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S.C. SUPREME COURT

THE STATE OF SOUTH CAROLINA
IN THE SUPREME COURT

APPEAL FROM OCONEE COUNTY
COMMON PLEAS COURT
R. Lawton McIntosh, Circuit Court Judge

Case No. 2014-CP-37-0133
Appellate Case No.: 2016-

Matthew Hinton, ... Petitioner,

v.

State of South Carolina, ... Respondent.

APPENDIX VOLUME I

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INDEX

Order of Dismissal	1
TRANSCRIPT OF PCR HEARING	6
Brittany Senerius	
direct	81
cross	270
redirect	282
Gordon Senerius	
direct	286
cross	335
redirect	341
recross	342
Matthew T. Hinton	
direct	344
cross	385
Denise Richardson	
direct	396
cross	401
Lindsey Simmons	
direct	404
cross	405
TRANSCRIPT OF CRIMINAL TRIAL	
Ashley Bright	
direct	499
cross	522
Ted Roundy	
direct	550
cross	556
redirect	562
recross	562
Chris Kelly	
direct	566
cross	577
Donna Eller	
direct	582
Paige Williams	
direct	586
cross	589

Rory Jones	
direct	595
cross	612
redirect	618
recross	619
Desmond Holland	
direct	628
cross	634
Kathryn Barden	
direct	630
cross	650
redirect	653
Earl Troup, M.D.	
direct	654
cross	659
Daryl Gwyn	
direct	679
cross	691
Brett Woodard	
direct	700
cross	715
Matthew Hinton	
direct	717
cross	766
Closing Argument State	377
PCR Exhibits	
P-1 Letter to Simmons	862
P-2 Letter to James H. Price	864
P-3 Handwritten notes	866
P-4 Letter to Senerius	871
P-5 GHS Medical Records	875
P-6 GHS Medical Records	882
P-7 GHS Consultation Request	888
P-8 GHS Radiology	890
P-9 Oconee Memorial	892
P-10 Statement Mitchell	895
P-11 Interview notes Simmons	898
P-12 Drug Analysis	901
P-13 Pathology Report	903
P-14 Boyd Statement	910
P-15 Fowler Statement	911

P-16 DSS Report	913
P-17 Search Warrant	917
P-18 Police Records Seized Property	921
P-19 Supp Report	926
P-20 Supp Report	927
P-21 Supp Report	930
P-22 Supp Report	932
P-23 Supp Report	934
P-24 Supp Report	936
P-25 Supp Report	938
P-26 Statement Bright	940
P-27 Letter Bright	942
P-28 Letter Bright	945
P-29 Postmortem Report	948
P-30 GHS Radiology	966
P-31 Oconee Medical ER Report	970
P-32 GHS Records	973
P-33 Med Records	976
P-34 Verizon documents	979
P-35 Oconee Medical Records	986
P-36 Payroll Records	996
P-37 Phone Records	998
P-38 Supp Report	1003
P-39 Netflix Reports	1006
Application for Post Conviction Relief (Form 5)	1007
Complaint for Post Conviction Relief	1015
Return	1027
Applicant's Memorandum of Law [from PCR]	1032
Respondent's Memorandum of Law [from PCR]	1037
Motion to Alter or Amend	1051
Return to Applicant's Motion to Alter or Amend	1062
Form 4 [denial of Motion to Alter or Amend]	1065

INDEX

Order of Dismissal	1
TRANSCRIPT OF PCR HEARING	6
Brittany Senerius	
direct	81
cross	270
redirect	282
Gordon Senerius	
direct	286
cross	335
redirect	341
recross	342
Matthew T. Hinton	
direct	344
cross	385
Denise Richardson	
direct	396
cross	401
Lindsey Simmons	
direct	404
cross	405
TRANSCRIPT OF CRIMINAL TRIAL	
Ashley Bright	
direct	499
cross	522
Ted Roundy	
direct	550
cross	556
redirect	562
recross	562
Chris Kelly	
direct	566
cross	577
Donna Eller	
direct	582
Paige Williams	
direct	586
cross	589

Rory Jones	
direct	595
cross	612
redirect	618
recross	619
Desmond Holland	
direct	628
cross	634
Kathryn Barden	
direct	630
cross	650
redirect	653
Earl Troup, M.D.	
direct	654
cross	659
Daryl Gwyn	
direct	679
cross	691
Brett Woodard	
direct	700
cross	715
Matthew Hinton	
direct	717
cross	766
Closing Argument State	377
PCR Exhibits	
P-1 Letter to Simmons	862
P-2 Letter to James H. Price	864
P-3 Handwritten notes	866
P-4 Letter to Senerius	871
P-5 GHS Medical Records	875
P-6 GHS Medical Records	882
P-7 GHS Consultation Request	888
P-8 GHS Radiology	890
P-9 Oconee Memorial	892
P-10 Statement Mitchell	895
P-11 Interview notes Simmons	898
P-12 Drug Analysis	901
P-13 Pathology Report	903
P-14 Boyd Statement	910
P-15 Fowler Statement	911

P-16 DSS Report	913
P-17 Search Warrant	917
P-18 Police Records Seized Property	921
P-19 Supp Report	926
P-20 Supp Report	927
P-21 Supp Report	930
P-22 Supp Report	932
P-23 Supp Report	934
P-24 Supp Report	936
P-25 Supp Report	938
P-26 Statement Bright	940
P-27 Letter Bright	942
P-28 Letter Bright	945
P-29 Postmortem Report	948
P-30 GHS Radiology	966
P-31 Oconee Medical ER Report	970
P-32 GHS Records	973
P-33 Med Records	976
P-34 Verizon documents	979
P-35 Oconee Medical Records	986
P-36 Payroll Records	996
P-37 Phone Records	998
P-38 Supp Report	1003
P-39 Netflix Reports	1006
Application for Post Conviction Relief (Form 5)	1007
Complaint for Post Conviction Relief	1015
Return	1027
Applicant's Memorandum of Law [from PCR]	1032
Respondent's Memorandum of Law [from PCR]	1037
Motion to Alter or Amend	1051
Return to Applicant's Motion to Alter or Amend	1062
Form 4 [denial of Motion to Alter or Amend]	1065

STATE OF SOUTH CAROLINA

COUNTY OF OCONEE

Matthew Hinton,
S.C.D.C. No. 345044

Applicant,

v.

State of South Carolina,

Respondent.

) IN THE COURT OF COMMON PLEAS

) FOR THE TENTH JUDICIAL CIRCUIT

) C.A. No. 2014-CP-37-0133

ORDER OF DISMISSAL

FILED OCONEE COUNTY, SC
SEVERLY N. WHITFIELD
CLERK OF COURT
2014 MAR 22 A 11:54

This matter comes before the Court pursuant to an application for post-conviction relief (PCR) filed March 4, 2014. Respondent made its Return on or about July 7, 2014. An evidentiary hearing into the matter was convened on February 9 and 10, 2015, at the Oconee County Courthouse. Applicant was present and was represented by Robert C. Childs, III, Esquire. Respondent was represented by Walt Whitmire, Esquire, of the South Carolina Attorney General's Office.

Applicant testified on his own behalf at the evidentiary hearing. Applicant's trial counsels, Gordon Senerius, Esquire and Brittany Senerius, Esquire, testified, as Lindsey did Simmons, Esquire, of the Tenth Circuit Solicitor's Office. Denise Richardson also testified. This Court had before it a copy of the trial transcript, the records of the Oconee County Clerk of Court regarding the subject convictions, Applicant's records from the South Carolina Department of Corrections, Applicant's direct appeal records, and the pleadings. The Court finds as follows:

1 the State cut off during his interview?

2 A. I think I talked about this a second ago. I
3 think part of my issue was that the State's CD
4 referenced what the written statement was and that was
5 pretty much the end of the written statement. So I
6 don't know that I specifically was concerned about
7 that, no.

8 Q. So you don't want to hear the rest of the
9 interview with Desmond Holland?

10 A. I don't really know how to answer that.

11 Q. Well, yes or no, did you want to hear the rest of
12 the interview ---

13 THE COURT: No, sir. That's not a proper
14 question. You can play it or not; okay, sir?

15 MR. CHILDS: I'm going to play the CD of
16 Ashley Bright. But I was asking her if she -- whether
17 or not she wanted to hear the rest of the audiotape of
18 Desmond Holland's interview.

19 THE COURT: I'm sorry. I misunderstood your
20 question.

21 MR. CHILDS: Okay.

22 THE COURT: Go ahead.

23 A. I don't know that there was an additional piece
24 to that. That's why I was referencing his written
25 statement, which seemed to encompass the information

prior proceedings, and legal arguments of counsel. Pursuant to S.C. Code Ann. §17-27-80 (2016), this Court makes the following findings of fact based upon all of the probative evidence presented.

As a matter of general impression, this Court has found that Applicant has not met his burden with respect to any of his roughly one hundred (100) allegations of ineffective assistance of counsel. This Court finds that the testimony of Applicant and Ms. Richardson was not credible. On the other hand, Mr. Senerius, Ms. Senerius, and Assistant Solicitor Simmons each provided credible and compelling testimony. In addition, this Court finds that a large number of Applicant's allegations are frivolous and facially deficient. Many misapprehend applicable law; some are too vague for this Court to form a definitive ruling on; and still others are supported by no credible evidence in the record or were not addressed at the evidentiary hearing. In summary, Applicant has used the post-conviction relief forum to attack and second-guess nearly every facet of his attorneys' performances in what this Court can only conclude arises out of a profound misunderstanding of Strickland² as it relates to the right to effective assistance of counsel.

Summary of State's Evidence and Testimony from Applicant's Trial

Ashley Bright testified to her relationship with Applicant after the child-victim was born. Tr. p. 70-80. Ms. Bright worked to support the five month old child-victim while Applicant cared for the 5 month old. She was of the impression that her relationship with Applicant was souring. Ms. Bright testified that Applicant hid his relationship with her and the paternity of the child-victim from his family. When Applicant's mother visited, he told her that Ms. Bright was his "roommate." Applicant stayed up the night before the incident playing video games. On August 16, 2009, Ms. Bright woke around 11:00 a.m. and soon left for her noon to five shift at

² Strickland v. Washington, 466 U.S. 668 (1984).

the Seneca movie theatre. She noted that the child-victim appeared fussy due to the fact that she just started teething; otherwise the child-victim appeared normal. Tr. p.75. Ashely testified that text messaged Applicant to check on the child-victim throughout the day. Around 2:10 p.m., she received an unusual text from Applicant that "he did not want my mom coming over, and I didn't understand why because he never had a problem with her coming over." Tr. p. 77. She received a subsequent text messaged from Applicant that "If [Ms. Bright's mother] steps one foot in this apartment, he would leave." Tr. p. 77. Near the end of Ms. Bright's shift, Applicant texted messaged her: "I can't hold my eyes open so [child-victim] and I are laying down... [child-victim] won't sleep unless I'm holding her, so we're both gonna be in the bed. Please try not to wake us." Tr. p. 77.

Ms. Bright testified that she returned to the apartment after 5:45 p.m. Throughout the afternoon, Ms. Bright periodically checked on Applicant and the child-victim: "I would check in, probably every 45 minutes. And I wouldn't go in. I wouldn't turn the light on because I didn't want to wake anyone... I would walk in to make sure that no blankets were over her face or pillow or nothing like that and to make sure that they were covered and everything." Tr. p. 79. At one point, Ms. Bright entered the bedroom and noted that the child-victim's leg was cold; Ms. Bright repositioned the blanket over the leg; she also observed that the child-victim was breathing heavy. Tr. p. 84. Ashely testified that she performed the checks in between watching episodes of Law & Order, SVU, on Netflix. Tr. p. 83. Ms. Bright was instant that she followed Applicant's instructions and did not move child-victim from the bed. Tr. p. 84.

Around 11:00 p.m., Ms. Bright heard Applicant's outburst that child-victim was not breathing. He attempted C.P.R.; E.M.S. arrived almost right after she phone 911. Tr. p.85. The

child victim was first transported to Oconee Medical; however, she was later transported to Greenville Memorial Children's Hospital. Tr. p. 86. When speaking with Dr. Gwyn at the Greenville hospital, Applicant disclosed that the child-victim had recent problems with reflux. Ms. Bright testified that Applicant had changed his version his story hours later:

Q: Specifically what did [Applicant] tell you?

A: He told me he was giving her a shower and she slipped, and when she did, he grabbed her by one leg and one arm across her chest and pulled up into his chest and that her head hit his clavicle.

Q: Was it unusual that he would have showering with your five-month old?

A: It was, he had given her a bath, but never a shower.

Tr. p. 87. Ms. Bright testified that Applicant told her, "[i]n Greenville we were getting ready to leave, and he told me that if I would take the rap for this, that I wouldn't get very much jail time because I had no previous criminal history." Tr. p.89. The child-victim soon died as a result of suffering severe head trauma.

Paige Williams, Ashely's cousin, testified to driving Applicant and Ms. Bright to D.S.S. office the day after the incident. Tr. p. 155. She noted that Ms. Bright and Applicant were interviewed separately. Applicant made the following statement to Paige while he stood outside the office, smoking a cigarette waiting for Ms. Bright's interview to conclude and for his to begin: "He told me that he was giving her a bath in the bathtub and that when he was getting her out, she jerked and she started to slip and that she possibly hit her head on the sink." Tr. p. 156. Subsequently, Applicant approached Paige at a separate location and asked her, "If the police were gonna make an arrest, when would they make the arrest. And I told him that that would be after the autopsy, that that would determine if they had evidence or not as to what had happened." Tr. p. 156-57. Donna Bright, Ms. Bright's mother, testified that Applicant also made

a similar statement to her, "he said he dropped her in a the shower, and he said -- I mean giving her a bath. Those were his exact words to me. And he did say that she hit her mouth." Tr. p. 153.

Desmond Holland testified that he lived in the apartment below Applicant and Ms. Bright at the time of the incident in 2011. R. p. 107. He testified that on the day of the incident, about 2:45 p.m., he heard:

a boom and it sounded like a TV or something falling. That's when I turned around and walked upstairs, because usually they make noise but it wasn't that loud. So I walked upstairs and knocked on the door and nobody came, so I knocked again. I stayed there for about three minutes. All I heard was the dog scratching and the baby whimpering. So by this time I was, like, forget it. And I walked downstairs. I got back downstairs and I didn't even make it past the kitchen again where I heard it again. So this time I went back up there. I was a little aggravated because they didn't come to the door. So I knocked even harder, harder and harder, and this time all you heard was the dog, no baby, no nothing, nobody still came to the door.

Tr. p.200. He testified that he disclosed the account to police several days after the day of the incident with no suspicion of criminal activity from Applicant. Tr. p. 199.

Officers Roundy, Kelly, and Jones testified to their investigation on the case. Applicant gave a statement to his "bathtub version" to Officer Roundy at the Greenville Hospital. Tr. p. 117. Officer Kelly had already obtained a statement from Applicant that did not include the "bathtub version." Tr. p. 143.

The State presented 4 expert doctors in its case-in-chief, each of whom refuted Applicant's version of events and testified that the victim's injuries were inconsistent with accidental trauma.³

Applicant testified during the defense's case-in-chief to his version of the events on the day of the incident. Tr. p. 310-45. The Oconee County jury returned a guilty verdict after one

³ Discussed Infra, "Overwhelming Evidence of Guilt."

hour and six minutes of deliberations. Judge Macaulay commented the quality and professionalism of the attorneys involved with the trial. Tr. p. 406. Judge Macaulay also commented to the jury, after they reached a verdict, "that I'm satisfied that you gave both the State and the Defendant a fair and impartial trial." Tr. p. 408.

Ineffective Assistance of Counsel

In a post-conviction relief action, the applicant has the burden of proving the allegations in the application. Rule 71.1(e), SCRPC; Butler v. State, 286 S.C. 441, 334 S.E.2d 813 (1985). Where ineffective assistance of counsel is alleged as a ground for relief, the Applicant must prove that "counsel's conduct so undermined the proper functioning of the adversarial process that the trial cannot be relied upon as having produced a just result." Strickland v. Washington, 466 U.S. 668, (1984); Butler, 286 S.C. 441, 334 S.E.2d 813 (1985).

The proper measure of performance is whether the attorney provided representation within the range of competence required in criminal cases. Courts presume that counsel rendered adequate assistance and made all significant decisions in the exercise of reasonable professional judgment. Butler, 286 S.C. 441, 334 S.E.2d 813 (1985). The applicant must overcome this presumption to receive relief. Cherry v. State, 300 S.C. 115, 386 S.E.2d 624 (1989).

Courts use a two-pronged test in evaluating allegations of ineffective assistance of counsel. First, the applicant must prove that counsel's performance was deficient. Under this prong, attorney performance is measured by its "reasonableness under professional norms." Cherry, 300 S.C. at 117, 385 S.E.2d at 625 (citing Strickland). Second, counsel's deficient performance must have prejudiced the applicant such that "there is a reasonable probability that,

but for counsel's unprofessional errors, the result of the proceeding would have been different." Cherry, 300 S.C. at 117-18, 386 S.E.2d at 625.

This Court would note that in the present case, Attorney Gordon Senerius was appointed to Applicant's case as substituted counsel after Attorney James H. "Chip" Price, retained counsel, was relieved on the matter. This posture affects the Strickland analysis. See Dows v. Wood, 211 F.3d 480, 486 (9th Cir. 2000) ("Alleged lack of investigation by the successor attorney was overcome by evidence that witness statements were made available by the first attorney"); U.S. v. Hall, 843 F.2d 408, 412 (10th Cir. 1988) (an alleged failure of the second counsel to confer with the defendant overcome by a showing that second counsel enjoyed complete cooperation with the first).

Also, in the present case, Attorney Gordon Senerius involved his entire firm on Applicant's case, retained a private investigator, sought out independent medical expert advice, and – most importantly – employed Attorney Britany Senerius for Applicant's case. The existence of co-counsel who can correct mistakes makes petitioner's claim tougher said U.S. v. Lloyd, 983 F.Supp. 738, 743 (N.D. Ill. 1997), aff'd, Lloyd v. U.S., 191 F.3d 456 (7th Cir. 1999). See also Bucklew v. Luebbers, 436 F.3d 1010, 1019 (8th Cir. 2006) (recognizing that it is not deficient for a team of attorneys to divide workload so that the failure of one attorney to interview was not deficient where another did).

Overwhelming Evidence of Guilt

This Court finds the evidence of guilt against Applicant was overwhelming. Even if this Court were to assume Applicant's version of the events were true, the State still presented compelling and substantial evidence that he committed the offense of homicide by child abuse by

manifesting an extreme indifference to human life in neglecting to care for a critically injured child when he failed to act as a responsible parent and further acted to deliberately conceal the victim's injuries from others that could have acted to save the child's life. At trial, Applicant testified to his version of facts as follows: He was bathing the victim in the shower when she escaped his grasp and started to fall. Tr. p.320. During the victim's descent, Applicant testified he "grabbed her leg, grabbed her on her chest and just jerked up.... which caused the victim to hit her head on Applicant's collarbone." Tr. p.320-21.

"S.C. Code Ann. § 16-3-85 (Supp.2001) defines the crime as follows: (A) A person is guilty of homicide by child abuse if the person: (1) causes the death of a child under the age of eleven while committing child abuse or neglect, and the death occurs under circumstances manifesting an extreme indifference to human life." State v. Jarrell, 350 S.C. 90, 97, 564 S.E.2d 362, 366 (Ct. App. 2002) (citing S.C. Code § 16-3-85)) (emphasis added). Despite Applicant testifying the incident caused him to experience "shock," the State presented compelling evidence that: (1) Applicant chose not to seek medical intervention; (2) he concealed victim's injuries from others, which thereby prevented the mother, grandmother, and concerned neighbor from having an opportunity to save the child's life; (3) his post-incident conduct created a compelling inference that he knew he had acted in a criminal manner.

The State presented evidence that Applicant initially attempted to hide the victim from her mother and grandmother, and keep anyone from discovering her injuries. Applicant sent inflammatory text messages to the child's mother where he demanded that Ms. Bright's mother not visit or enter the apartment on the afternoon of the incident. He even threatened to leave if Ms. Bright's mother entered the apartment. At the close of Ms. Bright's shift, Applicant sent her

a text message that said: "I can't hold my eyes open so [victim] and I are laying down... [victim] won't sleep unless I'm holding her, so we're both gonna be in the bed. Please try not to wake us." Tr. p.77 (emphasis added).

Applicant also ignored a concerned neighbor's attempts to talk with him. Applicant and Ms. Bright's downstairs neighbor, Desmond Holland, testified⁴ that around 2:45 p.m. on the day of the incident he:

[heard] a boom and it sounded like a T.V. or something falling. That's when I turned around and walked upstairs, because usually they make noise but it wasn't that loud. So I walked upstairs and knocked on the door and nobody came, so I knocked again. I stayed there for about three minutes. All I heard was the dog scratching and the baby whimpering. So by this time I was, like, forget it. And I walked downstairs. I got back downstairs and I didn't even make it past the kitchen again where I heard it again. So this time I went back up there. I was a little aggravated because they didn't come to the door. So I knocked even harder, harder and harder, and this time all you heard was the dog, no baby, no nothing, nobody still came to the door.

Tr. p.200 (emphasis added).

Applicant's post-incident conduct further gives rise to a substantial inference that he was attempting to conceal his conduct – or at least limit his criminal liability. Applicant conveniently forgot to disclose the shower incident to the initial physicians that were attempting to save the victim's life. He maintained this forgetful posture in his initial statement to police on the night of the incident. Hours later, after the severity of the victim's injuries became apparent, Applicant expanded upon his story to Ms. Bright to include the "shower incident." Ms. Bright also testified that Applicant asked her to "take the rap" for future criminal charges concerning the victim's death when Applicant had sole custody of the child. Tr. p.89; see State v. Crawford, 362 S.C. 627, 636, 608 S.E.2d 886, 891 (Ct. App. 2005) (it is sufficient that circumstances justify an

⁴ Holland testified he had no knowledge that the police were conducting a criminal investigation concerning an incident that occurred several days prior in the upstairs apartment when he spoke to police.

inference that the accused's actions were motivated as a result of his belief that police officers were aware of his wrongdoing and were seeking him for that purpose). Applicant also asked Paige Williams "If the police were gonna make an arrest, when would they make the arrest?" Tr. p.156.

Thus, even if the medical evidence had corroborated Applicant's account, the State presented substantial and compelling evidence that still would have cemented his conviction. But the medical evidence did not corroborate Applicant's story, and in light of the expert testimony from the initial emergency room physician who treated the victim, two pediatric neurologists, and the pathologist who all uniformly rejected Applicant's version of the facts, this Court finds that the evidence of Applicant's guilt was utterly overwhelming.

Dr. Troup testified to a reasonable degree of medical certainty that the victim's head injuries would not have likely been caused by a fall or accident in the shower, and that the child-victim suffered head trauma within a twenty-four hour period based upon the blood density in the brain, acute progression of edema, swelling, in the brain. Tr. p. 237. Dr. Troup found retinal hemorrhaging and occipital brain hematoma, consistent with severe whiplashesque head trauma consistent with "shaking baby syndrome" Tr. p. 234-36. Dr. Gwyn testified that scans revealed that the child "had diffuse cerebral edema, swelling of the brain; that she had left-sided subdural blood, retinal hemorrhages. She had a right rib fracture, she had a definite right tibial fracture, and a presumed right distal femur fracture." Tr. p. 253. She testified to the extent of shaking baby syndrome and noted that retinal hemorrhages are caused by "rotational force" and not blunt force trauma. The pathologist, Dr. Woodard, testified that the child's bruising and rib fractures were consistent with forceful gripping "by a right hand grabbing the left lower back and the

thumb being placed against the hip." Tr. p. 274. He found that the bruising was inconsistent with an injury caused by C.P.R. and that the fractures were inconsistent to a fall in a bathtub. Tr. p. 275; 281.

The various medical experts all agreed that the child sustained the fatal constellation of injuries within a twenty-four period when Applicant was the sole custodian of the child. In particular, Dr. Woodard testified:

the head injuries, the internal head injuries and the rib fracture all occurred in a similar time period. The leg injury could have occurred before this time period. But at the time that the head injury was incurred, I don't know if it was before or after the rib fracture occurred. Once the head injury occurred, the child would go unconscious and would proceed from unconsciousness into coma and finally a respiratory failure and death.

Tr. p. 282-83. (emphasis added). Dr. Woodard testified that the head injury would have occurred eight hours or less from when EMS was contacted around 11 p.m. on the night of the incident.

Tr. p. 283.

Because Applicant's version of facts was thoroughly refuted by the medical evidence, the jury readily saw Applicant's ill-conceived design to escape culpability for what it really was: a manufactured fabrication. It is telling that the jury convicted Applicant in one hour and six minutes despite hearing medical testimony complex to the layperson, and despite the experienced defense team's diligent efforts in challenging the State's case. See Dugas v. Coplan, 428 F.3d 317, 335 n.28 (1st Cir. 2005) (The court has looked not only to the strength of inculpatory evidence, but also the brevity of the jury's deliberations). As a result, this Court finds the evidence presented by the State against Applicant was overwhelming.

Failure to Investigate

Applicant raises a number of allegations concerning counsel's purported failure to conduct a thorough investigation. Each of these is without merit. Without a doubt, "[a] criminal defense attorney has a duty to investigate, but this duty is limited to a reasonable investigation." Ard v. Catoe, 372 S.C. 318, 331-32, 642 S.E.2d 590, 597 (2007). Accordingly, the controlling standard for counsel's duty to investigate is *reasonableness*. Edwards v. State, 392 S.C. 449, 457, 710 S.E.2d 60, 64 (2011). So long as a defendant's attorney conducts a reasonable investigation, including interviewing potential witnesses when it is reasonable to do so, his performance will not be deficient. Id. at 457, 710 S.E.2d at 65.

5. "Trial counsel was ineffective and deficient in his investigation and preparation for trial, including but not limited to failure to interview witnesses of the Applicant, failure to fully review all discovery provided by the State, failure to request a review of the South Carolina DSS file, failure to thoroughly interview the Applicant, failure to prepare Applicant for his trial testimony and a general failure to develop a defense strategy for the case."

Failure to Review Discovery

Concerning counsel's purported failure to request a review of Applicant's DSS file related to the incident, this Court find Applicant has failed to show prejudice. Applicant did not produce his full DSS file at the evidentiary hearing or introduce it into evidence. In fact, the only DSS record entered into evidence was a DSS Form 3070 that found, in part, that the injuries to the victim were "determined to be caused by [Applicant]," and that there was "[n]o evidence of [the victim's mother] causing harm to [the victim]." (Exhibit 16). Therefore, it is "merely speculative that counsel's alleged deficient performance was prejudicial to [Applicant]." Harris v. State, 377 S.C. 66, 75, 659 S.E.2d 140, 145 (2008) (citing Glover v. State, 318 S.C. 496, 498,

458 S.E.2d 538, 540 (1998) (noting mere speculation and conjecture on the part of Respondent is insufficient to substantiate allegation that counsel's deficient performance was prejudicial to respondent). This is particularly so in light of the overwhelming evidence of guilt against Applicant. See Harris v. State, 377 S.C. 66, 79-80, 659 S.E.2d 140, 147 (2008) (finding no reasonable probability of a different result where there is overwhelming evidence of guilt). This allegation is therefore denied and dismissed.

Failure to Thoroughly Interview Applicant

Applicant has failed to meet his burden with respect to this allegation. Applicant has not presented any evidence that counsel's interview of Applicant was, in any way, deficient. This allegation is therefore denied and dismissed.

Failure to Prepare Applicant for Trial Testimony

Applicant's allegation that he was not sufficiently prepared by counsel to testify is entirely refuted by the counsel Gordon Senerius's credible testimony. Counsel Gordon Senerius stated at the evidentiary hearing that he went through Applicant's testimony with him, although he did not remember exactly how many hours. Counsel acknowledged that he did not go over specific questions with Applicant, but only because it would have sounded rehearsed. See Stokes v. State, 308 S.C. 546, 548, 419 S.E.2d 778, 779 (1992) (where counsel articulates a valid reason for employing certain strategy, such conduct will not be deemed ineffective assistance of counsel). This allegation is therefore denied and dismissed.

General Failure to Develop a Trial Strategy

Both of Applicant's trial counsels testified credibly on numerous occasions as to their general theory of the case, as well as trial strategy on specific issues. This allegation is therefore denied and dismissed.

30. "Trial counsel was ineffective and deficient in failing to adequately review Netflix account regarding episodes watched."

Counsel testified that he did not see any purpose in going over the Netflix records and that they did not corroborate or contradict anything. He testified he probably agreed to let the Netflix records in without objection because it was "not a germane issue" and there was no argument Ms. Bright was not in the house. This Court finds that this fit in with counsel's overarching strategic decision not to pursue a third-party guilt theory against Ms. Bright, discussed *infra*, as there was no direct or strong circumstantial evidence to support such a theory. Applicant's assertion that the Netflix records somehow change this equation is as utterly vague as it is unsupported by the record. This is particularly true in light of what this court has found was an overwhelming evidence against Applicant. See Harris, supra. This allegation is therefore denied and dismissed.

35. "Trial counsel was ineffective and deficient in failing to accurately determine what time EMS arrived."

Applicant did not present any evidence on this allegation at the evidentiary hearing. It is therefore denied and dismissed.

43. "Trial counsel was ineffective and deficient in failing to review the cell phone records concerning the 911 call, including but not limited to, the cell phone records concerning the 911 calls by the victim's mother were not reviewed."

Applicant failed to present any evidence on this allegation at the evidentiary hearing. Counsel Brittany Senerius said that there were no discrepancies or issues with the 911 calls. She said that Applicant told Ms. Bright to call 911, and did not alert her to anything at that time. Because Applicant has failed to meet his burden with respect to this allegation, it is denied and dismissed with prejudice.

44. "Trial counsel was ineffective and deficient in failing to follow up on how victim's mother arrived home on the day of the incident, including but not limited to, the victim's mother did not have a driver's license."

Applicant has failed to present any evidence with respect to this allegation. In any event, even if taken as true, this Court fails to see how counsel's purported failure to follow up on this information could have possibly prejudiced Applicant. Applicant never contested the underlying fact that the victim's mother was present in the house the night of the incident. Moreover, it was counsels' combined strategy not to appear hostile to what they characterized as a grieving and sympathetic mother. This allegation is therefore denied and dismissed with prejudice.

67. "Trial counsel was ineffective and deficient in failing to investigate the victim's grandmother's alleged injuries."

Applicant did not present any evidence on this allegation at the evidentiary hearing. It is therefore denied and dismissed with prejudice.

71. "Trial counsel was ineffective and deficient in failing to investigate and introduce the statements made to DSS and the DSS investigation."

Applicant did not present any evidence on this allegation at the evidentiary hearing. It is therefore denied and dismissed with prejudice.

84. "Trial counsel was ineffective and deficient in failing to properly investigate and interview Desmond Holland."

Applicant has failed to meet his burden here. Counsel Brittany Senerius testified credibly that she was prepared to cross-examine Mr. Holland. She said she used Mr. Holland's statement to police during her cross-examination. Counsel Brittany Senerius also testified – again, credibly – that the knowledge that Mr. Holland may have known Ms. Bright from high school would not have affected her cross-examination. She said that she was concerned with the noise he heard and why he did not follow up on it or call anyone if it was as bad as he said it was.

This Court finds that counsel's investigation in this matter was entirely reasonable. Counsel had Ms. Holland's statement to police and had a valid strategy in conducting her cross-examination. Applicant has therefore failed to meet his burden to show deficient performance.

Applicant has also failed to show prejudice. First, Applicant did not bring Mr. Holland in to provide the testimony counsel purportedly missed as a result of her investigation. To the extent Applicant is alleging some sort of foul play between Mr. Holland and Ms. Bright, he has not presented any supporting evidence to support such a claim. While it is certainly Applicant's prerogative to raise any issue he feels is meritorious, no matter how minor or inconsequential, this Court will not fill in the gaps of his case and assist him in meeting his burden with rampant speculation. See, e.g., Moorehead v. State, 329 S.C. 329, 334, 496 S.E.2d 415, 417 (1998) ("Failure to conduct an independent investigation does not constitute ineffective assistance of counsel when the allegation is supported only by mere speculation as to the result"); Lorenzen v. State, 376 S.C. 521, 535, 657 S.E.2d 771, 779 (2008) (mere speculation insufficient to meet burden to establish that counsel was ineffective). Regardless, as the evidence against Applicant

was overwhelming, he has failed to meet his burden with respect to this allegation. It is therefore denied and dismissed.

88. "Trial counsel was ineffective and deficient in failing to investigate Desmond Holland's criminal record."

Applicant did not present any evidence on this allegation at the evidentiary hearing. It is therefore denied and dismissed with prejudice.

95. "Trial counsel was ineffective and deficient in failing to request or examine the x-rays showing the alleged injuries, including but not limited to, x-rays reflecting the injuries alleged being done on a portable unit of less accuracy."

Counsel testified that she was not sure whether the reliability of the portable x-rays was an issue. Applicant did not present any evidence – from an expert or otherwise – that was indicative of the relative reliability of a portable x-ray unit when compared to any other type of x-ray taking device. In any event, counsel testified that the rib fractures reflected in the portable x-rays was confirmed by the autopsy. Because Applicant has failed to meet his burden to show either deficiency or prejudice with respect to this allegation, it is denied and dismissed.

Failure to Request a Change in Venue

6. "Trial counsel was ineffective and deficient in failing to request a change in venue due to pre-trial publicity."

This Court finds Applicant has failed to meet his burden with respect to this allegation. Under South Carolina law, the relevant question in determining whether a change of venue is required "is not whether the community remembered the case, but whether the jurors had such fixed opinions that they could not judge impartially the guilt of the defendant." Sheppard v.

State, 357 S.C. 646, 655, 594 S.E.2d 462, 467 (2004). It is the defendant's burden to demonstrate actual juror prejudice resulted as a result of such publicity. Id.

Counsel Gordon Senerius testified that he was not concerned with the publicity in the case. Further, the trial court acknowledged to the jury that there had been publicity in the case, and gave them extensive instructions on it. Tr. p. 44-45; see also Foye v. State, 335 S.C. 586, 590 n. 1, 518 S.E.2d 265, 267 n. 1 (1999) (A jury is presumed to follow instructions). Counsel said that he was satisfied with the judge's instruction. Finally, Applicant has failed to present any evidence that he was prejudiced as a result of his trials' venue. In light of the judge's instruction and counsel's credible testimony on the matter, this Court finds Applicant has failed to show that a change in venue was necessary, or that failure to request a change in venue affected the fairness of Applicant's trial. This allegation is therefore denied and dismissed.

Failure to Excuse Jurors for Cause

Applicant's next allegations center around counsel's purported failure to excuse various jurors "for cause."

7. "Trial counsel was ineffective and deficient in failing to excuse Juror Makinson for cause, including but not limited to Juror Makinson's daughter was good friends with the victim's mother and Juror Makinson had read articles in the newspaper concerning the case and Makinson was not challenged for cause."

8. "Trial counsel was ineffective and deficient in failing to excuse Juror Todd for cause, including but not limited to, Juror Todd's daughter worked for the Solicitor's Office; was not challenged for cause, trial counsel failed to request additional voir dire of her and this resulted in a defense strike being used on this juror."

This Court finds Applicant has failed to meet his burden with respect to either of these allegations. While the Sixth and Fourteenth Amendments to the United States Constitution proved a defendant with the constitutional right to a fair and impartial jury of his peers, this right does not entitle a defendant to handpick a jury. State v. Stanko, 376 S.C. 571, 577, 658 S.E.2d 94, 96-97 (2008); see also State v. Edwards, 384 S.C. 504, 509, 682 S.E.2d 820, 823 (2009) (a defendant is not entitled to the jury of his or her choice); Magazine v. State, 361 S.C. 610, 617, 606 S.E.2d 761, 765 ("a criminal defendant has no right to a trial by any particular jury, but only a right to a trial by a competent and impartial jury"). The Constitution, after all, "does not dictate a catechism for *voir dire*, but only that the defendant be afforded an impartial jury." Stanko at 97, 658 S.E.2d at 576 (citing Morgan v. Illinois, 504 U.S. 719, 729, 112 S.Ct. 2222, 119 L.Ed.2d 492 (1992)).

The process of jury selection inherently falls within the expertise and experience of trial counsel. Magazine at 617, 606 S.E.2d at 764 (citing Palacio v. State, 333 S.C. 506, 517, 511 S.E.2d 62, 68 (1999)). In a PCR proceeding, an applicant must provide credible evidence that the trial attorney's refusal to strike a juror prejudice the defense.

Applicant has failed to present any credible evidence that his right to a trial by a competent and impartial jury was violated. Both Jurors Makinson and Todd were excused by the defense and did not participate in trial. Tr. p. 30. Applicant has not presented any evidence that counsel's failure to strike either jury member "for cause" resulted in an unfair or impartial jury. This allegation is therefore denied and dismissed.

Failure to Raise Batson⁵ Objection

Applicant next alleges counsel was ineffective for failing to raise a Batson challenge to one of the State's juror strikes.

9-10. "Trial counsel was ineffective and deficient in challenging the strike of Juror Bonilla pursuant to Batson v. Kentucky, including but not limited to, by failing to consult with the Applicant on individual juror selections and in general failing to properly exercise challenges, strikes, additional voir dire and Batson v. Kentucky challenges."

Applicant did not present any evidence on this allegation at the evidentiary hearing. It is therefore denied and dismissed with prejudice.

Failure to Object to State's Opening Statement

Applicant raised several allegations related to his counsels' purported failures to object to comments made by the State during opening statements:

11. "Trial counsel was ineffective and deficient in failing to object to prosecutor's injection of her personality into the case during the opening statements."

12. "Trial counsel was ineffective and deficient in failing to object to the prosecutor's testimony on evidence in opening statement."

Applicant has failed to meet his burden with respect to these allegations. Opening statements serve to inform the jury of the general nature of the action and the issues involved so they can better understand the evidence presented. State v. Kornahrens, 290 S.C. 281, 284, 350 S.E.2d 180, 183 (1983). "The solicitor is permitted in opening statement to outline the facts the

⁵ Batson v. Kentucky, 476 U.S. 79 (1986).

state intends to prove. Id. "As long as the State introduces evidence to reasonably support the stated facts, there is no error." Id.

Applicant has not presented any evidence that the solicitor failed to introduce evidence to reasonably support the facts put forth in the opening statements. Applicant has also failed to raise any applicable case or law forbidding a solicitor from "inject[ing]... her personality into [a] case during opening statements." From a strategic perspective, trial lawyers may refrain from objecting to all but the most egregious misstatements by opposing counsel on the theory that the jury may construe their objections to be a sign of desperation or hyper-technicality. See U.S. v. Molina, 934 F.2d 1440, 1448 (9th Cir. 1991); Julius v. Johnson, 840 F.2d 1533, 1538-39 (11th Cir. 1988) (recognizing counsel's tactical decision not to make an objection that would cause undue focus on an issue by the jury). Counsel testified credibly that, in his experience, jurors do not like interruptions, and that he wanted the jury to be sympathetic to his client. See also Julius v. Johnson, 840 F.2d 1533, 1538-39 (11th Cir. 1988) (That an objection would cause undue focus by the jury was another tactical reason).

This Court also finds Applicant has not met his burden to show any resulting prejudice from these purported deficiencies. "Improper comments do not automatically require reversal if they are not prejudicial to the defendant, and the appellant has the burden of proving he did not receive a fair trial because of the alleged improper argument." Humphries v. State, 351 S.C. 362, 373, 570 S.E.2d 160, 166 (2002). "The relevant question is whether the solicitor's comments so infected the trial with unfairness as to make the resulting conviction a denial of due process." Id. Moreover, this Court finds the comments were not prejudicial in light of the overwhelming evidence of guilt. See Harris, supra.

Failure to Call Witnesses

Applicant brought forward one claim that counsel was ineffective in failing to call specific witnesses.

81. "Trial counsel was ineffective and deficient in failing to call Melinda Nicholson, who collected the wet towel."

87. "Trial counsel was ineffective and deficient in failing to call Desmond Holland's fiancé to the stand, including but not limited to, in that Desmond Holland's fiancé may have contradicted his testimony."

This Court finds Applicant has failed to meet his burden with respect to this allegation. An Applicant cannot show that he was prejudiced by counsel's failure to call a favorable witness to testify at trial if that witness does not later testify at the PCR hearing or otherwise offer testimony within the rules of evidence. Dempsey v. State, 363 S.C. 365, 369, 310 S.E.2d 812, 814 (2005). Applicant did not call Melinda Nicholson or Desmond Holland's fiancé as a witness at the evidentiary hearing or otherwise offer either of their testimony in accordance with the rules of evidence. These allegations are therefore denied and dismissed with prejudice.

Failure to Assert Third Party Guilt

Applicant's next allegation involves counsel's purported failure to assert third party guilt at trial.

97. "Trial counsel was ineffective and deficient in failing to show the victim's mother was at fault in the injuries and trial counsel was ineffective and deficient in failing to even raise the possibility at trial."

Applicant has also failed to meet his burden with respect to this allegation. While a party may, under certain circumstances, introduce evidence at trial that the crime they are charged with

was committed by another person, this Court finds counsels' decisions not to pursue a third party guilt defense was motivated by a valid trial strategy. See Caprood v. State, 338 S.C. 103, 110, 525 S.E.2d 514, 517 (2000) (citing Stokes v. State, 308 S.C. 546, 419 S.E.2d 778 (1992)). Counsel Brittany Senerius testified that Ms. Bright appeared to be a "grieving mother" on the witness stand, and that their trial strategy – based on the sensitivity of the case – was to poke holes in the State's case through other witnesses rather than "hound" her. Further, both of Applicant's also explained that there was no evidence of third party guilt. Counsel Brittany Senerius said that, in her discussions with Applicant, he never indicated third party guilt or that anyone else may have been responsible, but only that he could not explain the situation. Counsel Gordon Senerius testified that third party guilt is "a difficult road to hoe." He said that he had pursued it in the past when he had direct evidence, but that in Applicant's case, there was not even any strong circumstantial evidence that anyone else had committed the crime. He said there were no leads on third party guilt.

Because counsels' decisions not to pursue third party guilt at trial was part of a valid trial strategy, this Court finds Applicant has failed to meet his burden to show deficient performance. Applicant has also failed to show prejudice. Applicant did not present any evidence or credible testimony at the evidentiary hearing that would lead this Court to question the outcome of his proceeding, or to conclude that Ms. Bright was anything more than a grieving mother. This allegation is therefore denied and dismissed.

Counsel's Opening Statement

Applicant next challenges his counsel's opening statement at trial.

13. "Trial counsel was ineffective and deficient in failing to introduce his client to the jury in the opening statement."

103. "Trial counsel was ineffective and deficient in failing to present proper background information on the plaintiff to the jury, including but not limited to, in that the Applicant served in the military, graduated from T.R. High School, grew up in an area similar to Oconee and had steady employment history."

This Court finds Applicant has also failed to meet his burden to prove these allegations. There is no Constitutional right to give an opening statement or oral argument except the right to provide a closing argument. Herring v. New York, 422 U.S. 853, 863 n.13 (1975). Challenges to the timing of opening statements, including the decision whether to make one at all, are resolved as a matter of trial tactics. U.S. v. Rodriguez-Ramirez, 777 F.2d 454, 458 (9th Cir. 1985).

Counsel also testified at the evidentiary hearing that Applicant's character was not an issue at in the case. This Court finds that testimony credible and compelling. Still, counsel was able to elicit beneficial testimony from Applicant about his military service during the trial, Tr. p. 325-26, and got Applicant to testify that he graduated high school in Greenville, South Carolina, and was employed up until around the victim's birth. Tr. p. 311-312. Counsel informed the jury during closing argument that Applicant was medically discharged from the military. Tr. p. 415. Practically all of the information Applicant alleged his attorneys were constitutionally deficient for failing to put before the jury actually ended up before the jury. Accordingly, Applicant has not met his burden to show deficiency or prejudice. This allegation is therefore without merit and dismissed.

Failure to Object to Leading Questions

Applicant alleges his counsels were ineffective in failing to object to a number of leading questions.

26. "Trial counsel was ineffective and deficient in failing to object to leading question that Plaintiff's behavior was "odd" on multiple occasions."

28. "Trial counsel was ineffective and deficient in failing to object to leading questions about the child's sleeping behavior."

29. "Trial counsel was ineffective and deficient in failing to object to leading question that child's breathing was "odd."

32. "Trial counsel was ineffective and deficient in failing to object to leading question regarding victim's breathing."

33. "Trial counsel was ineffective and deficient in failing to object to victim's mother's statement saying that the Plaintiff woke up and the child was not breathing."

34. "Trial counsel was ineffective and deficient in failing to object to leading questions about CPR on the child."

37. "Trial counsel was ineffective and deficient in failing to leading and inflammatory question ("what point did the shower story emerge")

38. "Trial counsel was ineffective and deficient in failing to object to leading question using the term "odd."

41. "Trial counsel was ineffective and deficient in failing to object to continued leading questions by the prosecution."

47. "Trial counsel was ineffective and deficient in failing to object to hearsay and leading question, "Did you investigation reveal that the child had been in

Oconee County during the days and hours surrounding 8/16.”

53. “Trial counsel was ineffective and deficient in failing to object prosecutor’s characterization of this statement as “Story one, story two and story three.” ”

60. “Trial counsel was ineffective and deficient in failing to object to the continued leading questions that plaintiff’s behavior was “odd.” ”

83. “Trial counsel was ineffective and deficient in failing to object to the continued leading of witness by the prosecution.”

93. “Trial counsel was ineffective and deficient in failing to object to prosecution leading, the examining physician “that would be the kind of injury were talking about.”

This Court finds Applicant has failed to meet her burden with respect to the above allegations, as well. Similarly, failure to object to leading questions has been resolved as trial strategy not to be second-guessed by the courts. Burnett v. Collins, 982 F.2d 922, 930 (5th Cir. 1993). The Ninth Circuit has rejected claims of ineffective assistance of counsel for failure to object to these types of rules violations, noting that the appellant made no claim that the evidence was inadmissible without leading questions so the attorney could allow the leading questions without objecting. U.S. v. Bosch, 914 F.2d 1239, 1246 (9th Cir. 1990); Bonin v. Vasquez, 794 F.Supp. 957, 969 (C.D. Cal. 1992), *aff’d*, 59 F.3d 815 (9th Cir. 1995).

Counsel Brittany Senerius said that she tried to watch for the solicitor testifying through leading, and would have objected if the leading was information that was important. Counsel Gordon Senerius testified that he does not object to every technical violation of the rules because juries may think he’s trying to hide something. Because these decisions were made pursuant to a

valid trial strategy – with counsels' respective credibility with the jury in mind – this Court finds Applicant has failed to show any deficiency with regard to these allegations.

This Court also finds that Applicant has also failed to show prejudice resulting from any of these purported deficiencies. Even if counsel was deficient, the alleged rule violations referenced above are each so miniscule as to preclude a finding of deficiency. They are therefore denied and dismissed.

Failure to Object to Irrelevant Testimony

In a number of allegations, Applicant states that counsel was ineffective for failing to object to irrelevant information:

16. Trial counsel was ineffective and deficient in failing to object to the relevance of Plaintiff's employment status.

17. Trial counsel was ineffective and deficient in failing to object to the relevance of the victim's mother's family helping the couple's financial condition and the Plaintiff's family not helping with that condition.

66. "Trial counsel was ineffective and deficient in failing to object to the relevance of the Plaintiff being unemployed and the victim's grandmother helping with the couples bills."

90. "Trial counsel was ineffective and deficient in failing to object to Desmond Holland's irrelevant testimony.

Applicant has failed to meet his burden on any of the above allegations. "Relevant evidence" is evidence having any tendency to make the existence of any fact that is of consequence to the determination of the action more probable or less probable than it would be without the evidence. Rule 401, SCRE. As a general rule, evidence which is relevant is

admissible, and evidence which is not relevant is not admissible. Rule 402, SCRE. Applicant had the burden to prove that counsel was deficient in failing to object to the above statements – that they were irrelevant and that counsel did not have a valid trial strategy in choosing not to objection – and that the deficiency prejudiced him. This Court finds Applicant has shown neither. As stated previously, counsel testified credibly that he does not typically object to every technical violation of the rules of evidence so that the jury does not think he is trying to hide something. Regardless, Applicant has failed to meet his burden to show prejudice. This is especially true in light of the overwhelming evidence of guilt in this case. Accordingly, these allegations are denied and dismissed.

Failure to Object to Hearsay

Applicant has raised a number of allegations concerning counsels' failures to object to hearsay. Hearsay is an out of court statement, other than the one made by the declarant while testifying at the trial or hearing, offered in evidence to prove the truth of the matter asserted. Rule 801(c), SCRE. Hearsay testimony is inadmissible because the adverse party is denied the opportunity to cross-examine the declarant. State v. James, 255 S.C. 365, 179 S.E.2d 41 (1971). However, reversal is not required unless appellant was prejudiced by the error. State v. Brown, 286 S.C. 445, 334 S.E.2d 816 (1985). State v. Mitchell, 286 S.C. 572, 573, 336 S.E.2d 150, 150-51 (1985).

15. "Trial counsel was ineffective and deficient in failing to object to the testimony of the victim's mother as to her opinion concerning the guilt of the Plaintiff and the impact of the hearsay autopsy report on her."

This Court finds Applicant has also failed to meet his burden with respect to this allegation. Ms. Bright testified that she believed Applicant, despite his changing stories, until the

autopsy report came out. Tr. p. 69. Ms. Bright does not say what the autopsy report said, but simply that once she read it she "knew that there was no way that a baby could get those injuries accidentally." Counsel Brittany Senerius's testimony that the knowledge that experts would be testifying later in the trial affected the trial strategy also precludes a finding of deficiency here. Dr. Woodard conducted the autopsy on the victim and testified as to its results. Tr. p. 271. There was also substantial expert testimony that the victim's injuries were not consistent with accidental trauma. Tr. p. 237, 253, 260, 274, 281. In light of this testimony and the overwhelming evidence of guilt, Applicant has also failed to meet his burden to show prejudice as a result of this allegation. It is therefore denied and dismissed.

18. "Trial counsel was ineffective and deficient in failing to object to the hearsay testimony of the victim's mother that 'the plaintiff's family did not know,' about the baby.

Applicant has failed to meet his burden with respect to this allegation. This Court finds counsel was not deficient in failing to make a hearsay objection because the testimony was not hearsay. Clearly the victim's mother was competent to testify – from her own personal knowledge – that she and Applicant had not told his family about the victim's birth. To the extent that she referenced statements made by Applicant at any point, such testimony was by definition not hearsay. Rule 801(d)(2)(A) SCRE ("A statement is not hearsay if [t]he statement is offered against a party and is the party's own statement..."). Even assuming it were hearsay, however, it's clearly not prejudicial where Applicant also testified that his family did not know about the birth of the victim. Tr. p. 314-15, and the state presented overwhelming evidence of Applicant's guilt. This allegation is therefore denied and dismissed.

19. "Trial counsel was ineffective and deficient in failing to object to the hearsay testimony of the victim's mother regarding what the Plaintiff's family believed their relationship to be."

This allegation is also without merit. Once again, Applicant has failed to frame his allegation in a way that makes any actual hearsay readily discernable. Ms. Bright was asked on direct examination what Applicant's family believed her relationship to be. Tr. p. 71-72. Ms. Bright simply responded "Roommate." This testimony does not contain any hearsay. See Allegation 18, supra.

23. "Trial counsel was ineffective and deficient in failing to object to the introduction of the Verizon records without a foundation."

This Court finds Applicant has not met his burden of proof here. Failure to object to alleged defects in the chain of custody was not ineffectiveness in where there was no showing the chain could not have been met anyway. Pryor v. Norris, 103 F.3d 710, 713 (8th Cir. 1997). Counsel testified that she may have told the solicitor that she would not require custodians for the Verizon records. Applicant has not presented any evidence that these records would have been otherwise inadmissible or that the State would not have been able to produce appropriate witnesses to introduce the records absent counsel's consent. This allegation is therefore denied and dismissed.

31. "Trial counsel was ineffective and deficient in failing to object to hearsay. Netflix records indicate that you watched all the shows."

Applicant has failed to meet his burden with respect to this allegation, as well. Counsel Gordon Senerius testified that he would have agreed to let the Netflix records into evidence without a custodian because it was not a germane issue. He further testified, as this Court has

repeatedly emphasized, that his practice is not to object to every technical violation of the rules so the jury would not think he was trying to hide anything. Taking into account the overwhelming evidence of Applicant's guilt – as well as counsel's testimony, which indicated the Netflix records had little to do with the strategy and theory of the case he developed – this Court finds Applicant has failed to meet his burden. This allegation is therefore denied and dismissed.

36. "Trial counsel was ineffective and deficient in failing to object to hearsay testimony about what Dr. Gwyn asked them." / 39. "Trial counsel was ineffective and deficient in failing to object to hearsay testimony of the victim's mother regarding what Dr. Gwyn told her." / 48. "Trial counsel was ineffective and deficient in failing to object to hearsay regarding information given by medical personal."

The purported hearsay testimony about "what Dr. Gwyn asked them" is not actually hearsay. In the relevant portion of the transcript, there is no "statement" by Dr. Gwyn being testified to. Tr. p. 87.⁶ Ms. Bright, the victim's mother, simply told the solicitor that she was asked a number of questions regarding events in the previous few days. Tr. p. 86-87. The only statement she testifies to at that time comes from Applicant. Such a statement is, by definition, not hearsay. See Rule 801(d)(2). Concerning what Dr. Gwyn "told" Ms. Bright – about the extent of the injuries – this Court finds this is also not hearsay. Tr. p. 88. Ms. Bright did not testify as to anything Dr. Gwyn told her. In addition, to the extent that is even remotely possible to construe Ms. Bright's testimony here as containing a statement by Dr. Gwyn, this Court finds it is not presented for the truth of the matter asserted. Dr. Gwyn "told" Ms. Bright "the extent of

⁶ It is entirely possible that Applicant is referring to a different portion of the transcript. This allegation – like many other allegations in Applicant's scattershot approach to pleading – is so vague that it makes it difficult to track down just what, exactly, he is referring to.

[the victim's] injuries." Tr. p. 88. Instead, the statement is presented to establish a timeline for Applicant's first, "updated" account of his interactions with the victim the day of the incident. Ms. Bright's testimony indicates that Applicant changed or modified his story after hearing the extent of the victim's injuries from Dr. Gwyn. Because there is no hearsay in the contested testimony, this Court finds Applicant has failed to meet his burden to show deficient performance. Further, in light of the overwhelming evidence of his guilt and the fact that Dr. Gwyn ultimately testified in Applicant's trial as to the extent of the victim's injuries, Tr. p. 252-55, this Court finds no prejudice from the purported deficiency. This allegation is therefore denied and dismissed.

50. "Trial counsel was ineffective and deficient in failing to object to hearsay testimony regarding a time line of the incident."

This allegation does not highlight any specific testimony that purportedly violates the general prohibition against hearsay. After reviewing the transcript, this Court finds Applicant has failed to meet his burden. Even if every statement by law enforcement that referred to a timeline of the incident were, in fact, hearsay, this Court finds the lack of any objection was based on a valid trial strategy – counsel was well aware that this information would come out later in the trial from the State's expert witnesses. The fact that the expert witnesses also testified to the time frame of the victim's death also precludes a finding of prejudice – the "time line" came out anyway. Tr. p. 276-77). This allegation is therefore denied and dismissed.

51. "Trial counsel was ineffective and deficient in failing to object to hearsay statement by the officer. He was alone with the child."

Officer Rounder's testimony that he learned Applicant was alone with the child on the day of the incident is not hearsay, but rather information he learned throughout the course of his investigation. It was not offered to prove the truth of the matter asserted,⁷ but to explain how his investigation developed. See Caprood v. State, 338 S.C. 103, 111, 525 S.E.2d 514, 518 (2000) (testimony that is offered for the limited purpose of explaining why a government investigation was undertaken is not hearsay). In any event, Officer Roundy's testimony was clearly not prejudicial where it was undisputed that Applicant was at home alone with the child for most of August 16th. This allegation is therefore denied and dismissed.

52. "Trial counsel was ineffective and deficient in failing to object to opinion of the officer "Fall, drop or accidental mishap none of those scenarios fit."

This Court finds Applicant has failed to show deficiency or prejudice. Counsel Brittany Senerius testified credibly that she knew experts would be testifying later, and that knowledge affected her trial strategy in terms of deciding not to object to evidence that would obviously come in later. In addition, the experts testified at length that the victim's injuries were not consistent with an accident. This allegation is therefore denied and dismissed.

54. "Trial counsel was ineffective and deficient in failing to object to hearsay testimony of statements made to officers, including but not limited to, by permitting officers and witnesses to testify about statements made to them by others and the content of records of others all without a proper foundation."

This allegation is too vague to rule on. Further, there was no evidence specifically presented to support this allegation at the evidentiary hearing. It is therefore denied and dismissed.

⁷ This Court notes that the matter asserted in the statement – that Applicant, for most of the day in question, at home alone with the victim – was never in dispute at the trial and was in fact testified to by Applicant.

56. "Trial counsel was ineffective in failing to object to hearsay testimony of the third statement allegedly provided to police, and generally failing to cross-examine the police officers about the number of statements given to the police."

This is not hearsay. Rule 801(d)(2)(A) SCRE ("A statement is not hearsay if [t]he statement is offered against a party and is the party's own statement. . ."). Moreover, this Court finds Applicant has failed to meet his burden with respect to counsel's failure to cross-examine police officers. See "Failure to Properly Cross-Examine Witnesses," Infra. Applicant has failed to meet his burden with respect to this allegation. It is therefore denied and dismissed.

57. "Trial counsel was ineffective and deficient in failing to object to the opinion by officer that what happened day before incident wasn't relevant"

Applicant has failed to meet his burden here, as well. This Court finds counsel's decision not to object to the above referenced statement was made pursuant to his overarching strategy not to object to every technical rule violation to avoid losing the jury. Applicant has also failed to show prejudice in light of the overwhelming evidence of guilt.

58. "Trial counsel was ineffective and deficient in failing to object to hearsay testimony by officer who testified that the mother-in-law didn't sleep over night before the incident."

This testimony is not hearsay. Officer Roundy stated that he "found out that nobody had been to the house" the night of August 15th. Tr. p. 121. His testimony does not contain an out of court statement. See Rule 801(c), SCRE ("Hearsay' is a statement, other than one made by the declarant while testifying at the trial or hearing, offered in evidence to prove the truth of the matter asserted"). This Court therefore finds Applicant has failed to meet his burden with respect to this allegation. Accordingly, it is denied and dismissed.

59. "Trial counsel was ineffective and deficient in failing to object to the hearsay and opinion testimony that the Plaintiff was "fully aware of the severity of her injuries at this point? He was by this time."

This testimony does not constitute improper hearsay. Officer Roundy was asked whether, at the time of his third discussion with Applicant, Applicant was aware of the severity of the victim's injuries. There is no out of court statement here for the purposes of determining hearsay, and any information presumably came from Applicant during the course of the discussion. In any event, by this point in time Officer Roundy also testified that the victim had died, so clearly it was inferable that Applicant was aware of the extent of her injuries. Tr. p. 121.

61. "Trial counsel was ineffective and deficient in failing to properly object to improper bolstering of the basis for Plaintiff's arrest, including but not limited to, as forth on page 179 l. 19- 180, l. 11 of the transcript the prosecution without objection bolstered the decision to arrest Applicant."

After reviewing the offending passage, this Court is unable to find any improper bolstering. To the extent that bolstering a "decision to arrest" a criminal defendant is grounds for a claim of ineffective assistance of counsel, the offer properly testified as to what information he used in his investigation. To the extent -- if any -- his comments on what determinations the "experts" made as far as the injury occurring on the 16th was inappropriate, this Court finds neither deficiency nor prejudice in failing to object. Counsel Brittany Senerius testified credibly that her knowledge that the experts were going to be testifying later affected her trial strategy in not making some objections to information that would come out anyway. Dr. Kathryn Barden, an emergency physician and a qualified expert in emergency medicine, testified that she believed the fatal injury occurred on the 16th. Tr. p. 218. Dr. Brett Woodard, a forensic pathologist and

expert in forensic pathology, also testified that the fatal injury was consistent with being inflicted on the afternoon of the 16th. Tr. p. 283. Because counsel's decision not to object was made pursuant to a valid trial strategy, and because the information ultimately came out anyway, Applicant's claim of ineffective assistance is without merit. This allegation is therefore denied and dismissed.

63. "Trial counsel was ineffective and deficient in failing to object to re-direct examination that allowed hearsay to correct mother's "odd" behavior"

This Court is unable to determine which portion of which witness's testimony Applicant is referring to in this vague allegation. Applicant presented no evidence or clarification in the evidentiary hearing. It is therefore denied and dismissed.

64. "Trial counsel was ineffective and deficient in failing to object to hearsay that the victim had been moved."

This Court is unable to determine which portion of which witness's testimony Applicant is referring to in this vague allegation. It appears that Applicant is referring to Officer Kelly's statement that when "he arrived, the child had been moved." Tr. p. 137. However, that testimony is not hearsay, and this Court is unable to find any hearsay testimony in its general vicinity. Regardless, it is Applicant's responsibility to plead his allegations specifically. See S.C. Code § 17-27-50 (2016). As Applicant has failed to meet his burden, this allegation is denied and dismissed.

65. "Trial counsel was ineffective and deficient in failing to object to hearsay and irrelevant and inflammatory testimony describing to the jury the happiness of the victim". 14. "Trial counsel was ineffective and deficient in failing to object to hearsay

testimony of the victim's mother that the victim was a "Happy baby, loved everyone."

This Court finds Applicant has failed to meet his burden with respect to this allegation, as well. The decision not to object here falls in line with counsel's strategy of not objecting to every technical violation of the rules of evidence to avoid losing the jury. Further, the testimony was clearly not prejudicial. Applicant presented nearly identical testimony at trial, saying that "she was happy," and "she loved everybody, everybody loved her." Tr. p. 316. Applicant said that he and Ms. Bright "had one person [tell them they] should put her in a magazine." Id. Applicant said that "[s]he was a happy baby constantly." Id. Applicant has therefore failed to meet his burden with respect to this allegation. Accordingly, it is denied and dismissed.

73. "Trial counsel was ineffective and deficient in failing to object to hearsay concerning the investigation determination, including but not limited to, as set forth on page 165, l. 5-8 of the trial transcript.

This Court finds the testimony in question is not hearsay. Officer Jones merely stated that his investigation revealed that the victim had been in the city limits of Seneca in the weeks prior to her death. There is no statement. In any event, it is clearly not prejudicial. There was never any question at trial that the victim lived with Applicant and Ms. Bright in their apartment in Oconee County. Applicant did not present any evidence at the evidentiary hearing that the incident did not occur in Oconee County. This matter is therefore denied and dismissed.

74. "Trial counsel was ineffective and deficient in failing to object to the hearsay statement "I was advised by Hospital Staff that she was brain dead"

This Court finds Applicant has failed to meet his burden with respect to this allegation, as well. While this may, technically constitute hearsay, as stated previously, Attorney Gordon

Senerius testified that he does not typically object to every technical violation of the rules of evidence because it makes the jury think he is hiding something, and counsel Brittany Senerius testified that they knew the expert testimony would come in later and altered their trial strategy accordingly. This Court therefore finds counsel was not deficient in failing to make an objection to this comment. Nevertheless, Applicant has failed to show any conceivable prejudice that could have resulted from this testimony, especially where – as here – there was overwhelming evidence of Applicant's guilt and there was never any question that the victim suffered severe head trauma and ultimately died as a result.

75. "Trial counsel was ineffective and deficient in failing to object to hearsay regarding the Officer corroborating victim's mother's story."

This allegation is also exceedingly vague. The Court is not entirely sure which portion of which witness's testimony Applicant is referring to. As no evidence was presented at the evidentiary hearing on this allegation, it is denied and dismissed.

77. "Trial counsel was ineffective and deficient in failing to object to speculation and lack of foundation that two people could not get into the nursery room bed."

Applicant failed to present any evidence in support of this allegation at the evidentiary hearing. In any event, having found counsel's trial strategy not to object to every technical objection to be valid, this Court finds Applicant has failed to meet his burden to show deficiency. In addition, due to the overwhelming evidence and the fact that this did not touch on any relevant aspect of the State's or Applicant's case at trial (or his theory at the evidentiary hearing), this Court finds Applicant has failed to show any prejudice. This allegation is therefore denied and dismissed.

78. Trial counsel was ineffective and deficient in failing to object to the hearsay of corroborating the time frames given by Mr. Holland.

This allegation is also exceedingly vague. The Court is not entirely sure which portion of which witness's testimony Applicant is referring to. As no evidence was presented at the evidentiary hearing on this allegation, it is denied and dismissed.

79. "Trial counsel was ineffective and deficient in failing to object to hearsay regarding determining the timing of injuries from the Doctors and the Medical Reports without a proper foundation."

Applicant has also failed to meet his burden with respect to this allegation. It is true that several experts testified as to the timing of the victim's injuries. This testimony did not constitute hearsay, but instead proper opinion testimony presented by experts pursuant to Rule 702, SCRE ("If scientific, technical, or other specialized knowledge will assist the trier of fact to understand the evidence or determine a fact in issue, a witness qualified as an expert by knowledge, skill, experience, training, or education, may testify thereto in the form of an opinion or otherwise"); see also State v. Hutto, 325 S.C. 221, 481 S.E.2d 432, 436 (1997) ("Expert witness testimony is a widely-recognized exception to the rule against hearsay testimony"). Moreover, "[t]he facts or data in the particular case upon which an expert bases an opinion or inference may be those perceived by or made known to the expert at or before the hearing. If of a type reasonably relied upon by experts in the particular field in forming opinions or inferences upon the subject, the facts or data need not be admissible in evidence." Rule 703, SCRE. Accordingly, Applicant has not convinced this Court that any non-frivolous objection to the above referenced testimony actually existed or would have been otherwise sustained. This allegation is therefore denied and dismissed.

80. "Trial counsel was ineffective and deficient in failing to object to testimony concerning the officer's basis for Plaintiff's arrest."

Applicant has failed to meet his burden with respect to this allegation, as well. Officer Roundy testified that he arrested Applicant "based on the pathologist's statement and report to [law enforcement] on the injuries and manner and cause of death." Tr. p. 123. Officer Roundy said that he also considered the time line. Tr. p. 124. Applicant did not present any additional evidence on this allegation at the evidentiary hearing, and this Court finds nothing objectionable about the statement. To the extent Applicant is attacking the time line the solicitor was referring to, this Court has already addressed that issue. See Allegation 61, supra.

82. "Trial counsel was ineffective and deficient in failing to object to the investigator opinion and speculative testimony that it was impossible to remove the child from the bed."

Applicant has failed to meet his burden here, as well. While Officer Jones testified that he felt it would be impossible for someone to have removed the child from the bed," Tr. p. 186, counsel opened the door to this testimony. Tr. p. 185. In any event, this Court finds the testimony was not objectionable. A lay witness may give testimony in the form of opinions or inferences provided those opinions or inferences (a) are rationally based on the perception of the witness, (b) are helpful to a clear understanding of the witness' testimony or the determination of a fact in issue, and (c) do not require special knowledge, skill, experience, or training. Rule 701, SCRE. Officer Roundy testified, on cross-examination, that he did not believe someone could have moved the victim from the bed while Applicant was still sleeping in it based on "the bedroom, the way it was laid out, the clutter, the size of the bed," and the size of Applicant. The Officer physically saw the bed room, and his opinion on whether someone could have entered.

the room and removed from the bed she and Applicant were sleeping in was helpful to the determination of whether Applicant had full and uninterrupted control over the victim during a substantial portion of the day of the incident. Finally, sleep and waking up is obviously within the everyday knowledge of most people. Officer Roundy did not testify that it would have been physically impossible to a reasonable degree of scientific certainty to remove the victim from the bed without waking up. Instead, he said that he did believe it would have been possible based on his perceptions. In any event, Applicant has also failed to show he was prejudiced by counsel's failure to object to these statements in light of the fact that there was no direct or circumstantial evidence of third party guilt, and the overwhelming evidence against Applicant. This allegation is therefore denied and dismissed.

89. "Trial counsel was ineffective and deficient in failing to object to Desmond Holland's statement regarding baby's location."

This Court is unable to determine which portion of which witness's testimony Applicant is referring to. Applicant failed to present any testimony or evidence with respect to this allegation at his evidentiary hearing. It is therefore denied and dismissed.

Failure to Object to the Criminal History

Applicant's next allegation deal with his criminal history.

40. "Trial counsel was ineffective and deficient in failing to object to the interjection of the Plaintiff's criminal record on direct testimony."

This court finds Applicant has failed to meet his burden with respect to this allegation. To the extent Applicant is alleging counsel should have objected to Applicant's testimony as he was being directed by counsel, this Court finds no deficiency or prejudice. This Court also notes

that there does not appear to be an actual reference to Applicant's criminal record during his testimony. This allegation is therefore denied and dismissed.

Failure to Properly Cross-Examine Witnesses

Applicant alleges counsel was ineffective for failing to properly cross-examine a number of witnesses.

20. "Trial counsel was ineffective and deficient in cross-examining the victim's mother. Including but not limited to, by failing to establish the third party guilt of this witness, failing to cross-exam her about her journal entries indicating anger over birth of child interfering with her relationship with Applicant, failing to cross-exam her about her visit to Walgreens, failing to cross-exam her about who brought her home, failing to cross-exam her about how she was with [REDACTED], failing to cross-exam her about the reasons [REDACTED] mother was not permitted to care for the child, failure to cross-exam her about her refusal to speak with the police without an attorney, failing to cross-exam her about her opportunity to pick the child up while the Applicant slept nor the frequency of her doing so, failing to cross-exam her about the alleged timing of the incident, failing to cross-exam her about her change in beliefs about the Applicant's guilt, failing to cross-examine her about the coroner's report, failing to cross-exam her about not going into the room on the day of the incident, failing to cross-exam her about the Netflix account not being hers, failing to cross-exam her about her inconsistent statements and generally failing to establish or even attempting that she had motive and opportunity to commit the crime Applicant was accused of."

21. "Trial counsel was ineffective and deficient in failing to effectively cross-examine the victim's mother about her scenario of the events surrounding the child's death."

22. "Trial counsel was ineffective and deficient in failing to thoroughly cross-examine the victim's mother

about getting up at 11:15 and the victim being fine and not having injuries."

24. "Trial counsel was ineffective and deficient in failing to object to testimony of Plaintiff texting victim's mother regarding Plaintiff not wanting victim's grandmother to come over without a proper foundation and failing to cross-examine victim's mother on that issue."

25. "Trial counsel was ineffective and deficient in failing to dispute the Plaintiff was laying down and that he said "try not to wake us."

42. "Trial counsel was ineffective and deficient in failing to follow up on how victim's mother left for work when there was no mention of her driving and failing to cross-examine her about lack of a driver's license."

45. "Trial counsel was ineffective and deficient in failing to introduce [Ms. Bright's] statement into evidence, including but not limited to, [Ms. Bright's]'s statement contradicted her testimony and it would have impeached her credibility."

46. "Trial counsel was ineffective and deficient in failing to properly cross examine [Ms. Bright]."

62. "Trial counsel was ineffective and deficient in failing to properly cross examine the investigating officer, including but not limited to, as set forth on page 124, 1:6-129 1:18 of the transcript."

68. "Trial counsel was ineffective and deficient in failing to review the cell phone records regarding the phone call to the victim's grandmother and not cross-examining [Ms. Bright] about the alleged phone call, including but not limited to, as set forth on page 152, 1:17-20 the timing and duration of the call to Donna Eller was a relevant point of investigation by the trial attorney."

69. "Trial counsel was ineffective and deficient in failing to cross-examine Grandmother about he told the victim's Grandmother about the shower incident."

70. "Trial counsel was ineffective and deficient in failing to cross-examine Paige Williams concerning the shower incident statement and her statement to the police."

72. "Trial counsel was ineffective and deficient in failing to use Paige Williams' statement to police for cross-examination."

85. "Trial counsel was ineffective and deficient in failing to properly cross-examine the investigator"

86. "Trial counsel was ineffective and deficient in failing to properly question the witness regarding the timing of noise from the apartment."

92. "Trial counsel was ineffective and deficient in failing to properly effectively cross examine the Doctors"

94. "Trial counsel was ineffective and deficient in failing to question the doctor about alleged rib bruises."

98. "Trial counsel was ineffective and deficient in failing to dispute in Desmond Holland's testimony in cross-examination of the doctors."

99. "Trial counsel was ineffective and deficient in failing to question the doctors about the leg injury occurring before the incident and mother's frequent checking of the child."

100. "Trial counsel was ineffective and deficient in failing to question the doctors about the leg injury occurring before the incident and mother's frequent checking on the child."

101. "Trial counsel was ineffective and deficient in failing to point out that victim's mother testified she

moved the child around and she should have noticed something was wrong with the victim.”

102. “Trial counsel was ineffective and deficient in failing in failing to cross-examine or question the size, width and length of the fingerprints allegedly detected on the victim.”

104. “Trial counsel was ineffective and deficient in failing to challenge the victim’s mother’s testimony.”

This Court finds Applicant has also failed to meet his burden of proof with respect to each of the above allegations concerning his attorneys’ cross-examination of various witnesses. The right to cross-examination is guaranteed by Davis v. Alaska, 415 U.S. 308, 316 (1974). Cross examination must be objectively reasonable and not flawless. Dows v. Wood, 211 F.3d 480, 487 (9th Cir. 2000). An attorney’s decision about the extent of cross-examination and refraining from certain lines of inquiry is entitled to great deference. Id.; see also Sallie v. North Carolina, 587 F.2d 636, 640 (4th Cir. 1978) (the manner and extent of cross-examination should not be second-guessed).

Many of these allegations involve counsel’s purported failure to challenge information that was either confirmed by Applicant during his testimony or not contested at the evidentiary hearing. Applicant alleges, for example, that counsel was ineffective for failing to dispute that he was lying down and said “try not to wake us.” But Applicant testified on direct examination that he “texted [Ms. Bright] to say, hey, me and [victim] were going to lay down, you know, try not to wake us.” Tr. p. 323. Some of his allegations are too vague to be a serious basis for relief.⁸ Others are entirely irrelevant to the theory Applicant’s attorneys argued at trial or the

⁸ “Trial counsel was ineffective and deficient in failing to properly cross-examine [Ms. Bright].”

evidence Applicant presented at the evidentiary hearing.⁹ Applicant's allegation that counsel was ineffective for failing to cross-examine Paige Williams concerning the shower incident statement and her statement to police is a complete misrepresentation of the record. See Tr. p. 159-161.

This Court finds that both of Applicant's attorneys competently cross-examined the State's witnesses in accordance with their trial strategy. As this Court has already discussed in detail, Applicants attorneys had valid strategic reasons not to pursue a third party guilt theory against the victim's mother. Concerning Mr. Holland, counsel Brittany Senerius said that she was most concerned with the noise he heard and why he did not follow up on it if it was as bad as he said it was. Applicant is certainly free to disagree with his attorneys' strategic decisions. However, this Court will not engage in a hindsight evaluation of every single one of those tactical decisions. To do so would demonstrate a profound misunderstanding of the Strickland standard of professional reasonableness.

This Court will not do Applicant's job for him and speculate on whether a "better" cross-examination would have helped at trial. See Skeen v. State, 325 S.C. 210, 216-17, 481 S.E.2d 129, 133 (1997) (finding that where there was no evidence or testimony about what information a more extensive cross examination might have revealed, Applicant unable to show prejudice). Applicant has failed to present any evidence that he was prejudiced by counsels' purportedly deficient cross-examinations. This allegation is therefore denied and dismissed.

Failure to Challenge Voluntariness of Applicant's Statements

⁹ "Trial counsel ineffective and deficient in . . . failing to cross-examine [Ms. Bright] about lack of a driver's license."

Applicant alleges counsel was ineffective in failing to challenge the validity of his statements to police.

55. "Trial counsel was ineffective and deficient in failing to challenge the statements made by Plaintiff to the police, including but not limited to, failing to request a determination as to the voluntariness of statements made by the Applicant to police."

Applicant has entirely failed to meet his burden to prove this allegation. "A criminal defendant is deprived of due process if his conviction is founded, in whole or in part, upon an involuntary confession." State v. Pittman, 373 S.C. 527, 565, 647 S.E.2d 144, 164 (2007) (citing Jackson v. Denno, 378 U.S. 368, 377 (1964)), *cert. denied*, 552 U.S. 1314 (2008). In State v. Miller, this court instructed:

The process for determining whether a statement is voluntary, and thus admissible, is bifurcated; it involves determinations by both the judge and the jury. First, the trial judge must conduct an evidentiary hearing, outside the presence of the jury, where the State must show the statement was voluntarily made by a preponderance of the evidence. Jackson v. Denno, 378 U.S. 368, 376, 84 S.Ct. 1774, 12 L.Ed.2d 908 (1964). If the statement is found to have been given voluntarily, it is then submitted to the jury, where its voluntariness must be established beyond a reasonable doubt. State v. Washington, 296 S.C. 54, 56, 370 S.E.2d 611, 612 (1988).

Miller, 375 S.C. at 380, 652 S.E.2d at 448.

In the context of a Strickland analysis, failure to move to suppress a confession was not ineffective where counsel did not think the motion would succeed. U.S. v. Nguyen, 997 F.Supp. 1281, 1290 (C.D. Cal. 1998).

Applicant has not presented any evidence that his statements to police were not voluntary. See Nickel v. Hannigan, 97 F.3d 403 (10th Cir. 1996) (finding failure to object to an allegedly involuntary confession failed the prejudice prong where there was no evidence

presented of any police coercion). Applicant did not say during the evidentiary hearing that any of his statements to police were involuntary. This allegation is therefore denied and dismissed.

Failure to Challenge Search Warrants

Applicant also alleges counsel was ineffective for failing to challenge the validity of the search warrants the State obtained.

27. "Trial counsel was ineffective and deficient in failing to object to the validity of the search warrants and allowing all photographs into evidence with objection or foundation, including but not limited to, in that the probable cause for the search warrants had expired, was not current, was insufficient and generally subject to a motion to quash along with the photographs that were introduced without a proper foundation"

76. "Trial counsel was ineffective and deficient in failing to challenge the probable cause for the two searches."

This Court finds Applicant has failed to meet his burden here, as well. The Second Circuit has expressed understandable reluctance to require defense counsel to file boilerplate motions merely to vindicate professional competence without regard to the grounds for the motion. U.S. v. Ditommaso, 817 F.2d 201, 215 (2d Cir. 1987). A motion to suppress is not required simply because a defendant has nothing to lose; counsel has credibility to lose with the judge. Lowry v. Lewis, 21 F.3d 344, 346 (9th Cir. 1994). In the present case, Applicant has not presented any evidence whatsoever that the warrants were, in any way, deficient or that a challenge by counsel would have been successful. This allegation is therefore denied and dismissed.

Failure *Voir Dire* Witnesses

Applicant alleged counsel was ineffective for failing to *voir dire* witnesses.

91. "Trial counsel was ineffective and deficient in failing to object to witness being allowed to render an opinion on child abuse trauma without proper foundation."

Applicant has failed to present any evidence in support of this allegation. It is therefore denied and dismissed.

96. "Trial counsel was ineffective and deficient in failing to question Dr. Woodard's qualifications" by trial counsel essentially vouching for the credibility of Dr. Woodard as shown on p. 269, l. 5-9 of transcript."

This Court finds this allegation to be wholly without merit. Reviewing the specified portion of the transcript, counsel's stipulation to Dr. Woodard's qualifications as an expert does not rise to the level of deficient performance or vouching for the witness's credibility. Counsel's stipulation did not constitute an improper comment on the expert's credibility – he merely stated that "the defense is prepared to stipulate to his qualifications as an expert witness." Tr. p. 269.¹⁰ In any event, the judge instructed the jury immediately afterwards that "the value of his testimony [was] for [their] determination." *Id.* Regardless, this Court is unable to find prejudice where Applicant has failed to present any evidence that Dr. Woodard was not, in fact, sufficiently qualified in his field to be considered an expert at the time of the trial. Because Applicant has failed to meet his burden, this allegation is denied and dismissed.

Failure to Object to Closing Argument

Applicant further alleges counsel was ineffective for failing to object to an improper "Golden Rule" –type argument during the State's closing argument.

¹⁰ Applicant's argument takes the concept of impermissible vouching well past its outer limit. Obviously a solicitor may not vouch for the credibility of a State's witness based on personal knowledge or other information outside the record. See *Matthews v. State*, 350 S.C. 272, 275, 565 S.E.2d 766, 768 (2002). Extending that prohibition to include a stipulation by defense counsel as to an expert's credentials strikes this Court as a bit of a stretch.

105. Counsel was ineffective and deficient in failing to object to the prosecution's closing statement that "Today is the day to speak up for [Ms. Bright]."

This Court finds Applicant has failed to meet his burden. While this Court finds that the testimony in question may have constituted a technical "Golden Rule" violation, it was clearly not prejudicial. The Supreme Court of South Carolina has outlined the proper framework in determining whether an improper argument warrants the reversal of a conviction:

On appeal, the solicitor's argument will be reviewed in the context of the entire record. State v. Copeland, 278 S.C. 572, 300 S.E.2d 63 (1982). Once the trial judge has allowed the argument to stand, the accused has the burden of proving that the argument denied him a fair determination of guilt or innocence. *Id.* In order to constitute reversible error, it must be shown that the argument so infected the trial with unfairness as to make the resulting conviction a denial of due process.

State v. Reese, 370 S.C. 31, 38, 633 S.E.2d 898, 901-02 (2006) overruled on other grounds by State v. Belcher, 385 S.C. 597, 685 S.E.2d 802 (2009) (emphasis added). The Reese Court cited to the arduous Donnelly v. DeChristoforo standard where the United States Supreme Court has made clear, that a petitioner is not entitled to relief based upon the closing argument of a prosecutor, unless that argument so infected the trial with unfairness as to make the resulting conviction a denial of due process. Donnelly v. DeChristoforo, 416 U.S. 637, 94 S.Ct. 1868, 40 L.Ed.2d 431 (1974)). The Donnelly standard is very difficult for a defendant to meet. "[I]t is not enough that the remarks were undesirable or even universally condemned." Darden v. Wainwright, 477 U.S. 168, 181 (1986).¹¹ See also Parker v. Matthews, 132 S.Ct. 2148, 2155

¹¹ In the course of rejecting a capital defendant's claim that the state prosecutor's argument entitled him to a new sentencing hearing, the Fourth Circuit Court of Appeals stated in Bates v. Lee, 308 F.3d 411, 422 (4th Cir. 2002), that:

we first recognize that prosecutors enjoy considerable latitude in presenting arguments to a jury. Sizemore v. Fletcher, 921 F.2d 667, 670 (6th Cir. 1990), because "the adversary system permits the prosecutor to prosecute with earnestness and vigor." United States v. Young, 470 U.S. 1, 7, 105 S.Ct. 1038, 84 L.Ed.2d 1 (1985) (quoting Berger v. United States, 295 U.S. 78, 88, 55 S.Ct. 629,

(2012)¹² ("even if the comment is understood as directing the jury's attention to inappropriate considerations; that would not establish that the Kentucky Supreme Court's rejection of the Darden prosecutorial misconduct claim 'was so lacking in justification that there was an error well understood and comprehended in existing law beyond any possibility for fair minded disagreement'"); State v. Brisbon, 323 S.C. 324, 474 S.E.2d 433 (1996) (ruling test of granting new trial for alleged improper closing argument of counsel is whether defendant was prejudiced to extent that he was denied a fair trial).

Von Dohlen v. State is dispositive where the Court addressed whether a PCR Applicant was entitled to relief as a result of his attorney's failure to object to the solicitor's improper comments that constituted a golden rule violation. 360 S.C. 598, 613, 602 S.E.2d 738, 746

79 L.Ed. 1314 (1935)). Committed advocates do not always present antiseptic closing statements, and the jury is entrusted within reason to resolve such heated clashes of competing views. Moreover, the scope of our review is narrow, because "not every trial error or infirmity which might call for application of supervisory powers correspondingly constitutes a 'failure to observe that fundamental fairness essential to the very concept of justice.'" Donnelly v. DeChristoforo, 416 U.S. 637, 642, 94 S.Ct. 1868, 40 L.Ed.2d 431 (1974) (quoting Lisenba v. California, 314 U.S. 219, 236, 62 S.Ct. 280, 86 L.Ed. 166 (1941)). Thus, our review is limited to whether the comments rendered the proceeding so fundamentally unfair as to constitute a denial of due process. Donnelly, 416 U.S. at 643, 94 S.Ct. 1868. This determination requires us to look at "the nature of the comments, the nature and quantum of the evidence before the jury, the arguments of opposing counsel, the judge's charge, and whether the errors were isolated or repeated." Boyd v. French, 147 F.3d 319, 329 (4th Cir.1998) (internal quotation marks omitted).

¹² Likewise, in State v. Durden, 264 S.C. 86, 212 S.E.2d 587, 590 (1975), our Supreme Court set forth examples of permissible closing arguments by prosecutors:

So long as he stays within the record and its reasonable inferences, the prosecuting attorney may legitimately appeal to the jury to do their full duty in enforcing the law, or to return the verdict which he conceives it to be their duty to return under the evidence, and it may employ any legitimate means for impressing on them their true responsibility in this respect, as by stating that a failure to enforce the law begets lawlessness. Thus, he may in effect tell them that the people look to them for protection against crime, and may illustrate the effect of their verdict on the community or society generally with respect to obedience to, and for enforcement of, the law; he has the right to dwell on the evil results of crime and to urge a fearless administration of the criminal law; and he may ask for a conviction, or assert the jury's duty to convict. He may argue with reference to any matter which the jurors may properly consider in arriving at their verdict, and may point out as well the matters which they should not consider. (Citation omitted) (emphasis added).

(2004). The Von Dohlen Court held that "Petitioner has shown error under the Strickland standard. His attorney erred in failing to object to the solicitor's explicit call for jurors to put yourself in Margaret's shoes, size six." Id. (internal quotations omitted). However and importantly, the Von Dohlen Court also held "Petitioner has not shown there is a reasonable probability that, but for counsel's error, the result of the trial's penalty phase would have been different." Id. This case is also distinguishable from Reese, in that there was only one inappropriate "Golden Rule" violation here, while in Reese the violations were frequent and pervasive. In addition, in this case there was overwhelming evidence of Applicant's guilt. In Reese, there was not. The above referenced cases preclude a finding of prejudice on these facts. This allegation therefore is denied and dismissed.

Cumulative Error

Applicant also alleges he was prejudiced by the cumulative effect of counsels' purported errors:

106. Counsel was ineffective and deficient in failing to generally, adequately and reasonably prepare for the trial, prepare the Plaintiff to testify, interview witnesses, and challenge the improper and irrelevant testimony as reflected by the trial testimony.

107. Counsels for the Plaintiff failed to render adequate assistance and to exercise reasonable professional judgment in making all significant decisions in his case, as reflected by the trial testimony and allegations of Applicant's application.

108. Trial counsel for Plaintiff failed to interview potential witnesses and make an independent investigation of the facts and circumstances of the case, as reflected by the trial testimony and Applicant's allegations and the failure to call or even interview witnesses on Applicant's behalf.

109. There is a reasonable probability that, but for counsel's errors, the result of the trial would have been different.

This Court finds Applicant has failed to meet his burden. In Green v. State, 351 S.C. 184, 196-97, 569 S.E.2d 318, 324-25 (2002), the Supreme Court of South Carolina expressly declined to address whether a PCR applicant is entitled to relief based upon the supposed cumulative effect of trial counsel's alleged errors. See also Simpson, 367 S.C. at 604, 627 S.E.2d at 710 (recognizing that "[w]hether several errors, which are independently found not to be prejudicial, may cumulatively warrant relief is an unsettled question in South Carolina" and holding that "[b]ecause the PCR court found that only one of Simpson's allegations had merit, there was no need to conduct a cumulative-error analysis").

Before an alleged error may be considered as a factor contributing to cumulative prejudice, a court first must find that the alleged error is, in fact, constitutional error. Only then can the cumulative prejudice arising from the error be considered. To hold otherwise is to conclude that even non-deficient performance might result in reversal of a conviction. Such a conclusion is manifestly contrary to the analysis set forth in Strickland v. Washington. See 466 U.S. at 687 ("Unless a defendant makes both showings [i.e., deficient performance and prejudice] it cannot be said that the conviction or death sentence resulted from a breakdown in the adversary process that renders the result unreliable").

Even in the absence of a cumulative prejudice analysis, a reviewing court, quite properly, analyzes the same class of errors together, such as the failure to present adequate evidence of mitigation. Yet, it is inappropriate to consider the cumulative prejudice from various alleged errors that are not related, such as the failure to request a jury charge and the failure to introduce certain testimony. This is especially true where, as in this case, counsel's performance was

determined not to be deficient on most of the individual claims that Applicant wishes to aggregate, and there was no prejudice on any Ground. To hold otherwise is to conclude that even non-deficient performance under Strickland might result in reversal of a conviction, a conclusion that is manifestly contrary to the analysis set forth in Strickland. See Strickland, 466 U.S. at 687 (“Unless a defendant makes both showings [i.e., both deficient performance and prejudice –] it cannot be said that the conviction or death sentence resulted from a breakdown in the adversary process that renders the result unreliable”). A number of other jurisdictions, including the Fourth Circuit Court of Appeals, have held a cumulative effect analysis is inappropriate and that the appropriate analysis focuses upon each individual allegation of ineffective assistance. See Fisher v. Angelone, 163 F.3d 835, 852-53 (4th Cir. 1998); Wainwright v. Lockhart, 80 F.3d 1226 (8th Cir. 1996); Jones v. Sotts, 59 F.3d 143, 147 (10th Cir. 1995).

Ineffective Assistance of Appellate Counsel

Applicant also raised a single allegation of ineffective assistance of appellate counsel.

49. “Appellate counsel was ineffective and deficient in failing to challenge the trial court’s ruling allowing investigating officers to testify about what they were told by medical personnel.”

Applicant failed to present any evidence with respect to this allegation. It is therefore denied and dismissed.

ALL OTHER ALLEGATIONS

As to any and all allegations that were raised in the application or at the hearing in this matter and not specifically addressed in this order, the Court finds Applicant failed to present any evidence regarding such allegations. Accordingly, the Court finds Applicant has abandoned any such allegations.

[Signature follows]

CONCLUSION

Based on the foregoing, this Court finds that the Applicant has not established any constitutional violations or deprivations that would require this Court to grant his application for post-conviction relief. Therefore, this application for post-conviction relief must be denied and dismissed with prejudice.

This Court notes that Applicant must file and serve a notice of intent to appeal within thirty (30) days from receipt of this Order to secure the appropriate appellate review. See Rule 203, SCACR, Rule 71.1(g), SCRCP; Bray v. State, 336 S.C. 137, 620 S.E.2d 743 (2005), for the obligation of Applicant's counsel to file and serve notice of appeal. The Applicant's attention is also directed to South Carolina Appellate Court Rule 243 for appropriate procedures after notice has been timely filed.

IT IS THEREFORE ORDERED

1. That the Application for Post-Conviction Relief must be denied and dismissed with prejudice; and
2. Applicant must be remanded to the custody of Respondent

AND IT IS SO ORDERED this 16 day of March 2016
(note: ORDER received 3-16-16.)
R. Dawton McIntosh
R. DAWTON MCINTOSH
Presiding Judge
Tenth Judicial Circuit
Andrus, South Carolina
FILED OCOONEE COUNTY, SC
REVEREND H. W. H. FIELD
CLERK OF COURT
A TRUE COPY
MAR 22 2016
CLERK OF COURT - OCOONEE COUNTY



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

MATTHEW HINTON, #345044

Applicant;

v.

STATE OF SOUTH CAROLINA,

Respondent.

CERTIFICATE OF SERVICE

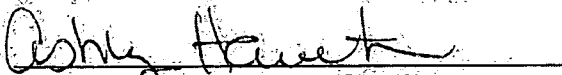
The undersigned hereby certifies that a true copy of the **Order of Dismissal** has been served upon the applicant by mailing one (1) copy in the United States mail, postage prepaid, addressed to:

Robert Clyde Childs, III, Esquire
Childs Law Firm
2100 Poinsett Hwy., Ste. E
Greenville, SC 29609

This 28th day of March, 2016.


JOHANNA C. VALENZUELA
Attorney for Respondent

SWORN to before me this 28th day of March, 2016.


Notary Public for South Carolina.
My Commission Expires: 3-18-23

IN THE COURT OF COMMON PLEAS

2014-CP-39-00133

FEBRUARY 9-10, 2015

TRANSCRIPT OF RECORD

TRANSCRIPT OF RECORD

TRANSCRIPT OF RECORD

THE HONORABLE R. LAWTON MCINTOSH, JUDGE

ROBERT C. CHILDS, III, ESQUIRE
ATTORNEY FOR THE PLAINTIFF

DANETTE P. HANKS
CIRCUIT COURT REPORTER

INDEX

WITNESSES	DIRECT	CROSS	REDIRECT	RECROSS
Brittany Senerius Whitmire Childs	22	211	223	
Gordon Senerius Whitmire Childs	227	276	282	283
Matthew T. Hinton Childs Whitmire	285	326		
Denise Richardson Childs Whitmire	337	342		
Lindsey Simmons Childs Whitmire	345	346		
				PAGE
Certificate of Reporter				371

PLAINTIFF'S EXHIBITS

NO	DESCRIPTION	ID	EV
P-1	Letter to Lindsey Simmons from James H. Price, III dated September 16, 2009	6	6
P-2	Letter to James H. Price, III from Lindsey Simmons dated September 18, 2009	6	6
P-3	Handwritten notes by Defendant giving chronology	6	6
P-4	Letter to Gordon A. Senerius from James H. Price, III dated March 4, 2014	6	6
P-5	Greenville Hospital System Medical Record of Dr. Darryl R. Gwyn	6	6
P-6	Greenville Hospital System Medical Record of Nancy A. Henderson NA	6	6
P-7	Greenville Hospital System Consultation Request	6	6
P-8	Greenville Hospital System GMH Radiology	6	6
P-9	Oconee Memorial Hospital Radiology Department Report	6	6
P-10	Voluntary Statement of Frederick Glenn Michell dated August 18, 2009	6	6
P-11	Witness Interview Notes of Lindsey Simmons	6	6
P-12	Omega Drug analysis report	6	6
P-13	Pathology Associates of Greenville Final anatomic diagnosis	6	6
P-14	Voluntary Statement of Sergeant Tim Williamson dated August 21, 2008	6	6
P-15	Voluntary Statement of Rory Jones dated August 18, 2009	6	6
P-16	DSS Report	6	6
P-17	Search warrant dated August 20, 2009	6	6
P-18	Seneca Police Department - Seized Property Request dated 9/2/09	6	6

NO	DESCRIPTION	ID	EV
P-19	Supplemental Incident Report - Page 2 of 10	6	6
P-20	Supplemental Incident Report - Page 4 of 10	6	6
P-21	Supplemental Incident Report - Page 5 of 10	6	6
P-22	Supplemental Incident Report - Page 7 of 10	6	6
P-23	Supplemental Incident Report - Page 8 of 10	6	6
P-24	Supplemental Incident Report - Page 9 of 10	6	6
P-25	Supplemental Incident Report - Page 2 of 3	6	6
P-26	Voluntary Statement of Ashley Bright dated 17th of August, 2009	6	6
P-27	Handwritten letter from Ashley	6	6
P-28	Handwritten letter from Ashley	6	6
P-29	Postmortem Report	6	6
P-30	Greenville Memorial Hospital Radiology Report dated 8/27/2009	6	6
P-31	Oconee Medical Center Emergency Department Record dated 8/17/2009	6	6
P-32	Greenville Hospital System Medical Record dated 8/17/09	6	6
P-33	Medical record of Drs. Parrino, Gully, Vissage, Deem	6	6
P-34	Verizon Wireless document	6	6
P-35	Oconee Medical Center Emergency Department Record	6	6
P-36	Seneca Cinemas Payroll record	6	6
P-37	Phone records	6	6
P-38	Supplemental report - Pages 1 and 2	6	6
P-39	Email from Netflix - rental history on August 16, 2009	6	6
P-40	Audio of interview of Ashley Bright	181	181
P-41	Audio of interview of Desmond Holland	181	181

P-42	Audio of 911 call	181	181
P-43	Direct trial transcript applicant issues	183	183
P-44	Text messages of the Defendant	368	368

DEFENDANT'S EXHIBITS

	(NONE)		
COURT'S EXHIBITS			
	(NONE)		

1 **February 9, 2015**

2 (WHEREUPON, court convened with all parties
3 present and the following proceedings were had.)
4 (WHEREUPON, Plaintiff's Exhibit Numbers 1 through
5 39 were marked and admitted into evidence.)

6 THE COURT: All right. Mr. Whitmire.

7 MR. WHITMIRE: May it please the Court, Your
8 Honor. The first matter of the term is Matthew Hinton
9 v. State of South Carolina, 2014-CP-37-133. We are
10 here currently this morning for a pre-hearing matter.
11 At our last term of PCR Court, Judge Long presided and
12 granted a discovery order allowing opposing counsel to
13 at least look into possible DSS files, not authorizing
14 any release. The custodians of those files are here
15 and present and at this time, I turn matters over to
16 opposing counsel and to the DSS representatives.

17 THE COURT: Okay.

18 MR. CHILDS: Your Honor, this is a homicide
19 by child abuse case where DSS had investigated
20 portions of the case against the applicant in this
21 case. And one of the allegations of the application
22 in this case is that defense counsel should have
23 investigated the DSS file. And I have marked as
24 Exhibit Number 1 a notice that was sent to Mr. Hinton
25 notifying him that he'd been indicated pursuant to

1 DSS's findings. And my position is once you're
2 indicated, of course, the law allows you to look at
3 the DSS file. And so I subpoenaed the DSS file for
4 the purpose of establishing whether or not the defense
5 counsel's failure to review the DSS file was
6 ineffective assistance of counsel.

7 THE COURT: Okay.

8 Are you the representatives from DSS?

9 MS. WELCHEL: Yes, Your Honor. My name is
10 Kim Welchel. I'm the attorney for DSS. This is Tammy
11 Allen. She's the director of Oconee DSS.

12 THE COURT: I see. What would be DSS'
13 position with regard to this matter?

14 MS. WELCHEL: Your Honor, we did have an
15 indicated case. This is our entire case file here.
16 We did not provide any services because we did not
17 have any other children in the home. And the case
18 that the case was indicated on, of course, is the
19 victim in the case. I've looked through out file,
20 Your Honor. We do have the determination fact sheets.
21 The rest of the file essentially is medical records,
22 newspaper clippings and police reports. So I'm not
23 sure what, if anything, could be beneficial to either
24 side. But the file has been retrieved from archives
25 if the Court wishes for us to turn that over.

1 THE COURT: So you're basically taking no
2 position one way or the other?

3 MS. WELCHEL: No, Your Honor. The only
4 thing that we would ask, of course, pursuant to our
5 confidentiality statutes, the name of the reporter is
6 always protected. So we would ask that that remain in
7 place.

8 MR. CHILDS: I have no objection to that. I
9 mean, I think the reporter was the person who called
10 9-1-1. So that's not a problem. And I have all of
11 the medical records already from defense counsel's
12 file.

13 THE COURT: All right. I'm going to order
14 that they be discovered by the applicant in this
15 matter with the redaction of any confidential
16 material. Is there anything else in there I need to
17 be concerned with, with regard to redacting out?

18 MS. WELCHEL: Your Honor, as I stated, I've
19 reviewed the file. There were conversations, of
20 course, with myself as counsel. Those would, of
21 course, be protected as well. But that would be all.

22 THE COURT: Okay.

23 Other than those, any objection to
24 attorney/client matters being held back as well?

25 MR. CHILDS: Well, as long as they don't

1 involve any statements made -- you know, what I'm
2 looking at is what statements were made to DSS during
3 the course of their investigation primarily. And as
4 long as those disclosures don't recite what was said
5 to them as far as the victim's mother or the father,
6 then I don't have any objection to that.

7 THE COURT: I think what counsel is
8 referring to is her work product or communications
9 with her own clients?

10 MR. CHILDS: Yeah. And so I have no problem
11 pulling that out at all.

12 THE COURT: Is that a correct statement?

13 MS. WELCHEL: Yes, Your Honor.

14 THE COURT: Okay. With those exceptions,
15 I'm going to go ahead and make it discoverable. Could
16 you make those available?

17 MS. WELCHEL: Yes, Your Honor.

18 MR. CHILDS: Maybe her and I could just go
19 through it and you can pull out without showing me
20 what you...

21 MS. WELCHEL: The only thing that we would
22 ask is we would just ask that something be sent to us
23 on letterhead just noting who we're turning the file
24 over to so if there's ever any question later on as to
25 who we gave the file to.

1 MR. CHILDS: So you can just put my subpoena
2 in the file.

3 MS. WELCHEL: That would be fine too.

4 THE COURT: As well, it seems to me so that
5 you don't lose your actual possession of the
6 documents, identify what's there, you copy it. How
7 big is your file?

8 MS. WELCHEL: This is it.

9 THE COURT: Okay. Why don't you just make
10 copies of what's in the file instead of trying to take
11 her originals?

12 MR. CHILDS: Oh, yeah. That would be my
13 plan. I just have to find somewhere to make copies.

14 THE COURT: And then you can place the
15 subpoena in there and that should be enough. Anything
16 else you think you need in the file?

17 MS. WELCHEL: No, Your Honor.

18 THE COURT: Okay. Great. Thank you so
19 much. Thank you for being here.

20 MS. WELCHEL: Thank you, Your Honor.

21 MR. CHILDS: Thank you, Your Honor.

22 MR. WHITMIRE: I just want to put on the
23 record that the Oconee County representatives have
24 been incredibly courteous with their time in coming
25 here today. And Anderson is set for tomorrow. The

1 AG's office certainly appreciates that. And also the
2 victim's mother in this case is present here to
3 observe this motion hearing and I believe will be here
4 for the remainder of the case this week.

5 THE COURT: All right.

6 MR. CHILDS: Thank you, Your Honor.

7 THE COURT: Thank you.

8 MR. WHITMIRE: Thank you, Judge.

9 THE COURT: Certainly.

10 (WHEREUPON, court stood at recess in this case at
11 approximately 9:56 a.m.)

12 THE COURT: All right. Let me -- I'm
13 looking at a complaint filed in this matter that
14 articulates a hundred and seven different grounds.

15 MR. CHILDS: Yes, sir.

16 THE COURT: And I understand that this is
17 going to be a lengthy hearing. But at the same time,
18 if there are grounds which you do not have testimony,
19 I want you to identify those for me at this juncture,
20 please. If you're going to make an argument as to
21 grounds, that's fine. But I want to find out which
22 ones the testimony's directly related to and you have
23 a witness with regard to.

24 MR. CHILDS: I would say every one.

25 THE COURT: You're sure?

1 MR. CHILDS: No, I'm not sure.

2 THE COURT: I need you to be sure. I mean,
3 this is your complaint. You filed it. You adopted it
4 as yours. And for a hundred and seven different
5 grounds, if they're legitimate, fine. But this is
6 your case. I want you to tell me which ones you're --
7 that you're putting the witnesses with regard to the
8 ones you argue by, just legal argument, please, sir.
9 And if not, be ready to tell me that tomorrow. I
10 understand this case is coming back up tomorrow;
11 correct?

12 MR. CHILDS: Yes, sir. And ---

13 THE COURT: For example -- let me ask you.
14 For example, I was about to write all of these down
15 and then I realized there was a hundred and seven of
16 them. Are you going to take any testimony on your
17 grounds for Julia Makinson?

18 MR. CHILDS: Yes, sir.

19 THE COURT: You're going to have testimony
20 on that?

21 MR. CHILDS: I'm going to ask defense
22 counsel about why they didn't excuse that juror,
23 excuse the juror for cause.

24 THE COURT: Okay. Isn't there some cases
25 about extrinsic versus intrinsic jurors, assuming

1 you're saying juror misconduct?

2 MR. CHILDS: No. I'm not saying juror
3 misconduct.

4 THE COURT: Then what are you saying?

5 MR. CHILDS: That particular witness
6 indicated that she was -- Makinson indicated some
7 knowledge of the case. And also, in addition to that,
8 indicated that he was -- read newspapers about the
9 incident and also that his daughter was good friends
10 with one of the witnesses. And so our argument is
11 that he should be -- the defense attorneys should have
12 moved to strike him for cause.

13 THE COURT: All right. Look, I know I'm
14 catching you off guard over here. The obvious point
15 is I know that sometimes people have a tendency to
16 throw the kitchen sink in their allegations, and I
17 want to get this down. If this is going to be a two-
18 day hearing ---

19 MR. CHILDS: Yes, sir.

20 THE COURT: --- ir longer, I want to make
21 sure that we get the issues that are truly issues in
22 this case.

23 MR. CHILDS: Well, and I basically, in
24 pleading this complaint, went by the transcript of the
25 trial.

1 THE COURT: I understand.

2 MR. CHILDS: In addition to the ---

3 THE COURT: But just because you see it in
4 the transcript and write it down as an issue doesn't
5 necessarily mean it's an issue at this juncture, is
6 what I mean?

7 MR. CHILDS: Yes, sir. And I will say that
8 probably there are issues about the search warrant
9 that I don't think are relevant to proceed upon
10 because I can't see a basis for challenging some of
11 those. And I went through each individual one in
12 preparation for this. So I cannot rule out any in
13 particular, aside from the issue on the search
14 warrants that I would be not asking the witness
15 directly about.

16 THE COURT: Well, I guess -- let me see.
17 Here's what I'm thinking in terms of -- say, you said
18 you intend to ask the attorney. Why?

19 MR. CHILDS: Yeah.

20 THE COURT: And is there going to be any --
21 is there going to be any testimony from this
22 particular juror?

23 MR. CHILDS: No, sir.

24 THE COURT: At all?

25 MR. CHILDS: No.

1 THE COURT: Could that ever meet the
2 standards?

3 MR. CHILDS: Well, I think there's a
4 consummation ---

5 THE COURT: Or a totality test?

6 MR. CHILDS: Huh?

7 THE COURT: Or a totality test?

8 MR. CHILDS: Yes, sir.

9 THE COURT: All right. I'm not trying to
10 keep you from trying your case, I want you to
11 understand.

12 MR. CHILDS: I understand, Your Honor.

13 THE COURT: I just don't want to get into
14 extraneous stuff out here that's unnecessary.

15 MR. CHILDS: And I'm not -- I certainly want
16 to par it down as much as I can and may. And
17 overnight, I'll be glad to look at some more. I think
18 you'll see with the first witness that, you know, that
19 we have those multiple issues that we need to address.

20 THE COURT: All right. So at this juncture
21 there are a hundred and seven grounds are the grounds
22 before the Court. All are, all are essentially under
23 the category broadly as ineffective assistance of
24 counsel?

25 MR. CHILDS: Yes, sir.

1 THE COURT: Okay.

2 MR. CHILDS: There's no ---

3 THE COURT: Anything else, other than
4 ineffective assistance?

5 MR. CHILDS: No, sir.

6 THE COURT: Okay. Do you have any expert
7 witnesses who are coming to testify in this trial?

8 MR. CHILDS: No, sir. No, sir.

9 THE COURT: Okay. All right. Are you ready
10 to proceed?

11 MR. WHITMIRE: Yes, sir.

12 THE COURT: Okay.

13 MR. WHITMIRE: May it please the Court? I'm
14 going to call this case a little differently than
15 usual. Mr. Hinton was indicted and convicted of
16 homicide by child abuse. He did file a notice of
17 appeal. It was pursuant to Anders. The Court of
18 Appeals ultimately dismissed that appeal. In parsing
19 through the triple digit allegations, I've submitted
20 Miranda law to Your Honor.

21 Section one is the summary of testimony from the
22 trial transcript from the State. Because it was an
23 Anders brief no one from the State's had the
24 opportunity to do that yet. Section two -- or section
25 three are allegations against the defense team

1 collectively for failure to investigate the case by
2 either attorney. Section four are allegations
3 specifically related to lead counsel, Gordon Senerius.
4 And I've split those up in a manner where he cross-
5 examined all the medical experts. He did the voir
6 dire. Did the opening and closing. And he did the
7 direct examination of applicant in defense's case in
8 chief. So allegations relating to trial strategy,
9 failure to object, at that juncture in the trial, I
10 believe, could most appropriate be answered by him.
11 And I've put them all there and tried to get them
12 categorically grouped by different types of
13 allegations. Also, the following section, section
14 five, are allegations against Ms. Senerius. She
15 handled the victims's mother ---

16 THE COURT: Ms. Tye, I believe, her name is.

17 MS. SENERIUS: Your Honor, that has been
18 changed. It is now back to Senerius.

19 THE COURT: I stand correct.

20 MR. WHITMIRE: It was Tye at the trial.

21 --- against the lay witnesses, against the victim's
22 mother. And I would ask this Court that in terms of
23 relevance that the allegations be directed to the
24 actual attorney who handled that witness at trial.

25 SAnd then last, section six, regards -- there's

1 one allegation against Appellate Counsel. It was an
2 Anders. I've submitted standard substantive law,
3 along with Strickland law and under Miranda.
4 Obviously, there's no record of this matter yet, so
5 I'm not addressing anything that may or may not
6 develop in the next two-day hearing.

7 THE COURT: Do me a favor. Since we have so
8 many allegations, just raise your objections at the
9 time so we can keep the record consistent instead of
10 me trying to anticipate.

11 All right. Would you call your first witness?

12 Is there anything else for the record?

13 MR. CHILDS: No, sir, Your Honor. And what
14 we've agreed to do, since Ms. Senerius is not a --
15 well, initially, we didn't believe she was going to be
16 available tomorrow. And she would ostensibly be the
17 respondent's witness in response to our allegation.
18 And Mr. Whitmire and I discussed that. And I'm going
19 to call her as an adverse witness, basically as my
20 first witness.

21 THE COURT: Okay. And let me make sure.
22 Mr. Hinton, would you raise your right hand?

23 MR. HINTON: (Complied.)

24 THE COURT: Do you swear or affirm to tell
25 the truth, the whole truth and nothing but the truth?

1 MR. HINTON: Yes, sir.

2 THE COURT: Okay, sir. And this only with
3 regard to venue; okay?

4 MR. CHILDS: Okay. Yes, sir.

5 THE COURT: This is an Oconee County case,
6 Mr. Hinton, but for the sake of the fact that we were
7 already here today and Ms. Tye is an Anderson County
8 lawyer or Ms. Senerius is an Anderson County lawyer,
9 you were the only one who really was outside the
10 county. Everybody decided to have the case here. Do
11 you have an objection to this aspect of the case being
12 heard in Anderson County?

13 MR. HINTON: No, sir.

14 THE COURT: And you waive venue here to
15 Anderson County for purposes of taking Ms. Senerius's
16 testimony?

17 MR. HINTON: Yes, sir.

18 THE COURT: Any other witness's testimony
19 you anticipate today?

20 MR. CHILDS: No, sir.

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

22 All right. One thing before we get started.
23 Have y'all stipulated to exhibit to the extent that
24 you can?

25 MR. CHILDS: Yes, sir.

1 MR. WHITMIRE: Yes, Your Honor. I believe
2 there are thirty-nine applicant's exhibits. I'm,
3 without objection, with the understanding they would
4 be authenticated from one of the two attorneys. And
5 it did, in fact, come from the attorney's files just
6 to expedite matters.

7 THE COURT: Okay.

8 MR. WHITMIRE: And, also, Your Honor,
9 opposing counsel did request that we obtain some of
10 the trial exhibits. And just like any other part of
11 the record, this is a part of the record before you.
12 The exhibits he specifically requested, Beverly
13 Whitfield was very kind. She made photocopies of it.
14 So I produced three copies of ---

15 MR. CHILDS: And we'll refer to those by
16 their original trial exhibit numbers.

17 MR. WHITMIRE: May I approach? This is
18 probably misappropriated. He got his packet anyways.
19 So these are for Your Honor.

20 THE COURT: What are your exhibit numbers on
21 those? I know you're saying you're going by the
22 original trial exhibit numbers?

23 MR. CHILDS: Yes, sir.

24 THE COURT: Then if you do probably ---

25 MR. CHILDS: Those would be State's and
26 Defense.

1 THE COURT: They're State's and Defense?

2 MR. CHILDS: Yes, sir.

3 MR. WHITMIRE: Your Honor, they're labeled
4 which they are. This is just for your ---

5 THE COURT: Great. Just so that we have it
6 in the record, I would prefer that y'all read them
7 out, the numbers. That way we don't have to keep
8 doing it over and over and we don't have the appellate
9 court looking as to whether or not they were admitted.

10 MR. WHITMIRE: Okay, Your Honor. The only
11 thing I requested was exactly that, that we just refer
12 to it as state trial exhibit versus this is a PCR
13 exhibit.

14 THE COURT: All right. All right. Call
15 your first witness.

16 MR. CHILDS: Ms. Brittany Senerius. You
17 might want to bring your file with you just in case
18 you need to refer to something.

19 THE CLERK: Do you solemnly swear or affirm
20 the testimony you give this court in this case be the
21 truth, the whole truth and nothing but the truth?

22 THE WITNESS: Yes.

23 THE CLERK: Take the witness stand, please.

24 **BRITTANY SENERIUS,**

25 **BEING FIRST DULY SWORN, TESTIFIED AS FOLLOWS:**

2 BY MR. CHILDS:

5 A. Brittany Dreher Senerius.

8 A. Yes.

10 A. Currently, my father and I have a general
11 practice here in Anderson. I would say for the last
12 three or four years, I've focus mainly in Family Court
13 DSS actions.

16 A. Yes.

19 A. I did.

20 Q. And what Judge was that?

21 A. Judge Macaulay.

22 Q. And how long was that?

23 A. It was a year. From August of 2008 until August
24 of 2009.

Appendix 81

1 August 15th, 2009; is that correct?

2 A. I don't have any reason to object to that. I
3 can't remember exactly right now.

4 Q. And so do you recall seeing this on the news?

5 A. I personally do not, no. But I'll be honest with
6 you, I don't necessarily try to watch the nightly
7 news. And we're in Anderson, so we don't always see
8 everything in Oconee.

9 Q. And do you recall when in 2010 that you were,
10 with your father, appointed to represent the
11 Defendant?

12 A. I do.

13 Q. Okay. When was that?

14 A. I believe it was toward the springtime of 2010.

15 Q. Okay. And at that time, how many criminal trials
16 had you handled yourself or participated in?

17 A. Well, less than a month earlier -- or less than a
18 month before -- do you mean this trial or do you mean
19 just at that time when we got the case?

20 Q. Just at that time when you got the case, how
21 many?

22 A. At that time when we got the case, I had not
23 actively participated in the trial of a case from an
24 attorney's perspective. I had been with Judge
25 Macaulay for a year and had seen a number of criminal

1 trials.

2 Q. Okay. All right. Now, you were initially -- the
3 file was transferred to you from Chip Price; is that
4 correct?

5 A. Well, I believe Mr. Price actually filed a motion
6 to be relieved.

7 Q. Right.

8 A. And then Mr. Hinton applied for a public defender
9 and we had a contract essentially through the public
10 defender's office in Oconee and that's how we received
11 the case.

12 Q. Okay. And do you recall it being about February
13 of 2010 maybe?

14 A. Yeah, that would be about it.

15 Q. And did you received Mr. Price's file then?

16 A. He did provide us with his entire file at that
17 time, including the information that he had previously
18 discovered and/or requested.

19 Q. Let me show you what's been marked Plaintiff's
20 Exhibit Number 1.

21 MR. CHILDS: May I go around this way?

22 THE COURT: Yes, sir. You don't need to
23 ask.

24 Is that Applicant's number 1?

25 Q. And do you recognize that as something that y'all

1 received from Mr. Price?

2 A. I do believe I've reviewed this before, yes, sir.

3 Q. Now, in that letter, Exhibit Number 1, it
4 indicates that he was asking if the natural mother of
5 the child, Ashley, could visit Matthew in the
6 detention center?

7 A. Yes.

8 Q. And to your knowledge is that something that went
9 on for a while prior to your involvement?

10 A. I cannot tell you exactly what happened before
11 us, but talking to our client, I believe, yes, that
12 did happen. I believe there was phone contact also.

13 Q. And is it correct that she visited him twice a
14 week up until the time that Mr. Hinton made bond?

15 A. I wouldn't be able to testify to that. I
16 honestly don't know.

17 Q. And let me show you Exhibit Number 2.

18 THE COURT: Just so the record is clear.
19 You are referring to the Applicant's Exhibit Number 2
20 ---

21 MR. CHILDS: Yes, sir.

22 THE COURT: --- as opposed to the State or
23 Defense at the trial?

24 MR. CHILDS: Yes, sir, Plaintiff's Number 1
25 and Number 2.

1 A. Did you want me to keep both or did you want this
2 one back?

3 Q. I'll take that one back.

4 MR. CHILDS: I would move in Number 1.

5 THE COURT: Any objection?

6 MR. WHITMIRE: No, Your Honor, just for
7 purposes at a later date ---

8 THE COURT: My understanding 1 through 39
9 were admitted without objection anyways.

10 MR. CHILDS: Based on those ---

11 MR. WHITMIRE: So I don't need to say that.

12 THE COURT: All right. I thought they were.
13 That's fine.

14 Q. All right. And let me show you Plaintiff's
15 Exhibit Number 2 in this case.

16 A. Yes.

17 Q. And did you receive also that from Mr. Price from
18 the prosecutor's file?

19 A. I believe so. Let me look at this real quick. I
20 believe this is a copy of a letter that we received
21 from Mr. Price when the case was -- when the file was
22 physically transferred to us.

23 Q. And in that letter, the State objects to Ms.
24 Bright visiting Mr. Hinton after he's released on
25 bond; is that correct?

1 A. No, I read it as saying she does not believe she
2 can object to Ms. Bright visiting.

3 Q. In the jail ---

4 A. In the jail.

5 Q. --- before he satisfies the term of the bond.

6 A. Yes, yes. I apologize.

7 Q. However, the State's position that after bond
8 it's a violation of the order?

9 A. Yes.

10 Q. All right. Now, so do you recall when you first
11 met with Mr. Hinton?

12 A. I do not off the top of my head recall when I
13 first physically met Mr. Hinton. No, sir.

14 Q. Do you recall any information about him -- about
15 her visiting him in the detention center twice a week
16 up until he made bond?

17 A. I honestly don't recall that specific issue. I
18 apologize.

19 Q. Did you check to see with the jail system how
20 often she visited with him until he made bond?

21 A. I personally did not. I don't know that we as an
22 office did. Based on how things had changed between
23 the two of them, I don't think there was -- I don't
24 think there was any confusion as to the fact that she
25 had visited before, but she was not at the time that

1 we started really being active in that case.

2 Q. Right. And explain that to the Court, why she
3 was -- what happened in the interim?

4 A. The autopsy reports came back, is my
5 understanding, and she met with the solicitor's office
6 around the time that the autopsy report came back.
7 And after that, she was no longer, I guess, for lack
8 of a better word, an ally for Mr. Hinton.

9 Q. All right. Now, would it surprise you that the
10 autopsy report came back within a couple of weeks of
11 August the 15th?

12 A. That wouldn't surprise me. I'm just telling you
13 that that was my understanding of the reasoning she
14 gave.

15 Q. Okay. Let me show you Plaintiff's Exhibit Number
16 3. See if you can identify that?

17 A. Yes.

18 Q. And what is that?

19 A. Those are some of my handwritten notes from the
20 file.

21 Q. Okay. And do you know when you made these notes
22 or ...

23 A. I don't. It looks like from the information
24 involved that it was potentially during an actual
25 face-to-face consultation with Mr. Hinton.

1 Q. Okay.

2 A. But I don't have a date on there unless it's been
3 cut off by a copier or something. I don't have a date
4 on there that I can see.

5 Q. All right. And in those notes, it goes through a
6 list of witnesses?

7 A. Yes.

8 Q. And they are Alex Hood?

9 A. Yes.

10 Q. Ronnie Craig?

11 A. Yes.

12 Q. William Fowler?

13 A. Yes.

14 Q. Danny Stevens?

15 A. Yes.

16 Q. And Denise Richardson?

17 A. Yes.

18 Q. And Randy Bargill?

19 A. Yes. I believe that's ---

20 Q. Do you know what they would testify to?

21 A. Based on the information that I have here, and
22 from my memory, all of those were witnesses regarding
23 Mr. Hinton's abilities at work and his -- basically,
24 character witnesses. I think Ronnie Craig, I noted,
25 observed two or three incidents where the minor child

1 was crying. And I think the reason that was important
2 was because Mr. Hinton was the one that would normally
3 console the minor child when she became upset.

4 Q. And so did you interview any of those witnesses?

5 A. We attempted to reach out to, I know, Danny
6 Stevens and one of the other co-workers from Pizza
7 Hut. They were no longer at that location. And Mr.
8 Hinton was unable to give us specific contact
9 information for the ones that we could not reach. I
10 don't remember off the top of my head about the other
11 few. As I mentioned, they were mainly focused on
12 being character witnesses.

13 Q. All right. And Denise Richards is his mother?

14 A. Yes. We did, obviously, speak with her. She was
15 involved in coming in and out of the office during
16 that time because I believe Mr. Hinton was actually
17 living with her at that time.

18 Q. So you interviewed her?

19 A. We spoke to her. I don't know if you could call
20 it a formal interview, but we did speak to her
21 throughout this process.

22 Q. All right. And did you ask her her knowledge of
23 the occurrences following his arrest?

24 A. I don't remember off the top of my head if that
25 was a specific question that I asked her.

1 Q. Do you know if she would have testified that she
2 took Ashley Bright to the detention center twice a
3 week up until February of 2010?

4 A. As I mentioned, I don't have really any memory of
5 Ashley going to and from the detention center before
6 we received the case, specifically.

7 Q. Would that be important concerning the issue
8 related to her reading the autopsy?

9 A. You mean the fact that she -- I don't understand
10 your question. I apologize.

11 Q. We'll get to the autopsy later. Now, it appears
12 there's a note, a statement from Dixie Gravely, crack
13 in '07 breach of peace?

14 A. Yes.

15 Q. Tell the Court about that?

16 A. I believe it was something that was on Mr.
17 Hinton's record that I wanted to speak with him about.
18 And so he gave me that information.

19 Q. Was that information something to do with a lie
20 pattern or something where he had had a previous
21 relationship with this lady and she alleged that he
22 was violent toward her or something of that nature?

23 A. I believe when I initially got it, I was just
24 attempting to make sure that we looked back through
25 his history. Obviously, if that had come up, I don't

1 believe his history from that specific incident became
2 a focal point. But I tried to look back through and
3 see what potential issues we might be facing. So I
4 asked him about that and that's what he told me.

5 Q. In fact, didn't the State disclose the incident
6 reports, statements from them, back in '07, in their
7 discovery responses?

8 A. I believe so. The discovery responses are
9 voluminous and I attempted to review back through them
10 before today, but I cannot promise you that that's in
11 there, but I believe it was, yes.

12 Q. Was there ever some concern about an attempt for
13 them to testify about that incident of 2007?

14 A. That's kind of a -- what time period are you
15 talking about? Were we concerned about ---

16 Q. About the breach of peace in 2006 that you have
17 -- 2007 breach of peace, the note there that you have?

18 A. My only memory of the reason that I got this
19 specific information was because we did review
20 something about it and I wanted to make sure that we
21 had our client's version or side of that story with
22 the information about it from him.

23 Q. And did you ever discuss with Mr. Hinton the
24 possibility of having those records -- that conviction
25 expunged from his record?

1 A. I don't remember talking to him about having that
2 expunged, no.

3 Q. All right. Would that be a type of offense that
4 one could expunge after three years?

5 A. I would have to look back at that specific thing.
6 I honestly don't know off the top of my head.

7 Q. All right. And it was a breach of peace from
8 2007?

9 A. Yes, I understand. I just -- off the top of my
10 head, I don't know if that's something that he could
11 just have expunged. I don't know that he attempted
12 to.

13 Q. Did y'all discuss that with him or have any
14 concerns about doing that, to your knowledge?

15 A. I don't have a memory of it. He seemed to
16 explain the incident from his side of the story, so
17 that's why we attempted to get that information so
18 that we could deal with it if it came up because it
19 was listed there as something on his record.

20 Q. Right. Wouldn't it assist the client to have a
21 cleaner record at the time ---

22 MR. WHITMIRE: Objection. Irrelevance.
23 They were not appointed to represent the Defendant on
24 an expungement.

25 THE COURT: What would be the relevance of

1 the ability to expunge an incident report with some
2 prior friend?

3 MR. CHILDS: Well, my next ---

4 THE COURT: I'm asking you?

5 MR. CHILDS: Yeah. Well, the point is that
6 it would look better for the client when he comes to
7 court that he wouldn't actually have a record if it
8 were expunged at that point.

9 THE COURT: I sustain the objection. Let's
10 go forward.

11 MR. CHILDS: All right.

12 Q. Now, did you ever have a discussion with him
13 about calling character witnesses?

14 A. I believe that's one of the things that we talked
15 about on this date, the notes that we are referring to
16 in Plaintiff's Exhibit Number 3.

17 Q. Did the existence of this 2007 incident have an
18 impact on your decision about doing that?

19 A. About calling them or about talking about them?

20 Q. About calling them?

21 A. Well, we spoke to our client repeatedly
22 throughout this process about witnesses that he wanted
23 called on his behalf, what we thought those witnesses
24 could provide for trial and whether or not we were
25 going to call them. So he was an active part of that

1 discussion throughout this case.

2 Q. And so you -- the second part of Exhibit Number

3 3, you're making a note about Ashley checking in?

4 A. Yes. I believe he and I started to kind of moved

5 forward to the topic of the alleged incident and what

6 happened that day and what he remembered. Basically,

7 this was just, from my memory, a day that I was just

8 trying to gather some information with him based on

9 some information in this -- in these notes. I believe

10 we were probably reviewing discovery.

11 Q. Okay. And the allegations, am I correct, were

12 that he was at home with the child for a period of

13 time on August 15th, 2009?

14 A. Yes.

15 Q. And while Ms. Bright, his girlfriend, was at

16 work; is that correct?

17 A. Yes, I believe she was alleged to be at work for

18 a period of time that day.

19 Q. And that she got home about five thirty?

20 A. Approximately.

21 Q. That's what the note says here?

22 A. Correct, yeah.

23 Q. And I think that's what the evidence would be at

24 the trial, as well?

25 A. Yes.

1 Q. And then she got home, him and the child were
2 laying down sleeping?

3 A. That's my understanding, yes.

4 Q. And then it says here in the note, A woke him up,
5 moved [REDACTED] turned her head away from him?

6 A. Yes.

7 Q. And so is that what he's telling you?

8 A. Yes.

9 Q. And later, woke them, blanket, he did, and she
10 woke up about ten something?

11 A. I believe the dash, woke up about ten something
12 is a new note. But it's my understanding that there
13 was a second incident that Ashley woke him up and that
14 because the blanket was up over [REDACTED] face, Ashley
15 wanted it moved down. And so that was what the
16 blanket -- he did move the blanket down. I may not
17 have finished the rest of that. I apologize.

18 Q. And then he woke up at ten something and the
19 child was no longer breathing?

20 A. That's what he told me, yes.

21 Q. And that's where the series of events ensued from
22 there?

23 A. Correct.

24 Q. All right. Now, you've got a note here about a
25 stern rub or a bruise. We'll get into that a little

1 bit later, but that was some evidence and information
2 that y'all had?

3 A. That's what he provided us, yes, sir.

4 Q. And there's a note here about unwrapping a pink
5 blanket from the child's legs which he did not placed
6 around her legs?

7 A. Yes. He mentioned that when he woke up and
8 noticed that she was not breathing, he had to remove a
9 pink blanket that he did not remember placing around
10 her legs.

11 Q. All right. Now, it also indicates here that the
12 child had had -- ever couple of days she would have
13 fits?

14 A. I believe that was right after she was born.

15 Q. Okay. And the doctors were told about this and
16 Ashley, Ashley's mother and Ashley's brother saw it?

17 A. Yes. It's my understanding they observed those
18 fits, so to speak.

19 Q. All right. And then got a note there about the
20 doctor's name?

21 A. Yes.

22 Q. And did y'all ever get the doctor's records, the
23 pediatrician's records?

24 A. I don't believe so. Those fits were supposedly
25 right after she was born and that they had stopped,

- 1 according to both parents, is my understanding.
- 2 Q. So you never got the pediatrician records?
- 3 A. Not that I remember off the top of my head, no.
- 4 Q. And the next day it says Ashley was impatient
- 5 with the child every time B -- is what you say there
- 6 -- was crying and A would hand her off to -- and I
- 7 assume that would be Matthew?
- 8 A. Yes. That's what he told us.
- 9 Q. And the second part is Ashley was twenty-three,
- 10 twenty-four when [REDACTED] was born. Defendant was
- 11 twenty-two?
- 12 A. Yes.
- 13 Q. And it says -- and I'm paraphrasing because
- 14 you've A and M, and I assume you mean Ashley and
- 15 Matthew?
- 16 A. I do.
- 17 Q. Ashley and Matthew's mother talked a lot during
- 18 the time Matthew was in jail?
- 19 A. That is what he told me, yes.
- 20 Q. Do you ever remember interviewing Matthew's
- 21 mother about those conversations?
- 22 A. I think I remember briefly speaking to her about
- 23 it, but was more along the lines of she was a bit
- 24 surprised that Ashley was no longer believing Matthew.
- 25 And I think it was based on the conversations that

1 she'd had with Ashley before. She was surprised to
2 see the change, was the majority of that conversation.

3 Q. And there's a note here with a star, Ashley never
4 showed any emotion?

5 A. That's what Mr. Hinton advised us.

6 Q. And that was also indicated -- and we'll get to
7 that a little later -- in the actual incident reports,
8 the investigation notes?

9 A. Yes. I believe we brought that out on cross-
10 examination on one of the police officers.

11 Q. And then there's a note about the shower?

12 A. Yes.

13 Q. Fell, dropped. He grabbed her and pulled her
14 back up. She may have hit her head or her collar
15 bone. She bit her tongue and was fussy for
16 approximately an hour and a half?

17 A. Yes. That was the information that Matthew and I
18 talked about that day.

19 Q. All right. And two broken legs. Actually it
20 only has one. I don't know what you meant by that.

21 A. For some reason, there was a notation somewhere I
22 think that said that there were two broken legs. And
23 we talked about the fact that, no, there was only one
24 break.

25 Q. Do you remember that actually what was diagnosed

- 1 was a classic metaphyseal lesion?
- 2 A. I believe that's correct, yes.
- 3 Q. Do you know what that is?
- 4 A. Off the top of my head, I could not define that.
- 5 No, sir. I apologize.
- 6 Q. All right. And you didn't do the cross-
- 7 examination on the doctors?
- 8 A. I did not.
- 9 Q. Y'all didn't discuss what that was or research
- 10 what it was?
- 11 A. I'm sure we did. There's actually a lot of
- 12 research here. I'm just telling you as of today I
- 13 actually couldn't define that for you. At the time of
- 14 the trial we were both very versed in trying to find
- 15 out what all of those things were, especially if they
- 16 were going to come up during the trial.
- 17 Q. All right. And the last page, going on from
- 18 that, is that he had an honorable discharge from the
- 19 military?
- 20 A. Yes.
- 21 Q. And he was a heavy weapons specialist?
- 22 A. Yes.
- 23 Q. And, let's see. Graduated from Travelers Rest
- 24 High School in 2004?
- 25 A. Yes.

1 Q. Played baseball for eight years, football for one
2 year?

3 A. Yes.

4 Q. All right. And there's a note here about his
5 prior girlfriend?

6 A. Kendra Kirkland, yes.

7 Q. Can you explain that to me?

8 A. I believe we were looking at that as potentially
9 if she was going to be testifying, to maybe make a
10 motion in limine on that issue.

11 Q. Okay. Because he had actually allow his parental
12 rights to be terminated for her child?

13 A. For the child that they had, yes.

14 Q. Because she was adopted by the step-father?

15 A. Yes. That's my understanding.

16 Q. All right. Now, based upon what your client told
17 you about the pink blanket ---

18 A. Yes.

19 Q. --- do you know who else could have put the pink
20 blanket on the child's legs?

21 A. I would just be -- I mean, the testimony said
22 that only two of the people were there that day,
23 Matthew and Ashley, other than [REDACTED]

24 Q. All right. Do you recall either yourself or your
25 father asking Mr. Hinton about the routine with the

1 child, about how he cared for the child before the
2 incident and how the mother was with the child?

3 MR. WHITMIRE: Objection. Relevance if the
4 question is directed to how the witness was examined
5 at trial about pre-trial intervention.

6 THE COURT: Say that again, please, sir.

7 MR. WHITMIRE: Objection. Relevance. If
8 the question -- the question concerns how Mr. Senerius
9 examined Mr. Hinton. But if they're talking about
10 just their pretrial interviews with the applicant,
11 then I'll withdraw it.

12 THE COURT: Why would that not be relevant?

13 MR. CHILDS: I think he just withdrew it.

14 MR. WHITMIRE: So I would withdraw it ---

15 THE COURT: Oh. I missed that. Okay.

16 MR. WHITMIRE: I apologize, Your Honor.

17 THE COURT: I'm sorry.

18 Q. Did you discuss with Mr. Hinton or do you recall
19 discussing with Mr. Hinton the routine between him,
20 the child and the mother as far as the care of the
21 child prior to this incident on August 15?

22 A. Yes. We went over that with him quite a few
23 times.

24 Q. Do you recall what that testimony -- what that
25 information was?

1 A. Based on my memory, especially close to the
2 incident, Mr. Hinton was not working. Ashley was
3 working part-time. So Mr. Hinton advised us that he
4 was the one that cared for [REDACTED] most of the time.
5 That he was the one that was capable of calming her
6 down if she was upset. I believe that was also
7 testified to at trial, that Ashley seemed to be
8 frustrated with [REDACTED] if she was not being calm.
9 And so that Matthew was the one that would calm her
10 down and that Ashley would kind of hand [REDACTED] off to
11 Matthew. He talked about when she was awake that she
12 would be in her crib or he would be playing with her,
13 that he -- a lot of times if she was in her crib
14 playing with her toys, he'd be playing with his x-box.
15 I think nothing out of the ordinary, just a general
16 routine of them, him bathing her and feeding her,
17 etcetera, throughout the day, that he had developed a
18 routine since he was not working.

19 Q. All right. So in respect to the girlfriend, what
20 was the information that you generated about her
21 involvement with feeding and bathing the child prior
22 to the incident?

23 A. Well, Matthew expressed that she was a good
24 mother, that she was attentive. She just would
25 sometimes get frustrated with the minor child. Based

1 on the discussions with him, they seemed to be a
2 relatively normal group of three family. They split
3 some of the power of doing things for the minor child.
4 And while she working and while he was not, he tried
5 to take over during the late night hours to allow her
6 to get some sleep since she was working.

7 Q. And did you discuss with him who cared for the
8 child that morning and that night before?

9 A. We did. He gave us the information that he was
10 asleep that morning, I believe when Ashley left, that
11 the minor child was also asleep at that time. But I
12 think Ashley woke him up before she left for work
13 sometime that morning. And that he cared for her
14 throughout the day.

15 Q. Any indication when the child was fed that
16 morning?

17 A. Not from my memory, no, not specifically that
18 morning.

19 Q. All right. Now, we've already kind of discussed
20 real briefly the situation where Mr. Hinton talked
21 about or told you about slipping in the shower earlier
22 that day?

23 A. Yes.

24 Q. I'm going to show you what's Exhibit Number 4 and
25 see if you can identify that?

1 A. Yes.

2 Q. And can you identify that letter?

3 A. This is a letter that Mr. Price had delivered to
4 us when he delivered his file. And he goes through
5 and details a number of things that he had had a
6 chance to review, and just different notes about the
7 case. I guess he was attempting to give us as much
8 information as he could.

9 Q. And he discussed the fact that y'all -- that
10 they'd done an independent pathology on the child. I
11 mean, were you aware of that?

12 A. Yes.

13 Q. And discussed the issues or the injuries to the
14 child?

15 A. Yes.

16 Q. And did he also discuss with you that the
17 incident in the shower was not a possible explanation
18 for the injuries?

19 A. That is what the note says, yes, sir.

20 Q. And would you agree with that?

21 A. Would I agree that the incident in the shower was
22 not a possible cause of the injuries?

23 Q. Yes?

24 A. I would agree that it was what our client advised
25 us happened. And so that's what we put forward.

1 because that's what our client told us happened that
2 day. He was very consistent about that. I can't
3 speculate as to whether or not that's possible to
4 cause the injuries.

5 Q. Well, what I'm getting at is, wasn't it unlikely
6 that any medical doctor was going to say a slip in the
7 shower caused these injuries to the child?

8 A. It seemed so, since at this time and throughout
9 the case, the medical doctors did not say that that
10 incident in the shower was what caused these injuries.

11 Q. All right. And so the issue really would have
12 been -- for the defense would it not be, as far as
13 you're concerned, would be did the mother do something
14 with the child after she got home from work?

15 A. That potentially could have been a -- was one of
16 the issues. Part of the problem that we had at that
17 time was that we did not have any information about --
18 from our client as to waking up and hearing something.
19 There was no other evidence that we could point to
20 regarding that based on third-party guilt issue.

21 Q. Did you ask him if he was a sound sleeper?

22 A. I believe we talked about the level of his sleep
23 actually quite a bit. There was issues regarding him
24 breathing while he was asleep and that he was a heavy
25 deep breather while he was asleep. We talked about

1 issues about whether or not he was somebody that you
2 had to rouse really hard to wake up. From my memory,
3 he was a pretty sound sleeper, but he does have
4 memories of waking up that afternoon after Ashley got
5 home.

6 Q. Because he says Ashley woke him up a couple of
7 times?

8 A. Correct.

9 Q. All right. Now, did you recall discussing with
10 him whether or not Ashley had ever retrieved the child
11 from the bed that he was in with the child previously?

12 A. Like previously that day?

13 Q. Anytime?

14 A. I believe he said that when he woke up the minor
15 child was still there next to him. He doesn't know if
16 Ashley removed that child from the bed. The only
17 thing about that was the pink blanket that he wondered
18 if she maybe wrapped the child's legs up in a blanket.

19 Q. What I'm asking is, did you ask him about whether
20 or not she, in the past, had gotten the child out of
21 bed without him knowing it?

22 A. I don't have a specific memory to that. No, I'm
23 sorry.

24 Q. All right. Let me show you Plaintiff's Exhibit
25 Number 5. See if you can identify that.

1 A. These are Greenville Hospital System records.

2 Q. And are those the records you received in the
3 course of discovery?

4 A. Yes, I believe so.

5 Q. And those are records relative to -- let me ask
6 you this. Initially, the child was taken to Oconee
7 Memorial?

8 A. Yes.

9 Q. And then transferred to Greenville Hospital?

10 A. Yes.

11 Q. And these are one of the records from the day
12 following, which is August 17th, where the child was
13 transferred to Greenville Memorial; correct?

14 A. Yes.

15 Q. And in that there's a little dictation in about
16 mid-page in the history of the present illness that
17 says, at five-thirty mom came home from work, found
18 both the dad and the baby asleep in the bed with
19 patient breathing, looking normal?

20 A. Yes.

21 Q. However, when dad woke at eleven, he found the
22 infant beside him not breathing?

23 A. Yes.

24 Q. All right. And so -- it also indicated that the
25 child was at eighty-nine degrees when the child was

1 seen at the ER, which I assume was Oconee?

2 A. I would assume so, yes.

3 Q. And did you or your father look at the issue of
4 the child's temperature when she arrived at Oconee?

5 A. I did not. I don't know that we specifically
6 looked at that. I honestly don't know. I don't
7 remember that.

8 Q. Just to be clear, the allegations were that the
9 mother had checked on the Defendant and the child
10 every forty-five minutes from five-thirty until he
11 woke up and said the child's not breathing?

12 A. Yes, he also awoke at least twice during that
13 period of time.

14 Q. When she came in and did something with the
15 child?

16 A. Correct.

17 Q. And the child arrived at the emergency room in
18 Oconee, appears to have eighty-nine degrees is his
19 temperature?

20 A. Yes.

21 Q. And you didn't investigate the issue of the
22 child's temperature relating to the allegations?

23 A. I don't have a specific memory of that, no.

24 Q. Now, the note here that the child, the baby was
25 asleep in bed with the patient, the child was -- the

1 patient breathing, looking normal?

2 A. Yes.

3 Q. And that was obviously a history that was given
4 at the hospital, by the mother, I assume?

5 A. I assume so. But I don't know who gave that
6 history.

7 Q. And was the testimony at trial different than
8 that that the condition of the child would be readily
9 apparent to anyone after the injuries were inflicted
10 on the child?

11 A. I believe one of the doctors was talking about
12 the broken leg specifically and said the minor child
13 would be very fussy about the broken leg. But it's
14 also my memory, and I think it was Dr. Troupe -- I
15 could be mistaken in that -- that referenced the fact
16 that once the minor child -- once and if the minor
17 child was going into a coma that she wouldn't
18 necessarily be fussy, that she would be more quiet.

19 Q. Would be in a coma by then?

20 A. Right.

21 Q. And we'll get into that in the transcript. So
22 Exhibit Number 6 is another record from the hospital
23 system?

24 A. Yes, Greenville.

25 Q. All right. And that was, again, a consultation

1 note. I think that's from Dr. Henderson. And it
2 talks about the father indicated -- told law
3 enforcement about the shower incident. In the second
4 paragraph?

5 A. Oh, sorry. Yes. Yes.

6 Q. And also indicates that -- at the bottom of the
7 second paragraph -- mother returned home from work
8 approximately five thirty, found father and baby.
9 Seemed to be doing okay. Mother continued to check on
10 father and baby periodically throughout the night?

11 A. Yes.

12 Q. Mother continued to be on the computer. I am
13 unsure why the infant was not awoken to be fed during
14 that period?

15 A. Yes.

16 Q. Did you look into the feeding schedule of the
17 child?

18 A. Based on the testimony and the information we
19 received, the minor child's schedule somewhat varied,
20 especially since she had started teething. The minor
21 child was more fussy and was not sleeping through the
22 night the way she had been before that. And so it was
23 -- the information that we got was that they were
24 essentially letting her sleep when she was sleeping
25 and would try to feed her when she woke up so that she

1 wasn't waking a sleeping baby.

2 Q. Well, wasn't generally though that the child fed
3 every two or three hours?

4 A. Yes, generally. But it was my understanding that
5 because of the issues with her -- I think she had had
6 a particularly tough night the night before. And so
7 they were allowing her to sleep. It's my
8 understanding that Mr. Hinton told Ashley not to wake
9 them, that they were going to try to sleep since she
10 had not slept real well that night before.

11 Q. So the mother comes home at five thirty and
12 doesn't attempt to feed the child or -- up until the
13 time that he woke up and found the child not
14 breathing?

15 A. Yes. That's the information we received?

16 Q. Which was ten -- was eleven o'clock?

17 A. Yes. That was the information that we received
18 from our client as well.

19 Q. I'm going to show you Number 7. And that's
20 another report from Greenville Hospital System, I
21 believe?

22 A. Yes. It looks like it was a consult, I think, by
23 Dr. Henderson again.

24 Q. And in that it also notes that mom came home and
25 periodically checked on the baby and dad. Dad awoke

1 around eleven, and that's when -- doesn't say it here
2 -- but that's when he discovered the child wasn't
3 breathing?

4 A. Yes.

5 Q. So I think that the information that you had was
6 the child was fed around three thirty?

7 A. Yes, I believe so.

8 Q. And did you ever check and ask who fed the child
9 earlier that day, in the morning?

10 A. No. As I testified just a minute ago, I don't
11 specifically remember about the feeding that morning.
12 However, the minor child's mother was, according to
13 both our client and then the testimony at trial, was
14 asleep until very soon before she had to go to work.
15 So I don't know that she would have had time to feed
16 the minor child that morning.

17 Q. So the evidence was that she got home the
18 previous night at five thirty and didn't get up the
19 next day until eleven?

20 A. Well, I don't know what time she went to bed that
21 night before, but, yes, that she got up approximately
22 eleven, eleven fifteen.

23 Q. And went straight to work?

24 A. Yes.

25 Q. And then never fed or touched the child?

1 A. Well, I don't know about touching the child. But
2 I don't know that, based on her testimony and the
3 information we have, that she would have had time to
4 feed the child that morning.

5 Q. Do you know if anybody checked to see if there
6 was an empty or partially filled bottle of formula
7 that might have been used in the home when the police
8 searched the residence?

9 A. I don't believe there was anything on the return
10 to the search warrant that said that. We did not have
11 a chance to go into that home specifically because by
12 the time we got the case they were no longer living in
13 that apartment. But I don't know that there was
14 anything specifically -- that there was a partially
15 used bottle. Our client did give us the information
16 that the minor child did not eat as much at the three,
17 three-thirty feeding as she normally did.

18 Q. And so from the police report you don't recall
19 them mentioning any baby bottles they saw?

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

21 Q. And did you ask Mr. Hinton what he did with the
22 baby bottle after he fed the child at three-thirty?

23 A. I personally did not, no.

24 Q. And do you know if anybody asked him? Did you
25 hear your father ask him that?

1 A. Specifically about what he did with the baby
2 bottle after he fed at three-thirty?

3 Q. Right?

4 A. No.

5 Q. If there were a partially filled bottle of
6 formula in the master bedroom that the police saw
7 after the incident and that was a location that the --
8 Mr. Hinton did not normally place a baby bottle, would
9 that be important?

10 A. If there was a baby bottle in the bedroom and
11 that's not ---

12 Q. In the master bedroom. There's two bedrooms
13 involved, just for the court's ---

14 A. Yes.

15 Q. We're kind of talking because we know this so
16 much, but there were two bedrooms involved?

17 A. Right.

18 Q. There was the front bedroom where the father and
19 the baby were. And then there's a master bedroom
20 where the father and mother and the child slept in a
21 crib?

22 A. Correct.

23 Q. And if there were a partially filled baby bottle
24 in that room, would that cause you to investigate it
25 further?

1 A. (No verbal response.)

2 Q. I mean the issue would be whether or not the
3 mother had the child up in the middle of the night
4 trying to feed her?

5 A. It is possible that that happened. I don't know
6 that I specifically looked into that issue. I
7 apologize, I don't have much more on that. We didn't
8 look into the baby bottle in the bedroom issue.

9 Q. The prosecution's case generally turn on the
10 proposition that the mother could not have done this;
11 is that correct?

12 A. Their case, I think, less focused on that the
13 mother couldn't have done it and more focused on the
14 fact that they believed that Mr. Hinton was the one
15 that was with the child during the time line that they
16 developed.

17 Q. Well, we're going to get to that in a little bit
18 from the trial testimony. But I think the opening
19 statement in that case was she was eliminated as a
20 suspect?

21 A. Right. Based on the testimony or based on the
22 time line that they had developed.

23 Q. Which was the child's injuries occurred eight
24 hours or less from the time of eleven o'clock?

25 A. Right. That's my understanding that they were

1 claiming that the injuries occurred to the child
2 around two-thirty, but I'd have to look back
3 specifically at that.

4 Q. We'll get to that. But the testimony, as you
5 might recall, was eight hours or less?

6 A. I'd have to look back specifically. I remember
7 -- two and two-thirty stuck out in my mind. That's
8 why ...

9 Q. All right. Let me show you Exhibit Number 8 and
10 ask you if you recognize that as another one of the
11 medical records?

12 A. Yes.

13 Q. And in that is an exam, a skeletal survey?

14 A. Yes.

15 Q. Do you remember this document?

16 A. Yes.

17 Q. And first of all, it says it was done on a
18 portable -- according to the State, it was done
19 portably? Did you notice that in this record?

20 A. Can you point me to ---

21 Q. It's down here at procedure at the bottom, first
22 paragraph?

23 A. Yes.

24 Q. The procedure was done portably?

25 A. Yes.

1 Q. Did you look into the reliability of portable x-
2 rays?

3 A. Not off the top of my head, I don't think there
4 was any question about that there were pretty specific
5 injuries.

6 Q. Well, that there was the rib fracture ---

7 A. Correct.

8 Q. --- that was not discernable in earlier medical
9 records ---

10 A. Right.

11 Q. --- x-rays? And was, quote, reasonably
12 discernable on this portable x-ray?

13 A. Right. And then I believe it was also followed
14 up by the autopsy that confirmed that as well.

15 Q. And there was a classic metaphyseal lesion?

16 A. Correct.

17 Q. Which I believe was testified to at trial, almost
18 routinely as a fractured of the left leg?

19 A. Yes. That's my memory.

20 Q. Now, let me show you Number 9. And I know I
21 probably shouldn't go into too much of the medical
22 with you. But you were involved in the investigation
23 of some of it?

24 A. Yes.

25 Q. And from that perspective did you do any research

1 on the metaphyseal lesions?

2 A. No. No, my focus was more the lay witnesses.

3 Q. There was, I think, testimony about a collapsed
4 lung?

5 A. Yes.

6 Q. And did y'all look into the issue about the
7 collapsed lung? It's evidence on Exhibit Number 9?

8 A. When you say did we look into the issue of it,
9 you mean the issue that it existed?

10 Q. What caused it?

11 A. What caused it? I looked through the records
12 that we had. I believe there was some testimony about
13 different things, but I don't know that I specifically
14 remember exactly what they said caused the collapsed
15 lung. I know our client mentioned part of it when he
16 was talking about the CPR, that that was one of the
17 things he was worried about, that he was trying not to
18 do, was harm one of the lungs.

19 Q. Do you know if the child was intubated?

20 A. I honestly don't remember. I would assume so.

21 Q. And you don't know whether or not the collapsed
22 lung was caused by the intubation, the
23 hyperventilation?

24 A. I do not know off the top of my head, no.

25 Q. Let me show you Number 10. This is the statement

1 of Frederick Glenn Mitchell?

2 A. Yes.

3 Q. Do you recall that from your file?

4 A. Give me just a moment. Let me look at it.

5 THE COURT: That's the statement of who?

6 MR. CHILDS: Number 10.

7 THE WITNESS: Number 10. A statement of
8 Frederick Glenn Mitchell.

9 A. I vaguely remember this. I believe he was one of
10 the EMS or one of the people with EMS.

11 Q. Okay. And did you see on the second page of that
12 statement from EMS where he mentioned that the room
13 where the baby was found was so darkly lit that they
14 had to use flashlights to see?

15 A. I remember that testimony. I remember our client
16 saying that was one of the reasons he laid down in
17 that room because it was darker. He was hoping to be
18 able to allow them both to sleep.

19 Q. Were you interested in that aspect of the case as
20 far as your cross examination of Ms. Bright as far as
21 her ability to see in that room when she allegedly
22 checked on the child routinely?

23 A. I believe I did specifically ask her about what
24 she did when she checked on the child? Did she go in
25 the room? Did she turn the light on? To try to find

1 out, especially since as long or later as it got in
2 the evening, the darker it would be anyways, because
3 they had windows. But I don't know that I
4 specifically said, is it too dark to see anything?

5 Q. Let me show you Number 11. See if you can
6 identify that?

7 A. This is information that the solicitor provided
8 to us. I believe these were some of the notes that
9 she took, that she specifically labeled discoverable
10 material when she spoke with Ms. Bright.

11 Q. And so that was -- she disclosed the statements
12 of the defendant?

13 A. No, these were, I believe, notes that she took
14 when she spoke to Ashley.

15 Q. Right. But also it was in the interest of
16 disclosing the statements of the Defendant they
17 intended to introduce at trial?

18 A. Some of them, I think. From my memory this was
19 specifically just because Lindsey Simmons always has,
20 at least in the trials that I've dealt with with her,
21 provides you as much information as she can. She's
22 not trying to hold back or hide anything. So she was
23 trying to make sure that we knew what information
24 she'd been provided.

25 Q. In this note that you're provided by her it

1 states at the bottom that GMH Monday a.m., Defendant
2 told Ashley that the potential charge carried about
3 twenty years, but told her she'd only do a couple of
4 years if she did it?

5 A. Yes, I do see that.

6 Q. Is that what she testified to at trial?

7 A. I don't know that that specific issue came up at
8 trial.

9 Q. Do you recall her testifying at trial that the
10 Defendant allegedly told her that if she took the rap
11 for what happened, took responsibility for what
12 happened, that she would get less time because she
13 didn't have a prior record?

14 A. I do remember that issue. I didn't remember him
15 saying that she would specifically get a certain
16 number of years. I just didn't remember the trial
17 transcript being that specific about what she said. I
18 apologize.

19 Q. So the statement disclosed by Ms. Simmons to you
20 was different at trial?

21 A. Not different just less specific.

22 Q. Well, he said the potential charge would carry
23 about twenty years ---

24 MR. WHITMIRE: Objection. Asked and
25 answered.

1 THE COURT: Overruled.

2 Q. All right. In addition to that it states here
3 that she told prosecutors she thinks the Defendant was
4 using drugs during the summer of 2009?

5 A. Yes. There is that listed here. That was not
6 something that -- from my memory, that was not
7 something that came up as an issue, that he was on
8 drugs. Everybody said that he had been a good father.

9 Q. Right. But she told the prosecutor that the
10 Defendant was on drugs in the summer of 2009?

11 A. Yes. Apparently she did.

12 Q. And that the Defendant had used marijuana and
13 alcohol since the child's birth. And the child was
14 five months old; right?

15 A. Yes. I see that here, yes.

16 Q. And this incident occurred on August the 15th; am
17 I correct?

18 A. That's my understanding, yes.

19 Q. Let me show you Plaintiff's Exhibit Number 12.
20 Do you recognize that?

21 A. Yes. This is a drug screen that looks as if it
22 was collected on August 17th of 2009, taken from Mr.
23 Hinton.

24 Q. All right. And so this was the day -- actually
25 the next day after this on August 7th, this was

1 collected; is that correct?

2 A. August 17th.

3 Q. Oh, okay. August 17th. I'm sorry. And it was a
4 hair strand drug test?

5 A. It was a five panel hair strand test.

6 MR. CHILDS: And I don't if Your Honor's
7 familiar with those. They're frequently used in
8 Family Court.

9 A. They are.

10 THE COURT: Go ahead. I understand.

11 Q. And were those all negative on behalf of the
12 Defendant?

13 A. Yes.

14 Q. And did you see this report?

15 A. I believe this was one of the reasons that we
16 didn't count the previous interview that we were
17 talking about as anything specific to this case
18 because he had passed the drug screen. He was not --
19 did not show any levels for a THC metabolite or
20 anything on this test.

21 Q. And that's a sixty day time frame?

22 A. Based on my understanding those test are
23 potentially up to sixty days, but it depends on the
24 length of hair and those types of issues. So I don't
25 know that you can specifically say that, but ...

1 Q. Well, what that says on the report is zero dash
2 thirty, sixty day time frame?

3 A. Right. Basically, the way I read that is
4 approximately zero to thirty or zero to sixty time
5 frame.

6 Q. And you understand that Ms. Bright told the
7 prosecutor that he had used drugs during the summer of
8 2009?

9 A. Yes.

10 Q. Did you investigate this hair strand test that
11 was conducted at the request of DSS?

12 A. What do you mean did I investigate the hair
13 strand test?

14 Q. Well, if in fact a hair strand test indicated
15 that he hadn't used drugs in the summer of 2009,
16 wouldn't that be important?

17 A. Yes. But we have the drug screen that showed
18 that he had not -- or that he had passed the drug
19 screen, that he did not show anything.

20 Q. Right. But Ms. Bright's telling the prosecutor
21 that he used drugs the summer of 2009?

22 A. Yes. But we had a test showing that he was clean
23 as of August 17th, 2009.

24 Q. Right. And so -- but wouldn't you be able to use
25 that to show that she lied to the prosecutor?

1 A. I don't know that the prosecutor specifically
2 asked her on the witness stand about drugs. So I
3 don't know that ---

4 Q. Well, you could have?

5 A. Yes, but I don't believe that came out on direct
6 and I also don't believe that the statement that we
7 received from the prosecutor was a specific written
8 statement from Ashley. It was just the notes that the
9 prosecutor took.

10 Q. Well, when the prosecutor said Ashley told her
11 she thinks the Defendant was using drugs the summer of
12 2009?

13 A. Right. But it wasn't a written signed statement
14 by Ashley specifically.

15 Q. So did you consciously think about that or just
16 ---

17 A. We looked at the drug screen that we had that
18 showed that he was clean so that if we -- if that
19 issue ---

20 Q. And you would have had that if she had testified?

21 THE COURT: Just one second. Let her
22 finish.

23 MR. CHILDS: I'm sorry.

24 A. We had the information there so that if that came
25 up at trial that we were able to refute that and would

1 be able to impeach her on that issue, addressed it.
2 But as a general rule during a trial, and especially
3 this one, there were a lot of issues with just
4 emotion. But we weren't trying to point the jury at
5 anything potentially negative about our client. So we
6 didn't want to bring up the fact that somebody was
7 accusing him of doing drugs. If that issue didn't
8 come up, we didn't want to bring it up.

9 Q. All right. Wouldn't that address or impeach her
10 credibility or reliability?

11 A. Based on the discussions that we had as a trial
12 team, the potential damage of pointing out the fact
13 that she thought he was doing drugs outweighed the
14 potential of saying that maybe she was lying about
15 that one issue. We didn't want to bring up a negative
16 thing specifically about our client, even though it
17 was potentially negative about her because she wasn't
18 the one on trial. We didn't want to make something
19 negative for our client who was the one on trial.

20 Q. But the perspective was that she supported him
21 until -- well, the indications would be until February
22 of '09 -- of '10. And then you got this in discovery
23 after y'all were -- and so wouldn't this be something
24 where she's basically trying to throw him under the
25 bus?

1 A. I don't know that we saw it that way from a trial
2 point of view because that didn't come up at trial.

3 Q. Okay. We're going to get to that. You also
4 received a copy of the private autopsy on the child?

5 A. Yes, I believe so.

6 Q. (Hands Exhibit to witness.)

7 A. Yes. I believe this is the one that Chip Price
8 had that he also discussed in his letter when he sent
9 us the initial file.

10 THE COURT: What's that Exhibit Number?

11 THE WITNESS: This is Exhibit 13.

12 MR. CHILDS: Exhibit 13.

13 Q. And in that autopsy they were unable to examine
14 basically the alleged classic metaphyseal lesion on
15 the leg because it wasn't there?

16 A. Can you point me to specifically where you're
17 looking at? I apologize.

18 Q. Let's see. The entire right first rib -- the
19 distal femur proximal tibia fibula, right side ---

20 A. Yes. It's my understanding ---

21 Q. There are some things that were missing in the
22 second autopsy or pathology August 19th, 2009?

23 A. I don't know if they were missing. I believe
24 they were removed at the first autopsy. So I think
25 they were kept in the State's evidence, but I wasn't

1 involved at this time so I can't tell you exactly why
2 some things got transferred and some things didn't.

3 Q. But you remember seeing the autopsy where certain
4 items that the pathologist in Greenville when they
5 were reviewed weren't with the child when he did the
6 autopsy?

7 A. Yes, I do remember that.

8 Q. And do you know if there was any follow-up to try
9 and get an examination of those items prior to trial?

10 A. Not that I'm aware of. Part of what we looked at
11 in this report was that this report did not
12 necessarily help, based on the information that we
13 had. So I think we were trying to move forward and
14 find something. I guess find a different issue. We,
15 ourselves, we did not get a specific expert to look at
16 the autopsy. We have a friend of ours that is a
17 pediatrician that we submitted that confidentially to
18 him to try to have him review to see if there was
19 anything about either report that caused him concern.
20 As an appointed case, I know you're aware, it's hard
21 to get funding very quickly. So we wanted to make
22 sure that we used the resources at our disposal before
23 attempting to try to go through funding for something
24 like that. But it was our understanding that he
25 looked at the initial autopsy report and said there

1 wasn't anything from that that concerned him or that
2 we needed to, I guess, stop and look at again.

3 Q. Okay. So the answer to that was that you decided
4 not to pursue further the issue of the examination of
5 those items that were missing from the August -- from
6 the autopsy examination by Dr. Fulcher?

7 A. Right. We did not follow up on the second
8 autopsy that was done; correct.

9 Q. Now, let me show you Plaintiff's Exhibit Number
10 14. Can you recognize that?

11 A. Yes. It looks like the statement of Lindsey
12 Bond.

13 Q. And that was a statement given to the police in
14 August of 2008?

15 A. Yes.

16 Q. And I assume that -- it says late April of '09
17 this individual was Ms. Bright's brother?

18 A. Sister.

19 Q. Let's see. Where is it -- my sister. I'm sorry.
20 And it's a statement that she said that Ms. Bright
21 said she was in love with him, meaning Matthew, but he
22 said he was not in love with her. Do you know the
23 circumstances about this statement?

24 A. I do not.

25 Q. Did y'all look into interviewing Ms. Bond?

1 A. We did not. Ms. Bright and her family were not,
2 I guess, very open to wanting to speak to us. We were
3 representing Mr. Hinton at that time. However, this
4 was not something that we hadn't been able to see or
5 talk to Mr. Hinton about before, so ...

6 Q. Well, I'm not sure that it's favorable to Ms.
7 Bright?

8 A. I don't know that it's favorable or not favorable
9 to either party or to Mr. Hinton or Ms. Bright.

10 Q. Let me show you Number 15. See if you can
11 identify that?

12 A. This seems to be the statement of William Fowler.

13 Q. All right. Now, is that one of the witnesses
14 that you initially had a note of?

15 A. Yes, I believe so.

16 Q. And it's basically a positive note from him about
17 Mr. Hinton?

18 A. Yes. This follows up on what Mr. Hinton and the
19 other -- when we talked to him about it, I believe
20 this was a man that worked with him at Pizza Hut.

21 Q. And basically a negative connotation about Ms.
22 Bright?

23 A. Yes. I'd have to re-read it again to be very
24 clear, but this was not somebody that said that he'd
25 ever seen the minor child in person.

1 Q. He happened to come forward and given a statement
2 to the Seneca Police on August 18th?

3 A. It looks that way, yes.

4 Q. Did you attempt to locate or talk to Mr. Fowler?

5 A. He was one of the people that Mr. Hinton
6 mentioned that we -- I don't know if he was one of the
7 ones that we thought we had a number for but didn't,
8 but we reached out to Pizza Hut and were unable to
9 specifically find at least two of the people that Mr.
10 Hinton asked us for or asked us to look into at Pizza
11 Hut. During this entire time, we also attempted to
12 have Mr. Hinton reach out and find some of these
13 numbers or information himself as well. And I can't
14 say he didn't, but I don't have any notes that
15 specifically say that he gave us that direct
16 information.

17 Q. Somewhere, I think, and I could be wrong, but
18 didn't Mr. Fowler -- is dispatcher for the Seneca
19 Police Department?

20 A. I don't remember that off the top of my head. I
21 can't say he didn't.

22 Q. All right. And Number 16 --

23 MR. CHILDS: This for Your Honor, it'll be
24 DSS finding of fact in respect to ---

25 MR. CHILDS: Where is number 16? I've got

1 it.

2 Q. Was the DSS indication against Mr. Hinton?

3 A. Yes. It looks like that's dated September 2009.

4 Q. You're aware of the fact that once an individual
5 is indicated by DSS they're entitled to review the
6 file of DSS?

7 A. Yes. Once they're -- well, I believe throughout
8 process, at least in Anderson, they have an open file
9 policy that the person that is a subject of it can go
10 and review the file.

11 Q. All right. And did y'all ever go over and review
12 the DSS file?

13 A. We didn't represent Mr. Hinton on the DSS action.
14 So, no, we did not go review the DSS file. We spoke
15 to him a little bit about the DSS case. But the main
16 issue on the forefront for us was the criminal case.
17 The DSS action was subsequent to that.

18 Q. Well, were you concerned that there were any
19 statements given to DSS or any records that were given
20 to DSS that weren't given to y'all in the criminal
21 case?

22 A. Based on the volume of what we had and reviewing
23 it with our client, there wasn't anything specific
24 that we were advised that he was aware of that was
25 different from the DSS action. The file for the

1 criminal case was voluminous.

2 Q. So the answer would be, no, you didn't think

3 there would be anything there?

4 A. No, we did not believe there would be anything

5 from the DSS case specifically that we did not have in

6 the criminal case. And as I said, our client reviewed

7 everything that we had in the criminal case. And we

8 were not a part -- we were not representing him during

9 that period of time. So it would have been more

10 difficult for us to gauge whether there was something

11 that he knew of at that time that wasn't in the

12 criminal case.

13 Q. I think -- correct me if I'm wrong -- what

14 happened was he was served at the jail with that

15 notice of finding, basically. And that was the end of

16 his involvement with DSS as far as you know?

17 A. As far as I know they did not go forward with a

18 trial like a merits trial against him, at least not

19 while we were involved.

20 Q. Do you recall if Mr. Hinton told you that as part

21 of the DSS investigation he gave a statement to DSS?

22 A. I know he said that he went and talked to DSS,

23 yes. And I think it was maybe the day after they went

24 to the hospital.

25 Q. Did he indicate to you that they came and visited

1 him at the jail?

2 A. That DSS came to visit him at the jail? No, I
3 don't remember him mentioning that.

4 Q. Did he indicate to you that they were favorable
5 towards him as far as their discussions of what
6 happened?

7 A. I don't remember him speaking too much about the
8 DSS case. As I mentioned, even for him, the criminal
9 case was on the forefront. And as they did not seem
10 to be pursuing the DSS action, we were more focused on
11 the criminal case.

12 Q. So you don't remember?

13 A. I don't remember specifically what you're asking,
14 no, sir. I apologize.

15 Q. You don't remember him discussing it with you
16 that DSS investigators talked to him and they had a
17 conversation about the situation and they were
18 favorable to him?

19 A. I don't remember anything in writing happening
20 from any of those.

21 Q. How would you know without looking at the DSS
22 file?

23 A. We asked our client specifically about those
24 issues with DSS and we gave him all of the information
25 that we received from the criminal case. Every time

1 we received anything, we sent it on to him. I don't
2 know that I specifically said, is there something in
3 writing in the DSS case that's not in writing in this
4 case. But we provided all the information to him
5 specifically for him to review as well so that he
6 could hopefully help clarify.

7 Q. How do we know what was in the DSS case?

8 A. He was the one that was actively involved in
9 that.

10 Q. He got served with a notice of finding while he
11 was in the detention center; right?

12 A. He also spoke with them on his own.

13 Q. And so how would you know what they were beyond
14 their file?

15 A. I would assume he would know what they wrote down
16 at least in his presence. And I don't know that there
17 was anything in writing that they used against him.
18 They, I believe, closed their case soon after that.

19 If the case does not go to court, it was my
20 understanding that those files then do get closed and
21 essentially that file gets ---

22 Q. Without a finding?

23 A. Right.

24 Q. And so despite the notice obviously, the lack of
25 further proceedings indicates that DSS didn't pursue a

1 finding against Mr. Hinton?

2 A. Correct. They indicated the case but did not
3 pursue it to a merits hearing and a finding, as far as
4 we were aware.

5 Q. Okay. Now, let me show you 17. And you reviewed
6 that document, also from your files?

7 A. Yes. This looks like a copy of a search warrant.

8 Q. Executed on August the 20th, I believe?

9 A. It says dated Monday, August 20th on the front.

10 Q. And so that was several days after the incident?

11 A. Yes.

12 Q. And at that time did they request a search
13 warrant of Mr. Hinton's -- a photo of his palms and
14 measurements of his hands, his left and right hands?

15 A. Yes.

16 Q. And do you recall ever seeing any of those
17 photographs that they took?

18 A. I do not off the top of my head. I know there
19 was testimony about them. I don't think they were
20 entered into evidence at trial.

21 Q. Okay. And the purpose of the palm prints and the
22 measurements was to -- an attempt by the prosecution
23 to match those up stuff with bruises found on the
24 child?

25 A. I would assume so, but I don't know exactly what.

1 they were doing with that. This is something that the
2 police did pretty early on in the case.

3 Q. All right. Would you know of any other reason
4 they would be measuring his hands and taking
5 photographs of them?

6 A. No. I just meant I can't speculate as to why the
7 prosecutors do certain things.

8 Q. All right. You do recall testimony about the
9 alleged fingerprints on the victim?

10 A. I vaguely remember the testimony about the ---

11 Q. Well, that was more of your father's kind of
12 cross-examination of that?

13 A. I believe so when he was cross-examining maybe
14 one of the doctors but additionally one of the police
15 officers. I think that was involved in taking ...

16 Q. But my real question is, I've never seen a copy
17 of those photographs and I asked for your whole file?

18 A. Yes, sir. I don't have a memory of specifically
19 looking at the pictures of his hands.

20 Q. All right.

21 A. I can't -- we provided everything we possibly
22 thought we could that was not just multiple copies of
23 the same thing. But I don't remember specifically
24 looking at the -- I did not go back through the
25 pictures from the file. I went back through most of

1 the written stuff that I had in the file.

2 Q. You do recall the testimony ---

3 THE COURT: Hang on for a second.

4 MR. CHILDS: Yes, sir.

5 THE COURT: Let's take our afternoon break.

6 MR. CHILDS: Yes, sir.

7 THE COURT: If you don't mind. Are you in a
8 position to stop at this stage?

9 MR. CHILDS: Yes, sir, I am.

10 THE COURT: All right. Let's take about a
11 ten minute break and we'll be back.

12 Now, Ms. Senerius, you know you can't speak with
13 anybody about your testimony; okay?

14 THE WITNESS: Yes, Your Honor.

15 THE COURT: Very good.

16 (WHEREUPON, court stood at recess for a short
17 break.)

18 Q. All right. Let me show you Plaintiff's Exhibit
19 Number 18. And this is more relevant to you. I
20 believe you did the cross of Desmond Holland?

21 A. Yes.

22 Q. And this is a copy of his alleged fiancé, Jamira
23 Robinson?

24 A. Yes. It looks like her work schedule.

25 Q. And are you familiar with that?

1 A. I'm sure I reviewed that, but I didn't look into
2 specifically Jamira Robinson. I cross-examined Mr.
3 Holland.

4 Q. Oh, you were specifically interest in Mr.
5 Holland?

6 A. That was who I cross-examined, yes.

7 Q. Right. But Mr. Holland testified, I think that
8 the girlfriend's work schedule confirmed his story
9 about hearing a noise at two-thirty in the afternoon?

10 A. I don't know that he said that her work scheduled
11 confirmed that. He said that's why he believed that
12 there was something that happened at a certain time.

13 Q. Okay. And so that would be the last -- the week
14 of August the 16th. And his fiancé was Jamira
15 Robinson. Do you remember that?

16 A. I remember that names, yes.

17 Q. And indicates that on Sunday, which was, I
18 believe the date of the incident, she was at work at
19 three fifteen?

20 A. Yes, that's what it says.

21 Q. And the other dates indicates that she was at
22 work at five fifteen. But the previous Monday she was
23 at work at 2:30?

24 A. Yes. Monday the 10th, it looks like.

25 Q. And Mr. Holland came forth to the police several

1 days after the alleged incident; said he heard
2 something?

3 A. I don't know that he came forward. I thought
4 they were canvassing the area and spoke to him at that
5 time, yes.

6 Q. And his testimony was that he heard a noise
7 upstairs in Mr. Hinton's apartment about two-thirty as
8 he was walking his fiancé to the door, basically? And
9 the transcript will show it; won't it?

10 A. Yes, that is ---

11 Q. But your understanding of his proposed testimony
12 was that his fiancé was there when he heard the noise.

13 A. No. My understanding was that his fiancé had
14 left by the time he heard the noise.

15 Q. Okay. All right. And then did you ever talk to
16 Jamira Robinson?

17 A. No.

18 Q. To find out if she'd heard anything or knew of
19 anything when she got home?

20 A. No.

21 Q. Did you know that Desmond Holland was -- knew
22 Ashley Bright from high school?

23 A. I thought he was specifically questioned about
24 that on the witness stand. I did not know that he
25 knew her from high school.

- 1 Q. Did you listen to his audio interview?
- 2 A. I'm sure I did but that was years ago.
- 3 Q. All right.
- 4 A. I apologize. My memory is more from the trial.
- 5 Q. All right. If you had listened to it and heard
- 6 that he knew Ashley Bright from high school, would
- 7 that have affected your cross-examination of him?
- 8 A. I don't think it would have changed it too much
- 9 because I was more trying to find out from him what he
- 10 thought he heard, if it was so important, why he
- 11 didn't follow up with it and trying to figure out -- I
- 12 guess trying to ask those questions and show that
- 13 obviously the noise that he heard wasn't as extreme as
- 14 he was making it out to be that day, since he didn't
- 15 really follow up with it, other than just knocking on
- 16 the door a couple of times.
- 17 Q. All right. And did you listen to the audio and
- 18 hear the officer characterize the noise he heard from
- 19 the apartment as a whimper to Mr. Holland?
- 20 A. I specifically don't remember listening to that.
- 21 That's what I'm saying. My memory of Mr. Holland is
- 22 from the trial.
- 23 Q. Did Mr. Holland -- and we'll get to that. It's
- 24 in the transcript. But Mr. Holland testified he
- 25 didn't know either one of these people?

1 A. Yes. He testified that on direct examination
2 from my memory from the solicitor.

3 Q. And if the audiotape indicates that he knew Ms.
4 Bright from high school and his girlfriend knew Ms.
5 Bright as well, would that have affected your cross-
6 examination of Mr. Holland?

7 A. His girlfriend, Ms. Robinson?

8 Q. Yeah. His fiancé?

9 A. His fiancé. I ---

10 MR. WHITMIRE: Your Honor. That's asked and
11 answered. Objection.

12 THE COURT: Overruled.

13 Q. I would play that audio but we're having trouble
14 with that.

15 THE CLERK: Well, I've got another source if
16 we can take two minutes?

17 MR. CHILDS: Okay. Is that all right, Your
18 Honor?

19 THE COURT: Sure.

20 MR. CHILDS: We can come back to that. We
21 can come back to this if you want me to.

22 THE CLERK: Okay. Because now it's not
23 giving me my password.

24 MR. CHILDS: I saw that.

25 Q. We'll get back to Mr. Holland.

1 MR. CHILDS: And, Your Honor, I apologize.

2 Mr. Shirley has been real cooperative with me. He
3 called me back Friday. We were talking about playing
4 the audio. We feel like we could do it off the court
5 reporter's system. This morning he's been helping us,
6 trying to get us to play it.

7 THE COURT: Okay.

8 MR. CHILDS: We'll get back to it. But I
9 wanted to say that he's been exceptional. And thank
10 God we don't have a jury.

11 Q. So let me shift gears from Mr. Holland, and I'll
12 get back to him. But as far as Jamira Robinson is
13 concerned, y'all made no attempts or efforts to talk
14 to her?

15 A. Not from my memory, no.

16 Q. And so even though it appeared she got -- she
17 left work at seven, according to those work records?

18 A. Yes.

19 Q. All right. Now, let me show you what's been
20 marked Number 19 and see if you can identify that. Is
21 that another report that y'all received from the
22 police as far as that's concerned?

23 A. It is. It looks like a supplemental incident
24 report.

25 Q. Now, I know your father did most of the work on

- 1 the medicals. But that report indicated that Dr.
2 Cromer talked about the bruising on the chest of the
3 child and believed the bruise could be an old bruise?
4 A. Yes. That's what this says.
5 Q. And was there any testimony from Dr. Cromer at
6 trial?
7 A. I would have to look back specifically. I
8 remember there being testimony about the bruise, but I
9 don't remember -- I think it may have been from more
10 than one source that testified about the bruise.
11 Q. Right. But most of the testimony was about the
12 bruise being relatively new?
13 A. Relatively new. I believe the time frame was
14 discussed by a couple of different doctors.
15 Q. Now, I show you what's marked Number 20. And
16 that's also another incident report?
17 A. Yes.
18 Q. From Officer -- Investigator Roundy?
19 A. Yes, sir.
20 Q. You didn't cross on Roundy; did you?
21 A. No, sir.
22 Q. In that report, however, it states, I've watched
23 both couples while interacting in the E.R. and saw
24 that while talking to the doctor, Ashley showed no
25 emotion. And when she asked her husband for his phone

1 she called someone, started the conversation off like
2 she was upset. When she hung the phone up and came to
3 where we were still talking to her husband, she was
4 dry-eyed and again showed no emotion or concern?

5 A. Yes. From my memory, there was testimony about
6 that.

7 Q. Did you cross-examine Ms. Bright about it?

8 A. I did not cross-examine Ms. Bright about that
9 specifically, no. That was testified to from someone
10 else, one of the officers. I believe actually Officer
11 Roundy.

12 Q. He testified as to that particular relation of
13 events?

14 A. I believe ---

15 Q. That she had a flat -- just a flat affect.

16 A. I believe he testified about her affect that day.
17 I don't know about a specific phone call, but he
18 testified about her affect that day and about
19 subsequent information that he'd discovered about it.

20 Q. All right. Number 21. That's another incident
21 report or another page?

22 A. Yes.

23 Q. By Officer Roundy.

24 A. Yes, page five of ten is what it says.

25 Q. At the bottom it says during my interview with

1 Ashley, I observed at no time did she ask about the
2 condition of the child, how the child was doing or
3 when she could see the child. She also never inquired
4 as to how the child could have been injured?

5 A. Correct.

6 Q. Did you cross-examine her about that?

7 A. No. That information was coming out through the
8 officer.

9 Q. Well, did you ask her if she talked to the
10 officer and never asked about the condition of the
11 child or how the child was doing or if she could see
12 the child?

13 A. I do not believe I specifically asked her about
14 that, no. She was presenting as a grieving mother on
15 the witness stand. And through trial strategy, we had
16 discussed the idea of not being extremely harsh, I
17 guess, specifically against her on the witness stand;
18 to try to bring out evidence and other issues through
19 other witnesses and through other cross-examination.
20 Based on the sensitivity of the case, we were
21 attempting to try to get that information through
22 other sources, especially sources that did not have,
23 you know, police officers or other sources that were a
24 little bit further away from the victim.

25 Q. Well, she denied making those -- failing to ask

1 the officer about the condition of the child, how the
2 child was doing or when she could see the child, and
3 not inquiring about how the child was injured.

4 Wouldn't that be relevant to the case?

5 A. Can you rephrase that again? I'm sorry. I
6 didn't follow.

7 Q. Well, if she was interviewed by Officer Roundy
8 and never asked about the condition of the child, how
9 the child was doing or when she could see the child,
10 and that she never inquired about how the child could
11 have been injured, wouldn't that be important to bring
12 out on cross so that Officer Roundy could be asked
13 about that?

14 A. As I mentioned, we were trying to -- you had a
15 grieving mother on the witness stand. And we were
16 trying to get out evidence like that or other
17 information to potentially poke holes in the State's
18 case through other witnesses versus looking as if we
19 were beating up on the victim's mother throughout the
20 trial.

21 Q. Well, all right. Let me show you Plaintiff's
22 Exhibit Number 22. That's another report of Officer
23 Roundy.

24 A. Yes. It says page seven of ten.

25 Q. And in that report Matthew was indicating that

1 Ashley would sometimes get upset and frustrated with
2 [REDACTED] when she wouldn't stop crying?

3 A. Yes. That was something that he had mentioned to
4 me as well.

5 Q. Would put [REDACTED] down and walk away? Or give
6 her to him and [REDACTED] would stop crying?

7 A. Yes. That's what he mentioned to me.

8 Q. Did you question her about that?

9 A. From my memory, we touched on that. I don't know
10 that I repeatedly went into it. I think we talked
11 about who would console the child and who was the
12 primary caretaker and whether or not she would get
13 frustrated. And I can't remember if it was a
14 statement or if it was specifically at trial -- I'm
15 trying to remember the things I've read -- but that
16 she said she would walk outside or something of that
17 nature.

18 Q. Do you remember a discussion from Mr. Hinton
19 about whether or not she wanted the baby initially?

20 A. We talked about that and I think that was also
21 somewhat drawn out or tried to be drawn out on Mr.
22 Hinton's direct examination. From the perspective of
23 our client, I think he believed that she was worried
24 how she would be perceived since she was pregnant and
25 not married. And I think she said that he was worried

1 how she would be perceived. So I think they both were
2 kind of pointing the finger at each other on that one.
3 But both of them said that once [REDACTED] was born that
4 they both fell in love with her. I mean, I think that
5 information was -- followed along with the information
6 that we had.

7 Q. And after this section here, the third paragraph
8 where it talks about [REDACTED] -- him bonding with
9 [REDACTED] spending -- he wouldn't know what to do
10 without her?

11 A. Yes.

12 Q. It indicates here that after the interview
13 Sergeant Jones and I spoke, I was told Ashley had
14 requested an attorney and refused to talk with me any
15 longer on that?

16 A. Yes.

17 Q. Did you ask Ms. Bright about that?

18 A. About her choice of hiring an attorney?

19 Q. About her refusing to speak to the police at a
20 certain point?

21 A. No. As a general rule when someone retains an
22 attorney most defense attorneys will ask the person
23 not to speak with police officers, so I didn't find
24 that strange.

25 Q. Did you ask her, basically, why did you lawyer

1 up?

2 A. No.

3 THE COURT: Move forward. Isn't that a
4 Doyle violation to ask that question?

5 MR. CHILDS: Excuse me?

6 THE COURT: Is that a Doyle versus Ohio
7 violation if you ask that question.

8 MR. CHILDS: I'm not sure.

9 THE COURT: Commenting on the parties
10 claiming the Fifth Amendment?

11 MR. CHILDS: Well, I'm not sure -- well, not
12 in relationship to a person who is not a defendant.

13 THE COURT: She's a potential defendant?

14 MR. CHILDS: Yeah. Well, she certainly is.
15 But it certainly would be an area of inquiry as least
16 to whether or not she ---

17 THE COURT: I disagree. Move forward if you
18 wouldn't mind, please, sir.

19 MR. CHILDS: Yes, sir.

20 MR. WHITMIRE: I object, Your Honor, I would
21 ask that counsel's comment that she potentially is in
22 the present tense a defendant be stricken from the
23 record.

24 THE COURT: I said that. I said that in the
25 case; okay? So that's just -- from what I'm hearing

1 from this question that's what I think. It doesn't
2 mean anything in this hearing.

3 Okay. Go ahead.

4 Q. Let me show you Exhibit Number 23. And Exhibit
5 Number 23 is another report by Roundy about -- and at
6 the time that the child had died?

7 A. It's page eight of ten of the same report.

8 Q. And in that report, could you tell me what it
9 says on the fourth paragraph?

10 A. The fourth full paragraph?

11 Q. Yeah. Where it starts with everyone.

12 A. Everyone showed emotion over this information,
13 except Ashley who showed very little, if any. I spoke
14 with the attending physicians who were present at the
15 time the family was told of the condition of [REDACTED]
16 and asked about the response from the family and
17 Ashley. I was told it was flat-line and not normal.

18 Q. You didn't ask her about that; did you?

19 A. No. I did not specifically ask her if she had a
20 flat affect when she was told that her daughter had
21 died.

22 Q. Let me show you 24. And this is another report.
23 It looks like page nine of ten of Officer Roundie's
24 report ---

25 A. Yes.

1 Q. --- that you have. And I'll direct your
2 attention to the middle paragraph where it says when
3 Dr. Woodard -- could you tell me what that says?

4 A. When Dr. Woodard was asked if the child could
5 have been able to be fed after the head trauma, Dr.
6 Woodard said, no, as the child would have been
7 unconscious immediately upon receiving the head trauma
8 that she had received.

9 Q. And would that be contrary to Ms. Bright's
10 testimony that she checked on the child and found the
11 child breathing normally?

12 A. I don't know that it would be contradictory. I
13 don't know that she, not being a medical professional,
14 would know if somebody was unconscious or breathing.
15 I don't know how close she got. I questioned her
16 about it, but she said she didn't specifically enter
17 the room. That she would basically peek her head in
18 and go back out. So I don't know. They both
19 testified that they woke up and she was breathing
20 normally throughout at least some of that process. I
21 don't know that either testified that the minor child
22 actually woke up at any time during the time that the
23 mother that was checking in. I think it was the
24 father that woke up.

25 Q. I show you 25. And this is an indication of a

1 statement of Officer Jones, page two of three of his
2 report?

3 A. Yes.

4 Q. And I direct your attention to the third
5 paragraph down where it starts, about the middle of
6 the paragraph, Ashley said Matthew had texted her to
7 tell her approximately four thirty, four forty-five to
8 lie down for a nap?

9 A. Yes.

10 Q. And from there the report said she arrived home
11 after five thirty to find him still in bed asleep.
12 Ashley said every thirty to forty minutes she would
13 check on them, but noticed between the hours of eight
14 and nine, that the victim's breathing was louder than
15 normal?

16 A. Yes.

17 Q. And also that Ashley stated that the victim would
18 usually take a nap anywhere from three-thirty to five
19 for about two hours, and would normally eat three to
20 five ounces of formula every couple of hours. And
21 Ashley confirmed that the victim was not waking up and
22 not eating. That was way out of the ordinary for her?

23 A. Yes.

24 Q. Did you ask her about the routine for feeding of
25 the child?

1 A. I did not ask her about the routine for feeding.

2 We did discuss the issue of the louder breathing. And

3 we did talk about, I believe, that the minor child had

4 not been sleeping very well the night before.

5 Q. All right. And Mr. Fowler, the witness we

6 discussed earlier about potential witnesses, when we

7 first started testimony?

8 A. Yes.

9 Q. Later on in this report it indicates that Mr.

10 William Fowler, a Seneca City dispatcher, stated he

11 worked with Matthew and Ashley before?

12 A. Yes.

13 Q. Did you ever attempt to check with the City of

14 Seneca about the whereabouts of Mr. Fowler?

15 A. No, I didn't. It was not my understanding that

16 he had any specific information regarding the

17 incidents that day. So I think that was maybe part of

18 the reason that I didn't look at that specifically.

19 Q. Let me show you Plaintiff's Exhibit Number 26.

20 And that was a statement given to police on August the

21 17th at Oconee Medical Center by Ashley Bright; is

22 that correct?

23 A. Yes.

24 Q. And that statement indicates that she would check

25 -- she got home and checked on Matt and [REDACTED] And

1 thirty, forty minutes later, went and checked again.

2 She was a little cold so I put another blanket over

3 her legs. I continued to check in thirty to forty

4 minute intervals; everything seemed fine?

5 A. Yes.

6 Q. Is there any indication in this statement about

7 the alleged heavy breathing?

8 A. Not specifically, no.

9 Q. Well, is there anything in here about heavy

10 breathing?

11 A. No, not ---

12 Q. That she testified to at trial?

13 A. There's nothing specific in this statement about

14 heavy breathing, no.

15 Q. And did you cross-examine her about her statement

16 to the police?

17 A. I talked to her a little bit about her statement,

18 but I asked her specifically about the heavy breathing

19 that she had said in another place or that she had

20 testified to before that.

21 Q. Did you ask her why didn't you tell the police

22 that on August 17th?

23 A. I would have to look back at the record to be

24 sure.

25 Q. All right. She also says the blanket is pulled

1 up a little high so I pulled it back down near her
2 armpits?

3 A. Yes.

4 Q. And am I correct that the State's position in
5 this case was that it would have been difficult for
6 her to get the child out of bed because she had to
7 lean over Mr. Hinton?

8 A. It was my understanding that their position was
9 that it would have been difficult for her to have
10 removed the child without waking Mr. Hinton and then
11 placing the child back without him knowing it.

12 Q. Okay. All right. Well, did you ask her about
13 what kind of sleeper he was, whether he was a heavy
14 sleeper?

15 A. I asked her about his breathing because of her
16 talking about the minor child's heavy breathing. We
17 asked her specifically -- I asked her specifically
18 about is it possible that she got that trait from her
19 father.

20 Q. Did you ask her about his heavy sleeping?

21 A. I'd have to look back at the record.

22 Q. And did you ask her about her ability to reach
23 over him and pull the blanket down near her armpits?

24 A. No, because at that time, that was one of the
25 instances that Mr. Hinton had mentioned that she would

1 -- that he was also awake. So it wasn't, it wasn't an
2 incident that during her testimony seemed to be
3 consistent with what she'd said here; that he had
4 woken up at that time too. I think one of them said
5 that Matthew actually pulled the blanket down. And
6 Ashley, I guess, in this statement says that she did.
7 But they both agreed that that action happened, that
8 the blanket was moved down below her face.

9 Q. Let me show you Number 27. Now, I believe Number
10 27 was a journal that was recovered by the police. Is
11 that your recollection?

12 A. I think it was a spiral notebook that also
13 included like math homework, things of that nature.

14 Q. And Exhibit Number 27 says, love Ashley?

15 A. Yes.

16 Q. And on the second page of Exhibit Number 27, this
17 letter says that I'm stressed out because of the same
18 reasons as you. Money, bills, your mom finding out
19 about Bri. Was that an issue in the trial in her
20 testimony?

21 A. What, specifically?

22 Q. About Mr. Hinton's mother not knowing about Bri?

23 A. She testified that it was Mr. Hinton's choice to
24 not have his mother know. And Mr. Hinton testified
25 that it was her choice not to have his mother know.

1 Q. Doesn't that statement in this letter indicate
2 that was her concern?

3 A. Well, it says that I'm stressed for the same
4 reasons as you. So it indicates to me that they both
5 had a concern.

6 Q. All right. Wouldn't that be an efficient cross-
7 examination of her issue saying she said Mr. Hinton
8 didn't want his mother to know about the child. Mr.
9 Hinton said she didn't want -- that it was Ms.
10 Bright's idea not to tell her mother about the child.
11 Ms. Bright testified that she wanted to tell him
12 (verbatim).

13 A Yes.

14 Q. And so her being stressed over your mom finding
15 out about Bri, wouldn't that be effective cross-
16 examination of her?

17 A. I believe it was an issue that did come up
18 through her testimony and his testimony. Many of the
19 things that he contradicted or that Mr. Hinton was
20 giving us saying that she was incorrect, we wanted to
21 bring out on his direct and allow him to specifically
22 address those issues versus just looking as if we were
23 beating up on Ashley. We wanted to try to let him
24 tell his side of the story and have that be something
25 that he specifically spoke about. However, I know

1 that that issue was addressed on her direct
2 examination, other than asking her if she believed
3 that.

4 Q. And we'll get to that specifically from the
5 testimony. So your idea would be -- would this
6 letter, in your mind, confirm your client's testimony
7 that it was Bri (verbatim) who was concerned about his
8 mother knowing about the child? I mean, Ms. Bright?

9 A. No this letter to me says they were both
10 concerned about it.

11 Q. All right. I show you Plaintiff's Exhibit Number
12 28. Is that another section taken from the journal
13 recovered by the police?

14 A. Yes.

15 Q. And on the second page of that, there was an
16 indication here, the first paragraph there says, I am
17 scared you're going to leave me after I have this
18 baby.

19 A. Yes.

20 Q. Did you ask her any questions about whether or
21 not this child was interfering with her relationship
22 with Mr. Hinton?

23 A. No. That portion of the letter was concerning
24 because we thought it may lead the jury to believe
25 that he didn't want the child, which I don't know -- I

1 wasn't in his head before the child came into this
2 world, but he specifically talked about that once she
3 got here, he fell in love with her. And that he
4 bonded with her and was close with her. This was from
5 2008, so there had been a dramatic change in their
6 lives that they had a minor child throughout this
7 process, after that letter.

8 Q. Wasn't it a relevant inquiry that Ms. Bright's
9 concern that the baby would come between him and her?

10 MR. WHITMIRE: Objection, asked and
11 answered?

12 THE COURT: Sustained.

13 Q. Did you ask Ms. Bright about Mr. Hinton's broken
14 hand?

15 A. I don't believe so, no.

16 Q. And why is that?

17 A. Well, as Mr. Hinton then testified to, that came
18 not too long before the alleged incident here and was
19 potentially -- could look to the jury as if he was --
20 had some aggression. And we were trying not to paint
21 him that way.

22 Q. Well, that would be dealt with on a motion in
23 limine; wouldn't it?

24 A. Well, but he testified to it himself.

25 Q. On direct he was asked about it by his own lawyer

1 ---

2 A. Right.

3 Q. --- did you have a broken hand?

4 A. Right.

5 Q. And so the question was how did the hand get
6 broken, whether or not that was relevant -- a relevant
7 question by the prosecution; isn't that correct?

8 A. I'm sorry. Can you say that again?

9 Q. Your concern was that a question from the
10 prosecution about how did the hand get broken?

11 A. No, my concern was that if Ms. Bright testified
12 about that specifically, I didn't know exactly what
13 she would say, that she could somehow make it look
14 even worse, as if he had this aggression. And not
15 knowing exactly what her answer was going to be, I
16 didn't want to open that up. We wanted to let Mr.
17 Hinton speak about it. Not open that up ---

18 Q. Right. But couldn't you have had a motion in
19 limine say, I'm going to ask a question about the
20 defendant's broken hand at the time of this incident.
21 I expect that the witness will probably try to
22 interject something about how the hand was broken.
23 And it's not relevant, Your Honor. So I'd like your
24 ruling on that issue.

25 A. But we specifically had -- he specifically

1 testified about it.

2 Q. I understand that. Later on he testified about
3 it on direct examination. And then he got cross-
4 examination exactly then and said, how did you break
5 your hand? Nobody objected to the relevancy of it.

6 A. Right. Because we wanted to allow him to explain
7 that.

8 Q. If it wasn't relevant, why would you want him to
9 explain that?

10 A. We wanted him to be able to say his side of the
11 story versus bringing it up to her?

12 Q. Well, why do you think it was relevant how he
13 broke his hand?

14 A. I don't know that I can answer that right this
15 second. I'm just telling you why I didn't bring it up
16 to her. If it was relevant to him, and I definitely
17 wouldn't have wanted to bring it up to her.

18 Q. Right. But my point is you could have asked her
19 that question and asked the Judge to rule on whether
20 or not it was relevant how he broke his hand?

21 A. I understand. I don't know that we knew exactly
22 at that time how the case would play out and that we
23 would specifically ask him about that in the future.
24 So I didn't want to bring it up to her ahead of time
25 if we weren't going to go into it. I mean, it was

1 something that ...

2 Q. Wouldn't her confirmation that the Defendant had
3 a broken hand challenge the evidence that there were
4 bruises from squeezing on the child?

5 A. I don't believe so because I believe he's -- I
6 mean, his ---

7 Q. Wasn't the State's position that the child was
8 squeezed with two hands?

9 A. I believe they speculated about that, yes.

10 Q. Yes. And so wouldn't at least Ms. Bright's
11 confirmation that indeed he had a broken hand at the
12 time of the incident help the defense in that case?

13 A. Well, he had use of the hand. It wasn't
14 completely in a cast. So I don't know that that would
15 have done anything but potentially allowed the door to
16 be opened about how that got broken and to go into
17 that in even more detail.

18 Q. Why do you think she would be allowed to testify
19 about how the hand got broken?

20 A. If I asked her about it.

21 THE COURT: That's the question you asked.
22 Let's move forward. This broken hand is not bringing
23 up a lot; okay?

24 MR. CHILDS: All right.

25 Q. Now, I'm going to skip over some of that ---

1 MR. CHILDS: I'm sorry, Your Honor.

2 THE COURT: That's okay. I mean, you're
3 doing your job.

4 Q. Let me show you Plaintiff's Exhibit Number 34.

5 A. Okay.

6 Q. And are those phone records that were subpoenaed
7 or obtained by the police relative to Ms. Bright's
8 phone?

9 A. Yes, I believe so.

10 Q. And on the last page there, there's a call to 9-
11 1-1?

12 A. Yes.

13 Q. That was at eleven fifty-three?

14 A. Yes.

15 Q. I'm sorry, ten fifty-three?

16 A. Ten fifty-three.

17 Q. Now, below that are other phone calls that were
18 made. One at ten thirty-four. Made or received. One
19 at ten thirty-four, one at ten twenty-eight, one at
20 eight forty-seven, one at eight thirty-two. One at
21 six fifty-nine. Did you investigate these telephone
22 calls?

23 A. I'm sorry, this list seems to be going backwards.
24 Are you talking about the next morning?

25 Q. No. No. If you go down from the 9-1-1 call ---

- 1 A. Uh-huh (affirmative).
- 2 Q. --- you'll have another call there that was at
- 3 ten thirty-four?
- 4 A. Yes.
- 5 Q. And then a call before that at ten twenty-eight?
- 6 A. Yes.
- 7 Q. And a call before that at eight forty-seven?
- 8 A. Yes. I don't know that -- I believe -- I was
- 9 under the impression that some of those could be text
- 10 messages.
- 11 Q. All right. Well, the 9-1-1 call is no text
- 12 message?
- 13 A. Correct.
- 14 Q. Right. And that's -- according to the front
- 15 sheet, it's the number of seconds involving the call,
- 16 seven hundred and sixty seven from 9-1-1 call?
- 17 A. Right.
- 18 Q. And a hundred and sixty-eight seconds for the
- 19 call before that. And the call before that was two
- 20 hundred and two?
- 21 A. Yes.
- 22 Q. Does that seem to make more sense?
- 23 A. Yes.
- 24 Q. Did you look into those phone calls?
- 25 A. No. I did not specifically look into those.

1 Q. Do you know what she told the police about those
2 phone calls?

3 A. Not to my knowledge, based on the information
4 that I remember.

5 Q. Did you review those phone calls with Mr. Hinton?

6 A. I know everything was sent to him. I don't know
7 that I specifically reviewed those phone calls with
8 him. I don't know that -- like I said, I know there
9 was a lot of material that was sent through, but I
10 don't recall having a conversation specifically about
11 those.

12 Q. And Donna Eller also testified; is that correct?

13 A. I believe so, yes.

14 Q. Were you the attorney that cross-examined her?

15 A. Is that the grandmother?

16 Q. Yes?

17 A. Yes.

18 Q. And you didn't cross-examine her at all with
19 questions?

20 A. No. We did not ask any questions of her.

21 Q. And so you don't know if these phone calls to and
22 from 882-3037 were to her mother?

23 A. I do not know.

24 Q. And you never investigated that?

25 A. Not from my memory. I don't believe we

1 specifically looked into that issue.

2 Q. Let me show you Plaintiff's Exhibit Number 36.

3 Is that the alleged work record of Ms. Ashley Bright?

4 A. Yes. It seems to be.

5 Q. And was a custodian of records there to testify
6 about that?

7 A. No.

8 Q. Who testified about her work schedule?

9 A. I believe she testified about her work schedule,
10 and we did not have anything from our client that said
11 that that was incorrect, him having been there that
12 day.

13 Q. And the police officers testified about this
14 schedule?

15 A. I think they'd gotten the information from her
16 and then obviously potentially this.

17 Q. Did you ever question the accuracy of this work
18 schedule?

19 A. No. I had no reason to believe that that wasn't
20 correct. I mean, that includes in discussing the time
21 frame with my client, he corroborated what was listed
22 there.

23 Q. All right. Let me show you Plaintiff's Exhibit
24 Number 38 -- 37, sorry.

25 MR. CHILDS: And I'm going to apologize to

1 the Court. There are bold markings on this that I
2 made that say A.M. And two-oh-nine and two ten. I'm
3 trying to figure out the times because I'm not good
4 with military.

5 Q. But let me show you that.

6 MR. CHILDS: And just for the record, I
7 added those to it.

8 Q. Do you recognize that?

9 A. Yes.

10 Q. What is that?

11 A. I believe these were calls, jail calls, I
12 believe.

13 Q. These are text messages the night of the
14 incident?

15 A. Oh, let me look at this.

16 Q. Am I correct?

17 A. Yes, you are.

18 Q. All right. And this is for the text phone number
19 for Mr. Hinton; is that correct?

20 A. Yes. And Ms. Bright.

21 Q. Well, it looks to me like -- I'm not sure. But
22 it looks like just Mr. Hinton was receiving these text
23 messages and sending them?

24 A. Right. I meant I believe the text messages were
25 between Mr. Hinton and Ms. Bright.

1 Q. Okay. But this is Mr. Hinton's phone records?
2 Text message records?

3 A. I believe so, yes.

4 Q. And do you remember Ms. Bright testifying about
5 it being unusual that Mr. Hinton did not want his
6 mother to come over?

7 A. Yes.

8 Q. And do you remember the testimony -- basically,
9 they introduced his text message records through her
10 testimony?

11 A. That she corroborated that those were text
12 messages back and forth between the two of them, yes.

13 Q. All right. And did you review the text messages?

14 A. Yes. The notes on this side here to the right
15 were -- look to be my father, Mr. Senerius's,
16 handwriting.

17 Q. But you did the cross-examine of Ms. Bright?

18 A. I did.

19 Q. And her testimony was that the -- him not wanting
20 her mother to come over was unusual or out of the
21 ordinary?

22 A. Yes.

23 Q. And Mr. Hinton told you that actually his
24 (verbatim) mom was on pills, that's why he didn't want
25 her over?

1 A. I would have to look back through my notes. I
2 don't have that memory specifically.

3 Q. Well, the note here says by -- I don't want your
4 mom coming over. The note says, Ashley's mom was on
5 pills.

6 A. That's a specific note that my father wrote.
7 That's what I'm saying, I don't remember him
8 specifically saying that to me.

9 Q. Okay. Did you ask Ms. Bright if her mom was on
10 pills?

11 A. No, I did not.

12 Q. Now, the second page of these text messages at
13 the top is the reply to Mr. Hinton's text messages.
14 And the answer to that was even if she's sober. That
15 was Ms. Bright sending a text message to Mr. Hinton
16 after he said he didn't want her mom coming over. And
17 she texted back and said, even if she's sober?

18 A. Where are you specifically looking. I'm sorry?

19 Q. Second page, top left?

20 A. I'm just not seeing it, I guess.

21 Q. At the very top. Very, very top. I'm sorry. I
22 was out of order on my sheet. After he said, just
23 starting to think about shit. I don't want her coming
24 over if she steps foot in the apartment for the next
25 week, I will leave. And on the next page, her

1 response was what?

2 A. Even if she's sober, question mark..

3 Q. Okay. And did you cross-examine her about that?

4 A. No. We were trying to focus on that day and that
5 indicates that the grandmother was not there.

6 Q. Okay. Well, explain that to me. She was saying
7 his behavior was very unusual in not wanting his
8 mother to come over there -- her mother to come over
9 there. Her testimony was, that's very unusual that he
10 didn't want my mother coming over?

11 A. Yes, which also was somewhat indicated by him
12 saying he'd just started thinking about stuff ---

13 Q. Right.

14 A. --- it seems as if she had been over there. And
15 I believe in my conversations with him, Ashley's
16 mother was over there quite a bit.

17 Q. Right. But his response to that is, I didn't
18 want her over there because she was on pills?

19 A. That's what he told us. That was not what he
20 responded to her that day.

21 Q. But her response to his text, I don't want your
22 mother over here, was even if she's sober?

23 A. Yes.

24 Q. And so doesn't that corroborate Mr. Hinton's
25 testimony that he didn't want her mother over there

1 because she was on pills?

2 A. It does sound like it corroborates that premise,

3 but what I was saying is we didn't specifically go

4 into that because she was not there that day. They

5 were focusing on the time line from that day. And

6 there was no way that us introducing her being on

7 pills proves that anybody else potentially did

8 anything.

9 Q. She was saying that Mr. Hinton's behavior was

10 unusual?

11 A. Yes.

12 Q. That he had no good reason to not want her mother

13 over there?

14 A. I don't believe that's the language she used but

15 ---

16 Q. Well, you look at her testimony. We'll get to

17 that in a minute. But there's her response in her own

18 words; okay?

19 A. Yes.

20 Q. Even if she's sober?

21 A. Yes.

22 Q. And you didn't ask her about that?

23 A. No.

24 Q. Let me show you State's Exhibit Number 9 from the

25 trial. Can you look at that?

1 A. Yes.

2 Q. Can you tell me why the, even if she's sober
3 response by Ashley Bright is marked out in that
4 exhibit?

5 A. I don't specifically remember.

6 Q. Did you review that exhibit before it was
7 admitted into evidence?

8 A. We -- the attorneys sat together and went through
9 things. And I believe we looked at it. I don't, I
10 just don't remember why that was marked out.

11 Q. Well, even though as a matter of discretion, you
12 might not want to cross-examine her about it, you
13 would certainly want that in evidence to corroborate
14 your client's testimony; is that correct?

15 A. I don't see why I wouldn't, but I just don't
16 remember off the top of my head why that was scratched
17 out.

18 Q. You don't remember -- okay. And so you don't
19 know why it was scratched out. You don't remember it
20 being scratched out?

21 A. I just don't have a memory of -- I mean, that was
22 in 2011 and I apologize, I just don't have a memory of
23 that specifically.

24 Q. Okay. All right. Now, let me show you State's
25 Exhibit -- Plaintiff's Exhibit Number 38. Isn't that

1 another incident report?

2 A. Yes. It looks like page one of two.

3 Q. Is that the search of the residence?

4 A. Yes. Looks to be a review of the search.

5 Q. And does it indicate at the top of that exhibit

6 that the master bedroom was observed by the police

7 officers?

8 A. Can you point to where you're referencing?

9 Q. If I can find my copy of my exhibit, I'll be glad
10 to.

11 A. I think this may be your copy.

12 Q. Oh. I'm sorry. I got a copy. But on page --
13 it's highlighted. Sorry. On the second page of that,
14 it indicates that certain items were observed in the
15 other bedroom. Do you see that?

16 A. Yes. Bedroom number two.

17 Q. Would you read that to the Court?

18 A. The highlighted portions?

19 Q. Yes.

20 A. There was a sofa in the room. I saw a dirty
21 diaper rolled up on the back of the sofa. I saw a
22 baby bottle containing what appeared to be formula, a
23 third full on the bottom shelf of the TV cart. I saw
24 a baby crib in the far left corner of the room that
25 had a broken mobile. The hanging part of the mobile

1 was lying inside the crib on the mattress. I noticed
2 two of the mobile animals were missing.

3 Q. All right. Did you -- do you remember reading
4 that portion of the incident report?

5 A. I don't have a distinct memory of reading that
6 specific portion of the incident report.

7 Q. Did it indicate though that in the master bedroom
8 there was a one-third filled infant bottle and a
9 broken mobile over the baby crib?

10 A. Yes.

11 Q. And was -- according to your knowledge, that was
12 the other bedroom, the bedroom that was not where the
13 child was found?

14 A. I believe that's correct.

15 Q. Now, did you ask Mr. Hinton about that or Ms.
16 Bright about that on cross-examination?

17 A. About specifically the baby bottle?

18 Q. The baby bottle and a broken mobile in the baby
19 crib?

20 THE COURT: Are you saying mobile, M-O-B-I-
21 L-E?

22 MR. CHILDS: Yes, sir.

23 A. No, I did not specifically ask them about that,
24 from my memory.

25 Q. Did you think that was relevant information?

1 A. I don't know that I specifically thought about
2 that as an issue for cross-examination.

3 Q. Okay. If the mother had gotten the child up
4 during the evening and attempted to feed the child,
5 would that be more a question to raise on cross-
6 examination?

7 A. I don't believe that I had any evidence that
8 supported that.

9 Q. Wouldn't the partially filled baby bottle in the
10 other bedroom and the broken mobile in the crib
11 support that?

12 A. I think there are a number of different things
13 that that could support including that that had been
14 there -- I mean, I don't know how long that had been
15 there. I don't know that any of ---

16 Q. Wouldn't -- well, go ahead.

17 A. No, I'm finished.

18 Q. Wouldn't that be an important question then, of
19 course, to ask the police about, about how long the
20 bottle had been there? Did they check it to see and
21 things like that?

22 A. I don't know that that was our specific focus.

23 Q. The broken mobile over the baby crib, did you
24 ever ask Mr. Hinton about that?

25 A. No, not to my memory. I don't know that he ever

1 mentioned anything about the mobile.

2 Q. Now, were you -- how many times did you meet with

3 Mr. Hinton, do you recall?

4 A. I honestly don't recall off the top of my head.

5 Q. Was it three or four times?

6 A. It would have been more than that. We were back
7 and forth in communication, whether it was by letter,
8 by phone or by personal meeting, there were different
9 appointments that we had set up for him, etcetera. I
10 know that there was at least one time that the numbers
11 that we had, had been disconnected. So we were only
12 able to reach him by letter. But we were in
13 communication with him and, as well as, I believe his
14 girlfriend or fiancé at the time.

15 Q. All right. Going back to Exhibit Number 23, I
16 want to ask you about this. It indicates here from
17 Officer Roundy, that Ms. Bright's mother called the
18 police department on August 19th. Can you tell me
19 about that?

20 A. What do you need from me? I'm sorry.

21 Q. What did she ask the police?

22 A. You just want me to read that paragraph?

23 Q. Yes, ma'am?

24 A. On August 19th, I was told Donna Eller wanted to
25 speak with Sergeant Jones and me at the Seneca Police

1 Department. We went to her address at 205 Brentwood
2 Drive and picked her up, bringing her back to the
3 police department. Donna wanted to know if Matthew
4 was telling us that Ashley had picked [REDACTED] up while
5 the two of them were sleeping in the bedroom. And we
6 wouldn't respond to the question.

7 Q. What else?

8 A. Do you want me to keep going? I'm sorry.

9 Q. Yeah. Keep going.

10 A. Donna told us that she was sure Ashley didn't
11 pick up the baby while she and Matthew were in the
12 bedroom sleeping and shake [REDACTED] and then put her
13 back in the bed. She said Ashley loved [REDACTED] too
14 much to hurt her.

15 Q. All right. Do you think that might have been
16 something you would want to cross-examine Ms. Eller
17 about?

18 A. I don't believe that -- I mean, we didn't have a
19 specific statement from her, but I understand that
20 that's what the police said that she was asking them
21 questions about.

22 Q. Right. Don't you think that you should have
23 asked her on cross-examination whether she called the
24 police and asked them what Matthew was telling them
25 about what her daughter did?

1 A. She in this is indicating that it was Matthew's
2 fault, not her daughter's fault. We were not
3 attempting to bring out any testimony that pointed the
4 finger at Matthew in any way if we didn't have to.
5 That information -- we were trying to make it so that
6 it did not look like he had done this, like that there
7 was evidence that was not there, trying to poke holes
8 in the State's case. We were not trying to bring up
9 evidence that potentially pointed the finger at
10 Matthew.

11 Q. I don't understand how that would point the
12 finger at Matthew?

13 A. Because this says that Ashley wouldn't have done
14 it. That if Matthew was telling them those things
15 that he was lying.

16 Q. The question before that. Had Matthew been
17 telling the police that Ashley had picked the child up
18 in the middle of the night?

19 A. Right. What I'm saying is the way this reads,
20 she was pointing the finger at Matthew or saying that
21 Ashley couldn't have done it, that it wouldn't have
22 been Ashley. And those were the only two people that
23 were reported to be there that day.

24 Q. Did it seem that the question was she was afraid
25 that Matthew had told the police that her daughter had

1 picked the child up during the night?

2 A. She said she wanted to know.

3 Q. Yeah? Wouldn't that be kind of an unusual
4 question?

5 A. Well, I don't know what she and her daughter had
6 talked about or what she and Matthew had talked about,
7 everything that they had talked about.

8 Q. Now, were you involved in the jury selection?

9 A. Yes, I was.

10 Q. And was your father principally involved in the
11 jury selection? Was he responsible for drawing the
12 jurors and selecting the jurors?

13 A. Yes and no. He was the one that specifically
14 answered questions or specifically made the statement
15 on the record about excusing a juror, but our process
16 during this case and in all the cases that we try
17 together is our client -- we have our client sit in
18 the middle. We give our client a notepad and pen.
19 And we have our client also review the potential juror
20 list beforehand and then be active in it with us
21 during the jury selection. And the three of us talked
22 about the jurors.

23 Q. Do you have the transcript with you?

24 A. I do.

25 Q. Let me direct your attention to page 8 of the

1 transcript.

2 THE COURT: What page?

3 MR. CHILDS: Page 8.

4 THE COURT: I'm sorry. One more time?

5 MR. CHILDS: Page 8.

6 THE COURT: 80.

7 MR. CHILDS: 8.

8 THE COURT: I am sorry.

9 Q. Line 20 through 21.

10 A. Yes.

11 Q. Do you remember juror Mack Mackinson?

12 A. I don't have a visual memory of him, no.

13 Q. Okay. Do you remember that he stated that his
14 daughter was good friends with Ashley Bright?

15 A. I read that when I read back through the
16 transcript. That did not specifically stick out at
17 that -- or in reviewing this case.

18 Q. Do you recall discussing with your client whether
19 or not -- ask that he be excused for cause?

20 A. I don't believe we asked that he would be excused
21 for cause.

22 Q. Do you recall discussing that with your client.

23 A. Not off the top of my head, no. Like I said, we
24 gave our client a piece of paper and a pen. I believe
25 we talked about the different jurors as they came

1 through, but I can't remember specifically discussing
2 that one juror with Mr. Hinton.

3 Q. Do you remember -- let me direct your attention
4 to page 12, line 8 through 17.

5 A. Yes.

6 Q. And that was a juror that knew Laura Moore, a
7 potential witness?

8 A. Yes.

9 Q. Did a lot of the witnesses appear to know Laura
10 Moore -- a lot of the jurors?

11 A. I don't believe there was any other juror that
12 specifically said that they knew Laura Moore, no.

13 Q. Well, let me direct your attention to page 13,
14 line 16 through 24 of the transcript?

15 A. Yes.

16 Q. Did that juror indicate they knew Laura Moore?

17 A. Yes. This is Oconee and while it's a big space
18 size, it's not a huge -- I mean, the population all
19 seems to know each other in some form or fashion.

20 THE COURT: Let me ask you this if you
21 would, counsel, on page 12. Refer to -- you looked at
22 Stacy Smith. Page 12 of the record.

23 MR. CHILDS: Page 12, juror Stacy Smith,
24 correct.

25 THE COURT: Is there any information in this

1 PCR hearing, other than those lines of the transcript?

2 Is there anything in this case other than this?

3 Because what I see on its face does not amount to

4 anything wrong; okay?

5 MR. CHILDS: Well, I don't understand your
6 comment, Your Honor. What I'm trying to ask is trial
7 strategy, whether there's a reasonable basis for it
8 and ---

9 THE COURT: What I'm saying to you is in the
10 voir dire of the trial court, Judge Macaulay ask this
11 lady that's standing up says, I do know Laura Moore
12 but we don't work close together. And if she's a
13 potential witness, will that affect your ability to be
14 fair and impartial in the trial.

15 MR. CHILDS: Oh, I understand. I'm not
16 saying ---

17 THE COURT: Well, hang on. Please do not
18 interrupt. This lady's trying to make a record over
19 there. And she said, no, sir, it would not. Now,
20 after that is there any other evidence in this PCR
21 hearing, other than what's in this transcript? My
22 question to you ---

23 MR. CHILDS: About jury selection?

24 THE COURT: --- questioning her about not
25 striking her after she identified her as knowing her?

1 MR. CHILDS: No.

2 THE COURT: Okay. I'm going to overrule
3 your petition on that. I note your objection. Move
4 forward, please sir.

5 MR. CHILDS: As to ---

6 THE COURT: If you want to proffer what you
7 intended to bring out based on that, I'll let you make
8 a record. I don't think it's relevant. I don't think
9 there's any standard of care that's been deviated or
10 prejudiced from that. And, therefore, it could not
11 meet the Strickland test. So I ask you to move
12 forward.

13 MR. CHILDS: Yes, sir.

14 THE COURT: But if you want to proffer what
15 you want to bring out, do so on a brief basis. And
16 that way you're protected on the record.

17 MR. CHILDS: That's fine, Your Honor. And
18 -- that's fine.

19 Q. I wanted to -- I might proffer that on page 15,
20 which is juror Rhonda Todd. Line 7, which is a juror
21 -- 7 through 9 -- which is a juror whose daughter used
22 to work for the solicitor's office.

23 A. Yes.

24 Q. And did you challenge her for cause?

25 A. No. She used to work for the solicitor's office.

1 Did not work there at that time.

2 Q. Did you make any further inquiry about who that
3 was or what relations they had?

4 A. Not from my memory.

5 Q. And the record will reflect that both Mackinson
6 and Todd, you had to use strikes on them; is that
7 correct?

8 THE COURT: Say that again, please, sir?

9 Q. Both Makinson and Todd you had to use strikes on
10 them?

11 A. We chose to use strikes on them, yes.

12 Q. You used strikes on those two people? That was
13 my point.

14 A. I believe so, yes.

15 Q. Now, was there a lot of publicity about this
16 case?

17 A. There were some news articles at the time. We
18 pulled most of them. We actually, I believe, signed
19 up for one of the journal online things so that we
20 could pull some of those records or some of the
21 things. But we also got papers ourselves around that
22 time. I don't know that we had much from before the
23 trial.

24 Q. There was a lot of also television coverage, Fox
25 News had a lot of video about this; isn't that

1 correct?

2 A. I did not specifically see any of that.

3 MR. WHITMIRE: I'm going to object on
4 relevance, Your Honor, unless there's some evidence
5 that counsel intends to show that this jury was, in
6 fact, impartial. These questions are ultimately ---

7 THE COURT: That's been my concern about
8 this jury inquiry. And frankly ---

9 MR. CHILDS: Well, Your Honor, ---

10 THE COURT: Just one second, please. I'm
11 going to let you make a record. My concern is when
12 the court asked the question during voir dire and they
13 respond, I can be fair and impartial. In one of them,
14 I think it was either Stacy Smith or Mackinson, said,
15 I think so. The Judge said, no, uh-huh (affirmative).
16 The standard is, you know, you've got to be. You go
17 forward from there.

18 MR. CHILDS: Right.

19 THE COURT: And that's why I asked you
20 earlier is there any other showing that you intend to
21 make in this case. Because the mere fact that those
22 people raised those issues without any further showing
23 on the part of your client that there was some kind of
24 bias, and I think it has to be extrinsic on the part
25 of the jury, then I just don't think you -- it's not

1 relevant without that showing.

2 MR. CHILDS: Well, I'm off of that inquiry.

3 THE COURT: Sir?

4 MR. CHILDS: I'm off that inquiry.

5 THE COURT: Okay.

6 MR. CHILDS: My next inquiry is pretrial
7 publicity and the question of whether or not a change
8 of venue should have been asked for. And that ties
9 into the judge's request to the jury panel, what he
10 asked them.

11 THE COURT: That ties into what now?

12 MR. CHILDS: That ties into what the judge
13 asked them, asked the jury panel. You know, he asked
14 them if they had read anything in the newspaper, but
15 he never asked them if they'd seen anything on
16 television about this case. The perspective is there
17 was extensive media coverage of this case on
18 television. Nobody objected to that judge's inquiry,
19 not from the defense. And then numerous jurors said
20 they had, they had information about it. They'd read
21 about it, including Makinson. And several said they
22 couldn't give him a fair trial based on the publicity.

23 THE COURT: Were they taken off for cause or
24 stricken?

25 MR. CHILDS: Yes, they were.

1 THE COURT: Okay. Is there any other
2 evidence out there that there were people who were
3 biased that were placed on the jury? People who had
4 knowledge of this case and made a -- in your opinion?

5 MR. CHILDS: No, I don't think I can make an
6 inquiry that way with the ---

7 THE COURT: Well, how can you establish your
8 case then? That's the problem I have.

9 MR. CHILDS: Your Honor, ---

10 THE COURT: Hang on for a second, brother.
11 And I'm asking. Because I seem to recall there being
12 cases out there that they could go into a dichotomy to
13 its extrinsic jury misconduct, intrinsic jury
14 misconduct and it's a very, very high hurdle for you
15 to get through and the threshold is way, way up there.
16 And it seems like without anything more to this,
17 you're trying to back door jury misconduct into this
18 matter and just a clear question to her -- and I hear
19 you. I'm going to let you talk. But I mean, just a
20 question to her and whether or not you did anything
21 further, without any anticipated further showing,
22 still doesn't get you to any deficient performance nor
23 to a prejudice on the part of your client under
24 Strickland. And so that's my concern. And so now,
25 I've cut you off three times. Go ahead and respond if

1 you would.

2 MR. CHILDS: Well, the point of inquiry in
3 this case is that the judge specifically asked the
4 jurors had they ---

5 THE COURT: What page are you looking at?

6 MR. CHILDS: I'm getting to that page.

7 THE COURT: Okay.

8 MR. CHILDS: Page 16, line 9 through 14,
9 where the judge asks, has any member of the jury panel
10 read anything, either online or in the newspaper or
11 anywhere else about this case or Mr. Matthew Hinton?
12 Mr. Matthew Hinton specifically, but not limited
13 specifically to the Seneca Journal, or the Journal
14 online, please stand. Let me say that I've read the
15 record. I don't think there's any discussion by the
16 Judge as to what the allegations in this case are. He
17 simply is requesting anything familiar with his name,
18 not the death of a five-month old in August of '09 in
19 Seneca. And he doesn't specifically ask anything
20 about video, television coverage over the case. So
21 our contention is defense counsel should have objected
22 to that as not appropriate protection for their client
23 as far as the pre-trial publicity is concerned.

24 THE COURT: Well ---

25 MR. CHILDS: Particularly in line from

1 numerous jurors ---

2 THE COURT: From a totality of the voir dire
3 conducted by the trial judge, wasn't there sufficient
4 information, questions asked, to determine if anybody
5 had any information about this case from any source
6 and whether or not they could be fair and impartial to
7 both the State and Defense; yes or no?

8 MR. CHILDS: I'm sure there is a statement
9 to that.

10 THE COURT: So if there is in the record,
11 when you try to isolate a particular question to set
12 aside a jury verdict, there's no way you can do that,
13 can you?

14 MR. CHILDS: Well, I think if counsel's
15 deficient in not asking the trial judge to be more
16 specific about what they may have heard and the media
17 they heard it ---

18 THE COURT: And assuming for the sake of
19 argument that there deficiency -- I'm not saying there
20 is -- but assuming for the sake of argument there is,
21 you've still got to get to the second prong of
22 prejudice. And how could you ever do that in light of
23 the totality of the voir dire conducted?

24 MR. CHILDS: I think that the responses of
25 the jurors to that question established that there was

1 extensive publicity and numerous members could not
2 give him a fair trial based on the mere mention of his
3 name. And so had the trial court elicited more
4 information, that more jurors may have stood up and
5 said something. But I certainly can't subpoena jurors
6 to establish that.

7 THE COURT: I mean, I know the standard and
8 you're in a tough position. I know it's a tough
9 standard. I just don't think you're going to have any
10 grounds that I think are very -- or are going to get
11 you to where this case -- let's do this. Let's move
12 forward on this. If you want to present something on
13 the record with regard to that, either by way of brief
14 or some other way or do a proffer and tell me what you
15 intend to prove, I'll let you do that. I just think
16 that even if there is, in fact, deficient performance
17 by not asking for more clear query of the jury, that
18 you cannot get to the second prong and you're not
19 going to be able to on prejudice; okay?

20 MR. CHILDS: Well, and I think the record
21 reflects what I'm trying to argue. So I will rely on
22 the record if you want me to.

23 THE COURT: And I'm not trying not to let
24 you do your case. You're not going anywhere today
25 with that.

1 MR. CHILDS: And I understand your position.

2 THE COURT: Okay.

3 MR. CHILDS: But I do need to establish, I
4 think, from my perspective on the record the fact that
5 there was a lot of, at least, television coverage of
6 this incident aside from the print or the newspaper
7 coverage or the online coverage. I need to ask her
8 that question.

9 THE COURT: Well, I'll give you a little
10 leeway. Go ahead.

11 MR. CHILDS: All right.

12 Q. Was television intimately involved in this case?
13 Were they there at the hearings that you had?

14 A. Not that I remember. There were newspaper
15 journalists there, usually sitting in the back, but I
16 don't specifically remember a TV camera and I don't
17 remember getting phone calls from a TV news reporter.

18 Q. And so you don't remember WSPA, Fox Carolina, and
19 WYFF providing coverage of this case?

20 A. I just don't off the top of my head. I'm not
21 saying they didn't. I just don't have a memory of it.

22 MR. CHILDS: Now, Your Honor, as I move
23 forward, just to the end of jury selection, I have a
24 issue relative to Batson versus McCall, why they did
25 not challenge the State striking one juror. And if

1 your analysis holds the same, I'll just point it out
2 to you and proceed on.

3 THE COURT: Well, let me ask you this,
4 wouldn't the analysis be the same? Because wouldn't
5 it be based on jury bias? It's just another way of
6 uncovering it?

7 MR. CHILDS: Well, since defense counsel
8 never raised a challenge to the strike of the juror,
9 we'll never know.

10 THE COURT: Right. So that leaves me
11 sitting here with a thousand pages or so of transcript
12 and a lot of exhibits, and the position of being a
13 speculator and that's not what I can do, especially in
14 light of the jury verdict; don't you agree?

15 MR. CHILDS: Right.

16 THE COURT: Go ahead and say what you're
17 going to -- just proffer that for me. And that way
18 you're protected on the record. And that way we can
19 go forward from there.

20 MR. CHILDS: Page 33, lines 1 through 6,
21 which is the juror 157, Myra Panella (phonics). And
22 excused by the State. And no Batson versus Kentucky
23 challenge.

24 THE COURT: And why should a Batson have
25 been requested at that stage, other than her ---

1 MR. CHILDS: Because every defendant has a
2 right to challenge a strike, whether or not they're --
3 whether or not he was Hispanic. Every defendant has a
4 right to challenge that strike.

5 THE COURT: I'm not saying that they
6 shouldn't have. What was the basis they should have
7 raised a Batson challenge is what I'm asking?

8 MR. CHILDS: As racially motivated.

9 THE COURT: Okay. Anything further on the
10 record on that?

11 MR. CHILDS: No, sir.

12 THE COURT: Okay. Thank you.

13 Q. Now, you did not -- were you involved in the
14 opening statements?

15 A. You mean on the record?

16 Q. Yes?

17 A. No.

18 Q. Were you the attorney that was supposed to object
19 to opening statements? Or who was going to object to
20 something that was said improperly by the prosecution?

21 A. I believe out of habit either one of us would
22 have objected if -- but I don't believe -- I mean,
23 that was something that Mr. Senerius was handling,
24 opening and closing.

25 Q. All right. Page 159, line 1 through 3. Oh, I'm

1 sorry. 59.

2 THE COURT: Just before you go further,
3 Danette, you okay?

4 MADAM COURT REPORTER: I'm fine.

5 THE COURT: You sure?

6 MADAM COURT REPORTER: Uh-huh (affirmative).

7 THE COURT: Richard, you okay?

8 THE CLERK: Yes, sir.

9 THE COURT: You okay? You have any little
10 ones to go pick up?

11 THE WITNESS: No, I'm good.

12 THE COURT: All right. Go ahead. I'm just
13 making sure everybody's okay as far as timing goes.
14 We're after five, substantially. Go ahead.

15 Q. Were you involved in -- did you see there where
16 the prosecutor asked -- indicates that -- she tells a
17 little about herself to the jury.

18 A. That she grew up in Oconee?

19 Q. Uh-huh (affirmative).

20 A. Yes.

21 Q. And was any objection raised to her interjecting
22 her personality to the jury?

23 A. No, I believe we also somewhat told a little bit
24 about where we practice and who we were.

25 Q. All right. In her opening statement on page 62,

1 line 11 through 13, she stated that law enforcement
2 will testify they did eliminate, I guess, the mother
3 as a suspect?

4 A. Yes.

5 Q. Was that the crux of the State's case?

6 A. That they eliminated Ashley?

7 Q. Yes?

8 A. Their focus was on Matthew. But, yes, they then
9 did seem to put information in or evidence in
10 regarding their elimination of Ashley. I believe
11 basically mostly because of the time line.

12 Q. Page 63, opening statement again, line 6 and 7,
13 they narrowed the suspect pool to one person?

14 A. Yes, I see that. Yes.

15 Q. And so you understood that basically the State's
16 case through their opening statement was that nobody
17 else could have done it but Mr. Hinton?

18 A. Yes.

19 Q. I won't go into your father's opening statement.
20 You were the responsible attorney for Ms. Bright's
21 testimony?

22 A. Yes.

23 Q. Let me direct your attention to page 68, line 10
24 through 17.

25 A. Yes.

1 Q. The prosecutor asked Ms. Bright to tell a little
2 bit about her relationship with the decedent?

3 A. Yes.

4 Q. And she went on a bit about she was the happiest
5 baby. She loved to smile and just giggled and played
6 with and went on and on about that. Did you offer an
7 objection to that testimony?

8 A. To her referencing her child's happiness?

9 Q. Yes?

10 A. No, I did not.

11 Q. Do you know that the victim's character is not
12 relevant?

13 A. I do understand that the victim's character is
14 not relevant, yes.

15 Q. Do you think that testimony would be inflammatory
16 to the jury ---

17 A. That the minor ---

18 Q. --- about what a wonderful -- I mean, she was a
19 sweet child and she was wonderful. But wouldn't that
20 tend to inflame the jury against the Defendant more?

21 A. I believe the Defendant also testified to that
22 specifically.

23 Q. Well, yeah, but he hadn't testified yet. And
24 y'all were the ones that asked him the questions on
25 direct; right?

1 A. Yes.

2 Q. So that was your decision to put her character at
3 issue in questions to him. My question to you is did
4 you -- why did you not object to her portrayal of
5 character at that point?

6 MR. WHITMIRE: Objection. Relevance, Your
7 Honor. It's per se without merit asking. That's an
8 improper question of the testimony on whether a five-
9 month-old baby is happy or not?

10 MR. CHILDS: The State versus Langley.

11 THE COURT: Overruled. Go ahead. Just go
12 forward. I've got your point.

13 Q. Now, Ms. Bright in page 69, line 5 -- line 4
14 through 5 is asked a question about how long she had
15 been apart from Mr. Hinton; is that correct?

16 A. Yes.

17 Q. And she states that since I read the autopsy,
18 [REDACTED] autopsy?

19 A. Yes.

20 Q. You've seen the autopsy report and you know it
21 was issued in September?

22 A. Yes. I don't have it in front of it, but I don't
23 have any reason to object to what you're saying.

24 Q. And you know that Ms. Bright continued to meet
25 with Mr. Hinton some time after September?

1 A. Yes. But I don't know when she reviewed the
2 autopsy.

3 Q. Isn't it true -- did you ever talk to Ms.
4 Richardson about Ms. Bright's statement to her about
5 the autopsy?

6 A. I don't have a memory of that.

7 Q. Having read the autopsy, do you think that Ashley
8 Bright could have developed some type of information
9 from reading it herself?

10 A. I couldn't speculate on that. I don't know
11 Ashley.

12 Q. Is it more likely that somebody read it to her?

13 A. It was my understanding that she discussed it
14 with the solicitor, that that's when they reviewed it
15 together.

16 Q. But you didn't cross-examine her on the question
17 or on her statement that since I read the autopsy,
18 we've been apart?

19 A. No, I did not.

20 Q. And did you object to that question?

21 A. No, I did not.

22 Q. Did that question contain hearsay about the
23 autopsy report?

24 A. That she read it?

25 Q. That she developed some type of information from

1 the contents of the autopsy report?

2 A. I don't believe there was hearsay in that
3 question from my reading of it.

4 Q. All right. Page 70, line 5 through 8. Ms.
5 Bright indicated that she thought the relationship was
6 ending. Is that correct?

7 A. Yes. There she does say that -- well, that he'd
8 said things that led her to believe that it was going
9 to be ending soon.

10 Q. And did you discuss with Mr. Hinton whether or
11 not that was true?

12 A. Did I ask Mr. Hinton whether or not he was going
13 to be breaking up with her?

14 Q. Right. In your pre-trial discussion, do you
15 recall discussing that?

16 A. I don't believe so. The indications that he gave
17 us were that he was focused on his daughter and that
18 he was there for his daughter. I know he said that
19 things weren't perfectly necessarily with Ashley, but
20 he was more focused on his daughter.

21 Q. She was asked a question about -- page 70 --
22 about the Defendant's family helping out with her?

23 A. Are you referring to the bottom of page 70?

24 Q. Yes?

25 A. Yes.

1 Q. And because she indicated on 71 they did not,
2 they did not know he had a child?

3 A. Correct.

4 Q. Do you know why that was relevant?

5 A. Well, I guess they wouldn't have been helping out
6 with the minor child if they didn't know about the
7 child.

8 Q. Why is it relevant whether or not they helped or
9 knew about the child?

10 A. I honestly believe she was just getting some back
11 story. But I don't have an answer. I apologize.

12 Q. The whole line of inquiry evolved from there
13 about him not wanting his mother to know about the
14 child. Do you think that was relevant?

15 A. About him not wanting his family to know about
16 the child?

17 Q. Yes?

18 A. I think they were trying to point to the fact
19 that -- they're saying he didn't -- that there was
20 something wrong with the relationship maybe.

21 Q. All right. So you thought that was relevant?

22 A. I didn't think it was relevant enough to
23 continuously object to questions. As a general rule,
24 I try to object, obviously, when I need to in cases.
25 But I have a policy not to be somebody that bounces up

1 and down, trying to object every time there's a
2 question that's potentially on a lying person, because
3 that distracts jurors and sometimes they can really
4 negatively affect you, especially if it's not a
5 question that I thought was going to be harmful to my
6 client.

7 Q. Well, wasn't that whole line of responses harmful
8 to your client?

9 A. I believed he was going to be able to discuss
10 that issue if he wanted to or that we would bring that
11 out on direct examination through out case.

12 Q. And on page 71, line 25, line 1 -- through 72,
13 line 2, the prosecutor asked her, did his family --
14 what did his family believe your relationship was with
15 him?

16 THE COURT: Let me ask you a question. Is
17 it your intention, counsel, to go through the entire
18 examination of this witness line by line like you've
19 been doing for the next twenty-five pages?

20 MR. CHILDS: Well, I have to ask ---

21 THE COURT: Yes or no? Yes or no?

22 MR. CHILDS: Yes.

23 THE COURT: I have a problem with that. We
24 can't -- this is not a micro trial of the trial. So
25 ---

1 MR. CHILDS: But I mean ---

2 THE COURT: I understand you're trying -- I
3 think what I understood you to tell me at the
4 beginning of this case, that you're trying to say
5 ineffectiveness really from a totality of all the
6 circumstances in this case.

7 MR. CHILDS: Yes, sir.

8 THE COURT: Okay. I'm going to let you go a
9 little ways today. I think we're going to have to
10 come up with a -- I want you to be able to -- your
11 client, obviously, got forty-one years.

12 MR. CHILDS: Yes.

13 THE COURT: And I want you to make a record.
14 I want to be able to hear the evidence and make a
15 decision based on that evidence. At the same time,
16 going back and do a play by play, strike by strike,
17 swing by swing, replay of the prior trial is not what
18 PCR's are all about.

19 MR. CHILDS: And I'm trying to avoid that,
20 but ---

21 THE COURT: So far, I've not seen it. And
22 I'm not questioning -- I'm not faulting you. You're
23 doing your job. I'm saying with regard to this
24 questioning about Ms. Bright. We went through a lot
25 of Ms. Bright. Now we're going back and really asking

1 more questions about Ms. Bright. I mean, I want you
2 to be able to make your record. But at the same time
3 we're going to have to come up with a better procedure
4 because, you know, what you and Mr. Whitmire told me
5 today, this morning, was the reason why we're calling
6 this lady out of order or in Anderson County because
7 we need to get it here today. We'll be done today and
8 taken care of. And we're not anywhere close to being
9 done with her, no cross-examination. You don't seem
10 to be anywhere close to the end of your direct
11 examination. And it is now five-thirty in the
12 afternoon; okay, sir? So, hey, listen I don't mind
13 about time. I do mind about undue time.

14 MR. CHILDS: Well, I don't know how else to
15 better address it other than asking the defense
16 counsel, you know, why you didn't object to that
17 because I think I have to establish that it was
18 legitimate trial strategy as far as what ---

19 THE COURT: Let me ask this. Under a
20 totality case, has there been a standard articulated
21 yet? And Mr. Whitmire, feel free to join in. From a
22 totality? I think I've seen something that there's
23 been some ruminations, I guess, from the totality of
24 all the facts you can have an ineffective assistance
25 of counsel.

1 MR. WHITMIRE: State versus Reece, I
2 believe.

3 THE COURT: Does that case say we go back
4 ---

5 MR. CHILDS: No, I'm sorry.

6 THE COURT: --- and recount every trial,
7 every word and every exhibit?

8 MR. CHILDS: No, no, it doesn't get into
9 that. It says ---

10 THE COURT: I know.

11 MR. CHILDS: --- that they recognize -- that
12 they seem to recognize a totality of the circumstances
13 as an issue for ineffective assistance of counsel.

14 THE COURT: What's your position from the
15 State?

16 MR. WHITMIRE: Page 11 through 13, Your
17 Honor, my pretrial brief. It's silence in the circuit
18 level, in the state circuit level currently. However,
19 federally there's a split. The majority does not
20 recognize cumulative error, what we call cumulative
21 prejudice, because Strickland read to its intent is
22 each error itself is looked at individually because
23 there would be no way to consistently have -- apply a
24 totality prejudice analysis. The Fourth Circuit does
25 not recognize it and our federal courts do not

1 recognize it.

2 THE COURT: In our state level.

3 MR. CHILDS: Our state level has commented
4 but not -- I think ---

5 THE COURT: It seems like there's an
6 indication that there may be some kind of grounds for
7 that, but there has not been a standard articulated or
8 it's not been a finding that there is, in fact, a
9 grounds for ---

10 MR. CHILDS: And let me find the case. And
11 I've got it here somewhere. But, yes. I think by
12 footnote on one case the court said maybe there is.
13 We're not going to rule on that.

14 THE COURT: I'm a trial local judge. That's
15 above my pay grade.

16 MR. WHITMIRE: What, Your Honor -- I'm
17 sorry. I didn't mean to interrupt, Your Honor.

18 THE COURT: Well, the only thing I'm trying
19 to say is, you know, listen, you know, and I'm not
20 trying to prevent you from making law if that's what
21 you want to do or if that's what you need to do. But
22 at the same time if you're planning to go line for
23 line, line for line, line for line, through the rest
24 of this transcript and do that again tomorrow, I do
25 have a problem. And I just don't see that we're going

1 to do that without coming up with some better laid
2 plans to get through the evidence so you can
3 supplement your record or have a record, but we're not
4 going to go back and effectively retry this case
5 again, which is not going to happen.

6 MR. WHITMIRE: Your Honor, to answer your
7 question on a totality error, the Supreme Court last
8 had this in State versus -- well, Walker v. State out
9 of the Second Circuit this summer. ... core issues in
10 the case and they punted on it and wouldn't touch it.
11 They found one error and it's -- the client to go into
12 it at this juncture of our jurisprudence.

13 THE COURT: Okay. Well, all right. How
14 would you propose that we resolve this issue so that
15 you have a record so that somebody down the line can
16 look at it and say whether you're right or wrong or
17 I'm right or wrong, more appropriately?

18 MR. CHILDS: Well, I don't know how I could
19 make a proffer any shorter than -- you know, you're
20 asking me to make a proffer on the issue. You know,
21 I'll think about it and see what we can do to shorten
22 it up, but ---

23 THE COURT: Well, that's kind of what you do
24 before trial, not during the middle of trial.

25 MR. CHILDS: Well, I wasn't asked to shorten

1 it up before trial.

2 THE COURT: Nobody but me is going to tell
3 you that. I would have.

4 MR. CHILDS: But, you know, you understand
5 my perspective is ---

6 THE COURT: I understand what I'm sitting
7 here watching is a microcosm or a replay of the prior
8 trial, play by play, as if I'm hearing it on the
9 radio. And that's not the way a PCR is supposed to
10 be. You're supposed to have a standard articulated.
11 You're suppose to show deviation of that standard and
12 prejudice suffered by the defendant as a result of the
13 deviation of the standard under the Strickland prongs;
14 okay? And so even from what I'm hearing about, if you
15 go through the totality, you may have a deviation from
16 the standard, do you have anybody coming in to show
17 prejudice or to show that this is a deviation from the
18 standard or are you asking the Court to make that
19 call?

20 MR. CHILDS: I think the law is the court
21 makes that call. The experts aren't necessary for
22 that issue. And I think after I finish presenting my
23 case, it'll be obvious. You know, there's over a
24 hundred issues relative to the trial of this case that
25 are legitimate objections or ---

1 THE COURT: There's some question about the
2 legitimacy of your issues, quite frankly, like the
3 jury things. I think those are totally without merit,
4 a waste of my time. And that's just -- I understand
5 you've got to bring up everything else in there, but
6 that's what I tried to get to at the beginning of this
7 hearing, to narrow this thing down to legitimate
8 issues.

9 Now, again, I'm not going to go through here and
10 go through a line by line recitation of questions in
11 this record. And I don't intend to do it again
12 through each and every witness that you intend to
13 call. I'm glad to let you make your record, but
14 you've got to come up with some kind of plan or a
15 system whereby you can make your record and then we go
16 forward from there. I mean, I don't know how to do it
17 otherwise. If we do it like you're proposing, our PCR
18 courts will be backed up from years and years and
19 years and years; okay? I know that doesn't seem --
20 indicating -- I see you flipping your hands and if
21 that doesn't bother you, but it does me.

22 MR. CHILDS: Right. Well, it does. And
23 quite frankly, I don't often see a transcript where I
24 can find those kind of issues in it. I mean, usually,
25 you've got a case where you've got three or four

1 issues in a transcript. And this one just had a lot.

2 I mean, I wish it didn't.

3 MR. WHITMIRE: Your Honor, the State would
4 disagree with that assessment. And would say at the
5 appropriate juncture in closing argument. It's a very
6 important case to the State. Very important case to
7 the victim. I'm prepared if I need to answer a
8 hundred questions -- hundred allegations if need be.
9 Fortunately, the way the PCR code stands, there's
10 really not much I can say; throw my hands up in the
11 air, but ...

12 THE COURT: I'm going to let you go forward.
13 I want you to give it some good thought. I'm going to
14 tell you that I'm going to let you go forward today,
15 but I am going to tighten this thing up. We're not
16 going to go out here ad infinitum. I'm just not going
17 to hear it. If you need to make a ---

18 MR. CHILDS: Well, ---

19 THE COURT: Stop for a second. Don't
20 interrupt me, please, sir. If you need to make a
21 record, make a record, make your questions and move
22 on. You know, I just -- I have -- I just don't see
23 this is what PCR's are about. I don't think this is
24 consistent with the code and it's certainly not with
25 the case law. Go ahead.

1 Q. Now, in respect to the testimony from earlier, we
2 talked about the autopsy report and about the comment
3 of what his family knew. And you didn't object to
4 that because it wasn't hearsay?

5 A. Which specifically?

6 Q. What did his family believe her relationship was
7 with him?

8 A. I did not believe that was hearsay because that
9 was what her impression of it was. I don't know that
10 -- she didn't say that the mother said anything in
11 particular.

12 Q. All right. Now, she was asked about her mother
13 being around that week; on page 73. And that was
14 Donna Eller; right? Was that Donna Eller?

15 A. Yes.

16 Q. Skip that. Did they ask Ms. Bright about Mr.
17 Hinton's employment or unemployment?

18 A. Yes. I believe so, briefly. They were
19 referencing the fact that he was not employed at the
20 time of the alleged incident.

21 Q. All right. And you didn't object to that?

22 A. No.

23 Q. And you didn't object to them asking how long
24 it's been since he had a job?

25 A. No. She was testifying as to her knowledge. She

1 was living with him.

2 Q. Did you listen to Ms. Bright's audio of her
3 statement to the police?

4 A. I believe I did, but I don't have a memory of it
5 off the top of my head.

6 Q. Do we have the photos yet?

7 THE COURT: I'm going to -- let me just say
8 this. I know I'm chaining your hands a little bit,
9 but I'm going to make you be available tomorrow.

10 THE WITNESS: I had planned on it, Your
11 Honor.

12 THE COURT: Okay.

13 THE WITNESS: I thought I had DSS all day
14 tomorrow, but I don't, so I have every intention of
15 being in Oconee approximately nine-thirty tomorrow
16 morning.

17 THE COURT: Okay. Very good.

18 MR. WHITMIRE: For the record, Your Honor,
19 this witness has been so kind with her time tomorrow.
20 I didn't plan on crossing. I plan on recalling her in
21 my case in chief.

22 THE COURT: Okay. Have you been able to get
23 that audio up at all, Mr. Clerk?

24 THE CLERK: Not with y'all operating.

25 THE COURT: Okay. I'm going to reserve that

1 right for you to do that tomorrow.

2 MR. CHILDS: All right.

3 THE COURT: Okay, sir.

4 Q. Ms. Bright testified about her activities that
5 morning?

6 A. Briefly.

7 Q. On page 72. She worked the weekend. From line
8 20 through 22?

9 A. Yes.

10 Q. Did you ask her any questions about what she did
11 the night before?

12 A. I do not believe I did.

13 Q. Do the records indicate from the text messages
14 that she texted Mr. Hinton at two a.m.?

15 A. I'd have to look that up. I apologize. There
16 were a lot of things to go through. If you can point
17 me just where you're ... Yes. It looks like it.

18 Q. Did you ask her anything about that?

19 A. No, I did not.

20 Q. The testimony was that her schedule of checking
21 with the child was corroborated by her Netflix record;
22 is that correct?

23 A. I don't know that it was corroborated by her
24 Netflix record. I think she was just using that as
25 kind of a time frame connection. I believe it was

1 somewhat corroborated eventually by the Defendant's
2 testimony, that she woke him up at least twice. But I
3 don't know that -- I know she testified about the
4 Netflix shows that she watched.

5 Q. Right.

6 A. And that she was using, I think as a time
7 reference for our benefit, that approximately at the
8 end of an episode she would go in and poke her head in
9 the room.

10 Q. Or checking every thirty to forty-five minutes?

11 A. Yes.

12 Q. Let me show you Plaintiff's Exhibit Number 39.
13 Are those the Netflix records that corroborated her
14 testimony?

15 A. Again, I don't know that they corroborated, but
16 this is a list of the time watched and the length of
17 time viewed during certain episodes. I know from my
18 understanding that Netflix will continue to play for a
19 certain period of time if you don't stop it. So I
20 don't know if that was a continuous ...

21 Q. All right. Well, the officers testified that
22 this corroborated her testimony?

23 A. I would have to look back at the officers'
24 testimony about that, but I know she ---

25 Q. All right. Well, we'll look at the record to see

1 then?

2 A. Yeah.

3 Q. But I know she was questioned specifically about
4 Netflix and she mentioned that there were some of them
5 that she didn't maybe watch specifically. But I think
6 she was trying to give an indication that she did go
7 in approximately every forty-five minutes.

8 Q. And is this Netflix account even hers?

9 A. It looks as if it's in the name of a William
10 Brettin, B-R-E-T-T-I-N.

11 Q. Did she testify that her Netflix account
12 confirmed her checking with the child every thirty to
13 forty-five minutes?

14 A. I believe she testified about it. I don't know
15 that she specifically said that it was hers and not
16 someone else's. I don't think we got into
17 specifically whose account was signed up on the name
18 of the account.

19 Q. The record will reflect what she said about the
20 Netflix account?

21 A. Right.

22 Q. Does that Netflix account indicate that she
23 checked with the -- that she took a break every thirty
24 to forty-five minutes from five-thirty until ten
25 o'clock?

- 1 A. Well, I don't know that she said she stopped the
2 Netflix video. I know she said she got up every
3 thirty to forty-five minutes to look in.
4 Q. Because of Netflix videos?
5 A. Well, but they will continuously play.
6 Q. Right.
7 A. So I don't know that she stopped them or
8 restarted them specifically.
9 Q. Well, when's the last one on that record?
10 A. If you can somewhat help me. I'm not ---
11 Q. Does it say nineteen hundred?
12 A. Nineteen fifteen ---
13 Q. Nineteen fifteen?
14 A. --- it looks like is the last one that started
15 playing. Played for approximately forty-one minutes,
16 I believe.
17 Q. Would that be seven fifteen?
18 A. I'm horrible with military time, as well, so I
19 don't know.
20 Q. Two from nine is seven?
21 A. Yes.
22 Q. And I've got the same problem. And so that
23 really is not watching a Netflix episode up until ten
24 o'clock. That's a Netflix episode that started at
25 seven fifteen and ended at -- ended forty-one minutes

1 later at eight?

2 A. If that -- like I said, I am horrible with
3 military time. I would actually have to sit down and
4 look at it, but I don't have any reason to object to
5 what you're saying.

6 Q. And the other entries on the Netflix -- actually,
7 what this is is the length of the video, not how long
8 she watched it. If you look the one before was at six
9 twenty-eight?

10 A. Yes. She did mention that she either skipped
11 some that she'd already seen before or that she'd
12 gotten into them and realized she'd already seen
13 before, so ...

14 Q. And the one before that was five forty-five. And
15 the one before that was five forty-two. And then
16 there was one at five thirty-three that was Sanctuary,
17 not Law and Order SVU.

18 A. Okay. Yes. There was a Law and Order SVU
19 somewhat before.

20 Q. And I don't know. Nobody asked any questions
21 about this at the trial, but these maybe how long they
22 were watched because these are shorter. These are two
23 minutes.

24 A. Yes.

25 Q. But this record would have shown you that she

1 stopped watching Netflix by nine o'clock -- by eight
2 o'clock?

3 A. I have no -- I don't object to the time frame
4 that you're looking at there, no. I think those
5 numbers indicate that, yes.

6 Q. And the police were called at ten something?

7 A. Yes.

8 Q. All right. And so you didn't ask her any
9 questions about her Netflix account or the Netflix
10 account of Mr. William Brettin?

11 A. No, I did not, not that I remember. There may be
12 something in the transcript.

13 Q. And the Netflix testimony -- I'm not sure if they
14 asked her if her Netflix -- let me check. She was
15 asked did your Netflix -- on page 84, line 1 through 3
16 -- did your Netflix record actually indicate that you
17 watched all the shows? And the answer was, it did.

18 A. Which line? I'm sorry.

19 Q. 84, line 1 through 3?

20 A. Okay. Yes. That's what the transcript says.

21 Q. And I believe, and I'll just refer to it on the
22 record. I believe page 168, Officer Rory Jones
23 testified, line 4 through 10, about the Netflix
24 records?

25 A. Yes.

1 Q. And he's testified that we had a copy of her
2 Netflix account?

3 A. Yes. I mean, I believe he was referring to the
4 Netflix account information that you have there.

5 Q. And she indicated from her testimony that that's
6 when she checked on the child, when the Netflix
7 episode was over?

8 A. Yes, she did use that as a time reference. I do
9 not have a memory of when she said -- what time
10 exactly she said the last time she checked on the
11 child was before the 9-1-1 call. I just don't have a
12 memory of that.

13 Q. So why did you let her testify that her Netflix
14 account corroborated her testimony?

15 A. Again, I don't believe she said it corroborated
16 it. I believe she was just giving us as a reference
17 to the time frames of approximately how long those
18 episodes were that she would get up. That was her way
19 of remembering approximately how often she checked on
20 the child, was my understanding. Not necessarily that
21 she looked in every single time the Netflix episode
22 was over.

23 Q. The record will show what her testimony was about
24 that timing, but wasn't it hearsay for her to testify
25 about what her Netflix records show?

1 A. I'm a little bit confused by your question.

2 Q. She's testifying about what some document said;
3 is that correct?

4 A. She was testifying about what happened. I
5 believe she was maybe asked whether or not the
6 information that she had on the Netflix account was
7 similar to that, yes.

8 Q. All right. So she was asked, did your Netflix
9 records actually indicate you watched all the shows
10 and she said it did?

11 A. Yes.

12 Q. And that was part of the State's case, that she
13 was checking every so often with the child and
14 watching Netflix. And so she couldn't have been the
15 one that inflicted these injuries?

16 A. Well, we were using it as that she was there also
17 and that there was a time period that she was present
18 in the home, continuously checking on the child, that
19 the child was doing okay. But if the child had been
20 as injured as they said -- this is my memory -- that
21 she should have either done a better job at checking
22 or that there was some way she was deficient that
23 evening.

24 Q. Right. In other words, the theory would be that
25 her testimony about checking the child and the child

1 appearing normal was probably false?

2 A. Either false or that she wasn't doing a good job
3 checking on the minor child, if that makes any sense.
4 We also did not believe that it was harmful to Mr.
5 Hinton that she had spent approximately four to five
6 hours, however long it showed, watching Netflix
7 instead of being more attentive to her child, even
8 though the minor child was sleeping.

9 Q. When the minor child hasn't eaten in hours and
10 hours?

11 A. Correct.

12 Q. And you will admit that you didn't object to a
13 lot of leading questions that were posed to her?

14 A. I will admit that here were some leading
15 questions that I did not object to because I did not
16 believe that they were harmful to my client at that
17 time.

18 Q. Or where she was asked leading questions like,
19 was his behavior odd?

20 A. Correct.

21 Q. Now, when she testified on page 89, line 14
22 through 17, you had already been disclosed by the
23 prosecution the substance of Mr. Hinton's alleged
24 statement to her, which was shown in the exhibit,
25 which were the notes you provided from the

1 prosecution; is that correct?

2 A. Well, again, I don't believe that was a
3 statement. What I believe was those were the notes.
4 Like I take notes when I'm in a meeting, that those
5 were the notes that the solicitor took, if that's the
6 record you're referencing or the exhibit you're
7 referencing.

8 Q. Well, do you believe you're entitled to
9 disclosure or the substance of any statements the
10 defendant makes in a criminal case?

11 A. Any statements?

12 Q. Yeah?

13 A. Yes.

14 Q. Okay. And so wasn't this disclosure to the
15 prosecutor on Exhibit Number 11 the substance of a
16 statement the Defendant made?

17 A. I believe it was the notes from the solicitor's
18 conference with the Defendant or about the Defendant
19 or relating to the Defendant -- or not to the
20 Defendant, excuse me. That they were the notes from
21 the prosecutor's meeting with Ms. Bright. But they
22 were just the notes from that meeting, just as I took
23 notes. She typed hers up. I did not.

24 Q. So you don't think the prosecutor had to tell you
25 what the substance of his statements to be presented

1 by Ms. Bright were?

2 A. Anything that was going to be presented, I
3 believe so.

4 Q. Okay. And so what they told you was that her
5 testimony would be that the Defendant told Ashley the
6 potential charge carried like twenty years. But told
7 her she'd only do a couple of years if she did it;
8 right?

9 A. Yes. That's one of the things that was in that
10 note.

11 Q. That's Exhibit Number 11?

12 A. Yes.

13 Q. And it said, the testimony at trial was, in
14 Greenville we were getting ready to leave and he told
15 me if I would take the rap for this, that I wouldn't
16 get very much jail time because I had no previous
17 criminal history?

18 A. Correct.

19 Q. Did you object to that?

20 A. No.

21 Q. Do you find that objectionable?

22 A. I don't believe it was much different than -- I
23 think it was less specific, maybe, than the statement
24 that was previously written.

25 Q. You don't think that that's different than what

1 was written?

2 A. Not -- I think it's less specific. I mean, that
3 one specifically talks about twenty years. And I
4 think the focus of who ---

5 Q. You don't think that implied that Mr. Hinton had
6 a criminal record?

7 A. No. That's not what I took from that at all.

8 Q. All right. So I wouldn't get very much jail time
9 because I had no previous criminal history. That was
10 what she testified to?

11 A. Yes. That's what she testified to.

12 Q. And your testimony is that didn't indicate to you
13 that she was implying Mr. Hinton had a criminal
14 record?

15 A. That's not -- no. At the time, that did not
16 indicate that to me. I can understand what you're
17 saying. But, no, at the time that did not indicate
18 that to me.

19 Q. The statement to the prosecutor that it only
20 carries like twenty years would have been
21 objectionable, as well; wouldn't it?

22 A. Potentially, but she did not make that statement
23 at trial.

24 Q. And you didn't cross-examine her about the
25 difference in the two statements either; did you?

1 A. No, because that was not a statement. It was
2 written notes from the solicitor. That was not a
3 written statement that she gave to a police officer.
4 That was not a statement that she -- that was notes
5 from a solicitor's conference with her.

6 Q. Okay. Did the disclosure from the solicitor
7 indicate that was the substance of oral statements
8 made by the Defendant?

9 A. Can you say that again? I'm sorry.

10 Q. Did the disclosure where that information was
11 provided to you did not indicate that was the
12 substance of oral statements made by the Defendant?

13 A. If you'll give me a second and let me look back
14 at it. Which exhibit was that again?

15 Q. There is no an exhibit.

16 A. I thought that was made an exhibit. I apologize.
17 I must not understand your question.

18 Q. Hang on. Strike that. Now, we've already
19 discussed earlier about her alleged statements to the
20 prosecutor about the drug use and your decision not to
21 ask her about those statements?

22 A. Yes.

23 Q. And she testified EMS got to the scene in five
24 minutes?

25 A. Can you show me where you're ---

1 Q. Page 85. That may be nitpicking a little bit.

2 So I'll strike it. She also testified on page 86

3 about statements made by Dr. Gwinn to her?

4 A. I believe she testified about the question that

5 Dr. Gwinn asked.

6 Q. Correct. And so did you object to hearsay for

7 that?

8 A. No. Because at that time there wasn't -- no, I

9 did not.

10 Q. And so the inquiry was, at that point, that

11 allegation was the Defendant had not mentioned the

12 shower incident earlier; is that correct?

13 A. Well, this was Dr. ---

14 Q. That was the theory of the State's case. The

15 Defendant didn't mention the shower incident earlier

16 and he'd changed his story along the way?

17 A. I don't know that that was specifically the crux

18 of the State's case, but I know that that was

19 something that was discussed as to whether or not he

20 gave that. He was pretty clear in his direct

21 examination about when he told them certain things and

22 was trying to remember back on when he was remembering

23 certain things.

24 Q. I understand that. But the question before that

25 was did the Defendant ever mention an accident or a

1 fall in the shower? And her answer was, he didn't
2 until after he talked to the detective that met us at
3 Greenville Memorial Hospital. And her question was
4 did Dr. Gwinn ask you about a specific instance like
5 that. And she said, yes. And that's hearsay; isn't
6 it, what Dr. Gwinn asked her?

7 A. Yes. I guess technically that is hearsay if it's
8 -- yes.

9 Q. And the prosecutor began to call the shower
10 incident the shower story in her questions?

11 A. Yes.

12 Q. And did you object to the characterization of
13 that as a shower story?

14 A. I do not believe so. Do you have a spot that
15 you're referring to specifically?

16 Q. I'll let the record show that.

17 A. Thank you.

18 Q. Did you allow the prosecutor to lead her into
19 making answer that indicated that his behavior was
20 odd?

21 A. Yes. I believe I've testified about that
22 specifically, but that she did ask some leading
23 questions.

24 Q. She was asked questions about the funeral home
25 and about people to put in the obituary, on page

1 ninety?

2 A. Yes.

3 Q. And line 1 through 6?

4 A. Yes.

5 Q. Do you know why that was relevant?

6 A. I believe they were trying to point out again
7 that his family did not know about the minor child.

8 Q. And, again, why was that relevant?

9 A. They were ---

10 MR. WHITMIRE: Objection. Asked and
11 answered for the previous reason on a separate
12 question.

13 THE COURT: Overruled. Overruled. Go
14 ahead.

15 A. Yes. I'm sorry. Can you repeat your question
16 again? I apologize.

17 Q. Again, why was that relevant?

18 A. Why was is relevant that -- whether or not his
19 family knew?

20 Q. Yeah?

21 A. I honestly don't know specifically why it was
22 relevant, other than just a history of the
23 relationship and of the minor child.

24 Q. Why was it relevant whether or not his family was
25 put in the obituary?

1 A. That's what I'm saying is I don't know, other
2 than just a history of ---

3 Q. A history that portrayed your client in a poor
4 light?

5 A. A history that also could potentially portray her
6 in a poor light by not referencing that information,
7 not putting that in there, not making sure that his
8 mother was aware, etcetera.

9 Q. Well, you really didn't ask her any questions on
10 cross about that; did you?

11 A. I would have to look. Are you talking about the
12 obituary specifically?

13 Q. In fact, that's what you asked her -- did you ask
14 her any questions about that in your cross?

15 A. I would have to look at the record. Are you
16 talking about the obituary specifically?

17 Q. Was the obituary issued after he was arrested?

18 A. I don't remember exactly.

19 Q. You asked questions about that in your cross-
20 examination on page 92. You asked her specifically
21 about, isn't it true you were concerned about how she
22 would view you because the two of you were not
23 married. And her answer was that he told me that she
24 would look down on me. Again you were asking about
25 why the family didn't know about the child?

1 A. Yes.

2 Q. But you never asked her about her journal entry
3 where she had the same concerns, where she said she
4 was stressed over whether or not they found out about
5 the child?

6 A. But I did ask her if she -- if it was not true
7 that it was actually her that was concerned, not him.

8 Q. But she denied it?

9 A. Correct. The ---

10 Q. And you didn't cross her with the journal?

11 A. No. Because the journal is a statement basically
12 by her that shows that she's saying he has those
13 concerns also. I was trying to point out that I
14 believed it was just her, not him. The journal
15 references that it's both of them, which would be
16 against what I was trying to do.

17 Q. All right. Well, she says it wasn't her. And
18 the journal entry says it was both of them?

19 A. Right.

20 Q. Did you ask her any questions about her second
21 statement to the police?

22 A. Again, I'd have to just refer to the record.

23 Q. I think the record is clear. You didn't ask her
24 about her statement to police not containing
25 information she testified to at trial?

1 A. If the record -- I'll have to refer to the record
2 on that. I mean, I did review the record, but I don't
3 have a specific memory about that.

4 Q. So your strategy was that since she was the
5 mother of the child, you would take a soft approach to
6 her?

7 A. Not that we would take a soft approach, but we
8 wanted to -- it's a very thin line there when you have
9 a grieving mother on the witness stand of not wanting
10 to essentially beat her up on the witness stand for
11 the jury to see, especially as the opening witness in
12 a case about her deceased daughter. It was a line
13 that we were trying to walk carefully.

14 Q. Well, wasn't the only defense that you really had
15 to it was that she had to have been the one that did
16 it?

17 A. Well, I'll be honest, in talking to our client we
18 attempted to gather information. He did not seem to
19 believe that he did it -- that she did it, excuse me.
20 He was really unaware of what happened. Based on our
21 discussions with him, he didn't know what happened, so
22 it was somewhat difficult to go into a trial saying
23 that she did it when we didn't have evidence that said
24 she did. And we were, like I said, attempting to poke
25 holes in the state's case with the information that we

1 had.

2 Q. Okay. And I'm not sure what your answer was to
3 that, but wasn't your only defense the defense that
4 she did it instead of him?

5 A. I don't know that that was our only defense. I
6 think our defense was that if any -- the statements
7 that he had made regarding the shower incident, that
8 if that could have happened, then it would have been
9 something that the, you know, that the mother should
10 have also noticed. Or, I mean, you're asking me to
11 really think back and I apologize by I'm not
12 explaining myself very clearly.

13 Q. So I'll leave it at that. The deletion of the
14 response to Donna Eller -- to Matthew not wanting
15 Donna Eller to come over to the house that day?

16 A. Yes.

17 Q. Where Ms. Bright testified that that was unusual?

18 A. Yes.

19 Q. The implication was that he was trying to keep
20 her away from the house because he'd done something to
21 the child; is that correct?

22 A. I believe that's one of the ones -- one of the
23 implications they were trying to make, yes.

24 Q. So the fact that Ms. Bright responded back and
25 said, even if she's sober would refute that

1 allegation; wouldn't it?

2 A. It would potentially cause some question to that
3 allegation, yes.

4 THE COURT: You've been over that.

5 MR. CHILDS: Yes, sir.

6 THE COURT: I mean, I think you're protected
7 on the record on that one. Is that the text you were
8 referring back to?

9 MR. CHILDS: Yes, sir.

10 THE COURT: Okay.

11 Q. All right. Now, you did cross-examination also
12 on -- we talked about Donna Eller. You didn't ask her
13 any questions?

14 A. Correct.

15 Q. And the reason for that was you didn't think any
16 of her testimony was damaging?

17 A. I would have to look at it specifically. But I
18 think we were attempting to move on from the emotional
19 testimony. The emotion was not going to help us in
20 that case. You had a minor child that was deceased.
21 And that was -- we were trying to be able to look at
22 the other specifics and poke holes in the State's
23 case.

24 Q. Well, Donna Eller again got to testify about the
25 character of the decedent in this case; didn't she, on

1 page 151?

2 A. That it was a good child?

3 Q. She was just joy and happiness. I mean, a very
4 happy baby?

5 A. Yes. She did testify about the minor child being
6 happy.

7 Q. Okay. And so was that helpful to the defense?

8 A. I mean, I don't know that it was harmful to the
9 defense that she was a happy minor child. I mean, it
10 was a happy baby. There's a deceased child. Even if
11 she was an unhappy child, it's a deceased child.

12 Q. Doesn't that go to character of the child?

13 A. I don't know that -- I didn't see it that way,
14 no. I think the character of a victim in that issue
15 is really more related to if there's an adult victim,
16 but I understand what you're saying.

17 MR. CHILDS: I'll just refer back to State
18 versus Langley, 515 S.E.2d 98.

19 THE COURT: I think we -- you've cited other
20 references to that.

21 Q. But Donna Eller also made statements that your
22 client allegedly made at the -- in Greenville; is that
23 correct? Page 153.

24 A. Yes.

25 Q. And were you ever -- was that statement ever

1 disclosed to you?

2 A. I would have to look back at what came through.

3 I have no reason to believe it wasn't, but I don't

4 have a ---

5 Q. Do you have any reason to believe it was?

6 A. If it was a statement that was in writing

7 anywhere, then, yes, I would believe it was disclosed

8 to us.

9 Q. All right. And do you recall there being a
10 statement of Donna Eller anywhere in the discovery?

11 A. I don't have a specific memory of that, no.

12 Q. If there was no statement to that effect in
13 discovery, would you have objected to that testimony?

14 A. If there was no previous written statement?

15 Q. Yes?

16 A. No, because not everybody that testifies at trial
17 gives a prior written statement.

18 Q. All right. Now, you took -- and so you asked no
19 questions of Ms. Eller at all?

20 A. Correct.

21 Q. Even though she gave a statement that was
22 different than what your client had made to the police
23 about the child hitting her mouth on something?

24 A. (No verbal response.)

25 Q. Mr. Hinton's testimony about the incident in the

1 shower was that the child hit her head on his collar
2 bone or something to that effect?

3 A. Right. The back of her head.

4 Q. Ms. Eller's statement was different to the point
5 that she said there was a statement that she hit her
6 mouth and, of course, the prosecutor, as you can see,
7 page 153, reminded her that she hit her mouth inside
8 on the shower stall?

9 A. Right.

10 Q. And so that was different than what your client
11 said?

12 A. That was somewhat different, yeah. But I think
13 she actually says that she assumes that. I don't
14 think she says that -- at least initially she said she
15 assumed that.

16 Q. But you didn't cross her at all?

17 A. No.

18 Q. And she also testified about the unemployment of
19 the Defendant?

20 A. Yes.

21 Q. And about the helping with the household, whether
22 or not his family helped with the household finances
23 or she did?

24 A. I don't know that she specifically testified
25 about his family, but she did say that she helped.

1 Q. That was Ashley that testified that his family
2 didn't help?

3 A. Right. I don't believe Ms. Eller testified about
4 his family. I believe she ---

5 Q. Would you object on relevance ---

6 MR. WHITMIRE: Objection.

7 THE COURT: Just one second. State your
8 objection.

9 MR. WHITMIRE: The witness hasn't had an
10 opportunity to answer the question.

11 THE COURT: Let her answer. Let's do this.
12 It's six fifteen. The witness is coming back
13 tomorrow. She's been on the stand for a good three
14 and a half, four hours. I am going to call it for the
15 night. I want to see counsel before we leave, up here
16 at the bench, to come up with some strategy to move
17 this case along, but protect the rights of the
18 Applicant.

19 You're excused for the night. You may not speak
20 with anybody. And I'll see you -- what time are we
21 starting in the morning? Nine-thirty?

22 MR. WHITMIRE: Nine-thirty, Your Honor, in
23 Oconee.

24 THE COURT: In Oconee, okay.

25 THE WITNESS: Thank you, Judge.

1 THE COURT: Thank you, ma'am.

2 Does she need to bring anything up there?

3 MR. WHITMIRE: I missed that?

4 THE COURT: Does she need to bring anything
5 up there with her?

6 MR. WHITMIRE: What she has now. She's
7 strictly coming on a voluntary basis.

8 THE COURT: No, she's coming because I asked
9 her to.

10 MR. WHITMIRE: Oh, I'm sorry, Your Honor.

11 THE WITNESS: Your Honor, I have no problem
12 bringing my box.

13 THE COURT: Okay. Thank you. I appreciate
14 it. Thank you very much.

15 MR. WHITMIRE: What I meant to say, I didn't
16 ask her beforehand.

17 THE COURT: Let me see the attorneys up
18 here. And let me say this for the record. What I
19 want to do is try to come up with some way to protect
20 the Applicant's rights but move this case along.
21 Anything we say at the bench we're going to put on the
22 record; okay?

23 THE WITNESS: Your Honor, am I finished for
24 the day?

25 THE COURT: You are.

1 (WHEREUPON, a bench conference was held off the
2 record.)

3 THE COURT: All right. Just for the record,
4 I met with counsel up here at my desk, for lack of a
5 better ... I asked them to consider cutting down the
6 time necessary in this case. Instead of going line by
7 line by line or every other line in the transcript and
8 asking minutia questions with regard to that, to have
9 points that they bring up that they think are
10 sufficient to warrant a reversal or a new trial or
11 whatever relief they're asking for. And then bring up
12 that point, bring up the references in the record to
13 that or any exhibits in the record to that. Identify
14 them on the record, bring them up to the witness and
15 question them about it instead of going line by line.

16 I understand at this point that the Applicant's
17 attorney has -- and this is a fairly new ground that
18 he's treading and it's fairly comprehensive, so I
19 understand it's not an easy job. But that's
20 essentially the substance of what we've been saying
21 and I asked the parties to think about that to come up
22 with some system.

23 Anything you'd like from the Applicant's
24 standpoint placed on the record about our bench
25 conference?

1 MR. CHILDS: No, sir.

2 THE COURT: From the State?

3 MR. WHITMIRE: None, Your Honor.

4 THE COURT: All right. I'll see you guys
5 tomorrow in Oconee County. Thank you.

6 MR. WHITMIRE: Thank you, Judge.

7 (WHEREUPON, court stood at recess for the day at
8 approximately 6:45 p.m.)

9 **February 10, 2015**

10 (WHEREUPON, court convened with all parties
11 present and the following proceedings were had.)

12 (WHEREUPON, Plaintiff's Exhibit Number 40, 41 and
13 42 were marked and admitted into evidence.)

14 THE COURT: All right. Hinton; we're back
15 on the record with Matthew T. Hinton. Ms. Tye, you
16 were on the stand yesterday when we broke. You're
17 still under oath. Would you come around, please,
18 ma'am?

19 MR. WHITMIRE: Your Honor, may I put
20 something on the record, if you'll permit me?

21 THE COURT: Yes, sir, you may.

22 MR. WHITMIRE: We had some substantial
23 issues administratively yesterday about opposing
24 counsel's attempt to retry the case line by line. And
25 the State would stand by its initial position that

1 ninety-eight percent of these allegations are facially
2 without merit. And the ones that potentially have
3 merit have been clearly answered by counsel, well
4 within trial testimony. I can't think of any way we
5 can expedite this action. And counsel has certified
6 -- and all this has merit. So I thought about it. I
7 don't know any good way to get it, you know, going
8 faster. But we intend to show that every single
9 allegation has been raised today. It's no different
10 than any other case.

11 THE COURT: Mr. Childs, have you given any
12 consideration to my request yesterday to do anything
13 to expedite the presentation of your client's case?

14 MR. CHILDS: I have a direct trial
15 transcript that I had in preparation of this case that
16 outlines the individual lines and pages of certain
17 testimony that I would raise just in the normal
18 course. I've got a summary of those I've prepared
19 this morning that we can submit for that purpose.

20 THE COURT: Okay, sir.

21 MR. CHILDS: It's entitled direct trial
22 transcript Applicant issues. And it addresses
23 Applicant's position about the failure to object to
24 relevancy and failure to object to hearsay. It's a
25 little -- as it was my notes to some extent, later on

1 it kind of is a little argumentative. If the Court
2 might disregard that, I could submit this. If you
3 want to review it, I've handed a copy of that to Mr.
4 Whitmire?

5 THE COURT: Do you have any objection?

6 MR. WHITMIRE: No, Your Honor, as I also did
7 submit a pre-hearing brief to you. No objection from
8 me.

9 MR. CHILDS: And would you want to make that
10 an exhibit?

11 THE COURT: Sure. Let's go ahead and get it
12 marked, please, sir.

13 (WHEREUPON, Plaintiff's Exhibit Number 43 was
14 marked and admitted into evidence.)

15 MR. CHILDS: Could we approach the bench on
16 another issue?

17 THE COURT: Sure.

18 (WHEREUPON, a bench conference was held off the
19 record.)

20 MR. CHILDS: Are you ready?

21 THE COURT: Yes, sir.

22 **DIRECT EXAMINATION CONTINUED**

23 **BY MR. CHILDS:**

24 Q. Ms. Senerius, I'm going to show you what's been
25 marked Plaintiff's Exhibit Number 40, which is an

1 interview of Ashley Bright, with a date on it of
2 8/12/09?

3 A. I think it's 8/17/09.

4 Q. Oh, you're correct. Was that obtained from your
5 file?

6 A. Yes, I believe this was something that we sent
7 you. This was one of the original or one of the
8 copies that we had in our file.

9 Q. And here's the copy that you had from your file
10 on that?

11 A. Yes, sir.

12 Q. And Plaintiff's Exhibit Number 41, also interview
13 of Desmond Holland?

14 A. Yes.

15 Q. And that was from your file, as well?

16 A. Yes.

17 Q. And then the Plaintiff's Exhibit Number 42, which
18 was the 9-1-1 call?

19 A. Yes.

20 Q. All right. Now, is it your testimony that you
21 listened to these CDs?

22 A. It was a very long time ago. I don't have a
23 distinct memory of specifically listening to those.
24 But it is our general trial strategy to review
25 everything that we received. I can't tell you when

1 the last time I heard it was, though.

2 Q. If you happened to listen to the CD of Ashley
3 Bright, the CD of Desmond Holland and the CD of the 9-
4 1-1 call and they terminated midway through the
5 interview, they stopped, and the 9-1-1 call stop
6 before the end, would you remember that?

7 A. I would think so, but again, I just don't
8 specially have a memory right now of listening to
9 those. But we'd had -- we have multiple copies, so I
10 don't know that that's the specific one I listened to.
11 So I can't say that I have some -- I can't say that's
12 the exact disk I listened to.

13 Q. Okay. You have multiple copies of those disk?

14 A. We have copies of disks in the file, yes, sir.

15 Q. Okay. Were those the original disks provided to
16 you from the prosecution?

17 A. I believe so. Like I said, we have multiple
18 copies in here. We received some, I believe, from Mr.
19 Child's (verbatim) file. And then we received some
20 directly from the State. And so I don't know that
21 those are the exact ones that we received from the
22 State, but that looks to be the ones.

23 Q. I mean, was that -- you or your dad's handwriting
24 on there?

25 A. No.

1 Q. And the ones in your file, would it have
2 different handwriting on it?

3 A. I can check real quick if you'll give me a
4 second.

5 Q. Okay.

6 A. (Reviews file.) These are 9-1-1 calls. I think
7 there were some photos, was the other CD.

8 Q. Okay. You don't have any others?

9 A. They may be in another box of just discovery
10 stuff downstairs. But I don't have -- I brought as
11 much as I could carry.

12 Q. Okay. Well, I just want to make sure that these
13 are the CDs that were provided to you from the
14 prosecution?

15 A. They look to be the CDs that are usually sent
16 over by the solicitor's office here in Oconee.
17 Usually they use those packets.

18 Q. Okay. Now, you took the cross-examination of
19 Desmond Holland; is that correct?

20 A. Yes, it is.

21 Q. And did you attempt to interview Mr. Holland
22 before his testimony?

23 A. No, I did not.

24 Q. Did you -- I think I've already asked you if you
25 knew that in this CD he indicates he knew Ashley

1 Bright from high school?

2 MR. WHITMIRE: Objection, speculation. Let
3 the CD speak for itself when it's played back.

4 MR. CHILDS: Yeah. That's fine.

5 Q. You never attempted to talk to his fiancée?

6 A. No, I did not.

7 Q. Do you recall in his direct testimony that he
8 talked about the dog coming to the door?

9 A. I believe his testimony was that he heard the dog
10 scratching at the door, but that's all my memory. I
11 have the transcript in front of me, but other than
12 specifically reviewing it ...

13 Q. And I'll just refer to page 200, line 8 through
14 20, where he said the dog scratched on the door?

15 A. Yes.

16 Q. And did you know that Mr. Hinton and Ms. Bright
17 actually have two dogs?

18 MR. WHITMIRE: Objection. Calls for
19 speculation unless there's some ... It's not in the
20 record.

21 THE COURT: Overruled.

22 A. I did not know that they had two dogs, but I
23 don't know that he said that he knew they had one or
24 two. I know he said that he did hear a dog scratching
25 at the door.

1 Q. Okay. Well, I mean, are you trying to dispute
2 his direct testimony that he said a dog was scratching
3 on the door?

4 A. No. I'm just saying I don't know that he
5 specifically knew that there was potentially another
6 one in there. But he said a dog scratched at the
7 door.

8 Q. Right. And did you ask him about that in his
9 cross-examination, whether it was a dog or two dogs?

10 A. I did not ask him whether it was a dog or two
11 dogs. I did ask him about the dog.

12 Q. And I think his testimony was that the sound he
13 heard was the loudest noise he'd ever heard?

14 A. I would have to refer back to the transcript, but
15 I do know he referred to it as being very loud, at
16 least one of them.

17 Q. One a scale of one to ten, it was a ten?

18 A. Yes. I think he actually mentioned it was an
19 eleven at one point and went back down to a ten.

20 Q. Did you cross-examine him about that statement,
21 that it was the loudest noise -- that it was an eleven
22 on a scale of one to ten?

23 A. I believe I talked to him about the noise and
24 when he heard them, but I don't know that I
25 specifically asked him about whether or not it was a

1 level of ten.

2 Q. All right. And I'd asked you yesterday and I
3 went back and looked, it appears, according to his
4 testimony, he said his fiance was there when he heard
5 the noise?

6 MR. WHITMIRE: Objection, asked and
7 answered. We went over this for forty-five minutes
8 yesterday.

9 THE COURT: Ask your question again, please.

10 Q. It appears from the testimony -- I went back and
11 looked at it after you said that you weren't sure if
12 he testified about his fiancé being there at the time.
13 Is it correct that he said in his testimony that his
14 fiancé was there when he heard the noise.

15 A. If you can refer me to a line ---

16 THE COURT: I overrule your objection. Go
17 ahead.

18 THE WITNESS: I apologize.

19 A. If you can refer me to a line, I'm -- I know when
20 I was talking to him about it, there was some
21 discrepancy in him saying where he was when he
22 actually heard it, especially based on his statement.
23 And I believe I specifically asked him about his
24 statement and the differences in his statement that
25 he'd written and what he'd testified to that day.

1 Q. Right. And that would be page 200, line 7
2 through 11. I was walking my fiancé to the door. By
3 the time I got not even to the first bathroom, I heard
4 a boom?

5 A. Yes. I believe I tried to clarify that with him
6 on cross-examination about exactly where he was. But
7 I believe on cross he referred to the fact that she'd
8 gone, that he was walking back to the bedroom.
9 Because in his written statement he referenced, I
10 think, actually being in the bed when he heard one of
11 the noises.

12 Q. Right. But didn't that implicate the importance
13 of whether or not the fiancé was there? And didn't
14 that require you, at least in the investigation of the
15 case, to check into her whereabouts?

16 A. Well, he specifically said, at least in one of
17 his statements, that he was in the bed, that the
18 fiancé wasn't there. So this is what he said at
19 trial. So I tried to cross-examine him on the issue
20 between his statement and what he referenced at trial.
21 So basically what he said at trial, I wouldn't have
22 been able to go back and -- I don't know how to answer
23 that differently.

24 Q. Is your answer that you weren't prepared for that
25 statement?

1 MR. WHITMIRE: Objection. Asked and
2 answered and badgering. Her trial strategy has been
3 testified to clearly. And it's, quite frankly,
4 reflected very clearly on the record. We're asking
5 about speculative matters concerning whether his
6 fiancé was interviewed and unless his fiancé is here,
7 there's evidence to put the record -- this is just a
8 speculative fishing expedition.

9 THE COURT: Overruled. Go ahead.

10 A. If you can repeat your question. I'm sorry.

11 Q. Doesn't that mean that you weren't prepared for
12 him to testify that his fiancé was there?

13 A. No. It's not that I wasn't prepared. His
14 statement did not say that his fiancé was there so we
15 were using the information and the documentation that
16 we'd been provided by the state.

17 Q. You were provided with a copy of her work
18 schedule?

19 A. Yes.

20 Q. And the State relied heavily on that work
21 schedule to allegedly corroborate Mr. Holland's
22 testimony?

23 A. I don't believe they put her work schedule in.

24 Q. That's correct. You allowed him to testify about
25 it or the officers were allowed to testify about the

1 work schedule.

2 A. But I don't believe they put her work schedule in
3 to corroborate any of that.

4 Q. Well, you know, the record will reflect whether
5 or not the officers were asked, did the work schedule
6 of his fiancé corroborate his testimony? But didn't
7 you think that was important to find out if she
8 actually even was living there at the time?

9 A. I don't know, other than just the information
10 that I had. I don't believe that she was somebody
11 that was testifying or that she was somebody that was
12 going to give any specific evidence about -- they did
13 not say she was planning on testifying against Mr.
14 Hinton.

15 Q. Right. Well, she could have testified for Mr.
16 Hinton if she wasn't there; right?

17 A. If she wasn't there?

18 Q. Yeah?

19 A. How would she have testified for Mr. Hinton if
20 she was not present?

21 Q. Well, if she testified differently than Mr.
22 Holland, then that would contradict his testimony,
23 wouldn't it. I mean -- well, let me rephrase that.

24 THE COURT: Hang on for a second.

25 MR. CHILDS: And let me, let me ---

1 THE COURT: Hang on. Hang on. You've kind
2 of beat this horse for a while and you beat it
3 yesterday, so I'm going to ask you to start moving
4 forward; okay?

5 MR. CHILDS: Yes, sir.

6 Q. Did you ask Mr. Holland what he did after he
7 heard the noise?

8 A. He heard two. And I believe I did go into it
9 with him as to what he did regarding walking upstairs.
10 I believe he walked upstairs or he testified that he
11 walked upstairs both times. And I did ask him about
12 -- specific things about that, whether or not he felt
13 it was important enough to call and contact the police
14 or the apartment manager, make a reference to a well
15 baby check. And he testified, I believe, that no, he
16 did not.

17 Q. All right. And did you ask him if he was there
18 at the apartment that night when the EMS and the
19 police responded to the apartment above him and stayed
20 all night, into the next day?

21 A. I did not ask him about that. I believe he
22 testified that he went to his mother's.

23 Q. For how long?

24 A. I don't -- I would have to refer to the trial
25 transcript on that.

1 Q. Nobody asked him how long he was at his mother's.

2 A. Again, I'll just refer to the trial transcript on
3 that.

4 Q. Wouldn't it be relevant to cross-examine him
5 about why he didn't know about the incident
6 beforehand?

7 A. Why he ---

8 Q. Why he wasn't at his apartment that night or the
9 next day?

10 MR. WHITMIRE: Again, I'm going to object on
11 relevance, Your Honor, on this inquiry. If we're
12 going to get into why he didn't cross-examine and you
13 can't prove what the answers would have elicited with
14 what's in the record and the evidence before the
15 Court, there's no purpose under Strickland to even
16 allow this testimony ---

17 THE COURT: I sustain that objection.

18 MR. CHILDS: Are we ready with the CD?

19 THE COURT: Would you identify that?

20 MR. CHILDS: Yes. It's Plaintiff's Exhibit
21 Number 41.

22 (WHEREUPON, Plaintiff's Exhibit Number 41 was
23 published for the Court.)

24 Q. So does that refresh your memory of what you
25 listened to?

1 A. Vaguely.

2 Q. And do you remember it cutting off at the end?

3 A. I don't know that I remember that. I do remember
4 that that was pretty much what we read in the written
5 statement.

6 Q. About him -- my girlfriend said, don't worry
7 about it?

8 A. I didn't hear that part right this second.

9 MR. WHITMIRE: Objection.

10 Q. I told my girlfriend the TV ---

11 THE COURT: Just one second. When he
12 objects, stop.

13 MR. WHITMIRE: Objection. I'd ask counsel
14 to rephrase the question. What my girlfriend told me
15 about -- I don't know what he's talking about at this
16 point. A little foundation.

17 Q. Did you hear on the audio where he said my
18 girlfriend said don't worry about it?

19 A. I don't know that I heard that specifically. Can
20 you give me a little more context.

21 Q. Should I play it again?

22 A. Well, I just mean, if you can give me a little
23 more context as to which part of the tape you're
24 referring to?

25 Q. Well, it's on the earlier part of the tape. But

1 later on he says, I told my girlfriend the TV fell.

2 A. I do remember that part, yes.

3 Q. And so had you listened to the tape, you would
4 have known that the girlfriend was allegedly there?

5 A. Okay. That's not what I picked up from that, but
6 I understand what you're saying.

7 Q. I told my girlfriend the TV fell, doesn't mean
8 she's there?

9 MR. WHITMIRE: Objection. Argumentative and
10 it calls for speculation. Two different grounds.

11 THE COURT: Overruled. Go ahead.

12 A. No, the way I listened to that was that he was
13 talking about it later.

14 Q. How did you gather that from that, that he was
15 talking about that later?

16 A. Because it sounded as if they were discussing the
17 incident later.

18 Q. And where it says my girlfriend said, don't worry
19 about it. Why would she say that later?

20 A. If he was worried about something and talked
21 about it later, then she may have said, don't worry
22 about it. I don't know -- I don't remember exactly
23 that part. I was talking about the later -- the part
24 in the video where they were referencing what may have
25 happened, whether it was a TV falling, etcetera.

1 Q. Did you hear the officer characterize the noise
2 he heard as a whimper?

3 A. I do believe the officer said that once, yes.

4 Q. Okay. Did you cross-examine Mr. Holland about
5 this audio?

6 A. No, I did not.

7 Q. And why not?

8 A. Because the audio seemed to go along with his
9 statement. So I cross-examined him from the written
10 statement -- about the written statement.

11 Q. Well, the audio differed from his direct
12 testimony; didn't it?

13 A. So did it differed from his written statement, as
14 well.

15 Q. Right. And so wouldn't that be helpful?

16 A. It could have been. That's why I cross-examined
17 him about the written statement because that was
18 something that he'd specifically written and signed as
19 well.

20 Q. So Mr. Holland was the critical cog of the
21 State's case; isn't that true?

22 MR. WHITMIRE: Objection. Calls for
23 speculation.

24 THE COURT: Sustained.

25 MR. WHITMIRE: That's the third time he's

1 said something's critical to the State's case.

2 THE COURT: Sustained.

3 Q. Did you hear the testimony from the audio
4 interview about him seeing the police there that
5 night?

6 A. I did hear that, yes.

7 Q. And would not that be important to ask him about
8 in cross-examination for you to show that he didn't
9 make any reports to the police for several days, even
10 though the police -- he saw the police that night?

11 A. Potentially. I know I did cross-examine him
12 specifically about the information that he had from
13 that day.

14 Q. Right.

15 A. And that he obviously wasn't that concerned about
16 it, since he didn't contact law enforcement that day
17 when it happened.

18 Q. All right. But you didn't ask him on cross-
19 examination about seeing the police that night?

20 A. No, I did not.

21 Q. Because apparently you didn't know he said that?

22 A. I don't know that I specifically remember that
23 from the video, but I don't know that I never knew it.
24 Video -- excuse me -- the DVD or CD.

25 Q. Now, were you concerned that the CD provided by

1 the State cut off during his interview?

2 A. I think I talked about this a second ago. I
3 think part of my issue was that the State's CD
4 referenced what the written statement was and that was
5 pretty much the end of the written statement. So I
6 don't know that I specifically was concerned about
7 that, no.

8 Q. So you don't want to hear the rest of the
9 interview with Desmond Holland?

10 A. I don't really know how to answer that.

11 Q. Well, yes or no, did you want to hear the rest of
12 the interview ---

13 THE COURT: No, sir. That's not a proper
14 question. You can play it or not; okay, sir?

15 MR. CHILDS: I'm going to play the CD of
16 Ashley Bright. But I was asking her if she -- whether
17 or not she wanted to hear the rest of the audiotape of
18 Desmond Holland's interview.

19 THE COURT: I'm sorry. I misunderstood your
20 question.

21 MR. CHILDS: Okay.

22 THE COURT: Go ahead.

23 A. I don't know that there was an additional piece
24 to that. That's why I was referencing his written
25 statement, which seemed to encompass the information

1 that he was going to testify about.

2 MR. CHILDS: I'm going to play the CD of
3 Ashley Bright's interview..

4 THE COURT: What Exhibit is that, please?

5 MR. CHILDS: Exhibit 42 -- 40, excuse me.

6 MR. WHITMIRE: I would object to relevance
7 for wasting court time to play it here. For the
8 record, they're -- their materials for preparing this
9 case are voluminous, thousands of pages. They spent
10 weeks. Are we going to go through all the evidence
11 and play got you or can we just submit it for Your
12 Honor.

13 THE COURT: We'll let him play it.

14 MR. CHILDS: Was that an objection, I ---

15 MR. WHITMIRE: It was an objection.

16 THE COURT: Just hold on one second. You
17 guys, if you want to have an objection, state the
18 objection. You do not argue back to his objection.
19 You speak to me. And you state your objection clearly
20 on the record. Is that understood?

21 MR. WHITMIRE: Yes, Your Honor.

22 MR. CHILDS: Yes, sir.

23 THE COURT: Is that understood? Okay.

24 (WHEREUPON, Plaintiff's Exhibit Number 40 was
25 published for the Court.)

1 Q. And is that the CD that you listened to?

2 A. I don't have a specific memory of listening to
3 that CD.

4 Q. Do you ever remember listening to the rest of
5 that discussion?

6 A. No.

7 Q. In that CD did she indicate that her mother
8 watched the child one day?

9 A. I believe she indicated that her mother was over
10 there one day, but I think she said it was Monday.

11 Q. I thought it was Thursday or Friday she said
12 initially?

13 A. I think she said her mother was over there on
14 Thursday or Friday, but for some reason I remember her
15 saying that it was Monday that her mom watched the
16 child.

17 Q. And you know from Eller's testimony, she didn't
18 actually watch the child on Thursday. She had just
19 saw the child downstairs?

20 A. Right.

21 Q. Did you notice the statements in the CD about
22 hearing the odd breathing was eight to nine?

23 A. Yes.

24 Q. And was that different from her testimony at
25 trial?

1 A. I don't know -- I don't remember that she gave a
2 specific time period for the breathing, but I do know
3 that I talked to her about the breathing. And I think
4 even on there she says it was somewhat normal, that
5 Matthew was a heavy breather.

6 Q. Right. You don't remember her testimony about it
7 being nine to ten?

8 A. I didn't, no, sir.

9 Q. The record will reflect whatever that is. This
10 was a statement taken -- I think my notes said August
11 17th at one twenty-eight a.m.?

12 A. I believe that's what the CD referenced on the
13 outside.

14 Q. And so the child had gone to the hospital on the
15 16th; correct?

16 A. Yes.

17 Q. And so this was as the child was over at the
18 hospital, Greenville Memorial?

19 A. I don't remember the specific time line, but I
20 don't have any reason to object to that, no.

21 Q. All right. And did -- do you know where that
22 audio was taken?

23 A. No, I do not.

24 Q. All right. Was there any mention in the
25 audiotape of her statement that she made at trial

1 about the -- on page 89, line 14 through 17?

2 A. No.

3 Q. In listening to the audiotape, did you find --
4 let me strike that. Does she seem awfully calm and
5 collected on that audiotape?

6 MR. WHITMIRE: Objection. Calls for
7 speculation.

8 THE COURT: Sustained.

9 Q. Do you have an impression about her demeanor from
10 the audiotape?

11 MR. WHITMIRE: Same objection, Your Honor.

12 THE COURT: Overruled.

13 MR. CHILDS: I'm trying to get to the useful

14 ---

15 THE COURT: I overruled the objection.

16 MR. CHILDS: All right.

17 A. She seems a bit nervous.

18 Q. She seems a bit nervous?

19 A. It sound as if so, yes, to me.

20 Q. Did she sound upset?

21 A. She sounded tired. I don't know that she
22 specifically sounded upset. I don't know that I heard
23 her crying or anything of that nature.

24 Q. Wouldn't this audio support the testimony about
25 her demeanor being flat and emotionless after the

1 incident at the hospital?

2 A. I mean, I guess it potentially could, yes.

3 Q. Would not that audio have been an effective
4 method of cross-examination of her?

5 A. I believe her statement references a number of
6 those things, which is one -- you know, we went back
7 through that and from my memory of the supplementary
8 reports from the police officers, I believe there were
9 a number of things that she talked about or that they
10 talked about in there that were also listed and in
11 written form.

12 Q. Wasn't there a lot of testimony at the trial
13 about the characterization of Mr. Hinton's information
14 about the shower incident, that supposedly that
15 information had changed over time?

16 A. Can you be more specific? I'm sorry.

17 Q. Like in this audio she relates that he told her
18 about the shower incident?

19 A. Yes. She does reference that.

20 Q. And that was one twenty-eight a.m. on August the
21 17th?

22 A. Yes, I believe so.

23 Q. Later on, several witnesses are asked about those
24 statements. And is it not -- and I'll let the record
25 reflect that. But was your impression that the

1 testimony was that he made that disclosure much later?

2 A. No. I believe his testimony was that he made it
3 at some point in Greenville.

4 Q. But weren't other witnesses trying to say that,
5 no, he didn't say that until late?

6 A. There may have been other witnesses that said
7 that he didn't say that to them until later. But I
8 know he talked to a number of different people
9 including doctors and Ashley. From my memory of his
10 statements, they were all relatively consistent with
11 each other. He may be more detailed in one than
12 another, but I think that's normal for anybody that's
13 talking about an incident. His statements did not
14 seem inconsistent to us.

15 MR. CHILDS: Just one minute, Your Honor.

16 Q. Wasn't it her testimony, page 69, line 13 through
17 17, that the entire time I always had a doubt because
18 stories had changed. He told me different things?

19 A. Yes. That was when she was talking about why
20 she'd changed her mind.

21 Q. And this indicates a consistent relation to her
22 about the shower incident that occurred at least by
23 one twenty-eight, August 17th; is that correct?

24 MR. WHITMIRE: Objection, Your Honor,
25 relevance.

1 THE COURT: Overruled.

2 A. I believe the statement on the 17th, being so
3 close in proximity to the alleged incident, that she
4 may have -- this may have been specifically
5 referencing later, but I don't disagree that what she
6 said there is somewhat different than what she said on
7 the video -- or the CD, excuse me. She was pretty
8 clear on the CD that she was -- did not believe that
9 Mr. Hinton would have harmed his child.

10 Q. And, in fact, in the testimony on page 86, line
11 16 through 21, she said -- she was asked, did the
12 defendant ever mention any accident or fall or slip or
13 mishap related to the shower? And her answer was, he
14 didn't until after we had talked to the detective that
15 met us at Greenville Memorial?

16 A. Yes, sir.

17 Q. And isn't this the detective that she talked to
18 at Greenville Memorial?

19 A. I'd have to go back and look at all the specifics
20 on it. I don't remember exactly who she talked to at
21 exactly what time.

22 Q. And you're not sure from your recollection
23 whether or not that statement was taken at Greenville
24 Memorial or after they left Greenville Memorial?

25 A. You mean the CD?

1 Q. Yeah?

2 A. No, sir, I'm not.

3 MR. CHILDS: Let me introduce Exhibit Number
4 42. And that's just a second file on that -- there's
5 a number of them.

6 (WHEREUPON, Plaintiff's Exhibit Number 42 was
7 published for the Court.)

8 Q. Do you ever recall listening to the rest of the
9 9-1-1 call placed by Ms. Bright?

10 A. No.

11 Q. Would that have been something you would want to
12 listen to?

13 A. It potentially would have been. However, based
14 on the discussions with our client, based on the
15 review of the information that we had, there were no
16 real issues with the 9-1-1 call that we were made
17 aware of that -- I mean, there seemed to be no
18 discrepancy in the fact that Matthew had called out to
19 her, that she called 9-1-1, that EMS arrived soon
20 thereafter, and that Matthew was attempting CPR, and
21 that he was attempting, I think a sternum rub that he
22 testified to, which may have been what she was
23 referencing in her CD just a moment ago.

24 Q. All right. But you weren't concerned about what
25 else she might have said to the dispatcher?

1 A. Not at that time, no, sir. That was not one of
2 the issues that we were trying to be focused on. Like
3 I said, I know that our client was present at that
4 time. There was nothing additional that he alerted us
5 to either.

6 Q. What were the issues you were trying to be
7 focused on?

8 A. Focused on what potentially had happened, focused
9 on his statements, focused on presenting him as the
10 loving father that we had information that he was.
11 Focused on the fact that he had taken care of her that
12 day, focusing on the fact that he, you know, provided
13 CPR as soon thereafter as he could or as soon as he
14 noticed that there was anything going on. Presenting
15 Matthew in the light that we believe showed that he
16 was the loving father that we had information that he
17 was.

18 Q. That he didn't inflict these injuries on her?

19 A. Correct. Or that if he did, based on the shower,
20 the slip in the shower, that that was potentially the
21 only other incident that he was aware of.

22 Q. But you knew the shower incident really according
23 to, at least Mr. Price's expert, really couldn't
24 explain that?

25 MR. WHITMIRE: Objection. Asked and

1 answered yesterday.

2 MR. CHILDS: Yeah. I agree. I agree.

3 Q. Now, did you also -- were you also there for the
4 closing arguments?

5 A. I was present throughout the whole trial; yes,
6 sir.

7 Q. And were you -- did y'all have an agreement as to
8 who might object to certain things on closing
9 statements?

10 MR. WHITMIRE: Objection, again, Your Honor.
11 Asked and answered from yesterday's testimony.

12 THE COURT: What was your question?

13 Q. Did y'all have an agreement as to who might
14 object to things on closing statements?

15 THE COURT: I sustain that objection.

16 MR. CHILDS: I thought I asked about opening
17 statements yesterday.

18 THE COURT: Go ahead. Very limited.

19 MR. CHILDS: All right.

20 Q. Did you recall the prosecutor's statement, today
21 is the day to speak for Ashley?

22 A. Yes, I do.

23 Q. Did you ---

24 MR. WHITMIRE: Objection, relevance.

25 THE COURT: He hasn't asked the question

1 yet, Mr. Whitmire. Go ahead.

2 Q. Did you perceive any basis to object to that
3 comment?

4 A. There was a close line ---

5 THE COURT: I overrule your objection.

6 A. There was a line that she was getting close to
7 for objections and we knew we were going to be able to
8 speak, but it was somewhat concerning.

9 Q. All right. And so who made the decision to or
10 not to object to that?

11 A. I believe it was a joint decision. I don't know
12 that we sat there while she was speaking and
13 specifically -- I would try not to hustle around while
14 there's testimony going on.

15 Q. Right.

16 A. You know, neither one of us objected to it.

17 Q. Do you know of any reason or strategy that you
18 would not have?

19 A. Similar strategy to what we've kind of talked
20 about, that she was -- it's an emotional case, that we
21 were trying not to just look harsh and hateful about a
22 child that's deceased, because as a general theory
23 juries are going to be somewhat sympathetic to that.
24 I believe that was addressed in opening. And so we
25 were trying to allow them to have sympathy for the

1 minor child but also understand that Mr. Hinton was
2 not the one that caused those injuries.

3 Q. What did that have to do -- that theory of the
4 case have to do with the prosecutor stating today is
5 the day to speak for Ashley (verbatim)?

6 A. Because I thought she said [REDACTED] I apologize.

7 Q. Well, you're right. [REDACTED]

8 A. Because [REDACTED] was the victim, the deceased
9 child.

10 MR. CHILDS: Just one minute, Your Honor.

11 That's all I have of this witness, Your Honor.

12 THE COURT: All right. Let's take about a
13 five or ten-minute break, a ten-minute break and then
14 come back for cross-examination.

15 MR. WHITMIRE: Thank you, Judge.

16 THE COURT: All right. You can't speak with
17 anybody about your testimony; okay?

18 THE WITNESS: Yes, sir.

19 (WHEREUPON, court stood at recess for a short
20 break.)

21 THE COURT: Mr. Whitmire.

22 MR. WHITMIRE: May it please the Court.

23 **CROSS-EXAMINATION**

24 **BY MR. WHITMIRE:**

25 Q. Good morning, Ms. Senerius?

1 A. Good morning.

2 Q. I'll try to keep this brief as you've testified
3 ad nauseam at this point. How long have you been in
4 practice with your father?

5 A. I joined his practice in August of 2009 after I
6 spent a year with Judge Macaulay.

7 Q. Is this your first time going through the PCR
8 process?

9 A. It is.

10 Q. However, you have also tried and won child abuse
11 cases?

12 A. I've been actively involved in DSS cases
13 involving child abuse, yes, sir.

14 Q. Matlock (phonics) in Oconee County?

15 A. Yes, that was a criminal sexual conduct with a
16 minor case. That was tried a month, almost to the
17 day, before this case.

18 Q. Y'all tried a case Cody Sprouse and won it,
19 homicide by child abuse?

20 A. I was not actively involved in the trial, but I
21 was involved with the preparation, speaking with the
22 client, and my father is the one that actually tried
23 that one actively.

24 Q. In other words, you're familiar with the subject
25 material?

1 A. Yes.

2 Q. Now, when you were appointed and substituted
3 counsel, do you recall your initially involvement in
4 the case?

5 A. Usually -- well, I wasn't appointed.

6 Technically, my father was appointed. This case was
7 big enough, it was something that we needed to focus
8 on. So I, even though I wasn't appointed, was
9 actively involved in the preparation and the trial of
10 this case. But when we got -- at that time we had a
11 policy in place that anytime we got a public defender
12 appointment, we would send an initial client letter,
13 is what we referred to it as, that outlines the --
14 some of our representation, our hours, email
15 addresses, ways to contact us, ways for the client to
16 be in touch with us. Notice to the client to make
17 sure that we continue to have their contact
18 information, etcetera.

19 Q. And on that, I have just a few more questions on
20 the subject. Mr. Hinton received benefit of two
21 substitute attorneys?

22 A. Yes.

23 Q. A private investigator?

24 A. Yes.

25 Q. You had him submitted for a polygraph?

1 A. Yes, we did.

2 MR. CHILDS: Objection. Not relevant. Not
3 admissible.

4 MR. WHITMIRE: Not relevant for the truth of
5 the matter, Your Honor. It's relevant to show what
6 counsel's course of conduct in the handling of this
7 case.

8 MR. CHILDS: The results are not admissible.

9 THE COURT: Overruled. The results are not
10 admissible.

11 MR. WHITMIRE: I missed that, Your Honor.

12 THE COURT: I overruled his objection, but I
13 stated that the results are not admissible.

14 Q. How was Mr. Hinton as a client?

15 A. He was relatively responsive. He answered our
16 questions, seemingly openly. He -- sometimes we had a
17 little bit of a difficult time getting in touch with
18 him, but that is not abnormal. His family was also
19 attentive and present throughout the time. We didn't
20 -- he wasn't a, quote unquote, problem client. He was
21 helpful, answered most questions.

22 Q. What was your case strategy in submitting him for
23 a polygraph?

24 A. I think it was something that we had talked about
25 with him partially to try to help just kind of

1 understand what the process was. One, it allows him
2 to go ahead and be questioned about certain things
3 regarding the case under a somewhat difficult
4 situation, so that if he did choose to testify that
5 would not have been the first time that under
6 stressful circumstances he would have been asked
7 questions regarding the incident. So I think a lot of
8 times that has to do with it. We understand that the
9 results are not admissible so that's not something --
10 we weren't trying to get them to prove that
11 necessarily.

12 Q. Was Mr. Hinton helpful in explaining his side of
13 it?

14 A. Yes and no. He answered our questions. He
15 didn't really seem to have a lot of information about
16 that day, other than what you've heard and other than
17 what he testified to at trial. There wasn't a whole
18 lot of other answers specifically.

19 Q. Y'all explain to him the need for him to be an
20 active client participant?

21 A. Yes, we did. We talked about that on a couple of
22 occasions. And, you know, with the contact that we
23 had with him we always advise our clients and it goes
24 out in that initial letter that if they ever have any
25 cause for concern or any questions, that the best way

1 to really sit down and talk with us is to set an
2 appointment. And he would do that on occasion.

3 Q. Did you have any difficulty getting in touch with
4 him leading up to trial about five weeks before?

5 A. There was a time period when the numbers that we
6 had, had been disconnected. So we reached out by
7 letter to the mailing address that we had, that I
8 believe was his mother's, which is where he was living
9 at that time.

10 Q. During your pre-trial preparations, did he convey
11 and was able to grasp an understanding of the
12 complexity and seriousness of this case?

13 A. He seemed -- it seemed like he understood the
14 seriousness of her injuries, but not necessarily the
15 seriousness of what was happening, that we were going
16 to trial on this big issue of her death, and that the
17 State was proving -- was going to prove that he was
18 the one that did this.

19 Q. Did y'all undertake different tactics in trying
20 to communicate with him and getting helpful
21 information out of him?

22 A. We did. That was one of the reason that I
23 decided or that we had decided as a team for me to
24 take part in this case at all was my father and I are
25 very different people. He may be able to express

1 something one way. I can express it very differently.

2 And so we had hoped that either between myself, him or
3 us as a team, that we would be able to gather the
4 information that we needed.

5 Q. Now, if you can't answer this exactly, I fully
6 understand. Approximately how much time and labor did
7 your firm spend on getting ready for this trial?

8 A. I can't answer it exactly. I do know there were
9 multiple meetings with the client. There were
10 multiple meetings that we had with other people. We
11 did have an investigator that we also had present at
12 the trial that is familiar with this area, that also
13 had a connection to Oconee Memorial. So we had him
14 there through jury selection, I know, to try to help
15 us with jury selection. We reached out to different
16 resources that were medical -- not experts, but people
17 that we knew in the medical field to have them under
18 confidentiality review the documentation that we had
19 to see if there was anything else, since we are not
20 medical experts, that we were -- anything else to kind
21 of bring to light. We, as I said, we did reach out to
22 the polygraph investigator to allow Mr. Hinton to have
23 that conversation or be questioned about these issues
24 ahead of time. There was the entire week of the trial
25 that both myself and Mr. Senerius present. We're the

1 only two attorneys in our firm. We had staff with us
2 at least, I believe, three or four of the days that we
3 were up there. So our office was essentially shut
4 down for that week and the week prior to that in
5 preparation.

6 Q. Approximately when did the solicitor disclose the
7 witness list to you or to your firm?

8 A. I don't remember specifically. Ms. Simmons is
9 pretty good about doing that at least a week ahead of
10 time. But obviously not all of those witnesses are
11 necessarily going to be called, but she is usually
12 pretty good about making sure. She is attempting to
13 streamline the trial, as well.

14 Q. Were you able to adequately prepare for witnesses
15 that you handled?

16 A. Yes.

17 Q. Now, would you have objected had the solicitor,
18 through leading questions, put words in the witnesses'
19 mouth you didn't see coming?

20 A. We would have depending on the question. I
21 think, you know, it's -- you are listening throughout
22 trial and you're taking notes and you're wanting to
23 make sure that they're not testifying themselves
24 through the leading. So if it had been something like
25 that, then, yes.

1 Q. Would you have objected if you had concerns on
2 the propriety -- admissibility of the leading question
3 asked?

4 A. Yes.

5 Q. And the last question on that, would you -- so
6 you knew the witnesses already?

7 A. Yes, we did. We knew the potential witnesses. I
8 don't believe she called everyone that was on her
9 list, but I'd have to go back and check on that.

10 Q. And you guys had decided who was going to handle
11 what witness ahead of time?

12 A. Yes, we did.

13 Q. Would knowing that an expert or witness is going
14 to testify later in trial influence your decision to
15 object to possible hearsay?

16 A. Yes.

17 Q. Can you explain?

18 A. Knowing that there is going to be a witness that
19 potentially would have a different view or a different
20 version or just saying something differently, is
21 something that if we can get it out through that
22 witness, especially if it's going to be an expert.
23 Unfortunately, juries do take a lot of testimony from
24 experts and sometimes they take it more strongly than
25 they do a lay witness. So if there's something like

1 that that we could get out through an expert or poke a
2 hole in a time line through an expert, then we were
3 going to attempt to do that.

4 Q. Did the Applicant in this case communicate with
5 you during the course of trial through a notepad?

6 A. Somewhat. I've got some notes that indicate that
7 there were some discussions during the jury selection.
8 I believe there was one juror in particular. And I
9 just have a number. I don't have a name. I don't
10 believe it was a juror that was seated, that he
11 specifically didn't feel good about, so we struck that
12 juror, from my memory, I believe. But I do have one
13 note from him. It's always our policy to put a
14 notepad -- well, we sit on either side of the
15 Defendant and put a notepad in front of the Defendant
16 with a pen. Because from my days of clerking, Judges
17 don't like a lot of hustle and bustle around the
18 courtroom while the witnesses are testifying. So we
19 didn't want him to have to lean over and speak
20 necessarily. We wanted him to be able to write it.
21 And he was not in shackles at that time. So he would
22 have had free reign of being able to write.
23 Q. And the lay witnesses you handled, did he ever
24 pass any notes and request any potential cross-
25 examination questions?

1 A. No. The other thing that I always do, that I got
2 in the habit of a long time ago was before I finish a
3 witness, I step back over to the defense table and
4 reference with co-counsel and/or the client and ask if
5 there was anything in particular that maybe I missed
6 while I was asking questions.

7 Q. Just a few more questions.

8 A. Uh-huh (affirmative).

9 Q. Do you recall your impression of the victim's
10 demeanor and the way she came across to the jury when
11 she testified?

12 A. I remember her coming across just -- not
13 necessarily extremely emotional that day but just very
14 sad, a grieving mother. She came across just almost
15 like smaller than she was. I mean, she just -- it was
16 an emotional day.

17 Q. Would delicate be an appropriate word?

18 A. Yes.

19 Q. And I don't want to belabor the point that's been
20 explored, for hours on end during your testimony. But
21 was it always understood that he would take the stand?

22 A. We had talked about it at length, both prior to
23 trial and in the days during the trial, and then as
24 Judge Macaulay's procedure, he makes you, even if
25 you've decided what you want to do, he makes you take

1 additional time and talk to your client and the
2 attorney about it. Mr. Hinton had planned on, at
3 least ahead of time, testifying. But obviously, that
4 could have changed throughout the trial. I don't
5 remember it ever changing. From my memory, he had
6 planned to take the witness stand throughout the
7 trial. But again, I don't know that he had -- that's
8 something that is always touch and go, depending on
9 what's going on.

10 Q. What was your impression of Mr. Hinton as a
11 witness?

12 A. He seemed nervous. He seemed -- and I think it
13 seemed to come across a bit harsh. But, again, I
14 think that probably was because of the fact that he
15 was nervous. I don't know how the jury took him
16 specifically, but he did seem a little rigid, a little
17 harsh, I guess is the best way to say that.

18 Q. Did your firm, you and your father, spend a
19 significant amount of time preparing him for that
20 testimony?

21 A. Yes. And, again, that was one of the other
22 reasons that we did the polygraph because they ask
23 difficult questions in that process, as well. So that
24 wouldn't have been the first time he would have heard
25 that.

1 Q. Do you recall him helping the case through his
2 testimony?

3 A. I don't remember it making us feel better
4 necessarily, but I don't remember necessarily it
5 making us feel worse. I mean, I think in the middle
6 of trial, your emotions are a little off anyways, but
7 I don't necessarily remember a relieved feeling once
8 he was finished testifying.

9 Q. Did you try this case to the best of your
10 ability?

11 A. Absolutely.

12 MR. WHITMIRE: No further questions, Your
13 Honor.

14 THE COURT: Any redirect?

15 MR. CHILDS: Just real briefly.

16 **REDIRECT EXAMINATION**

17 **BY MR. CHILDS:**

18 Q. You said your investigator -- did your
19 investigator do any field work in this case or just
20 attend the trial?

21 A. I don't remember specific field work. I know
22 that we had him previously registered with OID. You
23 have to register your investigator. I know we had him
24 previously registered. But I do specifically remember
25 him attending trial. I just don't remember anything

1 else.

2 Q. All right. But he was available to locate any
3 witnesses that you needed to?

4 A. He could have. I mean, I don't know that we
5 didn't, but, yes, he is able -- he is capable of doing
6 that.

7 Q. Now, the witness list that you received before
8 the trial from Ms. Simmons, did it list records
9 custodian for Desmond Holland's fiance's work records?

10 A. I would have to look back at it. I honestly
11 don't remember off the top of my head.

12 Q. And do you have that?

13 A. I have a box. I don't know where it is in the
14 box. It would take me a ---

15 Q. I'm supposed to have your entire file?

16 A. Yes, I believe you do.

17 Q. And so I don't see that in what you provided to
18 me?

19 A. And that's what I'm saying is I don't know that I
20 have that here. I'm saying I know that Lindsey's
21 usually good about providing that information ahead of
22 time.

23 Q. Well, in any event, at the trial itself they
24 didn't list any records custodians for ---

25 MR. WHITMIRE: Objection. Outside the scope

1 of cross-examination, Your Honor.

2 THE COURT: How is that within the scope of
3 cross-examination?

4 MR. CHILDS: That's fine, Your Honor.

5 Q. If the witness list you were provided by Ms. --
6 I'll withdraw the question. If the witness list Ms.
7 Simmons provided you did not have the records
8 custodian for the Netflix records, and the fiance's
9 work records, what would that indicate to you?

10 A. That it was potentially something that we had
11 referenced or that we had spoken to her about before
12 and did not make her call the records custodian for
13 those records.

14 Q. Is that what you did?

15 A. I don't remember. That's what that would
16 indicate to me.

17 Q. And do you recall agreeing to let those records
18 in, or ---

19 A. I don't know.

20 MR. WHITMIRE: Objection. Outside the scope
21 of cross, Your Honor.

22 THE COURT: Again, how is that within the
23 scope of cross-examination.

24 MR. CHILDS: I'll withdraw that second part.

25 THE COURT: Thank you, sir.

1 MR. CHILDS: That's all the questions I
2 have.

3 THE COURT: All right. May this witness be
4 excused?

5 MR. CHILDS: Yes, sir.

6 MR. WHITMIRE: Absolutely.

7 THE COURT: All right. Thank you, ma'am.

8 THE WITNESS: I'm going to leave the box of
9 information here if that's okay?

10 THE COURT: For your dad?

11 THE WITNESS: I didn't know who was next. I
12 can take it back here, however.

13 THE COURT: Well, who's your next witness?

14 MR. CHILDS: Well, normally, my next witness
15 would be Mr. Hinton.

16 THE COURT: I'm asking who it is, not what
17 normally it is.

18 MR. CHILDS: Well, if we want to get Mr.
19 Senerius out here, we can call him next.

20 THE COURT: It's your case.

21 MR. CHILDS: I'll go ahead and call Mr.
22 Senerius.

23 THE COURT: Very good.

24 Mr. Senerius, you can come around. Ms. Tye,
25 thank you.

1 THE WITNESS: Thank you, Your Honor.

2 THE CLERK: Place your left hand on the
3 Bible. Raise your right hand.

4 Do you solemnly swear or affirm the testimony you
5 give to the Court to be the truth, the whole truth and
6 nothing but the truth?

7 THE WITNESS: I do.

8 THE CLERK: Please have a seat.

9 GORDON SENERIUS,

10 BEING FIRST DULY SWORN, TESTIFIED AS FOLLOWS:

11 DIRECT EXAMINATION

12 BY MR. CHILDS:

13 Q. Mr. Senerius, we've been privy to some exhibits
14 that have already been entered into evidence that
15 relate to this case; in particular, Exhibit Number 3.
16 Let me show you that and see if you're familiar with
17 it?

18 A. These look like trial prep notes.

19 Q. All right. And those were -- is a list of
20 witnesses there, Alex Hood, Ronnie Craig, William
21 Fowler, Danny Stevens, Denise Richardson, and Brandy
22 Burgeon (phonics)?

23 A. Right.

24 Q. Did you have the occasion to speak with any of
25 those individuals?

1 A. Seems to me that I did at least with maybe Mr.

2 Hood, Craig, and Fowler. I can't remember for sure.

3 This has been a long time ago.

4 Q. Okay.

5 A. I don't believe that any of them had anything in

6 the way of facts to testify to.

7 Q. Were they character-type witnesses?

8 A. More so than other, yeah.

9 Q. Okay. And did you indicate to Mr. Hinton that
10 character witnesses were out of the question in this
11 case?

12 A. I indicated to Mr. Hinton that it was a fine line
13 to go into. And that his character really wasn't in
14 question. Nobody is accusing him of being a terrible
15 person, that I recall.

16 Q. Okay.

17 A. We did put up some character witness testimony
18 concerning him, if I remember correctly, about him
19 being a good dad and loving, you know, being good with
20 kids, things of that nature.

21 Q. And so the other witnesses you were -- do you
22 remember why you didn't call them as character
23 witnesses?

24 A. I suppose it was a matter of strategy trying to
25 get the case -- keeping the focus of the case in the

1 right spot. I suppose if you'd asked me this three
2 and a half years ago, I'd been able to answer you
3 better. But I don't recall anything other than that.
4 Q: Okay. Do you recall speaking to those
5 individuals and did they provide to you statements
6 that would bolster his credibility?

7 MR. WHITMIRE: Objection. Asked and
8 answered.

9 THE COURT: Overruled.

10 A. To bolster Mr. Hinton's credibility?

11 Q. And I said it really poorly.

12 A. Okay.

13 Q. So let me rephrase it. Having spoken to some of
14 these individuals here that were potentially character
15 witnesses ---

16 A. Right.

17 Q. --- were they helpful? Did they tell you he had
18 good character?

19 A. Yeah. They were cumulative to what other people
20 had said.

21 Q. Okay. And Ms. Richardson listed here, his
22 mother, ---

23 A. Right.

24 Q. --- did you speak with her?

25 A. Oh, she was in the office on more than one

- 1 occasion.
- 2 Q. Okay. And you had her listed as a witness on
- 3 your witness list at trial?
- 4 A. I don't recall. If you say so.
- 5 Q. Just the record ---
- 6 A. Whatever the record says.
- 7 Q. --- says her name ---
- 8 A. Okay. Whatever the record says.
- 9 Q. All right. Do you recall what her testimony was
- 10 going to be?
- 11 A. Her testimony was whatever it says in the record.
- 12 I believe it was that he was a good father and was
- 13 good with kids. I don't remember specifically. I've
- 14 not reviewed the transcript.
- 15 Q. All right. Well, she didn't testify.
- 16 A. Okay. All right. There must have been a reason
- 17 for it that I don't recall at the time.
- 18 Q. Do you recall any discussions with her about the
- 19 transportation of Ms. Bright to and from the detention
- 20 center to visit with Mr. Hinton?
- 21 A. Do I recall that?
- 22 Q. Yes?
- 23 A. No.
- 24 Q. Okay.
- 25 A. It doesn't mean she didn't tell me that. It just

1 means I don't recall it.

2 Q. All right. Do you recall any discussions with
3 her about Ms. Bright's statement that she had been
4 read the autopsy report?

5 A. No.

6 Q. Okay. Now, there was evidence presented or
7 documents and records indicated from an incident that
8 happened in Greenville County, I believe with a -- and
9 the note here, it goes on page -- I thought it was.
10 Hang on a second. Yeah. This was about the prior
11 child. Let me rephrase that.

12 A. Okay.

13 Q. I don't think that's listed here. Oh, there it
14 is on the first page. --- about a Dixie Gravely
15 McCracken, a breach of peace?

16 A. Right.

17 Q. Do you recall anything about that, why y'all were
18 even concerned with it enough to even take notes about
19 it?

20 A. It would be ---

21 MR. WHITMIRE: Objection. Asked and
22 answered. Ms. Senerius answered that specific
23 question yesterday.

24 THE COURT: Ms. Senerius did.

25 MR. WHITMIRE: She did.

1 THE COURT: Refresh my memory. For some
2 reason it's not -- I'm not recalling it.

3 MR. WHITMIRE: She testified that it was a
4 basic investigation to make certain she wouldn't be
5 ambushed with something. No other purpose besides
6 that.

7 THE COURT: I do recall that. Why is this
8 new information and not cumulative?

9 MR. CHILDS: Well, I needed to hear his
10 testimony as to what he felt the purpose of that was.
11 I think it may be different. My inquiry with her ---

12 THE COURT: So it's your intent to go back
13 and re-track side by side ---

14 MR. CHILDS: No. No, sir.

15 THE COURT: --- Ms. Tye's and Mr. Senerius's
16 testimony?

17 MR. CHILDS: No, sir.

18 THE COURT: I'll give you a little leeway,
19 but let's not dawdle; okay, sir?

20 MR. CHILDS: Right.

21 Q. Do you remember anything about that?

22 A. I remember that coming up with regard to issues
23 of his character.

24 Q. Okay. And were you concerned about that being
25 presented by the State in the case?

1 A. Yes.

2 Q. All right. And on page two of the note here, he
3 indicates about the pink blanket around the child's
4 legs?

5 A. I see the note.

6 Q. Do you remember anything about that?

7 A. That's not my handwriting.

8 Q. All right. Your note also indicates -- or the
9 note indicates he had an honorable discharge from the
10 military?

11 MR. WHITMIRE: Objection. Asked and
12 answered and relevance. Same reason, asked and
13 answered and relevance because it was Ms. Senerius's
14 note.

15 MR. CHILDS: All right.

16 Q. Let me ask you this. At the trial of the case
17 did you ask Mr. Hinton about his honorable discharge
18 from the military?

19 A. While he was on the witness stand?

20 Q. Yeah?

21 A. I don't remember. If I did, it would be in the
22 transcript.

23 Q. All right.

24 A. If it's not in the transcript, I didn't ask him.

25 Q. Do you remember asking him about what high school

1 he went to?

2 A. What high school he went to?

3 Q. Yeah?

4 A. No, sir. I don't recall that.

5 Q. Did you ask him about playing baseball in high
6 school?

7 A. Probably not since the case didn't deal with
8 baseball.

9 Q. Right. Well, you know, important is the
10 defendant's background; isn't it?

11 A. It can be to a certain extent.

12 Q. Right. And so the better a defendant's
13 background is, the better he is presented to the jury;
14 is that correct?

15 A. Could be. But playing baseball, I don't think,
16 would be germane as to what -- how nice a guy he was.

17 Q. Well, it makes him more of a person; doesn't it?

18 MR. WHITMIRE: Objection. Bolstering and
19 asked and answered. Mr. Senerius has testified ten
20 minutes ago that character was not an issue he wanted
21 to bring up.

22 THE COURT: Overruled.

23 THE WITNESS: I'm sorry.

24 THE COURT: I said overruled.

25 THE WITNESS: Oh.

1 A. I don't know. I suppose so. I used to be
2 triathlons and long distance cycling so I don't know
3 that that makes me a better person. It's just
4 something that I enjoyed.

5 Q. Well, I think we think better of you because you
6 did.

7 A. Well, that's awfully nice of you.

8 THE COURT: All right. Let's not banter;
9 okay?

10 MR. CHILDS: All right.

11 Q. And so normally would you want to bring those
12 things out in respect to a defendant if you could?

13 A. It depends on the case.

14 Q. Now, you were sent a letter to -- Mr. Price sent
15 you a letter shown in Exhibit Number 4. Can you
16 identify that?

17 A. Yeah. I remember seeing this.

18 Q. All right. Did you basically concur with that
19 letter as far as your investigation that the shower
20 incident couldn't explain the injuries?

21 A. Not being a doctor, I wouldn't say that I
22 concurred with it. I did, however -- I have a -- had
23 a pediatric physician who was retired military who
24 would consult with me on cases, point me in the right
25 direction. He wouldn't testify.

- 1 Q. Right.
- 2 A. And I went over the medical records with him. I
- 3 don't know whether I showed him this letter or not.
- 4 And he didn't have anything helpful to tell me.
- 5 Q. Right. So you went over the issue of the classic
- 6 metaphyseal lesion that was testified to at trial?
- 7 A. Went over that with who?
- 8 Q. With the doctor you consulted?
- 9 A. Yes.
- 10 Q. And what was your understanding of what that is?
- 11 A. My understanding of what that is was better three
- 12 years ago than what it is now, okay? I don't recall
- 13 specifically and I can't give you an expert testimony
- 14 or expert testimony with regard to the medical issues.
- 15 I know that Mr. Price had hired an independent
- 16 pathologist to review the work that had been done by
- 17 the state's pathologist. I sat down with a doctor, a
- 18 pediatrician friend of mine, who had dealt with a lot
- 19 of child abuse cases, shaken baby cases, consulted
- 20 with him. And he didn't have anything helpful to tell
- 21 me. He didn't have anywhere -- he didn't put me in
- 22 any direction to get additional information.
- 23 Q. All right. Well, did you understand that the
- 24 metaphyseal lesion was a rather subtle injury to a
- 25 child?

1 A. It can be.

2 Q. And during the trial itself, I believe it was
3 testified to quite frequently, and the record will
4 reflect that, so I'm not trying to ...

5 A. Okay.

6 Q. --- that that was a broken leg. Would you agree
7 that was an improper characterization to that?

8 MR. WHITMIRE: Objection, Your Honor.

9 Relevance in terms of -- unless he's intending to put
10 expert findings up in reference to the PCR. It's
11 improper testimony to get from anyone else.

12 THE COURT: Mr. Childs?

13 MR. CHILDS: Well, I think the question is
14 why did he not object to the testimony that it is a
15 broken leg, when it's a subtle injury. And so I think
16 his understanding of what type of injury it was would
17 relate to why or why not he didn't object to that
18 characterization?

19 THE COURT: I sustain that objection.

20 MR. CHILDS: All right.

21 Q. Now, you also --

22 MR. CHILDS: I believe, Your Honor, we've
23 already covered the jury selection. Do I need to get
24 back into that at all? Except can I ask him questions
25 about the media coverage?

1 THE COURT: Sure.

2 Q. Was there extensive media coverage of this case?

3 A. Of this case?

4 Q. Yes, sir?

5 A. I know to the extent that there was -- give me a
6 minute. There appears to have been at least in
7 comparison to most cases.

8 Q. Was there television coverage as well?

9 A. That, I don't recall. I think somebody told me
10 that there was. There wasn't any that I was able to
11 track down.

12 Q. All right. Do you remember television coverage
13 at the trial?

14 A. I do not. At trial I'm not concerned with what's
15 behind me.

16 Q. I understand. Were you concerned about too much
17 publicity?

18 A. No, not really.

19 Q. And why not?

20 A. Because cases have had more publicity than this.

21 I have had -- I've been doing this, at that time,
22 about thirty-four years, I guess. I can recall maybe
23 one or two instances where the publicity was such that
24 after trying to empanel a jury you were not able to.

25 But I've never had a situation where if I could

1 empanel a jury that there would be a change of venue.

2 Q. And so your decision whether or not to seek a
3 change of venue would be based upon the jury's
4 responses to voir dire?

5 A. Yeah, to a large extent. I believe -- gosh, I
6 don't remember. I'm talking three and a half years
7 ago. The subject may have been broached in chambers.
8 And if it was then the response would have been, we'll
9 try to seat a jury first and if we can't -- I mean, if
10 you ask a jury can you be fair and honest, ninety-nine
11 times out of a hundred, they're going to say yes. And
12 if they say no, based on my past experience, that's
13 the juror I want on the jury because they're being
14 totally honest with me.

15 Q. All right. And I'll let the record reflect the
16 jurors that responded that they could or could not.

17 A. Right.

18 Q. I was just going to ask you, though, were you
19 satisfied with the Judge's instruction to the jury
20 about publicity?

21 A. Yes.

22 Q. Now, in your discussions with Mr. Hinton, if you
23 recall them, did he indicate to you that Ms. Bright
24 had not wanted the child?

25 A. I recall there were some discussions about the

1 surprise and maybe how it might have affected. I
2 don't recall him ever specifically saying -- and he
3 may have. I'm just saying I don't recall him saying
4 -- she didn't want the baby.

5 Q. All right. And did you recall any discussions
6 with him about who was the primary care giver and her
7 response to the child.

8 A. I'm sorry. That he was the primary care giver?

9 Q. Who was the primary ---

10 A. Oh. Who was the primary care giver. I suppose
11 the subject came up. I don't recall.

12 Q. Okay. Now, we've introduced into evidence some
13 journals that were recovered by the police. Do you
14 remember those?

15 A. Those? You're talking about Ms. Bright's
16 journals?

17 Q. Yes.

18 A. I probably looked at them, but that was Ms. --
19 that's my daughter's witness. I have trouble calling
20 my daughter Ms. Senerius. I'm sorry.

21 MR. WHITMIRE: Objection.

22 A. She's my daughter. I call her Brittany.

23 THE COURT: Just one second. What's your
24 objection?

25 MR. WHITMIRE: Relevance and asked and

1 answered yesterday.

2 THE COURT: I'm going to let him ask the
3 question first and renew your objection if
4 appropriate.

5 Q. All right. So you don't really recall those?

6 A. Not as I sit here today.

7 Q. All right. And basically you left that to your
8 daughter as far as that issue is concerned?

9 A. I left the investigation, if you will, for lack
10 of a better word, of witnesses or how she was going to
11 prepare for her witnesses with her. We talked about
12 it but ---

13 Q. All right.

14 A. If I didn't have confidence in her, I wouldn't
15 have had her sitting next to me.

16 Q. I understand.

17 A. Or on the other side of Mr. Hinton, I should say.
18 She wasn't sitting next to me.

19 Q. Now, was this the first criminal trial that she
20 did cross-examinations on state witnesses?

21 A. No.

22 Q. Can you tell me that other trial she mentioned
23 earlier?

24 A. Yeah, about a month before or so we tried a case
25 in Oconee County, a criminal sexual conduct second

1 degree case, and it drew extensive publicity. During
2 the trial it had drawn extensive publicity.

3 Initially, when it happened it was a case that was
4 probably three years old at the time we tried it. We
5 were substitute counsel in this particular case.

6 There was some rather delicate DNA testimony about
7 certain bodily fluids and their location and the
8 alleged victim. And my daughter handled the cross-
9 examination of the state's DNA expert.

10 Q. All right. Was that her involvement in that
11 case?

12 A. Was that her only involvement in that case, no.

13 Q. Well, as far as in the trial?

14 A. No. She was there the whole time.

15 Q. As far as questioning witnesses?

16 A. Well, that's the main one that I remember.

17 Q. Okay.

18 A. And she did a wonderful job. Oh, and we got a
19 not guilty verdict in that case too, by the way.

20 Q. All right. Do you recall the testimony of
21 various witnesses about the character of the decedent
22 during the trial?

23 A. The baby?

24 Q. Yeah?

25 A. Yes.

1 Q And you didn't have any objection to that?

2 A. No, sir.

3 Q. Okay. What was the theory of your case?

4 A. The theory of our case was that our client did
5 not do anything intentionally to hurt the child. We
6 tried to play it out that way. That's the only
7 information that we had, the only theory that we could
8 go on that he was not guilty. No one was pointing
9 fingers at anybody else. Nobody had any alibi
10 witnesses. Most of the fact statements as to what
11 occurred on the day of the injury were undisputed.
12 You know, you go with what you've got.

13 Q. I understand. And so you ruled out the issue of
14 whether or not there was third-party guilt or
15 involvement in this case?

16 A. And I'm sure you're aware that that's a difficult
17 road to hoe in South Carolina. And I have pursued
18 that avenue in the past when I have had evidence that
19 I could directly point to. But I didn't even have any
20 strong circumstantial evidence in this case. The only
21 other person that I could point at supposedly during
22 that period of time, based upon the doctor's
23 testimony, was the baby's mother.

24 Q. And you did actually raise some issues about that
25 in the examination of the Officer Roundy, I think

1 that's correct.

2 A. Roundy?

3 Q. Roundy. You asked about her demeanor at the
4 hospital?

5 A. Sure.

6 Q. And you asked a rather short question about her
7 affect at the hospital?

8 A. Okay.

9 Q. But you didn't ask any questions related to what
10 he noted in his file about her behavior. And those
11 are shown on Exhibit Number 21 at the bottom there?

12 A. Okay. Are you talking about the last paragraph
13 or do I need to go further up?

14 Q. That last paragraph.

15 A. Okay. Okay. I've read it.

16 Q. So did you -- well, I'll let the record reflect
17 that. Would that be something that you would want to
18 ask him about on cross-examination?

19 A. Well, it's difficult to say. I've always taken
20 the opinion that you don't ask questions you don't
21 know the answers to or you don't know where they're
22 going to lead on cross. There are a number of reasons
23 why anyone in that situation could have a flat affect.
24 Be concerned about things. I mean, this lady is being
25 questioned by a police officer about injuries

1 sustained to her child. Never having been in that
2 particular circumstance myself, I can't tell you how I
3 would react. And I don't know that she would react
4 any differently.

5 Q. Well, I understand. But he thought it was
6 unusual enough to make a note of it in his in his -- I
7 mean, apparently?

8 A. Well, I don't know that he thought it was unusual
9 enough. It's not uncommon to see that information in
10 a report.

11 Q. That she didn't ask about the injuries to her
12 child. And that she didn't ask about ---

13 A. Well, that's his recollection. This is his
14 recollection. She did not sign this.

15 Q. I understand. You asked him about her affect?

16 A. I asked him about her affect.

17 Q. But you didn't ask him about that note from the
18 incident report where he saw her behavior, where she
19 didn't ask about the injuries to the child, or she
20 didn't ask ---

21 A. These are fact statements that he's got down
22 here. Nothing about her emotional state.

23 Q. All right.. Well, let me show you Exhibit Number
24 23 and ask you to look at the fourth paragraph.

25 A. Okay.

- 1 Q. Please tell me what that says?
- 2 A. Yeah. You want me to read it?
- 3 Q. Yeah?
- 4 A. Okay. Everyone showed emotion over this
- 5 information except Ashley who showed very little if
- 6 any. I spoke with the attending physicians who were
- 7 present at the time the family was told of the
- 8 condition of [REDACTED] and asked about the response from
- 9 the family and Ashley. I was, I guess that's told, it
- 10 was flat-line, not normal.
- 11 Q. All right.
- 12 A. Sounds like shock.
- 13 Q. Right. Well, you were asking him about her
- 14 affect at the hospital when he talked to her?
- 15 A. Uh-huh (affirmative).
- 16 Q. And the reason for that inquiry was what?
- 17 A. I really don't recall why I asked that specific
- 18 question at that point in time. I suppose I wanted
- 19 that information out in front of the jury. I suppose
- 20 it was because I knew what the answer to his question
- 21 would be.
- 22 Q. All right. And on cross-examination of her when
- 23 she was re-crossed -- actually redirected by Ms.
- 24 Simmons -- and do you have the transcript up there?
- 25 A. Yes.

- 1 Q. Look at page 130.
- 2 A. Okay.
- 3 Q. Line 5 through 10.
- 4 A. Lines 5 through what?
- 5 Q. 10. In his answer where she redirected him after
- 6 your questions?
- 7 A. This is the -- oh, the testimony of ---
- 8 Q. Roundy?
- 9 A. --- Roundy? Okay.
- 10 Q. And so the prosecutor followed-up and asked him
- 11 how did you -- when did you eventually learn about her
- 12 normal demeanor? And he responded, I learned that
- 13 she's an individual that holds things in and does not
- 14 display emotions to anybody except maybe in private.
- 15 A. Okay.
- 16 Q. Would that response not have been hearsay?
- 17 A. It could have been. Again, you get into the
- 18 question of the definition of hearsay. Were they
- 19 offering it for the truth of the matter asserted?
- 20 Could it be followed up by other questions from other
- 21 witnesses? I don't object to everything that is
- 22 technically a violation of the rules.
- 23 Q. Right.
- 24 A. Jurors don't like that. They think I'm hiding
- 25 something from them.

1 Q. Right. Did you agree to allow the Netflix
2 records testimony to be discussed by the witnesses?
3 The Netflix records that supposedly corroborated Ms.
4 Bright's testimony?

5 A. Yes.

6 Q. So you agreed they could testify about that?

7 A. Yeah.

8 Q. And it wasn't introduced into evidence?

9 A. Okay.

10 Q. Do you remember why you agreed they could testify
11 about ---

12 A. I would have agreed to that not having that
13 custodian in there because it wasn't a germane issue.
14 There was no argument that she wasn't there. So
15 whether she was watching Law and Order on Netflix or
16 Sponge Bob on the Cartoon Channel was of no
17 consequence.

18 Q. Right. And did you not object to the testimony
19 about her work record even though that was never
20 introduced?

21 A. I don't. If the work records weren't introduced
22 obviously, it wasn't something for me to object to.
23 If they were introduced, I obviously didn't think that
24 it was germane at the time to any central issue of the
25 case.

1 Q. Well, if the questions to Investigator Roundy was
2 that all her testimony was corroborated by the Netflix
3 records and the work records, wouldn't that be
4 hearsay?

5 A. Well, it would corroborate the fact that she was
6 where she was.

7 THE COURT: Do you have an objection.

8 MR. WHITMIRE: Objection. Relevance.
9 There's no purpose in taking testimony. That's not
10 hearsay. It's investigative testimony.

11 THE COURT: Sir?

12 MR. WHITMIRE: It's investigative testimony
13 offered by an officer, not for the truth of the
14 matter. There's no purpose of even taking testimony.

15 THE COURT: Overruled. Go ahead.

16 A. Okay. Ask me the question again.

17 Q. I will. And I'm trying not to point out each
18 individual -- I provided a summary for the Judge about
19 the testimony about these records.

20 A. Correct.

21 Q. But the evidence -- and I think if you read the
22 transcript it'll say that the officer testified that
23 all the information that Ms. Bright provided to him
24 was corroborated by these work records and this
25 Netflix records that was never introduced in the

1 trial. And nobody questioned their testimony as to it
2 being hearsay because they were documents produced by
3 somebody else?

4 A. I'm assuming at the time that I didn't object to
5 that stuff because I didn't think that it hurt us or
6 helped us one way or the other. There was testimony
7 -- they corroborated her testimony as to where she
8 was. As far as I knew from any of the evidence that I
9 had, from talking with my client and others, nobody
10 disputed where she was or what she was watching on
11 television. My client couldn't dispute what she was
12 watching on television. If anything, by her testimony
13 of being there during the period of time when the
14 child's injuries became severe, she probably put
15 herself in their cross-hairs. So there wasn't any
16 reason to dispute it.

17 Q. Well, I think the testimony was that -- and,
18 again, the record will reflect that. I'm not asking
19 you to rely upon that.

20 A. Okay.

21 Q. But the actual Netflix records shown in
22 Plaintiff's Exhibit Number 39, I'll ask you to look at
23 that.

24 A. Okay.

25 Q. And so basically that's an email to somebody who

1 was not a witness in the case; correct?

2 A. Yeah. It's addressed from the customer service
3 of Netflix dot com.

4 Q. All right. And so the testimony may be from the
5 transcript that this corroborated her checking on the
6 child every thirty to forty-five minutes, up until
7 about ten o'clock?

8 A. Okay.

9 Q. Did that corroborate that?

10 A. Did that corroborate that she's checked on the
11 child every thirty to forty minutes?

12 Q. Yes.

13 A. I wouldn't say that it corroborates it and I
14 wouldn't say that it contradicts it. It just merely
15 shows that these shows were on, on I guess a
16 television in her account or an account she had access
17 to.

18 Q. Right. And when was the last video that played?

19 A. The last video that played ---

20 MR. WHITMIRE: Objection. Asked and
21 answered from Ms. Senerius yesterday.

22 THE COURT: What ---

23 MR. CHILDS: That's fine.

24 THE COURT: Okay, sir.

25 Q. So you didn't see any purpose in going over the

1 Netflix records with any of the witnesses?

2 A. No.

3 Q. Now, the employment records that were testified
4 about, not introduced into evidence, do you remember
5 that? The payroll records of Ashley Bright?

6 A. I remember that she testified she was at work. I
7 think she testified -- well, she testified she was at
8 work.

9 Q. And that's Plaintiff's Exhibit Number 36. Do you
10 recall that?

11 A. Okay. I don't recall seeing it before, but I'm
12 sure I probably did.

13 Q. Okay.

14 A. If it was provided in discovery then we would
15 have had that asked.

16 Q. Did you inquire into that notation about work the
17 next day on August the 17th?

18 A. On August the 17th? No, I did not.

19 Q. Okay. But you had no objection to the officers
20 testifying that this document corroborated her
21 testimony without introducing it into evidence?

22 A. No. And it does.

23 Q. The officer testified also that he confirmed the
24 testimony of Desmond Holland by checking the
25 employment records of -- I'm sorry.

1 A. Do you need these?

2 Q. Yeah. Let me go back and look at my notes.

3 MR. CHILDS: Pardon me, Your Honor.

4 THE COURT: Mr. Childs, I believe it's an
5 Exhibit and I may have that document.

6 MR. CHILDS: Oh, I've got it, but I just
7 don't have the marked one; but I assume it's in there.

8 Q. The work records of Jamari Robinson, do you
9 recall that? It's reflected in Exhibit 18 that's
10 somewhere?

11 A. Do I recall seeing this? I do not recall seeing
12 it. It doesn't mean I didn't, just that I don't
13 recall.

14 Q. If the record reflected that you allowed the
15 officer to testify that Desmond Holland's testimony
16 was corroborated by Jamari Robinson's work records,
17 would you normally object to that?

18 A. It would depend on whether or not the work
19 records corroborated the testimony.

20 Q. If you knew they couldn't introduce the records
21 into evidence because the records custodian wasn't
22 there?

23 A. The records custodian may or may not have been
24 there because we may not have -- we may have
25 stipulated that the records custodians don't have to

1 be there. I've been in a number of trials where I
2 could stipulate to that, a number of trials where I
3 don't. It just depends on whether or not at that
4 point in time in my trial strategy whether I think
5 it's worthwhile having somebody come up saying that
6 they are John Doe, they work at so and so, they're the
7 records custodian for this, and this is their record.

8 Q. All right. Do you recall doing that in this
9 case?

10 A. Specifically, no.

11 Q. Yeah. I mean the Verizon records went in without
12 objection. I understand the custodian was called --
13 was there as a witness.

14 A. Okay.

15 Q. And I understand the strategy of that. And the
16 Verizon records ---

17 MR. CHILDS: Do you have the exhibits from
18 the trial?

19 MADAM COURT REPORTER: No, I do not.

20 MR. CHILDS: Okay.

21 Q. The Verizon records, it's shown as State's
22 Exhibit Number 9 in the criminal trial, were
23 introduced without objection. I understand your
24 theory behind that. But there is a -- on the third
25 page of this, there is an area where a text message

1 was marked out.

2 A. Okay.

3 Q. And referring to Plaintiff's Exhibit Number 37,
4 it appears the response that was marked out says, even
5 if she's sober. And that was in response to Mr.

6 Hinton advising his girlfriend that he did not want
7 her mother to come over to the house.

8 A. Okay.

9 Q. Do you recall that?

10 A. Not specifically. But if that's what the records
11 indicate, I don't disagree.

12 Q. All right. And do you recall in the testimony in
13 this case there's a lot of issues that that was odd,
14 that he didn't want his mother -- well, Ashley's
15 mother coming over to the house that day?

16 A. There were people expressing that opinion,
17 certainly.

18 Q. And did you ask Mr. Hinton about that?

19 A. I don't remember. I may have.

20 Q. On his direct examination?

21 A. Oh, on his direct examination?

22 Q. Yes, sir?

23 A. No. I may have asked him. I don't recall. The
24 record will reflect ---

25 Q. It will reflect whatever you asked him?

- 1 A. Yeah.
- 2 Q. Well, wouldn't that be important to ask him that,
3 to refute that testimony that that behavior was odd?
- 4 A. It could be.
- 5 Q. Okay. Because the notes we have from Plaintiff's
6 Exhibit Number 37 and says -- there's a note there
7 that says, Ashley's mom was on pills. And I think
8 your daughter testified that that's her -- somebody's
9 notes?
- 10 A. Yeah. That's my handwriting. Back then you
11 could actually read it.
- 12 Q. You can't read mine.
- 13 A. You can't read mine now.
- 14 Q. But do you know why they marked out from the
15 State's Exhibit the response that would make your
16 client's behavior seem more appropriate?
- 17 A. No, I do not.
- 18 Q. In your testimony related to the doctors'
19 testimony -- you did the cross-examination on the
20 doctors; is that correct?
- 21 A. I believe so.
- 22 Q. All right. And do you -- give me that back so I
23 can finish up. Do you recall any objection you made
24 concerning any of the doctors' testimony about their
25 testimony being speculative?

1 A. No. Their testimony was their opinion.

2 Q. All right. And did you recall ever objecting
3 based on their testimony not having a proper
4 foundation?

5 A. No. I believe they testified their foundation
6 was their reports -- records that they'd looked at and
7 activities that they had participated in.

8 Q. And any objection that their testimony was not
9 within a reasonable degree of medical certainty?

10 A. No. And the reason for that would have been that
11 would have been the next question. This is to a
12 reasonable degree of medical certainty. There are
13 certain things that you don't want to emphasize to a
14 jury. And expert testimony is one of them.

15 Q. Well, when the doctor was questioned by the
16 prosecutor as to whether or not these injuries were
17 inflicted by a small or a large person?

18 A. Right.

19 Q. And said a large person, did you object to the
20 foundation of that answer?

21 A. No, that was that doctor's opinion.

22 Q. Well, did you ask him what the basis of that
23 opinion was?

24 A. Specifically, no.

25 Q. Okay.

1 A. You want to know why?

2 Q. Sure?

3 A. Because he would have given me his opinion that
4 it was based upon his experience and knowledge in the
5 practice of medicine. And it would have reemphasized
6 the difference between Ashley and Matthew.

7 Q. All right. But these injuries that were --
8 allegedly occurred, you've handled these kind of cases
9 before ---

10 A. I have.

11 Q. --- and they don't required a very strong person
12 to inflict them; do they?

13 A. It depends on the doctor you talk to.

14 Q. Okay. Now, one of the doctors, and I'll let the
15 record speak for which doctor, testified that the
16 injures incurred by the child occurred within -- let
17 me rephrase it.

18 MR. WHITMIRE: I'm not objecting. Just for
19 the record I don't mind being patient for future
20 purposes.

21 MR. CHILDS: Let me go on to something else.
22 I'll find that in a minute. I'm sorry.

23 Q. Mr. Hinton's fingerprints were taken or
24 photographs of his hands and measurements of his hands
25 were taken; do you recall that?

1 A. No, but I'm sure they were.

2 Q. Okay. You don't recall that?

3 A. I don't specifically have a recollection of his
4 fingerprints and hand prints and size being taken, but
5 I'm sure the police would have been remiss in their
6 job if they didn't.

7 Q. Do you recall -- so you recall there was an issue
8 about fingerprints on the child?

9 A. I believe so.

10 Q. And do you recall if there was any evidence that
11 -- any effort or ability to match those fingerprints
12 to Mr. Hinton's hands?

13 A. I don't believe there was, but I don't recall.

14 Q. All right. And do you remember asking the
15 officers about that investigation, their inability to
16 match those fingerprints and the measurements of his
17 hands?

18 A. Not specifically, but if there was -- the record
19 will indicate what I did and didn't do about it.

20 Q. Right. Wouldn't that normally be something you
21 would want to bring out to the jury, the fact that
22 some of the evidence does not indicate that your
23 client committed the crime?

24 A. I think the jury understands that. When you get
25 the evidence in that they can't identify who the

1 fingerprints are.

2 Q. Well, nobody asked that?

3 A. They didn't put any evidence that they were
4 admitted -- that they were Matthew's, that I recall.

5 Q. Right. So ---

6 A. So they don't have ---

7 Q. They tried and were unable to do it.

8 A. Okay.

9 Q. Wouldn't that be a good question to pose to the
10 investigating officer, that you could not match up the
11 fingerprints to the evidence?

12 A. If the evidence in the trial is already that they
13 can't match up the fingerprints to any particular
14 individual, then why would I go ask somebody -- no,
15 sir. I would not do that.

16 Q. All right. Well, let me ---

17 A. First of all I don't know what he would answer.

18 Q. Let me clarify?

19 A. Okay.

20 Q. What they did was measure his hands in order to
21 try to match up the size of his hands to the injuries
22 on the decedent's body?

23 A. Right.

24 Q. And the result of that was that apparently they
25 were unable to do that. They could not match his

- 1 hands up with the injuries on the decedent's body?
- 2 A. Okay.
- 3 Q. And do you recall that?
- 4 A. I do not recall that.
- 5 Q. Okay.
- 6 A. I'm not saying it didn't happen. I just don't
- 7 recall it.
- 8 Q. If that happened, would not that be something you
- 9 wanted to ask the investigating officer about?
- 10 A. No.
- 11 Q. Okay. And explain to me why?
- 12 A. Because he's already said they don't match up.
- 13 Q. Well, he didn't say they didn't match up. Nobody
- 14 asked him about ---
- 15 A. Well, he didn't say they matched up either?
- 16 Q. Right?
- 17 A. So if he's not going to tell me something -- I'm
- 18 not going to ask him a question on cross-examination
- 19 that I don't know the answer to.
- 20 Q. Well, you knew the answer to that?
- 21 A. No, I knew that they didn't match up.
- 22 Q. Right.
- 23 A. But I didn't ask him why. I'm not going to give
- 24 him -- an example. If I should have asked it, okay,
- 25 that's your opinion. I suppose at the time I did not

1 feel that it was germane or relevant.

2 Q. Okay.

3 A. I mean, I can go back over this transcript in
4 twenty/twenty hindsight and say that there are
5 probably things I should have done and probably things
6 that I shouldn't have done. Any lawyer who tries
7 cases is going to tell you the same thing.

8 Q. Right. Do you recall the issue of the retinal
9 hemorrhages on the victim?

10 A. Shaken baby syndrome, there's always retinal
11 hemorrhaging.

12 Q. And do you recall any questions about CPR causing
13 those injuries as well?

14 A. I do not. But CPR doesn't cause retinal
15 hemorrhaging. At least to the best of my medical
16 knowledge.

17 Q. Okay. Is that anything that you -- what do you
18 base that on?

19 A. My experience with these kinds of cases, talking
20 with different medical experts in the area and talking
21 with the consulting expert that I used in this
22 particular case.

23 Q. All right. Dr. Troupe testified at trial that
24 the -- on page 238, line 1 through 3, which is in
25 response to a question earlier -- indicating that the

1 child would not have been normal a few hours earlier
2 that day?

3 A. Uh-huh (affirmative). Correct.

4 Q. And did you inquire as to any witness about the
5 possibility that these injuries were inflicted while
6 Mr. Hinton was sleeping that afternoon?

7 MR. WHITMIRE: Objection. Relevance, unless
8 counsel has an intended medical expert to produce this
9 for ---

10 THE COURT: Do you have such evidence?

11 MR. CHILDS: I've got it from the
12 transcript. And also I've got testimony from the
13 other doctor that said that the injuries occurred
14 within less than eight hours of presentation from the
15 ER. It's in the record.

16 MR. WHITMIRE: Ultimately, Your Honor, none
17 of us are doctors. The witness is not a doctor. If
18 he's going to question the doctor's findings, that
19 would be inappropriate. However, to point out cross-
20 examination on different testimony from doctors,
21 absolutely appropriate.

22 MR. CHILDS: All right.

23 Q. But my question really is why didn't you ask the
24 doctors could those injuries have occurred after five
25 thirty then?

1 A. Why didn't I ask if they could have occurred
2 after five thirty?

3 Q. Yeah?

4 A. I don't know. I suppose I could have. I could
5 have asked them if they occurred prior to five-thirty.

6 Q. Well, you did. I mean, you asked them if it
7 could have been older than eight hours?

8 A. Right.

9 Q. And that was the issue of the subdural hematomas
10 developing over time.

11 A. Right.

12 Q. Which I understand there's a theory behind that,
13 as well?

14 A. Right.

15 Q. But the evidence here was that apparently the
16 child was normal from five thirty until approximately
17 ten while the mother was checking on the child. And
18 so would not that be helpful to say to the doctor,
19 couldn't the time frames have been shorter than eight
20 hours.

21 THE COURT: Weren't there, in fact,
22 questions in the record that shortly up to EMS arrival
23 that this could have occurred?

24 MR. CHILDS: Yes, sir.

25 THE COURT: Okay. Go forward, please, sir.

- 1 That would be in the record.
- 2 Q. Now, you did the direct examination on Mr.
- 3 Hinton?
- 4 A. Yes.
- 5 Q. Is that correct?
- 6 A. Uh-huh (affirmative).
- 7 Q. And how much preparation did you do with him for
- 8 that?
- 9 A. You want number of hours?
- 10 Q. All right. And so you walked through direct ---
- 11 A. No, I was asking you do you want the number of
- 12 hours?
- 13 Q. Well, if you have it?
- 14 A. No, I don't.
- 15 Q. Okay.
- 16 A. I have no idea.
- 17 Q. I wouldn't expect you to?
- 18 A. I'm sorry?
- 19 Q. I wouldn't expect you to have the number of
- 20 hours. But I assume you went through his testimony
- 21 with him?
- 22 A. In general parameters, yes.
- 23 Q. And the questions that you asked.
- 24 A. The specific questions, no.
- 25 Q. All right. So let me direct your attention to

- 1 page 312, lines 22 through 24.
- 2 A. Okay.
- 3 Q. And that's where you asked him, were you drawing
4 unemployment insurance?
- 5 A. Right.
- 6 Q. Why did you ask him that?
- 7 A. I don't know. It seemed like a good idea at the
8 time, I suppose. I mean, I have no idea why I asked
9 him if he was drawing unemployment insurance.
- 10 Q. On page 314, line 5 through 7, you asked -- y'all
11 were -- the threesome were pretty happy together?
- 12 A. Yep.
- 13 Q. And your client said fairly. We had our ups and
14 downs but fairly.
- 15 A. Okay.
- 16 Q. Did you know that was going to be his answer to
17 that question?
- 18 A. Did I know that he was going to use the exact
19 word fairly?
- 20 Q. No, no. That he had basically said -- the
21 response was not a yes to that. It was a, well,
22 fairly.
- 23 A. The response to the question was an honest
24 response by my client that reflects the situation with
25 most people. Maybe I can save you some time. I will

1 tell you that I did not go over specific questions
2 with my client and I never do. I don't want their
3 testimony to sound rehearsed.

4 Q. Right. But you ---

5 A. And so if I go over specific questions, if I say,
6 where did you go to high school and he starts to tell
7 me about college, I'm going to be back telling him not
8 to do that. Just to listen to the question. What I
9 did tell him was to listen to the question, to answer
10 the question as truthfully and honestly as he could.

11 If he didn't know the answer, his response was to be,
12 I don't know. If he knew the answer at some point in
13 time but forgot, his response was to be, I forgot.

14 And that if he was on cross-examination by the
15 prosecutor and I started to say to something, he was
16 to shut up immediately.

17 Q. All right. Did you -- I believe you asked him
18 about the text messages that were read in court on
19 page 323?

20 A. Okay.

21 Q. Again, do you recall ever asking him about the
22 reason he didn't want Donna Eller over at the house?

23 A. No.

24 Q. On page 334, you were -- asked the question on
25 line 8 through 13, you asked a question about his

- 1 broken right hand?
- 2 A. Wait a minute. And where are you at now?
- 3 Q. 334?
- 4 A. Right. Which lines?
- 5 Q. Line 8.
- 6 A. Starting with line 8?
- 7 Q. Well, you can start with line 5. That was your
- 8 question?
- 9 A. Oh, okay.
- 10 Q. Did you prepare him for that question?
- 11 A. Did I what?
- 12 Q. Prepare him for that question?
- 13 A. I don't believe so specifically. What do you
- 14 mean by prepare? Did I tell him I was going to ask
- 15 him if he had a broken hand?
- 16 Q. Yes?
- 17 A. Or did I tell him what to say?
- 18 Q. Well, were you going to ask him if he had a
- 19 broken hand?
- 20 A. I don't recall specifically if I asked him if he
- 21 had a broken hand, that I was going to ask him that.
- 22 Again, everyone's trial strategy is different. I gave
- 23 him the general parameters that we were going to go
- 24 over. I had his statements. We talked on numerous
- 25 occasions?

1 Q. What was the purpose of asking him about the
2 broken hand?

3 A. Probably to try to negate the evidence that he
4 caused injuries to his daughter.

5 Q. Right. And did you expect, on cross-examination,
6 for the prosecutor to ask on page 335 ---

7 A. 335?

8 Q. --- line 9, how did you break your hand?

9 A. I knew how he broke his hand. He had told me
10 that.

11 Q. Right.

12 A. Did I expect her to ask that?

13 Q. Yeah?

14 A. Sure.

15 Q. Did you think that was something you could make a
16 motion in limine concerning how he broke his hand?
17 Why was that relevant?

18 A. I believed if I asked him if he had a broken hand
19 or if it -- what was my specific question? I asked
20 him if there was anything physically wrong with him
21 and he answered about the broken hand. It would have
22 been something that would have come out. I think the
23 line is, I've opened the door.

24 Q. Okay. By simply asking about his physical
25 limitations you opened the door about what caused

1 those?

2 A. I believe so. I don't believe the judge would
3 have sustained an objection.

4 Q. Would it have been possible to ask the judge to
5 rule on that issue before you asked the question?

6 A. Anything's possible.

7 Q. All right. And so you expected the prosecutor to
8 ask that, but you knew how he broke his hand?

9 A. Right.

10 Q. And that was something that was not exceptionally
11 beneficial to the Defendant; was it?

12 A. A truthful answer is always beneficial to a
13 client.

14 Q. All right. Now, do you typically go into the
15 background of your client on the witness stand more
16 extensively than you did with Mr. Hinton?

17 A. Every case is different.

18 Q. Okay. So you were just interested in whether or
19 not he was raised in Greenville and went to high
20 school?

21 A. I suppose. I don't think his childhood was an
22 issue in this case. It certainly had nothing to do
23 with the defense.

24 Q. Now, let me direct your attention to page 391,
25 the closing statements.

- 1 A. Okay.
- 2 Q. Line 17.
- 3 A. Okay.
- 4 Q. Where the prosecutor said today is the day to
- 5 speak for [REDACTED]
- 6 A. All right.
- 7 Q. That's clearly objectionable; isn't it?
- 8 A. Clearly objectionable?
- 9 Q. Yes, sir?
- 10 A. I don't think it's clearly objectionable.
- 11 Q. It's not clearly objectionable to ask the jury --
- 12 to state to a jury today is the day to speak for the
- 13 victim?
- 14 A. I've had -- objected to it in the past and been
- 15 overruled.
- 16 Q. Okay.
- 17 A. You don't want to know why?
- 18 Q. Do what?
- 19 A. You want to know why I didn't interrupt the
- 20 prosecutor?
- 21 Q. Yeah?
- 22 A. Juries don't like it.
- 23 Q. Right.
- 24 A. And I don't want the prosecutor interrupting me.
- 25 Q. Right.

1 A. I'm trying to keep the jury on my side.

2 Q. Right.

3 A. If I interrupt the prosecutor -- every time I
4 interrupt the prosecutor and the Judge overrules me,
5 it reinforces what the prosecutor's just said to the
6 jury. It's like telling a little kid to keep his hand
7 out of the cookie jar.

8 Q. Right.

9 A. If he wasn't thinking about putting his hand in
10 the cookie jar before, he certainly is now. It does
11 about as much good as a curative instruction, in my
12 opinion.

13 Q. And so -- if that were a golden rule violation,
14 would not that give you grounds for a motion for a
15 mistrial?

16 A. Sure.

17 Q. But you didn't consider it that?

18 A. I did not object.

19 Q. And you understand the reason behind the golden
20 rule?

21 A. Uh-huh (affirmative).

22 Q. Is what?

23 A. The reason behind it is that you're not -- you're
24 supposed to base it on the evidence not based on
25 sympathy. But there are times when I want the jury to

1 be sympathetic to my client.

2 Q. All right.

3 A. So it's a two-edged sword.

4 Q. I understand that. Was that sympathetic to your
5 client?

6 A. Was that sympathetic? No. I didn't say it was.

7 MR. CHILDS: Just one minute, Your Honor.

8 Q. You were here when we played these disks?

9 A. Yes. Earlier this morning, yes.

10 Q. And do you remember listening to those?

11 A. Not off hand.

12 Q. Do you remember that they stopped?

13 A. If I didn't remember listening to them, I
14 wouldn't remember that they stopped.

15 Q. All right.

16 A. I'm not trying to be smart.

17 Q. Normally, you would want to hear the rest of
18 that?

19 A. I'm sorry.

20 Q. Would normally you want to hear the rest of that?

21 MR. WHITMIRE: Objection. Asked and
22 answered.

23 THE COURT: Overruled.

24 A. I suppose.

25 Q. Particularly the statement -- the interview of

- 1 Ms. Bright; correct?
- 2 A. I would think more of the interview of Mr. ---
- 3 Q. Holland?
- 4 A. Desmond?
- 5 Q. Yeah. Would Ms. Bright's audio -- that kind of
- 6 confirmed your question to the officer about her
- 7 demeanor; didn't it?
- 8 A. Sure.
- 9 Q. Now, did you consider this a close case?
- 10 A. Yes.
- 11 Q. Did you consider the fact that the jury could
- 12 decide it either way?
- 13 A. I think that's what a close ---
- 14 Q. It wasn't a slam-dunk for the prosecution?
- 15 A. I didn't think it was a slam-dunk for the
- 16 prosecution.
- 17 Q. And your theory of the case was what?
- 18 A. That my client did not commit the acts and he was
- 19 not aware of it; of how they occurred. We don't have
- 20 to prove anything other than that.
- 21 Q. Right?
- 22 A. We don't even have to prove that.
- 23 Q. Right.
- 24 A. My client's biggest problem was, as with many
- 25 clients, I think he was trying to be helpful with the

1 police and he spoke too much.

2 Q. Right.

3 A. Silence is golden. Handcuffs are silver.

4 MR. CHILDS: That's all the questions I
5 have.

6 THE COURT: Cross-examination.

7 MR. WHITMIRE: Request a brief recess, Your
8 Honor, for the restroom.

9 THE COURT: Well, it's five to one. Let's
10 go ahead and break for lunch and be back here at two
11 o'clock, please.

12 How many more witnesses do you intend to call?

13 MR. CHILDS: Just two.

14 THE COURT: Just two?

15 MR. CHILDS: Mr. Hinton and possibly Ms.
16 Richardson.

17 THE COURT: Okay.

18 MR. CHILDS: Depending on if you think it's
19 relevant.

20 THE COURT: Mr. Senerius, you can't speak
21 with anybody on the break about your testimony.

22 THE WITNESS: Yes, sir.

23 THE COURT: See you guys back at two
24 o'clock.

25 MR. CHILDS: Thank you, Your Honor.

1 THE WITNESS: Yes, sir.

2 MR. WHITMIRE: Thank you, Judge.

3 (WHEREUPON, court stood at recess for a lunch
4 break.)

5 THE COURT: Please be seated. All right.
6 We're on cross-examination; is that right? Or have
7 you finished your direct?

8 MR. CHILDS: I've finished my direct.

9 THE COURT: Okay. Would you come around,
10 please, Mr. Senerius?

11 THE WITNESS: Yes, sir.

12 MR. WHITMIRE: May it please the Court?

13 THE COURT: Yes, sir.

14 **CROSS-EXAMINATION**

15 **BY MR. WHITMIRE:**

16 Q. Mr. Senerius, when you were substituted on this
17 case, what measures did the originally retained
18 counsel, Chip Price, take to get you caught up on it?

19 A. He gave me his entire file. Talked to me
20 telephonically more than once; I can't tell you how
21 many times. Wrote me a rather extensive letter
22 outlining his investigation. Provided us with all the
23 discovery that he had as of that date.

24 Q. Does he have a reputation for thoroughness?

25 A. Chip? Oh, yeah. Chip's a good lawyer. Second

1 best lawyer in South Carolina.

2 Q. Did he share with you the strengths and
3 weaknesses of the State's evidence?

4 A. We talked about it.

5 Q. Strengths and weaknesses of potential defense
6 theories that you could pursue?

7 A. We talked about it.

8 Q. What were his impressions on a possible third-
9 party guilt?

10 A. I don't remember that we got into it heavily. I
11 don't think it was something that was felt worthy of
12 pursuing, at least when I was talking with him. We
13 looked into it ourselves, but we never came up with
14 what I considered to be sufficient evidence to not --
15 to be able to get it in front of a jury.

16 Q. In addressing the third-party guilt issue, even
17 if you could overcome State v. Gregory standard where
18 you can get the charge, how would the fact that this
19 is a homicide by child abuse, the elements of the
20 defense hurt your case?

21 A. Well, this is pretty much of a strict liability
22 standard. My client had given three statements, I
23 believe, indicating some trauma to the child. There
24 was no direct evidence or even strong circumstantial
25 evidence that any injury had been inflicted by the

1 baby's mother.

2 Q. Particular in mens rea element, extreme

3 indifference or neglect?

4 A. Right.

5 Q. And he gave a statement that -- he discloses --

6 in a second statement he later discloses to dropping

7 the child cause potential leg and head injury?

8 A. Correct.

9 Q. And even under the statute if the jury believed

10 him, could he still potentially be culpable under

11 homicide by child abuse?

12 A. Could he still be? Sure. That's a jury

13 question.

14 Q. You've tried and won homicide by child abuse

15 cases in the Tenth Circuit?

16 A. Yeah. I've tried them.

17 Q. Cody Sprouse?

18 A. I'm sorry?

19 Q. Cody Sprouse?

20 A. Cody Sprouse wasn't a homicide but it was a great

21 bodily injury. Either the fortunate or the

22 unfortunate circumstances, depending on how you look

23 at it, is that the child in that particular case was

24 severely brain damaged and was alive the last that I

25 knew, which was two years ago.

1 Q. Distinguish in your experience dealing in these
2 cases, some of the differences in that case or any
3 other cases compared to the facts and the time line in
4 this case?

5 A. In the Sprouse case the expert testimony was
6 that, if I recall correctly, that the injuries could
7 have occurred within any time within a twenty-four
8 hour period. My client was out of town for a
9 significant portion of that twenty-four period. He
10 was only alone with the child for a three or four
11 period if I recall correctly. There was evidence that
12 the child had been in the care and custody of others
13 immediately prior to my client having care and custody
14 of the child. That the child had been acting fussy
15 before -- if I recall correctly, that the child had
16 been acting fussy before my client was the sole person
17 in custody of the child. And to be fair, that was a
18 hung jury case. They did not retry it. But it was a
19 hung jury.

20 Q. And compared to Mr. Hinton's case where he was
21 the sole -- he had sole custody for the majority of
22 that day.

23 MR. CHILDS: Objection to relevancy.

24 THE COURT: Sustained.

25 Q. You've had experience cross-examining, working

1 with Dr. Woodard?

2 A. Unfortunately, yes.

3 Q. And what do you know of his reputation, his
4 abilities that would impact the way you prepared this
5 case?

6 A. Dr. Woodard is pretty straightforward. I've
7 never known him to go out on a limb. Not somebody
8 that I want to have his testimony repeated. He's not
9 going to change his opinion.

10 Q. Yeah. I don't want to beat a dead horse. You
11 testified to that earlier?

12 A. That's okay.

13 Q. Dr. Gwinn, same question?

14 A. Yeah. Dr. Gwinn was the, if I remember
15 correctly, Dr. Gwinn was the key expert witness in the
16 Cody Sprouse trial, but he's not going to change his
17 opinion either.

18 Q. Dr. Troupe?

19 A. I don't believe that I was in front of -- had any
20 prior experience with him. But my experience with
21 expert witnesses is you get your expert to contradict
22 them. The expert itself is not going to change his
23 mind or waiver on cross-examination.

24 Q. And if I understand this correctly, Mr. Hinton's
25 version of the facts was that he doesn't know how the

1 child got injured to this extent. And/or he had
2 unintentionally caused it?

3 A. I would say that's a fair characterization of his
4 statements.

5 Q. Did he ask you to look into any type of third-
6 party involvement. I mean, outside of even Ashley
7 Bright?

8 A. Not that I recall.

9 Q. Had he asked you, would you have looked into it?

10 A. Sure.

11 Q. Just a few more questions.

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

13 THE COURT: Yes, sir.

14 MR. WHITMIRE: Let me make this short.

15 Q. If I recall correctly, you testified here today
16 that character wasn't an issue in this case?

17 A. Correct.

18 Q. Not something you would want to open the door to.
19 Would that be a concern in how you would cross-examine
20 or examine a witness?

21 A. Well, it would depend on the witness and whose
22 character we're talking about.

23 Q. If I recall correctly, addressing the issue of
24 venue, you've tried similar type cases with similar
25 type publicity before?

1 A. Yes.

2 Q. Is there any reason you wouldn't want a case in
3 Oconee County?

4 A. That I would not want a case in Oconee County?
5 Not so far.

6 MR. WHITMIRE: At this time, Your Honor, no
7 further questions.

8 THE COURT: Redirect. Responsive redirect.

9 MR. CHILDS: Yes, sir.

10 **REDIRECT EXAMINATION**

11 **BY MR. CHILDS:**

12 Q. You, in fact, did cross-examine Dr. Woodard;
13 didn't you?

14 A. Yes, sir.

15 Q. And you asked him, did you not, on page 284, line
16 15 and 16, that you believe -- you said you believe
17 that the head injury occurred eight hours or less
18 before EMS arrived. And he said that's correct?

19 A. That's what Dr. Woodard said, yes.

20 Q. And then you asked, so it could have been an hour
21 before, anywhere from the time EMS arrived to eight
22 hours earlier?

23 A. That's what I asked him.

24 Q. And basically his answer's there, but he
25 basically said, yes.

1 A. Basically.

2 MR. CHILDS: That's all.

3 THE COURT: All right. Yes, sir.

4 MR. WHITMIRE: Just one follow-up question
5 if you don't mind.

6 THE COURT: It has to be responsive. If
7 it's not, I'm not going to let you.

8 MR. WHITMIRE: It's within the scope.

9 THE COURT: Okay.

10 **RECROSS-EXAMINATION**

11 **BY MR. WHITMIRE:**

12 Q. I believe Dr. Troupe testified that once the head
13 injury had been inflicted it would have been obvious
14 to any normal person around the child that something
15 was seriously wrong with her?

16 A. I believe that was his testimony.

17 Q. And your client told the mother, don't interrupt
18 me. Let me sleep with the child?

19 A. That was a text message.

20 THE COURT: Overruled. Stop. Go ahead.

21 MR. WHITMIRE: Strike that, Your Honor.

22 THE COURT: You're welcome.

23 All right. Any reason why Mr. Senerius can't be
24 excused?

25 MR. WHITMIRE: None, Your Honor.

1 MR. CHILDS: None, Your Honor.

2 THE COURT: Thank you, sir.

3 THE WITNESS: Thank you.

4 THE COURT: You have a box of documents your
5 daughter left down there?

6 THE WITNESS: Yes, sir.

7 THE COURT: Is there any reason from the
8 Applicant's standpoint he can't take that box with
9 him?

10 MR. CHILDS: No, sir. There's no reason.

11 THE COURT: From the State's position?

12 MR. WHITMIRE: Without objection.

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

14 THE WITNESS: I was hoping you were going to
15 make my daughter come get it.

16 THE COURT: Would you call your next
17 witness, please, sir?

18 MR. CHILDS: Matthew Hinton.

19 THE CLERK: Place your left hand on the
20 bible and raise your right hand.

21 Do you solemnly swear or affirm the testimony
22 you're about give the Court to be the truth, the whole
23 truth and nothing but the truth?

24 THE WITNESS: I do.

25 MATTHEW HINTON,

1 **BEING FIRST DULY SWORN, TESTIFIED AS FOLLOWS:**

2 **DIRECT EXAMINATION**

3 **BY MR. CHILDS:**

4 Q. Mr. Hinton, how old are you?

5 A. Twenty-eight.

6 Q. And what's your present sentence?

7 A. Forty-one years.

8 Q. All right. And are you presently incarcerated at
9 Perry Correctional Institution?

10 A. Yes, sir.

11 Q. And do you know when your release date is?

12 A. June 20-something, 2045.

13 Q. All right. Now, where are you from originally?

14 A. Travelers Rest.

15 Q. All right. And you went to Travelers Rest High
16 School?

17 A. Yes, sir.

18 Q. And what year did you graduate?

19 A. 2004.

20 Q. All right. And you've heard the testimony about
21 the service in the military; is that correct?

22 A. Yes, sir.

23 Q. Did you have a child with Ashley Bright?

24 A. Yes, sir.

25 Q. And what's her name?

1 A. Alana -- Ashley, sorry, [REDACTED]

2 Q. And when was she born?

3 A. [REDACTED] of ---

4 Q. 2009?

5 A. Yeah. 2009, yeah.

6 Q. Now, you have brought this post conviction relief
7 action based upon the result of your trial?

8 A. Correct.

9 Q. And I've addressed a good number of issues
10 already. But I want to ask you some things about your
11 allegations. And let me ask you, first of all, there
12 was a note in the exhibits that you discussed with Ms.
13 Senerius, or Tye at the time, the information shown on
14 Plaintiff's Exhibit Number 3. Do you recognize that?
15 Probably not.

16 A. No.

17 Q. But let me ask you some questions about this
18 note. It is indicated here six potential witnesses
19 for your trial. And they're Alex Hood. And what was
20 Alex Hood -- what would Alex Hood have testified to,
21 according to what you told your lawyer?

22 MR. WHITMIRE: Objection, relevance, unless
23 these witnesses are here to help -- the actual case
24 restructure.

25 THE COURT: I sustain that objection unless

1 they're here to testify.

2 Q. All right. There's Denise Richardson is listed.

3 That's your mother?

4 A. Correct.

5 Q. And she was listed as a witness. And what did
6 you tell your lawyer about what she would say?

7 A. I basically told them that she could tell them
8 her conversation between Ashley Bright, Donna Eller,
9 and Ashley's grandmother while I was incarcerated at
10 Oconee.

11 Q. All right. And to your knowledge was she
12 interviewed?

13 A. No.

14 Q. All right. There's a note here about the
15 incident itself. It says Ashley checking in three-
16 thirty. Last feeding. Ashley got home around five-
17 thirty. Is that what you told your lawyers?

18 A. Yes, sir.

19 Q. And down here it says three forty-five defendant
20 and child lay down. He was asleep and A woke them up,
21 moved. [REDACTED] turned her head away from him. Later
22 A woke them up -- work them, blanket. He did. And
23 she woke up about ten something, couldn't get her
24 breathing?

25 A. Correct.

1 Q. Is that what you told your lawyer about the
2 incident?

3 A. Yes, sir.

4 Q. If you could explain that a little more
5 thoroughly about what you told your lawyer about that
6 evening as far as Ashley waking you up and coming into
7 the bedroom?

8 A. I don't remember much except for when Ashley was
9 actually next to me, telling me about [REDACTED] The
10 position she was in. One time was she came in and
11 said that the blanket was up around [REDACTED] eyes.
12 And the blanket was pulled down and [REDACTED] moved.
13 And I went back to sleep. I don't know how much time
14 it was until she woke me up again. And that was
15 because [REDACTED] had turned into my side and Ashley
16 thought that she couldn't breathe that way. And so I
17 lifted my arm and [REDACTED] actually turned her head.
18 And that was the last time that I remember being woke
19 up.

20 Q. All right. Now, there was testimony at trial
21 about your sleeping in the room with [REDACTED] in the
22 front room?

23 A. Correct.

24 Q. What did you tell your lawyers about that?

25 A. That was going to be her bedroom. And that was

1 actually more frequent than what was testified to.

2 Q. Okay. What do you mean by that?

3 A. The front bedroom, I had put blankets and stuff
4 up on the window just so it would be darker during the
5 day. And so I would sleep with her in there.

6 Q. So that wasn't unusual?

7 A. No. No, sir.

8 Q. Were you asked about that at trial?

9 A. No, sir.

10 Q. Did you talk to your lawyer about Ashley having
11 ever picked up the child while you and [REDACTED] were in
12 that bedroom, prior to the date in question?

13 A. No, sir.

14 Q. All right. Was that ---

15 THE COURT: What was that question again,
16 I'm sorry. I just didn't follow it.

17 MR. CHILDS: I understand. I didn't follow
18 it too well either.

19 Q. Did you talk to your lawyers about the pattern
20 that you had with sleeping with [REDACTED] in that
21 bedroom and Ashley checking on the child. Whether or
22 not Ashley previously had picked the child up from
23 that bedroom while you were sleeping?

24 A. We had conversations about that. I wouldn't say
25 it was in any detail. But it was explained to them

1 that on occasion she would come in there while I was
2 asleep and grab [REDACTED] feed her, bathe her, anything
3 like that.

4 Q. Okay. And were you asked about that at trial?

5 A. No, sir.

6 Q. Did you want to be asked about that?

7 A. Yes, sir.

8 Q. Why?

9 A. It would have -- in my opinion, it was important
10 because they were trying to say that it couldn't have
11 been done.

12 Q. Now, there was testimony about the -- I think
13 there's an exhibit about how dark that room was?

14 A. Uh-huh (affirmative).

15 Q. Was that room extremely dark?

16 A. Yes, sir.

17 Q. In fact, I think the affidavit -- the exhibit
18 would show that the officer had to use a flashlight to
19 see in the room?

20 A. Yes, sir.

21 Q. Is that how the room was lit?

22 A. By a flashlight?

23 Q. Well, no, I mean, was it that dark?

24 A. Oh, yes, sir.

25 Q. All right. And so when Ashley previously had

1 checked on the child while you were in the room, how
2 was she able to see and make sure the child was okay?

3 A. I couldn't tell you that.

4 Q. On the night in question, you don't recall her
5 taking the child; correct?

6 A. No, sir.

7 Q. But what kind of sleeper are you?

8 A. Pretty heavy.

9 Q. Okay. Well, what do you mean by that?

10 A. Meaning -- literally?

11 Q. What do you mean by you're a pretty heavy
12 sleeper?

13 A. Literally, you could run up and down the hall and
14 I wouldn't wake up.

15 Q. Okay. Had there been occasions in the past prior
16 to this incident that Ashley took the child from your
17 presence and ---

18 MR. WHITMIRE: Objection. Leading question.

19 THE COURT: Rephrase, please?

20 Q. Prior to the date of the incident, had there been
21 an occasion ever that the child was not still sleeping
22 with you?

23 A. Yes.

24 Q. Could you tell the Court about that?

25 A. I mean, it was frequently. Like I said, Ashley