- what I work with is child abuse cases
11 and sexual assault cases.

12 Q What do you do as an investigator? I mean what is
13 your normal daily job.

14 A We get reports that are assigned to us that need
15 further investigation done on those reports.

16 Q What kind of training did you have to have?

17 A I had to go to the criminal justice academy.

18 Q Do you have to also update your training on a yearly
19 basis?

20 A Yes, ma'am.

21 Q How long have you been in law enforcement?

22 A Since 2005.

23 Q And how long have you been an investigator?

24 A Since 2005.

25 Q So in July of 2009 you were working in investigations.

Tracy Moss

Direct examination by Ms. Crick

- 1 A Yes, ma'am.
- 2 Q At some point did you become involved in the
- 3 investigation of the death of Minor
- 4 A Yes, ma'am.
- 5 Q Can you briefly tell the jury how you came to be
- 6 involved in that case?
- 7 A My supervisor, Sergeant Bobo, assigns cases to us in
- 8 the morning. And he had assigned this case to me that
- 9 morning.
- 10 Q What was the first thing you did after you were
- 11 assigned this case?
- 12 A After I was assigned the case I went out to
- 13 Spartanburg Regional Medical Center.
- 14 Q What did you do at Regional?
- 15 A I spoke with doctors, nurses and family members.
- 16 Q At that point when you first went to the hospital was
- 17 Minor still alive?
- 18 A Yes, ma'am, she was.
- 19 Q So at that point you were investigating a child abuse
- 20 case.
- 21 A Yes, ma'am.
- 22 Q Did you monitor Minor condition as the days or the
- 23 hours went on?
- 24 A Yes, ma'am.
- 25 Q And you got updates from who -- doctors and nurses at

Tracy Moss
Direct examination by Ms. Crick

- 1 the hospital?
- 2 A Both, yes, ma'am.
- 3 Q And at some point did your investigation transition
- 4 from a child abuse case to a homicide case?
- 5 A Yes, ma'am.
- 6 Q Do you remember when and why?
- 7 A It was on July 7th. I believe -- let me look at the
- 8 date. I had received a call from one of the PICU nurses
- 9 that -- that Minor had passed away.
- 10 Q Okay. Up until that point you had spoken with
- 11 doctors, nurses and some of the family members. At some
- 12 point did you speak with the defendant?
- 13 A Yes, ma'am.
- 14 Q Do you remember what date and time that was?
- 15 A That was July 9th, and it was about 2:00 o'clock.
- 16 Q Did you go out and get him or did you -- how did he
- 17 get to have a conversation with you?
- 18 A I called him that morning and asked him if he would
- 19 come in and speak with me.
- 20 Q And he agreed to come in and speak with you.
- 21 A Yes, ma'am.
- 22 Q And you said come in. Where were you when you spoke?
- 23 A At the sheriff's office.
- 24 Q Where in the sheriff's office?
- 25 A It was actually upstairs in our investigation division

Tracy Moss

Direct examination by Ms. Crick

- 1 in our conference room.
- 2 Q So he came there voluntarily.
- 3 A Yes, ma'am.
- 4 Q Drove himself.
- 5 A Yes, ma'am.
- 6 Q It wasn't handcuffed when you talked to him, was he?
- 7 A No.
- 8 Q He was free to leave if he wanted to.
- 9 A Yes, ma'am.
- 10 Q But did you go ahead and advise him of his rights
- 11 anyway?
- 12 A I did.
- 13 Q Did you have him sign a waiver form or a copy of his
- 14 rights?
- 15 A Yes, ma'am, I did.
- 16 Q Let me see if I can find that real quick.
- 17 (Pause.)
- 18 Q I'm going to show you what's been marked as State's
- 19 Exhibit 21 and ask if you can take a look at it and see if
- 20 you recognize that.
- 21 A Yes, ma'am. This is our preinterrogation waiver form.
- 22 Q And that's a form that outlines the rights you advised
- 23 the defendant of.
- 24 A Yes, ma'am.
- 25 Q Did you have him go over those with you?

Tracy Moss
Direct examination by Ms. Crick

1 A I did.

2 Q Did he sign it?

3 A Yes, ma'am.

4 Q He initialed by each right? Did he?

5 A Yes, ma'am.

6 MS. CRICK: Your Honor, at this time I'd like to offer
7 State's 21 into evidence.

8 MR. BRANNON: No objection.

9 THE COURT: It's admitted.

10 (Waiver of defendant marked State's Exhibit No. 21.)

11 Q Was anyone else in that room during your conversation
12 with the defendant?

13 A Yes, ma'am, there was.

14 Q Who else was in there?

15 A Mike Shaw and Robin Forrest of the coroner's office.

16 Q When you guys were in there speaking with him you were
17 having a conversation. Did anybody have their guns out?

18 A No, ma'am.

19 Q Did anybody threatened him?

20 A No, ma'am.

21 Q Did anybody coerce him or promise him anything if he
22 would tell you what happened?

23 A No, ma'am.

24 Q Okay. So what was the conversation between you and
25 him? Did you have an oral conversation first?

Tracy Moss
Direct examination by Ms. Crick

- 1 A We did.
- 2 Q Can you tell the jury what you discussed?
- 3 A We -- we began talking about the time that he started
- 4 dating Kreszena, which is Minor mother. We talked about
- 5 his employment history.
- 6 Q When had -- did he tell you when he had started seeing
- 7 Kreszena?
- 8 A He had told me it was late November, beginning of
- 9 December of 2008.
- 10 Q Okay. And he told you about where he worked?
- 11 A Yes, ma'am.
- 12 Q Where did he work?
- 13 A He recently worked at Hilltop Fire Department. He had
- 14 informed me that the day before he came in to see me he had
- 15 actually quit his job at Hilltop.
- 16 Q Okay. What kind of work did he do? Did he talk about
- 17 that at all?
- 18 A Yes, ma'am. He had told me prior -- well, actually
- 19 during that time he currently worked at American Transmed.
- 20 He was there for a year and a half.
- 21 Q What is American Transmed?
- 22 A They're an ambulatory service that transports disabled
- 23 and sick people to different hospitals or doctors.
- 24 Q Ambulance type service?
- 25 A Yes, ma'am.

Tracy Moss
Direct examination by Ms. Crick

1 Q Did he tell you where he worked prior to that?

2 A He did. He said he worked at Spartanburg EMS for six
3 to seven months prior to that.

4 Prior to that he worked at Spartanburg ER as an ER
5 tech for two years.

6 Prior to that he worked for the EMS in Laurens County.
7 He worked there for six to seven months. And he had a been
8 a certified EMT for seven to eight years.

9 Q Did you discuss with him whether he ever babysat for
10 Minor by himself?

11 A Yes, ma'am.

12 Q What was that discussion?

13 A I did ask him how many times he watched Minor by
14 himself, and he said it was roughly four to five times.
15 And the longest time that he had watched her was Saturday
16 and Sunday, which would have been July 4th and 5th.

17 Q When she received these last injuries.

18 A Yes, ma'am.

19 Q Did he tell you who was there at the time this
20 happened on the July the 5th? Did he tell you if anyone
21 else was in home with he and Minor

22 A He -- he was by himself with Minor after 3:30 when the
23 home nurse had left.

24 Q And he admitted that to you.

25 A Yes, ma'am.

Tracy Moss
Direct examination by Ms. Crick

1 Q Did he tell you what happened after the nurse left?

2 A He did. We asked him just to give us, you know, just
3 the day-to-day activities of what occurred after the nurse
4 had left.

5 Q Okay.

6 A And he said that Diane had brought Minor out in her
7 wheelchair. She was actually on her feeding tube. She was
8 eating. He was on the computer. And he would go back and
9 forth and check on her.

10 Once she completed her feeding he took the feeding
11 tube out and he cleaned it. After he cleaned it he -- he
12 realized that she looked like she was kind of bored in the
13 wheelchair. So she took her -- he took her out of the
14 wheelchair and laid her in the floor, would give her a baby
15 rattle, and she would sit there and just rattle the baby
16 rattle. And she would watch videos on TV -- movies.

17 I think at the time -- I think they said that -- I
18 Shrek II was in. She was watching Shrek II at the time
19 while playing in the floor.

20 He also talked about how he would get in the floor and
21 play with her. Different things that he said he would do
22 to her is tickle her feet. He would get the palm of her
23 hand and kind of pat the palm of her hand. He would talk
24 to her. He would take her hand and actually tap her
25 forehead with her own hand while in the floor with her.

Tracy Moss
Direct examination by Ms. Crick

1 And he told me that he would play with her the same way he
2 would play with the other four children.

3 Q Did he ever talking about -- I'm sorry -- talk about
4 picking on her?

5 A He did. He talks about how he picks and aggravates
6 Minor

7 Q Why did --

8 A He had -- he had told me that he would take his finger
9 and put it on her forehead and he knew that would make her
10 mad, but he would do that anyway to aggravate her.

11 Q Did he say anything else about what he would do to
12 aggravate her or make her mad?

13 A He -- he did tell me that he knows when she's mad by
14 letting out a squealing. She had kind of, it's like a
15 squeal. And she'll stick her tongue out when she's mad.
16 But he did talk about how he picked her up by her feet and
17 would swing her around by her feet.

18 Q Did he say he was doing that the day that the nurse
19 left?

20 A Yes, ma'am.

21 Q He picked her up and was swinging her by her feet.

22 A Yes, ma'am.

23 Q Okay. Did he mention whether she liked that?

24 A He said that she did not like that and so he put her
25 down.

Tracy Moss

Direct examination by Ms. Crick

1 Q And what happened when he put her down?

2 A When he put her down her head made like a loud thump
3 noise when he put her down on the floor.

4 Q Continue on. What did he say after that, what
5 happened?

6 A After that he talked about that she had -- he thought
7 that she had had a bowel movement, so he went to check her
8 diaper. And he had proceeded to go ahead. He said it was
9 a false alarm, it was actually gas. So he changed her
10 diaper and ended up putting two diapers on her because they
11 say she does urinate frequently.

12 After he had put the diaper on her he told me that
13 there is at different points during this time while he was
14 back and forth between the computer and she was on the
15 floor that she was actually in the wheelchair at this time
16 and he would walk by going to the computer and he would put
17 his hand on top of her head and shake her head.

18 And then while she was on the floor at one time he
19 would set her up, up against the couch, and lean her up
20 against the couch. And there are times when she would fall
21 over and he would grab her by her left arm and pull her
22 back up to where she would sit back up against the couch.

23 Q When he mentioned to you going by her wheelchair and
24 putting his hand on her head and moving it back and forth,
25 what did he say her reaction was to that?

Tracy Moss

Direct examination by Ms. Crick

- 1 A She didn't like it.
- 2 Q Did he mention a seizure at any point to you?
- 3 A He did. He said that he started noticing Minor eyes
- 4 had rolled up and her arm had raised up and she began to
- 5 tremble and then she began to have a seizure.
- 6 Q Did he tell you what he did?
- 7 A He did. He said he moved her away from the couch and
- 8 laid her in the middle of the floor.
- 9 Q What happened after that according to him?
- 10 A He said that the grandmother, Alfrieda Monday, had
- 11 come in, and that she had come in because her granddaughter
- 12 tore her pantyhose and she had to get some new pantyhose.
- 13 So she had come in to get pantyhose. And Minor of course --
- 14 he said that Minor had stopped seizing when Ms. Monday came
- 15 into the house.
- 16 Q Did he say whether rescue workers were notified?
- 17 A He did.
- 18 Q And were those the folks at Boiling Springs Fire
- 19 Department?
- 20 A Yes, ma'am.
- 21 Q At any point during this did you speak to him about
- 22 the previous injury, the broken arm?
- 23 A I did. I asked him about Minor falling out of the bed
- 24 and her arm breaking.
- 25 Q What did he say about that?

Tracy Moss

Direct examination by Ms. Crick

- 1 A He told me that's not what happened.
- 2 Q Okay. What did he say happened?
- 3 A He told me that he -- she was in her wheelchair and he
- 4 was playing with her and had her hands up over her head
- 5 kind of behind her head and in an effort to keep her from
- 6 moving her arms he -- he would hold her arms, and then he
- 7 heard a pop, which he said he assumed was her shoulder
- 8 dislocating.
- 9 Q Okay. So, in fact, she wasn't even in the bed when
- 10 the injury happened.
- 11 A No, ma'am.
- 12 Q And she certainly didn't roll out of the bed and cause
- 13 the injury according to him.
- 14 A No, ma'am.
- 15 Q Did he mention holding her hands above her head and
- 16 shaking her to aggravate her?
- 17 A He did.
- 18 Q And that was his words, to aggravate her?
- 19 A Yes, ma'am.
- 20 Q Did you ask him about swinging Minor by her feet?
- 21 A I did.
- 22 Q What did he say about that?
- 23 A He told me that that's the first time that he's ever
- 24 done that with her and he would pick her up by her feet and
- 25 swing her from left to right.

Tracy Moss
Direct examination by Ms. Crick

1 Q And what happened?

2 A He realized that she didn't like it, and he put her
3 down and noticed the -- the loud thump that her head made
4 when it hit the floor.

5 Q So he had her by her feet, put her down. And you've
6 been in the house, correct?

7 A Yes, ma'am.

8 Q The floor's carpeted.

9 A Yes, ma'am.

10 Q Did he say what reaction she had or what her body did
11 after that?

12 A He describes Minor as saliva coming out of her mouth.
13 And he says that after -- apparently after she had the
14 seizure she had the saliva coming out of her mouth.

15 Q When he broke her arm that was the first time he had
16 watched her for any lengthy amount of time?

17 A Yes, ma'am.

18 Q Did he tell you why in the world he said she rolled
19 out of the bed and broke her arm rather than that he broke
20 her arm?

21 A He was worried about what Kreszena would say.

22 Q So he was scared. Did he ever mention her giving him
23 trouble, Minor giving him trouble? Did he make any comment
24 about that?

25 A He said that Minor was an easy child and that he's

Tracy Moss

Direct examination by Ms. Crick

- 1 never gotten upset or got out of hand with her.
- 2 Q Okay. Did you at that point ask him to write all of
- 3 that down for you?
- 4 A Yes, ma'am, I did.
- 5 Q I want to show you what's been marked as State's
- 6 Exhibit 22 and ask if you recognize what this is.
- 7 A This is a voluntary statement form by Tony Tyre.
- 8 Q Did he write that himself?
- 9 A Yes, ma'am, he did.
- 10 Q So it's in his handwriting.
- 11 A Yes, ma'am.
- 12 Q So any changes that are on there he made.
- 13 A Yes, ma'am.
- 14 Q And he signed that.
- 15 A Yes, ma'am.
- 16 Q And that is the statement he wrote and that you
- 17 notarized.
- 18 A Yes, ma'am.
- 19 MS. CRICK: Your Honor, at this time I'd like to offer
- 20 State's 22 into evidence.
- 21 MR. BRANNON: No objection.
- 22 THE COURT: It's admitted.
- 23 (Written statement of Defendant marked State's Exhibit
- 24 No. 22.)
- 25 MS. CRICK: Your Honor, may we publish that to the

Tracy Moss
Direct examination by Ms. Crick

1 jury?

2 THE COURT: You may.

3 Q Before I ask you that, did you offer him a drink, a
4 bathroom break during the time of this was going on?

5 A Yes, ma'am, I did, and he denied both.

6 Q So you asked him to write that down. Were you in the
7 room with him when he wrote it?

8 A Went he actually wrote it, no, ma'am.

9 Q So you allowed him sign to sit in the room by himself
10 and write that statement.

11 A Yes, ma'am. He was in there by himself writing it.

12 Q Can you please read that statement to the jury so they
13 know what he wrote down?

14 A "On July 5th of 2009 I relieved the weekend nurse for
15 Minor at 29316 at approximately
16 3:20 p.m. Minor was sitting in her wheelchair finishing her
17 feeding. I sat at computer desk and began looking at
18 internet. Once Minor feeding was complete I" -- there's a
19 word on here I can't read -- "I D. C.d her tube, placed
20 pumper charger and threw bag in trash. Minor appeared
21 listless, so I placed her in the floor to stretch out and
22 play and watch TV. I continued to divide my time between
23 watching TV and playing on internet and playing with Minor
24 Playing entailed tickling feet, patting her hand and
25 grabbing by shoulders and moving her side. At one point I

Tracy Moss

Direct examination by Ms. Crick

1 picked Minor up by her legs and swung her back and forth
2 with little force. Minor didn't like this, so I placed her
3 back on the ground. While placing on ground Minor head
4 made a sound against floor. After some time had passed I
5 placed Minor in a sitting position while in floor with her
6 back against the couch. At one point Minor began to fall to
7 one side. I grabbed Minor by her left arm to prevent
8 falling and encouraged her to sit. I then began tickling
9 Minor in the ribs. Minor eyes rolled up in her head, her
10 left arm raised up and she began to seize. I placed Minor
11 in the floor on her side. I then called her mother to gain
12 advice on what I should do. At this point Alfrieda Monday
13 walked in and saw Minor -- and he has flower, Minor in
14 flower. "Minor mother was asking me on phone what was
15 happening. I explained and she asked what was Alfrieda
16 saying. Ms. Monday observed Minor breathing and stated that
17 she just needed to rest. Ms. Monday left. At this point I
18 continued to observe Minor for another minute and did not
19 feel comfortable with her appearance. I then called the
20 Boiling Springs Fire Department to come to my location to
21 provide oxygen. I then called Kreszena, Minor mother, to
22 inform her of my action. V. A. of fire department,
23 firefighters obtained vitals. I attempted to open Minor
24 airway with a O. P. A. Minor mouth was clinched, so I
25 forced her mouth open and inserted O. P. A. and placed Minor

Tracy Moss
Direct examination by Ms. Crick

1 on O-2. Firefighters and myself were not comfortable with
2 Minor condition and requested EMS transport. VAEMS
3 arrived. I carried Minor outside to stretcher and placed in
4 EMS care. While en route to hospital I was requested by
5 EMS to assist in ventilation, which I then proceeded to do
6 until arrived at hospital. Two weeks prior to those events
7 I was playing with Minor --"

8 Q Well, let me -- let me stop you for a second, because
9 at that point was that the extent of his statement at the
10 first point that he had written it down?

11 A Yes, ma'am.

12 Q So when you first came back in the room and read
13 through it was there anything in there about the broken
14 arm?

15 A No, ma'am.

16 Q Did you ask him if he would write something down about
17 what he told you about the broken arm?

18 A Yes, ma'am.

19 Q And did he do that?

20 A Yes, he did.

21 Q So continue on. Is this the additional part he added?

22 A Yes, ma'am, it is.

23 Q Go ahead.

24 A "Two weeks prior to these events I was playing with
25 Minor As Minor placed her arms behind her head I held onto

Tracy Moss
Direct examination by Ms. Crick

1 them to prevent her from moving in my effort on play and
2 aggravate. I shook Minor while holding her arm and felt a
3 pop, which I assume was her shoulder dislocating. I then
4 called her mother and 9-1-1. I said that she had fallen
5 out of fear."

6 Q Okay. You got the statement. Did you have any
7 further conversation with the defendant about what
8 happened?

9 A I did.

10 Q What happened?

11 A We -- we talked about the statement, what he had
12 wrote. And at one point he continued to say the same thing

13 that he -- that we talked about in the statement. I
14 proceeded to get up and leave the interview room to talk
15 with my sergeant about just updating him on the case and
16 where we were at.

17 I was asked to come back into the room by Mike Shaw,
18 which is one of the coroner's office employees. And Tony
19 tells me that he must have shaken her too hard, I didn't
20 mean to. And he also told me that he must have waited too
21 long to call for help.

22 Q Okay. So at that point you had interviewed
23 witnesses -- doctors, nurses -- and you had a statement
24 from the defendant.

25 A Yes, ma'am.

Tracy Moss
Cross-examination by Mr. Brannon

1 Q And you had interviewed the nurses that we heard from
2 earlier -- Sharon and Diane.

3 A Yes, ma'am.

4 Q What did you do at that point?

5 A I went and got a warrant for his arrest.

6 Q And you did confirm that the address, the location
7 that this happened on Kenneth Drive, was in Spartanburg
8 County.

9 A Yes, ma'am.

10 Q Okay.

11 MS. CRICK: I have nothing further at this time, Your
12 Honor.

13 MR. BRANNON: May it please the Court, Your Honor.

14 THE COURT: Mr. Brannon.

15 CROSS-EXAMINATION

16 BY MR. BRANNON

17 Q Investigator Moss, after my client wrote that
18 statement did you take that statement or your recollection
19 of that statement to any of the medical professionals that
20 had treated Minor and run that, the scenario that's in his
21 statement, by the doctor?

22 A I didn't take the statement to a doctor, no, I did
23 not.

24 Q Did you talk to Dr. Sahhar about what Tony said to you
25 had happened on July the 5th?

Tracy Moss
Cross-examination by Mr. Brannon

- 1 A I talked to him via telephone.
- 2 Q Okay. And did you have in your mind during that
- 3 conversation Tony's statement to -- to run past the doctor?
- 4 A I didn't have the actual physical statement in front
- 5 of me when I was talking to him, but I did talk to him
- 6 about what he had told me.
- 7 Q And isn't it true that you learned that Dr. Sahhar
- 8 said that was absolutely possible as the cause of the
- 9 injury?
- 10 A The synopsis I gave him, yes, that's what he told me.
- 11 Q Absolutely. In fact, it's the word he used, correct?
- 12 A Yes, sir.
- 13 Q Okay. All right. Now, let's talk about -- let's talk
- 14 about Tony's statement. In there he says that he called
- 15 Boiling Springs Fire Department, right?
- 16 A I believe that's what he said.
- 17 Q Do you see it?
- 18 A That he called Boiling Springs Fire Department.
- 19 Q Right.
- 20 A Yes.
- 21 Q But it's in there, right?
- 22 A Yes.
- 23 Q Okay. But in his statement he says that he called the
- 24 Boiling Springs Fire Department, right?
- 25 A Yes, sir.

Tracy Moss
Cross-examination by Mr. Brannon

1 Q Okay. And you've been permitted to be in here the
2 whole time that the trial has been going on, right?

3 A Yes, sir.

4 Q So you heard the first two witness, the two EMTs or
5 paramedics that testified first, right?

6 A Correct.

7 Q Okay. And they admitted that he's the one that called
8 them, right?

9 A Yes, sir.

10 Q Okay. And then in his statement he says that he -- in
11 the ambulance on the way to the hospital he assisted in
12 helping Minor breathe, right?

13 A Yes, sir.

14 Q And were you able to confirm that with the EMTs or the
15 paramedics?

16 A Yes, sir.

17 Q Okay. And so he was truthful when he called Boiling
18 Springs, right?

19 A He was.

20 Q And he was truthful when he said that he assisted in
21 Minor care on the way to the hospital, right?

22 A Yes, sir.

23 Q And Dr. Sahhar said that the story that he told you
24 could -- could absolutely be the cause of her death,
25 correct?

Tracy Moss
Cross-examination by Mr. Brannon

- 1 A Yes, sir.
- 2 Q Okay. And then you said -- I want to talk about the
3 statement, the statement. You talked with Tony at the
4 sheriff's department, right?
- 5 A Yes, sir, I did.
- 6 Q The sheriff's department has video cameras, don't
7 they?
- 8 A Yes, they do.
- 9 Q And they, in fact, videotape some interviews of
10 people, don't they?
- 11 A They do.
- 12 Q Did you videotape this one?
- 13 A No, sir, I did not.
- 14 Q Why not?
- 15 A This was a preliminary interview, and we weren't going
16 to stop in the middle of an interview to go set up a video
17 tape or an audio tape.
- 18 Q Okay. And -- and you said that, I believe, Mike Shaw
19 and Robin Forrest were in the room as well.
- 20 A Yes, sir. They were.
- 21 Q Okay. They -- they don't work for the sheriff's
22 department though, right?
- 23 A No, sir. They don't.
- 24 Q Okay. Are they typically in interviews that you
25 conduct at the sheriff's department?

Tracy Moss
Cross-examination by Mr. Brannon

1 A The ones that I conduct, not normally, no.

2 Q Okay. All right. You -- now, you learned in this
3 interview that Tony was an EMT and a fireman, right?

4 A Yes, sir.

5 Q Did you know that before you interviewed Tony?

6 A I believe I knew that he was an EMT or a certified
7 EMT.

8 Q Had you ever been called to an incident site or a
9 crime scene or anything where Tony Tyre was responding as
10 either a firearm or an EMT?

11 A No.

12 Q You haven't.

13 A No.

14 Q Did you ask Mike Shaw or Ms. Forrest if she or they
15 had -- if they had ever responded to calls with Tony?

16 A I did not, no.

17 Q Did you later learn that they had?

18 A I later, yes.

19 Q Right. And is it also true that you later learned
20 that, quite frankly, Ms. Forrest and Mr. Shaw knew Tony
21 pretty well?

22 A I think just Mike Shaw. I didn't know anything about
23 Robin.

24 Q Okay. All right. But you now know that Mike Shaw who
25 was in this interview knew Tony and had known him for a

Tracy Moss
Cross-examination by Mr. Brannon

- 1 while, right?
- 2 A After the -- after the interview had already been
3 conducted, yes.
- 4 Q Okay. Is it -- is it typical or is standard to have
5 law enforcement officials or coroner's-office people who
6 are friends with someone being interviewed to have those
7 friends in -- in the room while the interview's going on?
- 8 A Well, I wouldn't say they were friends. It wasn't
9 said that they were friends, that they had went through
10 some training together.
- 11 Q Okay. All right. Acquaintances. How's that? Is
12 that a better word?
- 13 A That's fine.
- 14 Q Okay. Do you typically have people with acquaintances
15 with some form of relationship in the interview with you
16 when you're doing that?
- 17 A Well, I didn't find out until after the interview was
18 already conducted.
- 19 Q Okay. All right. Now, did you hear either Mr. Shaw
20 or Ms. Forrest say we know you didn't mean to do this?
- 21 A No.
- 22 Q You didn't hear that.
- 23 A No.
- 24 Q Okay. Did you hear them say we know you didn't intend
25 to do it?

Tracy Moss
Cross-examination by Mr. Brannon

- 1 A No.
- 2 Q Didn't hear that either.
- 3 A That's correct.
- 4 Q Good. All right. What about -- what about Tony said
- 5 that he swung Minor by her legs from side to side? Right?
- 6 A Yes, sir.
- 7 Q So it wasn't like this. It was like this, right?
- 8 (Demonstration.)
- 9 A That's what he said.
- 10 Q And that she didn't like it, so he put her down,
- 11 right?
- 12 A Yes, sir.
- 13 Q And that when he put her down her head hit the floor
- 14 and it made a thump, right?
- 15 A Yes, sir.
- 16 Q Then you were asked on direct examination was the
- 17 floor carpeted.
- 18 A Yes. It was.
- 19 Q It was. Did you look under the carpet?
- 20 A I did not look under the carpet, but I was advised it
- 21 was hardwood underneath the carpet.
- 22 Q How much pad's underneath that carpet, between the
- 23 carpet and the floor?
- 24 A I have no idea.
- 25 Q Don't know, do you?

Tracy Moss
Cross-examination by Mr. Brannon

1 A No.

2 Q All right. In -- in some of the reports -- and you've
3 got it mentioned in your extensive report here -- Minor had
4 a bruise on her eye in some of the photographs. Do you
5 remember that?

6 A Vaguely, yes.

7 Q Okay. And -- and -- and she had some swelling around
8 her mouth. Do you remember that in your report?

9 A Yes, sir.

10 Q And isn't it also true that Dr. Sahhar attributed that
11 to both cerebral palsy and the seizure?

12 A Yes, sir.

13 Q Okay. So you didn't have any indication from any of
14 the medical providers that the bruising to the eye or the
15 swelling around the mouth was the result of child abuse,
16 did you?

17 A No.

18 Q Okay. All right. Dr. Sahhar also told you that the
19 injury occurred within the last 24 hours of her being
20 delivered to the emergency room, right?

21 A Yes, sir.

22 Q Okay. My client never told you he got mad at Minor
23 did he?

24 A He did what?

25 Q He never told you that he got mad at Minor on July the

Tracy Moss
Redirect examination by Ms. Crick

1 5th, did he?

2 A No.

3 Q In fact, he never told you that he intended to hurt
4 her, did he?

5 A Say that again.

6 Q He never told you that he intended to hurt her, did
7 he?

8 A No.

9 Q Thank you.

10 REDIRECT EXAMINATION

11 BY MR. CRICK

12 Q Investigator Moss, when you called Dr. Sahhar was that
13 after your interview with the defendant had ended?

14 A Yes, ma'am, it was.

15 Q And you were giving him a brief synopsis of what you'd
16 been told.

17 A I did.

18 Q Told him that the defendant had admitted to shaking
19 her and knocking her head into the floor?

20 A Yes, ma'am.

21 Q Was that basically what you told Dr. Sahhar?

22 A Yes, ma'am.

23 Q Did you give him any information about the degree of
24 shaking or the degree of force or any of that stuff?

25 A No, ma'am.

Tracy Moss

Redirect examination by Ms. Crick

1 Q Okay. You also talked to Dr. Sahhar as Mr. Brannon
2 mentioned about the timeframe within which the injury would
3 have occurred. He told you within the last 24 hours.

4 A Yes, ma'am.

5 Q Told you it was a recent injury.

6 A Yes, ma'am.

7 Q Told you it could not have been caused two weeks prior
8 when she, quote, fell from the bed.

9 A Right.

10 Q So you had that information as well.

11 A Yes, ma'am, I did.

12 Q Mr. Brannon also asked you about whether he was

13 truthful to Boiling Springs Fire Department about trying to
14 put a mask on Minor on the way to the hospital or whatever
15 it was he did. Isn't it true, Investigator Moss, he was
16 not truthful about her falling from the bed?

17 A No, ma'am.

18 Q Not truthful when he originally said it was just a
19 seizure?

20 A No, ma'am.

21 Q Because later he said, oh, wait, I also was swinging
22 her and she may have hit her head, correct?

23 A Yes, ma'am.

24 Q And then he also added later that, okay, I may have
25 shaken her.

Tracy Moss
Recross-examination by Mr. Brannon

1 A Yes, ma'am.

2 Q So would you really describe his tone with you as
3 truthful?

4 A No, ma'am.

5 Q Thank you.

6 MR. BRANNON: Follow up to that, Your Honor.

7 RECROSS-EXAMINATION

8 BY MR. BRANNON

9 Q When did he first say that it was just a seizure?

10 A He had initially -- when he gave us the synopsis of
11 what happened that day he said that her eyes rolled to the
12 back of her head, her arm went up and she began to tremble
13 and seize.

14 Q Right. But the first call to the ER, excuse me, to
15 Boiling Springs, the first call to Kreszena, the first
16 call, those were because she had a seizure, right?

17 A Yes, ma'am, I mean, yes, sir. I'm sorry.

18 Q Okay. That was -- that was the immediate problem, the
19 seizure, right?

20 A Yes, sir.

21 Q Okay. When you asked him about things leading up to
22 the seizure or what happened before the seizure he told you
23 about the touching the forehead, the patting the hands, the
24 swinging by the legs. He told you about those things,
25 right?

Tracy Moss
Recross-examination by Mr. Brannon

- 1 A Yes, sir.
- 2 Q Okay. He reported a seizure because she had a
3 seizure, correct?
- 4 A Yes, sir.
- 5 Q Thank you.
- 6 MR. BRANNON: Nothing further.
- 7 THE COURT: You may step down.
- 8 Let me see y'all just a minute.
- 9 (Bench conference held off the record in the presence
10 of the jury but out of the hearing of the jury.)
- 11 THE COURT: Ladies and gentlemen, that is a convenient
12 time to break for lunch. So we're going to do that now.
- 13 Let me caution you again as I have before. There are
14 to be no discussions about this case or anything relating
15 to it in any fashion whatsoever with any person whatsoever.
- 16 If during the course of the trial something arises and
17 you feel that that needs to be brought to my attention, I
18 want you to bring that to my attention. But I don't want
19 you to talk to any other juror or any other person about
20 it.
- 21 You can simply let the foreperson know that you need
22 to see the judge. She'll notify the bailiff. The bailiff
23 will notify me. And we'll make those arrangements for you
24 to talk to me. You're not to discuss anything among
25 yourselves that relates to this case.

1 Okay. If you need to talk to me about something, just
2 let the forelady know. She'll let the bailiff know, and
3 we'll make those arrangements for you to talk with me. Do
4 not discuss anything among yourselves.

5 And of course, as I've said, do not allow yourselves
6 to be exposed to any type of media coverage that might
7 relate to the case, and don't conduct any research or do
8 your own investigation into any issue that might arise
9 during the trial.

10 With that do a have a good lunch, and please report to
11 your jury room at 2:00 o'clock, at 2:00 o'clock this
12 afternoon. Have a good lunch. Everybody understand it is
13 2:00 o'clock, not 2:30? 2:00 o'clock this afternoon.

14 (The following takes place outside the presence of the
15 jury.)

16 THE COURT: Court's in recess until 2:00 o'clock.

17 (Whereupon, a recess was taken.)

18 THE COURT: Any matters to address before the jury is
19 brought in?

20 MR. GOWDY: Not from the state, Your Honor.

21 MR. CAMPBELL: None from the defense, Your Honor.

22 THE COURT: Okay. Bring them in.

23 (The following takes place in the presence of the
24 jury.)

25 THE COURT: Good afternoon, ladies and gentlemen.

Dr. Hannah Samaan Sahhar
Direct examination by Ms. Crick

1 We're going to continue with the state's presentation
2 of evidence.

3 MS. CRICK: Thank you, Your Honor. The state calls
4 Dr. Hanna Sahhar.

5 DR. HANNA SAMAAH SAHHAR,
6 having been first duly sworn, testified as follows:

7 DIRECT EXAMINATION BY MS. CRICK

8 Q Dr. Sahhar, I was about to remind you that you need to
9 speak up into that microphone so we can all hear you. And
10 just let the jury know your full name.

11 A My full name Hannah Samaan Sahhar.

12 Q And tell them please what you do and where.

13 A I am a pediatrician. I'm a pediatric intensivist,
14 which is a pediatric critical care specialist.

15 THE COURT: Excuse me just a minute.

16 I know that you have an accent. It's obvious. But
17 the court reporter has to understand, as well as the jury.
18 So let me ask you to please slow down a little bit and
19 speak as distinctly as you can so that everyone can be
20 certain to understand your testimony.

21 THE WITNESS: I will try my best, Your Honor.

22 THE COURT: Thank you.

23 BY MS. CRICK

24 Q Thank you, Doctor.

25 So you are a pediatric critical care specialist at

Dr. Hannah Samaan Sahhar
Direct examination by Ms. Crick

1 Spartanburg Regional?

2 A That's correct. I am the medical director of the
3 pediatric ICU there. My academic degree is assistant
4 professor of clinical pediatric from the Medical University
5 of South Carolina.

6 Q How long have you --

7 THE COURT: I'm sorry. You're going to have to repeat
8 that. The court reporter didn't understand it.

9 A My academic degree is assistant professor of clinical
10 pediatrics from the Medical University of South Carolina.

11 Q So you have been a doctor for a total of how many
12 years?

13 A Sixteen years.

14 Q Did you -- you went to medical school. And then did
15 you do a residency after that?

16 A I did two pediatric residencies. I did one pediatric
17 critical care fellowship, which is training in intensive
18 care.

19 Q Are you board certified?

20 A I am double board certified. That mean I have two
21 boards, one for general pediatrics and one for pediatric
22 critical care units from the American board.

23 Q And you're on the staff of Spartanburg Regional
24 Medical Center?

25 A That's correct.

Dr. Hannah Samaan Sahhar
Direct examination by Ms. Crick

1 Q Are you a member of any medical associations?

2 A I'm an active member of the American Academy of
3 Pediatrics and the Society of Critical Care Medicine.

4 Q What is your best guess as to how many children you
5 have treated?

6 A Childrens with all diseases?

7 Q Uh-huh.

8 A More than 10,000.

9 Q And those have been both accidental and nonaccidental
10 injury cases?

11 A Of course.

12 MS. CRICK: Your Honor, at this time I would like to
13 qualify Dr. Sahhar as an expert in pediatric critical care.

14 MR. CAMPBELL: No objection, Your Honor.

15 THE COURT: He is so qualified.

16 BY MS. CRICK

17 Q I want to turn to your examination of Minor
18 You first saw her on July the 5th of 2009, is that correct?

19 A That's correct.

20 Q Did she come in to you directly or to the emergency
21 room?

22 A I have been called as a consultant to see Minor in the
23 emergency department after she presented with severe
24 respiratory distress unconscious, being stabilized there.
25 I have been called at 7:36 p.m. that day, and I was at her

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1 bedside at 7:55 p.m.

2 Q So you were called in by a doctor in the emergency
3 room?

4 A The emergency physician.

5 Q And what triggers a phone call to you? Why would you
6 get involved?

7 A A very sick kid arrives at the emergency department,
8 need an expertise in critical care, or they present with
9 illness or trauma that can cause life-threatening illness,
10 they consult me.

11 Q So if it is bad enough, life threatening?

12 A Has to be sick and have to call the intensive care
13 physician, yes.

14 Q What was the reason for her admission to the emergency
15 room?

16 A She presented with severe traumatic brain injury.

17 Q And can you describe her condition when you saw her in
18 the emergency room?

19 A First, when I saw her she was in a coma, unconscious.
20 She was on mechanical ventilator because she wasn't able to
21 breathe on her own. And she was having intermittent
22 seizures, convulsions.

23 Q At that point did you -- as part of your medical
24 treatment do you have to get a description of what caused
25 the injury or a patient history?

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1 A Of course. We have to go through the usual process as
2 physician starting from the history, from the medical
3 history, including all of the current history, family
4 history, past medical, past surgical, allergies. After we
5 did the history, then we go to the examination, physical
6 examination, of the child.

7 Q Okay. And in this particular case did you speak with
8 any members of the family or Mr. Tyre about what had
9 happened to her?

10 A I -- when I saw the patient I asked who brought the
11 patient, who -- who knows about that patient. They took me
12 to the room. And the person who presented Minor to me and

13 the person who said that he was the caregiver, he was the
14 boyfriend of the Minor mother.

15 Q What did he say had happened?

16 A When I asked he said he was playing with Minor on the
17 ground. He noticed that she started having seizures and
18 trouble breathing. At that time he called 9-1-1.

19 Q So he did not mention to you at that point anything
20 about her having been shaken or any trauma, just that she
21 had had a seizure.

22 A Not at all.

23 Q Would it have been beneficial to you to know at that
24 point since you were trying to treat her that she had been
25 shaken or that her head had been hit on the ground?

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- 1 A A hundred percent, yes. I can -- I can start my
2 intensive management right away.)
- 3 Q So you did not know that. So you were just operating
4 on the theory that she had had a seizure. But you were
5 treating her for whatever was going on.
- 6 A That's correct.
- 7 Q Were you aware that she had other medical issues?
- 8 A From shortly after I spoke to the caregiver, and then
9 I spoke to the mother later on when she came, she told me
10 that she is -- she suffers from severe developmental delay.
11 Even she is ten or 11 years old, she functions at the level
12 of one years. She does not communicate. She is nonverbal.
13 She doesn't eat. She eats by the, the hole in her outside
14 stomach. And she was a disabled kid. She, she used a
15 wheelchair to mobilize.
- 16 Q So she was not ambulatory.
- 17 A She was not ambulatory.
- 18 Q Were you aware -- and I am going to ask you very
19 specifically. Were you aware of her being in the emergency
20 room for a broken arm on, I believe it was, June the 22nd?
- 21 A I had to go with every patient I admit to my unit I
22 take care of. I'll go to their medical records and look
23 into previous admissions and the whole. This is usual for
24 every single patient. And I found that she was seen in the
25 emergency department twice, one of them as you mentioned

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1 during placement.

2 Q And specifically talking about the broken arm, you
3 were aware of that. And did you also request blood work at
4 that time?

5 A About all off, our evaluation of her condition we have
6 not to include decisions, but we have to exclude.
7 Illnesses can cause a similar presentation. One of them is
8 bleeding disorders.

9 Q So you were trying to check and see whether maybe some
10 kind of bleeding disorder could have caused this trouble?

11 A Absolutely.

12 Q What did you find when you got the results of the
13 blood work?

14 A The -- the first lab results were normal. So we went
15 to extensive profile to determine if she has any bleeding
16 disorders or even clotting disorders. And we tested every
17 single -- enzymes can cause either pathways and everything
18 for normal.

19 Q All the blood work was normal.

20 A Everything.

21 Q Well, let me ask you this. Did you check to see if
22 she had any issues with bone disease or bone density
23 issues?

24 A Yeah, of course. Bone densities we don't have in this
25 childrens, but by the x-rays and by the x-rays from the

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- 1 urologist they can tell if she has. A bone disease can
2 cause easily breakable or fragile bones. And she does not
3 have any illness in her bone.
- 4 Q Okay. You also did a general exam just looking at her
5 body, is that correct?
- 6 A That's correct.
- 7 Q And I believe you noted in your report that you saw
8 some bruising and marks. Can you describe for the jury
9 what you saw? And you can refer to your notes if you need
10 them.
- 11 A I found 14 different bruises in her body widespread,
12 including a side, both sides, of the face, the ears, even
13 in the back and beside the ankles also. It has bruises.
14 Characteristics of these bruises are different in shape and
15 different in color that may occurred in different time.
- 16 Q Let me show you something quickly. I'm going to show
17 you what's been marked as State's 9. I'm sorry. These are
18 in a weird order -- 8, 16, 15, 14, 10, 11, 12, 13, 7, 6, 5,
19 17, 18, 19 and 20. And see. If you'll take a look at
20 those, and all I want you to tell us is if you, A,
21 recognize those, and if those fairly and accurately depict
22 the bruising and marks you saw on Minor in the pediatric
23 intensive care unit.
- 24 A As far as I remember, yeah.
- 25 MS. CRICK: Your Honor, at this time I would like to

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1 move those into evidence.

2 THE COURT: State's Exhibit 5 through 20. Any
3 objection?

4 MR. CAMPBELL: No objection, Your Honor.

5 THE COURT: They're admitted.

6 (Photographs marked State's Exhibits Nos. 5 through
7 20.)

8 MS. CRICK: May I publish?

9 THE COURT: You may.

10 BY MS. CRICK

11 Q Okay. Dr. Sahhar, I'm going to have you look behind
12 you and see if I can --

13 THE COURT: He is not going to be able to testify with
14 his back to the court reporter. Do y'all have additional
15 copies of those photographs?

16 MS. CRICK: I do not.

17 THE COURT: All right. Well, let's ask the witness to
18 step down.

19 If you'll stand next to Ms. Crick perhaps everyone can
20 hear you. But be sure to speak up so the court reporter
21 can hear what you say.

22 (Whereupon, the witness left the stand.)

23 BY MS. CRICK

24 Q Dr. Sahhar, I'm just going to ask you. You had made
25 reference to some bruising on the eye area. Is this what

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1 you were referring to?

2 A There was one on the temple. The temple is the side
3 of the eye.

4 Q Speak up. All right.

5 THE COURT: Let's do this.

6 Let me ask the witness. Dr. Sahhar, do you see this
7 microphone hanging down from the ceiling there in front of
8 the witness box, that white microphone? That one. Yeah.
9 I think if you'll stand there and speak out that should
10 pick up your voice. Let's try that.

11 BY MS. CRICK

12 Q Dr. Sahhar, you -- are these the injuries or marks you
13 saw on the neck area or the shoulder area of Minor

14 A I can't tell you a hundred percent if this is the
15 patient herself or not, but this is the bruise. It's one
16 of those that I document in my record.

17 Q You documented this in your record.

18 A That's correct.

19 Q And then that would be the other side of the neck.

20 A That's correct. I also documented that.

21 Q Dr. Sahhar, you documented bruising on the face area.
22 Is that what you documented in your report?

23 A I don't remember seeing this now, but I remember what
24 I documented, particularly after I saw it in my patient.

25 Q Okay. And you documented redness.

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- 1 A Yes.
- 2 Q Marks on the ear. Is that what you documented?
- 3 A Yes.
- 4 Q You were documenting marks on the --
- 5 A Yeah. That's correct.
- 6 Q On the leg or knee area. Is that what you documented?
- 7 A I don't recall the picture, but I can tell from my
- 8 documentation I document red areas of that.
- 9 Q You documented some bruising and marks on the shoulder
- 10 upper-arm area?
- 11 A I remember that very well because it was different in
- 12 discoloration than others, yes.
- 13 Q You can have a seat, Dr. Sahhar.
- 14 (Whereupon, the witness returned to the stand.)
- 15 Q Had she already had a CT scan in the emergency room by
- 16 the time you saw her?
- 17 A Yes.
- 18 Q And when you got the results of that scan did you look
- 19 at it?
- 20 A Yes, I looked at it myself.
- 21 Q Can you explain in the easiest terms -- because I'm
- 22 not great at all of the terms myself -- to the jury what
- 23 you saw on the brain scan?
- 24 A Okay. An easy way to explain the place of the bleed,
- 25 imagine the skull a bone. Ball. Underneath it there is a

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1 fibrous tissue, a tissue attached to that bone. Underneath
2 it there is small spinal fluid. Under that fluid there is
3 the brain itself. Between the fibrous tissue it's called
4 the dura. And the brain surface, there are vessels. We
5 call them veins. We call -- call them bridging veins.

6 Q So between the bone area and the --

7 A There's bone, fibrous, and then brain cell.

8 Q And in between each of those, those are all connected
9 by little veins or blood vessels.

10 A That's correct, all over, that's called, yes.

11 Q Okay. So go ahead.

12 A And what we found on the CT scan, that there are a
13 blood around the brain under this fibrous tissue, which is
14 the dura. We call it subdural bleed or subdural
15 hemorrhage.

16 Now, the occasional duct, they were bilateral, that
17 mean from both sides from the right and from the left.
18 From the right it's more than from the left.

19 There's another important thing that we found on the
20 CAT scan, that there -- there was blood between the two
21 parcels of the brain. The brain has two lobes. In between
22 there was also blood.

23 Q So what did all of that tell you? What's your opinion
24 about all of that?

25 A From my expert opinion and from all the pictures,

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1 textbooks, articles, papers published, we call this a
2 nonaccidental bleed. We call it abusive head trauma kind
3 of bleed. It is very characteristic for this kind of
4 presentation to get bilateral subdural bleed and
5 interhemispheric between the lobes.

6 Q So the fact that the bleeding was on both sides and
7 not just one --

8 A That's correct.

9 Q -- led you to believe that this was more
10 characteristic of an abusive type injury rather than an
11 accidental one.

12 A Yes. One of them --

13 MR. CAMPBELL: Objection, Your Honor. I don't
14 believe -- that's speculation for one that's not what he
15 testified to. He testified that this was a nonaccidental
16 injury, not specifically that it was abuse, just
17 nonaccidental.

18 THE COURT: Overrule. You can examine him.

19 BY MS. CRICK

20 Q Go ahead.

21 A The American Academy of Pediatric distribute a policy
22 on May of 2009 telling all the pediatrician and the
23 physician to unified their definition of the nonaccidental
24 injury, to call it A-H-T, abusive head trauma, so because
25 many people call it different name, shaking baby and other

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1 kind of nonaccidental inflictive. So the American Academy
2 of Pediatric distributed this policy last year.

3 Q What kind of thing might cause this type of injury? I
4 know you said nonaccidental. But what could cause it?

5 A If you allow me just because you asked me about a CAT
6 scan, what I found, I did not finish, because this is very
7 important to include all the finding, not one finding.

8 Q Okay.

9 A The bleed was one of the finding that we saw.

10 Q The bleeding?

11 A The bleeding, which is -- it was -- it was not a large
12 bleed. It was about, the maximum about, 7-millimeter.

13 For kids that they have big fracture, big bleed,
14 usually there are large hematoma, large bleed, to cause
15 pressure on the brain.

16 For Minor it was different.. The brain injury she had
17 not just from the bleed. It was something called diffuse
18 axonal injury. And that is mean there were rupture and
19 tear injury of the smell cells of the brain.

20 How we know that? The CT scan that we -- we did in
21 the beginning showed swelling of the brain. Later on we
22 did the magnetic resonance image, MRI show in detailed
23 injury of the brain tissue. So she had both bleed and
24 brain tissue injury.

25 Q Okay. So damage to the tissue of the brain causing

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- 1 swelling as well as bleeding.
- 2 A That's why she progressed really fast.
- 3 Q And when you say she progressed really fast, could you
- 4 determine how recent this injury would had to have been?
- 5 A According to the CAT scan a characteristic of the
- 6 bleed, it was bright. And whenever it's bright we cannot
- 7 tell exactly the time, but usually it is within 24 hours.
- 8 Q Within 24 hours. Because of the color of the bleeding
- 9 you could tell that it was recent.
- 10 A That's correct.
- 11 Q Okay. Did you at that point seek consult from other
- 12 specialists?
- 13 A Yes.
- 14 Q Who were those folks?
- 15 A The first thing I consulted the neurosurgeon for if
- 16 there's any intervention surgically can be done.
- 17 Q So that would be Dr. Esce?
- 18 A That's correct.
- 19 Q And your question to Dr. Esce was is there anything we
- 20 can do for her surgically?
- 21 A Yes. That's correct.
- 22 Q And what did you find out from Dr. Esce?
- 23 A He said --
- 24 MR. CAMPBELL: Objection, Your Honor. Hearsay.
- 25 THE COURT: Well, is this -- was this information used

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1 in your treatment of the child?

2 THE WITNESS: About -- information about what?

3 THE COURT: Information from Dr. Esce. Did you use
4 that in your treatment of this child?

5 THE WITNESS: That's correct, yes.

6 THE COURT: Overruled.

7 BY MS. CRICK

8 Q Go ahead.

9 A So I consulted right away consulted him because I was
10 stabilizing the patient in case she needs to go to the
11 operating room before she goes to the pediatric intensive
12 care.

13 So he came right away. Within ten minutes from
14 talking to him, he came. He saw her in the emergency
15 department, and he told me there's nothing he can do.

16 Q So he examined her, looked at the scans.

17 A Yes.

18 Q And said it's too bad.

19 A Yes.

20 Q Did you consult with anybody else?

21 A The pediatric neurologist and the pediatric
22 neurologist happens to be out of town. There is -- her
23 department was available. She came. She examined Minor
24 with me. She gave me her opinion. She put her on the
25 continuous EEG monitor which is electroencephalogram to see

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1 the extent of the seizures. And then she contacted
2 Dr. Legarda. She's the primary pediatric neurologist who
3 used to see Minor for many, many years.

4 Q So at this point what you're being told by a
5 neurosurgeon and neurologist is supportive care but nothing
6 you could really do.

7 A That's correct.

8 Q You mentioned seizures, that she was having seizures
9 throughout. Could the seizures have been caused or
10 resulted from the traumatic brain injury or because of the
11 trauma? In other words, could the trauma trigger some
12 seizures?

13 A The trauma triggered seizures of course. We see that
14 all the time. Even kids who don't have seizure disorder by
15 having this kind of trauma or bleed or any injury to the
16 brain can cause seizures. But the seizures themselves will
17 not cause a bleed unless from the seizure the patient fall
18 down and hit their head and causing the trauma. So the
19 bleed would be from the trauma, not from the seizures.

20 Q So the seizure itself is not going to cause the
21 injuries that you were seeing.

22 A I have not seen in my professional life.

23 Q And did you have based on your conversation -- well,
24 let me ask you this. Did you consult with an
25 ophthalmologist as well?

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1 A This is part of our -- we have like a-checklist for
2 every patient who has question mark, nonaccidental head
3 injury to consult ophthalmologist to include or exclude
4 retinal hemorrhage.

5 Q And what -- when you say retinal hemorrhages, what
6 does that tell you if there are or are not retinal
7 hemorrhages? What's the point in that?

8 A Well, it's one, one of the most important finding --
9 and, again, A-H-T, abusive head trauma, because we have
10 triad. We have to get subdural bleed; we have to have
11 retinal hemorrhage -- and the triad, which is three things.
12 We have diencephalopathy (sic), which is severe brain
13 illness. So I have to complete those three to call my
14 diagnosis A-H-T. So I have to call Dr. Morashus (sic).
15 And his result was the patient had bilateral retinal
16 hemorrhage, bleeding in the retina.

17 Q So the eyes themselves had hemorrhages, both eyes.

18 A Both of them, yes.

19 Q So at that point the triad, as you said, indicated --

20 A Fulfilled the diagnosis of A-H-T, yes.

21 Q Which is abusive --

22 A Abusive head trauma.

23 Q At that point based on what you had learned, based on
24 your conversations, you contacted DSS because you feared
25 abusive head trauma?

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1 A We are obligated to inform and consult with child
2 protective services whenever we have any red flags, and she
3 has more than one of those flags when, after I saw her in
4 the emergency department. At that time consulted internist
5 to get if there was anything or not.

6 Q Okay. And how would you describe her general
7 condition at that point? How was she doing?

8 A She was very, very sick. She was in severe -- not
9 just severe. She was in very critical condition.

10 Q How would you compare her condition to other patients
11 you had seen?

12 A She was in life-threatening condition that her -- we
13 call it mortality rate -- in her was more than 95 percent.
14 That mean 95 percent of the kids with this injury at that
15 time, they will die from this injury.

16 Q In your opinion what kind of trauma would be necessary
17 to cause this kind of injury?

18 A According to the history that I got from the family
19 that there was no fall history from high. I mean high, we
20 have to -- to be more than 6 feet -- that's documented in
21 literatures pictures and the -- and the text, again, and the
22 papers -- or high speed car accidents. Both of them has
23 not been there, and there was no history of trauma when I
24 questions the caregiver, so unlikely to be due to accident.
25 So it has to be other causing.

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1 What we've seen, the reasons of this kind of trauma,
2 one of the mechanisms is we call it violent shaking.
3 Again, violent shaking and the mechanism of death, it is
4 acceleration-deceleration. Sometimes with direction of
5 force.

6 What does that mean? You have to get fast shaking of
7 the head and the mechanism as you would get from holding
8 the body from the shoulders, from the arms, from the legs
9 and let the head been shaken vigorously and violent.

10 Q And you're not talking about going up to somebody and
11 just doing a little shake.

12 A I will tell you what's the American Academy of
13 Pediatric define this. They said it's a violent shaking,
14 leading to abusive head trauma that individual observing
15 the act will recognize it as dangerous and would kill the
16 child. This is literal definition from the American
17 Academy of Pediatrics.

18 Q So --

19 A So it doesn't mean you have to see it, or you can, use
20 yourself. Anybody can tell. This is very dangerous. This
21 is how it's violent, the force that is behind this to cause
22 this, the brain, to hit the skull from inside, for this
23 bridging veins to break and cause a bleed.

24 Q So the brain hitting the skull inside hard enough is
25 what tears or breaks those vessels you were telling us

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- 1 about and causes the bleed.
- 2 A That's correct.
- 3 Q And it has to be enough -- what you're saying is it's
- 4 violent enough that the average person looking at it would
- 5 know the extent.
- 6 A That's the definition -- that's the definition from
- 7 the policy published in May 2009 American Academy of
- 8 Pediatrics.
- 9 Q You mentioned also a fall. Could these injuries have
- 10 resulted from a simple fall?
- 11 A I have never seen simple fall cause such injury. I'm
- 12 talking about an injury, not just a bleed. There was no
- 13 fracture in the skull itself. That's No. 1.
- 14 No. 2, the sheer effect, which is -- the sheer means
- 15 the tear of the brain tissue itself that caused severe
- 16 ischemia on swelling. I never seen anything simple -- from
- 17 a simple fall.
- 18 Q So the tearing of the brain issue itself is something
- 19 that alerted you that this is not from a fall.
- 20 A Absolutely.
- 21 Q At this point, Dr. Sahhar, did Minor have any brain
- 22 activity at all?
- 23 A Well, we have a -- a guidelines to determine the
- 24 brain. It's called brain death guidelines. And it is two
- 25 parts. One of the parts is examination. And as you

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1 already done, one of the examination by the intensivist and
2 the other one is by the surgeon or by the neurologist.

3 I done the first one. The exam was there's no brain
4 activity by the exam. Then we go through test called apena
5 test. We disconnect the patient from the mechanical
6 ventilation and we check if they can breathe and we check
7 the carbon dioxide to see if they induce breathing.

8 Now, for this test I could not complete because once I
9 disconnected Minor from the ventilator she had -- was record
10 like spinal shock. She lost her blood pressure and almost
11 lost her pulse. So I have to bring her back, stabilize
12 her. So I stopped my test.

13 I went to other confirmatory test, which is called
14 MRA, magnetic resonance angiogram. What does that mean?
15 We give her dye in her veins and see if this dye go to the
16 brain and see if the brain is diffused.

17 Minor when I pronounce her dead, she had no blood flow
18 to her brain. That mean this is diagnosis of brain dead,
19 besides the AAG, which is electrical activity. It was
20 silent. So there's two confirmatory tests that the brain
21 was dead. So at that time I pronounce her dead.

22 Q And I'm going to ask you one last time. In your
23 opinion based on the injuries you saw and based on the
24 history you had and your consultations it's your opinion
25 that this was abusive head trauma that caused her injuries.

Dr. Hannah Samaan Sahhar
Cross-examination by Mr. Campbell

1 A Again, in my expert opinion -- and I'm under oath --
2 this is a diagnosis of abusive head trauma.

3 Q Nothing further at this time.

4 CROSS-EXAMINATION

5 BY MR. CAMPBELL

6 Q Dr. Sahhar, you were called in initially around 7:30,
7 is that correct?

8 A That's correct.

9 Q Okay. And I believe Minor was initially brought in for
10 difficulty with seizure, correct?

11 A She was brought for seizures and difficulty of
12 breathing.

13 Q Okay. Evidently she had a seizure, had difficult
14 breathing, EMS was called, brought into the hospital,
15 correct?

16 A That's correct.

17 Q Okay. And then approximately how long after she was
18 brought in did you see Minor

19 A I think within 30 minutes. I'm not sure. But I'm --
20 I documented that I saw her at 7:36. I was called at 7:36,
21 and I saw her at 7:55.

22 Q 7:55.

23 A Yes.

24 Q Was she diagnosed as having brain trauma before you
25 arrived?

Dr. Hannah Samaan Sahhar
Cross-examination by Mr. Campbell

- 1 A No.
- 2 Q So you were actually the one who diagnosed her with
3 having brain trauma.
- 4 A The CAT scan. They already done the CAT scan.
- 5 Q Okay.
- 6 A And I looked at the CAT scan with the ER physician and
7 we saw the bleed and the head injury.
- 8 Q Okay. Can you give me an estimate of around what time
9 that was?
- 10 A Well, within -- within 15 minutes from -- from I've
11 seen, I examined her, and it was immediate. The CAT scan
12 result was immediate.
- 13 Q So about 8:10, around in there?
- 14 A Yeah.
- 15 Q Around 8:00, is that correct?
- 16 A I'm -- I'm not sure about the exact time, but usually
17 when we get CAT scan with a traumatic bleeding they will
18 call directly. The radiologist said there's something in
19 there we have to pay attention.
- 20 Q At what point did you inform the family that there was
21 a brain injury?
- 22 A I don't remember. I was -- all my concern at that
23 time was taking care of Minor
- 24 Q Well, Ms. Crick asked you earlier.
- 25 A Who?

Dr. Hannah Samaan Sahhar
Cross-examination by Mr. Campbell

1 Q Ms. Crick. She's the solicitor who questioned you.
2 She asked you specifically about what Mr. Tyre told you,
3 and you said seizure, correct?

4 A That's correct.

5 Q She first came in for a seizure though, didn't she?

6 A That's that presenting, yes.

7 Q Okay. Had you informed him of the brain injury before
8 he told you about that?

9 A I don't think so.

10 Q So he would have no reason to have told you about a
11 swinging by the ankles or hitting her head if he didn't
12 know there was a brain injury, would they -- would he?

13 A Well, I think part of my questioning about what
14 happened is we go through many, many questions and ask them
15 what triggered the seizures.

16 Q Okay.

17 A I don't know if I ask there's any trauma, any fall,
18 any hit, anything of this kind.

19 Q Okay.

20 A We do not give leading questions. We just ask a
21 question, and they will tell us. And we don't comment what
22 they tell us.

23 Q This child had a history of seizures though, didn't
24 she?

25 A That's correct. And the last seizure was five years

Dr. Hannah Samaan Sahhar
Cross-examination by Mr. Campbell

1 ago before she had presented, yes.

2 Q And I believe you include in your notes that she --
3 was it Lamitol she was on?

4 A Lamitol, yes.

5 Q Lamitol. And I believe her dosage was -- is it
6 125 milligrams? Is that right?

7 A The original dose was 125 milligrams, and was draining
8 slowly, and to prevent the side effects from it like loss
9 of hair.

10 Q So she had just recently been weaned down to 12 and a
11 half milligrams.

12 A Over months.

13 Q Okay. What does Lamitol do? What is that drug for?

14 A It's to decrease the pressure of seizures.

15 Q Okay. I understand that. I mean, can you explain how
16 the drug does that?

17 A Do you need the biomechanism of the drug? Is that
18 what you're asking me?

19 Q Yes.

20 A It -- it does work on a similar and molecular level.
21 It is between erythroid in the brain. The best person to
22 answer this question, we can ask the pediatric neurologist.
23 She can tell you about it.

24 But for us as intensivists we have a good
25 understanding of the seizures and the treatment of the

Dr. Hannah Samaan Sabhar
Cross-examination by Mr. Campbell

1 seizures and side effects of the medication.

2 Q Can you tell me all the medication that Minor was on
3 prior to coming in to see you? Do you know?

4 A Nothing that was in the back of my head. I remember
5 that she was on the Lamitol. I know that she has allergies
6 for Sulfer, Ceftin, Reglan.

7 Q Was she on Risperdal as well?

8 A I may have -- I may wrote that in her medical records.

9 Q Do you know if Lamitol or Risperdal causes an
10 individual to bruise easily?

11 A No. They don't. I asked that question to the other
12 pediatric neurologist.

13 Q Okay. So you -- you inquired about that -- that same
14 thing, correct?

15 A That's why we did that extensive bleeding disorder
16 panel.

17 Q Now, I believe you stated you also consulted with an
18 ophthalmologist.

19 A That's correct.

20 Q And to check the retinal bleeding, correct?

21 A Uh-huh.

22 Q And whenever there is bleeding on the brain and
23 hemorrhaging you would expect to find the retinal
24 hemorrhaging, correct?

25 A No, not with -- not with accidents. Accidents,

Dr. Hannah Samaan Sahhar
Cross-examination by Mr. Campbell

1 usually you don't have retinal hemorrhage. We order
2 retinal scan or consultation with ophthalmologist if we
3 suspect the accident is not accident, the trauma was due to
4 nonaccident -- nonaccident.

5 Q At what point did you consult with the
6 ophthalmologist?

7 A Just to fulfill my final diagnosis.

8 Q And when did you give your final diagnosis?

9 A The second day.

10 Q July 8th?

11 A She came -- she came on July 5th around 8:00 or
12 9:00 o'clock, you know, in p.m., when I admitted her in the
13 ICU. Then I was working with her -- with her to stabilize
14 her condition, try to treat her brain edema in I think
15 July 6th. And shortly the ophthalmologist saw her. I'm
16 not sure, but most probably July 7th.

17 Q Do you remember having a -- the opportunity to talk
18 with Investigator Moss in this case?

19 A I don't -- don't recall that.

20 Q Do you recall whether or not an investigator with the
21 sheriff's department talked to you frequently about this
22 case?

23 A Yes, of course.

24 Q Was that a female?

25 A Yes.

Dr. Hannah Samaan Sahhar
Cross-examination by Mr. Campbell

1 Q Okay. And if I told you that was Investigator Moss
2 would you have any reason to dispute that?

3 A No, no.

4 Q Okay. Do you remember telling her that a -- Minor
5 swollen mouth and dark eyelids would be due to the seizure
6 and cerebral palsy?

7 A Kids with cerebral palsy generally have gingival
8 hypertrophy, which is inflamed of the gingiva on the
9 tongue, yes.

10 Q And do you remember talking to Ms. Moss about her
11 conversation with Tony Tyre?

12 A That was a few months ago. I don't recall that.

13 Q Okay. Do you recall Ms. Moss, Investigator Moss,
14 calling you and telling you that Tony had said he had swung
15 the child by her ankles and she hit her head when putting
16 her down? Do you remember that conversation?

17 A I hope I have that. I don't know who specifically
18 told me that, but I have that.

19 Q Okay. And do you remember her asking you if that
20 could cause these injuries?

21 A I think so, yeah.

22 Q And your response was that dropping her on her head
23 after swinging her could absolutely cause these injuries?

24 A Absolutely. I'm not sure of absolutely, but I told
25 her my professional opinion when I've seen kids with this

Dr. Hannah Samaan Sahhar
Cross-examination by Mr. Campbell

1 kind of injury. Usually they have this kind of injury,
2 which is the shaking, violent shaking, with direct blunt to
3 the head.

4 Q Okay. But that's not what -- that's not the
5 conversation, I said. What Ms. Moss told you that Tony
6 swung Minor by her ankles and she hit her head when placed
7 on the floor, could those cause those injuries? Could that
8 action cause those injuries?

9 A Is that is that violent, yeah, it can cause that.

10 Q And you said absolutely it can cause those injuries.

11 A I may have said absolutely, and may not. I do not
12 recall I said the word absolutely.

13 Q When you talked to Kreszena and the family of Minor do
14 you remember telling them that these, this injury,
15 occurred?

16 A Who is Kreszena again?

17 Q Kreszena is Minor mother.

18 A Okay.

19 Q Do you remember telling the family that this injury
20 likely occurred in the last 24 hours, and specifically
21 between four and 20 hours ago?

22 A I do not remember the exact conversation with the
23 family.

24 Q Okay. Do you remember telling Investigator Moss that
25 this injury likely happened in the last 24 hours --

Larry Wayne Monday
Direct examination by Mr. Gowdy

1 A From the CAT scan.

2 Q -- and was a new injury?

3 A From, from the CAT scan, bleeding, and the bleeding
4 and the bruises, yes.

5 Q What time was the CAT scan taken? Can you -- do you
6 have that information?

7 A When I arrived to the emergency department it was --
8 it was already done.

9 Q It was already. And you arrived about 7:55.

10 A That's correct.

11 MR. CAMPBELL: Beg the Court's indulgence.

12 (Pause.)

13 MR. CAMPBELL: No further questions, Your Honor.

14 MS. CRICK: Nothing from the state, Your Honor.

15 THE COURT: You may step down.

16 MS. CRICK: Your Honor, may he be excused to go back
17 to work?

18 THE COURT: He may be.

19 MR. GOWDY: May it please the Court, Your Honor. The
20 state would call Mr. Larry Monday.

21 LARRY WAYNE MONDAY, having
22 been first duly sworn, testified as follows:

23 DIRECT EXAMINATION BY MR. GOWDY

24 MR. GOWDY: May it please the Court.

25 Q Good afternoon, Mr. Monday. I'm going to get you to

Larry Wayne Monday
Direct examination by Mr. Gowdy

- 1 answer verbally so madam court reporter can take it down.
2 And speak loud enough where the last two gentlemen in the
3 jury box can hear you. Okay?
4 A Okay.
5 Q Introduce yourself to the jury. Tell them who you
6 are. Tell them where you work.
7 A My name is Larry Wayne Monday. I'm the pastor at the
8 Whitney Freewill Baptist Church.
9 Q And you are also Minor grandfather, correct?
10 A Minor grandfather, yes.
11 Q Her maternal grandfather.
12 A Yes.
13 Q I want you to tell the ladies and gentlemen of the
14 jury a little bit about Minor Was she able to talk?
15 A No, she was not.
16 Q Was she able to walk?
17 A No, she was not.
18 Q Was she able to comb her hair?
19 A No.
20 Q Was she able to feed herself?
21 A No, she was not.
22 Q Pastor, she died when she was ten years old.
23 A Yes.
24 Q Did you ever pick her up by her ankles and swing her?
25 A No. I have never.

Larry Wayne Monday
Direct examination by Mr. Gowdy

1 Q If you had seen someone picking her up by her ankles
2 and swinging her what would you have done?

3 A I'd have stopped them immediately and reminded them
4 that she needs support.

5 Q When you say she needs support, did she have any
6 control over her fine motor skills?

7 A No, she did not.

8 Q If you sat her on the couch could she sit there or
9 would she fall off to one side?

10 A She'd fall over.

11 Q If you sat her in the floor would she sit there or
12 would she fall off to one side?

13 A She'd fall over.

14 Q Pastor, I want to go with you to July the 5th. Minor
15 already been taken to the emergency room. You were
16 preaching that night, correct?

17 A That's correct.

18 Q You got word that your granddaughter was in the
19 emergency room. So you left church and went to Spartanburg
20 Regional, correct?

21 A That's correct.

22 Q And you're in the room, and this defendant is in the
23 room as well, correct?

24 A That's correct.

25 Q Were you present when the last physician just

Larry Wayne Monday
Direct examination by Mr. Gowdy

1 testified?

2 A No, I wasn't in the room when he was there. It was an
3 emergency room doctor.

4 Q The emergency room doctor came in and asked what? Did
5 he ask --

6 A He informed us of the extent of her injury. And I
7 asked him specifically. I said what could have caused such
8 trauma. And he said it had to be something like a car
9 accident or a drop from extreme heights. And I said what
10 could have caused it. And he said it had to be a drop, or
11 he said I see this in car accidents with adults, I don't
12 see this with children.

13 Q All right. Now, this is a physician that is trying to
14 ask the family what could have caused her injuries because
15 that physician then wants to take care of her, correct?

16 A That is correct.

17 Q He wasn't just asking superfluous questions. He
18 needed to go treat her, correct?

19 A He wanted to know if what we knew that could have
20 caused this, if we had seen anything or done anything,
21 because he needed to know right away in order in order to
22 know how to treat her.

23 Q And this defendant asked that doctor what?

24 A He asked him if this could have been a result of a
25 fall like she had two weeks earlier when she broke her arm.

Larry Wayne Monday
Cross-examination by Mr. Brannon

1 Q And he admitted to you at the time that she never fell
2 and broke her arm?

3 A He had not admitted to me. I did not know. All I
4 knew was that she had broke her arm. And I just -- I
5 didn't know anything else.

6 Q So this defendant is asking an emergency room
7 physician who is caring for your granddaughter and trying
8 to determine the nature of this injury could it have been a
9 fall that never took place, is that correct?

10 A That's correct.

11 Q Mr. Monday, please answer any questions the defense
12 attorney may have for you.

13 CROSS-EXAMINATION

14 BY MR. BRANNON

15 Q Pastor, do you remember being in that room when the
16 doctor came in and he told you that the injury occurred
17 between four and 20 hours ago?

18 A I asked him specifically when -- when this happened,
19 when it could have happened. He said it had to happen
20 within the last four to 20 hours.

21 Q Four to 20 hours.

22 A Yes.

23 Q And you, in fact, put that in your statement to the
24 police, didn't you?

25 A Yes, I did.

Larry Wayne Monday
Redirect examination by Mr. Gowdy

1 Q Okay. No question in your mind the doctor there said
2 between four and 20 hours.

3 A That's what he said to me, yes, sir.

4 Q Okay. Do you remember being interviewed by Channel
5 Seven shortly after Minor passed?

6 A Yes, I do.

7 Q Do you remember telling them that you didn't think
8 Tony did this?

9 A No. I told them I didn't think that -- that what Tony
10 did was intentional and that -- they asked me, said why do
11 you think he did it. And I said, well, it's just a stupid
12 thing to do.

13 Q Thank you.

14 MR. BRANNON: Nothing further.

15 REDIRECT EXAMINATION

16 BY MR. GOWDY

17 Q No. I've got one more question for you.

18 MR. GOWDY: Your Honor, can we approach?

19 (Bench conference held off the record in the presence
20 of the jury but out of the hearing of the jury.)

21 Q Now, Mr. Brannon just asked you about an interview you
22 gave to Channel Seven and what your suppositions may have
23 been, correct?

24 A That's correct.

25 Q When you were interviewed by Channel Seven did you

Larry Wayne Monday
Recross-examination by Mrs. Gowdy

1 know that Mr. Tyre had broken your granddaughter's arm?

2 A No, I did not.

3 Q Did you know that Mr. Tyre had admitted that he had
4 shaken your granddaughter when he gave that interview?

5 A No, I did not.

6 Q Is it fair to say to this jury that you know a whole
7 lot more today than you did the day you gave that
8 interview?

9 A That's correct.

10 MR. BRANNON: Follow up to that.

11 RECROSS-EXAMINATION

12 BY MR. BRANNON

13 Q I believe you said you thought what Tony did was
14 unintentional, correct?

15 A What he asked me was did I believe that he did this
16 out of malice, and I said, no, I think it was just a --
17 just a crazy, stupid thing to do.

18 Q Thank you.

19 MR. BRANNON: Nothing further.

20 MR. GOWDY: Nothing further, Your Honor.

21 THE COURT: You may step down.

22 MR. GOWDY: Checking on Dr. Wren, Your Honor.

23 Your Honor, we would call Mike Shaw.

24

25

Mike Shaw
Direct examination by Mr. Gowdy

- 1 MIKE SHAW, having been first
2 duly sworn, testified as follows:
3 DIRECT EXAMINATION BY MR. GOWDY
4 MR. GOWDY: May it please the Court.
5 THE COURT: Yes, sir.
6 Q Good afternoon, Mr. Shaw.
7 A Good afternoon.
8 Q Can you tell the jury where you work and how long
9 you've been there?
10 A Spartanburg County Coroner's Office. I've been there
11 five and a half years.
12 Q Did you work in law enforcement prior to going to the
13 coroner's office?
14 A I did. I've got a total of 20 years and some months
15 in law enforcement.
16 Q Twenty total years in law enforcement?
17 A Yes, sir.
18 Q Were you involved in the investigation into the death
19 of Minor on July the 5th, 6th, 7th and 8th of 2009?
20 A Yes, sir.
21 Q Were you present when she was interviewed by a
22 detective from the Spartanburg County Sheriff's Department?
23 A When who was interviewed?
24 Q When -- I'm sorry. Were you present when the
25 defendant, Tony Tyre, was interviewed by a detective with

Mike Shaw

Direct examination by Mr. Gowdy

1 the Spartanburg County Sheriff's Department?

2 A I was.

3 Q Where did that interview take place?

4 A Spartanburg County Sheriff's Office in their
5 conference room.

6 Q Were you present when he was Mirandized prior to being
7 questioned?

8 A I was.

9 Q In fact, did you witness the preinterrogation waiver
10 form?

11 A I did.

12 Q This jury has already had the statement read to them,
13 so I'm not going to have you go back through it again.

14 What I would like to ask you is whether or not there
15 were any threats made to Mr. Tyre.

16 A No, sir. There were not.

17 Q Why there any promises or assurances made in exchange
18 for his talking to you?

19 A No, sir.

20 Q Was he free to get up and leave if he wanted to?

21 A Yes, sir.

22 Q And did you ask him about what happened to Minor on
23 July the 5th?

24 A We did, sir.

25 Q Can you tell the jury whether or not Mr. Tyre admitted

Mike Shaw
Direct examination by Mr. Gowdy

1 in your presence to swinging her by her ankles?

2 A He did.

3 Q Can you tell this jury whether or not Mr. Tyre
4 admitted to breaking her arm on June the 22nd?

5 A That's correct.

6 Q Do you recall why he told EMS and everyone else for
7 two weeks that it was a fall from bed? Do you recall the
8 explanation he gave?

9 A I do. He stated that he was afraid of what Minor
10 mother would think.

11 Q He was afraid of what Minor mother would think, so he
12 lied about how she broke her arm.

13 A That's correct.

14 Q Mr. Shaw, after he told you and Detective Moss and
15 your colleague, Ms. Farr, that he had held her by the
16 ankles and that he -- and he admitted to breaking her arm
17 on June 22nd, did he say anything with respect to what else
18 happened to her on July the 5th?

19 A He advised that he had been playing with her in the
20 floor, setting up with -- her on the floor near the couch
21 unbalanced, and in the process of swinging her by her feet
22 back and forth that as he was putting her down her head
23 struck the floor rather hard. He said that the floor was a
24 hardwood floor covered with carpeting.

25 Q Did he say anything to you about shaking her?

Mike Shaw
Cross-examination by Mr. Campbell

- 1 A He did.
- 2 Q What did he say?
- 3 A Stated he -- would place his hand on top of her head
- 4 and kind of shake it.
- 5 Q Were you present when he came in and told Detective
- 6 Moss that he must have shaken her too hard?
- 7 A I was.
- 8 Q Was he threatened before he said that?
- 9 A No, sir.
- 10 Q Was he coerced?
- 11 A No, sir.
- 12 Q Did you trick him?
- 13 A No, sir.
- 14 Q Mr. Shaw, please answer any questions the defense
- 15 attorney may have for you.
- 16 A Yes, sir.
- 17 CROSS-EXAMINATION
- 18 BY MR. CAMPBELL
- 19 Q Investigator Shaw, you knew Tony before this incident
- 20 occurred, didn't you?
- 21 A That's correct through the fire academy.
- 22 Q Through the fire academy. How long had it been you'd
- 23 known him?
- 24 A Six or seven years.
- 25 Q Six or seven years. And you'd been on calls with him

Mike Shaw
Cross-examination by Mr. Campbell

1 too, hadn't you?

2 A That's correct.

3 Q Okay. So previous to this interview you had had
4 somewhat of a working relationship with Tony.

5 A Yes, sir, as well as others at EMS and fire service.

6 Q Okay. Now, how did you get the call to come to this
7 interview?

8 A Investigator Moss advised us that she would be
9 interviewing him. We had yet to speak with him to find out
10 what information had transpired prior to Minor ending up at
11 the hospital.

12 Q Okay. You showed up. I think the interview took
13 place approximately 2:00 p.m. Does that sound about right?

14 A That's correct.

15 Q Okay. And you were present for the reading of Miranda
16 and everything like that.

17 A Yes, sir.

18 Q Were there any video cameras in the interview room at
19 the time?

20 A No, sir.

21 Q Do you know if there is the capability of -- to
22 videotape this interview?

23 A I cannot answer that a hundred percent because I do
24 not work at the sheriff's office.

25 Q Okay. Do you often go down to the sheriff's office to

Mike Shaw

Cross-examination by Mr. Campbell

1 interview individuals in a crime like this?

2 A Not very often, no, sir.

3 Q So this was somewhat of a different situation in
4 regards to this interview.

5 A It was more a situation of convenience rather than
6 Mr. Tyre being interviewed by the sheriff's office and then
7 being interviewed again on the same matters separately, at
8 a separate time, by us.

9 Q And you'd actually seen Tony at the hospital though
10 two or three days prior to your interview, hadn't you?

11 A Correct.

12 Q Did you have any interaction with him at the hospital?

13 A Basically, most of my interactions was with Minor
14 mother. I did express my condolences to Tony.

15 Q Okay. Now, I believe -- and the statement's been read
16 several times in court already. Tony said that he swung
17 Minor by her ankles and she hit her head on the floor,
18 correct?

19 A Correct.

20 Q Now, but he also indicated that he played with Minor
21 and tickled her feet.

22 A That's correct.

23 Q And that she was watching a movie.

24 A Correct.

25 Q And that he -- I believe he was on the computer and

Mike Shaw
Cross-examination by Mr. Campbell

1 was checking on her frequently, I think's what he told you.

2 A That's correct.

3 Q Okay. Now, when he said that he -- when he walked by
4 he'd shake her head, did he say he would just walk by and
5 put his hand on her head and move his hand over her head?

6 A Yes, sir. He demonstrated that he would walk by and
7 her (sic) hand on her head and shake her head like that.

8 Q Just like most parents do to their kids when they walk
9 by them?

10 A I can't say what most parents do.

11 Q Now, at some point Investigator Moss left the
12 interview room, correct?

13 A Correct.

14 Q Had Tony given his written statement at that point?

15 A He had.

16 Q Okay. And you and Investigator Forrest remained
17 behind, correct?

18 A That's correct.

19 Q While Investigator Moss was out of the interview at
20 any point did you say to Tony, look, I know you didn't
21 intend to do this, what happened?

22 A No, sir. I did not.

23 Q Well, I believe Investigator Moss came back in after
24 the statement was written and informed Tony about the cause
25 of death, correct?

Mike Shaw

Cross-examination by Mr. Campbell.

1 A I do not remember that.

2 Q You don't remember her coming back in and telling him
3 what the cause of death was?

4 A I don't remember.

5 Q And -- and that's the reason he said I must have
6 shaken her too hard?

7 A Basically, Mr. Tyre gave us -- I mean, he was
8 interviewed orally and given a written statement.

9 We stepped out of the room to give him time to write
10 the statement. He finished his statement, and we came back
11 in and went over his written statement to make sure we
12 understood what he had written.

13 Detective Moss then stepped out of the room. Myself
14 and Chief Investigator Forrest remained in the room. Then
15 Mr. Tyre and I talked about some stuff other than Minor
16 dealing with the fire service and this and that and the
17 other.

18 In the course of that conversation he asked would I
19 have Detective Moss come back into the room stating he knew
20 he was in trouble and wanted to speak to her.

21 Q And I think that's what -- he just made the statement
22 I must have shaken her too hard.

23 A That was after Detective Moss came back in the room,
24 yes, sir.

25 MR. CAMPBELL: Beg the Court's indulgence.

Dr. Phillip Esce
Direct examination by Ms. Crick

1 (Pause.)

2 Q Investigator Shaw, did Tony ever say he broke her arm
3 intentional?

4 A No, sir.

5 Q He -- I think he basically said that he had her arms
6 behind her head and was somewhat retraining her though,
7 right?

8 A That's correct.

9 Q And her arm popped out.

10 A Correct.

11 Q Did Tony ever tell you that he had ever gotten mad at
12 Minor

13 A No, sir.

14 Q Ever gotten frustrated at Minor

15 A No, sir.

16 MR. CAMPBELL: No further questions, Your Honor.

17 MR. GOWDY: Nothing on redirect, Your Honor.

18 THE COURT: Step down.

19 MS. CRICK: Your Honor, the state calls Dr. Phillip
20 Esce.

21 DR. PHILLIP ESCE, having been
22 first duly sworn, testified as follows:

23 DIRECT EXAMINATION BY MS. CRICK

24 Q Dr. Esce, could you make sure you speak loudly enough
25 so that the jury can hear you? And tell them your name and

Dr. Phillip Esce
Direct examination by Ms. Crick

1 where you work.

2 A Okay. My name is Phillip Esce. I work here in
3 Spartanburg at the Spartanburg Neurosurgical Institute.
4 I'm a neurosurgeon in town.

5 Q And how long have you been a neurosurgeon or a doctor?

6 A Fourteen years.

7 Q Can you briefly just tell the jury what your
8 background is as far as education, training, residency,
9 that sort of thing?

10 A Yes. I graduated from college with a biology major.
11 I went to the University of Rochester to get my medical
12 degree. I went on to do a residency in neurosurgery in
13 Charleston, South Carolina. And then I took a position
14 here in Spartanburg and have been here a little over eight
15 years now.

16 Q Have you ever had to testify as an expert in court
17 before?

18 A Yes.

19 Q Was it here in Spartanburg?

20 A Yes.

21 Q In criminal court?

22 A Yes.

23 MS. CRICK: Your Honor, at this time I'd like to
24 qualify him as an expert in neurology.

25 MR. BRANNON: No objection.

Dr. Phillip Esce
Direct examination by Ms. Crick

1 THE COURT: He is so qualified.

2 Q Did you at some point become involved in the treatment
3 of Minor

4 A Yes.

5 Q Can you tell the jury how you became involved in that
6 treatment?

7 A I was called by the emergency room physician.

8 Q When you got to the emergency room did you get a
9 history, a patient history, in terms of why she was there
10 at the emergency room?

11 A Yes.

12 Q And what did you know at that point?

13 A Well, when I was called in -- when there's call for a
14 head injury, a child in distress. When I came to the
15 emergency room first thing I did is see the child and
16 examine the child, got the information from the nurses and
17 the records from -- that came with the child at the time.

18 Q And when you examined the child, can you tell the jury
19 what kind of condition she was in?

20 A She was in grave condition. The child was
21 unresponsive, fixed and dilated pupils, which was a bad
22 sign for anybody. And I went ahead and started looking at
23 her imaging studies that they had performed in the
24 emergency room.

25 Q Do you mean the CAT scan or the CT scan?

Dr. Phillip Esce
Direct examination by Ms. Crick

1 A Yes.

2 Q Can you tell the jury what you saw on the scan of her
3 brain?

4 A I saw on the scan of her brain she had what we call --
5 two things really. A subdural hematoma. So what that is
6 is that's acute blood. So if somebody had hit their head,
7 for instance, and there was bleeding on top of the brain,
8 that blood measured about one centimeter. So it was
9 probably about this thick.

10 Predominantly visible on the right side. So when we
11 look at the scan we see this big white smear of blood
12 between the skull and the brain pushing the brain over.

13 The brain throughout globally, through the whole brain,
14 showed diffuse swelling, particular on the right side.

15 So some sort of severe impact happens. Let's say you
16 get in a car accident and you hit your head really hard or
17 go it goes through a windshield. Your brain will start to
18 swell.

19 Well, the CAT scan showed that right away, which means
20 at least it had been setting there for more than, I'd say,
21 an hour in that spot. And because of the swelling a lot of
22 the brain had shifted over to the other side, because your
23 brain inside your skull, there's not much room for anything
24 else. And once you start putting blood in there and
25 swelling things start moving around.

Dr. Phillip Esce
Direct examination by Ms. Crick

1 And this was causing ischemia, which means the blood
2 flow to the brain is severely impaired at that point. And
3 that's what causes the pupils to start dilating. Pressure
4 on the brain pushes down on the nerves. The blood flow
5 stops. And you become unresponsive. And at that point you
6 are very near death or, you know, on your way to death very
7 quickly at that point.

8 Q Were you aware that there was bilateral retinal
9 hemorrhage as well?

10 A Yes.

11 Q Can you tell the jury in your opinion what kind of
12 trauma would be necessary to cause this degree of injury to
13 the brain?

14 MR. BRANNON: Objection, Your Honor. I don't know
15 that he's qualified to give -- he's a neurologist. I don't
16 know that he's qualified to make that --

17 THE WITNESS: Actually, I'm a neurosurgeon, but go
18 ahead.

19 MR. BRANNON: Forgive me. Neurosurgeon. But I don't
20 know that he's qualified to make that.

21 THE COURT: Overruled.

22 BY MS. CRICK

23 Q You can go ahead, Doctor.

24 A Well, I've been doing trauma for 14 to 15 years in a
25 level one trauma center, a majority of which has been head

Dr. Phillip Esce
Cross-examination by Mr. Brannon

1 injury, and have been exposed to head injuries from car
2 accidents, falls, just walking down the street.

3 So but, anyway, an injury of that magnitude would take
4 a substantial amount of blunt force trauma to the head,
5 much more than, let's say, you fell off a bed.

6 We see this more commonly in high-speed car accidents,
7 assault injuries, somebody hits your head with a crowbar
8 very hard, that sort of thing.

9 Q So in your opinion this would not have been caused by
10 a simple fall.

11 A No.

12 Q And it would not have been caused by a seizure.

13 A Correct.

14 Q Were you able to provide any treatment for Minor

15 A At that point I thought once I saw this CAT scan that
16 had global ischemia she was too far past the point of any
17 return. She had fixed and dilated pupils. And I went and
18 told the family that she had a grave prognosis and I didn't
19 feel that she would make it.

20 Q So really there was no hope for her.

21 A No hope for her.

22 Q Thank you, Doctor.

23 CROSS-EXAMINATION

24 BY MR. BRANNON

25 Q Dr. Esce, you went into the, I guess the, family

Dr. John David Wren
Direct examination by Mr. Gowdy

1 waiting area of the emergency room, is that correct?

2 A Correct.

3 Q And was it you that told the family that this injury
4 occurred between four and 20 hours of her arrival in the
5 emergency room?

6 A I don't recall that.

7 Q Okay. If the family said it was you would they be
8 wrong?

9 A I don't know.

10 Q Okay. Had you ever seen Minor before that evening in
11 the emergency room?

12 A No.

13 Q Nothing further. Thank you.

14 MS. CRICK: Nothing further, Your Honor.

15 THE COURT: You may step down.

16 MR. GOWDY: Your Honor, may it please the Court. The
17 state would call Dr. John David Wren.

18 DR. JOHN DAVID WREN, having
19 been first duly sworn, testified as follows:

20 DIRECT EXAMINATION BY MR. GOWDY

21 MR. GOWDY: May it please the Court, Your Honor.

22 THE COURT: Yes, sir.

23 Q Good afternoon, Dr. Wren.

24 A Good afternoon.

25 Q Would you introduce yourself to the jury and let them

Dr. John David Wren
Direct examination by Mr. Gowdy

1 know what you do for a living and how long you've been
2 there?

3 A My name is John David Wren. I'm a medical doctor with
4 a specialty in pathology and forensic pathology. I've been
5 in Spartanburg since October the 18th, 1982, as a
6 pathologist. Before that I did live here for five years
7 before I went to medical school.

8 Q Would you give the jury the benefit of your
9 educational background?

10 A I have a bachelor's degree, a master's degree and a
11 doctor of philosophy degree in chemical engineering from
12 Clemson University.

13 I have an MD degree from the Medical University of
14 South Carolina. I did a combined anatomic and clinical
15 pathology residency at the Medical University. I finished
16 my requirements in three years and ten months of a 5-year
17 rotation because I got credit for some of the research I
18 had done in medical school, as well as my doctorate
19 training.

20 While I was there I was the assistant medical examiner
21 in Charleston County from July of 1980 until January -- the
22 end of January of 1983, because my family was still living
23 there, and I did -- took call a couple of weekends while I
24 was working here. And I did forensic pathology autopsies
25 at the medical university one weekend a month from the

Dr. John David Wren
Direct examination by Mr. Gowdy

1 start of about July of 1980 until I finished my residency
2 there.

3 Q How many autopsies have you conducted in your career,
4 Dr. Wren?

5 A For the last ten years I've done between 160 and 260 a
6 year. I haven't -- I stopped keeping count, but it's
7 probably about three to four thousand by now.

8 Q Have you been qualified as an expert in pathology
9 previously in either state or federal court?

10 A I've been qualified as a forensic pathologist with a
11 specialty in forensic pathology in -- as an expert in
12 numerous counties in South Carolina.

13 I can probably name a few. Starting in the lower part
14 of the state -- Charleston, Georgetown, Berkeley, Horry,
15 Dillon. And then on up toward the upper state --
16 Orangeburg, Lexington, Fairfield, Cherokee, Greenwood,
17 Newberry, Greenville, Spartanburg and York.

18 There's probably a few more, but I'd have to think for
19 a minute.

20 MR. GOWDY: Your Honor, at this point we would move
21 Dr. Wren in as an expert in the field of forensic
22 pathology.

23 MR. BRANNON: No objection.

24 THE COURT: He is so qualified.

25 MR. GOWDY: Thank you, Your Honor.

Dr. John David Wren
Direct examination by Mr. Gowdy

1 BY MR. GOWDY

2 Q Dr. Wren, did you perform an autopsy on a little girl
3 by the name of Minor on July the 8th of
4 2009?

5 A Yes. I performed an autopsy in the Spartanburg
6 Regional Autopsy Room on July the 8th of 2009 beginning at
7 approximately 5:00 p.m.

8 Q Would you share with the ladies and gentlemen of the
9 jury the findings that you made or what you found during
10 the course of your autopsy with respect to her condition?

11 A Well, she had some vague contusions about the head and
12 body. There were several of those. She had a -- evidence
13 of a contusion on her forehead.

14 She also had a healing contusion because of the color
15 of the bruise on her right arm with an underlying fracture
16 of her humerus, the bone in the upper part of the arm.

17 And then she had severe head injuries internally. She
18 had bilateral subdural hematomas. Those are -- there's a
19 covering over the brain. It's a thin transparent covering.
20 It's called the pia arachnoid or leptomeninges, depending
21 on who's using the term.

22 And then encased in that is some spinal fluid, both
23 mainly between that and the brain. But there's a space
24 that then has dura mater, which is a tough fibrous covering
25 about the brain that is sort of -- in most places it's

Dr. John David Wren
Direct examination by Mr. Gowdy

1 somewhat adhered to the calvarium, the skull cap, as well
2 as the base of the skull. And that's called the dura
3 mater.

4 A subdural hematoma means that there's hemorrhage
5 beneath that between that lining and the brain, whereas an
6 epidural hemorrhage is between that dura and the bone of
7 the skull.

8 She had a subdural hematoma on both sides. And then
9 she had evidence of herniation of the brain, which is as
10 blood or edema of the brain accumulates the brain is
11 pushed, because it's almost like a jello or gelatin because
12 it does have substance. But it doesn't compress very much.

13 And once the brain starts swelling or the hemorrhage
14 starts as it expands it has to go somewhere. And the only
15 place it can go is through orifices that are in the base of
16 the skull or underneath that dura between the two
17 hemispheres of the brain. And it had essentially herniated
18 and caused contusions and internal brain hemorrhage from
19 that effect.

20 Q Dr. Wren, you found a fracture on the upper right
21 humorous. Would you be gracious enough to show the jury
22 using yourself as a model where that fracture would have
23 been?

24 A Well, I don't remember exactly where it was because I
25 did not cut into it. There were x-rays taken. And it was

Dr. John David Wren
Direct examination by Mr. Gowdy

1 along inferior to the shoulder but above the elbow
2 slightly. I think it was slightly more toward the shoulder
3 than it was toward the elbow, but nevertheless in that
4 area.

5 Q Dr. Wren, you found and concluded, it was your
6 opinion, that Minor died as a result of brain death
7 secondary to evolving subdural hematomas secondary to
8 probable blunt force trauma to the head.

9 A Yes.

10 Q Can you tell the jury how you reached that conclusion
11 and what you meant by that opinion?

12 A Well, when you have a subdural hematoma, a subdural
13 hemorrhage, there are several mechanisms that can cause
14 that.

15 One of the more common ones is that if you put the
16 head in motion -- if one -- I like to give the example of
17 being in an automobile. If you're traveling along in an
18 automobile and the car suddenly stops by hitting a wall or
19 another car or whatever, since laws of motion apply and the
20 head -- the body keeps moving until it hits something, and
21 when that happens the brain has inertia too. And when the
22 brain or the head stops the brain keeps moving until it
23 hits the front of the skull if you were hit in the front of
24 the head. Or in the back it will move backwards.

25 And when that happens there are little bridging veins

Dr. John David Wren
Direct examination by Mr. Gowdy

1 that extend from the brain substance itself out to that
2 dura. And then it drains from the brain in back toward the
3 heart. But those little bridging veins are very delicate.

4 And what happens is if the brain is stretched enough
5 or moved enough those little brain -- those little vessels
6 will tear. And when that tears one starts bleeding into
7 the space between the dura and the brain. And blood starts
8 accumulating. And that's, again, the subdural hematoma.

9 Now, most of the time when you -- when one gets a
10 subdural it's from the brain stretching those veins and
11 causing them to rupture. And most of the time it's from,
12 of course, the brain stopping.

13 Now, the head would have to be in motion. And if it
14 hit a blunt object, then of course it would stop. The
15 brain could continue to move somewhat, and it would tear
16 those vessels. And then the hemorrhage would start.

17 The reason I called it probable blunt force trauma is
18 there are other ways it can be done.

19 In fact, if you take a young child, a baby, that has
20 very little neck musculature, then you can shake their
21 head, and it does the same thing because it moves the brain
22 back and forth.

23 But in this case since there was no obvious hemorrhage
24 from a -- from a sharp object -- and if the force is --
25 is -- that causes that trauma is over a wide enough space,

Dr. John David Wren
Direct examination by Mr. Gowdy

1 then there's no evidence left as far as a contusion is.
2 But, nevertheless, when that happens the little veins are
3 torn. And then that causes a subdural.

4 And then the subsequent events were that the brain
5 swells. You get accumulation of blood in the subdural
6 space. It causes pressure on the brain. And eventually
7 the brain will stop functioning. And that's the brain
8 death.

9 And then it was secondary to the subdural hematoma.
10 And then that was secondary to blunt trauma to the head.
11 That's how I reached that conclusion.

12 Q I believe you have addressed this, Dr. Wren, but I
13 will ask you again. You found that the midline had shifted
14 of the brain?

15 A Yes. There was more blood accumulated on the right
16 side.

17 Now, the dura -- without showing a picture -- the dura
18 encompasses the cerebrum. And in the midline there's a
19 sinus that's called -- that's where the blood starts
20 accumulating. And then it drains posteriorly into the back
21 of the head. And then in the back it goes down behind --
22 in an "S" type shape and goes through the internal jugular
23 foramen, which is at the base of the skull, and then drains
24 down the jugular veins and then back into the inferior vena
25 cava and back to the heart.

Dr. John David Wren
Cross-examination by Mr. Brannon

1 But where that dura is in the midline, it also extends
2 down between the two hemispheres. Everybody's seen a
3 picture of the brain. But there's a space between the two
4 hemispheres. And that dura extends down through there, and
5 it's not anchored at the bottom.

6 So as the brain expands on one side or another it
7 pushes that brain away from it, and it pushes it -- in this
8 case it pushed it up under that dura where there's a little
9 space. It's about an inch or so in most people. It pushed
10 it up under there. And it herniated. That's the term
11 given when it pushes it up under there.

12 MR. GOWDY: Your Honor, moment of the Court's time.

13 (Pause.)

14 Q Thank you Dr. Wren. If you would please be gracious
15 enough to answer any questions the defense attorney may
16 have.

17 CROSS-EXAMINATION

18 BY MR. BRANNON

19 Q Dr. Wren, just a couple of quick questions. You had
20 never met Minor before that day, had you?

21 A No, sir.

22 Q None of the tests that you did or the maneuvers that
23 you did during the autopsy led you to any proof of intent
24 or anything like that. Did your tests include that?

25 A Led me to what?

Dr. John David Wren
Cross-examination by Mr. Brannon

1 Q To -- you don't have any proof of intent based on the
2 scientific tests that you did, do you?

3 A No, I don't. I can't -- I can't say it was
4 intentional.

5 Q Thank you, Dr. Wren.

6 MR. GOWDY: Nothing further, Your Honor.

7 THE COURT: You may step down.

8 MR. GOWDY: Your Honor, could we approach for just one
9 moment?

10 THE COURT: Okay.

11 (Bench conference held off the record in the presence
12 of the jury but out of the hearing of the jury.)

13 THE COURT: All right. Ladies and gentlemen, I am
14 going to ask you to please go to your jury room. Do not
15 yet talk about the case in any fashion. I'll bring you
16 back shortly to continue.

17 (The following takes place outside the presence of the
18 jury.)

19 THE COURT: All right. Mr. Barnette.

20 MR. BARNETTE: Your Honor, one of the indictments,
21 Your Honor, the state has noticed there's a scrivener's
22 error on it. I believe it's the one with the great bodily
23 injury.

24 THE COURT: 4509.

25 MR. BARNETTE: Yes, sir. We'd just like to amend it.

1 I think it has victim on it, which should be Minor as her
2 first name. We'd ask that -- I talked to the defense
3 counsel. I don't think they have any objection to that,
4 Your Honor.

5 THE COURT: Any objection?

6 MR. BRANNON: No, Your Honor.

7 THE COURT: All right. It is so amended.

8 All right. We'll take 15 minutes.

9 MR. BRANNON: Your Honor, could we address a couple of
10 issues before we take that break?

11 THE COURT: Sure.

12 MR. BRANNON: It's my understanding that that's the
13 last witness the state intends to call.

14 MR. GOWDY: In our case in chief, that's correct, Your
15 Honor.

16 THE COURT: Okay.

17 MR. BRANNON: Your Honor, we -- I appreciate the 15
18 minutes, but we're going to need some time to talk with our
19 client about his testimony and the decision to testify or
20 not testify. Could we have more than 15 minutes, please?

21 THE COURT: Well, let me see y'all just a minute.

22 (Bench conference held off the record.)

23 THE COURT: Court's in recess for 15 minutes.

24 (Whereupon, a recess was taken.)

25 THE COURT: All right. I understand the state intends

1 to rest their presentation.

2 MR. GOWDY: That is correct, Your Honor, yes, sir.

3 THE COURT: All right. Does the defense wish to
4 address any motions?

5 MR. CAMPBELL: Yes, Your Honor.

6 At this time the defense makes a motion for a directed
7 verdict. We don't feel the state has met the burden in
8 regards to the charges of homicide by child abuse. They
9 have not proven intent or indifference -- an aggravating
10 difference for this child.

11 Your Honor, there's not been one person testified as
12 to Tony's intent. All the testimony has basically been

13 that he swung the child by the ankles and the child hit her
14 head. We do not believe this rises to the level of
15 homicide by child abuse, Your Honor.

16 And, more specifically, in regards to the broken arm,
17 Your Honor, the child abuse, great bodily injury, not one
18 doctor, not one person has testified that the broken arm is
19 a result of any abuse whatsoever.

20 The fact that my client may have misled individuals as
21 to the actual cause of the breaking of the arm does not in
22 and of itself lead to a conclusion of child abuse. There
23 has been not one ounce of testimony that the broken arm is
24 a result of child abuse, Your Honor.

25 THE COURT: All right. Anything else?

1 MR. CAMPBELL: That's all, Your Honor.

2 THE COURT: Well, under 16-3-95 what is required is
3 that the defendant inflict great bodily injury upon a
4 child, great bodily injury being defined as an injury which
5 creates a substantial risk of death, or which causes
6 serious or permanent disfigurement or protracted loss or
7 impairment of the function of a bodily member or organ. So
8 where is the evidence lacking in that respect?

9 MR. CAMPBELL: Your Honor, there's been no evidence
10 that the use of her arm is going to be impacted over a long
11 period of time. Broken arms heal. There has been no
12 doctor's testimony that the arm was not going to heal, not
13 going to heal properly. There's been no evidence of
14 illness or anything such as that that would prevent that.

15 THE COURT: Okay. Well, I think there's sufficient
16 evidence from which a jury could find those elements, and
17 that's all that needs to be established. So your motion is
18 denied as to infliction of great bodily injury.

19 With respect to homicide by child abuse what has to be
20 established is that the defendant committed a deliberate
21 act which causes physical injury to a child under 11 under
22 circumstances manifesting an extreme indifference.

23 They have established -- they have presented evidence
24 that can reasonably establish a deliberate act. They have
25 established a child was under 11 years. And an extreme

1 indifference simply means a deliberate act or the
2 commission of a deliberate act with a conscious
3 indifference to the probable consequences which culminates
4 in the death of a child. And I think there's sufficient
5 evidence from which a jury could find those elements. So
6 based upon that the motions are denied.

7 Anything else?

8 MR. CAMPBELL: Nothing further, Your Honor.

9 THE COURT: Okay. All right. Bring the jury in,
10 please.

11 MR. BRANNON: Your Honor, did you want to question
12 Mr. Tyre about his decision to testify in this matter?

13 THE COURT: Okay. Have you talked to him about it?

14 MR. BRANNON: Yes.

15 THE COURT: Mr. Tyre, Mr. Brannon says he talked to
16 you about your right to testify or not. Do you understand
17 you have that right?

18 THE DEFENDANT: Yes, sir.

19 THE COURT: Have you made a decision?

20 THE DEFENDANT: Yes, sir.

21 THE COURT: Have you had plenty of time to talk to
22 your lawyers about that decision?

23 THE DEFENDANT: Yes, sir.

24 THE COURT: Has anybody forced you into a decision?

25 THE DEFENDANT: No, sir.

1 THE COURT: Do you understand nobody can make you
2 testify?

3 THE DEFENDANT: Yes, Your Honor.

4 THE COURT: But if you do testify you have to answer
5 all of the questions that are relevant, not only those
6 asked by your lawyers but those asked by the prosecution.

7 THE DEFENDANT: I understand that.

8 THE COURT: Have you had time to reflect upon your
9 decision?

10 THE DEFENDANT: Yes, sir.

11 THE COURT: Do you understand the advantages and
12 disadvantages of testifying, as well as not testifying?

13 THE DEFENDANT: Yes, sir.

14 THE COURT: And you appreciate what those advantages
15 and disadvantages are?

16 THE DEFENDANT: Yes, sir.

17 THE COURT: And you've reached a decision on whether
18 or not you'll testify?

19 THE DEFENDANT: Yes, sir.

20 THE COURT: What is it?

21 THE DEFENDANT: I'll -- I'll testify.

22 THE COURT: Okay. And is that a decision that you
23 reached of your own free will and accord?

24 THE DEFENDANT: Yes it is.

25 THE COURT: Anybody force you into it?

David Anthony Tyre
Direct examination by Mr. Campbell

1 THE DEFENDANT: No, sir, they haven't.

2 THE COURT: You're satisfied with it.

3 THE DEFENDANT: Yes, sir.

4 THE COURT: Okay. Anything else?

5 MR. BRANNON: No, Your Honor.

6 THE COURT: Bring the jury in.

7 (The following takes place in the presence of the
8 jury.)

9 THE COURT: All right. The jury is present.

10 Anything further on behalf of the state?

11 MR. GOWDY: No, sir, Your Honor. The state rests.

12 THE COURT: All right. Ladies and gentlemen, that is

13 all of the testimony or other evidence to be offered by the
14 state, at least in their case in chief.

15 So we'll now proceed with any additional evidence to
16 be presented by the defense.

17 Mr. Campbell.

18 MR. CAMPBELL: Your Honor, the defense calls Tony
19 Tyre.

20 DAVID ANTHONY TYRE, having
21 been first duly sworn, testified as follows:

22 DIRECT EXAMINATION BY MR. CAMPBELL

23 Q Tony, please state your full name for the record.

24 A David Anthony Tyre.

25 Q And-but you go by Tony, correct?

David Anthony Tyre
Direct examination by Mr. Campbell

1 A Yes, sir.

2 Q And, Tony, where do you reside?

3 A 7041 Mary Avenue, Spartanburg.

4 Q Is that with your mother?

5 A Yes, sir.

6 Q Now, where did you work?

7 A Full time with American Transmed, part time with
8 Hilltop Fire District.

9 Q Okay. Now, it's my understanding you resigned from
10 Hilltop Fire District, is that correct?

11 A Yes, sir.

12 Q And I believe you were in the courtroom and heard
13 about, you know, the interview you gave, correct?

14 A Yes, sir.

15 Q And you resigned prior to that interview.

16 A Yes, sir.

17 Q And what was the reason behind resigning?

18 A Well, Hilltop had already had an incident where one of
19 the members had been arrested and faced some serious
20 charges.

21 Based on conversations I had with Minor mother I knew
22 that they would be, investigators would be, looking at me.
23 And I was -- I was afraid of causing any more problems at
24 the fire department.

25 Q Okay. Now, when did you become a fireman?

David Anthony Tyre
Direct examination by Mr. Campbell

1 A 2002.

2 Q Did you go to the academy?

3 A Here in Spartanburg we have the emergency services
4 academy. It kind of offers continuing-education type. You
5 take classes over a period of time.

6 Q Okay. Now, were you an EMT also?

7 A I became an EMT after I had been at the fire
8 department for about a year.

9 Q Okay. And what type of classes did you take for that?

10 A Initially, I took -- the very first class I took was a
11 first responder class, which is basic life support. And
12 then I took an EMT basic class. And then after about three
13 years I did the EMT intermediate.

14 Q Now, what positions did you hold as an EMT? Where did
15 you work?

16 A Initially, I worked at Laurens County EMS for, I
17 think, six or seven months. I'm not sure. It's been a
18 little while back. Then I worked at Spartanburg Regional
19 Medical Center ER as an ER tech and then transferred over
20 to EMS and then finally American Transmed.

21 Q You won awards as a fireman.

22 A Yes, sir.

23 Q What awards did you win?

24 A My first one was my first year there or my second year
25 there, I believe, was the training award for the most hours

David Anthony Tyre
Direct examination by Mr. Campbell

1 in training. That was for my EMT. I've won several
2 firefighter-of-the-year awards, a firefighter -- or a
3 fire-officer-of-the-year award, a lifesaving award and
4 several chief's awards.

5 Q Now, when did you meet Kreszena?

6 A It was in the course of working. Her -- where she
7 worked was White Oak Manor. My -- the company I worked for
8 had a contract with them. And I met her. I can't give an
9 exact time, but probably July or August maybe, something
10 like that.

11 Q Of 2008?

12 A Yes, sir.

13 Q Okay. And at some point you and Kreszena began to
14 date, correct?

15 A Yes, sir.

16 Q When was that?

17 A December 18th.

18 Q Was that your first date?

19 A Yes.

20 Q And you were introduced to Minor family or Kreszena's
21 family.

22 A Not right away, no, sir.

23 Q Okay. But you were introduced to -- you knew the fact
24 that Kreszena had children, correct?

25 A Yes, sir, I did.

David Anthony Tyre
Direct examination by Mr. Campbell

- 1 Q And then when were you introduced to those children?
- 2 A It was after the baby, Minor was born, which that was
- 3 January. I think I was introduced to the children around
- 4 February -- February or March.
- 5 Q So Kreszena was pregnant when you began dating her?
- 6 A Correct.
- 7 Q And that was with another man's child, correct?
- 8 A Correct.
- 9 Q And-but you were introduced to all of her children.
- 10 A Correct.
- 11 Q Okay. How many children did Kreszena have?
- 12 A Five.
- 13 Q And did all of them live with her?
- 14 A Yes.
- 15 Q Who -- who were those children?
- 16 A Minor ten; Minor was eight; Minor was six; Jordon
- 17 is two, or was two; and then Minor was the newborn.
- 18 Q And Minor had cerebral palsy, is that correct?
- 19 A Correct.
- 20 Q What were your first interactions with Minor
- 21 A The first time I met Minor first time I had anything
- 22 to do with Minor was shortly after Minor was born. Because
- 23 she had had that baby, Kreszena was on a lifting
- 24 restrictions, for lack of better word. She couldn't lift
- 25 over so much weight.

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1 Minor needed to go to the dentist. Kreszena was
2 having -- or didn't have anybody to really help her move
3 Minor from the car to the stroller, and vice versa.

4 I was working at the fire department at the time. I
5 couldn't go to her house to help her, but I talked with
6 the -- my supervisor. And since the dentist office was
7 very close to the district I was able to go over there and
8 take Minor out of the car and put her in her stroller. And
9 then the plan was for Kreszena to call me back, which she
10 did. I drove back over and put her back in the car.

11 Q And how long -- I guess how tall was Minor or how long
12 was Minor

13 A To be honest, I can't say. Maybe she would have
14 standing -- maybe she would have come to my chest. It's
15 not something I really looked at.

16 Q How much did she weigh?

17 A Fifty or 60 or 70 pounds.

18 Q Had you had any experience with disabled individuals
19 prior to Minor

20 A Yes, sir.

21 Q And what was that experience?

22 A I have an aunt and uncle that are both mentally
23 disabled, as well as a cousin. And then through my work
24 there are several patients that I had transported over a
25 long distance from South Carolina to Tennessee. For

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1 instance, there was a patient I had that had cerebral palsy
2 that I transported.

3 Q How did that affect your relationship with Minor

4 A While I didn't have a clear understanding of her
5 condition as far as all of the effects, I did do some
6 research. I knew there was three types of cerebral palsy.
7 I wasn't sure what specific type Minor had.

8 But based on the dealings that I had with my family,
9 the way that I saw how they were and how they felt, I -- my
10 dealings with Minor I just tried to treat her as a normal
11 little girl.

12 Q Well, you state in your interactions with your family.

13 Can you describe that?

14 A My uncle. He was always pretty rough with us as far
15 as playing. He would horse around, you know, grab ahold of
16 you and not let you go.

17 My aunt is not quite as physical. But, at the same
18 time, she still -- she's a very affectionate person and
19 loves to be shown affection.

20 Q Okay. Were they ever made fun of or anything?

21 A Yes, sir, they were. The kids in the neighborhood
22 where we were growing up did.

23 Q How did that affect you?

24 A They knew that they were -- they could tell that they
25 were different. I could see it by their actions. But they

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1 didn't understand why these kids -- they grew up in the
2 time when you're supposed to respect your elders, and they
3 didn't understand why these children weren't respecting
4 them given their age difference.

5 Q Did that shape your interactions with Minor any?

6 A Yes, sir.

7 Q How?

8 A I didn't want to treat her as just a wheelchair. I
9 wanted to treat her as a person, an individual, you know, a
10 little girl that wanted affection, that wanted to do things
11 little girls do.

12 Q Did you have any conversations with Kreszena about
13 Minor and her interactions with other individuals?

14 A Me and Chris talked about -- or Kreszena talked about
15 Minor several times. I was trying to learn how to take care
16 of her. Christy told me that Minor used to --

17 MR. GOWDY: Objection, hearsay.

18 THE COURT: Sustained.

19 Q Did you ever learn whether or not Minor enjoyed the
20 company of others?

21 A Yes.

22 Q And did Minor enjoy the company of others?

23 A Yes.

24 Q And how would she act around individuals?

25 A Those that she didn't know -- excuse me -- didn't

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1 know, the first time she'd meet them she'd give them a very
2 quizzical, for lack of a better word, look as if who are
3 you. Oftentimes, she -- she seemed to enjoy watching the
4 children play. If they were outside she seemed to enjoy.
5 She wouldn't -- seemed like she watched, actually watched,
6 them play.

7 Q You felt like Minor enjoyed watching them play?

8 A Yes.

9 Q And why did you feel that way?

10 A Minor was the type -- I don't know the medical
11 definition for it, but Minor -- it's just part of her -- I
12 guess you could call it a tick.

13 She constantly turned her head back and forth -- I
14 believe it's common with children with cerebral palsy --
15 unless she was focused on something. And very often when
16 the children were playing or there was some horsing around
17 going on she was focused on that or she was looking at
18 them.

19 Q And you felt like she wanted to get involved as well.

20 A Yes, sir.

21 Q At what point did you become more involved with
22 Kreszena, Minor and the other children?

23 A After I'd been introduced to the children -- and I
24 think we both -- for my part I realized things were getting
25 serious. I wanted to have a more active part. I would say

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1 that must have been around February.

2 I knew that it meant a lot to Kreszena that there was
3 someone there to help take care. There was someone taking
4 an interest in not only the children -- not only Minor but
5 all the children. And so I tried to do as much as I can to
6 learn how to care for her and learn how to care for the
7 other kids, their personalities and what they needed, and
8 just I tried to help out and tried to start filling in a
9 role I thought I was going to be playing.

10 Q In what way would you start to help out?

11 A Initially, I as -- you're talking about as far as
12 Minor

13 Q Yes.

14 A Okay. Changing. I started off changing diapers.
15 That was something that required some getting used to
16 compared to, you know, an infant's diaper.

17 Most of the time it was just lifting, moving, Minor
18 from the car to the stroller to the house. It seemed like
19 Sunday it kind of evolved -- my unofficial job to move --
20 when she came home with the kids after church I took Minor
21 inside and got her ready for bed, and Kreszena took care of
22 the other four getting them ready.

23 Q Now, what were your interactions with the other
24 children like?

25 A They seemed -- they seemed to love me. I know when I

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1 pulled up in the drive when I got off work Jordon, the
2 two-year-old, ran to the door to see who it was. And I
3 could see her. She was excited to see me.

4 I can maybe take three steps in the house before I was
5 mugged by the other two. Of course the baby, she seemed to
6 enjoy the attention I -- I gave her.

7 Q Would you play with the children?

8 A Yes.

9 Q Describe your play.

10 A Like I said, I could take two or three steps in the
11 house before I was mugged. They were -- Minor and Minor
12 were usually jumping on me, climbing on my back. I -- I

13 couldn't -- I couldn't even get in to say hello to their
14 mother good before they were all over me.

15 Usually we'd end up wrestling, jumping on my back. I
16 know there's been a few times somebody's taken a jump off
17 the couch onto my back.

18 We'd usually go -- I'd usually go back to see Minor and
19 speak to her. And Jordon sometimes would go back there and
20 I'd play with Jordon, chase Jordon around in there. And
21 then, you know, she'd leave and then I'd -- I'd go back in
22 the kitchen and living room and just talk with Chris, and
23 typical, you know, how-was-your-day type stuff.

24 Q But you made sure to include Minor in your hellos --

25 A Yes, sir.

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1 Q -- and good-byes.

2 A Yes, sir.

3 Q Were you falling for Kreszena?

4 A Yes, sir.

5 Q Falling in love?

6 A Yes, sir.

7 Q How about the children?

8 A Yes, sir. I loved -- I loved -- I don't -- I love,
9 not loved. I love the children. I knew that I wasn't any
10 of their -- I wasn't their father, but I wanted to at least
11 try to be a friend and somebody that they could talk to.
12 And I had tried to reach out several times to talk to them
13 when they had problems at school. And I actually worried
14 over them, over some problems they were having.

15 Q Now, Minor obviously with the cerebral palsy had
16 several doctors appointments, didn't she?

17 A Yes, sir.

18 Q Did you ever accompany Chris to those doctors
19 appointments?

20 A Yes, sir, I did.

21 Q When did you begin to do that?

22 A I can't remember the exact -- I know she had an eye
23 appointment prior to her first surgery in Charleston. I
24 don't know the date or the month.

25 I don't know when that took place, but I -- I went

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1 with Kreszena there. And when Kreszena took her back I
2 believe I watched Jordon and the baby in the waiting room
3 while they had Minor back in the back.

4 Q And you chose to go to this appointment.

5 A Yes.

6 Q At any point did you and the family go to Yorktown?

7 A Yes, sir. I believe it was in May. Minor had a
8 cataract surgery to her left eye, and it was kind of a --
9 it was a planned appointment, planned surgery, but it was
10 kind of an unplanned trip. We didn't really know what to
11 do. The Yorktown was something I'd always wanted to do.
12 We got done with the surgery. There was still plenty

13 of daylight. And I asked Chris, you know, do you want to
14 try to go down there. And of course she agreed, and that's
15 where we went.

16 Q And you took Minor along with you?

17 A Yes.

18 Q And was that your idea to include Minor

19 A Oh, yes.

20 Q You wanted her to experience that?

21 A Yes, sir.

22 Q Now, Minor was involved in activities like miracle
23 league baseball, wasn't she?

24 A Yes, sir, she was.

25 Q Did you ever attend those events?

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1 A Yes, sir.

2 Q Describe that to the Court.

3 A The very -- to my knowledge I believe it was the very
4 first game. I -- we didn't know where to park. I ended up
5 carrying Minor across the whole length or width, however you
6 want to look at it, of the North Spartanburg athletic
7 field. I carried her the whole length to the ballpark.

8 Usually, we put her chair in my truck, and they put
9 her in Kreszena's car, and we would take -- take several
10 vehicles to the ballgame so we could get the chair there.

11 I went to every game. Usually I just sat up in the
12 bleachers with Kreszena and the other parents and just
13 watched Minor play ball.

14 Q When you carried Minor to the field that time how did
15 you carry her?

16 A With her head and neck supported in one hand and her
17 legs draped over my -- my arms.

18 Q Did Chris give you any type of instructions in how to
19 carry her or how to treat her?

20 A About half way through I was struggling. Minor was
21 heavier than I anticipated. And I kept shifting my weight
22 and kept shifting her around. And Chris said, just
23 recommended --

24 MR. GOWDY: Objection. Hearsay.

25 THE COURT: Overruled. Go ahead.

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1 A Chris turned around. She could tell I was having some
2 problems, and she could see Minor was uncomfortable. And
3 she recommended, and I put her in -- she didn't say a
4 fireman carrier, but that's what I call it. It's a fireman
5 carrier over my shoulder.

6 Q At any point were you given instructions that she
7 wasn't fragile?

8 A That was early on when I first started dealing with
9 her and changing diapers and what not.

10 Q Why were you told that Minor wasn't fragile?

11 A As I said, early on I guess by the way I was doing
12 things, trying to change clothes or whatever I was -- I was

13 having difficulty because -- Chris and the nurses could get
14 her dressed very quickly, and it seemed I was having to
15 struggle. And I believe Kreszena saw that and wanted, you
16 know wanted, me to know that she wasn't fragile, I could
17 get her dressed, do what I had to do to get her dressed and
18 what not.

19 Q Now, as we're leading up to the date of June 22nd, how
20 often were you around the house at this point?

21 A Five or six nights a week, something like that.

22 Q You're spending the night at this point?

23 A Yes, sir.

24 Q Now, was -- describe the routine that Minor would have
25 throughout the day.

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1 A I don't know what happened when the nurses were there.
2 Usually, the times that she was left with me the nurses
3 would usually tell me that she's changed, she's bathed,
4 she's feeding, whatever was going on, she's good, she's in
5 bed, whatever. That was usually what would go on.

6 Typically, Minor was always back in her bedroom
7 watching TV or whatever. I'd usually try to keep a check
8 and make sure she just wasn't watching a blank blue screen.
9 I tried to keep a movie in. A lot of times I tried to her
10 up in the living room where I was, and if I was watching
11 the other kids where they were.

12 Q How about when you and Kreszena were there together?

13 A During the week Ms. Sharon usually left around 9:30 or
14 10:00. So she pretty much cared for Minor the whole time.

15 Like I said, I would go in and speak to her and speak
16 to Ms. Sharon. And throughout -- throughout the evening
17 I'd probably go back there and talk to Minor or Ms. Sharon.
18 After she had left she had Minor put to bed.

19 We'd get ready to go to bed, and I'd go through and
20 check on all of the kids and look in on them and make sure
21 they were sleeping and what not.

22 Q Was Minor wearing braces on her legs?

23 A For -- for a while, yes, sir.

24 Q Was she in braces the entire time she was in the bed?

25 A Yes.

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- 1 Q Would she ever bang her legs against the rails?
- 2 A She would sometimes, but not often.
- 3 Q Now, describe Minor mobility for me, please.
- 4 A Minor was very flexible. I've -- I've seen her laying
5 and sleeping in positions that I didn't think anybody
6 could, legs folded.
- 7 The best way I can describe it if you imagine sitting
8 Indian style and just folding your legs up. I mean,
9 that's -- that's the best way to describe it.
- 10 Minor could take her hands and put behind her head. Of
11 course we all can do that, but she'd actually reach around
12 by turning her head just a little bit and touch her left
13 eye with her left hand behind her head, or right hand,
14 right eye.
- 15 Q Would Minor often put her arms behind her head?
- 16 A Yes, sir, she would.
- 17 Q Describe that for the Court, please.
- 18 A Basically, if you can imagine maybe somebody laying in
19 a hammock, how they'd put their arms behind their head like
20 that relaxing. Minor would do that, maybe a little bit
21 farther.
- 22 Q And that's because of her flexibility?
- 23 A Yes, sir.
- 24 Q Now, would you ever take Minor and lay her in the floor
25 to watch TV or play with her?

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1 A Yes, sir.

2 Q Was Chris there when you would do that?

3 A Not really. Most of the time when I was there with
4 Chris the nurses were there too. And the nurses usually
5 did the primary -- primary care.

6 Q For what reason would you lay Chris -- lay Minor down
7 on the floor and play with her?

8 A I -- I had noticed, also been told, that Minor gets
9 bored, frustrated. She gets tired of sitting in that chair
10 all of the time. One of the reasons is one of the nurses
11 left her in bed.

12 So I didn't think it would hurt. I know we would
13 usually lay a blanket down and put the baby in the floor
14 and let her play. So I just thought I'd put Minor down and
15 let her stretch out and just kinda maybe experience
16 something new or...

17 Q On the day of June 22nd what time did you arrive at
18 the house?

19 A It was a little after 5:00, I believe, I think, yeah,
20 I think.

21 Q You relieved Sharon, is that correct?

22 A No. I'm sorry -- I'm sorry. That was a different
23 time. I can't -- to be honest with you, I can't remember
24 what time I got at the house. But I did relieve Sharon. I
25 think she had to leave early, or maybe that was during --

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1 that was during the summer. So it must have been after --
2 after 3:00. I'm sorry I can't remember.

3 Q And you were watching Minor by yourself.

4 A Yes, sir. Minor Jordon and Minor

5 Q Previous to this had you ever matched Minor by
6 yourself?

7 A Briefly maybe, you know, Chris took a trip to the
8 store or something like that.

9 Q Just a few minutes at a time?

10 A Yes.

11 Q Describe your interactions with Minor on that day.

12 A On that day I had Minor in the living room, had just

13 put -- had fed the baby and put her down. I had Minor in
14 the floor letting her stretch out a little bit.

15 Jordon said she was hungry, so I was getting ready to
16 feed her. And I was going to go ahead and put Minor in her
17 room and put a movie on so she would be there and I could
18 just concentrate on getting Jordon fed.

19 So I went to go get Minor and she was -- she was in
20 the floor. She gave me this little look that she would
21 give me. I don't know what she was thinking, or it was
22 just -- and so I just started playing with her a little bit
23 and messing with her feet. She -- it seems like every time
24 she saw me she'd always drew her feet up. So I -- I was
25 doing stuff like that. She had her -- she had her arms

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1 behind her head like she usually did and was doing her head
2 turned.

3 Q When you say she had her arms behind her head, can you
4 show? Show the Court what you mean by that.

5 A Yes, sir. She -- like I -- like I said, the normal
6 thing she did was arms behind her head like that. Of
7 course it was farther -- farther behind than I can do.

8 Q And I believe you stated you had -- I don't know --
9 picked at Minor or aggravated her?

10 A Yes, sir. But I did that with all the children.

11 Q Okay. And -- and what do you mean by that?

12 A Things that -- things that would make -- make her mad.
13 I would do that with anybody really. Anything I find that
14 makes you mad I might pick at you a little bit just not out
15 of meanness, just --

16 Q Are you doing in a malicious manner?

17 A No, no, nothing like that.

18 Q Just like you'd aggravate a small child.

19 A Yes.

20 Q Now, you said she had her arms behind her head.

21 A Yes.

22 Q Did you have ahold of her arms at some point?

23 A Yes, sir. I's getting ready to move her. Like I
24 said, I played with her and tickled her feet a little bit.
25 And I had -- I grabbed her -- grabbed her arms -- I believe

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- 1 her wrist -- and just when I grabbed them she started to
2 try to pull away like she usually does.
- 3 Q Were her wrists behind her head?
- 4 A No, her wrists were not behind her head. They were --
5 I mean, they weren't directly behind her head, but arms
6 were behind her head.
- 7 Q And you were just holding her.
- 8 A Yes, sir.
- 9 Q I guess providing resistance to her.
- 10 A Yes, sir.
- 11 Q What was the purpose of this?
- 12 A Just aggravating her, just trying to interact with
13 her. I mean, it wasn't a particular purpose or anything
14 that I had in mind. It was just something I was doing just
15 to -- just to -- just to like play with her.
- 16 Q At some point did you hear a pop?
- 17 A Yes, sir. I -- like I said, I had her by the arms,
18 and she was doing a little head thing, or forgive me. I
19 don't know what to call it. But her head turned. And I
20 was kind of doing kind of like a roller type like her head
21 was rolling on her arms.
- 22 And I picked her -- I picked her arms -- picked her
23 up. I didn't pick her up. I -- I kind of like just raised
24 her up and just kind of bounced her a little bit. And I
25 felt this pop, and I let go. And at -- at first I didn't

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1 see or notice anything. So I thought I just better leave
2 things alone. And I -- I scooped her up and was going to
3 take her back in her bedroom and put on -- put her in her
4 bed.

5 Q What was Minor reaction when you did that?

6 A At first nothing. She looked at -- she gave me one of
7 her quizzical looks, and there was no reaction at first.
8 But as I -- when I scooped -- when I scooped her up and was
9 taking her down the hall, then she began to cry. And it
10 wasn't something that I'd heard before, so I knew she was
11 hurt.

12 Q You knew she was in pain.

13 A Yes, sir.

14 Q Where did you sit her after that?

15 A Well, I was in the hall when she started crying. I
16 had nowhere to go but her room. So I took her in her room
17 and I put her down on -- on the floor.

18 Q And is the floor hardwood or was it -- describe the
19 floor.

20 A It's a hardwood floor.

21 Q Why did you lay her on the floor?

22 A I didn't want to put her in the soft bed. I didn't
23 know what was wrong. Like I said, I heard -- a felt the
24 pop. I thought something. I knew it must have been
25 something with the arm. I put her on the hardwood floor

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- 1 because that's the closest thing to -- or that was a hard
2 surface that could just provide some kinda of stabilization
3 without her being in bed and moving around too much.
- 4 Q Was her arm caught behind her back?
- 5 A No, sir, not when I laid her down.
- 6 Q Where was her arm?
- 7 A It was kinda beside her over to the side. She -- she
8 was crying a little bit. She was in pain and frustration,
9 because her arm wasn't working like she was wanting it to.
- 10 Q What did you do then?
- 11 A I -- first thing I did was I called Chris and told her
12 Minor had just -- I think Minor had dislocated her arm,
- 13 because that's what it looked like. Her shoulder was
14 actually a little bit higher than her arm. It looked like
15 a dislocation. And she said okay. She knew I had the
16 kids. And I believe that's when she called her mama. And
17 that's when I turned around and called 9-1-1.
- 18 Q Did you tell Minor -- or did you tell Chris that Minor
19 had fallen out of the bed?
- 20 A Yes, sir, I did.
- 21 Q Why in the world would you do that?
- 22 A Because I was scared.
- 23 Q Scared of what?
- 24 A The very first thing that went through my head was the
25 children. I was afraid of DSS coming and taking the

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1 children. That was the very first thought that I had.
2 Those children are her world. She's -- she's a good mother
3 and she's proud of that. And I didn't want to be the cause
4 of -- of destroying that world.

5 Q Why on earth would you be scared that DSS would take
6 the children of an accident?

7 A Because that's what they do. That's how I felt. I
8 just -- that's -- that's what they do.

9 Q Why else did you lie?

10 A As was mentioned, I was afraid of -- I was afraid of
11 Chris because I knew she'd be mad, and she had a right to
12 be. She'd trusted me to make a -- trusted me to watch her
13 -- watch her child. And I had made at a stupid decision
14 that had caused -- that had caused some injury and betrayed
15 a trust that she put in me.

16 Q Did you love Chris?

17 A Not did. Do.

18 Q Why lie to her then if it was an accident?

19 A As I said, I was -- I was scared. I -- I didn't want
20 her thinking that she couldn't trust me with her children.
21 I didn't want, because things were going good. They
22 were -- they were -- the children loved me. I was helping
23 out. It made her happy. I didn't want her thinking she
24 couldn't trust me. I just -- I just -- there was a
25 thousand thoughts, and all of them was fear, had some sort

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- 1 of fear.
- 2 Q Were you trying to cover your own rear end?
- 3 A I -- I won't lie. That did have something to do with
- 4 it, but that wasn't my very first thought, no.
- 5 Q Did you intentionally break Minor arm?
- 6 A No, sir, I did not.
- 7 Q Were you mad at Minor when this occurred?
- 8 A No, sir, I was not.
- 9 Q Were you frustrated with Minor when this occurred?
- 10 A No, sir.
- 11 Q Did you harm her out of anger?
- 12 A No, sir. I wasn't angry.
- 13 Q Did you love Minor
- 14 A Yes, sir.
- 15 Q Did you try to stage Minor in the floor to make it look
- 16 like an accident?
- 17 A No, sir. I wasn't trying to stage anything. I -- I
- 18 wasn't thinking of staging anything at that point. I
- 19 wasn't even thinking of staging, but I wasn't -- at that
- 20 point I wasn't -- that wasn't even in my thinking process.
- 21 I was just trying to get her a stable, level environment.
- 22 Q So when this happened you were already taking her into
- 23 the room.
- 24 A Yes.
- 25 Q When she cried out in pain.

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1 A Yes, sir. We were in the hall.

2 Q And you laid her on the floor why?

3 A Because it was a hardwood floor. It was a stable
4 environment.

5 Several EMC -- excuse me -- several EMT classes I had
6 taken I'd always -- seems instructors always were talking
7 about if you got somebody on the backboard then you got
8 them splinted, basically talking about in an emergency
9 situation.

10 That -- that was my thinking, if I could get her on
11 this hardwood surface, even though I couldn't strap her
12 like you could a backboard, at least she was on a level
13 surface, not on that soft bed. And I had tried -- I was
14 trying to figure out what was wrong.

15 Q Did you call 9-1-1?

16 A Yes, sir, I did.

17 Q What did you tell them?

18 A I told them I had a child that had I believed a
19 dislocated shoulder, and I told them that she had rolled
20 out of bed.

21 Q Did Minor grandmother, Ms. Monday, arrive?

22 A Yes, sir, she did.

23 Q And who called her?

24 A I believe Kreszena did. I didn't have her number at
25 that time.

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- 1 Q Okay. And was the purpose to watch the children?
- 2 A Yes, sir. That was my understanding.
- 3 Q Did the ambulance take Minor to the hospital, or how
- 4 did Minor get to the hospital?
- 5 A Ambulance came and took Minor
- 6 Q And did you tell the doctors she fell out of bed?
- 7 A Yes, sir, I did.
- 8 Q What type of treatment was Minor given at the hospital?
- 9 A I know they did the x-rays of her arm. They -- they
- 10 administered some pain medication. I know -- I believe
- 11 they used one ace wrap and a sling, but that we later found
- 12 out that wasn't going to work real good with Minor
- 13 Q Did you find out that day or when did you find that
- 14 out?
- 15 A I believe they found it later when they took her up to
- 16 a recommended followup.
- 17 Q And why would the sling not work?
- 18 A Because Minor would not stop moving her arms.
- 19 That's -- that's -- that's all -- all she could do. That's
- 20 what she did. And she just -- she didn't understand to sit
- 21 still.
- 22 Q And obviously they didn't cast her arm.
- 23 A No. They didn't.
- 24 Q Do you know why they did not cast her arm?
- 25 A No, sir, I don't. I thought they would at least try

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1 to splint it. I was surprised that they didn't. They said
2 something about the break being too far up, but I wasn't
3 really sure what that meant.

4 Q Far up close to the shoulder?

5 A Yes.

6 Q And so after it became apparent the sling would not
7 work, what was the treatment for Minor

8 A They -- they wrapped and secured the arm with an ace
9 wrap to keep it mobile. And then they usually put in kind
10 of a bent elbow across her -- across her mid section. And
11 they would wrap the second ace wrap around pretty tight to
12 keep that immobile.

13 Q Could Minor still move her arm?

14 A Yes. She would still get out of that ace wrap on --
15 not on occasions but often.

16 Q She was still able to figure out how to get out of it.

17 A Yes, sir.

18 Q While she was -- I guess her arm immobilized, you'd
19 say -- did she ever like to hold items or do anything with
20 that arm?

21 A With the -- well, she favored her left arm. She -- I
22 guess you could she was left-handed, seemed like. She --
23 with that arm I never really saw her do anything when it
24 was covered up at first. At one point I had saw her -- I
25 had given her a -- you call it a chain, like a little

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1 plastic chain, that links. I had given her that. She was
2 in the living room. And I had given her that to play with
3 because she looked bored, and she was rattling it.

4 I walked away. It was a weekend. Ms. Diane was
5 there. And I come back in the living room for some reason,
6 and I looked. And Minor had taken her right hand and
7 somehow gotten loose from that ace wrap and had it coming
8 out her left shirt sleeve holding onto the other end of the
9 wrap.

10 And she looked at me like what. I called Diane in
11 there. I said I want you to come and look at this. And
12 Diane said something. I don't remember what exactly she
13 said. I took a picture through my phone and I sent it to
14 Chris, something along the lines of look what your
15 daughter's doing or something like that. And she sent me
16 something back about her being an escape artist or
17 something along those lines. It was something we said
18 often Minor because it seems like she could always get loose
19 of something.

20 Q Now, between the broken arm on June 22nd and the
21 incident on July the 5th did you have the opportunity to
22 watch Minor alone again?

23 A Yes, sir, I believe I did.

24 Q On how many occasions?

25 A Maybe one -- one or -- one -- one or two.

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1 Q Now, I want to go to July the 5th. Start off that day
2 in the morning.

3 A All right. July 5th was a Sunday. Chris was -- had
4 headed off to work. I believe I woke up late.
5 Ms. Diane -- well, Chris was in the shower, I think. I
6 woke up and let Ms. Diane in about 6:30 and went back to
7 bed.

8 I worked three straight 5:00 a.m. to 5:00 p.m. shifts.
9 And Sundays I was always off, so I was tired. I think I
10 got up about 9:00 and went in the kitchen and fixed coffee.
11 I offered Diane something. I don't know if she drank it or
12 not.

13 But Diane asked me had Minor had a late night, and I
14 said not that I know of. And she said she's a little
15 sluggish this morning. I said I don't -- I said I don't
16 know anything. To my knowledge she didn't have a late
17 night.

18 I lounged around the house for a while. I did some
19 studying for my paramedic class. Diane -- I left to go
20 home. My mother was out of town. And I went to go take
21 care of our dogs.

22 I got back in time for Diane to leave around 3:00 or
23 3:30, something like that.

24 Q Okay. Now, you stated that Diane asked you if Minor
25 had a late night.

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1 A Right.

2 Q Were you there the previous night?

3 A I was.

4 Q What time did you get in or --

5 A As I said, I worked 5:00 a.m. to 5:00 p.m. That's why
6 Diane only worked till 3:00 that Sunday, because she had to
7 stay awake for me to get there. I got there. I was tired.

8 Diane said Minor had already -- she was ready for bed.

9 Her diaper had been changed and all of that. Fine.

10 That's -- that was fine.

11 I just made sure that her movie was on or she had
12 something playing, and I made sure her diaper -- and I

13 really didn't have too much interaction with Minor that --
14 that day. I stayed pretty much in the living room doing
15 some studying, trying to work on what they call drug cards
16 for my paramedic class because I was way behind on that.

17 At some point -- let's see. Chris got off at 7:00.
18 She came -- she came home. I can't remember if she picked
19 us up anything to eat or not. At some point about 7:30 or
20 8:00 o'clock she came. We talked for a little bit.

21 As I said, my mother was still out of town. So I
22 went, left. As I was leaving Chris had mentioned something
23 about Minor had wet the bed. I said do you want to change
24 the sheets, and she says, no, go on. So I went ahead and
25 took care of my dogs.

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1 She asked me to pick up some babyfood on the way back.
2 I stopped by the fire department and picked up my turn-out
3 gear because I was wanting to do some stuff with it.

4 I had got back to the house 9:00 or 9:30, something
5 like that.

6 Q That night. And was Minor already asleep then?

7 A I believe she was. She was a very light sleeper.
8 When I checked on her I believe she was awake, but she was
9 in bed.

10 Q When Diane left on the 5th where was Minor

11 A She was in the living room. Diane had actually
12 wheeled her down the hall in the living room. She was
13 saying that Minor room was a little cold.

14 I know Minor seemed liked she was actually happy. She
15 was kicking her legs. I hadn't really seen her do that
16 before. She was sitting in the living room kind of in
17 front of the computer, between me and the computer, and the
18 TV is off to the corner.

19 Q And was Minor still eating at that time?

20 A Yes. Diane said that Minor was still feeding. She
21 didn't know how much longer she had left, but she knew she
22 was still feeding.

23 Q And at what point did she -- her feeding stopped or
24 you have to remove the tube?

25 A It was probably -- let's see. Diane left around 3:30.

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1 It was probably a quarter till 4:00, 4:00 o'clock,
2 something, when I checked it. And it was -- the bag was
3 just about empty.

4 Q And what did you do when you noticed that?

5 A Cut the -- the pump off, D. C., disconnected the tube,
6 threw the bag away, put the pump on the charger, washed out
7 her little -- the -- the tube we kept, wash it out and hung
8 it up to dry.

9 Q Where was Minor

10 A Still sitting in her -- in her chair at that point.

11 Q Okay. Did you get her out of the chair?

12 A Yes. She -- she didn't seem like she was too -- she

13 just didn't seem like she -- she was too interested in
14 being in that chair. She looked like she was kind of bored
15 or just she -- listless.

16 Q Obviously, she couldn't tell you she was bored. How
17 would you know that?

18 A Just this look, her body language. She was just kind
19 of like slumped, or not slumped. But her head was just
20 kind of hung, and she wasn't really doing the stuff that
21 she would normally do as far as turning her head and moving
22 around.

23 Q And you interpreted that as being bored?

24 A Bored or just confined, wanting out. That's how I
25 felt about it.

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1 Q You felt like she needed to be out.

2 A Yes, sir.

3 Q So what did you do?

4 A I took her out of her -- I undid her straps, picked
5 her up out of her chair and laid her -- laid her in the
6 floor. /

7 I don't remember what movie was playing. I put
8 something in to entertain her. I tried to pick something
9 that had some music because I knew that's what she liked.
10 And I laid her in the floor with her feet pointed towards
11 the television.

12 Q Was she on her back or her stomach?

13 A She was on her back.

14 Q On her back. And where was the TV?

15 A The TV is in the corner where the walls -- well,
16 obviously it's the corner, so the walls come together. But
17 it was in the corner, and she was directly in front of it.

18 Q And she could still see the television?

19 A Yes, sir, for the most part. I mean, she couldn't
20 really raise her head up to look, but she was -- it had the
21 music going. And oftentimes she really wouldn't be
22 watching TV. A lot of times the TV was playing when she
23 was in her bed, the rail up. She couldn't really see it,
24 but she was listening to the music. And that's just what I
25 was trying to do.

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1 Q She was listening to the music as much as anything.

2 A Yes, sir.

3 Q At any point did you begin to play with Minor

4 A Yes, sir. I -- Minor was here and the computer desk
5 was here. So Minor was kind of behind me.

6 I was messing around on the internet a little bit.
7 And I'd turn around and maybe speak to her, say something
8 to her. She may look over at me. And I might say
9 something, you know, like what are you looking at, and just
10 joking and talking, just talking to her.

11 I got up and walked over to her. She drew her legs up
12 because she knew I was fixing to tickle her feet. I

13 tickled her feet for a little bit and talked to her some,
14 just little things like that with her.

15 Q Did you play patty-cake with her?

16 A Yeah, well, our version of it.

17 Q Now, what's your version of patty-cake?

18 A Minor usually kept her hands closed. And if you could
19 take her hand and beat on your hand, then she'd open up and
20 started patting.

21 Usually what I would do, I'd pat it a couple of times
22 and just touch her face, and I'd pat a couple of times and
23 touch my face.

24 I'd go to touch her face again the second and she'd
25 stiffen up and not let me do it. But it was okay for her

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1 to hit me.

2 Q When you say hit, I mean, describe.

3 A Just a tap. I mean, it wasn't -- barely made a sound.

4 Q Okay. Was it malicious or violent or anything?

5 A No, nothing like that. It was just patty-cake for
6 lack of a better word.

7 Q And did Minor enjoy hitting you in the face?

8 A It appeared so. She didn't resist that.

9 Q Now, how did you know Minor didn't like something?

10 A Usually you'd get some resistance if it was something
11 involving her limbs where you maybe had to change her or
12 dress her or something like that.

13 If the resistance didn't work, then Minor would start
14 yelling, squealing. It's -- she would make a sound that
15 you knew you needed to stop or she wasn't happy.

16 Q At some point you picked Minor up by her ankles, didn't
17 you?

18 A Yes, sir, I did.

19 Q Tell the Court what happened here.

20 A I had gotten up to go -- go use -- go use the
21 restroom, I believe. No. I had went to go change Minor I
22 had thought that she had had a dirty diaper. Turned out to
23 be a false alarm, but it was wet. So I went ahead and
24 changed her. I doubled the diapers up.

25 I believe then, because I went to go throw the diaper

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1 away, that's when I used the bathroom. I came back. She
2 was in the floor, and I thought, well, see if she likes
3 this, at which point I picked her up.

4 I actually had to turn her around because the TV was
5 between us, or I was between her and the TV, and there
6 wasn't a lot of room. So I kind of turned her around. And
7 I -- I picked her up by her ankles, and I kind of did a
8 penduline swing two or three times maybe, no more than
9 four.

10 Q Did she squeal?

11 A She wasn't happy about that. She didn't like it.

12 Q How did you know?

13 A She let that -- she squealed. She made that sound.

14 Q So what did you do?

15 A I sat her down.

16 Q What happened when you sat her down?

17 A For lack of a better word, it was -- it was a -- it
18 was a thud type sound. I don't know if it was because she
19 was heavier than I anticipated or if I had her higher up.
20 I don't know but it made a -- made a thud -- thud type
21 sound.

22 Q Why on earth would you do this to a special needs
23 child?

24 A I didn't see Minor as special needs. I just -- I felt
25 like she was a little girl who just was -- I tried to look

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1 at it as a little girl who was a slow learner because I
2 didn't want it to affect how I treated her, to be
3 different. I didn't want it to be different from how I
4 treated the other children.

5 Q Had you ever done that to any of the other children?

6 A Yes, sir. I'd done that I believe with Jordon and
7 Minor I had done that.

8 Q Picked them by up their ankles?

9 A By ankles, legs, shins, yes, sir.

10 Q Did Minor see you do that?

11 A She may have. I -- she may have been in the living
12 room. I don't know. There's a good chance she probably
13 did.

14 Q So you thought you could treat Minor the same way.

15 A I felt that, yes, sir.

16 Q When you heard the thump what did you do?

17 A I laid her -- I laid her back down carefully, went in
18 and checked her. I said Minor are you okay, and she just
19 kind of looked at me like -- like she was mad.

20 She didn't seem to be doing anything any different.

21 She started her -- doing her head -- her head motion. I
22 thought she was okay. She seemed to be okay. So I -- I
23 just left her alone and let her watch -- finish listening
24 to a movie.

25 Q At some point you realized she wasn't okay.

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1 A Yes, sir.

2 Q When was that?

3 A I had taken her and sat her up against the couch with
4 her legs -- while she was on the floor and kind of -- I sat
5 beside her for just a little bit and watched the movie.

6 And I just would talk to her.

7 And I knew she couldn't sit on her own, but I just was
8 trying to encourage her just to have some kind of
9 interaction with her, you know. I said, come on, Minor you
10 can set up. And she'd start to, of course, slump over or
11 tilt over.

12 And I -- I grabbed her by her arm or I got her arm and
13 just kept her from falling over. And then I pulled her
14 back up like that back in the sitting type position.

15 Q So was her back to the base of the couch, the bottom,
16 the base of the couch?

17 A Yes, sir.

18 Q Had you ever seen that done before with Minor

19 A No, sir.

20 Q Once again, I must ask why would you do this.

21 A I didn't think it was -- it would hurt her just to sit
22 her up, I mean, compared to anything else. I just felt
23 that just sit her up, maybe she'd like to sit up and maybe
24 watch the movie. I sat beside her and talked with her,
25 interact.

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1 Q Obviously, that wasn't working out well for you. What
2 did you do next?

3 A I believe I went to go -- go move her or lay her back.
4 I -- I don't remember exactly what my next action was. I
5 think I was just going to lay her back in the floor.

6 Q Okay.

7 A I don't remember exactly.

8 Q At some point though she began acting differently.

9 A Yeah, yes, sir.

10 Q What did you notice?

11 A Her eyes kind of rolled up in her head and her free
12 arm, her left arm, kind of came up, or didn't kind of. It
13 did come up.

14 In previous conversations I had had with Chris about
15 Minor seizures and stuff like that I recognized that that
16 was possibly a seizure that she was having.

17 Q Did you associate this seizure in any way to the bump
18 on her head?

19 A No, sir. It was -- it was way after that.

20 Q How long?

21 A Maybe an hour.

22 Q When she began having her seizure, what did you do?

23 A I was concerned about her airway. Minor had a lot of
24 secretions. Forgive the term, but drooling. So I laid her
25 on her side, on her right side, just so she wouldn't inhale

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1 that saliva and cause greater complications with her
2 airway.

3 Q She had a broken arm on her right side, didn't she?

4 A Yes, sir.

5 Q But you still laid her on her right side anyways?

6 A Yes, sir. If I'd laid her on her left she'd been
7 facing the couch and I couldn't really observe her airway.

8 I knew her arm was broken. At that time I was
9 concerned about the airway. And as I mentioned before,
10 that was the day that I'd actually seen her stick her arm
11 up through the sleeve. So I knew -- I knew that the arm
12 had been resecured, and I was more concerned with her

13 airway at that moment.

14 Q Did you call Kreszena?

15 A Yes, sir.

16 Q And what did you tell her?

17 A I asked her. I said didn't -- I said, "Minor arm
18 raised up." I believe I said her eyes rolled back. I
19 said, "I think she's had a seizure. Does that sound like
20 it?" Kreszena said yeah, that's probably a seizure. And
21 right then Ms. Monday came in to pick up the -- the
22 stockings for Jordon.

23 Q And did Ms. Monday check on Minor

24 A Yes, sir. She -- when she came in we laid Minor back.
25 Ms. Monday talked to her, said something along the lines

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1 of, you know, come on girlfriend, how she basically talked
2 to Minor all of the time.

3 I know she did a little -- messed with the eyelash, a
4 little flick. And I was -- my attention was distracted
5 between her and Kreszena, because Kreszena was wanting to
6 know what was going on. I was trying to tell her. I
7 trying to talk to Ms. Monday and see what she was doing.
8 So I didn't see everything that Ms. Monday was doing. But
9 I -- I did know she was talking to her. And -- and at one
10 point I did hear her say that she's coming out of it or
11 she's going to be fine, she will come out of it.

12 Q So you were still on the phone with Kreszena at this
13 time.

14 A Yes, sir.

15 Q Did you have her on a speaker phone or --

16 A Yes, sir. I had my phone opened up laying on the
17 couch where both of us could hear it.

18 Q And were you describing Minor to Kreszena, or what was
19 your conversation with Kreszena?

20 A I can't remember my -- my words exactly. I think I
21 re -- I redescribed what had happened, what her breathing
22 was, that her mom was here.

23 She kept asking what's going on, what's going on. And
24 I couldn't really tell her anything because nothing was
25 going on. Ms. Monday was just talking to me, and I'd done

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1 told her, you know, your mom's checking on her. And she
2 was wanting to try to find out what was going on.

3 Q Okay. And when you say what happened, what are you
4 referring to there? Do you mean with the seizure when
5 Kreszena was asking you what happened?

6 A Yeah. She was asking, you know, what happened as in,
7 I believe as in, what the symptoms were, or signs.

8 Q And you were describing those to her?

9 A Yes, sir.

10 Q At some point did it appear Minor was done with the
11 seizure or had come out of it?

12 A Yes, sir. That's -- that's when Ms. Monday felt

13 that -- or she -- I can't say how she felt. That's when
14 she said she's going to come out of it, she just needs to
15 rest, something along that. Minor didn't appear to be
16 seizing any more, and so I thought it was done.

17 Q You thought Minor was going to be okay.

18 A Yes, sir.

19 Q Did you leave Minor side or what did you go do then?

20 A No, I didn't -- I didn't leave her side. I continued
21 to watch her and keep an eye on her.

22 Q Did you call Kreszena again or --

23 A Yes, sir. Her breathing became erratic or irregular,
24 and I wasn't feeling comfortable with what I was seeing.

25 So I called Chris to let her know what I was seeing. And I

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1 think at that point she wanted to listen to -- listen to
2 the breathing, which I put my phone to Minor mouth.

3 Q At any point did Chris call the doctors or anything
4 like that?

5 A I can't remember. I don't know if she did or didn't.
6 I -- she -- she -- I know -- I remember her saying
7 something about calling the doctor, but I don't know if
8 that was at that moment or not. I can't remember when that
9 took place.

10 Q Okay. But you were observing her breathing.

11 A Yes, sir.

12 Q What did you notice?

13 A As I said, it was irregular. It wasn't her normal.
14 It was a very fast type of breathing, very shallow.

15 Q Did you call 9-1-1?

16 A No, sir, I didn't.

17 Q Why not?

18 A Again, I called Chris and told her I'm not liking what
19 I'm seeing. I believe at one point I told her that -- I
20 said her eyes, her pupils, don't look right. Chris said
21 Minor doesn't present normally. Chris was looking at it
22 from the viewpoint of a regular seizure. She wasn't
23 looking at what I was looking at. And I -- I didn't do a
24 good enough job explaining what I was seeing.

25 Q Did you become concerned enough to call the Hilltop

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1 Fire Department?

2 A Yes, sir.

3 Q And was it Hilltop you called first?

4 A It was Hilltop I called first.

5 Q Who did you call?

6 A I called the station first, and nobody answered. I
7 believe I called the officer that was working directly on
8 his cell phone.

9 Q Why call Hilltop Fire Department first and not call
10 9-1-1?

11 A Because from what I've been taught -- and you defer to
12 the family because they know what's going on -- that's what

13 I did. I felt they -- they -- they were weren't concerned.
14 I was just doing it for my own peace of mind.

15 Q You're not trying to blame them for this.

16 A No, sir. As I said, I didn't do a good enough job
17 explaining to Kreszena what I was seeing. If she had seen
18 it, if I'd done a better job explaining it, I believe
19 things would have been different.

20 Q So you called the director of Hilltop on his cell
21 phone.

22 A The shift officer, yes, sir.

23 Q The shift officer.

24 A Yes, sir.

25 Q What happened?

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- 1 A I asked him if he had anybody, you know, we had
2 anybody extra hanging around the station, that maybe they
3 could just run some oxygen up there to me.
- 4 Q And what did he say?
- 5 A He said, no, he didn't have anybody.
- 6 Q What did you do next?
- 7 A He said -- said you can call Boiling Springs and he --
8 his words were Moose is working, which that was Captain
9 Gibbs. I knew Captain Gibbs when I started. And I said
10 okay. So it was somebody that I knew who knew me.
- 11 Q So, and you called him. I would assume you called
12 him -- Moose or whatever.
- 13 A Yes, sir. I called the Boiling Springs Fire Station.
- 14 Q Okay. And what happened when you called the Boiling
15 Springs Fire Station?
- 16 A Captain Gibbs answered the phone. I identified who I
17 was. I said can you run some oxygen up here to me, my
18 girlfriend's daughter's had seizure. I may have said she's
19 not breathing. I may have said something about her
20 breathing, that I was uncomfortable with it. And he said,
21 yeah, I'll be right there.
- 22 Q And how soon did they get there?
- 23 A It seemed forever. To be honest with you, it could
24 have been anywhere from five to six, seven minutes,
25 something like that.

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1 Q How many times did you call Boiling Springs Fire
2 Department?

3 A I called them, including the first time I called them,
4 twice.

5 Q Wanted to know where they were?

6 A Yes, sir.

7 Q What was taking so long?

8 A Correct.

9 Q When Moose or Captain Gibbs got there where were you?

10 A As I said, I had called them a second time to find out
11 where they were. The secretary, office administrator, said
12 that they had left. I asked her what unit. I kind of knew

13 which one it was. She said, yeah, that's squad one. I
14 said okay, I'll call them on the radio.

15 I ran outside to get my personal radio issued by the
16 fire department. I was going to call them and ask them
17 to -- to step it up. They were coming what's called code
18 one, just driving. I was going to ask them to step it up,
19 lights and sirens. And I was going to request what's
20 called county fire -- they dispatch fire departments -- I
21 was going to request that EMS be dispatched to that
22 location.

23 Q Okay. And when did, I guess, they get there?

24 A Time I got on the porch I turned around. I turned my
25 radio on. And I saw the unit driving down Midland Drive.

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1 Q Okay. And did you wave them in?

2 A Yeah. Well, I turned around and got -- put my radio
3 in the house and turned around and motioned for them, yes,
4 sir.

5 Q Where was Minor at this point?

6 A Minor was laying in the floor on her -- on her back.
7 She had to be on her back because there was no way she
8 could lay on her -- on her side without help.

9 Q And I believe Captain Gibbs came in and y'all began
10 giving her oxygen.

11 A Nuck, Sergeant Ray, he came in first.

12 Q Okay.

13 A Captain Gibbs -- Sergeant Ray I believe grabbed the
14 oxygen, and then Captain Gibbs grabbed the medical bag.

15 Sergeant Ray came in and came around the couch. I
16 told him what -- what was going on. He said do you want to
17 give her some oxygen. I said yeah. He gave me the oxygen.
18 I began setting it up. He put the pulse oximeter on her.
19 That tells you what your percentage of oxygen in the
20 bloodstream is.

21 Q Okay. At what point was 9-1-1 called?

22 A We got the oxygen on her. There was a good
23 improvement. Her breathing was still not right. When I
24 say good improvement, her skin color returned to normal.
25 But her breathing still wasn't right. And Nick looked at

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1 me and I could tell. I could see concern on his face. And
2 Moose, excuse me, Captain Gibbs, he said do you want to
3 call transport. And I shook my head and Nick shook his
4 head. And Captain Gibbs called dispatch on the radio and
5 requested an ambulance at that location.

6 Q How soon did the ambulance get there?

7 A It was fairly quick. I -- I know they were coming
8 from Asheville Highway. They got there less, five -- five
9 minutes maybe.

10 Q Who transported Minor to the ambulance?

11 A EMS. Or transported her to the ambulance? I did.

12 Q And did you carry her?

13 A Yes, sir.

14 Q How did you carry her?

15 A When they pulled up I saw them pull up. I scooped her
16 up real quick, and I started to head out the door. But
17 when I scooped her up it just -- it wasn't like usual. It
18 just wasn't. It wasn't Minor

19 She started to -- I did like this, so she kinda
20 started -- excuse me -- started to drop in between my arms.
21 So I -- I tried to catch her real quick with my knee. I
22 kinda tried to shove her up a little bit and got her close
23 to my body.

24 I believe Sergeant Ray said something along the lines
25 have you got her. I said yes.

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1 And I headed out the door. I went -- I went between
2 the couch and the chair because I could fit. I actually
3 had to stop because Sergeant Ray couldn't. And they had to
4 hand off the O2. And then I was out the door to -- I got
5 to them about the time they got the stretcher out the back
6 of the ambulance.

7 Q Okay. And did you get in the back of the ambulance or
8 the front of the ambulance?

9 A I started to. That paramedic, Paramedic Holt, he
10 said -- he said, nah, man, you have to ride up front, you
11 know the rules, which I understood. So I got up front and
12 rode with Paramedic Counts.

13 Q Where were y'all headed?

14 A Initially, we were going to go to Mary Black. I don't
15 know what Paramedic Holt's radio report to Mary Black was,
16 but I do know that Mary Black -- I don't want to say
17 denied. But we were transported or transferred to
18 Spartanburg Regional.

19 Q And at some point you ended up in the back of the
20 ambulance.

21 A Yes, sir.

22 Q Why did that occur?

23 A Paramedic Holt, Jeff, said -- he said I'm -- he said I
24 need somebody to bag or ventilate. He said -- he called --
25 he asked Paramedic Counts, said pull over in the median and

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1 let Tony get back here. So he pulled over in the median
2 and I jumped in the back.

3 Q Did you tell any members of the EMS crew -- Holt,
4 Duncan, Captain Gibbs, Nick Ray, anybody -- about Minor
5 hitting her head?

6 A No, sir.

7 Q Why not?

8 A She was having a seizure. I didn't equate that
9 that -- what happened with her head was -- had been prior,
10 way prior.

11 Q And you knew Minor had a history of seizures.

12 A In the past, yes, sir.

13 Q And this was just another seizure.

14 A It was my first dealing with her, but yes.

15 Q She gets to the hospital. Then what happens?

16 A Well, Chris was at work near the hospital, so she was
17 there waiting on us.

18 They took her into the pediatric ER, pediatric trauma
19 room, and started doing their work. Chris was kind of --
20 the paramedic was trying to get information from her, and
21 signatures.

22 At the same time the doctors are trying to find out
23 what's going on. She was kinda torn there. But she got in
24 there with Minor I was in there for a little bit, and then
25 I came out because I was basically in the way.

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1 Q Okay. At any point did the doctors have a
2 conversation with you to ask you what happened?

3 A Yes, sir.

4 Q When was that?

5 A It was sometime after. I -- I don't remember the
6 doctors. I know they came in the waiting room and they --
7 they asked what had happened or, you know, what the
8 symptoms were.

9 Q And what did you tell them?

10 A I told them she had had, appeared to have had, a
11 seizure.

12 Q At that point were you aware of any brain injury or
13 blunt force trauma to the head?

14 A No, sir. I don't believe they had said anything at
15 that point.

16 Q So still at this point it's a seizure to you and
17 treating a seizure.

18 A Yes, sir.

19 Q Sometime after that the doctor though came out and
20 informed y'all about a brain injury though, correct?

21 A Yes, sir.

22 Q Do you know who that was?

23 A No, sir, I don't, I mean, I don't. I don't know who
24 it was to be honest.

25 Q And did you tell them about Minor hitting her head when

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- 1 you were swinging her by her ankles?
- 2 A No, sir, I didn't.
- 3 Q Why not?
- 4 A I -- I -- I don't -- I don't know why. I don't know
- 5 because it didn't cross my mind, had so much other on my
- 6 mind. I can't give an answer to that question. I would --
- 7 I would love to. I want to. I don't know.
- 8 Q Tony, did you ask the doctor if it could come from
- 9 falling out of the bed?
- 10 A Yes, sir.
- 11 Q Well, you knew she didn't fall out of the bed, didn't
- 12 you?
- 13 A Correct.
- 14 Q Why on earth would you ask the doctor that?
- 15 A Because the ugly -- the ugly thing about not telling
- 16 the truth, telling a lie, sometimes you get locked into it.
- 17 And at that point I felt locked into it. They were
- 18 treating her. I knew they were treating her. And I
- 19 just -- I showed absolutely no -- no moral character.
- 20 Q You knew Minor was in grave condition.
- 21 A Yes.
- 22 Q At some point did the Spartanburg County Sheriff's
- 23 Department get ahold of you?
- 24 A I know they came up there after she had been
- 25 transferred to ICU. I spoke briefly with Detective --

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- 1 Detective Moss introduced herself to me. And she told me
2 that she was having -- I believe that she told me she
3 wanted a statement, or she said she'd talk with me later,
4 which was -- I believe she called me on the 8th to set up
5 the appointment to come on the 9th, or maybe she called me
6 early on the 9th and asked if 2:00 o'clock would be okay.
- 7 Q And you went.
- 8 A Yes, sir.
- 9 Q Who was present in the room when you got there?
- 10 A Detective Moss and the two investigators from -- from
11 the coroner's office.
- 12 Q And who was that?
- 13 A Shaw -- and forgive me. I don't know her last name --
14 Robin.
- 15 Q Robin Forrest?
- 16 A Yes. I'm sorry.
- 17 Q Had you seen Mike at the hospital previously?
- 18 A Yes, sir.
- 19 Q And by Mike I mean Mike Shaw.
- 20 A Yes, sir.
- 21 Q Did you have a conversation with him about this at the
22 hospital?
- 23 A They walked in and talked to Kreszena. They were kind
24 of talking to her, and then they realized I was kinda --
25 Mike looked up and saw me, and he spoke to me briefly. And

David Anthony Tyre
Direct examination by Mr. Campbell

1 I believe he gave -- he gave me his condolences. That was
2 the extent of our conversation, just hellos.

3 Q When you got to the interview room did they read you
4 your Miranda rights?

5 A Yes, sir. They gave me the paper they had.

6 Q Gave you a form, and you initialed that and signed it
7 and everything.

8 A Yes, sir.

9 Q And you freely and voluntarily talked to the
10 investigators.

11 A Yes, sir.

12 Q What did you tell them?

13 A They asked what you asked, what my actions were that
14 day, you know, what was -- they wanted to know the details
15 of the day, which -- what I described. I played with Minor
16 I changed her, so forth.

17 Q At any -- did you tell them -- at what point did you
18 tell them about the broken arm?

19 A Detective Moss had asked me. She said -- I don't
20 remember her exact phrasing, but something along the lines
21 about the broken arm. She says tell me about that or
22 what's up with that or -- or something like that.

23 Q And how did you respond?

24 A I said I want to tell you what happened with that.
25 And I said Minor didn't fall, I broke -- I broke -- broke

David Anthony Tyre
Direct examination by Mr. Campbell

1 her arm.

2 Q When you say you broke her arm, did you describe to
3 her how that happened?

4 A Yes, sir.

5 Q Did you tell her whether or not you did it
6 maliciously?

7 A No. I didn't say I did it maliciously. It wasn't
8 malicious.

9 Q Did you explain to her that it was an accident?

10 A Yes, sir.

11 Q And did you tell her why you lied?

12 A Yes, sir.

13 Q And I believe you mentioned the DSS and Chris, you
14 didn't want to hurt Kreszena.

15 A Yes, sir.

16 Q Now, did you tell her about the broken arm before you
17 gave the written statement?

18 A I can't -- I can't remember if I did or didn't. I
19 don't know when that took place.

20 Q But you gave the written statement about an hour and
21 45 minutes after the interview began, correct?

22 A Something like that. I wasn't really aware of the
23 passage of time, but yes.

24 Q Did the investigators leave the room while you gave
25 the written statement?

David Anthony Tyre
Direct examination by Mr. Campbell

- 1 A Yes, sir.
- 2 Q Did Investigator Shaw and Investigator Forrest stay
3 behind?
- 4 A When I was writing the written statement, no. They
5 had -- they left also.
- 6 Q Okay. At one point were you in the room by yourself
7 with Investigator Shaw and Investigator Forrest?
- 8 A Yes, sir.
- 9 Q And at any point did -- how did that conversation take
10 place?
- 11 A Well, I had been informed about the cause of death,
12 what the doctor had pronounced. I had explained --
13 explained about the swinging.
- 14 I don't remember exact wording, but something along
15 the lines of, you know, we're not going to think you're,
16 you know, we don't think you're a bad guy, we don't -- you
17 know, this wasn't intentional, you know, we know you or not
18 we know you, but, you know, the work -- the work you do,
19 and this -- this was an accident, something along those
20 lines. I can't remember exactly.
- 21 Q Did you tell Investigator Shaw and Investigator
22 Forrest that you must have shaken Minor too hard?
- 23 A Yes, sir.
- 24 Q In what context?
- 25 A As in I must have. Given what I was told that the --

David Anthony Tyre
Direct examination by Mr. Campbell

1 what the cause of death was, what my actions were, I felt I
2 must have done something that I wasn't aware that I had
3 done.

4 Q Are you referring to more specifically the grabbing by
5 the ankles and swinging her? Is that what you were
6 referring to when you told them that?

7 A Yes, sir.

8 Q Tony, did you intentionally cause any harm to Minor

9 A No, sir, I did not.

10 Q Did you intentionally shake Minor to harm her?

11 A No, sir.

12 Q Did you shake her with malice?

13 A No, sir. I was never angry with Minor for anything.

14 Q Did you shake her because you were frustrated with
15 her?

16 A No, sir. There's nothing to be frustrated about.

17 Q Did you intentionally cause her head injury?

18 A No, sir. I didn't intentionally mean to do anything
19 to her.

20 Q Did you love Minor

21 A Yes, sir, I did.

22 MR. CAMPBELL: Beg the Court's indulgence.

23 (Pause.)

24 Q Tony, when you were shaking Minor did you have any
25 thoughts about whether this hurt her or not?

David Anthony Tyre
Direct examination by Mr. Campbell

1 A No, sir. Like I said, she -- she let me know she
2 didn't like what I was doing. So I just -- I didn't think
3 it was hurting her, so I just -- I just thought she was --
4 so I just --

5 Q As soon as she let you know you didn't -- she didn't
6 like it you quit.

7 A Correct.

8 Q Immediately.

9 A Yes, sir.

10 MR. CAMPBELL: No further questions, Your Honor.

11 THE COURT: Let me see y'all a minute.

12 (Bench conference held off the record in the presence
13 of the jury but out of the hearing of the jury.)

14 THE COURT: All right. Mr. Tyre, we're going to
15 continue with your examination in the morning, so if you'll
16 step down and have a seat with your lawyers right now.

17 THE WITNESS: Yes, sir.

18 THE COURT: Ladies and gentlemen, because of the time
19 it's convenient to break for the day. And we'll resume
20 with the cross-examination in the morning.

21 So keep in mind during the overnight recess you're to
22 have no discussions of any kind whatsoever with any person
23 whatsoever during the overnight recess. No discussions
24 about this case or anything related to it.

25 Also, do not permit yourselves to be exposed to any

David Anthony Tyre
Direct examination by Mr. Campbell

1 type of media coverage -- television, radio or newspaper.
2 Don't conduct any research or do any investigation into any
3 issue that relates to the case.

4 Have a good evening, and please report to your jury
5 room at 9:45 in the morning. Have a good evening.

6 (The following takes place outside the presence of the
7 jury.)

8 THE COURT: Mr. Tyre, let me instruct you -- and I'll
9 remind your lawyers -- that you can have no discussions
10 with anyone during the overnight recess about your
11 testimony. That means you can't even discuss your
12 testimony with your lawyers, because you're technically
13 still on the witness stand. So there are no discussions
14 with any person during this overnight recess about your
15 testimony in this case -- no family, no friends, no
16 lawyers, nobody. Do you understand?

17 THE DEFENDANT: About the testimony.

18 THE COURT: About your testimony.

19 THE DEFENDANT: Yes, sir.

20 THE COURT: All right. Anything further?

21 MR. GOWDY: No, sir, Your Honor.

22 MR. CAMPBELL: Nothing, Your Honor.

23 THE COURT: All right. Court is in recess until 9:45
24 in the morning -- 9:45.

25 END OF PROCEEDINGS OCTOBER 12, 2010

David Anthony Tyre
Cross-examination by Mr. Gowdy

1 (Proceedings October 13, 2010)

2 (The following takes place outside the presence of the
3 jury.)

4 THE COURT: Any matters that need to be addressed
5 before the jury is brought in?

6 MR. GOWDY: Not from the state, Your Honor.

7 MR. CAMPBELL: Not from the defense, Your Honor.

8 THE COURT: All right. Bring them in.

9 (The following takes place in the presence of the
10 jury.)

11 THE COURT: Good morning, ladies and gentlemen.

12 As you know, when we recessed yesterday the defendant,

13 Mr. Tyre, had just undergone direct examination by his
14 lawyer. And so we'll now proceed with the
15 cross-examination by the prosecution.

16 Mr. Tyre, if you will come and resume your place on
17 the witness stand, you're still under oath for the purpose
18 of these questions.

19 MR. GOWDY: May it please the Court, Your Honor.

20 CROSS-EXAMINATION

21 BY MR. GOWDY

22 Q Mr. Tyre, I want to show you what's been marked as
23 State's Exhibit 23 and ask you whether or not that picture
24 fairly and accurately depicts Minor

25 A Yes, sir, it does.

David Anthony Tyre
Cross-examination by Mr. Gowdy

1 MR. GOWDY: Your Honor, we would move State's 23 into
2 evidence at this time.

3 MR. CAMPBELL: No objection.

4 THE COURT: It's admitted.

5 (Photograph marked State's Exhibit No. 23.)

6 MR. GOWDY: Permission to publish it to the jury, Your
7 Honor.

8 THE COURT: You may.

9 BY MR. GOWDY

10 Q Mr. Tyre, I want to go back to June the 22nd with you.
11 You said Minor rolled out of bed.

12 A Yes, sir.

13 Q Why did you say that?

14 A Because, as I mentioned, I was -- I was afraid of what
15 was going to happen.

16 Q Afraid of what was going to happen to you, right?

17 A No, sir, not -- not wholly, no.

18 Q Well, what part of you was afraid of what was going to
19 happen to you? Let's see if we can parse it up some.

20 A Well, my first immediate thought was a fear of DSS
21 taking the children.

22 Q Mr. Tyre, the first person you lied to is that young
23 lady on the first row -- grandma.

24 A Yes, sir.

25 Q She doesn't work for DSS, does she?

David Anthony Tyre
Cross-examination by Mr. Gowdy

- 1 A No, sir.
- 2 Q So you lied to someone who has absolutely nothing to
3 do with DSS. So let's try it again. Why did you lie about
4 her rolling out of bed when the truth was you broke her
5 arm?
- 6 A As I said, my first thought was DSS. Then as I
7 thought about things I realized -- I became afraid of the
8 disappointment that I was going to cause the family --
9 Kreszena, her mother, father. And then as I thought
10 further, then as I said yesterday I became afraid for
11 myself.
- 12 Q Right. You were afraid you were going to go to jail,
13 right, Mr. Tyre?
- 14 A Yes, sir. I'm not going to deny that.
- 15 Q Afraid you were going to go to prison.
- 16 A Yes, sir.
- 17 Q So you lied in order to avoid going to jail or prison,
18 correct?
- 19 A Partly, yes.
- 20 Q That was your motive for lying, right?
- 21 A Not wholly, no.
- 22 Q But that was part of your motive for lying, right, is
23 that you had your own self interest in mind, correct?
- 24 A Correct, partly.
- 25 Q And how would that be different from yesterday when

David Anthony Tyre
Cross-examination by Mr. Gowdy

1 you testified?

2 A Because I've been completely, totally up front.

3 Q Well, the jury is going to decide that, Mr. Tyre. You
4 will agree with me you have the same bias and self interest
5 today that you had on June the 22nd when you lied to law
6 enforcement, correct?

7 A No, sir. I --

8 Q Do you want to go to jail now?

9 A No, sir, I don't want to go to jail.

10 Q Do you want to go to prison now?

11 A No, sir.

12 Q All right. Well, then you have the same bias and the
13 same selfish interest today --

14 MR. CAMPBELL: Objection, Your Honor. Badgering.

15 THE COURT: Sustained.

16 Q How is your interest different, Mr. Tyre?

17 A Because at this point my only concern is really for
18 Kreszena, the children and my family. No, I don't want to
19 go to prison, but that's up for these people to decide
20 based on what I'm telling them and how they interpret it.

21 THE COURT: Mr. Seay, there is to be no further coming
22 and going.

23 THE BAILIFF: All right, sir.

24 THE COURT: Pardon me.

25 MR. GOWDY: Yes, sir, Your Honor.

David Anthony Tyre
Cross-examination by Mr. Gowdy

- 1 BY MR. GOWDY
- 2 Q Mr. Tyre, you told law enforcement that she was in the
3 wheelchair on June the 22nd when you raised her arms up
4 above her head and broke her arm.
- 5 A I may have. I don't remember telling them that but...
- 6 Q You don't deny telling law enforcement that on
7 June the 22nd -- you told them on June 22nd her arms -- she
8 was in the wheelchair and she raised her arms up above her
9 head and you broke her arm, correct?
- 10 A I -- I may have told them that. I don't -- that's not
11 what I put in my statement. That's not what happened.
- 12 Q That's not what you told your lawyer yesterday either,
13 right? You told him she was in the floor.
- 14 A That's where she was.
- 15 Q But regardless of whether or not she was in the
16 wheelchair or on the floor you moved her, right?
- 17 A Correct.
- 18 Q You moved someone who had a broken arm. You are a
19 trained EMT, correct?
- 20 A Yes, sir.
- 21 Q You couldn't wait to tell this jury about all of your
22 training and all of your awards and all of this. And you
23 moved someone with a broken arm and staged it where it
24 would look like she rolled out of bed, correct?
- 25 A No, sir.

David Anthony Tyre
Cross-examination by Mr. Gowdy

1 Q Well, why would you move her from carpeted floor to
2 hardwood floor, Mr. Tyre?

3 A As I said, I didn't immediately notice anything wrong
4 with her. She didn't indicate there was any problem. So I
5 went ahead and scooped her up and took her to the room.
6 When I was in the hall, that's when she began to cry and I
7 began to notice the problem. That's when I laid her on the
8 floor.

9 Q I thought you heard a pop, Mr. Tyre.

10 A I did hear a pop, and I didn't notice anything
11 immediately.

12 Q Were you present when the doctor testified that her
13 bone density test was normal?

14 A Yes, sir.

15 Q I want you to show the jury how you broke the right
16 arm, the upper right arm, of an otherwise normal
17 ten-year-old bone. Show me.

18 A As I said yesterday, she had her arms behind her head
19 farther than I can put them. I had my hands on her. And
20 she was doing her head-turn thing. And just I was kind of
21 doing a little rolling with it. And I just began to move
22 her back and forth and just shake her and just attempt to
23 aggravate her.

24 Q That's your explanation?

25 A Yes, sir. That's -- that's what happened.

David Anthony Tyre
Cross-examination by Mr. Gowdy.

- 1 Q Speaking of aggravating Minor Mr. Tyre, do you know
2 Jeanie Johnson?
- 3 A Yes, sir.
- 4 Q Why don't you tell the jury who Jeanie Johnson is.
- 5 A That's Kreszena's cousin, by first or second. I don't
6 know.
- 7 Q And she would have been around you and Minor right?
- 8 A Yes, sir.
- 9 Q Do you remember telling Jeanie Johnson that you liked
10 to piss Minor off?
- 11 A I may have said that, yes, sir.
- 12 Q You liked to piss a ten-year-year old special needs
13 child off. Do you remember saying that?
- 14 A I didn't say it in those words, no, sir.
- 15 Q Well, what words did you use, Mr. Tyre?
- 16 A I may have said I like to piss her off, but I've also
17 said I like to aggravate her.
- 18 Q Well, then you did use those words, didn't you?
- 19 A Yes, sir.
- 20 Q Did you also tell Jeanie Johnson that you thought that
21 that ten-year-old child was manipulative?
- 22 A No, sir.
- 23 Q You deny that.
- 24 A What I said is she was a little manipulator. That was
25 based on an ongoing conversation me and her mother had

David Anthony Tyre
Cross-examination by Mr. Gowdy

1 frequently.

2 Q That child is a manipulator.

3 A Yes, sir, in a way.

4 Q That's what you said?

5 A In a way, yes, sir.

6 Q And she liked to piss people off.

7 A No. She didn't like to piss people off.

8 Q Mr. Tyre, did you put your hands on her ears until she
9 squealed and flailed? Do you remember doing that in front
10 of Jeanie Johnson?

11 A Yes, sir.

12 Q When Elfrieda Monday asked you what happened to Minor
13 on June the 22nd what did you tell her?

14 A I told her that Minor had rolled out of the bed.

15 Q When EMS asked you what happened to her on June the
16 22nd what did you tell them?

17 A Same thing.

18 Q When the doctors asked you what happened to her on
19 June the 22nd what did you tell them?

20 A Very same thing.

21 Q And then on July the 5th when there were a team of
22 healthcare providers trying to save her life, you asked
23 what?

24 A If the fall could have caused it.

25 Q What fall, Mr. Tyre?

David Anthony Tyre
Cross-examination by Mr. Gowdy

- 1 A I was staying with the story that I had told.
- 2 Q Why were you staying with that story, Mr. Tyre?
- 3 A As I said, I was afraid and ashamed of what had
- 4 happened. And as I said yesterday, sometimes -- not
- 5 sometimes. Oftentimes when you lie you get locked into it.
- 6 Q Well, Mr. Tyre, it's one thing to worry about your
- 7 girlfriend having some interaction with DSS. It's quite
- 8 another to have a team of critical care physicians coming
- 9 in and trying to save a ten-year-old child's life and you
- 10 perpetuating and continuing that lie. Don't you agree?
- 11 A Yes, sir.
- 12 Q And not only did you manufacture a story about a fall
- 13 when you are talking -- would you agree with me that
- 14 physicians need the most accurate up-to-date information
- 15 they can possibly get when they're on the verge of treating
- 16 someone who's critically injured?
- 17 A Yes, sir.
- 18 Q Absolutely essential that they have the right
- 19 information, right, Mr. Tyre?
- 20 A Yes, sir.
- 21 Q Did you tell the physicians that you shook her so
- 22 violently that a passerby would have stopped it?
- 23 A No, sir.
- 24 Q Did you tell them that you dropped her on her head?
- 25 A No, sir.

David Anthony Tyre
Cross-examination by Mr. Gowdy

1 Q Instead of saying those two accurate pieces of
2 information that might have actually helped treat her what
3 did you ask?

4 A Could the fall have caused it.

5 Q A phantom fall. You never mentioned to the doctors
6 that you shook her, did you?

7 A No, sir.

8 Q You never mentioned to the doctors that you dropped
9 her on her head.

10 A No, sir.

11 Q I want you to look at the jury and tell them why you
12 were feeding false information to the critical care
13 physicians, Mr. Tyre.

14 A As I said, I was ashamed of what I had done with the
15 lying, and, most importantly, of hurting her the first
16 time.

17 I didn't realize the situation was as critical as it
18 was until the doctors came and said. And I still didn't
19 realize that my actions earlier that day had caused those
20 injuries, because Minor showed no indication of any distress
21 or any pain or any hurt. And, put it simply, I didn't
22 think what I did was hard enough to have hurt her.

23 Q Mr. Tyre, one of her pupils was like that and one of
24 her pupils was like that. And you are a trained EMT that
25 couldn't wait to come and tell this jury about all of the

David Anthony Tyre
Cross-examination by Mr. Gowdy:

1 books you were reading and all of the awards that you won,
2 and you can't tell something's wrong with a ten-year-old
3 when one pupil is like that?

4 MR. CAMPBELL: Objection, Your Honor. Badgering
5 again.

6 THE COURT: Overruled.

7 Q And one's like that.

8 A I was on the phone with her mother, and I told her
9 that. Her mother repeated to me that Minor does not present
10 normally with the seizures.

11 Q Is her mother a trained EMT?

12 A No, sir, she's not, but her mother is a nurse and
13 she's treated her for ten years.

14 Q So -- so despite all of your training as an EMT you
15 thought when one pupil was that size and one was that size,
16 which is indicative of no brain activity, that you should
17 do what, call the fire department?

18 A No, sir.

19 Q You didn't call 9-1-1, did you, Mr. Tyre?

20 A No, sir, I did not.

21 Q You called the fire department.

22 A Yes, sir.

23 Q Did you tell the fire department that you had dropped
24 her on her head?

25 A No, sir.

David Anthony Tyre
Cross-examination by Mr. Gowdy

1 Q Did you tell the fire department that you had shaken
2 her so violently that a passerby would have stopped it?

3 A No, sir.

4 Q I want to go with you to July the 5th, Mr. Tyre, and
5 see if you will agree with me that grandma and grandpa did
6 not take her to church because they didn't want to move her
7 from her wheelchair to a van because she had a broken arm.
8 Do you agree with me on that?

9 A Yes, sir.

10 Q They were so concerned about pain that they didn't
11 want to simply move her from the wheelchair to the van to
12 go to church. Do you agree with me?

13 A Yes, sir.

14 Q And when the nurse leaves her in the wheelchair with
15 you the first thing you do is what?

16 A I placed her in the floor so she could stretch out.

17 Q You take her out of the wheelchair, Mr. Tyre, right?

18 A Yes, sir.

19 Q You take her out of the wheelchair and you hold her by
20 her ankles.

21 Now, let me ask you this, Mr. Tyre. She had a broken
22 arm, right?

23 A Yes, sir.

24 Q A broken arm that was wrapped to her body.

25 A Yes, sir.

David Anthony Tyre
Cross-examination by Mr. Gowdy

1 Q The other arm, she has very little to any fine motor
2 skills or the ability to brace a fall, correct?

3 A Yes, sir.

4 Q What did you think was going to brace the fall when
5 you picked her up by her ankles, Mr. Tyre?

6 A I didn't think about that. I'm not going to deny that
7 it was stupid. I'm not denying that at all. It was
8 stupid. I didn't think things out.

9 Q That's the only word you can come up with, Mr. Tyre,
10 is stupid? Had you ever seen anyone else pick that child
11 up by her ankles?

12 A No, sir.

13 Q Before she had a broken arm had you ever seen anybody
14 pick her up by her ankles?

15 A No, sir.

16 Q So she's got a broken arm and she's got another arm
17 that she can't use like a normal ten-year-old can use, and
18 you think it's a good idea while nobody else is around to
19 pick her up by her ankles, right?

20 A Yes, sir. I thought it was something maybe she would
21 have enjoyed.

22 Q Enjoyed? How was she supposed to brace her fall,
23 Mr. Tyre?

24 A Because she wasn't going to fall. I was going to
25 lay -- lay -- let her down gently.

David Anthony Tyre
Cross-examination by Mr. Gowdy

1 Q She's almost 50 inches tall and weighs almost
2 70 pounds, and she can't help. If it was such a good idea,
3 Mr. Tyre, why didn't you do it while mama was around?

4 A As I said, I -- it just occurred to me as I came back
5 in the room and saw her laying in the floor.

6 Q Mr. Tyre, this is the third time you had ever kept her
7 by herself, right?

8 A Yes, sir.

9 Q On June the 22nd she winds up in the emergency room,
10 right?

11 A Yes, sir.

12 Q On June (sic) the 5th she winds up in a morgue, right?

13 A Yes, sir.

14 Q Do you see a pattern developing, Mr. Tyre?

15 A Yes, sir.

16 Q Do you see a pattern develop?

17 A Yes.

18 Q Mama's gone; grandparents aren't around. It's just
19 you and that little ten-year-old, right?

20 A Yes, sir.

21 Q Mr. Tyre, let's be candid with the jury. That floor
22 was carpeted, right?

23 A Yes, sir.

24 Q Despite the stupidity of what you did that's not why
25 she's dead.

David Anthony Tyre
Cross-examination by Mr. Gowdy,

1 I want to talk about what else you did. I want to talk
2 about shaking her. Why did you shake her, Mr. Tyre?

3 A I didn't shake her.

4 Q Mr. Tyre, were you present when the physician said her
5 brain injuries were like being in a high-speed car
6 accident?

7 A Yes, sir.

8 Q And you want this jury to believe that laying somebody
9 down on a carpeted floor is going to give injuries like
10 that?

11 A That's all that I did that I thought would have caused
12 the injury.

13 Q Well, you admitted to the police that you must have
14 shaken her too hard, Mr. Tyre.

15 A Yes, sir.

16 Q Let's talk about the shaking.

17 A I was afraid to when I was holding her and swinging
18 her like a pendulum.

19 Q No, sir. Mr. Tyre, you'd already told the police that
20 you held her by her ankles. That's not what you were
21 talking about. You'd already told the police that. You
22 put it in your statement.

23 You told them that you held her by her ankles and that
24 you swung her. You told them that you broke her arm. And
25 then you came back and said I must have shaken her too hard.

David Anthony Tyre
Cross-examination by Mr. Gowdy

1 So let's talk about the shaking, Mr. Tyre. Why did you
2 shake her?

3 A I didn't shake her.

4 Q Mr. Tyre, were you present when the doctors said it
5 had to be a fall from about 10 feet to have that kind of
6 brain injury?

7 A Yes, sir.

8 Q She didn't fall from 10 feet, did she?

9 A No, sir.

10 Q Were you present when the doctor said it had to be a
11 car accident at a high rate of speed?

12 A Yes, sir.

13 Q She wasn't in a car accident at a high rate of speed,
14 was she, Mr. Tyre?

15 A No, sir.

16 Q Were you present when the doctor said that it would
17 have been a shaking so severe that a normal person, a
18 passerby, would have stopped it and immediately known that
19 it was dangerous? Were you in the courtroom when he said
20 that?

21 A Yes, sir.

22 Q Let's talk about the shaking, Mr. Tyre. Why did you
23 shake her?

24 A I did not shake her violently like he described.

25 Q Mr. Tyre, how's she dead?

David Anthony Tyre
Cross-examination by Mr. Gowdy

- 1 A As I said, all I did was raise her, swing her like a
2 pendulum, place her back down on the floor.
- 3 Q Mr. Tyre, how's she dead?
- 4 A That's all I did, sir.
- 5 Q How did her brain move from one side to the other,
6 Mr. Tyre?
- 7 A My understanding was the bleeding on the brain.
- 8 Q Well, how did she get that?
- 9 A Blunt force trauma.
- 10 Q How did she get that?
- 11 A When I placed her on the floor and she hit her head.
- 12 Q So you admit that you engaged in the conduct that led
13 to her death.
- 14 A Yes, sir.
- 15 Q So when your lawyer asked you if you meant to hurt
16 her, the real question is did you mean to engage in the
17 conduct that killed her. And you'll agree with me that you
18 did, correct?
- 19 A I can't say that I'll agree with that, no.
- 20 Q Well, Mr. Tyre, it's a simple question. Did you mean
21 to pick her up by her ankles?
- 22 A Yes, sir.
- 23 Q Did you mean to pick a ten-year-old up by her ankles
24 that had a broken arm and the inability to brace herself
25 with the other?

David Anthony Tyre
Cross-examination by Mr. Gowdy

- 1 A Yes, sir.
- 2 Q Did you intend to do that?
- 3 A Yes, sir.
- 4 Q Mr. Tyre, you admit to me -- and more importantly you
5 admit to this jury -- that you were the only adult around
6 on June the 22nd when Minor arm was broken.
- 7 A Yes, sir.
- 8 Q And you intended to engage in the conduct that
9 resulted in her broken arm.
- 10 A Yes, sir.
- 11 Q And you will admit to me that you were the only adult
12 present on July the 5th of 2009 when Minor sustained
13 a fatal traumatic brain injury.
- 14 A Yes, sir.
- 15 Q And you will admit to me that you intended to take her
16 out of a wheelchair that her grandparents had left her in
17 so she would not have to be moved, agreed?
- 18 A Yes, sir.
- 19 Q You intended to put her on the floor even though she
20 could not support herself, correct?
- 21 A Yes, sir. I laid her on the floor.
- 22 Q You intended to pick her up by her ankles even though
23 she had no way of bracing her fall.
- 24 A Yes, sir.
- 25 Q You, and you alone, are solely responsible for what

David Anthony Tyre
Cross-examination by Mr. Gowdy

1 happened to that child. Agreed, Mr. Tyre?

2 A Yes, sir.

3 Q Now, I want to ask you one more time. I want you to
4 look at that jury, and you tell them what you meant when
5 you told the police I must have shaken her too hard.

6 A I was referring to when I was swinging her like a
7 pendulum. I must have swung too quickly, too fast. I
8 don't know. That's what I was referring to.

9 Q Mr. Tyre, did you shake her so violently that a
10 passerby would have immediately known that it was
11 dangerous?

12 A No, sir, I did not.

13 Q Well, then that couldn't have been what did it,
14 Mr. Tyre. Did you hear the physicians testify?

15 A Yes, sir.

16 Q It is abusive brain injury -- traumatic, abusive brain
17 injury -- not playing on a floor in a trampoline with a
18 child. Tell the jury what you did that led her brain to
19 shift from one side to the other, Mr. Tyre.

20 MR. CAMPBELL: Your Honor, asked and answered.

21 THE COURT: Overruled.

22 A As I said, I had picked her up and had swung her like
23 a pendulum, placed her down. I heard a thud. I laid her
24 body or laid the rest of her on the floor. Checked her.
25 She didn't act like she was hurting. She just looked

David Anthony Tyre
Cross-examination by Mr. Gowdy

1 around, and that was that. I didn't think any more of it.

2 Q Do you really think she's manipulative, Mr. Tyre?

3 A In the context of the conversation I was having with
4 her mother and Jeanie. As I said, I called her a little
5 manipulator based on actions she done. It was in a joking
6 jesting kind of way with her mother.

7 Q You really liked to piss her off, Mr. Tyre.

8 A Not to make her angry, just to aggravate her like I
9 did all the children.

10 Q You kept her by herself three times, right?

11 A At least.

12 Q Well, Mr. Tyre, was it three or was it four?

13 A I kept her several times, three that I know of for a
14 fact, maybe more.

15 Q Okay. Well, Let's err on the high side and say four
16 then. Okay. Of the four times you kept her she wound up
17 going to the emergency room half those times. And one time
18 she did not come back. Agreed?

19 A Yes, sir.

20 Q And you, and you alone, are solely responsible for
21 that, correct?

22 A Yes, sir.

23 THE COURT: Mr. Campbell.

24 MR. CAMPBELL: Thank you, Your Honor.

25

David Anthony Tyre
Redirect examination by Mr. Campbell

1 REDIRECT EXAMINATION

2 BY MR. CAMPBELL

3 Q Tony, were you in the courtroom when the doctor was
4 asked if swinging Minor by her ankles and a thump when she
5 was placed on the floor would absolutely lead to the
6 injuries that she suffered?

7 A Yes, sir.

8 Q So you were in the courtroom when that was said as
9 well, right?

10 A Yes, sir.

11 Q When you had your interview with the police you still
12 had not told the truth about the broken arm, had you?

13 A No, sir.

14 Q But you told the truth that day, didn't you?

15 A Yes, sir.

16 Q Why did you tell the truth that day?

17 A It had been eating me up the whole time, and it was
18 just time to come clean and get it all out.

19 Q You could have come up with that lie, couldn't you?

20 A Yes, sir.

21 Q And nobody would have been none the wiser.

22 A I -- I would have known.

23 Q So you told the truth that day.

24 A Yes, sir.

25 Q And the story about swinging Minor by her ankles and

David Anthony Tyre
Redirect examination by Mr. Campbell

1 her hitting her head, is that the truth?

2 A Yes, sir.

3 Q Now, you gave your written statement about swinging
4 the ankles on that day, correct?

5 A Yes, sir.

6 Q After that the investigators left the court -- left
7 the interview room. When did you find out about the cause
8 of death?

9 A I believe after they had come back in.

10 Q After you had given your written statement.

11 A Yes, sir.

12 Q And that's when you tried to clarify in regards to
13 shaking her too hard.

14 A Yes, sir.

15 Q And you were meaning -- were you meaning by the
16 ankles? Is that what you were clarifying, that incident?

17 A Yes, sir.

18 Q Now, Mr. Gowdy brought up this little manipulator
19 comment that you made.

20 A Yes, sir.

21 Q And you never got to explain the context or the joking
22 manner in which this was made. Please explain this to the
23 jury.

24 A We -- we would often talk about the children,
25 obviously. Chris would tell me about Minor Chris had told

David Anthony Tyre
Redirect examination by Mr. Campbell...

1 me one time that Minor sometimes would get bored in class,
2 or she used to, and she would gag herself so she could take
3 a ride down the hall to the nurse's station because she was
4 bored. She was just trying to get out. And I had told --
5 I said, well, she's just a little manipulator. And, you
6 know, we -- we laughed about it, and just that was it.

7 Ms. Diane had also told me one time that Minor enjoyed
8 getting her back scratched and said something along the
9 lines of she'll roll over just so I'll scratch her back.
10 So she was -- again, I believe I may have said that to
11 Ms. Diane. I know I said that to Chris, that she's just
12 a -- she's just a little manipulator.

13 I just meant it in that, that context. It just -- I
14 didn't mean it that she was malicious about it or I didn't
15 mean it in a malicious way.

16 Q Did you mean it in a mean way?

17 A No.

18 Q Were you saying it to degrade Minor in any way?

19 A No, sir.

20 Q She was doing things to get what she wanted?

21 A Yes, sir.

22 Q And she was -- so she was able to communicate.

23 A Yes, sir.

24 Q Now, Mr. Gowdy asked you two or three times about
25 shaking her so a passerby would have stopped. Have you

David Anthony Tyre
Redirect examination by Mr. Campbell

1 ever testified or given a written statement to the fact
2 that you were shaking her so a passerby would have stopped
3 it?

4 A No, sir.

5 Q You picked her up, swung her by her ankles and placed
6 her on the floor. And that's when she hit her head,
7 correct?

8 A Yes, sir.

9 Q How long a period of time from when she -- you placed
10 her on the floor until she began to seize?

11 A It's hard to tell. At least -- at least an hour. I
12 know one movie was half over and I had done put another one
13 in and it was -- it had been playing for some time.

14 Q So this isn't a scenario where she seized right away.

15 A No, sir.

16 Q The putting her -- putting your hands on her ears and
17 squeezing her head, explain that to the jury.

18 A I didn't squeeze her head.

19 Q Okay. What did you do?

20 A I believe Minor maybe was -- maybe was sleeping or she
21 wasn't -- I don't remember exactly. She was sitting in the
22 chair, and it was the middle of the day. I can't remember
23 exactly the reason, but I believe I told Jeanie watch this,
24 this, you know, she won't like this. And I just put my
25 hand on her head, wouldn't let her turn it. When she got

David Anthony Tyre
Redirect examination by Mr. Campbell

- 1 mad, I let go.
- 2 Q Why would you do something that she wouldn't like?
- 3 A I had seen other people do it just -- and stuff to
- 4 aggravate her. Not out of a malicious way, just -- just
- 5 something to make her mad.
- 6 Q Did you do...
- 7 MR. CAMPBELL: One moment, Your Honor.
- 8 (Pause.)
- 9 Q Are you telling the truth today?
- 10 A Yes, sir, I am.
- 11 Q Have you told the truth since you gave that
- 12 interview --
- 13 A Yes.
- 14 Q -- July the 9th?
- 15 A Yes, sir.
- 16 Q Did you intentionally cause Minor any harm?
- 17 A No, sir, I didn't. I wasn't -- I wasn't intending to
- 18 hurt her. The intent and the result were so far apart, I
- 19 didn't. I wasn't trying to hurt her.
- 20 Q Did you love Minor
- 21 A Yes, sir, I did.
- 22 MR. CAMPBELL: No further questions, Your Honor.
- 23 MR. GOWDY: Very briefly Your Honor, if I may.
- 24
- 25

David Anthony Tyre
Recross-examination by Mr. Gowdy

1 RECROSS-EXAMINATION

2 BY MR. GOWDY

3 Q Mr. Tyre, let's see if we can set a different story,
4 not one about backscratches. But Minor watching
5 television. And you say watch this, and you go put her
6 hands over her ears and hold them until she starts yelling
7 and flailing. Do you remember that?

8 A I don't remember her watching television. She may
9 have been but it was only --

10 Q And you put your hands over her ears until she starts
11 yelling and flailing, correct?

12 A Yes, sir.

13 Q And then you say I'm pissing her off. But when
14 someone rebukes you for it you say she's a manipulator,
15 correct?

16 A Nobody rebuked me for it.

17 Q Nobody asked you why you were doing that?

18 A I don't recall that, no, sir.

19 Q Mr. Tyre, did you intend to engage in the conduct that
20 led to Minor death?

21 A I intended to engage in the conduct, yes, sir. I
22 didn't intend for Minor to die or to be hurt in any way.

23 Q Well, so, Mr. Tyre -- well, even if all you did was
24 pick her up by her ankles and put her on the floor -- if
25 that's all you're going to admit to -- you still engaged in

Kreszena Marie Gist
Direct examination by Mr. Brannon

1 the conduct that resulted in her dying, correct?

2 A Yes, sir.

3 Q Three or four times you watched her, and 50 percent of
4 the time she wound up in the emergency room, correct?

5 A Yes, sir.

6 Q And one time not to come back, correct?

7 A Yes, sir.

8 MR. CAMPBELL: Nothing, Your Honor.

9 THE COURT: You may step down.

10 MR. BRANNON: Your Honor, we call Kreszena Gist.

11 KRESZENA MARIE GIST, having
12 been first duly sworn, testified as follows:

13 DIRECT EXAMINATION BY MR. BRANNON

14 Q Ma'am, would you please state your full name for the
15 record?

16 A My name is Kreszena Marie Gist.

17 Q Okay. Say your first name a little bit louder.

18 A Kreszena.

19 Q Okay. It is not Christina. It is Kreszena, right?

20 A Kreszena.

21 Q All right. What do people call you?

22 A Most people call me Chris, and that's okay.

23 Q All right. You are Minor mama, aren't you?

24 A I am.

25 Q And you have other babies, right?

Kreszena Marie Gist
Direct examination by Mr. Brannon

- 1 A I do.
- 2 Q I made an error in my opening statement, didn't I?
- 3 A Yes, sir.
- 4 Q I said you had two other children. You did have two
5 others, but you had more than two, didn't you?
- 6 A Yes, sir.
- 7 Q What are their names?
- 8 A Minor Minor Jordon and Minor.
- 9 Q So I was off by two, right?
- 10 A Yes, sir.
- 11 Q Okay. Tell the jury a little bit about Minor
- 12 A Minor was our miracle. When she was born -- I guess
13 she was about a month old when she had her first long
14 seizure. And when she was about nine months old they
15 finally diagnosed her with a metabolic disorder and told us
16 that she wouldn't make it to the age of three. And-but
17 through much hard work and staying on top of appointments
18 and doctors we managed to make it to ten. She --
- 19 Q There was something else in there too, wasn't there?
20 I know there was a lot of hard work and staying on top of
21 things. But there was probably some prayer in there too,
22 wasn't there?
- 23 A Definitely.
- 24 Q Minor couldn't say her A-B-C's, could she?
- 25 A No, sir.

Kreszena Marie Gist

Direct examination by Mr. Brannon

1 Q But she could tell you what she liked and disliked,
2 couldn't she?

3 A Those who knew her well could tell.

4 Q I mean, we all looked at the picture. She was
5 beautiful. But you could tell in that picture she was
6 happy, couldn't you?

7 A Yes, sir.

8 Q You could tell when she was not happy too, couldn't
9 you?

10 A Yes, sir.

11 Q Could you tell when she liked something?

12 A Really the chief things that you had to go on was her

13 smiles or her snapping-turtle look that we called it when
14 she just didn't like what was going on. You just kind of
15 had to apply it to the situation.

16 Q But if you put -- if you put Shrek in she smiled,
17 right?

18 A Right.

19 Q Okay. Show you knew that Shrek was okay.

20 A Uh-huh.

21 Q When did you meet Tony?

22 A I actually had met him quite -- probably eight months
23 even before we started dating.

24 I'm a nurse. I was a nurse at White Oak Manor and he
25 worked for Transmed, which is an ambulance service that we

Kreszena Marie Gist
Direct examination by Mr. Brannon

1 used quite often for a lot of our dialysis patients. And
2 so I saw him quite regularly. And we would just converse
3 in the hall, that kind of thing.

4 Q And, now, you started dating when?

5 A Actually I think our first day was Christmas Day of
6 December.

7 Q Of '08, correct?

8 A Correct.

9 Q And so you had met him, you say, about eight months
10 before that.

11 A Something like that just at work, yeah.

12 Q Like April or -- March, April, May, something like
13 that.

14 A Yeah, somewhere in there.

15 Q Okay. All right. After your first date -- how long
16 was it after your first date that you introduced Tony to
17 your children?

18 A I can't remember. It was -- it was a couple of
19 months.

20 Q Okay. So maybe February?

21 A February or March maybe.

22 Q All right. What kind of things did you tell Tony
23 about Minor before he met her?

24 A I had found that it's much easier in the beginning
25 just to let them know what they're dealing with basically.

Kreszena Marie Gist
Direct examination by Mr. Brannon

1 I never was ashamed of Minor I always talked about
2 her. And so I just basically said that she was a
3 ten-year-old that had cerebral palsy and she was total
4 care, because us both being in medical work we understood
5 kind of what that meant. And I'm sure at different
6 conversations I might have gone more in-depth. But, I
7 mean, that was basically it from the beginning what I told
8 him.

9 Q Okay. Did you tell him that Minor was not fragile?

10 A In another conversation we had been -- he had been
11 around her a while. And I -- I think he had been maybe
12 trying to do like pick her up and put her somewhere. And I
13 could tell he was just really concerned, you know, trying
14 to be careful. And I had just made the comment, you know,
15 she's not fragile just as long as you, you know, be careful
16 and do it right, she'll be okay.

17 My point, I was trying to explain, trying to make him
18 feel better and let him know that, you know -- because he
19 was really holding her kind of tight. And I was just
20 trying to get him to kind of relax a little bit and know
21 that, you know, by all means she was not like a normal
22 child. But, I mean, if you blew on her she wasn't going to
23 break. That's what I was trying to.

24 Q All right. Was Minor -- I know that she didn't have
25 regular or normal muscle control. I understand that. But

Kreszena Marie Gist
Direct examination by Mr. Brannon

1 she was flexible, wasn't she?

2 A Yes. Due to the fact she was low tone she was able to
3 do a lot.

4 Q And so when in my opening statement I described her
5 hands behind her head and stuff like that, was that an
6 accurate description of things that she could do with her
7 arms?

8 A Yes, sir.

9 Q And is it true that Minor enjoyed her -- her mobility?
10 She enjoyed being able to move her arms and maybe even her
11 legs and those kinds of things when she had the opportunity
12 to do that?

13 A Yes, sir.

14 Q And so if you restricted her movement in some way did
15 it frustrate her?

16 A Yes.

17 Q Okay. Were there people in -- were there people that
18 had been around Minor that you could tell she wasn't all
19 that friendly with or comfortable with?

20 A Not really. I mean, like I said, she pretty much --
21 if she smiled you knew she was good. And if she had her
22 bad look, as I would call it, I guess, you knew it wasn't.
23 I mean, those kinds of things was hard to tell.

24 Q Okay.

25 A So either she did or she didn't.

Kreszena Marie Gist
Direct examination by Mr. Brannon . . .

1 Q Right. It was either good or bad.

2 A Right.

3 Q Okay. After the June 22nd incident where Minor arm
4 was broken, Tony's already admitted that he didn't tell you
5 how that actually happened, correct? And the fact that he
6 didn't tell you is true, correct?

7 A Yes, sir.

8 Q What I want to know is after June 22nd, after she came
9 home from the emergency room that night with her arm in a
10 bandage, did Minor give Tony the bad look?

11 A She was medicated and...

12 Q Well, I'm not talking about that night specifically.

13 But after she came home, any time after that, did she give
14 Tony the bad look?

15 A Not that I observed.

16 Q Okay. So, and I appreciate that when she came home
17 she had medication, so that would not have been a good time
18 to judge. But afterwards she still give Tony the good
19 look, right?

20 A I can't -- I mean, I don't remember anything.

21 Q But you don't remember the bad look, right?

22 A Right.

23 Q Okay. When -- earlier you said Minor had her first
24 seizure just months after she was born, right? How long
25 did those seizures go on?

Kreszena Marie Gist
Direct examination by Mr. Brannon

1 A They were uncontrolled until she was about ten months
2 old. And then we found our miracle drug, we called it, and
3 she stayed controlled for a while until she had gotten an
4 infection in her blood, and the seizures had started again.

5 Q Okay. How long is a while? I know this is difficult.

6 A It had been a couple of years. And then she had
7 gotten the infection. She has a couple of other medical
8 things that were going on. And she had an access in her
9 chest, and it had gotten infected and she had gotten septic
10 which caused her to go into having seizures for probably a
11 couple of weeks. And we had to do some medication
12 adjustment. And then she was good and had been well for
13 five -- about four or five years.

14 Q Okay. But at some -- at some point in late 2008 or
15 2009 was there some adjustment going on to that miracle
16 drug?

17 A Because she had been seizure free for so long we
18 started to see if we could wean here. They told me we
19 could try it and see.

20 Q Okay. And where were you in that process?

21 A I believe we were -- we were coming toward the end. I
22 don't remember the exact dose.

23 Q Okay. All right. When Minor was actively seizing in
24 those periods of time did you -- did you learn what the
25 seizures were like, at least from an appearance standpoint?

Kreszena Marie Gist
Direct examination by Mr. Brannon

1 A Over time it did develop a pattern.

2 Q Okay. And did you learn the signs that the seizure
3 was coming to an end or that it was about to -- to wane?

4 A You never really knew if it was over or if it would
5 start again, but if the symptoms started to subside, then
6 you'd be under the impression that possibly it was coming
7 an end.

8 Q And did you learn the breathing patterns during a
9 seizure and then following the seizure, in the immediate
10 recovery period following the seizure?

11 A I'm not sure about after, but during, yes, there was.

12 Q Okay. On July 5th did Tony call you and tell you that

13 Minor was having a seizure or that he thought she was having
14 a seizure?

15 A He did.

16 Q Do you remember how many times he called you?

17 A No, sir, I don't.

18 Q It was more than once?

19 A Yes, sir.

20 Q Okay. Between phone calls with Tony did you do
21 anything?

22 A I called the doctor.

23 Q Okay. Was there a point in time when while you were
24 at work and Tony was at your house that he put the phone to
25 Minor to her face or her nose or her mouth, so that you

Kreszena Marie Gist
Direct examination by Mr. Brannon

1 could hear the breathing or the breathing pattern?

2 A Yes.

3 Q Did you, in fact, tell him that it sounded like a
4 seizure or something that you had heard before?

5 A It sounded like something I had heard before.

6 Q Okay. Did you believe based on what he had told you
7 and what you were hearing through the phone that Minor was
8 coming out of the seizure?

9 A No, sir, not based on what he was saying or hearing.
10 My mom had come, and I based that information on her
11 assessment.

12 Q Correct. That was going to be the next question.

13 Were you comforted by the fact that your mother was
14 there or came in and her observations and that expressing
15 those to you that Minor was about to come through or come out
16 of the seizure?

17 A She felt like the symptoms were subsiding.

18 Q Okay. All right. And based on that did you, in fact,
19 tell Tony that you thought she would be okay?

20 A No, sir. That was the first conversation.

21 Q Okay.

22 A And I just said that you don't know what can happen,
23 because you don't. They can automatically start again, or
24 there's no -- it's not by a book. You just don't know.
25 And I just told him that if anything else happened to call

Kreszena Marie Gist
Direct examination by Mr. Brannon.

- 1 me back.
- 2 Q Okay. Now, let's back up.
- 3 What is miracle league baseball or miracle league ball?
- 4 A It's a baseball program where special-needs children
- 5 can participate in something that every child does.
- 6 Q Okay. And was Minor involved in miracle league?
- 7 A She was.
- 8 Q How many years or seasons did she play?
- 9 A Actually this was our first year at it, but she
- 10 really, really enjoyed it. So we had -- I think it was her
- 11 second season.
- 12 Q Okay. All right. And did Tony help you getting Minor
- 13 to the ballpark?
- 14 A Yes, sir. He transported her chair.
- 15 Q Okay. And -- and did he carry her across the parking
- 16 lot from time to time or something like that?
- 17 A That one time. The very first time we went we didn't
- 18 know what to expect. And actually I think mom had
- 19 transported her chair at that time. And so we had to walk
- 20 to her vehicle.
- 21 Q Were there other occasions or instances where Tony
- 22 helped you with Minor
- 23 A Yes, sir.
- 24 Q He talked about, I think it was, going to the dentist.
- 25 Did that happen?

Kreszena Marie Gist
Direct examination by Mr. Brannon

1 A Yes, sir.

2 Q Okay. And as your relationship with Tony progressed
3 did you find that he was of a positive assistance to you
4 with Minor

5 A Yes, sir.

6 Q How did he interact with the other kids?

7 A He played with them and -- I mean, he didn't shun
8 them.

9 Q Okay. But you've heard his testimony that he would
10 walk in the door and they would be on his legs or on his
11 back. Was that accurate?

12 A Yes, sir.

13 Q Okay. So they enjoyed his company too, right?

14 A Yes, sir.

15 Q Okay. Do you believe that Tony intended to hurt your
16 daughter Minor

17 MS. CRICK: Your Honor, actually I'm going to object.
18 That's speculative.

19 THE COURT: Sustained.

20 Q Had you ever seen Tony do anything to Minor
21 intentionally to harm her?

22 A No, sir.

23 Q And you felt comfortable with him providing care for
24 your daughter, is that correct?

25 A Yes, sir.

Kreszena Marie Gist

Direct examination by Mr. Brannon

- 1 Q Had you ever seen him do anything inappropriate to the
2 other children?
- 3 A No, sir.
- 4 Q When they would wrestle or when they would play was it
5 appropriate play?
- 6 A Yes, sir.
- 7 Q And when he would play with those children were there
8 times that Minor was in the room?
- 9 A I'm not sure, but it's possible.
- 10 Q Okay. So Minor saw him interacting with the other
11 children as well, correct?
- 12 A It's possible.
- 13 Q Did he from time to time at night go to their rooms
14 and check to make sure that they were sleeping or that they
15 were comfortable before -- before bed?
- 16 A Yes, sir.
- 17 THE COURT: Ma'am, you're going to have to speak up a
18 little bit. I'm having a hard time hearing you. I expect
19 the jurors are too. You might need to get closer to that
20 microphone.
- 21 Q You had no reason to believe that Tony was going to
22 hurt your daughter, did you?
- 23 A No, sir.
- 24 Q Because you didn't believe he would, did you?
- 25 A No, sir.

Kreszena Marie Gist
Direct examination by Mr. Brannon

1 Q Thank you.

2 MR. BRANNON: Just one minute.

3 (Pause.)

4 Q I skipped a spot. Forgive me. What medications was
5 Minor on?

6 A Lamitol for her seizures, Risperdal or Risperdone.
7 She was on the generic for behavior. And a multivitamin
8 and Zyrtec for allergies.

9 Q Okay. You're a nurse, right?

10 A Yes, sir.

11 Q Is it your understanding that either one or the other
12 of those medications or the combination of those
13 medications leads individuals to bruise easily?

14 A I don't know. Not the Risperdal, no. I think the
15 Lamitol. I'm not sure.

16 Q Well, do you remember talking to Investigator Moss?

17 A Yes, sir.

18 Q Do you remember telling her that the medications, one
19 or the other or the combination, made Minor bruise easy,
20 more easily, than normal?

21 A When I had taken her to the doctor because she was
22 starting to bruise and she was on Prednisone they had --
23 the doctor after she had done tests and everything
24 mentioned maybe it could be a possibility and just to
25 monitor.

Kreszena Marie Gist
Cross-examination by Ms. Crick

1 Q Okay. And you told that to Investigator Moss, right?

2 A Uh-huh.

3 Q Okay. Ma'am, I don't have any more questions, but I'm
4 sure the state will.

5 CROSS-EXAMINATION

6 BY MS. CRICK

7 Q How old was Minor when she died?

8 A Ten.

9 Q And you got a call that day from the defendant around
10 6:15?

11 A I'm not sure of the time, but yeah.

12 Q And he told you that Minor had a seizure. That's what
13 he told you on the telephone.

14 A Yes, ma'am.

15 Q And you weren't there.

16 A No.

17 Q And you didn't see with your own eyes.

18 A No.

19 Q You don't know if he had already dropped her, beaten
20 her, whatever. You don't know that that had not already
21 happened before a seizure, do you?

22 A No.

23 Q You relied on what he told you on the telephone, is
24 that correct?

25 A Yes.

Kreszena Marie Gist
Cross-examination by Ms. Crick

1 Q So when you called the doctor and relayed that
2 information, that was only based on what the defendant was
3 telling you, is that correct?

4 A Yes.

5 Q At the point that he talked to you on the phone he
6 didn't mention shaking Minor did he?

7 A No.

8 Q He didn't mention that he was swinging her by her
9 feet, did he?

10 A No.

11 Q He didn't mention that he had dropped her on her head,
12 did he?

13 A No.

14 Q So you had none of that information.

15 A No.

16 Q All he was telling you was that she had just had a
17 seizure, and you took him at his word.

18 A He described some of the symptoms to me.

19 Q What did he tell you about how she broke her arm?

20 A He had said that she rolled out of the bed.

21 Q So he had already lied to you before about how Minor
22 arm was broken.

23 A Right.

24 Q And you believed him when he told you how her arm was
25 broken.

Kreszena Marie Gist
Cross-examination by Ms. Crick

- 1 A I did.
- 2 Q So he was pretty convincing when he lied to you, was
3 he not?
- 4 A Right.
- 5 Q It had been five years since she had a seizure.
- 6 A Correct.
- 7 Q Did you not find it a very strong coincidence that the
8 day she suffered traumatic brain damage was the first time
9 she had ever had a seizure in five years?
- 10 A I'm -- I mean, I just thought maybe it was because of
11 the medicine.
- 12 Q But she had not had one --
- 13 A No.
- 14 Q -- in the entire time you had been weaning her.
- 15 A No.
- 16 Q You stated that you started dating the defendant late
17 2008 and he was introduced to your children in the spring
18 of 2009.
- 19 A Correct.
- 20 Q And I think Mr. Brannon just asked you about some
21 increase in bruising. You had taken her to the doctor.
- 22 A Yes.
- 23 Q And that was in May of 2009?
- 24 A The latter half of May, yeah.
- 25 Q So in May of 2009 you noticed an increase in bruising

Kreszena Marie Gist
Cross-examination by Ms. Crick

1 to your child so that you took her to a doctor to see what
2 the cause might be?

3 A Yes.

4 Q And the doctor told you there were no issues that he
5 could detect and just to monitor her condition?

6 A Correct.

7 Q And yet after that visit in May, in June you found out
8 that Minor had a broken arm.

9 A Correct.

10 Q Had you ever swung Minor by her feet?

11 A No.

12 Q Well, let me ask it this way. Had you ever swung Minor
13 by her feet when she did not have a broken arm?

14 A No.

15 Q Had you seen anybody do that?

16 A No.

17 Q Did you swing Minor by her arm when she did have a
18 broken arm?

19 A No.

20 Q Did you see anybody else do that?

21 A No.

22 Q On the day of July the 5th that she was killed you
23 were concerned about moving her too much. And that's why
24 she didn't go to church, correct?

25 A Yes.

Kreszena Marie Gist
Cross-examination by Ms. Crick.

1 Q Because she may be in some pain and she had to be
2 moved in and out of the chair.

3 A Yes.

4 Q And in and out of the vehicle. You certainly wouldn't
5 have --

6 THE COURT: Excuse me. You'll have to answer orally.
7 Don't shake your head.

8 A Yes.

9 Q So you certainly wouldn't have picked her up by her
10 feet.

11 A No.

12 Q Did you ever tell the defendant, hey, do whatever you
13 want with her?

14 A No.

15 Q She's just like everybody else, you can do whatever
16 you want?

17 A No.

18 Q As time went on with him in your life you allowed him
19 to stay by himself with Minor a couple of times?

20 A I did.

21 Q And it was very few times, correct?

22 A Correct.

23 Q And one of those times she ended up with a broken arm,
24 correct?

25 A Correct.

Kreszena Marie Gist
Redirect examination by Mr. Brannon

1 Q And one of those times she ended up dead, correct?

2 A Correct.

3 Q Had you known, in fact, that she had broken -- he had
4 broken Minor arm would you have felt comfortable leaving
5 him alone with her?

6 A No.

7 Q You did not know that information at the time.

8 A Right.

9 MS. CRICK: I have nothing further, Your Honor.

10 REDIRECT EXAMINATION

11 BY MR. BRANNON

12 Q Kreszena, Ms. Crick asked you about your responses to
13 the phone calls with Tony on the night of July the 5th.
14 And you were asked. You based your decision -- your
15 decisions, your decision to call the doctor and stuff on
16 things that Tony told you, on information that he gave you.
17 Do you remember those questions?

18 A Yes, sir.

19 Q Do you remember what she just asked you?

20 A Yes, sir.

21 Q You also relied on information that you gathered from
22 your mother too, correct?

23 A Yes, sir.

24 Q Did your mother ever tell you that Minor had bruising
25 around her eye?

Kreszena Marie Gist
Redirect examination by Mr. Brannon

- 1 A No, sir.
- 2 Q Did your mother tell you that she had bruising around
3 her neck?
- 4 A No, sir.
- 5 Q Did your mother complain to you about how she was
6 placed on the floor?
- 7 A No, sir.
- 8 Q So when Ms. Monday, when grandma, left you were
9 unaware of any bruising or any complaints about her
10 placement on the floor or anything like that, correct?
- 11 A Correct.
- 12 Q And what's -- what was that miracle drug?
- 13 A Lamitol.
- 14 Q Lamitol was what was controlling her seizures,
15 correct?
- 16 A Yes, sir.
- 17 Q And you were doing what with the Lamitol?
- 18 A Weaning her down.
- 19 Q And that means reducing the dosage?
- 20 A Correct.
- 21 Q Did you ever stop giving her the Lamitol before she
22 passed?
- 23 A No, sir.
- 24 Q The doctors were looking for a level, a decreased
25 level, that would still control the seizures, correct?

Kreszena Marie Gist
Redirect examination by Mr. Brannon

1 A Yes, sir.

2 Q And how long had it been since the last reduction in
3 Lamitol?

4 A Maybe a couple of weeks.

5 Q A couple of weeks.

6 A To a month at the most.

7 Q Okay. So not an extended period of time then, right?

8 A No, sir.

9 Q Could it be that we reduced just a little too much?

10 A I'm not a doctor. I don't know.

11 Q Thank you.

12 MR. BRANNON: Nothing further.

13 MS. CRICK: Nothing further from the state.

14 THE COURT: You may step down.

15 MR. CAMPBELL: Your Honor, at this time the defense
16 rests.

17 THE COURT: Any reply?

18 MR. GOWDY: No, sir, Your Honor.

19 THE COURT: All right. Ladies and gentlemen, that is
20 all of the testimony or evidence to be offered in the trial
21 of the case.

22 What remains to be done are the lawyers' final
23 summations, after which I'll instruct you on the law, and
24 then you can begin with your deliberations in the case.

25 Before we can do that I've got some matters I'll need

1 to address with the lawyers first. Should take only a few
2 moments.

3 But right now I'm going to ask you to please go to
4 your jury room. Do not yet discuss the case in any
5 fashion. I'll bring you back shortly to conclude with the
6 final summations and the legal instruction. So please
7 retire, but do not discuss the case.

8 (The following takes place outside the presence of the
9 jury.)

10 THE COURT: Motions or other matters?

11 MR. CAMPBELL: Yes, sir, Your Honor. At this time I
12 would renew my motions for a directed verdict, and more

13 specifically on the infliction or allowing infliction of
14 great bodily injury upon a child.

15 I believe it states for purposes of this section great
16 bodily injury means bodily injury which creates substantial
17 risk of death.

18 I think it is pretty clear to the Court that the
19 broken arm did not create a substantial risk of death,
20 serious or permanent disfigurement. I think it's pretty
21 clear. And there's been absolutely no testimony on serious
22 or permanent disfigurement.

23 And as for protracted loss or impairment of a function
24 of the bodily member or organ, Your Honor, there's been
25 zero scintilla of medical evidence regarding this broken

1 arm.

2 Dr. Wren testified that he didn't even look at it,
3 Your Honor. There's been no x-rays, anything. This arm
4 was not casted; this arm was not splinted. It was merely
5 wrapped, Your Honor.

6 We don't know if it was a stress fracture or what type
7 of break it was. There's been no evidence of it, Your
8 Honor. Therefore the state has not met their burden as to
9 this charge, Your Honor.

10 THE COURT: Okay. Who wants to address that?

11 MR. GOWDY: Your Honor, Subsection C, I believe, is
12 pled in the disjunctive and uses the word "or -- "or
13 protracted loss or impairment of function of any body
14 member."

15 Your Honor, I think the testimony, particularly taken
16 in the light most favorable to the nonmoving party, is that
17 the arm was wrapped to her body. She could not use it.

18 That is loss; that is impairment. And I think there's
19 a sufficient amount of evidence for the jury to conclude
20 that he's guilty of that section.

21 MR. CAMPBELL: Your Honor, just in brief response to
22 that, I think in regards to impairment, the testimony was
23 that she can move the arm. She had movement of the arm.

24 That's the reason they had to bandage it to her, is
25 because she could move it, Your Honor. The arm was not

1 impaired at all. There was no cast, no splint. It was
2 only bandaged to her because she could move it, Your Honor.

3 THE COURT: Well, I don't think having a broken arm
4 necessarily immobilizes it, but it certainly impairs its
5 function.

6 I think that's a jury question, so I deny your motion
7 for a directed verdict.

8 Any others?

9 MR. CAMPBELL: No other motions, Your Honor.

10 THE COURT: Okay, sir.

11 MR. CAMPBELL: We have requests to charge at the
12 appropriate time.

13 THE COURT: Okay. Does the state have any requests
14 for jury instructions?

15 MR. BARNETTE: I have not seen the Court's
16 instructions. I don't know what the instruction is on it.
17 We'd like to enter the state's charge here, and I have the
18 case law too, Your Honor.

19 May I approach the bench, Your Honor?

20 THE COURT: Yes, sir.

21 MR. BARNETTE: Your Honor, the charge we'd like to
22 charge, Your Honor, comes from State vs. Jarrell. It's 350
23 South Carolina, 90, 564, S.E. 2d, 362, a 2002 court of
24 appeals case, Your Honor.

25 In there the law of the case was, "Extreme

1 indifference is in the nature of a culpable mental state
2 and therefore is akin to intent."

3 In South Carolina, "Indifference in the context of
4 criminal statutes has been compared to the conscious act of
5 disregarding a risk which a person's conduct has created,
6 or a failure to exercise ordinary or due care."

7 That comes directly from the case, Your Honor. We'd
8 like to have that included in the charge with the other
9 charges the Court may -- and don't know -- I have not seen
10 the homicide-by-child-abuse charge, but I would like to
11 take a look at it too, Your Honor.

12 THE COURT: All right.

13 MR. CAMPBELL: Your Honor, our charge as well -- and
14 I'll hand that up to the Court -- it comes from the same
15 case, Your Honor.

16 However the quotation and the quote that Mr. Barnette
17 is quoting from is not the actual definition that they
18 gave. At the end of that paragraph the case more
19 specifically defines extreme indifference as the, "Mental
20 state akin to intent characterized by a deliberate act
21 culminating in death."

22 That is the definition and the only definition they
23 give to extreme indifference. It's at the end of that
24 paragraph that Mr. Barnette is quoting. And I think both
25 sides are using the State vs. Jarrell case, Your Honor.

1 THE COURT: Well, there are some other cases that
2 define that too, or at least shed some light on the intent
3 of it. So I think I encompass that in my instruction.
4 I'll be happy for y'all to review it so you can address it
5 in your closing statements if you wish to.

6 All right. Let's take ten minutes, and let me see the
7 lawyers in chambers to look at the instruction.

8 (Whereupon, a recess was taken.)

9 THE COURT: All right. Are we ready for the jury?

10 MR. GOWDY: The state is, Your Honor.

11 MR. CAMPBELL: The defense is ready, Your Honor.

12 THE COURT: Okay. Bring them in, please.

13 MR. BRANNON: Your Honor, we may make that request to
14 charge a part of the court record?

15 THE COURT: I will do that.

16 MR. BRANNON: Thank you, sir.

17 THE COURT: You don't need the case marked, do you?

18 MR. BRANNON: No.

19 (Defendant's request to charge marked Court's Exhibit
20 No. 1.)

21 (The following takes place in the presence of the
22 jury.)

23 THE COURT: All right. Ladies and gentlemen, as you
24 know, all of the evidence has been received, and so you're
25 going to hear from the lawyers in their final summations,

Closing arguments

1 after which I'll instruct you on the law, and then you can
2 begin with your deliberations in the case.

3 So please give the lawyers your attention now as they
4 give you their final summations.

5 Mr. Campbell.

6 MR. CAMPBELL: May it please the Court, Your Honor.

7 A ten-year-old little girl. Loves to laugh, loves to
8 play, loves cartoons, loves movies, melts everyone's heart.

9 I'm not talking about Minor though. I'm describing my
10 daughter. She knew I was stressed all of this week about
11 this trial and how important it was to me. And she saw it
12 on the news and she asked me why I was representing Tony.

13 And I told her, and I gave her a civics' lesson, I
14 guess, that ten-year-olds, they don't really understand in
15 this Nancy Grace level of news media how everyone's guilty
16 at the drop of a hat.

17 And I explained to her that Tony is presumed innocent,
18 and just as he is innocent right now. And just like every
19 person that's ever charged with a crime, he's innocent,
20 that the state has to prove beyond a reasonable doubt that
21 Tony is guilty of two crimes.

22 Now, you're going to hear from Mr. Gowdy in a few
23 minutes, and he always likes to use a line or a statement
24 in some of his closings that he's standing on a rock and
25 it's a rock called justice.

Closing arguments

1 Well, I'm telling you I'm standing on a mountain, and
2 this mountain is reasonable doubt. And it's a tough
3 mountain to climb.

4 And why is that burden there? Why is there a burden
5 of reasonable doubt? Well, let's look at the indictments.
6 It's the State of South Carolina vs. David Anthony Tyre --
7 the State of South Carolina, all the resources that the
8 state has at its disposal -- Solicitor Trey Gowdy; Deputy
9 Solicitor Barry Barnette; Assistant Solicitor Cindy Crick.
10 You had the sheriff's department, coroner's office,
11 forensic pathologist. All work for the State of South
12 Carolina. All the resources in the state. That's why

13 there is a huge burden they must meet.

14 Let's look at the charges against Tony. First off,
15 he's been charged with infliction of a great bodily injury
16 of a child. It's the June 22nd of 2009 incident.

17 Now, infliction of great bodily injury is infliction
18 of an injury on a child. The great bodily injury must be
19 injury that could result in death, injury that impairs or
20 disfigures, injury that has a protracted loss, or an injury
21 that impairs.

22 Now, let's look at the broken arm. That's the charge,
23 that's the injury that falls under the great-bodily-injury
24 charge.

25 Zero medical evidence in regards to the broken arm --

Closing arguments

1 zero. Not one doctor testified to the extent of this
2 injury. They said it was in the upper arm, but they never
3 told you whether it was a stress fracture, a compound
4 fracture, what type of fracture it was.

5 What you did know is that there was absolutely no cast
6 on the arm. There was no splint on the arm. They wrapped
7 it and put it in a sling.

8 Now, Minor could move her arm. Minor still had full
9 movement of this arm. Didn't lead to risk of death and it
10 wasn't disfigured. There was not a protracted loss of the
11 arm and she still had movement. It wasn't impaired.

12 As a matter of fact, they bandaged the arm to her
13 because she could move the arm and to help the healing.
14 Not one ounce of testimony about the broken arm other than
15 the fact that Tony lied about the injury, the fact that he
16 lied how the injury happened.

17 Now, in the reading of the statute and the reading of
18 the law that the judge will give you the fact that he lied
19 about how the injury happened has no bearing. That's not
20 part of the case law.

21 And was it wrong for Tony to lie about how the broken
22 arm happened? Absolutely it was wrong. I will sit here
23 and tell you that it was one hundred percent wrong for him
24 to lie about the broken arm.

25 He took the stand and told you it was wrong and stupid

Closing arguments

1 and he should not have broken the arm and that he should
2 not have lied about it. And he told you the reasons why he
3 lied about it.

4 The fact was he didn't want Chris to get in trouble
5 with DSS. He didn't want her to be mad at him because he
6 loved her. But he also told you, he admitted, he was
7 trying to cover his own butt in that scenario too.

8 I can't excuse him for that, but all I can tell you is
9 those actions, the lying, that has no bearing on that
10 statute, on whether, in fact, he's guilty of that crime.

11 Now, he told you that Minor had her arms behind her
12 head and that he was playing with her. He didn't tell you

13 he meant to break her arm, that he bashed her arm, that he
14 twisted her arm, or that he did anything in anger or that
15 he was frustrated with her.

16 He explained to you how that happened. Not one
17 doctor, not one expert, not one single person took the
18 stand and disputed that, nobody, of how that happened, no
19 one. Being stupid is not enough.

20 Now, let's go to July the 5th of 2009. This is where
21 the charge of homicide by child abuse results. And the
22 judge will define that for you later and explain to you the
23 elements of the crime of homicide by child abuse. But I'll
24 give you a brief synopsis now. It's abuse, an intentional
25 abuse, inflicted upon a child with an extreme indifference

Closing arguments

1 to the act that causes, that ultimately causes, death.

2 Now, the judge will define extreme indifference for
3 you, but you will hear the words intentional act in that.

4 Let's look at the facts on that day, July the 5th of
5 2009. Diane Thornton, the nurse, gets there at 6:30 a.m.
6 She sees Minor every day or every weekend. She's in charge
7 of Minor has been for a year and a half.

8 What does she notice when she wakes Minor up? She's
9 breathing more rapid than normal. She's extremely sluggish
10 that morning. She asked Tony did Minor have a late night,
11 because Minor was already sluggish that morning, and Diane
12 was concerned about it.

13 Now, as the day progresses Tony's in and out of the
14 home. Diane's watching all day. She leaves approximately
15 3:30. Tony takes over. At that point Minor is sitting in
16 her wheelchair with her feeding tube off in the living room
17 without question.

18 Tony checks on the feeding tube. Fine. She's done
19 feeding. Changes the bag and disposes of it.

20 Tony then decides to lay her on the carpet floor, let
21 her stretch out. You heard the testimony. Minor hated to
22 be restrained. She hated to be cooped up. Her mother
23 testified to this; the nurse has testified to this. She
24 did not like it. So Tony laid her on the floor and put the
25 movies in for her -- Shrek. She enjoyed it.

Closing arguments

1 You heard Tony testify how he would tickle her feet,
2 how he would play with her and he would check on her and go
3 back and forth.

4 Then you heard Tony describe to you he did, I would
5 say, probably the stupidest thing in his entire life,
6 something that there's no doubt he regrets tremendously.
7 He picked her up by her ankles, swung her in a pendulum
8 manner. But he heard her and noticed that she didn't like
9 it. So he sat her down immediately. He didn't continue to
10 do that. He sat her down immediately, and she hit her head
11 and he heard a thump. Now, he checked on her right
12 afterwards. He didn't notice anything wrong.

13 Now, Tony explained to you the reason he did this was
14 because he was roughhousing with her and playing with her
15 like he would the other children that he has done that to
16 that Minor has witnessed.

17 Now, I can tell you I've swung, I've played with my
18 children that way, held them by their ankles. I'm from a
19 small town in Kentucky. I've seen that done with hundreds
20 of kids before growing up. None of my kids are special
21 needs though. And I can't tell you I've ever seen that
22 done with a special-needs child. I can't condone that
23 aspect of it. I cannot.

24 But Tony told you that he wanted to treat Minor just
25 like all the other children. He wanted her to feel just

Closing arguments

1 like the other normal children because he played with Minor
2 and Minor and Minor And he wanted to play with Minor
3 that same way. He wanted her to be able to enjoy that same
4 type of play.

5 Now, the fact of the matter is it was dumb and it was
6 stupid. But he did not have the intent to cause her any
7 injury when he picked her up by her ankles. You heard him
8 testify that he had planned on just sitting her back down
9 where she would not get hurt. That was his intent. That
10 was what was in his head, not that she was going to get
11 hurt.

12 The connection was not there because he felt like he
13 was doing it in a safe enough manner where she would not
14 get hurt. And you heard him say as soon as she didn't like
15 it he sat her down. He was thinking about her at that
16 time. And he checked on her right afterwards. He checked
17 on her. No problems.

18 Approximately an hour later, an hour, he noticed
19 something wasn't right with her, her eyes rolling in the
20 back of her head. He noticed the seizure. He noticed
21 something was wrong.

22 He knew Minor had a history of seizures. He knew it
23 was part of her medical past. He knew she was on Lamitol
24 and he knew that they were reducing the dosage of the drug.
25 He called Chris immediately describing the signs of the

Closing arguments

1 seizure and she told him sounds like a seizure.

2 Grandmother comes in. Almost immediately recognizes
3 the fact that it's a seizure. The grandmother of this
4 child has seen this child for the ten years of her life,
5 seen the seizures that she's going through, saw the signs.
6 The grandmother looks at her and tells Kreszena she's
7 coming out of it, everything's fine.

8 Kreszena felt better about it because her mother was
9 there. And the grandmother left. Felt comfortable enough
10 that she left.

11 Tony still wasn't satisfied. You know, he could have
12 said forget about it, but no. He still looks at her and

13 continued to watch her and did not like the way she was
14 breathing, just did not like it.

15 So he called Hilltop Fire Department because -- and
16 he'd called Chris two or three times saying I -- I just
17 don't know. So he calls Hilltop Fire Department to get her
18 some oxygen because he had trusted the grandmother, and the
19 mother noticed. The grandmother said she's coming out of
20 it, she's going to be fine. The mother called the doctors
21 and told him it sounded from the descriptions that she was
22 coming out of it as well.

23 He calls Hilltop Fire Department for oxygen, couldn't
24 get Hilltop Fire Department. Calls Boiling Springs Fire
25 Department. That way, that's when Captain Gibbs and Nick

Closing arguments

1 Ray come in with the oxygen.

2 Now, I know they testified she was on the couch when
3 they got there, but I think once you look at their
4 statements which are in evidence, you're listening to what
5 they actually testified to -- you listened to the
6 grandmother's testimony, you listened to Tony's testimony.
7 And you look and determine whether it's even possible for
8 Minor to be on the couch. I think it's pretty clear that
9 Minor was on the floor when they got there. Tony had her on
10 the floor already when they got there.

11 Now, they provide her oxygen, get her O2 levels up.
12 Still not good enough. Let's call EMS. And EMS arrives.
13 Tony scoops her up, takes her to the ambulance. He was
14 going to hop in the back. They told him, no, you got to
15 ride up front. But half way through for some reason they
16 have to stop and he has to get in the back to help, and he
17 does.

18 Now, at that point Minor is on that road. Minor in
19 trouble. There's without question of that.

20 They get to the hospital though, and this is still
21 recovering from a seizure. There's no knowledge of any
22 potential brain injury at this point. Everything that
23 they've seen was a seizure. And the things that they would
24 know to believe, this was a seizure. She was fine up until
25 an hour after the bump on the head before the seizure

Closing arguments

1 started.

2 She had a history of seizures. There was no reason at
3 that point to tell the doctors about the bump on the head.
4 She had a history of seizures. That's why this was treated
5 as a seizure from the very beginning.

6 Only after the doctors came in, Dr. Sahhar, and looked
7 at the CT scan and everything did they realize that this
8 could be a brain injury. And at that point, that's when
9 the family was asked about a brain injury.

10 Now, initially Pastor Monday, the child's grandfather,
11 asked could it have anything to do with the fall in the
12 floor. And Dr. Sahhar said this injury occurred in the
13 last four to 24 hours. This was approximately
14 8:00 o'clock.

15 Tony began watching her at 3:30. So that fits into
16 that timeframe. But Tony wasn't watching her that entire
17 time. Tony was not in care for her that entire time. She
18 was in the care of Ms. Thornton as well. Remember, Minor
19 woke up sluggish and with rapid breathing.

20 Now, Tony admitted to the pendulum and the hitting on
21 the head. But there were other timeframe things that could
22 have happened in the interim.

23 Now, I think Tony sat there on the stand though and
24 told you that more than likely he was the cause because of
25 the swinging and the hitting on the head. Tony told you

Closing arguments

1 that.

2 He didn't say, look, this could have happened before I
3 was there. He stepped up and said, look, I may be the
4 cause of this, this is probably me from the slinging.

5 But I'll tell you, Tony didn't tell the doctors after
6 the brain injury that he swung her and she hit her head.
7 Tony didn't do that. I can't tell you he did. And I can't
8 tell you that was very smart either.

9 But two days later Tony goes down. He's called by
10 Investigator Moss. Goes down, interviews with Investigator
11 Moss.

12 She asks him what did y'all do that day, what
13 happened. And he explained how he played with her and the
14 swing -- picking her up by her ankles and her bumping her
15 head, because at this point he knew there was a brain
16 injury. At this point they knew.

17 So he explained that to Investigator Moss. He could
18 have kept his mouth shut, because remember the doctors told
19 them between four and 24 hours. Could have kept his mouth
20 shut and said it wasn't me, I don't know what you're
21 talking about, everything was fine under my watch.

22 He didn't. He told the truth, told them, look, could
23 have been this incident. But you know what? He also told
24 the truth about the broken arm. And the broken arm was
25 gone. That wasn't an issue.

Closing arguments

1 Investigator Moss asked him about the broken arm, and
2 he told the truth again. He told her, look, the
3 falling-out-of-the-bed story, that ain't what happened.
4 She had her arms behind her head. I was playing with her,
5 swinging her arms, and I heard a pop.

6 Now, I think you heard testimony it looked like a
7 dislocation and that that's how he initially treated it and
8 that she didn't even scream out in pain until he was taking
9 her into the bedroom. And that's when he laid her on the
10 floor.

11 Now, it's going to be made out like he tried to stage
12 her falling out on the floor. If you're going to stage

13 falling out -- falling out of a bed and landing on the
14 floor, why are you going to put her head at the foot of the
15 bed? It wasn't staged.

16 He was taking her into the bedroom. She began to cry
17 out in pain. And he immediately sat her down in the floor
18 because it was like a backboard that was what he was
19 trained. It wasn't in the soft of bed. It was a firm
20 surface.

21 Now, he tells Investigator Moss about swinging by the
22 ankles and the head and tells her about the broken arm. At
23 that point he learns what the cause of death is, because
24 the autopsy's been done. Dr. Wren has done the autopsy.
25 And she comes in and tells what the cause of death was.

Closing arguments

1 And you heard him say blunt force trauma. That's what
2 Dr. Wren said. And he said must have shaken her too hard,
3 I just must have shaken her too hard in regards to swinging
4 her by her ankles and her hitting her head in that
5 instance.

6 He never said I shook her violently or I shook her so
7 hard a passerby would stop. That was never part of the
8 interview. It was never shaking her like this. That was
9 never described. Now, Investigator Moss never testified
10 that he described it as a shaking her where a passerby
11 would stop it.

12 Now, let's look at the evidence and the witnesses. As
13 I mentioned earlier, Captain Gibbs and Nicholas Ray, they
14 came in and testified about the giving Minor the oxygen,
15 being one of the first responders on the scene and about
16 her being on the couch.

17 I have already pointed it out to you, but I'm going to
18 point it out to you again. Take a look at the couch. Take
19 a look at the pictures of the living room. It's not
20 possible with the way they describe it. It's just not
21 possible.

22 As a matter of fact, on the stand he said Tony never
23 said that she had had a seizure. As a matter of fact, it's
24 in the top third of his written statement that's been
25 introduced into evidence that he read to you. Tony said

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1 she'd had a seizure. It's in the very beginning. It's
2 clear Minor was on the floor when they arrived.

3 Now, let's look at Sharon Niedermeyer and Diane
4 Thornton. They testified about Minor and her treatment and
5 when they left what happened afterwards. Not one time did
6 they testify that Tony abused Minor or ever saw him treat
7 her with malice, with anger, with frustration.

8 They're nurses who are there constantly. Diane
9 Thornton works 20 hours every weekend. Sharon Niedermeyer
10 is there every day during the week. Never testified to the
11 fact that Tony was treating Minor never.

12 Now, Ms. Monday, Minor grandmother, takes the stand.

13 And she told you, like I said, she saw Minor saw the
14 seizure, thought she was coming out of it.

15 But did she say anything about Tony mistreating Minor
16 or seeing Tony be mean to Minor or seeing Tony get
17 frustrated with Minor Nope. Never. Never had been one to
18 question Tony's actions around Minor not at all.

19 Pastor Monday, her husband, same thing. Testified
20 that -- about what happened at the hospital right after
21 July the 5th.

22 Let's talk about what he didn't say. He never said
23 one time that he saw Tony be mean to Minor abuse Minor in
24 any way, get frustrated with Minor Nothing.

25 As a matter of fact, what he did tell you is on the

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1 news right after Tony was arrested that he just couldn't
2 see Tony doing something like this. And why would he say
3 that? It's because he had the chance to observe Tony
4 around Minor. He saw Tony's interactions with Minor and how
5 he cared for her and loved her.

6 Now, you heard from Investigator Moss who interviewed
7 Tony, who interviewed the doctors, interviewed the family.
8 Investigator Moss -- let's talk about what she did say and
9 did find out. She told you that she talked to Dr. Sahhar
10 and described what Tony told her. And he told her it
11 absolutely could have led to the injuries -- it absolutely
12 could have led to those injuries.

13 And in addition Investigator Moss told you in her
14 investigation she interviewed people. She did not put
15 forth any testimony at all about anyone seeing Tony abuse,
16 mistreat, be mean to Minor. None.

17 You saw, heard Dr. Sahhar take the stand. He said 24
18 hours, blunt force trauma. And, again, he said when I
19 asked him Tony's description of what happened, he said that
20 could have led to the injuries, yes, that could have led to
21 those injuries.

22 You heard from Dr. Esce who said it was blunt force
23 trauma.

24 You heard from the forensic pathologist, Dr. Wren, one
25 of the smartest men I can tell you in Spartanburg County.

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1 He told you blunt force trauma. And he could not in any of
2 his tests indicate intent, not in any of his testing. My
3 cocounsel, Doug Brannon, asked him, and he said no.

4 Now, let's talk about who you didn't hear from today
5 or this week. The two EMS drivers who transported Minor
6 They talked to Investigator Moss, and they told her, and
7 she testified to this, that Tony was calm and he acted
8 appropriately in helping them out. He provided them the
9 list of medications.

10 They weren't called to testify to tell you that he
11 acted appropriately and helped out. We had to get from
12 that from Investigator Moss.

13 The mother, Kreszena Gist. Did they call her to
14 testify? No. She had been around Tony more than anybody.
15 She'd seen his interactions with Minor she'd seen his
16 interactions with the other children. There was nothing,
17 no indications at all he's ever been mean to any of the
18 children or to Minor

19 They -- he treated them in a loving manner, loved to
20 play with them, loved to roughhouse with them. And they
21 loved him -- and they loved him. You've never heard any
22 testimony at all about any of these other children and
23 whether or not any harm had ever come to them at all.

24 Now, let's talk about something else. You were
25 shown -- I don't know -- several pictures of bruising, of

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1 different aspects of Minor one of which is of her eyelid,
2 which is dark and purple, and you'd think she had a black
3 eye.

4 Dr. Sahhar testified said, no, this is common for
5 someone with cerebral palsy or someone who had a seizure.
6 You did not, you didn't, hear one bit of evidence linking
7 any type of bruise whatsoever to Tony Tyre.

8 We've got pictures of bruises, and we're going to
9 throw them out here and make you think that it's Tony's
10 fault, Tony caused all of these bruises. There's not one
11 ounce of testimony or evidence linking those to Tony. Not
12 one. They want you to think that Tony caused those
13 bruises.

14 But this was a special-needs child who had no muscle
15 tone and was extremely flexible. I think it's pretty clear
16 a child like that is easy to bruise. She's being handled
17 constantly, moved from the bed to the chair, having to be
18 changed. She's being handled constantly. A child like
19 that is going to bruise, but there's not one ounce of
20 evidence or testimony linking any of those bruises to my
21 client.

22 Let's talk about Tony. Not one person came up here
23 and took the stand and testified to Tony being mean to any
24 of the children or Minor abusing any of the children, and
25 Minor including Minor

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1 Now, you heard him say I liked to aggravate her, I
2 liked to piss her off. It's a term he used. I liked to
3 piss her off.

4 But you know what? I have four children ages 16, ten,
5 eight, and my youngest turned seven this week. And I can
6 tell you there are times I like to make them mad too.
7 That's what -- little kids, you play with them. I
8 roughhouse with them. You know, they like to make me mad
9 too. They like to come and ruffle my hair. They like to
10 move my head around. It is interactions between
11 individuals.

12 Now, no question Minor was special needs. Minor was
13 different. But Tony told you I didn't want to treat
14 differently, I wanted to treat her as a normal person, I
15 didn't want to treat her as fragile. You heard him testify
16 I have an aunt and uncle who were mentally disabled, I
17 couldn't stand it when they were picked on, couldn't stand
18 it when they were made fun of because they knew it. They
19 wanted to be normal. That was Tony's viewpoint. He wanted
20 to treat Minor normal.

21 Now, Tony, seven years, decorated service, won several
22 firemen-of-the-year awards, several lifesaver awards. And
23 now we're supposed to believe that out of the blue he has
24 the mind to intentionally harm this child.

25 You heard Tony. He loved Minor. He loved those

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1 children. He loved Kreszena. Their loss is a loss I can't
2 comprehend, and I will never be able to, at least I hope
3 not. And it compares not one iota to what Tony's feeling.
4 But Tony has to live with this the rest of his life. The
5 family he thought he was going to have was Kreszena and
6 being part of Minor Never going to happen again. He's
7 lost that, and that is his fault.

8 You heard Chris take the stand. And through Tony's
9 actions around the children she trusted him. Ten-year-old
10 little girl liked watching movies, liked to be loved, liked
11 to laugh, liked music, loved to play.

12 But this time I am talking about Minor She was loved
13 greatly by her mother and her family. And wouldn't her
14 mother know best? Wouldn't she know best because she felt
15 comfortable in all of Tony's actions throughout the
16 relationship that he wouldn't hurt her?

17 Ladies and gentlemen, when you go back and deliberate,
18 I told you there's a mountain to climb, and it is
19 reasonable doubt. And Mr. Brannon told you in the opening,
20 in his opening argument, that it is a doubt that makes you
21 pause, makes you say h'm.

22 When looking at everything, when listening to the
23 testimony, when you go back and you recount the testimony,
24 and you pause and you shake your heads no, that's
25 reasonable doubt. Tony Tyre is not guilty. Thank you.

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1 MR. GOWDY: May it please the Court, Your Honor.

2 Madam forelady and ladies and gentlemen of the jury,
3 this will be the last time anyone from the State of South
4 Carolina has a chance to stand in front of you.

5 So let me start by saying thank you for your service.
6 Service in any criminal case is difficult. Service in a
7 case that involves a child is doubly so. So on behalf of
8 everybody involved in the case thank you for your
9 attention, your attention to detail, your patience with the
10 Court and with the attorneys. And most of all thank you
11 for your service.

12 Judge Cole is the judge of the law. And he, and he
13 alone, will tell you what the law is at the end of this
14 trial. So to the extent anyone else tries to tell you what
15 the law is, disregard what we say that contradicts in any
16 way, shape or form with what His Honor says. He is the
17 judge of the law.

18 But just like he's the judge of the law you are judges
19 too. You don't have on a black robe. We may not stand up
20 when you come into the courtroom. Nobody may address you
21 as Your Honor. But you are judges. You are judges without
22 robes, but you are judges. You, and you alone, will decide
23 what happened in this case on June the 22nd and on July the
24 5th.

25 And while at first bluish it may seem like a daunting

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1 task to determine what's true from what's not true, what
2 happened from what didn't happen, what's fact and what's
3 fiction, the reality is you do that every single day of
4 your lives whether you're a coworker or a parent or a
5 spouse or a friend or a child or all of the above.

6 You make important decisions every single day. And
7 you don't have a prosecutor and you don't have a defense
8 attorney and you don't have a judge present when you do it.
9 You have your background, your education and your common
10 sense.

11 One of the things I believe the judge will tell you as
12 your job as a juror, is to determine the credibility or the
13 believability of the witnesses. You decide what pieces of
14 evidence to attach value to. You decide, frankly, what
15 pieces of evidence to attach no value to.

16 The fact that someone testifies doesn't mean you have
17 to believe one word that they say or you can believe
18 everything that they say. And what of the bedrocks, one of
19 the touchstones of our criminal justice system, is that
20 defendants don't have to testify.

21 That is a hard and fast ironclad rule that no
22 defendant can be compelled to testify. And no hint or
23 inference of guilt can be drawn from the fact that the
24 defendant does not testify.

25 However, when a defendant does walk and puts his or

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1 her hand on the Bible and sits right here and testifies you
2 are free to judge his testimony by the exact same standard
3 that you would anyone else's, which means you start going
4 through the checklist.

5 Does this person have an interest in the outcome of
6 this case; is this person biased in some way towards the
7 outcome in this case? With every witness, including the
8 defendant if he or she testifies, you have to determine
9 whether or not it has the ring of truth to it, whether it's
10 credible, whether it is believable.

11 As we go through the facts in this case I want to ask
12 you to keep maybe two or three different backdrops in your
13 mind.

14 I don't know much about literature. We read "Amelia
15 to Delia" and "Golf Digest" in my family. But I can tell
16 you this. There was a German philosopher by the name of
17 Friedrich Nietzsche and he said something that is every bit
18 as accurate today as the day he did it.

19 He was a German nihilist, and this is what he said.
20 "I'm not mad that you lied to me. I'm mad that I can't
21 believe another word you tell me." Think about that for a
22 minute. I'm not mad that you lied to me. I'm mad that I
23 can't believe anything else you tell me.

24 I want you to think as we go through the evidence when
25 he had an opportunity to tell the truth about what

Closing arguments

1 happened, whether or not he did it, and whether or not that
2 should impact everything else you hear.

3 The other backdrop I want you to consider -- and the
4 defense attorneys started this in their opening
5 statement -- they started talking about intent, intent to
6 kill, did he mean to kill her, did he intend to kill her.

7 Ladies and gentlemen, you have not heard the word
8 murder once since you walked into this courtroom. This is
9 not a murder case. If it were a murder case, then perhaps
10 there would have been some discussion on whether or not
11 someone intended to kill someone. Make no mistake. That
12 is not the legal paradigm that you will navigate when you
13 go back into the jury room.

14 This is a homicide-by-child-abuse case, and the issue
15 is not whether or not someone intended to kill someone.
16 The issue is whether or not someone intended to engage in
17 the activities and the actions and the acts that led to
18 someone's death. That is the difference between murder and
19 homicide by child abuse.

20 So please do not be dissuaded. Please do not be
21 confused by the discussion of whether or not someone
22 intended to kill a ten-year-old special-needs child. The
23 act, the real question, is whether or not that person
24 intended to engage in the activities that proximately led
25 to her death.

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1 July the 5th, the nurse had left. And I put these
2 pictures up because, ladies and gentlemen, the nurse was
3 crystal clear. There were no bruises on that child when
4 she left that day.

5 But here they are at the hospital. They weren't there
6 when the nurse left. She leaves. She leaves Minor in a
7 wheelchair. And why did she leave Minor in a wheelchair?
8 Do you recall the testimony of grandmama? That because she
9 had a broken arm and because it appeared to be painful to
10 move her we're not going to take her to church tonight.

11 That makes perfect sense, doesn't it? We don't want
12 to move her from the wheelchair to the van, from the van to

13 the wheelchair to put her into the pew or put her into a
14 wheelchair at church. We're not going to do it. She's got
15 a broken arm. That's the reasonableness of grandparents!

16 What's the very first thing this guy does when he gets
17 there? The first thing he does is he takes her out of the
18 wheelchair and either puts her on the couch or puts her on
19 the floor. It really doesn't matter. She can't support
20 herself no matter where she is.

21 And I want you to have this image emblazed in your
22 mind. We've talked about it so much I pray you have not
23 become sensitized to it. I want you to figuratively close
24 your eyes and imagine a ten-year-old child with cerebral
25 palsy with a broken arm and the inability to control the

Closing arguments

1 fine motor movements of the one arm she does have. And
2 we're going to go from not wanting to take her to church
3 for fear of hurting her to holding her up by her ankles.

4 What was supposed to happen? She's got an arm wrapped
5 to her body. She can't use the other arm. What was
6 supposed to break her fall -- her head? What was supposed
7 to happen?

8 He never did it when the grandparents were around. He
9 never did it when mom was around, the love of his life that
10 he so desperately wanted to marry. He didn't bother to do
11 it when she was around. But when everybody's gone this
12 highly trained, highly decorated firefighter takes her out
13 of a wheelchair and suspends her in the air by her ankles
14 with a broken arm. And you're supposed to let him walk out
15 of the back of the courtroom this afternoon?

16 What was supposed to happen? How else do you brace
17 your fall when you can't use this arm and this one is
18 wrapped to your body?

19 But, ladies and gentlemen, we cannot look at
20 July 5th without looking at July -- at June 22nd, because
21 we have to evaluate through the prism of common sense and
22 the medical testimony what he said on July 5th, we have to
23 evaluate that through the prism of what he said on June the
24 22nd.

25 Oh, they'd would love for you to view those two as

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1 isolated. They'd love it. Let me just say I'm sorry about
2 June 22nd and ignore it when we think about July the 5th.
3 But you cannot do that.

4 When you view July 5th you have to look at that
5 through the prism of your common sense, what the physicians
6 told you and what he did on June the 22nd. And what he did
7 on June the 22nd, which according to the testimony was the
8 first time that he was left with Minor he breaks the
9 otherwise normal arm of a ten-year-old.

10 And his lawyer would have us believe -- I'm a parent.
11 You may be parents. I don't know. The defense attorney is
12 a parent. He would have you believe this just happens. It

13 just happens when you're playing in life, doesn't it, that
14 you break someone's arm?

15 And then you stage it. You move her from one room to
16 the other or out of the wheelchair onto the floor. And
17 grandmama says the arm was behind her tucked in like that.

18 Boy, he was good, wasn't he? He was good. He was
19 good at making it appear as if she rolled out of bed. And
20 when EMS came he lied; and when grandmother came he lied;
21 and when we got to the emergency room he lied; and when the
22 mother asked what happened he lied.

23 And I remind you again I'm not upset that you lied to
24 me. I'm upset that I can't believe another single word you
25 tell me.

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1 June the 22nd. If we've gotten to the point in the
2 State of South Carolina where you can break a
3 ten-year-old's arm, admit to it and still expect a jury to
4 let you walk out of the back of the courtroom because
5 that's not great bodily injury, then I need to move.

6 There was nothing wrong with her bones. They were not
7 brittle. The bone density tests were perfect, the same
8 bones that you and I have. They were perfect. And yet he
9 breaks it. That's the first time he kept her by himself.

10 And then we fast forward to July the 5th. And I
11 mentioned June 22nd in connection to July the 5th because I
12 want us collectively to all transport ourselves into the
13 worst nightmare a parent or grandparent can have. You come
14 with me to the worst nightmare any of us can have, which is
15 standing in the critical care unit of a hospital while
16 doctors are asking what could have happened.

17 Are you with me? Have you transported yourselves with
18 me? There are doctors coming in, and they're describing
19 the injuries and they're saying what could have happened.
20 And what does he do? What does he say? Could it have been
21 the fall? Could it have been the fall out of bed?

22 Here's this highly trained EMT that couldn't wait to
23 come and tell you about all of the awards he'd won. And he
24 doesn't mention shaking her and he doesn't mention falling
25 on a head.

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1 And I bring it up to you for this reason. Would it
2 have made a difference? Probably not. She was essentially
3 dead when the ambulance brought her. She really died in
4 her home. They kept her alive. Would it have made a
5 difference? I don't know. But even when her life is in
6 the balance he can't muster the strength to tell the truth
7 about what happened.

8 July the 5th. It's either the third or the second
9 time this defendant is alone with Minor. And he wants you
10 to believe that as egregious and unconscionable as it is to
11 suspend a ten-year-old with special needs and a broken arm
12 by her legs, that gently laying her down on carpeted,

13 padded floor is why you're sitting in a jury box in
14 Spartanburg.

15 You've got two versions in this case, ladies and
16 gentlemen, two versions of what happened. I submit to you
17 that under either version he's guilty of both indictments
18 even if you believe it happened exactly the way he said it
19 happened.

20 You heard him admit that he engaged and intended to
21 engage in the conduct that led to her death. You heard
22 him. He said it. I made him say it twice for you.

23 I asked him did you intend to suspend her by her legs.
24 Yes. Did you intend to shake her? Yes. Did you intend to
25 break her arm? Yes. Did you intend to lie about it? Yes.

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1 There's no accident; there's no mistake. A mistake is
2 when you put on the wrong socks in the morning. An
3 accident is when you walk into a door thinking it might be
4 open. These are not accidents and those are not mistakes.
5 He intended to do them. That's under his version. If you
6 believe his version he's still guilty of both.

7 But I am here to tell you, ladies and gentlemen,
8 there's another version. Abusive brain injury, traumatic
9 brain injury.

10 I didn't hear defense counsel say a whole lot about
11 Dr. Sahhar, Dr. Byrd, Dr. Esce and Dr. Wren. He mentioned
12 them -- he mentioned them. But I want you to go back and
13 think in your minds to what they actually said.

14 And I made some notes. And if your notes and your
15 mental notes disagree with mine, you go with yours. You do
16 not go with what I tell you. But I think we're all going
17 to remember it fairly well the same way.

18 One of those physicians said it was like being in a
19 high-speed car accident. He says he was just laying her on
20 padded carpet on the floor -- a high-speed car accident.

21 The other physician said that not only was she having
22 bleeding on the top of her brain, she was having bleeding
23 in the middle of her brain such that it caused the midline
24 of that little girl's brain to shift.

25 Have any of our kids ever fallen before? Any of our

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1 grandkids ever fallen before? Do you really believe what
2 he told you? Did he really? Do you really think it can
3 look like a fall for more than 10 feet when you just lay
4 somebody down on a carpeted, padded floor?

5 And what you didn't hear the defense attorneys, either
6 one of them, say one word about is they don't have an
7 explanation for this. And it's called bilateral retinal
8 hemorrhaging. Both eyes.

9 There's no skull fracture. You've got a brain bleed,
10 you've got bilateral retinal hemorrhaging and no fracture.
11 And that comes from shaking something so violently that a
12 passerby would immediately recognize it as dangerous. Do

13 you remember what Dr. Sahhar said? A passerby would
14 immediately recognize it as dangerous.

15 You've got his version. You've got the medical
16 doctors' versions of a horrific, traumatic brain injury. I
17 believe Dr. Sahhar said he'd been doing this for maybe 16
18 years.

19 This wasn't a bump on the head, ladies and gentlemen.
20 Bumps on the head don't kill kids. He shook her to death.

21 You're going to have back with you two indictments.
22 You're going to have an indictment for breaking her arm.
23 It's her right arm. It's up near the top. I can't tell
24 you whether or not she was in a wheelchair or on the floor.
25 I can just tell you what the doctors said, her bones, her

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1 density test, was normal. She didn't have brittle bones.
2 She had lots of problems. She didn't have brittle bones.
3 And somehow or another he shook her or did something to her
4 and broke it. And if that's not great bodily injury when
5 you do it to a child, then I can't tell you what is.

6 And then you've got homicide by child abuse. And I
7 want you to listen very carefully to what the judge tells
8 you. Extreme indifference.

9 This is not a murder case. Despite what they would
10 like you to believe, this is not a murder case. This is a
11 case of extreme indifference where you have to own the
12 consequences of what you have done.

13 And, no, I do not believe it is enough that he just
14 live with the guilt of knowing it. That's not enough.
15 There have to be legal consequences for what he did.

16 And I will ask you this. Let me ask you this. Let me
17 put it in a different fact pattern. When a parent leaves a
18 child in a car in July with the windows rolled up, what is
19 it? I didn't mean for my child to die. It was just a
20 reckless, stupid, indifferent act to human well being. But
21 you have consequences when you do that.

22 If I go to a football game and I decide I'm going to
23 shoot in the stands, I don't mean to hit any of you. I
24 don't know you. I'm not mad at you. I don't have any
25 malice in my heart. I'm not mad at y'all. I'm just firing

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1 a gun into a crowd and unfortunately I hit one of you. Is
2 it enough for me to come in here and cry and turn my head
3 and say I'm sorry, or are there legal consequences when you
4 do things that are reckless?

5 This is homicide by child abuse. It is a reckless
6 disregard for the safety of someone else. It is extreme
7 indifference. And he admitted time after time after time,
8 because I asked him. I gave him two chances, two chances
9 to tell you otherwise. Did you intend to do what you did,
10 did you intend to engage in the acts that led to Minor
11 death? And he said yes.

12 He's guilty of both indictments. You're going to go
13 back in the jury room and you're going to deliberate and
14 you're going to examine the evidence and you're going to do
15 whatever it is juries do. I've never served on one. And
16 you're going to apply what His Honor tells you.

17 But you're going to deliberate with an eye towards
18 something called a verdict. And that is a word that we've
19 borrowed from Latin. It means to speak the truth.
20 Veredicto, to speak the truth.

21 And I'm going to ask you to come back into this
22 courtroom and speak on behalf of someone who could not
23 speak. And you walk into this courtroom on behalf of
24 someone who could not walk.

25 And my hope and my desire is for your verdict to

Jury charge

1 reflect justice in such a way that not only does it fill
2 this courtroom, but even a ten-year-old child in Heaven can
3 hear it. That's what I'm asking you to do.

4 THE COURT: Y'all turn that projector off, please.

5 Madam forelady and ladies and gentlemen of the jury,
6 you of course have now heard and seen all the evidence in
7 the case, and you've heard the final summations of the
8 lawyers; and therefore it now becomes my duty and
9 obligation to instruct you on the law that's applicable in
10 a case such as this. And then you'll be asked to go back
11 and begin with your deliberations. And through that
12 process you will examine all the evidence, decide the
13 facts, apply the law and arrive at a fair and just decision
14 in the case, whatever that decision may be.

15 It is your exclusive duty to determine what the facts
16 are. You do that through your own common-sense examination
17 and evaluation of all of the testimony and the other
18 evidence received during the trial of this case.

19 You 12 jurors alone will decide what weight, value and
20 effect to give to any particular witness' testimony or
21 other evidence in the case. Your sole objective is to
22 simply reach the truth in the matter, and by doing that you
23 will have fulfilled your obligations as jurors, and that is
24 to simply give both the state and the defendant a fair and
25 impartial trial.

Jury charge

1 Now, in this case, as you know, the state through the
2 prosecutor has charged the defendant, David Anthony Tyre,
3 with two separate and distinct offenses.

4 Each of those offenses is set forth in a separate
5 indictment. As I told you after your selection, you'll be
6 considering the charges separately, and you'll do that
7 based upon the evidence presented during the trial as it
8 relates to that particular charge and the law that I'll
9 provide you which sets forth what constitutes the charge.

10 And therefore your verdicts may be the same as it
11 relates to each of the separate indictments. Your verdicts
12 may be different. That of course will depend upon your
13 determination of fact and then your application of the law
14 as I will have provided it to you.

15 But in this case the state has accused the defendant
16 with the crime of homicide by child abuse or neglect. And
17 the state alleges in that indictment that the defendant,
18 David Tyre, did here in Spartanburg County or about
19 July the 5th of 2009 cause the death of Minor a
20 child under the age of 11 years, while committing child
21 abuse or neglect, and that the death of Minor
22 occurred under circumstances manifesting an extreme
23 indifference to human life.

24 The state has also accused the defendant with having
25 committed the crime of the infliction of great bodily

Jury charge

1 injury upon a child. And the state alleges by way of that
2 indictment that the defendant, David Tyre, did here in
3 Spartanburg County on or about June the 22nd of 2009
4 inflict or cause great bodily injury to Minor a
5 child under the age of 11 years, while committing child
6 abuse or neglect in violation of a separate statute which
7 I'll instruct you on later on in this instruction.

8 The indictments are going to be in the jury room.
9 They'll be in the jury room because they will serve as the
10 verdict forms. The indictments, as I believe I have
11 already told you, are not evidence of anything. They're
12 not proof of anything. They don't establish anything.

13 They're simply the means by which any person charged
14 with a crime is brought into this court. They serve to put
15 the defendant on notice as to what crime the state claims
16 he committed.

17 And we have two separate indictments, and so they'll
18 serve as the verdict forms when you go back to begin your
19 deliberations. And once you decide the case, Madam
20 Forelady, you'll be asked to indicate the jury's unanimous
21 decision as it relates to a particular indictment. You'll
22 do that on the back of a form in the space provided.

23 But as to the allegations set forth in those
24 indictments and as to each of the charges contained in
25 those separate indictments the defendant has entered a plea

Jury charge

1 of not guilty. As I've told you, that plea of not guilty
2 has placed upon the state the burden of proving the
3 allegations set forth in each of those indictments, the
4 burden of proving each of the essential elements that make
5 up the crimes that are set forth in the indictment; and
6 therefore the burden is upon the state to establish the
7 defendant's guilt to the satisfaction of you 12 jurors
8 beyond a reasonable doubt before a verdict of guilty could
9 be returned as it relates to a particular charge.

10 The burden is never upon a defendant or a person
11 accused of a crime to prove that they are not guilty or to
12 prove that they are innocent because in some cases that

13 might not be possible. The burden is always upon the state
14 because they have brought the charges against another to
15 establish that person's guilt beyond a reasonable doubt.

16 You are instructed that it is a vital, important and
17 cardinal rule of law that every defendant in a criminal
18 trial, no matter how serious the offense might be for which
19 that person stands charged, that person shall always be
20 presumed innocent of that charge.

21 That presumption of innocence remains with every
22 defendant, as it does with this defendant, from the time he
23 is placed under arrest and throughout the course of the
24 criminal process and even throughout the course of the
25 actual trial in the case.

Jury charge

1 That presumption of innocence will be with Mr. Tyre
2 even as you go back into your jury room to begin with your
3 deliberations in this case. That presumption of innocence
4 will be with him in that jury room, and it will remain with
5 him forever unless you 12 jurors determine that he's no
6 longer entitled to that presumption of innocence.

7 In other words, after you've carefully considered all
8 of the evidence in the case, and from that evidence you
9 have determined the facts as you believe the facts to be,
10 and after deciding those facts you apply the law that I
11 will have provided you, if you 12 jurors unanimously
12 determine that his guilt as to a particular charge has been
13 proven beyond a reasonable doubt, then he would no longer
14 be entitled to the presumption of innocence as it relates
15 to that particular charge. But it's only if, unless and
16 until you are satisfied of his guilt beyond a reasonable
17 doubt that the presumption of innocence would no longer be
18 applicable.

19 Now, while the state does have the burden of proving a
20 defendant's guilt beyond a reasonable doubt, that doesn't
21 mean that the state has to prove his guilt beyond all doubt
22 or beyond any possible doubt. But it does require the
23 state to prove his guilt to your satisfaction beyond a
24 reasonable doubt.

25 The term reasonable doubt should be given its plain

Jury charge

1 and ordinary meaning. A reasonable doubt is the kind of
2 doubt that would cause a reasonable person to hesitate to
3 act upon the information provided. And a defendant in a
4 criminal trial is entitled to any reasonable doubt that
5 arises from the evidence or lack of evidence in a case.
6 And if upon any factual issue essential to a finding of a
7 verdict of guilty you have some reasonable doubt as to how
8 that issue should be resolved, it would be your duty to
9 resolve that reasonable doubt in favor of the defendant.

10 And therefore if upon your consideration of the whole
11 case you have a reasonable doubt as to his guilt as it
12 relates to a particular charge, you must resolve that

13 reasonable doubt in his favor and return a verdict of not
14 guilty as to that charge.

15 And, on the other hand, after you've carefully
16 considered all of the evidence and decided the facts and
17 applied the law, if you have no reasonable doubt as to his
18 guilt as it relates to a particular charge, then it would
19 be your corresponding duty to convict him of any charge
20 that has been proven to your satisfaction beyond a
21 reasonable doubt.

22 The same law that provides that you are the judges of
23 the facts also provides that I am the judge of the law.
24 And that simply means that nobody's going to tell you how
25 to arrive at your determination of fact in this case. You

Jury charge

1 do that through the exercise of good judgment and common
2 sense conscientiously applied to the testimony and the
3 evidence received during the trial of the case. You 12
4 jurors alone will decide what weight, value and effect to
5 give to any particular witness' testimony or other evidence
6 in the case.

7 Again, your sole objective is to simply reach the
8 truth in the matter. By doing that you will have fulfilled
9 your obligations.

10 You must however accept the law as I provide to you as
11 being the law that is applicable in this particular case.
12 In other words, you are never to concern yourself with what
13 you thought the law was before you came to serve as a juror
14 this week or what you think the law ought to be.

15 Use must simply under your oath accept the law as I
16 provide it to you as being the law that you are to apply in
17 the case. And then you take that law and you apply it to
18 the facts as you 12 jurors determine those facts to be
19 based upon your common-sense examination of the evidence
20 received during the trial.

21 Now, as I've told you, you are the sole judges of the
22 facts in this case; and therefore you are necessarily the
23 sole judges of the credibility or the believability of each
24 of the witnesses that have testified during the trial. And
25 you 12 jurors alone will decide what weight, value and

Jury charge

1 effect to give to any particular witness' testimony.

2 But there are several factors which you should take
3 into consideration in order to arrive at your assessment as
4 to a witness' credibility, and I'm going to list those
5 factors for you.

6 You should consider the demeanor of the witness. That
7 is how did witness appear to you when the witness testified
8 from the witness stand. Was the witness straightforward in
9 responding to questions, or was the witness hesitant or
10 evasive in responding to questions that were asked of the
11 witness.

12 Simply put, did the witness appear to you to be
13 telling the truth and to have knowledge of the facts to
14 which that witness has testified.

15 You should also consider whether or not the testimony
16 of a witness is consistent, or was it inconsistent with
17 that witness' own testimony, and whether it be in
18 comparison to statements made by that witness in court or
19 outside of court. And you should also consider whether or
20 not the testimony a witness consistent or inconsistent with
21 other witnesses' testimony or other evidence received
22 during the trial.

23 You should also consider how the witness came to know
24 the facts to which a witness has testified. In other
25 words, what was a particular witness' opportunity and

Jury charge

1 ability to perceive the existence of those facts to which
2 that witness has testified by having previously used his or
3 her senses, and then what is the ability of that witness to
4 be able to come into court and to accurately recollect to
5 you as to what they have previously perceived?

6 You should also consider any bias or prejudice or
7 interest that the witness might have with respect to the
8 case. In other words, do you find some reason that a
9 particular witness would come into court and would testify
10 one way or another to help or to hurt one side or the
11 other.

12 And you may consider any interest that a witness might
13 have in the outcome of the case if you determine that a
14 witness does have such an interest and you find that that
15 interest would bear upon that particular witness'
16 credibility.

17 You should also consider whether or not the testimony
18 of a witness was strengthened, or was it weakened by other
19 testimony or other evidence received during the trial of
20 the case.

21 Now, because you are the sole judges of the facts and
22 are also the sole judges of the credibility of each witness
23 you are permitted to believe as much or as little of what a
24 witness has testified to as you deem is appropriate. And
25 therefore you can believe everything that a witness

Jury charge

1 testified to; you may choose to believe none of it. You
2 may believe some portion of a witness' testimony and reject
3 some other portion of that same witness' testimony.

4 You may believe one witness as opposed to several, or
5 several as opposed to one. But whatever your good judgment
6 and common sense tells you is the most believable and
7 credible testimony is the testimony you should accept, and
8 you should reject any testimony or evidence that you find
9 not to be credible or believable.

10 Again, your sole objective is to simply reach the
11 truth in the matter. And by doing that you will have
12 fulfilled your obligations as jurors.

13 Now, during the course of the trial you have heard
14 testimony from witnesses that were qualified as experts in
15 a particular field.

16 While the Court, the judge, has to determine whether
17 or not a witness can testify as an expert with regard to a
18 particular matter, the fact that I qualify a witness as an
19 expert and allow them to give opinions in that respect
20 should not be taken by you as any indication by me that you
21 have to accept that witness' testimony.

22 You have to judge the credibility and the
23 believability of an expert witness just as you do any other
24 witness testifying in the case. And it is for you 12
25 jurors to determine and assess the credibility, the

Jury charge

1 reliability and the believability of expert-witness
2 testimony just as you do any other testimony.

3 Now, while there are various forms of evidence such as
4 testimony, photographs, documents, charts and other types
5 of physical exhibits, there are really only two types of
6 evidence. Either or both of those types of evidence may be
7 used to prove any fact in issue. But the two types of
8 evidence are direct evidence and circumstantial evidence.

9 Now, direct evidence is the testimony of a person who
10 testifies from actual knowledge of a fact. It is testimony
11 by a person who has perceived the existence of some fact by
12 having used his or her senses and then that person comes
13 into court and they testify as to what they have previously
14 perceived.

15 Circumstantial evidence, on the other hand, is the
16 proof of some other fact or set of facts which taken either
17 singly or collectively may prove the existence of a fact in
18 question as a necessary consequence. That is through an
19 inference.

20 An inference is simply a deduction of fact that may
21 logically and reasonably be drawn from the proof of some
22 other fact or set of facts. In other words, it's a fact
23 not proven by the direct testimony of a witness based upon
24 personal perception, but it is a conclusion that might
25 reasonably be drawn from the proof of other facts.

Jury charge

1 In other words, you may infer that a particular event
2 occurred or that a particular fact exists based upon the
3 proof of sufficient factual circumstances which would
4 reasonably warrant your arriving at a particular
5 conclusion.

6 The law however makes absolutely no distinction
7 between the weight or the value to be given to direct
8 evidence as opposed to circumstantial evidence, nor is a
9 greater degree of certainty required of circumstantial
10 evidence as opposed to direct evidence.

11 Whatever the type of evidence used to prove any fact
12 in issue, you should consider all of the evidence presented
13 in the trial of the case. And after carefully considering
14 all of that evidence and weighing it in your minds if you
15 are not convinced of the guilt of the defendant as it
16 relates to a particular charge beyond a reasonable doubt,
17 then you must resolve that doubt in his favor and return a
18 verdict of not guilty.

19 Now, in this case, as you know, there are two separate
20 and distinct charges for which you must decide the facts
21 and then apply the law and render a decision.

22 I'm going to start with the indictments in
23 chronological order. And so the first statute that I'll
24 reference is the statute charging the defendant with the
25 unlawful infliction of great bodily injury upon a child.

Jury charge

1 And that statute is set forth in Section 16-3-95.

2 That statute provides in its pertinent parts as
3 follows: It is unlawful to inflict great bodily injury
4 upon a child. Great bodily injury is defined in the
5 statute as bodily injury which creates a substantial risk
6 of death, or which causes serious or permanent
7 disfigurement, or which causes a protracted loss or
8 impairment of the function of any bodily member or organ.
9 And a child is defined for the purposes of this statute as
10 a person under the age of 18 years.

11 Now, before you could find the defendant guilty of a
12 violation of this particular section of law it would be
13 necessary that the evidence in this case establishes to
14 your satisfaction beyond a reasonable doubt that the
15 defendant, David Anthony Tyre, inflicted bodily injury
16 creating or causing a protracted loss or impairment of the
17 function of a bodily member and that such injury was
18 inflicted upon a person under the age of 18 years and that
19 the defendant committed those acts with a criminal intent.
20 Criminal intent is a necessary element of the crime that
21 must be proven beyond a reasonable doubt.

22 The term intent refers to the state of a person's mind
23 that directs his actions towards a specific object or goal.
24 Criminal intent refers to the state of a person's mind that
25 joins with the commission of a deliberate act culminating

Jury charge

1 in the commission of the crime.

2 Criminal intent is a mental state of conscious
3 wrongdoing accompanying the commission of an act in
4 contrast to an act that is committed inadvertently,
5 mistakenly, accidentally or in accordance with the law and
6 therefore without a criminal intent.

7 Where a person is engaged in the commission of a
8 deliberate act accompanied by criminal intent he is legally
9 responsible for all of the consequences that necessarily
10 flow from the commission of that intentional act or acts
11 that are a natural and probable consequence of the act even
12 though the result was not actually intended as part of the

13 original design so long as it is established that the
14 result was reasonably known to be substantially certain to
15 occur.

16 Proof of the existence of criminal intent may be
17 satisfied by proof of criminal negligence. Criminal
18 negligence is more than mere simple negligence.

19 In the law criminal negligence refers to the
20 commission of a deliberate act or acts with a reckless
21 disregard for the safety of others. And reckless conduct
22 refers to the commission of a deliberate or intentional act
23 with a conscious disregard for the consequences of that
24 act.

25 It is not necessary in order to establish the element

Jury charge

1 of criminal intent that such intent be proven by direct
2 evidence. Criminal intent may be proven by circumstantial
3 evidence, the same way any other essential element of any
4 crime may be proven.

5 In your determination as to whether or not criminal
6 intent has been proven you are permitted to infer the
7 existence of criminal intent from the declarations and the
8 conduct of the defendant, as well as from any other
9 circumstances established by the evidence in the case from
10 which you may reasonably and logically infer such intent so
11 long as you are satisfied of the existence of criminal
12 intent beyond a reasonable doubt.

13 The second indictment charges the defendant with
14 having committed the crime of homicide by child abuse, and
15 that indictment alleges that the defendant did on or about
16 July the 5th of 2009 cause the death of Minor a
17 child under the age of 11, while committing child abuse or
18 neglect and that the death of Minor occurred under
19 circumstances manifesting an extreme indifference to human
20 life.

21 Homicide by child abuse is also a statutory offense.
22 The statute setting forth the definition of homicide by
23 child abuse is contained in 16-3-85 of the Code of Laws of
24 South Carolina. And that statute provides in its pertinent
25 parts a person is guilty of homicide by child abuse if the

Jury charge

1 person causes the death of a child under the age of 11
2 while committing child abuse or neglect, and the death
3 occurs under circumstances manifesting an extreme
4 indifference to human life.

5 The statute also provides certain definitions. And
6 the term child abuse or neglect is defined as an act, or an
7 omission where you have a duty to act, by any person which
8 causes harm to the child's physical health or welfare.

9 The term harm to the child's physical health or
10 welfare in the context of this case is defined as the
11 infliction of physical injury upon a child.

12 The term extreme indifference to human life refers to
13 the deliberate commission of an act with a conscious
14 indifference to the probable consequences of the act which
15 culminates in the death of another human being.

16 It may be further described as the commission of an
17 intentional act with a conscious indifference to any risk
18 created thereby which culminates in the death of another
19 person.

20 And therefore before you could find the defendant
21 guilty of the crime of homicide by child abuse it would be
22 necessary that the evidence in this case has established to
23 your satisfaction beyond a reasonable doubt the following
24 four essential elements.

25 First, it must be proven that the defendant committed

Jury charge

1 a deliberate or intentional act under circumstances
2 revealing an extreme indifference to human life; and,
3 secondly, that the act caused physical injury to a child;
4 and, third, that the child was under the age of 11 years;
5 and, four, that the physical injury culminated in the death
6 of the child.

7 Now, Madam Forelady, and ladies and gentlemen of the
8 jury, I am not in any way concerned with what your decision
9 is or decisions are, but you are instructed that the
10 verdict, any decision that is rendered, has to be
11 unanimous. All 12 of you must be in agreement before a
12 decision could be returned as to a particular indictment.

13 Now, Madam Forelady, as you know, you're going to
14 preside over the jury deliberations in the jury room simply
15 to ensure that those deliberations are carried out in some
16 orderly fashion.

17 You will also be charged with the responsibility of
18 writing the verdict, whatever that decision is, on the back
19 of each of the verdict -- indictments which are serving as
20 the verdict forms.

21 You will sign your name as the foreperson and place
22 the appropriate date. You are the only juror that needs to
23 sign the verdict form. Only the foreperson signs the
24 verdict form. But all of the jurors, of course, are
25 expected to participate in the deliberations because the

Jury charge

1 deliberations have to result in a unanimous decision. All
2 12 of you must be in agreement before a decision may be
3 rendered.

4 Now, with respect to each of the separate indictments
5 you have two potential verdict forms. Those two potential
6 verdict forms are guilty and not guilty. So whatever that
7 decision is as it relates to that particular charge,
8 indicate it in the space provided.

9 Madam Forelady, you'll see on the back of each of the
10 indictments in the lower left-hand corner, you'll see the
11 word verdict. It's beneath that word that you indicate the
12 jury's decision. And then sign your name as the foreperson
13 and place the appropriate date on it.

14 Once you have reached your decisions knock on the
15 door -- and you've completed the verdict form -- knock on
16 the door. Tell the bailiff you've reached your decisions.
17 We'll bring you back to receive that verdict or those
18 verdicts.

19 Now, during your deliberations there may come a time
20 where you have a question about evidence or facts. I am
21 never permitted to comment upon the facts. I am never
22 permitted to answer questions that relate to factual
23 issues. You have to determine the facts based upon your
24 common sense review of the evidence and your evaluation of
25 the credibility of each witness.

Jury charge

1 Also, no additional evidence can be received. So in
2 other words, you go back, you start deliberating and you're
3 wondering if there's something else that you don't have
4 back there, could you get it, it might help you, it can't
5 be introduced, can't be received.

6 The evidence has closed. No additional evidence of
7 any kind could be received whether it exists or not. So do
8 not inquire about any other type of evidence if you think
9 it might help you because you cannot have it.

10 If however you have a question about the testimony or
11 the facts developed in the testimony and you think
12 listening to testimony can help you resolve that question
13 or that issue, we can bring you back into the courtroom to
14 have testimony replayed in whole or in part.

15 I don't have transcripts of a witness' testimony, but
16 you can come back into the courtroom and we can replay a
17 witness' testimony if that'll assist you.

18 If you have a question about the law that's applicable
19 I am always permitted to answer those questions. So if you
20 need for me to give you a reinstruction, an additional
21 instruction, you need a different explanation, you need a
22 clarification, let me know. I can always provide you with
23 any explanation or clarification of the law that you are to
24 apply.

25 Madam forelady, if at any time you need to address