

STATE OF SOUTH CAROLINA

IN THE COURT OF APPEALS

Appeal from Richland County

Honorable R. Knox McMahon, Circuit Court Judge

ORIGINAL

THE STATE,

RESPONDENT,

V.

SHANE ISAAC JOHNSON,

APPELLANT

APPELLATE CASE NO 2017-000873

RECORD ON APPEAL

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COURT'S EXHIBIT NO. 1 (VIDEO);
STATE'S EXHIBIT NOS. 1-16 (PHOTOGRAPHS)**

1 sometimes the law's not practical. I don't think it would
2 necessarily be prudent for me to do that.

3 If the case were to go to the jury, then of course
4 they could have a clean recording, a clean computer to
5 listen to it all they wish.

6 I will, I think I'll tell them there's not a
7 transcript at this time, and we'll -- the parties will try
8 to do something, something will try to be done to enhance
9 the quality of, of the tape in the -- by in the morning. I
10 think that's all I'm going to tell them at this time
11 because I don't want to tell them, yes, there's a tape
12 available and then it never be -- it would be offered in
13 evidence and then I exclude it and, like, wait. What?
14 Where's the tape? You know what I'm saying?

15 It's not within your province. The record is created
16 by the items that are put into evidence, whether good
17 quality or not good quantity. It's just like undercover
18 tapes.

19 MR. BANK: Yes, sir.

20 THE COURT: So, I, I think that's what I'll tell them
21 at this point.

22 MR. BANK: Yes, sir.

23 THE COURT: Kind of a bland answer or a non answer.

24 (A PAUSE.)

25 MR. BANK: Your Honor.

1 THE COURT: Yes.

2 MR. BANK: Could I get my notes back?

3 THE COURT: Of course. Yes, sir.

4 There's about thirty minutes left on it, Solicitor?

5 MR. FYALL: Yes, Your Honor.

6 THE COURT: Okay.

7 (THE JURY ENTERS AT 5:47 P.M.)

8 THE COURT: And again y'all always move except that
9 gentleman back there and the gentleman next to him. I see
10 the three on the front.

11 Be that as it may, thank you. Thank you very much for
12 your question. I have to take up certain matters outside
13 the presence of the jury, but again, Mr. Juror, thank you.
14 Thank you very much.

15 What I -- what myself and the parties talked about was
16 seeing if we could get some better audio equipment to
17 enhance the quality of the audio tape. It's approximately
18 thirty minutes left on the audio, according to the
19 solicitor that's operating it. And so I want to break
20 momentarily, and we'll listen to that in the morning, and
21 there is one more witness on behalf of the state.
22 Thereafter, there will be -- the next phase would begin
23 based on certain rulings I would have to make.

24 The short answer is there is no transcript at this
25 time. That's the short answer, and y'all are probably

1 tired of listening to me, number one, and listening to what
2 I always repeat of myself: I can't predict what may be in
3 the future. I can predict anything but the future. So,
4 what we'll do is break today. Well, I don't want to quote
5 him, but I feel your pain, so to speak, and we'll see what
6 we can do about it enhancing the quality. And if you want
7 to go back and listen to it again, you certainly may.

8 As you recall in my opening to you, I said whatever
9 items are introduced into evidence, you will have them with
10 in you in your jury room at the time of your deliberations.
11 If there were audiotapes, which they are introduced into
12 evidence, you would have a clean computer to listen to them
13 on also. We'll see, we'll see if we can't upgrade it a
14 little bit, so to speak, okay?

15 All right, 9:30 in the morning. Do not discuss the
16 case. Do not watch any news reports. Do not do any
17 independent research or any research on the Internet. Hope
18 y'all have a pleasant evening, and be safe. Thank you.
19 Thank you very much. See you at 9:30 in the morning.

20 (THE JURY EXITS AT 5:50 P.M.)

21 THE COURT: Any objections to anything I've told them,
22 Mr. Bank?

23 MR. BANK: No, sir.

24 THE COURT: Solicitor?

25 MS. CAMPBELL: No, sir.

1 THE COURT: All right, thank you. Thank -- if we can
2 enhance the quality, let's see what we can do. Move it
3 around, whatever. It is very, it is very distorted.
4 Nobody's fault. It is what it is, and they count a lot.

5 Anything further before we break?

6 MR. BANK: No, sir.

7 THE COURT: Solicitor, anything further before we take
8 our recess?

9 MS. SIMPSON: No, sir.

10 THE COURT: 9:30 in the morning. Thank y'all. Thank
11 y'all very much.

12 (WHEREUPON, THE CASE IS AT EASE.)

13 FRIDAY, APRIL 7, 2017

14 (COURT RESUMES AT 9:50 A.M.)

15 THE COURT: All right, Solicitor.

16 MS. CAMPBELL: May it please the court, Your Honor?

17 At the break last night, of course one of the jurors
18 requested a transcript of the thing, and we indicated that
19 we would try to work on it to make the quality of the sound
20 better. We have worked on it. The quality of the sound is
21 not significantly better.

22 Last night, Mr. Fyall did prepare a transcript of the
23 remaining part, and we did email that to the defense. They
24 did have an opportunity to review that transcript, and it
25 had two words that they wanted changed, which we changed.

1 So, they are in agreement that that represents what is
2 heard on the tape. And at this time, we would ask for the
3 rest of the tape, that they be allowed to use the
4 transcript.

5 Of course you could address -- I think it would be
6 appropriate for you to remind them that the transcript is
7 only to help them and they are to rely on what they've
8 heard and not the transcript itself. And they did have an
9 opportunity to review it, and we have changed two words
10 which they requested. I don't know what their position is.

11 THE COURT: Thank you. Thank you, Solicitor.

12 Mr. Bank.

13 MR. BANK: Thank you, Your Honor. We did have a
14 chance to review it, scrambling this morning to see how
15 accurate it can be. I think there might be some typos or
16 something, but as long as it's limited to this section that
17 they've transcribed ---

18 THE COURT: Limited?

19 MR. BANK: This section at the time that they asked to
20 be able to hear it. You know, for example, I think the
21 first tape is clear; they were able to hear it. The second
22 tape, at this point they're having trouble with it. I'll
23 consent to this part of it being transcribed and them
24 having a copy of it. If we're going to talk about any
25 other transcriptions, that might not be the case, but for

1 this specific one that the jury is asking for, we're fine
2 with it.

3 THE COURT: All right, and, and let me ask you this
4 now. You're just talking about them having access to the
5 tape -- excuse me, to the transcript while they are
6 listening to the remaining parts of that audio, correct?

7 MS. CAMPBELL: Correct.

8 MR. BANK: Correct.

9 THE COURT: Not offering it in evidence.

10 MS. CAMPBELL: No, sir.

11 THE COURT: It's not going to the jury room.

12 MS. CAMPBELL: No, sir.

13 MR. BANK: That's correct.

14 THE COURT: All right, and you consent to that?

15 MR. BANK: Yes, sir.

16 THE COURT: All right, and I do want one of them
17 marked, but I want a copy of it, number one, and I'm going
18 to have that marked as a court's exhibit.

19 MR. BANK: Yes, sir.

20 (TRANSCRIPT MARKED INTO EVIDENCE AS COURT'S EXHIBIT
21 NUMBER 10.)

22 THE COURT: All right, and let's have our bailiff,
23 when he gets in here, we'll have our bailiff hand them out,
24 Solicitor.

25 MS. CAMPBELL: Yes.

1 THE COURT: All right, anything further before we
2 bring in our jury?

3 MR. BANK: Just two quick issues, one just to put on
4 the record. Ms. Campbell and myself have been discussing
5 the forensic evaluations that have been done on the phones.

6 THE COURT: Yes, ma'am -- yes, sir. Sorry.

7 MR. BANK: Just to give you a little bit of background
8 so you have some context about what I'm talking about, law
9 enforcement has been in possession of both these phones for
10 the majority of this ---

11 THE COURT: I'm aware of what you're talking about,
12 and then Mr. Watkins ---

13 MR. BANK: No, it's been -- the phones were originally
14 in the possession of law enforcement with VanHouten from
15 Secret Service.

16 THE COURT: That's right. I understand.

17 MR. BANK: The phones were apparently given back to
18 Kristin Campbell about a month ago; they were released from
19 evidence and given back. Once the solicitor's office found
20 out about that, they asked for the phones to be returned,
21 to be back in their custody. At about that same time, we,
22 the defense, were asking to -- if they would consent to us
23 doing an independent physical forensic evaluation
24 ourselves.

25 We have done that. We have given the solicitor's

1 office what we've had. It's, it's been so last minute and
2 everything else that I think we've come to an agreement
3 that we're just not going to bring up the forensic
4 evaluation that was done by Chris Watkins, my investigator.
5 That any discussion about the phones is going to be limited
6 to Investigator Charley stating that it was given to
7 VanHouten, and VanHouten was unable to obtain anything off
8 the phones, which is accurate.

9 THE COURT: Correct, Solicitor?

10 MS. CAMPBELL: Correct.

11 THE COURT: Is that not correct? Not Mr. Bank. You
12 agree with that?

13 MS. CAMPBELL: Yes, sir. We'll just say that it was
14 given to VanHouten with the Secret Service and that he was
15 unable to retrieve any information or data from these
16 phones.

17 THE COURT: All right.

18 MS. CAMPBELL: I believe one of them is a phone and
19 the other one...

20 MR. BANK: The one, other one we can't get in to
21 because it has a pass code anyway.

22 MS. CAMPBELL: It has a pass code.

23 MR. BANK: I think that that just keeps it clean.

24 And the final issue, Your Honor, which I don't think
25 we have agreement on is Ms. Campbell told me that they in

1 some way want to present evidence that they are unable to
2 locate Bruce Gibbs currently. I would object to that or am
3 objecting to that. We haven't brought up Bruce Gibbs.
4 They've brought up Bruce Gibbs as a witness in opening and
5 with their investigators and all these things, and now they
6 want to tell the jury, oh, by the way. We can't find him.

7 It's, it's not relevant. It might be relevant to how
8 they're presenting their case, but it's not relevant to
9 what actually happened. Whether they can currently find
10 Bruce Gibbs or not or have tried, or I think she said they
11 think he's avoiding them because of a warrant.

12 I haven't brought up Bruce Gibbs. I don't -- I'm not
13 going to be bringing it up on cross. They've brought him
14 up. I don't think that they should be able to bring up and
15 talk about a witness and then get to come back and say by
16 the way, we can't find him and leave whatever implications
17 might be in the air. I think it's a straight relevance
18 issue. Them currently not being able to find him has no
19 relevance to what happened on October 7th.

20 THE COURT: Well, just, just let me -- well, let me
21 hear from you.

22 MS. CAMPBELL: Your Honor, it's Mr. Johnson and Ms.
23 Campbell that bring up Bruce Gibbs shows up after this
24 event occurs. That's in their statements, as well as their
25 testimony.

1 MR. BANK: That they presented.

2 MS. CAMPBELL: Yes, sir, I think all -- we don't have
3 to go into the underlying fact that there are outstanding
4 warrants for him. However, I do think we are allowed to go
5 into -- and I've got Investigator Cullor from our office in
6 the courtroom, Your Honor, and he can address the attempts
7 he's made and we have made over the last month to secure
8 his attendance at this trial, and we have been unable to
9 get him here. The jury, of course, has a right to know why
10 or why we don't present evidence if it's relevant. And we
11 have simply not been able to find him anywhere.

12 He apparently has been seen in the Winnsboro area.
13 It's my information, and I don't want to misquote.
14 Investigator Cullor can address this better, that there are
15 some outstanding either warrants or something from family
16 court. I don't know if it's for back pay or what, but
17 anyway, that he has been avoiding -- we have been in
18 contact with law enforcement up there in an attempt to get
19 him served, and we have been unable to get him.

20 The only thing we want to put on the record is that,
21 you know, is that we attempted to secure his attendance in
22 this trial, and we have been unable to get him here, to
23 find him. Now, they could hold that against us in that we
24 didn't try hard enough, but we at least have the right, I
25 think, to present that we attempted to get him.

1 THE COURT: Mr. Bank.

2 MR. BANK: The whole, this idea that he's avoiding
3 them or whatever it might be is speculation, and I don't
4 know that anybody's -- they have anybody that's talked to
5 Mr. Gibbs that has said that to an investigator that we've
6 avoid -- that he's avoid -- I don't know. I don't have Mr.
7 Gibbs under subpoena. I don't know where Mr. Gibbs is.

8 I don't know that the jury has a right to know why the
9 solicitor's office may or may not have problems with their
10 case. That is their own issue. They've been preparing for
11 trial. This has been ---

12 THE COURT: I thought that's what you were trying, Mr.
13 Bank.

14 MR. BANK: They, they've had a year and a half to get
15 this guy under subpoena or whatever they want to do. The
16 fact that they're having problems with it is not something
17 that's relevant for the jury to know. Again, I haven't
18 brought up Bruce Gibbs; I haven't opened up the door to
19 anything. They shouldn't be allowed to talk about a
20 witness, have a whole bunch of inferences about what he may
21 or may not have seen, present audio testimony or audio
22 recordings of the officer talking about Bruce Gibbs and
23 whether he thinks he's, you know, trying to help Shane or
24 not and then go, oh, and by the way. We can't find him.
25 That's just, that's not fair to us. Because if we open the

1 door to something -- but we simply haven't. I just -- it's
2 relevant to how they're presenting their case, but it's not
3 relevant to Mr. Johnson's case.

4 MS. CAMPBELL: Your Honor, I think it's very relevant
5 why a witness that was there for shortly after this
6 occurred, that the defendant called afterwards by his own
7 admission, that's before the court, that we have not
8 presented his testimony, which we wanted to. We just can't
9 find him. I don't think it's any kind of burden shifting.

10 THE COURT: Well, that, that, that would be
11 speculation as far as whatever his testimony may be, but
12 I ---

13 MS. CAMPBELL: I wouldn't go into what his testimony
14 would be.

15 THE COURT: No, I, I understand that, but it would
16 still be speculation, but there, there's a case in the
17 Court of Appeals. I think the name of it is *State vs.*
18 *Dominick* which the reverse was argued. That the defendant
19 could argue in a criminal trial the failure in the closing,
20 the failure of the state to call a witness, the failure to
21 call a witness. And the court ruled that, no, you can't
22 argue that.

23 Now, what, what y'all presented to me, I think, is an
24 issue of whether you're going to cut your throat left to
25 right or right to left. Your throat's still going to be

1 cut.

2 If I allow it in as under the quality of the
3 investigation, the quality of the investigation or the
4 presentation, which is different, a little different, that
5 we tried to find this witness and were unable to do so,
6 then Mr. Bank can argue the inequality or ineffective
7 quality of the investigation that they couldn't find the
8 witness. And the jury just knows he was there, depending
9 on their determination of credibility, but they, they
10 don't, they don't have any idea as to what he observed,
11 statements he made, what he saw.

12 I'm going to rule it's not admissible for the state to
13 offer that, nor is it admissible for the defense to argue
14 the failure to call a witness in the closing.

15 MR. BANK: Closing, yes, sir.

16 THE COURT: All right?

17 MR. BANK: Yes, sir.

18 THE COURT: Thank you. Thank you very much. Anything
19 further?

20 MR. BANK: No, sir.

21 THE COURT: Thank you.

22 MS. CAMPBELL: Your Honor, yes, one other thing. I'm
23 sorry.

24 THE COURT: Just a minute, Mr. Bailiff.

25 Yes, ma'am.

1 MS. CAMPBELL: I have instructed our last witness that
2 he is not to go into when she calls the police because
3 she's scared of him, any kind of domestic abuse. He's also
4 asked me to limit his contact with DSS. We'll agree to do
5 that, but because of that, I'm going to kind of lead him a
6 little bit through, kind of point him to different points
7 in his follow up, Your Honor.

8 In addition, Your Honor, there was a final statement
9 that we've agreed on following bond court. The defendant,
10 Shane Johnson, requested to speak to the investigator. He
11 went back there. He then stated without questioning that
12 it was an accident. He didn't know the water had gotten so
13 hot. At that point Investigator Charley tells him to stop
14 talking. Johnson says:

15 I know I have to pay for what I've done, but I
16 don't beat on Kristin. We were lying on the bed,
17 and all of a sudden the police were knocking on
18 the door.

19 I've advised him he cannot -- and we have agreed to
20 this redaction -- that he cannot go into the part about I
21 don't beat, but I don't beat Kristin or: We were lying in
22 bed and all of a sudden the police were knocking at the
23 door.

24 Is that a correct assessment?

25 MR. BANK: That's correct.

1 THE COURT: All right. Thank you. Thank you very
2 much.

3 MS. CAMPBELL: Investigator Charley, you understand
4 you're not to go into that?

5 THE COURT: And I think the solicitor just said she's
6 going to lead, ask leading questions, Mr. Bank.

7 (THE JURY ENTERS AT 10:06 A.M.)

8 THE COURT: All right, good morning, ladies and
9 gentlemen of the jury panel. Welcome back. I'm going to
10 just quit apologizing. Y'all, y'all got it in your minds.
11 You know it exactly.

12 During the overnight hours, a transcript was prepared
13 for the remainder of the tape. The parties have reviewed
14 it. It will be distributed to each of you while you also
15 listen to the remainder of the tape.

16 The quality of the sound in the remainder of the tape
17 is really not significantly better whatsoever, but it does,
18 it does help to have a copy. Obviously it helps each of
19 you, me, each of us to have a copy. So, got about thirty
20 minutes left of the tape, and then one final witness on
21 behalf of the state. So, we're going to press on. Thank
22 you very much.

23 Solicitor, would you have the bailiff hand those among
24 the members of the jury?

25 Mr. Bailiff.

1 MS. CAMPBELL: Thank you.

2 THE COURT: Thank you, Solicitor, and thank you, Mr.
3 Bank.

4 (A PAUSE.)

5 THE COURT: All right, Solicitor, you can -- you ready
6 to begin the tape?

7 MR. FYALL: Yes, Your Honor.

8 THE COURT: All right. Thank you. Thank you very
9 much, Solicitor.

10 (WHEREUPON, PLAY OF STATE'S EXHIBIT NUMBER 97 RESUMES
11 FOR THE JURY. AUDIO IS NOT TRANSCRIBED.)

12 THE COURT: All right, Solicitor.

13 MS. CAMPBELL: Your Honor, at this time we call
14 Investigator Charley to the stand.

15 THE COURT: All right, Detective Charley, if you'd
16 come around and be sworn for us, please.

17 JAMES L. CHARLEY, JR., BEING DULY
18 SWORN, TESTIFIES AS FOLLOWS:

19 CLERK OF COURT: Have a seat in the witness stand,
20 please. State your name for the record.

21 WITNESS: My name is James L. Charley, Jr.,
22 C-h-a-r-l-e-y, Jr.

23 DIRECT EXAMINATION BY MS. CAMPBELL:

24 Q. Investigator Charley, where are you employed?

25 A. City of Columbia Police Department.

J. CHARLEY - DIRECT EXAMINATION BY MS. CAMPBELL

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1 Q. What you do there, sir?

2 A. I am a criminal investigator.

3 Q. And how long have you been with the City of Columbia
4 Police Department?

5 A. Twenty years and ten months now.

6 Q. And prior to being with the city, where were you?

7 A. Military.

8 Q. And you retired with the military and then started in
9 with law enforcement?

10 A. Yes.

11 Q. How long have you actually been in investigations?

12 A. Been in investigations since November 2009.

13 Q. So, approximately coming up on eight years?

14 A. Yes.

15 Q. And what do your duties include as an investigator
16 with the City of Columbia?

17 A. As an investigator, as report of suspected crimes are
18 assigned to me, I investigate to see if, in fact, a crime
19 did occur, what type of crime. I then identify all
20 witnesses, suspects, victims, collect evidence. Then I
21 weigh all that evidence to see if it support the suspected
22 crime. If it support the suspected crime and the suspect
23 can be identified, then a warrant is issued for the arrest
24 of the suspect..

25 Q. So if I call 911, you aren't necessarily the guy that

1 may come as a result of that?

2 A. No.

3 Q. And I notice that you were sitting back there on the
4 first row. Usually you sit at the table. Is there a
5 reason why you sat back there?

6 A. Yes.

7 Q. Why is that, sir?

8 A. Because of my injured ankle, and I need to keep my
9 foot elevated.

10 Q. How did you become involved in this case?

11 A. This case was assigned to me on the morning of October
12 8, 2015.

13 Q. And at that point what, if anything, did you do about
14 starting to collect evidence in this case?

15 A. Once the, once the case was assigned to me, and I
16 understand that the victim, Minor was transported to
17 the Augusta Burn Center, I started making contact with the
18 social worker there.

19 Q. Okay, let me stop you right there. At that point,
20 were you aware of whether or not CPD or anyone from your
21 office had responded to the hospital the night before?

22 A. Yes.

23 Q. And had they generated a report?

24 A. Yes.

25 Q. And had you come to possess, or is that kind of how.

J. CHARLEY - DIRECT EXAMINATION BY MS. CAMPBELL

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1 you get assigned the case?

2 A. Yes. Once the case is assigned to me, it's assigned
3 by way of a report, police-generated report.

4 Q. And that morning, did you have an opportunity to
5 review that report?

6 A. I did.

7 Q. And in that report, were you able to review -- you
8 can't say what it said -- but were you able to review what
9 was reported by the caretakers ---

10 A. Yes.

11 Q. --- as far as what had happened?

12 A. Yes.

13 Q. And did you also get additional information as far as
14 what the child said? You can't say what he said, but as
15 far as what the child said about it?

16 A. Yes.

17 Q. And that was from the doctors at Richland Memorial?

18 A. Yes.

19 Q. And subsequent to that, did you then attempt to make
20 contact with the Augusta Burn Center?

21 A. I did.

22 Q. Did you speak to any doctors there that morning?

23 A. I did speak with Dr. Cartie of the Augusta Burn
24 Center.

25 Q. And you can't say what he said, but was he able to

1 give you information that was vital to your investigation?

2 A. Yes, he did.

3 Q. Including information about what the child said, as
4 well as the injuries he suffered?

5 A. Yes.

6 Q. That day, did you make any attempts to try to get some
7 medical records and photographs from the Augusta Burn
8 Center?

9 A. I did.

10 Q. And did you -- who did you make contact with?

11 A. I made contact with a Ms. Videtto, V-i-d-e-t-t --
12 V-i-d-e-t-t-o, from the Augusta Burn Center.

13 Q. And once you had been given that information, the
14 incident report, the information from the two different
15 doctors from two different hospitals, were you seeking to
16 make contact with the caretakers of the child?

17 A. Yes, also.

18 Q. And did you make contact with either Mr. Johnson or
19 Ms. Campbell that morning?

20 A. I did.

21 Q. That afternoon or something?

22 A. Yes, I did.

23 Q. And who did you make contact with?

24 A. Ms. Campbell.

25 Q. And where was she when you make contact with her that

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1 day?

2 A. She stated she was at the Augusta Burn Center that
3 day.

4 Q. And where was her boyfriend at that time?

5 A. She stated that he was at work.

6 Q. And that was -- who was her boyfriend?

7 A. Shane Johnson, defendant Shane Johnson.

8 Q. What, if anything, did you ask her to do when she had
9 the chance?

10 A. I asked, I asked her -- because she stated she was
11 down there with her child, and not knowing the detail, I
12 asked her to, as soon as she could, it was important I
13 speak to her immediately and have her boyfriend, defendant
14 Johnson, come in to speak with me as well.

15 Q. And did she indicate that she would try to make that
16 happen?

17 A. Yes.

18 Q. And again this is on October the 8th?

19 A. That's correct.

20 Q. The next day did you continue to work on this case?

21 A. I did.

22 Q. And that morning what happened about 8:30 a.m.?

23 A. Well, I initiate a report and amend the case to take
24 Minor into protective custody. And once getting him
25 into protective custody, of course I forward the case, copy

1 of the incident report, to DSS, as well as notifying the
2 social worker down at the Augusta Burn Center that ----

3 Q. Okay, let me stop you there. That morning when you
4 first came in, did you get a voice mail from anyone?

5 A. Yes.

6 Q. And who did you get a voice mail from?

7 A. That voice mail was from Kristin Campbell. I think it
8 was, like, 5:30 in the morning.

9 Q. Around 5:30 in the morning?

10 A. Around 5, 5:30 in the morning.

11 Q. And then I believe it was later that day you started
12 making arrangements to take the child into emergency
13 protective custody?

14 A. That's correct.

15 Q. And is that unusual in a case such as this?

16 A. No, it's not.

17 Q. And what's the purpose of doing that, sir?

18 A. To ensure the safety of the child, that the child is
19 not in imminent danger.

20 Q. And this is while the investigation is ongoing?

21 A. Right.

22 Q. And at that point, were you also aware that the child
23 was going to be at the Augusta Burn Center for an extended
24 period of time?

25 A. Yes.

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1 Q. After receiving the voice mail from Ms. Kristin
2 Campbell that they would be coming in, did they show up
3 that day?

4 A. They did.

5 Q. And this is on the 9th they showed up?

6 A. On the 12th that they show up.

7 Q. Okay. So, they didn't show up on the 9th?

8 A. No.

9 Q. They didn't show up on the 10th or the 11th?

10 A. Right.

11 Q. That was actually, to be fair, a weekend, wasn't it?

12 A. Yes.

13 Q. And prior to leaving work that day, did you also try
14 to set up what's called an ARC interview or an assessment
15 for this child?

16 A. Yes.

17 Q. And what is the ARC or the Assessment Resource Center?

18 A. It's a center that specialize in interviewing
19 children.

20 Q. And there was also a medical exam that was set up?

21 A. Yes.

22 Q. But of course none of that could happen until he'd
23 been released from the hospital.

24 A. That's correct.

25 Q. Moving your attention to October the 12th, that

1 morning did you call to check on the welfare of the child?

2 A. I did.

3 Q. And who did you make contact with?

4 A. The child's, [REDACTED] Minor [REDACTED] grandmother, Ms. Debra
5 Campbell and his aunt Sonia Caree. I think that how she
6 pronounce that name.

7 Q. That morning, did you also discuss this case with
8 other investigators in your office?

9 A. Yes, I did. Yes.

10 Q. And around 11:25 that morning, what did you do?

11 A. I called Kristin Campbell and Shane Johnson and
12 scheduled an interview. They arrive approximately 12:30
13 p.m.

14 Q. And who actually conducted those interviews?

15 A. Investigator Fields, Sergeant Fields now, she
16 conducted the interview with Kristin Campbell. Myself and
17 Investigator Bailey conducted the interview with defendant
18 Shane Johnson.

19 Q. And at that point, were they both persons of interest
20 in your case?

21 A. Yes.

22 Q. As far as how did the injuries -- who did the injuries
23 and how they were inflicted?

24 A. Correct.

25 Q. And that day, did the interview take place?

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1 A. Yes, it did.

2 Q. And did you interview Kristin Campbell?

3 A. I did not, not on October 12th.

4 Q. But there was an interview done with her that day?

5 A. Yes.

6 Q. And was it recorded?

7 A. Yes.

8 Q. Was there an additional interview done of Shane
9 Johnson that day?

10 A. Yes.

11 Q. And at that point, was anybody in custody?

12 A. No, they weren't.

13 Q. Was anybody under arrest?

14 A. No, they were not.

15 Q. Were you still investigating?

16 A. Yes.

17 Q. But prior to talking to both of these people that day,
18 were they advised of their rights?

19 A. They, they were.

20 Q. And I'm going to show you what's been marked as
21 State's Exhibit Number 25. I believe it's in evidence. Do
22 you recognize that?

23 A. I do.

24 Q. And what is that, sir?

25 A. It's the Advice of Rights form we use that we --

1 before we question any suspects of -- in a crime, we advise
2 them of their rights.

3 Q. And was that the actual form that was used that day by
4 you and Investigator Bailey when advising Mr. Johnson of
5 his rights?

6 A. It is.

7 Q. And at the bottom of that, I believe there's an area
8 called a Waiver of Rights?

9 A. Yes.

10 Q. And prior to talking to him, did y'all go over the
11 Waiver of Rights?

12 A. Yes.

13 Q. And at that point, once he had been advised of his
14 rights and advised of his waiver of rights, did he choose
15 to speak to you?

16 A. He did.

17 Q. And, in fact, he wanted to tell you his story that
18 day?

19 A. Yes.

20 Q. In the recording that's been played, which is State's
21 Exhibit Number 93, earlier or earlier in the week, part of
22 yesterday, was that the interview that was conducted?

23 A. It was.

24 Q. And I noted at the end of the interview, you went
25 through a series of questions.

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1 A. Yes.

2 Q. And kind of broke down some answers.

3 A. Yes.

4 Q. Can I show you what's been marked as State's Exhibit
5 94? Do you recognize that?

6 A. I do, yes. It's a question and answer form I use when
7 I speak with victims, suspects, and while I'm doing the
8 interview, I'll go back over things. So, you said this,
9 you said this, and I'll write the answer down. And at the
10 conclusion of the interview, I would go over everything
11 with them to make sure it's accurate and nothing was added
12 or taken away and then have them to sign the form.

13 Q. And the questions and answers that were gone over on
14 this piece of paper are actually recorded on the...

15 A. That's correct.

16 Q. And that would be the best evidence?

17 A. Yes.

18 Q. What information was Shane Johnson able to give to you
19 that day about his participation in what happened to

20 **Minor**

21 A. On that day, Shane Johnson on October 12th, Shane

22 Johnson stated he had nothing to do with putting **Minor**

23 **Minor** in the shower. He stated that the mother handled all

24 of that. In the beginning of the relationship, defendant

25 Johnson stated that he may have turned the water on once or

1 twice but he, he was strongly adamant that he had nothing
2 -- or take -- nothing to do with the child in the shower.

3 Q. That day or the next day, were you able to also review
4 the interview of Kristin Campbell?

5 A. I did.

6 Q. And at that point, did she give pretty much the same
7 information?

8 A. Yes. On that date -- this is at the interview she did
9 with Investigator Fields -- she stated that she did
10 everything. That defendant Johnson had nothing to do with
11 giving the victim, [Minor] his shower or turning the
12 water on. She state that she had everything to do with it.

13 Q. Did she say she burned [Minor] though?

14 A. She didn't say she burned [Minor] but she stated that
15 she placed him in the shower.

16 Q. And, in fact, in both interviews who did they indicate
17 burned [Minor] [Minor]

18 A. They stated that he was allowed to be there by
19 himself, that he caused it himself.

20 Q. And at this point, are you still getting information
21 from the doctors and records and things of that nature?

22 A. Yes. I'm still working on getting the medical records
23 and photographs and things like that, like that.

24 Q. That evening, did you also prepare some search
25 warrants in this case?

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1 A. I did.

2 Q. And was one of the search warrants for medical
3 records?

4 A. Yes.

5 Q. In addition to that, did you also get a search warrant
6 for the residence at 804 Easter Street?

7 A. I did.

8 Q. The next day, moving to October the 13th, did you then
9 give the search warrant to the Palmetto Richland record
10 department?

11 A. Yes, I did.

12 Q. And did you also make arrangements to execute a search
13 warrant at 804 Easter Street on the next day on October
14 14th?

15 A. Yes, I did.

16 Q. I want to move to October the 14th. Did you make
17 arrangements for a crime scene investigator to meet you at
18 804 Easter Street?

19 A. Yes, I made arrangements for the crime scene
20 Investigator Sutton.

21 Q. And who all was there when the search warrant was
22 executed and the area was photographed?

23 A. Myself, Investigator Bailey, Investigator Sutton, and
24 I believe Bailey may have had an intern with him.

25 Q. And that day, were there photographs taken of the

1 house?

2 A. Yes, it was.

3 Q. Of the exterior and interior?

4 A. Yes.

5 Q. And were there photographs taken of the water heater
6 itself?

7 A. It was.

8 Q. And I've noticed, and the photographs are in evidence,
9 but the water heater, were y'all able to check the settings
10 it was on that day?

11 A. Yes.

12 Q. And again, how long is this after this occurred?

13 A. October 14th, seven days past the date of the
14 incident.

15 Q. And were y'all able to gain access to where you set
16 the water heater easily?

17 A. Yes.

18 Q. And that was photographed?

19 A. Right.

20 Q. And what was the setting it was on at that point seven
21 days later?

22 A. The setting was on C, which would indicate hot.

23 Q. That day while you were at the house, did anyone also
24 try to take some measurements as far as the water
25 temperature?

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1 A. Yes. Investigator Bailey did.

2 Q. And were you there when he did that?

3 A. Yes.

4 Q. And he did it right up where it comes out?

5 A. I didn't observe him actually get the measurement
6 because I was just looking at the layout of the house and
7 kind of walking through.

8 Q. Okay, and in doing that, did you prepare a diagram of
9 the layout of the house?

10 A. I did.

11 Q. And is it to scale, scale though or is it just
12 approximate?

13 A. Approximately.

14 Q. And I want to show you what's marked as State's
15 Exhibit 96. Do you recognize this? This is a blowup.

16 A. Yes, I do.

17 Q. And is that a diagram you prepared?

18 A. Yes.

19 MS. CAMPBELL: Your Honor, at this time we'd offer
20 State's Exhibit 96 into evidence.

21 MR. BANK: Without objection.

22 THE COURT: State's 96 in evidence without objection.

23 (DIAGRAM MARKED INTO EVIDENCE AS STATE'S EXHIBIT
24 NUMBER 96.)

25 MS. CAMPBELL: And I just don't want to -- I don't

1 want you to have to step down.

2 THE COURT: He may come around.

3 MS. CAMPBELL: Yes, sir. I just didn't want him to
4 have to step down.

5 BY MS. CAMPBELL:

6 Q. Does -- where is the front door on this approximately?
7 I'm sorry.

8 A. That's okay.

9 THE COURT: Is there a pointer?

10 MS. CAMPBELL: Yeah, there's a pointer right there,
11 Your Honor. I should have grabbed it. I apologize. Thank
12 you very much.

13 BY MS. CAMPBELL:

14 A. This indicate the three steps. This is the front
15 porch, and this is the entrance to the house.

16 Q. Okay, and as you enter the house, what room do you
17 come into?

18 A. You come into the living room.

19 Q. And is there a dining area in the house?

20 A. Yes. Right across from the living room to the left is
21 the dining area.

22 Q. And you also indicate on here that there is a hallway.

23 A. Yes.

24 Q. And down that hallway, what were the significant rooms
25 to you aa far as what you were trying to...

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1 A. The first room on the right coming down the hallway on
2 the -- yes, on the right, which is the full bath where the
3 incident occurred, and further down the hallway is the
4 entrance to Mom's bedroom. In Mom's bedroom is the half
5 bath where the towels were kept where Mom was -- told us in
6 the beginning of the first interview where she went to get
7 the towel once she heard her son hollering.

8 Q. And where is [Minor] bedroom?

9 A. Down the hallway, straight down the hallway is
10 [Minor] bedroom, right off of Mom's bedroom.

11 Q. Okay, and the water heater was located inside or
12 outside the house?

13 A. On the outside.

14 Q. Moving your attention to -- at that point, were you
15 aware of who was actually living in the Easter Street house
16 when you executed the search warrant?

17 A. Yes.

18 Q. And who was living there at that point?

19 A. Kristin, defendant Kristin and defendant Shane Isaac
20 Johnson.

21 Q. Moving your attention to October the 15th, did you
22 attempt to make contact with a magistrate in Georgia as far
23 as getting a search warrant for some records from the
24 Georgia burn center?

25 A. Yes, I, yes, I did make contact with them to try to --

1 I was having problems trying to get the medical records and
2 I didn't know the process, being that they were a different
3 state, and I was told to call this office.

4 Q. And again at this point, you were still investigating?

5 A. Yes.

6 Q. That day, did you also make contact with Dr. Cartie
7 again at the Augusta Burn Center?

8 A. Yes, by way of email.

9 Q. Okay. Later that day, did you also call 911 to check
10 about a traffic spot -- stop, that occurred when the two
11 defendants finally took him to the hospital?

12 A. Yes, I did.

13 Q. And were you able to determine at that point who
14 actually made the stop?

15 A. Not, not on that day. They stated that there was a
16 stop made, but it wasn't -- the officer that made the stop
17 during that day wasn't the officer involved in this
18 incident that stopped the victims and the defendants on the
19 way to the hospital.

20 Q. At a later time, were you able to determine which
21 officer that was?

22 A. Yes.

23 Q. And would that be Officer Williamson?

24 A. Yeah. Right.

25 Q. And at a later time, did you also contact him just to

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1 get his information?

2 A. I did.

3 Q. That day, did you speak to a Ms. Barbara Richardson?

4 You can't say what she said.

5 A. Yes.

6 Q. And what was her relationship to either -- just say
7 what her relationship was to either Kristin Campbell or
8 Shane Johnson.

9 A. Her relationship was with Kristin, defendant Kristin
10 Campbell. She acted as a guardian, godmother type figure
11 to Kristin Campbell.

12 MS. CAMPBELL: Beg the court's indulgence?

13 THE COURT: Yes, ma'am.

14 BY MS. CAMPBELL:

15 Q. I want to turn your attention. At this point, did you
16 think that you needed to re-interview the two defendants?

17 A. Yes.

18 Q. Potential defendants, I guess, at this point?

19 A. Yes.

20 Q. And why was that?

21 A. Because of the inconsistency in the -- in what they
22 reported and what was reported in the medical report and,
23 of course, what the victim say.

24 Q. And did you make arrangements to meet with them again?

25 A. I did.

1 Q. And how did that happen?

2 A. I notified Ms. Campbell phone, defendant Kristin
3 Campbell by phone and scheduled another interview.

4 Q. And did Mr. Johnson and Ms. Campbell come back to
5 headquarters? Where did that take place?

6 A. Our headquarters at that time, because I was assigned
7 to the Special Victims Unit, was located at 2132 Devine
8 Street in Five Points.

9 Q. And is that where the previous interview had taken
10 place as well?

11 A. Yes.

12 Q. And did they come to the office?

13 A. They did.

14 Q. And approximately what time of day was that, sir?

15 A. About 10 a.m. on the morning of October 19th.

16 Q. And did you make arrangements for both of them to be
17 interviewed that day?

18 A. Yes, I did.

19 Q. And did you interview both of them or one of them?

20 A. I interview both of them myself, with Investigator
21 Odom assisting on that day.

22 Q. And who did you interview first?

23 A. We interview defendant Kristin Campbell first, the
24 mother.

25 Q. And at that time, did she give you additional

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1 information?

2 A. Yes.

3 Q. And was her -- you can't say what she said, but was
4 her information significantly different from what she had
5 said before?

6 A. Significantly different, yes.

7 Q. Prior to interviewing her, had she been advised of her
8 rights?

9 A. Yes, she was.

10 Q. And was that advice of rights as well as the interview
11 recorded?

12 A. Yes, it was.

13 Q. After speaking to her, did you then speak to Mr.
14 Johnson?

15 A. I did.

16 Q. And was he there waiting, or how did that happen?

17 A. We had them in a separate part of the building in
18 another room.

19 Q. Okay, and at that point, was he under arrest?

20 A. No, not at that point.

21 Q. At that point, was he in custody?

22 A. No, he wasn't.

23 Q. Prior to talking to him, however, did you think it
24 prudent to again advise him of his rights?

25 A. Yes.

1 Q. And why is that, sir?

2 A. Because of the additional information that was offered
3 by defendant Campbell, and because we were still
4 questioning him about a crime.

5 (ADVICE OF RIGHTS FORM MARKED AS STATE'S EXHIBIT
6 NUMBER 98 FOR IDENTIFICATION.)

7 Q. I show you what's been marked as State's Exhibit 98
8 for ID purposes.

9 (A PAUSE.)

10 Q. And do you recognize that?

11 A. I do.

12 Q. And what is this, sir?

13 A. It's, again it's the form we use, Advice of Rights
14 form we use when we interview suspects who are suspected of
15 committing a crime.

16 Q. And tell the jury, as they've heard on the tape that's
17 been played earlier which is going to be the recording, did
18 you go through all those rights with him?

19 A. I did.

20 Q. And what rights are those, sir?

21 A. Before we ask you any question, you have -- you
22 must understand your rights. You have a right to
23 remain silent. Anything you say can be used
24 against you in court. You have the right to talk
25 to a lawyer for advice before we ask you any

1 question and to have him with you during
2 questioning. If you cannot afford a lawyer, one
3 will be appointed for you before any questioning
4 if you wish. If you decide to answer questions
5 now without a lawyer present, you will still have
6 a right to stop answering at any time. You have
7 the right to stop answering at any time until you
8 talk to a lawyer.

9 And there is the waiver of rights, and my practice is
10 -- because I go over these step by step with suspects. As
11 I read them off, I have them to initial that they
12 understand exactly what we are talking about, and I have
13 them read out the Waiver of Rights and I read along with
14 them, and that is:

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

22 And I usually just add I'm not trying to persuade them
23 to saying or doing anything.

24 Q. And, in fact, there's actually colloquy between the
25 two of you about the word coercion?

1 A. Yes.

2 Q. And you explained that to him again?

3 A. Yes.

4 Q. And at that point, did he initial by each right?

5 A. He did.

6 Q. Acknowledging he knew what it was, and did he also
7 sign?

8 A. Yes.

9 Q. And then whose signatures are over here?

10 A. Myself and Investigator Odom.

11 Q. And underneath his, Shane Johnson's, signature, I
12 believe it's written out and then his signature?

13 A. Right.

14 Q. Is there also a date of birth?

15 A. It is.

16 Q. And what's his date of birth?

17 A. His date of birth is February the 15th, 1988.

18 Q. All right. Did he agree to talk to you?

19 A. He did.

20 Q. And then the recording that's just been played
21 overnight and today, is that the recording from that
22 interview?

23 A. It is.

24 Q. And at first, who was he blaming in that recording?

25 A. Initially he was blaming defendant Campbell, Kristin,

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1 as the one that placed the child in the shower.

2 Q. And at some point during the interview, did his story
3 change again?

4 A. Yes, it did.

5 Q. At one point in that interview, it sounds like his
6 voice is cracking up and breaking down at some point?

7 A. Yes.

8 Q. Was he crying?

9 A. No tears.

10 Q. Based on the information you had at that point from
11 the victim, from the doctors, from Ms. Campbell, and from
12 the defendant himself in his final admission, what did you
13 do?

14 A. At that point that -- I find that we have enough
15 evidence to pursue a warrant against -- the arrest of Mr.
16 Johnson for inflicting great bodily injury upon a child.

17 Q. And at that point, did you get a warrant that evening?

18 A. Yes, we did.

19 Q. And was he arrested that evening?

20 A. Yes.

21 Q. And that day, did you also arrest Ms. Campbell, or did
22 that happen later?

23 A. Defendant Campbell's arrest came a little later on.

24 Q. Did you also make arrangements to collect any
25 telephones that may have been used by the defendants in

1 this case?

2 A. Yes.

3 Q. And how many telephones did you collect?

4 A. Two. They were in possession of Ms. -- defendant
5 Campbell.

6 Q. And those would have been the phones used by both
7 defendants?

8 A. Yes.

9 Q. Did you submit those to try to get information from
10 them?

11 A. Yes.

12 Q. And who did you submit them to?

13 A. To Investigator VanHouten of the Secret Service.

14 Q. And was he able to get any information from those
15 phones?

16 A. He was -- he did not.

17 Q. I want to turn your attention to the next morning,
18 October the 20th of 2015. Did you attend bond court that
19 morning?

20 A. I did.

21 Q. And following bond court, what, if anything, did Shane
22 Johnson request?

23 A. Following bond court, the court officer advised me,
24 nudged me that defendant Shane Johnson wanted to speak with
25 me. I went in the back where he was, and just say how you

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1 doing? What's up? And he stated that it was an accident.
2 I didn't know the water got that hot. And at that point, I
3 tell him to stop talking. He stated -- he kept talking and
4 stated, look, I know I have to pay for what I done.

5 Q. That's what he told you?

6 A. Yes.

7 Q. I know I have to pay for what I've done. Is that
8 correct?

9 A. Yes.

10 Q. And that's right after he's been there for a bond
11 setting for the charge of infliction of great bodily injury
12 on a child?

13 A. Yes, and I told him to again to stop talking, and I
14 walked away. I walked out.

15 Q. Later on, did you get an arrest warrant for Kristin
16 Campbell?

17 A. Yes, we did.

18 Q. And what was that arrest warrant for?

19 A. Unlawful conduct towards a child.

20 Q. And when was that arrest warrant served?

21 A. On November 2, 2015.

22 Q. During the course of this investigation, did you also
23 attempt to contact a Bruce Gibbs?

24 A. Yes.

25 Q. And had both Ms. Campbell and Mr. Johnson kind of told

1 you he'd shown up after all this happened?

2 A. Yes.

3 Q. Were you eventually able to make contact with him?

4 A. I did. Yes, I was able to make contact.

5 Q. Did that take a while?

6 A. It did. It did. Through several calls and I emailed
7 -- well, not email. I sent the certified letter to his
8 address which was, I guess, answered by his mother and --
9 once she opened it up, and she was concerned. She gave me
10 a call, and I then tell her it was important that I speak
11 with Bruce Gibbs.

12 Q. And as far as in your interview with him, and you
13 can't say what he said, but did he have any direct
14 knowledge of what had happened in the bathroom, too?

15 A. No. He had knowledge of what he seen after the
16 bathroom incident.

17 Q. Later that month -- or did you become aware that the
18 victim was released from the hospital on November the 4th?

19 A. Yes.

20 Q. And at that point, did you follow up as far as getting
21 to the ARC?

22 A. Yes, with the assistance of DSS, yes.

23 Q. And is that when he would have gone later that month
24 in November?

25 A. Yes.

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1 Q. And I believe Dr. Lamb would have examined him at that
2 point?

3 A. That's correct.

4 Q. And was there also an interview that was conducted?

5 A. It was.

6 Q. There at the Assessment Resource Center?

7 A. Yes.

8 Q. And you can't say what was said during the interview,
9 but was Minor again able to relate what had
10 happened to him and who had done it?

11 A. He did.

12 Q. The defendant, has his appearance changed?

13 A. Yes.

14 Q. And how has it changed?

15 A. I had to take a double look when I saw him when I
16 first walked in. He's wearing glasses now, more
17 clean-shaven than he was on -- when I had first contact
18 with him.

19 Q. Let me show you what's been marked as State's Exhibit
20 95 for ID purposes.

21 (A PAUSE.)

22 Q. And this photograph, does this fairly and accurately
23 depict how he looked when you arrested him?

24 A. Yes.

25 MS. CAMPBELL: Your Honor, at this time I'd offer

1 State's Exhibit 95 into evidence.

2 THE COURT: Mr. Bank?

3 MR. BANK: Objection on relevance.

4 THE COURT: All right, under 401 I find it is
5 relevant. State's 95 is in evidence subject to the defense
6 objections.

7 (PHOTOGRAPH MARKED INTO EVIDENCE AS STATE'S EXHIBIT
8 NUMBER 95.)

9 MS. CAMPBELL: Beg the court's indulgence.

10 THE COURT: Yes, ma'am.

11 (A PAUSE.)

12 BY MS. CAMPBELL:

13 Q. When you got the search warrant and went out to the
14 house about a week after this occurred, did you process the
15 crime scene for, like, any DNA or fingerprints or anything
16 of that sort? Would that have been appropriate in this
17 case?

18 A. We didn't do any, any...

19 Q. Because both of them ---

20 A. DNA.

21 Q. --- were still in the house?

22 A. Right.

23 Q. So, would that have been probative of anything as far
24 as your investigation?

25 A. Not as far as my investigation.

J. CHARLEY - DIRECT EXAMINATION BY MS. CAMPBELL

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1 Q. And in your investigation, the only two people other
2 than the victim that were there at the time this happened
3 were who?

4 A. Repeat, please?

5 Q. Who were the only two people, in addition to the
6 victim, that were there when this happened?

7 A. Defendant Kristin Campbell and defendant Isaac Shane
8 Johnson.

9 Q. And the person that we heard in the second statement
10 who admits it's his responsibility, the person who told you
11 that he had to pay for what he had done, do you see him
12 here in the courtroom?

13 A. Yes.

14 Q. Can you point him out for the jury?

15 A. Yes. He's the gentleman that's sitting between the
16 two females to my left.

17 Q. What color shirt does he have on?

18 A. Appears to be tan, tannish color.

19 MS. CAMPBELL: Your Honor, may the record reflect he's
20 identified the defendant?

21 THE COURT: So reflected.

22 MS. CAMPBELL: Thank you. Nothing further.

23 THE COURT: Thank you, Solicitor.

24 Mr. Bank.

25 MR. BANK: Yes, sir.

1 THE COURT: Yes, sir.

2 MR. BANK: Thank you, Your Honor. If it please the
3 court?

4 CROSS-EXAMINATION BY MR. BANK:

5 Q. Investigator Charley, do you ever clean yourself up
6 before you come to court?

7 A. I consider myself clean all the time.

8 Q. You wear the same thing you wear in your living room
9 to ---

10 A. I, I ---

11 Q. --- the courtroom?

12 A. --- change clothes.

13 Q. You change?

14 A. Yes.

15 Q. Now, you were the lead investigator in this case,
16 right?

17 A. Yes.

18 Q. And might be more to it, but essentially your
19 objective is to figure out whether this burn is the result
20 of neglect or intentional or an accident. Is that fair?

21 A. No.

22 Q. That's not fair? Those weren't the three things you
23 were trying to determine?

24 A. No.

25 Q. Now let's switch to this search warrant on the house.

J. CHARLEY - CROSS-EXAMINATION BY MR. BANK

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1 I want to make sure I have the dates right, okay? The
2 incident occurred on October 8th. Is that right?

3 A. Yeah. No, no. The incident occurred October 7th.

4 Q. 7th. Thank you, sir, and I think we come in to some
5 of that midnight time. That's one mistake, so I appreciate
6 you correcting me.

7 Now, you got consent from both Kristin and Shane to
8 search the house on October 12th?

9 A. Right.

10 Q. Is that right? You didn't ask for a search warrant
11 until October 13th, right?

12 A. That's when the -- well, we were still in the process
13 of getting the search warrant as well.

14 Q. Sure. Well, let's talk about a search warrant for a
15 second. The benefit of a search warrant is you don't need
16 anybody's consent to be able to search a house, right?

17 A. Correct.

18 Q. And the process of obtaining a search warrant is that
19 you put a document together to explain you have probable
20 cause and ask a judge to sign it. Is that fair enough?

21 A. That's correct.

22 Q. And how long does it take to type out that paragraph?

23 A. Well, that, that, that depends.

24 Q. Sure. Well, let me ask you this, sir. Did Shane or
25 Kristin do anything to prevent you from getting a search

1 warrant as quickly as you could?

2 MS. CAMPBELL: Objection, Your Honor. They can't ---

3 THE COURT: I'm sorry? I couldn't hear the last part,
4 Solicitor.

5 MS. CAMPBELL: How -- they can't prevent him from
6 getting a -- I, I'll approach.

7 (OFF-THE-RECORD BENCH CONFERENCE.)

8 THE COURT: Everything all right, Mr. Bailiff?

9 BAILIFF: She was asking for water.

10 THE COURT: Oh, okay. All right. That's fine.
11 That's all right.

12 (OFF-THE-RECORD BENCH CONFERENCE RESUMES.)

13 THE COURT: Thank you, Mr. Bank. Thank you,
14 Solicitor.

15 BY MR. BANK:

16 Q. Did Mr. Johnson or Ms. Campbell in any way prevent you
17 from being able to get a search warrant?

18 A. No.

19 Q. Now, the home is a two-bedroom home. Is that fair?

20 A. That's correct.

21 Q. And do you have any idea what the square feet is?

22 A. I spoke to the grandmother. She stated it was about
23 1000 square feet.

24 Q. Okay, and this is the diagram here that we were
25 looking at earlier.

J. CHARLEY - CROSS-EXAMINATION BY MR. BANK

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1 A. Yes.

2 Q. Is that right?

3 A. That's correct.

4 Q. And this ---

5 MR. BANK: And, Your Honor, I'm holding State's
6 Exhibit 96.

7 THE COURT: All right, thank you.

8 BY MR. BANK:

9 Q. This is the bathroom where the shower happened, right?

10 A. Yes. Uh-huh.

11 Q. This is Mom's bedroom, right?

12 A. Right.

13 Q. And down here we have a measurement of -- from Mom's
14 bedroom door entrance to the full bathroom door entrance,
15 which is this wall. Is that right?

16 A. That's correct.

17 Q. And that's 7 feet?

18 A. Yes.

19 Q. Okay. Now, you gathered some type of information that
20 this may not have been the first water heater in the house.
21 Is that correct?

22 A. Repeat?

23 Q. Sure. Did you gather any information that this may
24 not have been the first water heater in the house?

25 A. I don't recall that.

1 Q. You don't recall?

2 A. No.

3 Q. You don't recall that there may have been multiple
4 water heaters put in the house?

5 A. No.

6 Q. Would it refresh your recollection if I could show you
7 a note you made about it?

8 A. Yes.

9 Q. Yes?

10 MR. BANK: Your Honor, may I approach the witness?

11 THE COURT: Yes, sir. Of course.

12 BY MR. BANK:

13 Q. Does that refresh your recollection at all?

14 A. Yes. Yes.

15 Q. So, there had been some information that there had
16 been at least one other hot water heater put in this house
17 at some time since the Campbells lived there?

18 A. Yes.

19 Q. And just to clarify all that, Kristin and her family,
20 the Campbells, are the ones that owned this house, right?

21 A. I believe the mother is the owner, from what I gather,
22 that bought the house for Kristin.

23 Q. Sure. This isn't a rented house?

24 A. No, not.

25 Q. Briefly, I just want to go through these interviews,

J. CHARLEY - CROSS-EXAMINATION BY MR. BANK

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1 and I won't be long. I know we've all listened to them.

2 THE COURT: Speak up a little bit for me ---

3 MR. BANK: Yes, sir.

4 THE COURT: --- please, Mr. Bank.

5 MR. BANK: Yes, sir.

6 THE COURT: Thank you.

7 BY MR. BANK:

8 Q. What I'd like to do is go through these interviews,
9 and I don't want to spend at length because they're already
10 in evidence. But you were present for both of the audio
11 recorded interviews of Shane Johnson?

12 A. That's correct.

13 Q. All right. Well, let's start with interview one,
14 okay? That interview occurred on October 12th?

15 A. That's correct.

16 Q. And in going over the circumstances, you told him he
17 didn't have to talk to you, right?

18 A. That's correct.

19 Q. And he decided that he'd like to speak with you
20 anyway?

21 A. Yes.

22 Q. How far did Shane say he went in school?

23 A. I believe he stated he graduated from high school.

24 Q. All right, and what did he do for a living?

25 A. He was working in the lawn care business.

1 Q. And he's from Fairfield, right?

2 A. Yes.

3 Q. Now, he says to you that he had moved in with Kristin
4 somewhere in the year leading up to this incident, right?

5 A. Yes.

6 Q. And he, as we know at this point, wasn't the
7 biological father of [Minor]

8 A. Correct.

9 Q. You actually know the biological father of [Minor]
10 right, Reginald, Sr.?

11 A. I met him. I don't know him.

12 Q. Sure, and I didn't mean to put any words in your
13 mouth. He was living in California, right?

14 A. That's correct.

15 Q. Both Shane and Kristin did indicate to you that Shane
16 is not called dad, right?

17 A. Yes.

18 Q. And that Reginald, Jr., actually refers to Reginald,
19 Sr., as dad?

20 A. Correct.

21 Q. Now, it came up that Shane has two other kids that are
22 about the same age as Reginald?

23 A. That's correct.

24 Q. And y'all mentioned in the interview that they didn't
25 have any diagnosis of autism like [Minor] did?

J. CHARLEY - CROSS-EXAMINATION BY MR. BANK

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1 A. Correct.

2 Q. And all three kids knew each other and played
3 together?

4 A. Yes.

5 Q. But Shane's two children didn't actually live at
6 Easter Street. They would just visit Easter Street?

7 A. Yes.

8 Q. They lived with their biological mother, right?

9 A. I'm not quite sure, but I believe that was stated.

10 Q. Okay. Did you ever try to reach out to the biological
11 mother of his two children?

12 A. No.

13 Q. Now, his relationship with **Minor** Shane's
14 relationship with **Minor** starts from him dating **Minor**
15 mother, right?

16 A. That's correct. ~~No.~~ Say -- repeat that, please.

17 Q. Yeah. I think I know what you're getting at. Shane
18 knew **Minor** before he knew **Minor** mother, right?

19 A. Right.

20 Q. That's actually how he ended up meeting Kristin?

21 A. Yes.

22 Q. Right, but **Minor** knew, in the context of 2014, he
23 knew Shane as Kristin's boyfriend, right?

24 A. Yes.

25 Q. And his characterizations of **Minor** to name a few

1 in the interview, are that he's a good kid, right?

2 A. Correct.

3 Q. That if you ran a day care, you would want all kids to
4 be like Minor

5 A. Yes.

6 Q. And you try to -- you and -- well, you try to lead him
7 a couple times to say, well, isn't -- doesn't he have
8 problems? Doesn't, doesn't he have some issues, and he
9 corrects you each and every time and says, no, Reginald is
10 a good kid.

11 A. Yes.

12 Q. Right, just as he always corrects you when you try to
13 get him to say that Kristin did something intentionally to,
14 to Reginald, right?

15 A. Correct.

16 Q. He says over and over again that what happened in this
17 incident was an accident, right?

18 A. No.

19 Q. No?

20 A. No. No.

21 Q. He says ---

22 A. Eventually he came to say accident, and I don't know
23 if that after we put it on the table or what, but initially
24 he denied having anything to do with it.

25 Q. Sure, but regardless of whether he's putting -- he's

J. CHARLEY - CROSS-EXAMINATION BY MR. BANK

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1 saying he's putting the child in the shower or Kristin is,
2 he's always said that either way, neither of them
3 intentionally burned the child.

4 A. No, he didn't use that word intentional. He did not.

5 Q. He never used that word ---

6 A. No.

7 Q. --- intentional, right?

8 A. No. Not, not during the first interview, no.

9 Q. Then in the second interview, he continues ---

10 THE COURT: You were talking about the first?

11 MR. BANK: Sure.

12 THE COURT: You're to the second now? I'm just trying
13 to track you.

14 MR. BANK: Sure. I'll stay with the first, Your
15 Honor.

16 THE COURT: All right.

17 BY MR. BANK:

18 Q. Now in the first interview still, we start talking
19 about the actual incident when the shower happened, okay,
20 and he immediately acknowledges to you on the tape that
21 there was about an hour delay before **Minor** got to the
22 hospital?

23 A. That's correct.

24 Q. And we know that when they were on the way to the
25 hospital, they were pulled over for speeding, right?

1 A. Yes.

2 Q. And that was, as Ms. Campbell pointed out, Officer
3 Williamson who we saw here just a couple days ago, right?

4 A. That's correct.

5 Q. And during this hour before they get in the car, the
6 events at the house are described as chaotic, right?

7 A. I'm not, I'm not -- chaotic wasn't used.

8 Q. The word chaotic wasn't used. They were talking about
9 how **Minor** was crying and running around and there was a
10 lot of yelling.

11 A. Yes.

12 Q. Is that fair? At some point in the first interview,
13 you actually ask Shane if he's covering for Kristin, right?

14 A. That's correct.

15 Q. And there's this comment that came up a couple of days
16 ago about Shane and cold showers. Do you recall that?

17 A. Yes.

18 Q. And when that comes up, he actually corrects you and
19 say, well, no, I take lukewarm showers. I use cold water
20 to wash my face and teeth. Is that right?

21 A. No.

22 Q. That's not right?

23 A. No, that's not correct.

24 Q. All right.

25 A. He stated he take cold showers. It was only when he

J. CHARLEY - CROSS-EXAMINATION BY MR. BANK

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1 and Kristin take showers together. When she says the water
2 is too cold, he adjusted where it's lukewarm.

3 Q. And you'd agree with me that the tapes would be the
4 most accurate ---

5 A. Yes.

6 Q. --- version of that? And you also asked him what I
7 think are very pertinent questions about timing, right?

8 A. Right.

9 Q. You asked him and had a lot of questions about the
10 time before they get in the car, right, and you also ask
11 about the time -- amount of time that Reginald was actually
12 in the shower.

13 A. Yes.

14 Q. Right, and both of those situations you explained to
15 them -- to him that you don't expect him to be able to give
16 you a precise time?

17 A. Correct. That's correct.

18 Q. Now let's switch briefly to interview two. We have
19 the same circumstance where he's there without a lawyer,
20 right?

21 A. Right.

22 Q. And you tell him he doesn't have to talk to you,
23 right?

24 A. That's correct.

25 Q. And he wants to talk anyway?

1 A. Yes.

2 Q. And here he acknowledges -- or the statement changes
3 in the sense that he says that Kristin actually left the
4 house?

5 A. Correct.

6 Q. And that's the first time you had heard that, right?

7 A. That's correct.

8 Q. And he says he didn't say before in the first
9 interview because he was scared?

10 A. Yes.

11 Q. And later he says something about being worried about
12 being treated like this in an interrogation or something
13 like that. Do you recall that?

14 A. Yes.

15 Q. Now, between Shane's interview one and two, the two
16 biggest acknowledgments he makes is one, what we just
17 talked about, the -- he says Kristin left the house, right?

18 A. Uh-huh.

19 Q. And two, that he helped Shane into the shower, the
20 bathroom, right?

21 A. Yes.

22 Q. Now, sir, that's actually not the first time that he
23 said that he helped him into the bathroom, is it?

24 A. No, it's not.

25 Q. In fact, we heard and it was very brief, and a couple

J. CHARLEY - CROSS-EXAMINATION BY MR. BANK

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1 days ago the responding officer, Officer Timmons on the
2 stand, right?

3 A. Yes.

4 Q. Officer Timmons, just so we can remind the jury, is
5 the responding officer that was at the ER the night this
6 happened?

7 A. Yes.

8 Q. Right, and Shane's immediate response to him was he
9 was the one that helped him into the bathroom?

10 A. Yes.

11 Q. He also says at some point in the second interview
12 that before Kristin left, that she and him both helped put
13 **Minor** in the shower. Is that right?

14 A. Yes.

15 Q. But he continues to say nothing intentional happened,
16 right?

17 A. No.

18 Q. He says ---

19 A. Eventually he came to that statement that nothing --
20 that it was an accident, but, no, he, he denied doing it.
21 He denied having anything to do with it.

22 Q. Right. Well, that's my question, sir, is that at no
23 point did he ever say that he intentionally burned this
24 child or that Kristin intentionally burned this child,
25 right?

1 A. Yes.

2 Q. And you start at some point in the second interview
3 showing Shane pictures, right?

4 A. That's correct.

5 Q. Probably the same pictures that we've seen some of
6 what -- some of them here today or this week anyway?

7 A. Yes.

8 Q. And the point of that is to get an emotional response.
9 Isn't that right?

10 A. No.

11 Q. Oh. What is the point of that then?

12 A. To show him the injury that was inflicted on that
13 child.

14 Q. Well, hadn't he already seen that?

15 A. Not to my knowledge.

16 Q. Wasn't he with the child when it happened?

17 A. He didn't see the pictures.

18 Q. Now, we've spoken a couple times and heard on the tape
19 this issue of Shane taking responsibility, right?

20 A. Yes.

21 Q. Now, there was a certain hypothetical that you gave
22 when you were explaining to him what responsibility is. Do
23 you recall that?

24 A. I'm not sure what you're, what you're say -- what
25 you're asking.

J. CHARLEY - CROSS-EXAMINATION BY MR. BANK

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1 Q. Sure. Let me go a little further. Do you remember
2 describing him taking responsibility -- as taking
3 responsibility is something similar to being in a traffic
4 accident?

5 A. Okay, yes. Yes.

6 Q. You stated something along the lines imagine if I was
7 in the car and I hit the back of somebody in the car,
8 right?

9 A. Right.

10 Q. And you said wouldn't I be responsible?

11 A. Right.

12 Q. And that example, that precise example is literally a
13 car accident, right?

14 A. Yes.

15 Q. And within the word car accident is accident, right?

16 A. I guess. I'm not sure what you're asking, but yes, I
17 guess.

18 Q. So, in the sense that this is an accident, Shane says,
19 well, yes. I must be responsible. I was the only adult
20 there, right?

21 A. Repeat that, please.

22 Q. Sure. In the sense that Shane says I'm taking
23 responsibility for this, he is saying that in the sense
24 that it is an accident and I am the adult there.

25 A. He say he take the responsibility because he put the

1 child in the shower.

2 Q. But he never said that he intentionally burned the
3 child, right?

4 A. No.

5 Q. He always denied that ---

6 A. No.

7 Q. --- in every interview.

8 A. No, he didn't always deny that.

9 Q. Sir, at what point did he intentionally say that he
10 burned the child?

11 A. Halfway through the second interview.

12 Q. Halfway through the second interview?

13 A. Yes, yes. The first interview, he denied having
14 anything to do with it.

15 Q. I understand that, sir. I'm, I'm not ---

16 THE COURT: Don't be argumentative. Ask your next
17 question. It's not a matter of whether you understand or
18 not. It's a question. It's an answer by the detective.

19 MR. BANK: Yes, sir. I'll, I'll move on.

20 THE COURT: Thank you.

21 MR. BANK: Thank you.

22 BY MR. BANK:

23 Q. Now, towards the end of the second interview after he
24 tells you these new things, he asks now that he told you,
25 you don't have to talk to Kristin anymore, right?

J. CHARLEY - CROSS-EXAMINATION / REDIRECT EXAMINATION 573

1 A. Yes.

2 Q. And finally just on statement -- I have it written as
3 statement three, but the statement we heard about at the
4 bond court.

5 A. Yes.

6 Q. Right. Even there when he talks to you, he
7 characterizes and calls this an accident, right?

8 A. Yes.

9 MR. BANK: Beg the court's indulgence.

10 THE COURT: Yes, sir. Of course.

11 (A PAUSE.)

12 MR. BANK: That's all the questions I have.

13 THE COURT: Yes, sir.

14 Redirect, Solicitor?

15 MS. CAMPBELL: Thank you.

16 REDIRECT EXAMINATION BY MS. CAMPBELL:

17 Q. Is there anything -- he asked you about the evidence.

18 A. Yes.

19 Q. Was there anything consistent about anything he told
20 you?

21 A. No. In the first interview, the child was an angel,
22 was a good child; in the second interview, the child was a
23 liar.

24 Q. And at some point in one of these interviews, he talks
25 about how much he loves Minor

1 A. Yes.

2 Q. Like his own?

3 A. Yes.

4 Q. Goes on and on about what a good child he is because
5 he doesn't want you to think he's done anything to
6 discipline him or because he was mad at him. He's big on
7 that, right?

8 A. Yes.

9 Q. And this is the same person -- while **Minor** is in the
10 hospital fighting for his life, were you aware that they
11 had a barbecue on Easter Street for his family?

12 A. Only yesterday during the interview -- I mean, during
13 the testimony of Ms. Campbell.

14 Q. And he was very specific about making **Minor** into the
15 best child ever to make sure it wasn't discipline or that
16 he was mad at him?

17 A. Yes.

18 Q. When he called you back in the back, he wanted to tell
19 you once again it was an accident?

20 A. Yes.

21 Q. What was the final thing he said to you?

22 A. I know I have to pay for what I've done.

23 Q. So, he acknowledged he had to pay for what he'd done?

24 A. Yes.

25 Q. And the interviews speak for themselves?

1 A. Yes.

2 MS. CAMPBELL: Thank you, sir.

3 THE COURT: Mr. Bank?

4 MR. BANK: No, sir. Nothing further.

5 THE COURT: Thank you. Thank you very much for being
6 with us, Detective Charley. You may step down.

7 (THE WITNESS EXITS THE STAND.)

8 THE COURT: All right, Solicitor, you may call your
9 next witness.

10 MR. FYALL: At this time, the state rests, Your Honor.

11 THE COURT: Thank you. Thank you very much,
12 Solicitor.

13 Madame Forelady, ladies and gentlemen of the jury, as
14 you've just heard, the state has rested. You have heard
15 all the evidence and all the testimony you're going to hear
16 from the state in its case in chief. I now have a matter I
17 must take up outside of your presence. Further, perhaps
18 now would be a good time to take our recess anyway. So,
19 I'd ask you to please go to your jury room. We'll take --
20 I'm not going to say fifteen minutes because I won't make
21 it. I'll say twenty minutes. Y'all are thinking he won't
22 make it, but we'll take twenty minutes.

23 Do not discuss the case during this brief recess.

24 Thank you. Thank you very much. You now may go with your
25 bailiff.

1 They can't take those transcripts now.

2 FOREPERSON: We can leave our transcripts?

3 THE COURT: Yes, the transcripts, Madame clerk will
4 take them up.

5 Thank you, Madame Clerk.

6 (THE JURY EXITS AT 11:43 A.M.)

7 THE COURT: All right, anything from the defense, Mr.
8 Bank?

9 MR. BANK: Yes, sir. We have several motions.

10 THE COURT: All right. Yes, sir.

11 MR. BANK: Well, first of all I'd like to renew our
12 motion for mistrial based on the testimony of Dr. Cartie
13 that was stricken from the record regarding discipline.
14 Ms. Campbell, knowing that that was the case and that
15 that's an issue, that there's been a curative instruction
16 bringing that to the attention of the jury, just got up and
17 asked at the end whether Shane made clear to make sure this
18 had nothing to do with discipline.

19 Discipline is not a part of this trial. It was a
20 problem when Dr. Cartie brought it up. We've had to strike
21 it from the record. We've had, we've had to give a
22 curative instruction. I've had to move for a mistrial and
23 then Ms. Campbell, knowing all that, brought it up again,
24 the inference being that he in some way is hiding that he
25 was trying to discipline the child.

1 They can't keep doing this, and so I'm renewing the
2 motion for a mistrial. They've now heard the word
3 discipline twice, this second time after they've already
4 heard it the first time. They're not supposed to hear
5 that. They -- I, I can't stop them from thinking that now.
6 There's nothing I can do to fix that, Your Honor.

7 So, along with our other motions that I can go into in
8 more detail to renew, that specifically we're asking to
9 renew based on our previous arguments and then this new
10 question, line of questioning from Ms. Campbell.

11 THE COURT: All right. Thank you.

12 Ms. Campbell.

13 MS. CAMPBELL: Your Honor, the statement itself, he's
14 asked repeatedly was he acting up that day, was he being
15 bad. It's in the -- what they didn't object to was part of
16 the statement that came in. It's replete in there as far
17 as that he, that he was asked repeatedly by investigators
18 about **Minor** acting out or being sassy that day I believe
19 was one term he used and everything, and he repeatedly
20 denies. Said **Minor** didn't do anything wrong. It was just
21 a normal day. **Minor** was good.

22 And obviously, Your Honor, I mean, the whole crux
23 about it is that, you know, he's distancing himself from
24 the fact that he wasn't mad at **Minor** or he wasn't trying
25 to discipline **Minor** and he's -- in the same manner he

1 keeps saying it's an accident. That's from the record of
2 the statements. And then also in his direct, that's what
3 Bobby, Mr. Bank, actually went into.

4 (A PAUSE.)

5 THE COURT: Again specifically, Mr. Bank, tell me the
6 question and the answer, the part of the testimony you're
7 referring to through Detective Charley.

8 MR. BANK: Yes, Your Honor. Specifically the line of
9 questioning -- obviously I'd much rather rely on the
10 transcript but ---

11 THE COURT: That's what I'm going to do. That's why I
12 want to know particular conversation because I'm going to
13 have -- I'm going to ask our court reporter to find it.

14 MR. BANK: Yes, sir. The, the specific question
15 included something about, so, he was trying to distance
16 himself away from disciplining the child.

17 THE COURT: Okay, and that was a question, you're
18 saying, by the solicitor?

19 MR. BANK: Yes, sir.

20 THE COURT: And that was a question by the solicitor
21 that was not part of -- or a reasonable inference that
22 would be part of either tape one, tape two, or a
23 combination of tape one and tape two?

24 MR. BANK: I believe that -- and I think she
25 acknowledged what the inference is, is that they're trying

1 to suggest that he's lying about it to cover up his motive.
2 And I believe that inference was apparent from the
3 questioning. However, it is not in the tapes.

4 THE COURT: But it could be -- it would or would not
5 be a reasonable inference from tape one or tape two? Just
6 like the questions you asked about reasonable inferences,
7 that he always denied it was intentional.

8 My recollection of listening to the tape, and I won't
9 say either one of them is of the greatest of quality, nor
10 am I the greatest quality as far as I try to listen, pretty
11 good at that, but I don't always hear because of other
12 issues as far as those tapes are concerned. They're very
13 difficult to hear, as we all know. But it's like the
14 reasonable inferences in asking he always said it was an
15 accident, but that, that's the foundation of your motion
16 for a directed -- for a mistrial?

17 MR. BANK: Yes, sir, and it's a renewal of ---

18 THE COURT: Well, it can't ---

19 MR. BANK: It's compound, it's ---

20 THE COURT: --- be a renewal. I've already ruled. I
21 mean, if you're asking me to go back -- if it's a renewal,
22 that means I go back to the first mistrial on the
23 punishment, and I, I totally affirm my ruling as to that.
24 That's why I'm trying to process what it is I'm looking at
25 now, but I'll ask our court reporter if she can find that

1 for us.

2 MR. BANK: Yes, sir.

3 THE COURT: All right, I'll take that under
4 advisement. Now what's your next motion?

5 MR. BANK: Our next motions are, are to renew just for
6 the record our, our previous objections, rulings
7 specifically. Our request for an evaluation of competency
8 for the alleged victim, finding of competency, any of the
9 hearsay objections we've made, the expert qualification,
10 opinion objections we've made, and any -- along with any
11 other objections we've made through the course of this
12 trial, we're just renewing them at this time.

13 THE COURT: Thank you. I would deny those motions
14 and reaffirm all my previous pretrial, trial rulings,
15 including, including all those, including evidentiary
16 rulings. All right, thank you.

17 MR. BANK: Yes, sir.

18 THE COURT: Next motion.

19 MR. BANK: I believe Ms. Pinnock is going to make a
20 motion for a directed verdict.

21 THE COURT: All right. Yes, ma'am.

22 MS. PINNOCK: Thank you, Your Honor. If it pleases
23 the court? Your Honor, at this time we would move for a
24 directed verdict on the charge that Mr. Johnson is facing.
25 Your Honor, even viewing in the light most favorable to the

1 state with the evidence they've presented, the state has
2 failed to put any evidence on the record as far as the
3 *mens rea* requirement for the statute.

4 Your Honor, the statute number, as you're aware, is
5 16-3-95. It's entitled Infliction or Allowing Infliction
6 of Great Bodily Injury upon a Child, and it's broken up
7 into different subsections. Mr. Johnson is charged under
8 Subsection A, which says it's unlawful to inflict great
9 bodily injury upon a child.

10 Your Honor, it is, it is our position, based on the
11 construction of the statute and what we can only assume
12 from the legislative intent behind the statute, that the
13 *mens rea* requirement would be intentional, which would make
14 it a specific intent crime. The only information that we
15 have, based on the state's evidence at this point, is that
16 Mr. Johnson, according to their theory, is the one that put
17 him in the shower and we know that Minor
18 was burned. There has been an abundance of testimony about
19 his actions afterwards in the house prior to going to the
20 hospital, after the child was admitted to the hospital,
21 what he was doing after that, conversations he had with
22 Kristin Campbell, the codefendant in the case. But they
23 have provided no information in court this past week
24 talking about Mr. Johnson's mental state at that point.

25 Your Honor, I'm fully aware that, you know, it's not

1 an exact science. Nobody can get into somebody's head to
2 establish what they were thinking at the time, but there
3 just has been nothing offered. So, Your Honor, I -- they
4 have failed in establishing that element.

5 In order for a jury to deliberate, to even consider if
6 they can -- if the state's reached their burden of proving
7 all elements of the offense beyond a reasonable doubt,
8 which is their burden, in order to do that they have to be
9 able to make that same determination on the *mens rea* aspect
10 of the statute as well, Judge. So, Your Honor, without any
11 evidence of that, you know, I don't believe it should make
12 it to the jury.

13 If he had been charged under another subset, you know,
14 another subsection or with another offense, I think it
15 would be a different, a different issue, Judge, but there's
16 just been nothing showing that an intentional act was made,
17 was made against Minor in this case, Judge.
18 So, I would ask you grant the directed verdict and not
19 allow it to go to the jury for any further deliberations.

20 THE COURT: Thank you, Ms. Pinnock.

21 Solicitor.

22 MS. CAMPBELL: May it please the court, Your Honor?
23 They keep arguing that this was intentional, and I would
24 just submit that intentional is not part of the actual
25 statute itself. Regardless of that, Your Honor, the

1 victim's testimony alone, along with the admissible hearsay
2 statements, and he says Shane did this to me. His
3 testimony is Shane burned me. Clearly that inference,
4 coupled with also, Your Honor, with the expert testimony
5 from the doctors as far as this was a case of child abuse
6 and the victim did not do it to himself. Hence, Your
7 Honor, it's overwhelming the amount of -- testimony of the
8 child alone is enough to get it past the directed verdict,
9 Your Honor.

10 THE COURT: Any response, Ms. Pinnock?

11 MS. PINNOCK: Yes, Your Honor, briefly. The testimony
12 we have from the child is that Shane did it. There's no
13 further explanation. There's no, you know, well, what did
14 Shane do? You know, did Shane hold you? Did Shane force
15 you? None of that has come out. So, I'm not quite sure
16 how that goes to explain anything that Mr. Johnson was
17 thinking at the time.

18 And, you know, the solicitor brought up the testimony
19 of the doctor. Your ruling, one, was that testimony was
20 not going to be inferred to establish anything about
21 criminal intent. That it was just a medical diagnosis.
22 So, I don't believe the state can rest an intent, a
23 *mens rea* requirement on the opinion of a -- the medical
24 opinion, not the legal opinion, of the doctor. That was my
25 understanding of your ruling when you ruled to be, you

1 know, in, in line with the *Commander* case, Judge.

2 So, there is not an -- I, I disagree there's an
3 overwhelming, you know, there's, there's overwhelming
4 amount of evidence that's being presented to the jury.
5 They have a statement that says Shane did it. I don't
6 believe that gets past the level of a mere suspicion that
7 he might have done something. I don't believe it raises to
8 the level of reasonable doubt. I don't believe that the
9 jury should be able to deliberate based on that. It's a
10 suspicion at this point, Your Honor. They have not offered
11 anything to this court with the element of *mens rea*. And,
12 Your Honor, because of that, again we're asking you to, to
13 grant the directed verdict, our, our motion for the
14 directed verdict.

15 THE COURT: Thank you.

16 MS. PINNOCK: Oh, I'm sorry, and I, I left this part
17 out, Your Honor. The statute itself, you have to look at
18 the statute as a whole. Subsection A does not specifically
19 say intentional, but if you read Subsection B, for somebody
20 to be charged ---

21 THE COURT: I think it says unlawful.

22 MS. PINNOCK: I'm sorry, Judge?

23 THE COURT: I think it says unlawful in my reading of
24 it.

25 MS. PINNOCK: Yes, sir, but the intentional standard,

1 I believe, comes from looking at the statute as a whole.

2 Subsection B says it's:

3 Unlawful for a child's parent or guardian, person
4 with whom the child's parent or guardian is
5 cohabiting, or another person responsible for the
6 child's welfare knowingly to allow another person
7 to inflict great bodily injury upon a child.

8 THE COURT: That's not what he was indicted for.

9 MS. PINNOCK: Yes, sir.

10 THE COURT: He was indicted 16-3-95(a).

11 MS. PINNOCK: Yes, sir, and that, that part of the
12 statute lacks any mention of the intent requirement. So,
13 the next step when the statute is, is silent on it, you
14 look at the statute as a whole.

15 THE COURT: All right. Thank you, Ms. Pinnock.

16 (A PAUSE.)

17 THE COURT: He's not charged with 16-3-95(b). He's
18 charged with 16-3-95(a), which states: It is unlawful. And
19 unlawful is a mental state.

20 It is unlawful to inflict great bodily injury
21 upon a child. A person who violates this section
22 is guilty, must be imprisoned for not more than
23 twenty years.

24 He's not charged as the child's parent or guardian.

25 Knowingly to allow another person to inflict

1 great bodily injury. The person who violates
2 that subsection is guilty of a felony and must be
3 imprisoned for more -- not more than twenty
4 years.

5 But at any rate, I will rule momentarily. All right.

6 (A PAUSE.)

7 THE COURT: A defendant is entitled to a directed
8 verdict when the state fails to produce evidence of the
9 offense charged, citing *State vs. Walker*, 349 S.C. 49. The
10 trial judge is only concerned with the existence of
11 evidence, not of its weight, citing *State vs. Butler*, 407
12 S.C. 376.

13 I view this motion in the light most favorable to the
14 nonmoving party, that being the state. If there is direct
15 or sufficient circumstantial evidence for which a jury
16 could find the defendant guilty, the case must go forward
17 to the, to the jury. Rule 19(a), grounds for motion of the
18 South Carolina Rules of Civil Procedure states that:

19 On a motion of a defendant, court shall direct a
20 verdict in defendant's favor on any offense
21 charged in the indictment after the evidence of
22 either side is closed. If there is failure of
23 competent evidence tending to prove the charge in
24 the indictment, in ruling on the motion, the
25 trial judge shall consider only the evidence or

1 nonexistence of the evidence and not its weight.

2 I comply with that rule in State versus a number of
3 cases, *Williams, Larmand, L-a-r-m-a-n-d*, 780 S.E. 2d 892.
4 *State vs. McCombs*, 368 S.C. 469:

5 A defendant is entitled to a directed verdict
6 when the state fails to produce evidence of the
7 offense charged.

8 And those other cases just relating to suspicion of
9 guilt: *Bostick*, the Orangeburg County case out of North,
10 and those others.

11 I think there is -- and further in my review of it,
12 the -- there's two types of evidence, direct and
13 circumstantial. State is never required to prove direct
14 intent by direct evidence, but it may be proved by indirect
15 or circumstantial evidence. There's no mathematics to it.
16 That's also an issue for the jury.

17 I think based on the testimony of a number of
18 witnesses, both the victim, Dr. Cartie, Dr. Lamb, my ruling
19 is limited under *Commander* but that does not limit the
20 ability of the juror as fact finders to make whatever
21 reasonable inferences they may find may be properly drawn
22 from the evidence. So, I think there is clearly direct
23 testimony because there is no valid reason for an adult to
24 put a seven-year-old human being or any other -- even a
25 non-homo sapien -- living creature in a scalding, hot

1 shower, scalding, hot shower. And I think there is
2 substantial circumstantial evidence. So, motion for
3 directed verdict is respectfully denied.

4 MS. PINNOCK: And, Your Honor.

5 THE COURT: Thank you. Thank you very much. Court
6 will be in recess fifteen minutes.

7 (OFF THE RECORD.)

8 THE COURT: Without narrating it back into the record
9 as far as the standard for a mistrial, it is laid out very
10 well in the case I have previously cited, *State vs. Bantan*,
11 B-a-n-t-a-n, 387 S.C. 412 2010.

12 The court reporter handed a note where this question
13 was asked, asked by Solicitor Campbell:

14 He doesn't want you ---

15 Directed to Detective Charley.

16 --- to think he's done anything to discipline

17 or...

18 COURT REPORTER: Because.

19 THE COURT: Because he's mad at him.

20 All right, so I, I think that's a reasonable inference
21 to be drawn as far as a question to be asked in the
22 transcript of the second half of the second interview. The
23 pages aren't numbered. Detective Charley asks:

24 Okay, and you know what? Now I felt that and I

25 believe that, Mr. Johnson, I believe that -- was

1 Minor acting up that day? Did Minor sass you
2 that day?

3 Answer: No, sir. It was a regular day. I come
4 home from work tired. Minor get in the shower.
5 Just get the routine on so I can get to bed.

6 That's it. I mean, of course, that ain't it.

7 Throughout the interviews of Mr. Johnson, he talks a
8 great deal about what a good child Minor was, how much he
9 loves him. If he ran a daycare, he would like to have all
10 Minor basically. I paraphrase those. It was also asked
11 on cross-examination of Detective Charley what a good child
12 he was and such like that in that line of questioning.

13 Again, as far as the mistrial, I do not think it's of
14 manifest necessity. I do not think it's prejudicial in any
15 way, that question, not Detective Charley's response to
16 that question based on the totality of the testimony
17 presented. So, I respectfully deny the motion for a
18 mistrial.

19 And I will consider it as far as additionally
20 bootstrapping, back to the previous motion concerning as a
21 form of punishment by -- the response by Dr. Cartie. I
22 would further deny that.

23 Mr. Bank, I will give whatever curative instruction
24 you would like me to give. However, I do not think, based
25 on the fact that there is no foul, one would not be

1 necessary, but I certainly would consider whatever you
2 would like me to consider in that regard.

3 MR. BANK: Your Honor, I'm not requesting one, but I
4 wouldn't object to one either.

5 THE COURT: All right. Well, then I will decline to
6 give one.

7 All right, bring us our jury panel, please.

8 MR. BANK: Do we need to ---

9 MS. PINNOCK: Your Honor.

10 THE COURT: Yes, ma'am.

11 MS. PINNOCK: Are you -- we wondered if you were going
12 to advise Mr. Johnson.

13 THE COURT: Ma'am?

14 MS. PINNOCK: Were you going to advise Mr. Johnson
15 before the jury came back?

16 THE COURT: All right. Wait. Wait a minute. Yes,
17 ma'am.

18 All right, Mr. Johnson, come around, please. Come
19 around, Mr. Johnson.

20 Sheriff, would you have Mr. Johnson please come
21 around? Place him under oath, Madame Clerk.

22 SHANE ISAAC JOHNSON, BEING DULY
23 SWORN, TESTIFIES AS FOLLOWS:

24 THE COURT: Mr. Johnson, I need to go over some things
25 with you. I have to do this for everyone who is on trial,

1 and I require your responses to be under oath. Do you
2 understand?

3 DEFENDANT: Yes, sir.

4 THE COURT: We've reached the stage of the trial where
5 the state has rested, and your side, the defense, now has
6 the opportunity to present evidence, which it has already
7 done by certain defense exhibits, for the jury to consider.
8 Do you understand where we are at in the trial?

9 DEFENDANT: Yes, sir.

10 THE COURT: In that regard, you may call witnesses to
11 testify on your behalf. If you choose to testify yourself,
12 you may do so. Do you understand?

13 DEFENDANT: Yes, sir.

14 THE COURT: No one can force you to testify. You have
15 the absolute right to remain silent, and if you choose not
16 to testify, I will tell this jury that they cannot hold
17 your silence against you in any way. I will tell them that
18 they are not to even discuss that in the jury room. Do you
19 understand?

20 DEFENDANT: Yes, sir.

21 THE COURT: Does Mr. Johnson have any prior criminal
22 history that would subject him to impeachment under Rule
23 609?

24 MR. BANK: Yes, Your Honor.

25 THE COURT: And what would that be?

1 MR. BANK: He has -- I don't have it right in front of
2 me. He has a conviction for a common law assault and
3 battery high of a high and aggravated nature. I beg the
4 court's indulgence.

5 THE COURT: All right. Yes, sir.

6 (A PAUSE.)

7 MS. CAMPBELL: He has, Your Honor, I believe it would
8 be one, two, three, four, five counts of assault and
9 battery of a high and aggravated nature from 2011. He has
10 a burglary in the second degree from 2011. Your Honor, I
11 do not believe the rest of it's impeachable.

12 THE COURT: And that, that would be all of them?

13 MS. CAMPBELL: Let me make sure, Your Honor. Beg the
14 court's indulgence.

15 (A PAUSE.)

16 MS. CAMPBELL: Yes, Your Honor.

17 THE COURT: All right, what that means, Mr. Johnson,
18 is if you were to take the stand, the prosecutor could ask
19 you if you have criminal convictions for assault and
20 battery of a high and aggravated nature, five counts, in
21 2001. They could ask you that. They could further ask you
22 if you have a criminal conviction for burglary in the
23 second degree in 2011. Do you understand?

24 DEFENDANT: Yes, sir.

25 THE COURT: Now, they can't, they can't go into

1 details of it. They cannot go into the details of them
2 whatsoever, but they can ask you if you have been convicted
3 of those offenses.

4 I will tell the jury that they can only consider that
5 evidence against you, if they consider it against you at
6 all, on the issue of whether your testimony is believable
7 or not and for no other purpose. Do you understand?

8 DEFENDANT: Yes, sir.

9 THE COURT: The decision about whether you testify or
10 not is your decision to make and yours alone; it's your
11 call. I expect that you have conferred with your attorneys
12 and perhaps with others whose opinions you value on
13 important decisions. But the ultimate decision about
14 whether you testify or not is your call, your decision to
15 make. Do you understand?

16 DEFENDANT: Yes, sir.

17 THE COURT: Has anyone exercised any undue influence
18 over you to get you to choose to testify or not testify?

19 DEFENDANT: No, sir.

20 THE COURT: Today are you under the influence of any
21 drugs, alcohol, medication, or anything that negatively
22 affects your thinking ability?

23 DEFENDANT: No, sir.

24 THE COURT: Do you suffer from any physical or mental
25 problems that affect your thinking today?

1 DEFENDANT: No, sir.

2 THE COURT: Have you understood my questions?

3 DEFENDANT: Yes, sir.

4 THE COURT: Is there anything you would like to ask me
5 that we've just been over?

6 DEFENDANT: No, sir.

7 THE COURT: How old are you, Mr. Johnson?

8 DEFENDANT: Twenty-nine, sir.

9 THE COURT: How much education do you have?

10 DEFENDANT: High school diploma.

11 THE COURT: Whatever decision, if you've made a
12 decision about whether to testify or not testify, is your
13 decision made of your own free will and accord?

14 DEFENDANT: Yes, sir.

15 THE COURT: Have you talked with your lawyers about
16 that decisions?

17 DEFENDANT: Yes, sir.

18 THE COURT: Do you need any more time to talk with
19 your attorneys about that decision?

20 DEFENDANT: No, sir.

21 THE COURT: Have you made your decision?

22 DEFENDANT: Yes, sir.

23 THE COURT: Do you agree, Mr. Bank? Do you think you,
24 Ms. Pinnock, Ms. Sturgill need any more time to talk with
25 Mr. Johnson about whatever decision he's made?

1 MR. BANK: We do not need any more time, no.

2 THE COURT: What is, what is your decision, Mr.
3 Johnson?

4 DEFENDANT: I, I don't want to testify.

5 THE COURT: And that's your choice?

6 DEFENDANT: Yes, sir.

7 THE COURT: Made of your free will and accord?

8 DEFENDANT: Yes, sir.

9 THE COURT: And you have no questions to ask me about
10 what we've been over. Is that correct?

11 DEFENDANT: Yes, sir, no more questions.

12 THE COURT: And you've understood all my questions?

13 DEFENDANT: Yes, sir.

14 THE COURT: Thank you, Mr. Johnson. You may return to
15 your seat.

16 I find that the decision of Mr. Johnson to not testify
17 in his behalf has been made freely, knowingly, and
18 voluntarily.

19 Anything else before we bring in the jury, Mr. Bank?

20 MR. BANK: No, sir.

21 THE COURT: Solicitor?

22 MS. CAMPBELL: No. I would just ask who their first
23 witness is.

24 MR. BANK: We don't plan to call any witnesses.

25 THE COURT: All right. Well, I always advise the jury

1 that you may, and further I go into presumption of
2 innocence and such like that. All right, thank you. Thank
3 you very much, Mr. Bank.

4 MS. CAMPBELL: Your Honor, will I have maybe ten
5 minutes just to get things together before we close?

6 THE COURT: I'm going to send them to lunch.

7 MS. CAMPBELL: Okay.

8 THE COURT: Before we close. It's 12:30, so we'll
9 probably -- I'll tell them an hour.

10 MS. CAMPBELL: Okay.

11 THE COURT: Was my thoughts. They'd still be back
12 before 2:00, and I haven't received any request for charge.
13 When my law clerk comes out, y'all, y'all can hand them up
14 to her. I've pulled the standard charges, but of course I
15 would consider whatever y'all choose, whatever y'all submit
16 also.

17 (THE JURY ENTERS AT 12:33 P.M.)

18 THE COURT: Madame Forelady, ladies and gentlemen of
19 the jury, as you know, the state has rested. At this point
20 in the trial, the defense has an opportunity to present
21 evidence and testimony if the defense chooses to do so.

22 Please remember a criminal defendant in South
23 Carolina, regardless of the seriousness of whatever the
24 charge may be, is always presumed to be innocent, and the
25 state bears the burden of proving its case beyond a

1 reasonable doubt. A criminal defendant has no burden
2 whatsoever to prove himself or herself innocent. The
3 burden is on and always remains on the State of South
4 Carolina to prove guilt beyond a reasonable doubt.
5 However, a criminal defendant may present evidence and
6 testimony if he chooses to do so.

7 So, we will now direct our attention to Mr. Bank and
8 ask. Does the defense intend to present any evidence or
9 testimony, Mr. Bank?

10 MR. BANK: No, Your Honor.

11 THE COURT: The defense rests?

12 MR. BANK: The defense rests.

13 THE COURT: All right. Thank you. Thank you very
14 much, Mr. Bank.

15 With that being said, ladies and gentlemen, you've
16 heard all the evidence and all the testimony you're going
17 to hear in the trial of this case. We're now at the point
18 of the closing arguments by the attorneys. After the
19 closing arguments, I would instruct you on the law, and the
20 case would be submitted to you for your deliberations for
21 your verdict.

22 Given the hour, I'm going to have y'all go to lunch.
23 I'm going to ask you to please be back. I was going to say
24 an hour, but we'll say 1:45. That's an hour and seven
25 minutes, I think. No, excuse me. Yeah, that's about

1 right, hour and seven minutes. So, if you'd be -- please
2 be back in your jury room promptly, promptly at 1:45.

3 Again, do not discuss the case. Do not read, watch,
4 listen to any news reports. Do not do any independent
5 investigation or any investigation.

6 Any questions? Thank you. Thank you very much. I
7 hope y'all have a pleasant lunch, and I will see you
8 promptly at 1:45.

9 (THE JURY EXITS AT 12:37 P.M.)

10 THE COURT: And thank you, Ms. Pinnock, for bringing
11 that to my attention as far as questioning Mr. Johnson. Do
12 you have some requests to charge?

13 MS. PINNOCK: Yes, I do, Your Honor. If I may
14 approach?

15 THE COURT: All right, yes, ma'am.

16 And you have copies, Solicitor?

17 MS. PINNOCK: I've got a copy for them.

18 (DEFENSE'S REQUEST TO CHARGE MARKED INTO EVIDENCE AS
19 COURT'S EXHIBIT NUMBER 11.)

20 (A PAUSE.)

21 THE COURT: All right, as to the first charge,
22 Solicitor, you have any comment?

23 MS. CAMPBELL: Your Honor, I would ask, and I will
24 hand up our request to charge on intent, which I believe is
25 from the judge's book. If I may approach?

1 THE COURT: Yes, ma'am.

2 MS. CAMPBELL: Which I think includes the language
3 we're talking about. It just further -- it's the complete
4 charge.

5 THE COURT: All right, Ms. Pinnock, and that's --
6 typically I charge this, this.

7 MS. PINNOCK: Yes, sir.

8 THE COURT: This intent charge that has been handed up
9 by the state, which is expanded.

10 MS. PINNOCK: Yes, sir.

11 THE COURT: And it also includes the language:
12 Criminal intent must be proven by the state beyond a
13 reasonable doubt.

14 MS. PINNOCK: Yes, sir.

15 THE COURT: So, what is your position on *Davis*, the
16 first -- number 1?

17 MS. PINNOCK: Your Honor, I would, I would ask that if
18 this is the exact language from the juror charge book that
19 negligence, recklessness, or indifference to due be taken
20 out. I believe that would confuse the issues with the jury
21 when deliberating on the mental state. I can put my, my
22 reasonings for that on the record if you would like me to,
23 but I believe that including all the different levels of
24 *mens rea* when there's only one at issue that could possibly
25 be confusing to the jury.

1 THE COURT: Solicitor.

2 MS. CAMPBELL: Your Honor, I believe that's the proper
3 charge that has been handed down, and we think that that
4 language is to be included.

5 THE COURT: That, that third paragraph I've always
6 thought of as being by way of example, and typically when I
7 charge it, I always say generally. I paraphrase. For a
8 particular crime, criminal intent can -- then I say it, you
9 know, and I've always thought it's been by way of, of
10 example.

11 I intend to charge a definition of unlawful as part of
12 the -- my charge on the statute itself because it says it
13 is unlawful. So, I would charge that.

14 I think with that third paragraph, however:

15 Criminal intent can arise from the totality of
16 the facts and circumstances that is considered by
17 law to be the equivalent of criminal intent.

18 So, even that, last part, that, that does give the jury
19 some guidance without using the word, words: It may arise
20 from negligence, recklessness, or indifference to duty. It
21 certainly can arise from negligence, recklessness, or
22 indifference to duty in this case. So, given the fact that
23 I'm required to charge the law, I will, I will take parts
24 of the last paragraph out but not all of it.

25 MS. CAMPBELL: I'm sorry, Your Honor, I just didn't

1 understand which part you're taking out. Criminal intent
2 can arise from actions ---

3 THE COURT: It may arise from negligence,
4 recklessness, or indifference to duty, but I would leave
5 in: It may arise from consequences that is considered by
6 law to be the equivalent of criminal intent.

7 Does that make -- you have that, Solicitor?

8 MS. CAMPBELL: It may arise from consequences?

9 THE COURT: Yes, ma'am.

10 MS. CAMPBELL: Okay. I got it.

11 THE COURT: All right. Now number 2, number 2, do you
12 have any position as to that?

13 MS. CAMPBELL: Your Honor, I think that the...

14 THE COURT: Say that again.

15 MS. CAMPBELL: I think it's sufficient because in your
16 criminal intent charge, it talks about criminal liability.

17 THE COURT: I'll look at that *Passmore* case when I
18 take a break.

19 (A PAUSE.)

20 THE COURT: I'll look at *Brown*. There's, there's --
21 although his first statement, it's my recollection, accuses
22 Ms. Campbell, he doesn't accuse her accidentally. That's
23 what this says:

24 Harm caused by another -- which would be Ms.

25 Campbell -- cannot entail criminal responsibility

1 for the actor -- which is Mr. Johnson -- if the
2 harm was accidentally inflicted without intent to
3 harm.

4 That evidence is not in the record.

5 MS. CAMPBELL: No, sir.

6 MS. PINNOCK: Your Honor, my interpretation, that --
7 maybe I worded it wrong -- was the -- to interpret it as
8 harm caused to the child. Cannot inflict responsibility on
9 Mr. Johnson. That's, that was my intention when I typed
10 it. Maybe I was ---

11 THE COURT: Yeah, I see that: Harm caused to another,
12 to the child, cannot entail criminal responsibility for the
13 actor.

14 Well, who, who's the actor?

15 MS. PINNOCK: It would be Mr. Johnson in this
16 situation.

17 THE COURT: See, there's no, there's no evidence in
18 the, in the record that if Ms. -- Johnson caused the harm,
19 that it was accidentally inflicted without intent to harm.
20 None of that's in the record.

21 MS. PINNOCK: I'm sorry?

22 THE COURT: There's nothing in the record. In other
23 words, it's harm caused to another. That means somebody
24 else had to cause the harm. Cannot entail criminal
25 responsibility for the act of Mr. Johnson if the harm that

1 was caused was accidentally inflicted. There's no
2 testimony in the record that whoever, whoever caused the
3 harm accidentally inflicted the harm. That's, that's not
4 in the record.

5 MS. PINNOCK: Your Honor, I believe that it is through
6 all of our testimony, all of our questioning through all
7 the witnesses. If the jury believes that Mr. Johnson was
8 the person that put the child in the shower, I believe,
9 based on the evidence that's on the record, they could very
10 reasonably believe that there was no intent of harming, but
11 the intent was to give the child a shower. Not challenging
12 that the injury happened, but that the injury itself is an
13 accident.

14 THE COURT: I'll read *Brown*. I don't interpret it
15 that way.

16 MS. PINNOCK: Your Honor, and I know that the, you
17 know, the defendant's statement by itself, you know, is not
18 always sufficient for a jury charge. But the statements
19 that are in evidence do provide that on the record. You
20 know, the action of putting -- again, the action of putting
21 the child in the shower is not what our theory has been the
22 -- throughout the entire trial. It's been that the injury
23 itself was the accident.

24 And there is medical testimony, Your Honor, that the
25 burn could have happened in, I think the doctor testified,

1 in less than a second. So, the jury could take that
2 information and believe that the injury was, in fact, an
3 accident.

4 (A PAUSE.)

5 THE COURT: All right, I'll look at that case, *Brown*.
6 All right, and then 4.

7 MS. CAMPBELL: Your Honor, the first line is a
8 misstatement of the law.

9 THE COURT: I decline to ask 4.

10 MS. CAMPBELL: Thank you.

11 MS. PINNOCK: Your Honor, can I put my, my reason for
12 asking?

13 THE COURT: Yes, ma'am, you can put in the record of
14 course.

15 MS. PINNOCK: Thank you, Your Honor. Throughout the
16 trial, Judge, before the testimony of Dr. Cartie testimony
17 and before the testimony, testimony of Dr. Lamb, more so
18 with Dr. Cartie, there was extensive discussion about any
19 testimony regarding child abuse or coming to a medical
20 opinion of child abuse. We still -- you know, we have
21 renewed our objections on that issue, Judge, but I fully
22 understand your ruling on it.

23 So, based on the information that the jury has, I
24 offered an addition to the expert witness general charge
25 that you would do to try to explain to the jury to what I

1 think would be in line with my understanding of Your
2 Honor's decision based on our objection under 701, 702, and
3 the *Commander* case, Judge. That case does cite -- does
4 state, Judge, that in certain circumstances, some sort of
5 jury instruction explaining what the basis of the opinion
6 was for and what it should be used for would be necessary.
7 I believe that this, these circumstances for Mr. Johnson,
8 because of what he's charged with, the testimony that
9 they'd heard and decision they ultimately have to make, I
10 would argue that, that, that this is necessary to provide
11 them with an extra jury instruction explaining what that
12 medical opinion was versus what their job is under the law.

13 Your Honor, that is our reason for asking for it. I
14 will ask you to reconsider charging it or adding something
15 to your, your general expert jury charges when you deliver
16 it to the jury to ensure that Mr. Johnson's rights are
17 protected because we are trying to figure out how to best
18 deal with, you know, the situation that we have because of
19 your rulings over our objections.

20 THE COURT: Thank you. Thank you, Ms. Pinnock.
21 Anything, Solicitor?

22 MS. CAMPBELL: No, sir, Your Honor. I think it's
23 appropriate.

24 THE COURT: Thank you, and I'll read *Commander* again.
25 I still have it up here, but I'll review it again, Ms.

1 Pinnock.

2 MS. PINNOCK: Thank you, Your Honor.

3 THE COURT: Thank you. Thank you very much. 1:45.

4 MR. BANK: Your Honor.

5 THE COURT: Yes, sir.

6 MR. BANK: Is the *Logan* circumstantial evidentiary
7 standard charge at this point the ---

8 THE COURT: That's what I typically use.

9 MR. BANK: Okay.

10 THE COURT: Yes, sir.

11 MR. BANK: I just wanted to make sure.

12 THE COURT: Yes, sir.

13 MR. BANK: And, Your Honor, is there anything in
14 addition that I would be prevented from arguing or saying
15 the word accident in closing? I just don't ---

16 THE COURT: It's in the record. It's replete in the
17 record.

18 MR. BANK: Yes, sir.

19 THE COURT: Both through questioning and through
20 answering and all. I mean, I, I go back to Ms. Sturgill's
21 opening.

22 MS. CAMPBELL: That's what she argued.

23 THE COURT: Appeared to be the issue, and you can
24 argue whatever's in the record and the reasonable
25 inferences to be drawn therefrom. Of course, the solicitor

1 objects, I'll rule. You've heard my general rulings on
2 objections during closing.

3 MR. BANK: Yes, sir.

4 THE COURT: And I'll probably keep making them.

5 Thank you. Thank you very much, Ms. Pinnock.

6 MS. PINNOCK: Thank you.

7 THE COURT: Mr. Bank, Ms. Sturgill. Thank you,
8 Solicitor.

9 (OFF THE RECORD.)

10 THE COURT: In reading *Commander* and the discussion
11 about Dr. Nichols, it talks about the trial judge gave the
12 standard instruction to the jury concerning the relative
13 weight to accord witness testimony, including expert
14 witnesses' testimony, along with other evidence in the
15 case. In footnotes number 12, the trial judge directed the
16 jury not to place any expert opinions above the idea of
17 their own opinions on the subjects, any subject covered,
18 and to form their own conclusions after considering the
19 expert opinions in conjunction with all the other evidence
20 in the case, and I will charge that as part of my charge
21 during the credibility portion of it.

22 Also, I do charge the extensive criminal intent in
23 that regard. I will not charge -- and I've reviewed
24 *Passmore*. I will not charge that, and in that other request
25 to charge under *Brown* -- I don't seem to have it. You have

1 another copy of that? I had it back on my desk.

2 MS. CAMPBELL: I've got mine.

3 MS. PINNOCK: The charge itself or ---

4 MS. CAMPBELL: The case?

5 THE COURT: Yeah, the charge itself.

6 MS. PINNOCK: I have the charge.

7 THE COURT: All right, let me see the case again,
8 Solicitor. I left it back there.

9 MS. CAMPBELL: Here's the case and here's the charge
10 they requested.

11 THE COURT: Yes, ma'am. I've got them both it looks
12 like, Ms. Pinnock. She had the case.

13 (A PAUSE.)

14 THE COURT: All right, and I'll be glad to hear you on
15 this *Brown* charge, Ms. Pinnock.

16 MS. PINNOCK: Thank you, Your Honor. If it pleases
17 the court? Your Honor, the -- we're asking for the
18 accident charge because we do believe there is evidence on
19 the record that would support the jury being charged with
20 accident.

21 The question that has been the question through the
22 entire trial has been was the injury caused intentionally
23 or was it caused accidentally. So, Your Honor, I believe,
24 you know, based on the statements that have been introduced
25 into evidence by the state where Mr. Johnson is being

1 questioned by Investigator Charley on two separate dates
2 where he asked him repeatedly through the recordings and
3 also the transcript, Your Honor, that was made a part of
4 the record and provided to the jury during the second half
5 of the second statement where he says repeatedly, and I
6 quote. Mr. Johnson states:

7 You're going to treat me -- I'm scared. What are
8 you scared of? Y'all are going to treat me like
9 this and not want to hear this was an accident.

10 He says later on, Judge:

11 Specifically, I am not going to do that because
12 regardless, regardless of what you think, that
13 was an accident and I really do love him.

14 There are other statements that are included in the
15 recordings that were introduced into evidence the jury has
16 heard. That is part of the record, Judge. That, along
17 with testimony of Dr. Cartie, that the injury alone without
18 statements is not inclusive of being intentionally
19 inflicted. The injury would be the same regardless of the,
20 of the history that they gathered. He testified that based
21 on the temperature of the water, the injury could have
22 happened and happened -- he gave three different examples,
23 but the best example was in less than a second or half a
24 second. And again, the injury alone does not suggest that
25 it was intentionally done.

1 You know, so coupled with that, Investigator,
2 Investigator Bailey's testimony about the actual
3 temperature of the water that he tested, all go, I think,
4 to a reasonable assumption that the jury could believe that
5 the injury itself was an accident. So, Your Honor, that's
6 why we're asking for the accident -- for a, for a charge of
7 accident to be given to the jury because, based on the
8 evidence that is on the record, I believe that could be a
9 reasonable conclusion for the jury to make based on what
10 they've heard.

11 THE COURT: All right, thank you.

12 Solicitor.

13 MS. CAMPBELL: May it please the court, Your Honor?
14 Our problem with the charge that she handed up is it
15 doesn't quote the case. In fact, it's not anywhere near
16 the case.

17 In addition, we don't feel like accident is -- the
18 charge she just requested is not appropriate because it's
19 not the definition of the accident charge.

20 The case she gave us, which is *State vs. Brown*, talks
21 about that:

22 The death of a human being as the result of an
23 accident. No criminal responsibility attaches to
24 the act of a slayer if it can be shown that the
25 killing was unintentional, that it was done by

1 the perpetrators engaged in a lawful enterprise,
2 and was not the result of negligence.

3 She -- they specifically asked to take that language
4 out of the criminal intent part, Your Honor. So, we would
5 object to the charge they proposed because it does -- not
6 an accurate reflection of what the law is.

7 MS. PINNOCK: And, Your Honor, if the -- sorry.

8 THE COURT: Yes, ma'am.

9 MS. PINNOCK: If the, if the state's objecting because
10 I had to try to fashion the charge from a homicide charge
11 -- this was not a homicide case -- to, you know, apply
12 here, I would ask you charge your normal charge on
13 accident.

14 THE COURT: Well, there, just like *Commander*, they
15 cite *Chapman*, which has the elements of accident in a
16 homicide case. Is that, is that what you're saying,
17 Solicitor, that since *Brown's* back when an automobile was
18 considered a deadly weapon, you're objecting because of the
19 facts of that case?

20 MS. CAMPBELL: Yes, sir.

21 THE COURT: But, you know, I have some concerns about
22 that also as far as the cases that were presented to me
23 have to do with other different, very different factual
24 situations, whether they were homicides or in the *Brown*
25 case, of course, automobile. For example, quite frankly, I

1 don't know why they put the third, the third requirement
2 under *Chapman*, but:

3 Homicide is excusable on the ground of accident
4 when the killing was unintentional, the defendant
5 was acting lawfully, and due care was exercised.

6 It goes on into handling a weapon. If that's Cedric
7 Chapman, which I think it is, he did not have a deadly
8 weapon. It was a fight.

9 MS. CAMPBELL: Correct, Your Honor.

10 THE COURT: But is that, is that what you're asking
11 for? That, in other words, that the injuries were
12 unintentional, the defendant was acting lawfully, and due
13 care was exercised?

14 MS. PINNOCK: Yes, sir.

15 THE COURT: What about that, Solicitor, to be excused
16 on the ground of accident under the homicide law? It's
17 that the killing -- in this case the injuries were
18 inflicted unintentionally, the defendant was acting
19 lawfully, and due care was exercised. Now, I've seen no
20 case law as to a specific statute in regard to the
21 accident, in regard to an accident defense. And, of
22 course, all of that is first cousins or closer to criminal
23 intent.

24 MS. CAMPBELL: And, Your Honor, I'm just looking at
25 the *Tucker* case, which it has similar language to what

1 you're talking about in *Chapman*. The killing was
2 unintentional, the defendant was acting lawfully, and the
3 act was not the result of negligence, i.e. due care was
4 handled -- in handling the weapon.

5 THE COURT: Right.

6 MS. CAMPBELL: We would just ask ---

7 THE COURT: So, it's unintentional, it's lawful,
8 and ---

9 MS. CAMPBELL: It's not negligent.

10 THE COURT: --- it was due care. Due care was used.

11 MS. CAMPBELL: The terminology we would ask for, Your
12 Honor, is that it was not the result of negligence. I
13 think an example of that is due care in handling a weapon.

14 THE COURT: Well, due care is negligence.

15 MS. CAMPBELL: I think the terms may be
16 interchangeable, but negligence is maybe perhaps one that's
17 more familiar with most people.

18 THE COURT: Well, that's what that third prong says,
19 the due care was exercised in the handling of a weapon.
20 That would be that he would be non negligent at the time.

21 What about that, Ms. Pinnock?

22 MS. PINNOCK: Well, you know, Judge.

23 THE COURT: Ma'am?

24 MS. PINNOCK: I feel like I might be backtracking a
25 little bit because of the discussion of the negligence, if

1 you would allow me to, to go -- I know, I know. I just
2 answered yes, that's what I was asking for, but then I
3 thought about it more as y'all were speaking about it.

4 Negligence as the *mens rea* requirement in this case, I
5 don't think ---

6 THE COURT: I'm just reading it like I bought it from
7 the Supreme Court.

8 MS. PINNOCK: Yes, sir, and I understand that. The
9 negligence language concerns me because of the criminal
10 intent requirement.

11 THE COURT: Well, that -- they have to determine
12 criminal intent, and he would not be entitled to the
13 defense of accident if he were negligent, if he failed to
14 use due care.

15 MS. PINNOCK: Yes, sir.

16 THE COURT: I mean, that's, that's the issue that
17 those three -- that's the elements of the defense of
18 accident. The injuries were unintentional, the defendant
19 was acting lawfully -- and, of course, unlawfully is used
20 in the statute that he's indicted for -- and that due care
21 was exercised, which is, which is negligence.

22 MS. PINNOCK: Yes, sir.

23 THE COURT: Okay, and that, that would be part of my
24 charge to the jury.

25 MS. CAMPBELL: If that's what you're requesting.

1 THE COURT: And probably -- if you request that, and I
2 would put that in the section under the -- I put defense of
3 accident and put that in at the end of my charge to the
4 jury on the statute, on the charge in the indictment.

5 MS. PINNOCK: Yes, sir. Thank you, Your Honor.

6 THE COURT: Okay.

7 MS. PINNOCK: And if I could? I believe you said
8 before that you were going to charge the definition of
9 unlawful.

10 THE COURT: Yes, ma'am.

11 MS. PINNOCK: As the *mens rea* requirement under the
12 statute. Your Honor, I would again -- I understand that
13 you've made your ruling. I would again ask you to
14 reconsider and, and possibly -- I'd ask you to reconsider
15 and offer the jury a different *mens rea* requirement based
16 on the instruction of the statute.

17 THE COURT: Okay.

18 MS. PINNOCK: And, Your Honor, if I could put my
19 concerns on the record? The definition of unlawful just
20 defined in *Black's Law Dictionary*, it says it's pretty much
21 illegal because it's illegal.

22 THE COURT: Go right ahead.

23 MS. PINNOCK: Yes, sir. That creates a strict
24 liability situation for Mr. Johnson in this charge. I
25 understand that Subsection A does not specifically say

1 intentional or knowing or willing, but the remainder of the
2 statute, Judge, does talk about intentional acts happening
3 to -- for somebody to be charged under that statute. And I
4 don't believe that if a statute is silent on *mens rea*, that
5 the next step would be, would be to scrutinize it in the
6 strictest form, which is what strict liability is. It does
7 not require the jury to decide whether or not the state
8 proved the *mens rea* required to be guilty of this charge.
9 I would argue that just leaving it at unlawful, again, just
10 makes it a strict liability situation: because the child is
11 injured, Mr. Johnson is criminally responsible for those
12 injuries.

13 I believe the statute does require at least a
14 knowledge aspect, if not a specific intent, to cause the
15 injuries. I believe that it's somewhere in that, in that
16 realm, Judge. I believe it is higher than negligence
17 because if it was negligence, he would have been charged or
18 he could have been charged with the unlawful conduct of a
19 child. There's completely a separate charge for that.
20 This is a higher charge penalty wise. So, I believe the
21 *mens rea* requirement should be higher than the, than the
22 less severe charge, Judge.

23 And again, I just, I don't believe it's a strict
24 liability charge. I believe leaving that charge out of
25 your, out of, out of your instruction to the jury, Your

1 Honor, does take away a burden the state has to prove under
2 the law in making a criminal charge where somebody is
3 looking at the possibility of twenty years in prison for a
4 strict liability offense, and that's not the purpose of
5 that statute. That's not the purpose of most criminal,
6 criminal laws in this state. It's not strict liability.
7 There is some sort of *mens rea* the state has to prove.

8 So, we'd ask that you charge some -- I'd like to add.
9 I want to ask you to charge specific intent because I think
10 it qualifies under the statute if you read the statute as a
11 whole. But at the very least, Judge, I believe that a
12 knowledge charge should be given to the jury based on the
13 statute.

14 MS. CAMPBELL: Your Honor, that's the same language
15 that's in the murder. It's the unlawful killing of
16 another. She's trying to take this and trying to bootstrap
17 this into something it's not. The language -- and the
18 legislature has surely put this language in other statutes,
19 but the plain face of the thing says the unlawful
20 infliction. It doesn't say the intentional; it doesn't say
21 the knowing. It's the unlawful, and it's my understanding
22 you are going to define unlawful.

23 MS. PINNOCK: And, Your Honor, I can give you two
24 examples of how that, that would not be the purpose of the
25 statute. The murder statute says the unlawful killing of

1 another human being with malice aforethought, so it does
2 give that mental requirement.

3 And then an exact example of a statute that does not
4 have anything listed for *mens rea* is the kidnapping
5 statute. Kidnapping is the unlawful confinement, decoy --
6 you know all the different examples they give -- but it
7 does not specifically say that someone has to know that
8 they are committing a kidnapping.

9 This issue came up with that statute, and what the
10 courts did was they went back and looked at first the
11 statute and then went back to the legislative history to
12 see how the statute had evolved to try to interpret what
13 the legislative intent was for that statute. It was
14 determined that knowledge was a requirement for kidnapping
15 because one of the concerns that the court had when coming
16 to that conclusion is if I -- if somebody shuts their shed
17 in their backyard, they don't know if somebody's in there,
18 they're not then criminally responsible for kidnapping.
19 So, they say based on the history that they could obtain
20 from the evolution of the kidnapping statute, that the
21 intent of the legislature was to have a knowing element.

22 The problem is we don't have the legislative history
23 of this. There is no history. We have looked, which is
24 why we have resorted to reading the statute as a whole, the
25 statute on its face, all three section, A, B, and C.

1 B requires somebody to stand by, allowing somebody to
2 injure their child. It's allowing somebody to do something
3 intentionally to their child, which is what makes them
4 criminally responsible under Subsection B. Subsection C is
5 an exclusion. If somebody intentionally inflicts corporal
6 punishment on their child, they are excluded from criminal
7 responsibility if it's just corporal punishment.

8 So, the statute as a whole has an intent element
9 included in it. Just because it's left out of Section A
10 does not make it a strict liability offense.

11 THE COURT: I'm not telling them it's a strict
12 liability offense, number one.

13 MS. CAMPBELL: No, sir, we aren't.

14 THE COURT: But number two, Solicitor, do you agree
15 that -- not that he had to specifically intend to commit
16 the ultimate result?

17 MS. CAMPBELL: That's correct, and that's just what I
18 was going to say, Your Honor.

19 THE COURT: Go ahead.

20 MS. CAMPBELL: He doesn't -- we don't have to prove
21 that he intended for the burns to be as bad as they are,
22 just like in a murder.

23 THE COURT: But you agree he would have to do it, -- it
24 would had to have been non negligent, correct?

25 MS. CAMPBELL: I think it would have to be -- I think

1 our position would be that in every case, we have to prove
2 criminal intent.

3 THE COURT: Exactly.

4 MS. CAMPBELL: That's the purpose of the criminal
5 intent charge, and the language in there covers that whole
6 issue.

7 THE COURT: And my criminal intent charge says:

8 A particular crime might be purpose, knowledge,
9 intent, recklessness, or criminal negligence.
10 Criminal intent must be proven by the state
11 beyond a reasonable doubt.

12 That's, that's in my general charge.

13 It's always a matter, must be determined by the
14 jury from the circumstances surrounding the
15 situation. The law says criminal intent may be
16 inferred from the circumstances shown to have
17 existed. They must make a determination whether
18 or not the element requiring intent was present.

19 Not, not, not necessary to establish by direct or
20 positive evidence. It's a mental state, conscious,
21 conscious wrong doing.

22 It is up to you to determine what the defendant
23 intended to do based on the circumstances shown
24 to have existed.

25 So, if you take, you take the charge as a whole, they

1 have to determine the element of intent and the state has
2 to prove it beyond a reasonable doubt. And then the
3 defense for that is accident: either A, I didn't do it, Ms.
4 Campbell did; or B, if I did, it was an accident. It, it's
5 not diminishing the state's burden of proof in that regard,
6 but I -- you know, as far as the statute, it says 'unlawful:

7 Unlawful is not necessarily strict liability, in my
8 mind. It is not authorized by law to put a seven year old
9 in a scalding shower. I mean, that -- we ain't got to
10 write a statute for that. I mean, that would be assault
11 and battery of a high and aggravated nature under the
12 common law, in my opinion. But that's how the statute is
13 written. It is unlawful to do what he did, what he
14 allegedly did. It's up to the jury to determine whether or
15 not, based on this record and the facts as they find them
16 to be, whether he's guilty or not guilty. And they can
17 find it based on whatever evidence and the inferences to be
18 drawn, and they could find that it was an accident because
19 he said it was an accident. They may believe -- they can
20 believe whatever they want to believe, but they may believe
21 his statements that they've heard, that they've read some
22 of them, that Detective Charley testified to it was an
23 accident.

24 Now, if -- I mean, Solicitor, if you think -- I don't
25 think it's a specific intent to cause the harm that

1 ultimately resulted because you can't, you can't, you can't
2 crack his mind open and tell what's in it at that time.
3 It, it's not that he intended to do -- to cause that
4 specific harm. It, it's not like whatever those cases are,
5 *Belcher* and that line of cases, whatever line of cases
6 there is. A lot of, a lot of cases fail as a result of
7 *Belcher*.

8 But he, I mean, he said several things. I mean, of
9 course, they can believe all, part, or none of what he said
10 to Detective Charley. I, I do not think it's specific
11 intent to kill. Actually, the case I was thinking of was a
12 case out of Saluda with Judge Keesley on specific intent to
13 kill. The name will come to me.

14 MS. CAMPBELL: The one that came out about attempted
15 murder?

16 MS. PINNOCK: *State vs. King*?

17 THE COURT: Say again?

18 MS. PINNOCK: *State vs. King*?

19 MS. CAMPBELL: No.

20 THE COURT: No, but it's, it's a common name in
21 Saluda, common last name, but I can't wrap my mind around
22 it right now.

23 What I'll do is when I get to my charge on the
24 statute, after I've charged intent I'll refer the jury back
25 to my charge on intent per se.

1 MS. CAMPBELL: Under intent?

2 THE COURT: If you recall my -- I'll refer the jury
3 back to my charge on intent because typically the way I do
4 is I charge intent. Then I go into the specific statute.
5 And when I get to the term unlawful and I'll, and I'll say
6 madame, ladies and gentlemen, I'll refer you back to my
7 charge on intent, which uses the language of knowledge,
8 intent, purpose, recklessness, and negligence.

9 Yes, Kinard, and if you're in Newberry it's Kinard,
10 but it's Kinard in Saluda.

11 (A PAUSE.)

12 THE COURT: All right, anything further, Solicitor?

13 MS. CAMPBELL: Your Honor, is she requesting the
14 accident charge?

15 MS. PINNOCK: Yes, I think we've asked for that.

16 THE COURT: All right.

17 MS. CAMPBELL: I just wanted to make sure.

18 THE COURT: All right. Thank you. Thank you very
19 much.

20 MS. CAMPBELL: Thank you, Judge.

21 THE COURT: You know, I read this great quote the
22 other day that said if you intend on talking longer than
23 twenty minutes, you ought to stop and write a book. I just
24 thought I'd tell that to y'all. I certainly don't want to
25 limit the lawyers to any particular period of time, but at

1 any rate, I wanted to share that thought with you.

2 Ms. Pinnock.

3 MS. PINNOCK: Thank you, Judge and just for record,
4 Your Honor, as far as charges go, so the record's clear, we
5 do object to negligence referenced.

6 THE COURT: All right.

7 MS. PINNOCK: I object to the general intent because
8 I, I -- we asked for specific intent. Thank you, Judge,
9 and one more thing?

10 THE COURT: Yes. I was doing that to you while you
11 were looking the other way, Ms. Pinnock. Go ahead.

12 MS. PINNOCK: It slipped my mind, Judge, when we were
13 in here earlier. Lesser-included offenses.

14 THE COURT: What are they?

15 MS. PINNOCK: We would actually ask for cruelty to
16 children.

17 THE COURT: Do you have a copy of the statute on
18 cruelty to children?

19 MS. PINNOCK: I do. It's -- all the statutes are on a
20 one page. Your Honor, it says:

21 Whoever cruelly ill treats, deprives necessary
22 substance or shelter, or inflicts unnecessary
23 pain or suffering upon a child, or causes the
24 same to be done.

25 We're asking for that, Judge, because if the jury,

1 based on the evidence in the record, believes that Mr.
2 Johnson, you know, may not have intended for the severity
3 of the injury but that he caused the injury. We believe
4 that taking out the, the, the intent aspect, they could
5 potentially still believe that he -- the injuries were the
6 result of his, his actions and those with the, the pain
7 that Mr. -- that, that Reginald suffered in the delay to
8 the hospital.

9 THE COURT: Solicitor.

10 MS. CAMPBELL: Your Honor, they are the same elements.
11 Under the test, it's not a lesser included in any way,
12 shape, or form.

13 THE COURT: I do not think this is lesser included.
14 It does not include great bodily injury. It also requires:
15 The person who has charge or custody of a child
16 or who is the parent or guardian of the child or
17 who is responsible for the welfare of the child
18 as defined under 63-7-20.

19 I do not think it is a lesser-included offense, but
20 you're protected for the record.

21 MS. PINNOCK: Thank you, Your Honor.

22 THE COURT: All right, anything before we bring in the
23 jury, Solicitor?

24 MS. CAMPBELL: No, sir.

25 THE COURT: Ms. Pinnock?

1 MS. PINNOCK: No, Your Honor.

2 MS. CAMPBELL: One housekeeping matter is we did the
3 Advice of Rights on the last one I put in with Investigator
4 Charley. Apparently I forgot to move into evidence, and
5 Mr. Bank has no problem with that. I believe it's 98.
6 Thank you.

7 (ADVICE OF RIGHTS FORM MARKED INTO EVIDENCE AS STATE'S
8 EXHIBIT NUMBER 98.)

9 THE COURT: All right, yes, sir.

10 MR. BANK: And, Your Honor, just to be clear, Ms.
11 Campbell and I have spoken. We'll be arguing under, I
12 guess, the Beatty, the new Beatty structure.

13 THE COURT: Right. I thought we discussed that. The
14 solicitor goes first, you're second, solicitor's ---

15 MR. BANK: Rebuttal.

16 THE COURT: --- rebuttal.

17 MR. BANK: Yes, sir.

18 THE COURT: All right.

19 I don't allow anyone out during the time in which an
20 attorney is addressing the jury.

21 And I don't like people squatting at the back either,
22 Sheriff, whoever that is.

23 So, so, please if you want to leave, you can leave
24 between the closings. You're welcome to do that and
25 certainly leave before my charge.

1 (THE JURY ENTERS AT 2:29 P.M.)

2 THE COURT: Welcome back, ladies and gentlemen. As
3 you recall, we're at the stage of the closing arguments by
4 the attorneys. The procedure we follow, the state closes
5 first in full, followed by the defense. Thereafter, the
6 state has an opportunity to rebut the -- any new material
7 that was brought up during the defense's closing argument.

8 I would ask you to please give the parties your
9 complete and undivided attention. They may comment on the
10 law, on the facts, and how the facts may intersect with the
11 law. Again, what they say is not evidence in the case, but
12 please give them your complete and undivided attention.

13 With that being said, Solicitor.

14 MS. CAMPBELL: May it please the court?

15 THE COURT: Yes, ma'am.

16 MS.. CAMPBELL: The first thing I want to do on behalf
17 of the State of South Carolina, citizens of Richland
18 County, and Minor and his family and his friends is
19 to thank you for your service in this case. I know when
20 you showed up for court on Monday for jury duty, you
21 probably wondered what kind of case am I going to sit on.
22 What am I going to hear? Is it going to be a contract
23 dispute? Maybe a car wreck where the light might have been
24 red or might have been green? And I know as you have had
25 to listen and look at things no one should really have to

1 Solicitor.

2 Anyone can leave now that would like to leave. I
3 allow it between closing arguments and before my charge
4 begins, but don't be slow about doing it, okay?

5 (A PAUSE.)

6 THE COURT: Thank you. You may lock the door again,
7 Mr. Bailiff.

8 Ladies and gentlemen, my charge, just to kind of give
9 an estimate of the time, of course, would probably take
10 about thirty-five minutes. I would as soon press on if
11 y'all are ready to press on. Thank you. Thank you very
12 much.

13 I would advise that an instruction or charge is very
14 well scripted. I cover the general criminal law that
15 applies to all criminal cases in South Carolina first.
16 After that, I cover the specific charge in the indictment,
17 and after that I cover the form of the verdict. When I
18 move from one subject matter to the next, I will typically
19 give you the subject matter that I am fixing to cover. I
20 will try to do that in all instances.

21 Charge, arrest, indictment, not evidence. The
22 indictment charges the defendant, as you recall, with
23 infliction of great bodily injury upon a child, a statute
24 in South Carolina that I will repeat to you later. I
25 remind you that the fact the defendant was arrested,

1 charged, and indicted in this case is not evidence in this
2 case and cannot be considered by you as evidence of guilt
3 in this case, nor does it create any presumption of
4 innocence of guilt. This document, this indictment, is
5 simply the formal written instrument which contains the
6 charge brought against the defendant. It is the formal
7 document by which this case is brought before the court.

8 Presumption of innocence. The defendant has pled not
9 guilty to this indictment, and that plea puts the burden on
10 the state to prove the defendant guilty beyond a reasonable
11 doubt. A criminal defendant in South Carolina is never
12 required to prove himself innocent. I instruct you that it
13 is an important rule of the law that a defendant in a
14 criminal trial, no matter what the seriousness of the
15 charge may be, will always be presumed to be innocent of
16 the crime for which the indictment was issued unless guilt
17 has been proven by evidence satisfying you, the jury, of
18 that guilt beyond a reasonable doubt.

19 This presumption of innocence does not end when you
20 begin your deliberations, but it accompanies the defendant
21 throughout the trial until you reach a verdict of guilt
22 based on the evidence satisfying you of that guilt beyond a
23 reasonable doubt. This presumption of innocence has been
24 said to be like a robe of righteousness placed about the
25 shoulders of the defendant which remains with the defendant

1 until it has been stripped from the defendant by evidence
2 satisfying you of the defendant's guilt beyond a reasonable
3 doubt.

4 The presumption of innocence is not a mere legal
5 theory; is not just a legal phrase. It is a substantial
6 right to which every defendant is entitled unless you, the
7 jury, are satisfied from the evidence of the defendant's
8 guilt beyond a reasonable doubt.

9 What is a reasonable doubt in the law? A reasonable
10 doubt is the kind of doubt that would cause a reasonable
11 person to hesitate to act. The state has the burden of
12 proving this defendant guilty beyond a reasonable doubt.
13 Some of you may have served as jurors in civil cases in the
14 past where you were told that it is only necessary to prove
15 that a fact is more likely true than not true, such as by
16 the greater weight or the preponderance of the evidence.
17 In criminal cases such as this, the state's proof must be
18 more powerful than that. It must be beyond a reasonable
19 doubt.

20 Proof beyond a reasonable doubt is proof that leaves
21 you firmly convinced of the defendant's guilt. There are
22 very few things in this world that we know with absolute
23 certainty, and in criminal cases the law does not require
24 proof that overcomes every possible doubt. If, based on
25 your consideration of the evidence, you are firmly

1 convinced that the defendant is guilty of the crime
2 charged, you must find the defendant guilty. If, on the
3 other hand, you think there is a real possibility that the
4 defendant is not guilty, you must give the defendant the
5 benefit of the doubt and find him not guilty.

6 Duties of jury and trial judge. I remind you that
7 during this trial, you and I have certain distinct duties
8 to perform. As the trial judge, it is my responsibility to
9 preside over the trial of this case, and I also have a duty
10 to rule on the admissibility of evidence offered during
11 this trial.

12 You are to consider only the competent evidence before
13 you. If there was any testimony, which there was, ordered
14 stricken from the record in this case during the trial, you
15 must disregard that testimony. You are to consider only
16 the testimony which has been presented from this witness
17 stand and any exhibits which have been made a part of the
18 record in this case.

19 I have the additional duty to instruct you on the law
20 applicable to this case. As the presiding judge, I am the
21 sole judge of the law of this case, and it is your duty as
22 jurors to accept it and to apply it as I now state it to
23 you. If you already have any idea as to what the law is or
24 what the law ought to be and it does not agree with what I
25 now tell you the law is, you must abandon, you must set

1 aside your idea because you are sworn to accept the law and
2 apply the law exactly as I state it to you.

3 In every case tried in this court before a jury, the
4 jury becomes the sole and exclusive judge of the facts. A
5 trial judge cannot intimate, state, comment on, or make any
6 statement to a trial jury about the facts in a case. Since
7 you, the jury, are the sole judge of the facts of this
8 case, you are not to infer from what I have said during the
9 progress of this trial in ruling upon the admissibility of
10 evidence or otherwise or anything that I say now during the
11 course of this instruction to you that I have any opinion
12 about the facts in this case. The law does not allow me to
13 have an opinion about the facts in this case. That is a
14 matter solely for you, the jury, to determine. As jurors,
15 it is your duty to determine the effect, the value, the
16 weight, and the truth of the evidence presented during the
17 trial.

18 Direct and circumstantial evidence. There are two
19 types of evidence which are generally presented during a
20 trial: direct evidence, circumstantial evidence. Direct
21 evidence is the testimony of a person who claims to have
22 actual knowledge of a fact such an eyewitness or an ear
23 witness. It is evidence which immediately establishes the
24 main fact to be proved. Circumstantial evidence is proof
25 of a chain of facts and circumstances indicating the

1 existence of a fact. It is evidence, which immediately
2 establishes a collateral fact from which the main fact may
3 be inferred. Circumstantial evidence is based on inference
4 and not on personal knowledge or observation.

5 The law, our law, makes absolutely no distinction
6 between the weight or the value to be given to either
7 direct evidence or circumstantial evidence, nor is a
8 greater degree of certainty required of circumstantial
9 evidence than of direct evidence. You should weigh all of
10 the evidence in the case.

11 After weighing all of the evidence, if you are not
12 convinced of the guilt of the defendant beyond a reasonable
13 doubt, you must find the defendant not guilty. If after
14 weighing all the evidence you are convinced of the guilt of
15 the defendant beyond a reasonable doubt, you must find the
16 defendant guilty.

17 Credibility of witnesses. Necessarily, you must
18 determine the credibility of the witnesses who have
19 testified in this case. As you all know, credibility
20 simply means believability. Who do you believe? It
21 becomes your duty as jurors to analyze and to evaluate the
22 evidence and determine which evidence convinces you of its
23 truth in using your good judgment individually, common
24 sense individually and collectively in determining the
25 believability of the witnesses who have testified in this

1 case. You may believe one witness over several or several
2 witnesses over one. You may believe the part of the
3 testimony of a witness and reject the remaining part of the
4 testimony of that same witness. You may believe the
5 testimony of a witness in its entirety or reject the
6 testimony of a witness in its entirety. You may consider
7 whether any witness has exhibited to you any interest,
8 bias, prejudice, or other motive in this case. You may all
9 consider the appearance, the manner, the demeanor of a
10 witness while on the witness stand. You may consider
11 anything that is in the record that will help you evaluate
12 the believability, the credibility of the witnesses.

13 The rules of evidence. This is -- let me back up.
14 Expert witnesses, and you've heard versions of this. This
15 is a little bit longer but not extremely, extremely longer.

16 Expert witnesses. The rules of evidence ordinarily do
17 not permit witnesses to testify to an opinion or a
18 conclusion. An exception to this rule exists for witnesses
19 that we call expert witnesses. A witness who by education
20 and experience has become an expert in some art, science,
21 profession, or calling may state an opinion as to relevant
22 and material matter in which the witness claims to be a
23 witness, and may also state the reasons, the basis for
24 holding those opinions.

25 You should consider any expert opinion received in

1 evidence in this case, and like any other witness, any
2 other evidence, give it the weight you, the jury, thinks it
3 deserves. If you decide the opinion of an expert witness
4 is not based on sufficient education or experience, or if
5 you conclude that the reasons given in support of the
6 opinions are not sound, or that the opinion is outweighed
7 by other evidence, you may disregard the opinion in its
8 entirety.

9 Ladies and gentlemen, as jurors, I direct jurors not
10 to place any expert's opinions above the ideas of your
11 opinions on the subject and to form your own conclusions
12 after considering expert's opinions in conjunction with all
13 other evidence that has been presented in this case. An
14 expert witness's testimony is to be given no greater weight
15 than that of other witnesses simply because the witness is
16 labeled an expert.

17 Further, you are not required to accept an expert's
18 opinion even though it is not contradicted. Again, the
19 credibility of the witness is entirely up to you, ladies
20 and gentlemen, expert witnesses and non-expert witnesses.

21 I instruct you and emphasize the fact that the
22 defendant did not testify is not a factor to be considered
23 by you in any way in your deliberation and in your
24 consideration on the question of the guilt or the innocence
25 of the defendant. It must not be considered by you in any

1 manner whatsoever. A defendant has the constitutional
2 right to remain silent, and the assertion of that right
3 must not be considered by you in your deliberations. I
4 repeat. Under your oath, you are to draw no conclusion,
5 whatsoever from the fact that the defendant in this case
6 did not testify.

7 Madame Forelady, the fact that this defendant did not
8 testify should not even be discussed in the jury room. The
9 burden of proof, as I have stated to you, is on the state
10 to prove the defendant guilty, the defendant beyond a
11 reasonable doubt. The defendant is not required to prove
12 his innocence. The burden of proof remains on the state to
13 prove guilt beyond a reasonable doubt.

14 Statement of the defendant, and that, that's -- I use
15 singular. It could be plural. A statement alleged to have
16 been made by the defendant has been admitted into evidence
17 in this case. While the court, while I have determined
18 that the statement is admissible, I instruct you that you
19 make the ultimate decision on whether or not the defendant
20 made the statement. If the defendant did make a statement,
21 you must determine whether the statement made was made by
22 the defendant voluntarily and of his own free will. This
23 means that the statement was not caused by pressure, force,
24 fear, threat, coercion, or intimidation, or by hope or a
25 promise of leniency, or a reward of any kind.

1 In determining whether you could consider a statement
2 as voluntary, you could, should consider both the
3 characteristics of the defendant and the detail of the
4 question. Some of the factors that you must consider are
5 the age of the defendant, the defendant's education or lack
6 of education, the defendant's mental ability or capacity,
7 the defendant's IQ or intelligence, the defendant's
8 background and environment, the place and the length of
9 detention, the nature of the questions, and the advice or
10 lack thereof to the defendant of his constitutional rights,
11 including but not limited to the right to remain silent.
12 That any statement could be used against him in a court of
13 law, the right to have a lawyer present. That if he could
14 not afford a lawyer, a lawyer would be appointed to
15 represent him without any cost, and that he could stop
16 making a statement at any time. You must carefully
17 consider all of the surrounding circumstances before you
18 give any weight to any alleged statement.

19 The state has the burden of proving beyond a
20 reasonable doubt that the alleged statement was voluntary.
21 If you determine it was voluntary, you may give that
22 statement any further consideration that you deem proper
23 and fit. You must decide what weight, if any, should be
24 given to any alleged statement. If you determine the
25 statement was not the free and voluntarily statement of the

1 defendant, you should not consider the statement at all.

2 Intent. In order to establish criminal liability,
3 criminal intent is required. For example, the mental state
4 required to be proven by the state for a particular crime
5 might be purpose, purposely, intent, intentionally,
6 knowledge, knowingly, recklessness, or criminal negligence.
7 Criminal intent must be proven by the state beyond a
8 reasonable doubt.

9 Criminal intent is always a matter that must be
10 determined by the jury from the circumstances surrounding
11 the situation. There is no way to prove intent to a
12 mathematical certainty. There's no way medical science can
13 dissect a person's brain and determine what the person had
14 in their mind. So, the law says criminal intent may be
15 inferred from circumstances shown to have existed.

16 This is how you make a determination of whether or not
17 the element requiring intent was present. It is not
18 necessary to establish intent by direct and positive
19 evidence, but intent may be established by inference in the
20 same way as any other fact: by taking into consideration
21 the acts of the parties and all the facts and circumstances
22 of the case.

23 Criminal intent is a mental state, a conscious
24 wrongdoing. It is up to you to determine what the
25 defendant intended to do based on the circumstances shown

1 to have existed. Criminal intent can arise from action or
2 a failure to act. It may arise from consequences that is
3 considered by the law to be the equivalent of criminal
4 intent.

5 Ladies and gentlemen, that covers the general charge
6 as to all the aspects of the criminal law that apply to
7 cases such as this. I am now going to address the specific
8 charge in this indictment.

9 The defendant is charged with infliction of great
10 bodily injury upon a child. That is a statute in South
11 Carolina under Code Section 16-3-95. It is unlawful --
12 when I use that term, please refer back to my instruction
13 to you that I just stated as to criminal intent. It is
14 unlawful to inflict great bodily injury upon a child. Now,
15 this is a -- and the state must prove beyond a reasonable
16 doubt that the defendant inflicted unlawfully -- and again
17 finding of also criminal intent -- unlawfully with criminal
18 intent inflicted great bodily injury upon a child.

19 Now, that term great bodily injury is also defined in
20 that statute. Great bodily injury means bodily injury
21 which creates a substantial risk of death; or which causes
22 serious or permanent disfigurement; or protracted loss or
23 impairment of the function of any bodily member or organ.
24 The state must prove those elements: unlawful criminally,
25 intentionally inflicting great bodily injury upon a child.

1 And that is the definition of great bodily injury, and that
2 has to be proved by the state beyond a reasonable doubt.

3 Ladies and gentlemen, there has been a defense of
4 acts, to be entitled to a defense of accident. There are
5 three elements. The act of the defendant must have been
6 unintentional. That is, by definition, not intentional as
7 opposed to intentional. First, the act of the defendant
8 must have been unintentional. Second, the defendant was
9 acting lawfully, acting lawfully. And third, the defendant
10 used due care. Would not be entitled to such a defense if
11 the defendant failed to use due care. That is, if the
12 defendant was negligent. Those are the three elements:
13 unintentional, acting lawfully, and used due care. That or
14 the -- that is the elements.

15 Again, there no burden on the defendant to prove
16 himself or herself innocent. You would consider both --
17 all the charges I have given you, the statute as to what
18 the state must prove beyond a reasonable doubt, and further
19 the defense of accident in reaching your verdict as to the
20 guilt or the innocence of the defendant, understanding
21 defendant does not have to prove himself innocent. The
22 state always bears the burden of proving its case beyond a
23 reasonable doubt.

24 And, ladies and gentlemen, I assure you the end is in
25 sight but not any less unimportant for you to please

1 continue to give me your complete and undivided attention.

2 There was testimony by a witness who had a prior
3 criminal conviction. I remind you or I instruct you that a
4 person with a prior criminal conviction is competent to
5 testify, and you may use that prior conviction, if you use
6 it at all, only for the purposes as to whatever weight and
7 value you want to give it as to the witness's credibility
8 or believability and for no other purpose.

9 Further, you will recall that during the course of the
10 trial, I gave you a curative instruction as to the
11 testimony of a witness, and I asked you -- and I didn't
12 ask. I instructed you that you may not consider certain
13 parts of that witness's testimony. I believe it was four
14 words: As a form of punishment. Again, that may not be
15 considered by you whatsoever in any manner in your
16 deliberations and in your consideration of the verdict in
17 this case.

18 I would remind you again, Madame Forelady, that should
19 not even be discussed in the courtroom. That had been
20 stricken from the record.

21 And remembering, ladies and gentlemen, you are the
22 sole judges of the facts of this case and the believability
23 of any and all witnesses in the case, both witnesses and
24 experts.

25 Now, Madame Forelady, ladies and gentlemen of the

1 jury, you will have this document in there with you, along
2 with all the evidence and such.

3 Entitled the Verdict Form. It has the caption of the
4 case, *State vs. Shane Isaac Johnson*. It -- I think you
5 will find it very easy to understand and follow. It has
6 the indictment number and it has:

7 As to the infliction of great bodily injury upon
8 a child, we, the jury, unanimously find the
9 defendant.

10 And it has two choices: guilty or not guilty. The
11 order in which I have written them on this document, the
12 order in which I have stated them has no significance
13 whatsoever. One must be stated. One must be written
14 first.

15 Once you have considered the record, the evidence and
16 you, the jury, have determined what the facts are as you
17 find them to be, you apply those facts to the law, the
18 standard of the law as I have told you the law is. If you
19 find that the state has failed to prove its case beyond a
20 reasonable doubt, then your verdict would be not guilty.
21 It must be unanimous; all twelve of you must agree.

22 If your finding is not guilty, Madame Forelady, I
23 would ask you to check to the left of the two words not
24 guilty. Circle both your checkmark and those two words not
25 guilty, sign as our presiding juror, and date.

1 If, after your consideration of the evidence in this
2 case and your determination as what the facts are in the
3 case, you find that the state has met its burden of proof
4 beyond a reasonable doubt as to the charge in the
5 indictment, and you reach a unanimous verdict of guilt, and
6 Madame Forelady, I'd ask you to check to the left of the
7 word guilty, circle the checkmark, the word guilty, sign as
8 our presiding juror, and date.

9 Your verdict must be based on the evidence in the
10 case. It may not be based on passion, prejudice, sympathy,
11 or any other motive not in the record in this case.

12 Once the jury has reach a unanimous verdict, Madame
13 Forelady, and you have signed and dated, I would ask that
14 you please knock on the jury room door, inform the bailiff,
15 and we will then return you back into the jury room for the
16 taking of your verdict.

17 Also, if during the course of your deliberations you
18 have any questions whatsoever, you or any member of the
19 jury, if you'd please, Madame Forelady, write me a note. I
20 know you know how to write a note, so write me a note and I
21 will respond in a timely manner.

22 Do not begin your deliberations. I have to meet one
23 final time with the attorneys prior to submitting the case
24 to you. If I do not have to bring you back out --
25 everybody looks great today. Our fine alternate would come

1 out. We will marshal the evidence, and it will be
2 presented to you, and then you'll be directed to begin your
3 deliberations with your fellow jurors. I'll also make
4 arrangements to have a, I guess they call it a clean
5 computer where you can watch the -- listen, I should say,
6 listen to the audios should you wish to do so. I'm sure
7 there's many of you that can operate that, that type of
8 electronic device.

9 Thank you. Thank you very much, ladies and gentlemen,
10 for your focus and attention. You may now go to your jury
11 room. Do not begin your deliberations until instructed to
12 do so.

13 (THE JURY EXITS AT 4:30 P.M.)

14 THE COURT: All right, Solicitor?

15 MS. CAMPBELL: No exception to the jury charge, Your
16 Honor.

17 THE COURT: Ms. Pinnock?

18 MS. PINNOCK: Your Honor, we just renew our previous
19 objections that we discussed earlier.

20 THE COURT: All right, and I would note for the record
21 I used with unlawful, I referred them back several times to
22 my charge on criminal intent, and I used the word
23 intentional intentionally several times. Further, I used
24 it during the course of the accident charge with the first
25 requirement that the act be not intentional and be

1 unintentional, and I placed also in there unintentional is
2 not intentional. So, I have, I have done that in several
3 respects, but you are certainly protected for the record,
4 Ms. Pinnock.

5 MS. PINNOCK: Thank you, Your Honor.

6 THE COURT: Thank you very much.

7 If y'all will marshal the exhibits in a timely manner
8 so we can get the case to the jury in a timely manner? Do
9 y'all have a computer also for the jury?

10 MR. FYALL: We do, Your Honor.

11 THE COURT: If you could get that. Thank y'all.
12 Thank y'all very much.

13 (WHEREUPON, COUNSEL FOR BOTH SIDES REVIEW EXHIBITS
14 WITH THE COURT REPORTER.)

15 (WHEREUPON, JURY DELIBERATIONS BEGIN AT 4:38 P.M.)

16 (OFF THE RECORD.)

17 THE COURT: Question:

18 What is criminal negligence under the criminal
19 intent statute? Same question for recklessness.

20 Signed juror 108.

21 All right, Ms. Pinnock.

22 MS. PINNOCK: Yes, sir.

23 THE COURT: You have an answer?

24 MS. PINNOCK: Off the top of my head, no, sir. I
25 mean, I can go get one.

1 THE COURT: I don't have it.

2 MS. PINNOCK: Okay.

3 THE COURT: Even if it goes from the top of my head
4 all the way and swirls around left brain, right brain.

5 MS. PINNOCK: I'm can -- I'm happy to go get one.

6 THE COURT: There is a definition of criminal
7 negligence. I want to say it's -- I'm going to take a
8 stab, say it's 16-3-50 of involuntary manslaughter statute,
9 but I'm not sure. Do you have an answer? And, you know, I
10 actually don't define that. That's used as an example in
11 that standard criminal intent charge which I scooped up a
12 little bit, but I didn't change that at all. But that's a,
13 I think that's just a statutory definition. I'm not sure.
14 Let me see.

15 (A PAUSE.)

16 THE COURT: 60. I said 50. 50 is manslaughter. 60
17 is involuntary. It's got criminal negligence defined:

18 With regard to the crime of involuntary
19 manslaughter, criminal negligence is defined as
20 the reckless disregard for the safety of others.
21 A person charged with the crime of involuntary
22 manslaughter may be convicted only upon a showing
23 of criminal negligence as defined in this
24 section.

25 And then it's got the penalty. That's, that's the

1 definition. I didn't have the definition in my mind, but I
2 thought that's where it was attached to in the -- for
3 involuntary manslaughter.

4 (A PAUSE.)

5 THE COURT: I didn't define it. The statutory crime
6 -- the statutory definition of criminal negligence is under
7 the involuntary manslaughter statute. So, that statute
8 doesn't apply to this case, number one. I'm making an
9 assumption that the definition is the same across the
10 board, but at the same time criminal negligence doesn't
11 apply to this case either. It's part of the -- I'm not
12 even sure I -- it uses -- the state, for example, it's
13 starts off, the question starts off -- I mean the sentence
14 starts off -- well:

15 In order to establish criminal liability,
16 criminal intent is required. For example, the
17 mental state required to be proven by the state
18 for a particular crime might be purpose, intent,
19 knowledge, recklessness, or criminal negligence.

20 And that, that's giving it by way of examples. Of
21 course, criminal negligence is not sufficient -- well, it's
22 not written in the statute, 16-3-95.

23 How would y'all like me to respond? Do y'all have a
24 suggestion on how I should respond?

25 MR. BANK: I mean, it seems apparent that they're

1 trying -- they're assuming if they find criminal negligence
2 that they can find him guilty, and if we're saying that
3 more is required than that, then I think we need to be
4 clear that criminal negligence was meant to be an example
5 and not something that they can use to find Shane Johnson
6 guilty of the crime.

7 MS. CAMPBELL: I think all we can do at this point is
8 answer their question. Either if you want it defined,
9 great. If not, great, too.

10 THE COURT: What now?

11 MS. CAMPBELL: If they want the words defined -- I
12 mean, they may just be using them as an example. I don't
13 think we can go further in educating them. We can just
14 answer the question, I think. So, it's ---

15 THE COURT: Both points are well taken. Just thinking
16 is that the definition of criminal negligence is not in the
17 statute that's before this jury.

18 MS. CAMPBELL: So, I don't know ---

19 THE COURT: Well, y'all respond to this. What if I
20 tell them that was not part of my charge to you and I can,
21 I can -- or that I can recharge you fully and completely on
22 criminal, on crim -- on intent.

23 MS. CAMPBELL: That would be fine.

24 THE COURT: And just recharge what I have previously
25 charged.

1 MS. CAMPBELL: Yes.

2 MR. BANK: I think that, that we wouldn't get away
3 from the problem if they're taking -- if they're reading,
4 reinterpreting the examples to be the standard, we run into
5 the same problem. So, if we recharge without using the
6 examples, I think that that would be the best way to
7 address it.

8 THE COURT: Well, then my next suggestion is for me to
9 just write and say I am unable to answer this question. I
10 can't change my charge.

11 MR. BANK: But I think we can focus that. I don't
12 know that we need to change the charge, but I just don't
13 know that we need to include the examples.

14 THE COURT: Well, if I'm extracting those two words
15 out, that's, that's all I'm saying. I'm not, I'm not, not
16 trying to be argumentative or anything. I don't want you
17 to get like that. I just don't want to change, I don't
18 want to change what I've already told them when those
19 things are by way of example. I mean, I still wouldn't
20 know. If I assume you're reading them correctly, the jury,
21 I could -- if I defined it under the statute as criminal
22 negligence being the reckless disregard for the safety of
23 others.

24 MS. CAMPBELL: That's fine, too.

25 THE COURT: I mean, that's what the definition is

1 under the involuntary manslaughter statute. I don't, I
2 don't know where that leaves the defendant.

3 MR. BANK: Right.

4 THE COURT: Or the state.

5 MR. BANK: Right.

6 THE COURT: And so that's pretty serious.

7 MR. BANK: Yes, sir.

8 THE COURT: It's pretty serious. I mean, I'm not
9 saying that's what they think because, you know, kind of
10 like Judge Manning, I can't ever predict who a widower
11 might marry or what a jury might do. I don't, don't know
12 which way, which way that cuts, if either.

13 MR. BANK: Well, Your Honor, I think if anything,
14 maybe we can say that was not part of the charge and
15 then ---

16 MS. CAMPBELL: It was part of your criminal intent
17 charge.

18 THE COURT: By way of example.

19 MS. CAMPBELL: Yes.

20 THE COURT: It said ---

21 MS. CAMPBELL: Just recharge the entire criminal
22 intent.

23 THE COURT: Said for -- it starts off:

24 In order to establish criminal liability,
25 criminal intent is implied. For example, the

1 mental state required to be proven by the state
2 for a particular crime ---

3 It does not specify this crime.

4 --- but for a particular crime might be purpose,
5 intent, knowledge, recklessness, or criminal
6 negligence. Criminal intent must be proven by
7 the state beyond a reasonable doubt.

8 And it goes on. It gives, though, it gives kind of
9 that laundry list by way of example.

10 MR. BANK: Yes, sir.

11 THE COURT: And it doesn't, doesn't say any of them
12 are, are specific to this charge.

13 MR. BANK: But ---

14 THE COURT: It kind of gives them that scale that we
15 all learned: motive, purpose, intent, all the way down.

16 MR. BANK: I just think that if it was clear, they
17 wouldn't have asked the question. If it was clear that it
18 was a laundry list, I don't think they would have asked the
19 question.

20 MS. CAMPBELL: But that's -- you're assuming.

21 THE COURT: Well, you know, the next question would be
22 is a charge ever clear.

23 MR. BANK: Yes, sir.

24 THE COURT: Mr. Bank, not, not mine necessarily. I
25 don't mean that, but...

1 MR. BANK: But again, Your Honor, I think your first
2 suggestion of explaining that was not part of the charge is
3 what we would request.

4 MS. CAMPBELL: But it is part of the charge. It's
5 just part of the examples in the criminal intent charge.
6 So, therefore, if you just want to recharge the entire
7 criminal intent, I don't have a problem.

8 MS. PINNOCK: I think that's what we're trying to get
9 at, Judge. If you -- if we could agree to just tell them
10 it's not part of the charge that he's charged with, then
11 recharge the whole thing.

12 MS. CAMPBELL: No, no, no, no, no, no. That's a
13 comment. We can't say it's not part of the charge. It is
14 part ---

15 MS. PINNOCK: No, I'm not saying it's not part of the
16 charge. It's not part of the statute that he's charged
17 with, and then recharge the entire criminal intent or the
18 intent charge that he did.

19 MS. CAMPBELL: We would object to that, Your Honor. I
20 don't think we can say it's not part of the charge he's
21 charged with. At that point, we're back to just defining
22 what ---

23 THE COURT: All right, I'm going to tell them I cannot
24 add to or detract from charge, and I can recharge any part
25 of any, any -- or all of my previous charge.

1 MS. CAMPBELL: Thank you, Your Honor.

2 THE COURT: But I, I, I mean, I -- that's, that's what
3 I'm going to do.

4 MR. BANK: Yes, sir.

5 (A PAUSE.)

6 THE COURT: And what I have written is:

7 I can only reread my previous instructions to
8 the jury in reference to your specific question.

9 There may be other questions they potentially could
10 have that we could answer. I mean, I don't want to
11 foreclose that. So, again I put:

12 I can only reread my previous instructions to
13 the jury in reference to your specific question.

14 They can decide if they think they're going to hear it
15 or not.

16 MR. BANK: Yes, sir. We stand by our original
17 request, but I think that that ---

18 THE COURT: And tell, tell me ---

19 MR. BANK: --- with your ruling ---

20 THE COURT: Tell me your original request again.

21 MR. BANK: Our original request is to tell the jury
22 that, that criminal negligence was not charged in the
23 specific crime to Shane Johnson, and then reread the intent
24 charge. I mean, it's just not charged. I understand
25 that's -- the language is in the charge explaining criminal

1 intent, but the language is not in the charge of what he's
2 charged -- what he's on trial for, so that we stand by that
3 original request, but understanding your ruling that you're
4 not going to do that, I am obviously fine with, it.

5 THE COURT: Anything further, Solicitor?

6 MS. CAMPBELL: No, sir.

7 THE COURT: All right. Thank y'all. Thank y'all very
8 much.

9 (JURY NOTE MARKED INTO EVIDENCE AS COURT'S EXHIBIT
10 NUMBER 12.)

11 (OFF THE RECORD.)

12 THE COURT: Thank you. Please be seated.

13 All right, I received a note in response to my note,
14 which is on the same note, Court's Exhibit 12. The first
15 question is: Can we have what you read in writing?

16 MR. BANK: Beg the court's indulgence?

17 (A PAUSE.)

18 MR. BANK: Judge, we, we would prefer it be just
19 recharged and not given back there.

20 THE COURT: Solicitor?

21 MS. CAMPBELL: We don't object.

22 THE COURT: All right: If not, then if you reread it,
23 can we make notes?

24 MR. BANK: Judge. I, I don't know that -- I think we
25 would object to that. I mean, they weren't allowed to make

1 notes for the other parts of it, and I don't know that
2 starting note taking at the end of the trial is the best
3 idea.

4 THE COURT: Solicitor?

5 MS. CAMPBELL: We have no objection.

6 THE COURT: All right, we're two for two.

7 Number three: Also, please, can number 30 be excused
8 from this process because she has anxiety?

9 My answer to that -- your answer to that, Mr. Bank,
10 is?

11 (A PAUSE.)

12 MR. BANK: Your Honor, my answer to that is that's
13 obviously very concerning. If we let her go, it's
14 obviously a mistrial, but if she has anxiety and can't
15 function as the twelfth person on the jury, that, you know,
16 is, is not obviously something that we can live with.

17 Your Honor, if they're asking her to be let go, that
18 causes enough concern for me that -- I don't know that we
19 have twelve people that can handle this and if we don't
20 have twelve people that can handle this, I don't enjoy
21 having to ask for a mistrial at the end of the process.
22 But I don't know any other result or any other option than
23 that. We obviously can't deliberate with eleven and if we
24 can't deliberate with eleven plus somebody that can't -- or
25 is too anxious to be able to think clearly or whatever it

1 might be. So, Your Honor, I think my response to that
2 would be to ask for a mistrial. At the very least, if
3 you're not inclined to do that, bring the juror out and
4 maybe ask some questions so we can get more context as to
5 how bad of a problem it actually is.

6 THE COURT: Thank you.

7 Solicitor.

8 MS. CAMPBELL: Your Honor, I don't think we can excuse
9 the juror just because she's anxious.

10 THE COURT: Ma'am?

11 MS. CAMPBELL: I don't think we can excuse me a juror
12 just because she's anxious.

13 THE COURT: Thank you.

14 Bring me the jury panel, please.

15 (THE JURY ENTERS AT 5:25 P.M.)

16 THE COURT: Madame Forelady, ladies and gentlemen of
17 the jury, I received your note and the response to my
18 response. The first question was: Can we have what you
19 read in writing? The answer to that is no.

20 If not, then if you read it, can we take notes?

21 The answer to that is no. I will be delighted to read
22 my charge on intent again. I, I can't, I can't change my
23 charge in any way from what I originally said to what I say
24 now. It's scripted like that. I, I would say I reread
25 recharges to jurors as requested, and I want to make sure I

1 understand your note that as requested is my charge on
2 intent.

3 FOREPERSON: Yes, that's correct, right?

4 JUROR: It is.

5 THE COURT: On intent. Is that, is that correct?

6 FOREPERSON: Yes. Correct.

7 THE COURT: I will read that to you but with the
8 understanding that that's part of my charge as a whole

9 JUROR: Right.

10 FOREPERSON: Yeah.

11 THE COURT: So, you take this and you encapsulate it
12 in, in my entire charge. And after I do that, I will
13 address your third question as to this.

14 Intent. In order to establish criminal liability,
15 criminal intent is required. For example, the mental state
16 required to be proven by the state for a particular crime
17 might be purpose, intent, knowledge, recklessness, or
18 criminal negligence. Criminal intent must be proven by the
19 state beyond a reasonable doubt.

20 Criminal intent is always a matter that must be
21 determined by the jury from the circumstances surrounding
22 the situation. There is no way to prove intent to a
23 mathematical certainty. There is no way medical science
24 can dissect a person's brain and determine what the person
25 had in mind. So, the law says that criminal intent may be

1 inferred from the circumstances shown to have existed.

2 This is how you make your determination of whether or
3 not the element requiring intent was present. It is not
4 necessary to establish intent by direct and positive
5 evidence, but intent may be established by inference in the
6 same way as any other fact: by taking into consideration
7 acts of the parties and all the facts and circumstances of
8 the case shown to have existed.

9 Criminal intent can arise from action or a failure to
10 act. It may arise from that which is considered by the law
11 to be the equivalent of criminal intent.

12 As you may recall, I referred to that charge also not
13 in its entirety, but I referred back to the intent charge
14 when I read to you the statute as to intentional -- as to
15 infliction of great bodily injury upon a child. That is my
16 response to the question.

17 As to the third request, alternates are released when
18 the jury begins its deliberations. I can't thereafter plug
19 an alternate in that has not been part and parcel of the
20 jury panel's deliberation. I can only proceed with twelve
21 jurors; I can only proceed with twelve jurors.

22 Now with that being said, I do not have detailed
23 information concerning the particular juror. If I could
24 get some additional information, I will certainly address
25 that. I would never -- I would address that, and I'll just

1 say it from there, if there's additional information. But
2 I need twelve jurors that can still function as fair and
3 impartial jurors in the trial of this case and commit their
4 focus and attention to the trial, the serious case, serious
5 case, important case. And I've told you. Y'all know that
6 now. I don't have to say it again. It's important to Mr.
7 Johnson; it's important to the state.

8 So, if you could give me and your fellow jurors,
9 Madame Forelady, perhaps some further clarification as to
10 that third issue, I'll review it, but I would ask you at
11 this time. Please return to your jury room and recommence
12 your deliberations. Thank you. Thank you very much.

13 FOREPERSON: Thank you.

14 THE COURT: Yes, ma'am.

15 (THE JURY EXITS AT 5:32 P.M.)

16 THE COURT: Any objections, Mr. Bank?

17 MR. BANK: Your Honor, I am still concerned about the
18 anxiety comment obviously, but if you're not inclined just
19 on the basis of the anxiety comment, if your ruling is not
20 to grant a mistrial on that and that is your ruling, then
21 in that sense, yes, I am -- I have no objections to, to
22 your address.

23 THE COURT: Thank you, Mr. Bank.

24 MS. SIMPSON: No objection by the state.

25 THE COURT: All right, and I noticed all of the jurors

1 appeared to be alert and attentive for that brief period of
2 time they was in the courtroom, and I would like to have
3 more clarification. That's, that's why I requested it so
4 that if I were to decide to inquire into it further with a
5 specific juror, I would be more prepared to do so. So with
6 that being said, you're certainly protected, protected for
7 the record.

8 MR. BANK: Yes, sir. Thank you.

9 THE COURT: Yes, sir. Thank you, Mr. Bank. Thanks.
10 Thank you, Solicitor. Don't get far. Thank you.

11 (OFF THE RECORD.)

12 THE COURT: All right, I understand we have a verdict.
13 Anything from the defense before we bring in our jury?

14 MR. BANK: No, sir.

15 THE COURT: State?

16 MS. CAMPBELL: No, sir.

17 THE COURT: I don't tolerate any outburst, show of
18 emotions pro or con in the courtroom upon taking of the
19 jury verdict. If you feel like you cannot contain your
20 emotions, I'd ask you to please leave at this time. If you
21 remain, I will consider that you have accepted my comments.
22 I know it can be emotional, but please contain them. Thank
23 you. Thank you very much.

24 (THE JURY ENTERS AT 5:51 P.M.)

25 THE COURT: Madame Clerk.

1 CLERK OF COURT: Yes, Your Honor.

2 THE COURT: Verdict.

3 CLERK OF COURT: Madame Forelady, do you have your
4 verdict?

5 FOREPERSON: Yes, I do.

6 CLERK OF COURT: Is it the verdict of the entire jury?

7 FOREPERSON: Yes, it is.

8 CLERK OF COURT: Would you hand it to the bailiff,
9 please?

10 (A PAUSE.)

11 THE COURT: All right, Madame Clerk, you may publish
12 the verdict.

13 VERDICT

14 CLERK OF COURT: State of South Carolina in the County
15 of Richland in the Court of General Sessions in the Fifth
16 Judicial Circuit, indictment number 2015-GS-40-6544, as to
17 infliction or allowing infliction of great bodily injury
18 upon a child, we, the jury, unanimously find the defendant
19 guilty. Signed by the forelady and dated April 7, 2017.

20 Madame Forelady, is this your verdict and the verdict
21 of the entire jury?

22 FOREPERSON: The verdict of the entire jury.

23 CLERK OF COURT: Thank you.

24 THE COURT: Thank you.

25 You may be seated, Mr. Johnson.

1 Anything further for the jury from the state,
2 Solicitor?

3 MS. SIMPSON: No, Your Honor.

4 THE COURT: From the defense?

5 MR. BANK: We'd ask that the jury be polled, Your
6 Honor.

7 THE COURT: All right, Madame Clerk, would you please
8 explain to the jury the polling process and then conduct
9 the polling process?

10 CLERK OF COURT: Yes, Your Honor.

11 Madame Forelady and ladies and gentlemen, I'm going to
12 call each of your numbers out. I'm going to ask you two
13 questions, and I need you to answer both questions.

14 THE COURT: And would you raise your hand for me,
15 please, when your numbers are called? Thank you very much.

16 CLERK OF COURT: Number 108, was this your verdict?

17 FOREPERSON: Yes.

18 CLERK OF COURT: Is it still your verdict?

19 FOREPERSON: Yes.

20 CLERK OF COURT: Number 35, is your verdict?

21 FOREPERSON: Yes.

22 CLERK OF COURT: It is still your verdict?

23 JUROR: Yes.

24 CLERK OF COURT: Number 185, was this your verdict?

25 JUROR: Yes.

1 CLERK OF COURT: Is it still your verdict?
2 JUROR: Yes.
3 CLERK OF COURT: Number 59, was this your verdict?
4 JUROR: Yes.
5 CLERK OF COURT: Is it still your verdict?
6 JUROR: Yes.
7 CLERK OF COURT: Number 170, was this your verdict?
8 JUROR: Yes.
9 CLERK OF COURT: Is it still your verdict?
10 JUROR: Yes.
11 CLERK OF COURT: Number 45, was this your verdict?
12 JUROR: Yes.
13 CLERK OF COURT: Is it still your verdict?
14 JUROR: Yes.
15 CLERK OF COURT: Number 200, was this your verdict?
16 JUROR: Yes.
17 CLERK OF COURT: Is it still your verdict?
18 JUROR: Yes.
19 CLERK OF COURT: Number 30, was this your verdict?
20 JUROR: Yes.
21 CLERK OF COURT: Is it still your verdict?
22 JUROR: Yes.
23 CLERK OF COURT: Number 152, was this your verdict?
24 JUROR: Yes.
25 CLERK OF COURT: Is it still your verdict?

1 JUROR: Yes.

2 CLERK OF COURT: Number 171, was this your verdict?

3 JUROR: Yes.

4 CLERK OF COURT: Is it still your verdict?

5 JUROR: Yes.

6 CLERK OF COURT: Number 102, was this your verdict?

7 JUROR: Yes.

8 CLERK OF COURT: Is it still your verdict?

9 JUROR: Yes.

10 CLERK OF COURT: Number 227, was this your verdict?

11 JUROR: Yes.

12 CLERK OF COURT: Is it still your verdict?

13 JUROR: Yes.

14 CLERK OF COURT: Jury is polled, Your Honor.

15 THE COURT: Thank you. Thank you very much, Madame

16 Clerk.

17 Anything further for the jury from the defense, Mr.

18 Bank?

19 MR. BANK: No, sir.

20 THE COURT: Thank you. Thank you very much.

21 Momentarily I will release you from your jury service,

22 ladies and gentlemen, but I'm going to ask you if you'd

23 please step back to your jury room for a, just a brief

24 time. I have to meet with the lawyers one time outside of

25 your presence, one further time. Thank you. Thank you

1 very much.

2 (THE JURY EXITS AT 5:55 P.M.)

3 THE COURT: Mr. Bank, I wanted to give you one final
4 opportunity before I release the jury panel outside of
5 their presence if you had any other motions in that regard.

6 MR. BANK: Your Honor, I -- we -- I don't know that --
7 you're asking us to renew all our other motions?

8 THE COURT: No, no, sir, I'm not. I just wanted to
9 give you one final opportunity before I release the jury.
10 I think you're well protected on the record as to other
11 motions, I think.

12 MR. BANK: Yes, sir.

13 THE COURT: I don't know what an appellate court
14 expects of defense lawyers anymore as far as protecting the
15 record, but if somebody ever asked me did they protect the
16 record, I would say yes.

17 MR. BANK: Well, if ---

18 THE COURT: But they would weigh my credibility of
19 course, too, Mr. Bank, but I'm not inviting you to make any
20 more motions. I just want to -- wanted to give you the
21 opportunity.

22 MR. BANK: Yes, sir. Your Honor, I, I don't know that
23 I need the jury -- we do -- we would move for a new trial
24 based on ---

25 THE COURT: Yes, sir.

1 MR. BANK: --- based on the -- what we think is
2 confusion over the *mens rea* issue and the anxiety of the
3 juror and not getting any more information from her. I
4 don't know that we need to ask any questions. The verdict
5 is in, but I am moving for a new trial on those two issues
6 that we were discussing throughout all the notes.

7 THE COURT: Thank you. Well, I don't, nor do any of
8 us, invade the province of the jury. I invited them to
9 give me further information or guidance. The jury chose to
10 continue their deliberations and not do so.

11 I would place in the record I observed all the jurors
12 generally, and specifically number 30. I have observed all
13 of them throughout the course of the trial. Juror 30
14 appeared, as did all the members of the jury, focused,
15 engaged, attentive throughout, throughout the course of the
16 trial, closing arguments. And I saw no behavior, demeanor
17 that would lead me to believe otherwise.

18 Thank you, Mr. Bank. Thank you, Solicitor.

19 Bring the jury back.

20 (THE JURY ENTERS AT 5:58 P.M.)

21 THE COURT: Madame Forelady, ladies and gentlemen, I
22 never criticize nor commend a jury for its verdict. That
23 is solely, entirely up to the jury as the judges of the
24 facts in the case.

25 However, I will say this, I have observed you

1 throughout this -- I think it was a week. Sometime it
2 feels like perhaps it was longer than a week. We had our
3 kind of fits and starts with the weather and with other
4 issues and timing of which I take up motions. The lawyers
5 are always very prepared to present motions and they give
6 me a lot to think about, and I think about it as diligently
7 as I'm able to. Quite frankly, you have been, as I say,
8 focused, attentive to all of the parties, the attorneys,
9 the witnesses, the evidence that has been presented, and I
10 commend you for that, and I commend you for your
11 willingness to perform your very important civic duty.

12 I think one of the lawyers may have said previously
13 this week. I've heard it in other cases I have tried. You
14 will never come down to the courthouse, I do not think, and
15 see a line of, line of individuals wanting to get on jury
16 duty. They don't -- that doesn't happen. However, when
17 they get into -- or get chosen or summoned to jury duty,
18 most times they step up to the plate. Many times they have
19 legitimate reasons not to step up to that plate. Most
20 times, though, they do, perhaps willingly.

21 When I qualify the jury, I always tell them it can be
22 a very educational process for them because it is our
23 justice system, whether it's civil or -- whether it's
24 civil, there are very different decisions, important
25 decisions made in this, this structure. People's freedoms

1 are at stake. People's custody of their children's at
2 stake. People's property and money's at stake. A lot of
3 important decisions, and we couldn't make them in this
4 courtroom without people just like yourselves in and out
5 every week willing to make those difficult decisions.

6 One final thing and I will release you. I have found
7 regardless of the divisiveness that we sometimes see in our
8 country from afar, from the big picture, I never see it in
9 the American people in jury panels. Never, never see it.
10 They make -- they, they come together and make those
11 decisions, and I salute you for it. I really do. That's
12 been one of my honors of being a circuit court judge is
13 being not only with these wonderful attorneys and staff and
14 officers and clerks throughout South Carolina but with the
15 people. It's great, great. Thank you. Thank you for your
16 service.

17 If you get summoned any time this year, you're
18 disqualified; you can't even serve even if you wanted to.
19 The next two years you have the right to choose not to
20 serve. I will tell you this, though. If you get a
21 subpoena for this year or the next year or the next year,
22 try to get in touch with me because I want to share a
23 lottery ticket with you, okay, and we'll split. In fact,
24 I'll pay and we'll still split it. I don't gamble, but I
25 do support education. So, just keep that in mind.

1 Again, it's been my pleasure and privilege. You're
2 now released.

3 Sheriff, we need security for them or anything of that
4 nature? No?

5 All right, thank y'all. Thank y'all very much, and
6 I'm sure she's going to tell you the check's in the mail.

7 (THE JURY EXITS AT 6:03 P.M.)

8 THE COURT: All right, other motions, Mr. Bank? A
9 motion for new trial, you, you stated that. Any others?

10 MR. BANK: Yes, sir. We'd just move to renew all of
11 our previous motions, objections pretrial, during the
12 course of trial, jury deliberations, Your Honor, at this
13 time.

14 THE COURT: All right, thank you. I will deny the
15 motion for a new trial. Further, reaffirm all my previous
16 rulings pretrial, *in camera*, and evidentiary rulings.
17 Thank you. Thank you very much.

18 MR. BANK: Thank you, Judge.

19 THE COURT: Any reason the sentence cannot be imposed
20 at this time, Mr. Bank?

21 MR. BANK: Not from the defense.

22 THE COURT: All right, if you'd come around, please,
23 Mr. Johnson.

24 MS. CAMPBELL: Your Honor, do you want the defense to
25 sign?

1 THE COURT: If he does -- or not have to. He can
2 choose not to, or he can sign.

3 (A PAUSE.)

4 THE COURT: All right, anything further, Solicitor?

5 MS. CAMPBELL: Your Honor, I'll just check with the
6 victims.

7 (A PAUSE.)

8 MS. CAMPBELL: Your Honor, in the courtroom is Debra
9 Campbell, Minor grandmother.

10 THE COURT: All right.

11 MS. CAMPBELL: I think she would like to address the
12 court with the court's permission.

13 THE COURT: All right, I'll be glad to hear from you,
14 Ms. Campbell. Just speak up for me, please.

15 MS. D. CAMPBELL: Yes, Your Honor, I would hope that
16 you would impose the maximum sentence because after
17 eighteen, fifteen years, however long you give him, he will
18 walk out and be a normal citizen. My grandson has a
19 lifetime sentence.

20 He will always have to -- people will always ask what
21 happened to him for his entire life. He cannot go swimming
22 or anything without being covered, his scars, and they're
23 hard to look at. Thank you.

24 THE COURT: Thank you. Thank you, Ms. Campbell.

25 Anything, anything further, Solicitor?

1 MS. CAMPBELL: No, sir. I think the facts of this
2 case speak for themselves.

3 THE COURT: All right, thank you. Thank you,
4 Solicitor.

5 Mr. Bank?

6 MR. BANK: Thank you, Your Honor. May it please the
7 court? You learned a little bit about Shane as we've gone
8 through the trial. He is from Fairfield. His mother's
9 been here for the trial, along with his sister. He has two
10 young children which we've heard about. He does have one,
11 one prior -- his prior convictions are all one incident.
12 He did serve active time for that, Your Honor.

13 We just ask for you to consider anything other than
14 the maximum sentence. We respect the jury's verdict but
15 obviously still maintain his innocence. Thank you.

16 THE COURT: Do any of the other attorneys wish to
17 address the court, Ms. Pinnock, Ms. Sturgill?

18 MS. PINNOCK: No, Your Honor.

19 MS. STURGILL: No, Your Honor.

20 THE COURT: Anything you'd like to say, Mr. Johnson?

21 DEFENDANT: No, sir.

22 THE COURT: All right, Mr. Johnson, I am going to
23 impose a sentence tonight. I've listened very closely and
24 intently to the testimony presented in this case; I've
25 viewed all the items of evidence throughout the trial of

1 the case.

2 Sometime acts are so horrendous or cruel. As many
3 years as I've been in the courtroom, they're hard to, hard
4 to wrap my mind around. Perhaps that's a blessing. I
5 think it is. Somewhere during the testimony, it was the
6 comment I think in one of the tapes about things will be
7 better. Well, for **Minor** I hope they will because I don't
8 think things can get no worse than what he's already
9 endured in his young life.

10 I don't know much about autism, genetic or what have
11 you. I don't know. Very difficult for -- obviously, it
12 hasn't been cured. It affects, I'm sure, many, many lives
13 in many, many children. Many, many families and
14 caretakers.

15 What, what you did to **Minor** that can't be cured
16 either. Now, I'm not talking just about the wounds and the
17 scars you can see. I'm talking about the ones also you
18 can't see. And he'll, he'll bandage those himself. He'll
19 bandage his heart and his soul, but every now and there
20 will be a rip in that band-aid even if he lives however
21 many years. Could be a 100 years old. It'll tear away
22 from time to time and he'll relive that. He won't ever be
23 eligible for parole. Won't ever get any relief from that
24 throughout the course of his life.

25 But observing him in this courtroom, he's got the

1 courage to bear that burden. That's what it takes; that's
2 what he has. He'll need it. He'll need it. And in my
3 sentencing, those words keep ringing in my ear, a young
4 seven-year-old who's got the courage to be carried by his
5 abuser to look up and say you did this to me. You did it.
6 That's, that's hanging on. The difference between a hero a
7 non-hero is a hero hangs on one minute longer, and he did.
8 So, as far as my sentence is concerned, I may impose it,
9 but you didn't only do it to **Minor** You did it to
10 yourself.

11 *SENTENCE OF THE COURT*

12 THE COURT: 2015-GS-40-06544, Shane Isaac Johnson,
13 having been convicted by the jury of abuse to inflict great
14 bodily injury upon a child, the defendant is committed to
15 the State Department of Corrections for a determinate term
16 of twenty years, credit for all time served under the code,
17 and no contact with the victim or any member of the
18 victim's family in any manner whatsoever. Good luck to
19 you. Good luck to you, Mr. Johnson.

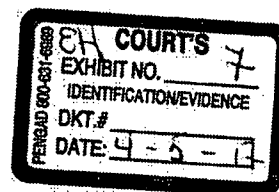
20 MR. BANK: Thank you, Your Honor.

21 THE COURT: Thank you, Mr. Bank, Ms. Pinnock, Ms.
22 Sturgill.

23 MS. SIMPSON: Thank you, Your Honor.

24 THE COURT: Thank you, Solicitor.

25 --- END OF TRANSCRIPT OF RECORD ---



DISCOVERY CHECKLIST
State v. SHANE JOHNSON

1. ARC Forensic Interview Report (3 pgs.)
2. ARC Interview – On Disc

Assistant Solicitor Luck Campbell #42
Prepared by Dana M. Outen, Paralegal 02/02/16
Receiving Attorney: Robert Bank, Esq.
Please Sign & Date: _____

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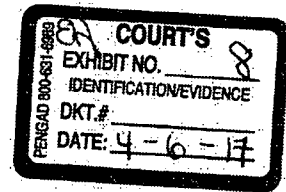
FEB 12 2016

Deb Fleming

Susan Lamb, MD

Assistant Professor, Division of Child Abuse Pediatrics
 University of South Carolina School of Medicine
 3710 Landmark Drive Suite 200
 Columbia, SC 29204

Phone: 803-898-1470 Fax: 803-898-1471

**Education**

- 2001-2004 Johns Hopkins University, Baltimore, MD
 - B.S. in Molecular and Cellular Biology
- 2007-2008 Augustine College, Ottawa, ON, Canada
 - Diploma in Western Studies
- 2004-2009 University of Virginia School of Medicine, Charlottesville, VA
 - M.D.

Postdoctoral Training

- 2009-2012 Pediatric Residency CHKD/EVMS Department of Pediatrics, Norfolk, VA
- 2012-2015, Child Abuse and Neglect Fellowship, CHKD/EVMS Department of Pediatrics, Child Abuse Program, Norfolk VA

Employment

- 7/1/2009-6/30/2012 Pediatric Residency, EVMS/CHKD, Norfolk VA
- 7/1/2012- 6/30/2015 Child Abuse Fellow, EVMS/CHKD, Norfolk VA
- 10/18/2013- 6/30/2015 Emergency Department Minor Care Pediatrician, CHKD, Norfolk VA
- 8/1/2015- present Assistant Professor of Clinical Pediatrics, Division of Child Abuse Pediatrics, USC, Columbia SC

Professional Licensure

- 2005, 2007 and 2010 United State Medical Licensing Exam
- 2012 Licensed Physician, Virginia State Board of Licensure
- 2012 Board Certified Pediatrician, The American Board of Pediatrics
- 2015 Licensed Physician, South Carolina State Board of Licensure
- 2015 Board Certified Child Abuse Pediatrician, The American Board of Pediatrics

Professional Memberships

- 2006- present Christian Medical and Dental Association
- 2009- present American Academy of Pediatrics
- 2012- present American Academy of Pediatrics Section on Child Abuse and Neglect
- 2012- present Ray E. Helfer Society (Honor Society for Physician Specialists in Child Abuse)
- 2015- present South Carolina American Medical Association

Professional Activities

- 2012- 2015 Hampton Roads Coalition Against Human Trafficking
- 2012- 2015 Children's Hospital of The King's Daughter's Medical Education Committee
- 2012- 2015 Child Fatality Review Team, Norfolk, VA
- 2012- 2015 Child Abuse Program Research Committee, CHKD
- 2012- 2015 Chesapeake Multidisciplinary Investigative Team, CHKD
- 2012- 2015 Hampton Multidisciplinary Investigative Team, CHKD
- 2012- 2015 NAVY Multidisciplinary Investigative Team, CHKD
- 2012- 2015 Norfolk Multidisciplinary Investigative Team, CHKD
- 2012- 2015 Newport News Multidisciplinary Investigative Team, CHKD
- 2012- 2015 Portsmouth Multidisciplinary Investigative Team, CHKD
- 2012- 2015 Virginia Beach Multidisciplinary Investigative Team, CHKD

- 2015- present Kershaw County Multidisciplinary Investigative Team, USC
- 2015- present Lexington County Multidisciplinary Investigative Team, USC
- 2015- present Richland County Multidisciplinary Investigative Team, USC
- 2015-present Orangeburg County Multidisciplinary Investigative Teams, USC

Consulting:

Contract consultation from July 2012 to June 2015, on child abuse pediatrics (evaluation of suspected child abuse and neglect) for local and regional investigators in the state of Virginia as well as for national agencies.

Contract consultation from August 2015 to present, on child abuse pediatrics (evaluation of suspected child abuse and neglect) for local and regional investigators in the state of South Carolina as well as for national agencies

Faculty Appointments:

- Instructor, Eastern Virginia Medical School 2013
- Emergency Department Physician, Children's Hospital of The King's Daughters, Children's Specialty Group 2013
- Assistant Professor of Clinical Pediatrics, University of South Carolina School of Medicine, 2015

Poster/Publications:

- Wyvill, V., Lamb, S., Niam, D., Perkins, A., Starling, S. *Survey of Pediatrician and Parental Attitudes and Knowledge of the Female Genitalia.*
- Presented by poster at Pediatric Academic Society Meeting 2012
- Wyvill, V., Lamb, S., Niam, D., Perkins, A., Starling, S. *Knowledge regarding Hymens and the Sex Education of Parents.* Journal of Sexual Abuse. June 9, 2014.
- Lamb, S., Clayton, M., Starling, S. *Boy's Widespread Partial Thickness Burns:*

Are They Inflicted or Accidental? Consultant for Pediatricians. November, 2015.

Lectures/Presentations

- Lamb, S. *Normal Genital Examination* Children's Hospital of The King's Daughters Pediatric Resident Lecture. December 2012
- Lamb, S. *Fractures* Children's Hospital of The King's Daughters Pediatric Resident Lecture. December 2012
- Lamb, S. *Global Health Travel in Medical School* Eastern Virginia Medical School Student Lecture. February 2013
- Lamb, S. *Video Gaming and Childhood Injury*. Helfer Lab Presentation. December 2013
- Lamb, S. *Failure to Thrive and Nutritional Neglect*. Virginia Beach Department of Social Services Training. December 2013.
- Lamb, S. *Cutaneous Injuries* Children's Hospital of The King's Daughters Pediatric Resident Lecture. March 2014
- Lamb, S. *Failure to Thrive and Nutritional Neglect* Children's Hospital of The King's Daughters Pediatric Resident Lecture. April 2014
- Lamb, S. *Abusive Head Trauma*, Portsmouth Naval Medical Center Pediatric Resident Lecture. May 2015.
- Lamb, S. *Abusive Head Trauma*, Virginia Beach Sentara Medico-Legal Conference on Child Fatalities. May 2015.
- Lamb, S. *Normal Genital Anatomy and Sexual Abuse*. Child Advocacy Centers. Virginia State Meeting. June 2015.
- Lamb, S. *Normal Genital Anatomy and Sexual Abuse*. Regional training for Children's Law Center, South Carolina. September 2015
- Lamb, S. *Fractures* USC Pediatric Resident Lecture. October 2015.
- Lamb, S. *When is a bruise not just a bruise* USC Pediatrics Grand Rounds. November 2015.
- Lamb, S. *When is a bruise not just a bruise* USC Surgery Grand Rounds. December 2015.
- Lamb, S. *When is a bruise not just a bruise* USC Emergency Medicine Lecture. January 2016.
- Lamb, S. *Failure to Thrive and Nutritional Neglect* USC Pediatric Resident Lecture March 2015.
- Lamb, S. *Video Gaming and Abusive Injuries in Children*. Helfer Society Meeting April 2016.

Professional Meetings Attendance

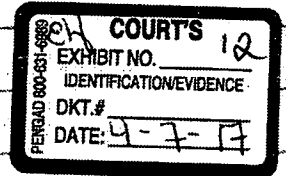
- 2012 Pediatric Academic Society Meeting- Boston, MA
- 2013 Helfer Society Meeting- San Francisco, CA
- 2013 Global Missions Health Conference- Louisville, KY
- 2014 Helfer Society Meeting- Annapolis, MD
- 2015 Child Advocacy Centers Virginia State Meeting- Hampton, VA
- 2016 Helfer Society Meeting, Tuscon, AZ.

Question:

What is criminal negligence

under the criminal intent ~~statute~~
statute?

~~What is criminal negligence
under the criminal intent statute?~~



Same question for Wrecklessness?

~~12~~ Signed,
Juror #108

I can only re-read
my previous instructions
to the jury in reference
to your specific questions.

J. Knox McMan

⊕ Can we have what you read in
writing? If not, then if you
re-read it, can we make notes.

Also, please can #30 be excused
from this process b/c she has anxiety.
We can bring in the alternate. Juror #108

STATE OF SOUTH CAROLINA

IN THE COURT OF GENERAL SESSIONS

675

COUNTY OF Richland
STATE VS.

Shane Isaac Johnson

AKA:

Race: BLACK Sex: M Age: 29

DOB: SS#:

Address:

City, State, Zip:

DL#: SID#:

*CDL Yes No CMV Yes No Hazmat Yes No

In disposition of the said indictment comes now the Defendant who was TO: Abuse / To inflict great bodily injury upon a child

INDICTMENT/CASE#: 2015GS4006544

A/W#: 2015A4021602369

Date of Offense: 10/7/2015

S.C. Code §: 16-03-0095(A)

CDR Code #: 2766

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APR 11 2017

SENTENCE SHEET SC Court of Appeals

CONVICTED OF or PLEADS

in violation of § 16-03-0095(A) of the S.C. Code of Laws, bearing CDR Code # 2766

NON-VIOLENT VIOLENT SERIOUS MOST SERIOUS Mandatory GPS(CSC w/minor 1st or Lewd Act) §17-25-45

The charge is: As Indicted, Lesser Included Offense, Defendant Waives Presentation to Grand Jury, (defendant's initials)
The plea is: Without Negotiations or Recommendation, Negotiated Sentence, Recommendation by the State.

ATTEST: Campbell Luck SC Bar# 13009 Defendant Robert Bank SC Bar# 10112 Attorney for Defendant

WHEREFORE, the Defendant is committed to the State Department of Corrections, County Detention Center, for a determinate term of 20 days/months/years or under the Youthful Offender Act not to exceed years and/or to pay a fine of \$; provided that upon the service of days/months/years and/or payment of \$; plus costs and assessments as applicable*, the balance is suspended with probation for

months/years and subject to South Carolina Department of Probation, Parole and Pardon Services standard conditions of probation, which are incorporated by reference.

CONCURRENT or CONSECUTIVE to sentence on:
The Defendant is to be given credit for time served pursuant to S.C. Code § 24-13-40 to be calculated and applied by the State Department of Corrections.

The Defendant is to be placed on the Central Registry of Child Abuse and Neglect pursuant to S.C. Code §17-25-135. Pursuant to 18 U.S.C Section 922, it is unlawful for a person convicted of a violation of Section 16-25-20 or 16-25-65 (Domestic Violence) to ship, transport, possess, or receive a firearm or ammunition.

SPECIAL CONDITIONS:

RESTITUTION: Deferred Def. Waives Hearing Ordered PTUP

Total: \$ plus 20% fee: \$

Payment Terms:

Set by SCDPPPS

Recipient:

Table with 2 columns: Description and Amount. Includes items like § 14-1-206 (Assessments 107.5%), § 14-1-211(A)(1) (Conv. Surcharge) \$100, § 14-1-211(A)(2) (DUI Surcharge) \$100, § 56-5-2995 (DUI Assessment) \$12, § 56-1-286 (DUI Breath Test) \$25, Proviso 61.6 (Public Def/Probation) \$500, § 14-1-212 (Law Enforce. Funding) \$25, § 14-1-213 (Drug Court Surcharge) \$150, § 50-21-114 (BUI Breath Test Fee) \$50, § 56-5-2942(J) (Vehicle Assessment) \$40/ea, 3%-to County (if paid in installments)

TOTAL \$

days/hours Public Service Employment

Obtain GED

Attend Voc. Rehab. or Job Corp.

May serve W/E beginning

Substance Abuse Counseling

Random Drug/Alcohol testing

Fine may be pd. in equal, consecutive, weekly/monthly pmts. of \$ beginning

\$ paid to Public Defender Fund

Other: NO CONTACT WITH VICTIM OR ANY MEMBER OF THE VICTIM'S FAMILY IN MANNER WHATSOEVER

Appointed PD or appointed other counsel, Proviso 61.6 requires \$500 be paid to Clerk during probation and shall be collected before any other fees.

Clerk of Court/ Deputy Clerk Jewnette McBride

Court Reporter: E. Harris

SCCA/217 (07/2016)

Presiding Judge

Judge Code: 2766

Sentence Date: 7 April 17

WITNESSES

(S) James L Charley Jr
- Columbia Police Department

ARREST WARRANT NUMBER

2015A4021602369

ACTION OF GRAND JURY

TRUE BILL

Deannin Gardner

Foreperson of Grand Jury

Date:

DEC 17 2015

VERDICT

Foreperson of Petit Jury

Date:

DOCKET NO. 2015GS4006544

The State of South Carolina

County of

Richland

COURT OF GENERAL SESSIONS

DECEMBER TERM 2015

42

THE STATE

vs.

Shane Isaac Johnson

Indictment for
ABUSE / TO INFLICT GREAT BODILY
INJURY UPON A CHILD

SC Code: 16-03-0095(A)

CDR Code: 2766

After being fully advised as to my legal rights, I hereby waive presentment to the Grand Jury.

Defendant

I hereby appear in my own proper person and plead guilty to the within indictment or to

Defendant

Witness:

C.C.C. PLS. AND G.S.

CERTIFICATE OF COUNSEL FOR APPELLANT

Counsel for appellant certifies that this Record on Appeal contains all material proposed to be included by any of the parties and not any other material and that this Record on Appeal complies to the best of my ability with the April 15, 2014 order from the South Carolina Supreme Court entitled "Revised Order Concerning Personal Identifying Information and Other Sensitive Information in Appellate Court Filings."

Respectfully Submitted,



Taylor D Gilliam
Appellate Defender

South Carolina Commission on Indigent Defense
Division of Appellate Defense
PO Box 11589
Columbia, S.C. 29211-1589

ATTORNEY FOR APPELLANT

This 19th day of November, 2018.

CERTIFICATE OF COUNSEL FOR APPELLANT

Counsel for appellant certifies that this Record on Appeal contains all material proposed to be included by any of the parties and not any other material and that this Record on Appeal complies to the best of my ability with the April 15, 2014 order from the South Carolina Supreme Court entitled "Revised Order Concerning Personal Identifying Information and Other Sensitive Information in Appellate Court Filings."

Respectfully Submitted,



Taylor D Gilliam
Appellate Defender

South Carolina Commission on Indigent Defense
Division of Appellate Defense
PO Box 11589
Columbia, S.C. 29211-1589

ATTORNEY FOR APPELLANT

This 19th day of November, 2018.

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NOV 19 2018
SC Court of Appeals