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No Respondent's Brief Filed

NO DEFENDANT'S BRIEF

STATE OF SOUTH CAROLINA

In The Court of Appeals

APPEAL FROM SPARTANBURG COUNTY

J. Derham Cole, Circuit Court Judge

THE STATE,

RESPONDENT,

V.

TINA DOCKERY,

APPELLANT

Appellate Case No. 2011-183266

RECORD ON APPEAL

DAYNE C. PHILLIPS
Appellate Defender

South Carolina Commission on Indigent Defense
Division of Appellate Defense
PO Box 11589
Columbia, SC 29211-1589
(803) 734-1330

Attorney for Appellant

ALAN WILSON
Attorney General

SALLEY W. ELLIOTT
Senior Assistant Deputy Attorney General
Office of the Attorney General
PO Box 11549
Columbia, SC 29211
(803) 734-3727

Attorneys for Respondent

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SC Court of Appeals

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STATE OF SOUTH CAROLINA

COURT OF GENERAL SESSIONS

COUNTY OF SPARTANBURG

FILE NO: 2006-GS-42-4481 &
2006-GS-42-4482

THE STATE of SOUTH CAROLINA

-VS-

TINA MICHELLE DOCKERY

Defendant.

THE STATE OF SOUTH CAROLINA

-VS-

LEONARD SCOTT MOORE,

Defendant.

TRANSCRIPT OF RECORD

January 4, 5, 6, 7, 2011
Spartanburg, South Carolina

Ordered: January 26, 2011

Delivered: August 3, 2011

B E F O R E:

THE HONORABLE J. DERHAM COLE, Presiding Judge, and a
jury.

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

MS. JENNIFER JORDAN, Esquire
MS. SUSAN REESE, Esquire
Assistant Solicitors for the State

MS. ANDREA PRICE, Esquire
Public Defender for the Defendant Tina Dockery

MR. MICHAEL RUDASILL, Esquire
Public Defender for the Defendant Roger Moore

Pamela Faucette
Circuit Court Reporter

PAMELA FAUCETTE, CVR - 864-574-9534 or 336-260-2864

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E X H I B I T S

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Reporter's Note: This transcript may contain quoted material. Such material is reproduced as read or quoted by the speaker.

1 January 4, 2011

11: 25 A.M.

2 (Whereupon, State's Exhibit Numbers 1 through 32
3 were marked for identification before the trial began.)

4 PRE-TRIAL MOTIONS

5 (Off-the-Record Discussion)

6 THE COURT: Ms. Jordan, do you have the indictments?

7 MS. JORDAN: Yes, Your Honor.

8 (Documents handed up to the Court.)

9 MS. JORDAN: Your Honor, there have been a couple of
10 amendments to the indictment based upon one of the prior
11 arguments of Mr. Rudasill.

12 And another one was because I indicted it under the
13 Code Section that wasn't applicable at the time, when
14 they took Title 20 and moved it over to Title 63. So, I
15 re-indicted it and moved the Title 20 to 63 as to Count
16 Number 1.

17 MR. RUDASILL: Ms. Jordan, the copy you just gave
18 me, is that the last one we did?

19 MS. JORDAN: Yes, sir. That was true billed in
20 August ---

21 MR. RUDASILL: Okay.

22 MS. JORDAN: --- two thousand, ten (2010).

23 MR. RUDASILL: All right.

24 (Off-the-Record Discussion)

25 (Brief Pause)

1 THE COURT: All right. The -- let the record
2 reflect all persons are present, the Defendants along
3 with Counsel.

4 Ms. Jordan, you're proceeding to trial on the
5 indictment 2006-4482 as amended August 23rd, two thousand,
6 ten (2010)?

7 MS. JORDAN: Yes, Your Honor.

8 THE COURT: All right. And each of the Defendants
9 need to be arraigned on Count two of each of those
10 indictments?

11 MS. JORDAN: Yes, sir. We've provided copies to
12 both of their attorneys in the past based upon they've
13 never been arraigned on -- on the felony child abuse
14 charge.

15 THE COURT: All right. Ms. Price and Mr. Rudasill,
16 do each of you have copies of the most recent indictments
17 that the State is proceeding to trial on?

18 MS. PRICE: Yes, Your Honor.

19 MR. RUDASILL: Yes, Your Honor.

20 THE COURT: All right. Ms. Dockery and Mr. Moore,
21 each of you are charged in Count two, of your respective
22 indictments, with the crime of child abuse with great
23 bodily injury.

24 The State alleges that each of you did, on or
25 between the dates of June the 22nd of two thousand and

1 five (2005) and October the 25th of two thousand and five
2 (2005), inflict great bodily injury upon **Minor Child** Eugene
3 Scott Moore, a minor child; that being in violation of
4 Section 16-3-95, Subsection (a).

5 If found guilty of that offense, the punishment that
6 could be imposed is a term of imprisonment not to exceed
7 twenty (20) years.

8 Ms. Dockery, do you understand the charge and
9 potential punishment?

10 **THE DEFENDANT:** Yes, sir.

11 **THE COURT:** Ms. Price, does your client wish to
12 enter a plea of not guilty as to that charge?

13 **MS. PRICE:** Yes, Your Honor.

14 **THE COURT:** Mr. Moore, do you understand the charge
15 and the potential punishment?

16 **THE DEFENDANT:** Yes, sir.

17 **THE COURT:** And, Mr. Rudasill, does your client wish
18 to enter a plea of not guilty at the present time?

19 **MR. RUDASILL:** He does, Your Honor.

20 **THE COURT:** All right. Any other pre-trial matters
21 we need to address?

22 **MR. RUDASILL:** There are some other pre-trial
23 matters in relation to the arraignment. As Your Honor is
24 aware, Mr. Moore is out on bond. We may as well address
25 that at this point.

1 I anticipate that this trial will continue past
2 today, possibly several days. And I would ask whether
3 the State has any objection, at the conclusion of the
4 recess each day, that he be allowed to continue on bond
5 without being taken back into custody each evening.

6 THE COURT: All right. What's the State's position?

7 MS. JORDAN: Your Honor, the State will just leave
8 that up to the Judge as far as your ruling as far as
9 leaving him out.

10 MR. RUDASILL: He's been present for all
11 proceedings, been at my office when I needed him to be
12 there. There is absolutely no reason for him to be taken
13 back into custody when the Court recesses. He need to
14 have him available without me having to go through the
15 jail to do any night preparation.

16 THE COURT: All right. Is it a fair statement to
17 say that he has never failed to meet a required court
18 appearance?

19 MS. JORDAN: Your Honor, he has been at all that I
20 can recall, yes.

21 THE COURT: All right. And who is on his bond?

22 MR. RUDASILL: Your Honor, without looking, I --
23 it's been since two thousand, five (2005). I cannot
24 recall.

25 THE COURT: Well, you'll need to check that because

1 what -- in order -- before I even consider allowing him
2 to remain on bond, I'll have to have the bondsman here to
3 inform the Court that they are willing to continue to
4 assume that obligation.

5 MR. RUDASILL: All right, sir.

6 MS. JORDAN: Your Honor, our records reflect that
7 it's Melvin Woods (phonetic) is his bondsman.

8 THE COURT: Who?

9 MS. JORDAN: Jim Woods (phonetic).

10 THE COURT: Okay. And you have a copy of his bond
11 with you?

12 MR. RUDASILL: I do somewhere in my documents, Your
13 Honor.

14 THE COURT: All right. Well, you can just call him
15 and see. And he can just let me know.

16 MR. RUDASILL: All right.

17 THE COURT: All right. Any other pre-trial matters
18 we need to address prior to jury selection?

19 MS. JORDAN: Your Honor, nothing from the State
20 regarding to jury selection. I do have voir dire and a
21 witness list if I may approach.

22 (Documents handed up to the Court.)

23 (Off-the-Record Discussion)

24 (Brief Pause)

25 THE COURT: All right. Any matters to address

1 before the jury panel is brought around?

2 MS. JORDAN: Your Honor, Mr. Rudasill just reminded
3 me that there's a mistake on my voir dire as to number 1,
4 that his firm is now referred to as Lawrence, Rudasill
5 and Collins. I drafted this awhile back and didn't
6 correct it.

7 MR. RUDASILL: It's David Collins, Your Honor.

8 THE COURT: Okay.

9 MS. JORDAN: And, Your Honor, as to Mr. Rudasill's
10 request in his voir dire that you conduct individual voir
11 dire, I believe that, while it's discretionary with the
12 Judge, I'm only aware of it ever occurring in capital
13 cases.

14 And it appears, from all the questions that he is
15 seeking to ask, that those are questions that the Court
16 normally asks and it would be a better panel than
17 something that specifically would require individual voir
18 dire by the attorneys.

19 MR. RUDASILL: The only case that, that has been
20 allowed in the Seventh Judicial Circuit is Judge -- The
21 Honorable Judge Brown Couch (phonetic) allowed me to do
22 that many years ago, the only known situation where it's
23 occurred in this Circuit.

24 But I would still seek the request because, in that
25 instance, it was amazing how many individual responses we
26 got that we would not have gotten from the panel had we

1 not.

2 THE COURT: All right. So, you're asking to
3 individually voir dire the jurors?

4 MR. RUDASILL: That is correct.

5 THE COURT: By the -- by the attorneys?

6 MR. RUDASILL: Yes, sir.

7 THE COURT: Okay. I'm going to decline that
8 request.

9 MR. RUDASILL: Yes, sir.

10 THE COURT: All right. Any other matters to address
11 before the panel is brought around?

12 MR. RUDASILL: Just one thing, Your Honor. I -- I
13 mentioned to Ms. Jordan and Ms. Reese that, when we were
14 walking over this morning, the Defendant and myself and
15 my paralegal, I recognized an individual that is in the
16 jury panel.

17 I don't know how long he was behind us. The only
18 reason I recognized him is we got caught through the
19 light change -- changing on St. John Street.

20 I know we were talking about some things walking
21 over here. He apparently parked, in the parking garage,
22 but I cannot tell the Court how long he was behind me or
23 whether he overheard anything that was discussed or not.

24 I was surprised to see him in the panel when we
25 started calling names. I believe he is Number 112 was

1 the juror that I observed and may have heard some
2 discussion; I just don't know.

3 THE COURT: All right. Well, is there any objection
4 to just excluding him from the panel to avoid that
5 potential?

6 MS. JORDAN: No, sir, Your Honor.

7 (Brief Pause)

8 MS. JORDAN: No objection, Your Honor.

9 THE COURT: No objection from the State? Is that
10 your request?

11 MR. RUDASILL: I just wanted to make the Court aware
12 of it. I don't know whether he heard anything or not. I
13 just know that we were discussing and he was behind us at
14 a point in time near the Subway Station.

15 THE COURT: Well, I mean, I could ask him, but if --
16 if you all are in agreement, we can just take him out of
17 the panel.

18 MR. RUDASILL: I have no problem in doing that.
19 That's the safest thing to do in case he did overhear
20 anything.

21 THE COURT: Okay. Ms. Price?

22 MS. PRICE: That's fine, Your Honor.

23 THE COURT: Juror 112?

24 MR. RUDASILL: Yes, Your Honor.

25 THE COURT: No objection to him being removed by the

1 State, by the Defendant Dockery, or Defendant Moore?

2 MS. PRICE: That's correct, Your Honor.

3 MR. RUDASILL: Correct, Your Honor.

4 THE COURT: Okay.

5 MS. JORDAN: Your Honor, if I may address just one
6 issue. I know that Mr. Rudasill has filed a motion
7 requesting ten (10) strikes in this case. However, I
8 believe, the statute only requires -- only allows five
9 (5) and five (5); five (5) for Mr. Moore and five (5) for
10 Ms. Dockery.

11 MR. RUDASILL: There is a motion pending, Your
12 Honor. Other than what I've submitted with regard to my
13 memorandum, based on having submitted that to the Court
14 in the past, me having argued that in the past and you
15 denied it, I'm not going to argue any additional.

16 THE COURT: All right. Well, now, I don't have
17 those motions. So, if you all have something you all
18 need to address motion wise that's been filed, I'll need
19 to have copies of it.

20 MR. RUDASILL: All right. I'll -- just one second
21 and I'll pass that up.

22 (Documents handed up to the Court.)

23 (Off-the-Record Discussion)

24 MR. RUDASILL: And, if the Court granted the motion,
25 I think Ms. Price joins into that motion and it would

1 give us twenty (20)/ten (10) rather than ten (10) and ten
2 (10).

3 MS. PRICE: That's correct, Your Honor.

4 (Brief Pause)

5 THE COURT: All right. So, the Defendants are in
6 agreement that Section 14-7-1110 provides for the numbers
7 of peremptory challenges, as it relates to various
8 criminal offenses, does not provide for ten (10)
9 peremptory challenges for the crime of unlawful conduct
10 towards a child or child abuse with great bodily injury?

11 MR. RUDASILL: That is correct, Your Honor. The
12 statute does not so provide.

13 THE COURT: All right. And your -- your argument
14 for allowing it is simply what?

15 MR. RUDASILL: Your Honor, the -- the -- for
16 allowing ten (10) is that it is a fundamental right that
17 they have a fair and impartial jury, and -- and there is
18 no reason for offenses that are provided ten (10) strikes
19 not to conclude these particular offenses, specifically
20 Count two, which is the felony child abuse with great
21 bodily injury.

22 And, for that reason, since there is no justifiable
23 State reason for that distinction, that our clients
24 should be afforded the same number of strikes as breach
25 of trust or grand larceny.

1 They're felonies and those carry a less period of
2 punishment, sentence-wise, than the offense that as child
3 abuse by great bodily injury, which carries -- carries
4 twenty (20) years compared to ten (10) years for those
5 other offenses that are also felonies.

6 And, for that reason, we think we should be entitled
7 to twenty (20) -- excuse me -- ten (10) strikes each
8 because of the similar nature of the criminal offenses,
9 both being felonies and those that are specifically in
10 the statute to allow ten (10) strikes are no different
11 and carry less punishment than what these Defendants face
12 potentially if the jury convicts them.

13 **THE COURT:** Ms. Price, you want to join in Mr.
14 Rudasill's request?

15 **MS. PRICE:** Please, Your Honor.

16 **THE COURT:** Do you have anything you would like to
17 add to it?

18 **MS. PRICE:** No, Your Honor.

19 **THE COURT:** Ms. Jordan, do you want to be heard?

20 **MS. JORDAN:** Your Honor. just briefly. I believe
21 that 14-7-1110 clearly states the offenses for which the
22 Legislature decided were proper for ten (10) strikes and
23 those that are proper for five (5). We just rest on the
24 language of the statute and ask the Court to deny his
25 motion.

1 THE COURT: All right. The motion for additional
2 peremptory challenges, based upon the reason given, is
3 denied.

4 MR. RUDASILL: May I have my motion?

5 (Brief pause while documents are retrieved.)

6 THE COURT: All right. Any other matters we need to
7 address prior to the jury selection?

8 MS. JORDAN: Not prior to jury selection, Your
9 Honor.

10 MS. PRICE: No, your Honor.

11 MR. RUDASILL: No, your Honor.

12 THE COURT: All right. Let me see the lawyers just
13 a minute.

14 (Whereupon, a bench conference was had with all
15 attorneys present.)

16 THE COURT: All right. My understanding is that the
17 attorneys have no objection to jurors number one and one,
18 twelve (112) being held out of this particular draw?

19 MS. JORDAN: That's correct, your Honor.

20 MS. PRICE: That's right.

21 MR. RUDASILL: Correct, Your Honor.

22 THE COURT: Okay. All right. If there's nothing
23 further, we'll bring the jury around.

24 (The bailiff stepped out to summon the jury panel at
25 11:44 a.m.)

VOIR DIRE

Page 19

1 (Off-the-Record Discussion)

2 (The jury panel entered the courtroom at 11:45 a.m.)

3 (Whereupon, a bench conference was had with all
4 attorneys present.)

VOIR DIRE

11:51 A.M.

6 THE COURT: All right, ladies and gentlemen. Thank
7 you for your patience. We are now ready to begin with
8 jury selection in the first case. It's going to require
9 some of your participation.

10 The title of the case is *The State vs. Tina Michelle*
11 *Dockery* and *The State vs. Leonard Scott Moore*. There are
12 two persons being charged with the same criminal
13 offenses. And they're being tried together, each being
14 represented by separate lawyers.

15 I'm going to read the indictments to you, so, that
16 you'll understand what the charges are. And I'll be
17 introducing some people to you, so, that you will
18 understand who the lawyers are and who the partici -- the
19 participants are, who the potential witnesses are.

20 And I'm going -- and I'll ask you some other
21 questions because I need to find out if there is any
22 reason why any juror should not be selected to
23 participate in the trial of this particular case; in
24 other words, do you have some reason why you could not be
25 fair and impartial. And we'll determine that during the

1 course of this process.

2 But, as I've stated, the persons who are charged
3 with these criminal offenses, for which they're now going
4 to trial, are Tina Michelle Dockery and Leonard Scott
5 Moore.

6 Mr. Moore and Ms. Dockery are charged with two
7 separate and distinct criminal offenses, although they
8 are alleged to have arisen out of one particular event or
9 course of events, which the State alleges occurred back
10 between the dates of June the 22nd of two thousand and
11 five (2005) and October the 25th of two thousand and five
12 (2005).

13 Both Ms. Dockery and Mr. Moore are charged with
14 unlawful conduct towards a child. And the State alleges,
15 by way of that count of the indictment, that each of
16 these Defendants did, between June the 22nd of two
17 thousand and five (2005) and October the 25th of two
18 thousand and five (2005), having charge or custody and/or
19 being the parent or guardian of **Minor Child** Eugene Scott
20 Moore, a minor child, did place the child at an
21 unreasonable risk of harm affecting the child life,
22 physical or mental health, or safety.

23 And/or each did do or caused to be done, unlawfully
24 or maliciously, any bodily harm to the child, so, that
25 the life or health of the child was endangered or likely

1 to be endangered.

2 Each of the Defendants is also charged with a
3 separate criminal offense, that offense being child abuse
4 with great bodily injury. And each is alleged to have,
5 between the dates of June the 22nd of two thousand and
6 five (2005) and October the 25th of two thousand and five
7 (2005), inflicted great bodily injury upon **Minor Child** Eugene
8 Scott Moore, a minor child under the law.

9 Now, as to each of those charges, and as to all the
10 allegations set forth against each of the separate
11 Defendants, each of these separate Defendants have
12 entered a plea of not guilty.

13 And that plea of not guilty, therefore, places upon
14 the State the burden of proving the allegations that are
15 set forth in each of those separate counts of the
16 separate indictments, the burden of proving each of the
17 essential elements of the crimes alleged against each of
18 the Defendants.

19 And, therefore, the burden is upon the State to
20 establish a Defendant's guilt, to the satisfaction of
21 twelve (12) jurors beyond a reasonable doubt, before a
22 verdict of guilty could be returned as to either charge
23 and as to either of the Defendants.

24 Now, therefore, we're going to be selecting twelve
25 (12) of you as primary jurors. And we will also select

1 an additional juror to serve as an alternate.

2 And, by way of jury selection, you're simply going
3 to be called upon to listen carefully to the testimony
4 that will be elicited from the witness stand, to consider
5 all of the other evidence that might be introduced during
6 the trial of the case.

7 And, at the trial's conclusion, you'll be called
8 upon to carefully evaluate all of that testimony and
9 evidence. And, from that evidence, you will decide what
10 you believe to be the true facts as it relates to these
11 allegations.

12 Upon deciding those facts, you'll apply the law that
13 I will provide the jury prior to your deliberations. And
14 upon determining the facts and application of the law,
15 you'll decide whether or not either Defendant has been
16 proven guilty, beyond a reasonable doubt, as to any
17 crime.

18 And, if that person has been proven guilty, then,
19 your verdict would be guilty. If the person has not been
20 proven guilty, then, your verdict will be not guilty as
21 to that particular Defendant and as to that particular
22 charge.

23 Now, before we begin with the actual jury selection
24 in the case, I've got a number of questions to ask you.
25 And, as I say, the purpose of the questions is to

1 determine whether or not there is any reason why a juror
2 should not be selected to participate in the trial of
3 this particular case.

4 Before I begin with those questions, I'm going to
5 introduce you the Defendants, the -- some family member
6 -- I am guessing the person representing the victim.
7 I'll also introduce to you the lawyers involved in the
8 case. And I'll also be reciting a list of all of the
9 potential witnesses to be called during the trial.

10 The reason for these introductions is to find out if
11 any juror knows anybody involved in this particular case.
12 In other words, are you related to them?

13 Do you go to school with them? Do you go to work
14 with them? Do you go to church with them? Do you
15 socialize with them? Or have you met them? Do you
16 happen to know them in any capacity whatsoever?

17 And, as these people are introduced to you, or their
18 name is read from the recitation of the witness lists, if
19 you have any connection, with any of these people, as
20 that person's name is called or as they are introduced to
21 you, I'll ask that you, please, stand, so, that we can
22 address that connection and determine whether or not it
23 would impair your ability to be fair and impartial in
24 this particular case.

25 First of all, I am going to introduce the persons

1 who are charged with the commission of these offenses.
2 And they are Tina Michelle Dockery. Ms. Dockery, if you
3 will, please, stand and face the jury panel.

4 (Ms. Dockery complied with the Court's request.)

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

6 (Ms. Dockery complied with the Court's request.)

7 THE COURT: Ms. Dockery is represented by Andrea
8 Price of the Seventh Judicial Circuit Public Defender's
9 Office. She will be assisting Ms. Dockery in the trial
10 the case.

11 (Ms. Price stands and faces the jury panel.)

12 THE COURT: The other defendant is Leonard Scott
13 Moore. Mister Moore, if you'll stand and face the jury
14 panel

15 (Mr. Moore complied with the Court's request.)

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

17 (Mr. Moore complied with the Court's request.)

18 THE COURT: He is represented by Michael Rudasill of
19 the law firm of Lawrence, Rudasill and Collins here in
20 Spartanburg. And he will be assisting Mr. Moore in the
21 trial of the case.

22 (Mr. Rudasill stands and faces the jury panel.)

23 THE COURT: The person who is alleged to have been
24 the victim of these offenses is **Minor Child** Eugene Scott
25 Moore. And he is not present in the courtroom, but he is

1 the natural child of these two Defendants?

2 MS. JORDAN: Yes, Your Honor, he is.

3 THE COURT: All right. **Minor Child** Eugene Scott Moore
4 is the natural child of the two Defendants who have just
5 been introduced to you.

6 And presenting the case on behalf of the State are
7 Jennifer Jordan and Susan Reese, both who are assistant
8 circuit solicitors for the Seventh Judicial Circuit.

9 (Both Ms. Jordan and Ms. Reese stand and face the
10 jury panel.)

11 THE COURT: Persons who are to potentially be called
12 as witnesses include Nicki Cantrell, with the Spartanburg
13 County Sheriff's Department; Ted Saar, with the
14 Spartanburg County Sheriff's Department.

15 Now, some of these or all of these persons are
16 present. And I'm going to recite the list. And, if you
17 know somebody -- and I will try to give you who they are
18 employed by and what their connection is, so, that you
19 can identify whether or not you know that person -- but
20 if someone has a name similar to someone you know, and
21 you're not sure if that's the same person, if you'll
22 stand and just let me know of that fact. And we'll try
23 to narrow down the identification of that person.

24 We also have Tracy Moss, with the Spartanburg County
25 Sheriff's Department; Richard Nieto, with the Spartanburg

1 County Sheriff's Department; David Hogsed, with the
2 Spartanburg County Sheriff's Department; Henry Cline,
3 with the Spartanburg County Sheriff's Department; Tim
4 Metz, with the Spartanburg County Sheriff's Department;
5 Robert Rosenberg, with the Spartanburg County
6 Sheriff's Department; Anita Mullinax, with the
7 Spartanburg County Sheriff's Department; Jack
8 Westmoreland with the Spartanburg County Sheriff's
9 Department;

10 Margaret Greer with the Spartanburg County detention
11 facility; Randy Bogen, formerly with the Sheriff's
12 Department, now with the Spartanburg County Coroner's
13 Office;

14 Steve Denton, formerly with the Spartanburg County
15 Sheriff's Office; Danny Morgan, formerly with the
16 Spartanburg County Sheriff's Office; Michael Thomason,
17 physician, Greenville Hospital System; Curtis Rogers,
18 physician, Greenwood ---

19 (Brief Pause)

20 MS. JORDAN: Your Honor, it should be Genetics.

21 THE COURT: Genetics? All right. It looks sort of
22 like geriatrics and something else. I don't know what.

23 Curtis Rogers, a physician with Greenwood Genetics;
24 Roy Berry, physician; Troy Beavers, physician; Julius
25 Robbie Robinson, physician, Greenville Hospital system;

1 Tracy Lance, physician, Mary Black Hospital;

2 Jan Arthur with the Spartanburg County Department of
3 Social Services; Leslie George, with the Spartanburg
4 County Department of Social Services;

5 Angela Robinson, Spartanburg County Department of
6 Social Services; Melinda Lynn, Spartanburg County
7 Department of Social Services;

8 Dina Brazil, Spartanburg County Department of Social
9 Services; Margaret Ventura, Margie Moore, Jean Bradley,
10 and Kamshik Kotecha with the South Carolina Department of
11 Health and Environmental Control.

12 Further, we have Sharon Massey, Ronald Moore, a
13 custodian from Orin Community Health Center, Inc.; also a
14 records custodian from Palmetto Denture;

15 Melissa Goforth, with the Department of Social
16 Services; Melissa Gail Childers and a records custodian
17 from Carolina Analysis, Inc.

18 Are there any other potential witnesses on behalf of
19 the State?

20 MS. JORDAN: Your Honor, just for clarification,
21 Deputy Margaret Greer (phonetic) works with the
22 Spartanburg County Sheriff's Office. She is here with
23 the meds.

24 And, then, number 11, Jim Kennedy, with the
25 Spartanburg County Detention Facility.

1 THE COURT: Oh, I'm sorry. Okay. I miss those.
2 Margaret Greer, who I identified with the detention
3 facility is with the sheriff's department. Jim Kennedy
4 is with the Spartanburg County Detention Facility.

5 All right. Any other potential witnesses on behalf
6 of the State?

7 MS. JORDAN: No, sir, your Honor.

8 THE COURT: The Defendant Dockery?

9 MS. PRICE: No, your Honor.

10 THE COURT: The Defendant Moore?

11 MR. RUDASILL: No, your Honor.

12 (Potential jurors stand in response.)

13 THE COURT: All right. You can start -- well, let's
14 start on the front row and work back. Give me your name
15 and number, please.

16 POTENTIAL JUROR: William House, 68.

17 THE COURT: All right. And who is it that you know?

18 POTENTIAL JUROR: My wife worked for the Seventh
19 Circuit Solicitor's Office for the past six years and
20 just left to work for Trey Gowdy. So, I know -- I'm met
21 a handful of the people who work at the solicitor's
22 office in this case.

23 THE COURT: All right. And would that have any
24 bearing upon your decision in this case if you were
25 selected as a juror?

1 POTENTIAL JUROR: No, no, It wouldn't.

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

3 That's juror number 68. Yes, ma'am?

4 POTENTIAL JUROR: I am Michelle Weathers, 165. And
5 I work at Mary Black Hospital and I know Tracy Lance; I
6 mean I don't know her, I -- I just work at Mary Black
7 Hospital.

8 THE COURT: All right. And is there anything about
9 that connection that would have any bearing upon your
10 decision in the case?

11 POTENTIAL JUROR: (Shakes head negatively.) No.

12 THE COURT: Thank you. Be seated. Yes, ma'am?

13 POTENTIAL JUROR: Juror number 46; Dana Fortner. I
14 know Dr. Troy Beaver.

15 THE COURT: And how do you know him?

16 POTENTIAL JUROR: My children have seen him in ---

17 THE COURT: All right. Would that have -- Oh, I'm
18 sorry.

19 POTENTIAL JUROR: In the pediatricians office.

20 THE COURT: And would that have any bearing upon
21 your decision in this case?

22 POTENTIAL JUROR: No.

23 THE COURT: Thank you. Be seated. Yes, sir?

24 POTENTIAL JUROR: James Brennan, number 176. I was
25 a colleague of Roy Berry, the pediatrician if that's the

1 same.

2 THE COURT: It is. I mean, I'm assuming it is.

3 There is only one in Spartanburg County, isn't it, Roy
4 Berry?

5 MS. JORDAN: Yes, sir.

6 THE COURT: Would that have any bearing upon your
7 decision in the case?

8 POTENTIAL JUROR: No, no, Your Honor.

9 THE COURT: Thank you. Be seated. Yes, sir.

10 POTENTIAL JUROR: Number 38, my -- my son has been
11 seeing Doctor Beavers somewhat.

12 THE COURT: Doctor Beavers?

13 POTENTIAL JUROR: Yes, sir.

14 THE COURT: And would that have any bearing upon
15 your decision in this case?

16 POTENTIAL JUROR: No, sir.

17 THE COURT: Thank you. Be seated. Yes, ma'am?

18 POTENTIAL JUROR: Karen Martin, number 93. I used
19 to work at Mary Black with Dr. Beavers and Dr. Berry.

20 THE COURT: And would either of those connections
21 have any bearing upon your decision in the case?

22 POTENTIAL JUROR: No, sir.

23 THE COURT: Thank you. Be seated. Anyone else know
24 any of the potential witnesses in the case, the -- either
25 Defendant, the child who is alleged to be the victim, any

1 of the lawyers involved in the case, as well as any
2 members or employees of their respective offices; that
3 being the Seventh Judicial Circuit Solicitor's Office,
4 the Seventh Judicial Circuit Public Defender's Office, or
5 the law firm of Lawrence, Rudasill, and Collins?

6 I need to know if you know anybody from those
7 respective offices. If so, please, stand.

8 (Potential juror stands in response.)

9 THE COURT: Yes, ma'am?

10 POTENTIAL JUROR: I have met Mr. Rudasill. He
11 represented my son in a divorce.

12 THE COURT: All right. And your name and number,
13 please?

14 POTENTIAL JUROR: My number is 164. My name is
15 Margie Watson.

16 THE COURT: And would that have any bearing on you
17 making a decision in this case?

18 POTENTIAL JUROR: No, it wouldn't.

19 THE COURT: Thank you. Be seated. Does anyone else
20 need to respond to that question?

21 (No Response)

22 THE COURT: All right. Now, this is an event or a
23 course of events which the State alleges occurred back
24 between June of two thousand, five (2005) and October the
25 25th of two thousand, five (2005), wherein the State

1 alleges that these Defendants did place their child, at
2 an unreasonable risk of harm, and/or did inflict --
3 inflict great bodily injury upon that child.

4 Is there any member the jury panel who believes you
5 might have heard, seen, or read something that related to
6 this particular case?

7 Have you received any information about this case
8 from any source, whether it be television, radio,
9 newspaper, just some discussion at work or at home or at
10 church or just heard people talking about the case in any
11 fashion?

12 Do you think you've been exposed to any type of
13 information that relates to the case? If so, I would ask
14 that you, please, stand.

15 (No Response)

16 THE COURT: Is there anything about the nature of
17 the case itself; that is, what is alleged against these
18 Defendants?

19 Is there anything about the nature of the case
20 itself that would prevent any juror from being able to be
21 fair and impartial if you were called upon to serve as a
22 juror in the case? If so, please, stand.

23 (No Response)

24 THE COURT: Has any member of the jury panel, or any
25 member of your immediate family -- and I'm going to

1 define immediate family member as a parent, a spouse, a
2 child, or a sibling; a parent, a spouse, a child, or a
3 sibling -- have you, or any member of your immediate
4 family, as I've just defined it, ever been the victim of
5 or ever been accused of the commission of any type of
6 crime that might be characterized as a violent crime?

7 And that would include, but not be limited to;
8 murder, manslaughter, assault and battery with intent to
9 kill, assault and battery of a high and aggravated
10 nature, burglary, armed robbery, criminal sexual conduct,
11 also known as rape;

12 Criminal domestic violence of a high and aggravated
13 nature, or any other type of crime involving violence or
14 physical assault, as well as any crime involving
15 allegations of child abuse?

16 Anyone ever been the victim of such -- you or a
17 family member, ever been the victim of such, or you or a
18 family member ever been accused of having committed any
19 type of those offenses? If so, please, stand.

20 (Potential Jurors stand in response)

21 THE COURT: All right. I've got several jurors
22 standing and more standing. I'm going to start on the
23 front row on my right and I'll work my way back. And
24 I'll jump the aisle and work that side. I need for you
25 to respond to the question as I've asked.

1 If you don't want to answer the question where you
2 are, and you prefer to step down here and discuss it with
3 me, feel free to do that. Otherwise, I'll just simply
4 assume that you don't mind responding to the question
5 where you are.

6 (Jurors line up in the aisle to speak to the court
7 in private.)

8 THE COURT: How about telling me your juror number,
9 please, ma'am.

10 POTENTIAL JUROR: Number 12.

11 THE COURT: Number 12.

12 (Potential juror stepped forward.)

13 POTENTIAL JUROR: My nephew was -- is still in jail
14 on aggravated assault. And, then, my daughter was a
15 victim of sexual abuse.

16 THE COURT: And would either of those circumstances
17 have any bearing upon your ability to be fair and
18 impartial in this case?

19 POTENTIAL JUROR: No, your Honor because it's been
20 so long ago.

21 THE COURT: Okay. Thank you.

22 POTENTIAL JUROR: Thank you.

23 BAILIFF Juror 19.

24 (Potential juror stepped forward.)

25 (Off-the-Record Comments)

1 POTENTIAL JUROR: My brother was lewd act on a
2 minor. It's been several years ago. He pleaded no
3 contest and he is now on a sexual registry -- sex
4 offender.

5 THE COURT: All right. And would that
6 fact have any bearing upon your decision in this case?

7 POTENTIAL JUROR: No, sir, not at all.

8 THE COURT: All right. Thank you. You may return
9 to your seat. Next?

10 BAILIFF Juror 129.

11 (Potential juror stepped forward.)

12 POTENTIAL JUROR: I have a brother that has been
13 charged with criminal domestic violence, criminal
14 domestic violence of a high and aggravated nature and a
15 CDV and all of that stuff. I don't know what you're
16 asking.

17 THE COURT: You don't know what I'm asking? What I
18 was asking was if you or a family member has ever been
19 the victim or accused of any those crimes ---

20 POTENTIAL JUROR: Yes, sir, my brother.

21 THE COURT: All right. Would that have any bearing
22 upon your decision in this case?

23 POTENTIAL JUROR: I wouldn't reckon.

24 THE COURT: Do you perceive there is any way it
25 could?

1 POTENTIAL JUROR: It may, I don't -- it just depends
2 on --- it depends on -- does it have anything to do with
3 a CDV?

4 THE COURT: No, it doesn't. But, let me ask you
5 this: Do you think that there is some reasonable
6 probability that your brother's situation could have a
7 bearing upon your decision in this case?

8 POTENTIAL JUROR: No -- no, no.

9 THE COURT: In other words, notwithstanding what
10 occurred with your brother, could you put it aside and
11 not allow it to influence your decision in this case?

12 POTENTIAL JUROR: No, I could not. I just don't
13 feel it's appropriate to tell someone that -- you know,
14 I'll have to keep my mind clear of things he's probably
15 done in his past or anything like that, but, you know, as
16 far as this case here, it shouldn't affect nothing.

17 THE COURT: Well, that was my question. Are you
18 telling me that you would not permit your brother's
19 situation to influence your judgement in this case?

20 POTENTIAL JUROR: I'm having trouble understanding.
21 Can you tell me a different approach, so, I can
22 understand it?

23 THE COURT: What do you think that your brother was
24 charged -- has multiple convictions or charges for
25 criminal domestic violence, do you think that would have

1 any bearing or any influence on you in deciding what
2 ought to be done in this particular case if you were a
3 juror?

4 POTENTIAL JUROR: I don't think -- I don't believe
5 so.

6 THE COURT: Okay. All right. Have a seat.

7 POTENTIAL JUROR: All right. Thank you.

8 BAILIFF Juror Number 1.

9 (Potential juror stepped forward.)

10 POTENTIAL JUROR: I am the victim of sexual assault.

11 THE COURT: Do you think that would have any bearing
12 upon your decision in this case?

13 POTENTIAL JUROR: Yes, probably.

14 THE COURT: You think it possibly could?

15 POTENTIAL JUROR: Perhaps, yeah.

16 THE COURT: We'll excuse you from service in this
17 case.

18 POTENTIAL JUROR: Okay.

19 BAILIFF Juror Number 34.

20 (Potential juror stepped forward.)

21 POTENTIAL JUROR: My father was charged with child
22 work -- or charged with child neglect.

23 THE COURT: And has that case been resolved?

24 POTENTIAL JUROR: It's over.

25 THE COURT: All right. Is there anything about that

1 situation that would affect your judgement?

2 POTENTIAL JUROR: I don't think so.

3 THE COURT: So, you can put that aside and not
4 let it influence you?

5 POTENTIAL JUROR: I think so.

6 THE COURT: All right. Thank you. Have a seat.

7 BAILIFF Juror 82.

8 (Potential juror stepped forward.)

9 POTENTIAL JUROR: I've been the victim of rape
10 twice.

11 THE COURT: And would that have any bearing upon
12 your decision in this case?

13 POTENTIAL JUROR: I don't think so; I would hope
14 not.

15 THE COURT: All right. We understand.

16 POTENTIAL JUROR: There won't be any allegations of
17 any type of sexual abuse?

18 THE COURT: Correct, that's a fair statement;
19 there's not.

20 POTENTIAL JUROR: Yes, sir.

21 THE COURT: Understanding you have had an experience
22 like that, do you think that would affect your decision
23 in this case?

24 POTENTIAL JUROR: It shouldn't.

25 THE COURT: Okay. Could you put aside any

1 circumstance of your own and not allow it to influence
2 your decision in this case?

3 POTENTIAL JUROR: I could do that.

4 THE COURT: All right. Thank you.

5 BAILIFF Juror 124.

6 (Potential juror stepped forward.)

7 POTENTIAL JUROR: I just wanted to let you know I
8 was physically abused by a neighbor when I was a child.
9 I don't know if I could have any ---

10 THE COURT: Was that physical abuse and/or sexual
11 abuse?

12 POTENTIAL JUROR: Yes, both.

13 THE COURT: Okay. Would that experience have a
14 bearing upon your decision in this case?

15 POTENTIAL JUROR: I would hope not.

16 THE COURT: Well, do you think there is a reasonable
17 probability that it could?

18 POTENTIAL JUROR: Maybe. I still have problems
19 with ---

20 THE COURT: Okay.

21 POTENTIAL JUROR: --- people who do things to
22 children.

23 THE COURT: All right. Do you think there is a
24 reasonable possibility that it would affect you?

25 POTENTIAL JUROR: It could.

1 THE COURT: We'll excuse you from service in this
2 case.

3 BAILIFF Juror 155.

4 (Potential juror stepped forward.)

5 POTENTIAL JUROR: My brother was charged with
6 assault on his wife. They're no longer married. I also
7 have a brother-in-law that done life in prison for child
8 molestation charges.

9 THE COURT: All right. And would those facts have
10 any bearing upon your decision in this case?

11 POTENTIAL JUROR: Yes.

12 THE COURT: We'll excuse you from service in this
13 case, but don't leave yet. Just have a seat.

14 POTENTIAL JUROR: Okay.

15 BAILIFF Juror 43.

16 (Potential juror stepped forward.)

17 POTENTIAL JUROR: In two thousand, five (2005), my
18 son was murdered. And we had a trial three years in a
19 row before we had a conviction, so....

20 THE COURT: Tell me that again? You had a child
21 three ---

22 POTENTIAL JUROR: We had three in a row. We had one
23 and 2006, seven, and eight. And we finally got a
24 conviction. It was mistrials.

25 THE COURT: Okay. Is there anything about that

1 experience that would affect your judgement in this case?

2 POTENTIAL JUROR: No.

3 THE COURT: Okay. Thank you.

4 BAILIFF Juror 33.

5 THE COURT: What number?

6 BAILIFF Thirty-three (33).

7 (Potential juror stepped forward.)

8 THE COURT: Yes, sir?

9 POTENTIAL JUROR: How are you?

10 THE COURT: Good.

11 POTENTIAL JUROR: I think it was in two thousand and

12 -- I think was right at 2000, convicted -- I wasn't

13 convicted, charged with assault of a pastor at a church.

14 THE COURT: You were convicted?

15 POTENTIAL JUROR: No, I was never convicted of that.

16 After that, there was another trial involving a youth,

17 where I slapped him on the hand, and I was convicted of

18 that one.

19 THE COURT: All right. You have been charged and

20 convicted of assault and battery?

21 POTENTIAL JUROR: Yes.

22 THE COURT: Assault and battery?

23 POTENTIAL JUROR: Yes, sir.

24 THE COURT: Okay. All right. Anything about that

25 experience that would affect your judgement in this case?

1 POTENTIAL JUROR: No, sir.

2 THE COURT: Thank you. You may have a seat.

3 (Brief Pause)

4 THE COURT: All right. Do we have anyone else who
5 needs to respond to that question?

6 (No Response)

7 THE COURT: All right. Those jurors who have been
8 excused, pursuant to that question, are Jurors 1, 24 --
9 excuse me -- 1, 124, and 155.

10 (Whereupon, the jurors whose numbers were called
11 were excused by the Court.)

12 THE COURT: Is there any member of the jury panel,
13 whether you or an immediate family, who has ever been
14 involved in an investigation involving the Department of
15 Social Services?

16 Anyone been involved in a matter with the Department
17 of Social Services? If so, please, stand.

18 (Jurors stand in response)

19 THE COURT: All right. Tell me what you know,
20 please, sir.

21 POTENTIAL JUROR: Fourteen (14).

22 THE COURT: All right. Let me ask you to step down
23 here, please.

24 (Potential juror stepped forward.)

25 THE COURT: Juror 14? Okay. You have been involved

1 in a -- in a -- let me get the other lawyer up here
2 first.

3 (Brief Pause)

4 THE COURT: You have been involved in a matter with
5 the Department of Social Services?

6 POTENTIAL JUROR: My daughter's mother has.

7 THE COURT: Your daughter's mother? And what was
8 the matter?

9 POTENTIAL JUROR: It was her husband had allegedly
10 beat his son, including my daughter -- my daughter's
11 brother.

12 THE COURT: So, the Department of Social Services
13 investigated that?

14 POTENTIAL JUROR: Yeah.

15 THE COURT: Did you have anything to do with it?

16 POTENTIAL JUROR: No.

17 THE COURT: It was just your -- the mother of your
18 child, boyfriend, husband?

19 POTENTIAL JUROR: Yeah.

20 THE COURT: All right. He was accused of
21 assaulting?

22 POTENTIAL JUROR: Yes, but it was dismissed.

23 THE COURT: Okay. Is there anything about that fact
24 that would affect your ability in this case?

25 POTENTIAL JUROR: No, sir.

1 THE COURT: Thank you. Have a seat.

2 BAILIFF Juror number 34.

3 (Potential juror stepped forward.)

4 THE COURT: Yes, ma'am?

5 POTENTIAL JUROR: They dismissed the case.

6 THE COURT: Okay. Thank you.

7 BAILIFF Juror 125.

8 (Potential juror stepped forward.)

9 POTENTIAL JUROR: I deal with DSS a lot when I lived
10 in Greenville County.

11 THE COURT: Would that have any bearing upon your
12 decision?

13 POTENTIAL JUROR: No.

14 THE COURT: Thank you. Anyone else need to respond
15 to that question?

16 (No Response)

17 THE COURT: All right. Has any member the jury
18 panel ever been involved in a matter that involved the
19 Spartanburg Children's Advocacy Center, the Spartanburg
20 Children's Advocacy Center? If so, please, stand.

21 (No Response)

22 THE COURT: Has any member of the jury panel ever
23 been employed as a law enforcement officer?

24 And, also, has any member of your immediate family
25 ever been employed as a law-enforcement officer or a

1 prison employee?

2 And I need to know if you or if any family member is
3 now or has ever been employed as a law enforcement
4 officer? If so, please, stand.

5 (Potential jurors stand in response.)

6 THE COURT: All right. I'll start to my right and
7 I'll work my way left. And I'll start with juror number
8 1.

9 POTENTIAL JUROR: My mother was a deputy.

10 THE COURT: I'm sorry, your mother was what?

11 POTENTIAL JUROR: She worked in the police force.

12 THE COURT: Where?

13 POTENTIAL JUROR: She was a police officer.

14 THE COURT: Where?

15 POTENTIAL JUROR: Oh, I'm sorry, in California.

16 THE COURT: Okay. Thank you. Be seated. Yes,
17 ma'am?

18 POTENTIAL JUROR: My brother-in-law is a retired
19 state trooper.

20 THE COURT: All right. And you -

21 POTENTIAL JUROR: In Cherokee County.

22 THE COURT: And your juror number please?

23 POTENTIAL JUROR: One, twenty-six (126).

24 THE COURT: One, twenty-six (126)?

25 POTENTIAL JUROR: (Nods affirmatively).

1 THE COURT: Okay. Thank you. You can be seated.

2 Next, the same row.

3 POTENTIAL JUROR: My brother is retired from the
4 Spartanburg County Sheriff's Department.

5 THE COURT: All right. I need you all, when you --
6 when you address me, if you would, if you'll, please,
7 give me your name and your juror number, so, I'll know
8 who's speaking.

9 POTENTIAL JUROR: Yes, sir. My name is Charles
10 Cuff, and my number is 27.

11 THE COURT: Twenty-seven (27)? All right. Thank
12 you, sir. All right, next row?

13 POTENTIAL JUROR: Herman Glenn, juror number 56. I
14 have a brother who is a corrections officer.

15 THE COURT: All right. Thank you. Be seated. Yes,
16 ma'am?

17 POTENTIAL JUROR: My name is Margie Watson. My
18 number is 164. And my son has, at one point, been a
19 police officer. And he's a -- a fireman now.

20 THE COURT: Okay. Thank you. Be seated. Yes, sir?

21 POTENTIAL JUROR: Danny Lowe, juror 88, former
22 Marine, CIDH (phonetic) and NCIS.

23 THE COURT: All right. Thank you. I'm glad you
24 mentioned that. And, when I refer to military -- I mean,
25 when I refer to a police officer, I mean civilian as well

1 as military. Okay. Thank you. Next row?

2 POTENTIAL JUROR: Phillip Kerby, 79. My father is a
3 correctional officer at the Lee Center (phonetic).

4 THE COURT: All right. Thank you. Be seated. Next
5 Row?

6 POTENTIAL JUROR: One, thirty-four (134), my
7 brother is an FBI agent and my nephew is a lieutenant in
8 Union County in the Sheriff's Department. And my nephew
9 was a former deputy here in Spartanburg County.

10 THE COURT: And you said your number was one, three,
11 four (134)?

12 POTENTIAL JUROR: Yes, sir.

13 THE COURT: All right. Thank you. Be seated. Yes,
14 sir?

15 POTENTIAL JUROR: My number is 70, Wayne Isler. I
16 work for the city.

17 THE COURT: Thank you. Be seated. Yes, ma'am?

18 POTENTIAL JUROR: Linda Knox, my number is 82. My
19 sister-in-law was a police officer in Greenville,
20 Spartanburg, and Chesnee (phonetic).

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

22 (Brief Pause)

23 THE COURT: Does any member of the jury panel belong
24 to or contribute time or money to any types of
25 organizations that might be characterized as law

1 enforcement support or victims' advocacy groups?

2 Those might include organizations such as Mothers
3 Against Drunk Drivers, Citizens Against Violent Crimes,
4 the Honorary Sheriff's Association, The Troopers'
5 Association, Safe Homes, The Children's Advocacy Center,
6 or a neighborhood watch program or any similar type of
7 organization?

8 Do you belong to any of those or do you contribute
9 time or money to any of those organizations? If so,
10 please, stand.

11 (Jurors stand in response)

12 POTENTIAL JUROR: Troopers Association, juror number
13 56, Herman Glenn.

14 THE COURT: Fifty-six (56)? Thank you. Be seated.
15 Yes, sir?

16 POTENTIAL JUROR: David Chastain, juror number 19,
17 Helen Hines Smith Girls' Home (phonetic). We do
18 different projects there with both time and money.

19 THE COURT: Okay. Thank you. Be seated. Yes, sir?

20 POTENTIAL JUROR: Juror 88, Troopers Association and
21 M.A.D.D. and also The Child's Advocacy Center.

22 THE COURT: Thank you. Yes, ma'am?

23 POTENTIAL JUROR: Juror number 60, work at Safe
24 Haven. It's a victim's center, it's abused mothers and
25 children.

1 THE COURT: Thank you. Be seated. Yes, sir?

2 POTENTIAL JUROR: Number 176, James Bradof, The
3 Children's Advocacy Center.

4 THE COURT: Thank you. Be seated. Yes, sir?

5 POTENTIAL JUROR: Juror Number 121, Billy Nunnery.
6 I donate to the sheriff's department.

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

8 Anyone else need to respond to that question?

9 (No Response)

10 THE COURT: All right. Has any member of the jury
11 panel ever been called to testify; whether you actually
12 testified or not, were you called to testify as a
13 witness, in a criminal case, whether it be for the state
14 or for the Defense? If so, please, stand, if you were
15 called to testify as a witness, even though you might not
16 have actually testified.

17 (Jurors stand in response)

18 THE COURT: All right. And your name and number,
19 please, ma'am?

20 POTENTIAL JUROR: My name Cynthia Reid, number 136.
21 I was recently called as a witness in a case.

22 THE COURT: All right. Was that for the State or
23 the Defense?

24 POTENTIAL JUROR: I was for the defendant.

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

1 POTENTIAL JUROR: Danny Lowe, juror 88. I've been
2 called numerous times as a (inaudible).

3 THE COURT: Okay. Thank you. Be seated. Yes, sir?

4 POTENTIAL JUROR: James Bradof, 176. I was deposed
5 as a witness in my partner's malpractice case, a civil
6 case.

7 THE COURT: Okay. Thank you. Be seated. Anyone
8 else?

9 (Potential juror stands in response.)

10 THE COURT: Okay.

11 POTENTIAL JUROR: Juror number 43, and I was listed
12 as a witness in my son's murder trial.

13 THE COURT: Okay. Thank you, ma'am.

14 (Brief Pause)

15 THE COURT: All right. I have introduced to you the
16 participants in the trial, as well as the potential
17 witnesses, as well as the lawyers. And I've told you
18 basically what the case is about.

19 With that knowledge, does any member of the jury
20 panel know of any reason whatsoever why you could not be
21 fair and impartial if you were called upon to serve as a
22 juror in this particular case?

23 If so, please, stand.

24 (No Response)

25 THE COURT: Any other questions requested by the

JURY SELECTION

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1 State?

2 MS. JORDAN: No, sir, your Honor.

3 THE COURT: By the Defendant Dockery?

4 MS. PRICE: No, your honor.

5 THE COURT: By the Defendant Moore?

6 MR. RUDASILL: No, your Honor.

7 THE COURT: All right. Let me see the lawyers for
8 just a moment.

9 (Whereupon, a bench conference was had with all
10 attorneys present.)

11 (Voir dire concluded at 12:31 p.m.)

12 JURY SELECTION

13 THE COURT: All right. Now, the way a jury is
14 selected is your names are in the computer and the
15 computer selects them randomly.

16 You'll be asked to come forward as your name is
17 called. And just come down the center aisle and you'll
18 see where there's a microphone. The bailiff is walking
19 towards it.

20 And just stand where the bailiff is. And each side
21 has an opportunity to have you seated for service in the
22 case or have you excused from service in the case.

23 If either side asks that you be excused, you can
24 simply go back and have a seat where you are now. If
25 both agree to have you seated, for service in the case,

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1 you will be having a seat in the jury box to your right
2 and to my left.

3 So, please, come forward as your name is called and
4 you'll be instructed if you have been seated or excused
5 from service in the case.

6 (Please see attached jury selection sheet.)

7 (Jury selection began at 12:32 p.m. and ended at
8 12:46 p.m.)

9 THE COURT: All right. Those jurors who have been
10 selected, I'll ask that you please go with the bailiff to
11 the jury room. I'll bring you back in just a few
12 minutes.

13 (The jury exited the courtroom at 12:46 p.m.)

14 THE COURT: Are there any matters that need to be
15 addressed regarding jury selection by the State?

16 MS. JORDAN: No, sir, your Honor.

17 THE COURT: By the Defendant Dockery?

18 MS. PRICE: No, your honor.

19 THE COURT: By the Defendant Moore?

20 MR. RUDASILL: No, your Honor.

21 THE COURT: All right. Those jurors who are not
22 selected, I'm going to ask you, if you would, please, go
23 with the bailiff back to the jury assembly room. I'll
24 check to see if judge couch is going to need you for the
25 balance of the day.

1 If not, you will be excused and you will be asked to
2 call back this evening to receive reporting information.
3 And, you need to come back here this afternoon, the
4 bailiff will tell you that also.

5 So, thank you for your participation. Please, go to
6 the jury assembly room and we will give you that
7 information in just a few minutes.

8 (The jury panel exited the courtroom at 12:47 p.m.)

9 (Brief Pause)

10 PRE-TRIAL MOTIONS

11 THE COURT: All right. We have some pretrial
12 motions to be addressed?

13 MS. JORDAN: Your Honor, on behalf of the state, we
14 would -- in accordance with your ruling on a pretrial
15 matter on December 16, last year ---

16 THE COURT: Well, I haven't ruled on that yet.

17 MS. JORDAN: I will address that they had. your
18 Honor, we do have a brief motion in limine as to
19 information that I believe Mike Rudasill has indicated
20 that he was going to offer on behalf of the Defendant
21 Eugene Scott Moore, if I may approach?

22 (Document handed up to the Court.)

23 THE COURT: Okay. What I am trying to find out
24 right now is, how much time you all going to need to
25 argue your pretrial motions?

1 MS. JORDAN: Your Honor, my -- mine is very brief.
2 It is just a motion in limine as to Ronnie Brown.

3 THE COURT: Okay.

4 MR. RUDASILL: Your Honor, I understand Ms. Jordan
5 has some probably high dollar several witnesses on call
6 for this afternoon. It's medical testimony.

7 I have no objection to her preserving our motion in
8 limine and the other issues with regard to Crawford and
9 Burton, as far as statements and waiting until she
10 concludes this evening, if that would suit her, to get
11 her witnesses in here and out of here. In fact, I have
12 no problem doing that, depending on what she states she
13 needs as far as time.

14 THE COURT: All right. So, no motion needs to be
15 heard before we get to the ---

16 MR. RUDASILL: Unless you're going you something
17 that I have -- that I have not participated in.

18 MS. JORDAN: No, currently, as I told both defense
19 attorneys, my -- my intention this afternoon is to call
20 three doctors to the stand; Dr. Michael Thomasson, a
21 radiologist; Dr. Robbie Robinson, the pediatrician from
22 Greenville Hospital system; and Dr. Curtis Rogers from
23 Greenwood Genetics.

24 None of that were involved in the statements made by
25 either one of these individuals because the child was in

1 DSS custody at that time. And they had no contact with
2 these individuals.

3 MR. RUDASILL: That was my understanding, and for
4 that reason, if it would facilitate her meeting her time
5 line with them, I have no problem with us addressing
6 these matters at the conclusion of today's testimony or
7 even prior to getting into those issues.

8 THE COURT: All right. That's fine.

9 (Brief Pause)

10 THE COURT: Let's bring in the jury.

11 (The bailiff stepped out to summon the jury.)

12 (The jury entered the courtroom at 12:55 p.m.)

13 THE COURT: Ladies and gentlemen, we will recess for
14 lunch. Let me caution you, as you leave to go to lunch,
15 during the course of this trial, you are never to discuss
16 this case with anybody whatsoever in any fashion
17 whatsoever.

18 You are not permitted to let anyone discussed the
19 case with you. Also, you are not permitted to conduct
20 your own research or your do your own investigation into
21 any issues that might arise during the trial.

22 You have to base your decision upon what you see and
23 hear during the trial of the case. You can't supplement
24 that knowledge by considering outside extraneous
25 information.

1 Also, you are not to permit yourself to be exposed
2 to any type of media coverage that might relate to the
3 case, should there be some; no television, no radio, no
4 newspaper article as relates to the case.

5 As I said, you must make your decision based upon
6 the evidence received during the trial of the case and
7 you cannot be influenced by any outside consideration.
8 And that is the reason for the instruction that you have
9 no discussion, do not conduct any investigation, do not
10 do your own research into any issue, and don't permit
11 yourself to be exposed to any type of media coverage that
12 might relate to this case.

13 Do have a good lunch and please report back to your
14 jury room, that jury room that you just have been shown
15 to, please report to that jury room at 2:30, at 2:30 this
16 afternoon. If you're not sure how to get back there,
17 talk to the bailiff's and they will provide you with
18 those directions.

19 Have a good lunch and we will see you at 2:30 p.m.

20 (The jury exited the courtroom for the luncheon
21 recess at 12:58 p.m.)

22 (Brief Pause)

23 THE COURT: All right. Court is in recess until
24 2:30 p.m. The defendants are in custody until I've
25 talked to the bondsman.

1 MR. RUDASILL: I'll try to make arrangements to do
2 that during lunch.

3 MS. JORDAN: Thank you, your Honor.

4 (Whereupon, a luncheon recess was taken from 12:59
5 p.m. until 2:30 p.m.)

6 THE COURT: Thank you. Be seated. All right. Any
7 matters to address before the jury is brought in?

8 MS. JORDAN: None from the State, Your Honor.

9 MS. PRICE: No, Your Honor.

10 MR. RUDASILL: Your Honor, the only thing that I
11 would be sequestration. I spoke to Ms. Jordan about
12 that. I have no objection to Ms. Cantrell being in the
13 courtroom since she's the investigator, the primary
14 investigator. But, otherwise, I would request that we
15 sequester the witnesses.

16 THE COURT: Any objection?

17 MS. JORDAN: No, sir.

18 THE COURT: All right. The witnesses will be
19 sequestered, both the State's and Defendants'.

20 All right. Bring the jury in and ask Mr. Lowndes to
21 take the foreperson's seat.

22 (Whereupon, the jury entered the courtroom at 2:38
23 p.m.)

24 PRELIMINARY INSTRUCTIONS

25 THE COURT: Good afternoon, ladies and gentlemen.

1 We are ready to begin with the trial of the case for
2 which each of you have been selected.

3 Mr. Lowndes, I'm going to ask you to serve as the
4 foreperson of the jury. As the foreperson, you'll have
5 three specific duties that -- that none of the other
6 jurors will have.

7 Number one, you're going to be asked to serve as a
8 spokesperson for the jury. And, so, if during the trial,
9 something arises that needs to be brought to my attention
10 -- you or a fellow juror has some difficulty, problem, or
11 question -- it will be you who will direct those comments
12 to me, either directly or through the bailiff should that
13 be required.

14 Secondly, you will preside over the jury
15 deliberations when the time comes for those
16 deliberations.

17 That, of course, will not be, until the end of the
18 trial, after all of the evidence has been received and I
19 have instructed you on the law that's applicable in the
20 case.

21 But, when the time does come for jury deliberations,
22 you will preside over that process, in the jury room,
23 simply to ensure that those deliberations are carried out
24 in some orderly fashion.

25 And, thirdly, you'll be called upon to actually

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1 write the decisions or the verdicts of the jury. You'll
2 do that on a verdict form that I'll provide you at the
3 trials conclusion, on which you will indicate the jury's
4 unanimous decision as it relates to each separate
5 defendant and each separate charge.

6 Now, the foreperson has those specific duties that
7 I've just indicated. That does not, however, mean that
8 he is any more important than any of you other jurors
9 because the decision of a jury is the unanimous consensus
10 opinion of all twelve (12) jurors.

11 And, so, therefore, all of you will have an equal
12 say and an equal vote in what the ultimate decisions will
13 be in this case. Someone simply has to be delegated
14 those responsibilities that I have just indicated and I
15 have delegated those to Mr. Lowndes in appointing him as
16 the foreperson.

17 But all of you twelve (12) jurors are equally
18 important so far as the ultimate decision is concerned
19 because, as I've stated, the verdicts have to be
20 unanimous; all twelve (12) of you must be in agreement.

21 Now, Ms. Hayes and Mr. Wyatt, each of you have been
22 selected as alternate jurors. And the function of an
23 alternate juror is to take the place of one of the
24 original twelve (12) jurors, if during the trial, one or
25 two of these original twelve (12) jurors cannot continue

1 to serve for some reason.

2 And, so, if one or two are called away because of an
3 emergency or an illness or some other circumstance that
4 prevents them from being able to continue to serve as a
5 juror, then, one or both of you will be called upon to
6 take those jurors' places.

7 In that event, one or both of you will become the
8 twelfth juror. And, in that event, you would participate
9 throughout the course of the trial, including the jury
10 deliberation, at the trial's conclusion.

11 If, however, when the time does come for jury
12 deliberations, the original twelve are able to
13 participate in those deliberations, then, the service of
14 an alternate juror ceases and you don't participate any
15 further.

16 And that's because the decision of a jury is that of
17 twelve (12). No more than twelve (12) can participate in
18 that deliberation process.

19 But it is important that each of you, as alternate
20 jurors, pay just as careful attention as we ask of all of
21 the jurors in the case because it does occur from time-
22 to-time, for one reason or another, one or two of these
23 original jurors may be unable to continue.

24 And, in that event, one or both of you will be
25 called upon to take their places. So, we do appreciate

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1 your participation as alternate jurors just as we
2 appreciate the participation of each of you jurors who
3 have been selected for the purpose of deciding the
4 verdict in this particular case.

5 You may swear the panel.

6 (Whereupon, the jury was impaneled at 2:46 p.m.)

7 THE COURT: All right. Now, ladies and gentlemen,
8 as you know, these are criminal cases. We have two
9 defendants in this particular case. Those defendants are
10 Tina Michele Dockery and Leonard Scott Moore.

11 Each of those defendants have been accused of two
12 separate and distinct criminal offenses, although each of
13 those offenses is alleged to have arises out of one
14 particular event or a course of events, which the State
15 alleges occurred between June the -- the 22nd of two
16 thousand and five (2005) and October the 25th of two
17 thousand and five (2005).

18 When a person is accused of a crime, where the
19 jurisdiction lies in the Circuit Court, that person is
20 always brought here by way of that document that I
21 referred to prior to your selection and as I referred to
22 it as the indictment in the case.

23 Those indictments set forth the charges against a
24 defendant. The indictments are not evidence of anything.
25 They're not proof of anything. They do not establish

1 anything.

2 They are the legal documents required, however, to
3 bring a person into this Court and to formally put them
4 on notice as to what crime the State claims they've
5 committed.

6 And, of course, the indictment serves to do just
7 that; that is, to put a defendant on notice as to what
8 crime it is alleged that they have committed.

9 The indictments will be in the jury room at the
10 trial's conclusion; not as evidence, because as I've told
11 you, they're not evidence of anything.

12 But they will be in the jury room because the
13 indictments, Mr. Foreman, will serve as the verdict form.
14 And it's going to be on the back of each of those
15 separate indictments as they relate to the separate
16 defendants, that you will indicate the jury's decision as
17 to each defendant and as to each charge against that
18 particular defendant.

19 As to the charges contained in these indictments,
20 each of the defendants, as you know, has entered a plea
21 of not guilty. And that plea of not guilty has,
22 therefore, placed upon the State the burden of proving
23 the allegations that they have set forth in each of the
24 indictments and the burden of proving each of the
25 essential elements, that are set forth in each of those

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1 indictments.

2 And, therefore, the burden is upon the State to
3 establish a defendant's guilt to the satisfaction of you
4 twelve (12) jurors, beyond a reasonable doubt, before any
5 verdict of guilty could be returned as to any charge and
6 as to either defendant.

7 Every person, who is accused of a crime -- and it
8 doesn't matter how serious -- how serious the crime might
9 be that a person is charged with -- every person accused
10 of a crime is always presumed innocent of the charge.

11 And that presumption of innocence remains with any
12 defendant, as it does with these defendants, from the
13 time that they are placed under arrest and throughout the
14 course of the criminal process and even throughout the
15 course of the actual trial in the case.

16 Now, that presumption of innocence will be with each
17 of these defendants, even as you go back at this trial's
18 conclusion, to begin with your deliberations in this
19 case.

20 And that presumption of innocence will be with them
21 in that jury room. And it will be with them forever
22 unless you twelve (12) jurors determine that a defendant
23 is not entitled to that presumption of innocence as to a
24 particular charge.

25 In other words, after you've carefully considered

1 all of the evidence in the case, and from that evidence
2 you have determined what you believe to be the true
3 facts, and upon deciding those facts you apply the law
4 that I will have provided you, if you twelve (12) jurors
5 unanimously determine, beyond a reasonable doubt, that a
6 defendant has been proven guilty of a particular charge,
7 then, that defendant will no longer be entitled to the
8 presumption of innocence as it relates to that charge.

9 But it's only if, unless, and until you are
10 satisfied, of a defendant's guilt as it relates to a
11 charge beyond a reasonable doubt, that that defendant
12 would no longer be entitled to that presumption of
13 innocence. And the presumption would no longer be
14 applicable.

15 Now, the way the trial will proceed is, in a moment,
16 the lawyers are going to address you in what's called
17 opening statements.

18 There are two occasions, in the trial of a case,
19 where lawyers are permitted to address the jury; that is
20 at the beginning of the trial before any evidence has
21 been introduced; then, again, at the conclusion of the
22 trial, after all of the evidence has been received.

23 But keep in mind, as I've just indicated, the
24 evidence comes in between the opening and the closing
25 statements of the lawyers.

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1 And, therefore, what the lawyers tell you in their
2 statements is not to be considered by you as any evidence
3 upon which you will base your decision. And that's
4 because the lawyers aren't witnesses to anything.

5 They don't know anything about this case of their
6 own personal knowledge or experience as a witness will be
7 testifying to.

8 The lawyers will not be placed under oath. They
9 won't take the witness stand. They will not be subjected
10 to direct and cross-examination as each of the witnesses
11 will be.

12 And, so, what the lawyers tell you in their
13 statements is not to be considered by you as any evidence
14 upon which you will base your decision.

15 But you should listen to what the lawyers have to
16 say in those statements because those statements do serve
17 a purpose.

18 The opening statements will serve to provide you
19 with a basic understanding of what this case is about,
20 from both the perspective of the State and each of the
21 Defendants, so, that you'll have some context in which to
22 place the evidence that we will be receiving shortly
23 thereafter.

24 The closing statements, which occur after all the
25 evidence has been received, again, are not to be

1 considered as evidence. But they do afford the lawyers
2 an opportunity to discuss with you the evidence that you
3 have seen and heard during the trial of the case.

4 And, through that discussion, each will be trying to
5 persuade you or to convince you that that evidence does
6 or does not support a particular decision.

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

11 The State has brought these charges against each of
12 these defendants. And, therefore, the burden is on the
13 State to convince you of the Defendants' guilt beyond a
14 reasonable doubt.

15 And, therefore, the State will go forward first in
16 its presentation of evidence because they have the burden
17 of proof. In other words, they have to establish a
18 defendant's guilt, as to a charge beyond a reasonable
19 doubt, before a jury could find a defendant guilty of
20 that particular charge.

21 There is no corresponding duty or obligation on any
22 defendant to testify or to present evidence. And that's
23 because the burden is never upon a defendant to prove
24 that he or she is not guilty or to prove that he or she
25 is innocent because, in some cases, that might not even

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1 be possible.

2 The burden is always upon the State because they
3 have brought the charges against another to establish
4 that person's guilt beyond a reasonable doubt.

5 While a defendant has no obligation to testify,
6 during the trial of the case, while the defendant has no
7 obligation to call any witnesses or produce any evidence,
8 every defendant is afforded an opportunity to present
9 evidence if he or she wishes to do so.

10 If a defendant does not testify, during the trial of
11 a case, and doesn't call any witnesses or produce any
12 evidence, that's not a circumstance that may be
13 considered by the jury, in the slightest degree, against
14 that defendant.

15 In other words, you can never consider the fact that
16 a defendant does not testify or present evidence or call
17 witnesses in your determination as to whether or not
18 their guilt has been proven beyond a reasonable doubt.
19 And that's because, as I say, the burden is on the State
20 to convince you of that fact.

21 So, after all the evidence has been received, and
22 after you hear the final summations of the lawyers, I
23 will, then, instruct you fully on the law as it relates
24 to the criminal law in general and as it relates to these
25 specific charges particularly. After which you will be

1 instructed to go back and begin with your deliberations.

2 And, through that process, you're simply going to be
3 called upon, through the exercise of good judgement and
4 common sense, conscientiously applied to the testimony
5 and the evidence received during the case, to decide the
6 facts, then, apply the law and arrive at a fair and just
7 decision, whatever that decision might be.

8 Now, it is important that you pay careful attention
9 to each of the witnesses as they testify. And that means
10 from the first one, through the middle, until the very
11 end because you never know what testimony is going to be
12 important in your arriving at your decision.

13 And it may come from the first witness. It may come
14 from the last witness. It may come from some witness in
15 between. It may come from each witness; they may have
16 some important details to provide that you have to
17 consider in arriving at your decision.

18 So, it's important that you give every witness the
19 same degree of attention as they testify. That, of
20 course, doesn't mean that you're going to attach the same
21 degree of weight to one witness as opposed to another.

22 You necessarily will have to often evaluate the
23 credibility of a witness and their testimony in arriving
24 at your decision.

25 And, as you must make a decision as to the facts

1 and, therefore, you must judge the credibility of each
2 witness as they testify, you are permitted to believe as
3 much or as little of what a witness is testified to as
4 you deem is appropriate.

5 So, you can believe everything that a witness
6 testifies to. You may choose to reject it all. You may
7 believe one portion of a witness' testimony and reject
8 some other portion of that same witness' testimony.

9 You can believe one witness as opposed to several or
10 several as opposed to one.

11 But, in order for you to be able to fairly assess
12 the credibility of each of the witnesses' testimony, you
13 have to consider that testimony in light of not just that
14 witness' testimony, but in light of all the testimony and
15 all the evidence received during the trial.

16 And that, of course, is the very reason why you have
17 to pay careful attention to each witness as they testify
18 throughout the course of the trial.

19 And it's important that you keep an open mind
20 throughout the course of the trial. And that simply
21 means that you are not to begin making up your minds or
22 formulating your opinions as to what you think the
23 ultimate decisions in this case ought to be until all of
24 the evidence has been received, until you have been
25 instructed on the law, and until you've been asked to

1 begin with your deliberations in the case.

2 So, that is the process that is designed for you
3 twelve (12) jurors to arrive at a fair and just decision
4 in the case. So, I do want to thank you in advance for
5 your participation as well as for your careful attention.

6 I'll ask that you, please, give the lawyers your
7 attention now as they give you their opening statements.
8 Ms. Jordan?

9 OPENING STATEMENTS

10 (Ms. Jordan's opening statement began at 2:51 p.m.)

11 MS. JORDAN: Thank you, Your Honor. Ladies and
12 gentlemen, on June the 22nd of two thousand and five
13 (2005), [Minor Child] (phonetic) was born to the
14 Defendants, Tina Dockery and Leonard Scott Moore, at Mary
15 Black Hospital here in Spartanburg County.

16 That was a happy, joyous occasion. Four months and
17 three days later, [Minor Child] was back at Mary Black
18 Hospital. This time he showed up with multiple broken
19 bones, twenty-six total; twenty-three in the ribs, two in
20 the skull, and one in the femur.

21 What you're going to hear about is [Minor Child]
22 treatment, once he arrived at Mary Black and was
23 subsequently taken to Greenville Hospital System, to the
24 Children's Hospital over there.

25 You're going to hear from the doctors who treated

1 him. They'll be the first people that you hear from.
2 They're going to tell you about what they found when they
3 did a skeletal survey on him and just talk to you about
4 his injuries.

5 Remember, **Minor Child** was four months old at this
6 time. For the four months that he was -- for the four
7 months there, he was in the care, custody, and control of
8 two people, his parents, the Defendants here.

9 You're also going to hear, during the course of this
10 trial, about what the Defendants say happened to **Minor Child**
11 during the time that they had him, and the time they took
12 him back to Mary Black Hospital.

13 Ladies and gentlemen, both of the Defendants, both
14 his mom and his dad, are charged with felony child abuse,
15 which means that they inflicted great bodily injury upon
16 **Minor Child**.

17 They're also charged with unlawful neglect of a
18 child, which means that they either placed **Minor Child** at an
19 unreasonable risk of harm affecting the child's life,
20 physical, or mental health and safety, or they caused or
21 did cause to be done, unlawfully and maliciously, injury
22 to **Minor Child** body; twenty-six broken bones on a four-
23 month-old baby.

24 Ladies and gentlemen, you're going to hear from the
25 Defense attorneys. They're going to tell you that it's

1 the State's burden to prove this case beyond a reasonable
2 doubt.

3 It is. Our burden is to prove that both of these
4 Defendants committed both crimes beyond a reasonable
5 doubt. Keep in mind it's beyond a reasonable doubt, not
6 beyond any and all doubt.

7 The one thing I love about the American jury system
8 is that you come in here and no one asks you to leave
9 your common sense at the door of the courthouse steps.
10 No one says leave that out there.

11 You get to bring that and whatever every day,
12 ordinary experiences into this courtroom, work together,
13 and return a verdict.

14 Ladies and gentlemen, at the end of this case, I'll
15 have the opportunity to come back and talk to you again.
16 And, at that time, as I am now, I would ask you to return
17 a verdict of guilty as to both of these Defendants as to
18 both charges. Thank you for your time.

19 THE COURT: Ms. Price?

20 (Ms. Price's opening statement began at 3:00 p.m.)

21 MS. PRICE: Thank you, Your Honor. May it please
22 the Court?

23 Good afternoon, ladies and gentlemen. I trust all
24 of you had a nice holiday season and now it's time to get
25 back to work.

1 And I say that because you're an integral part of
2 this system too. I can't do my job, Mr. Rudasill can't
3 do his job, Ms. Jordan can't do her job without your
4 help. And that's another integral part of our legal
5 system that that's the help we need.

6 The other essential needs and parts Ms. Jordan
7 touched on is the burden of proof by the State. Now,
8 when I was walking up here to court this morning, if any
9 of you saw me, you saw me lugging a huge box sitting
10 right over there. It's all my file materials that I
11 always bring with me.

12 And I -- I use that as an illustration to say, I was
13 lugging that huge box with my case in it, but actually
14 the big huge box in this case metaphorically speaking is
15 held by the State.

16 The State has the burden of -- of proving. And you
17 have the opportunity to make the State prove their case.
18 And I don't want to talk to you a whole lot about the
19 facts in this case.

20 I'll talk to you about that a little later on at the
21 close of this trial. But I would submit to you, at this
22 time, that there are two tables because there are two
23 opposing sides to this case.

24 And, as there are two sides to this case, those of
25 you who have children know that are always two sides of

1 every story.

2 I'll just ask you at this time, you know, just to
3 listen very carefully to everything you hear, make the
4 State prove their case. And, when you do, you should
5 find my client, Ms. Dockery, not guilty. Thank you.

6 THE COURT: Mr. Rudasill?

7 (Mr. Rudasill's opening statement began at 3:02
8 p.m.)

9 MR. RUDASILL: Thank you, Your Honor. Mr. Foreman,
10 ladies and gentlemen, Minor Child as you have heard,
11 is the son of Scott Moore, whom I represent, and Tina
12 Dockery, who is seated by Ms. Price.

13 They also have a daughter you'll learn, Catherine,
14 who at the time that these events are alleged to have
15 occurred, was two years of age. She's now seven.

16 Minor Child is now five years of age.

17 You're going to hear, in just a moment, a succession
18 of witnesses regarding the medical trauma, for lack of a
19 better term, that Minor Child sustained in the first
20 four months of his life.

21 I'm sure you're going to hear repeatedly that he had
22 the twenty-six (26) fractures, which Ms. Jordan just
23 mentioned to you; fractures to his leg, his thigh, ribs,
24 and to his skull, and an additional burn to the bottom of
25 his foot.

1 I use the term "repeatedly" not to try in any way to
2 diminish what you're going to hear occurred in the first
3 months of **Minor Child** life.

4 I make a point of telling you that because I also
5 want you to know Scott Moore does not deny that those
6 injuries existed when his son was examined at Mary Black
7 Emergency Room the evening of October 25, two thousand
8 and five (2005).

9 That's not an issue. The issue that you're going to
10 be called upon to determine is who inflicted those
11 injuries on **Minor Child**

12 That is the issue that you're going to have to
13 determine and also whether or not the burn to the heel of
14 his foot was intentional or something that came about
15 accidentally, as you will hear what he told Officer
16 Cantrell occurred, to cause that burn when he was given
17 responsibility of taking care of a two year old and an
18 infant while he was stirring or attempting to prepare
19 lunch for Catherine one day prior to October 25, two
20 thousand and five (2005), when **Minor Child** foot, as he was
21 holding him, dropped down, and was burned by the stove.

22 I will tell you now Scott denies that he brought
23 about, caused, or set in motion any event that caused the
24 fractures that you're going to hear about from the
25 medical witnesses the prosecution will be calling.

1 I point out one other thing to you. And His Honor
2 has given you some preliminary instructions about the
3 indictments and the counts of the indictment.

4 I believe -- I know, with regard to Scott's
5 indictment, count one alleges child neglect as Ms. Jordan
6 and His Honor has explained that to you.

7 Count two alleges child abuse with great bodily
8 injury. Those indictments charge each of these
9 Defendants with having done those acts.

10 There is not a count, or a separate indictment,
11 charging that these individuals or that Scott Moore
12 conspired, act in -- acted in concert, did anything
13 jointly with Ms. Dockery to bring about the injuries to
14 **Minor Child**

15 So, you have got to determine, as I've indicated,
16 who inflicted these injuries on **Minor Child**

17 You're going to be called upon to weigh
18 circumstantial evidence, evidence that you're going to
19 have to listen to very closely.

20 And, again, I make that statement to point out to
21 you that I want you to do two or three things for me
22 while you're listening to Officer Cantrell's testimony,
23 Officer Saar's testimony, and possibly some of the other
24 testimony of officers that were involved in the
25 investigation.

1 What I want you to listen for, as they tell you
2 about the interrogation or the investigation of Scott
3 Moore and Tina Dockery, is I want you to listen for which
4 one of those individuals showed love, or lack of love,
5 for their child, concern, or lack of concern, for their
6 child, or any emotion at all for their child.

7 And one other point I want you to listen for
8 closely, as you hear the testimony the prosecution is
9 going to put up, is which one of Scott or Tina had
10 consumed a substantial quantity of drugs, at the point in
11 time, the closest point in time that we know about, when
12 injuries were inflicted to **Minor Child** when he appeared at
13 the emergency room on October 25, two thousand and five
14 (2005).

15 What kind of drugs had been consumed? I believe
16 you'll hear Lortab, Vicoprofen, in substantial
17 quantities, were consumed by one of these Defendants.

18 Mr. Foreman, ladies and gentlemen, Ms. Jordan, Ms.
19 Price, and I chose the twelve (12) of you and the two
20 alternates as those individuals that we felt were best
21 qualified to listen and weigh the evidence that you're
22 going to hear in this trial over the next probably couple
23 or so days.

24 It's an awesome responsibility that you have taken
25 an oath to do. In 1774, John Adams was quoted as having

1 said, "Representative government and trial by a jury are
2 the heart and lungs of liberty."

3 It's something that I have hanging on my wall that I
4 very much believe distinguishes our nation from other
5 nations and their judicial systems.

6 It's the twelve (12) of you sitting, in that jury
7 box, listening carefully to what is presented to you, to
8 make a determination first as to whether the -- what the
9 true facts are, if that can be ascertained from what you
10 hear.

11 You may hear a lot of information, but you have to
12 determine what the true facts are.

13 And, secondly, whether those facts prove, beyond a
14 reasonable doubt, each and every element -- each and
15 every element of the offense His Honor will explain to
16 you are involved in the allegations of child neglect and
17 child abuse with great bodily injury.

18 You're going to have to listen to whether there's a
19 bias and why the witness testified a particular way,
20 whether there may be some motive in testifying, in a
21 particular way, or whether there is overall reliability
22 in what that witness testifies.

23 I'll simply ask that you keep those things in mind,
24 as you hear the testimony, and make the determination as
25 to whether -- what the true facts are and whether or not

1 the State has proven guilt beyond a reasonable doubt.

2 Some of you may have sat on a civil jury in the
3 past. I don't know if you sat on a criminal jury in the
4 past.

5 In a civil proceeding, where liberty is not at
6 stake, where monetary damages are involved, the standard
7 of -- of proof one side has is proof by a greater weight
8 or preponderance of the evidence.

9 If you picture the scales of justice, that means
10 that one side or the other has to tip the scales of
11 justice higher and slight in their favor to receive a
12 verdict.

13 When a person's liberty is at stake, the law
14 requires proof beyond a reasonable doubt.

15 And I believe Judge Cole -- after you've heard all
16 the testimony, you've heard our arguments, you've had to
17 put up with us again standing in front of you and arguing
18 what we think the evidence has or has not proven, I
19 believe he will, as a part of his instruction on the law,
20 will tell you, in defining reasonable doubt, that
21 reasonable doubt is nothing more than what a reasonable
22 person would hesitate to act on in their daily decisions
23 in life.

24 So, if the State does not convince you each -- of
25 each and every element past that point, they've not

1 proven their case beyond any reasonable doubt.

2 I do ask that you use your common sense. When you
3 were chosen by the three of us, to serve as jurors in
4 this case, you didn't leave your common sense back where
5 you were seated.

6 You brought it with you and we want you to use that
7 common sense, in weighing the evidence, in listening to
8 evidence, and determining the truth in this case.

9 I'll get an opportunity to address you again after
10 all the evidence has been introduced.

11 I simply join in what Judge Cole asked you to do;
12 pay close attention, keep an open mind, use your common
13 sense. Thank you.

14 THE COURT: Ms. Jordan?

15 MS. JORDAN: Thank you, Your Honor. The State Calls
16 Dr. Robert Michael Thomason.

17 (The witness was summoned.)

18 (The witness stepped forward to be sworn.)

19 (Off-the-Record Comments)

20 (Whereupon,

21 DR. MICHAEL THOMASON

22 having been duly sworn, testified as follows:)

23 DIRECT EXAMINATION BY MS. JORDAN:

3:14 P.M.

24 Q. State your name for the record.

25 A. Michael Thomason.

1 Q. What is your occupation?

2 A. I'm a pediatric radiologist.

3 Q. Where are you currently employed?

4 A. At Greenville Memorial.

5 Q. Okay. Are you licensed in the State of South
6 Carolina?

7 A. Yes.

8 Q. Okay. Where did you receive your undergraduate
9 degree?

10 A. Furman University.

11 Q. And what year did you graduate?

12 A. 1977.

13 Q. With which degree?

14 A. Bachelor of Science degree.

15 Q. Okay. Did you, then, attend medical school?

16 A. Yes.

17 Q. Okay. Where at?

18 A. Medical College in Georgia, in Augusta, Georgia.

19 Q. Okay. What degree and when did you receive it?

20 A. I graduated there in 1981 with a medical degree.

21 Q. Okay. Where did you do your residency training?

22 A. At the Medical College of Georgia.

23 Q. Okay. In what speciality?

24 A. Radiology.

25 Q. Okay. How long did your training -- how long did

1 your training and residency take?

2 A. From -- three (3) years of radiology residency and,
3 then, I did a pediatric radiology fellowship at Emory from '85
4 to '86.

5 Q. Are you Board Certified?

6 A. Yes. And as a -- I also have a certificate of added
7 qualification in pediatric radiology.

8 Q. Okay. What are the requirements for becoming board
9 certified and obtaining the additional certification for
10 pediatrics?

11 A. An extra year of pediatric radiology is what allowed
12 me to really practice as a pediatric radiologist because there
13 was no certificate of added qualification.--

14 But, then, in 1995, nine years after I'd been in
15 practice, it was actually a certificate you could get. And I
16 did what I had to do to get that certificate.

17 Q. Okay. How long have you been board certified?

18 A. As a radiologist since 1986.

19 Q. Dr. Thomason, are you on the staff of any hospital?

20 A. I'm on staff at Greenville Memorial Hospital and
21 Shriner's Hospital in Greenville.

22 Q. Okay. Are you a member of any medical associations?

23 A. Yes. I'm a member of numerous medical associations,
24 including the Society for Pediatric Radiology, which is made
25 up of pediatric radiologists.

1 Q. Okay. During all of your time and experience in
2 your practice, have you been able to work on cases involving
3 physical abuse to children?

4 A. I -- I have. It's -- it's something -- as a
5 pediatric radiologist, it's just part of your job that you're
6 involved with all of the time.

7 Q. How many patients -- I know you can't give an exact
8 number in all the years that you've practiced, but a ballpark
9 number of how many patients have you examined -- examined and
10 treated, during your course of professional experience, that
11 related to medical abuse -- or child abuse?

12 A. Yeah, I would say just being involved with
13 evaluating the children, when they come in for possible abuse
14 -- abuse, I would say probably several hundred; three hundred
15 (300), four hundred (400). I don't -- I don't know.

16 Q. Okay. Have you ever been called upon to testify in
17 Court before regarding pediatric radiology?

18 A. Yes, I have.

19 Q. Okay. Have you ever been qualified as an expert in
20 that field?

21 A. Yes, I have.

22 Q. Roughly how many times?

23 A. I've probably been in Family Court fifty (50) to a
24 hundred (100) times and criminal court, four (4) or five (4)
25 times in twenty-five (25) years.

1 Q. Okay. And in what counties? Do you recall?

2 A. In what counties?

3 Q. Right.

4 A. Greenville, Spartanburg, Cherokee, Oconee, and
5 Pickens, just the upstate, just above Columbia. That's where
6 the kids often come is to Greenville Memorial.

7 Q. Okay. Does Greenville Memorial have a specialized
8 children's hospital?

9 A. They do.

10 Q. Okay.

11 MS. JORDAN: Your Honor, at this time, we'd move to
12 qualify Dr. Thomason as an expert in the field of Pediatric
13 Radiology.

14 MS. PRICE: Without objection.

15 MR. RUDASILL: Without objection.

16 THE COURT: Without objection, he is so qualified.

17 MS. JORDAN: Thank you, Your Honor.

18 Q. (By Ms. Jordan) Dr. Thomason, could you just tell
19 the jury what your duties are as a pediatric radiologist?

20 A. I go to work at -- from seven (7:00) in the morning
21 until five o'clock (5:00) when I leave. I do ninety-nine
22 percent (99%) pediatric radiology and do a little bit of adult
23 radiology, where I just read the ER films on adult patients
24 that come in during the night. But, otherwise, I do pediatric
25 radiology all day long.

1 Q. Okay. What is a skeletal survey?

2 A. A skeletal survey is when you take x-rays of every
3 bone of the child's body. In other words, somebody might have
4 a chest x-ray and that would be one x-ray that we get.

5 And our typical skeletal survey involves twenty-one
6 films, so, that we can literally look at every bone in the
7 body. So, if we get a film of the hand, a film of the
8 forearm, a film of the upper arm, rather than combining films,
9 where the detail is not as good, we get a bunch of films.

10 Q. And how is that performed?

11 A. The -- the -- the child, or the baby, comes to the
12 radiology department and the x-ray technologist takes the
13 films. They do those and I usually never see the baby or
14 never see the child.

15 Q. How does that -- what is the purpose of your review
16 of the skeletal survey?

17 A. The purpose of the skeletal survey is just to see in
18 -- in a child that may be suspected of being abused, like
19 bruises or something, to get x-rays to see if there are any
20 breaks, set the centimeter for fractures (phonetic), to see if
21 there are any fractures, because it's well-known that in
22 little children, or babies that are abused, they can have
23 multiple fractures and the doctor would not be able to pick
24 that up on physical exam when they were examining the child.

25 Q. Is there a difference between a skeletal survey and

1 just a basic x-ray?

2 A. Well, like I said, the skeletal survey is just much
3 more thorough, much more detailed. And it involves a bunch of
4 x-rays.

5 Q. Okay. Are you familiar with Minor Child

6 A. I am.

7 Q. Did you have an occasion to treat Minor Child -- or
8 excuse me -- review a skeletal survey of Minor Child

9 A. Yes, I -- I did.

10 Q. Okay. Do you recall how old Minor Child was at that
11 time?

12 A. Four (4) months of age.

13 Q. Okay. What dates did you review the skeletal
14 survey?

15 A. I think it was on October the 27th, I believe. It
16 was in the afternoon. And I had already looked at some x-rays
17 that she [sic] had had at Mary Black Hospital on Oct --
18 October the 25th and October the 26th.

19 And, then, we got the routine skeletal survey that
20 we normally do, the afternoon of October the 27th. And, then,
21 because I saw certain findings, we got her [sic] back down
22 from the floor.

23 She [sic] came in and got some more x-rays on the
24 morning of October the 28th, two thousand, five (2005).

25 Q. Okay. And where did the skeletal survey occur?

1 A. In -- in the radiology department.

2 Q. Okay. At Greenville Hospital?

3 A. At Greenville Memorial.

4 Q. Okay. Could you describe to the jury what injuries
5 you found on **Minor Child**

6 A. Well, she [sic] had twenty-three (23) rib fractures,
7 the -- the ribs of the chest here (indicating). And she [sic]
8 had a -- a -- a skull -- a skull fracture, on both sides of
9 her head, and a lot of soft tissue swelling on one side of her
10 head. And, then, she had a fracture of her femur, just at the
11 level of the hip.

12 Q. Okay. Could you describe specifically the twenty-
13 three (23) rib fractures that baby **Minor Child** had?

14 A. Okay. The -- the twenty-three (23) rib fractures
15 were on the sides of the chest and posteriorly on your back.
16 And the thing about the rib fractures is we could tell that
17 they were old rib fractures, meaning, when you have an x-ray,
18 if a baby broke a rib, most of the time you're not going to
19 see it if they came in an hour after they had a rib fracture
20 because there's no displacement of the bone. And you're going
21 to miss them, most acute rib fractures.

22 And, so, the way you see there's a fracture is that
23 with time, usually after ten (10) to fourteen (14) days, there
24 begins to be some healing. And some new bone formation forms
25 there. And that shows up as a little spot on the rib.

1 So, these twenty-three (23) fractures, they had a
2 lot of new bone formation. And that was how we could tell
3 that they were older than ten (10) to fourteen (14) days of
4 age. And they were on both sides of the chest.

5 Q. Okay. Could you also just talk to the jury about
6 the two bi-lateral skull fractures on both sides of his head
7 and whether or not you were able to date those?

8 A. Okay. The skull fractures, there were fractures on
9 both sides of the head. And, on the right side, there was a
10 lot of soft tissue swelling. And you can't date skull
11 fractures.

12 You can't tell the difference between a fracture
13 that was one day ago versus a month ago by just looking at the
14 break in the skull.

15 But the soft tissue swelling helps you because there
16 was a tremendous amount of soft tissue swelling. So, that
17 let's us know that it was -- you know, whether it was one day
18 of age, two hours of age.

19 It could have been either one of those, but it was
20 less than ten (10) days of age. And that's important because
21 the rib fractures -- we know all of those rib fractures were
22 older than ten (10) days of age.

23 They were actually probably three (3) or four (4)
24 weeks of age. But -- so, that lets you know there were two
25 different episodes of injury; that the skull fracture did not

1 happen when the rib fractures did.

2 Q. Okay. Now, I believe we've now talked about twenty-
3 five (25) of the fractures. Could you also talk to the jury
4 about the femur fracture?

5 A. Okay. There was a little fracture of the femur,
6 which is right at the level of the hip. And it just let us
7 know that there was an injury there. And I thought that it
8 was older than ten (10) days also.

9 Q. Was that based upon callous formation also?

10 A. The bone being more dense than normal.

11 Q. Okay. Could you explain to the jury what you mean
12 when you refer to things as high or moderate or low spec --
13 specificity?

14 A. Well, there -- there are certain fractures in
15 children, particularly children less than a year of age, where
16 somebody could -- if -- if you read x-rays like we used to,
17 when somebody slipped it under the door -- of course, now we
18 sort of read off of computers.

19 But, I could hold up a film, and without me knowing
20 any history whatsoever, there are certain high specificity
21 fractures, meaning they're very specific for abuse. And one
22 of those -- the -- the most common one that you see are the
23 rib fractures.

24 And the second most common one is the type of
25 fracture of the hip here. And, so, you pretty much know the

1 answer, that the child's been abused, unless there was
2 something like a motor vehicle accident or, you know, a train
3 hitting a car and the baby being in there.

4 But, having said that, I've never seen -- like a
5 case like this where you have all of these rib fractures, I've
6 never seen a case like that, that's not, you know, abuse.

7 So, there's just something about the mechanism of
8 the injury, in these abused babies, that it's very specific
9 for abuse.

10 Q. Would you also talk to the jury about just a child's
11 bones in general; their pliability? Like a child's bone
12 versus an adult's bone.

13 A. Well, if you're talking about the ribs, if you're an
14 adult, it's an easy to fall. You know, if you're sixty (60)
15 years old and you fall and you can break a rib pretty easily.

16 Or if you're, you know, a Clemson quarterback and
17 somebody hits you hard, you can get a -- a fracture. But, in
18 children, particularly the younger they are, the saying is
19 that the ribs bend but don't break;

20 That it takes a tremendous amount of force to cause
21 rib fractures in children. And because of that, if you see a
22 rib fracture in a child, it's usually due to abuse because you
23 don't get rib fractures from the kind of wear and tear that a
24 child gets just growing up and due to accidental trauma.

25 Q. Dr. Thomason, in your expert opinion, what is the

1 possibility that these injuries could have been caused by your
2 average two year old?

3 In this case, **Minor Child** had a two-year-old sister
4 named Catherine (phonetic). What would be the possibility
5 that the two year old could have caused these injuries?

6 A. I would say zero percent, no possibility, because a
7 two-year-old is not big enough to basically squeeze -- squeeze
8 the chest. So, there's no possibility a two-year-old could do
9 that to a four-month old baby.

10 Q. And based upon your experience, to a reasonable of
11 medical certainty, do you have -- what are your findings, as
12 far as **Minor Child** skeletal survey, are they consistent with
13 infant abuse?

14 A. They're consistent with infant abuse.

15 Q. Okay. And, in your opinion, to a reasonable degree
16 of medical certainty, could **Minor Child** injuries create
17 substantial a risk of death or loss or impairment of the
18 function of any of his bodily organs?

19 A. Yeah. Usually, the boney abnormalities that allow
20 us to be able to specifically say a child's been abused,
21 usually, they're not what would kill a child or hurt a child.

22 Usually, what would hurt the child is the head
23 injury. So, the skull fractures here could absolutely cause
24 -- you know, that's the outside of the box. And the inside of
25 the box is a brain. So, you -- you could die from a brain

1 injury in abuse.

2 MS. JORDAN: May I have a moment, Your Honor?

3 THE COURT: (Nods affirmatively.)

4 (Off-the-Record Discussion)

5 MS. JORDAN: Dr. Thomason, if you would, please
6 answer any questions Ms. Price or Mr. Rudasill may have.

7 CROSS EXAMINATION BY MS. PRICE

3:27 P.M.

8 Q. Dr. Thomason, I have just one or two things I wanted
9 to clear up. I didn't go to medical school. There's a reason
10 I went to law school, so...

11 When you were talking about the -- the age of the
12 rib fractures, you said you could tell that they were ten (10)
13 to fourteen (14) days old, at least ten (10) to fourteen (14)
14 days old because of the -- the amount of healing; is that
15 right?

16 A. Correct.

17 Q. Can you put a specific -- can you narrow it down to
18 a more specific time period?

19 A. Generally, I don't do that because you can get in
20 trouble doing that. But there was a lot of new bone
21 formation, a lot of so-called callous formation there, so, I
22 would think they were -- I think -- I think it would be very
23 safe to say they were at least three (3) weeks old.

24 Q. Okay. But, as far as going back any further in --
25 in your medical opinion, is it difficult to do that?

1 A. It's -- it's -- it's difficult to say, well, like
2 they're five weeks old versus six weeks old. You can only say
3 so much.

4 MS. PRICE: Okay. That's -- that's what I needed to
5 clear up. Thank you, sir.

6 CROSS EXAMINATION BY MR. RUDASILL

3:29 p.m.

7 Q. Doctor, just a couple of things. When you're saying
8 a lot of callous formation, are we talking still soft callous
9 or hard callous? Because my understanding is hard callous
10 probably wouldn't show up until at least three weeks; is that
11 correct?

12 A. I -- I don't use those terms. I'd just say that the
13 basic teaching is that, at ten (10) to fourteen (14) days --
14 days of age, you can begin to see -- you know, if you want to
15 call it soft callous.

16 And that's how you know it's healing. And, so,
17 that's how you decide if something is a little bit old versus
18 acute.

19 Q. So, as I understand your testimony with regard to
20 the rib fractures, that all of those fractures showed
21 indications that they had healing callous?

22 A. Twenty-two (22) of the twenty-three (23) showed a
23 lot of new bone formation. There was one that didn't show any
24 new bone formation.

25 And, if you had several that didn't show any new

1 bone formation, then, you would hypothesize that you might
2 have fractures of different injuries. But I would probably
3 lean toward, in this case, since twenty-two (22) of them
4 looked alike, that for whatever reason that rib didn't produce
5 as much new bone formation.

6 Q. And, in reviewing the survey that -- that you signed
7 off on, that was my understanding; there was twenty-two (22)
8 of them did show that callous formation and one apparently did
9 not?

10 A. Correct.

11 Q. But you still feel like that these are probably
12 typical of an event that occurred, at some point in time, from
13 three (3) to fourteen (14) days -- twenty-one (21) to fourteen
14 (14)?

15 A. Yeah, yeah, some -- somewhere around -- at least
16 fourteen (14) days. I'm a hundred percent (100%) sure of that
17 and at least three weeks. I'd say I'd be ninety-five percent
18 (95%) sure of that.

19 Q. Well, that's -- that's a pretty good range for your
20 opinion as far as those events; is that correct?

21 A. Uh-huh (affirmative).

22 Q. And, as I understand it, from -- from some of the
23 readings that I've done, the -- you used the term "mechanism"
24 in your direct testimony as to -- as to how these injuries are
25 specific for indications of -- of abuse.

1 A. Uh-huh (affirmative).

2 Q. The mechanism most frequently occurring, with the
3 fractures being on the back, the posterior, is a squeezing
4 mechanism of some kind?

5 A. Right. That's what you would strongly suspect is
6 that somebody grabbed the child, with the child's face, the --
7 the baby's face facing them, with their thumbs in front and
8 the fingers behind. And they just squeezed the chest. And
9 that's how you can get fractures in the back and fractures on
10 the side.

11 And, on the right side, there were two other little
12 rib fractures. So, it's due to an indirect compressive force,
13 manual with your hand, thoracic compression and -- because, if
14 you only had just a few fractures in a certain place, it could
15 be that you slammed the baby down against a hard object. But
16 that -- that would not explain what -- all of the rib
17 fractures here.

18 Q. What you observed, based on the survey that was
19 done, it appeared to be that squeezing mechanism?

20 A. That's true.

21 Q. From what I've read, is that oftentimes that's
22 related to the baby crying or -- or being upset for some
23 reason, the -- the -- the child would be squeezed?

24 A. There are many reasons why. That's most common
25 thing that makes some -- somebody abuse a child is the child

1 crying.

2 Q. And I'm -- I'm going to ask you some obvious
3 questions because you've touched on this as far as your
4 preliminary statements.

5 You are making your assessments and opinions solely
6 from these radiographic studies that were done? You have no
7 knowledge as to ---

8 A. Absolutely. The only -- I -- I -- I only read the
9 x-rays. I don't know anything else about the baby. That's
10 why I said, I never see the baby or the child.

11 I'm reading the x-rays, in -- in a vacuum so to
12 speak, and I never look at any of the other information from
13 any of the other sub-specialists. My opinion is only on the
14 x-rays.

15 Q. Would you also agree that, with regard to the soft
16 tissue that was observed that you commented on, there was
17 nothing that was sent with this child that indicated any
18 effort to measure the amount of soft tissue that was -- the
19 soft tissue swelling -- excuse me -- that was initially
20 observed on this child; is that a fair statement?

21 A. I'm -- I don't -- I'm not sure I understand that.

22 Q. Was there anything that -- that you were aware of
23 that, in some way, tried to measure the extent, if that's
24 possible, of the size of the swelling?

25 A. There's -- yeah, there's nothing I know that they

1 tried -- anybody tried to do that exactly, so...

2 Q. And, as you indicated, in a skull fracture such as
3 you found radiographically, with the -- with the bilateral
4 fracture, isn't the only way to -- to accurately attempt to
5 date something like that is based on some type of assessment
6 of the amount of swelling or the degree of swelling that has
7 occurred, at a point in time, up to when it would possibly
8 resolve -- my understanding is, from the table, that it could
9 resolve as early two (2) to five (5) days or as long as four
10 (4) to ten (10) days like that?

11 A. I did -- I did say earlier there was a tremendous
12 amount of soft tissue swelling. So, the point is that that
13 injury did not occur at the same time as the ribs. That --
14 there had to be two different events.

15 Q. And some time, then, less than ten (10) days,
16 because you assessed the rib injuries had ---

17 A. It's greater than ten (10) days.

18 Q. But you don't have any way or a time line that you
19 can give me ---

20 A. No.

21 Q. --- or the jury as far as ---

22 A. I would -- I would suspect that the -- the -- the
23 skull injury probably occurred within a day or two of when
24 that survey was done I would guess.

25 Q. So, we've got forth-eight (48) hours outside?

1 A. Yeah, but -- but -- well, no, because I can't be
2 exact there. I mean, you just said it -- it could be four (4)
3 days.

4 Q. Exactly. So, there's no way that you can, as an
5 expert that you've been qualified, give a definitive time
6 frame as to when that event occurred?

7 A. Exactly.

8 MR. RUDASILL: Thank you, sir. That's all the
9 questions I have.

10 THE COURT: Ms. Price, do you have anything else?

11 MS. PRICE: No, Your Honor.

12 THE COURT: Ms. Jordan?

13 MS. JORDAN: May this witness be excused?

14 THE COURT: He may be. Thank you. You may step
15 down.

16 (The witness complied with the Court's request.)

17 (The witness stepped down from the witness stand and
18 was excused at 3:35 p.m.)

19 MS. JORDAN: Your Honor, the State would call Dr.
20 Robbie Robinson.

21 (The witness was summoned.)

22 (The witness stepped forward to be sworn.)

23 (Whereupon,

24 DR. JULIUS (ROBBIE) ROBINSON

25 having been duly sworn, testified as follows:)

1 THE COURT: Ms. Jordan?

2 MS. JORDAN: Thank you.

3 DIRECT EXAMINATION BY MS. JORDAN

3:36 P.M.

4 Q. Dr. Robinson, could you state your full name for the
5 record?

6 A. Julius Ernest Robinson, Jr.

7 Q. Okay. Do you commonly go by Robbie?

8 A. I do.

9 Q. Dr. Robinson, what is your occupation?

10 A. I'm a pediatrician, a physician at Greenville
11 Memorial Hospital.

12 Q. Okay. How long have you been employed there?

13 A. I've been at Greenville Memorial for twenty-five
14 (25) years.

15 Q. Okay. I'm going to step back and talk about --
16 about your license, your qualification, and your education.
17 Are you licensed here in the State of South Carolina?

18 A. I am.

19 Q. Okay. Where did you receive your undergraduate
20 degree?

21 A. Furman.

22 Q. Okay. Where did you -- and what year did you
23 graduate?

24 A. I graduated from Furman in 1973.

25 Q. And with what degree?

1 A. A B.S. degree in Biology.

2 Q. Where did you attend medical school?

3 A. At the Medical University of South Carolina in
4 Charleston.

5 Q. Okay. And when did you graduate and what degree did
6 you receive from MUSC?

7 A. I received my M.D. degree in 1977.

8 Q. And, from there, can you tell the jury a little bit
9 about your residency training?

10 A. My residency was also in Charleston at the Medical
11 University Hospital, three (3) years of pediatric -- general
12 pediatric training, one (1) extra year of research in
13 immunology, and, then, an extra year as chief resident in
14 pediatrics.

15 Q. Are you board certified?

16 A. I'm board -- I'm board certified in general
17 pediatrics.

18 Q. Okay. And what did you become certified?

19 A. In 1981.

20 Q. Okay. Could you tell the jury a little bit about
21 the qualifications needed to become board certified and remain
22 board certified?

23 A. Well, in addition to completing an accredited
24 residency -- and virtually all residencies are accredited now
25 or you -- you don't stay in business very long shall we say.

1 And we have a residency in -- in Greenville.

2 That and, then, board certification requires that
3 you pass a test. And I'm old enough that one is not required
4 to continue to take that test over and over.

5 But the state licensing board has a requirement for
6 on-going continuing medical education of a thousand -- I
7 believe it's forty (40) hours every two (2) years minimum.

8 And that is required to maintain state licensure.
9 And, so, passing the board examination, at the end of
10 residency, is a requirement. And, then, to maintain licensure
11 in the state, in this state -- and it's different -- it may be
12 different from state to state, but as a state function
13 requires on-going medical education at accredited meetings.

14 For example, I mean, they're always in nice places,
15 of course. You know, Hilton Head is where I usually get to
16 go. So -- and I've been able to maintain that for the thirty
17 (30) -- thirty (30) years now that I've been out.

18 Q. Okay. Are you on the board -- I'm sorry. Are you
19 on the staff of any hospital?

20 A. I'm only on the staff at Greenville Memorial.

21 Q. Are you a member of any medical associations?

22 A. I'm a member of the American Academy of Pediatrics,
23 have been since I was a resident. And I'm a member of a
24 fairly recently formed Society of Hospital Medicine, which is
25 a group that supports practitioners whose practice -- who work

1 primarily in the hospital.

2 Q. Okay. Has your -- have you had experience in your
3 practice dealing with physical abuse cases of children?

4 A. Oh, yes, over the -- sadly, over the thirty (30)
5 years I've seen dozens maybe even into hundreds of cases of --
6 of varying degrees of child neglect and abuse, including some
7 that were fatal.

8 Q. Have you ever been called upon to testify in court
9 regarding pediatrics?

10 A. Many times.

11 Q. Do you -- do you recall what courts?

12 A. Well, I can tell you what counties. I've certainly
13 been in Greenville County, Spartanburg County, Pickens County,
14 Anderson County. And I believe either once or twice in Oconee
15 County.

16 Q. Okay. Have you testified in Criminal Court?

17 A. I have testified in Criminal Court. Mainly, though,
18 I believe in Family Courts.

19 Q. That was going to be my next question, Family Court
20 also. Have you been qualified as an expert in pediatrics in
21 the past?

22 A. Virtually -- virtually in every one of those
23 instances, yes. To my knowledge, it was every one of those
24 instances.

25 Q. Okay.

1 MS. JORDAN: Your Honor, at this time we'd move to
2 qualify Dr. Robinson as an expert in the field of pediatrics.

3 MS. PRICE: Without objection.

4 MR. RUDASILL: Without objection.

5 THE COURT: He is so qualified.

6 Q. (By Ms. Jordan) Okay. Dr. Robinson, did you have
7 an occasion to treat **Minor Child**

8 A. Yes, I did, uh-huh (affirmative).

9 Q. Okay. How old was **Minor Child** when you first treated
10 him?

11 A. When he was -- when he was transferred to our
12 hospital, he was four (4) months old.

13 Q. And what date was he transferred?

14 A. I have that he was transferred early on October
15 26th.

16 Q. Okay.

17 A. Well, I see that was when he was seen at Mary Black.
18 I believe we had him, though, from just the 26th.

19 Q. Okay.

20 A. Of '05 that would have been.

21 Q. Okay. He did come to you from Mary Black?

22 A. Yes.

23 Q. Could you explain to the jury about the children's
24 hospital that you guys have in Greenville?

25 A. Sure. Well, we don't have -- it's -- it can be

1 confusing. A lot of people think that the Shriner's Hospital
2 is the children's hospital. It's not.

3 It's a separate orthopaedic hospital run by the
4 Shriners organization. We don't have actually a free-standing
5 children's hospital, which is what a lot of people think
6 about.

7 We have several floors and areas, within the main
8 hospital of Greenville Memorial Hospital, that are dedicated
9 to children's services like the neonatal intensive care unit
10 and the pediatric intensive care unit and a cancer ward.

11 And, then, about fifty (5) beds that are dedicated
12 to children, beyond the newborn period, who are admitted with
13 all variety of illnesses from simple dehydration and asthma to
14 more complicated things; a lot of kidney failure, diabetes
15 that's out of control, heart conditions, et cetera.

16 The reason we're able to do that here is because we
17 have sub-specialists in virtually all the pediatric sub-
18 specialities that are affiliated with our children's hospital.

19 Q. Okay. Is that something different or do you have
20 more opportunities as far as children's health at Greenville
21 Hospital as compared to Mary Black?

22 A. I think we do, yes. It's not -- we're -- we have a
23 larger -- you know, it's a larger area. We have a designated
24 facility.

25 We have somewhere between fifty (50) and a hundred

1 (100) pediatric sub-specialists; everything from, as you've
2 already heard, pediatric radiology -- and will hear --
3 pediatric genetics, kidney disease, et cetera;

4 And even myself now specializing in a relatively new
5 area that's called hospital medicine wherein I take care of
6 predominately -- not children in a clinic or an office
7 setting, but actually children who are admitted to the
8 hospital.

9 And that's often the first contact -- not always,
10 but it's frequently the first contact some of the children
11 with abuse and neglect may have with the medical system.

12 Q. To you knowledge, based upon your review of the file
13 that you had from [Minor Child] was this [Minor Child] first or second
14 visit to a hospital beyond his birth?

15 A. Well, let's see. Of course, if there was -- he --
16 he was born, so, there was that, the time of his birth. And,
17 then, he was seen at Mary Black and, then, transferred to us.
18 And I do not have any indication that he'd been seen in the
19 interim.

20 In fact, he had not received shots, according to the
21 record I have, which some of course individuals these days do
22 not wish their children to have shots because of varying
23 concerns about -- but we had no reason to believe that that
24 was an issue in this case.

25 We are -- it's -- it's our -- it's our belief that

1 this child simply had not had proper access to medical care.

2 Q. Okay. Doctor, if you would, describe **Minor Child** to the
3 jury when you met him on October the 25th -- I'm sorry,
4 October the 26th of two thousand, five (2005).

5 A. Well, let me get to my notes here. He did not
6 appear to be in any acute distress, but he was pale appearing
7 and perhaps a little bit -- I would say -- the proper word
8 would probably be a little bit listless we call it.

9 We -- the main findings included the -- a small
10 bruise, the medical term ecchymosis, on the left cheek. And,
11 then, the much more prominent -- I've written it down here --
12 swelling and bruising on the right side of the head.

13 And, then, what appeared to be a burn on the -- the
14 plantar or bottom aspect of the left foot, which had sort of a
15 semi-circular configuration if you will. It was very well
16 demarcated.

17 Q. Okay. And, Doctor, I believe I'm going to stop you
18 and take you back just briefly.

19 A. Okay.

20 Q. The swelling of the head that you referred to, I'm
21 going to show you what's previously been marked as State's
22 Exhibit Number 11 -- I'm sorry, State's Exhibit Number 12 and
23 ask you if you recognize this photo?

24 (Exhibit shown to witness.)

25 A. That's it. I already recognize it. Yes, that's the

1 -- that is the bruising that we saw. And you see that there's
2 some -- appears to be there right in front of the -- the ear.

3 Sometimes maybe, if the blood would have settled
4 down, it will do that.

5 Q. Let me ask you quickly: Does that -- does that
6 fairly and accurately depict **Minor Child** as you saw him in October
7 of '05?

8 A. Yes, it does.

9 MS. JORDAN: Your Honor, at this time we move to
10 admit State's Exhibit Number 12 into evidence.

11 MS. PRICE: Without objection.

12 MR. RUDASILL: No objection.

13 THE COURT: It's admitted.

14 (Whereupon, State's Exhibit Number 12 was admitted
15 into evidence without objection.)

16 Q. (By Ms. Jordan) If you could, describe for the jury
17 what -- what they can see on that photo.

18 A. Well, you can see that the -- on this side
19 (indicating) there's swelling.

20 THE COURT: You can -- you can step down from the
21 stand if you need to ---

22 (The witness complied with the Court's request.)

23 A. Okay.

24 THE COURT: --- just do you see the microphone
25 hanging from the ceiling up over the jury box?

1 A. Okay.

2 THE COURT: If you'll use that microphone, we can
3 hear you.

4 A. All right. Can everyone hear me?

5 (Jurors nod in the affirmative.)

6 A. Okay. You can see swelling here (indicating), soft
7 tissue swelling. And it appears to be what we call bruising
8 in there (indicating). And there is some here (indicating), I
9 don't know if everybody can see that.

10 And you see the ear right here. And you see
11 swelling here (indicating. And here (indicating) there
12 appears to be some bruising. Is that adequate?

13 Q. Yes, sir. Thank you so much.

14 (Witness returns to the witness stand.)

15 Q. I'm going to take you back. You were describing

16 Minor Child foot.

17 A. Uh-huh (affirmative).

18 Q. And a burn mark that you saw on that.

19 A. Yes. It's hard -- it's hard to describe. A
20 picture's worth a thousand words, but it does -- it does
21 appear as it were several -- if this were my foot, several
22 sort of parts of a ring or a configuration that were noted
23 that were very sharply demarcated.

24 Q. I'm going to show you what's been previously marked
25 as State's Exhibit Number 13 and ask you if you recognize that

1 photograph?

2 (Exhibit shown to witness.)

3 A. That's it.

4 Q. Does that picture fairly and accurately depict

5 **Minor Child** foot as you saw it October '05?

6 A. Yes, it does. Shall I show it to them as well?

7 MS. JORDAN: Your Honor, at this point, we'd move.
8 State's Exhibit Number 13 into evidence.

9 MS. PRICE: Without objection.

10 MR. RUDASILL: Without objection.

11 THE COURT: It's admitted.

12 (Whereupon, State's Exhibit Number 13 admitted into
13 evidence without objection).

14 Q. You can now publish that to the jury.

15 A. (Inaudible).

16 THE COURT: All right. Now, let me remind you,
17 you've got to speak up because the court reporter is over here
18 (indicating).

19 A. Oh, I'm sorry.

20 THE COURT: And she's got to hear what you say to
21 them. You've got to use that microphone. You -- you can step
22 down, but you can't take it down with you. You can show the
23 photograph as you'd like, but, when you speak, speak into the
24 microphone.

25 A. I'm sorry. Well, you can see -- I think you can see

1 the very sharply demarcated red areas here that appears to be
2 -- some have like a bit of a curve. They're not perfectly
3 straight.

4 And that is what made me think it might -- we
5 thought that it might be part of a -- something circular.
6 That was our -- that was our finding at the time.

7 (Brief Pause)

8 Q. Thank you.

9 (Witness returns to the witness stand.)

10 Q. Did you notice, was this a fresh injury to **Minor Child**
11 or were you able to put any sort of date or time on when this
12 injury occurred?

13 A. On the foot ---

14 Q. Yes, sir.

15 A. --- specifically? Well, the time, that would be --
16 let me look at -- if you don't mind, let me look at my record
17 here.

18 (Brief pause while witness examines documents.)

19 A. Well, given that there are no blisters, which would
20 allow me to say that it was a very acute injury, if it was
21 still blistered or more like a very bad sunburn.

22 In the absence of that, I'm a little -- and the fact
23 that it's still very red -- I can't give you any kind of -- I
24 mean, I would say more recent than distant, but I can't give
25 you any kind of time specifically.

1 Q. Could you also tell the jury about the breaks, the
2 fractures that **Minor Child** had?

3 A. Sure. I had to -- to summarize them because there
4 were, to start at the top, two skull fractures; one on each
5 side here (indicating).

6 In addition, a CT scan was done at Mary Black prior
7 to transfer to our hospital. And they believed that there was
8 a small amount of blood that could be seen underneath the
9 fracture on the right side, which would be equivalent to this
10 picture (witness holds up State's Exhibit 12).

11 Q. State's Exhibit Number 12?

12 A. Twelve (12), yes. Now, the reason that's important,
13 if I can use this, is that lesser injuries to the head
14 typically do not generate any kind of pathology or injury to
15 the brain proper.

16 It takes a greater amount of force delivered to the
17 skull to depress the skull or to cause injury to the brain or
18 to cause bleeding, which means to me that the injury, on the
19 right, was a -- an injury of greater force than one would
20 suspect of any kind of other more simple injury, if I can put
21 it that way.

22 Q. Yes, sir.

23 A. It does speak to an injury of -- with greater force
24 because of the -- now, you'd say, well -- and, then, an MRI
25 was done later. And I'm not an expert in radiology, but an

1 MRI was done later that we ordered. And this was done in
2 Greenville.

3 It did not show blood, or any other injury inside
4 the brain, but the truth is, is that CT scanning is often
5 better able to detect small amounts of blood.

6 That's one thing the CT scan is a little bit better
7 at actually than an MRI. We always think an MRI now as the
8 ultimate test for everything.

9 But, in fact, for blood, you can sometimes see it
10 better with the CT scan just because of the way it lights up.
11 It's just a matter of the technology of the pictures.

12 So, in addition to those two skull fractures, we had
13 twenty-three (23) rib fractures. I'm sorry. The -- according
14 to my information, the skull fractures were thought to be less
15 than ten (10) days of age.

16 The twenty-three (23) rib fractures were at varying
17 ages, but were all felt to be greater than ten (10) days of
18 age, greater than ten (10) days of age.

19 Q. Did he also have an additional fracture to the
20 femur?

21 A. He did. He had a little fracture to the proximal --
22 I'm sorry again. Excuse me, to the -- of the proximal left
23 femur, which long bone fractures, again, being not diagnostic
24 but strongly suggestive of non-accidental trauma as are the
25 posterior rib fractures.

1 And I don't know if Dr. Thomason explained the
2 mechanism of the rib fractures for you, but it's ---

3 Q. He did.

4 A. He did? To complete, then, you have these -- you
5 have those fractures. And, then, you have the burn to the
6 left foot.

7 An eye exam was done that was normal. We were
8 looking there for evidence of hemorrhages in the eyes, which
9 would be suggestive of what's traditionally been called a
10 shaking type injury.

11 It's now called non-accidental traumatic brain
12 injury, a mouthfull. We did not find evidence of that.

13 Q. Okay.

14 A. And I believe that's it, the best I ---

15 Q. Was he referred to a neurosurgery -- a neurosurgeon?

16 A. Yes, he was. Neurosurgery evaluated him and
17 reviewed the MRI. And it did not show, as I said, any
18 evidence of any brain type injury, serious brain injury, that
19 needed treatment.

20 It just showed swelling that was consistent with the
21 swelling in the scalp that was picked up on the scan.

22 Q. As far as your treatment of the child, and what you
23 suspected was non-trauma related injuries, did you also refer
24 **Minor Child** to other specialists?

25 A. Well, we did several -- several things. We worked

1 him up. Since there were a lot of bruises, we did a lot of
2 lab tests to rule out any kind of bleeding disorder, you know,
3 and all to see if he was a free bleeder.

4 And we -- all of those tests were normal. We did
5 not find any evidence that he had a tendency to bruise, in
6 other words, from a trivial injury, let's say.

7 And, in addition, we did consult genetics, yes, to
8 rule out a bone disease that might pre-dispose him to multiple
9 fractures because there are bone diseases that will cause and
10 can present looking like child abuse.

11 Q. Okay. Your Honor, [sic] in your expert opinion,
12 what is the possibility that your average two year old -- in
13 this case, **Minor Child** had a two-year old sister named Catherine.

14 What are the chances that a two-year-old could have
15 caused these injuries that **Minor Child** suffered?

16 A. It's not possible.

17 Q. And, Your Honor, [sic] I'm also -- or I'm sorry --
18 Dr. Robinson, I'm also going to show you what's previously
19 been marked as State's Exhibit Number 1 -- I'm sorry, Number
20 11.

21 (Exhibit shown to the witness.)

22 A. The rib fractures alone require large hands that can
23 squeeze the chest of a child to the extent that they would
24 snap the ribs, post -- the back part of the rib forward.

25 And as the rib comes forward, many of them will hit

1 the vertebral body, which is the spine. And each of the
2 vertebral bodies have little processes that come off, called
3 transverse processes.

4 And as the rib comes forward, it can hit that and
5 just snap -- just snap. And that's a classic mechanism for a
6 posterior rib fracture in an -- in a abuse type situation.

7 I can't imagine anyone other than a -- I can't give
8 you an age; a teenager or an adult or someone bigger, you
9 know, with hands large enough to generate such force to create
10 such injury.

11 Q. So, you would not see these type of injuries in
12 something caused by the hand of a two-year-old?

13 A. No, never.

14 Q. I'm going to show you what's previously been marked
15 as State's Exhibit Number 11 and just refer you to what's in
16 the lower corner there.

17 (Exhibit shown to the witness.)

18 A. Oh, that's the -- well, like a swing.

19 Q. Yes, sir. Those are commonly referred to as travel
20 swings. And you see that that's seated close to the floor?

21 A. Yes.

22 Q. Would you expect these injuries to happen to a child
23 who is falls -- who falls out or is dumped out of a travel
24 infant swing?

25 A. No, I would not.

1 Q. Based on your experience, to a reasonable degree of
2 medical certainty, are your findings on Minor Child consistent
3 with infant abuse?

4 A. Yes, they are. My diagnosis is child abuse.

5 Q. What were the potential risks to Minor Child based upon
6 his injuries?

7 A. Well, of course, the -- the injuries -- perhaps the
8 most serious would have been a brain injury. You don't have
9 to go much further with, you know, two skull fractures, one on
10 each side.

11 A little bit more force and you've got a depressed
12 bone that hits the brain. And you've got a hemorrhage in the
13 brain. And who knows what after that.

14 So, that was very serious, potentially extremely
15 serious, even potentially life threatening.

16 Q. And what about the injuries to Minor Child ribs?

17 A. The ribs, it could puncture a lung and -- or that's
18 tension pneumothorax (phonetic), a medical term, a punctured
19 lung. Probably not enough, given the location, most of them
20 posteriorly, that they would get to the heart. But I would
21 think mainly the risk of injury to the lungs.

22 There's a considerable amount of pain. If you've
23 ever got a rib fractured, they're extremely painful.

24 Q. Okay. And my last question to you, Dr. Robinson,
25 is it your opinion, to a reasonable degree of medical

1 certainty, could **Minor Child** injuries create a substantial risk
2 of death, or a protracted loss or impairment or function of
3 any body -- body member or organ?

4 A. Yes.

5 MS. JORDAN: Please answer any questions that Ms.
6 Price and Mr. Rudasill may have.

7 MS. PRICE: I have no questions for Dr. Robinson.

8 CROSS EXAMINATION BY MR. RUDASILL

3:59 P.M.

9 Q. Dr. Robinson, just very, very briefly..

10 A. Yes.

11 Q. My first question, to state the obvious or ask the
12 obvious: Again, your testimony comes from your observations
13 that occurred when **Minor Child** presented to you, transferred from
14 Mary Black on October the 26th, correct?

15 A. Yes.

16 Q. All right, sir. And, as far as being able to --
17 strike that. Would you agree with Dr. Thomason's analysis and
18 opinions regarding the x-rays and the reading of those x-rays
19 and opinions concerning the time line, if one can be
20 constructed, would probably be more accurate than what you
21 would try to opine as a pediatrician?

22 A. Definitely.

23 Q. All right, sir. So, you would defer to his
24 testimony with regard to ---

25 A. Yes.

1 Q. --- the conclusions that relate to the -- the
2 different fractures, especially with regard to the rib
3 fractures ---

4 A. Yes.

5 Q. --- and the skull fractures ---

6 A. Yes.

7 Q. --- and the femur fracture?

8 A. I would, definitely.

9 Q. And I believe ---

10 A. But we hadn't -- we have not discussed that.
11 specifically before this case.

12 Q. Right. But, for the jury's benefit, you would defer
13 to him as far ---

14 A. Yes.

15 Q. --- as his opinion with regard to those fractures?

16 A. Yes, I would.

17 Q. All right. Now, with regard to this burn, which is
18 Exhibit 13, I believe, to the left foot. Certainly, you do
19 not consider that to be life threatening?

20 A. No.

21 Q. All right, sir. And, as you have testified, that
22 appears to be at least in the healing, if not healed process,
23 because there are no blisters or anything to indicate
24 disruption of the -- of the skin itself; is that a fair
25 statement?

1 A. Well, I don't -- I'm not sure I can go that far. I
2 mean, it's -- there -- it's still red appearing. And, of
3 course, you know, the -- the -- the mildest form of burn is
4 like sunburn, and that's just red.

5 Q. Right.

6 A. I mean, you don't have to have violation of the skin
7 or blistering; just a matter of the degree of how much heat is
8 applied for what period of time and the depth of the injury.

9 So, it's still possible that it could, based upon,
10 you know, limitations of a single picture, which is all I
11 have, and, you know, memory from four or five years ago, that
12 I think it's still possible that it could have been a -- an
13 acute injury, but I just don't think I can answer that any
14 better than that.

15 Q. So, you can't tell me whether you believe that to
16 have been in -- a healing injury or a healed injury?

17 A. Well, actually, parts of it in the middle here
18 (indicating) appear to be in a healing phase. But this part
19 up here at the top (indicating) is quite red.

20 Q. All right.

21 A. Which looks more acute.

22 Q. All right.

23 A. And that -- I cannot reconcile that.

24 Q. All right, sir. And your opinion, with regard to
25 the time line on that event, would be what? I'm -- I'm not

1 sure I recall what you said as to what you think -- thought
2 that timeline would be.

3 A. On the foot?

4 Q. Yes, sir.

5 A. Well, I thought it would have been -- based upon the
6 fact that the majority of it continues to look red, that it
7 would have been sooner rather than later, more recent rather
8 than older. I can't ---

9 Q. But that's as much as you can ---

10 A. That's the best I can do, sorry.

11 Q. All right.

12 (Brief Pause)

13 MR. RUDASILL: That's all the questions I have.

14 Thank you, Your Honor.

15 THE COURT: Ms. Price, anything further?

16 MS. PRICE: I don't have any questions.

17 THE COURT: Ms. Jordan?

18 MS. JORDAN: May this witness be excused, Your
19 Honor?

20 THE COURT: He may be. Thank you, sir.

21 (Whereupon, the witness was excused and stepped down
22 from the witness stand at 4:02 p.m.)

23 MS. JORDAN: Your Honor, at this time, the State
24 would call Dr. Curtis Rodgers.

25 (The witness was summoned.)

1 (The witness stepped forward to be sworn.)

2 (Whereupon,

3 DR. RICHARD CURTIS RODGERS

4 having been duly sworn, testified as follows:)

5 (Off-the-Record Comments)

6 DIRECT EXAMINATION BY MS. JORDAN:

4:03 P.M.

7 Q. Dr. Rodgers, could you state your name for the
8 record?

9 A. It's Richard Curtis Rodgers.

10 Q. What is your occupation?

11 A. I'm a clinical geneticist. I work for the Greenwood
12 Genetics Center.

13 Q. Are you licensed to practice in the State of South
14 Carolina?

15 A. Yes, I am.

16 Q. Where did you receive your undergraduate degree?

17 A. Clemson University.

18 Q. And what year did you graduate?

19 A. Nineteen -- gosh, that's been a long time -- 1975.

20 Q. What degree did you receive from Clemson?

21 A. That degree was in Chemical Engineering.

22 Q. Okay. Did you, then, go into -- what did you do
23 after you graduated from Clemson?

24 A. Worked for fifteen (15) months as an engineer at a
25 paper mill, Westvaco (phontic) in North Charleston, and, then,

1 went to medical school at the Medical University of South
2 Carolina.

3 Q. And what year did you graduate from medical school?

4 A. In 1980.

5 Q. With what degree?

6 A. M.D., Medical Doctor.

7 Q. Okay. Did you have to complete a residency
8 training?

9 A. Yes.

10 Q. Where did you complete that?

11 A. I did that in pediatrics. That was four (4) years.

12 That was at Greenville Hospital Systems.

13 Q. Are you board certified?

14 A. I'm board certified in both Pediatrics and Clinical
15 Genetics.

16 Q. What are the requirements of becoming board
17 certified in either one of those areas or both of those areas?

18 A. Experience with patients and taking written and oral
19 exams and passing those.

20 Q. Do you have to complete any types of continuing
21 education requirements?

22 A. Oh, yes. Even to stay on staff at a hospital, you
23 have to complete at least twenty (20) hours a year.

24 Q. Okay. Are you on staff at any hospitals?

25 A. I'm on staff at Greenville Hospital System and

1 Spartanburg Regional Medical Center.

2 Q. Okay. And are you a member of any -- I'm sorry. I
3 apologize. Dr. Rodgers, are you a member of any medical
4 associations?

5 A. I'm a member of the American Society of Human
6 Genetics and the American College of Medical Genetics.

7 Q. Okay. And I understand you're engaged in the
8 private practice of medicine -- the private practice of
9 medicine?

10 A. I'm with the Greenwood Genetics Center. It's a
11 private non-profit genetics center.

12 Q. Okay. How many patients have you examined and
13 treated, during the course of your experience, dealing with
14 medical conditions related to genetics or genetic defects?

15 A. You're really testing me here. Let's see.

16 Q. I know you can't give the jury an exact number ---

17 A. About, gosh, five hundred (500) a year at least over
18 almost thirty (30) years.

19 Q. Have you ever been called upon to testify in court
20 regarding genetic defects?

21 A. Yes.

22 Q. Have you ever been qualified as an expert in the
23 field of genetics?

24 A. Yes.

25 Q. Can you recall approximately how many times?

1 A. I would say three (3) or four (4) times.

2 MS. JORDAN: Your Honor, at this time, the State
3 would move to qualify Dr. Rodgers as an expert in the
4 field of genetics.

5 MS. PRICE: Without objection.

6 MR. RUDASILL: Without objection.

7 THE COURT: He is so qualified.

8 MS. PRICE: Thank you, Your Honor.

9 Q. (By Ms. Jordan) Did you have an occasion to
10 evaluate Minor Child

11 A. Yes, I did.

12 Q. When did that did -- when did that evaluation occur?

13 A. I'm going to refer to my chart here. That was on
14 November 1st of two thousand, five (2005).

15 Q. And where did you examine Minor Child

16 A. He was a patient then at the GMH Children's
17 Hospital, of Greenville Memorial Children's Hospital.

18 Q. Doctor, if you could, would you tell the jury a
19 little bit about osteo -- and I may mispronounce this here --
20 osteogenesis and dealing with that?

21 A. You got it right. OI, or osteogenesis imperfecta,
22 occurs at a frequency at around one (1) in fifteen thousand
23 (15,000) or so individuals.

24 It's also called brittle bone disease or soft bone
25 disease, which means that these children will experience

1 fractures more easily than the general population, even with
2 just mild trauma.

3 There are at least seven (7) types. The four (4)
4 main types are numbered one, two, three and four, with one and
5 four being the least severe, two being lethal, three being
6 very deforming.

7 They are all due to alterations, in the two genes
8 that code for the collagen molecules that make up the type
9 one collagen. There are two alpha one chains and one alpha
10 two chain.

11 Different genes for the alpha one chain and a
12 different gene for the alpha two gene or chain. And those
13 three wrapped together, those three two alpha one, one alpha
14 two wrapped together -- you can think of it like a braid.

15 And it's a linear molecule that, if braided together
16 against your bones (phonetic), the compressive and tensile
17 strength they need to be flexible and not to bend, when
18 subjected to significant force, but also strong enough to be
19 able to resist fracturing.

20 You can think of type I collagen much like you would
21 think of paving your driveway and putting steel rods down in
22 the concrete when you pave your driveway. If you don't put
23 enough steel rods down, the concrete's going to be more
24 fragile and it's going to break more easily.

25 Or, instead of using steel rods, you have an altered

1 rod or collagen. So, instead of using a steel rod, you put
2 down wooden dowels instead of using steel rods.

3 Well, obviously, that's not going to give you the
4 strength of your concrete, the concrete structure being
5 analogous to the bone; it's not going to give you the strength
6 you need, so, it's going to break more easily.

7 Q. Okay. Are there certain physicals features that you
8 look for in individual babies suffering from OI?

9 A. Many of them will have a rather triangular shape to
10 their face. They will have bluing of the square at the whites
11 of your eyes (phonetic). They have a blue discoloration.

12 They may have hearing loss. They may have dental
13 anomalies as they get older. The teeth -- the enamel on the
14 teeth may not form properly. Those things, in addition to the
15 bones that break easily.

16 Q. Did you observe, in you evaluation of **Minor Child**
17 any of those common features of OI?

18 A. The only thing that **Minor Child** has or had out of that
19 group were the fractures. He did not have blue square
20 (phonetic).

21 He had passed a newborn hearing screen. He didn't
22 have any hearing loss at that point. I couldn't tell you
23 whether he does now.

24 He did not have a triangular face. And I failed to
25 mention he did not have a positive family history for a parent

1 with bones that broke easily.

2 Q. So, based upon your evaluation of **Minor Child** did you
3 test him for OI?

4 A. We -- in the dictation that I -- I wrote, after
5 seeing him, I suggested that was a possibility, but I did not
6 recommend that because he did not meet the clinical criteria
7 for testing for OI.

8 Q. So, in your evaluation of **Minor Child** you did not
9 find any genetic abnormality?

10 A. No. But that was purely on a clinical evaluation.
11 But he did not, again, meet the criteria we would use to
12 recommend testing of the genes that can cause OI.

13 MS. JORDAN: If you -- if you would, please, answer
14 any questions Ms. Price or Mr. Rudasill may have.

15 MS. PRICE: I have no questions of Dr. Rodgers.

16 MR. RUDASILL: No questions.

17 THE COURT: You may step down.

18 (The witness complied with the Court's request.)

19 MS. JORDAN: And, Your Honor, may this witness be
20 excused?

21 THE COURT: He may be.

22 (The witness stepped down from the witness stand and
23 was excused at 4:12 p.m.)

24 MS. JORDAN: Your Honor, may I approach with Mr.
25 Warder (phonetic) and Ms. Price?

1 THE COURT: Yes, ma'am.

2 MS. JORDAN: I'm sorry, Mr. Rudasill and Ms. Price.

3 (Whereupon, a bench conference was had with all
4 attorneys present.)

5 THE COURT: All right. Ladies and Gentlemen, we're
6 going to stop with the testimony. I've got some other
7 matters I need to address. So, you're going to be
8 excused for the balance of the afternoon.

9 We will resume in the morning beginning at nine-
10 thirty (9:30). As you leave, keep in mind the caution I
11 gave you prior to excusing you for lunch. No discussions
12 about the case.

13 Do not conduct any research. Don't -- do not do
14 your own investigation with any issue. Don't permit
15 yourself to be exposed to any type of media coverage that
16 might relate to the case. And don't permit anyone to try
17 to discuss the case with you.

18 With those instructions in mind, have a good
19 evening. Please report to your jury room at nine-thirty
20 (9:30) in the morning; nine-thirty (9:30) in the morning.
21 Have a good afternoon.

22 (Whereupon, the jury was excused for the evening and
23 exited the courtroom at 4:14 p.m.)

24 THE COURT: All right. What are the matters you
25 want to address this afternoon?

1 MS. JORDAN: Your Honor, can we decide the issues as
2 far as the statements and what comes in and what does
3 not? And I also have brief motion in limine as to any
4 reference to a Ronnie Brown and any potential physical as
5 far as sexual activity that he may have had with Mrs.
6 Moore.

7 I have a written basic motion if I may pass it up to
8 the Court.

9 THE COURT: Okay.

10 MS. JORDAN: I have already pre -- presented copies
11 of it to both attorneys.

12 (Document handed up to the Court.)

13 THE COURT: All right. Thank you. Ms. Price, do
14 you have any issues or motions?

15 MS. PRICE: Yes, sir, Your Honor. I have one motion
16 in limine, Your Honor, regarding demeanor testimony
17 (phonetic).

18 THE COURT: Regarding what?

19 MS. PRICE: Demeanor testimony, Your Honor.

20 THE COURT: Okay. And did you file a written motion
21 or ---

22 MS. PRICE: I did not, Your Honor.

23 THE COURT: Okay. Mr. Rudasill?

24 MR. RUDASILL: Your Honor, I have motions in limine
25 I believe to some photographs that were made inside the

1 home as it depicts some pornography, and a photograph of
2 a hole in the wall there, at the front entrance to the
3 mobile home, where they were residing, and photographs of
4 the bathroom, of the condition of the bathroom, as it
5 relates to a stomach disorder that Mr. Moore has. So, in
6 regards to those areas, I have motions in limine.

7 THE COURT: All right. Do you think it will take
8 more than thirty (30) minutes to hear them?

9 MS. PRICE: I don't think so, Your Honor.

10 MS. JORDAN: I don't think so, Your Honor. And I
11 have the photographs that I wish to seek to introduce.

12 I had already in a way consented to not -- based
13 upon some prior rulings of the Court, consented upon or
14 agreed not to put in any pictures of the pornography that
15 was scattered throughout the house.

16 I also agreed not to put any photographs of the
17 broken wall -- of the hole in the wall. We, actually, on
18 the State's Exhibit with the baby swing, cut the picture
19 to take the hole out.

20 I also have agreed not to put in any photographs of
21 a broken table that was in the house.

22 I do have photographs of the home that I would seek
23 to introduce.

24 THE COURT: All right. Let -- let's take fifteen
25 (15) minutes. You all look at the photographs, and if

1 you all can agree upon them, that's fine. If you can't,
2 I will address the ones that you can't agree upon.

3 MS. JORDAN: Okay.

4 MR. RUDASILL: And would you -- can we address the
5 earlier motion you sent us an e-mail about ---

6 THE COURT: Yes.

7 MR. RUDASILL: --- that we had not put on the
8 record?

9 THE COURT: All right. Yes, we will.

10 MS. PRICE: Thank you, your honor.

11 MS. JORDAN: Thank you, Your Honor.

12 MR. RUDASILL: Thank you, Your Honor.

13 THE COURT: And let me see you all before you take
14 your break.

15 (Whereupon, a bench conference was had with all
16 attorneys present.)

17 THE COURT: All right. We'll take fifteen (15)
18 minutes.

19 MR. RUDASILL: All right. Thank you, Your Honor.

20 MS. JORDAN: Thank you, Your Honor.

21 (Whereupon, a recess was taken from 4:20 p.m. until
22 4:35 p.m.)

23 THE COURT: All right. Let's first address the
24 statements that the State wishes to offer into evidence.
25 And they are statements against the interest of each of

1 the two defendants.

2 The Defendants made several statements, over
3 different time periods, to law enforcement officers that
4 were investigating this matter. The State has offered to
5 introduce certain portions of those statement -- or
6 statements -- that were provided by each of the
7 Defendants to law-enforcement officers.

8 As I understand it, there was no objection to the
9 statements based upon them not being voluntary or the
10 Defendants not been advised of their Constitutional
11 Rights.

12 I've read through those statements, and the context
13 of them, and it does not appear -- while -- while the
14 statements to tend to incriminate and implicate the
15 declarant, in the commission of the crimes, and
16 therefore, a statement against interest, none of the
17 statements offered by one Defendant tend to implicate or
18 incriminate the other defendant. At least that's my view
19 of it.

20 So, based upon the fact that the statement being
21 offered only incriminates the declarant, and not the co-
22 defendant, there's no *Crawford* issue. There is no denial
23 of the right of confrontation because the statement is
24 not incriminating the co-defendant. Does that make
25 sense?

1 MS. JORDAN: It does to me, Your Honor.

2 THE COURT: Did I say that clearly enough, Ms.

3 Price?

4 MS. PRICE: I understand, Your Honor.

5 THE COURT: Mr. Rudasill?

6 MR. RUDASILL: I understand your reasoning, but I
7 object; I don't agree with it as far as *Crawford*.

8 THE COURT: Oh.

9 MR. RUDASILL: Our position was that it was hearsay.
10 It was testimonial in nature after the investigation,
11 where people have been advised of their rights,
12 regardless of whether or not it incriminates the co-
13 defendant.

14 It is testimony of a nature which lessens what the
15 State has to prove as far as the facts they are relying
16 on to make their case. And it voids our right to cross
17 examine those witnesses.

18 THE COURT: All right. Well, I understand. I
19 understand your interpretation of *Crawford*, but I think
20 the confrontation clause, as relates to hearsay testimony
21 offered to incriminate another defendant, instead of the
22 declarant;

23 And as I -- and the way I read these portions of the
24 statements being offered, they do incriminate the
25 declarant, but they do not tend to incriminate the co-

1 defendant.

2 And, therefore, there is no confrontation clause
3 violation, at least a Constitutional confrontation clause
4 violation.

5 All right. Now, we may need to run through the
6 statements to be certain we are on the same understanding
7 as to what is being offered.

8 Does everybody have those statements that we
9 addressed last time?

10 (All attorneys nodded affirmatively.)

11 THE COURT: Now, I am not certain that I have these
12 in same order as you do, but I think this is the order in
13 which they were taken; I'm not positive of that.

14 But the first statement I have relates to Ms.
15 Dockery. And it's the investigative report of Danny
16 Morgan, and it's Page 1 of one. Does everybody have
17 that?

18 (All attorneys nodded affirmatively.)

19 THE COURT: And it's the statement or the
20 investigative report wherein Danny Morgan sets out that
21 he began a post-test interview with Ms. Dockery. And,
22 then, the State offered beginning with, "Dockery
23 continued to deny she had inflicted any of the injuries
24 on **Minor Child**..."

25 And the State offered beginning there through the

1 sentence ending the 10th line from the bottom, "...baby
2 was a lie" (phonetic). Is everybody in agreement with
3 that?

4 MS. JORDAN: Your Honor, if I may ask, was the last
5 thing you stated was that it started -- "...That what she
6 had..." -- "...and stated what she had told me with
7 dropping the baby was a lie" (phonetic)?

8 THE COURT: Well, yeah, I was saying -- I'm just
9 saying what you have offered, it starts with, "Dockery
10 continued to deny..." and goes through the sentence
11 ending, "...baby was a lie."

12 MS. JORDAN: Yes, Your Honor.

13 THE COURT: And, as I understood it, there was no
14 objection by Ms. Price or Mr. Rudasill, other than a
15 Crawford objection; is that true?

16 MS. PRICE: That's correct.

17 MR. RUDASILL: Correct.

18 THE COURT: Okay. All right. The next statement
19 was also one taken by Danny Morgan.

20 It appears on a Spartanburg County Sheriff's Office
21 report. And it's entitled in capital letters,
22 "CONFIDENTIAL" and there's "CONFIDENTIAL DOCUMENT,"
23 across the page. Down in the paragraph beginning with,
24 "Comments..." the State offered that portion which begins
25 with "...after initially making denials..." and goes

1 through the last few words being, "...how he received any
2 of the injuries," referring to **Minor Child**

3 And as I understood it, there was no objection by
4 Ms. Price or Mr. Rudasill other than Mr. Rudasill's and
5 Ms. Price's *Crawford* objection.

6 MS. PRICE: That's correct.

7 MR. RUDASILL: Correct, Your Honor.

8 THE COURT: Ms. Jordan, are we -- are we in
9 agreement on that?

10 MS. JORDAN: Yes, sir, Your Honor.

11 (Brief Pause)

12 THE COURT: And next portion of the statement being
13 offered I had was a report by Nicki Cantrell. And it's
14 Page 4 of eight.

15 It begins on the 10th line with, "I asked her about
16 the lack of food..." and ends with "...the night I was
17 there, she had no explanation for that." (Phonetic)

18 Then, beginning with "...she was still unemotional
19 during the entire time in the residence..." and ends with
20 "...the medication was never found during the entire
21 search warrant."

22 Then, the next paragraph picks up with the fourth
23 line, the second full sentence "...he said Tina left the
24 bathwater in the tub..." and goes through the fourth line
25 down, "...he said that he had not seen it," referring to

1 the medication.

2 MS. JORDAN: That's correct, Your Honor. That
3 second paragraph references Scott. It references Scott.

4 THE COURT: All right.

5 (Brief Pause)

6 THE COURT: And the first paragraph was an interview
7 with Ms. Dockery and the second paragraph references an
8 interview with Mr. Moore.

9 MR. RUDASILL: Are you talking about the bath water?

10 THE COURT: Yeah, they -- they both said that she
11 put -- left the bath water in the tub.

12 MR. RUDASILL: Who are we talking about here?

13 MS. PRICE: That's another issue, Your Honor.

14 THE COURT: Oh, the food?

15 MR. RUDASILL: Yes, sir.

16 THE COURT: All right. Any other -- was there any
17 other objections besides the Crawford issue as to that --
18 that -- as to those two?

19 MS. PRICE: No, Your Honor.

20 MR. RUDASILL: No, sir.

21 THE COURT: Okay. The next one I have is a
22 statement of Tina Dockery provided October 26th at 6:17
23 p.m. The State is offering the portion that said she got
24 her medication from the doctor and took two -- took two
25 every two hours. The State is offering that?

1 MS. JORDAN: Yes, Your Honor, that is just from one
2 line.

3 THE COURT: All right.

4 MS. JORDAN: And what I propose to do is just to
5 have Officer Saar just read that instead of trying to put
6 in the entire statement because the top part is where
7 Tina points the finger to what Scott did.

8 THE COURT: Well, that's what I'm saying, as I
9 understand it, that is the only line that was offered.

10 MS. JORDAN: Yes, sir.

11 MS. PRICE: Uh-huh (affirmative).

12 THE COURT: And Mr. Rudasill had no objection. And
13 Ms. Price objected on relevance grounds and I've
14 determined it was relevant; and had an objection on the
15 Crawford issue.

16 All right. The next statement was a statement of
17 Tina Dockery made October 26th, two thousand, five (2005)
18 at 1:45 a.m.

19 And the only portion being -- well, that one was
20 object to and that was ruled out. That was referencing
21 Mr. Moore saying they probably needed to wait before they
22 took the child to the hospital. So, that was ruled --
23 that was objected to and ruled out.

24 MS. JORDAN: Your Honor, I believe that's the
25 statement we are asking to admit everything but that

1 line.

2 THE COURT: Oh, well...

3 MS. JORDAN: And what I proposed was I ---

4 THE COURT: All right. I just did it backwards.

5 You all highlighted what -- what was object to. Oh, that
6 was the only portion that was objected to?

7 MR. RUDASILL: That -- no, she was going to -- as
8 she just stated, she was only going to -- she was
9 offering everything else except for the line....

10 THE COURT: I understand. You only objected to the
11 portion of the line that says that your client probably
12 -- said, "We probably need to wait a while"?

13 MR. RUDASILL: Correct, Your Honor.

14 THE COURT: Okay. So, there is no other objection
15 to that statement other than that sentence?

16 MR. RUDASILL: And Crawford.

17 THE COURT: And the Crawford issue?

18 MR. RUDASILL: Yes, sir.

19 THE COURT: Is everybody in agreement?

20 MS. JORDAN: Yes, Your Honor.

21 THE COURT: Ms. Price, are you in agreement?

22 MS. PRICE: Yes, Your Honor.

23 MS. JORDAN: And for the record and for the court,
24 What I did was redacted that line and made copies, so,
25 that it looks like it has not been redacted if we put

1 that into evidence.

2 THE COURT: Okay.

3 (Brief Pause)

4 THE COURT: All right. And the next statement being
5 offered was the investigative report of Nicki Cantrell,
6 Page 7 of eight.

7 And the portion that the State is offering, and the
8 portion objected to by Mr. Rudasill, that being, "On the
9 way to the hospital, I asked Scott if he still wanted to
10 tell me the truth about Minor Child injuries, and he said
11 he did want to tell the truth, but he wanted a lawyer
12 first"?

13 MS. JORDAN: That was it. I believe that was
14 excluded based upon the ---

15 THE COURT: Well, that was the only portion of that?

16 MS. JORDAN: On that one, I believe so, Your Honor.

17 THE COURT: Right. Okay. So, that has been
18 excluded.

19 MR. RUDASILL: Correct.

20 THE COURT: The next portion offered is Page 6 of
21 eight of Nicki Cantrell's investigative report. And that
22 portion that is being offered was the portion in the
23 middle wherein Mr. Moore stated that he had made up the
24 statement that he had dropped Minor Child. Was there any
25 other portion of that to be offered?

1 MS. JORDAN: Your Honor, we weren't seeking to admit
2 -- admit the part where he said he had made that up
3 because that's where he's saying he made up watching Tina
4 drop the baby. We were just seeking to admit where he
5 just stated he dropped Minor Child

6 THE COURT: Oh, I'm sorry. No, I'm -- I'm -- I
7 misread that. Yeah, he did state that he made that up
8 referring to some prior sentence. And that he had, in
9 fact, dropped Minor Child

10 MS. JORDAN: Yes, sir.

11 THE COURT: So, that is an admission on his part
12 that he dropped Minor Child

13 MS. JORDAN: Yes, sir.

14 MR. RUDASILL: Your Honor, I would ask that -- that,
15 as a part of that, they include the portion that also
16 recants that. It was apparent that Scott was making up
17 all of these statements.

18 MS. JORDAN: That is not so much a statement by
19 Scott as an impression Nicki Cantrell had.

20 MR. RUDASILL: Well, I haven't had a chance to
21 question her, so, I don't know if that's what my client
22 said or what she would say.

23 But if -- if it is -- if it is a statement, I
24 certainly would want it included to get the full
25 understanding of what was said.

1 MS. JORDAN: Your Honor, Ms. Cantrell is here. I
2 believe that she would state that, that was her
3 impression of the conversation.

4 MR. RUDASILL: I'll cross examine her. Thank you.

5 THE COURT: All right. And -- well, that's all I
6 have I believe. What else was there, if -- if there was
7 anything else?

8 MS. JORDAN: Your Honor, I have a two-page statement
9 from Scott ---

10 THE COURT: Scott Moore?

11 MS. JORDAN: Yes, Your Honor.

12 THE COURT: And all of that was offered?

13 MS. JORDAN: All of that was offered along with his
14 three-page statement and a one-page treatment.

15 THE COURT: Okay. Well, we have those. All right.
16 Now, was there any objection to these statements other
17 than the *Crawford* issue?

18 MS. PRICE: No, Your Honor.

19 MR. RUDASILL: (No Response)

20 THE COURT: Okay. All right. That deals I believe
21 with all the statements being offered by the Defendants.

22 MS. JORDAN: Your Honor, if I -- if I may, when we
23 were discussing this on December the 16th, I -- I stated
24 that, if there was anything that I ran across that I
25 neglected to put in, if I could come back before the

1 Court.

2 In looking at what was -- the written statements of
3 Tina Dockery and Scott Moore, on the very first day of
4 this, on the 26th, and orally what they said to Officer
5 Cantrell, there were just a few items by each person that
6 they stated orally to Officer Cantrell but didn't reduce
7 to writing, and the written statements that I am seeking
8 to introduce, that I would also seek to be able to have
9 Officer Cantrell testify about.

10 THE COURT: Is it contained in her investigative
11 report?

12 MS. JORDAN: Yes, sir.

13 THE COURT: All right. Where -- where is it?

14 MS. JORDAN: Your Honor, I believe it's on -- on the
15 very first page, of her investigative report, which I'm
16 not sure that the Court has a copy of.

17 THE COURT: Oh, well, no, I don't.

18 MS. JORDAN: I apologize, Your Honor. I have an
19 extra copy.

20 (Document handed up to the Court.)

21 THE COURT: Have you been over these with Ms. Price
22 and Mr. Rudasill?

23 MS. JORDAN: Your Honor, we did not discuss it in
24 any sort of detail other than the fact I mentioned this
25 morning that I had some additional things that I would

1 like to introduce.

2 THE COURT: Well, you need to show them to them, so,
3 they'll know what we're talking about. And they may
4 object or may not.

5 (Brief pause while documents are shown to Ms. Price
6 and Mr. Rudasill.)

7 MS. JORDAN: Your Honor, as to -- if I may approach,
8 I can give the Court...

9 (Off-the-Record Discussion)

10 MS. JORDAN: If I may approach, Your Honor?

11 (Documents handed up to the Court.)

12 MS. JORDAN: As to Ms. Dockery, she stated a few
13 things that were not contained in her written report that
14 I believe are relevant.

15 THE COURT: Wait, say that again.

16 MS. JORDAN: She's stated orally to Officer
17 Cantrell, before she provided her written statement, and
18 did not include this information in her written
19 statement ---

20 THE COURT: All right.

21 MS. JORDAN: --- items I think are important, mainly
22 that ---

23 THE COURT: Now, these are contained in -- in -- in
24 Investigator Cantrell's investigative report, Page 1?

25 MS. JORDAN: Yes, Your Honor.

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1 THE COURT: All right.

2 MS. JORDAN: She stated that on October the 24th of
3 '05 she went to Piedmont Dental in Spartanburg to have a
4 tooth pulled.

5 The dentist, then, prescribed her twelve (12)
6 hydrocodone for pain. She stated that she took all her
7 medication and that it did not help.

8 Therefore, on October 25th of '05, at 3:44 p.m., she
9 arrived at Mary Black emergency room complaining of pain.
10 The hospital prescribed her generic Lortab, seven point
11 five (7.5).

12 Later on down, on the third line from the bottom,
13 she talked about the fact that she is on disability. And
14 then, on the next line, she states that Scott is
15 currently unemployed.

16 Your Honor, the reason I seek to introduce those
17 last two items, about the fact that she is on disability
18 and that he is unemployed, is to show that they are home
19 with this child or that they do not have jobs outside of
20 the house that they've been away from being with this
21 baby.

22 THE COURT: All right. Ms. Price?

23 MS. PRICE: I have no objection, Your Honor.

24 THE COURT: Mr. Rudasill?

25 MR. RUDASILL: Let me make sure I understand. She's

1 reading a line out of the first portion that begins, "She
2 stated that on October the 24th...", but you're leaving
3 out the line regarding Ronnie Brown, who lives in
4 Clifton, gave her a ride to the dentist? Or are you
5 including that?

6 MS. JORDAN: I wasn't including that just because I
7 really didn't think that it mattered how she got there,
8 just that she walked away with a lot of pain medication.

9 I have no objection as to that's how she got there,
10 but I know that, that leads into my motion in limine
11 about any sexual allegations regarding Ms. Dockery and
12 Mr. Brown.

13 MR. RUDASILL: Well, that we will hear later, but
14 I'm just asking -- I want to make sure whether you were
15 asking to include it or exclude it?

16 THE COURT: Excluded.

17 MS. JORDAN: Excluded.

18 (Brief Pause)

19 THE COURT: All right. Any objection to what's
20 being offered?

21 MS. PRICE: Not on behalf of Ms. Dockery.

22 (Brief Pause)

23 MR. RUDASILL: And you are stopping at generic
24 Lortab 7.5, correct?

25 MS. JORDAN: Yes, sir.

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1 THE COURT: Ms. -- Ms. Jordan, well, how about
2 taking your highlighter and highlight for Mr. Rudasill
3 what you're offering, so, he'll --

4 MR. RUDASILL: I've marked it, Your Honor. I've
5 marked it. I just wanted to make sure that I heard her
6 correctly and what she was saying.

7 THE COURT: Okay.

8 MR. RUDASILL: I have no objection to the upper
9 portion. And I have no objection to that bottom line,
10 that being a statement she apparently made.

11 THE COURT: Okay.

12 MS. JORDAN: Your Honor, as to Leonard Scott Moore,
13 the same as far as items that he discussed with Ms.
14 Cantrell but didn't include in his written statement are
15 on Page 2 of her summary. If I may approach?

16 THE COURT: All right. Before you do that, do you
17 have it highlighted? Show that to Ms. Price and Mr.
18 Rudasill, so, they will have it while we're talking about
19 it.

20 (Brief pause while documents shown to opposing
21 counsel.)

22 (Off-the-Record Discussion)

23 MS. JORDAN: And, Your Honor, if I may approach?

24 (Document handed up to the Court.)

25 MS. JORDAN: The line on -- to supplement his

1 written statement that I have asked to put in, Your
2 Honor, he stated some things that Ms. Moore -- Ms.
3 Dockery stated; that she is on disability and he is
4 unemployed, and that Scott said that he is at home a lot
5 with the children.

6 Further down it said that he was hesitant about
7 taking the victim to the doctor because he said the
8 baby's head swelled when he was a newborn.

9 (Brief Pause)

10 THE COURT: Period or, "...and they were told by a
11 family member that, that was normal"?

12 MS. JORDAN: Your Honor, I -- I know that's hearsay;
13 I don't know if -- if they want to get that in. But I --
14 I do know that, that part, it would be considered
15 hearsay, but for the rule of completeness (phonetic) ---

16 THE COURT: Well, okay.

17 (Brief Pause)

18 THE COURT: Any objection, Ms. Price?

19 MS. PRICE: No, Your Honor.

20 THE COURT: Mr. Rudasill?

21 MR. RUDASILL: No objection.

22 THE COURT: Okay. What else?

23 MS. JORDAN: I think that's it.

24 THE COURT: Okay. All right. Now we will address
25 the State's motion.

1 MR. RUDASILL: For the record, no objection other
2 than what is -- the *Crawford* issue -- regarding *Crawford*
3 to keep the record clear.

4 THE COURT: All right. Next is the State's motion
5 in limine.

6 MS. JORDAN: Yes, Your Honor. Mr. Rudasill, in
7 pretrial motions, just made reference to the fact of a
8 Ronnie Brown, who is since deceased, and any involvement
9 -- any physical involvement that he had -- he may have
10 had with Tina Dockery;

11 The State just feels that it's not relevant to the
12 proceedings that we have here in that she is not on trial
13 for whom she did or did not have a sexual relationship
14 with. She's on trial for any abuse that she did cause to
15 **Minor Child**

16 THE COURT: All right. Mr. Rudasill, are you
17 intending to try to develop that testimony?

18 MR. RUDASILL: Your Honor, there is also information
19 from Danny Morgan that was apparently elicited from Ms.
20 Dockery that was later conveyed to my client, during the
21 course of the investigation, and used to interrogate him
22 based on the fact they purposely told him that Ms.
23 Dockery had admitted that she had, had extramarital
24 affairs.

25 There is some testimony that -- that would be

1 elicited with regards to her leaving the home and why she
2 was away from the home -- that she was away from the home
3 for periods of time.

4 I don't intend to offer any specific information as
5 it relates to whether Mr. Brown engaged in those sexual
6 relations because I have nothing that I've seen that
7 indicates that, that was the person she identified as
8 having the affair with.

9 But I think it is relevant as it relates -- since
10 they have -- since the State is trying to establish that
11 these two individuals were the sole people that had
12 contact with this child, when it is alleged to have been
13 injured; if, in fact, this lady was away from the home
14 with the children, if we develop that, I think we've got
15 a right to go into that.

16 I'm not going to go into specifically whether Mr.
17 Brown, who is now deceased, had sexual relations with her
18 or not. Were he still alive, we would be addressing that
19 because it relates to some things that took place with
20 the children while in his presence.

21 But I think it is relevant to -- to at least to the
22 extent I'm talking about. And that is that there was an
23 admission, with regards to extramarital affairs, and that
24 she was away from the trailer, for periods of time with
25 other individuals, with the children.

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1 MS. PRICE: Your Honor, I never thought I would be
2 in a position to find myself joining in a State's motion,
3 but, in effect, I am.

4 As you know, I represent Mr. Dockery. And the
5 allegation is that Ms. Dockery was having an affair with
6 this Mr. Brown, who is now deceased.

7 Your Honor, I think any reference to any sort of
8 extramarital activity, on the part of Ms. Dockery in this
9 case under this context, would be very prejudicial to my
10 client.

11 As Your Honor as heard from the State, this is about
12 a child abuse and neglect case; it's not about who was
13 running around with whom, having an affair with whom.

14 I just feel that part of this is -- is just bringing
15 up adultery. And I think that, that would just be overly
16 prejudicial to my client.

17 I'm not -- I am not suggesting that her coming and
18 going from the home is not relevant because it is. My
19 objection is to this reference to this affair that she
20 was having with this gentleman.

21 THE COURT: Well, is -- is there something in this
22 information? I mean, I -- I don't -- it hasn't been
23 brought to my attention, but is there something in there
24 where Ms. Dockery stated that she was not at her home
25 because she was out having affairs with Mr. Brown or

1 anybody else for that matter?

2 I mean, is there -- is there something that -- that
3 would establish that, because of those affairs, she was
4 not at the house; that's why she was not at home or
5 that's why she was away from the home on a frequent
6 basis?

7 Is that in here somewhere? Because otherwise having
8 -- having had an affair with somebody doesn't establish
9 that she was not at home or well, it could have been at
10 home for that matter.

11 MS. JORDAN: I don't recall anything specifically in
12 the report. And I'm -- I glanced at briefly the
13 polygraph video about the affair. I do know that -- no,
14 I don't want to misstate anything to the Court. I...

15 MR. RUDASILL: Your Honor, if I could refer Ms.
16 Jordan to Paragraph -- Page 2 of Officer Saar's
17 testimony, I will read from that.

18 "We told Scott that Tina had failed the polygraph --
19 and -- the polygraph test, and that during the test she
20 was on video admitting to having a sexual affair with
21 another man. And -- and that Scott did not know about
22 the affair.

23 "Scott was visibly upset by this news, so, it was
24 used as an investigative technique in order to, then,
25 write down. He started changing his previous story."

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1 So, it was told to him. But, again, I'm not going
2 to connect that to a particular person. What I will be
3 doing is -- to the extent I can -- show that she was away
4 from the home with various individuals.

5 THE COURT: Well -- well, that statement doesn't
6 establish that.

7 MS. JORDAN: And, Your Honor ---

8 MR. RUDASILL: No, sir, that does not. That just --
9 I'm just pointing out to the Court that it was used as
10 part of the investigation to try to elicit additional
11 information. So, it was used by law enforcement as a
12 tool.

13 THE COURT: Okay.

14 MS. JORDAN: And, Your Honor, and I -- and I can
15 stand corrected on this because there are so many
16 statements here, but the last statement that I'm seeking
17 to introduce from Leonard Scott Moore is on the 26th where
18 he told Officer Cantrell and Steve Denton, "I dropped
19 him."

20 This stuff about the affair and what occurred, after
21 the polygraph, was on the next day. And I didn't seek
22 introduce any of those statements because that's where
23 you have a *Bruton* issue in that Scott is pointing the
24 finger at Tina.

25 I'm not seeking to introduce any of that stuff.

1 THE COURT: Okay. Well, I don't think that -- that
2 statement that Mr. Rudasill just read from, I don't think
3 that establishes any fact that Defendant Dockery was away
4 from the residence.

5 So, to that extent, it's not relevant unless it's
6 proven -- unless it otherwise becomes relevant, then,
7 we'll address it.

8 All right. What else?

9 MS. JORDAN: Your Honor, we had an issue. We've
10 agreed upon the majority of the pictures. A lot of the
11 pictures actually, with the exception of -- we're now
12 down to two.

13 The two pictures that I seek to introduce, I'm
14 taking out ---

15 (Off-the-Record Comments)

16 MS. JORDAN: --- one is of the baby's bassinet to
17 show that, that -- and Officer Cantrell's testimony will
18 show that that's the any place this child, a four-month-
19 old baby, had to sleep.

20 It's full of other stuff. I think it's relevant to
21 the jury, as far as the condition that this child had to
22 live in, when you look at what an unlawful neglect charge
23 is, it's to place a child at an unreasonable risk of harm
24 or -- to place a child at an unreasonable risk of harm.

25 And I think the bassinet shows that that's the only

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1 place this child had to sleep and it was not the best
2 environment for him. It's littered with other items.

3 There is a baby bed in the home, but the baby bed is
4 not put together. There's a mattress -- a baby bed
5 mattress -- that is sitting up straight and tall.

6 So, I do believe it is relevant as to charges
7 against both of these defendants.

8 The next picture, Your Honor, is ---

9 MS. PRICE: That's the bar.

10 MS. JORDAN: --- of the bar of the -- in the
11 trailer. And, in the bar, there's one baby bottle and
12 two cans of formula.

13 And I -- I would surmise that in a way it helps them
14 in showing that the child did have food and we are making
15 no allegations that this child was malnourished or
16 dehydrated in any way.

17 But it also shows the lack of provisions in the
18 house would lead to an unlawful risk of harm to this
19 child in that it's my understanding that the one baby
20 bottle for a four-month-old is not enough.

21 THE COURT: How many are you supposed to have?

22 MS. JORDAN: I would think you would probably need
23 more than one, although I guess careful washing and
24 taking care of that one bottle would show that you don't.

25 And it's my understanding from Officer Cantrell that

1 that's the only bottle found inside the residence of a
2 home with a four-month-old child.

3 A four-month-old child, at that age, that's how
4 they're fed, via a bottle or any type of baby food. And
5 it's my understanding that there was no -- no other
6 things found.

7 (Brief Pause)

8 THE COURT: All right.

9 MS. JORDAN: So, I think it is relevant.

10 THE COURT: Okay. Ms. Price?

11 MS. PRICE: Your Honor, there is absolutely no
12 evidence in this case that this baby was malnourished in
13 any way first of all.

14 Second of all, Ms. Jordan already seeks to put in
15 the statement that this gentleman was unemployed and this
16 lady was on disability, so, she was at home too.

17 So, one baby bottle can be washed. There is no
18 evidence that there was not any running water or anything
19 that would preclude these folks from washing this baby
20 bottle.

21 There are two cans of Good Start also in this
22 picture. So, any argument by the State saying that it
23 was neglectful to have one baby bottle is just quite
24 frankly a little ridiculous.

25 It's not like they didn't have anything at all in

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1 the house. Secondly, in regards to the bassinet, what
2 Ms. Jordan has indicated is that it was, quote/unquote,
3 "full of stuff," these -- this stuff, Your Honor, is baby
4 blankets.

5 The bed appears to be clean. There are several
6 blankets in here. It does not appear to be unsafe in any
7 way.

8 There's nothing in my discovery -- and I don't
9 suspect the State would put in any evidence -- that this
10 was -- this particular bed was harmful to this child in
11 any way.

12 I think I said, it is clean. There are blankets in
13 there.

14 Your Honor, sleeping in a bassinet is -- is not a
15 crime, Your Honor. So, I don't think that it's -- it's
16 relevant in any manner.

17 THE COURT: Well, let me see the picture.

18 MS. PRICE: Yes, Your Honor.

19 (Document handed up to the Court.)

20 THE COURT: Mr. Rudasill, do you want to address the
21 picture?

22 MR. RUDASILL: I will just ajoin in Ms. Price's
23 comments. Initially, we were told, with regard to the
24 first photograph showing the bar, that it was being
25 introduced to show a lack of food in the home.

1 Well, as she said, there is absolutely nothing to
2 indicate that this baby was malnourished.

3 And, so, now I'm hearing that it's only to show one
4 bottle. And that we ought not have a problem with that
5 because it shows other baby food there.

6 Additionally, with regard to the bassinet, as she
7 said, if the fact that a child slipped -- slept in a
8 bassinet rather than a crib was a crime, we could not
9 have enough jails to incarcerate the folks that --
10 that violate whatever that rule is concerning where a
11 child should sleep.

12 That's preposterous. There's nothing to indicate
13 that any harm came to the child because it slept in a
14 bassinet rather than a crib or some other bed.

15 THE COURT: All right. Well, Ms. Jordan, I
16 understand the purpose of these photograph is to -- to
17 show neglect?

18 MS. JORDAN: Your Honor, I'll tell you what,
19 I'll ---

20 THE COURT: Take them back?

21 MS. JORDAN: --- take them back, yes, sir.

22 THE COURT: Okay.

23 (Brief Pause)

24 MS. JORDAN: Your Honor, we are also seeking to
25 introduce some other photographs that I showed to both

1 parties that they agreed upon.

2 We're also seeking to introduce a pill bottle
3 belonging to Ms. Dockery, from October the 24th, and a wet
4 baby shirt from the home.

5 THE COURT: And those are agreed to?

6 MS. PRICE: They're ---

7 MS. JORDAN: Well, maybe they aren't.

8 MS. PRICE: Those are agreed to, Your Honor.

9 MR. RUDASILL: I certainly agree.

10 THE COURT: Okay. All right. Is that all the
11 State's motions?

12 MS. JORDAN: Yes, sir.

13 THE COURT: All right. Ms. Price, do you have any
14 additional motions?

15 MS. PRICE: Your Honor, I do have one short motion.
16 I have a motion in limine to preclude the State from
17 referencing my client's demeanor at the hospital and in
18 any subsequent interviews that she had.

19 Miss -- Detective Cantrell makes reference in her --
20 in her investigation report that my client did not cry;
21 that she sat in -- in the corner, with her other
22 daughter, Catherine, while at the hospital.

23 Your Honor, I will submit that this is absolutely
24 irrelevant to the case at hand. It is not an element of
25 whatt my client is charged with. It is -- it's just an

1 observation on behalf of -- of Ms. Cantrell here.

2 Your Honor, it's just not -- it's just not relevant.

3 THE COURT: Mr. Rudasill, do you want to be heard on
4 that?

5 MR. RUDASILL: I do.

6 THE COURT: Okay.

7 MR. RUDASILL: I certainly object to the motion
8 because I believe that testimony is relevant.

9 THE COURT: Okay. You're going to agree with the
10 State on that?

11 MR. RUDASILL: I'm going to agree with the State on
12 that.

13 THE COURT: All right. Let me hear from Ms. Jordan.

14 MS. JORDAN: Thank you, Your Honor. Your Honor, I
15 believe it's completely relevant to this case in that
16 she's got -- she is the mother -- a mother of four-month-
17 old who is at the hospital suffering from head injuries.

18 And, at that point in time, what they had already
19 seen or -- just the head swelling and everything, and she
20 sits there unemotional, unresponsive, with no concern at
21 all.

22 I do believe it's -- it's very imperative. Officer
23 Cantrell has many years of work in the field of child
24 neglect and police investigation. And I think that her
25 observations are very important for the jury to get an

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1 idea and understanding of what was going on that day when
2 all of this went down.

3 THE COURT: All right. Ms. Price, do you want to
4 respond?

5 MS. PRICE: Your Honor, she is exactly what Ms.
6 Jordan said, she is an investigator. She is not a
7 psychologist; she is not a mind reader.

8 THE COURT: All right. Well, I -- I do think it's
9 relevant. So, it will be allowed. Your motion to
10 exclude is denied.

11 MS. PRICE: Please note my objection, Your Honor.

12 THE COURT: Note her objection. All right, what
13 else? Anything else, Ms. Price?

14 MS. PRICE: I have nothing else, Your Honor.

15 THE COURT: All right. Mr. Rudasill?

16 MR. RUDASILL: Nothing else, Your Honor.

17 THE COURT: All right. Court is in recess until
18 nine-thirty (9:30) in the morning.

19 MS. JORDAN: Thank you, Your Honor.

20 (Off-the-Record Comments)

21 (Whereupon, court was adjourned for the day at 5:15
22 p.m.)

23 (Court reconvened at 9:30 the following day,
24 Wednesday, January 5, 2011 and began at 9:52 after an in-
25 chambers conference with the attorneys.)

1 January 5, 2011

9:52 A.M.

2 (Off-the-Record Comments)

3 THE COURT: All right. Any matters to address
4 before the jury is brought in?

5 MS. JORDAN: Nothing from the State, Your Honor.

6 MS. PRICE: Not for Ms. Dockery.

7 MR. RUDASILL: Nothing from Mr. Moore.

8 THE COURT: All right. Bring the jury in, please.

9 (The bailiff stepped out to summon the jury.)

10 (The jury entered the courtroom at 9:54 a.m.)

11 (Off-the-record comments regarding the number of
12 jurors present.)

13 THE COURT: Good morning, ladies and gentlemen.

14 (Responses of "good morning," heard.)

15 THE COURT: As you can probably tell, the -- the
16 heating system is working very well this morning.
17 Sometimes the air conditioner is working better than the
18 heating, but today the heat is working very well.

19 There's not much we can do about it. We try to
20 regulate it. We've got a poor system. Hopefully, it
21 will be repaired or regulated properly. But, there's
22 nothing else we can do right now.

23 So, if you get to a point where you just can't stand
24 the heat anymore, you don't feel well, you feel sick, or
25 whatever, you let me know and we'll take a break and get

1 some fresh air. But right now this is what we have to
2 deal with.

3 As you know, yesterday when we recessed, the State
4 had begun with their presentation of evidence. So, we're
5 going to continue the State's presentation this morning.

6 MS. JORDAN: The State calls Investigator Nicki
7 Cantrell.

8 (The witness stepped forward to be sworn.)

9 (Whereupon,

10 NICKI CANTRELL,

11 having been duly sworn, testified as follows:)

12 DIRECT EXAMINATION by MS. JORDAN:

9:56 A.M.

13 Q. Please state your name for the record.

14 A. Nicki Cantrell.

15 Q. Where are you currently employed?

16 A. I'm a detective at the Spartanburg County Sheriff's
17 Office.

18 Q. Okay. How long have you been employed there?

19 A. Nine and a half (9 ½) years.

20 Q. And what are your duties there currently?

21 A. I'm a detective. I investigate all crimes that are
22 sexually motivated and all crimes against children.

23 Q. Okay. Were those your same duties back in October
24 of two thousand and five (2005)?

25 A. Yes, ma'am.

1 Q. Okay. Were you on call the night of October the 25th
2 of two thousand, five (2005)?

3 A. Yes, ma'am.

4 Q. Okay. Did you receive a call regarding **Minor Child**
5 Moore?

6 A. I did.

7 Q. Okay. What -- where did you go that night in regard
8 to **Minor Child**

9 A. I responded to Mary Black Emergency Room.

10 Q. Okay. Tell the jury a little bit about **Minor Child**
11 Through your investigation, were you able to determine when he
12 was born?

13 A. Yes. He was born June 22nd, two thousand and five
14 (2005).

15 Q. Okay. When you arrived at the hospital that night,
16 what did you do?

17 A. I went into the room that **Minor Child** was in. At that
18 time, the nurse was drawing blood from **Minor Child** and he was
19 crying and screaming.

20 And I saw Scott Moore. And he was standing over
21 **Minor Child** And, Tina Dockery, the victim's mother, she was
22 sitting across the room holding their two year old.

23 Q. And what was the demeanor of both Scott and Tina?

24 A. Scott was trying to comfort the child while he was
25 screaming and Tina Dockery was completely unemotional. She

1 wasn't even looking over at the baby while they were drawing
2 blood.

3 Q. How did you begin your investigation that night?

4 A. Before speaking to them, or just before introducing
5 myself or anything like that, I spoke to the doctor in the ER,
6 Dr. Lance.

7 And he told me about the injuries to the child and
8 the severity of the injuries and what they had found so far
9 with the child.

10 Q. And did you also speak with Tina Dockery and Leonard
11 Moore -- Leonard Scott Moore?

12 A. I did. After I spoke -- after I spoke to the
13 doctor, I went into the room they were all in. And, at that
14 point, they were done drawing blood on **Minor Child**

15 And Scott was holding **Minor Child** and Tina was still
16 sitting across the room completely ignoring **Minor Child**

17 Q. Okay.

18 A. So, I asked to speak to Tina first.

19 Q. Okay. Did you speak with Tina in the room with
20 everyone else or did you take her somewhere else?

21 A. No, I asked her to come speak with me in -- they
22 have like a family room right outside of the ER. And I talked
23 to her in there.

24 Q. Okay. When you talked with her, in -- in the family
25 room, were you in there alone?

1 A. Yes. At that time, it was just Tina and I.

2 Q. I'm going to show you what's previously been marked
3 as State's Exhibit Number 1, and ask you if you can identify
4 this document?

5 (Exhibit shown to the witness.)

6 A. This is the pre-interrogation waiver form we fill
7 out. So -- and when -- after I'd introduced myself and we sat
8 down, I explained to her that, at this point, the injuries were
9 consistent with child abuse.

10 So, at this point in the investigation, anyone who
11 had been around the child was a suspect in the case, so, I
12 would need to go over this form with her. And that was the
13 reason I was reading her her rights.

14 So, I went over the form.

15 Q. Can you show the jury how you go over the form with
16 a defendant?

17 A. I show them the form, so, they can read along with
18 me, but I also read it to them. So, I read her -- do you want
19 me to read each one -- everything the form says?

20 Q. Yes, ma'am.

21 A. So, I read her the form. And I say, I have the
22 right to -- and I say, "you," so, she doesn't -- they don't get
23 confused.

24 "You have the right to remain silent. Anything you
25 say can and will be used against you in a court of law. You

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1 have the right to talk to a lawyer and have him present with
2 you while you're being questioned.

3 "If you cannot afford to hire a lawyer, one will be
4 appointed to represent you before any questioning, if you wish.
5 And you have the right to stop answering questions at any point
6 in the questioning.

7 "The above rights have been read to you by me,
8 Detective Cantrell. You have read the same and understand your
9 rights fully."

10 And, then, I asked her if she understood each one of
11 those. And she indicated that she did understand them.

12 So, I asked her to initial the lines next to each
13 right that she had read and understood each right individually
14 and, then, sign this section right here indicating that she
15 understood the rights.

16 And, then, I go over the second part which says,
17 "You waive or give up your rights as explained above and agree
18 to talk to me, Officer Cantrell, in reference to **Minor Child**
19 and any statement you make is of your own free will without
20 fear, threat, promise, favor or reward of any kind.

21 "You're able to read and write the English language
22 and finished eight (8) years in school."

23 And I told her, you know, if that's true, if you're
24 willing to talk to me -- which she indicated she did; she
25 wanted to talk to me -- just to sign right here, which she

1 did.

2 MS. JORDAN: Your Honor, at this point, we'd offer
3 State's Exhibits Number 1 into evidence.

4 MS. PRICE: Without objection.

5 MR. RUDASILL: Without objection.

6 THE COURT: It's admitted.

7 MS. JORDAN: Thank you.

8 (Whereupon, State's Exhibit 1 was admitted into
9 evidence without objection.)

10 Q. (By Ms. Jordan) Can you describe Ms. Dockery's
11 physical appearance for the jury that night or that following
12 morning hours?

13 A. When I was talking to her, again, she was still very
14 unemotional. She wasn't crying.

15 There were several times, when we would talk, that
16 she would sniff and kind of put her head down like maybe she
17 was crying. But she would look up and there were no tears.

18 And she was just, like I said, very -- just
19 unemotional about the whole situation.

20 Q. Okay. When you were going through her rights with
21 her, did she appear to understand everything that you read to
22 her?

23 A. Yes.

24 Q. Was she coherent when she would speak with you?

25 A. Yes.

1 Q. And did she respond to every question?

2 A. She did.

3 Q. She waived those rights?

4 A. Yes.

5 Q. Did you promise her anything in return for making a
6 statement?

7 A. No, ma'am.

8 Q. Did you coerce her in any way to make a statement?

9 A. No, ma'am.

10 Q. Okay. To the best of your knowledge, the
11 Defendant's statement was given freely and voluntarily that
12 night?

13 A. Yes, ma'am.

14 Q. Did she make a written statement in response to your
15 request?

16 A. She did.

17 (Brief Pause)

18 Q. I'm going to show you what's been marked previously
19 as State's Exhibit Number 2 and ask you if you recognize this
20 document?

21 (Exhibit shown to the witness.)

22 A. I do.

23 Q. Okay. What is on State's Exhibit Number 2?

24 A. This is a written, the first written statement, that
25 Tina Dockery provided us.

1 Q. Okay. And when did she provide that?

2 A. That was at the Mary Black Hospital on October 25th.
3 Actually, by the time she finished signing the form, because
4 we talked first, and, then, after she answered all of my
5 questions and went through the events of the day and all of
6 that, I asked her if she would, please, write a statement
7 about everything we talked about.

8 So, that's when she wrote this statement. And she
9 completed it at one forty-five (1:45) a.m. on the 26th of
10 October.

11 MS. JORDAN: Your Honor, at this time, we'd move
12 State's Exhibit Number 2 into evidence.

13 MS. PRICE: Without objection.

14 MR. RUDASILL: Without objection.

15 THE COURT: It's admitted.

16 (Whereupon, State's Exhibit 2 was admitted into
17 evidence without objection.)

18 MR. RUDASILL: Your Honor, may we approach just very
19 briefly.

20 THE COURT: You may.

21 (Whereupon, a bench conference was had with all
22 attorneys present.)

23 MR. RUDASILL: Your Honor, if I may respond on the
24 record, no objection other than as previously noted.

25 THE COURT: All right. Thank you.

1 MS. PRICE: And the same for Ms. Dockery, the same
2 objection previously noted by the court.

3 Q. (By Ms. Jordan) Would you, please, read Defendant
4 Dockery's statement to the jury that she made that morning at
5 Mary Black?

6 A. "We got up this morning a little before or a little
7 after ten (10:00) to -- to feed and change the baby. Went
8 back to sleep. Woke up again about ten-thirty (10:30).

9 "Fed him and changed him again. Me and Catherine
10 ate, watched TV, then, a bath twelve (12:00) or one (1:00) ---

11 Q. Does that say "about"?

12 A. Yeah. "Then about twelve (12:00) or one (1:00) we
13 took a bath. Me, Catherine and Minor Child got finished.

14 "Scott showed up at two-thirty (2:30) or three
15 (3:00). "I..." -- I'm having problems with that."

16 Q. "Left"?

17 A. "...left. Went to the ER, got home about six (6:00)
18 or six-thirty (6:30). Went in, kissed Minor Child Then I got to
19 looking, picked him up, and I said, 'Scott, his head is
20 swollen. We need to take him to the ER.'

21 "I got their clothes up. Got the -- got ready. Put
22 my clothes on and we got in the car.

23 "He dropped me and Catherine off at a neighbor's.
24 He said he was going to his mom's. He came back and picked us
25 up. We went to the store, got gas, and came here."

1 Q. In addition to the written statement that she gave
2 you that night, did she also speak to you or give you a verbal
3 statement in regard to any type of dental work she had
4 received?

5 A. She did. She stated that on October 25th, which was
6 the day prior, she went to Piedmont Dental in Spartanburg to
7 have a tooth pulled. She stated that her dentist had
8 prescribed her twelve (12) Hydrocodone.

9 Q. I want to stop you there. Could you double check
10 your date?

11 A. October 24th, two thousand, five (2005)?

12 Q. Okay. I believe you stated the 25th.

13 A. Oh, I'm sorry. October 24th, two thousand and five
14 (2005). So, it was the day prior to me responding to the
15 hospital.

16 And the dentist prescribed her twelve (12)
17 Hydrocodone for pain. She said that she took all the
18 medication and it did not help with the pain.

19 Therefore, on October 25th, which was the day that I
20 responded to the hospital, at three forty-four (3:44) p.m.,
21 she arrived at Mary Black Emergency Room due to pain in her
22 mouth. And the hospital prescribed her generic Lortab seven
23 point five (7.5).

24 Q. Okay. Did she also make any written state -- or
25 oral statements to you as far as whether or not she was

1 employed?

2 A. Yes. She stated that she was on disability.

3 Q. And did she also make any comments to you as far as
4 whether or not Scott Moore was employed?

5 A. Yes. She told me he was unemployed at the time.

6 Q. Okay. Can you describe to the jury again what
7 Tina's demeanor was when you finished speaking to her? Did it
8 change in any way?

9 A. No. Again, like I said, she was completely
10 unemotional. She would sniff and rub her eyes, but tears
11 never even fell from her eyes.

12 It -- it appeared to me she was faking being upset.
13 She would look at me, when we talked about her background, if
14 she worked and that sort of thing.

15 She would look directly at me when I was talking to
16 her, but whenever I talked to her about **Minor Child** injuries,
17 she would always look down and away from me and would not
18 provide eye contact when we talked about **Minor Child**

19 Q. After you spoke to Tina, did you also speak with
20 Scott?

21 A. I did. I left Tina in that family room to write
22 this -- this statement (indicating). While she was writing
23 it, I went into the hospital room, where Scott was with the
24 children, and talked to him in there.

25 Q. I'm going to show you what's previously marked as

1 State's -- State's Number 6 and ask if you can identify this?

2 (Exhibit shown to the witness.)

3 A. This is a pre-interrogation waiver form that I went
4 over with Scott.

5 Q. And in the way that you describe earlier to the jury
6 that you went through this with Ms. Dockery, did you also go
7 through that similar waiver with Mr. Moore?

8 A. I did. I do that the same all the time.

9 Q. Okay. Did he sign in both places, as indicated
10 before, that he did understand those rights?

11 A. He did.

12 Q. And he also signed in the place indicating that he
13 understood and wanted to waive those rights?

14 A. Yes.

15 MS. JORDAN: Your Honor, at this time, the State
16 would move to admit State's Exhibit Number 6 into
17 evidence.

18 MS. PRICE: Without objection.

19 MR. RUDASILL: Without objection.

20 THE COURT: It's so admitted.

21 (Whereupon, State's Exhibit 6 was admitted into
22 evidence without objection.)

23 Q. (By Ms. Jordan) When you were speaking with Scott,
24 did he...

25 (Brief Pause)

1 Q. ...did he appear to understand the rights you read
2 to him?

3 A. He did.

4 Q. Did he appear to -- well, what was his physical
5 demeanor that night?

6 A. He -- he appeared fine. His speech was normal. He
7 responded to my questioning. He was able to provide -- at the
8 beginning of those, there's like name, date of birth -- or
9 your age, your address, that sort of stuff. He was able to
10 answer questions about his vit -- his vitals. He was ---.

11 Q. Was he coherent?

12 A. --- coherent.

13 Q. Okay. Did -- did you promise him anything in
14 response to making a statement or in return for making a
15 statement?

16 A. No, ma'am.

17 Q. Did you coerce him in any way to making a statement?

18 A. No, ma'am.

19 Q. Did you -- to the best of your knowledge, was his
20 statement given freely and voluntarily?

21 A. Yes, ma'am.

22 Q. Okay. And did he, at your request, provide a
23 written statement?

24 A. Yes, ma'am.

25 Q. I'm going to show you what's previously been marked

1 as State's Exhibit Number 7 and ask if you recognize this
2 document?

3 (Exhibit shown to the witness.)

4 A. I do. This is the first written statement that
5 Scott Moore provided.

6 Q. Is that the statement he provided to you in the
7 early morning hours of the 26th at Mary Black?

8 A. Yes, ma'am.

9 MS. JORDAN: Your Honor, at this time, the State
10 would move to admit State's Exhibit Number 7 into
11 evidence.

12 MS. PRICE: Without objection.

13 MR. RUDASILL: No objection.

14 THE COURT: It's admitted.

15 (Whereupon, State's Exhibit 7 was admitted into
16 evidence without objection.)

17 Q. (By Ms. Jordan) Please tell the jury what he wrote
18 on his statement that night.

19 A. "I woke up at ten-thirty (10:30), got dressed, and
20 left for my dad's. I went and went with him to pick up his
21 camper and came back.

22 "Helped him measure the camper for a tarp and shed.
23 Got back home around four p.m. (4:00) or something 'till.
24 Noticed Tina was playing with **Minor Child** and she got up and gave
25 him to me.

1 "I laid him down in his bassinet and she got ready
2 to go to the hospital for tooth pain or gum pain. Me and
3 Catherine watched TV. She mostly played.

4 "Son woke up. I fed him and changed him in the
5 bassinet. And he went back to sleep. Tina came home around
6 six-thirty (6:30), something 'till.

7 "Picked up **Minor Child** after changing clothes, sat down
8 with him and I noticed his head. We got to talking about
9 hospital and we started getting clothes out to dress Catherine
10 and **Minor Child**

11 "I got mad because there was no more gas in the car.
12 We never screamed, but I was mad because I had to go ask for
13 gas money from my parents.

14 "I told her to stay there and I would go, but she
15 insisted to at least go to a friend's and wait. I would come
16 back to get her.

17 "So, I went down to parents' after letting her and
18 Catherine out -- her and Catherine out at Mr. Powell's. Asked
19 mom her opinion. She said get to the hospital and gave me gas
20 money.

21 "So, I left, got Tina and Catherine, and we all went
22 to the store, got ten dollars in gas, and two bags of potato
23 chips. And me, Tina, Catherine, and **Minor Child** came up here to
24 the hospital."

25 Q. That night, in addition to the written statement

1 that he provided to you, did he also make any oral statements
2 regarding whether or not he worked outside the home?

3 A. He did. He told me that he was unemployed.

4 Q. Did he make any statements as to Ms. Dockery's
5 employment?

6 A. Yes. He stated that she was on disability.

7 Q. Did he also make any statements to you in regard to
8 his hesitation to take the victim to a doctor?

9 A. Yes. He said he was hesitant about taking **Minor Child**
10 to the doctor because he said the baby's head swelled when he
11 was a newborn.

12 Q. Could you describe Scott's demeanor to the jury that
13 evening as you finished your -- your -- your interview with
14 him?

15 A. In my interview with Scott, he was -- he was crying.
16 His nose was running. And he was trembling during the
17 investigation. He -- he appeared very remorseful.

18 Q. Did -- did you see **Minor Child** that night?

19 A. I did.

20 Q. I'm going to show you what's previously been marked
21 as State's 24, 25, and 26.

22 (Exhibits shown to Defense Counsel and witness.)

23 MS. PRICE: Without objection.

24 MR. RUDASILL: No objection.

25 THE COURT: They're admitted.

1 (Whereupon, State's Exhibit Numbers 24, 25, and 26
2 were admitted without objection.)

3 Q. (By Ms. Jordan) What do those pictures show?

4 A. This is a picture of the swelling and bruising on
5 Minor Child's head and the side of his face.

6 Q. I'll -- I'll tell you what, if I may, I'll take them
7 and show them. On State's Number 24, can you tell the jury
8 what this picture is?

9 (Exhibit shown to the jury.)

10 A. That shows the bruising on the right side of
11 Minor Child's head and some bruising on his cheekbone and his eye.
12 The corner of his eyes are turning black and blue.

13 Q. Okay. And State's Number 25?

14 (Exhibit shown to the jury.)

15 A. That shows, again, bruising on the side of the head
16 as well as the black and blue and the bruising around the eye.

17 Q. And State's Number 26?

18 (Exhibit shown to the jury.)

19 A. That shows bruising underneath his chin. There's
20 bruises. And there's also bruising on his chest, on his
21 sternum.

22 Q. What course of action did you take that night, in
23 regard to Minor Child and his two-year-old sister, Catherine?

24 A. That night, I placed both children in emergency
25 protective custody because, according to both Scott and Tina

1 and my interviews with them, they were the only ones around
2 **Minor Child** pretty much -- well, pretty much since **Minor Child** had
3 been born.

4 So, at that point, they were both suspects for the
5 child abuse. And the injuries were consistent with child
6 abuse.

7 Therefore, **Minor Child** would be in danger being in a
8 home with them. And I also placed Catherine, the two year
9 old, in emergency protective custody due to her being at risk
10 of harm being in the home with both of them.

11 Q. Okay. Were you able to determine, through your
12 investigation, where these individuals lived during those four
13 months?

14 A. Yes. They lived at two locations. Both of them,
15 the [REDACTED] which is where they lived at --
16 on October 25th, two thousand and five (2005).

17 And they lived at another address in Clifton prior
18 to that, but both of them were in Spartanburg County.

19 Q. Okay. Did you have occasion to see both of them
20 later on that morning of the 26th?

21 A. I did..

22 Q. Were you present at their home when a search warrant
23 was executed?

24 A. Yes.

25 Q. Okay. And what was that address again?

1 A. That address was 425 Cowpens [REDACTED] in
2 Clifton, South Carolina.

3 Q. Okay. Were both Ms. Dockery and Mr. Moore present?

4 A. They were. Well, not -- not originally; when we
5 first arrived to execute the search warrant, they were not
6 there.

7 They were at Scott's mother's house. And we made
8 contact with them and they returned to their home.

9 Q. Did you have an opportunity to speak with both of
10 them that morning?

11 A. I did.

12 Q. Okay.

13 (Brief Pause)

14 Q. When you present at the house, were you able to walk
15 through the house?

16 A. I was.

17 Q. First, I'll start with Ms. Dockery. Did you have a
18 chance to speak with her?

19 A. I did.

20 Q. Okay. Did you go through her rights again with her?

21 A. I did. I just read her the rights that I read out
22 loud a minute ago. I read her those verbally.

23 Q. Okay. Back in October of two thousand and five
24 (2005), what was your procedure when you would read those
25 rights to someone?

1 A. I had a card that I carried with me in my car that
2 had the rights listed on it and I would read it directly from
3 the card.

4 Q. Okay. Did she appear to understand those rights?

5 A. She did.

6 Q. Did she -- did she appear to be coherent?

7 A. Yes, ma'am.

8 Q. And there were no promises made that night?

9 A. No.

10 Q. There were no -- no coercion or threats made that
11 morning or that afternoon?

12 A. No, ma'am.

13 Q. Okay. Did she voluntarily waive those rights in
14 your opinion?

15 A. She did.

16 Q. Okay. And did she agree to speak with you?

17 A. She did.

18 Q. Going through some of the things that she told you
19 -- where did you speak with her at?

20 A. I spoke with her basically -- I spoke with her first
21 out on the porch. And, then, we walked through the house
22 because, at that point, the house had already been processed.
23 We'd already been through it.

24 So, I walked her through the house to ask her
25 several questions about the home and also talked -- yeah, to

1 find out questions about the home and things we'd found in the
2 home.

3 Q. Did she talk to you about food in the home?

4 A. I did. I asked her about the lack of food in the
5 home and she stated that they had just run out.

6 Q. Okay. Did she say -- did you ask her what **Minor Child**
7 had been wearing the day of the 26th?

8 A. Yes. She stated that he was wearing a multi-colored
9 outfit that was located -- that we located in a diaper bag
10 that was in the living room.

11 Q. Okay. I'm going to show you -- did you also ask her
12 about another specific item of baby clothing?

13 A. Yes. We had found a white shirt of the baby's that
14 was wet. And it was in the bedroom.

15 Q. Why do you recall this shirt specifically?

16 A. Because it was wet. It was the only wet item of
17 clothing in the entire house. And she had mentioned that she
18 had bathed the children that -- the day of the -- the day of
19 the 25th.

20 Q. Okay.

21 (Whereupon, State's Exhibit Number 27 was remarked
22 for identification.)

23 (Exhibit shown to Mr. Price and Mr. Rudasill.)

24 MS. PRICE: Without objection, Your Honor.

25 MR. RUDASILL: No objection, Your Honor.

1 Q. (By Ms. Jordan) I'm going to show you State's
2 Number 26 and ask you if that's the T-shirt that you
3 collected?

4 A. It is.

5 MS. JORDAN: Your Honor, at this time we'd move
6 State's 26 into evidence.

7 THE COURT: It's admitted.

8 MADAM COURT REPORTER: Twenty-seven (27). It's 27
9 actually.

10 THE COURT: Excuse me?

11 MADAM COURT REPORTER: It's twenty-seven (27).

12 THE COURT: Twenty-seven (27).

13 MS. JORDAN: Oh, that's 27?

14 (Whereupon, State's Exhibit 27 was admitted into
15 evidence without objection.)

16 Q. (By Ms. Jordan) Did -- did she give you any clue as
17 to why the item was the only wet item?

18 A. No. She had -- she said that she did not know about
19 that item.

20 Q. Did you also speak to her about one of the bathtubs?

21 A. I did.

22 Q. And what did she state about the bathtub?

23 A. I asked her about the bathtub because there was
24 still bath water in it. It was just standing in the bath tub.
25 And she said that she forgot to let the water out on the

1 afternoon of the 25th, after she bathed the children.

2 Q. Okay. I'm going to show you what's been marked as
3 State's 17 and 18.

4 (Exhibits shown to the witness.)

5 MS. PRICE: Without objection.

6 MR. RUDASILL: Without objection, Your Honor.

7 Q. (By Ms. Jordan) And ask if you recognize those?

8 A. I do. Those are the pictures of the bathtub and the
9 standing water that was in the bathtub.

10 MS. JORDAN: Your Honor, we -- the State moves to
11 admit 17 and 18.

12 THE COURT: They're admitted.

13 (Whereupon, State's Exhibit Numbers 17 and 18 were
14 admitted into evidence without objection.)

15 Q. (By Ms. Jordan) What room are we looking at in
16 State's 18?

17 A. That's a picture of the bathroom where she stated
18 that she gave **Minor Child** a bath in and stated that was the tub
19 that she gave **Minor Child** the bath in. It's right off of their --
20 the master bedroom.

21 Q. I'm going to show you State's 17. Is that ---

22 A. That's the bathtub she said that she had bathed
23 **Minor Child** in, which is a deep garden tub. And it was filled
24 three-fourths of the way up.

25 Q. And is that picture a fair and accurate

1 representation of the water you found in it?

2 A. It is.

3 Q. Okay. Did you speak with her about any other items
4 located throughout the house?

5 A. I did. I talked to her about numerous bags of trash
6 that we had found throughout the residence. And she didn't --
7 again, didn't have an explanation of why they had bags of
8 trash all throughout the house.

9 Q. Did you also have an -- an opportunity -- or
10 describe for the jury, again, what her demeanor appeared to be
11 like while you were walking through the house with her?

12 A. Again, she was still very unemotional; no crying,
13 just very, very calm and unemotional, and -- which we
14 typically don't see, especially after taking both of their
15 children from them earlier that morning.

16 Q. Did you also talk to her about the prescriptions she
17 had previously told you about from the dentist?

18 A. I did. I asked her where the prescriptions were
19 from the dentist and from the hospital, because she'd received
20 two prescriptions in a very short time period. She told me
21 that they were on the kitchen counter.

22 I asked her if she could locate them because we
23 could not. The medication was not there on the kitchen
24 counter like she stated.

25 And we found -- finally found the first prescription

1 that was given to her from the dentist for the hydrocodone or
2 the -- yeah, the hydrocodone.

3 That was in the trash can. That was where we
4 located it.

5 Q. Did she ---

6 A. It was empty.

7 Q. I apologize. Did she state to you how she -- how
8 she took those items?

9 A. Yes. She said that the med -- the hydrocodone was
10 not working. And she took -- she took twelve (12) of them,
11 all twelve (12) of them, in six (6) hours.

12 (Exhibits shown to Mr. Price and Mr. Rudasill.)

13 Q. (By Ms. Jordan) I'm going to show you what's
14 previously been marked as State's 31 and State's 16 and ask if
15 you recognize these two items?

16 (Exhibits shown to the witness.)

17 A. This is a picture we took of the bottle that we
18 recovered out of the trash can. And, then, this is the actual
19 bottle that we recovered out of the trash can for the -- the
20 empty bottle of hydrocodone. And it's in the name of Tina
21 Dockery.

22 MS. JORDAN: Your Honor, at this time, the State
23 would move to admit State's Exhibit Numbers 16 and 31.

24 MS. PRICE: Without objection.

25 MR. RUDASILL: Without objection.

1 THE COURT: They're admitted.

2 (Whereupon, State's Exhibits 16 and 31 were admitted
3 into evidence without objection.)

4 Q. (By Ms. Jordan) Were you able to locate the other
5 prescription bottle that she stated -- or the other
6 prescription medication that she stated she received on the
7 25th?

8 A. No. We asked her where that was and she said it was
9 on the kitchen counter. There was -- that bottle was not on
10 the kitchen counter.

11 We could not locate any paperwork, in the entire
12 residence, from the pharmacy where she'd gotten that
13 prescription. And that medication was never found during the
14 entire search.

15 Q. Okay. Did you also have a chance, after speaking
16 with Ms. Dockery, to speak to Mr. Moore?

17 A. I did.

18 Q. Okay. Did you go through Mr. Moore's rights with
19 him again?

20 A. I did.

21 Q. Did you do that in the same fashion that you went
22 through with Ms. Dockery that morning?

23 A. Yes, ma'am. I read it off of a card.

24 Q. Okay. Did he appear to understand those rights?

25 A. He did.

1 Q. Did he appear to -- to waive those rights?

2 A. Yes, ma'am.

3 Q. Did he appear to -- or did you coerce him, threaten
4 him, or make him any promises in return for talking to you?

5 A. No, ma'am.

6 Q. And did he agree to speak with you?

7 A. Yes, ma'am.

8 Q. Can you tell or talk to the jury about what he -- I
9 take that back. Did you also walk the residence with him?

10 A. I did.

11 Q. Did he make any statements to you, as you were
12 walking through the residence, in reference to certain items
13 in the home?

14 A. He did.

15 Q. Did he speak with you specifically about the
16 bathtub?

17 A. He did. He stated that Tina had left the bath water
18 in the bathtub.

19 Q. Okay. Did he have any explanation, as you spoke
20 with Ms. Dockery, about the lack of food in the home?

21 A. He had -- he had no explanation either.

22 Q. Did he have any explanation for the trash?

23 A. No.

24 Q. Did he have any explanation for the wet clothing?

25 A. No. He -- he didn't know anything about that

1 either.

2 Q. Was he able to help you find either -- the other
3 prescription for Ms. Dockery?

4 A. No.

5 Q. Okay. I'm going to show you two additional
6 pictures, it's State's Number 14 and 15.

7 (Exhibits shown to Ms. Price and Mr. Rudasill.)

8 MS. PRICE: Without objection.

9 MR. RUDASILL: Without objection, Your Honor.

10 MS. JORDAN: Your Honor, may I approach?

11 (Whereupon, a bench conference was had with all
12 attorneys present.)

13 MS. JORDAN: Your Honor, I apologize. I found them.
14 They were stuck behind the Statement.

15 THE COURT: Okay.

16 Q. (By Ms. Jordan) I'm going to show you, again,
17 what's been marked as State's Number 11, 14, and 15 and ask if
18 you recognize those pictures.

19 (Exhibits shown to the witness.)

20 A. I do. These are the pictures we took in the home
21 the day we completed the search warrant in the house.

22 MS. JORDAN: Your Honor, at this time the State
23 would move to admit 11, 14, and 15. Would you tell ---

24 MS. PRICE: Without objection.

25 THE COURT: They're admitted.

1 (Whereupon, State's Exhibit Numbers 11, 14, and 15
2 were admitted into evidence without objection.)

3 Q. (By Ms. Jordan) Would you tell the jury what's in
4 State's Number 11?

5 A. That's the picture of the -- the travel swing.

6 Q. I know it's hard to see with the lighting. Are you
7 referring to the item just over to the side?

8 A. Uh-huh (affirmative). It's right next to the door.

9 Q. Can you describe the travel swing to the jury?

10 A. It's just a baby swing. But like -- like the older
11 baby swings, they sit up really, really high, but the travel
12 swing you can actually fold it up and carry it with you. And
13 it only sits a couple of inches off of the ground.

14 Q. Let me show you what was previously marked as
15 State's Number 15, and ask if you can describe this.

16 (Exhibit shown to the witness.)

17 A. That's the picture of the bathroom, the other
18 bathroom that was in the residence.

19 Q. Okay. And, then, State's Number 14?

20 (Exhibit shown to the witness.)

21 A. That's a picture of the kitchen stove.

22 Q. Moving ahead, did you also -- did you continue your
23 investigation later on that afternoon?

24 A. I did.

25 Q. Where did you continue your investigation at?

1 A. At the Sheriff's Office. We asked Scott and Tina to
2. come to the Sheriff's Office to continue our investigation.

3 Q. And did they come to the Sheriff's Office and meet
4 with you?

5 A. They did.

6 Q. At that point in time, did you have another
7 investigator -- well, during the search warrant, was Officer
8 -- or Investigator Ted Saar present?

9 A. He was.

10 Q. Did you also ask him to assist you with this
11 investigation?

12 A. I did.

13 Q. Okay. Were you -- did both of you speak with Mr.
14 Moore?

15 A. Yes.

16 Q. And were you present when Mr. -- when Investigator
17 Saar read him his rights?

18 A. Yes, ma'am.

19 Q. Did he use the same form that we've referred to in
20 the past?

21 A. Yes, ma'am.

22 Q. Did he appear to understand those rights as he read
23 them to him?

24 A. He did.

25 Q. Was he, again, coerced or in any way forced or

1 promised anything in return for giving a statement?

2 A. No, ma'am.

3 Q. Okay. When you were present, did he waive those
4 rights?

5 A. He did.

6 Q. And did he sign the *Miranda* form with Investigator
7 Saar?

8 A. Yes, ma'am.

9 Q. At that point in time, did he -- did he also provide
10 written statements to you and Investigator Saar that day?

11 A. Yes, ma'am.

12 Q. To your knowledge, how many statements did he
13 provide?

14 A. I believe he provided two (2) that day.

15 Q. Okay. Did you also have a chance to speak with Tina
16 Dockery?

17 A. I did.

18 Q. Okay. Did Investigator Saar assist you in speaking
19 with her?

20 A. He did.

21 Q. At that point in time, was she read her rights
22 again?

23 A. Yes, she was.

24 Q. Did Investigator Saar use the same form he had
25 previously -- you had previously used with them?

1 A. Yes.

2 Q. Did she also provide an oral statement to law
3 enforcement?

4 A. She did.

5 Q. Okay. In dealing with her that day, did she also
6 appear to understand her rights?

7 A. She did.

8 Q. To waive her rights?

9 A. Yes, ma'am.

10 Q. Did you promise, coercion or force her in any way ---

11 A. No, ma'am.

12 Q. --- to give a statement?

13 A. No, ma'am.

14 Q. Okay. Just one more time briefly: Can you
15 describe, once they were at the Sheriff's Office that
16 afternoon, what their demeanor was?

17 A. Again, they were both very coherent, alert. They
18 did not appear to have -- I mean, they weren't sick or
19 anything like that. They were allowed restroom breaks,
20 cigarette breaks, things like that.

21 Q. Were they offered any food if they needed any?

22 A. Yes, ma'am.

23 Q. Did you also -- in addition to the written
24 statements that Scott Moore gave that day, did you also -- at
25 any point in time, did you speak with Scott again?

1 A. I did.

2 Q. Did you ask another individual in your office to
3 assist you with that interview?

4 A. I did.

5 Q. Who was that?

6 A. Captain Steve Denton.

7 Q. Okay. In speaking with Scott with Captain Denton,
8 did he make any comments to you in regard to **Minor Child**

9 A. He did.

10 Q. What did he state?

11 A. He had stated that he had dropped **Minor Child**

12 Q. At that point in time in your investigation, did you
13 let both individuals go for the night?

14 A. We did.

15 Q. Did you have -- did you schedule an appointment for
16 Ms. Dockery to speak to another investigator in the office?

17 A. I did.

18 Q. Okay. During the course of your investigations, did
19 you keep in contact with the doctors treating **Minor Child**

20 A. I did.

21 Q. Did you also keep in contact with the Department of
22 Social Services?

23 A. I did.

24 MS. JORDAN: Your Honor, if I may have a moment.

25 (Brief Pause)

1 MS. JORDAN: Please answer any questions Ms. Price
2 or Mr. Rudasill may have.

3 (Brief Pause)

4 CROSS EXAMINATION by MS. PRICE

10:33 A.M.

5 Q. Good morning. We're just going to start at the
6 beginning of your testimony and work our way through, okay?

7 A. Okay.

8 Q. All right. Go back to the night that you first met
9 Minor Child at the hospital, and you say, when you walked into the
10 room, that Minor Child was being stuck with some needles to get
11 some blood; is that right? And he was crying.

12 A. Yes, ma'am.

13 Q. And his dad was with him?

14 A. Yes, ma'am.

15 Q. And his mother was holding Catherine, who's two
16 years old?

17 A. Yes, ma'am.

18 Q. Okay. So, it's not like she was sitting there doing
19 nothing; is that right?

20 A. Actually, Catherine was sitting there very calmly
21 and ---

22 Q. But, she -- she was sitting with her; is that right?

23 A. Catherine was just sitting on her lap while Tina was
24 picking at her nails.

25 Q. Okay. But you didn't -- you did a report in this --

1 in this investigation, didn't you?

2 A. Yes, ma'am.

3 Q. And your description doesn't say anything about Tina
4 picking her nails, does it?

5 A. No. I just remember that evening very, very vividly
6 because I had -- I've been working these cases for a long time
7 and I had just had my own child, who is the exact same age as
8 **Minor Child** And, when I walked in that hospital room and heard
9 the baby crying, you could tell it was a definitive pain cry.

10 And as a new mother myself, you can pick those cries
11 out. And it just seemed odd that a mother was not burdened at
12 all by her infant's pain cry.

13 Q. So, in your opinion, if -- if your child is crying,
14 you're supposed to be crying too?

15 A. No, they should just be emotional about it. Most
16 mothers are.

17 Q. Oh, okay. And -- but isn't it true that some people
18 just are not emotional type people?

19 A. That is true.

20 Q. And -- but your testimony today has centered around
21 the fact that my -- my client has not been crying or wailing,
22 gnashing teeth, any -- anything like that?

23 A. Correct.

24 Q. Okay. And you've also talked about today that, when
25 you talked to her at the hospital that night, she said she had

1 gone to the dentist and gotten some pain medication?

2 A. Yes, ma'am.

3 Q. And the next day she was still having some problems,
4 so, she went back and got some more pain medication?

5 A. Yes, ma'am.

6 Q. Okay. Your testimony today is -- is that she later
7 -- that she later said that she had taken that pain
8 medication?

9 A. Yes, ma'am.

10 Q. And that it was mild and it wasn't working, which is
11 why she went back to the hospital; is that right?

12 A. Yes, ma'am.

13 Q. Okay. But your testimony today, when -- when you
14 talked about the waiver of rights and things, she did not
15 appear high to you, did she?

16 A. No.

17 Q. She did not appear under the influence, did she?

18 A. No, her speech was not slurred.

19 Q. Okay. But, now, when you went over to Tina's and
20 Scott's house, you went in, and is -- is it fair to say that
21 -- that the house is not in pristine condition?

22 A. Correct.

23 Q. And it's -- it's -- two small children live there
24 and, so, it's -- it's a little messy, right?

25 A. Yes.

1 Q. Okay. And Tina said that they had run out of food;
2 is that right?

3 A. Correct.

4 Q. Did she say how long it had been since they ran out
5 of food?

6 A. No. She stated that they just -- she stated that
7 they didn't have any money to purchase more food, so, she
8 didn't know what they were going to do. She was trying to get
9 food stamps.

10 Q. Okay. You saw both **Minor Child** and Catherine; that's
11 been your testimony, right?

12 A. Yes, ma'am.

13 Q. Did either of these children look malnourished ---

14 A. No, ma'am

15 Q. --- in your opinion? So, they looked like they had
16 been eating pretty good?

17 A. Yes, ma'am.

18 Q. Okay. As you went further into the house, your
19 testimony was about -- and you went in the bathroom and saw
20 some -- there was still water in the tub; is that right?

21 A. Yes, ma'am.

22 Q. Okay. And there was a wet t-shirt in the bathroom;
23 is that right?

24 A. It was in the bedroom.

25 Q. Okay. In the bedroom?

1 A. Uh-huh (affirmative).

2 Q. Is that the bedroom adjoining the bathroom?

3 A. Yes, ma'am.

4 Q. Okay. It's not illegal to have wet clothes in the
5 house, is it?

6 A. No, ma'am.

7 Q. Okay. And, on this wet t-shirt, it did not appear
8 that there was any blood or mucus or anything like that, was
9 there?

10 A. There -- I wouldn't -- I wouldn't say blood. I
11 mean, it was -- you can see around -- it was -- there was
12 maybe like spit-up or something around the collar.

13 Q. All right. And there were bags of trash in the
14 home; is that right?

15 A. Yes, ma'am.

16 Q. But the trash was bagged up?

17 A. Yes, ma'am.

18 Q. It wasn't strewn in any of the rooms or anything?

19 A. No.

20 Q. Okay. There -- there weren't stray animals running
21 around eating the trash or anything like that?

22 A. No, ma'am.

23 Q. Okay. And getting back to...

24 MS. PRICE: I think that's all I have actually.

25 Thank you.

1 MR. RUDASILL: May it please the Court?

2 THE COURT: Mr. Rudasill?

3 MR. RUDASILL: Thank you.

4 CROSS EXAMINATION BY MR. RUDASILL

10:38 A.M.

5 Q. Detective Cantrell, I believe, when you first
6 observed Scott Moore and Tina Dockery, you have described Mr.
7 Moore as being with **Minor Child** when they were drawing blood; is
8 that correct?

9 A. Yes, sir.

10 Q. That was your initial contact, the first time you'd
11 had a chance to observe them that evening; is that correct?

12 A. Yes, sir.

13 Q. Did you know either of them prior to October the 25th
14 when you were on-call and got sent to the hospital?

15 A. No, sir.

16 Q. And, if I understand correctly, you had just given
17 birth and had a child very close to the same age as **Minor Child**

18 A. Uh-huh (affirmative).

19 Q. You don't think that, that, in any way, affected
20 your objectivity in -- in this investigation, do you?

21 A. No, sir. Actually, I think it helped me understand
22 child abuse cases a lot easier.

23 Q. So, you were -- you were drawing a lot on that
24 knowledge you had as a -- as a new mother with a -- with a
25 child about the same age or the same age as **Minor Child**

1 A. Correct.

2 Q. And, obviously, if they're drawing blood from
3 **Minor Child** you heard him cry. The pain was associated with
4 drawing blood, upset, Mr. Moore was right there with his son
5 during that procedure trying to comfort him, I believe is what
6 you put in your report; is that correct?

7 A. Yes, sir.

8 Q. And that was your observation of him, trying to
9 comfort his son during that procedure?

10 A. Yes, sir.

11 Q. And I believe you described, in that instance, when
12 you were talking about Ms. Dockery in the -- I believe you
13 said she was just void of any emotion at all. And I think the
14 term that you used in your report was it was as if she was
15 ignoring what was taking place?

16 A. Correct.

17 Q. Did she show any emotion at all that night when you
18 were talking with her?

19 A. No, sir.

20 Q. We'll go back to some other events in more detail in
21 just a second, but later -- sort of jumping forward -- you
22 learned that the day before, the 24th, she had been to Palmetto
23 Dental and had received a prescription which has been
24 introduced; is that correct?

25 A. Correct.

1 Q. I believe it was Palmetto Dental Lab. I believe
2 that's what it is. Is that -- but, anyway, Palmetto is
3 something that's related to -- to dentistry, correct?

4 A. Correct.

5 Q. And I believe the records, and your testimony,
6 reflects that on that occasion she received a scrip; she was
7 prescribed twelve (12) Lortab seven point five (7.5); is that
8 also correct?

9 A. No. She was -- on the first prescription is for
10 hydrocodone, which yes, is generic Lortab, correct.

11 Q. Well, that's is generic Lortab, is it not?

12 A. Correct, yes.

13 Q. All right. So, I think the record reflects seven
14 point five (7.5), but hydrocodone and Lortab are the same
15 thing; one is just generic?

16 A. Right.

17 Q. Or generic. Excuse me. You were asked questions
18 about whether she -- by Ms. Price about whether she appeared
19 to be high I think was the terminology. And you indicated she
20 did not?

21 A. No. I mean, her speech was not slurred. She was
22 able to walk fine.

23 Q. But you had never had met her before, had you?

24 A. Correct. I had nothing to base -- have a base on.

25 Q. And you've been an officer for how many years?

1 A. Nine (9) years, nine and a half (9 ½) years.

2 Q. And I'm sure, in the process of -- of doing your
3 work, you are aware that individuals can build up tolerance to
4 substances, can they not?

5 A. Correct.

6 Q. And, by the fact that you're saying she did not
7 appear to be thick-tongued or slurring her words, does not
8 mean that you made an observation as to whether she was under
9 the influence of that -- those drugs that you later learned
10 she'd taken not as prescribed, correct?

11 A. Correct.

12 Q. And tell me again what your recollection was about
13 how many pills she took in what period of time?

14 A. She took -- let me go back to my notes to make sure.
15 It was all twelve (12) of them in six (6) hours.

16 Q. And you also mentioned something that -- that I need
17 to ask you about too, was that she was prescribed, according
18 to what she told you -- strike that.

19 According to what she told you, she received
20 additional medication on the 25th, when she went to Mary Black
21 herself, earlier that same day; is that correct?

22 A. Correct.

23 Q. And, as a part of your investigation, you tried to
24 determine whether or not you could locate any records
25 concerning medication being prescribed?

1 A. Right. Like the pharmacy, any pharmacy records,
2 like a prescription. If -- if the hospital prescribes you
3 something, sometimes they'll give you a prescription.

4 Or you have a receipt from the pharmacy where you
5 got it filled. Or sometimes your prescription comes in a bag,
6 anything like that.

7 Q. And what was the -- what were you told by her that
8 medication was?

9 A. We were told that it was Vicoprofen.

10 Q. All right. And what type of medication is that; do
11 you know?

12 A. I believe it's like Vicodin with Ibuprofen as well
13 in it.

14 Q. And did -- did you ever find out, in any of your
15 investigation, the quantity that were given?

16 A. If you'll hold on a minute; let me check on that.

17 (Brief pause while witness reviews document.)

18 A. I don't believe I obtained that information.

19 Q. All right. And you never found that bottle?

20 A. No, sir.

21 Q. That script bottle like you have before you on the
22 -- on the counter there?

23 A. Correct.

24 Q. And all of those pills were consumed?

25 A. We're assuming so. She stated they were.

1 Q. You would expect to find a script, a prescription,
2 written, if they had been prescribed at Mary Black, would you
3 not?

4 A. I would.

5 Q. So, if she reported to you in her statement that she
6 had gotten additional drugs, they would either have had to
7 have been prescribed by a medical physician or would have been
8 street drugs?

9 A. Correct.

10 Q. Who did she go to or what did she tell you about how
11 she got to Mary Black Emergency Room the afternoon of October
12 the 25th?

13 A. One time she stated she received a ride and another
14 time she stated she drove herself.

15 Q. And the person that gave her a ride, were they male
16 or female?

17 A. A male.

18 Q. Not Scott Moore?

19 A. Correct. He was at home with the children.

20 Q. So, she left him there with the children while she
21 went to get this additional medication; is that correct?

22 A. Correct.

23 Q. You also took into evidence, when the search warrant
24 was executed at their mobile home, a wet tee shirt that you
25 have that's been introduced as Exhibit 27, correct?

1 A. Correct.

2 Q. I want to make sure I understand the significance of
3 that. Based on the information consistent, from both Scott
4 and Ms. Dockery, during the day of October the 25th, Scott
5 Moore was away from his home from about ten o'clock (10:00)
6 until varying times in the statements, but let's say mid-
7 afternoon; three o'clock (3:00), four o'clock (4:00),
8 somewhere in -- in that time frame; is that correct?

9 A. Correct.

10 Q. And it was, during this period of time, that it was
11 reported that -- by Ms. Dockery that she bathed **Minor Child**

12 A. Correct.

13 Q. Did the investigation indicate, at some point in
14 time, whether it was your investigation or possibly another
15 detective's investigation, that Ms. Dockery indicated she had
16 dropped **Minor Child** in the bathtub?

17 A. Yes.

18 Q. So, is that why you felt that tee shirt was
19 significant?

20 A. Yes.

21 Q. Was there any other wet clothing found?

22 A. No, sir.

23 Q. So, that's the reason that item was seized?

24 A. Yes, sir.

25 Q. And you made a comment that, when you talked to

1 Scott, he could not give you an explanation for that wet tee
2 shirt?

3 A. Correct.

4 Q. Well, if he wasn't home, he would not have known
5 about the baby being dropped in the bathtub and possibly that
6 was when the wet tee shirt occurred, correct?

7 A. Possibly.

8 Q. Well, he wasn't there during that time frame, when
9 -- when that event was reported as having occurred, correct?

10 A. He wasn't there when the child was given the bath,
11 no.

12 Q. All right.

13 (Brief Pause)

14 Q. You also testified -- let me make sure whether it
15 was -- I believe in your initial discussion, which would be on
16 the notation of 10/25/05 at twenty-three forty-five (2345)
17 hours.

18 And I believe that is in talking with -- with Ms.
19 Dockery, that she was drawing disability, correct?

20 A. Correct.

21 Q. And you indicated that she said Scott was
22 unemployed. What she -- what you noted was that he was
23 currently unemployed, correct?

24 A. Correct.

25 Q. Did you make any effort to try to tie that down at

1 all as to when he last worked? What his last job was?
2 Anything that would give you any more information other than
3 that as to his employment history, during the time that
4 **Minor Child** had been born, up until October the 25 -- the 25th of
5 two thousand and five (2005)?

6 A. I believe I talked to Scott about that, and going
7 from my memory, I believe he indicated to me that he had been
8 unemployed from like a -- a regular job, pretty much since
9 **Minor Child** had been born.

10 He did odds and end jobs for his parents or for
11 people in the neighborhood. But he helped out with **Minor Child** a
12 lot.

13 Q. To -- to refresh your recollection, when he was
14 talking about the last job that he had being, I believe, at
15 Lowe's. Did he mention the fact that he had worked at Lowe's
16 and that was the last job before his Workers' Comp injury?

17 A. Possibly.

18 Q. All right. And, then, did he also -- when you said,
19 helping out others -- indicate to you that he had been helping
20 his cousin Matthew lay stone during the summer?

21 A. I don't -- I don't remember. I just remember him
22 saying he did odds and end jobs.

23 Q. Odds and end jobs?

24 A. Uh-huh (affirmative).

25 Q. Working some out of the home? All right.

1 (Brief Pause)

2 Q. Without going back through each -- well, let me go
3 back to one thing. You indicated initially at the hospital
4 that, when you observed Scott, he was -- his nose was running,
5 he was crying, he was trembling as describing his demeanor; is
6 that correct?

7 A. Correct.

8 Q. Well, in all fairness, Detective Cantrell, this was
9 after you had told both he and Ms. Dockery that they were
10 suspects, that you were going to talk with them about
11 suspected child abuse, correct?

12 A. Correct.

13 Q. And I'm sure you had told him what you had learned
14 from the doctor as far as **Minor Child** being diagnosed with a
15 bilateral skull fracture, correct?

16 A. Correct.

17 Q. So, isn't it fair to -- to -- instead of saying
18 that, that was remorseful, that he was upset having -- as you
19 observed, him comforting his child from having blood drawn and
20 being told his four-month-old child had a bilateral skull
21 fracture? That would upset you, wouldn't it?

22 MS. JORDAN: I object, at this point in time,
23 because she's already stated -- she's described his
24 demeanor, but she can't specifically state why he was
25 that way; if he was upset or if he was anxious about what

1 was going on. She had described it.

2 MR. RUDASILL: She testified that he was remorseful,
3 Your Honor, that's what I'm addressing.

4 THE COURT: Overruled.

5 Q. (By Mr. Rudasill) But isn't it fair that a parent,
6 who did not know that their child had sustained this injury,
7 at that point in time, it was just a bilateral skull fracture
8 that had been discussed, unless you know more than -- than
9 what your report indicates that had been determined at that
10 point in time.

11 But certainly it's understandable, just as you
12 expect Ms. Dockery to show emotion, that Scott would show
13 emotion because he found out his child had a skull fracture?

14 A. When I -- I guess I should rephrase that. He was
15 crying and trembling. When I -- when I stated he was
16 remorseful, that was kind of a conclusion I had come to after
17 meeting with him several times and seeing him cry and act that
18 way and also comfort Tina at the same time.

19 Q. But show emotion?

20 A. Correct.

21 Q. And, obviously, at that point in time, he had
22 feelings, for the mother of his two children, just as you've
23 said, comforting her; hard to believe that she could have done
24 the things that they were both accused of doing, correct?

25 A. I guess.

1 (Brief Pause)

2 MR. RUDASILL: That's all I have, Your Honor.

3 THE COURT: Ms. Price?

4 MS. PRICE: I have nothing, Your Honor.

5 THE COURT: Ms. Jordan?

6 MS. JORDAN: Just briefly.

7 REDIRECT EXAMINATION by MS. JORDAN

10:55 A.M.

8 Q. Ms. Cantrell, the -- the pill bottle you have in
9 front of you, is that for the 24th or the 25th?

10 A. That's for the 24th.

11 Q. And is that the state -- is that the prescription
12 bottle that she stated she took twelve (12) pills in six (6)
13 hours?

14 A. Yes, it is.

15 MS. JORDAN: Okay. Nothing further, Your Honor.

16 THE COURT: You may step down.

17 (The witness complied with the Court's request.)

18 THE COURT: We'll take a short break. I'll ask the
19 jury to, please, go to your jury room. And do not
20 discuss the case in any fashion. I'll bring you back
21 after that break.

22 (The jury exited the courtroom at 10:56 a.m.)

23 THE COURT: All right. We'll be in recess for
24 fifteen (15) minutes.

25 MS. JORDAN: Thank you.

1 MR. RUDASILL: Thank you, Your Honor.

2 (Whereupon, a recess was taken from 10:56 a.m. until
3 11:16 a.m.)

4 THE COURT: All right. Are we ready for the jury?

5 MS. JORDAN: Yes, sir.

6 MS. PRICE: Yes, sir.

7 MR. RUDASILL: Yes, Your Honor.

8 THE COURT: Bring them in, please.

9 (The bailiff stepped out to summon the jury.)

10 (The jury entered the courtroom at 11:17 a.m.)

11 THE COURT: All right. The jury is present. You
12 may proceed.

13 MS. JORDAN: Thank you, Your Honor. The State calls
14 Investigator Ted Saar.

15 (The witness stepped forward to be sworn.)

16 (Whereupon,

17 INVESTIGATOR THEODORE SAAR

18 having been duly sworn, testified as follows:)

19 DIRECT EXAMINATION by MS. JORDAN: 11:17 A.M.

20 Q. Please state your name for the record.

21 A. My name is Theo D. Saar, III.

22 Q. Where are you currently employed?

23 A. Spartanburg County Sheriff's Office.

24 Q. How long have you worked there?

25 A. A little over seven (7) years.

1 Q. And before that, did you work for any other law
2 enforcement agency?

3 A. I did. I worked for Spartanburg City Police for a
4 little over six (6) years.

5 Q. What is your current position at the Sheriff's
6 Office?

7 A. Currently, I am the agency's fingerprint examiner.
8 I work in the Forensics Division.

9 Q. Okay. What is your title?

10 A. Investigator Master Deputy.

11 Q. Okay. Back in October of two thousand and five
12 (2005), what was your position with the Sheriff's Office?

13 A. I was an investigator working in criminal
14 investigations assigned to doing white collar and family abuse
15 investigations.

16 Q. Did you have an occasion to work with Investigator
17 Cantrell on a case involving Minor Child

18 A. I did.

19 Q. Did she request your help?

20 A. She did.

21 Q. Did you meet with the Defendants in this case, Tina
22 Dockery and Steve -- Scott Moore?

23 A. I did.

24 Q. When you met with them -- or did you actually -- did
25 you go to the home during the search of the home?

1 A. I did.

2 Q. Did you also interview the individ -- the Defendants
3 later on that day at the Sheriff's Office?

4 A. I did.

5 Q. I am going to start with State's Exhibit Number 8
6 and ask if you've read this -- or if you recognize this?

7 (Exhibit shown to Defense Counsel.)

8 MS. PRICE: Without objection.

9 MR. RUDASILL: Without objection, Your Honor.

10 THE COURT: It's admitted.

11 (Whereupon, State's Exhibit Number 8 was admitted
12 without objection.)

13 Q. (By Ms. Jordan) Can you tell the jury what is
14 contained in Exhibit Number 8?

15 A. This is a -- a form that we use at the Sheriff's
16 Office. It's what's called a pre-interrogation waiver form.
17 It has Mr. Moore's name and address, general information like
18 that.

19 And it also has their rights written out on the
20 form, in written form. So, I would have read this form to
21 them and, then, I also had them read it. And, then, there's
22 places for me to sign as a witness and, also, for Mr. Moore to
23 sign.

24 Q. And did you go through each one of those rights with
25 Scott Moore?

1 A. I did.

2 Q. Okay. Did he appear to understand those rights?

3 A. He did.

4 Q. Did he also -- did he also sign indicating that he
5 understood his rights?

6 A. He did.

7 Q. Did he further sign on the second line of that form
8 stating that he wished his waive his rights to speak with you?

9 A. He did.

10 Q. When you spoke with him, was anyone else present?

11 A. No, not at the time.

12 Q. Officer Cantrell, did she assist at different
13 portions?

14 A. She did.

15 Q. Okay. Did -- did you promise him anything in
16 exchange for making a statement?

17 A. No.

18 Q. Did you coerce or threaten him in any way?

19 A. No.

20 Q. In your -- in your opinion did his state -- did he
21 appear to give this statement freely and voluntarily?

22 A. He did.

23 Q. In response, to speaking with him that day, did he
24 provide any written statements to you?

25 A. He did.

1 Q. I'm going to show you what's first been marked as
2 State's Exhibit Number 1 and ask if you recognize this -- I'm
3 sorry. State's Exhibit Number 9.

4 (Exhibits handed to witness.)

5 Q. (By Ms. Jordan) I'm actually going to hand you 9
6 and 10, but right now just focus on 9.

7 (Brief pause while witness examines exhibit.)

8 Q. Do you recognize State's Exhibit Number 9?

9 A. I do.

10 Q. Okay. Is that a statement completed by Scott Moore?

11 A. It is.

12 Q. Did you -- let me ask you this: Did he write that
13 statement or did you write it for him?

14 A. He wrote it.

15 MS. JORDAN: Your Honor, at this time, the State
16 would move to admit State's Exhibit Number 9.

17 MS. PRICE: Without objection.

18 MR. RUDASILL: Without objection.

19 THE COURT: It's admitted.

20 (Whereupon, State's Exhibit Number 9 was admitted
21 without objection.)

22 Q. (By Ms. Jordan) Would you please tell the jury what
23 he stated to you in State's Exhibit Number 9?

24 A. Would you like me to read it?

25 Q. Yes, sir.

1 A. It says, "I woke up around ten-thirty (10:30), left
2 the house and went to my parents'. And my father and I left
3 to go to his camper at Sonny's on 85.

4 "We got back to his house and unhooked camper, got
5 measurements for tarp because of water leak. Stayed with him
6 until about three-thirty (3:30) p.m. and left for home, got
7 there at something 'till four (4:00):

8 "My girlfriend, Tina, was holding and playing with
9 Minor Child with Catherine sitting on the couch with her. She
10 told me her mouth was hurting -- and, then, it's got "Tina" in
11 parentheses -- and that she was going to hospital.

12 "I asked her to take Catherine because I was tired.
13 Tina said no. So, she left and took the car to the hospital.

14 Minor Child was laying down in bassinet for two hours
15 asleep. Me and Catherine watched TV. And she played a little
16 bit in the living room.

17 Minor Child woke up crying, so, I fed him with his
18 bottle propped up on cover on his side. After he finished, I
19 changed him in his bed.

20 "And, then, I switched him to his other side and
21 went back to sleep. About six (6:00) 'till something till --
22 about six (6:00) till something till Tina got home and told me
23 there was a piece of tooth still in her gum and that it was
24 infected.

25 "She told me they gave her a shot and gave her some

1 medicine. I have knee, back, and groin problems, so, she gave
2 me three of the pills to ease my pain.

3 "She checked on **Minor Child** and walked to -- and talked
4 to him. And she changed her clothes and, then, picked him up
5 and sat on couch with his back to me.

6 "I seen the swelling on his head and told her. She
7 looked and said, 'Let's go the hospital.' She found clothes
8 for **Minor Child** and Catherine that was still bagged up. And I got
9 them ready.

10 "I got ready and I told her to let me take him to my
11 mother's, so, she could see. Tina rode with me and I let her
12 and Catherine out at Mr. Powell's and went to parents' house.

13 "My mom told me to carry him to hospital. So, she
14 gave me gas money. And I left and picked up Tina and
15 Catherine at Mr. Powell's and went to Lil Cricket for some
16 gas.

17 "She went in to pay for gas and two bags of potato
18 chips for her and Catherine. I pumped gas and went straight
19 to hospital, where they took him back and me and Catherine
20 stayed out to fill out papers.

21 "We went back to room. And they took me and him for
22 a CT scan and x-rays. **Minor Child** and I came back to room where a
23 doctor came in with a cop and told us what was wrong with
24 **Minor Child**

25 Q. In addition to that three-page statement that day,

1 did you continue to speak with Scott Moore?

2 A. I did.

3 Q. Did he -- did you talk with him specifically about
4 the injuries to Scott's -- to **Minor Child** foot?

5 A. I did.

6 Q. Did he make any admissions to you?

7 A. He did.

8 Q. Okay. Referring to what's State's Exhibit Number
9 10, do you recognize that?

10 A. I do.

11 Q. What is that?

12 A. This is a written statement about the injuries to
13 **Minor Child** foot.

14 MS. JORDAN: Okay. Your Honor, at this time the
15 State would move to admit State's Exhibit Number 10 into
16 evidence.

17 MS. PRICE: Without Objection.

18 MR. RUDASILL: Without Objection.

19 THE COURT: It's admitted.

20 (Whereupon, State's Exhibit Number 10 was admitted
21 without objection.)

22 Q. (By Ms. Jordan) Please publish for the jury what he
23 said to you in regard to **Minor Child** foot.

24 A. The statement reads, "Tina was gone when I was
25 watching **Minor Child** and Catherine. I was holding **Minor Child** and

1 cooking Oodles of Noodles.

2 "The pot was smaller than the eye, so, when was
3 stirring the noodles, his foot dropped down and touched the
4 stove eye.

5 "It looked -- peeled, so, I covered it not thinking
6 it was bad because it was on for a split second. When Tina
7 came home, we went to my parents' house and they noticed it.
8 It had bubbled up.

9 "I told her I didn't know how it happened. So, when
10 me, my parents, Tina, and Catherine got to Cape..." --
11 "Hickory Knob" is in parentheses -- "...I told her that it was
12 burnt on the stove while I was cooking. Why I lied was I
13 didn't want him taken."

14 (Brief Pause)

15 Q. Could you describe for the jury what Scott's
16 demeanor was that day when you were speaking with him at the
17 Sheriff's Office?

18 A. For the most part, he was calm and kind of a -- a
19 lack of emotion for the most part. It changed throughout the
20 day as we talked.

21 Q. Has his appearance changed in any from two thousand
22 and five (2005) to how you see him today?

23 A. It has.

24 Q. How?

25 A. It looks like he's lost a pretty good bit of weight.

1 Q. Okay. In addition to speaking to Scott back on the
2 26th of October, did you also have a chance to speak with Tina
3 Dockery?

4 A. I did.

5 Q. Okay. Did you go through Tina's rights with her?

6 A. I did.

7 Q. I'm gong to show you what's been previously marked
8 as State's Exhibit Number 3.

9 (Exhibit shown to Defense Counsel.)

10 MS. PRICE: Without objection.

11 MR. RUDASILL: Without objection.

12 THE COURT: It's admitted.

13 (Whereupon, State's Exhibit Number 3 was admitted
14 into evidence without objection.)

15 Q. (By Ms. Jordan) And ask -- and ask if you recognize
16 State's Exhibit 3 that's been admitted?

17 A. I do.

18 Q. Okay. What is that?

19 A. This is another one of the pre-interrogation waiver
20 forms that we tell them what their rights are.

21 Q. Okay. Did you go through those with Tina?

22 A. I did.

23 Q. Did you do it in the same form that you spoke about
24 going through those with Scott?

25 A. I did.

1 Q. Did she appear to understand the questions that you
2 asked her?

3 A. She did.

4 Q. Did she sign waiving -- did she sign saying that she
5 understood those rights?

6 A. She did.

7 Q. Did she further sign stating that she wished to
8 waive those rights and speak with you?

9 A. She did.

10 Q. Did you coerce her in any way?

11 A. I didn't.

12 Q. Did you promise her anything?

13 A. No.

14 Q. Did you threaten her?

15 A. No.

16 Q. In your opinion, did her waiver of those rights
17 appear to be voluntarily, freely given?

18 A. It did.

19 Q. And did you speak with her about what happened that
20 day?

21 A. I did.

22 Q. And did she provide an oral statement to you in
23 regard to any type of medication she had been taking?

24 A. She did.

25 Q. What did she say?

1 A. She said that she had gotten medication from a
2 doctor and that she had taken two every two hours.

3 Q. While you were speaking to Scott Moore and Tina
4 Dockery, did you give -- were they allowed bathroom breaks?

5 A. Yes.

6 Q. Were they allowed to take any smoke breaks if
7 needed?

8 A. Yes.

9 Q. Were they offered anything to eat?

10 A. Yes.

11 Q. Okay. Were you present at the Sheriff's Office the
12 following day?

13 A. Yes.

14 Q. And I believe Ms. Dockery spoke to another
15 investigator?

16 A. Yes.

17 Q. Okay. Were you able to observe any or part of that
18 interview?

19 A. I was.

20 Q. Were you...

21 MS. JORDAN: Your Honor, may I have a moment?

22 Q. (By Ms. Jordan) Just going back briefly to Mr.
23 Moore's statement about Scott's -- **Minor Child** foot. Did Mr.
24 Moore state when that occurred, the injury?

25 A. I'm -- I'm not -- I -- I can't remember right

1 offhand. If I could look at my notes I may have it, but it
2 wasn't that -- that day, I don't believe, that he was saying.
3 Let me check.

4 (Brief pause while the witness reviews documents.)

5 A. I don't see them and I also don't remember.

6 MS. JORDAN: Please answer any questions Ms. Price
7 or Mr. Rudasill may have for you.

8 MS. PRICE: I don't have anything for Investigator
9 Saar.

10 CROSS EXAMINATION by MR. RUDASILL

11:29 A.M.

11 Q. Investigator Saar, in addition to taking a statement
12 that you've indicated and introduced for the statement of Mr.
13 Moore ---

14 A. Uh-huh (affirmative).

15 Q. --- you prepared a report, in conjunction with your
16 interviews and the activities that you were -- were involved
17 in concerning this investigation; is that correct?

18 A. Yes, sir.

19 Q. All right, sir. Were you involved at all in trying
20 to determine whether Ms. Dockery had obtained a prescription
21 for the Vicoprofen that she told you about?

22 A. Not directly that I remember. But it's -- it's
23 possible. Myself and Investigator Cantrell were working on
24 various things together.

25 Q. To refresh your recollection, she indicated that --

1 that they were not -- they were not -- she was not able to
2 find the prescription for the medication that she supposedly
3 received at -- at the emergency room on the 25th when she went.

4 Do you have a recollection of being involved and
5 trying to go through those medical records to determine if
6 there was a script or not?

7 A. I don't recall going through medical records, but I
8 do recall, during the search at the house, looking for
9 bottles; you know, something that would have her name on it.

10 Q. There was a bottle found that was from Palmetto
11 Dental that's been introduced as State's Exhibit 31. Is that
12 your recollection of the only prescription bottle that was
13 located?

14 A. As far as I recall, yes. That was the only one that
15 was recovered.

16 Q. Okay. And you've read Mr. Moore's statement
17 concerning him being there with Catherine and -- and **Minor Child**
18 and stirring the Oodles of Noodles on the -- on the stove.
19 There was no question about the fact that he indicated that,
20 that event, when it took place, was an accident?

21 It was not something that was intended; it was
22 something that occurred while he was trying to prepare food
23 for them to eat; is that correct?

24 A. That's what he said, yes, sir.

25 Q. That's what you noted in your report that it was an

1 accident that he told you about that had occurred, correct?

2 A. Yes, sir.

3 Q. When you were present, during Ms. Dockery's
4 questioning with Detective Cantrell, you made some notations
5 in your report regarding the appearance of Ms. Dockery during
6 that interview, correct?

7 A. I believe so.

8 Q. And how did she appear to you during the time that
9 you were speaking with her?

10 A. As far as...?

11 Q. Emotion.

12 A. Emotion? Very -- a -- a strong lack of emotion in
13 other words.

14 Q. So, no emotion whatsoever? Just completely void of
15 emotion?

16 A. Yes, sir.

17 Q. You indicated -- and I'm -- I'm sorry; I apologize
18 if I didn't -- when you talked about emotion, in response to
19 direct questions from Ms. Jordan, were you speaking about Ms.
20 Dockery or Mr. Moore?

21 A. Just Mr. Moore.

22 Q. All right. And your description of him, on that
23 occasion when you talked with him, was that he also did not
24 show any emotion whatsoever?

25 A. Yes, sir.

1 Q. But it varied during the time?

2 A. Yes, sir. It varied during the time.

3 Q. All right. Well, let's -- let's talk about how it
4 varied. What -- what were the ways in which it varied during
5 the time that you had contact with him that day?

6 A. There were times where he appeared to get upset, cry
7 or -- or feel very emotional that way. But it didn't appear
8 to me that, in my opinion, that it was a -- a genuine emotion.

9 Q. But he did show emotions?

10 A. Correct.

11 Q. All right. This was the second day of the
12 investigation we're talking about when you had contact with
13 him at the Sheriff's Office, correct?

14 A. I believe so, yes, sir.

15 Q. All right. And you were present when the home was
16 searched or not?

17 A. Yes.

18 Q. All right. Did you have direct contact with Mr.
19 Moore during the time the house was searched?

20 A. Briefly, yes, sir.

21 Q. So, your contact was primarily with Ms. Dockery, Mr.
22 Moore, or neither one?

23 A. During the search warrant, I completed the search
24 warrant return. So, I stayed pretty much stationery. The
25 evidence was found and brought to me. And it was my job to

1 make sure that all of that was -- was collected in the proper
2 manner.

3 So, I had some interaction with -- with both of them
4 during that day, but not -- I wasn't primarily the one talking
5 with them.

6 Q. Primarily, you were concerned about doing an
7 inventory of what was being gathered in the -- in the house;
8 is that a fair statement?

9 A. Yes, yes, sir.

10 Q. All right. With regard to Ms. Dockery, again,
11 concerning the medication, she later gave you a statement or
12 both of you a statement regarding her ingesting the Lortab or
13 hydrocodone that she'd been prescribed from Palmetto --
14 Palmetto Dental; is that correct?

15 A. Yes.

16 Q. And when did -- how did she tell you that she had
17 taken that medicine?

18 A. That she had taken two pills every two hours.

19 Q. For a total of how many pills?

20 A. I -- I didn't -- I'm not sure.

21 Q. Do you need to refer back to your notes?

22 A. Yes, sir.

23 Q. It would be the third paragraph down.

24 (Brief pause while the witness reviews documents.)

25 Q. (By Mr. Rudasill) I believe, according to the copy

1 that I have, she indicated to you that she'd taken twelve (12)
2 Lortab in six hours?

3 A. Yes, sir.

4 Q. And, then, she went on to make another statement to
5 you; is that correct, in -- in -- in conjunction with that,
6 that she was trying to take care of the children?

7 A. Yes, sir.

8 MR. RUDASILL: That's all the questions I have.

9 MS. PRICE: Nothing, Your Honor.

10 THE COURT: Ms. Jordan?

11 MS. JORDAN: May this witness be excused?

12 THE COURT: You may step down.

13 THE WITNESS: Thank you.

14 MS. JORDAN: Your Honor, at this time the State
15 calls Kamshih Kotecha.

16 (The witness was summoned.)

17 (The witness stepped forward to be sworn.)

18 (Whereupon,

19 KAUSHIK KOTECHA

20 having been duly sworn, testified as follows:)

21 DIRECT EXAMINATION by MS. JORDAN:

11:38 A.M.

22 Q. Can you state your name for the record?

23 A. Yes, Kaushik Kotecha.

24 Q. What is your current position?

25 A. I am the Regional Director for DHEC Bureau of Drug

1 Control.

2 Q. And what is your educational background?

3 A. I have an Associate's Degree in Criminal Justice, a
4 Bachelor's Degree in Interdisciplinary Studies. And, then, I
5 have a B.S. Degree in Pharmacy, so, I'm a pharmacist.

6 Q. Okay. In the past, have you been a practicing
7 pharmacist?

8 A. Yes, I was.

9 Q. Okay. And what is your job, again, at the
10 Department of Health and Environmental Control?

11 A. I'm the Regional Director. I supervise
12 investigations regard -- regarding controlled substance
13 violation.

14 MS. JORDAN: Okay. Your Honor, at this ---

15 Q. (By Ms. Jordan) And -- and how long have you been --
16 when did you graduate from school?

17 A. Nineteen, eighty-nine (1989).

18 Q. Okay. And you've been practicing either in pharmacy
19 or working with DHEC since then?

20 A. Yes, I have.

21 Q. All involving, in some aspect, controlled
22 substances?

23 A. Well, the first four (4) years I was a practicing
24 pharmacist. Three years -- years' worth at the hospital and
25 one year with an oncology pharmacist.

1 MS. JORDAN: Your Honor, at this time, the State
2 would move to admit this witness as an expert in the
3 field of pharmacology.

4 MS. PRICE: Without objection.

5 MR. RUDASILL: Without objection.

6 THE COURT: He is so qualified.

7 MS. JORDAN: Thank you.

8 Q. (By Ms. Jordan) Have you had the opportunity to
9 review any documents in relationship to this case?

10 A. Yes, what documents you provided me.

11 Q. And did you review an oral statement that was given
12 to Detective Cantrell by Tina Dockery on the early morning
13 hours of October the 26th of two thousand and five (2005)?

14 A. Yes.

15 Q. Did you also have an opportunity to review a medical
16 record involving Ms. Dockery's visit to the emergency room at
17 Mary Black on October the 25th of two thousand, five (2005)?

18 A. I didn't review the whole document, but I reviewed
19 the prescription for Lortab that was given to her.

20 Q. Okay. Right in front of you, marked as State's
21 Exhibit Number 31, is a prescription bottle. Would you let
22 the jury know what that prescription bottle is for? And, if
23 you need to, you -- you may open it.

24 A. If I can figure out where it's sealed.

25 (Brief pause while the witness opens evidence

1 envelope.)

2 Q. What is the date on the prescription?

3 A. The date that it was -- the prescription was filled
4 and dispensed on 10/24/2005.

5 Q. Okay. And whose prescription is that?

6 A. The prescription is in the name of Tina Dockery.

7 Q. And what is the prescription for?

8 A. The prescription is for hydrocodone, seven -- seven
9 point five (7.5), five hundred.

10 Q. And what is that -- what is hydrocodone normally
11 used for?

12 A. hydrocodone is used for pain. It's used for pain
13 and also cough, so, it's an antitussive and analgesic both.

14 Q. Okay. What is the prescribed dosage as given to her
15 on the prescription?

16 A. "Take one tablet every four hours as needed for
17 pain."

18 Q. Okay. In your course dealing with pharmaceutical
19 issues, is that a standard recommendation for the dosage?

20 A. Yes. For -- you know, of course, it depends on the
21 height and weight and age and everything, but for a normal
22 adult, this would be the recommended dose.

23 Q. Are there any warnings or labels on the bottle?

24 A. Yes. In fact, there's three warning labels. One,
25 it says, "When taking this medication, do not drink alcoholic

1 beverage," because it would have synergistic effect, of
2 course.

3 And, then, the next one says, "May cause dizziness."
4 And, then, the final one is, "This medicine contains
5 Acetaminophen. Taking more Acetaminophen than recommended may
6 cause serious liver problems."

7 Q. Okay. Were you also able, in reviewing her ER
8 records from the 25th of October, able to determine if she was
9 given a prescription that day?

10 A. Yes, she was.

11 Q. What was the prescription for that day?

12 A. It was -- it was for Vicoprofen, which is the same
13 thing as hydrocodone, but the other ingredient is Ibuprofen
14 instead of Acetaminophen. That's the only difference between
15 the two.

16 Q. And it's, I'm assuming, also used for pain?

17 A. It is. It is.

18 Q. Does it indicate on there how much the prescription
19 was for?

20 A. Yeah. It was for twelve (12) tablets. And,
21 according to that doctor, he order -- he wrote a prescription
22 for, "Take one tablet every four to six hours as needed for
23 pain."

24 Oh, excuse me. "As needed." I'm sorry. It didn't
25 say "pain." It just says "as needed."

1 Q. And, Doctor, she -- Ms. Dockery had previously given
2 statements that have been admitted to the Court stating that
3 she took two -- of the first prescription on the 24th, two
4 pills every two hours.

5 What are any, if there are any, potential side
6 effects for taking that amount of pain medication in that time
7 frame?

8 A. Well, there are several side effects that you would
9 notice. One would be obviously drowsiness. You know, of
10 course, it depends on the person.

11 Every medicine works different on different people.
12 Some people it will cause them drowsiness. Some people will
13 just get hyper. So, it's just one or the other.

14 The second, of course, is the dizziness. That's
15 another one of those side effects.

16 Third, would be you basically are sort of like a
17 stupor mode when you have a high does like that. In other
18 words, you're there but just not there, you know.

19 I mean, you're just like a blank person. That's one
20 of the side effects. It can cause constipation.

21 And, of course, because it's got Acetaminophen in
22 it, it caused -- could cause liver problems too.

23 Q. Okay. Would it be fair to say that it could impair
24 a person's judgment?

25 A. Absolutely.

1 Q. And just to clarify, you have never personally met
2 Ms. Dockery?

3 A. No, I have never met her.

4 Q. And you've never prescribed any medications for her
5 or anything in the past?

6 A. I've never dispensed any medications for her, no.

7 MS. JORDAN: Please answer any questions Ms. Price
8 or Mr. Rudasill may have.

9 CROSS EXAMINATION by MS. PRICE:

11:45 A.M.

10 Q. Good afternoon.

11 A. Good afternoon.

12 Q. It's nice to finally meet you.

13 A. You too (laughter).

14 Q. You just -- in your testimony, we've heard about the
15 -- some of the possible side effects of the prescriptions that
16 Tina had prescribed to her.

17 And it -- it could be several different things;
18 isn't that right?

19 A. That is correct.

20 Q. She could be sleepy?

21 A. Uh-huh (affirmative).

22 Q. On the other end of the spectrum, she could be very
23 hyper?

24 A. Euphoric. That's correct.

25 Q. Okay. Or she could be -- or she could be in a

1 stupor; is that right?

2 A. Right.

3 Q. Or she could not be in a stupor, like you said; she
4 could be euphoric?

5 A. Right.

6 Q. Okay. And just -- just for clarification, you've
7 never met Ms. -- Ms. Dockery, have you?

8 A. No, I have not.

9 Q. Have you -- have you -- you did review the pharmacy
10 records or what she was prescribed back in October of two
11 thousand, five (2005) on these two pages?

12 A. Just what Ms. Jordan provided.

13 Q. Okay. So, you haven't -- you're not aware of any
14 other medications that Ms. Dockery was taking or -- or
15 anything like that, are you?

16 A. No, I'm not.

17 Q. Okay. And you've never done a -- a full
18 pharmacological work-up on her, have you?

19 A. No, I have not.

20 Q. Okay.

21 MS. PRICE: Thank you very much. That's all I have.

22 CROSS EXAMINATION by MR. RUDASILL

11:46 A.M.

23 Q. Mr. Kotecha, nothing was asked about the Vicoprofen.
24 You were able to determine that, that script was, in fact,
25 written by the ER doc on 10/25?

1 A. According to the medical record, she was there --
2 let me make sure. Discharge summary date 10/25, time five
3 eleven (5:11) p.m. and it was Vicoprofen, yes, sir.

4 Q. I'm sorry. Five eleven (5:11) p.m.?

5 A. Yes, five eleven (5:11) p.m., October 25th.

6 Q. So, it was at five eleven (5:11) that she left the
7 emergency room with the script?

8 A. That's the discharge time, yes, sir.

9 Q. The discharge time, right.

10 A. Yeah.

11 Q. And that was for twelve (12) Vicoprofen?

12 A. That is correct.

13 Q. All right. And what milligram were they?

14 A. Seven point five (7.5), two hundred milligram of
15 Ibuprofen.

16 Q. So, they were the same strength as the twelve (12)
17 that was prescribed by Palmetto Dental that's the bottle that
18 you have there in front of you?

19 A. Yes, sir.

20 Q. All right. And that bottle, was that filled there
21 at Palmetto or was it filled at a pharmacy?

22 A. This was filled at Eckerd's Pharmacy.

23 Q. So, it was filled at a pharmacy?

24 A. Right.

25 Q. All right, sir. And, as you were asked, if that was

1 reported to be taken two every two hours, I believe, that it
2 was prescribed one ---

3 A. Every four hours.

4 Q. --- every four hours?

5 A. Right.

6 Q. But, if someone took two every hour in a six-hour
7 period of time, you would expect the person to have some
8 change in function or ability to function based on that amount
9 of medication taken in that period of time, would you not?

10 A. There's some alteration. Like I say, it could be
11 euphoric. It could be depressed. It could be stupor. Just,
12 you know, there's going to be some alteration in their
13 functioning capability.

14 Q. Does it show, on the bottle that has been
15 introduced, when that script was filled, the time?

16 A. It does not show the time, but it was 10/24, the
17 date on that.

18 Q. It shows the date?

19 A. Yes, sir.

20 Q. All right, sir. And, then, we know, then, that at
21 eleven something p -- you said -- I'm sorry. The time, again,
22 on the -- on the ER?

23 A. Five-eleven (5:11).

24 Q. Five-eleven (5:11)?

25 A. P.M., yes, sir.

1 Q. All right. Another twelve (12) were dispensed?

2 A. That's correct.

3 Q. And, again, if it was recorded that the individual
4 had taken all of those twelve (12) pills, and the prescription
5 bottle was not found; without knowing the time frame that
6 those twelve (12) pills would have been taken, there would not
7 be a way for you to render an opinion as to -- as to whether
8 that script was abused or not abused; is that a fair
9 statement?

10 A. That is a fair statement, yes, sir.

11 Q. But, assuming that if the person took twelve (12) in
12 six (6) hours, it's -- it is probable that they took the other
13 twelve (12) in a short period of time, or other than as
14 prescribed. Is that a fair statement?

15 A. That's an assumption, yes, sir.

16 Q. You indicated that based, on your experience,
17 education, and training, that an individual's judgment by
18 over-medicating, on these two types of medication, could be
19 impaired?

20 A. Over-dosing, yes.

21 Q. Over-dosing can impair you?

22 A. Yes. I just want to make sure we are -- okay.

23 Q. If you took it other than as prescribed?

24 A. That is correct. That is correct.

25 Q. You certainly, as you've been asked, know that it

1 was taken in a shorter period than it was prescribed ---

2 A. Right.

3 Q. --- at least on one script?

4 A. Right. And, you know, it -- it also -- also depends
5 on the patient's prior medical history.

6 In other words, if a patient had been taking -- a
7 patient was a little bit naive, then, you know, obviously it
8 would have a greater effect too.

9 Q. So, if a person had emotional problems to start
10 with, that could heighten or increase the effect of this
11 medication as far as their judgment?

12 A. I would think so, yes, sir.

13 Q. And, when you say impairing a person's judgment,
14 that is a general statement, with regard to any judgment, any
15 situation a person would be placed in, that judgment could be
16 impaired?

17 A. That is correct. What -- you know, you have a
18 standard that you are. And, then, if you take this
19 medication, it's going to alter your way of thinking.

20 Your priority would change. How you feel would
21 change. It alters your mood basically.

22 Q. More apt -- apt to do something that you normally
23 wouldn't do?

24 A. Probably.

25 Q. More apt to react differently than what you would

1 normally do in a situation?

2 A. That's correct.

3 MR. RUDASILL: Thank you, sir.

4 THE COURT: Ms. Price?

5 RECROSS EXAMINATION by MS. PRICE

11:52 A.M.

6 Q. So, you would agree that different medications
7 effect different people in different ways; is that correct?

8 A. Yes, ma'am. I sure would.

9 Q. And that's -- that's based on a variety of factors?

10 A. That is correct.

11 Q. Age sometimes?

12 A. Right. That's correct.

13 Q. Other medications that they may take or may not
14 take?

15 A. That's correct.

16 MS. PRICE: Thank you. That's all I have.

17 MS. JORDAN: May this witness be excused?

18 THE COURT: He may be. Watch your step.

19 (The witness stepped down from the witness stand and
20 was excused at 11:53 a.m.)

21 MS. JORDAN: The State calls Tracy Moss.

22 (The witness was summoned.)

23 (The witness stepped forward to be sworn.)

24 (Whereupon,

25 TRACY MOSS

1 having been duly sworn, testified as follows:)

2 DIRECT EXAMINATION by MS. JORDAN:

11:54 A.M.

3 Q. Please state your name for the record.

4 A. Tracy Moss.

5 Q. And where are you currently employed?

6 A. Spartanburg County Sheriff's Office.

7 Q. How long have you been there?

8 A. Six (6) years.

9 Q. What is your title?

10 A. I'm an investigator.

11 Q. Did you also work at the Sheriff's Office in October
12 of two thousand and five (2005)?

13 A. Yes, ma'am.

14 Q. What was your position then?

15 A. An investigator.

16 Q. Did you have occasion to assist Investigator
17 Cantrell in the case involving **Minor Child**

18 A. Yes, ma'am, I did.

19 Q. Okay. What did you do in that case?

20 A. I went out to Mary Black Hospital and took some
21 photographs for her.

22 Q. Okay. And when did you take those photographs?

23 A. I believe it was October 26th, two thousand, five
24 (2005).

25 Q. Okay. I'm going to show you what's previously

1 marked State's 21, 22, 23, 19, and 26, and ask if you can
2 identify these photographs?

3 (Exhibits shown to the witness.)

4 A. Yes, ma'am.

5 MS. JORDAN: Your Honor, at this time the State
6 would move to admit State's 23, 22, 19, 21, and 26 into
7 evidence.

8 MS. PRICE: Without objection.

9 MR. RUDASILL: Without objection.

10 THE COURT: They're admitted.

11 (Whereupon, State's Exhibit Numbers 19, 21, 22, 23
12 and 26 were admitted without objection.)

13 Q. (By Ms. Jordan) I'm going to show you State's
14 Number 19 and, if you would, just tell the jury what's in
15 these -- each photograph.

16 (State's 19 shown on overhead.)

17 A. That is the picture of -- of **Minor Child** head. The
18 right side of his head where you can see the bruising.

19 Q. Is there any additional bruising?

20 A. From where I'm standing, it's hard to see -- or from
21 where I'm sitting.

22 Q. Do you notice any bruising around his eye?

23 A. Yes, to the right side of his eye.

24 Q. Let me show you State's 26.

25 (State's 26 shown on overhead.)

1 A. And that shows the swelling, to the right side of
2 the head, and the bruising. And you can also see it around
3 his eye.

4 Q. And is this an additional photograph, Exhibit 21?
5 (Exhibit 21 shown on overhead.)

6 A. Yes, it is.

7 Q. Okay. Twenty-two (22)?
8 (Exhibit 22 shown on overhead.)

9 A. That is his back with a -- a bruise and a scratch on
10 his back.

11 Q. And twenty-three (23)?
12 (Exhibit 23 shown on overhead.)

13 A. That's the same. It's his back showing some
14 bruising and a spot on his back.

15 MS. JORDAN: Thank you. Please answer any questions
16 Mr. Rudasill or Ms. Price may have.

17 MS. PRICE: I have no questions for Ms. Moss.

18 MR. RUDASILL: No questions.

19 MS. JORDAN: May this witness be excused?

20 THE COURT: She may be.

21 (The witness stepped down from the witness stand and
22 was excused at 11:55 a.m..)

23 MS. JORDAN: At this time, the State calls Dina
24 Brazil.

25 (The witness was summoned.)

1 (The witness stepped forward to be sworn.)

2 (Whereupon,

3 DINA BRAZIL

4 having been duly sworn, testified as follows:)

5 DIRECT EXAMINATION by MS. JORDAN: 11:56 A.M.

6 Q. Please state your name for the record.

7 A. Dina Brazil.

8 Q. Where are you currently employed?

9 A. The Spartanburg County Department of Social
10 Services.

11 Q. How long have you been employed there?

12 A. Twenty-one (21) years.

13 Q. And I'm assuming you worked there in October of two
14 thousand, five (2005)?

15 A. I did.

16 Q. Did you have -- well, what are your duties at the
17 Department of Social Services?

18 A. I'm an investigator. I investigate allegations of
19 abuse and/or neglect of children.

20 Q. Okay. Is it safe to say that you are usually in --
21 that you're usually involved on the front-end of a case?

22 A. I am.

23 Q. Okay. In the case involving **Minor Child** did you
24 have a chance to speak to Leonard Scott Moore and Tina
25 Dockery?

1 A. I did.

2 Q. Okay. When did you interview them?

3 A. I interviewed them on October 28th at the Spartanburg
4 County Detention Center.

5 Q. Okay. Did you have a chance to speak to both
6 individuals?

7 A. I did.

8 Q. In regard to Mr. Moore, did you have a chance to
9 discuss the injuries that **Minor Child** suffered?

10 A. I did.

11 Q. What did he state in regard to those injuries?

12 A. He stated did not know anything about the injuries.
13 He just didn't know what happened to him.

14 Q. Okay. On the day that this occurred, on October the
15 25th, did he kind of give you a time line of what went on that
16 day?

17 A. He did. He said that he was at home. That Ms.
18 Dockery had a problem with her tooth and she went to the
19 emergency room by herself about four-thirty (4:30) in the
20 afternoon. And he was with the children until she got back
21 home about six-thirty (6:30).

22 Q. Okay. Did he say anything regarding to -- in
23 regards to any pills?

24 A. He said that she was given pain pills at the
25 emergency room. And, when she came in, she asked him was he

1 hurting and gave him three pain pills.

2 Q. Okay. Moving on to any issues with [Minor Child] head,
3 did he speak with you in regards to swelling of the baby's
4 head?

5 A. He said about eight o'clock (8:00) that night, he
6 told Ms. Dockery that [Minor Child] head was swollen and that he
7 needed to go to the emergency room; that they needed to take
8 him to the emergency room.

9 And they did. They made a few stops before they got
10 to the emergency room, but they checked into the emergency
11 room about nine forty-five (9:45).

12 Q. Okay. Did he state where some of those stops were?

13 A. He stopped at his mother's house to get gas money.
14 He stopped to get some gas at a Lil Cricket.

15 Q. Did he give you any indication of -- or did he talk
16 to you about showing the baby's head to his mother?

17 A. He did. He showed it -- when he got to her house,
18 he showed the baby -- there was a hat on the baby's head, but
19 he took it off, I believe, and the baby's head was more
20 swollen at that point. And he said it was swollen way out and
21 felt like a rock.

22 Q. Okay. In part of your investigation, did you also
23 talked to Scott Moore about the burn on [Minor Child] foot?

24 A. I did.

25 Q. What did he say to you with regard to the burn?

1 A. He said that he caused the burn. He said that he
2 was -- this was about three months before this particular --
3 it was three months before October.

4 And he was watching both the children. He was
5 making Oodles -- Oodles of Noodles for Catherine on the stove.
6 He had a small pot on a large burner.

7 He was holding the baby, [Minor Child] And [Minor Child]
8 foot slipped and accidentally went onto the burner of the
9 stove.

10 Q. Did he describe [Minor Child] to -- just, in general,
11 describe [Minor Child] to you?

12 A. He said he's normally a happy baby. He likes to be
13 held. He likes to be on your -- put on your chest. But he
14 said he had noticed that, any time you picked [Minor Child] up from
15 under his arms, he cries.

16 Q. In addition to speaking to Mr. Moore, did you also
17 have an opportunity to speak to Ms. Dockery?

18 A. I did.

19 Q. Did she give any indication in -- in regard to
20 whether or not [Minor Child] appeared to be acting any differently
21 in recent days?

22 A. She said that he didn't act any differently. He
23 acted the same. But, when she saw that -- I guess when she
24 saw that his head was swollen, she thought that he might have
25 cancer or a blood clot.

1 Q. Okay. Did she indicate whether or not she had any
2 knowledge about the bruises and how they were caused?

3 A. She said she didn't know anything about the bruises.
4 She didn't have any idea of what happened.

5 Q. Okay. Did she speak to you about her daughter
6 Catherine, who's two years old, and anything regarding a
7 travel swing and Minor Child

8 A. She said that, on one occasion, Catherine had dumped
9 Minor Child out of the travel swing.

10 Q. Okay. Did she indicate to you whether or not
11 Minor Child had had any of his normally planned-for shots?

12 A. She said he had not. She said that he -- that she
13 was gong to take him for his three-month shots, but didn't
14 have a way.

15 Q. Okay. Did she talk to you about how she went to the
16 hospital on the 25th of October?

17 A. She did. She drove to the hospital.

18 Q. Okay. Did she also make any indications to you
19 about Catherine and Minor Child as far as their plan, their
20 planning for children?

21 A. She said that she and Mr. Moore had planned to have
22 Catherine, but didn't plan to have Minor Child

23 Q. Did she also talk to you about any medication that
24 she -- or I believe the last time that she took any medication
25 was?

1 A. She said that she had taken medication two days
2 before and it was Lortab.

3 Q. Okay. Did she state how many she took at a time?

4 A. She took two at a time.

5 MS. JORDAN: Please answer any questions that Ms.
6 Moore -- or Ms. Price or Mr. Rudasill may have.

7 MS. PRICE: I don't have any questions for this
8 witness.

9 CROSS EXAMINATION by MR. RUDASILL

12:02 P.M.

10 Q. Ms. Brazil, just very briefly. You indicated that
11 Mr. Moore told you that Ms. Dockery had given him three (3) of
12 her pills for pain, but there was nothing said about when
13 those were taken or whether he had taken them or how he taken
14 them, correct?

15 A. Can you repeat that, please?

16 Q. When you reported that she, Ms. Dockery -- Scott
17 Moore told you that Ms. Dockery had given him three (3) of her
18 pain pills.

19 There was nothing asked, nothing said about whether
20 those were taken, whether he still had them, whether he had --
21 how he had consumed them? Nothing was discussed about that,
22 was it?

23 A. He told me that she gave him three (3) of her pain
24 pills.

25 Q. Right. But nothing about whether they were taken or

1 when they were taken or if he still had them?

2 A. No.

3 MR. RUDASILL: Thank you, ma'am.

4 THE COURT: Ms. Price?

5 MS. PRICE: I have no follow-up now.

6 MS. JORDAN: May this witness be excused?

7 THE COURT: She may be. Thank you.

8 (The witness was excused and stepped down from the
9 witness stand at 12:03 p.m.)

10 MS. JORDAN: Your Honor, the State calls Jan Arthur.

11 (The witness was summoned.)

12 (The witness stepped forward to be sworn.)

13 (Whereupon,

14 JAN ARTHUR

15 having been duly sworn, testified as follows:)

16 DIRECT EXAMINATION by MS. JORDAN:

12:04 P.M.

17 Q. Please state your name for the record.

18 A. Jan Arthur.

19 Q. Where are you currently employed?

20 A. With the Department of Social Services.

21 Q. How long have you been there?

22 A. Since 1998.

23 Q. And I'm assuming that's the Department of Social
24 Services here in Spartanburg County?

25 A. It is.

1 Q. Okay. What are your current duties there?

2 A. I work -- right now I work with intensive foster
3 care and clinical services. And we work with children who
4 have emotional disturbances, foster children.

5 Q. Okay. Did you also work, with the Department of
6 Social Services, in October of '05?

7 A. Yes.

8 Q. And you've been there since then?

9 A. Yes.

10 Q. During your time at DSS, from '05 to two thousand
11 and eleven (2011), now, have you had a chance to work on a
12 case involving Minor Child

13 A. Yes.

14 Q. As part of -- has Minor Child been in the care of foster
15 care at certain periods of time?

16 A. Yes.

17 Q. During the care -- during Minor Child care, or during
18 any child's care in foster -- in foster care, would you, as a
19 DSS worker, be notified if there is any addition -- if there
20 is any broken bones or any type of medical treatment needed
21 for a child?

22 A. Yes.

23 Q. During your time with Minor Child have -- in
24 reviewing -- did you also review his file for court?

25 A. Yes.

1 Q. In your time, has there been any additional broken
2 bones, to your knowledge or to DSS's knowledge, regarding
3 **Minor Child** since October of two thousand and five (2005)?

4 A. No.

5 Q. Have you had occasion to see **Minor Child** recently?

6 A. Yes.

7 Q. Does he appear to be a happy, healthy -- or a
8 healthy child?

9 A. Yes.

10 MS. JORDAN: Please answer any questions Ms. Price
11 or Mr. Moore may have -- Mr. Rudasill may have.

12 MS. PRICE: I have no questions for Ms. Arthur.

13 MR. RUDASILL: I have no questions.

14 MS. JORDAN: May the witness be excused?

15 THE COURT: She may be.

16 (The witness was excused and stepped down from the
17 witness stand at 12:06 p.m.)

18 MS. JORDAN: Your Honor, may we approach?

19 THE COURT: (Nods affirmatively.)

20 (Whereupon, a bench conference was had with all
21 attorneys present.)

22 THE COURT: Ladies and gentlemen, we're going to
23 break now for lunch. We'll resume this afternoon at one-
24 thirty.

25 So, keep in mind my caution previously given, no

1 discussions about the case, no media exposure, no
2 research or investigation.

3 Do have a good lunch. Please report to your jury
4 room at one-thirty (1:30). One-thirty (1:30) this
5 afternoon.

6 (The jury exited the courtroom at 12:08 p.m.)

7 THE COURT: Let me see you all before we break for
8 lunch, please.

9 (Whereupon, an in-chambers conference was had.)

10 THE COURT: Court is in recess until one-thirty
11 (1:30).

12 (Whereupon, a luncheon recess was had from 12:07
13 p.m. till 1:30 p.m.)

14 (Off-the-Record Comments)

15 THE COURT: Are we ready for the jury?

16 speel Your Honor, if I could just put one thing on
17 the record?

18 THE COURT: Okay.

19 MS. JORDAN: In speaking with the court reporter, she
20 stated that I failed to admit State's Exhibit Number 20,
21 which is a photograph that was previously published to
22 the jury. So, I would move to admit that just to clarify
23 the record.

24 THE COURT: Any objection?

25 MS. PRICE: No objection.

1 MR. RUDASILL: No objection.

2 THE COURT: Let me see the group of photos starting
3 with 19 through 26.

4 MS. JORDAN: And since the witnesses are sequestered,
5 I would ask that Mr. Morgan just step outside. And Mr.
6 Denton will be our next witness.

7 THE COURT: Exhibit 20 is admitted without
8 objection.

9 (The witness complied with the request.)

10 (Whereupon, State's Exhibit Number 20 was admitted
11 without objection.)

12 THE COURT: All right. Bring the jury in, please.

13 (The bailiff stepped out to summon the jury.)

14 (The jury entered the courtroom at 1:59 p.m.)

15 THE COURT: Good afternoon, ladies and gentlemen.

16 And I -- I apologize for the delay. We had a witness who
17 had a medical appointment and was delayed as a result of
18 that.

19 So, we are now ready to continue with the State's
20 presentation of evidence. Ms. Jordan?

21 MS. JORDAN: Thank you, Your Honor. The State calls
22 Steve Denton.

23 (The witness stepped forward to be sworn.)

24 (Whereupon,

25 STEVE DENTON

1 having been duly sworn, testified as follows:)

2 DIRECT EXAMINATION by MS. JORDAN:

2:00 P.M.

3 Q. Please State your name for the record?

4 A. My name is Steven Denton.

5 Q. Okay. What is your current occupation?

6 A. I'm an attorney here and have my practice here in
7 Spartanburg.

8 Q. Okay. Back, in October of two thousand, five
9 (2005), what was your occupation?

10 A. I was a Captain at the Sheriff's Office here in
11 Spartanburg.

12 Q. How long had you worked in law enforcement?

13 A. Twenty-three years (23) and nine (9) months, I
14 think, and some odd days.

15 Q. What were you duties as a Captain at the Sheriff's
16 Office in October of '05?

17 A. I supervised the investigative division, among other
18 things. Basically supervised the day-to-day activities of the
19 investigators.

20 Q. Okay. Did you have an occasion to work with
21 Investigator Cantrell on a case involving an infant, **Minor Child**
22 Moore?

23 A. I did.

24 Q. Okay. On October the 26th of '05, did you assist in
25 her interview with Scott Moore?

1 A. I did.

2 Q. Okay. While you were interviewing Mr. Moore along
3 with Ms. Cantrell, did he make any statements regarding

4 **Minor Child**

5 A. He did.

6 Q. And what statement did he make?

7 A. He stated that he dropped **Minor Child**

8 MS. JORDAN: Okay. Please answer any questions that
9 Mr. Rudasill or Mister -- Ms. Price may have.

10 THE WITNESS: Sure.

11 MS. PRICE: I have nothing for Mr. Denton.

12 MR. RUDASILL: May it please the Court?

13 THE COURT: Mr. Rudasill?

14 CROSS EXAMINATION by MR. RUDASILL

2:01 P.M.

15 Q. Mr. Denton, I didn't think I'd have an opportunity
16 to cross-examine you again since you left the Sheriff's
17 Office.

18 A. I didn't either, Mr. Rudasill.

19 Q. Without going into any of the content of anything
20 other than what you've just testified to, as to his statement,
21 there were multiple statements?

22 A. There were.

23 Q. And do you agree with the assessment that Ms.
24 Cantrell has indicated in her report that it was apparent that
25 all of these were being made up and, so, not truthful?

1 A. I do.

2 Q. Thank you, sir.

3 THE COURT: Ms. Price, anything further?

4 MS. PRICE: No, Your Honor.

5 THE COURT: Ms. Jordan?

6 MS. JORDAN: May this witness be excused?

7 THE COURT: He may be. Thank you.

8 THE WITNESS: Thank you.

9 (Whereupon, the witness was excused and stepped down
10 from the witness stand at 2:02 p.m.)

11 MS. JORDAN: The State calls Danny Morgan.

12 (The witness was summoned.)

13 (The witness stepped forward to be sworn.)

14 (Whereupon,

15 DANNY MORGAN

16 having been duly sworn, testified as follows:)

17 DIRECT EXAMINATION by MS. JORDAN: 2:03 P.M.

18 Q. Please state your name for the record.

19 A. My name is Danny Morgan.

20 Q. Back, in October of two thousand and five (2005),
21 where were you employed?

22 A. With the Spartanburg County Sheriff's Office.

23 Q. And what was your job title there?

24 A. I was a Detective Sergeant.

25 Q. How long have you been employed in law enforcement?

1 A. At -- at that time or total?

2 Q. Yes, sir.

3 A. At that time? I'm sorry, at the time ---

4 Q. Total is fine.

5 A. Eighteen (18) years total.

6 Q. Okay. Do you -- are you currently employed at the
7 Sheriff's Office?

8 A. No, I'm not.

9 Q. Okay. On October the 27th of two thousand and five
10 (2005), did you have an opportunity to work with Investigator
11 Cantrell on a case involving an infant, Minor Child

12 A. Yes, ma'am, I did.

13 Q. Who did you speak with in that case?

14 A. Initially, I was briefed on the case by Detective
15 Cantrell and was asked to speak with the -- the mother of the
16 child, Tina Michelle Dockery.

17 Q. Okay. I'm going to show you what's previously been
18 marked as State's Exhibit Number 5 and ask if you can identify
19 this?

20 (Exhibit shown to the witness.)

21 A. Yes.

22 Q. Would you tell the jury what's contained in State's
23 Exhibit Number 5?

24 A. This is a standard waiver of rights form that I used
25 at that time.

1 Q. Okay. Is it in essentially the same condition it
2 was back in '05?

3 A. Yes, ma'am, it is.

4 MS. JORDAN: Your Honor, at this time we would move
5 to admit State's Exhibit Number 5.

6 MS. PRICE: Without objection.

7 MR. RUDASILL: Without objection.

8 THE COURT: It's admitted.

9 (Whereupon, State's Exhibit Number 5 was admitted
10 without objection.)

11 Q. (By Ms. Jordan) Just briefly, as to State's Exhibit
12 Number 5, did you go through Ms. Dockery's rights with her
13 prior to speaking with her?

14 A. Yes, ma'am, at ten forty-five (10:45) that morning I
15 did.

16 Q. Okay. And just in the standard -- what is your
17 standard technique for going through the individual rights
18 with them?

19 A. I would always turn the form, so, that the person
20 could read along with me while I went over the form. But I
21 would read the form to them, go through each line with them
22 and have them sign it.

23 There are two different places for the person to
24 sign. Would you like me to read those to you or just go
25 through them?

1 Q. I think it's okay. The jury is going to read them
2 in this case.

3 A. Okay. Thank you.

4 Q. Did you read her rights to her?

5 A. I did.

6 Q. Did she indicate by her signature that she
7 understood those rights?

8 A. Yes, she did.

9 Q. Did she indicate, by a subsequent signature, that
10 she understood those rights and wished to waive them and speak
11 with you?

12 A. She did.

13 Q. Okay. During your time with Ms. Dockery, did she
14 make any statements as to the injuries that **Minor Child** received?

15 A. Yes, she did. She told me about the -- the day that
16 -- that she took the baby to the hospital and they found that
17 he had a skull fracture.

18 She said that it must have occurred that morning
19 when she was taking a bath with the baby.

20 Q. Okay.

21 A. She said that she had dropped the baby.

22 Q. Prior to making the admission that she must have
23 dropped the baby, did she deny harming the child?

24 A. Yes. She'd been denying for quite a while that she
25 had done anything. She tried -- I think she tried to say that

1 maybe her daughter, the child, had done something like that.

2 Q. Okay. Did she give you -- did she talk to you about
3 Catherine, who was the two-year-old, about any incidents that
4 she had witnessed?

5 A. Yes. She talked about -- I think she said that
6 Catherine played rough with the child and that Catherine
7 dumped the baby out of the swing and jumped on the baby, with
8 her -- with her knees on her chest, things like that.

9 Q. Okay. Did you talk with her about the various
10 injuries that the child had?

11 A. Yes, I talked about them. There was also --
12 obviously, the -- the -- the one that was most present at that
13 time was the skull fracture, but there -- there also appeared
14 to be other injuries that had been -- that were in varying
15 degrees of healing and -- and some rib fractures and things.

16 Q. Did you speak with her -- or can you give the jury
17 more detail about the comments she made regarding dropping
18 **Minor Child** in the -- in the bathtub?

19 A. Yes. She said that she'd gotten up. She got up out
20 of the bathtub and apparently she was holding the baby. And
21 she stood up and she -- I think she said she got dizzy and
22 that she dropped the baby. And the baby fell between the tub
23 and the sink and -- and fell somehow between the tub and the
24 sink.

25 Q. Did she -- did she make any comments about any

1 medication she had taken that day?

2 A. She talked about having taken Lortab pills. She's
3 -- I've got listed here she indicated she had taken seven
4 point (7.) -- twelve (12), seven point five (7.5) milligram
5 Lortab pills in a span of about six (6) hours.

6 Q. Okay. What did -- after she talked to you about
7 dropping the baby in the bathtub, what she indicated happened,
8 -- or what did she indicate that she did with him?

9 A. Well, I asked her about seeking medical attention
10 for the child and she said that she didn't think it was
11 necessary because the baby wasn't crying that much. And she
12 said she, then, went and took a nap around eleven (11:00) a.m.

13 Q. Okay. Did she -- towards the end of your interview
14 with her, did she recant her statement about dropping the
15 baby?

16 A. After -- I don't remember exactly how long, but she
17 did recant her statement and said that that was all a lie;
18 that she didn't know how the baby had gotten injured.

19 MS. JORDAN: Okay. Please answer any questions Mr.

20 Rudasill or Ms. Price may have for you.

21 (Off-the-Record Comments)

22 CROSS EXAMINATION by MS. PRICE

2:08 P.M.

23 Q. Mr. Morgan, kids roughhouse, don't they?

24 A. Yes, ma'am, yeah.

25 Q. Okay. And sometimes older brothers and sisters

1 like to play with little brothers and sisters, don't they?

2 A. Yes, ma'am.

3 Q. And sometimes it does get a little out-of-hand,
4 doesn't it?

5 A. I'm sure, uh-huh (affirmative).

6 Q. And sometimes that roughhousing and playing could --
7 could lead to small fractures; isn't that right?

8 A. I'm -- I'm sure it could.

9 Q. Okay. Now, Mr. Morgan, going back to Ms. Dockery's
10 statements, where she started talking about taking the pain
11 medication, you were actually the one in your interview that
12 suggested that maybe she was under the influence at the time
13 of this; is that right?

14 A. I -- I did mention that possibly she was being
15 affected in some way by the medication.

16 Q. Okay. And it -- it was only at that point that she
17 started talking about being dizzy; is that -- is that right?

18 A. Probably. I don't remember exactly.

19 Q. Okay. I -- I know it's been a long time. I have a
20 copy of your report. Would it help if you reviewed that for a
21 moment?

22 A. I'm sorry. You have what?

23 Q. I have a copy of your investigation report. Do you
24 remember making that?

25 A. Yes, I've got that.

1 Q. Oh, okay. But -- and you said -- you said on your
2 direct examination, that she at some point recanted her story?

3 A. Yes.

4 Q. Okay. Did she, at any time, offer to add to her
5 story in any way?

6 A. After she recanted?

7 Q. Uh-huh (affirmative).

8 MS. JORDAN: Your Honor, may we approach?

9 THE COURT: Yes.

10 (Whereupon, a bench conference was had with all
11 attorneys present.)

12 Q. (By Ms. Price) Mister -- Mr. Morgan, going back to
13 your direct testimony, you said that Miss -- Tina initially
14 talked about how she dropped the baby?

15 A. Yes.

16 Q. Okay. And your -- and she talked about being dizzy
17 after you suggested that maybe she was under the influence; is
18 that right?

19 A. Yeah, she talked about being dizzy. I'm not sure
20 exactly when -- when that came in, but we did talk about her
21 taking medication and that the medication may have had some
22 effect on her ---

23 Q. Okay.

24 A. --- on her thinking.

25 Q. Okay. So, you all talked about that, and, then, at

1 some subsequent point in the interview, you said that she
2 recanted?

3 A. Yes.

4 Q. And that she didn't know what happened to **Minor Child**

5 A. That's correct.

6 Q. Did she offer any other way that he might have
7 gotten hurt?

8 A. After recanting?

9 Q. Yes.

10 A. I don't have anything in my notes where she had
11 offered anything else.

12 Q. Okay.

13 MS. PRICE: That's all I have. Thank you.

14 MR. RUDASILL: May it please the Court?

15 THE COURT: Mr. Rudasill?

16 CROSS EXAMINATION by MR. RUDASILL:

2:13 P.M.

17 Q. Mr. Morgan, at the time that you were talking with
18 Ms. Dockery, you indicated that you had been briefed by
19 Detective Cantrell, correct?

20 A. Yes, sir.

21 Q. Do you recall whether you had any of the photographs
22 that had been made at the residence where Scott and Ms.
23 Dockery were residing on October the 25th?

24 A. I don't have an independent recollection of it, but
25 if those photos were available at that time, then, I would

1 have looked at them prior to talking with Ms. Dockery.

2 Q. And, specifically, there have been -- well, the
3 photograph which I'm looking for and I think I've just found,
4 which would be State's Exhibit 18 and State's Exhibit 17.

5 (Exhibits shown to the witness.)

6 Q. Does that refresh your recollection as to whether
7 you had seen either one of those photographs prior to the
8 interview?

9 A. I'm sorry, no, not really.

10 Q. Okay. Then, I'll not follow that then if you don't
11 have a recollection.

12 Based on the briefing that you had been given, when
13 you were talking to Ms. Dockery and she was explaining about
14 the medication that she had taken, in that short time span
15 that had caused her to become dizzy, did it seem consistent
16 with what you knew about at least some of the injuries that
17 related to **Minor Child**

18 As she was describing what happened when she dropped
19 **Minor Child** in the bath in the bathroom or the bathtub, did it
20 seem consistent with what your understanding was concerning
21 the bilateral skull fracture?

22 (Brief Pause)

23 A. I'm -- I'm sorry, I really can't -- can't understand
24 exactly ---

25 Q. Okay. Well, let me try to rephrase it again. Did

1 the explanation that she was giving you -- recanted for the
2 jury -- excuse me.

3 Not recanted, but told to the jury -- with regard to
4 her explanation of what happened, that she'd taken the drugs,
5 stood up, was dizzy from taking too many pills, and dropped
6 **Minor Child** And he landed on the side of the tub between the
7 faucet (sic) and the cabinet.

8 Did you believe that to be consistent with some of
9 the background information that you had received from
10 Detective Cantrell regarding **Minor Child** injuries?

11 A. No, sir. I -- I can -- I can say that I didn't
12 believe that that's what actually happened. I believe that it
13 was an -- an excuse that she -- or some way of explaining how
14 that injury occurred.

15 I don't remember at the time, though, whether or
16 not, if I knew the extent of the skull fracture, exactly; you
17 know, what -- what the doctors had said.

18 I can't recall at this time. But, whether or not
19 dropping a child and hitting the head on the side of the tub,
20 would that have been consistent with the skull fracture, I
21 can't really say for sure.

22 Q. So, you -- but you -- you don't have a recollection
23 as to whether you had the photographs that would have shown
24 the configuration of the bathtub in relation to the cabinet or
25 the edges that would be there, anything of that nature; is

1 that correct?

2 A. I -- I don't have a recollection of whether I saw
3 them first.

4 Q. All right. And, as she told you this, did you
5 continue to question her? Without going into anything beyond
6 what was said, did you continue to question her about the
7 mechanics, of any of the injuries, that had occurred that day?

8 A. I -- I talked to her about the -- I'm not sure, if
9 it came in before the dropping the baby part, but we talked
10 about how the child had some injuries -- some rib fractures
11 and apparently had had some earlier fractures before the skull
12 fracture.

13 We talked about her lack of seeking medical --
14 medical attention. And she said that, since the baby didn't
15 cry that much, she figured the baby wasn't really hurt.

16 I knew that, that could not really be consistent
17 because a rib fracture is such a -- such a painful injury that
18 the child wouldn't have even been able breathe without being
19 in extreme pain.

20 Q. And I'm certain that you followed up, when you were
21 told, with regard to the amount of medication that she had
22 taken in that short period of time, as I believe you indicated
23 being under the influence might affect her ability as far as
24 judgement or things of that nature concerning these injuries,
25 correct?

MR. DANNY MORGAN - RECROSS by MS. PRICE

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1 A. Yes, sir. I did go into that, which is not -- when
2 a person is denying and denying and denying, sometimes a
3 window of opportunity to help them save face, if you will; to
4 give them the ability to be able to say, "Okay, I did, but
5 maybe I'm not really responsible because of this."

6 That's where I would have, you know, entered into
7 the possibly the medication may have affected how you were
8 thinking that day.

9 Q. And, as a matter of fact, that's when she opened up
10 to you and told you about standing up, getting dizzy, and the
11 baby being dropped in some fashion at that point in time?

12 A. Yes, sir. I do have that in my notes that it was
13 that, after we mentioned about the medication, that's when
14 she's talked about standing up and getting dizzy.

15 MR. RUDASILL: Thank you, sir.

16 THE COURT: Ms. Price?

17 MS. PRICE: Thank you, Your Honor.

RECROSS EXAMINATION by MS. PRICE

2:18 P.M.

19 Q. Mr. Morgan, are you a doctor?

20 A. No -- no, ma'am.

21 Q. Okay. So, you -- and you're not an expert in pain
22 management, are you?

23 A. No, ma'am.

24 Q. Okay. But it's -- it's your opinion here today that
25 a broken rib would cause a baby to cry?

1 A. It -- I've never had a broken rib, but it caused me
2 to cry when I got hurt. I've had my ribs hurt and it was very
3 painful, so, I was speaking from personal ---

4 Q. But you're an adult, right?

5 A. Yes.

6 Q. And **Minor Child** just a baby, right?

7 A. Yes.

8 Q. And baby bones are a lot different than adult bones,
9 aren't they?

10 A. I don't know that; yes, I'm -- I'm assuming.

11 Q. Okay.

12 MS. PRICE: That's all I have.

13 THE COURT: Ms. Jordan?

14 MS. JORDAN: May Mr. Morgan be excused?

15 THE COURT: He may be.

16 MS. JORDAN: Thank you, Your Honor.

17 THE COURT: Thank you. You may step down.

18 (The witness complied with the Court's request.)

19 MS. JORDAN: Your Honor, at this time the State
20 would rest.

21 THE COURT: All right. Ladies and gentlemen, that
22 is all of the testimony or other evidence to be offered
23 by the State, at least in their case in chief.

24 Before we go further, I've got a couple of matters I
25 need to address with the lawyers. It should take only a

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1 few moments.

2 So, I'll ask you to, please, go to your jury room.
3 Do not begin discussing the case. Once I've concluded
4 with those matters, I'll bring you back to continue with
5 the trial.

6 (Whereupon, the jury exited the courtroom at 2:20
7 p.m.)

8 **THE COURT:** All right. Any motions or any matters
9 to address before we continue, Ms. Price?

10 **MS. PRICE:** Yes, Your Honor. At this point, I would
11 like to make a motion for a directed verdict on behalf of
12 Ms. Dockery based upon our previous arguments and motions
13 and objections.

14 **THE COURT:** All right. That motion is denied. Mr.
15 Rudasill?

16 **MR. RUDASILL:** I would move for a directed verdict
17 of acquittal, with regard to Mr. Moore, on the basis that
18 there has not been any direct evidence introduced to
19 establish that Mr. Moore has inflicted any of these
20 injuries, with the exception of the burn to the bottom of
21 the left foot.

22 And based, on the testimony of Dr. Robinson, I
23 believe, who was the pediatrician from Greenville
24 Hospital Systems, he acknowledged that, that was not --
25 could not be construed as any type of life endangering

1 injury;

2 That it appeared to be a redness similar to sunburn
3 or could be similar to a sunburn, the kind of injury
4 where it was red.

5 So, with regard to count two of the indictment, the
6 great bodily injury, there's no evidence in the record at
7 all that indicates that any of these injuries came about
8 as a result of anything that Scott Moore did to inflict
9 those injuries.

10 And, for that reason, I would move for a directed
11 verdict of acquittal.

12 THE COURT: Well, there is some evidence, including
13 a statement made by Mr. Moore, that he dropped the child
14 on the child's head, which did cause an injury that the
15 doctor testified to was life threatening.

16 MR. RUDASILL: Your Honor, I would beg to disagree.
17 There's not any testimony about him dropping the baby on
18 its head.

19 There was a statement that he dropped the baby. And
20 that was in -- also acknowledged by law enforcement that
21 they did not believe the statement was true, which we
22 just heard from Detective Denton.

23 So, there was nothing that I'm aware of that he
24 dropped the baby on its head.

25 THE COURT: Well, I think from the evidence you can

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1 infer that that was drop that caused the damage to the
2 head, if it was true.

3 So, there's some evidence. So, your motion for
4 directed verdict is denied.

5 MR. RUDASILL: All right, sir.

6 MS. PRICE: Your Honor, my client has indicated to
7 me that she wishes to testify on her own behalf. So, I
8 think this is the probably the appropriate time to go
9 over her rights as far as that's concerned.

10 THE COURT: All right. Ms. Dockery, Ms. Price has
11 just indicated that she has discussed with you your right
12 to testify or not during the course of this trial. Have
13 you discussed that right with her?

14 MS. DOCKERY: Uh-huh (affirmative), yes, yes, sir.

15 THE COURT: And has she explained to you that you
16 have an absolute right to remain silent?

17 MS. DOCKERY: Yes, sir.

18 THE COURT: And that you also have an absolute right
19 to take the witness stand and testify if you wish to.

20 MS. DOCKERY: Yes, sir.

21 THE COURT: Has she explained to you that you are
22 the one that makes that decision?

23 MS. DOCKERY: Yes, sir.

24 THE COURT: In other words, nobody can make you
25 testify or not testify. You have the choice.

1 You get to testify if you wish to, but you can't be
2 required to. You have an absolute right to remain
3 silent. Do you understand?

4 MS. DOCKERY: Yes, sir.

5 THE COURT: Have you discussed with Ms. Price the
6 advantages and disadvantages of testifying as well as not
7 testifying?

8 MS. DOCKERY: Yes, yes, sir.

9 THE COURT: And do you appreciate what those
10 advantages and disadvantages are?

11 MS. DOCKERY: Yes, sir.

12 THE COURT: And have you had time to reflect upon
13 your decision as to whether or not you will testify?

14 MS. DOCKERY: (Shakes head negatively) No, sir.

15 MS. PRICE: Have you had time to think about this,
16 whether or not you will testify?

17 MS. DOCKERY: Yes, sir.

18 THE COURT: Well, that's what I meant when I said
19 have you had time to reflect upon your decision. In
20 other words, have you had time to sit down and decide
21 whether or not you want to testify?

22 MS. DOCKERY: Yes, sir.

23 THE COURT: And have you made a decision?

24 MS. DOCKERY: Yes, sir.

25 THE COURT: And what decision have you made?

1 MS. DOCKERY: I want to testify.

2 THE COURT: And has anybody forced you into that --
3 into that decision?

4 MS. DOCKERY: No, sir.

5 THE COURT: Has anybody suggested that that's what
6 you need to do in this case?

7 MS. DOCKERY: No, sir.

8 THE COURT: Did you make that decision of your own
9 free will and accord?

10 MS. DOCKERY: Yes, sir.

11 THE COURT: And you're satisfied with it?

12 MS. DOCKERY: Yes, sir.

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

14 MR. RUDASILL: Your Honor, while we're at the point
15 of the jury being out, Mr. Moore has also indicated to me
16 that he wishes to testify. And it would be appropriate
17 for you to ask similar questions to him.

18 THE COURT: All right. Mr. Moore, Mr. Rudasill has
19 indicated that he and you have discussed your right to
20 testify. And you've indicated to him that you wish to
21 testify; is that true?

22 MR. MOORE: Yes, sir.

23 THE COURT: Do you understand and did he discuss
24 with you the fact that you have an absolute right to
25 remain silent?

1 MR. MOORE: Yes, sir.

2 THE COURT: Do you understand nobody can make you
3 testify; only you can make that decision?

4 MR. MOORE: Yes, sir.

5 THE COURT: Have you and he discussed the advantages
6 and disadvantages of testifying and whether or not to
7 testify?

8 MR. MOORE: Yes, sir.

9 THE COURT: And you appreciate what those advantages
10 and disadvantages are?

11 MR. MOORE: Yes, sir.

12 THE COURT: And have you had time to think about
13 your decision as to whether or not you'll testify?

14 MR. MOORE: I have.

15 THE COURT: And have you made a decision?

16 MR. MOORE: Yes, sir.

17 THE COURT: And what is your decision?

18 MR. MOORE: To testify.

19 THE COURT: And is that a decision that you made of
20 your own free will and accord?

21 MR. MOORE: Yes, sir.

22 THE COURT: Did anybody suggest to you that that's a
23 the decision you ought to make in this case?

24 MR. MOORE: No, sir.

25 THE COURT: Has anybody pressured you into that

1 decision?

2 MR. MOORE: No, sir.

3 THE COURT: You made it on your own?

4 MR. MOORE: Yes, sir.

5 THE COURT: Are you satisfied with it?

6 MR. MOORE: Yes, sir.

7 THE COURT: All right. Thank you. Be seated. All
8 right. Anything else before the jury comes back?

9 MS. JORDAN: Nothing from the State, Your Honor.

10 MS. PRICE: Nothing from Ms. Dockery.

11 MR. RUDASILL: Nothing from Mr. Moore.

12 THE COURT: Do we have other witnesses besides the
13 two defendants?

14 MS. PRICE: I don't have anybody.

15 MR. RUDASILL: I have one additional witness, Your
16 Honor.

17 THE COURT: Okay. All right. Bring the jury back,
18 please.

19 (The bailiff stepped out to summon the jury.)

20 (Whereupon, the jury entered the courtroom at 2:26
21 p.m.)

22 THE COURT: Now, ladies and gentlemen, as you know,
23 the State has rested in their presentation of evidence.
24 So, we'll now proceed with any to be offered by either or
25 both of the Defendants. Ms. Price?

1 MS. PRICE: Your Honor, the Defense calls Tina
2 Dockery.

3 (The witness stepped forward to be sworn.)
4 (Whereupon,

5 TINA DOCKERY
6 first being duly sworn, testified as follows:)

7 THE COURT: You will need to get a little bit
8 closer. Just pull up to that microphone and speak into
9 it. And speak out, so, we can hear you.

10 MS. PRICE: Thank -- thank you, Your Honor.

11 DIRECT EXAMINATION by MS. PRICE: 2:28 P.M.

12 Q. Would you, please, state your full name for the
13 record, so, that the court reporter can get that, please?

14 A. Tina Michelle Dockery.

15 Q. Ms. Dockery, how old are you?

16 A. Thirty-six (36).

17 Q. And, Ms. Dockery, do you have any children?

18 A. Yes, I do.

19 Q. How many?

20 A. Three (3).

21 Q. What are their names?

22 A. Catherine and Minor Child and Gabriel.

23 Q. And how old are Catherine, Minor Child and Gabriel?

24 A. Seven (7), five (5), and two (2).

25 Q. You -- where is -- where are Catherine and Minor Child

1 now if you know?

2 A. They're in DSS custody.

3 Q. And where is Gabriel?

4 A. He's with me.

5 Q. So, he lives with you?

6 A. Uh-huh (affirmative), yes, ma'am.

7 Q. Has he always lived with you?

8 A. Yes, he has.

9 Q. Okay. Ms. Dockery, do you know Mr. Leonard Scott
10 Moore?

11 A. Yes, I do.

12 Q. How do you know him?

13 A. He is my kids' dad. He's my ex-boyfriend.

14 Q. Which kids?

15 A. **Minor Child** and Catherine.

16 Q. Okay. So, he's not Gabriel's father?

17 A. No, no, ma'am.

18 Q. Okay. Ms. Dockery, just a little bit more about
19 your -- well, we will go on from there. How is it that you
20 came to meet Mr. Moore if you remember?

21 A. I think my brother, maybe my brother.

22 Q. Okay. And you subsequently had two children with
23 the gentleman; is that right?

24 A. Yes, ma'am.

25 Q. And that would be the aforementioned Catherine and

1 **Minor Child**

2 A. Yes, ma'am.

3 Q. And when was Catherine born?

4 A. She was born April 23rd, two thousand and three
5 (2003).

6 Q. And when was **Minor Child** born?

7 A. June 22nd, two thousand, five (2005).

8 Q. And, at that time that Catherine and **Minor Child** were
9 born, in -- in October of two thousand, five (2005), which is
10 the date we're talking about in this proceeding, where were
11 you living?

12 A. I was living -- we had two homes. We're --- we lived
13 on Long Road (phonetic), right down there. Then, we moved to
14 Clifton.

15 Q. And, when you say "we," who do you mean?

16 A. Scott, me, and the kids.

17 Q. The kids? Which kids?

18 A. Catherine and **Minor Child**

19 Q. Okay. And in October of two thousand, five (2005),
20 Catherine was two years old and **Minor Child** was four months old;
21 is that right?

22 A. Yes, ma'am.

23 Q. Okay. Now, I'm going to take you back to October of
24 two thousand and five (2005), on October 24th specifically.
25 What do you remember about that day?

1 A. Went -- I was -- I got up I believe it was like nine
2 (9:00) or something like that, got dressed, changed **Minor Child**
3 diaper.

4 Q. Well, let me stop you just a minute. Was October
5 24th the you went to the dentist?

6 A. Oh, yes, ma'am. Yes, ma'am.

7 Q. Okay. And why did you go to the dentist?

8 A. I had a toothache.

9 Q. Could you repeat that?

10 A. I got a toothache.

11 Q. Okay. You had a toothache?

12 A. Yeah.

13 Q. And what did the dentist do to the tooth?

14 A. He -- he pulled my tooth.

15 Q. Okay. Were you prescribed any medication?

16 A. Yes, ma'am.

17 Q. What were you prescribed?

18 A. Lortab.

19 Q. How many?

20 A. Twelve (12) I think -- twelve (12).

21 Q. Did you get that prescription filled?

22 A. Yeah -- yes, ma'am.

23 Q. When did you get it filled?

24 A. The same day I'm thinking, the same day.

25 Q. October 24th?

1 A. I think yeah.

2 Q. Okay. On October the 25th, that's the next day, now
3 you can get into what exactly happened on that day. That's
4 the day you took **Minor Child** to the hospital. **Minor Child** was in the
5 hospital; is that right?

6 A. Yes, ma'am.

7 Q. Okay. What do you remember about that day starting
8 from the beginning?

9 A. I remember getting up, changing his diaper, giving
10 him his bottle, gave him something to eat, laying back down,
11 getting in the bathtub -- or Scott leaving and, then, getting
12 in the bathtub.

13 Q. Okay. So, Scott left before you got in the bathtub?

14 A. Yes, ma'am.

15 Q. Okay. And, at that -- at this point of the day, do
16 you remember about what time it was?

17 A. That I got in the tub?

18 Q. Yes.

19 A. It was about twelve (12:00) or one (1:00), something
20 like that. I can't remember.

21 Q. Okay. Did -- when -- those Lortab that you were
22 prescribed by the dentist, when did you take those?

23 A. What day?

24 Q. When?

25 (Brief Pause)

1 A. I'm not sure. I think it was later on that day.

2 Q. You think it was later on the day of the 25th or the
3 24th?

4 A. The 25th.

5 Q. Okay.

6 A. But I took some on the 24th too. I'm just saying
7 that on that day, I took you know -- that I took some that
8 day.

9 Q. Okay. How many Lortab did you take?

10 A. Which -- on the 24th or the 25th?

11 Q. Either one.

12 A. On the 24th I think I took about four (4) of them or
13 five (5). No, I took...

14 (Brief Pause)

15 A. I think I took six (6) on the 25th -- on the 24th.
16 And on the 25th I took the rest of them.

17 Q. Okay. Did you take the rest of them before or after
18 you bathed the children?

19 A. It was after. I think it was after, yeah.

20 Q. It was after you bathed the children?

21 A. Yeah, yes, ma'am, I think it was.

22 Q. Well, let's get back to that day. Could you
23 describe exactly what -- what you did?

24 A. Yeah. I ran the water and me and the kids got in.
25 And Catherine was dancing in the mirror. She was a naked

1 little girl. She was looking towards the mirror and dancing
2 and singing. And I was bathing **Minor Child**

3 And, I washed him and we got out. And I got him
4 ready; put powders the him, put a diaper on him, put lotion on
5 him.

6 Q. At -- at some time, did you drop Christen --

7 **Minor Child** Excuse me.

8 A. No, ma'am, I did not.

9 Q. You didn't? You never dropped him?

10 A. No, ma'am, I did not. No, ma'am, I didn't.

11 Q. We've heard testimony about a wet white tee shirt.

12 Do you remember that?

13 A. I don't -- I can't remember that. I don't.

14 Q. Okay. Now, it's your test -- if I understand you
15 correctly, you had six (6) Lortab after you bathed the
16 children; is that right?

17 A. Yes, ma'am.

18 Q. Okay. At some point on the 25th, did you go back to
19 the hospital?

20 A. I went to the ER on the 25th I think it was.

21 Q. Why?

22 A. My ear on the right was still hurting real bad ---

23 Q. Okay.

24 A. --- the back of my ear.

25 Q. But you still had Lortabs left, is that right?

1 A. Yeah, some of them I think. I can't recall. It's
2 been -- it's been a while back.

3 Q. Now, at some point on the 25th, you came home from
4 the hospital; is that right?

5 A. Yes, ma'am.

6 Q. What time was that if you remember?

7 A. When I got home from the hospital?

8 Q. Yes.

9 (Brief Pause)

10 A. Five (5:00), five (5:00) something.

11 Q. Okay. Now, earlier in the day when you were taking
12 care of **Minor Child** Scott was not home; is that right?

13 A. Yes, that's right.

14 Q. Okay. When you went to the hospital, who all was at
15 the home?

16 A. Scott and Catherine and **Minor Child** And I think his
17 daddy came over there.

18 Q. Okay.

19 A. But I can't remember.

20 Q. But Scott was there with the children?

21 A. Yes, ma'am.

22 Q. Okay. How long were you gone for approximately to
23 the hospital?

24 A. It wasn't long. It wasn't long.

25 Q. Well, was it hours, minutes, do you remember?

1 A. A couple -- maybe a couple of hours.

2 Q. Okay. When you got home, what did you do?

3 A. I came in and took my shoes off. I think I went --
4 I was going to kiss **Minor Child** and see what he was doing, but
5 Scott told me not to pick him up because he just got him to
6 sleep. And I picked him up anyway because he was; (makes
7 sniffing noise) you know, doing that.

8 And I picked him up and I sat on the couch and I put
9 him on my right -- on my right knee. And I seen his head
10 swollen.

11 Q. Okay. Could you describe that swelling, please?

12 A. It -- it was -- his head was just swollen. It was
13 swollen up. And I thought -- you know, I'm not a doctor and I
14 thought, you know, a blood clot or something like that. And I
15 asked him what happened and he said that he didn't know.

16 But I said, "Are you sure about that?" And he said,
17 "You think I would do something to hurt my own kid?" And I
18 said, you know, "No." But he didn't say anything about the
19 burn.

20 Q. Okay. Well, at some point, did you all decide to
21 take **Minor Child** to the hospital?

22 A. Yeah, I made him get up and take him.

23 Q. Okay. And who all went to the hospital?

24 A. Me and him and my two babies.

25 Q. Okay. Now, when you all got to the hospital from

1 home, **Minor Child** was examined; is that right?

2 A. Yes, ma'am.

3 Q. Okay. We've heard testimony from Detective Cantrell
4 that she came into your hospital room and -- when **Minor Child** was
5 having some blood drawn; is that right?

6 A. Uh-huh (affirmative).

7 Q. Do you remember her coming in?

8 A. Yes, ma'am.

9 Q. Do you remember what you were doing?

10 A. Yeah, I was watching Catherine turning my head. I
11 don't like to see blood pumped, huh-uh (negative).

12 Q. You've also heard her testimony saying that you were
13 unemotional?

14 A. No, I was in shock really because I don't -- I
15 didn't know what to do. I didn't know what to think.

16 Q. Okay. When the doctor came in there and told you
17 that Christen -- **Minor Child** was injured with -- on his skull and
18 ribs and a broken femur, what -- what did you think -- how did
19 you think he got hurt?

20 A. I knew Scott done it.

21 Q. Why do you believe that?

22 A. Because I know didn't do it and I wasn't even there.

23 Q. You've also heard testimony today that these -- that
24 these injuries were -- did not -- probably did not occur at
25 the same time due to the amount of healing.

1 A. Yeah, I heard that, yes, ma'am.

2 Q. Okay. Do you know how long **Minor Child** had his ribs
3 broken?

4 A. The only thing I could think was he used to play
5 rough with -- with Catherine too when she was smaller. But he
6 would throw **Minor Child** up and catch him. And **Minor Child** would be
7 bouncing like this right here (demonstrates). Or he would get
8 him -- he would get him and he would have **Minor Child** -- and he'd
9 get him by the arms right here (demonstrates) and flip him
10 over and over and over and over (demonstrates). And his daddy
11 talked to him about it. And I told him, "Stop it, stop it,
12 stop it." And he would ---

13 Q. How long did that go on?

14 A. He wouldn't do it in front of me. I don't know if
15 he done it while I was gone. But he -- he done that.

16 Q. Okay.

17 MR. RUDASILL: Your Honor, I'm going to enter an
18 objection. If he didn't do it in front of her, she has
19 no a first-hand observation of it. And I would move to
20 strike.

21 THE COURT: All right. Well, Miss -- Ms. Dockery,
22 you can't testify as to what somebody else told you
23 might have occurred on some occasion.

24 But you can testify as to what you observed --

25 A. Okay.

1 THE COURT: --- or what Mr. Moore said to you or
2 told you?

3 A. Well, I -- I seen him doing that.

4 THE COURT: Okay.

5 A. That's what I told him to stop.

6 Q. (By Ms. Price) How old was **Minor Child** when that
7 happened?

8 A. He was three (3) or four (4) months old.

9 Q. Okay. Do you remember Detective
10 Cantrell coming out to your house a -- a few days -- excuse
11 me. Do you remember her coming and telling you that your
12 children had been taken into emergency custody?

13 A. Yes, yes, ma'am.

14 Q. What were your thoughts about that?

15 A. I didn't know what to think. I was scared because I
16 wanted to get them back, you know? Because, I mean, I didn't
17 do anything and I wanted to get them back and get them home.

18 (Brief Pause)

19 Q. Subsequent -- excuse me. A little later on,
20 Detective Cantrell, she came out with the search warrant for
21 your house; is that right?

22 A. Yes, ma'am.

23 Q. Okay. And she talk to you about food in your house;
24 is that right?

25 A. Yes, ma'am.

1 Q. And you said that you had run out of food; is that
2 right?

3 A. Yeah, yeah, yes, ma'am.

4 Q. When was that?

5 A. Like the day before that. And we'd go to his
6 parents house and they would help us out. You know, we'd go
7 eat or whatever. And, then, we would come home.

8 Q. You ate at his mom's and dad's house a lot?

9 A. Yes, ma'am.

10 Q. Okay. And you also heard testimony about bags of
11 trash being in your house?

12 A. Yeah.

13 Q. Why was there bags of trash in your house?

14 A. Well, the car stayed out of gas all the time. And
15 he would have to take it off, Scott would, and he didn't take
16 it off. He hadn't took it off in a couple of days.

17 (Brief Pause)

18 Q. Okay. Tina, did you break your baby's ribs?

19 A. No, I did not.

20 Q. Did you break his leg?

21 A. No, I did not.

22 Q. Did you drop your baby?

23 A. No, I did not.

24 Q. Why did you say you dropped your baby?

25 A. Because Scott told me to.

1 Q. Why did Scott tell you to if you know?

2 A. He told me to say that I dropped him getting out of
3 the bathtub, between the bathtub and the sink. Or we had just
4 moved in and -- and the bedroom and there's like a mattress on
5 the bed -- on the -- on the floor; you know, box -- box
6 springs. He told me to tell that I tripped over that and
7 dropped him.

8 Q. And why did you do that?

9 A. So, I would get my kids home. He told me I would
10 get him back and I believed him. I loved him, you know?

11 (Brief Pause)

12 MS. PRICE: That's all I have, Your Honor.

13 THE COURT: Let me see you all just a moment.

14 (Whereupon, a bench conference was had with all
15 attorneys present.)

16 THE COURT: Mr. Rudasill?

17 MR. RUDASILL: Thank you, Your Honor.

18 CROSS EXAMINATION by MR. RUDASILL:

3:00 P.M.

19 Q. Ms. Dockery, you recognize the lady I'm fixing to
20 walk behind and put my hand on her right shoulder?

21 (Mr. Rudasill stands behind Detective Cantrell.)

22 A. Yes, sir.

23 Q. You talked to that lady several times, did you not?

24 A. Yes, sir.

25 Q. And the other officers have testified and left, but

1 do you recall an officer named Ted Saar, S-a-a-r?

2 A. No -- no, sir.

3 Q. But you do you recognize Ms. Cantrell; correct?

4 A. Yes, sir.

5 Q. And, when you first had contact with Ms. Cantrell,
6 you were in Mary Black Hospital?

7 A. Yes, sir.

8 Q. Your child was there?

9 A. Yes, sir.

10 Q. And Scott was taking care of him?

11 A. He was ---

12 Q. Scott was with **Minor Child** when he was in the emergency
13 room -- the emergency room?

14 A. Yes, sir.

15 Q. And you were with Catherine?

16 A. Yeah.

17 Q. My understanding was you were taking care of
18 Catherine?

19 A. I cannot watch blood be -- I don't -- I don't like
20 needles.

21 Q. Were you taking care of Catherine was my question,
22 ma'am.

23 A. Yeah, I was sitting there with her.

24 Q. So, you had her with you, correct?

25 A. In the -- in the -- in the room, yeah, yes, sir.

1 Q. And Scott was with **Minor Child**

2 A. Yeah, he was getting his blood drawn.

3 Q. All right. Now, we've heard some things that
4 obviously were not in the statements that have been introduced
5 that you made and the officers have testified to here this
6 afternoon.

7 You knew you what the investigation was about
8 concerning the injuries to **Minor Child** when Detective Cantrell
9 talk to you?

10 A. (No Response)

11 Q. She told you that your son had a bilateral skull
12 fracture, correct?

13 A. Yes, sir.

14 Q. She told you that?

15 A. Yeah, and the doctor -- well, and the doctor did
16 too.

17 Q. And she also told you that you were a suspect,
18 correct?

19 A. Yeah, yes, sir.

20 Q. And you understand what that word means, "suspect"?

21 A. Yes, sir.

22 Q. That they think you may have caused the injuries to
23 **Minor Child**, that's what that word means, correct?

24 A. Yes, sir.

25 Q. And you were given your rights and given an

1 opportunity to tell them what you knew about this, correct?

2 A. Yes, sir.

3 Q. Well, you had taken some Lortab that day, the 25th of
4 October, correct?

5 A. Yes, sir.

6 Q. And you had taken some Lortab the 24th of October?

7 A. Yes, on the 24th, yes, sir.

8 Q. And the -- well, strike that. You had taken
9 actually Vicoprofen on the 25th, which is another type of
10 hydrocodone that has something else added into it differently
11 their Lortab, correct?

12 A. Yes, yes, sir.

13 Q. You had gotten twelve (12) of those, at the
14 emergency room, when you went to the emergency room before
15 **Minor Child** was taken to the emergency room, correct?

16 A. Yes, sir.

17 Q. All right. So, I'm having a little bit of a problem
18 understanding. You didn't tell Detective Cantrell that you
19 took the Lortab that you got at Palmetto was still -- that was
20 in this bottle (indicating) that has been introduced, State's
21 Exhibit 31, the prescription bottle.

22 "Tina Dockery, take one tablet every four hours."
23 And you had it filled at Eckerd's. Do you remember doing
24 that?

25 (Brief Pause)

1 A. I -- I think so.

2 Q. Well, did you drive yourself or did somebody drive
3 you there to get that?

4 A. I -- I forgot. I'm not sure if I drove myself or he
5 drove me I think.

6 Q. Do you even remember what time of day you've got
7 these?

8 A. From the dentist.

9 Q. Yes, ma'am, from the dentist, Palmetto, where you
10 had your tooth pulled.

11 A. I went -- I went early that morning. I went early
12 in the morning, so, what time had to be about three o'clock
13 (3:00).

14 Q. And, according to what you told Detective Cantrell,
15 you took two every two hours. You told her that, didn't you?

16 A. Yes, sir.

17 Q. Well, how -- if you took two every two hours, how
18 did you only take four (4) on the 24th and, then, take the rest
19 of them on the 25th, before you went back to emerg -- to the
20 emergency room to get more drugs?

21 A. I can't -- say what now? I'm sorry.

22 Q. My understanding of your testimony, in answer to
23 your lawyer's question, Ms. Price's question, was that you
24 took four (4) of the Lortab, from that prescription bottle I
25 just showed you, on the 24th when you got them?

1 A. Uh-huh (affirmative).

2 Q. And you didn't take the rest of them until the next
3 day?

4 A. I took some that night too over ---

5 Q. So, you took all of those pills that night?

6 A. No. I took some that night. I took some when I got
7 them and some that night, later on that night.

8 Q. You took two every two hours?

9 A. Of the Lortab -- yeah, two every two hours.

10 Q. And, then, on the 25th, you got up about ten o'clock
11 (10:00); is that right?

12 A. Yes, sir.

13 Q. And Scott left?

14 A. Yes, sir.

15 Q. Does the baby crying upset you?

16 A. No.

17 Q. That doesn't -- you didn't have any problem -- you
18 never had a problem with **Minor Child** crying and upsetting you?

19 A. The only time he cried was when he was wet or Scott
20 had him.

21 Q. Never made any statements about, "If you don't quit
22 crying, I'm going to do something to you"?

23 A. To **Minor Child**

24 Q. To **Minor Child**

25 A. No, huh-uh (negative).

1 Q. Do you know Scott's sister, Sharon?

2 A. Well, yeah, kind of. I don't know, know her.

3 Q. Do you recall her coming to see the baby one day,
4 when you and your sister were there, and **Minor Child** was crying?

5 A. No, sir.

6 Q. Been doing a Lortab that day?

7 A. I don't remember her coming to the house, I mean...

8 Q. Do you remember her coming to the house and **Minor Child**
9 was crying and making a comment about what you would do to him
10 if his crying didn't stop.

11 MS. PRICE: Your Honor, I'm going to object to
12 that ---

13 A. No, sir.

14 MS. PRICE: --- unless -- unless this lady is going
15 to come in and testify.

16 MR. RUDASILL: She is, Your Honor.

17 THE COURT: Overruled.

18 Q. (By Mr. Rudasill) Did you make that statement?

19 A. No, I didn't.

20 Q. Did you want her to take the baby to keep you from
21 doing something to the baby?

22 A. No, I didn't.

23 Q. And you're telling me under oath that you had not
24 taken drugs on that day?

25 A. I don't remember her even coming over.

1 Q. Well, you answer my question: Did you take drugs on
2 another occasion?

3 A. No, sir. I mean...

4 Q. Only when you got them on the 24th and the 25th?

5 A. Well, not when I had **Minor Child** and Catherine.

6 Q. The ---

7 A. I mean....

8 Q. --- drugs that you took -- excuse me, the drugs that
9 you received from the hospital, when you went to -- to Mary
10 Black, you were present Investigator Kotecha testified about
11 your prescription of Vicoprofen that you got in the emergency
12 room? You were present in the courtroom when he testified
13 regarding that, correct?

14 A. He -- yes, sir.

15 Q. And you heard him say that you got that -- you --
16 you left Mary Black. You were discharged with that
17 prescription that five, eleven (5:11) p.m.; does that sound --
18 or do you remember that being accurate as to when you left the
19 emergency room?

20 A. I think so.

21 Q. And you were given twelve (12) of those right
22 before?

23 A. I don't -- I can't remember how many I got.

24 Q. Well, he said it was twelve (12) based on the
25 records that he had a copy of that he was testifying from,

1 correct?

2 A. Okay. Yes, sir.

3 Q. And did you take all of those pills that afternoon
4 after you got home?

5 A. Sir, no, no, sir.

6 Q. Well, where were they when they came to your house
7 with a search warrant to try to find the bottle of pills?

8 A. I can't remember. They might have been in the car.
9 I know Scott wanted some of them.

10 Q. But you are asked about those drugs by Detective
11 Cantrell, weren't you?

12 A. Yeah, yeah, yes, sir.

13 Q. And they wanted that prescription bottle, didn't
14 they? They looked for it when they came into the house to
15 search and when they took the wet T-shirt and some -- the
16 other things?

17 A. (No response)

18 Q. They looked for the prescription bottle that you got
19 at the ER, didn't they?

20 A. Yes, sir.

21 Q. And you couldn't show them where it was or produce
22 it, could you?

23 A. No, I -- I couldn't.

24 Q. And you told them you took all those drugs too?

25 A. No, because I gave Scott some of them.

1 Q. Well, you denied that?

2 A. Scott took some of the Vi -- Vicoprofen when I got
3 home from the prescription center.

4 Q. Well, ma'am, when this lady asked you that question
5 (indicating), when she was taking statements and
6 investigating, you told her that you didn't give him any the
7 drugs; that you took them all?

8 A. No, he got -- he got some of them.

9 Q. Yes, ma'am, you heard that in the courtroom. But,
10 when she talked to you, that's not what was said.

11 You told her that you took all of the drugs. You
12 denied giving Scott any of those pills, didn't you?

13 A. Well, I can't remember it's been so long ago.
14 Sorry.

15 (Brief Pause)

16 Q. When you described observing Scott flip **Minor Child** as
17 you've described, you had an opportunity, again, on multiple
18 occasions with multiple law enforcement officers, to tell
19 Detective Cantrell, Detective Saar, Danny Morgan.

20 You had an opportunity to tell them the things that
21 you've testified to here today after sitting through this
22 trial for a day and a half. But you didn't tell them anything
23 about that, did you?

24 A. No, no, sir.

25 Q. You went through a Family Court proceeding, when the

1 children were put into protective custody from this event, and
2 there was nothing testified to about your observations
3 concerning Scott Moore in that Family Court proceeding?

4 A. My -- my Family Court lawyer ---

5 Q. I do not wanting to get into what you and your
6 lawyer talked about. I'm asking you whether you ever
7 testified in court to what you just told your attorney in this
8 courtroom today?

9 A. No, sir. My other lawyer wouldn't let me because it
10 would ---

11 Q. Ma'am, I am not asking you what you and your lawyer
12 talked about; I'm asking whether it occurred or not.

13 But the first time that anyone has heard the
14 allegations you just made about Scott doing something that
15 would potentially injure **Minor Child** was here today. That's the
16 first time that you've shared that with anybody was today?

17 A. I told my Family Court lawyer about it. But that's
18 been a while back. It's been like years ago.

19 Q. You wouldn't go to Scott's parents' house on October
20 the 25th with the children, would you? You refused to go?

21 A. (No Response)

22 Q. Before you went to the emergency room, Ms. Dockery,
23 you wouldn't go to Scott's parents'. You had him take you to
24 a gentleman named Kenneth Powell's house?

25 A. Uh-huh (affirmative). He said he -- he didn't want

1 me going. He was going to drop me and Catherine off.

2 Q. He didn't want you to go?

3 A. No. He was going to take **Minor Child** by himself. He
4 said, "I'll be right back."

5 Q. He told you he was taking him to the emergency room?

6 A. No, he was going to his mom's to get gas money.

7 Q. There was an argument that took place because you
8 had been in the car and had driven out the gas, had you not?

9 A. No, because there wasn't gas in it when I got in it.
10 that's why ---

11 Q. So, did you drive -- excuse me. Go ahead. I didn't
12 mean to cut you off.

13 A. I drove to the hospital and to a friend's to get
14 some -- you know, get them to take me to -- to the drugstore.
15 And, then, I just drove the car home.

16 Q. So, you drove to the hospital with your friend; that
17 would be Mr. Brown took you to get the medicine?

18 A. Yeah, yes, sir.

19 Q. Okay. But you and Scott did not get into an
20 argument about you having left and driven the gas out of the
21 vehicle?

22 A. There was no gas in the vehicle. That's why I
23 didn't drive it to the hospital and had to park it.

24 (Brief Pause)

25 Q. Regardless of whether you wanted to go or whether

1 Scott did not want to take you to his mother's, you did go to
2 Mr. Powell's house where you stayed until he came back to pick
3 you up? And that's when you went from there to the emergency
4 room, correct?

5 A. Yeah, he did come back to pick me and Catherine up
6 and went to Li'l Cricket.

7 (Brief Pause)

8 A. It's like, when we went for food, he didn't want me
9 going down there to his parents'.

10 Q. Did you have a problem going to his parents'?

11 A. No, not really. You know, me and his dad just
12 didn't get along too well.

13 Q. At any point in time, when you were questioned by
14 Investigator Morgan, the gentleman who testified here this
15 afternoon -- do you remember him?

16 A. The one who testified last with the gray hair?

17 Q. The one that testified last, correct, Danny Morgan?

18 A. I think, yes, sir, I think so, yes, sir.

19 Q. All right. You told him, when he was talking to you
20 about the medicine that you had taken, which you admitted to
21 him that you had taken those Lortabs, that, that could cause
22 your judgement to be impaired.

23 And you told him a whole different version of what
24 happened, when you were talking to him regarding **Minor Child** did
25 you not?

1 A. Like when I said I dropped **Minor Child**

2 Q. Yeah, that you -- that you got **Minor Child** in the bath
3 with you, you took a bath, you got dizzy when you stood up,
4 and that you dropped him in the bathroom.

5 A. That's because ---

6 Q. You told him that?

7 A. Yeah, because Scott told me to and I believed him,
8 to get my kids back. "Do you want the kids back?" "Do you
9 want the kids back?" And I said, "Yes, I do." And I believed
10 them. So, I went ahead and you know...

11 Q. Ms. Dockery, I've got a little problem understanding
12 how that would get your kids back, if -- if, in fact, Mr.
13 Moore said that to you. And you are admitting to a law
14 enforcement officer that you taken drugs, you were dizzy, you
15 stood up, and you dropped your son injuring him;
16 How would that make it easier for you to get your
17 kids back? You're the one that's telling the officer you did
18 those things?

19 A. To get my kids back, yes, sir.

20 Q. And that is what Scott got you to do and that's why
21 you did it ---

22 A. Yeah.

23 Q. -- was because he told you that, if you admitted to
24 it law enforcement officer that you had been on drugs, dropped
25 your son, injuring your son, that, that would get your kids

1 back?

2 A. And that's what Ms. Cantrell said. She said, "If
3 you dropped him, you can go ahead and get them back. You can
4 go ahead and get them back." I don't get in trouble. I don't
5 know. I don't ---

6 Q. Ma'am, you've -- you've just come up with that story
7 to try the shift responsibility from you ---

8 A. No, sir, I have not.

9 Q. --- onto to the daddy, onto Scott?

10 A. No, sir, I have not.

11 MR. RUDASILL: That's all the questions that I have.

12 THE COURT: Ms. Jordan?

13 MS. JORDAN: Thank you, Your Honor.

14 CROSS EXAMINATION by MS. JORDAN:

3:00 P.M.

15 Q. Ms. Dockery, you took a lot of pain medication on
16 the 24th and the 25th of October, didn't you?

17 A. (No Response)

18 Q. I mean, I think we can all agree on that; you took a
19 lot?

20 A. (No Response)

21 Q. You took a lot of pain medication on the 24th and 25th
22 of October of '05?

23 A. Okay.

24 Q. You -- you have to answer my question.

25 THE COURT: Well, you got to put it in the form of a

1 question.

2 MS. JORDAN: I'm sorry, Your Honor.

3 Q. (By Ms. Jordan) Did you take a lot of pain
4 medication on the 24th and 25th of '05?

5 A. Yes, ma'am.

6 Q. Okay. You took a lot. You may not remember exactly
7 how much, but it was a lot?

8 A. (No Response)

9 (Brief Pause)

10 Q. Let's step back a minute then. On the 25th, you
11 stated that you went to -- did you state that you went to the
12 emergency room?

13 A. Yes, ma'am.

14 Q. And why did you go?

15 A. I had a tooth pulled and it -- it was still hurting.

16 Q. Okay.

17 A. I had my ear hurting.

18 Q. Okay.

19 A. I forget which side it was; I didn't know which side
20 it was.

21 Q. And, when you came home, what did you notice?

22 A. When I came home?

23 Q. Yes.

24 A. I picked my son up.

25 Q. And, then, what did you notice about **Minor Child**

1 A. His head.

2 Q. Okay. So, you noticed that he had --

3 (Exhibit shown to the witness)

4 Q. -- this injury that's in State's Number 12?

5 A. Yes, ma'am. When I picked him up and set him on my
6 -- when I was on the couch, I put him on my --- on my right
7 knee.

8 Q. Okay. And that's not how your son normally looked,
9 is it?

10 A. No, ma'am, it is not.

11 Q. Okay. What did you do, when you saw your baby
12 looking like this, when you came home from the hospital on the
13 25th?

14 A. I asked Scott, I said, "What's on his head? What's
15 on his head?" And he said he didn't know. He said, "But, do
16 you think I'd do something -- something to hurt my own kid,"
17 and I said "No," you know.

18 And I said, "Well, you know..." I said, "I mean,
19 what is this, you know?" I said -- I mean, his head was
20 swollen up and I thought it was a blood clot because I'm not a
21 doctor.

22 But I was thinking a blood clot or something like
23 that. But, I mean, he said the same thing about, you know,
24 his foot.

25 Q. Uh-huh (affirmative).

1 Q. I said, "Well, get up. Let's go to the doctor."

2 And he said, "No, let's wait till after while or tomorrow."

3 And I said no. So, I got up. We put some stuff in the black
4 bags and I had to get going and get him something to wear.

5 Q. Okay. And why did you have to change his clothes?

6 A. I had to put clothes on him.

7 Q. Why?

8 A. Because he had I think a sleeper -- a sleeper on.

9 Q. And what did you put on him?

10 A. I can't -- I can't remember.

11 Q. I mean, is it -- is it safe to say that in these
12 photographs it looks like he's wearing a sleeper?

13 A. I can't tell. I'm sorry.

14 Q. Did you immediately take this child to the hospital
15 when you noticed those injuries?

16 A. No, not immediately I didn't. No, ma'am.

17 Q. Okay. But you saw that on your son's head
18 (indicating)?

19 A. Yes, ma'am, when I came in.

20 Q. What did you do after ---

21 A. I told him ---

22 Q. --- you saw ---

23 A. I told him to get up; I told him to get his butt up.
24 We was going back to the ER.

25 Q. Okay. Going back to the ER?

1 A. Uh-huh (affirmative).

2 Q. Okay. Did you go straight there?

3 A. No. He had to go get gas money from his mom, so, he
4 wanted to drop me and Catherine off at a friend of mine's --
5 at a friend -- at a friend -- at a friend of mine's house.

6 Q. Okay.

7 A. Sorry. So, he could go get money.

8 Q. Okay. So, you let him take your child, with these
9 injuries, while you stayed at a friend's house?

10 A. It was like up the road, I mean, not -- not any
11 distance or nothing like that, just up the road.

12 Q. Okay. But you had concerns or you stated here that
13 he had hurt your baby or that he had done these things to

14 **Minor Child**

15 A. Yes, ma'am.

16 Q. And you come home and find **Minor Child** in this position?

17 A. Yes, ma'am.

18 Q. And you let him take this child ---

19 A. To show his mom.

20 Q. --- to show his mom?

21 A. Yeah.

22 Q. You -- you did not go with him with **Minor Child**

23 A. No, he wanted to drop me off at a friend of mine's
24 house until he went and got gas money.

25 Q. Why did he drop you off at a friend's house?

1 A. I was like -- well, I don't know why he did, but me
2 and his dad don't get along that very well.

3 Q. Well, you told your attorney that you go over to his
4 parents' house to eat when you need food.

5 A. Yeah, sometimes.

6 Q. But you would not go to his parents' house when your
7 child was injured?

8 A. No. He wanted me to stay home on that -- at a
9 friend of mine's house because me and his daddy don't -- me
10 and his dad don't get along.

11 Q. Okay.

12 A. He -- can I say it what his dad ---

13 Q. No, we'll move one. You've stated that he has hurt
14 your child in the past?

15 A. Scott has, yes, ma'am.

16 Q. Scott has hurt your child in the past?

17 A. Yes, ma'am.

18 Q. You see your child was injured?

19 A. Yes, ma'am.

20 Q. And you leave him with Scott?

21 A. Are you talking about to go to a friend of mine's
22 house ---

23 Q. Yes, ma'am.

24 A. --- only one time? Yeah, he just went down the
25 road. He wanted to drop me and Catherine off while he went

1 and got gas money from his parents' house because it's
2 like...

3 (Brief Pause)

4 A. It's like four (4) houses up, about four (4) houses
5 up. It's not far, you know.

6 Q. Okay.

7 A. It's right there.

8 Q. So, when he comes back to get you, where did you go?

9 A. To the Li'l Cricket.

10 Q. Okay. Did you go to little cricket on the way to
11 Mary Black?

12 A. Yeah, yes, ma'am.

13 Q. Or did you drive to a different Li'l Cricket that
14 was kind of out of the way?

15 A. No, we went to -- they live in [REDACTED] (phonetic),
16 and there is a Li'l Cricket in [REDACTED] And they live below
17 it. And that's where we went to, right there, and got it and
18 then, we drove to the ER with us.

19 Q. Okay. Did you also pick up snacks along the way?

20 A. Yeah, I grabbed two things of chips when -- when I
21 went to pay for the gas. I think I paid for the gas. And I
22 grabbed two bags of them.

23 Q. Okay. So, your child is seated in the car ---

24 A. So, Catherine ---

25 Q. So, [REDACTED] Minor Child is seated in the car with a head injury,

1 serious enough that you believe he needs to get to the
2 emergency room, and you stopped and got snacks?

3 A. Well, we was stopped and I just grabbed -- you know,
4 I was -- I was the third person in the line, so, I just
5 grabbed them real quick. I went in and out. Catherine wanted
6 something to eat.

7 Q. We can also -- Ms. Dockery, can we also agree that
8 you gave multiple statements about what happened to **Minor Child**
9 I'll turn this off (referring to overhead projector.)

10 A. (No Response)

11 Q. Can we also agree that you gave multiple statements
12 about what happened to **Minor Child**

13 A. About dropping him?

14 Q. Yes, ma'am.

15 A. Yeah.

16 Q. Did you also give statements to -- you also gave
17 statements where you blamed the two-year-old for causing the
18 injuries to your son?

19 A. She was rough on him. She would smack him and
20 dumped him out of his car seat one time and dumped him out of
21 the swing one time.

22 Q. Did you ever stop her?

23 A. Yeah, but she's a devil (phonetic). She said don't
24 hold the baby, hold maw maw (phonetic). I mean, that's what
25 she said. And I would read to her all the time.

1 Q. But you blamed your two-year-old for causing these
2 injuries?

3 A. No, I didn't blame her for doing the injuries. I'm
4 saying that's probably -- probably the bruising because she
5 was standing one day smacking him.

6 And he had nothing but a diaper -- we had a diaper
7 on him and I was drying clothes and I heard (knocks on ledge),
8 you know. And I looked around the corner and she was over top
9 of him smacking him. And I had to stop her.

10 Q. So, the two-year-old is causing injuries to your
11 child?

12 A. (No Response)

13 Q. Catherine caused injuries to **Minor Child**

14 A. I'm not going to say she did, I'm just saying what I
15 seen her do.

16 Q. Okay. And you did nothing?

17 A. Yeah, I told her to stop. And I picked him up and
18 put him in his bassinet, I mean... And I made her sit down on
19 the -- on the couch.

20 Q. Is it safe to say that on the date of October the
21 25th that you were in pain?

22 A. Yes, ma'am.

23 Q. In pain so much that you went to the emergency room?

24 A. Yes, ma'am.

25 Q. After you had got -- got out the garden bathtub with

1 your two children?

2 A. Yes, ma'am.

3 Q. Let me go back to just your basic times with

4 **Minor Child** What were your daily activities with him?

5 A. Lord, he -- he was a good baby. He didn't cry
6 unless he -- he was hungry or wanting to be held or something
7 like that. **Minor Child** he was -- he was a good baby, a good
8 baby.

9 Q. Okay. So, you changed **Minor Child** diapers regularly?

10 A. Yes, ma'am, yeah, yeah, I did. Yes, ma'am.

11 Q. Okay. And, in changing his diaper, did you lift his
12 leg?

13 A. No, I lifted like his feet; you know, wiped him
14 clean, put powders on him.

15 Q. Did he ever cry?

16 A. No. When Scott held him, he did. I mean, I would
17 -- I would ---

18 Q. Okay. Continue.

19 A. I would hold -- I would be holding **Minor Child** because
20 like, when I would hold him, then, Scott would sit down beside
21 me and say, "Let me hold him," and he would get him.

22 And that's when -- I would sit like here --
23 (demonstrates) -- on the other end and he would say, "Let me
24 hold him." And, then, when I did, **Minor Child** would start crying.

25 And, then, I would say, you know, "Well, let me have

1 him back." And I would get him back and he would hush.

2 And he got him -- he would want him back again. He
3 got him back again, he started crying again. And, I got him
4 back.

5 I said, "Why don't he like you?" And he'd say,
6 "It's because we both got red hair," you know.

7 (Brief Pause)

8 Q. You're saying that, when you would change your son,
9 he would not cry?

10 A. No, not less he was wet or he got hungry. He never
11 cried.

12 Q. When you would touch his chest, would he cry?

13 (Brief Pause)

14 A. No, he was a good baby.

15 Q. He was a good baby ---

16 A. I mean, he wouldn't cry unless he was wet or hungry.

17 Q. So, you were saying this child was a good baby even
18 with twenty-three (23) healing rib fractures?

19 A. Well, I didn't know he had twenty-three (23) rib
20 fractures until I went to the doctor, I mean...

21 Q. Well, you know the doctor -- **Minor Child** was born on
22 June 25th of two thousand of five (2005)?

23 A. Yeah, yes, ma'am.

24 Q. Where was the next time that **Minor Child** saw a doctor?

25 A. I was taking -- I was going to take him for his ---

1 Q. Ms. Dockery, when was the next time **Minor Child** saw a
2 doctor?

3 A. At the ER.

4 Q. Okay. And, when -- how old was **Minor Child** at the ER?

5 A. Here -- about three (3) months old.

6 Q. Would it be safe to say that he was four (4) months
7 and three (3) days?

8 A. Something like -- yeah, something like that.

9 Q. Okay. And **Minor Child** never saw a doctor?

10 A. No.

11 Q. And, in those four (4) months and three (3) days,
12 **Minor Child** did suffer a burn?

13 A. Yeah, yes, ma'am.

14 Q. Okay. The burn was to his foot?

15 (Brief pause while witness examines exhibit.)

16 A. Yeah, but it's healed up a lot.

17 Q. But you never took him to have that looked at?

18 A. No, we were going to.

19 (Brief pause while witness pours water.)

20 A. What now? I'm sorry. Oh, about his foot?

21 Q. Yes, ma'am.

22 A. I was -- we was going to Hickory Knob with his --
23 with his parents because his dad has got a boat.

24 Q. Okay.

25 A. And it was summertime and I had to go dry clothes.

1 And, when I got back, he had -- he had one sock on -- on the
2 baby's foot.

3 And he had him in a carrier and I forgot which way
4 the door was in the house, but he had him -- he had him like
5 behind the -- like behind the door where the the couch was,
6 and he said, "Where's your sock at?"

7 And **Minor Child** was sitting like this right here
8 (demonstrates) you know, with his little foot out, and I
9 looked and he had one sock on his foot.

10 And I pulled it off and that's when I seen the --
11 that's when I seen the marks on the bottom of his foot right
12 here. And I said...

13 Q. You were aware of those injuries?

14 A. Yeah, when I got home, yes, ma'am.

15 Q. And you did nothing?

16 A. No. He took into his mom's house after ---

17 Q. Is his mom a doctor?

18 A. No, but ---

19 Q. Is his mom a nurse?

20 A. No, ma'am.

21 Q. Does she work in any type of medical field?

22 A. No, ma'am.

23 Q. But, he did have a burn on his foot?

24 A. Yes, ma'am.

25 Q. And, yet again, you -- you didn't take him to a

1 doctor?

2 A. No. He wanted to take him to his mom's, so, she
3 could check it out. Well, he didn't tell me that. He kept
4 telling he didn't do it. He didn't know what they were and,
5 you know...

6 Q. So, he denied causing those injuries?

7 A. Yes, he did.

8 Q. Or that injury? And he later admitted that he did?

9 A. Hold on and I'll tell you when. Yes, ma'am, he said
10 that he didn't know how it got there -- on there.

11 But he said the same thing, you -- you know, "Do you
12 think I'd do something to hurt my own kid?" And I said,
13 "No," you know.

14 And, then, he said,
15 you know, "I'm going to take him to mom's while you're
16 packing," to go to the lake. And he was going to go to his
17 mom's.

18 And his mom advised not to take him to the doctor
19 because it would be all right. And I'm thinking she put some
20 -- some kind of medicine on it. I'm not sure what kind
21 though.

22 Q. Do you remember when this happened?

23 A. No, it was -- that's when we went to Hickory knob.
24 I'm not sure what the -- I -- I remember when it happened, but
25 not -- you know, not the day.

1 Q. But you still went on vacation after your child had
2 burns on his foot?

3 A. With his parents, yeah, yes, ma'am.

4 Q. But Scott admitted that he burned the child's foot?

5 A. Well, after -- you know, on that day, he did -- he
6 did.

7 Q. And you continued to leave the baby alone with
8 Scott?

9 A. Yes, ma'am, because, accidents -- I mean, you know
10 after I found -- came home and **Minor Child** head was like that,
11 that's when I, you know...

12 Q. Okay.

13 A. I started thinking about him, you know.

14 Q. Let's go back to the 25th again; I'll take you back
15 to that day, when you came home from the hospital and you sit
16 on the couch with Scott.

17 You stated to I believe it was, to your attorney or
18 Mr. Rudasill, that you had to make Scott get up?

19 A. Yeah, I told him, "Get up. Let's go to the ER."

20 Q. Okay.

21 A. And he said, "Let's wait a little while or the next
22 day," and I said no. I didn't say it like that; I said,
23 "H-e-l-l, no."

24 Q. Okay. But he wanted to wait?

25 A. Yeah, but I said, "No, we're going back to the ER."

1 Q. Before he took this child to the emergency room?

2 A. Uh-huh (affirmative), he wanted to wait. And I
3 wouldn't let him.

4 Q. During **Minor Child** four years -- four (4) months and
5 three (3) days, that he spent with you, who cared for him?

6 A. Both of us.

7 Q. Okay. Does that mean -- did he spend the majority
8 of his time with you and with Mr. Moore?

9 A. Yes, ma'am, yes, ma'am.

10 Q. Okay.

11 (Brief Pause)

12 A. But his foot was healed up a lot on that.

13 Q. So, that's healed up a lot?

14 (Brief Pause while witness examines exhibit.)

15 Q. Did it look worse?

16 A. I mean, I wear glasses, so, I can hardly see this.

17 (Brief pause while witness examines exhibit.)

18 A. Yeah, a little bit, yeah, yeah.

19 (Brief Pause)

20 Q. Did his foot look worse than what the photograph
21 shows?

22 A. Than when I first looked at it?

23 Q. Yes.

24 A. Yeah, because that's after he burned his foot.

25 Q. So, it looked worse and you did nothing?

MS. TINA DOCKERY - REDIRECT by MS. PRICE

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1 A. Well, we took -- he took him to his mom's. We were
2 going on vacation, and his mom said it was -- you know, it
3 would be all right and put some medicine on it.

4 MS. JORDAN: Thank you, Ms. Dockery.

5 THE COURT: Ms. Price?

6 MS. PRICE: Thank you, Your Honor.

7 REDIRECT EXAMINATION by MS. PRICE:

3:17 P.M.

8 Q. And the substances that Mr. Rudasill has
9 consistently referred to as drugs, they weren't illegal, were
10 they?

11 A. No, ma'am, they were not.

12 Q. And you obtained those by prescriptions; is that
13 right?

14 A. Yes, ma'am.

15 Q. Now, granted, you did not follow the directions on
16 the bottle, did you?

17 A. No, ma'am.

18 Q. Why not?

19 A. Because I was in pain.

20 Q. Now, on October the 25th of two thousand and five
21 (2005), when you were bathing **Minor Child** and Catherine, did you
22 have -- do you have a clear recollection of that day?

23 A. Yes, ma'am.

24 Q. Even though it was five (5) years ago?

25 A. Yes, ma'am.

1 Q. Do you feel like you're under the influence of any
2 drugs?

3 A. No, ma'am, no, ma'am.

4 Q. Do you recall telling the detective that you felt
5 dizzy when you stood up?

6 A. I don't remember it.

7 Q. Okay.

8 A. I'm sorry.

9 Q. But you did not feel like you were intoxicated in
10 any way, did you?

11 A. No, ma'am.

12 Q. Okay. Now, we've also heard testimony about **Minor Child**
13 was a good baby?

14 A. Yeah, he was a good baby.

15 Q. And, when you refer to a good baby, did -- did he
16 cry a lot?

17 A. No, he didn't.

18 Q. Did he cry -- did he cry only when he was hungry?

19 A. Yeah, and when he was wet, you know.

20 Q. Okay. Did **Minor Child** ever wince or anything when you
21 picked him up?

22 A. No, but I can't remember.

23 Q. Did he act like he was hurting in any way?

24 A. No, ma'am.

25 MS. PRICE: That's all I have.

1 THE COURT: You may step down.

2 (Witness complied with the Court's request.)

3 (The witness stepped down at 3:17 p.m.)

4 THE COURT: We're going to take a short break before
5 we go further. I will ask the jury to, please, go to
6 your jury room.

7 Again, do not discuss the case. I will bring you
8 back out after the break.

9 (The jury exited the Courtroom at 3:17 p.m.)

10 THE COURT: We'll be in recess for fifteen (15)
11 minutes

12 (Whereupon, a recess was taken from 3:17 p.m. until
13 3:36 p.m.)

14 THE COURT: All right. Are we ready for the jury?

15 MS. JORDAN: Yes, sir.

16 THE COURT: Bring in the jury.

17 (The bailiff stepped out to summon the jury.)

18 (The jury entered the Courtroom at 3:35 p.m.)

19 THE COURT: All right. Ms. Price, do you have any
20 additional witnesses?

21 MS. PRICE: No, your honor.

22 THE COURT: All right. Mr. Rudasill?

23 MR. RUDASILL: Thank you, Your Honor. We call
24 Sharon Massey.

25 (The witness stepped forward to be sworn.)

1 (Whereupon,

2 SHARON MASSEY

3 first being duly sworn, testified as follows:)

4 DIRECT EXAMINATION by MR. RUDASILL:

3:36 P.M.

5 Q. Ms. Massey, state your name for the record, please.

6 A. Sharon Lynn Massey (phonetic).

7 Q. Where do you reside?

8 A. [REDACTED] (phonetic).

9 Q. What is your relationship to Scott Moore?

10 A. I'm his sister.

11 Q. Do you also know Tina Dockery?

12 A. Yes, I do.

13 Q. Did you know Tina before she and Scott started their
14 relationship?

15 A. No, sir.

16 Q. You were aware they had a relationship for about
17 four (4) years before October of two thousand and five (2005);
18 is that a fair statement?

19 A. Yes, sir.

20 Q. And they have together two children?

21 A. Yes, sir.

22 Q. What are their names?

23 A. Catherine and Minor Child [REDACTED]

24 Q. During the time -- well, strike that. Do you recall
25 what locations, if there were more than one, that they lived

1 during the time they were together?

2 A. I know of two (2).

3 Q. All right. And what were those locations?

4 A. Well, one was over at Clifton. And I don't know the
5 exact address, but it was close to Tina Dockery's family.

6 And, then, the one up the street from where I live
7 on [REDACTED]

8 THE COURT: Ms. Massey, I'm going to ask you to pull
9 up a little bit closer to that microphone, please.

10 A. Okay. I'm sorry, sir.

11 (Witness complied with the Court's request.)

12 Q. (By Mr. Rudasill) And did you occasionally go to
13 visit or have contact with your brother and Ms. Dockery and
14 the children?

15 A. About once a week.

16 Q. Was there ever an occasion, when you went to visit
17 with them, that you had some concern -- that caused you
18 concern about the children?

19 A. Yes. September of two thousand, five (2005) I
20 stopped by after work and I got out to go knock on the door.
21 And I heard [REDACTED] crying real loud like a scream.

22 And before I got to the door and knocked, I heard
23 Ms. Dockery say, "If you don't stop that crying, you're going
24 to see what I'll do."

25 Q. Did the crying appear to be very loud or just as a

1 normal baby would cry?

2 A. It was screaming. It was very loud.

3 Q. Did you go into the trailer ---

4 A. Yes, sir.

5 Q. --- to let them know that you were there at the
6 door?

7 A. Yes, I knocked.

8 Q. Okay. And they allowed you to come in?

9 A. Yes.

10 Q. Who was there? Who was home when you went inside
11 the trailer?

12 A. Tina and her sister Alisa (phonetic).

13 Q. And they were the only two adults there?

14 A. Yes, sir.

15 Q. Scott was not there?

16 A. No, sir.

17 Q. Was Catherine there?

18 A. Yes, sir.

19 Q. Did you take **Minor Child**

20 A. Yes, sir. I asked could I hold him and she said,
21 "Go ahead because I wish you would before I do something I
22 wouldn't want to do."

23 Q. Is that the only occasion that you observed anything
24 like that ---

25 A. Yes.

1 Q. --- relating to the children?

2 A. Yes, sir.

3 Q. Scott, his last job that he worked was where?

4 A. It was Lowe -- Lowe's.

5 Q. And he left there. Do you know about when he left
6 Lowe's?

7 A. About -- it seems like about around June of two
8 thousand, five (2005).

9 Q. And I believe that was because of an injury he had?

10 A. Yes, sir.

11 Q. Okay. After he left Lowe's, that was about the same
12 time that your nephew **Minor Child** was born; is that right?

13 A. Yes, sir.

14 Q. Because he was born in June of '05?

15 A. Uh-huh (affirmative).

16 Q. And you are aware that these allegations came up in
17 October of '05, when he was about four months old, correct?

18 A. Yes, sir.

19 Q. During the time after Scott left Lowe's, and up
20 until these allegations were made, did he work anywhere else
21 after he left Lowe's?

22 A. Yes, sir.

23 Q. Tell the jury where he worked.

24 A. He worked with my cousin, Matthew Turner (phonetic).
25 They was laying bricks.

1 Q. And did he have that job -- or do you know when he
2 stopped doing that work for your cousin?

3 A. It was about October, first of November.

4 Q. And do you know what hours he's worked when he was
5 laying stone?

6 A. As soon as he got up till dark.

7 Q. So, working pretty much ---

8 A. Yes ---

9 Q. when he had daylight, to lay them ---

10 A. --- till he got through, yes, sir.

11 Q. --- and he was able lay them and was able to work?

12 (Phonetic).

13 (Talking over each other.)

14 A. Yes.

15 MR. RUDASILL: That's all the questions I have. If
16 you would, answer either Ms. Price's questions or -- or
17 Ms. Jordan's questions.

18 CROSS EXAMINATION by MS. PRICE:

3:40 P.M.

19 Q. Ms. Massey, your testimony here today was Miss --
20 you heard Ms. Dockery say something to the effect, "If you
21 don't stop that crying, just see what I'll do," or something
22 of that nature?

23 A. Yes, ma'am.

24 Q. Okay. And when did you call the police and report
25 this?

1 A. I didn't because I -- I didn't know if she was
2 really going to do anything.

3 Q. So, you didn't take it very seriously, did you?

4 A. No, I didn't.

5 Q. Okay. You didn't call DSS either?

6 A. Huh-uh (negative).

7 Q. Okay. And you said that your brother worked laying
8 bricks in the fall of two thousand, five (2005)?

9 A. Yes.

10 Q. And you know where he was on October the 25th, two
11 thousand, five (2005)?

12 A. Yes, he was with my dad going to pick up a camper.

13 Q. So, he wasn't laying bricks all day?

14 A. No.

15 Q. Okay. Thank you.

16 MS. PRICE: That's all I have, Your Honor.

17 CROSS EXAMINATION by MS. JORDAN:

3:43 P.M.

18 Q. Ms. Massey, you stated that Scott was injured while
19 working at Lowe's?

20 A. Yes, ma'am.

21 Q. What was his injury?

22 A. His back.

23 Q. Okay. And how long was he out with that?

24 A. He was out for a couple of weeks, and then, they let
25 him go.

1 Q. Okay. But he was still able to lay bricks later on?

2 A. Yes.

3 Q. Okay. Going back to the day that you -- you heard

4 Ms. Moore -- or Ms. Dockery make comments as to **Minor Child** ---

5 A. Uh-huh (affirmative).

6 Q. --- did you tell your brother?

7 A. Yes, I told him.

8 Q. To your knowledge, did your brother do anything
9 about that?

10 A. I don't know. I think he talked to her about it.

11 Q. Okay. Did he -- did he continue to live with her?

12 A. Yes, ma'am.

13 Q. Did he continue to leave the baby with her?

14 A. Yes.

15 MS. JORDAN: Nothing further.

16 MR. RUDASILL: I would ask that the witness be
17 excused, Your Honor.

18 THE COURT: You may step down.

19 (Witness complied with the Court's request.)

20 (The witness stepped down from the witness stand and
21 was excused at 3:42 p.m.)

22 MR. RUDASILL: I call Scott Moore.

23 (The witness stepped forward to be sworn.)

24 (Whereupon,

25 SCOTT MOORE

1 first being duly sworn, testified as follows:)

2 DIRECT EXAMINATION by MR. RUDASILL:

3:43 P.M.

3 Q. You are Scott Moore?

4 A. Yes, sir.

5 Q. Where do you reside, Scott?

6 A. I live at 330 [REDACTED] now (phonetic).

7 Q. How old are you?

8 A. Thirty-four (34).

9 Q. What is your education?

10 A. I graduated -- I graduated high school and I got a
11 year and a half in technical college.

12 Q. Have you been married before?

13 A. Yes, sir.

14 Q. To whom were you married?

15 A. Misty Diane Myrtle (phonetic).

16 Q. And you and she are divorced?

17 A. Yes, sir.

18 Q. Do you have children together?

19 A. We have one, yes, sir.

20 Q. Where is that child and what is his name and age?

21 A. His name is Jared Blaten Moore (phonetic) and he is
22 thirteen (13) years old now.

23 Q. How long have you and Misty been divorced
24 approximately?

25 A. We've been divorced since July 23, two thousand,

1 three (2003).

2 Q. And, sir, it has been established that you and Ms.
3 Dockery have two children together.

4 A. Yes, sir.

5 Q. Catherine, correct?

6 A. Yes, sir.

7 Q. And she is now seven (7) years of age?

8 A. Yes, she is.

9 Q. And, **Minor Child** who is now five (5) years of age; is
10 that correct?

11 A. Yes, he is.

12 Q. How did you and Ms. Dockery come to start a
13 relationship with each other?

14 A. I met her through her brother. I was friends with
15 him and I went to school with her sister and brother also.

16 And I didn't know anything about her, but I met her
17 through her brother, Brent Childers (phonetic).

18 Q. And you and she were together for approximately how
19 long up until the time that you ended the relationship?

20 A. It was around four (4) years.

21 Q. During the time that you and she were together, that
22 four (4) year period of time, where did you work? What --
23 what is your employment history during that period of time?

24 A. Well, I worked at Goldstar Housing (phonetic) when
25 we first met. And I worked all the way up until I got hurt at

1 Goldstar.

2 And I went out on Workers Comp and they went out of
3 business. And, afterwards, I went to Lowe's a week or two
4 later.

5 Q. Let me interrupt you. At Goldstar, what type of
6 work did you do for them?

7 A. I set up mobile homes and ran parts (phonetic).

8 Q. Okay So, you basically, when -- when somebody
9 bought a new unit, you would go out and set it up to where it
10 was put on a foundation or on lots and built up; is that
11 correct?

12 A. Yes, sir.

13 Q. All right. And, then, you went to Lowe's to -- to
14 go to work?

15 A. Yes, sir.

16 Q. Do you know about when that was?

17 A. It was in '04 I think, sir.

18 Q. And, when you started to work at Lowe's, what type
19 of work did you do for them?

20 A. I was part time with them at first. And, then, I
21 become team leader inside lawn and garden.

22 Q. And is that where you were at the entire time after
23 that at Lowe's in lawn and garden?

24 A. Yes.

25 Q. What was your reason for leaving Lowe's?

1 A. I had an existing back injury from Goldstar that I
2 had not put down on my record. I did not think that, you
3 know, it had anything to do with it because it wasn't
4 bothering me.

5 But, I got just re-injured it at work. And they --
6 they found that out and let me go because I didn't put it
7 down.

8 Q. Because of that pre-existing injury?

9 A. Yes, sir.

10 Q. And do you know about what it was that -- that you
11 left employment with Lowe's?

12 A. It was right around the same time my son was born,
13 just right before my son was born, **Minor Child**

14 Q. Once you were let go at Lowe's, have you had a job
15 since then that you've worked? And I am primarily concerned
16 with up to October of two thousand and five (2005)?

17 A. Yes, sir, yes, sir.

18 Q. What type of work did you do after being laid off at
19 Lowe's?

20 A. I did rock work with my cousin, really just mixing
21 mortar in a -- in a wheelbarrow. And he's the one that laid
22 the rocks. And I would clean them, you know, as we went.

23 Q. Was he working for himself or was he working for
24 somebody else?

25 A. He was working for another gentlemen that I think

1 was incarcerated. I'm not really sure. He didn't give me the
2 details about who he was really working for. But I think his
3 name was Roger Booth (phonetic).

4 Q. And, so, you basically helped out your cousin by
5 doing what you described?

6 A. Yes.

7 Q. And he paid you for the work that you did?

8 A. Yes, sir.

9 Q. And how long, again, did you do that job?

10 A. I did it all the way till the end of September --
11 well, it was around November that I had left him. It was
12 right after this October 25th had happened.

13 Q. And do you recall, during the summer months going
14 into the fall, was the work that you did steady, sporadic?
15 How would you describe the days that you worked compared to
16 the days that you didn't have something to do with work?

17 A. Well, we worked six (6) days a week doing the rock
18 work. And mostly on Sundays we would go and clean up the
19 cemetery where his daughter was buried. So, we worked like
20 seven (7) days, you know.

21 Q. And were you working a good bit during the day? How
22 many hours did you normally work when you would go do your
23 job?

24 A. He would come get me about seven o'clock (7:00) in
25 the morning and we would work to about seven (7:00) or eight

1 o'clock (8:00) at night.

2 Q. Daylight was that long during that period of time?

3 A. Yes.

4 Q. Where you would be able to be away for that length
5 of time?

6 A. Yes, sir.

7 Q. Do you recall what you were making an hour working
8 for your cousin?

9 A. Well we -- I was getting paid ten percent (10%) of
10 the job.

11 Q. So, it wasn't a situation where he paid you
12 necessarily for each hour that you worked; it was just a part
13 of what he got for the overall job?

14 A. Yes.

15 Q. Did you have to have that income for you and -- and
16 Tina and the children?

17 A. Yes.

18 Q. Was Tina working during that period time?

19 A. No, sir.

20 Q. She was drawing -- or disabled and drawing some
21 benefits; is that correct?

22 A. Drawing SSI.

23 Q. SSI was what she was drawing?

24 A. Yes, sir.

25 Q. All right.

1 (Brief Pause)

2 Q. When **Minor Child** was born, was this a child that you and
3 Tina had planned to have?

4 A. We didn't plan to have him.

5 Q. How about Catherine?

6 A. We -- we kind of planned having her. We talked
7 about it.

8 Q. So, **Minor Child** birth came as a little bit of a
9 surprise?

10 A. At first, yes, sir.

11 Q. And, when he was born, give me some idea of --
12 again, with what you described as far as the time that you
13 were working versus the time that you would have been home
14 helping take care of the children?

15 A. I didn't have much time with him, when he was first
16 born, all the way up till this happened. And I was mainly
17 gone in the mornings till all the way to late at night just
18 about.

19 Q. Let's talk about the locations that you and -- and
20 Ms. Dockery lived during the time that you and she had a
21 relationship.

22 What locations did you live initially? And, if that
23 changed, tell me how it's changed and where you then began
24 living.

25 A. Well, I was living with my mom at first, my mom and

1 my dad, because I just had divorced, you know, not long.

2 Q. And Ms. Dockery was there with you at that time?

3 A. She came to live there January the 18th of '02.

4 Q. And, so, you all live with your parents for a period
5 time?

6 A. Yes, for some time.

7 Q. And Catherine was born when?

8 A. She was born -- we actually lived somewhere else,
9 but she was born April 23rd, two thousand, three (2003).

10 Q. And, so, my next question was, were you still with
11 your parents then or had you found a place to live on your own
12 when Catherine was born?

13 A. We found a place.

14 Q. And that was where?

15 A. That was at 423 [REDACTED] -- or Clifton-Cowpens
16 Road.

17 Q. And about how long did you live there?

18 A. We lived there maybe six (6), seven (7) months.

19 Q. And, then, you move to where?

20 A. We had moved back to my parents' at the time
21 because, when my daughter was born, we found an infestation of
22 spiders, you know, in the mobile home that -- that was her
23 dad's. And, you know, I -- I moved us out of there quickly.

24 Q. Back to -- back to your parents'?

25 A. Back to my parents'.

1 Q. And how long did you stay with your parents?

2 A. We didn't stay there long. We -- we moved right
3 above on 190 [REDACTED] (phonetic) right above them.

4 Q. And you were there for how long?

5 A. We was there maybe -- I think it was the first
6 October of two thousand, five (2005).

7 Q. And, when you left that location, you moved to the
8 location where you're living on October the 25th of two
9 thousand, five (2005)?

10 A. Yes, sir.

11 Q. So, you had only been there less than a month; is
12 that -- is that a fair statement?

13 A. Two and a half (2 ½) weeks I think precisely it was.

14 Q. So, that's where you were on October the 24th and the
15 25th and you had been there about two and a half (2 ½) weeks?

16 A. Right, yes, sir.

17 Q. Let's talk about an incident -- an instance that
18 occurred before we go -- before we go to the 24th and the 25th.
19 You -- and the statement has been introduced -- but you were
20 asked about the burn to the bottom of [REDACTED] Minor Child foot. And you
21 told the detectives about that, did you not?

22 A. Yes.

23 Q. Tell the jury how that came -- how that occurred?

24 A. Well, the weekend that -- that we was about to go on
25 vacation with my parents, I was running around keeping my

1 daughter Catherine satisfied and I was holding my son, Cat --

2 **Minor Child**

3 And Tina was ---

4 Q. Let me interrupt you. Where was Tina?

5 A. She was at the neighbor's behind us, at Rodney
6 Brown's home.

7 Q. Okay. And, so, what happened when you were there
8 with the children?

9 A. Well, I was cooking me and my daughter something to
10 eat on the stove. I think it was something like Oodles of
11 Noodles. And I was using a smaller pot, you know, on the eye.

12 And I know that was a mistake, but, you know, the
13 way -- the way I was holding **Minor Child** and everything, his --
14 his body was laying flat in my arm, you know.

15 Q. And which -- at which end of your arm, with the way
16 you were holding your arm, would his head have been and where
17 would his feet have been?

18 A. His feet would have been down at the bottom of my
19 hand, to my elbow.

20 Q. All right. So, his feet would have been toward the
21 fingers of the hand?

22 A. Right.

23 Q. And the head would have been up against your elbow
24 or arm?

25 A. Right, Yes, sir.

1 Q. All right. And what was Catherine doing, the two-
2 year old, while you were doing this?

3 A. She was playing, being a normal little girl.

4 Q. And was this the meal you -- were you preparing this
5 for the children, for yourself, or for you and Tina? What
6 would -- what you were preparing, who were you going to feed?

7 A. I was mainly going to feed my daughter, but I
8 figured I was making enough that her and I both could eat
9 together, so...

10 Q. All right. And, when you were stirring the noodles,
11 tell the jury what happened.

12 A. When I went to stir the -- the noodles, and -- at
13 the stove, my son's leg had fell -- fallen down past my hand
14 and had went down and bumped the eye of the stove. And it --
15 and quickly I picked him right back up.

16 But because of the way the stove was, it was a very
17 tallish stove compared to me, so...

18 Q. Well, I think they've got a picture of the stove
19 introduced. And I'll show that to you just for you to
20 identify whether that is, in fact, the stove. I show you
21 what's been introduced as State's Exhibit 14.

22 (Exhibit shown to the witness.)

23 Q. Do you recognize that as being the stove there in
24 the mobile home where you all were living in October?

25 A. That's not the same mobile home we lived in when

1 that happened.

2 Q. This occurred before ---

3 A. Yes, sir.

4 Q. --- the 24th?

5 A. Yes, sir.

6 Q. All right. And you were living at the 190?

7 A. 190 [REDACTED] yes, sir.

8 Q. All right. And do you know -- you had been at this
9 location for about twenty-five (25) -- or two and a half (2 ½)
10 weeks -- excuse me -- two and a half (2 ½) weeks on October
11 the 25th when these allegations were made?

12 A. At 425, yes, sir.

13 Q. Right.

14 A. Yes, sir.

15 Q. And, so, this would have been at least before that.

16 Do you know about how much before that? Do you -- do you know
17 about the date that the burn occurred to the bottom of the
18 foot?

19 A. It happened I think prior to September, not long. I
20 think it was like the first of September or something like
21 that. I think that's when we went to -- to Hickory Knob State
22 Park (phonetic).

23 Q. But at least it was not at the location of 425?

24 A. No, no, sir.

25 Q. All right. How did you react, when you just

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1 realized that your son's foot touched the eye of the -- of the
2 stove? What did you do?

3 A. Well, I got -- I immediately looked at it. And, I
4 mean, it didn't look so bad, but he was crying with this.

5 So, you know, I -- I observed it. And it didn't
6 look as bad to take him to the hospital or anything because he
7 -- he quit crying after a period of time, you know. And I
8 applied Neosporin and kept a watch on it myself. So...

9 Q. In the statement you acknowledged that you didn't
10 tell Tina about what had happened?

11 A. Right.

12 Q. Why didn't you?

13 A. I just -- I -- I worry about, you know, anything
14 like that. We had -- we had broke up before when it was just
15 my daughter.

16 And considering that she was still married to
17 somebody else, that I did not have legal rights to my kids.
18 So, I was scared that she would just take them away and, then,
19 I -- I would just lose my -- my kid, just like I did my first
20 son in a divorce.

21 Q. Did you actually show **Minor Child** to someone else to
22 look at the burn to his foot as far as any kind of treatment?

23 A. Yeah, I showed my parents. I showed Tina and told
24 her about it after a while.

25 But -- you know, but we stopped and got him some

1 burn creams and stuff like that and some wrapping gauze to ---
2 you know, that's -- that's just the way my parents raised me.

3 You know, if it ain't too bad, you know, you don't
4 rush to the hospital. You try to take care of it yourself.

5 Q. Let's go to October the 24th of two thousand and five
6 (2005). On that particular day, did Tina leave to go to the
7 dentist?

8 A. Yes, she did.

9 Q. And you weren't working on that day?

10 A. No, not that day, I -- I couldn't.

11 Q. And she went to the dentist -- do you know about
12 what time she left to go to the dentist?

13 A. It was afternoon, afternoon time.

14 Q. And do you know how long she was gone?

15 A. Approximately two (2) or so hours.

16 Q. And you would've been with the children during that
17 time frame?

18 A. Yes, sir.

19 Q. When she returned, what did you learn about her trip
20 to the dentist?

21 A. Well, that she -- I found out that, you know --
22 well, first of all, Tina had to have a lot of teeth pulled.
23 You know, so she would always complain about teeth, you know.
24 And she loved to take Lortabs any way. So, I figure that was
25 just one way of her just getting Lortabs again.

1 So -- but, she had left and went to Piedmont -- I
2 think Rodney Brown (phonetic), she went down to him and he
3 took her to Piedmont Dental. And, you know, they -- they was
4 around each other. So...

5 Q. And that -- that was the 24th ---

6 A. Yes, sir.

7 Q. --- of October? And, so, when she came back, did
8 she have medication in conjunction with the tooth being
9 pulled?

10 A. Yes, sir.

11 Q. Do you recall what the medication was?

12 A. Think it was hydrocodone 7.5's I think.

13 Q. And do you recall how many she had?

14 A. Twelve (12)).

15 Q. Did you see her take that medication?

16 A. Yes, I witnessed her take it all.

17 Q. And did she take it as it was prescribed, which was
18 one every four hours?

19 A. No, sir.

20 Q. Quicker or longer?

21 A. Pretty much more than half in one handful is the way
22 she took her medication.

23 Q. So, it wasn't a situation where she took two every
24 hour?

25 A. Right.

1 Q. She took more than that when she initially took
2 those Lortab?

3 A. Yes.

4 (Brief Pause)

5 Q. I assume you and she were at home together the night
6 of the 24th?

7 A. Yes.

8 Q. And the children were there?

9 A. Right.

10 Q. Had you made arrangements to do something other than
11 help your cousin lay stone on the 25th?

12 A. Yes. My dad had taken a camper for insurance to pay
13 for a leaking roof. And, when he found out we were going to
14 do the next day, on the 25th, to go pick it back up.

15 Q. What time did you get up on the morning of the 25th?

16 A. I got up around ten (10:00) and left around ten-
17 thirty (10:30).

18 Q. And how far were your parents away from where you
19 were living at 425?

20 A. I would say probably about four (4) or five (5)
21 miles.

22 Q. And did you drive the car there or did he pick you
23 up? Or how did you get to your dad?

24 A. I drove my car.

25 Q. And how long were you with your dad helping him?

1 A. Probably up till like -- I got back home around four
2 o'clock (4:00) that day.

3 Q. When you left, did you have any conversation with
4 Ms. Dockery or did you talk -- have any contact with her at
5 all before you got up and left to go help your dad?

6 A. No. I just got up and, you know, got ready and just
7 went on out of the house because she knew where I was going.

8 Q. And where was she when you left?

9 A. She was in the bed.

10 Q. Where were the children when you left?

11 A. They were asleep in bed.

12 Q. And you returned home about what time that
13 afternoon?

14 A. It was about four o'clock (4:00).

15 Q. When you got back home, who was there?

16 A. It was Tina and my kids.

17 Q. And what did you do?

18 A. Well, I walked in and she said she was wanting to go
19 to the ER because the tooth she had pulled the day previously,
20 pretty much she had ran out medication and she just wanted to
21 go get more, you know.

22 She express that to me. You know, that she wanted
23 to go get it packed and, you know, and see if they would give
24 her more pain pills.

25 Q. How did she do that? Did she leave to -- to go to

1 the ER?

2 A. Yes.

3 Q. And did she go in the car?

4 A. She took my car, yes.

5 Q. All right. And you know about what time she would
6 have left?

7 A. She would have left about four thirty (4:30) about.

8 Q. All right. And you would had the children when she
9 left; is that correct?

10 A. Yes, sir.

11 Q. What were they doing, when you got home, up until
12 the point in time that she left?

13 A. Catherine was sitting on the couch and **Minor Child** she
14 just laid him down and told me that he was resting. So, I
15 just told her to let him lay because I was tired.

16 Q. So, you never got him up or -- or held him, from the
17 time that you got home until she had left and -- and gone to
18 the emergency room; is that correct?

19 A. I just fed him in his bassinet and changed him.

20 Q. She was gone how long would you say?

21 A. It was about an hour and a half, almost close to an
22 hour and forty-five (45) minutes.

23 Q. During the entire time that you were there with the
24 children, did **Minor Child** cry?

25 A. No, he was very content.

1 Q. Did you notice anything that appeared to be unusual,
2 at that point in time, concerning his head or any swelling?

3 A. No, I did not see anything.

4 Q. Did you notice any bruising at that point in time?

5 A. No, sir.

6 Q. What side was he laying on -- or strike that. When
7 he was in the bassinet, was he laying flat on his back, on his
8 side? Do you recall?

9 A. I kept him on his side, you know, because they say
10 that babies get -- swallow back and can choke, you know, on
11 their own spit and stuff like that.

12 So, I always put a blanket on the back and in the
13 front to keep him on his side. So...

14 Q. Do you recall which way he was turned in the
15 bassinet as to how he was laying?

16 A. I think he was turned towards the wall on his -- on
17 his right side I think.

18 Q. When you say towards the wall, the wall was near
19 where the bassinet was ---

20 A. Yes.

21 Q. --- was sitting?

22 A. Correct.

23 Q. And, when you gave him the bottle, you indicated you
24 just -- you didn't pick him up to -- to feed him; you propped
25 it, so, that he could take the bottle himself without being

1 held?

2 A. Right, because he was good at belching at that age.

3 Q. Did you have any other contact with him other than
4 to feed him?

5 A. At that time, no.

6 Q. During the entire time that Tina was gone, did you
7 have to do anything else to care for him ---

8 A. No.

9 Q. --- other than let him stay there in the bassinet?

10 A. No, I just let him stay there.

11 Q. So, when she returned about an hour and a half
12 later, what did you learn she had done or acquired while she
13 was gone?

14 A. Well, she -- she came home. And she had told me
15 that they give her something like Vicoprofen. I think it's
16 ibuprofen mixed with -- you know, with Vicodin.

17 Q. Uh-huh (affirmative).

18 A. But -- and they packed her tooth. I think they did.

19 Q. Once she got home, what happened? What did you do
20 then?

21 A. Well, I had -- I had -- I had just went to -- to the
22 very end of the mobile home. I was using the restroom.

23 You know, I went to the restroom after she had got
24 home and let me know what she had done.

25 And as I was -- you know, I guess I took a bathroom

1 break around ten (10) minutes or so, on the other side of the
2 mobile home. And, as I was coming back, she was over top of
3 him.

4 Q. And had you heard anything when you went to the
5 bathroom and -- or enroute back that caused you any concern?

6 A. I heard crying.

7 (Brief Pause)

8 Q. When you got back and she was standing over him, in
9 the bassinet, did you and she have any discussion about why he
10 was crying, what you heard?

11 A. No. She just acted like he was just, you know,
12 crying because of Catherine or something like that, done
13 something wrong. But that's when she had picked him up and
14 acted like she was comforting him.

15 Q. And, when did you or did she say anything about his
16 head swelling?

17 A. I did. I'm the one that said it.

18 Q. And when, in relation to coming back out of the
19 bathroom, and seeing her over the bassinet?

20 A. Well, when I -- when I come back out, you know, I
21 come to the couch where she sat at the far end with **Minor Child**
22 You know, about like so (demonstrates).

23 And -- and I would always just, you know, throw --
24 throw myself up and be facing, you know, her and him with his
25 -- like his side, you know, and his back towards me.

1 And that is when I noticed the back -- the back end
2 of his head right in here (indicates) swollen. And that's
3 when I jumped up and spoke about it.

4 Q. And it was you that noticed that and said that her?

5 A. Yes.

6 Q. Tell me about that conversation. What did you say
7 to her when you noticed that his head was swollen?

8 A. I was telling her we needed to take him to the
9 hospital.

10 Q. And she said that you didn't want to take him to the
11 hospital?

12 A. Yeah. Yeah, I was the first one to say, "Let's take
13 him," because I was the one -- the first one to realize he had
14 something going on with his head.

15 Q. How long did it take you and she and the children to
16 get things together to go to the hospital?

17 A. Because we were still kind of packed up and
18 everything, but she wanted to go look through clothes and, you
19 know, take her sweet little time and everything like that to
20 get them ready and get herself ready really because he was
21 already ready.

22 All I would have had to do was throw something on
23 him and just take him out in his carry all.

24 Q. How long would you say it took them get dressed; for
25 her to get dressed and get the children dressed?

1 A. It -- it took her some time. It took her about an
2 hour or so before.

3 Q. Were you trying to get her to leave?

4 A. Yes. I was -- I was trying to hurry up as fast as
5 possible.

6 Q. When you got everything ready to go, did you go
7 straight to the hospital?

8 A. Well, we first had an argument about the car because
9 I always kept gas in my car, you know, where she told me,
10 "Well, the gas is out of the car. How are we going to get
11 there," you know.

12 And that's when I made the statement, "Well, I guess
13 I'll have to go to my parents' home to borrow money to take my
14 own son to the hospital."

15 Q. Well, you had driven the car to meet with your dad
16 earlier that day?

17 A. Right.

18 Q. And you had come home, as you've told me, in the
19 afternoon?

20 A. Right.

21 Q. And, then, she took the car to go back to the
22 hospital?

23 A. Right.

24 Q. Was there gas in the car when she left then?

25 A. There was plenty of gas when she left.

1 Q. But, when you went out to -- to leave, there was no
2 gas in the car?

3 A. There was no gas in the car.

4 Q. Where did you go?

5 A. Well, she wanted me to stop at Mr. Powell's house --
6 and not me, I did not -- I did not tell her I was going to
7 stop anywhere because I'm very concerned about my own son's
8 head.

9 And I was just going to ride right down to my
10 parents' home, but it -- on the way, Mr. Powell lived. "No,
11 no, just stop here. Let me and Catherine out first."

12 I said, "Now, come on, now, we can't do this."

13 Well, she got very belligerent about it, you know, "I can't
14 get along with your parents," you know, and all of this. And
15 -- and, "Just let me out." So...

16 Q. And that's what you did?

17 A. I did. I just let her out.

18 Q. And, when you got to your parents', they gave you
19 money for gas?

20 A. Yes.

21 Q. Did you tell them what -- how **Minor Child** -- what was
22 causing you concern about **Minor Child** when you were there?

23 A. Yes, I did.

24 Q. Okay. And you left there to do what?

25 A. I left there to I guess go back and get Tina. And,

1 then, head straight to my -- the closest store to get gas.

2 Q. There is some issue that apparently was raised in
3 some of the questioning of Ms. Dockery. So, I'll go ahead and
4 ask you: Where did you get gas?

5 A. At the Li'l Cricket in Clifton.

6 Q. And where is that in relation to your parents'?

7 A. It's maybe two (2) miles away from my parents' home.

8 Q. Was it closer to get gas there, with the amount of
9 gas you had in the car, than it would have been to drive
10 toward Mary black and get gas at a station that may have been
11 in the direction -- more directly than where you went to get
12 gas?

13 A. Well, I was riding on fumes, so, I had to get to the
14 closest store possible, so, that was the Li'l Cricket.

15 Q. And that's where you went to get the gas?

16 A. Yes, yes.

17 Q. And from there you went to the emergency room?

18 A. We did.

19 (Brief Pause)

20 Q. What did you learn when you got to the emergency
21 room?

22 A. Well, I let them out and she took my son in. And me
23 and my daughter went and we parked the car. Well, as soon as
24 I walked in, they had already took him back and I had to stay
25 out, me and my daughter did, to fill out the paperwork for

1 him.

2 Q. And how long, then, was it before you got back to
3 where **Minor Child** ---

4 A. It wasn't long.

5 Q. --- and Catherine and Tina were?

6 A. It was not long. It was about fifteen (15) minutes
7 maybe after I got finished.

8 Q. Do you recall how long you were there before some
9 issue arose concerning your son's condition and what had
10 caused that condition?

11 A. We was there for some time because my son stayed in
12 my -- as soon as I got back there, I took him back over and
13 held him, you know, and kept him in my arms. And my daughter
14 Catherine was on the bed with his mother -- you know, with her
15 mother.

16 But it seems like we stayed in there a long time
17 before they come to get us to take us to a CT scan.

18 Q. And, at some point in time, you were told that your
19 son had a bilateral skull fracture; is that correct?

20 A. Yes, sir.

21 Q. You were also told, at some point in time, that
22 there were healing fractured ribs; is that correct?

23 A. Yes, sir.

24 Q. Prior to arriving at Mary Black that night, on the
25 25th of October, did you have any idea concerning the skull

1 fracture or the fractured ribs?

2 A. No, sir.

3 Q. Had you done anything to cause those injuries to
4 your son, Scott?

5 A. No, sir.

6 (Brief Pause)

7 A. I couldn't do something like that to a -- a child.
8 I couldn't do it.

9 Q. There has been testimony that the police -- several
10 of the statements, and I think we even looked at them, that
11 said that, when Tina came home from the Mary Black emergency
12 room, she gave you three (3) of the Vicoprofen ---

13 A. Yes.

14 Q. --- pills; is that correct?

15 A. She did.

16 Q. And you told the police or the investigators that
17 she had done that; is that also correct?

18 A. Yes, yes, sir.

19 Q. Did you take that medication when she immediately
20 came back?

21 A. No, no, I just pocketed them.

22 Q. You did what?

23 A. I put them in my pocket.

24 Q. And did you take them at a later point in time ---

25 A. I did.

1 Q. --- after you had gone to the emergency room? Do --
2 do you have a recollection as to when you took those -- the
3 medication that she gave you?

4 A. I think I took one at the hospital.

5 Q. After you got to the hospital?

6 A. Yes.

7 Q. As a result of these allegations, DSS became
8 involved. We've got copies of the information provided to Ms.
9 Brazil and heard her testimony. You were asked to have blood
10 drawn and submit a hair sample for testing; is that correct?

11 A. Right.

12 Q. I believe that occurred on November the 3rd of two
13 thousand and five (2005)?

14 A. Yes, sir.

15 Q. I believe you submitted a urine station -- specimen
16 as well as hair. I think it was actually chest hair that was
17 given for a hair follicle drug panel test; is that correct?

18 A. Yes.

19 (Whereupon, Defendant's Exhibit Numbers 1 and 2 were
20 marked for identification.)

21 Q. I show you what has been marked for as defendant's
22 Exhibit 1 and 2 for identification purposes. Can you -- can
23 you identify those documents for me?

24 A. Yes.

25 Q. What are those documents?

1 A. That's the showing where I was negative of -- for
2 the urine and the hair samples.

3 Q. All right. And that was the specimen that was drawn
4 on November the 3rd of two thousand, five (2005) and tested on
5 November the 7th ---

6 A. Yes.

7 Q. --- of 2005; is that correct?

8 A. Yes.

9 MR. RUDASILL: Your Honor, we would offer
10 defendant's exhibits one and two into evidence at this
11 time.

12 MS. PRICE: I have no objection.

13 MS. JORDAN: No objection from the State, Your
14 Honor.

15 THE COURT: It's admitted.

16 (Whereupon, Defendant's Exhibit Numbers 1 and 2 were
17 admitted into evidence without objection.)

18 Q. (By Mr. Rudasill) And they were both negative as
19 far as any substance being in your system; is that correct?

20 A. Right.

21 (Brief Pause)

22 Q. Scott, I am sure you are going to be asked
23 questions, by either Ms. Price or by Ms. Jordan, as to why you
24 gave multiple statements during these events.

25 A. Yes, sir.

1 Q. Why did you?

2 A. I was pretty much besides myself.

3 Q. Did you intentionally harm your son?

4 A. I didn't harm my son at all.

5 Q. The burn that took place, to the bottom of the foot,
6 was that something that was totally accidental?

7 A. Yes, it was just an accident.

8 MR. RUDASILL: That is all the questions I have. If
9 you would, answer any of Ms. Price's questions and Ms.
10 Jordan's questions.

11 CROSS EXAMINATION by MS. PRICE:

4:16 P.M.

12 Q. It was an accident, but you lied to Tina about it,
13 didn't you?

14 A. I didn't lie to her. I just didn't tell her what
15 had happened.

16 Q. So, it was a lie by omission?

17 A. It's just not saying anything to her.

18 Q. So, you -- you -- you have an accident with your
19 baby and you don't think it is important to tell his mother?

20 A. Well, maybe due to it wasn't that bad.

21 Q. There -- there is a mark on a baby and I'm just not
22 going to say anything about it? I put Neosporin on a baby and
23 I'm not want to say anything about it?

24 A. I just -- I just didn't say anything to her.

25 Q. Just like you didn't say anything about your back

1 injury to Lowe's when they hired you either, did you?

2 A. Well, that was on the application, but it didn't
3 list the same way that I would have put it down.

4 Q. But that's why they -- they fired you, right?

5 A. That's what they came up with, yes.

6 Q. Oh, so, they just fired you for no particular good
7 reason?

8 A. It wasn't a good reason at all I wouldn't think.

9 Q. Not telling them about a previous back injury?

10 A. They wanted to know, if there was an existing
11 problem, and it was not.

12 Q. But that's -- that's why they fired you?

13 A. That's what they came up with, yes.

14 Q. Okay. Your testimony today is that you --
15 subsequent to your employment with Lowe's, that you were
16 working six (6) days a week; is that right?

17 A. Up to seven (7), yes.

18 Q. Okay. Well, you weren't working on October the 24th,
19 were you?

20 A. No, I was not.

21 Q. You weren't working on October the 25th either, were
22 you?

23 A. No.

24 Q. So, you don't work six (6) days a week?

25 A. I was at the time. I just planned not to work those

1 days.

2 Q. Okay. So, you planned not to work to support your
3 family?

4 A. Well, I was working every day. So, I mean, that's
5 pretty much -- you got take time off sometime or another.

6 Q. Okay. So, you said that you were working six (6)
7 days a week, but this particular week you weren't?

8 A. Yeah. But, I mean, it was -- Tina needed to go to
9 the -- you know, the dentist. And I had things to do the next
10 day with my father. So...

11 Q. Well, Tina needed to the dentist, but you didn't
12 take her, did you?

13 A. No.

14 Q. Okay.

15 A. She wanted to go herself.

16 Q. Okay. But you needed -- okay. Now, on October the
17 24th, you said that Tina left the house in the afternoon and
18 went to the dentist; is that right?

19 A. Right.

20 Q. And you also said, at this point in time, she loved
21 to take Lortab; is that right?

22 A. She did.

23 Q. So, the mother of your children is taking
24 prescription medication, that she does not have a prescription
25 for; is that right?

1 A. Right.

2 Q. And yet, you leave your children home with her?

3 A. Well, I mean, I didn't think it was a problem, that
4 she would hurt them or anything like that.

5 Q. Oh, okay. So, but she is -- would you classify her
6 as a -- in your impression, as a drug addict?

7 A. A drug addict, I would.

8 Q. So, you're leaving your children with a drug addict?

9 A. Well, that's -- I guess I did.

10 Q. Okay. And, on October the 25th of two thousand and
11 five (2005), you said that you got home that day about four
12 o'clock (4:00) from your father's house; is that right?

13 A. Yes, ma'am.

14 Q. And Tina left about four thirty (4:30); is that
15 right?

16 A. Right.

17 Q. Do you recall what time exactly she got home?

18 A. It was about six o'clock (6:00) when she got home or
19 a little bit before.

20 Q. Okay. And about how far do you all live from -- or
21 did you live from Mary Black Hospital at the time?

22 A. I can't recall, but I know it was a pretty good ways
23 off.

24 Q. Okay, from -- can you give us an estimate?

25 A. Maybe six (6) or seven (7) miles.

1 Q. A time estimate?

2 A. Maybe fifteen (15) minutes.

3 Q. Okay. And what time did you all get to the hospital
4 that day?

5 A. It was a round eight thirty (8:30) or so, or nine
6 o'clock (9:00) I think it was.

7 Q. And you said Tina got home about six (6:00)?

8 A. Yes.

9 Q. Okay. Now, when you got home that day -- and Mr.
10 Rudasill has taken you through the events of your afternoon.
11 When you got home, you said that **Minor Child** wasn't crying?

12 A. No, he was not crying.

13 Q. He was in his bassinet?

14 A. He was in his bassinet.

15 Q. He appeared to be sleeping?

16 A. Yes, ma'am.

17 Q. So, he didn't act like he was in any pain or
18 distress, did he?

19 A. No.

20 Q. Not that you observed?

21 A. No, ma'am.

22 Q. Okay. But -- and then, you -- you later went to the
23 restroom ---

24 A. Right.

25 Q. --- thereafter? And, at that point, you said you

1 started hearing him cry?

2 A. Yes.

3 Q. Did you hear anything else?

4 A. No.

5 Q. No thumping, no hitting, no nothing like that?

6 A. You know, you got to understand, where he was laying
7 and where I was at, that's a pretty good long trailer.

8 And I'm in a -- I'm in a bedroom in the bathroom
9 with the door closed, with the bedroom door closed.

10 Q. But you didn't hear anything except him cry?

11 A. No, exactly.

12 Q. Okay. Now, have you ever been into an ER as a
13 patient?

14 A. I have.

15 Q. And you know that sometimes you have to sit there a
16 while?

17 A. Yes, ma'am.

18 Q. In fact, it -- it really doesn't happen very often
19 that you get to go right on in, right?

20 A. Right.

21 Q. Okay. And you -- you testified that there was
22 plenty of gas in your car for Tina to take herself to the
23 hospital?

24 A. There was.

25 Q. Okay. And she ended up having her teeth packed?

1 A. I think so.

2 Q. Her tooth packed that you know of?

3 A. Right.

4 Q. Okay. And she came back with a prescription for
5 medicine from the hospital too, right?

6 A. Yes.

7 Q. Okay. So, you know she went to the hospital?

8 A. Right.

9 Q. Okay. And she was gone for about an hour and a half
10 I believe?

11 A. She was.

12 Q. Leaving about four thirty (4:30)?

13 A. Yes.

14 Q. Okay. And it's about a fifteen (15) minute drive?

15 A. It's about a fifteen (15) minute drive.

16 Q. Okay. Okay. But, you also said that Tina did not
17 want to take the baby to the hospital; is that right?

18 A. No, she did not.

19 Q. But you did want to take the baby to the hospital?

20 A. Yes, I did.

21 Q. Why did you wait around on her?

22 A. She would not get ready. I mean, she was trying to
23 just prolong everything and tell me I didn't have any gas in
24 the car, what was we going to do, and everything like that.

25 Q. Well, your parents lived up the road from you,

1 right?

2 A. It's a little ways off.

3 Q. But, if you were in some type of need, you could
4 have called your mom, couldn't you?

5 A. I didn't have a phone at the time.

6 Q. You didn't have a phone?

7 A. No.

8 Q. Okay. So, you couldn't call an ambulance either?

9 A. No.

10 Q. Okay. And it's also been your testimony today that
11 Tina gave you some of the medicine she was prescribed at the -
12 -- at the hospital that day; isn't that right?

13 A. Right.

14 Q. Do you always take pills that are not prescribed for
15 you?

16 A. No.

17 Q. Okay. This was a first time thing?

18 A. Well, I had just been discharged, from my regular
19 doctor, because she was stealing my medications.

20 Q. She was stealing your medications?

21 A. Yes, she was.

22 Q. So, your doctor fired you because she was stealing
23 your medication?

24 A. It was not my system, so, when they did a pee
25 sample, and it wasn't in my blood, they discharged me; they

1 did.

2 Q. They fired you as a patient?

3 A. They discharged me as a patient.

4 Q. Okay. Did you ever report your medication stolen?

5 A. No.

6 Q. Okay.

7 (Brief Pause)

8 Q. Just one last question: You told Steve Denton that
9 you dropped **Minor Child** didn't you?

10 A. They kept telling me -- yeah -- if I -- I had done
11 it by some accident that I would get my children back, nobody
12 goes to jail or anything. "We know accidents happen."

13 But he kept coming around the table acting like he
14 was going to hit me. He said, "If you was -- if it was back
15 then, I'd take you outside and I'd whoop you." That's what he
16 told me.

17 Q. Oh, so, he threatened you?

18 A. He did.

19 MS. PRICE: Okay. That's all I've got.

20 CROSS EXAMINATION by MS. JORDAN:

4:24 P.M.

21 Q. Mr. Moore, how long did it take to get from the
22 house that you lived at, on the 25th of October, to your
23 parents' house?

24 A. It might take about five (5) or six (6), seven (7)
25 minutes.

1 Q. How many miles?

2 A. I'm not really sure. I think it's a few miles,
3 about four (4) or so, four (4) or five (5).

4 Q. Okay. How many miles was it from your house to the
5 hospital

6 A. I'm not really sure, but it's -- it's a lot further
7 than my parents' home. So, I guess is around seven (7) or so
8 miles.

9 Q. Okay. I'm not familiar with Spartanburg County too
10 well, but is -- directly from your house in Clifton or Cliff
11 Dale to Mary black, is your parents' house along that way?

12 A. No, it's not.

13 Q. It's in the opposite direction?

14 A. The opposite direction.

15 Q. So, you went on a -- you were in the car with --
16 running on fumes and you went in the opposite direction of the
17 hospital?

18 A. Yes.

19 Q. And your testimony earlier was that the hospital was
20 only a few more miles the other way?

21 A. Yes.

22 Q. Okay. But you chose to go to your mom's?

23 A. It's a few more miles longer than where my parents'
24 home would be if I had left and went this way (indicating).

25 So, I mean, theirs being like four (4) or five (5)

1 miles, it could be seven (7) or eight (8) miles this way to
2 the hospital.

3 Q. Okay. So, you took your child and went the opposite
4 way of the hospital?

5 A. I had to.

6 Q. And you had to wait on Ms. Dockery, for over an
7 hour, to get ready?

8 A. Well, she kept -- she kept grabbing him up and
9 holding him and telling, "I'm going to put more clothes on
10 him," and everything, so... Because we still had your stuff
11 packed up.

12 Q. Was he wearing a sleeper in the bassinet?

13 A. He was.

14 Q. What did she change him into?

15 A. I think it was another sleeper and just thicker
16 clothes.

17 Q. But it was just one sleeper?

18 A. Yes.

19 Q. And that's all that she did?

20 A. Well, I mean, no, she kept going through the
21 clothes, you know, because we had them in bags and everything.
22 And she kept looking for clothes for him.

23 Q. But he was dressed?

24 A. He was, at the time, but she didn't want him to wear
25 that.

1 Q. So, she was concerned about what she took him to the
2 hospital wearing?

3 A. Yes.

4 Q. And it took over an hour to get this child dressed?

5 A. Yes, sir -- yes, ma'am.

6 Q. Now, we have all seen the pictures of this child's
7 head injury.

8 A. Yes.

9 Q. And that's how it looked that night?

10 A. Right.

11 Q. And it still took over an hour?

12 A. Yes.

13 Q. You didn't just take the child and take him?

14 A. No.

15 Q. When you got to your mom's, how long did you stay
16 there?

17 A. I stayed there maybe about fifteen (15) minutes.

18 Q. Okay. So, an additional fifteen (15) minutes onto
19 the hour you had already been with this child with the
20 injuries; is that how long you waited?

21 A. Yes.

22 Q. And, then, you stopped by the gas station?

23 A. I stopped by the gas station.

24 Q. And, then, you finally took him to the doctor?

25 A. Right.

1 Q. But you waited over an hour and fifteen (15)
2 minutes?

3 A. Yes.

4 Q. Does your mom have a phone?

5 A. She does.

6 Q. Did you consider calling 911?

7 A. From her home?

8 Q. Yes.

9 A. I thought it'd be faster for me to get him from
10 there to -- because it takes a ambulance a long time to get to
11 your home.

12 Q. You were concerned about timing, at that point, so,
13 you waited and drove him?

14 A. Yes.

15 Q. After you waited an hour?

16 A. Well, I mean, it takes an ambulance a very long time
17 to come anywhere.

18 Q. **Minor Child** is not your first child?

19 A. No, he's not.

20 Q. He's actually your third?

21 A. He's my third.

22 Q. So, you have been around infants before?

23 A. Right.

24 Q. And you know that a child's head does not normally
25 just swell up?

1 A. No.

2 Q. What -- isn't it true that, when you spoke to Ms.
3 Brazil from DSS, that you told her that you have been out of
4 work since May?

5 A. It's at a regular payroll job.

6 Q. A regular payroll job? Didn't you also tell her
7 that you were laying rock for your cousins in June ---

8 A. Yes. I told ---

9 Q. --- but you didn't get paid for it?

10 A. Well, I mean, he was -- he was waiting on the job to
11 be complete.

12 Q. So, you told Ms. Brazil that it was just in June?

13 A. I worked longer than that.

14 Q. But, did you tell her you worked in August?

15 A. I'm not really sure. I think she asked was I
16 working when my son was born.

17 Q. So, you didn't mention that you were working in
18 August?

19 A. I don't think she asked that question.

20 Q. Did you mention that you were working in September?

21 A. I'm -- I'm not really sure.

22 Q. Did you mention that you were working in October?

23 A. I'm not really sure.

24 Q. But you managed to take the days off when your child
25 was injured?

1 A. I took the days off because there was plans to do
2 other things.

3 Q. Other things, other things with your father?

4 A. With my father and for her to take -- to go to the
5 dentist the day before.

6 Q. Okay. So, you had planned ahead for the dentist
7 trip?

8 A. Well, not really. I woke up that day and she had to
9 go to the dentist. So, I told my cousin I wasn't going to
10 work that day.

11 (Brief pause while Ms. Jordan retrieves documents.)

12 Q. Let's take a minute and talk about the different
13 statements you gave to law enforcement over a time span.

14 A. Yes, ma'am.

15 Q. When you spoke with Nicki Cantrell at the hospital,
16 you provided her with a two-page written statement?

17 A. Yes.

18 Q. Okay. And I believe you stated -- you stated to
19 her, then, at the hospital, that you noticed his head was
20 swollen?

21 A. I did notice, yes.

22 Q. And a few more hours that day, when you spoke with
23 Investigator Saar and Ms. Cantrell -- or Investigator Cantrell
24 that day you stated that she looked -- meaning Tina -- and
25 said, "Let's go to the hospital"?

1 A. She didn't say go to the hospital; I did.

2 Q. Well, you told Officer Cantrell and Officer Saar
3 tt you -- and you I believe wrote the statement yourself --
4 stated that she said, "Let's go to the hospital"?

5 A. No. She wanted to prolong it, so, it must've been a
6 mistake.

7 Q. So, what you told the officers that day, when this
8 happened, less than twenty-four (24) hours afterwards, was a
9 mistake?

10 A. Well, I was besides myself. They just took my kids.

11 Q. But you -- but what you're saying now is the truth?

12 A. Yes.

13 Q. Okay. Did you also told officers that, that day,
14 "That I told her to let me take him to my mom's"?

15 A. Let me take him to my mom's -- I had to take him to
16 my mom's to get gas and show her what was going on with my
17 son.

18 Q. But you said, "Let me take him to my mom's, so, that
19 she can see"?

20 A. Right.

21 Q. Okay. When you burned your baby's foot, where did
22 you take him?

23 A. Well, ma'am, we went to my parents' because we were
24 going on vacation.

25 Q. Where did you not take him?

1 A. To the hospital.

2 Q. When your child had a swollen head, where did you
3 tell Officer Cantrell you were going to take him?

4 A. Well, I had to take him to get gas first because she
5 ran the gas out.

6 Q. Where did you tell Officer Saar and Officer Cantrell
7 that you were going to take him?

8 A. To my parents'.

9 Q. To your parents', because you wanted your mom to
10 see?

11 A. And I had to get gas. And, while I was there, I
12 would show her what was going on.

13 Q. Did you take him to your mom's, so, that she could
14 see and, so, that the doctor wouldn't see?

15 A. No. I -- I didn't. It was not that.

16 Q. But your statement was, "Tina said, 'Let's take him
17 to the hospital. I said, 'Let's take into moms'?"

18 A. Well, I said I needed to take him and go get gas
19 because she told me that the gas was gone out of the car.
20 That's where I had to go first or we wouldn't have made it to
21 the hospital.

22 Q. The gas was run out of car because she used the car
23 earlier?

24 A. Yes.

25 Q. She used the car when you came back from being out

1 with your dad?

2 A. She used a lot of the gas.

3 Q. You woke up at ten thirty (10:30) that morning?

4 A. Yes.

5 Q. And went with your dad?

6 A. Well, I left by ten thirty (10:30).

7 Q. And you came back?

8 A. Yes.

9 Q. And she had to leave? She wanted to leave you with
10 two kids?

11 A. Yes.

12 Q. A two-year-old and a four-month-old?

13 A. Right.

14 Q. What did you tell her?

15 A. I'm sorry?

16 Q. What did you tell Tina?

17 A. What did I tell her about what?

18 Q. When she wanted to leave.

19 A. To go to the dentist?

20 Q. Yes.

21 A. Or go to the emergency room?

22 Q. Yes.

23 A. I guess she can go.

24 Q. Did you also her to take Catherine?

25 A. No.

1 Q. Didn't you tell Officer Saar and officer Cantrell
2 that you asked her to take Catherine?

3 A. I might have did. It's been five (5) years ago.
4 I'm not really sure.

5 Q. Well, if it's in your statement that you made back
6 then, do you think you said that?

7 A. Well, if it's in there, yes, ma'am, I did.

8 Q. You told her to take Catherine because you were
9 tired?

10 A. I was tired.

11 Q. Because you got up at ten thirty (10:30) and gone
12 out with your dad?

13 A. I had worked that day, yes.

14 Q. Did you work?

15 A. Well, I mean, it was -- it's a pretty good job to
16 get up on a camper and -- and measure it and, you know, leave
17 because I was pretty much tired from the job I had been
18 working before this.

19 Q. And that's the job you were working beforehand that
20 you didn't tell DSS about?

21 A. I -- I told them that I was working with my cousin
22 some.

23 Q. I believe you told them that you were unemployed?

24 A. At a payroll job, I did.

25 Q. I believe you also told Ms. Cantrell that you were

1 unemployed?

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

3 Q. Which was it; were you working or were you
4 unemployed?

5 A. I was working with my cousin, yes.

6 Q. Okay. Working with your cousin now, that is what
7 you saying back then?

8 A. Yes.

9 Q. But you did tell the officers that you wanted her to
10 take Catherine because you were tired?

11 A. Right.

12 Q. Okay. You later on told the officers that you --
13 and this is your statement -- you "...had knee, back, and groin
14 problems"?

15 A. Right, I did.

16 Q. So, she gave you three (3) of her pills ---

17 A. Right.

18 Q. --- to ease your pain?

19 A. She just given to me. I didn't ask for them.

20 Q. But you took them?

21 A. I did at a later time.

22 Q. To ease your pain?

23 A. Yeah.

24 Q. Because you were tired and in pain?

25 A. Well, I'm always in pain, so...

1 Q. Why are you always in pain?

2 A. I've been hurt on jobs.

3 Q. Which jobs were you hurt on?

4 A. I was hurt on the Goldstar job. I've had hernia
5 operations. I've had small back -- minor back operations.
6 So...

7 Q. And this is the injury that you neglected to tell
8 Lowe's?

9 A. Ma'am, it was at the time I wasn't hurting, but
10 after working ---

11 Q. So, you did not tell them you had a prior injury?

12 A. On the job, so...

13 Q. So, you lied ----

14 A. Well ---

15 Q. --- to get what you wanted?

16 A. Well, at the time I did.

17 Q. At the time to get what you wanted, you lied?

18 A. (No Response)

19 Q. **Minor Child** slept in a bassinet?

20 A. He did.

21 Q. Bassinets are kind of small?

22 A. Well, it was a pretty good-sized bassinet.

23 Q. It was a good-sized bassinet?

24 A. Yes.

25 Q. It's not a crib?

1 A. It's not a crib, no.

2 Q. Is not a Pack and Play?

3 A. No.

4 Q. It's a bassinet?

5 A. It's a bassinet.

6 Q. And you told the officers that **Minor Child** was in the
7 bassinet when Tina left?

8 A. Right.

9 Q. Or did you put him in the bassinet when Tina left?

10 A. I think she put him in the bassinet because I didn't
11 ever really pick him up at all.

12 Q. And it's just conveniently you're stating that you
13 never took him out of the bassinet?

14 A. I never did.

15 Q. You never burped a four-month-old baby?

16 A. He burped himself by four months of age.

17 Q. A four-month-old can burped himself?

18 A. Yes.

19 Q. What else can a four-month-old do?

20 A. I -- I mean, he -- he can -- it come up with a belch
21 anyway, while I was changing his diaper, so, that's the reason
22 why I didn't ever pick him up.

23 Q. But you never picked up this child in the time that
24 he was there with you?

25 A. That day, no.

1 Q. But you fed him?

2 A. I did.

3 Q. You changed him?

4 A. I did.

5 Q. And you never picked him up?

6 A. Never picked him up.

7 Q. You rotated him from one side to the other?

8 A. I laid him in a -- I mean, he was in his bassinet,
9 so, I mean, I did it in the bassinet.

10 Q. Okay.

11 A. So, I never took him out, you know.

12 Q. In a regular sized bassinet, you did all of that?

13 A. Yes.

14 Q. And you moved him from one side to the other side?

15 A. Yes.

16 Q. Did you notice anything wrong with his head?

17 A. No.

18 (Off-the-Record Discussion)

19 Q. Your testimony today is that you wanted to take the
20 baby to the hospital?

21 A. Yes.

22 Q. She was the one holding back?

23 A. Right.

24 Q. Didn't you also tell officer Cantrell that you were
25 hesitant to take the baby to the hospital?

1 A. I don't think I told her that.

2 Q. You didn't tell her that -- at the sheriff's -- at
3 the actual -- at the ER at Mary Black?

4 A. No. I never did say anything about being hesitant
5 at all because I want to get him to the hospital.

6 Q. But you were hesitant to take the baby to the doctor
7 because the baby's head had swelled before when he was a
8 newborn?

9 A. Well, I mean, it was just a little bit of swelling,
10 you know.

11 Q. So, this is a child that had an injury before?

12 A. No. It wasn't an injury. It was a swelling effect
13 that they said babies get, so, you know...

14 Q. A swelling effect that babies get?

15 A. It's just a-- it's just a little bit of swelling
16 that baby can get around, you know, when they're first born
17 and stuff like that.

18 Q. And you never took him to the doctor with that
19 swelling?

20 A. No. It didn't swell up real big. And it didn't --
21 it just was a little bit. It was just a little puffy, you
22 know, just a little puffy right ---

23 Q. How old was he when he was puffy?

24 A. He was just a few days old.

25 Q. But you never took him to the doctor?

1 A. No.

2 Q. In fact, [Minor Child] never saw a doctor, from the time
3 he was discharged from the baby nursery, until he showed up
4 with twenty-six (26) broken bones?

5 A. She always had -- she always had an excuse the
6 reason why. But she always -- well, I'd leave her the car
7 because my cousin would pick me up for the job.

8 And she had a -- you know, she would tell me, "I'm
9 taking him today." And, then, when I got home she'd say,
10 "Well, I just couldn't take him," or something like that.
11 So...

12 Q. You are [Minor Child] dad?

13 A. I am.

14 Q. And you did not take him?

15 A. No.

16 Q. [Minor Child] never saw a doctor?

17 A. No.

18 Q. [Minor Child] never saw a doctor after you burned his
19 foot?

20 A. No.

21 Q. [Minor Child] never saw a doctor after you saw some type
22 of swelling when he was younger?

23 A. No, it was ---

24 Q. [Minor Child] never saw a doctor after you stated
25 sometimes he would cry when you would pick him up underneath

1 his arms?

2 A. Right. I mean, he would just make a little -- just
3 a little whang (phonetic). When you would bring him close to
4 your chest, he was content. So, I just thought he just loved
5 being held close.

6 Q. But you told DSS that he would cry when you would
7 pick him up underneath his arms?

8 A. He would. He would not make a cry cry, he would
9 just make a little whang (phonetic), you know.

10 (Brief Pause)

11 Q. You told DSS that you noticed that he always cries
12 when you pick him up from underneath his arms?

13 A. Okay.

14 Q. This is your third child?

15 A. This is my third child.

16 Q. Did he always cry when you picked him up underneath
17 his arms?

18 A. Not every time, no.

19 Q. But he started to?

20 A. Correct.

21 Q. And you did nothing?

22 A. No.

23 Q. Okay. But you noticed it?

24 A. Right, I noticed it after this done happened. I'm
25 looking back reflecting on what was going on now that I had

1 found out that he had been hurt.

2 Q. Okay. Mr. Rudasill has pointed out that you had
3 negative drug tests on November the 3rd of '05?

4 A. Right.

5 Q. Do you know what the -- do you know how long that
6 pills stay in your system?

7 A. I think they say seventy-two (72) hours or something
8 like that.

9 Q. Okay. And you received these pills from her on
10 October the 25th?

11 A. Right.

12 Q. And that was much later?

13 A. I think that it was the 3rd of November that they
14 took it.

15 Q. Beyond seventy-two (72) hours?

16 A. I was not used to taking them anymore, so, I figured
17 it would go right through your system.

18 Q. So, you did take them?

19 A. I did take one at the hospital. And I think I took
20 the other ones later on, but it was not that day.

21 Q. And you took the pills with you to the hospital?

22 A. Well, I didn't -- I didn't think, you know, about
23 them being in my pocket or anything, but they were there
24 because where she had give them to me.

25 Q. You actually on the next day, on the 26th, had an

1 appointment to meet with the officers?

2 A. Right.

3 Q. Did you make that appointment initially?

4 A. No, not initially.

5 Q. Why?

6 A. I didn't know what to do. I went to my parents'

7 home to let them know that my kids had been taken.

8 Q. Didn't you tell Officer Cantrell that you overslept,
9 that both of you had overslept?

10 A. I did not sleep that night.

11 Q. But you slept in?

12 A. Sleep in? She slept, but I -- I didn't myself. I
13 stayed up at night reflecting on my kids' pictures where they
14 had been taken.

15 (Brief Pause)

16 Q. At four months old -- of age, what did **Minor Child**
17 mainly do?

18 A. He would just lay, just a regular baby at four
19 months of age.

20 Q. Did he sit up?

21 A. No, ma'am. If you propped him up, he would.

22 Q. Did he crawl?

23 A. No.

24 Q. Did he walk?

25 A. No.

1 Q. He was dependent upon you?

2 A. Yes.

3 Q. And his mom?

4 A. Right.

5 Q. For all his needs?

6 A. Right.

7 Q. Ms. Price touched on this with you briefly: You
8 thought Tina had a drug problem?

9 A. Yes.

10 Q. And you would even refer to her as a drug addict?

11 A. Right.

12 Q. And you left the kids with her?

13 A. I did.

14 Q. You left them alone with her?

15 A. I did.

16 Q. And you did nothing?

17 A. Well, I figured they didn't -- you know, I thought
18 she was a good person, you know, that she would not hurt a
19 kid.

20 Q. Would you classify a drug addict as a good person?

21 A. I don't know many drug addicts.

22 Q. Did your sister talk to you about her experiences or
23 her observations with **Minor Child** and Tina?

24 A. Yes.

25 Q. And you still left Tina alone with him?

1 A. Well, this was afterwards, after this all happened
2 that my sister told me it happened.

3 Q. Your sister never expressed concern that she had
4 about the kids to you?

5 A. No, no.

6 Q. Not at all?

7 A. Not at the time when it was -- we was together, no.

8 **(Brief Pause)**

9 Q. When you burned the baby's foot, you initially
10 denied it?

11 A. I just didn't tell her that I had burned his foot.
12 I was just taking care of it myself.

13 Q. So, by not telling, it's kind of a lie?

14 A. I -- I guess, if you see it that way.

15 Q. Okay. And you stated that it wasn't that bad?

16 A. No, it was not.

17 Q. But you reported to Officer Cantrell, in your
18 statement, that it was red -- retrieves exhibit -- that it had
19 actually healed?

20 A. It was a small burn that with the skin you get a --
21 if you get a sunburn, it'll peel, so...

22 Q. How big was **Minor Child** foot when this happened?

23 A. Ma'am, I'm not really sure the measurements.

24 **(Exhibit shown to the witness.)**

25 Q. Would you classify that as a small burn?

1 A. That's -- that's just red, you know, around the
2 areas.

3 Q. Did the markings cover one side of his foot to the
4 other side?

5 A. Yes. It was the eye of the stove.

6 Q. The eye of the stove and it covered the child's
7 entire foot?

8 A. Well, from the -- well, from the tip to the middle,
9 about three quarters of it.

10 Q. Okay. Was this bad enough that you purchased things
11 -- purchased first aid items for it?

12 A. Yes.

13 Q. But you didn't take him to the ER?

14 A. Right.

15 Q. You didn't take him to a regular doctor?

16 A. That's the way I was raised. You'd only -- you kept
17 eyes on things. If it went bad, if it started streaking, you
18 would take him to the hospital.

19 Q. So, you were waiting on the burn on his foot to go
20 bad?

21 A. No, I was just keeping a eye on it to make sure it
22 didn't go bad.

23 Q. Okay. Did you and Tina have financial problems back
24 at this time?

25 A. We did.

1 Q. And you were not working steady?

2 A. I was working just about every day, but I wasn't
3 getting paid until the job was done.

4 Q. Okay. **Minor Child** was on Medicaid?

5 A. I'm not -- I'm -- yes, he was. He was on Medicaid,
6 yes.

7 Q. So, his bills would -- or his medical -- his medical
8 expenses would have been covered?

9 A. Yes, they would have.

10 Q. So, it wouldn't have cost you anything out-of-pocket
11 to take him to a doctor?

12 A. No, not at the doctor's office, no.

13 Q. To have his foot looked at?

14 A. No.

15 Q. To have his swollen head looked at ---

16 A. No.

17 Q. --- the first time?

18 A. No.

19 Q. Or the crying when you picked him up underneath his
20 arms?

21 A. I didn't think it was hurting or anything like that.

22 Q. But you remembered him crying?

23 A. I remembered him making whimpers. He was not crying
24 in pain, so, it was whimpers and little cries like where you
25 would like maybe picked him up and then just wanted you to

1 hold him close or something.

2 Q. But you said that DSS it was only when you held him
3 under his arms?

4 A. Right. I didn't think maybe, you know, he liked to
5 be held that way.

6 Q. But you would still pick him up that way?

7 A. Well, I mean, you have to pick a baby up that way.

8 (Brief Pause)

9 MS. JORDAN: Nothing further, Your Honor.

10 REDIRECT EXAMINATION by MR. RUDASILL:

4:44 P.M.

11 Q. Scott ---

12 A. Yes, sir?

13 Q. --- what was your understanding regarding who was
14 going -- was taking him to the doctor -- the baby to the
15 doctor or was to take the baby to the doctor?

16 A. Sir? I'm sorry?

17 Q. What was your understanding concerning who was going
18 to take the baby, **Minor Child** to the doctor ---

19 A. After the head -- after his head has swollen up?

20 Q. No, before that, for any kind of checkup?

21 A. Tina because she would always set up appointments
22 for him to go.

23 Q. Was that something that was discussed between you
24 and her?

25 A. Yes.

1 Q. And, to your knowledge, did she take the baby?

2 A. No, she did not.

3 Q. And why didn't she take the baby?

4 A. She would always come up with excuses.

5 Q. With regard to the drug tests that we've introduced
6 as Defendant's 1 and 2; one was a urinalysis. That stays in
7 your system for seventy-two (72) hours; is that correct?

8 A. That's what I've heard.

9 Q. But, with regard to the hair strand test, that shows
10 up for a lot longer period of time if you've taken drugs; is
11 that correct?

12 A. Right.

13 Q. And both tests are negative; is that correct?

14 A. Right.

15 MR. RUDASILL: That's all I have.

16 THE COURT: All right. You may step down.

17 (Witness complied with the Court's request.)

18 MR. RUDASILL: Defendant Moore rests, Your Honor.

19 THE COURT: All right. Any reply?

20 MS. JORDAN: No, sir.

21 THE COURT: All right. Ladies and gentlemen, that
22 is all the testimony and other evidence to be offered
23 during the trial of the case.

24 And, therefore, what remains to be done are the
25 lawyers' final summations, after which I'll instruct you

1 on the law, and you will begin your deliberations.

2 We're not going to do that this evening. We will
3 start with that in the morning at nine thirty (9:30).

4 So, again, during the overnight recess, keep in mind
5 my instructions; no discussions about the case, no
6 exposure to media coverage, do not conduct any
7 independent research or do your own investigation into
8 any issue that might have arisen during the trial.

9 With those instructions in mind, have a good evening
10 and please report directly to your jury room at nine
11 thirty (9:30) in the morning, nine thirty (9:30) in the
12 morning.

13 (Whereupon, the jury was excused for the evening and
14 exited the Courtroom at 4:46 p.m.)

15 THE COURT: All right. Any motions or other matters
16 to address before we conclude?

17 MS. JORDAN: None from the State, Your Honor.

18 THE COURT: Ms. Price?

19 MS. PRICE: Not on behalf of Ms. Dockery.

20 THE COURT: Mr. Rudasill?

21 MR. RUDASILL: Nothing further.

22 CHARGE CONFERENCE

23 THE COURT: All right. Requests for instruction by
24 the State?

25 MS. JORDAN: Your Honor, the State's requested

1 charge, it's upstairs in my office. I apologize. But
2 voluntary intoxication is not a defense.

3 THE COURT: Okay.

4 MS. JORDAN: The State would also request a charge
5 on the hand of one is the hand of all.

6 THE COURT: Okay.

7 MS. JORDAN: The State would also request a charge
8 under *State vs. Jenkins* as it relates to the type of
9 liability required under the unlawful neglect statute.

10 And I have a copy to hand up to the Court if the
11 Court like to see a copy of the case..

12 THE COURT: Well, let me see what you want me to --
13 what you are requesting that I charge.

14 (Document handed up to the Court.)

15 (Brief pause while the Court examines documents.)

16 THE COURT: Now, what is it you're -- what is it
17 that you're requesting?

18 MS. JORDAN: Your Honor, on Page 2 it talks about
19 the intention of the ...

20 (Brief Pause)

21 MS. JORDAN: ... Page 2 of the decision, it talks
22 about the reason it was an accident, the duty to protect,
23 persons of a tender age or helplessness rendering
24 incapable of self protection and by failing to include
25 knowingly or other apt words to indicate criminal intent.

1 We think the Legislature simply -- or the
2 Legislature intended that it when it's simply without
3 knowledge or intent, that, "This act is criminal to fail
4 to provide proper care or attention for a child or
5 helpless person of whom he has legal custody, so, that
6 the life, health, or comfort of a child or helpless
7 person is endangered or is likely to be endangered."

8 Basically, that it's -- it's more of a simple
9 negligence requirement as opposed to a criminal intent.

10 (Brief Pause)

11 MS. JORDAN: And, Your Honor, on Page 1 it talks
12 about what the appellant raised that the trial Court
13 erred in charging the jury that the requisite standard of
14 proof, under the statute, is simple negligence rather
15 than criminal negligence.

16 And it defines criminal negligence as, "The reckless
17 disregard for the safety of others. The appellant
18 contends that this is the standard of proof for
19 conviction, however, the Court disagreed."

20 (Brief Pause)

21 THE COURT: All right. I'll read it through.

22 (Brief Pause)

23 THE COURT: And, then, I'd suggest -- do you have a
24 particular instruction you want me to provide that you've
25 reduced to writing and submitted?

1 MS. JORDAN: I will, Your Honor. I apologize.

2 MR. RUDASILL: I would like a copy prior to our
3 arguing, if I may be provided a copy of that.

4 THE COURT: Any other requests by the State?

5 MS. JORDAN: Not as far as the requested charge.

6 But we do have some objections to the one submitted by
7 Mr. Rudasill.

8 THE COURT: Ms. Price, do you have any requests?

9 MS. PRICE: No, Your Honor.

10 THE COURT: And, Mr. Rudasill, you're submitting --
11 you've submitted yours?

12 MR. RUDASILL: I have, Your Honor.

13 THE COURT: And yours are one (1) through seventeen
14 (17).

15 MR. RUDASILL: That is correct.

16 THE COURT: All right. Ms. Jordan, you object to
17 some?

18 MS. JORDAN: Your Honor, some of them I believe that
19 the Court will cover in their basic charge anyway like
20 certainly Number 1, which is the reasonable doubt is a
21 doubt causing a reasonable person to hesitate to act.

22 THE COURT: Just tell me the ones that you object
23 to.

24 (Brief Pause)

25 MS. JORDAN: Your Honor, Number 3 I don't believe is

1 applicable, it's the statement of a non-testifying co-
2 defendant. They did testify.

3 MR. RUDASILL: That will be withdrawn.

4 THE COURT: All right. It's been withdrawn.

5 MS. JORDAN: Four (4) I believe is covered by the
6 State -- or by the standard charge. Number 5 we would
7 request that the Court read directly from the statute.

8 (Brief Pause)

9 MS. JORDAN: The same issue with Number 6.

10 (Brief Pause)

11 MS. JORDAN: Number 7 is normally covered by the
12 State's circumstantial and direct. And I believe that
13 Number 8 is appropriate as far as mere presence.

14 (Brief Pause)

15 THE COURT: Okay.

16 MS. JORDAN: The same with 9. Number 10 kind of
17 goes along with my argument for the simple negligence in
18 *Jenkins*. It goes -- it's opposite of the simple
19 negligence in *Jenkins* as -- as it relates to the unlawful
20 neglect.

21 Eleven (11) would be covered in the Court's
22 intentional -- or definition of ---

23 THE COURT: Just a second. Go back to 10, as it
24 relates to what?

25 MS. JORDAN: I would -- I would suggest that Number

1 10 doesn't apply to unlawful neglect of a child based
2 upon *State vs. Jenkins*.

3 THE COURT: Unlawful conduct toward the child?

4 MS. JORDAN: Yes, Your Honor.

5 MR. RUDASILL: Is she withdrawing count two of the
6 indictment?

7 MS. JORDAN: No, I'm not withdrawing anything.

8 MR. RUDASILL: Okay.

9 MS. JORDAN: I'm probably being unclear.

10 MR. RUDASILL: Well, we've got two counts. So, I
11 mean, is there -- you have to instruct with regard to
12 intent concerning the other count.

13 MS. JORDAN: Yes.

14 MR. RUDASILL: You agree with that, don't you?

15 MR. RUDASILL: Okay.

16 MS. JORDAN: I think it applies -- I think criminal
17 intent applies as to the felony child abuse, but I think
18 it's simple negligence as it replies -- applies to the
19 unlawful conduct of the child.

20 MR. RUDASILL: But he still has to charge intent
21 with regard to the other count.

22 MS. JORDAN: Yes.

23 MR. RUDASILL: Do you agree with that principle?

24 MS. JORDAN: Yes.

25 MR. RUDASILL: I wanted to make sure.

1 THE COURT: All right. Number 11?

2 MS. JORDAN: Number 11, I think this is covered in
3 your standard charge as is number twelve (12).

4 (Brief Pause)

5 MS. JORDAN: As is number 13.

6 (Brief Pause)

7 MS. JORDAN: Your Honor, I'm -- I'm at a loss as to
8 whether he's -- why is he is requesting the recklessness
9 under Number 14.

10 I don't recall recklessness being -- and I could be
11 mistaken -- I don't recall recklessness being a
12 requirement under either unlawful neglect or felony child
13 abuse.

14 THE COURT: Well, criminal intent can be established
15 by criminal negligence, which is recklessness basically.

16 MS. JORDAN: Okay.

17 MR. RUDASILL: And that's why I believe we have a
18 chance to argue what the standard is for direct -- it's
19 criminal negligence, not simple negligence.

20 (Off-the-Record Comments)

21 MS. JORDAN: Your Honor, assuming -- is he
22 requesting State's -- or Defendant's 15, which is
23 malice in regard to criminal negligence?

24 THE COURT: Well, now, that's a separate -- that's a
25 separate issue altogether. The felony DUI -- felony DUI

1 -- the felony child abuse statute, if -- if I'm -- I
2 don't have it right in front of me, but -- well, I do
3 have it in front of me.

4 20-7-50, which is now 63-5-7 (phonetic), it says
5 that you can be guilty of a violation of the statute if
6 you do or cause to be done unlawfully or maliciously any
7 bodily harm, so... That's part of Subsection II.

8 (Brief Pause)

9 MS. JORDAN: I think Number 16 would be covered
10 under the State's basic malice definition.

11 (Brief Pause)

12 MS. JORDAN: And it appears that under his requested
13 charge Number 17 that maybe he's in agreement with my
14 analysis under *State vs. Jenkins* actually, where he has
15 referred to this proposed charge just as to Count two
16 with specific intent.

17 (Brief Pause)

18 MS. JORDAN: I guess I'm at a loss for the specific
19 intent in that I don't -- I don't think there's a
20 requirement that you have to specifically intend to do
21 something, but you have to conduct (phonetic) a criminal
22 act.

23 THE COURT: Well, you don't have to have a specific
24 intent if criminal negligence suffices, which I believe
25 it does.

1 (Brief Pause)

2 THE COURT: All right. Mr. Rudasill, you want to
3 address those issues?

4 MR. RUDASILL: Well, I -- I have submitted the
5 instructions. They may be included in your general
6 instructions, but I specifically wanted to make sure that
7 those things were instructed, whether they be a part of
8 yours or given as individual instructions.

9 THE COURT: Well, she's -- you know, she's not
10 objecting to those. She's just saying she thinks they
11 are covered.

12 She -- her objections start with your proposed
13 Number 8.

14 MR. RUDASILL: Number 8?

15 THE COURT: Number 8 and 9, mere presence.

16 (Brief Pause)

17 MR. RUDASILL: Your Honor, even though there is
18 testimony now in the record of both of the Defendants
19 testifying regarding the conduct of the other, there is
20 still testimony denying that any acts took place with
21 regard to Mr. Moore.

22 And I believe that the jury could understand -- as
23 we are trying them as co-defendants, they also have been
24 requested -- or you have been requested to give
25 instructions concerning the hand of one is the hand of

1 all, I think the jury needs to also understand the fact
2 these parties were residing together and living together,
3 as the State as theorized, that the presence itself does
4 not constitute an offense.

5 And, for that reason, I think that they need to
6 understand that being at a location -- they are not
7 charged with the commission of a felony or failing to
8 report a criminal violation.

9 They're charged with specifically doing the act.
10 Each one of them are charged identically.

11 And, for that reason, I think the Court needs to
12 give them some instruction as to the fact that they were
13 living together, when these events supposedly occurred,
14 in itself does not constitute a crime. And that's the
15 reason I requested 8 and 9.

16 THE COURT: All right. I'll reflect on that.

17 (Brief Pause)

18 MR. RUDASILL: The things that have been submitted
19 that relate to intent, as far as being more than criminal
20 negligence, relate to the felony count.

21 I realize -- I read the decision that's been handed
22 up to the Court, but I think that there is a standard of
23 that would be charged with criminal negligence, which is
24 more than a mere simple negligence.

25 For that reason, I've submitted the definition of

1 recklessness, so, that the jury would have some idea of
2 understanding what that would constitute.

3 And I believe that is all that has been objected to.
4 The statute provides for it being maliciously and
5 knowingly, as to Count two.

6 THE COURT: Well --

7 MR. RUDASILL: And you'll address them as they've
8 been submitted. Do you want me to go through each one of
9 them?

10 THE COURT: Well, Ms. Jordan, you're -- you're --
11 you're claiming that simple negligence is always required
12 under 63-5-70, Subsection II -- or excuse me, Subsection
13 I, placing the child at unreasonable risk?

14 MS. JORDAN: Your Honor, I would argue that it
15 applies to both of those, one and two.

16 Well, I take that back. I believe it's simple
17 negligence as to one, to place the child at unreasonable
18 risk of harm affecting his life, physical or mental
19 health or safety because the second part does include the
20 words of "unlawfully and/or maliciously."

21 THE COURT: All right. So, you think the *Jenkins*
22 instruction applies to Count one, Subsection I?

23 MS. JORDAN: Yes, Your Honor.

24 THE COURT: All right. And you agree that criminal
25 intent applies to Count two? Proof of criminal intent

1 does apply to Count two?

2 MS. JORDAN: Yes, sir.

3 THE COURT: Okay. All right. Anything else?

4 (All parties respond in the negative.)

5 THE COURT: All right. Court is in recess until
6 nine thirty (9:30) in the morning.

7 (Whereupon, court was adjourned for the evening at
8 5:02 p.m.)

9 (Court reconvened at 9:30 a.m. on Thursday, January
10 6, 2011)

11 (In chambers conference with counsel from 9:30 a.m.
12 until 10:01 a.m.)

13 (Court reconvened at 10:02 a.m. on January 6th,
14 2011.)

15 (Off-the-Record Comments)

16 THE COURT: All right. Any matters to address
17 before the jury is brought in?

18 MS. JORDAN: None for the State, Your Honor.

19 MS. PRICE: None for Ms. Dockery.

20 MR. RUDASILL: None for Mr. Moore.

21 THE COURT: Ms. Price, are you going to rest?

22 MS. PRICE: I need to, Your Honor, yes.

23 THE COURT: Okay. Well, that's a matter we need to
24 address.

25 MS. PRICE: Okay. Your Honor, Ms. Dockery rests her

1 case.

2 THE COURT: Thank you. I thought we had done that.

3 MS. PRICE: Just as a matter of law.

4 THE COURT: We'll make it official. All right,
5 bring the jury in, please.

6 (The bailiff stepped out to summon the jury at 10:02
7 a.m.)

8 (The jury enters the courtroom at 10:03 a.m.)

9 (Off-the-Record Comments)

10 THE COURT: Good morning, ladies and gentlemen.

11 (Responses of "good morning" were heard.)

12 THE COURT: As you know, when we recessed yesterday,
13 all of the evidence had been received. And, therefore,
14 what remained to be done were the lawyers' final
15 summations, after which I will instruct you on the law.
16 And, then, you can begin with your deliberations in the
17 case.

18 So, I will ask that you, please, give the lawyers
19 your attention as they give you their final summations.
20 Ms. Price?

21 MS. PRICE: May it please the Court?

22 CLOSING ARGUMENTS

23 MS. PRICE: Good morning, ladies and gentlemen.

24 (Responses of "good morning" were heard.)

25 MS. PRICE: This will be my last chance to talk to

1 you because, at this point, my job is ending and your job
2 is just about to begin.

3 Now, what I'll do in my closing statement is to try
4 to take you through step-by-step through all the
5 witnesses that you heard speaking from this box
6 (indicating).

7 And, since we started this case two days ago, I'm
8 just going to try to refresh your recollection just a
9 little bit.

10 Now, the first witness you heard from was Dr.
11 Thomasson, and he's the radiologist here from Greenville.

12 He's the one that did the -- all -- excuse me -- all
13 the films and all the scans on little **Minor Child** when he
14 came in as a patient.

15 Now, he said a couple of things that were kind of
16 interesting to me as a defense lawyer. He said that the
17 reason that they do the bone scans is that sometimes in
18 babies doctors couldn't pick up on the breaks when you're
19 examining a child.

20 And this is why you have a skeletal survey. Now,
21 this gentleman sat here and said that, as a physician, he
22 can't pick up on them when he examined the baby.

23 So, if a doctor is going to have difficulty with
24 that, my client, Ms. Dockery, who is not a physician, who
25 does not have any medical training, how could she be

1 expected to pick up on it?

2 And he also said that the rib fractures were ten
3 (10) to fourteen (14) days of healing at least, but he
4 couldn't date the skull fractures; but soft tissue
5 swelling would indicate that there was a fairly new
6 injury.

7 As far of the femur fractures go, he said that he
8 thought that those were also older, at least more than
9 ten (10) days old.

10 Now, Dr. Robinson, who was the pediatrician that you
11 heard from next, he said, when he examined **Minor Child** at the
12 hospital that day, that he did not appear to be in what
13 he would called pain.

14 This is consistent with what Mrs. Dockery said, that
15 she never observed **Minor Child** being, in any kind of distress
16 or pain, which is why they didn't take him to the doctor.
17 So...

18 (Brief Pause)

19 MS. PRICE: We next continued with the testimony
20 from Detective Cantrell. And you heard her say that Ms.
21 Dockery was unemotional when she -- when she first saw
22 her when -- when she had little Catherine with her when
23 **Minor Child** was being -- was with his father when he was
24 having his blood drawn.

25 But you also heard her say on cross examination that

1 different people respond in different ways to stress. I
2 have noticed that myself.

3 I've noticed that sometimes I think that my client
4 is like that. It's just something that all of us do.
5 Not all of us respond to stress and bad situations the
6 same.

7 And you also heard her say on cross examination that
8 their -- these children did not seem to be malnourished
9 or underfed in any way.

10 (Brief Pause)

11 MS. PRICE: You also heard her say on direct
12 examination -- you heard a lot of talk about my client
13 taking some medicine -- medication, prescription
14 medication, for her tooth. It was prescribed though.

15 When I asked Detective Cantrell did she appear to be
16 high or under the influence, she said no when she talked
17 to her.

18 Now, in yesterday's testimony you heard from Ms.
19 Dockery and Mr. Moore. First, you heard from the
20 gentleman from DHEC yesterday.

21 We all call him Chico for short. And you heard him
22 say that, when he went through her medical records and --
23 and saw that she had been prescribed the prescription on
24 October the 25th, her discharge instructions were from
25 Mary Black written at 5:11 P.M.

1 And that's an important time to remember, ladies and
2 gentlemen, because, when we get to the testimony
3 yesterday, from Mr. Moore, he said that his wife left --
4 left the home at approximately four thirty (4:30) in the
5 afternoon. And that it was about a 15-minute ride from
6 their house to Mary Black Hospital.

7 Now, you all, one thing that the Judge and that Ms.
8 Jordan talked to you about was using your common sense
9 when you get to judge -- judge a case and listen to the
10 facts and make a decision.

11 Now, I think all of us, at some point in time, have
12 been to the emergency room either on our own behalf or a
13 sick parent, child, whatever.

14 Now, if you leave your house at four forty-five
15 (4:45) [sic] and you get at Mary Black Hospital at
16 approximately fifteen (15) minutes later, at four forty-
17 five (4:45), you're not going to be discharged at five,
18 eleven (5:11).

19 You're still -- you are usually still going to be
20 sitting there because sometimes there are other
21 emergencies that take precedence over yours and things of
22 that nature.

23 So, four forty-five (4:45) you're getting to the
24 hospital, discharged at five, eleven (5:11), that time
25 frame just doesn't work, ladies and gentlemen.

1 And the reason it doesn't work is because she left
2 that house earlier to get to that hospital which means
3 that Scott Moore was alone with **Minor Child** while she was
4 gone earlier.

5 This is the same person that admitted to dropping
6 his baby on a stove. Accidental or no, he still didn't
7 tell the baby's mama the truth about how the baby got
8 burned.

9 If it's an accident, why won't you tell them? You
10 know, those of us who have kids or have been around small
11 kids know that accidents happen. So, why not tell?

12 This is also the same person who said he worked six
13 (6) days a week but yet, he was alone with the child and
14 he never saw anything wrong with the baby.

15 But, if I -- if I didn't do anything, she must've
16 done it but I never saw anything. And, by the way, I
17 wasn't working for two days straight on October 24th and
18 25th.

19 And this is also the same person who got fired from
20 Lowe's for not being totally honest on his job
21 application.

22 This is also the same person who has said that Tina
23 loves to take Lortab, but I didn't say she was stealing
24 my medicine that I got fired for taking from my own
25 doctor.

1 But he admittedly leaves his child alone with
2 somebody that he himself says is a drug addict. And he's
3 the only person who says that, by the way. We didn't
4 hear anything about Ms. Dockery ever appearing to be
5 under the influence when she was at the -- the hospital.

6 This is the same person that took prescription drugs
7 from Tina when he didn't have a prescription.

8 And he never noticed anything wrong with **Minor Child**
9 head.

10 Probably the most telling testimony that we hear --
11 that we heard from my client yesterday was that he told
12 her what to say.

13 And you all can see my client and I admit to you,
14 neither one of these folks are going to be mom and daddy
15 of the year.

16 But I'll be quite honest with you, you all heard my
17 client and you saw her demeanor. You all saw how she
18 acted yesterday. She is not the smartest person on the
19 face of the earth, okay?

20 She does what he tells her to. And what he told her
21 to do was to say that she dropped **Minor Child** because,
22 otherwise, they would have their children taken away.
23 And she believed him.

24 Now, in our last few moments together, as you weigh
25 what you've heard over the past three days, just keep in

1 mind that Ms. Dockery has two children. Since this case
2 has happened, she's had a third son.

3 His name is Gabriel and he is two years old. He
4 lives with her. That child is not in DSS custody. He's
5 a cute little fella.

6 The common denominator with **Minor Child** is Scott. Thank
7 you, ladies and gentlemen.

8 (Ms. Price's closing argument ended at 10:13 a.m.)

9 THE COURT: Mr. Rudasill?

10 MR. RUDASILL: Thank you, Your Honor.

11 (Mr. Rudasill's closing argument began at 10:14
12 a.m.)

13 MR. RUDASILL: Good morning, ladies and gentlemen.
14 When I first got an opportunity to address you, in my
15 opening argument, I told you that what you had taken an
16 oath to undertake was a huge responsibility.

17 But I also tried to at least give you some
18 forewarning that part of your responsibility, part of
19 that responsibility that you have taken an oath to carry
20 out as jurors in this case, would not involve Scott Moore
21 any contest with regard to whether there were fractures
22 that had occurred to his son that he found about -- found
23 out about on October the 25th, two thousand and five
24 (2005), when he took **Minor Child** to the emergency room; the
25 fractures that later turned out to be to his skull, to

1 his leg, and to his ribs.

2 I also told you that you would hear testimony that
3 he acknowledged that there was an event, prior to October
4 the 25th, when he was holding his son, as he described to
5 you, with his head against his shoulder [sic] and his
6 feet against his fingers, stirring food on the stove to
7 prepare for Catherine and himself to eat;

8 That [Minor Child] foot touched the eye of the stove and
9 burned his foot, not at the location where they were
10 living, and which you have a photograph of, but at 190 in
11 Clifton, a different mobile home;

12 That with regard to what you were primarily called
13 upon to do, to carry out your responsibility as jurors in
14 this case, would be to determine who brought about, who
15 caused the fractures, the great bodily injury, that the
16 prosecution alleges took place with regard to [Minor Child]
17 that was found out about on October 25th of two thousand,
18 five (2005);

19 And whether or not, under another count of Scott
20 Moore's indictment, whether or not the event that I
21 talked about where his -- [Minor Child] foot was burned,
22 while he was stirring the food, exposed [Minor Child] to an
23 unreasonable risk of harm.

24 Those are the issues. And nothing has changed after
25 two days of testimony that, that -- those are the primary

1 issues that you're going to have to determine in carrying
2 out your duties as jurors in this case.

3 Very briefly I would like to talk about the two
4 offenses that Scott Moore is charged with. His Honor, in
5 a moment, will give you instructions concerning the law;
6 what the statutes say and the elements of the offenses of
7 child neglect, which is Count one. And Count two is
8 child abuse with great bodily injury.

9 I believe that he will instruct you that, with
10 regard to Count one, concerning neglect, that where a
11 parent exposes a child to an unreasonable risk of harm,
12 that affects that child's physical or emotional health,
13 the child's life, or safety, is one way that child
14 neglect can occur.

15 Secondly, that if that person does or caused --
16 causes to be done, unlawfully or maliciously, any bodily
17 harm, so, that the life of that child is endangered or
18 likely to be endangered, that would constitute child
19 neglect.

20 Child abuse, with great bodily injury, is injury to
21 a child. And great bodily injury is defined as, "Injury
22 which creates a substantial risk of death, serious or
23 permanent disfigurement, or protracted loss or impairment
24 of a body member or organ -- body member or organ."

25 But those are the offenses that Scott Moore is accused of

1 having done.

2 Judge Cole, I believe, as he did in his initial
3 instructions to you, will tell you that -- that, even
4 though these individuals are being tried together, that
5 you have to consider the evidence that you've heard since
6 we started this Tuesday afternoon through last night;

7 That you have to consider that evidence separately
8 as it relates to Scott and separately as it relates to
9 Ms. Moore [sic].

10 In addition, I believe he will tell you that, with
11 regard to the charges against Scott Moore, you have to
12 consider each of those counts separately.

13 So, you're are going to have to take -- as I've told
14 you, one of the functions that you would have would be
15 determining believability, believing credibility, in
16 trying to determine what the true facts are;

17 That you're going to have to go through that
18 function, determine what the facts are. Then, take those
19 facts and apply them to the law that His Honor will give
20 you as it relates to each one of the counts and as it
21 relates to each one of the individuals that you're
22 hearing the evidence concerning, both Scott Moore and
23 Tina Dockery.

24 I pointed out initially, when I talked to you, and
25 I'll point out again: There is not an allegation, there

1 is not a count of any indictment, that charges Scott
2 Moore with having conspired with Tina Dockery, joined in
3 some joint venture or common enterprise, to harm **Minor Child.**

4 That is not accused. He's not accused of that. Nor
5 is he accused of mis-presentment (phonetic) of a felony,
6 which is another criminal offense, where a person fails
7 to report a felony that has occurred, to the appropriate
8 authorities.

9 We have no joint conspiracy or conduct. So, you're
10 going to have to separately determine whether or not
11 Scott Moore is guilty of child neglect and separately
12 whether he is guilty of child abuse by great bodily
13 injury.

14 The fact that he and Ms. Dockery had a relationship,
15 however ill advised that obviously has become through the
16 testimony that you've heard, does not mean that simply
17 because they were together Scott Moore is responsible for
18 what -- for what Ms. Dockery did during that
19 relationship.

20 I asked you initially -- I tried -- when I first
21 spoke with you, I tried to exclude what was not going to
22 be at issue and asked you to focus, when you were
23 listening to testimony because I knew it was going to be
24 a day and a half or two days of testimony, all the
25 testimony that I thought would help you best determine

1 what the facts are in this particular case and who
2 carried out, set in motion, caused the injuries to

3 **Minor Child**

4 I asked you to pay close attention to the testimony
5 you were going to hear, from the investigating officers,
6 regarding Scott's demeanor, Tina's demeanor; meaning --
7 and specifically I said I wanted you to listen to whether
8 you -- they observed love, by either of them for their
9 children, concern by either of them for their children,
10 or any emotion whatsoever, once they were made aware of
11 the injuries to **Minor Child** and the extent of the injuries to
12 **Minor Child** whether they showed any emotion at all.

13 (Brief Pause)

14 MR. RUDASILL: Going back to Detective Cantrell's
15 testimony, on October the 25th, when she first had contact
16 with either Scott or Tina, at the emergency room. Recall
17 what she testified she observed about Scott and Tina;
18 Scott crying, shaking, nose running.

19 Granted -- and I'm sure Ms. Jordan, when she has the
20 opportunity, is going to say, "Well, Mr. Rudasill told
21 you about that, but he didn't tell you that Detective
22 Cantrell said she thought that, that was remorseful."
23 And she did.

24 But, when I asked her questions about, "Well, wait a
25 minute, let's -- this is a father who has taken his son

1 to the emergency room because of swelling to his head,
2 has now been told that he has a bilateral skull fracture;

3 "There's an officer there investigating, he's been
4 holding the child, when you first saw him, having blood
5 drawn from his arm, comforting -- comforting him while
6 the mother won't even look at him and is with the other
7 child, that couldn't it be that he was just upset about
8 what he had just found out?

9 "Would that not explain why he was showing the
10 emotion of crying, shaking, nose running?" And I think
11 she finally responded that, "Yes, it very well could."

12 But I want you to also think about not only that
13 event because, if you'll recall, she had contact with
14 them in the emergency room of the 25th. She talked with
15 them and interviewed them there.

16 On the 26th, a search warrant at their home; contact
17 then. The afternoon of the 26th, contact then.

18 Other statements, written statements taken from
19 Scott. And, then, Officer Morgan had contact I believe
20 on the 27th that we'll talk about in just a moment.

21 But, throughout all of that contact, what came out
22 consistently was this: Tina Dockery showed no emotion
23 whatsoever with regard to the event, to the children, to
24 what was taking place; no emotion.

25 That was affirmed by Detective Saar when he

1 testified. I also asked you, when I first spoke with
2 you, to listen for the testimony concerning drug abuse.

3 Again -- and I'll explain why I asked you to focus
4 on those two things in just a moment. But I asked you to
5 listen for the testimony concerning who abused drugs.

6 And you learned, through the testimony that you
7 heard, that on the 24th you have -- and you will have a
8 prescription bottle to take back with you because it's in
9 evidence, in your deliberations.

10 On the 24th, Tina Dockery got twelve (12) hydrocodone
11 pills. Consistently throughout her statement, she told
12 you that she took those two every two hours.

13 Now, I would admit that certainly there is evidence
14 -- and I'm sure, again, Ms. Jordan is going to talk about
15 that and I know Ms. Price has already talked about it to
16 some extent.

17 There's no question there are a number of statements
18 that were made by my client, but also a number of
19 statements made by Tina Dockery.

20 And I will admit that, in those statements, in the
21 different statements, with regard to Scott, there are
22 inconsistencies; inconsistencies, inconsistencies on
23 things I would submit to you are peripheral.

24 If you look at the two written statements that are
25 introduced, and I believe they were State's Exhibits --

1 let's see -- I'm not sure what the numbers were, but
2 you'll have a chance to have them.

3 But they're the written statements taken on the
4 evening of -- at the Emergency Black and, then, the next
5 morning or afternoon at the sheriff's office.

6 Scott's written statements -- and you'll have an
7 opportunity to read them -- are not really inconsistent.
8 The second written statement give more information.

9 It gives information about the pills, the three (3)
10 pills that he got from Tina when she came back from the
11 emergency room at Mary Black.

12 But I want you to remember something about those
13 three pills when you're talking about inconsistencies in
14 statements. Throughout every interview that Detective
15 Cantrell talked with Tina, when she told her about that
16 second script that she got, the Vicoprofen, twelve (12)
17 pills that she got on the 25th, that she had consumed all
18 of those pills. Now, that's twelve (12) pills.

19 She's gotten twelve (12) pills on the 24th. That's,
20 if she took them all, twenty-four (24) in less than or
21 around a 24-hour period of time.

22 It was only, after she being seated at that table
23 beside me with my client, and hearing Scott's statement
24 being read by the Detective saying that he admitted, in
25 his second statement, that she gave him three pills, that

1 was the only time, when she was on the stand and
2 testifying, that we heard anything about, "I gave Scott
3 three pills."

4 Up to that point in time, she had denied it. She
5 said that she had taken all the pills.

6 The reason that the drugs that were ingested are
7 important we learn from Investigator Kotecha with DHEC
8 because she [sic] was qualified as an expert within the
9 field of pharmacology.

10 She's [sic] a pharmacist. She [sic] has been in law
11 enforcement. And she's worked in this area for a number
12 of years.

13 He found where not only the script for the bottle
14 that you have from Palmetto Dentistry. He found that
15 script as well as the script from Mary Black Hospital.
16 And, yes, she was discharged and received those
17 Vicoprofen at five, eleven (5:11) p.m. on the 25th.

18 But what did he say about those drugs? Which is why
19 I asked you to pay close attention to the issue about who
20 took the dope. He said that for an adult, a normal
21 adult, one pill every four hours.

22 The second script said, according to the doctor's
23 instruction, one every four (4) to six (6) hours as
24 needed.

25 Scott Moore testified that, when she got the first

1 twelve (12) pills -- and they're both generic hydrocodone
2 -- when she got the first bottle of pills, she may have
3 taken as much as six (60) of them, a half of them I think
4 was his testimony.

5 Why is that important? Because he also said, based
6 on his education and training, that medicine either makes
7 you drowsy and puts you out or it can hype you up in a
8 euphoria; make you more agitated, active, hyperactive.

9 He also said, beside some other side effects which
10 aren't important, that it affected a person's judgement.
11 It altered judgement, things that a person would do
12 normally without ingesting that quantity.

13 There's nothing wrong with taking pain medicine, if
14 you're hurting, but you can't take it beyond what's
15 prescribed. And you can't eat half of your prescription
16 or two every two hours because it affects your ability to
17 control your emotions.

18 It affects your ability to control your judgement.
19 It makes you do things that you wouldn't otherwise do
20 when you're sober.

21 Now, I also know Ms. Jordan is going to talk about
22 the fact that Scott got three pills. She's got a right
23 to do so. That's certainly part of the evidence.

24 But I ask that you recall his testimony that, yes,
25 she gave them to him, but he think he took one when he

1 got back to the hospital that night, but the others he
2 didn't take at the same time.

3 More importantly, you're going to have Defense
4 Exhibits 1 and 2, which are lab reports for samples
5 submitted by Scott, granted, November the 3rd, after the
6 Family Court action concerning the children being taken
7 into protective custody, had commenced.

8 But it was a urinalysis. It was a body hair drug
9 strand test. And Ms. Jordan I'm sure is going to say,
10 "Seventy-two (72) hours, urinalysis is not going to show
11 a thing." She's absolutely right.

12 You take drugs, for a urine sample, and you test it
13 and it will not show up usually after seventy-two (72)
14 hours. But with hair -- a drug strand test, which is the
15 other exhibit, both of them negative, can last -- can
16 show drugs from six (6) months to a year, depending on
17 what the drugs are.

18 (Brief Pause)

19 MR. RUDASILL: We know from the evidence -- and you
20 have introduced into evidence -- evidence I think is
21 Prosecution's Exhibit 27, which is the tee shirt.

22 We know that on October the 25th, after Scott left,
23 around ten o'clock (10:00), that between eleven (11:00)
24 and twelve (12:00), Tina took a bath.

25 We know that they, the detectives, took that wet tee

1 shirt, the only wet item of clothing that was -- of
2 **Minor Child** that they found when they executed the search
3 warrant on October the 26th.

4 And you're looking at me and you're saying, "What
5 difference does that make? Why is that important?"

6 Well, it becomes important, ladies and gentlemen,
7 because of the last person who you heard testify called
8 by the prosecution, Danny Morgan.

9 It becomes important because, if you will recall, on
10 cross examination of Mr. Morgan, I asked him about his
11 questioning -- his interrogation tactic with Ms. Dockery.

12 And he told you, if you will recall, that he used
13 the fact, that he had been briefed by Detective Cantrell,
14 had been told about her acknowledging she abused that
15 Lortab, taking two every two hours, at a minimum.

16 And that he used that to say, "Look, you know, maybe
17 this happened as an accident. Maybe because you were
18 under the influence of drugs. You just made a mistake.
19 It was an accident."

20 He did that to give her an opportunity to fess up,
21 to tell what happened. And what did she do? She said,
22 "Yeah, I took that medicine. I got dizzy. I had
23 **Minor Child** I dropped him, he hit the side of the tub."

24 Later she said, "No, that's not what happened." But
25 you've heard her testify. And, yes, just like her

1 attorney says, I want you to remember what you saw when
2 you heard the two people charged testify.

3 What was her explanation to me when I said, "That's
4 what you told Investigator Morgan -- Detective Morgan."
5 Her answer? "Scott told me to tell them, so, that I would
6 get the children back."

7 Mr. Foreman, ladies and gentlemen, I'll tell you
8 that, that is the most unbelievable statement I've heard
9 in many a year. And I've practiced for many a year now
10 I'm sorry to say.

11 Why would anyone, who knows they are a suspect for
12 causing fractures or injury to their son, who knows they
13 have given a statement to an investigating officer that
14 they have abused drugs;

15 Why would they make a statement admitting that they
16 dropped their child, causing -- or possibly causing
17 injuries with the belief, based on what someone told them
18 to -- why to say that, that because they made that great
19 admission, Detective Cantrell is going to rush in with
20 the two children and give them back to her. That's
21 absurd.

22 Scott Moore didn't tell her to say that. I submit
23 to you, ladies and gentlemen, that is the closest
24 explanation we're going to have -- as not necessarily
25 accurate, the closest explanation we're going to have as

1 to how [Minor Child] had a bilateral skull fracture.

2 (Brief Pause)

3 MR. RUDASILL: You heard the testimony of Scott's
4 sister, Ms. Massey. You heard that, when she came to
5 their mobile home in September to visit her niece and
6 nephew and see Ms. Dockery, that before she got to the
7 door, outside the trailer she heard [Minor Child] crying.

8 She also heard Tina Dockery make the statement, "If
9 you don't quit crying, I don't know what I'm going to
10 do." She went inside. She was given [Minor Child]

11 That statement was repeated, that she didn't know
12 what she would do if she didn't take the baby.

13 Think back for a moment to Dr. Thomason's testimony,
14 the radiologist, the gentleman from the Greenville
15 Hospital System, that did the skeletal survey.

16 We know from his testimony, to a reasonable degree
17 of medical certainty, which simply means more probable
18 than not, fifty-one percent (51%). We know that he says
19 we're talking about two incidences when [Minor Child] was
20 physically abused that resulted in fractures.

21 I'm not talking about the burn now; we'll talk about
22 that in a moment.

23 Within seventy-two (72) hours of either -- and I
24 don't believe he ever clarified this, and if you recall,
25 then, you take your recollection -- within seventy-two

1 (72) hours of when **Minor Child** came to the emergency room at
2 Mary Black Hospital about nine forty-five (9:45) on
3 October the 25th, or within seventy-two (72) hours of when
4 he did the skeletal survey of on the 26th of October,
5 after **Minor Child** had been transferred to Greenville Hospital
6 System, that based, on the soft tissue swelling, that he
7 felt that bilateral skull fracture had occurred.

8 The rib fractures and the leg up close to the hip,
9 being within anywhere from fourteen (14) days to twenty-
10 one (21) days because of the healing process.

11 But what I want you to focus on for a second is I
12 asked him about the mechanics -- or Ms. Jordan asked him
13 about the mechanics, or we both did, because of where the
14 fractures were;

15 If you just picture between my fingers an infant, he
16 described the fractures at the posterior or back and at
17 the front, which is a classic indication which they see
18 when they find radi -- radiographs that show fractures in
19 infants under a certain age.

20 Where you've got fractures that appear, on the back
21 and on the front, is classic indication of child abuse.
22 It's that classic indication usually when a -- an adult
23 squeezes the child to stop it from crying that those
24 fractures occur.

25 I submit to you, again, that because this

1 explanation that we're going to have as to when those rib
2 fractures occurred, is related to the testimony of
3 Scott's sister and what Dr. Thomason found with regard to
4 those fractures.

5 There is no question that **Minor Child** foot was burned
6 when Scott was preparing noodles. To me this is going to
7 be for you the hardest part of your responsibility to
8 determine, based on how you heard him explain that,
9 whether in your opinion that rises to the level of having
10 subjected **Minor Child** to an unreasonable risk of harm.

11 I submit to you that does not; that caught up in the
12 moment of trying to prepare food, and the way he
13 described the foot touching that, that is not the level
14 of criminal responsibility as the law requires or the
15 amount of responsibility, the burden of responsibility,
16 that the law requires with regards to that Count one of
17 the indictment.

18 Additionally, I would refer you back to Dr.
19 Robinson's testimony, when I -- the pediatrician from
20 Greenville Hospital System, who said, "When it comes to
21 trying to date the fractures, I defer to my colleague Dr.
22 Thomason. He's the radiologist. He's the expert. He's
23 the one that that's his specialty."

24 But, as it relates to the foot, he described it as a
25 redness. Now, I want you to remember how he went on to

1 describe it, when I was trying to tie him down, as much
2 as I could, as to whether that was a healing burn;

3 What -- what he saw about that redness to the bottom
4 of the foot, and he used the term, "redness."

5 Not scarring, not disfigurement, redness. And he
6 said, as -- when I asked him about the healing, he said
7 it was like somebody having a sunburn that's red.

8 It's not healed, the sunburn is there; it's still
9 red. That's the kind of severity he was talking about
10 with regard to that burn on the bottom of **Minor Child** foot.

11 Now, ladies and gentlemen, I have argued testimony
12 that I recall. Ms. Price did the same thing. I
13 anticipate Ms. Jordan will do that.

14 And lawyers, we in our arguments, are telling you
15 what we recall the witnesses having said. I can assure
16 you that none of the three of us would ever intentionally
17 misstate what we think the testimony was.

18 But we're advocates. We have a client we represent.
19 And I will tell you that, if I've misstated something --
20 if you remember testimony differently than from what I
21 said it was, you use your testimony or your recollection
22 of the testimony, in making the decision in this case;
23 not what I said, not what Ms. Jordan says a person said
24 or what Ms. Price says that a person said.

25 The State has the burden of proof. They have to

1 prove what the facts are. If they fail to do that, they
2 fail to meet their burden. They have to prove guilt of
3 each and every element beyond a reasonable doubt.

4 I told you, in my opening remarks to you, that I
5 believe Your Honor will instruct you that a reasonable
6 doubt is the kind of doubt that a reasonable person would
7 have that would cause them to hesitate to act in their
8 daily decisions of life.

9 If you have a doubt, as to any of the elements of
10 the offenses charged against Scott Moore, that doubt has
11 to be resolved in his favor.

12 Mr. Foreman, ladies and gentlemen, I simply ask that
13 you, at the conclusion of deliberations, that you write a
14 verdict that speaks the truth. And, with regard to Scott
15 Moore, that verdict should be acquittal, not guilty, on
16 both counts. Thank you.

17 (Mr. Rudasill's closing argument concluded at 10:45
18 a.m.)

19 THE COURT: Ms. Jordan?

20 MS. JORDAN: Thank you, Your Honor.

21 (Brief Pause)

22 (Ms. Jordan's closing argument began at 10:46 a.m.)

23 MS. JORDAN: Ladies and gentlemen, I'm going to
24 start by talking to you about Count one of both
25 indictments. Count one of both indictments, as you've

1 already been told, is in regards to the unlawful conduct
2 or neglect of **Minor Child**

3 Count one simply states, in two separate parts --
4 there's an and/or proposition. It states in part one,
5 "To place a child at a reasonable risk of harm affecting
6 the child's life, physical or mental health, or safety."

7 The Judge is going to talk to you about that this is
8 just a negligence standard. They were negligent to the
9 degree that's stated in here, "unreasonable risk of
10 harm."

11 The next one is part two of Count one is that they
12 "Did do, or caused to be done unlawfully or maliciously,
13 any bodily harm to the child, so, that the life or
14 health of the child was endangered, or likely to be
15 endangered." There is an criminal intent aspect to that.

16 I'm going to spend a few minutes talking to you as
17 to why both of the Defendants are guilty of both of them.

18 It is painfully obvious, from the testimony that you
19 seen, that they did that, both of them, from their
20 actions, their words, during the course of the
21 investigation back in October of '05, and their words on
22 the stand here yesterday.

23 **Minor Child** was four months old. The indictment
24 covers the span of his life, from June 22nd through
25 October the 25th two thousand, five (2005), when he was

1 taken to Mary Black, covers his entire life.

2 Common sense tells you everybody has experience, and
3 most people gave experience with small children, a four-
4 month-old, a newborn to four months old, they're very
5 dependent, for all of their needs, on their parents.
6 They're helpless. They need constant attention.

7 They have to be changed, fed, bathed, and taken care
8 of by the two people who are their mom and their dad.
9 Unfortunately for **Minor Child** that's what he got
10 (indicating). He got those two (indicates) for his mom
11 and his dad.

12 And how did they neglect him? You heard the
13 condition of the house he was living in; trash, no
14 explanation for it. It was bagged up, but it was still
15 in bags. He's a baby.

16 You heard that he had obvious medical needs. His
17 foot was burned, they did nothing. I take that back,
18 they took him to Scott's mom.

19 Where do you go when you've done something bad? You
20 go to your mom because your mom is going to help you out.

21 And where did they take this child? Scott's mom.
22 The mom is going to help out. Mom wasn't going to call
23 DSS. Mom wasn't going to take the child to the hospital.
24 She was going to help them out. And that's where they
25 took this child.

1 (Brief Pause while exhibit is retrieved.)

2 MS. JORDAN: I'm not a doctor, but see the burn on
3 this child's foot? And I'm not going to take a few
4 minutes talking to you about this now, but I am going to
5 talk to you about it later. Ladies and gentlemen, this
6 wasn't an accident. It wasn't an accident at all.

7 Ms. Dockery, when I showed her the picture up here,
8 she was aware of this. Mr. Moore didn't initially tell
9 her what happened. He put a sock on the baby's foot.

10 They were going on vacation, they had plans to keep.
11 Put a sock on the foot -- on his foot, go over to his
12 mom's. She sees the foot.

13 What did he say in his statement? "First I told her
14 I'd didn't know what happened." And you got a copy of
15 the statement. You can read it.

16 "Then, I lied. I told her I did it. I lied because
17 I didn't want to take him to the hospital." A reasonable
18 risk of harm, both parents knew this child had this burn
19 and they did nothing.

20 This is an infant. This isn't an adult. This isn't
21 a teenager. This is not a child. This -- this is an
22 infant with this injury. He should have been taken to a
23 doctor, ladies and gentlemen.

24 Scott talked about how it peeled, how it blistered.
25 They even went and bought gauze for it and ointment, but

1 never took him to a doctor.

2 When Tina saw the picture yesterday, she seemed kind
3 of amazed of the fact that it didn't look that bad; it
4 didn't look that bad. Which makes me wonder, what did it
5 look like when it happened if this didn't look that bad
6 to her in the photograph?

7 You don't need glasses to see this injury. It is
8 hard to see on the screen, but she had it right in front
9 of her, the perfect outline of the stove on this baby's
10 foot.

11 And like I said, I'm going to come back and talk to
12 you about it later, about that photograph and that foot.

13 They never sought treatment for this child from the
14 day he left the infant nursery at Mary Black until they
15 rolled him to the ER in October at four months old; four
16 months and three days and never took him to a doctor.

17 The amazing thing is, is that Tina tells DSS, "Well,
18 she could've taken him for his shots, but she didn't have
19 a ride." She got herself to the doctor, not once but
20 more than once.

21 She was able to take herself to seek medical
22 attention for the pain that she was in, but nothing for
23 this child, nothing.

24 Scott even talks about how he notices when he picks
25 up the child. He told DSS, when he picked him up under

1 his arms, he would cry. He wasn't a first-time dad.

2 Babies don't cry when you pick them up under -- that
3 way unless something is wrong. So, what did he do?
4 Nothing.

5 Because on the night of October the 25th, this day --
6 or this night -- and this is what the child looks like
7 (indicating).

8 And I'm not going to -- to stand up here and parade
9 all of these pictures of this child in front of you;
10 you've seen them.

11 But October 25th, this is the -- the baby as they
12 have him. Do they rush him to the hospital? No. If you
13 read the different statements, it's kind of hard to tell
14 who notices the burn -- or I'm sorry, who notices the
15 swelling.

16 They seem to have a discussion as to what to do with
17 him. "Should we take him to the hospital?" They talked
18 about it for a while. Scott even talked about that,
19 "Well, we talked about it. We talked about it, and Tina
20 had to get dressed."

21 He states in the first statement or the second
22 statement to law-enforcement, "Well, we got the kids
23 dressed. We talked about taking the kids -- taking him
24 to the hospital. We got the kids dressed. We did this.
25 We did that."

1 Then, he talks in here yesterday and he was like,
2 "Well, Tina was taking forever." It took Tina over an
3 hour to get herself ready and get the baby ready to go to
4 the hospital.

5 She had clothes out. She wore clothes apparently
6 when she went to the hospital herself. She just put
7 those on.

8 She changed the baby from one sleeper to another
9 sleeper. Why was it so important that he have on a
10 different sleeper at that point in time?

11 She also changed Catherine, the two-year-old. It
12 took over an hour. Ladies and gentlemen, I didn't get
13 dressed in a hurry this morning, but it didn't take me
14 that long.

15 Now, granted, I didn't have two kids to get dressed,
16 but you've got a child with these injuries and it takes
17 you over an hour to get ready?

18 Then, they go, not a trip to the hospital because
19 they have to discuss the whole car issue. I never saw
20 emotion from Scott other than the fake tears at the end
21 yesterday was when he talked about the gas in that car.

22 He was upset about the fact that she used the gas in
23 the car back in October of two thousand and five (2005)
24 and he's still upset about it.

25 You could see how angry he was about that. And what

1 did they do? They get in the car to drive and they drive
2 not to Mary Black, but they drive to his mom's.

3 Where do you go when you've done something wrong?
4 Your mom's. He drove to his mom's, not in the direction
5 of Mary -- Mary Black.

6 He testified Mary Black is a little bit further from
7 his house, but it wasn't a lot further. He's driving on
8 fumes, so, he decides, when he goes the way to his mom's,
9 to stop and drop Catherine and Tina off at his friend's.
10 That takes time and a little extra gas too.

11 He takes him to his mom's. He stays at his mom's
12 about fifteen (15) minutes. Even he describes it that,
13 by the time he got his mom's house, that his head was
14 bigger and harder. And he's still there fifteen (15)
15 minutes.

16 Then, she gives him gas money and he goes back and
17 picks up Catherine and picks up Tina at Mr. Powell's
18 house because he didn't want to take **Minor Child** -- or
19 Catherine and Tina to his mom's house.

20 He picks them back up. They stop and get gas and a
21 bag of chips -- actually two bags of chips. Then,
22 finally, they make it to the hospital.

23 Is that an un -- an unreasonable risk of harm, their
24 actions to this child of four months and three days? Is
25 that unreasonable? Is that negligence? Yes.

1 It is clear from their actions and their words and
2 the condition of that child, that they placed him at an
3 unreasonable risk of harm.

4 (Brief Pause)

5 MS. JORDAN: The next thing I want to focus on is
6 the second count of the indictment. The second count, as
7 you've already heard, is felony child abuse or child
8 abuse with great bodily injury.

9 It's quite simple. I'll break it down to three
10 separate elements.

11 The first element you look at it is whether there
12 was great bodily injury to a child. Let's get that one
13 out of the way. He's four months old. He is a child.

14 We move on to the second element. The second
15 element is whether there was great bodily injury.

16 Both doctors testified that this child suffered
17 great bodily injury. Let's look at that briefly.

18 Dr. Thomason, the radiologist, was the first one
19 that you heard from talk about the skeletal survey that
20 he did, just basically an x-ray of the child's entire
21 body. And what did it show? It showed twenty-three (23)
22 healing rib fractures.

23 He talked about them being posteriorly and around --
24 around that child, twenty-three (23) rib fractures.

25 Babies are little. And there were a lot broken

1 bones in that child's body.

2 He talked about the femur fracture, left side, near
3 the hip femur fracture, the dense bone is what he talked
4 about.

5 Finally, he talks about the -- well, he talked about
6 the bilateral skull fractures. He has got two, one on
7 each side, with worse swelling on the right side,
8 probably took a harder impact on this side.

9 He can't really date that one, but he can tell from
10 the swelling that it's recent.

11 The other broken bones, at least ten (10) days old
12 based upon the cal -- the callous formations that they
13 had.

14 He talked to you about the pliability of the baby's
15 bones. They're bendable in children, when they're still
16 growing, and the force it takes to break them.

17 They bend, but they don't break, unless you put a
18 lot of force on them. They put a lot of force on that
19 baby.

20 Dr. Robinson gives you his first impressions of
21 **Minor Child** when he sees him, at the second hospital that
22 he's transferred to, pale and listless. That's how he
23 described this child, pale and listless.

24 He talked about the bruising. He had bruising on
25 his body, small amounts of bruising, at different

1 locations.

2 He talked about the swelling to his right side.

3 That side probably took the greater force.

4 He described all of these. And he also talks about
5 don't forget the pain that this child must have been in.

6 He had to have been in pain; twenty-six (26) broken
7 bones.

8 He had to have been in pain, but they didn't notice
9 it. According to them, he was a happy baby. He must
10 have been extremely, extremely happy baby to have
11 suffered from twenty-six (26) fractures and not cry.
12 They didn't notice anything.

13 Dr. Robinson referred to this as not accidental
14 trauma, but tremendous force in various stages of
15 healing. This child wasn't abused just once. He was
16 abused more than twice to have the head, the ribs, the
17 foot, and the femur fractured. He was a punching bag for
18 his four months at the hands of those two (indicating).

19 Dr. Robinson also spoke to you about the fact that
20 they did blood tests to rule out any reasoning for any of
21 this. And there was none.

22 You heard from the next doctor, who looked at this
23 child and said he had none of the clinical features of
24 what we all call brittle bone disease when they tested
25 him. And we hear that five (5) years later he has had no

1 more breaks. He's a healthy kid.

2 So, those are the first two elements, child, great
3 bodily injury. Next we go to the third one, who did it
4 (phonetic). This is a good question.

5 Here is what we have: We know who didn't do it,
6 Catherine, the two-year-old child who apparently Tina was
7 the one that she was going to blame, "I'm going to place
8 the blame on this one." She dumped him out of the swing,
9 a travel swing, a couple inches from the ground; Tina's
10 story.

11 You also heard Tina talk about the fact that she came
12 in, got on the stand and she talked about how she saw
13 Catherine applying pressure to his chest.

14 I love the fact that Tina focuses on his chest and
15 the pressure to it. She knows that pressure could harm
16 that baby because she did it. She picked up that baby,
17 wanted to get him quiet, she applied the pressure.

18 You heard the doctor say that, that pressure couldn't
19 cause -- couldn't have been caused by a two-year-old. It
20 was either a teenager's or an adult's hand that caused
21 that.

22 Tina knows that. And, yet, she still blames her two-
23 year-old.

24 I believe it was Dr. Thomason I said, "What is the
25 poss -- the possibility that a two-year-old could have

1 inflicted these injuries?" "Zero," "None." So, it wasn't
2 **Minor Child** [sic].

3 Who else was with this child during these four months
4 and three days of his life before he went to the hospital,
5 mom and dad. Seat over there, those two (indicating).

6 Let's look at the evidence that tells you that it was
7 them. The judge is going to talk to you about two
8 different types of evidence. You have direct evidence and
9 you have circumstantial evidence.

10 Direct evidence is usually an eyewitness who says, "I
11 saw -- I saw Susan take that pen." That's direct
12 evidence.

13 Circumstantial is what you can gather from all that
14 is put in front of you. Ladies and gentlemen, that's what
15 we have here. We have all the evidence here that you can
16 gather and it forms a picture of the two of them
17 inflicting great bodily injury on **Minor Child**

18 Let's focus on Scott for a while. Scott's time line
19 is not consistent. The only thing that I think in this
20 courtroom that Scott is consistent is that he lies.

21 He's lied since October the 25th and beyond -- and
22 before that up until the time he was on the stand. He
23 couldn't even keep it straight on the stand in what he
24 heard in this courtroom.

25 I think yesterday his sister testified about this

1 horrible, went over there, Tina was frustrated saying I'm
2 going to do something to this baby.

3 If I recall correctly, she stated, "I told my
4 brother. I guess he talked to her."

5 Scott, who was seated in the courtroom and heard his
6 sister testify, his sister who loves him, says, "Well,
7 didn't your sister tell you that you had issues to be
8 concerned about?" "No, she never told me anything."

9 He states in his first statement to law enforcement
10 -- and you've got copies -- "Woke up at ten thirty (10:30)
11 went over to dad's, Tina was home with the kids, came
12 back;

13 "Tina left to go to the doctor because she could find
14 a way to the hospital to see -- to get her pills. He laid
15 down and he laid the baby down in the bassinet the minute
16 she went to the hospital. **Minor Child** woke up, he fed and
17 changed him in the bassinet, and he went back to sleep."

18 I love how he doesn't even handle the baby. "I don't
19 even want to touch him. So, I just propped up the bottle
20 and fed him. He burped himself. Then, I changed him, but
21 I left him in there."

22 He rotated him from side to side he stated. He,
23 then, states that, when Tina came home, she changed her
24 clothes, sat down, and he noticed the swelling to the
25 head. We got to talking about the hospital and we started

1 getting clothes out for both Catherine and Minor Child

2 "I got mad because there was no more gas in the car."

3 He got mad because there was no more gas in the car and
4 his child's head is swollen. "We never screamed, but I
5 was mad."

6 He said he had to go ask for gas money from his
7 parents. He didn't have to go ask for gas money. They
8 had neighbors. He might not have had a telephone, but
9 someone around them had a phone.

10 He talked about how Minor Child [sic] would go to some
11 neighbor's house occasionally -- not Minor Child Tina would
12 go to some neighbor's house occasionally, randomly, got
13 rides from neighbors occasionally.

14 They had other avenues than to go to his mom's house
15 and ask for gas money.

16 He insisted on going, but finally, he took her -- he
17 didn't take her to his mom's house. He dropped her off
18 down the street.

19 He got there to his mom's house, he asked his mom her
20 opinion. He wasn't going to Mary Black; he was going to
21 his mom's house.

22 He got there and he asked his mom's opinion. She
23 said, "Go to the hospital." Finally she says, "Go to the
24 hospital."

25 She gives them gas money and they head to the store

1 and, then, they go to the hospital. The next day he talks
2 to Officer Cantrell. After they leave the hospital, they
3 met that morning at the house.

4 He doesn't make his appointment with officer
5 Cantrell. I guess other stuff came up.

6 She stated, when they got there and executed the
7 search warrant, she found him where? At his mom's.
8 Finally, they come to the house and they talked to him and
9 they talked about basically the home.

10 That afternoon, they come over to the sheriff's
11 department and they meet with not only Officer Cantrell
12 but Investigator Ted Saar.

13 What -- what does Scott say here? Basically he said
14 he woke up at ten thirty (10:30) and went to help his dad,
15 got back home. His girlfriend, Tina, wanted to go to the
16 hospital. What does he say? "Can you take Catherine?"
17 Can you take a two-year-old to the hospital?

18 He's trying to pawn off one of the other kids because
19 he's tired. He doesn't want to have to deal with her.
20 His admission, he's tired. He's been up since ten thirty
21 (10:30).

22 Tina said no, so, she left and took the car to the
23 hospital. **Minor Child** was laying down his bassinet for two
24 hours asleep. "And me and Catherine watched TV.

25 "She played a little bit in the living room. **Minor Child**

1 woke up crying. So, I fed him with the bottle propped up
2 with a cover on his side."

3 He didn't comfort him. With the crying came the
4 bottle, left him there. "I changed his diaper, then, I
5 switched him to the other side and he went back to sleep."

6 He never picks up his kid according to this
7 statement, but he flips him over, switches him from one
8 side to the other and leaves him in his bassinet
9 immediately.

10 Tina comes home sometime after six (6:00). She did
11 have a quick visit to the emergency room because, even if
12 she left earlier than they stated, that's a pretty quick
13 visit to an ER. It took her longer to get ready to take
14 **Minor Child** to the ER than it seems like it took her to go to
15 the ER herself.

16 But he tells you in this statement that he's in some
17 pain. Not only is he tired, he's having some knee, back,
18 and groin pain. She gave him some pills to ease that
19 pain.

20 So, he's tired. He's in pain. He's left at home
21 with two kids, one of them he didn't even want there.

22 At this point in time, he says, "Well, I saw he was
23 swollen on his head and I told her -- she looked and she
24 said, 'Let's go to the hospital.'"

25 "She found clothes for **Minor Child** and Catherine. They

1 were still bagged up and got them ready. I got ready and
2 told her to let me take him to my mom's."

3 He knew what was wrong with that child. He knew what
4 was wrong with that child and didn't want to take it to
5 the hospital. He wanted to go to his little safe place,
6 to his mom's.

7 "Tina rode around," the same stuff that we've already
8 heard. "Mom said take him to the hospital." They stopped
9 and got gas, picked up some chips, and then, made it to
10 the hospital finally.

11 The third statement that he gives, the third written
12 statement -- "Oh, yeah, guess what happened? At some
13 point in time, I burned his foot."

14 Here's where I think the foot becomes important.
15 According to this statement, it was an accident. He was
16 cooking his Oodles of Noodles and this child's foot just
17 accidentally hit the stove.

18 We all have those stoves; maybe we don't have them
19 now, but you've had them in the past that have the eyes on
20 them that are circular. Some of them are bigger and some
21 of them are smaller.

22 Mine has two small ones and two big ones. And he
23 states about how the pot was smaller than the eye. That's
24 realistic; that could happen.

25 Is the pot so small that it can fit not only -- or is

1 the eye so small that not only -- or the pot was so small
2 on the eye that it could fit the pot and this child's
3 foot, the entire foot?

4 This isn't a small mark. This isn't one little mark
5 before he pulled away. This is a great impression of the
6 stove, the eye of that stove.

7 It's not an "I accidentally let his foot hit." He
8 told you on the stand, "I had to pick his foot up off of
9 it." He had to pick his foot off of it because he put it
10 on there.

11 It's his left foot. A perfect indent markings of the
12 stove. This is old. This is a healing injury
13 (indicating), what the doctor stated.

14 What did they also state was a healing injury? The
15 left femur fracture; healing injury. The left foot;
16 holding that baby's foot down. That baby has got a reflex
17 just like we all do. You feel something hot, you pull
18 back.

19 He couldn't pull back because his dad had his hand on
20 him. He couldn't pull back. Dad was helping this
21 impression get there. Left foot burn, left fracture.

22 We've all accidentally more than likely hit
23 something hot. We hit an iron. You hit a flat iron.
24 You hit the stove. You pull back. Perfect markings of a
25 stove, the entire foot.

1 When you're holding a baby like that, their feet --
2 first of all, their feet are not flat to make this
3 perfect -- a perfect indentation. Their feet are like
4 anyone else's, it's got some arch to it.

5 Their foot is also not going to be perfectly in a
6 position just placed down on the eye if you're holding
7 that child like that.

8 Their feet dangling, hanging there, not this perfect
9 mark here (indicating). Left foot burn, left fracture; I
10 don't think it's a coincidence that he has those two
11 injuries.

12 This is not an accident. It's not an accident at
13 all. To me, it's just a pattern of the abuse that they
14 inflicted on this baby.

15 What still amazes me is Tina's response to that
16 picture, "Oh, it's not that bad." And you heard Scott.
17 He apparently was raised with the family philosophy of,
18 "Oh, it's not that bad, I won't go to the doctor."
19 That's how he referred to that; "Well, it wasn't that
20 bad." That's healing (indicating).

21 (Brief Pause)

22 MS. JORDAN: The next time we hear about Scott and
23 what he's talking about is when he meets with Officer
24 Cantrell and Steve Denton, who is captain of
25 investigations at the time.

1 Guess what he states -- states to Steve Denton? "I
2 dropped him." He admits, "I dropped him." Is it the
3 full story? No.

4 You don't drop a baby and end up with twenty-six
5 (26) broken bones and a burned foot and some swelling and
6 random bruises. Babies don't bounce. It's a series of
7 abuse to this child at the hands of the both of them
8 (indicating).

9 Number 6, DSS. You heard from Ms. Brazil when she
10 came in and stated that she had talked to Scott Moore.
11 At that point in time, he doesn't know anything about
12 this. He doesn't know what happened. He's not at home.
13 He doesn't know what happened to him.

14 The child depended upon them for all of his needs;
15 he doesn't know. He states to her that they -- "Tina
16 went to the ER." He talks about he went to the bathroom
17 when he was there with the kids by himself.

18 At some point he told you guys yesterday, he goes to
19 the bathroom, he fed him in the bassinet, propped him up,
20 watched him.

21 Tina came home, gave her three pain pills -- gave
22 him three pain pills. I'm sorry. Saw that **Minor Child**
23 head was swollen and said "Let's take him to the
24 hospital." That was about eight o'clock (8:00).

25 They had to stop by his mom's to get gas. Dropped

1 off **Minor Child** and Tina -- or Catherine and Tina at Mr.
2 Powell's house, went to his mom's house.

3 The baby was dressed in a blue jumpsuit, which
4 you'll see the edges of in the photographs, a hat and a
5 cover over him.

6 Took him to his mom's house, pull off the hat. By
7 the time -- "By that time, his head was swollen way out
8 and felt like a rock." They were thinking the baby had
9 an ear infection.

10 Here comes a father who's thinking an ear infection
11 and his head is swollen out and is as hard as a rock.

12 He gets gas money, leaves to go to the hospital. He
13 signed in at the hospital at nine, forty-four (9:44).

14 What do they also tell DSS? The part about the
15 burn. "I did it. Sorry."

16 They didn't seek any medical attention for him,
17 nothing. "We were headed to Hickory Knob State Park that
18 day." Burned his foot; it's nothing.

19 "His foot slipped and fell on the burner. He cried
20 out and he jerked his foot away as fast as possible."
21 That marking is not as fast as possible. That marking is
22 held down.

23 He even dates it. "That was a while ago, about
24 three months ago. It was just red." His own sister said
25 that it blistered up and peeled. He told Tina he didn't

1 know what happened. Why I lied, "I didn't want him taken
2 from me."

3 He also stated that **Minor Child** was normally a happy
4 baby. He loved to be held tight and he told us about how
5 he would hold him up at his chest. But he did notice
6 that he always cried when you picked him up from under
7 his arms.

8 Yesterday, he walked up here and he told you the
9 same thing about the day: He put the baby in the
10 bassinet, the baby is in the bassinet. He doesn't pick
11 him. He didn't want to hold him.

12 He doesn't pick him up. Changed his diaper, propped
13 him up or propped up the bottle, fed him that way.
14 Changed his diaper. The baby burped himself magically.
15 Left him in there, changes sides.

16 Tina came home, then, he went to the bathroom and
17 heard a noise. He said, "We got to take him to the
18 hospital."

19 The entire one-hour clothing ordeal, one hour with
20 two adults and two babies to get ready to go to the
21 emergency room; one hour.

22 Drives to mom's, dropped them off, kind of stayed
23 about fifteen (15) minutes. Got the gas money, picked
24 them back up, went to get gas and chips, finally makes it
25 to the hospital. Never called 911.

1 He told you yesterday that would've taken too long
2 for the ambulance to come. Well, what about that? At
3 this point in time, how long is too long?

4 He's already had the kid for over an hour, so, he
5 can get dressed. He's already been at his mom's house
6 for over fifteen (15) minutes. How long is too long?

7 What did they pass along the way to his mom's house
8 that they could have used a phone? They took pains to
9 tell you they didn't have a phone. But they could've
10 used somebody else's.

11 Didn't do anything. Took their time, their own
12 sweet little time, with that kid in the car with those
13 injuries.

14 The funny thing is, he talked yesterday -- and he
15 also told Officer Cantrell this -- that the baby's head
16 had been swollen before. He talked about being hesitant
17 to take the child to the emergency room because his head
18 was swollen before. You know, the area around his eyes
19 had been swollen when he was younger and we never took
20 him to the doctor for that because he looked normal.

21 If it ain't that bad, you just take care of it
22 yourself. That's part of their family motto he talked
23 about.

24 How do we also know that he's a consistent liar?
25 The whole work situation. From listening to Scott

1 yesterday, he's a workaholic.

2 Back in '05, he tells Officer Cantrell, "I'm
3 unemployed." Tina also tells Officer Cantrell he's
4 unemployed. They're both at home alone with that baby.

5 He tells DSS, "unemployed." "I helped out my cousin
6 in June, didn't get paid for it." But he's unemployed in
7 October.

8 Yesterday he magically becomes a worker six (6) days
9 a week, dawn to dusk six (6) days a week? He's got to
10 distance himself from this child.

11 You can't really because he lives in the house with
12 him, so, yesterday he magically starts working six (6)
13 days a week.

14 According to his sister, who stopped by the house
15 maybe once a week, he worked six (6) days a week. Where
16 was the cousin or the family friend or whoever it was
17 that he was working with to say that he was working those
18 long hours?

19 The funny thing is, is that he can't take himself
20 away from that baby those last two days. And we know
21 that the skull fracture happened in those last two days.

22 Mr. Rudasill is correct, I am going to just speak
23 for a minute on the fact that -- Scott's demeanor at the
24 hospital because he was crying and he was upset.

25 And he was opposite of what Tina was. Apparently,

1 Tina was just there.

2 I kind of got the idea that maybe her demeanor back
3 then was the same demeanor that she had on the stand
4 here.

5 The Judge is going to talk to you about the
6 credibility or believability of a witness. Look at hers
7 from yesterday, just focus this way: Looking down and
8 answering the questions. She didn't make any eye
9 contact; she was looking down.

10 And Scott's demeanor, he was crying. He was upset
11 when all this happened. Ladies and gentlemen, you can
12 love someone and you can still hurt them. There are a
13 lot of reasons to cry.

14 I want to take a few minutes to talk about Tina.
15 Tina, just like Scott, has a responsibility.

16 She dropped **Minor Child** This poor child has been
17 dropped by everybody, the two people that care for him
18 and supposed to love him. She dropped him.

19 That's what she told the investigator Morgan. "I
20 dropped him. I dropped him when I was getting out of the
21 bathtub with him that day."

22 The funny thing is, when Investigator Cantrell goes
23 to the house the next morning, what's still in the
24 bathtub? Water, about three fourths (3/4) of the way
25 full of water. Not clean water; if you look at it, it

1 looks like water that's had soap in it, shampoo and some
2 items along with lime. Still in there from this child
3 being dropped.

4 What was the item of wet clothing that she finds? A
5 tee shirt, a baby shirt. She's always at home with this
6 baby.

7 She describes how poor Catherine was putting
8 pressure on his chest, that this happens to go along with
9 the mechanism that the doctors described that could cause
10 the injury to his chest, the squeezing, the pressure to
11 his chest.

12 She is -- she can't tell you how many pills that she
13 took in that 24-hour period. We know this, she had
14 access to twenty-four (24).

15 She readily admits to taking twelve (12) and passing
16 off three (3); leaves her with twenty-one (21).
17 Voluntary intoxication is not a defense. It's not a
18 defense at all.

19 She blamed Catherine for causing the injuries. Ms.
20 Price talked about how this was stress and a bad
21 situation and people deal with that differently.

22 She knew what happened to that child. She did part
23 of the injuries to that child. She admitted she dropped
24 him. And her reasoning was that she thinks she would get
25 him back.

1 I'm going to admit that I hurt him, so, I can get
2 him back. She admitted to hurting him because that's the
3 truth. What is the easiest thing to remember? The
4 truth.

5 What is the hardest thing to remember? Lies, a
6 series of lies. But woven through all that they said is
7 the truth. They were the ones with the baby. They were
8 the ones who harmed him.

9 (Brief Pause)

10 MS. JORDAN: Ladies and gentlemen, there are no
11 other witnesses to this. This is one of those crimes
12 where we stand up here and we talk to juries about bad
13 things that happened to kids, and in this case, a baby.

14 Unfortunately, no one invites people over when
15 they're going to harm a child. It's rare that you have
16 an eyewitness to this. Neither one of them are out on
17 the streets in Clifton or Cliffdale, here in Spartanburg
18 saying, "Hey, come on over. I'm going to break his leg.
19 I'm going to burn his foot, cause two bilateral skull
20 fractures to him, and twenty-three (23) rib fractures."

21 So, we don't have that direct evidence, but we have
22 the entire picture. We have the entire picture of that
23 child.

24 **Minor Child** has no voice. He can't tell you what
25 happened. But you know what did? Those skull fractures

1 did. That told you what happened to him.

2 And you know the only two people that had access to
3 him consistently were those two (indicating). Those two
4 who described him as a good baby; a good baby. He gets
5 broken bones; a good baby.

6 He even acknowledged he cried when they picked him
7 up under the ribs or picked him up under his arms; a good
8 baby.

9 If you believe Scott's sister, she shows up and Tina
10 is screaming at the kid. He's a good baby.

11 Ladies and gentlemen, both of these parents take
12 responsibility for hurting **Minor Child**. They're both guilty
13 of neglect to this child for placing him at an
14 unreasonable risk of harm with their actions during his
15 entire life.

16 And they're both guilty of child abuse with great
17 bodily injury. Look at the entire picture. Look at
18 those two and what they say and, then, look at **Minor Child**.

19 (Brief Pause)

20 MS. JORDAN: Thank you.

21 (Ms. Jordan's closing argument concluded at 11:25
22 a.m.)

23 THE COURT: All right. Let's take about ten (10)
24 minutes before I give you the instructions. I'll ask you
25 to, please, go to your jury room.

1 Don't discuss the case. I'll bring you back out
2 after we take a short break.

3 (The jury exited the courtroom at 11:26 a.m.)

4 THE COURT: All right. We will be at ease for ten
5 (10) minutes.

6 (Whereupon, a recess was taken from 11:26 a.m. until
7 11:39 a.m.)

8 (Off-the-Record Comments)

9 (The jury entered the courtroom at 11:39 a.m.)

10 JURY CHARGE

11 THE COURT: All right. Ladies and gentlemen, you of
12 course have heard or seen all of the evidence in the
13 case. You have now heard the final summations of the
14 lawyers.

15 And, therefore, now it becomes my duty and
16 obligation to instruct you on the law which is applicable
17 in the case, after which you will be asked to go back and
18 begin with your deliberations.

19 And, during that process, you will examine the
20 evidence, decide the facts, apply the law, and arrive at
21 a fair and just decision in the case, whatever that
22 decision might be.

23 It is your exclusive duty to determine what the
24 facts are. And you do that through your own common sense
25 examination and evaluation of all the testimony and the

1 other evidence received during the trial of this case.

2 You twelve (12) jurors alone will decide what
3 weight, value, and any effect to give any particular
4 testimony or other evidence in the case. Again, your
5 sole objective is to simply reach the truth in the
6 matter.

7 And, by doing that, you will have fulfilled your
8 obligations as jurors, and that is, to simply give both
9 the State and the Defense a fair and impartial trial.

10 Now, in this case, as you know, there are two
11 Defendants on trial. Where the State alleges criminal
12 offenses against more than one person, where those
13 offenses out -- arise out of one event, or a course of
14 events, the State can try those Defendants together or
15 try those Defendants -- the Defendants separately.

16 That doesn't make any difference to you as jurors.
17 You still have to consider each of these cases on their
18 own merit; consider the evidence as it relates to each
19 defendant, consider the evidence as it relates to each
20 charge. And, then, apply the law that I will have
21 provided you.

22 You are going to be rendering separate and distinct
23 verdicts as it relates to each of those indictments which
24 you'll have in the jury room. Each Defendant has one
25 indictment, but in that indictment, are two separate

1 criminal offenses alleged.

2 And, as I say, you will be considering -- in
3 arriving at your decisions and your verdicts, you'll be
4 considering the indictment separately as they relate to
5 each of the separate Defendants.

6 And you'll be considering each of the offenses
7 alleged, in each of the indictments, separately as it
8 relates to the evidence presented and the law that's
9 applicable to that particular criminal offense.

10 So, the point being, it doesn't matter that two
11 people are being tried during the course of the same
12 trial. You still have to consider the law and the
13 evidence as it relates to each of those separate
14 defendants separately in arriving at your decisions in
15 the case.

16 Now, as you know, each of the Defendants in this
17 case have been charged with two separate and distinct
18 offenses.

19 Those offenses are set forth in their respective
20 indictments. Count one of each indictment charges each
21 of the Defendants with the crime of unlawful conduct
22 towards a child.

23 The State alleges that each of the separate
24 Defendants did, here in Spartanburg County, on or between
25 the dates of June the 22nd of two thousand and five (2005)

1 and October the 25th of two thousand and five (2005),
2 having charge or custody and/or being the parent or
3 guardian of **Minor Child** Eugene Scott Moore, a minor child,
4 did number one, place the child at unreasonable risk of
5 harm affecting the child's life, physical or mental
6 health, or safety.

7 And/or number two, each of the Defendants did do or
8 cause to be done, unlawfully or maliciously, any bodily
9 harm to the child, so, that the life or health of the
10 child was endangered or was likely to be endangered.

11 And the State alleges that was in violation of
12 Section 20-7-50, which has actually been changed now.
13 It's 63-5-70. But you don't need to be worried about the
14 numbers.

15 But that is the code section that the State alleges
16 that each of these Defendants have violated in Count one.

17 Now, Count two of each indictment charges each of
18 the Defendants with the crime of child abuse resulting in
19 great bodily injury.

20 And the State alleges, by way of Count two, of each
21 indictment that each of the separate Defendants did here,
22 in Spartanburg County, on or between the dates of June
23 the 22nd of two thousand and five (2005) and October the
24 25th of two thousand and five (2005), inflict great bodily
25 injury upon **Minor Child** Eugene Scott Moore, a minor child.

1 And they allege that to be a violation of Section
2 16-3-95 of the South Carolina Code of Law.

3 Now, as to those allegations, and as to each of
4 those charges, each of these Defendants have entered a
5 plea of not guilty.

6 And, as I told you, that plea of not guilty
7 therefore placed upon the State the burden of proving the
8 allegations that they have set forth, in each of these
9 indictments, the burden of proving each of the essential
10 elements that make up the crime that the State has
11 alleged against each of these separate Defendants.

12 And, therefore, the burden is upon the State to
13 establish a Defendant's guilt, to the satisfaction of you
14 twelve (12) jurors, beyond a reasonable doubt as it
15 relates to any of crime alleged against the Defendant.

16 The burden is never upon a defendant, or a person
17 accused of a crime, to prove that they are not guilty or
18 to prove that they are innocent because in some cases
19 that might not even be possible.

20 The burden is always upon the State because they
21 have brought this charge against another individual to
22 establish that person's guilt to the satisfaction of you
23 twelve (12) jurors beyond a reasonable doubt.

24 You are further instructed that it is a vital and
25 important and cardinal rule of law that every defendant,

1 in a criminal trial, no matter how serious the offense
2 might be for which that person stands charged, any person
3 charged with a crime is presumed to be innocent of that
4 charge.

5 And that presumption of innocence remains with any
6 defendant as it does with each of these Defendants, from
7 the time that they are placed under arrest and throughout
8 the course of the criminal process, and even throughout
9 the course of the actual trial of the case.

10 As I told you, that presumption of innocence will be
11 with each of these Defendants even as you go back into
12 your jury room to begin with your deliberations in this
13 case.

14 And that presumption of innocence will be with each
15 of those Defendants in that jury room. And it will be
16 with them forever unless you twelve (12) jurors determine
17 that a Defendant is no longer entitled to that
18 presumption of innocence.

19 In other words, after you've carefully considered
20 all of the evidence in the case, and from that evidence
21 you determine what you believe to be the true facts as
22 they relate to these allegations;

23 And upon deciding those facts you apply the law that
24 I will have provided you as relates to each of the
25 charges, if you twelve (12) jurors unanimously determine

1 that a Defendant has been proven guilty, of a particular
2 crime beyond a reasonable doubt, then, that Defendant
3 will no longer be entitled to that presumption of
4 innocence as it relates to that particular charge.

5 But, it is only if, unless, and until you are
6 satisfied of a Defendant's guilt, as it relates to a
7 particular charge beyond a reasonable doubt, that the
8 presumption of innocence would no longer be applicable as
9 it relates to that charge and that Defendant.

10 Now, while the State does have the burden of proving
11 a defendant's guilt, beyond a reasonable doubt, that
12 doesn't mean that the State has to prove a defendant's
13 guilt beyond all doubt or beyond any possible doubt. But
14 it does require the State to prove a defendant's guilt to
15 your satisfaction beyond a reasonable doubt.

16 And the term, "reasonable doubt" should be given its
17 plain and ordinary meaning. A reasonable doubt is the
18 kind of doubt that would cause a reasonable person to
19 hesitate to act upon the information provided.

20 And a defendant, in a criminal trial, is entitled to
21 any reasonable doubt that arises from the evidence or
22 lack of evidence in a case.

23 And, if upon any factual issue essential to the
24 finding of a verdict of guilty, you have some reasonable
25 doubt as to how that issue should be resolved, it would

1 be your duty to resolve that reasonable doubt in favor of
2 that Defendant.

3 Now, therefore, if upon your consideration of the
4 whole case, you have a reasonable doubt as to a
5 Defendant's guilt, you must resolve that reasonable doubt
6 in his or her favor and return a verdict of not guilty as
7 it relates to that charge.

8 And, on the other hand, after you've carefully
9 considered all the -- all the evidence in the case and
10 decided the facts and applied the law, if you have no
11 reasonable doubt, as to a Defendant's guilt, as it
12 relates to a particular charge, then, it would be your
13 corresponding duty to find that Defendant guilty of that
14 particular charge, when you are satisfied of his or her
15 guilt beyond a reasonable doubt.

16 Now, the same law that provides that you are the
17 judges of the facts also provides that I am the judge of
18 the law. And that simply means that nobody is going to
19 tell you how to arrive at your determination of fact in
20 this case.

21 You do that, as I believe I have told you, through
22 the exercise of good judgement and common sense,
23 conscientiously applied to the testimony and the evidence
24 received during the trial of the case.

25 You must, however, under your oath as a juror,

1 accept the law as I provide it to you as being the law
2 that you are to apply in this particular case.

3 In other words, you're never to concern yourself
4 with what you thought the law was before you came to
5 serve as a juror this week, or what you think the law
6 ought to be. Under your oath as a juror, you must accept
7 the law as I provide it to you as being the law that you
8 are to apply to this case.

9 And, then, you simply take that law and you apply it
10 to the facts as you twelve (12) jurors determine those
11 facts to be based upon your common sense examination and
12 evaluation of all the testimony and evidence received
13 during the trial of the case.

14 Now, as I have told you, you are the sole judges of
15 the facts in this case. And you are, therefore,
16 necessarily the sole judges of the credibility or the,
17 believability of each witness who has testified during
18 the course of this trial.

19 And you twelve (12) jurors alone will decide what
20 weight, value, and effect to give to any particular
21 witness' testimony or even a portion of that testimony.

22 But there are several factors that you should --
23 that you should consider in arriving at your assessment
24 as to a particular witness' credibility. And I'm going
25 to list those factors for you.

1 But you should consider the demeanor of the witness;
2 that is, how the witness appeared to you as the witness
3 testified from the witness stand.

4 In other words, was the witness straightforward, in
5 responding to the questions that were asked, or was the
6 witness hesitant or evasive in responding to questions
7 that were posed to that witness when they testified?

8 In other words, did the witness appear to you to be
9 telling the truth and to have knowledge of the facts to
10 which that witness testified?

11 You should also consider whether or not the
12 testimony of a witness is consistent or is it
13 inconsistent with that witness' own testimony, as well as
14 statements made by that same witness outside of court?

15 And you may consider whether or not the testimony of
16 a witness is consistent or is it inconsistent with other
17 witnesses' testimony or other evidence received during
18 the trial of the case?

19 You should also consider how a witness came to know
20 the facts to which that witness has testified. In other
21 words, what was that particular witness' opportunity and
22 ability to perceive the existence of those facts about
23 which that witness has testified by having previously
24 used his or her senses?

25 And, then, what is that particular witness' ability

1 to be able to come into court and to accurately recollect
2 to you as to what they have previously seen or heard or
3 felt for that matter?

4 You should also consider any bias, prejudice, or
5 interest that a witness might have with respect to the
6 case. In other words, do you find some reason that a
7 particular witness would come into court and testify one
8 way or another to -- to help or to hurt one side or the
9 other?

10 And you may consider any interest that a witness
11 might have, in the outcome of the case, if you determine
12 that an interest -- that a witness does have such an
13 interest, and you find that interest would bear upon that
14 particular witness' credibility.

15 You should also consider whether or not the
16 testimony of a witness is strengthened or is it weakened
17 by other testimony or other evidence received during the
18 trial of the case?

19 Now, during the course of this trial, you have heard
20 testimony, from not only lay witnesses, but you've heard
21 testimony elicited from persons who were qualified as
22 experts in a particular field.

23 Now, while I have the obligation and the duty to
24 determine, whether or not a witnesses may testify as an
25 expert, the fact that I qualify a witness as an expert

1 and permit them to testify in an opinion form, should
2 never be taken by you as any indication by me as to how
3 you should consider that testimony.

4 Lay witnesses are not permitted to testify in an
5 opinion form. They can only testify to the facts that
6 they have perceived.

7 Expert witnesses are other persons who have some
8 special education, skill, training, knowledge or
9 experience with respect to a particular field. And where
10 a person is qualified, as an expert in a particular
11 field, then, they may testify as an expert and testify in
12 an opinion form.

13 But you are to consider the testimony of an expert
14 witness just as you do any other witness. And you
15 twelve (12) jurors still must assess and evaluate the
16 credibility of an expert witness just as you do any other
17 witness that has testified during the course of the
18 trial.

19 And because you are the finders of the facts, and
20 because you are the judges of the credibility of each
21 witness, whether it be a lay witness or an expert
22 witness, you are permitted to believe as much or as
23 little of what a witnesses testified to as you deem is
24 appropriate.

25 And, therefore, you may believe everything that a

1 witness testified to. You may choose to believe none of
2 it. And you may believe some portion of a witness'
3 testimony and reject some other portion of that same
4 witness' testimony.

5 And, in a given case, you can believe one witness as
6 opposed to several, or several as opposed to one. But,
7 whatever your good judgement and common sense tells you
8 is the most believable and credible testimony, is the
9 testimony you should accept.

10 And you should reject any testimony or other
11 evidence that you find not to be credible or believable.
12 Again, your sole objective is to simply reach the truth
13 in the matter.

14 And it should not matter from what source that truth
15 may come, whether it be from a witness for the State or a
16 witness for a Defendant or a combination of testimony
17 received from both sides in a case.

18 Now, while there are various forms of evidence such
19 as testimony, photographs, documents, charts, and other
20 types of physical exhibits, there are really only two
21 types of evidence. Either or both of those types of
22 evidence may be used to prove a fact at issue.

23 But the two types of evidence are direct evidence
24 and circumstantial evidence.

25 Direct evidence is the testimony of a person who

1 testifies from actual knowledge of a fact. It is
2 testimony by a person who has perceived the existence of
3 some fact by means of his or her senses. And, then, they
4 come into court and they testify as to what they have
5 previously observed or perceived.

6 Circumstantial evidence, on the other hand, is the
7 proof of some other fact or set of facts, which taken
8 either singly or collectively, may prove the existence of
9 a fact in consequence or a fact in question as a
10 necessary consequence; that is, by an inference.

11 And an inference is simply a deduction of fact that
12 may logically and reasonably be drawn from the proof of
13 some other fact or set of facts.

14 In other words, it's not a fact proven by the direct
15 testimony of a person based upon their personal
16 perception, but it is a conclusion which might reasonably
17 be drawn from the proof of other facts.

18 In other words, you may infer that a particular
19 event occurred or that a particular fact exist based upon
20 the proof of sufficient factual circumstances which would
21 reasonably warrant you're arriving at a particular
22 conclusion.

23 The law, however, makes absolutely no distinction
24 between the weight or value to be given to direct
25 evidence as opposed to circumstantial evidence, nor is a

1 greater degree of certainty required of circumstantial
2 evidence as opposed to direct evidence.

3 Whatever the type of evidence used to prove any fact
4 in issue, you should consider all the evidence presented
5 during the trial of the case.

6 And, after carefully considering that evidence and
7 weighing it in your mind, if you have a reasonable doubt
8 as to a Defendant's guilt, as to it relates to a
9 particular charge, you must resolve that doubt in that
10 Defendant's favor and return a verdict of not guilty as
11 it relates to that particular charge.

12 Now, in this case, as you know, each Defendant is
13 charged with two separate and distinct criminal offenses.
14 All the offenses are statutory offenses, and that just
15 means that they are quantified by the Legislature when
16 they meet every year from January through June.

17 They pass a number of rules, laws, and regulations
18 that govern our conduct in a variety of ways. Some of
19 the laws that are passed are criminal statutes, and that
20 just means that the Legislature prohibits certain types
21 of conduct.

22 And where a person is found to have engaged in that
23 conduct, that is prohibited by the statute, then, it
24 subjects that person to some form of punishment or
25 penalty.

1 Now, please, understand that you, as jurors, are
2 never to be concerned with punishment or penalty. your
3 sole obligation and duty is to determine whether or not a
4 defendant's guilt, as it relates to a particular charge,
5 has been proven beyond a reasonable doubt.

6 And you're to make that determination without giving
7 any consideration to any consequence of your decision.

8 In this case, as you know, Count one of each
9 indictment charges the respective Defendant with the
10 crime of unlawful conduct towards a child.

11 And, as I told you, that's a crime that is set forth
12 in Section -- now Section 63-5-70. It used to be
13 20-7-50, and that's the number that's shown in the
14 indictment.

15 But, again, you do not need to be concerned about
16 the statute numbers. But you do need to be concerned
17 about the statute.

18 That particular statute provides that it is unlawful
19 for a person, who has charge or custody of a child or who
20 is the parent or guardian of a child, or who is
21 responsible for the welfare of a child, to one, place
22 that child at an unreasonable risk of harm affecting the
23 child's life or mental health or safety.

24 Or, number two, where a person who has charge or
25 custody of a child or who is the parent or guardian of

1 the child, or who is responsible for the welfare of a
2 child, to do or cause to be done, unlawfully or
3 maliciously, any bodily harm to the child, so, that the
4 life or health of the child is endangered or likely to be
5 endangered, would be guilty of the crime of unlawful
6 conduct towards a child.

7 Now, in this case, the State contends that each of
8 the Defendants violated both Section I and Section II of
9 that statute. The other is three (III).

10 And, in this case, a Defendant may be found guilty
11 of a violation of this particular statute -- they may be
12 found guilty if a violation of either of those two
13 sections has been proven to your satisfaction beyond a
14 reasonable doubt.

15 And, therefore, before a Defendant could be found
16 guilty, of a violation of this particular criminal
17 statute, it would be necessary that the evidence in this
18 case establishes, to your satisfaction beyond a
19 reasonable doubt, two essential elements.

20 Number one, it has to be proven that the Defendant
21 was a parent, guardian, custodian, or otherwise
22 responsible for the welfare of the child **Minor Child** Eugene
23 Scott Moore.

24 And secondly, it must be proven that the Defendant
25 did, by some act or omission, place the child at an

1 unreasonable risk of harm which affected the life or the
2 physical or mental health or the safety of the child.

3 Now, in order to be found guilty of a violation of
4 this particular statute, it is not required that the
5 State prove the Defendant acted with a criminal intent.
6 But the State must prove that the Defendant acted at
7 least negligently or carelessly.

8 Negligent or careless conduct is defined in the law
9 as doing something that an ordinary and reasonably
10 prudent person would not have done or it is the failing
11 to do something that an ordinary and reasonably prudent
12 person would have done, if that person acting under the
13 same or similar circumstances, as established by the
14 evidence in this case.

15 And, further, it must be proven that the negligence
16 of that Defendant placed the child at an unreasonable
17 risk of harm which affected the life or the physical or
18 mental health or safety of the child.

19 Now, the second section of that particular statute
20 the State also alleges is that the Defendant did do or
21 caused to be done, unlawfully or maliciously, any bodily
22 harm to the child, so, that the life or health of the
23 child was endangered or likely to be endangered thereby.

24 A person who acts maliciously means a person who
25 intentionally commits a wrongful act without just cause

1 or legal excuse. Or it's where person deliberately acts
2 with a reckless -- or acts recklessly with a conscious
3 disregard for the rights or safety of others and without
4 just cause or legal excuse.

5 (Brief Pause)

6 THE COURT: And, therefore, as stated, a -- either
7 Defendant could be found guilty of a violation of this
8 particular statute where the State has proven, beyond a
9 reasonable doubt, that the Defendant was a parent,
10 guardian, custodian, or otherwise responsible for the
11 welfare of the child.

12 And that the Defendant did, by some act or omission,
13 place the child at unreasonable risk of harm, which
14 affected the life or the physical or mental health or
15 safety of the child. Or the Defendant did do or did
16 cause to be done, unlawfully or maliciously, any bodily
17 harm to the child, so, that the life or health of the
18 child was endangered or was likely to be endangered
19 thereby.

20 (Brief Pause)

21 THE COURT: Count two of each indictment alleges
22 that the Defendant has violated Section 16-3-95, which is
23 the code section defining child abuse with great bodily
24 injury. Section 16-3-95 provides that it is unlawful to
25 inflict great bodily injury upon a child.

1 And the term, "great bodily injury" is defined as
2 "Bodily injury which creates a substantial risk of death
3 or which causes serious or permanent disfigurement or
4 which causes a protracted loss or impairment of the
5 function of any bodily member or organ."

6 And the term, "child" is defined as any person under
7 the age of eighteen (18) years.

8 Now, based upon that statute, before you could find
9 the Defendant guilty of a violation of this particular
10 criminal statute, it would be necessary for the evidence
11 in this case establishes to your satisfaction, beyond a
12 reasonable doubt, the following three essential elements:

13 Number one, it must be proven that the Defendant did
14 inflict bodily injury which created a substantial risk of
15 death or which caused serious or permanent disfigurement
16 or which caused a protracted loss or impairment of the
17 function of any bodily member or organ.

18 And, secondly, it must be proven that such injury
19 was inflicted upon a child; that is, a person under the
20 age of eighteen (18) years.

21 And, thirdly, it must be proven that the Defendant
22 committed such act -- such act or acts, accompanied with
23 criminal intent.

24 Now regarding the element of criminal intent, you
25 are instructed that the term, "intent" refers to the

1 state of a person's mind that directs his or her actions
2 toward a specific object or goal.

3 The term "criminal intent" means the state of a
4 person's mind, that joined with the commission of the
5 deliberate act, culminating in the commission of a crime.

6 Criminal intent is a mental state of conscious
7 wrongdoing accompanying the commission of an act which is
8 in contrast to an act that is committed inadvertently,
9 mistakenly, accidentally, or in accordance with the law
10 and, therefore, without a criminal intent.

11 Where a person is engaged, in the commission of a
12 deliberate act, and that is accompanied by criminal
13 intent, he or she is legally responsible for all of the
14 consequences that necessarily resulted from the
15 commission of that intentional act that are a natural and
16 comparable consequence of it, even though the result was
17 not actually intended as a part of the original design,
18 so, long as it is proven that the result was reasonably
19 known to be substantially certain to occur.

20 Proof of the existence of criminal intent may be
21 satisfied by proof of intentional or deliberate conduct
22 or by proof of criminal negligent conduct.

23 Criminal negligence is a greater degree of
24 culpability than mere or simple negligence or
25 carelessness as I've described when instructing you on

1 the criminal offense of unlawful conduct towards a child.

2 In the law, criminal negligence refers to the
3 commission of a deliberate act or acts with a reckless
4 disregard for the safety of others.

5 "Reckless disregard" refers to the commission of a
6 deliberate or intentional act or acts with a conscious
7 disregard for the consequences of that act or those acts.

8 It is not necessary, in order to establish the
9 element of criminal intent, that such intent be proven by
10 direct evidence. Criminal intent may be proven by
11 circumstantial evidence the same way any other essential
12 element of a crime may be proven.

13 In your determination, as to whether or not criminal
14 intent has been proven, you are permitted to infer the
15 existence of criminal intent from the declarations and/or
16 the conduct of a defendant, as well as from any other
17 circumstances established by the evidence in this case
18 from which you might reasonably and likely infer such
19 intent, so, long as you are satisfied of the existence of
20 criminal intent beyond a reasonable doubt.

21 (Brief Pause)

22 THE COURT: And you are further instructed that
23 voluntary intoxication is never a defense to the
24 commission of a criminal offense.

25 Where a person voluntarily consumes intoxicating

1 substances, to the extent that he or she becomes
2 intoxicated to any degree, such intoxication is not a
3 defense or an excuse to the commission of any crime
4 committed even while under the influence of any
5 intoxicating substance.

6 Under the law, a person is just as responsible for
7 any criminal acts committed while intoxicated as the
8 person would be if sober.

9 Now, Mr. Foreman, ladies and gentlemen of the jury,
10 I am not in any way concerned with what your decisions
11 are, but as I think I've told you, any decision that you
12 reach must be unanimous; all twelve (12) jurors must be
13 in agreement before a verdict may be rendered and
14 returned to the Court.

15 And, Mr. Foreman, as you know, you're going to be
16 called upon to preside over the jury deliberations in the
17 jury room, simply to ensure that those deliberations are
18 carried out in some orderly fashion. But all twelve (12)
19 jurors are expected to participate in the deliberations
20 because, as I stated, the verdict has to be unanimous.

21 A verdict is the consensus opinion of all of the
22 jurors, and therefore, all of you must be in agreement
23 before a verdict can be rendered.

24 Now, in addition to the evidence which has been
25 received and introduced during the trial, Mr. Foreman, as

1 I told you, you're going to have these two indictments in
2 the jury room.

3 They are not evidence and they are not to be
4 considered as evidence. They don't prove anything. But
5 they do set forth the charges that have been brought
6 against each of these Defendants.

7 And you are going to be called upon to -- to enter
8 the verdicts on each of the separate offenses on each of
9 the separate indictments; in other words, each of the
10 separate offenses as they relate to each of the separate
11 Defendants.

12 And I will put on here -- on the back of each -- on
13 the back of the indictment, in the lower left-hand
14 corner, you'll see the word "verdict." It's beneath that
15 word that you'll indicate the jury's unanimous decision.

16
17 I'm going to write in "Count one" and "Count two."
18 So, Count one is unlawful conduct towards a child. And
19 Count two is child abuse with great bodily injury.

20 Beside Count -- the word "Count one" and "Count
21 two," you will indicate the jury's unanimous decision as
22 it relates to that particular charge and as it relates to
23 each of the individual defendants.

24 You'll, then, be called upon to sign your name as
25 the foreperson. You are the only juror that needs to

1 sign the verdict form. And you -- you will also place
2 the appropriate date after you sign it.

3 Now, in deciding the case and rendering decisions
4 and verdicts and indicating those on the verdict form
5 understand, as I previously stated, your verdict may be
6 the same as they relate to both charges in each
7 indictment or they may be different. That will depend
8 upon your determination of the facts and your application
9 of the law.

10 Your verdicts may be the same as it relates to each
11 of the separate Defendants or they may be different.
12 That also will depend upon your determination of the
13 facts and your application of the law as it relates to
14 each of the separate Defendants.

15 So, whatever your verdicts are, as they relate to
16 each of the separate Defendants and each of the separate
17 charges against each of the separate Defendants, indicate
18 those in the space provided, sign your name, and place
19 the appropriate date.

20 Then, notify the bailiff when you've reached
21 decisions, and he will bring you back into the courtroom
22 for us to receive those verdicts.

23 Now, during the course of your deliberations, there
24 may come a time where you wonder if you can have some
25 additional evidence; that you think there's something out

1 here that you believe might help you in deciding the
2 case. No more evidence can be received now that you're
3 going back to begin your deliberations.

4 So, even if something exists that could be brought
5 to court and could be provided to you, you can't have it
6 because the evidence -- the case is closed, the evidence
7 is closed, and no more additional evidence can be
8 received.

9 So, even if it exists, you can't have it. So, don't
10 inquire about it. You'll have all the evidence back
11 there that has been introduced, and that is all that you
12 can have or consider.

13 All right. If you have a question about testimony;
14 in other words, you have an issue about what a witness
15 said or didn't say, if you need to have testimony
16 replayed, in whole or in part, of a particular witness,
17 we can bring you back to the courtroom for that purpose.
18 I do not have transcripts of each witness to provide you
19 in the jury room.

20 But, if you want to have testimony of a witness
21 replied, in whole or in part, let the bailiff know and
22 he'll let me know and we'll bring you back into the
23 courtroom to accomplish that purpose. And you can hear
24 the testimony in its entirety or just some portion if
25 that's all you need.

1 During your deliberations, if you ever have a
2 question about the law that is applicable, I am always
3 permitted to answer questions that relate to the law that
4 you are to apply.

5 So, if you need for me to give you a re-instruction,
6 if you need for me to provide you an explanation or
7 clarification of the law that I've given you, I am always
8 permitted to do that.

9 So, if you need re-instruction or an explanation or
10 clarification of the law, let me know and I can bring you
11 back and provide that additional instruction.

12 I don't know, if we have any smokers on the jury,
13 but if we do have any smokers, you can't smoke in the
14 jury room. You have to go outside for that purpose.

15 So, if anybody wants to smoke, let the bailiff know
16 and they'll take those jurors outside to accomplish that
17 purpose.

18 You are instructed that deliberations may only be
19 engaged in when all twelve (12) jurors are present in the
20 jury room. So, if at any time, a juror is absent for an
21 authorized purpose, the deliberations have to stop and
22 may only resume when all twelve (12) are present, so,
23 that all can participate.

24 I assume that every body ordered lunch and your
25 lunch, if it's not here now, it will be here shortly.

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1 When your lunch arrives, I'll leave that up to you as to
2 whether you eat while you deliberate or stop and eat and
3 then resume deliberations. That's just up to you; you
4 can elect however you -- the jury sees fit to do so.

5 Mr. Foreman, if you ever need to direct some comment
6 to me or question to me, write it on a piece of paper and
7 give it to the bailiff. He will provide it to me and
8 I'll respond accordingly.

9 All right. It appears that the original twelve (12)
10 jurors are all able to participate, so, I will ask those
11 twelve (12) primary jurors to, please, go to your jury
12 room with the bailiff.

13 Do not, however, begin any deliberation. I've got
14 some matters I'll need to address with the lawyers. If I
15 don't need to bring you back for any reason, I will
16 simply send word, by way of the bailiff, that you may
17 begin with your deliberations.

18 And, in that event, he'll bring to the jury room all
19 the exhibits which have been introduced. And to you, Mr.
20 Foreman, he will also bring the indictments which will
21 serve as the verdict forms.

22 I'll ask the two alternate jurors to stay in the
23 courtroom with me, please. The twelve (12) primary can
24 retire, but await my instruction as to when to begin.

25 (Whereupon, the jury exited the courtroom at 12:20

1 p.m.)

2 THE COURT: Mr. Wyatt and Ms. Hayes, as you know,
3 you are not able to participate in the jury deliberations
4 because the original twelve (12) are apparently able to
5 do that.

6 So, that will conclude your service for the trial of
7 this case. But we necessarily do want to thank you for
8 your service as jurors in the case and for your -- the
9 time and attention you've devoted to it.

10 If you want to stay, just because you're curious as
11 to what your fellow jurors might do so far as the verdict
12 is concerned, you're welcome to stay.

13 You can't go in the jury room. But, if you prefer
14 not to stay and you want to leave, you can do that also.
15 This is going to be the last case that will require your
16 participation this week.

17 So, you're not going to need to call back or report
18 back any further this week. You will receive a pay
19 voucher for your service this week and a statement for
20 your employer in the event you need one.

21 (Continued comments regarding juror's pay vouchers
22 and lunch.)

23 (Whereupon, the alternate jurors were excused at
24 12:21 p.m.)

25 THE COURT: Are there any exceptions taken to the

1 instructions or requests for additions to the
2 instructions by the State?

3 MS. JORDAN: None from the State, Your Honor.

4 THE COURT: By the Defendant Dockery?

5 MS. PRICE: No, Your Honor.

6 THE COURT: By Defendant Moore?

7 MR. RUDASILL: No, Your Honor.

8 THE COURT: All right. Let me ask you all to verify
9 all the exhibits before they go back.

10 (Brief pause while Counsel checked all the exhibits
11 that were admitted into evidence.)

12 THE COURT: All right. All the exhibits are
13 accounted for?

14 MS. PRICE: Yes, Your Honor.

15 MR. RUDASILL: Yes, Your Honor.

16 MS. JORDAN: Yes, sir.

17 (Brief Pause)

18 THE COURT: All right. Take the exhibits back and
19 the verdict forms and tell the jury that they can begin
20 deliberating. We will be at ease while the jury is
21 deliberating.

22 (Off-the-record comments regarding attorneys leaving
23 for lunch.)

24 (The jury began deliberating at 12:22 p.m.)

25 (The jury had a question at 1:29 p.m.)

1 THE COURT: Thank you. Be seated. The jury has
2 sent a request. They want me to re-instruct them on the
3 second count of the indictment, which is violation 16-3-
4 95. So, I'm going to bring them back to do that.

5 All right. Bring them back.

6 (The bailiff stepped out to summon the jury.)

7 (The jury entered the courtroom at 1:32 p.m.)

8 THE COURT: Mr. Foreman, I have your requests. The
9 first one is to re-instruct you on the law as it relates
10 to the criminal offense set forth in Count two of the
11 indictment, which is infliction of great bodily injury
12 upon a child.

13 MR. LOWNDES: That's correct.

14 THE COURT: The second request that you sent out is
15 a question that relates to the evidence or an issue of
16 fact. And I'm never permitted to respond to those
17 questions.

18 In other words, you have to -- to answer the
19 question if you can from the evidence or testimony
20 presented. I'm not permitted to comment upon the
21 evidence or any factual issues that might have arisen
22 during the trial that you're considering during your
23 deliberations.

24 But I can re-instruct you on Section 16-3-95, which
25 you have requested.

1 And Section 16-3-95 provides that, "It is unlawful
2 to inflict great bodily injury upon a child.

3 And the term, "great bodily injury," is defined as
4 "Bodily injury which creates a substantial risk of death
5 or which causes serious or permanent disfigurement or
6 which causes a protracted loss or impairment of the
7 function of any bodily member or organ." And "child" is
8 defined as "any person under the age of eighteen (18)
9 years."

10 And, therefore, there are essentially three elements
11 which have to be established before a Defendant can be
12 found guilty of a violation of this particular section of
13 law..

14 First, it would have to be proven, to your
15 satisfaction beyond a reasonable doubt, that the
16 Defendant did inflict bodily injury which created a
17 substantial risk of death or which caused serious or
18 permanent disfigurement or which caused a protracted loss
19 or impairment of the function of any bodily member or
20 organ.

21 And that injury would have had to been inflicted
22 upon a child under the age of eighteen (18) years. And
23 the Defendant would have had to have committed that act
24 or those acts accompanied with a criminal intent.

25 Regarding the element of criminal intent, you're

1 instructed that criminal intent means the state of a
2 person's mind that joined with the commission of a
3 deliberate act culminating in the commission of a crime.

4 Criminal intent is a mental state, a conscious
5 wrongdoing, accompanying the commission of an act. And
6 that would be in contrast to an act that is committed
7 inadvertently, mistakenly, accidentally or in accordance
8 with the law and, therefore, without a criminal intent.

9 Where a person is engaged in the commission of
10 deliberate act, accompanied by criminal intent; that is,
11 a mental state of conscious wrongdoing, he or she is
12 legally responsible for all of the consequences that
13 necessarily flow from the commission of that intentional
14 act that are a natural and probable consequence of it,
15 even though the result was not actually intended as a
16 part of the original design, so, long as it is proven
17 that the result was reasonably known to be substantially
18 certain to occur.

19 And the proof of the existence of criminal intent
20 may be satisfied by proof of the intentional or
21 deliberate conduct or by the proof of criminal
22 negligence.

23 Criminal negligence is a greater degree of
24 culpability than mere simple negligence or carelessness,
25 as I defined that term for you, in instructing you on the

1 crime of unlawful conduct towards a child.

2 In the law, criminal negligence refers to the
3 commission of a deliberate act or acts with a reckless
4 disregard for the safety of others.

5 Reckless disregard refers to the commission of a
6 deliberate or intentional act with a conscious disregard
7 for the consequences of that act.

8 (Brief Pause)

9 THE COURT: So, therefore, as stated, in order to
10 establish a Defendant's guilt, as it relates to the crime
11 of the intentional infliction of great bodily injury upon
12 a child, it would have to be established, beyond a
13 reasonable doubt, that the Defendant did inflict bodily
14 injury which created a substantial risk of death or which
15 caused serious or permanent disfigurement or which caused
16 a protracted loss or impairment of the function of any
17 bodily member or organ.

18 And that such injury was inflicted upon a child
19 under the age of eighteen (18) and that the Defendant
20 committed such act or acts accompanied with a criminal
21 defent -- criminal intent as I defined that term for you.

22 All right. Now, as you go back and continue with
23 your deliberations -- I realize that this is new to most
24 of you if not all of you. So, if it still is not clear
25 enough, you be sure to let me know and I'll be happy to

1 continue to give you a re-instruction or to try to
2 clarify or give you a different explanation as to the
3 law. Okay?

4 MR. LOWNDES: Thank you, Your Honor.

5 THE COURT: All right. Thank you. Please, retire
6 to your jury room and continue your deliberations.

7 (The jury exited the courtroom at 1:44 p.m.)

8 THE COURT: Are there any exceptions taken to that
9 additional instruction by the State?

10 MS. JORDAN: No, Your Honor.

11 THE COURT: By Defendant Dockery?

12 MS. PRICE: No, Your Honor.

13 THE COURT: By Defendant Moore?

14 MR. RUDASILL: No, Your Honor.

15 THE COURT: All right. Let me see you all just a
16 minute.

17 (Whereupon, a bench conference was had with all
18 attorneys present.)

19 (Whereupon, Court's Exhibit Number 1 was marked for
20 identification and admitted into evidence.)

21 THE COURT: All right. We'll be at ease while the
22 jury continues to deliberate.

23 (Other matters were heard while the jury
24 deliberated.)

25 (The jury entered the courtroom at 3:54 p.m.)

1 THE COURT: All right, Ladies and gentlemen, I
2 understand one of the jurors is not feeling well. So,
3 we're going to recess for the afternoon.

4 We'll resume in the morning at nine thirty (9:30).
5 Hopefully, at that time, everybody will be in good shape
6 to go forward.

7 So, I've previously given you instructions about not
8 discussing the case, not talking about it with any person
9 whatsoever. Don't allow anyone to discuss it with you.

10 That's even more important; it's always important,
11 but it's extremely important now that you have begun with
12 your deliberations.

13 So, no discussions, no research, no investigation
14 into any issue. And, also, when you come back in the
15 morning, do not begin any discussions of the case until
16 all twelve (12) jurors present. We'll tell you when to
17 begin continuation of your deliberations, okay?

18 When you come back in the morning, don't deliberate
19 until we tell you to start. And that will be after all
20 twelve (12) jurors are present.

21 With that, have a good evening. And, please, report
22 to your jury room at nine thirty (9:30) in the morning,
23 nine thirty (9:30) in the morning.

24 (The jury was dismissed for the day and exited the
25 courtroom at 3:56 p.m.)

1 THE COURT: All right. Court is in recess until
2 nine thirty (9:30) in the morning. And I need to see the
3 lawyers for just a minute before you leave.

4 (Off-the-Record Comments)

5 (Whereupon, Court adjourned at 3:59 p.m.)

6 (Court reconvened at 9:30 a.m. on Friday, January 7,
7 2011.)

8 (Off-the-Record Comments)

9 (The jury sent requests to the Court for a recharge
10 and testimony of two doctors to be replayed.)

11 (The Court entered the courtroom at 9:57 a.m.)

12 THE COURT: All right. The jury has a request to
13 -- well, three (3) things. Number one, they've asked to
14 first be re-instructed on Count two of the indictment,
15 which is Code Section 16-3-95.

16 Secondly, they've asked to be instructed as to what
17 is -- what does the term, "substantial risk of death,"
18 mean. And, thirdly, they wish to, then, re-hear the
19 testimony of the radiologist and the pediatrician.

20 I'm going to bring them back for re-instruction.
21 And, then, I'll -- or the court reporter will play the
22 testimony for them. All right. Bring the jury in,
23 please.

24 (The bailiff stepped out to summon the jury.)

25 (The jury entered the courtroom at 10:02 a.m.)

1 THE COURT: Good morning, ladies and gentlemen.

2 (Responses of "good morning," were heard.)

3 THE COURT: Mr. Foreman, I have your requests on
4 behalf of the jury. And, as I understand it, you wish
5 for me to re-instruct the jury on the offense set forth
6 in Count two of each indictment, which is the infliction
7 of great bodily injury upon a child as set forth in
8 Section 16-3-95.

9 You also wish for me to give you the legal
10 definition of the term, "substantial risk of death,"
11 after which you wish to have re-heard the testimony of
12 both the radiologist and the pediatrician.

13 MR. LOWNDES: Yes, sir.

14 THE COURT: Okay. All right. With regard to the
15 first request, the re-instruction as to 16-3-95. That
16 section of the Code of Laws of South Carolina provides
17 that:

18 "It is unlawful to inflict great bodily injury upon
19 a child. And the term, "great bodily injury," is defined
20 as "bodily injury which creates a substantial risk of
21 death or which causes serious or permanent disfigurement
22 or which causes a protracted loss or impairment of the
23 function of any bodily member or organ."

24 And the term, "substantial risk of death," refers to
25 "A real or actual or considerable risk of death in

1 contrast to one which is remote, slight, or possible risk
2 of death."

3 And "child" is defined as "any person under the age
4 of eighteen (18) years."

5 And, therefore, based upon the statute, before you
6 could find a Defendant guilty of a violation of this
7 particular statute, it would be necessary that the State
8 has established, to your satisfaction beyond a reasonable
9 doubt, three essential elements.

10 First, it must be established that the Defendant did
11 inflict bodily injury which created a substantial risk of
12 death or which caused serious or permanent disfigurement
13 or which caused a protracted loss or impairment of the
14 function of any bodily member or organ.

15 And, secondly, that such injury was inflicted upon a
16 child under the age of eighteen (18) years. And,
17 thirdly, that the Defendant committed those acts
18 accompanied with a criminal intent.

19 "Criminal intent" is a mental state of conscious
20 wrongdoing accompanying the commission of an act which is
21 in contrast to an act that is committed inadvertently,
22 mistakenly, accidentally, or in accordance with the law
23 and, therefore, without a criminal intent.

24 You are instructed that, "Where a person is engaged
25 in the commission of deliberate act, accompanied by

STATE OF SOUTH CAROLINA

 ORIGINAL

IN THE COURT OF APPEALS

Appeal from Spartanburg County

J. Derham Cole, Circuit Court Judge

THE STATE,

RESPONDENT,

V.

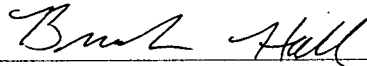
TINA DOCKERY,

APPELLANT

Appellate Case No. 2011-183266

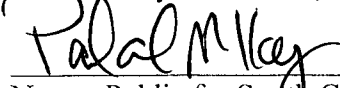
CERTIFICATE OF SERVICE

I certify that a true copy of the Record on Appeal in the above referenced case has been served upon Salley W. Elliott, Esquire, at Rembert Dennis Building, 1000 Assembly Street, Room 519, Columbia, SC 29201; and on Tina Dockery, at 165 Clark Circle, Spartanburg, SC 29307, this 26th day of October, 2012.



Brandon Hall
Administrative Specialist

SUBSCRIBED AND SWORN TO before me
this 26th day of October, 2012.

 (L.S.)
Notary Public for South Carolina

My Commission Expires: July 24, 2022

RECEIVED
OCT 26 2012
SC Court of Appeals