

20149

THE STATE OF SOUTH CAROLINA  
In The Court of Appeals

---

APPEAL FROM LEXINGTON COUNTY  
Court of General Sessions

Knox R. McMahon, Circuit Court Judge

---

Case No.: 2010-GS-32-01876

---

State of South Carolina, . . . . . Respondent,

v.

Lexie Dial, III, . . . . . Appellant.

---

**RECORD ON APPEAL**  
**Volume One**

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**SC Court of Appeals**

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I

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2     COUNTY OF LEXINGTON     )     COURT OF GENERAL SESSIONS  
                                          )     No. 2010 GS 32 01876

3

4     STATE OF SOUTH CAROLINA     )  
5                                     )  
6     versus                         )     TRANSCRIPT OF RECORD  
7                                     )  
8     LEXIE DIAL, III                )  
9                                     )  
10                                    )  
11                                    )  
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24                                    )  
25                                    )

Lexington, South Carolina  
April 11-15, 19, 2011

12     B E F O R E :

13             HONORABLE KNOX McMAHON, Judge, and a Jury

14

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1           (The within matter came before the Court on April  
2 11, 2011)

3           THE COURT: All right, if the State would call its  
4 first case for trial, please?

5           MS. WEISS: Thank you, Your Honor. May it please  
6 the Court?

7           The State calls Indictment Number 2010 GS 32 01876,  
8 the State of South Carolina versus Lexie Dial, Third.

9           If I may approach, Your Honor?

10          THE COURT: Yes, maam.

11          (Indictment handed up to the Court)

12          THE COURT: Ladies and gentlemen of the jury panel,  
13 if you would give me your complete and undivided atten-  
14 tion? Please consider yourselves still under oath.

15          We are going to begin a process whereby we select  
16 a trial jury for the first case that has been called  
17 for trial.

18          As a result of that, I'm going to publish or read  
19 to you the Indictment in the case. The Indictment in  
20 the case is not evidence. The Indictment is the formal  
21 document by which an individual is placed on notice of  
22 the charge that has been brought against him or her.

23          It contains allegations, and it is in no way evi-  
24 dence of any of the allegations contained therein. It  
25 is the mere formal Indictment. I publish or read the

1 Indictment to you because of questions that I will ask  
2 you throughout the course of this proceeding. Our pur-  
3 pose in conducting this procedure is to select a fair  
4 and impartial jury for the trial of this case for both  
5 the State and the Defendant.

6 The Indictment is 2010 GS 32 01876, the State  
7 versus Lexie Dial, Third.

8 The Indictment reads that Lexie Dial, Third, in  
9 Lexington County, South Carolina, on or about January  
10 19 of 2010, caused injury to Joshua Dial; date of birth  
11 of August 22, 2009, a child who was under the age of  
12 eleven years at the time of his death on January 20,  
13 2010; in that the Defendant did cause the death of the  
14 said child while committing child abuse or neglect, to  
15 wit:

16 The Defendant did violently shake the infant vic-  
17 tim, resulting in his death, and/or the Defendant did  
18 violently assault the infant victim, resulting in his  
19 death; and that the death of said child occurred under  
20 circumstances manifesting an extreme indifference to  
21 human life, in violation of Section 16 3 85 of the South  
22 Carolina Code of Laws, 1976, as amended.

23 That is an Indictment for homicide by child abuse,  
24 ladies and gentlemen.

25 The Indictment is the formal charging document.

1 It contains mere allegations. It is not evidence of  
2 any of the allegations contained therein.

3 The State is represented by Attorney General Weiss  
4 and Waters.

5 If you would stand and face the jury panel and in-  
6 troduce yourselves to the jury panel?

7 MS. WEISS: Good morning. My name is Heather  
8 Savitz Weiss, and I'm an Assistant Attorney General.

9 MR. WATERS: My name is Creighton Waters, and I am  
10 an Assistant Attorney General.

11 THE COURT: Are there others from the Attorney  
12 General's staff that will be assisting you in the prose-  
13 cution of this case?

14 MS. WEISS: Yes, Your Honor. Sam Waller, the vic-  
15 tim advocate for the Attorney General's Office.

16 THE COURT: Thank you very much.

17 The Defendant is represented by Mr. Wayne Floyd.

18 Please stand and introduce yourself and your  
19 client to the jury, Mr. Floyd.

20 MR. FLOYD: Thank you, Your Honor. My name is  
21 Wayne Floyd, and I practice law in West Columbia.

22 Standing next to me is Lexie Dial, Third, and he  
23 is the Defendant in this case.

24 THE COURT: Thank you, Mr. Floyd. Thank you, Mr.  
25 Dial.

1           Ladies and gentlemen of the jury panel, is any  
2           member of the jury panel related by blood or marriage  
3           or a close personal friend, or have any business, per-  
4           sonal or professional relationship with any of the  
5           attorneys in this matter, that being Attorney General  
6           Weiss, Attorney General Waters, or Mr. Floyd?

7           If so, please stand.

8           (Juror standing)

9           THE COURT: Yes, your name, please?

10          JUROR: David Coleman, Number 25.

11          THE COURT: Would you come up here for me, please,  
12          Mr. Coleman?

13          (Juror coming forward)

14          THE COURT: Yes, sir. This is Number 25. All  
15          right, tell me your situation.

16          JUROR: Well, I'm the Fire Chief of West Columbia.  
17          We do inspections on Mr. Floyd's building.

18          THE COURT: The fact that you are the Fire Chief  
19          in West Columbia -- that you are the Fire Chief there  
20          and do inspections on Mr. Floyd's building . .

21          JUROR: Yes, sir.

22          THE COURT: . . could you still be a fair and im-  
23          partial juror to both the State and Defendant?

24          JUROR: Yes, sir.

25          THE COURT: Thank you. You may step back.

1 (Juror returning to seat in Courtroom)

2 THE COURT: Has anyone on the jury panel or any  
3 member of your immediate family or close personal friend  
4 ever been prosecuted by or represented by either At-  
5 torney General Weiss, Attorney General Waters or Mr.  
6 Floyd?

7 If so, please stand.

8 (No response)

9 Has any member of the jury panel had any family  
10 member or close personal friend employed by the South  
11 Carolina Attorney General's Office or the Lexington  
12 County Sheriff's Department or by the State Law Enforce-  
13 ment Division?

14 If so, please stand.

15 (Juror standing)

16 THE COURT: Yes, your name and number, please?

17 JUROR: Courtney Smith, 147.

18 THE COURT: And what agency?

19 JUROR: My mom works for the Attorney General's  
20 office.

21 THE COURT: And how long has she been so employed?

22 JUROR: Seven years.

23 THE COURT: Seven years, and what position does she  
24 have with the Attorney General's office?

25 JUROR: As a legal assistant.

1 THE COURT: The fact that your mom is employed by  
2 the Attorney General's office as a legal assistant,  
3 could you still be a fair and impartial juror in the  
4 trial of this case to both the State and the Defense?

5 JUROR: Yes, sir.

6 THE COURT: You may be seated.

7 Any others?

8 (Jury seated in Courtroom)

9 (No further response)

10 THE COURT: Is any member of the jury panel or  
11 any member of your immediate family a close personal  
12 friend or have any business or professional relationship  
13 with the Defendant in this case, Lexie Dial, the Third?

14 If so, please stand.

15 (No response)

16 THE COURT: The Indictment alleges an incident  
17 that occurred around January 19th of 2010, and January  
18 20, 2010, in Lexington County.

19 Is there any member of the jury panel that has any  
20 knowledge of the facts of this case?

21 If so, please stand.

22 (No response)

23 THE COURT: Is any member of the jury panel  
24 biased or prejudiced toward either of the parties or  
25 the subject matter in the case?

1           If so, please stand.  
2           (No response)  
3           THE COURT: Has any member of the jury panel heard  
4 or know anything about the case from any source whatso-  
5 ever?  
6           If so, please stand.  
7           (No response)  
8           THE COURT: Has any member of the jury panel or any  
9 member of your immediate family been a victim of a  
10 crime of violence, personal violence?  
11          If so, please stand.  
12          (No response)  
13          THE COURT: Has any member of the jury panel or  
14 any member of your immediate family ever been charged  
15 with or convicted of a crime of personal violence?  
16          If so, please stand.  
17          (No response)  
18          THE COURT: Is any member of the jury panel or  
19 any member of your immediate family employed by a hos-  
20 pital or other medical provider?  
21          If so, please stand.  
22          (Juror standing)  
23          THE COURT: All right. This lady on the front,  
24 that is Ms. Taylor, 158?  
25          JUROR: Yes, sir.



1           THE COURT: All right, and tell me your situation,  
2   Ms. Taylor?  
3           JUROR: My mother works for the Lexington Medical  
4   Center on the mother-baby floor.  
5           THE COURT: The fact that your mother works for the  
6   Lexington Medical Center on the mother-baby floor,  
7   could you still be a fair and impartial juror in the  
8   trial of this case for the State and the Defense?  
9           JUROR: Yes, sir.  
10          THE COURT: Thank you. You may be seated.  
11          (Juror being seated)  
12          (Another juror standing)  
13          THE COURT: And the gentleman that is next to Ms.  
14   Taylor, your number and name, please?  
15          JUROR: Stanley Young, 184.  
16          THE COURT: All right, and your situation, Mr.  
17   Young?  
18          JUROR: I work at the Lexington Medical Center.  
19          THE COURT: In what capacity?  
20          JUROR: In support areas.  
21          THE COURT: The fact that you are employed by the  
22   Lexington Medical Center, could you still be a fair  
23   and impartial juror in the trial of this case for both  
24   the State and the Defense?  
25

1 JUROR: Yes, sir.

2 THE COURT: Thank you. You may be seated.

3 (Juror seated)

4 (Another juror standing)

5 THE COURT: Yes, maam. Your name and number,  
6 please?

7 JUROR: Ruth Hickman, 77.

8 THE COURT: Are you employed or someone else?

9 JUROR: My sister works at the Lexington Medical  
10 Center.

11 THE COURT: All right, and how is she employed,  
12 Ms. Hickman?

13 JUROR: She is a technician.

14 THE COURT: All right, and the fact that your  
15 sister is so employed at the Lexington Medical Center,  
16 could you still be a fair and impartial juror in the  
17 trial of this case for both the State and the Defen-  
18 dant?

19 JUROR: Yes, sir.

20 THE COURT: Thank you. You may be seated.

21 (Juror seated)

22 (Another juror standing)

23 THE COURT: Your name and number, please?

24 JUROR: Albert Semer, 139.

25 THE COURT: And your situation?

1 JUROR: My mom is employed as a nurse. An RN.  
2 THE COURT: Where at?  
3 JUROR: Vocational rehabilitation.  
4 THE COURT: The fact that your mom is employed as  
5 an RN with voc rehab, would you still be a fair and  
6 impartial juror in the trial of this case for both the  
7 State and the Defendant?  
8 JUROR: Yes.  
9 THE COURT: All right, thank you.  
10 (Juror seated)  
11 (Another juror standing)  
12 THE COURT: I would say the lady in black, but I  
13 am not sure so I'll start on this side. Your number  
14 and name, please?  
15 JUROR: Jamantha Edwards, 45.  
16 THE COURT: Say your name again, please?  
17 JUROR: Forty-five.  
18 THE COURT: And your situation?  
19 JUROR: I'm employed as an engineer at the medical  
20 college.  
21 THE COURT: The fact that you are so employed,  
22 would you still be a fair and impartial juror in the  
23 trial of this case for both the State and the Defen-  
24 dant?  
25 JUROR: Yes.

1 THE COURT: Thank you. You may be seated.  
2 (Juror seated)  
3 (Another juror standing)  
4 THE COURT: Yes, your name and number?  
5 JUROR: Mary Snipes, 152.  
6 THE COURT: And your situation?  
7 JUROR: I work as a nurse at the trauma center  
8 at the hospital.  
9 THE COURT: In what area?  
10 JUROR: Trauma and ICU.  
11 THE COURT: The fact that you are so employed,  
12 could you still be a fair and impartial juror in the  
13 trial of this case to both the State and the Defense?  
14 JUROR: I believe so.  
15 THE COURT: Step up here for me, please.  
16 (Juror approaching the Bench with counsel)  
17 THE COURT: When you say you believe so -- it may  
18 just be a matter of semantics but . .  
19 JUROR: I don't know if I am unknowingly biased  
20 in some way. You know, having seen trauma patients, I  
21 don't know if that would make any difference.  
22 THE COURT: Well, do you understand if you were  
23 selected as a juror for the trial of this case or of  
24 any case your job would be to decide the case based on  
25 what you see and hear in the Courtroom, the facts coming

1 from the witness stand from witnesses testifying under  
2 oath, and the law as the Judge tells you the law to be,  
3 setting aside what may have occurred in the trauma room  
4 with other individuals?

5 You understand that, don't you?

6 JUROR: Yes, sir. I am familiar with the law.

7 THE COURT: So you could, if you were selected as  
8 a juror on the trial of this case -- you could do that?

9 You could decide the case based on the evidence  
10 that is presented to you in the Courtroom and the law  
11 as charged? No doubt about that?

12 JUROR: No.

13 THE COURT: All right, thank you. I believe you  
14 can stay with us.

15 You can return to your seat.

16 (Juror returning to seat in Courtroom)

17 (Another juror standing)

18 THE COURT: Yes, maam. Your number and name,  
19 please?

20 JUROR: Number 114, Heather McKinney.

21 THE COURT: And your situation?

22 JUROR: I'm on the staff at the hospital.

23 THE COURT: And the fact that you are so employed,  
24 could you be a fair and impartial juror in the trial  
25 of this case for both the State and the Defendant?

1 JUROR: Yes, sir.

2 THE COURT: Thank you.

3 (Juror seated)

4 (Another juror standing)

5 THE COURT: Yes, maam, in the back?

6 JUROR: Nancy Rumbaugh, 136.

7 THE COURT: Your situation, Ms. Rumbaugh?

8 JUROR: My sister is employed at at the Lexington

9 Medical Center. She works in the emergency room.

10 THE COURT: The fact that your sister is so em-

11 ployed, could you still be a fair and impartial juror

12 in the trial of this case to both the State and the

13 Defendant?

14 JUROR: Yes, sir.

15 THE COURT: Thank you very much. You may be

16 seated.

17 (Juror seated)

18 (No further response)

19 THE COURT: Is any member of the jury panel or any

20 member of your immediate family employed by the Depart-

21 ment of Social Services or any agency or organization

22 that advocates for children?

23 If so, please stand.

24 (Juror standing)

25 THE COURT: All right. Yes, your number and name,

1       please?

2       JUROR:   Dwight Watson, Number 169.

3       THE COURT:   Yes, sir.

4       JUROR:   My sister lives in North Carolina, and she

5       works at her hospital as a social worker there..

6       THE COURT:   The fact that your sister is so employed,

7       could you still be a fair and impartial juror in the

8       trial of this case to both the State and the Defense?

9       JUROR:   Yes.

10      THE COURT:   Thank you.   You may be seated.

11      (Juror seated)

12      (Another juror standing)

13      THE COURT:   Yes, sir.

14      JUROR:   Number 142, Tom Skiro.

15      THE COURT:   Yes, sir.

16      JUROR:   I don't know if this would actually be

17      involved here, but my wife works as a Guardian ad Litem

18      as a volunteer and is personally involved in advocating

19      for children.

20      THE COURT:   All right.   The fact that your wife is

21      a volunteer Guardian ad Litem, could you still be a

22      fair and impartial juror in the trial of this case to

23      both the State and the Defense?

24      JUROR:   I'm not sure.

25      THE COURT:   Step up here, please.

1 (Juror coming to bench with counsel)

2 THE COURT: Yes, sir. Could you explain that an-  
3 swer a little bit for us?

4 JUROR: Well, often in the cases she has passed on,  
5 the parents have failed the children and I see that,  
6 and I am not sure I could be impartial. I always am an  
7 advocate for the child or the children.

8 THE COURT: I will set you aside for the trial of  
9 this case.

10 Please do not say anything to your fellow jurors.  
11 You may return to your seat. Thank you very much.

12 (Juror returning to seat in Courtroom)

13 THE COURT: I asked this question in a general  
14 manner previously, and I will reask it. Has any member  
15 of the jury heard or seen anything in the newspaper,  
16 on radio, television, or internet reports concerning  
17 this case, if there were any?

18 If so, please stand.

19 (Juror standing)

20 THE COURT: All right, let's see. Was this 169?

21 JUROR: Yes, sir.

22 THE COURT: I didn't see the others. How about  
23 you all line up here for me. Just come and line up for  
24 me.

25 (Jurors forming line to speak to the Court)



1           (One juror coming forward)

2           THE COURT: Yes, sir.

3           JUROR: Number 163.

4           THE COURT: Mr. Trader. Tell me your situation or

5           what you heard about this.

6           JUROR: I heard it on the news.

7           THE COURT: On the radio?

8           JUROR: The TV.

9           THE COURT: What do you remember that you've seen?

10          JUROR: I didn't really pay that much attention

11          to it.

12          THE COURT: What time frame are you talking about?

13          JUROR: It's been a while back. I'm not sure what

14          time it was, what date.

15          THE COURT: What is your memory of it?

16          JUROR: I just remember hearing about this. I

17          didn't really pay that close attention to it. I watch

18          the news.

19          THE COURT: When you say you remember hearing it,

20          what do you remember hearing?

21          JUROR: I just remember something about the child

22          but I can't remember exactly but I just want to be hon-

23          est.

24          THE COURT: Sure. The fact that you have seen some news

25          reports at some time in the past about what may have

1 happened although you don't have a clear memory of it,  
2 can you still be a fair and impartial juror in the trial  
3 of this case to both the State and the Defendant?

4 JUROR: Yes, sir.

5 THE COURT: And you understand if you're selected  
6 you would have to make a decision based on what you  
7 hear in the Courtroom and not on what you heard on tele-  
8 vision or read in the newspaper? Do you understand  
9 that?

10 JUROR: Yes, sir.

11 THE COURT: And you can set that aside?

12 JUROR: Yes, sir.

13 THE COURT: And make your decision based on what  
14 you hear witnesses testify to?

15 JUROR: Yes, sir.

16 THE COURT: Thank you. Stay with us, and  
17 please do not discuss anything with your fellow jurors.

18 All right, I'm going to ask that you stay with us.

19 (Juror returning to seat in Courtroom)

20 (Another juror coming forward)

21 JUROR: Number 169.

22 THE COURT: All right, Mr. Watson. Would you tell  
23 me what you have seen or heard?

24 JUROR: I believe I saw it on WLX's website and on  
25 or about the week it happened, and the reason I remember

1     was because of Mr. Dial's name. I knew a Jeff Dial and  
2     I wondered if it was probably his son.

3             I can guess or think that I remember something  
4     about previous altercations with his wife over something  
5     but I can remember any specifics.

6             THE COURT: The fact that you may have seen it on  
7     the website, could you set that aside and base your de-  
8     cision on what you heard in this Courtroom from witnes-  
9     ses testifying under oath and the law as I tell you the  
10    law is?

11            JUROR: Yes, sir.

12            THE COURT: And based on what you may have seen or  
13    heard in the news, have you formed or expressed any  
14    opinion about the guilt of the Defendant?

15            JUROR: No.

16            THE COURT: And if I told you that this Defendant  
17    or any Defendant is presumed to be innocent until the  
18    State proves its case beyond a reasonable doubt, you  
19    will follow that law?

20            JUROR: Yes, sir.

21            THE COURT: You may stay with us. Do not say any-  
22    thing to your fellow jurors, and thank you, Mr.  
23    Watson.

24            (Juror returned to seat in Courtroom)

25            (Another juror coming forward)

1 THE COURT: Mr. Williams?  
2 JUROR: Yes, sir.  
3 CLERK: Number 174, Your Honor.  
4 THE COURT: Tell me your situation, sir.  
5 JUROR: I saw the news report on it and it refer-  
6 enced the website. I'm a single parent or have been.  
7 I raised my son myself.  
8 THE COURT: You're talking about back when it hap-  
9 pened?  
10 JUROR: Back in the January term, yes, sir.  
11 THE COURT: January of last year?  
12 JUROR: Yes, sir.  
13 THE COURT: Now, the fact that you saw it on the  
14 website, could you still be a fair and impartial juror  
15 in the trial of this case both to the State and to the  
16 Defendant?  
17 JUROR: Yes, sir.  
18 THE COURT: You would be able to sit as a juror on  
19 this case and base your decision on what you hear in  
20 the Courtroom?  
21 JUROR: Yes.  
22 THE COURT: And set aside when you heard or saw on  
23 the website?  
24 JUROR: Yes, sir.  
25 THE COURT: You mentioned another thing about

1       being a single parent?

2               JUROR: Yes, sir. I make myself aware of inci-  
3       dents with children.

4               THE COURT: Can you explain that to me a little  
5       bit more?

6               JUROR: Being a single parent or actually being a  
7       male and having a child in your care, you really have  
8       to care for children. So it takes somebody, I believe,  
9       in a really extraordinary situation to do something  
10      like that. Somebody that has the capacity to do some-  
11     thing like that, I don't . .

12              Especially a male . .

13              THE COURT: Given the fact that the Defendant is  
14     a male and is alleged to have injured a child to the  
15     extent that it caused the child's death, which is just  
16     a mere allegation, but given your opinion which is not  
17     right or wrong of the person who would do something  
18     like it -- do you feel you could be a fair and impartial  
19     juror in the trial of this case for the State and the  
20     Defendant?

21              JUROR: I believe so.

22              THE COURT: When you say you believe so, that is a  
23     matter of semantics. You know yourself better than any-  
24     body else.

25              You say you believe so, and I don't want to put

1 words in your mouth or take words out, but this is the  
2 only opportunity for the Defense Lawyer and the Attorney  
3 General has to view the jury and listen to their re-  
4 sponses and make a decision as to who is selected on  
5 this jury panel.

6 Can you expound on your beliefs?

7 JUROR: After hearing the facts as they are brought  
8 forward in this case, I know that I can make a decision.

9 THE COURT: Based on the facts?

10 JUROR: Yes, based on the facts.

11 THE COURT: And the law I give to you?

12 JUROR: Yes, sir.

13 THE COURT: If the State fails to prove its case  
14 beyond a reasonable doubt, the State being the party  
15 that has the burden of proof, you could find the Defen-  
16 dant not guilty?

17 JUROR: Yes, sir.

18 THE COURT: And you don't have any doubt that you  
19 could do that?

20 JUROR: No.

21 THE COURT: Let me have you step right over there  
22 for just a moment, Mr. Williams. Step right over  
23 there.

24 (Juror stepping to the side)

25 (Discussion between the Court and counsel off the

1 record)

2 THE COURT: Step back up here, please, Mr.  
3 Williams.

4 (Juror returning to the Bench)

5 THE COURT: I should have asked you this to start  
6 with. I guess the flip side of the coin is this, if  
7 the State has proved its case beyond a reasonable doubt  
8 -- the State has the burden of proof-- if the State met  
9 the burden of proof, could you return a verdict of  
10 guilty in the case?

11 JUROR: Yes, sir.

12 THE COURT: Thank you. You may return to your  
13 seat.

14 (Juror returning to seat in Courtroom)

15 THE COURT: Ladies and gentlemen of the jury panel,  
16 I'm going to call a list of names, The question, of  
17 course, would be, is any member of the jury panel re-  
18 lated by blood or marriage, or close personal friends,  
19 with any of these individuals, the names that I call.

20 If any of the parties are present when your names  
21 are called, if you would please stand and face the jury  
22 panel?

23 I would further advise the jury panel that the  
24 witnesses are not required to be present during this  
25 procedure. Therefore, I may call names and have no one

1 stand.

2 The first five names, Lexie Dial, Jr., Courtney  
3 Dial, Misti Marie Richard -- I'm going to apologize in  
4 advance for the mispronunciation of this name --  
5 Michael Szenas and Donna Szenas. That's the first five  
6 names.

7 Is any member of the jury panel related by blood  
8 or marriage, or a close personal friend, or have any  
9 business or professional relationship with any of those  
10 individuals whose names I just called?

11 If so, please stand.

12 (No response)

13 The next five names, Christopher Pruitt, Jessica  
14 Campbell, Gina Geddings, Kimberly A. Watson and  
15 Christina Hagens.

16 Is any member of the jury panel related by blood  
17 or marriage, or a close personal friend, or have any  
18 business or professional relationship with any of the  
19 individuals whose names I just called?

20 If so, please stand.

21 (No response)

22 The next five names, Rick Zureich, Z U R E I C H,  
23 Nikki Rodgers, nine one one custodian, Sergeant Kevin  
24 Howard, Lexington County Sheriff's Department, Detective  
25 Shawn Grant, Lexington County Sheriff's Department, and



1 Deputy Kevin Steele, Lexington County Sheriff's Depart-  
2 ment.

3 The next five names, Deputy Adam Clayton, Detec-  
4 tive Eric Russell, Investigator Terry Goven, Investiga-  
5 tor Eddie Prestigiacomo, Victim Advocate Erica Owens.

6 All of those last five individuals are with the  
7 Lexington County Sheriff's Department.

8 The next five names, David Day, Troy Crump, Ser-  
9 geant Jeff Palkowski, Shelby Derrick, Renee Strickland,  
10 all employed with the Lexington County Sheriff's De-  
11 partment.

12 The next five names, also all with the Lexington  
13 County Sheriff's Department, are Beth Harmon, Candy  
14 Kyzer, Sergeant Henry Dukes, Lieutenant Scott Frier and  
15 Detective Luis Rivera.

16 Again, ladies and gentlemen, the question is, is  
17 any member of the jury panel related by blood or mar-  
18 riage or a close personal friend to any of those indi-  
19 viduals whose names I just called.

20 If so, please stand.

21 (Juror standing)

22 THE COURT: Yes, your number and name, please?

23 JUROR: Marie Counts.

24 CLERK: Number 48, Your Honor.

25 THE COURT: Thank you. This is Ms. Counts?

1 JUROR: Yes, sir.

2 THE COURT: Are you a friend or are you related?

3 JUROR: I am . . .

4 THE COURT: Speak up a little bit.

5 JUROR: I work with the South Carolina Office of  
6 Disability Determination and come in . . .

7 REPORTER: I'm sorry.

8 JUROR: . . . come in contact with officers from  
9 Lexington County.

10 I am also close friends with . . .

11 REPORTER: Close friends with -- I'm sorry.

12 JUROR: Close friends with Erica Owens, the victim  
13 advocate in Lexington County.

14 THE COURT: The fact that you work in that capac-  
15 ity and are close friends with the victim advocate in  
16 Lexington County, could you still be a fair and impar-  
17 tial juror in the trial of this case to the State and  
18 to the Defense?

19 JUROR: No, sir.

20 THE COURT: Thank you. I'll set you aside for the  
21 trial of this case.

22 Please step back to your seat, and please do not  
23 say anything to your fellow jurors.

24 (Juror going back to seat in Courtroom)

25 (Another juror coming forward)

1 THE COURT: Let's see. This is Mr. Coleman.

2 CLERK: Number 25, Your Honor.

3 THE COURT: Yes, sir.

4 JUROR: Sir, I have met some of the deputies and  
5 I'm sure I've worked with them in some arson cases, as  
6 well as Ms. Owens.

7 THE COURT: The fact that you worked with -- in  
8 association with Ms. Owens and worked with some of the  
9 deputies in other cases, could you be a fair and impar-  
10 tial juror in the trial of this case . .

11 JUROR: Yes, Your Honor.

12 THE COURT: . . to both the State and the Defen-  
13 dant?

14 JUROR: Yes, sir.

15 All right, you may return to your seat. Thank  
16 you.

17 (Juror returning to seat in Courtroom)

18 THE COURT: All right, the next five names, ladies  
19 and gentlemen of the jury, are Victim Advocate Donna  
20 Roof, Lexington County Sheriff's Department, and the  
21 next four appear to be with EMS; that is, the Emergency  
22 Medical Services, and those are Jason Hentz, Debra  
23 Fields, Amy Lee and Mark Schermerhorn, S C H E R M E  
24 R H O R N.

25 Any member of the jury panel related by blood or

1 marriage, or close personal friends, with any of those  
2 individuals whose names I have just called?

3 If so, please stand.

4 (No response)

5 The next five names, Laurie Grimes Gould with the  
6 Lexington Coroner's Office.

7 The next four names are all with SLED, the State  
8 Law Enforcement Division, and are Amy Stephens, Selena  
9 Kinard, Pat Crooks, Nicole Perry.

10 If any member of the jury panel is related by  
11 blood or marriage, or a close personal friend, of any  
12 of those individuals whose names I have just CALLED,  
13 please stand.

14 (No response)

15 The next five people are all employed with the  
16 State Law Enforcement Division. Toni Broome, Brandon  
17 Williams, Kimberly Mears, Sheree Brown, and Verona  
18 Gibson.

19 The next two names are employed with the State Law  
20 Enforcement Division. Brandon Landrum and Shana  
21 Sorrells.

22 If any member of the jury panel is related by  
23 blood or marriage, or a close personal friend, of any  
24 of those individuals whose names I just have called,  
25 please stand.

1 (No response)

2 The next four names are all employed with the  
3 Lexington Medical Center. Sarah Walker, Crystal  
4 Johnson, RN, Natache Walker, RN, and Dr. Wesley  
5 Shuler.

6 (No response)

7 The next five names, Dr. Janice Ross, Dr. Susan  
8 Luberoff, Dr. Sharon Webb, Dr. Adam Chun, C H U N, Dr.  
9 Greta Setzer Harper.

10 If any member of the jury panel is related by  
11 blood or marriage, or a close personal friend, or have  
12 any business or professional relationship with any of  
13 those individuals whose names I have just called, please  
14 stand. If so, please stand.

15 (Juror standing)

16 THE COURT: All right, this is a trauma room nurse.  
17 Please come forward for me.

18 (Juror coming to the bench with counsel.

19 THE COURT: All right, yes, sir.

20 CLERK: Number 152, Your Honor.

21 THE COURT: Thank you. All right, Ms. Snipes,  
22 tell me your situation.

23 JUROR: I worked with Dr. Chun.

24 THE COURT: And what time frame are you talking  
25 about?

1 JUROR: Between -- well, he left for a Fellowship  
2 in California, but for a year or two I helped him to  
3 take care of patients.

4 THE COURT: The fact that you worked for the doc-  
5 tor, could you still be a fair and impartial juror in  
6 the trial of this case for both the State and the De-  
7 fendant?

8 JUROR: Yes.

9 THE COURT: You may be seated.

10 (Juror returning to seat in Courtroom)

11 (Another juror standing)

12 THE COURT: Yes, sir.

13 JUROR: Good morning, Your Honor.

14 CLERK: One eighty-four, Your Honor.

15 THE COURT: Yes, sir. Tell me your situation.

16 JUROR: I used to work with Dr. Shuler. It has  
17 been a few years ago.

18 THE COURT: Could you still be a fair and impartial  
19 juror in the trial of this case for both the State and  
20 the Defense?

21 JUROR: Yes, sir.

22 THE COURT: Thank you. Stay with us.

23 (Juror return to seat in Courtroom)

24 THE COURT: Any others?

25 (No further response)

1 THE COURT: The next five names all appear to be  
2 employed with the Palmetto-Ridgeland Hospital. Dr.  
3 Sara Evers, E V E R S, Dr. Edward Cheeseman, Sharon  
4 Emory, RN, Jeremy Hilton, Karen Young, RN.

5 Any member of the jury panel related by blood or  
6 marriage, close personal friends, have a business or  
7 professional relationship, with any of those individ-  
8 uals?

9 If so, please stand.

10 (No response)

11 THE COURT: The next four names, Shannon Clark, RN, Dr.  
12 Heather Brown, Palmetto-Ridgeland; Dr. Bruce Cope,  
13 C O P E, and then there is -- is this a person's name,  
14 Capitol Transportation or . .

15 MS. WEISS: No, Your Honor. That is one we just  
16 became aware of -- it's the mortuary transport.

17 THE COURT: A custodian?

18 MS. WEISS: Yes, sir, Your Honor.

19 THE COURT: A custodian of records with Capitol  
20 Transportation.

21 Is any member of the jury panel related by blood  
22 or marriage, close personal friends, with any of those  
23 individuals whose names I just called?

24 If so, please stand.

25 (Juror standing)

1 THE COURT: Yes, sir. Your name and number, please,  
2 sir?

3 JUROR: Number 81, Blake Holmes.

4 THE COURT: What is your situation?

5 JUROR: Dr. Cope takes care of my children.

6 THE COURT: Come forward, please.

7 (Juror coming to Bench with counsel)

8 THE COURT: You said Dr. Cope is your child's  
9 doctor?

10 JUROR: Yes, he is my children's pediatrician.

11 THE COURT: How long has he been your children's  
12 pediatrician?

13 JUROR: For one child a couple of years -- two or  
14 three years, and I have another child, a six month old.

15 THE COURT: Is Dr. Cope also that child's pediatri-  
16 cian?

17 JUROR: Yes, sir.

18 THE COURT: The fact that Dr. Cope is a pediatri-  
19 cian for your children, could you still be a fair and  
20 impartial juror in the trial of this case for both the  
21 State and the Defense?

22 JUROR: Yes, sir.

23 THE COURT: Thank you. You may step back to your  
24 seat.

25 (Juror returning to seat in Courtroom)



1. (No further response)

2 THE COURT: All right, the next five names. Reba  
3 Hill, Rick Hubbard, Debra Moore with the Lexington  
4 County Solicitor's Office, Maynard Darren Amick with  
5 the Lexington County Sheriff's Department, Sergeant  
6 Ashley Russell, Lexington County Sheriff's Department.

7 Is any member of the jury panel related by blood  
8 or marriage, a close personal friend, of any of those  
9 individuals?

10 If so, please stand.

11 (Juror standing)

12 THE COURT: Step up here for me, sir.

13 (Juror coming to the Bench with counsel)

14 CLERK: Number 66, sir.

15 THE COURT: Thank you. Mr. Gunter?

16 JUROR: Yes, sir.

17 THE COURT: Good morning.

18 JUROR: Good morning, sir.

19 THE COURT: And who do you know . . .

20 JUROR: Darren Amick.

21 THE COURT: How do you know Mr. Amick?

22 JUROR: Know him from high school. He graduated  
23 after me.

24 THE COURT: I figured he graduated before you.

25 JUROR: I graduated in '82 and he should have

1 graduated in '84.

2 THE COURT: You went to Chapin High School?

3 JUROR: Yes, sir.

4 THE COURT: Could you still be a fair and impar-  
5 tial juror in the trial of this case?

6 JUROR: I believe so, sir.

7 THE COURT: You say you believe so. That is -- I  
8 need you to say yes or no.

9 JUROR: Yes, sir.

10 THE COURT: You can stay with us.

11 (Juror returning to seat in Courtroom)

12 (No further response)

13 THE COURT: All right. The next five names. Keith  
14 Kershner, Lexington County Sheriff's Department, Regina  
15 Socks, Barbara Socks, Scott Rife, R I F E, Linda Grimes.

16 The next three names. William Y. Rast, Junior,  
17 Michael Hill, Mackenzie Hill.

18 Again, any member of the jury panel related by  
19 blood or marriage, close personal friend, with any of  
20 those individuals whose names I just called and/or who  
21 stood before you?

22 If so, please stand.

23 (No response)

24 THE COURT: I would decline to ask number six on  
25 the requested voir dire.

1 I have asked a more generalized question in that  
2 regard.

3 Any additional voir dire requested from the State?

4 MS. WEISS: Nothing further, Your Honor.

5 THE COURT: From the Defense?

6 MR. FLOYD: Nothing further, Your Honor.

7 THE COURT: Finally, ladies and gentlemen, you know  
8 yourselves best. Does any member of the jury panel  
9 know of any reason whatsoever why you -- why you could  
10 not be a fair and impartial juror in the trial of this  
11 case to both the State and the Defendant?

12 If so, please stand.

13 (No response)

14 THE COURT: All right, thank you very much. I  
15 find our panel is qualified with the exception of the  
16 ones I stood aside.

17 Strikes, Madam Attorney General?

18 MS. WEISS: Five and ten, Your Honor.

19 THE COURT: Is that correct, Mr. Floyd?

20 MR. FLOYD: So I understand, Your Honor.

21 THE COURT: The strikes are five for the State,  
22 ten for the Defense.

23 Madam Clerk, if you'd give us a jury, please.

24 CLERK: Yes, sir.

25 THE COURT: And if you would explain the procedure

1 to the panel.

2 CLERK: I need you to bring your personal belong-  
3 ings with you. If you would come up and stand right  
4 here, just like I'm doing right now.

5 Remain standing like this until I give you in-  
6 structions to have a seat in the jury box or to return  
7 to your seat, not back in the audience.

8 THE COURT: All right, Madam Clerk.

9 CLERK: Number 6, Judd Barth.

10 (Juror coming forward)

11 CLERK: What say you for the State?

12 MS. WEISS: Please excuse Mr. Barth.

13 CLERK: Return to your seat, please, sir.

14 Number 48, Thomas Ferguson.

15 (Juror coming forward)

16 CLERK: What say you for the State?

17 MS. WEISS: Present Mr. Ferguson.

18 CLERK: What say you for the Defense?

19 MR. FLOYD: Present Mr. Ferguson.

20 CLERK: Have a seat in the jury box, sir.

21 (Juror seated in jury box)

22 CLERK: 146, Chastity Smith.

23 (Juror coming forward)

24 CLERK: What say you for the State?

25 MS. WEISS: Please excuse Ms. Smith.

1 CLERK: Return to your seat, please, maam.  
2 (Juror returning to seat in Courtroom)  
3 CLERK: Number 47, Ronnie Faircloth.  
4 (Juror coming forward)  
5 CLERK: What say you for the State?  
6 MS. WEISS: Please present Mr. Faircloth.  
7 THE COURT: What say you for the Defense?  
8 MR. FLOYD: Excuse Mr. Faircloth, please.  
9 CLERK: Return to your seat, please.  
10 (Juror returning to seat in Courtroom)  
11 CLERK: Number 43, Albert Eaton.  
12 (Juror coming forward)  
13 CLERK: What say you for the State?  
14 MS. WEISS: Please present Mr. Eaton.  
15 CLERK: What say you for the Defense?  
16 MR. FLOYD: Present Mr. Eaton.  
17 CLERK: Have a seat in the jury box, sir.  
18 (Juror seated in jury box)  
19 CLERK: Number 139, Albert Semer.  
20 (Juror coming forward)  
21 CLERK: What say you for the State?  
22 MS. WEISS: Please present Mr. Semer.  
23 CLERK: What say you for the Defense?  
24 MR. FLOYD: Excuse the juror, please.  
25 CLERK: Please return to your seat.

1 (Juror returning to seat in Courtroom)  
2 CLERK: Number 17, Jamie Brunson.  
3 (Juror coming forward)  
4 CLERK: What say you for the State?  
5 MS. WEISS: Please present Mr. Brunson.  
6 CLERK: What say you for the Defense?  
7 MR. FLOYD: Present Mr. Brunson..  
8 CLERK: Have a seat in the jury box, sir.  
9 (Juror seated in jury box)  
10 CLERK: Number 98, Dawn Lahrman.  
11 (Juror coming forward)  
12 CLERK: What say you for the State?  
13 MS. WEISS: Present Ms. Lahrman.  
14 CLERK: What say you for the Defense?  
15 MR. FLOYD: Present Ms. Lahrman..  
16 CLERK: Have a seat in the jury box, maam.  
17 (Juror seated)  
18 CLERK: Number 5, Beatrice Baker.  
19 (Juror coming forward)  
20 CLERK: What say you for the State?  
21 MS. WEISS: Please present Ms. Baker.  
22 CLERK: What say you for the Defense?  
23 MR. FLOYD: Present Ms. Baker..  
24 CLERK: Have a seat in the jury box, maam.  
25 (Juror seated)

1 CLERK: Number 141, Debra Sightler.  
2 (Juror coming forward)  
3 CLERK: What say you for the State?  
4 MS. WEISS: Please present Ms. Sightler.  
5 CLERK: What say you for the Defense?  
6 MR. FLOYD: Present Ms. Sightler.  
7 CLERK: Have a seat in the jury box, maam.  
8 (Juror seated)  
9 CLERK: Number 79, Virginia Hildeleran.  
10 (Juror coming forward)  
11 CLERK: What say you for the State?  
12 MS. WEISS: Please present Ms. Hildeleran.  
13 CLERK: What say you for the Defense?  
14 MR. FLOYD: Present Ms. Hildeleran.  
15 CLERK: Have a seat in the jury box, maam.  
16 (Juror seated)  
17 CLERK: Number 153, Shirley Sprenne.  
18 (Juror coming forward)  
19 CLERK: What say you for the State?  
20 MS. WEISS: Please present Ms. Sprenne.  
21 CLERK: What say you for the Defense?  
22 MR. FLOYD: Present Ms. Sprenne.  
23 CLERK: Have a seat in the jury box, maam.  
24 (Juror seated)  
25 CLERK: Number 40, Cheryl Dorner.

1 (Juror coming forward)  
2 CLERK: What say you for the State?  
3 MS. WEISS: Please present Ms. Dorner.  
4 CLERK: What say you for the Defense?  
5 MR. FLOYD: Present Ms. Dorner.  
6 CLERK: Have a seat in the jury box.  
7 (Juror seated)  
8 CLERK: Number 55, Holley Fox.  
9 (Juror coming forward)  
10 CLERK: What say you for the State?  
11 MS. WEISS: Please present Ms. Fox.  
12 CLERK: What say you for the Defense?  
13 MR. FLOYD: Excuse Ms. Fox, please.  
14 CLERK: Return to your seat in the Courtroom,  
15 please.  
16 (Juror returning to seat in Courtroom)  
17 CLERK: Number 114, Heather McKinney.  
18 (Juror coming forward)  
19 CLERK: What say you for the State?  
20 MS. WEISS: Please present Ms. McKinney.  
21 CLERK: What say you for the Defense?  
22 MR. FLOYD: Present the juror.  
23 CLERK: Have a seat in the jury box.  
24 (Juror seated in jury box)  
25 CLERK: Number 136, Nancy Rumbaugh.



1 (Juror coming forward)  
2 CLERK: What say you for the State?  
3 MS. WEISS: Present Ms. Rumbaugh.  
4 CLERK: What say you for the Defense?  
5 MR. FLOYD: Excuse Ms. Rumbaugh, please.  
6 CLERK: Return to your seat, please, maam.  
7 (Juror returning to seat in Courtroom)  
8 CLERK: Number 124, Sharee Parker.  
9 (Juror coming forward)  
10 CLERK: What say you for the State?  
11 MS. WEISS: Please present Ms. Parker.  
12 CLERK: What say you for the Defense?  
13 MR. FLOYD: Present the juror.  
14 CLERK: Have a seat in the jury box, please.  
15 (Juror seated)  
16 CLERK: Number 73, David Hazel.  
17 (Juror coming forward)  
18 CLERK: What say you for the State?  
19 MS. WEISS: Please excuse Mr. Hazel.  
20 CLERK: Please return to your seat, please, sir.  
21 (Juror returning to seat in Courtroom)  
22 CLERK: Number 25, David Coleman.  
23 (Juror coming forward)  
24 CLERK: What say you for the State?  
25 MS. WEISS: Please present Mr. Coleman.

1 CLERK: What say you for the Defense?  
2 MR. FLOYD: Excuse Mr. Coleman, please.  
3 CLERK: Return to your seat, please.  
4 (Juror returning to seat in Courtroom)  
5 CLERK: Number 66, Peter Gunter.  
6 (Juror coming forward)  
7 CLERK: What say you for the State?  
8 MS. WEISS: Please seat Mr. Gunter.  
9 CLERK: What say you for the Defense?  
10 MR. FLOYD: Excuse Mr. Gunter, please.  
11 CLERK: Return to your seat, please.  
12 (Juror returning to seat in Courtroom)  
13 CLERK: Number 154, Tanya Springer.  
14 (Juror coming forward)  
15 CLERK: What say you for the State?  
16 MS. WEISS: Please present Ms. Springer.  
17 CLERK: What say you for the Defense?  
18 MR. FLOYD: Excuse Ms. Springer, please.  
19 CLERK: Return to your seat, please, maam.  
20 (Juror returning to seat in Courtroom)  
21 CLERK: Number 45, Jamantha Edwards.  
22 (Juror coming forward)  
23 CLERK: What say you for the State?  
24 MS. WEISS: Please present Ms. Edwards.  
25 CLERK: What say you for the Defense?

1 MR. FLOYD: Please excuse Ms. Edwards.  
2 CLERK: Please return to your seat, maam.  
3 (Juror returning to seat in Courtroom)  
4 CLERK: Number 76, Deborah Herring.  
5 (Juror coming forward)  
6 CLERK: What say you for the State?  
7 MS. WEISS: Please excuse Ms. Herring.  
8 CLERK: Return to your seat, please, maam.  
9 (Juror returning to seat in Courtroom)  
10 CLERK: Number 103, Sharon Lewis.  
11 (Juror coming forward)  
12 CLERK: What say you for the State?  
13 MS. WEISS: Please present Ms. Lewis.  
14 CLERK: What say you for the Defense?  
15 MR. FLOYD: Please present Ms. Lewis.  
16 CLERK: Have a seat in the jury box, maam.  
17 (Juror seated in jury box)  
18 CLERK: Alternate?  
19 THE COURT: Two alternates. Strikes one and two.  
20 CLERK: Yes, sir. Number 61, Tanya Goines.  
21 (Juror coming forward)  
22 CLERK: What say you for the State?  
23 MS. WEISS: Please present Ms. Goines.  
24 CLERK: What say you for the Defense?  
25 MR. FLOYD: Excuse Ms. Goines, please.

1 CLERK: Please return to your seat, please, maam.  
2 (Juror returning to seat in Courtroom)  
3 CLERK: Number 51, Charles Flanery.  
4 (Juror coming forward)  
5 CLERK: What say you for the State?  
6 MS. WEISS: Please present Mr. Flanery.  
7 CLERK: What say you for the Defense?  
8 MR. FLOYD: Present Mr. Flanery.  
9 CLERK: Have a seat in the jury box, please.  
10 Alternate Number One, Your Honor.  
11 (Juror seated)  
12 CLERK: Number 9, Chelsee Binau.  
13 (Juror coming forward)  
14 THE COURT: What number?  
15 CLERK: Number 9. What say you for the State?  
16 MS. WEISS: Please present Ms. Binau.  
17 CLERK: What say you for the Defense?  
18 MR. FLOYD: Present Ms. Binau.  
19 CLERK: Have a seat in the jury box, maam.  
20 Alternate Number Two, Your Honor.  
21 (Juror seated)  
22 THE COURT: Any motion regarding the jury selec-  
23 tion process, from the State?  
24 MS. WEISS: Nothing from the State, Your Honor.  
25 THE COURT: From the Defense?

1 MR. FLOYD: Nothing from the Defense, Your Honor.

2 THE COURT: All right. Ladies and gentlemen who  
3 were selected as the Trial Jury for the trial of this  
4 case, momentarily I'm going to have you go with your  
5 bailiff to your new temporary home, the jury room.

6 During this break or recess, I remind you that you  
7 will not discuss this case with anyone. Not with your  
8 fellow jurors or anyone else.

9 If anyone tries to talk with you about the case,  
10 please let me know immediately.

11 I need to give your colleagues some instructions  
12 concerning their jury service, and then I will have you  
13 back out here as soon as I do some things administra-  
14 tively.

15 So if you would please go with your bailiff to  
16 your jury room.

17 Do not discuss the case during this brief recess.  
18 Thank you very much.

19 (Jury members excused from Courtroom to their jury  
20 room)

21 THE COURT: All right. Those members of the jury  
22 that were not fortunate enough to be selected as jurors  
23 for the trial of this case, there are other cases to be  
24 tried this week, but we can release you from your jury  
25 service for the remainder of the day.

# Lexington County Courthouse

## RANDOM STRIKE SHEET

JUDGE NAME : McMahon, R. Knox

Sorted by: Random Nbr

AL TYPE : Criminal

EL ID : 2010-GS-32-1876

DESCRIPTION : THE STATE V. LEXIE DIAL III

Trial

COURTROOM CTR

| NAME                        | JUROR NBR | RACE | SEX | ST/PLTFF | DEF   | CRT | REMARKS   |
|-----------------------------|-----------|------|-----|----------|-------|-----|-----------|
| 1 Barth, Judd S             | 6         | W    | M   | (✓) 1    | ( )   | ( ) | <u>1</u>  |
| 2 Ferguson, Thomas J        | 48        | W    | M   | ( )      | ( )   | ( ) | <u>1</u>  |
| 3 Smith, Chasity B          | 146       | W    | F   | (✓) 2    | ( )   | ( ) | <u>1</u>  |
| 4 Faircloth, Ronnie R       | 47        | W    | M   | ( )      | (✓) 1 | ( ) | <u>2</u>  |
| 5 Eaton, Albert B           | 43        | W    | M   | ( )      | ( )   | ( ) | <u>2</u>  |
| 6 Semer, Albert W           | 139       | W    | M   | ( )      | (✓) 2 | ( ) | <u>3</u>  |
| 7 Brunson, Jamie D          | 17        | B    | M   | ( )      | ( )   | ( ) | <u>4</u>  |
| 8 Lahrman, Dawn M           | 98        | W    | F   | ( )      | ( )   | ( ) | <u>5</u>  |
| 9 Baker, Beatrice E         | 5         | W    | F   | ( )      | ( )   | ( ) | <u>6</u>  |
| 10 Sightler, Debra L        | 141       | W    | F   | ( )      | ( )   | ( ) | <u>7</u>  |
| 11 Hildeleran, Virginia M   | 79        | W    | F   | ( )      | ( )   | ( ) | <u>8</u>  |
| 12 Sprenne, Shirley G       | 153       | W    | F   | ( )      | ( )   | ( ) | <u>9</u>  |
| 13 Dorner, Cheryl A         | 40        | W    | F   | ( )      | ( )   | ( ) | <u>10</u> |
| 14 Fox, Holley A            | 55        | W    | F   | ( )      | (✓) 3 | ( ) | <u>11</u> |
| 15 Mckinney, Heather Alison | 114       | W    | F   | ( )      | ( )   | ( ) | <u>12</u> |
| 16 Rumbaugh, Nancy W        | 136       | W    | F   | ( )      | (✓) 4 | ( ) | <u>13</u> |
| 17 Parker, Sharee A         | 124       | B    | F   | ( )      | ( )   | ( ) | <u>14</u> |
| 18 Hazel, David R JR        | 73        | W    | M   | (✓)      | ( )   | ( ) | <u>15</u> |
| 19 Coleman, David W         | 25        | W    | M   | ( )      | (✓)   | ( ) | <u>16</u> |
| 20 Gunter, Peter D          | 66        | W    | M   | ( )      | (✓)   | ( ) | <u>17</u> |
| 21 Springer, Tanya L        | 154       | W    | F   | ( )      | (✓)   | ( ) | <u>18</u> |
| 22 Edwards, Jamantha S      | 45        | W    | F   | ( )      | (✓)   | ( ) | <u>19</u> |
| 23 Herring, Deborah L       | 76        | W    | F   | (✓)      | ( )   | ( ) | <u>20</u> |
| 24 Lewis, Sharon S          | 103       | W    | F   | ( )      | ( )   | ( ) | <u>21</u> |

# Lexington County Courthouse

## RANDOM STRIKE SHEET

JUDGE NAME : McMahon, R. Knox

Sorted by: Random Nbr

AL TYPE : Criminal

EL ID : 2010-GS-32-1876

DESCRIPTION : THE STATE V. LEXIE DIAL III

Trial

COURTROOM CTR

| NAME                     | JUROR NBR | RACE | SEX | ST/PLTFF | DEF | CRT | REMARKS            |
|--------------------------|-----------|------|-----|----------|-----|-----|--------------------|
| 25 Goines, Tanya N       | 61        | B    | F   | ( )      | ( ) | ( ) | <del>ACT # 1</del> |
| 26 Flanery, Charles R    | 51        | W    | M   | ( )      | ( ) | ( ) | ACT # 1            |
| 27 Binau, Chelsee M      | 9         | W    | F   | ( )      | ( ) | ( ) | ACT # 2            |
| 28 Mack, Rebecca W       | 108       | B    | F   | ( )      | ( ) | ( ) |                    |
| 29 Black, Rhonda L       | 10        | W    | F   | ( )      | ( ) | ( ) |                    |
| 30 Williams, Dana L      | 174       | W    | M   | ( )      | ( ) | ( ) |                    |
| 31 Hurley, Barry D       | 85        | W    | M   | ( )      | ( ) | ( ) |                    |
| 32 Hellerman, Chris A    | 75        | W    | F   | ( )      | ( ) | ( ) |                    |
| 33 Holmes, Blake G       | 81        | W    | M   | ( )      | ( ) | ( ) |                    |
| 4 Smith, Courtney D      | 147       | W    | F   | ( )      | ( ) | ( ) |                    |
| 35 Trotter, David L      | 164       | W    | M   | ( )      | ( ) | ( ) |                    |
| 36 Young, Stanley M      | 184       | B    | M   | ( )      | ( ) | ( ) |                    |
| 37 Hightower, Ralph M JR | 78        | W    | M   | ( )      | ( ) | ( ) |                    |
| 38 Whitehead, Johnny R   | 171       | W    | M   | ( )      | ( ) | ( ) |                    |
| 39 Hickman, Ruth S       | 77        | W    | F   | ( )      | ( ) | ( ) |                    |
| 40 Douthett, Mark T      | 41        | W    | M   | ( )      | ( ) | ( ) |                    |
| 41 Snipes, Mary F        | 152       | W    | F   | ( )      | ( ) | ( ) |                    |
| 42 Hall, Johnnie W III   | 67        | B    | M   | ( )      | ( ) | ( ) |                    |
| 43 Trader, Jerry J       | 163       | W    | M   | ( )      | ( ) | ( ) |                    |
| 44 Watson, Dwight C      | 169       | W    | M   | ( )      | ( ) | ( ) |                    |

Total Number of Jurors:

44

\*\* END OF REPORT \*\*

1           We would ask that you please call the juror in-  
2           formation number after six P.M. tonight.

3           After six o'clock, if you'd call your juror in-  
4           formation number, you will be known as the balance of  
5           the panel, and it will prompt you and give you the in-  
6           structions concerning your jury service for the remainder  
7           of this week.

8           (Jurors not selected for the trial of this case  
9           were excused for the day by the Court)

10          THE COURT: All right. Are there any pre-trial  
11          matters for the State?

12          MR. WATERS: Yes, sir, there are a few matters to  
13          take up.

14          One matter is that we have some photographs from  
15          the autopsy that we need to address with Your Honor,  
16          prior to the jury being sworn.

17          Additionally, I believe Your Honor is aware of an  
18          issue regarding the relationship between the Detective  
19          and the Circuit Solicitor. I think there may be some-  
20          thing as to that. The State feels that is irrelevant.

21          I don't know how you want to handle those, but  
22          those are the two matters of which the State is aware.  
23          I don't know if you wish to take them up right now.

24          There is also a Jackson v. Deno matter regarding  
25          statements.



1           THE COURT: All right. How long do you think the  
2 Jackson versus Deno will take?

3           MS. WEISS: Your Honor, I can just say there are  
4 probably five statements, one of which I think we need  
5 to go into, but I don't think it will take more than  
6 about an hour.

7           THE COURT: And as far as the autopsy, photographs,  
8 how long do you think that will take?

9           MR. WATERS: Your Honor, I can't think that would  
10 take very long. Maybe fifteen minutes. There are not  
11 that many of them.

12          THE COURT: And then the issue concerning the De-  
13 tective and the Assistant Solicitor, how long do you  
14 think that will take?

15          MR. WATERS: Well, Mr. Floyd might need to speak  
16 on that. It depends on if we have to do things the  
17 hard way.

18          If that is the case, then it will potentially take  
19 an hour to an hour and half. Something of that nature,  
20 Your Honor.

21          THE COURT: All right.

22          MR. WATERS: I think we might need to just address  
23 the admissibility on the front end.

24          THE COURT: Thank you. Mr. Floyd, does the De-  
25 fense have pre-trial matters?

1 MR. FLOYD: There will be one other matter in ad-  
2 dition to those that have been raised.

3 THE COURT: What would that be?

4 MR. FLOYD: It will be a motion to dismiss, Your  
5 Honor.

6 THE COURT: How long do you think that will take?

7 MR. FLOYD: Maybe twenty minutes, and we may have  
8 some witnesses as to the Jackson v. Deno matter.

9 THE COURT: All right. So -- well, if so, rather  
10 than begin the trial now, it looks like we may have two  
11 and a half hours worth of motions.

12 Is that about right?

13 MR. WATERS: It is always so hard to judge those  
14 things. It shouldn't be outside of that.

15 THE COURT: Do you tend to agree with that, Mr.  
16 Floyd?

17 MR. FLOYD: Yes, Your Honor.

18 THE COURT: Do you all suggest I bring the panel  
19 back in the morning?

20 If we take a break now and start back at one  
21 thirty, if it's two and a half hours it still puts us  
22 at about four o'clock.

23 MR. WATERS: I don't know how they feel about it,  
24 but it is okay with me, Judge. I think we will have  
25 some discussions today that may stream-line the issues

1 we will have.

2 MS. WEISS: Your Honor, if I may, I have one wit-  
3 ness that I need to check with on his schedule.

4 THE COURT: All right, Ms. Weiss.

5 (Short break in the proceeding)

6 THE COURT: All right. I think I will bring the  
7 panel out and give them some instructions and have them  
8 report back at nine thirty in the morning.

9 That will give us the afternoon to take up all of  
10 the pre-trial matters.

11 All right, and, of course, the motion to dismiss.

12 All right, if you would bring us our jury panel,  
13 please.

14 (Jury returned to the Courtroom)

15 THE COURT: All right, welcome back, ladies and  
16 gentlemen.

17 I am going to momentarily release you for the re-  
18 mainder of the day and have you report back at nine  
19 thirty in the morning.

20 This case is no different from others as far as  
21 there are many times pre-trial matters that must be ad-  
22 dressed by the Court prior to the beginning of the  
23 trial.

24 If we bring you back at three thirty or four  
25 o'clock today, we could still not be through with the

1 motions. It is difficult to guestimate, so to speak,  
2 how long it will take, and then we would have you held  
3 captive back there for an hour or hour and a half and  
4 get nothing done.

5 I think what I will do is take up all the motions  
6 this afternoon and will not need your presence for that.  
7 Rather than hold you captive any further today, we'll  
8 start fresh in the morning and that should stream-line  
9 the process.

10 Your time is very valuable to me. I will manage  
11 it as best I can. Some jurors in the past have told  
12 me -- I don't mind them sharing this with me as I al-  
13 ready know it -- again, I don't mind them sharing it  
14 with me -- they told me I'm not a manager of their time,  
15 and I assure you I do try to move a trial along.

16 However, sometimes justice requires a very slow,  
17 deliberate and methodical approach.

18 You all, of course, will be a part of that process  
19 this week.

20 I am going to give you some instructions concern-  
21 ing your jury service during this afternoon and evening  
22 recess.

23 You shall not discuss this case with others, and  
24 I am including your fellow jurors, family, friends, or  
25 anyone else. If anyone tries to talk with you about

1 the case, please let me know.

2 You may not read or listen to or watch any news  
3 reports about the case whatsoever, if there should be  
4 any, whether it be radio, television, print media or  
5 the internet.

6 You may not use your computer, cellular or any  
7 other electronic device with communication capability  
8 when you are in attendance at trial or during deliber-  
9 ations.

10 These devices, of course, may be used during lunch  
11 breaks or evening hours and such, but may not be used  
12 to obtain or disclose information which is prohibited  
13 by the Court.

14 Information prohibited by the Court includes the  
15 following, but is not limited to the following: In-  
16 formation about a party or witness or attorney or a  
17 court officer; any accounts of the case; information  
18 collected through juror research on any topics raised  
19 or testimony offered by a witness; or information col-  
20 lected through juror research on any other topic that  
21 you might think would be helpful in deciding the case.

22 You will decide this case based on the evidence  
23 and the testimony you hear from the witnesses testify-  
24 ing under oath from the witness stand and any other  
25 documents or exhibits that may be placed in evidence.

1 And then the law as I tell you the law is.

2 You cannot in this modern technology information  
3 age -- you cannot go out and do any investigation on  
4 the internet or the current news or research any party  
5 or participant or individual in any manner whatsoever.  
6 Do not any independent investigation on your own.

7 Prior to March of last year, I told jurors that  
8 these types of thing only happened in other States.  
9 However, since March of last year, I can no longer say  
10 that because a juror did do some research on the inter-  
11 net and that caused the juror to be held in contempt  
12 and fined and -- to be subject to the contempt powers  
13 of the Court, for which that juror paid dearly for the  
14 failing to follow their oath as a juror.

15 I know you will follow your oath and follow my  
16 instructions to you.

17 Upon your return in the morning at nine thirty,  
18 if you would select from among your number a Foreperson  
19 of this jury panel.

20 That could be anyone except Mr. Flanery or Ms.  
21 Binau, although I'm sure Mr. Flanery or Ms. Binau either  
22 one would make a fine jury Foreperson, but right now  
23 they are in the status of alternate so they would not  
24 be authorized to serve as your Foreperson.

25 Upon your return tomorrow, if you would make that

1 selection among yourselves. It does not have to be a  
2 long campaign or long speeches or anything of that na-  
3 ture, prior service or what have you. Whatever stand-  
4 ard you want to use.

5 Once you make that selection, write that name  
6 down and knock on the jury room door and hand the name  
7 to the bailiff. Thereafter, we will receive you into  
8 the Courtroom.

9 Upon your return, whoever is selected as the Fore-  
10 person, if you will please maintain this seat closest  
11 to the Bench. Mr. Flanery and Ms. Binau, if you would  
12 maintain the seats you are now in. Mr. Flanery, in  
13 the seat this gentleman is now in.

14 The others of you may sit anywhere you wish, ex-  
15 cept for the Foreperson and the two alternates.

16 Now, with that being said, I will excuse you for  
17 the balance of the day, to return in the morning at  
18 nine thirty.

19 (Jury excused from Courtroom for the balance of  
20 the day)

21 THE COURT: Mr. Floyd, I note that you have a mo-  
22 tion to dismiss based on prosecutorial misconduct. I  
23 did not know whether that would involve the taking of  
24 testimony or not.

25 MR. FLOYD: There will be a little bit of testimony,

1 Your Honor, and these are briefs that have been provided  
2 to the Attorney General's Office with a copy of this.

3 Your Honor, this was a document, I guess, if you  
4 could call it that, that was attached to jars in the  
5 various retail establishments in the area, soliciting  
6 money.

7 You know how they have these in stores and they  
8 put them out there on a counter. We found out about  
9 it about a week or two weeks before the trial when  
10 somebody in the family saw it.

11 We provided a copy of it to the Attorney Gener-  
12 al's Office and we looked into it. We said, where is  
13 this money going, and they told us that the money was  
14 being given to the victims' assistance people in the  
15 Lexington County Solicitor's Office -- in the Sheriff's  
16 Department -- in the Sheriff's Department.

17 Your Honor, it is our position that that is prose-  
18 cutorial misconduct because in that way the Sheriff's  
19 Department is cooperating with the victim in this case  
20 to the prejudice of the Defendant in the eyes of the  
21 public.

22 They are saying that this Defendant did what he  
23 did of his own volition and on purpose. That is out  
24 there for everybody to see.

25 I don't know how much places it was put out there,



1 and that is one thing I want to ask the witness. We  
2 know of five or six, but we are sure there are probably  
3 more.

4 It is our position that the Sheriff's Department  
5 by accepting the benefits from the operation of that  
6 make them a cooperating conspirator. That that gives  
7 a governmental nexus necessary for this conduct to oc-  
8 cur.

9 That is what. . .

10 THE COURT: Well, I wasn't sure what the motion  
11 involved. You can certainly call your witnesses after  
12 we take our luncheon recess, Mr. Floyd.

13 Do you have any authority you want me to look at  
14 during the break?

15 MR. FLOYD: No, Your Honor.

16 THE COURT: All right. Madam Attorney General, do  
17 you have any response you wish to make at this time?

18 MS. WEISS: Your Honor, may it please the Court?  
19 We just found out about it before you came in, what  
20 this is about.

21 I am aware of this charge and became aware of  
22 it from the Defense Attorney, Mr. Floyd. I have looked  
23 into it, and there is nothing on there about the name  
24 of the Defendant or the date or anything along those  
25 lines.

1           The jars that were put out by the grandfather of  
2   the victim in this case, and I have talked to -- to  
3   Donna Roof of the Sheriff's Department.

4           I had known there was a fund established, and I  
5   think we can put on more information to that effect.

6           The State has nothing to do with this, had nothing  
7   to do with these jars being put out, had nothing to do  
8   with benefiting from these proceeds directly, had any-  
9   thing to do with prejudicing this case or that would be  
10   prosecutorial misconduct in the case.

11          Your Honor, I think there is nothing to go on,  
12   and there is no prosecutorial misconduct.

13          THE COURT: And I'll be glad to hear you completely.  
14   I just wanted to be sure what the motion was about.

15          Do you want to have them marked as a Court's Exhi-  
16   bit at this point?

17          MR. FLOYD: Yes, Your Honor.

18          THE COURT: Go ahead and mark them.

19          (Photograph with letter from jar marked Court's  
20   Exhibit 1)

21          THE COURT: All right. Thank you.

22          So that then the only other issue that you wanted  
23   to take up which I wanted to address before we took our  
24   recess has to do with the autopsy photos.

25          MR. WATERS: Yes, Your Honor.

1           REPORTER: Judge, I've put stickers on them but  
2 not numbers. Do you want me to number them all before  
3 -- I wasn't sure how you wanted to handle it.

4           THE COURT: Let me see them.

5           MR. WATERS: Your Honor, these photographs are  
6 very graphic, and I would ask to approach with counsel  
7 so you can take a look at them.

8           These are State's 1 through 13 for identification  
9 only, at this time.

10          THE COURT: You object to these?

11          MR. FLOYD: I object to all of those, Your Honor.  
12 There are some I don't object to, of the autopsy photo-  
13 graphs.

14          MR. WATERS: Your Honor, I have some case law but  
15 I wanted to show you these photographs.

16          These two photographs here contain . .

17          REPORTER: Speak up just a little bit, please.

18          MR. WATERS: There have been some contentions with  
19 regard to whether or not the child, Josh, hit his head.  
20 These would be necessary for the co-examiners to de-  
21 scribe what someone might consider to be bruising on  
22 the back of his brain, but that is not what it appears  
23 to be.

24          So in that regard, there is clearly no blood in  
25 those pictures, no face display, and they are necessary

1 to explain a point and to refute a point that any of  
2 that is due to the child hitting his head on a table  
3 or something of that nature.

4 THE COURT: As to State's 1 and 2, your objection?

5 MR. FLOYD: Your Honor, they have photographs of  
6 the child while alive that would show the same areas  
7 that we have no objection to.

8 I think that once you get to the coroner stage you  
9 start getting into other factors, which I think might  
10 prejudice the jury. That's when lividity sets in, and  
11 you take that one, it has all kind of marks all over  
12 it. That is just with the blood settling, really.

13 THE COURT: All right.

14 MR. FLOYD: I think there is a matter in dispute  
15 or at issue that there is going to be testimony from  
16 medical professionals about.

17 MR. WATERS: Judge, we believe that they are ne-  
18 cessary for the jury to understand the issues.

19 THE COURT: And you have others?

20 MR. WATERS: Yes, Your Honor. There is a photo-  
21 graph of a bruise that is underneath the victim's chin.

22 THE COURT: All right, these are 11, 12 and 13.

23 THE COURT: Mr. Floyd, do you have objections?

24 MR. FLOYD: Your Honor, the same objections in that  
25 they have photographs of that before the child died,

1     and I think those could be used.

2             I think after death that as the blood settles it  
3     settles in various places of the body, and that that  
4     may alter the appearance . .

5             MR. WATERS: Your Honor, those are photographs of  
6     the autopsy and reflect the injuries to the child, and  
7     that would be the testimony of the pathologist as well  
8     as doctors who are called.

9             THE COURT: Anything further?

10            MR. FLOYD: No, sir.

11            THE COURT: All right, and these are . .

12            MR. WATERS: Seven, eight-- excuse me. Five, six,  
13     seven, eight.

14            These are obviously not pleasant photographs, but  
15     they are obviously very necessary.

16            One of the points at issue in the case would be  
17     the extent of the bilateral hemorrhaging, which is  
18     a wide matter of interpretation.

19            REPORTER: Sorry, a wide matter of what?

20            MR. WATERS: A wide matter of interpretation.

21            REPORTER: Okay.

22            MR. WATERS: These show the results of the violent  
23     injury rather than an accident. An intentional injury.

24            This is very crucial to the pathologist, as well  
25     as the medical professionals, in distinguishing between

1 an intentional injury and one that occurred just by  
2 accident.

3 That is the reason it is necessary in order for  
4 them to demonstrate what they are talking about.

5 THE COURT: You have objections to 5, 6, 7 and 8,  
6 Mr. Floyd?

7 MR. FLOYD: Your Honor, those would be shocking  
8 to the jury. We have objections to those, yes, Your  
9 Honor.

10 If they are probative, which we dispute, we think  
11 the prejudicial nature would outweigh any probative  
12 value.

13 We think -- Your Honor, there are a lot of photo-  
14 graphs, and we think there are some that could be used  
15 to make a point but not over-make a point.

16 THE COURT: Do you have those?

17 MR. WATERS: The next two, which would be State's  
18 9 and 10 -- these are -- they reflect the rear of the  
19 child's head.

20 Again, while they are not pretty, they go to the  
21 fact that there is no bruising to the back of the head  
22 because you can see that through the skin, which is  
23 very crucial to the point.

24 It is going to testimony of our medical experts,  
25 and they would be offered for that very probative

1 matter, Your Honor.

2 THE COURT: All right. Do you have those?

3 MR. FLOYD: Yes, sir.

4 MR. WATERS: These two show the eye and the chamber  
5 where you can see the hemorrhaging going on in the eye  
6 which is one of the tell-tale signs of the event.

7 That would go to -- the pathologist would need to  
8 explain that hemorrhaging, Your Honor.

9 THE COURT: Any others?

10 MR. WATERS: Court's indulgence a moment, Your  
11 Honor.

12 (Brief pause in the proceeding)

13 MR. FLOYD: The next, Your Honor, we don't object  
14 to the presentation of the next one.

15 MR. WATERS: These are State's 14, 15, 16.

16 THE COURT: Do you have objections to 14, 15 and  
17 16?

18 MR. FLOYD: Yes, Your Honor.

19 MR. WATERS: Then 17 through 20 are more photo-  
20 graphs of the bruise on Josh's chin. These were taken  
21 in the hospital while he was still alive.

22 These are in -- of course, there is the face but  
23 there is no blood, and they will be corroborative of  
24 testimony we will have from the medical professionals  
25 in the trial.

1 THE COURT: Do you have objections to these?

2 MR. FLOYD: Not to the photographs themselves,  
3 assuming they can establish the relevance of them,  
4 Your Honor.

5 MR. WATERS: Your Honor, this next set, 21 through  
6 31 -- these are images as taken by a ret-cam of the  
7 victim.

8 They show extent of retinal hemorrhaging to his  
9 eye, which, again, is a tell-tale indicator of inten-  
10 tional injury to the child, and are offered in that  
11 regard.

12 Obviously, they are probative in that regard from  
13 the perspective of the eye doctor, who will testify, as  
14 well as the medical professional.

15 For that reason, as I said, because it is a tell-  
16 tale indicator.

17 We also have -- in contrast we have State's 23,  
18 28, 29, 30 and 31. These are photographs here of the  
19 eye, and these would also be used by our medical pro-  
20 fessionals to show the difference between the normal  
21 eye and the existence of injury to the victim's eyes,  
22 Your Honor.

23 THE COURT: What about those, Mr. Floyd?

24 MR. FLOYD: Your Honor, we would object for the  
25 same reasons, and these would be shocking to the jury,



1 to depict the eye in that fashion.

2 THE COURT: All right, Mr. Waters.

3 MR. WATERS: Your Honor, we would -- this is 32  
4 through 59. Again, those are the remainder of the  
5 retinal hemorrhaging pictures that will be necessary  
6 during the testimony of the eye doctor and other med-  
7 ical people.

8 THE COURT: Same objection, Mr. Floyd?

9 MR. FLOYD: Yes, Your Honor. We would suggest  
10 that is cumulative also, in addition to the previous  
11 objections.

12 MR. WATERS: My understanding is -- and Ms. Weiss  
13 might be able to address it better -- but they are not  
14 all configurations of the same thing in the eyes.

15 THE COURT: All right, do you have others?

16 MR. WATERS: Your Honor, finally we have 60 through  
17 62.

18 It is my understanding those would be demonstra-  
19 tive of the evidence and testimony of the eye doctor.  
20 They are purely demonstrative but would permit the doc-  
21 tor to explain to the jury the nature and significance  
22 of these retinal images.

23 THE COURT: Do you have objectns to their offer-  
24 ing them for demonstrative purposes?

25 MR. FLOYD: We would certainly like to have a copy.

1 THE COURT: All right. Do you have others, Ms.  
2 Weiss, Mr. Waters?

3 MR. WATERS: It is my understanding that it is as  
4 to the autopsy photos that need to be addressed at this  
5 time.

6 THE COURT: All right. Let me make sure I have  
7 this tracked correctly.

8 One and 2 are the back of the child's head at  
9 autopsy.

10 Three and 4 are the retinal hemorrhage at the au-  
11 topsy.

12 Five, 6, 7 and 8 are the exposed area of the brain  
13 showing hemorrhage.

14 Nine and 10 is the rear of the child's head, re-  
15 futing the Defendant's version.

16 Eleven, 12, 13 are bruises on the chin of the child.

17 As I understand it, you object to all of those.  
18 Is that correct, Mr. Floyd?

19 MR. FLOYD: Yes, Your Honor.

20 THE COURT: And what is your objection to those?

21 MR. FLOYD: Your Honor, they are autopsy photo-  
22 graphs, and my objection is that they are prejudicial  
23 because they also contain the decomposition process or  
24 at least as to the ones on the back of the head.

25 That is obviously going to shock the jury, and

1 they have basically the same information from the hos-  
2 pital when the child was alive.

3 They are all highly prejudicial and would be very  
4 shocking to the jury. There is no way they could show  
5 that the probative value would outweigh the prejudicial  
6 effect due to the nature of them.

7 THE COURT: All right. I understand that 14, 15  
8 and 16 you have no objection to?

9 MR. FLOYD: That's correct, Your Honor. Those  
10 are photos from the hospital.

11 THE COURT: Then 17, 18, 19, 20, no objection to  
12 them?

13 MR. FLOYD: That's correct, Your Honor. They were  
14 taken prior to the child's death at the hospital.

15 THE COURT: And 21 through 59 -- what are your ob-  
16 jections?

17 MR. FLOYD: Same objections. These would also be  
18 shocking to the jury. They were taken with some kind  
19 of special camera and depict the interior of the young  
20 child's eyes.

21 They could provide testimony to cover those areas  
22 but the photographs themselves would be prejudicial.

23 THE COURT: And 60, 61 and 62 you have no objection  
24 to them for demonstrative purposes?

25 MR. FLOYD: As long as we are provided a copy of

1       them, Your Honor.

2               THE COURT: And I assume your authority for this

3       is State versus Holder, or your main authority for it?

4               Mr. Attorney General?

5               MR. WATERS: I have two cases here, State versus

6       Martucci and State versus Jarrell.

7               Martucci is 669 Southeastern Second 598, and I

8       apologize that I only have one copy.

9               THE COURT: What's the other one?

10              MR. WATERS: The other one is State versus Jarrell,

11       which is 564 Southeastern Second 462.

12              I'll start with . .

13              THE COURT: Of course, all of this would be con-

14       tingent upon a proper foundation being laid?

15              MR. WATERS: Yes, sir, Your Honor.

16              THE COURT: From my observation, it appears that

17       these would be paired down a little bit.

18              With that being said, I'm no eye doctor, and if

19       there are different visions, again that goes to the

20       proper foundation being laid for the differences in the

21       photographs.

22              So I'll take it under advisement, and they would

23       have to lay the proper foundation for their pathologist

24       or eye doctor or any other witness.

25              MS. WEISS: May I ask one question for some

1 clarification, Your Honor?

2 THE COURT: Sure.

3 MS. WEISS: Numbers 3 and 4 I believe you said  
4 were about retinal hemorrhaging. I believe that was the  
5 hemorrhaging in the brain going down into the retina,  
6 into . . .

7 THE COURT: Well, I thought that was the retina.  
8 The eye is all I'm seeing.

9 MS. WEISS: I know, but I'm just -- I'm sorry.

10 THE COURT: That's all right.

11 MS. WEISS: Right here, Your Honor. The purpose  
12 of this is to show down the optic nerve and into the  
13 eye.

14 THE COURT: All right, anything further?

15 MR. FLOYD: No, sir, Your Honor.

16 THE COURT: All right, I'll take it under advise-  
17 ment.

18 The Court will be in recess until two fifteen.

19 (Whereupon, the Court took a luncheon recess until  
20 2:15 P.M., when the matter resumed)

21 THE COURT: You may continue.

22 MR. FLOYD: Ricky Campbell, please.

23 RICKY CAMPBELL, being duly  
24 sworn, testified as follows, out of the presence of the  
25 jury:

1           CLERK: Have a seat, please, sir. Once you are  
2 seated, you need to speak up loud and clear.

3           State your full name on the record.

4           WITNESS: My name is Ricky Lee Campbell. I'm here  
5 to support the family, and any questions you need to  
6 ask me, Mr. Floyd, I'll be glad to answer them truth-  
7 fully and to the best of my knowledge.

8           MR. FLOYD: Thank you, Mr. Campbell.

9           DIRECT EXAMINATION

10          BY MR. FLOYD:

11          Q. Mr. Campbell, I'm going to pass you up what is  
12 called Court's Exhibit 1.

13          A. All right.

14          Q. And ask you if you can identify it?

15          A. Yes, sir, I can.

16          Q. Would you tell us what that is?

17          A. Yes, sir. This is a picture of my grandson. We  
18 decided to try to come up with a fund to try to raise  
19 money for victims for Lexington County, which goes in  
20 the hands of Ms. Donna Roof, which is the Victim's Ad-  
21 vocate for the Sheriff's Department.

22                Everything that I went into when I put these --  
23 I've got four jars. I would have had five more that  
24 was taken by one of your clients.

25                I'm pursuing that but for later. That's not for

1 today -- not today.

2 All money is accounted for and signed off on by  
3 the store owners, and I have all the receipts. I have  
4 my federal ID number. I have everything I need to do  
5 this the legal way.

6 It is not binding against anyone. It's to help  
7 the victims and other families that go through the same  
8 tragic event that we've been through.

9 We found this to be a way of -- we didn't expect  
10 it at the beginning, but maybe a way of a little bit of  
11 healing, to go along, and we have more respect for law  
12 enforcement today than we ever had.

13 Q. Mr. Campbell, how many of them did you have out?

14 A. I have had five out all together, and one was  
15 stolen out of Ticky Town.

16 THE COURT: Stolen where?

17 A. Ticky Town, and there was some moneys in there but  
18 when I went to pick it up the picture was gone. The  
19 lid had not been removed because they are sealable lids  
20 and you cannot open them without -- it's just like a  
21 milk carton in a way.

22 You cannot open them and take them loose, and you  
23 cannot put it back on after you go into them. These  
24 were accounted for and I put new end seals back on them  
25 and put them back in the stores.

1 Q. Now, this Ticky Town, is it located in Lexington  
2 County?

3 A. On Saltlake Drive, yes, sir.

4 Q. Saltlake Drive -- where are the other locations  
5 where you put them?

6 A. I have one in Tegler's Store.

7 Q. Tegler's Store?

8 A. Yes, sir.

9 Q. That's off ..

10 A. Palm Branch -- off Palm Branch Road.

11 Q. Where at the others?

12 A. One is at Advance Auto Parts.

13 Q. Where is that located?

14 A. On Saltlake Drive.

15 Q. On Saltlake Drive?

16 A. Yes, not too far from Ticky Town.

17 Q. And the next one?

18 A. I have one at Forty-four Truck Store on Palm  
19 Branch Road, and I'm trying to think where I have the  
20 other one.

21 Give me a few seconds here.

22 (Brief pause)

23 Oh, yeah. Horse Sense.

24 REPORTER: I'm sorry.

25 A. Horse Sense.



MR. CAMPBELL IN CAMERA

1 BY MR. FLOYD:

2 Q. Horse Sense.

3 A. In Red Bank -- feed and tac, and I still have fif-  
4 teen more to put out.

5 Q. How long have these been out?

6 A. Probably about a month to a month and a week, but  
7 a month basically.

8 Q. Has money been taken and given to the Lexington  
9 County Sheriff's Department?

10 A. Yes, sir, it has.

11 Q. And who was it you were dealing with over there?

12 A. Ms. Donna Roof, Victim's Advocate.

13 Q. Did she know you were doing this?

14 A. Yes, sir, she does. She has authority from the  
15 Sheriff's Department and in the past through the board  
16 meeting that she has.

17 I am trying to work with her to help other people,  
18 and my wife is. Everybody in the community has helped  
19 me.

20 We are trying to figure out other ways of -- trying  
21 to do a fund raiser to try to bring in more money for  
22 the victims who need help.

23 We first met with Ms. Donna Roof, and she's the  
24 only one who deals with the victims and everything.

25 Q. I understand that. So the Sheriff's Department

1 approved this?

2 A. Yes, sir, they did.

3 Q. Did you show them the jars and pictures and all  
4 that?

5 A. Yes, sir. I remember when I talked with them, I  
6 let them understand what we had and we are also trying  
7 to head, when this case is over with, toward Joshua's  
8 Law, to protect children.

9 Q. If you recall, can you tell me about when you  
10 went to the Sheriff's Department and got approval for  
11 this process?

12 A. Uh, I don't have that information. Ms. Donna  
13 probably would.

14 Q. And you can't tell me ...

15 A. I can't give you a number as to the time, sir.

16 Q. How much time was there between when you first met  
17 with them and they said okay?

18 A. I can't give you an estimated time, sir.

19 Q. How much time between when you first met with  
20 them and they said okay?

21 A. I couldn't tell you that either. I'm not for  
22 sure.

23 Q. All right.

24 A. I stay so busy doing a little bit of everything  
25 around the household, this and that, this and that, and

1 my hands are full.

2 That's why I didn't have time to go and put the  
3 others out, which this has inspired me since this hap-  
4 pened to go on and put those out and keep on with it.

5 Q. Okay, let me make sure I have a clear understand-  
6 ing. At some point you met with them to get approval,  
7 but you don't know when that was?

8 A. No, sir, I don't.

9 Q. You don't recall how much time it was from when  
10 you went to meet with them until they . . .

11 A. We had done talked about it all anyway.

12 REPORTER: I'm sorry.

13 A. We had talked about it before that with Ms. Roof,  
14 and Ms. Vericol.

15 REPORTER: I'm sorry. The other person?

16 A. Vericol. They thought it was a great idea and  
17 were going along with it.

18 Q. All right, so did you meet with anybody else from  
19 the Sheriff's Department about this?

20 A. No, maan. No, sir. Sorry. No, sir.

21 Q. And, of course, they knew what you planned to do  
22 and approved of the process and the documents?

23 A. The plan and for the money to go to them, and they  
24 disburse it to the victims who need it in whatever  
25 fashion they may need it.

1 I have no control over that. I just carry the  
2 federal ID number that gives me the right -- I'm legal  
3 to be able to do this, participate and do this.

4 Q. Thank you, sir. No other questions.

5 A. Thank you.

6 THE COURT: Mr. or Madam Attorney General, any  
7 questions?

8 Just a minute, Mr. Campbell. The Attorney General  
9 may have some questions for you.

10 A. Okay.

11 CROSS EXAMINATION

12 BY MR. WATERS:

13 Q. Mr. Campbell, how are you doing today?

14 A. Okay. How you?

15 A. Just fine. Just so I understand, this was an  
16 idea that you and your family came up with. Is that  
17 correct?

18 A. Yes, it is.

19 Q. Nothing the Sheriff's Department came to you with  
20 then?

21 A. No.

22 Q. And the whole purpose of this is just to help  
23 other victims of crime?

24 A. Yes, to help other victims of crime in any nature  
25 or way.

MR. CAMPBELL IN CAMERA

1 Q. It's not to line your pockets?

2 A. No, I'm not lining my pockets.

3 Q. Or to line the Sheriff's Department's pockets  
4 either?

5 A. No, sir. The fund is to be disbursed to the vic-  
6 tims, not to the County. We were trying to get to-  
7 gether and be involved in it, me and my family, and  
8 some others have called me, wanting to get involved,  
9 have fund raisers.

10 We're just bound and determined to do it.

11 Q. All right, and the total -- there are five stores  
12 that . .

13 A. Five bottles we put in five stores.

14 Q. And you went to the store owner and proposed what  
15 you wanted to do and they agreed?

16 A. Yep.

17 Q. And they kept records as well, and you keep re-  
18 ceipts?

19 A. Yes, sir. I count the money out right there in  
20 front of them, and they sign off on my receipts for  
21 me.

22 Q. And you've got all those records?

23 A. I've got them all.

24 Q. And you went as far as to get a federal ID num-  
25 ber?

MR. CAMPBELL IN CAMERA

1 A. Got a federal ID number.

2 Q. For your foundation funds?

3 A. That's correct. To make it legit.

4 Q. And you are just doing this to help heal yourself  
5 and help other people?

6 A. Well, yes.

7 Q. Okay. I have nothing further, Your Honor.

8 THE COURT: Any Redirect?

9 MR. FLOYD: Nothing further.

10 THE COURT: Thank you very much, Mr. Campbell.

11 You may step down.

12 (Witness excused from stand)

13 THE COURT: Mr. Floyd, you may call your next wit-  
14 ness.

15 MR. FLOYD: That's all the witnesses we have on  
16 that point.

17 THE COURT: Mr. or Madam Attorney General, do you  
18 all care to call any witnesses?

19 MR. WATERS: If I could ask the Court's indulgence  
20 for a moment?

21 THE COURT: Certainly.

22 (Brief pause in the proceeding)

23 MR. WATERS: We have no witnesses, Your Honor.

24 THE COURT: Thank you. Then I'll be glad to hear  
25 from you.

1           MR. FLOYD: Thank you, Your Honor. The witness  
2     has established that this is an agreement entered into  
3     between the family of the victim and the Sheriff's De-  
4     partment.

5           The Sheriff's Department agreed to the procedure.  
6     The Sheriff's Department approved the procedure, and  
7     the Sheriff's Department approved Court's Exhibit 1 as  
8     placed on the jars.

9           The purpose of the agreement is not significant  
10    or important. What is important is that the Government  
11    has engaged in a practice to prejudice this Defendant  
12    in the eyes of the community.

13          Had they not put in here the statements that they  
14    put in here, saying that Lexie Dial is responsible for  
15    the death of this child; that it's his fault; he did  
16    it intentionally -- had they not done that, we wouldn't  
17    have any argument to make, Your Honor.

18          The fact is that here they have tried to prejudice  
19    him in the community, and that would be prosecutorial  
20    misconduct.

21          Your Honor, I have to respectfully move that this  
22    matter be dismissed with prejudice.

23          THE COURT: Thank you, Mr. Floyd.

24          Mr. Attorney General?

25          MR. WATERS: May it please the Court?

1 THE COURT: Yes, sir, or Madam Attorney General.

2 MS. WEISS: Thank you, Your Honor.

3 Your Honor, in a review of the cases that lay out  
4 prosecutorial misconduct, I attempted to press on with  
5 it, but, as you may or may not be aware, we had a  
6 power outage during the lunch break and I wasn't able  
7 to do this.

8 There are a lot of cases, and the issue each case  
9 goes to is the intent to prejudice the Defendant. It  
10 is an attempt by the prosecutor to do whatever it is  
11 they have alleged.

12 In this case, Mr. Floyd has alleged that there is  
13 prosecutorial misconduct by trying to prejudice the  
14 community which does not get to the line of cases.

15 First of all, if you view Court's Exhibit 1, there  
16 is nothing in there that is from the prosecutor or the  
17 prosecution at all.

18 In fact, we as the prosecutors were unaware of  
19 this completely until it was brought to us by Mr.  
20 Floyd.

21 There is nothing in here that mentions Lexie Dial  
22 by name. There is nothing that mentions the Sheriff's  
23 Department.

24 It is a letter drafted and written by the victims  
25 in this case to try to heal and to provide information,



1 to provide funds to the Victim Advocate to assist any  
2 victim of crime.

3 This has nothing to do with an intent to prejudice  
4 anybody. It is an intent to heal the victims who have  
5 been through a very traumatic experience.

6 This is a very tragic case that involves the death  
7 of a very young child, any way you look at it, and the  
8 victims have tried to heal from that by talking to  
9 Donna Roof, and they spoke to Erica, but primarily with  
10 Donna Roof, to try to come up with some way to heal.  
11 So there was no intent to prejudice anyone.

12 The second element of this is that there has to  
13 be some sort of prejudice to the Defendant, and, Your  
14 Honor, we addressed that specifically during jury selec-  
15 tion.

16 Your Honor asked the jury in two separate questions  
17 whether they had any information in the case or if they  
18 had seen it on the news or the internet, newspaper --  
19 in any way had any information, and then a second ques-  
20 tion when you asked if they had heard about this case.

21 Not one of those jurors has mentioned the jars or  
22 the picture, the letter, or having seen them. There is  
23 no prejudice to the Defendant.

24 The jury has been asked specifically if they are  
25 aware of this case, if they have any information, and

1     they don't.

2             The Defense has shown no prejudice in this case,  
3     and, therefore, the State submits there is no prosecutorial  
4     misconduct. There is no intent to commit any miscon-  
5     duct, no misconduct, and, therefore, I would submit that  
6     there has been no misconduct.

7             Secondly, there has been no prejudice to the Defen-  
8     dant that can be shown. Whatever prejudice the Defense  
9     is alleging, it could have been caught and remedied by  
10    Your Honor when you specifically asked those questions  
11    of whether or not they had any information.

12            Finally, we would submit this letter is not from  
13    the prosecution. It is not from the Sheriff's Depart-  
14    ment. It is merely from the victim's family, trying  
15    to heal from a very tragic situation.

16            THE COURT: Thank you, Ms. Weiss. Anything in re-  
17    sponse?

18            MR. FLOYD: The term prosecutorial misconduct is a  
19    broader term than just the Solicitor or Attorney General  
20    but it could include the Sheriff's Department.

21            The evidence clearly establishes that the Sheriff's  
22    Department went along with this procedure.

23            Therefore, that is the relevant nexus you need to  
24    show prosecutorial misconduct. We think we have shown  
25    that, and we would respectfully ask for dismissal of

1 the charges.

2 THE COURT: Thank you. With regard to the issue  
3 of the motion to dismiss the Indictment based on prose-  
4 cutorial misconduct, I analyze it by the testimony pre-  
5 sented and then comparing it to the law.

6 As far as the testimony of Mr. Campbell, I find it  
7 to be credible that as the maternal grandfather of the  
8 victim in this matter he and other family members form-  
9 ulated this idea to place jars in various locations,  
10 really in the center of the County in only five loca-  
11 tions, from Red Bank to Boiling Springs to the Forty-  
12 four Truck Stop, for purposes of raising money to assist  
13 other victims of crimes such as this.

14 He got a federal ID number according to the testi-  
15 mony, and he worked with the Victim Advocate of the  
16 Sheriff's Department, a Miss Roof and Ms. Owens.

17 I find as far as that is concerned, the issue of  
18 intent of Mr. Campbell is credible in regards to his  
19 testimony; that he sees that as a way to perhaps take  
20 some steps down the road to heal or to recover.

21 Obviously, the Sheriff's Department had no intent  
22 except to be the receptacle through which the funds  
23 would flow to victims of crime.

24 There are laws that allow that. SOLO for example,  
25 through our Governor's Office.

1           They pay these victims of crime. I don't know  
2   about how the money is raised, by way of tax money or  
3   fees, or otherwise.

4           But these cases state that the Court should review  
5   the intent, and, of course, most of these cases come  
6   up in the arena where the Assistant Solicitor perhaps  
7   has asked an improper question or allegedly asked an  
8   improper question, or evidence was withheld or allegedly  
9   withheld, or something of that nature.

10          Even if I analyze the intent of the Sheriff's De-  
11   partment, I have nothing in the record to tell me that  
12   their intent was anything but lawful.

13          No one testified that their intent was to somehow  
14   prejudice the Defendant.

15          When I go to the issue of prejudice, as the At-  
16   torney General pointed out, no one indicated that they  
17   had seen -- no one on the jury pool in its entirety,  
18   nor in this particular panel, indicated they had seen  
19   any jars throughout any area of the County collecting  
20   money for victims of crime that had the photograph of  
21   Joshua on it and a letter that was prepared by the fam-  
22   ily. As I recall, the three jurors -- my number may be  
23   off -- but they came forward and they had gotten in-  
24   formation through the internet-TV web sites. One, I  
25   believe, was giving the fact that he went to high school

1 with a Jerry Dial, and was curious whether or not the  
2 Defendant, Lexie Dial, was related to the Dial he went  
3 to high school with.

4 I would also point out I do not think any of the  
5 -- any of those jurors were selected as trial jurors in  
6 the trial of this case.

7 You know, a dismissal is a very harsh remedy, and  
8 it should only be exercised in extreme types of circum-  
9 stances.

10 The cite, U. S. versus Banks, B A N K S, 383 S Sec-  
11 ond 389, a 1974 case, where the Court dismissed charges  
12 because of governmental misconduct, was extremely aggra-  
13 vated.

14 The Banks Court stayed a motion for judgment of  
15 dismissal on the grounds of governmental misconduct.  
16 On the other hand, it was granted on the allegation  
17 that the Defendant cannot receive a fair trial now or  
18 at any time in the reasonable future, and the Defendant  
19 cannot be afforded due process of law.

20 I find that is not the case here. I find there  
21 is no government misconduct. Even if there is -- even  
22 if I assume there is, I find that there was no prejudice  
23 to the Defendant.

24 He, in fact, can receive a fair trial by fair and  
25 impartial jurors who were appropriately selected in

1     this case.

2             The motion is denied.

3             Again, reviewing State versus Neads, N E A D S,  
4     508 Southeast Second 857; State versus Quattlebaum, 527  
5     Southeast Second 105; State versus Warrick and others,  
6     310 Southeast Second 428, 1983.

7             All right. How do you wish to handle the -- oh,  
8     one further thing.

9             The Court would place on the record that I have  
10    read this letter. If we caption it a letter or a note  
11    or what have you, on Court's Exhibit Number 1, it does  
12    not name the Defendant. It names the child, Joshua  
13    Hunter Dial; in parenthesis, my mommy calls me Joshy,  
14    J O S H Y, end parenthesis.

15            It does not have his mother's name or his father's  
16    name. The only thing at the bottom, it does have to  
17    contact Ricky Campbell and a phone number.

18            So it does not identify the Defendant in any man-  
19    ner, so it would have to be knowledge from some other  
20    source to connect Joshua Hunter Dial up with Lexie Dial,  
21    Third, or Joshua Hunter Dial up with this mother also.

22            All right. How do you want to handle the other mo-  
23    tions, Mr. Floyd, Madam Attorney General?

24            You still have a motion regarding Jackson versus  
25    Deno, and I would just label it the Detective and

1 Assistant Solicitor relationship.

2 How do you want to handle those motions?

3 MR. WATERS: Your Honor, the State would move to  
4 decline that admission with reference to that particu-  
5 lar event, the Detective/Assistant Solicitor issue, or  
6 however you want to term it or entitle it.

7 The -- I will be glad to argue that now, but we  
8 think it is clearly inadmissible and not relevant to  
9 the issues at trial.

10 Even if you take the facts as are known to the  
11 parties, and if you assume those are the case, still  
12 there is no basis for admissibility either in the Jack-  
13 son v. Deno or in the case in chief during the trial  
14 of this matter.

15 I don't know if you want me to expound on that at  
16 this time or have Mr. Floyd state his position as to  
17 why he thinks it is admissible.

18 I will be happy to do what is Your Honor's plea-  
19 sure.

20 THE COURT: All right, Mr. Floyd.

21 MR. FLOYD: Well, Your Honor, if there is nothing  
22 to it, I don't understand why they gave a letter from  
23 the Lexington County Solicitor's Office.

24 I think I am certainly allowed to explore the sit-  
25 uation and why the case was turned over to the Assistant

1 Attorney General's Office and the potential bias of the  
2 witness.

3 I don't mind doing it under the context of the  
4 Jackson-Deno hearing. Just however Your Honor feels  
5 about it . .

6 THE COURT: All right, going to the Jackson versus  
7 Deno hearing, if during the course of the hearing you  
8 have any objection, Mr. Attorney General, you can state  
9 your objection.

10 You may call your first witness.

11 MR. FLOYD: Thank you, Your Honor.

12 MS. WEISS: Your Honor, if it please the Court?

13 We have several statements that it is my under-  
14 standing the Defense has no objection to, as to whether  
15 they were voluntarily made.

16 I am prepared to put those witnesses on the stand,  
17 or if Your Honor is willing to do that by stipulation  
18 we can go that way, sir.

19 THE COURT: Mr. Floyd?

20 MR. FLOYD: Your Honor, the only statement under  
21 Jackson v. Deno that is being challenged is the one he  
22 gave to Russell.

23 THE COURT: All right. Solicitor, then you may  
24 call your first witness as to the statement to Detective  
25 Russell.



1           MR. WATERS: Your Honor, we would call Eric  
2 Russell.

3           THE COURT: Lieutenant, if you would come around  
4 and be sworn for me.

5                           ERIC RUSSELL, being duly  
6 sworn, testified as follows:

7           CLERK: Once you are seated, please state your  
8 name on the record.

9           WITNESS: Lieutenant Eric Russell, R U S S E L L.

10 DIRECT EXAMINATION

11 BY MR. WATERS:

12 Q. Lieutenant Russell, how you doing today?

13 A. I'm great. Thank you, sir.

14 Q. Just quickly for the record, tell us what your  
15 present position is?

16 A. I'm a Lieutenant with the Lexington County Sher-  
17 iff's Office.

18 I'm the Assistant Commander of the South Region  
19 of the Department.

20 Q. Back in January of 2010, did you have the same  
21 position or a different one?

22 A. No, in January of 2010, I was a major crime scene  
23 investigator.

24 Q. You were a detective?

25 A. Correct.

1 Q. And a major crime scene investigator -- what pri-  
2 marily was your subject matter?

3 A. All crimes against people. I primarily dealt  
4 with child abuse, sexual abuse, physical abuse. I did  
5 more of that than anything else.

6 Q. Did you have any particular involvement in this  
7 case?

8 A. I did.

9 Q. Did you go to the hospital?

10 A. I did.

11 Q. When was that, if you recall?

12 A. That was January the 20th, back in 2010.

13 Q. And did you talk with any of the doctors there  
14 when you were at the hospital?

15 A. I did.

16 Q. Did you ask them the nature of Josh's injuries?

17 A. Yes.

18 Q. Did you ask something about that?

19 A. I did.

20 Q. Did you see the Defendant there at any time?

21 A. Yes, I did.

22 Q. And were you present when the Defendant was taken  
23 into custody?

24 A. I was.

25 Q. Was he in custody prior to that?

ERIC RUSSELL IN CAMERA

1 A. Prior to . . .

2 Q. To when you first saw him in the hospital?

3 A. No, when I first saw him at the hospital he was  
4 not in custody.

5 Q. Where did you see him?

6 A. In the little area right outside of the room where  
7 Josh was.

8 Q. And he was not under arrest or handcuffed or any-  
9 thing?

10 A. That's correct. He was not.

11 Q. Did anything happen to little Josh during the night  
12 or during the time that you were there?

13 A. Yes. During the time I was there conducting inter-  
14 views, he passed away.

15 Q. All right. Was the Defendant in custody at that  
16 point?

17 A. He was not in custody when Josh passed away. No,  
18 he was not.

19 Q. All right. Did he go into the room after Josh  
20 passed away, to your knowledge?

21 A. Into Josh's room?

22 Q. That's correct.

23 A. I believe he did, yes.

24 Q. And did there come a subsequent point in time  
25 that he was placed in custody?

1 A. Yes, sir, there did.

2 Q. And tell us about that.

3 A. After we found out that Josh had passed away, there  
4 was, of course, a big commotion outside of his room.  
5 Numerous family members and staff at the hospital, doc-  
6 tors and nurses, were in the room.

7 We allowed Lexie to be there for just a few minutes  
8 to kind of say his goodbyes and that kind of thing.

9 We asked him to step away from the room and step  
10 into a conference room or a little smaller room where  
11 he was kind of secluded and in private, and he was at  
12 that time placed in custody.

13 Q. What was the reason that you took him into that  
14 small room?

15 A. Just to kind of get him away from the family and  
16 to do that in private.

17 Q. Who was present when he was placed in custody?

18 A. I was.

19 Q. You were personally present when he was placed  
20 into custody?

21 A. I was.

22 Q. And who actually placed him into custody?

23 A. Sergeant Henry Dukes actually made the physical  
24 arrest.

25 Q. Was there a reason for that?

1 A. There was. We were at Grady Memorial Hospital,  
2 and that is in Richland County.

3 Sergeant Dukes is a member of the Sheriff's Depart-  
4 ment's Task Force. He had jurisdiction to make arrests  
5 in Richland County, and I do not.

6 Q. Okay. All right. After he was placed -- well,  
7 let me ask you this. When he was placed into custody,  
8 did you all rough him up or push him around or anything  
9 like that?

10 A. No.

11 Q. Did anybody threaten him or do anything to coerce  
12 him or was anybody mean to him?

13 A. No. Absolutely not.

14 Q. How was it handled? Was it a fairly peaceful ar-  
15 rest or was it . .

16 A. Very peaceful, very peaceful. He put up absolutely  
17 no resistance. He was told he was under arrest, and  
18 to turn around and put his hands behind his back, and  
19 he did so without any problem.

20 Q. What happened after that?

21 A. He was escorted from the room down to the parking  
22 lot to Sergeant Dukes' vehicle who transported him  
23 back to the Sheriff's Department.

24 Q. Did you ride back to the Sheriff's Department with  
25 him?

1 A. I did.

2 Q. All right. Describe to us how everybody was in  
3 the car?

4 A. Sergeant Dukes was driving. I believe Lexie was  
5 sitting behind him in the back passenger seat, and I  
6 was sitting to the right of Lexie.

7 I believe there was another marshall to the right  
8 in the right front seat but I don't know who that person  
9 was.

10 Q. Was there any discussions with the Defendant dur-  
11 ing that ride of a substantive nature relating to this?

12 A. No. There was small talk. Nothing concerning  
13 the case.

14 Q. All right, any promises made to him?

15 A. No.

16 Q. Any threats made to him?

17 A. No.

18 Q. What happened once you arrived at the Sheriff's  
19 Department?

20 A. Once we arrived at the Sheriff's Department, Ser-  
21 geant Dukes and myself escorted Lexie from his vehicle  
22 to the Sheriff's Department interview room.

23 Once we got into the interview room, Sergeant  
24 Dukes then left.

25 Q. Okay.

1 A. I removed the handcuffs that Lexie had on at that  
2 time. Let me back up for a minute.

3 When he was placed under arrest, he was advised of  
4 the charges against him, homicide by child abuse.

5 When we got to the interview room, Sergeant Dukes  
6 left and I took the handcuffs off Lexie at that time.

7 I sat down with him and I started filling out the  
8 top portion of our Sheriff's Department statement form  
9 that has the Miranda Rights with it.

10 Q. And let me get something before we get to that.

11 REPORTER: Number 63 for ID, Your Honor.

12 THE COURT: Thank you.

13 BY MR. WATERS:

14 Q. All right, I am going to show you State's Exhibit  
15 63 for ID at this point. During the course of your in-  
16 teractions with Mr. Dial, did you have any problems  
17 understanding him?

18 A. Absolutely not. He could speak and he seemed to  
19 understand everything I was saying. There were general  
20 questions that he would give general answers to.

21 Q. Did he respond appropriately to your questions?

22 A. He did.

23 Q. Did he display any evidence of unwillingness?

24 A. He did not.

25 Q. Did he display any evidence of drug abuse or

1 alcohol intoxication or drug intoxication?

2 A. He did not.

3 Q. All right, you were starting into what you did at  
4 first with Mr. Dial. Continue with that, if you would,  
5 what you did with Mr. Dial.

6 A. So we were in the interview room, and I advised  
7 him, you know, that I needed to speak with him, that I  
8 needed to get some general information first.

9 That's when I started to fill out the top portion  
10 of this form which has the name, birth date, address,  
11 etcetera, and those type of things.

12 THE COURT: If you have a copy of that, Mr. Waters,  
13 I can look along with you.

14 MR. WATERS: Yes, Your Honor. One moment.

15 (Brief pause in the proceeding)

16 THE COURT: Thank you.

17 MR. WATERS: Your Honor, I have a little bit of  
18 highlighting on there, but Mr. Floyd said he didn't ob-  
19 ject to me showing you this one.

20 THE COURT: All right, thank you, Mr. Waters and  
21 Mr. Floyd.

22 BY MR. WATERS:

23 THE COURT: This is a copy of State's Exhibit 63  
24 for ID?

25 WITNESS: That's correct, Your Honor.



1 Q. All right.

2 A. Like I said, I began getting general information.  
3 His age, birth date, where he lived, that kind of  
4 thing.

5 I also asked him how far he had gone in school,  
6 and he stated he was currently enrolled in internet  
7 school and that he was at the equivalent of the eleventh  
8 grade.

9 I asked if he could read and write, and he said, yes, I  
10 could.

11 He indicated -- there is a place on the form that  
12 asks you to put your initials if you can read and write,  
13 and he put LD there.

14 After getting that general information, and input-  
15 ting my information that I was a detective with the  
16 Sheriff's Office, I also advised him that I was going  
17 to read him his Miranda Rights before we discussed any-  
18 thing about the case.

19 And I asked that he read along with me.

20 I then read the rights off of this form to Mr.  
21 Dial, and after they were read and he read them, I had  
22 him put his initials in the place provided by each of  
23 the rights, indicating that I had read them to him and  
24 that he understood them.

25 We went through all of them like that, and he put

1 his initials there that he had had them read to him and  
2 that he understood them.

3 The last statement there is, I have read this state-  
4 ment of my rights and understand what they are. I read  
5 that to him while he read along, and he put his initials  
6 there, indicating that that had been done.

7 He then agreed to discuss the case with me.

8 Q. Okay. At any time -- I'm asking if at any time  
9 during the context of the whole course of your interac-  
10 tions with the Defendant, did he ask for an attorney?

11 A. No, sir, he did not.

12 Q. At any time during the course of your interactions  
13 with the Defendant, did he ever say he didn't want to  
14 talk any more or that he wanted to remain silent?

15 A. No, he did not.

16 Q. And those Miranda Rights -- and we don't need to  
17 read them because they're on the form, unless the Judge  
18 wants to hear them -- but those are precisely what you  
19 explained to him. Is that correct?

20 A. That's correct. The original of this piece of  
21 paper is what I read the rights from.

22 Q. And you personally witnessed him initial by each of  
23 the five lines after you explained that to him, is that  
24 correct?

25 A. That's correct.

1 Q. All right, tell us what happened next?

2 A. After we went through the rights and he agreed to  
3 talk to me, I advised him that I had heard from differ-  
4 ent people his story about what had happened, and I told  
5 him that I wanted to actually hear it from him.

6 I asked him if he would tell me what happened, and  
7 he agreed to do that.

8 Q. Okay, and did he do so at that time?

9 A. He did.

10 Q. Just very generally -- we don't need to get into  
11 all the details, but just very generally what was the  
12 general version of the events he gave you at that time?

13 A. At that time the version of events was that he had  
14 been home feeding Joshua. Joshua had got some baby  
15 food on his face and he got up to look for a rag; that  
16 he tripped over something and fell and hit the coffee  
17 table.

18 Q. Did he orally provide that statement to you or did  
19 he write that one out?

20 A. No, that was oral.

21 Q. And after he gave you that oral version of events,  
22 what happened?

23 A. After he gave that oral version of events, I ex-  
24 plained to him that I had spoken to the doctors at the  
25 hospital -- I told him several doctors at the hospital,

1 and they were telling me that the injuries Joshua had  
2 suffered could not have been caused by a single fall, as  
3 Lexie had described.

4 I explained to him that he had bleeding on the  
5 brain, had severe retinal hemorrhaging. Josh didn't  
6 actually understand at the time what the term retinal  
7 hemorrhaging was, so I said it was bleeding inside the  
8 eyes; that it couldn't been seen from the outside but  
9 the medical staff could see it.

10 And, you know, once again, that the injuries that  
11 the child had were not consistent with just falling or  
12 being dropped like that.

13 I explained to him that it was important for him  
14 to be honest with me; that I didn't believe at that time  
15 he was being honest.

16 Q. Okay, and did Mr. Dial respond to that?

17 A. Yes, he did. He asked several questions of me.  
18 You know, he asked me what he was charged with, and I  
19 explained homicide by child abuse.

20 He asked me what sentence that carried, and I told  
21 him it carried twenty years to life; that I did not  
22 know what he would get if he was found guilty.

23 He asked me if he could get PTI for this, and I  
24 told him I didn't think that was an option for him to  
25 get PTI.

1 Q. Did you say anything about your authority to make  
2 any such promises or anything?

3 A. I did not. I made sure to tell him that I had  
4 absolutely no authority, no reason, to make a promise  
5 to him; I could not do that; I couldn't promise him  
6 anything.

7 Q. All right.

8 A. I asked him again, I said ..

9 Q. Let me stop you there. Did you make any threats  
10 to him that he was going to get this or he could get  
11 that if he wasn't truthful with you, or anything like  
12 that?

13 A. Absolutely not, absolutely not. I told him it was  
14 important for him to be truthful, but I did not threaten  
15 him or make any promises to him.

16 Q. At any time -- we'll get back to that in a second.  
17 At any time during your interaction with him, did he  
18 ask for a bathroom break or something to drink, or any-  
19 thing of that nature?

20 A. He did not.

21 Q. And did you ever deny him any request that he made  
22 along those lines?

23 A. No, sir, I didn't.

24 Q. Okay. I interrupted you.

25 A. After we went through those couple of questions,

1 I then once again expressed to Lexie that it was import-  
2 ant he tell me the truth of what really happened, and  
3 that's when he said to me, it was an accident.

4 Actually, I believe at one point there I told him I  
5 don't think you did anything on purpose to Josh. I  
6 don't think you actually were meaning to cause him any  
7 harm, but it is important that you be honest with me  
8 and tell me what really happened.

9 Lexie sat there for a minute, and I think he -- I  
10 remember he said it was an accident, and I told him,  
11 I believe that.

12 I don't think you had any intent to hurt him but  
13 you need to tell me exactly what happened, and he went  
14 then and gave another version of events.

15 Q. And explain to me how that happened?

16 A. Explain to you ..

17 Q. How he actually gave you the second version of  
18 events.

19 A. Well, first he gave them to me verbally.

20 Q. Okay.

21 A. And then . .

22 Q. Just generally.

23 A. He said he had been trying to teach Lexie how to  
24 walk and was sitting on the floor with him, and he  
25 demonstrated how he was holding the child underneath

1 his arms; that he had been rocking him back and forth,  
2 trying to show him to walk.

3 Josh, being five months old, wasn't really under-  
4 standing what it was that Lexie was trying to get him  
5 to do, and this was aggravating Lexie, and he said to  
6 me that I got angry and I picked him up and held him  
7 and I shook him and I said, why won't you cooperate,  
8 and I shook him back and forth like that, and all of a  
9 sudden . . .

10 Q. Let me stop you there real quick. You are holding  
11 your hands out. Can you describe for the record, be-  
12 cause obviously the record is on paper. What are you  
13 doing there that Lexie did?

14 A. Well, he held his hands out in front of me like  
15 he was holding the child up underneath his arms. You  
16 know, up about eye level, and he was holding him like  
17 that, and he was angry because he wouldn't cooperate.  
18 He shook him back and forth, like this -- why won't you  
19 cooperate?

20 When he stopped shaking him, he noticed Lexie was  
21 not breathing. He was trying to breathe but it wasn't  
22 working.

23 I said, you know, what exactly do you mean by  
24 that, and he said he could see that like the muscles  
25 were working to try to suck it in, but no air was going

1 in.

2 Q. Okay, let me stop you there real quick. When you  
3 were doing that demonstration, I noticed that you had  
4 your arms pointed up towards the ceiling and your fingers  
5 out, is that correct?

6 A. That's correct.

7 Q. Go on about the air issue.

8 A. He noticed Josh was not breathing but it looked  
9 like he had been trying to breathe. The muscles were  
10 working like he was trying to suck air in but there was  
11 no air coming into the lungs.

12 He did say he had a heart beat, and I said, what  
13 happened next, and he said that he started to do CPR.

14 I asked Lexie exactly what he did when he did CPR  
15 or what does that mean? What is that to you?

16 He said he pushed on his chest, tilted his head  
17 back and blew into his mouth. He said that didn't do  
18 any good. It didn't seem to help the situation, so he  
19 left Lexie -- excuse me. He left Josh on the floor and  
20 went to a neighbor's house and asked them if they would  
21 call his father, for his father to come home quick.

22 Lexie said that he did not tell the neighbor what  
23 the problem was, nor did he tell his father what the  
24 problem was. He just asked his dad to get home quick.

25 Then he went back home and continued CPR until his



1 father got there. He said it took a couple of minutes  
2 for his father to get there.

3 Once his father arrived -- I don't remember which,  
4 but one of them called nine one one while the other con-  
5 tinued CPR, but they swapped back and forth.

6 They continued to call nine one one and do CPR un-  
7 til the EMS and law enforcement arrived when they took  
8 over the CPR.

9 Q. Going back to the demonstration, at any time prior  
10 to that when Mr. Dial was doing that shaking demonstra-  
11 tion to you, had you mentioned anything about shaking  
12 the baby or the shaken baby syndrome, or anything of  
13 that nature?

14 A. I explained to Mr. Dial that the injury the child  
15 had suffered from per the doctor could not have been  
16 caused by the fall that he was alleging had happened,  
17 but I gave him no -- no other idea of how the injuries  
18 could have been caused, other than that was not how  
19 the doctors say it happened.

20 Q. All right. After he gave you that oral version,  
21 describe what happened next.

22 A. I asked him if he would write a statement.

23 Q. And did he do so?

24 A. He did.

25 Q. Did you write it out for him, or did he write it

1 out himself?

2 A. He wrote it himself.

3 Q. Did you tell him what to say or did he sit there  
4 with the pen and paper for a while and do the work him-  
5 self?

6 A. I handed him the statement form, the same one that  
7 I had used during the Miranda Rights, and he wrote out  
8 the statement while I waited.

9 Q. Okay, and State's 63, I believe -- is this the  
10 statement you saw him do? The statement he did?

11 A. It is.

12 Q. Do you see the person who wrote the statement in  
13 the Courtroom?

14 A. I do.

15 Q. Where is he?

16 A. He's sitting right beside Mr. Wayne Floyd in the  
17 purple shirt.

18 MR. WATERS: Let the record reflect he has identi-  
19 fied the Defendant.

20 THE COURT: It will so reflect.

21 BY MR. WATERS:

22 Q. All right. There is no question that this is the  
23 statement that he did?

24 A. No question.

25 Q. And he wrote it out in his own hand?

1 A. He did.

2 Q. And when he finished doing that work, what happened  
3 next? Did you do anything further with the statement?

4 A. Yes, I read it over and got an idea of what he  
5 was trying to say, and we went to a page two statement  
6 form, and I wrote out some questions.

7 First off, I asked Lexie would he answer some ques-  
8 tions on the statement form, and I wrote the questions  
9 on there one time and had him write the answer down.  
10 Then we'd go on to the next one. I believe there were  
11 three questions.

12 Q. Okay, and so on page two of this statement, what  
13 portion is your writing and what portion is his?

14 A. The questions are my writing, and the answers are  
15 Lexie's writing.

16 Q. So you wrote out the question, and he wrote out  
17 the answer, is that correct?

18 A. That is correct.

19 Q. Did you tell him what to say there?

20 A. No.

21 Q. Did you tell him to write this down or make any  
22 threats to him if he didn't cooperate?

23 A. No.

24 Q. Did you make any promises to him if he would go  
25 ahead and admit to those?

1 A. I did not.

2 Q. Do you have any idea about how long this whole  
3 process took place?

4 A. A little bit over an hour. I think if I remember  
5 right we started at about three o'clock and we finished  
6 it about ten after four.

7 Q. Okay, and after you finished the statement, what  
8 happened next?

9 A. The form-- after he signed both pages and initialled  
10 everything, I served the warrant for homicide by child  
11 abuse on him and took him back to the detention center.

12 Q. And did you witness him signing both pages down at  
13 the bottom?

14 A. I did.

15 Q. All right. Was that the extent of your involvement  
16 with Mr. Dial?

17 A. It was.

18 MR. WATERS: Court's indulgence, please.

19 (Brief pause in the proceeding)

20 MR. WATERS: Your Honor, we have nothing further  
21 at this time.

22 THE COURT: All right. Mr. Floyd?

23 MR. FLOYD: Thank you, Your Honor.

24 CROSS EXAMINATION, out of the jury's presence

25 BY MR. FLOYD:

1 Q. What was your first involvement in this case at the  
2 Lexington Hospital -- at the Richland Hospital?

3 A. My actual first involvement, I guess you would  
4 say, was a discussion I had with my Lieutenant prior  
5 to going to the hospital.

6 Q. And so you then went to the hospital after that  
7 conversation with him?

8 A. Yes, Detective Grant and I went to the hospital  
9 together, yes, sir.

10 Q. And you arrived at the hospital about what time?

11 A. Probably in the twelve or one o'clock area. Some-  
12 where in that nature.

13 Q. And you testified that it was only after the child  
14 died that Lexie was arrested, is that correct?

15 A. That's correct.

16 Q. And I believe the child's death was at two O six  
17 in the afternoon?

18 A. Somewhere in that neighborhood, yes, sir.

19 Q. Now, assuming that that's correct, that the child's  
20 death was two O six or fourteen O six, what time was  
21 Lexie arrested?

22 A. A rough estimate -- I would actually say he was  
23 arrested maybe around fourteen ten.

24 Q. All right.

25 A. I can't be certain of the exact time.

ERIC RUSSELL IN CAMERA

- 1 Q. So within five minutes, correct?
- 2 A. A few minutes later.
- 3 Q. And he was arrested by Sergeant Dukes?
- 4 A. Sergeant Dukes arrested him, correct.
- 5 Q. And that was for homicide by child abuse, is
- 6 that correct?
- 7 A. Yes.
- 8 Q. Now, had Lexie performed any type of criminal ac-
- 9 tivity in front of Sergeant Dukes at that time?
- 10 A. No, sir.
- 11 Q. Had he performed any type of criminal activity be-
- 12 fore you at that time?
- 13 A. No, sir.
- 14 Q. So the two of you arrested him, or Sergeant Dukes
- 15 arrested him at Richland Memorial Hospital at five
- 16 minutes after death for homicide by child abuse. Is
- 17 that correct?
- 18 A. That's correct.
- 19 Q. Did you have a warrant for homicide by child abuse
- 20 at that time?
- 21 A. At that time, we had a warrant for inflicting
- 22 great bodily harm on a child that was in the process of
- 23 being recalled, and a homicide by child abuse warrant
- 24 issued.
- 25 Q. But it hadn't been done yet, had it?

1 A. Probably not. I mean, I don't know the exact time  
2 it was signed.

3 Prior to Josh's death, we did have an inflicting  
4 great bodily harm warrant for Lexie. Once we found  
5 out that Josh had died, we called back and said to re-  
6 call that warrant and issue this one.

7 Exactly the time that warrant was issued, I can't  
8 say.

9 Q. The warrant would have to be issued by a Judge,  
10 would it not?

11 A. That's correct.

12 Q. Did you have a Judge on stand-by?

13 A. It was done back at the Sheriff's Department and  
14 . . .

15 Q. But you can't tell us at what time the homicide  
16 by child abuse warrant was issued?

17 A. I don't know the exact time. No, sir.

18 Q. Lexie Dial was arrested within four or five minutes  
19 of the death of the child?

20 A. That's correct.

21 Q. The warrant would not have actually even been  
22 started until the child died?

23 A. Correct.

24 Q. Do you have anything to show that the warrant was  
25 issued before Mr. Dial was arrested?

1 A. No.

2 Q. Now, when Mr. Dial was arrested -- after the  
3 child's death, you arrested him within four or five  
4 minutes, and he was carried straight to the jail?

5 A. No, he was carried to -- he was carried to the  
6 Sheriff's Department, to an interview room.

7 Q. He was handcuffed, was he not?

8 A. Yes.

9 Q. And even before that, was he free to leave the  
10 hospital?

11 A. Well, after I talked to the doctors -- when I got  
12 to the hospital, he would have been free to leave, but  
13 once I had talked to the doctors and talked with the  
14 mother of the child, and that is when I called back to  
15 the detective back at the Sheriff's Department and  
16 said, this is what we've got -- I mean, this is enough  
17 to get a warrant, I think.

18 I could then get the great bodily injury warrant,  
19 and at that point he would not have been free to leave.

20 Q. When was that done?

21 A. Sometime between when I got there and before he  
22 died. I don't know the exact time.

23 Q. Can you tell me what time you got there?

24 A. I'm going to guess and say I got there in the noon  
25 time frame -- noon or one o'clock.



1 Q. Now, do you recall whether or not Lexie Dial's  
2 father was present when you arrested him?

3 A. There was numerous people there. I cannot say  
4 whether he was there or not. I do not know.

5 Q. Do you recall him telling you that . .

6 THE COURT: Be clear on that, Mr. Floyd, if you  
7 are asking about his father --- I just wasn't tracking  
8 it.

9 MR. FLOYD: I'm sorry.

10 BY MR. FLOYD:

11 Q. Do you recall the father, not Lexie Dial -- Lexie  
12 Dial's father -- do you recall him telling you that he  
13 had a lawyer for Lexie?

14 A. No, I do not.

15 Q. You don't recall him telling you that Bill Rast  
16 was his lawyer; that he was representing Lexie?

17 A. No, sir, I do not.

18 Q. Do you deny that he was present?

19 A. I'm sorry.

20 Q. Do you deny that he was present?

21 A. I don't deny or confirm. I don't know if he was  
22 or not.

23 Q. Now, had you not been told -- I'll rephrase that.  
24 Did Mr. Dial at some point in time inform you that he  
25 had taken a bunch of pills?

1 THE COURT: Which Mr. Dial? I'm sorry.

2 MR. FLOYD: Mr. Dial, the father of the victim.

3 A. Yes.

4 BY MR. FLOYD:

5 Q. Mr. Dial here?

6 A. He did.

7 Q. Did you know what those pills were?

8 A. I know what he told me they were.

9 Q. Did you observe any kind of impact of that medica-  
10 tion on him at that time?

11 A. No, sir.

12 Q. Did you -- had you received any blood reports back  
13 on him yet?

14 A. No, sir.

15 Q. Now, when you took him to the Sheriff's Department  
16 was he free to leave at that point?

17 A. No. When I took him to the Sheriff's Department?

18 Q. Yes.

19 A. No, he was under arrest.

20 Q. And did he at first tell you the same thing he had  
21 told the night before?

22 A. Yeah. I was under the impression that he had told  
23 two different stories the night before, and he did tell  
24 me one of them.

25 I asked him about the other one, and he said he

1 never said that.

2 Q. In fact, did you tell him that that was not ac-  
3 ceptable because the doctor said it could not have hap-  
4 pened that way?

5 A. I told him the doctor said the injuries that Josh  
6 was suffering could not have been caused by what he was  
7 telling me happened.

8 Q. Did you tell him that they had -- that he had to  
9 have shaken the baby for him to have those injuries  
10 that were observed?

11 A. No, I did not. I did not tell him that.

12 Q. You never told him that?

13 A. No, I did not. I purposely did not tell him  
14 that.

15 Q. Was this interview recorded?

16 A. No, it was not.

17 Q. Either visually or audibly?

18 A. No.

19 Q. Was anyone else present in the room except the  
20 two of you?

21 A. No. There was not.

22 Q. No one else was present in the room but the two  
23 of you?

24 A. Correct.

25 Q. After -- did you also tell him that things would

1 go better for him if he cooperated with you?

2 A. I told him it was important that he be honest  
3 with me. I didn't promise it would be better or worse,  
4 no.

5 Q. How long had you been investigating child abuse  
6 cases at this point in time?

7 A. Seven and a half years or in that neighborhood.

8 Q. In fact, weren't you investigating a shaken baby  
9 case at that time that was several months older than  
10 Lexie's?

11 A. That case had been closed. I mean, I wasn't ac-  
12 tively investigating that case at that time, but, yes, I  
13 did investigate one previously.

14 Q. And was Debra Moore the Solicitor on that case?

15 A. She was.

16 Q. And had Debra Moore been the Solicitor on other  
17 cases, other child abuse cases of yours?

18 A. . .

19 MR. WATERS: Your Honor, at this point I would ob-  
20 ject. We are getting into the issue that I believe is  
21 irrelevant. This is one of the . .

22 THE COURT: Well, he's got a right to make a re-  
23 cord.

24 MR. WATERS: I understand that.

25 THE COURT: Yes, sir.

1 (REPORTER'S NOTE: Pages 130 through 133, and page 136,  
2 of this Record have been sealed by the undersigned per  
3 Order of the Honorable Knox McMahon, Judge.)

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*Harriet P. Bennett*

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1 BY MR. WATERS:

2 Q. Mr. Russell, you were asked about whether or not  
3 -- about getting the warrants in this case.

4 Can you expound on that a little bit?

5 A. After we -- after Detective Grant and I arrived at  
6 the hospital and we spoke with Dr. Luberoff and the  
7 other doctors, and they explained to us the nature of  
8 the injuries to the child, and with that information,  
9 as well as the information from Detective Grant and  
10 people who had responded the previous night, then we  
11 felt probable cause to exist to get a great bodily harm  
12 on a child warrant.

13 The reason being is that due to the injuries on  
14 the child, and the story from the previous night had  
15 been that when the child became injured the only people  
16 that had been with the child at that time was Lexie  
17 Dial.

18 So I called back to the Sheriff's Department and  
19 to Detective Rivera, and I gave him the particulars I  
20 had and explained to him what was going on. I asked  
21 him to take that information and present it to a Magis-  
22 trate and to attempt to obtain a warrant.

23 When he got that warrant to place that warrant on  
24 NCIC and have Sergeant Dukes respond because Sergeant  
25 Dukes did have jurisdiction in Richland County.

1 Q. And your testimony -- well, the initial warrant was  
2 for what?

3 A. Great bodily harm to a child.

4 Q. And did something happen to cause you to change  
5 that warrant?

6 A. It did. The child passed away.

7 Q. All right, and what did you do then? What steps  
8 did you take?

9 A. I called Detective Rivera and asked him to have  
10 the great bodily harm warrant recalled and obtain a  
11 warrant for homicide by child abuse. The only differ-  
12 ence was that the child had died.

13 Q. So a different warrant was prepared?

14 A. Right.

15 Q. And that was after the child had died?

16 A. That is correct.

17 Q. And that was the warrant that was served on Mr.  
18 Dial?

19 A. That is correct.

20 Q. And you saw that warrant when it was served on Mr.  
21 Dial?

22 A. I did. I served that warrant on him, yes.

23 Q. And you saw that it was signed by a Judge?

24 A. Correct.

25 Q. And for homicide by child abuse?

1 Q. When you served this warrant for homicide by child  
2 abuse, that was back in the jail, was it not?

3 A. . .

4 Q. Or back in the detention center?

5 A. I think it was at the Sheriff's Department where  
6 we were sitting -- are you talking about where I physi-  
7 cally signed it and read it to him?

8 Q. Yes.

9 A. I believe we were still sitting in the interview  
10 room, at the Sheriff's Department.

11 Q. Do you recall what time that was?

12 A. I think he was signed into the jail at four thirty  
13 or so, and it was ten minutes before that, fifteen min-  
14 utes before that.

15 Q. Okay. Just a minute, please.

16 (Brief pause in the proceeding)

17 BY MR. FLOYD:

18 Q. I believe you concluded your interview with him  
19 about sixteen ten and then he was booked in the jail  
20 at sixteen thirty-one?

21 A. . .

22 Q. So there was some kind of delay in there in book-  
23 ing him when somebody else was being booked, or some-  
24 thing like that?

25 A. That's correct.



1 Q. Around sixteen eighteen or so is when you would  
2 have served him with the warrant?

3 A. Somewhere right in that neighborhood, yes.

4 Q. Thank you, Mr. Russell.

5 THE COURT: Thank you, and thank you very much,  
6 sir. You may step down.

7 (Witness excused from stand)

8 THE COURT: All right, call your next witness,  
9 please.

10 MR. WATERS: May we approach?

11 THE COURT: Certainly.

12 (Conference at the bench between counsel and the  
13 Court off the record)

14 MR. WATERS: Your Honor, Detective Rivera is not here  
15 yet. Mr. Floyd may want to call a witness.

16 THE COURT: All right, that would be fine. Mr.  
17 Floyd, you may call your first witness.

18 MR. FLOYD: Your Honor, I'd call Lexie Dial, Junior.

19 THE COURT: All right, Mr. Dial. If you would  
20 come around and be sworn, please.

21 LEXIE DIAL, JUNIOR, being  
22 duly sworn, testified as follows:

23 CLERK: Once you are seated, please state your  
24 full name.

25 WITNESS: My name is Lexie Dial, Junior.

LEXIE DIAL JUNIOR IN CAMERA

1 DIRECT EXAMINATION out of presence of the jury

2 BY MR. FLOYD:

3 Q. What is your relationship to Lexie Dial, Third?

4 A. I'm his father.

5 Q. Were you present in the hospital room when he got  
6 arrested?

7 A. Yes, sir, near there.

8 Q. Where were you when that happened?

9 A. I was in the little area right there in the hall-  
10 way with my grandson and Lexie. A bunch of us was  
11 right there. His grandma and all of us was right  
12 there.

13 Q. And what happened -- can you tell us what happened  
14 when you found out that Joshua had died?

15 A. When he passed away, the nurses and all come rush-  
16 ing into the room, and they told us all that we needed  
17 to go into the hallway, and they was in there working  
18 on my grandson, Josh, and then shortly after that they  
19 pronounced him passed away.

20 And we was still in the hallway out there, and the  
21 officers in the hallway -- that was out there in the  
22 hallway, they was talking to my son, and I looked at my  
23 son and said, I have a attorney, Mr. Bill Rast, and  
24 said, yes, I've got an attorney, and that's when . .

25 THE COURT: When you say he said, who are you

1 talking about?

2 A. The investigator. The investigator, he was over  
3 there and they was fixing to arrest my son, and I men-  
4 tioned to him -- I told him that I had a lawyer and  
5 that was Mr. Rast. Yeah, I got an attorney.

6 And they kind of rushed me out the door then, out  
7 into the waiting room out there.

8 Q. So do you know who it was? Was it Eric Russell?

9 A. Yes, sir. I seen him and the other gentleman in  
10 the tan suit over there. I remember seeing them two.

11 Q. And do you recall -- if you don't know, you don't  
12 know, but could you be confused?

13 A. No, sir. I know there was probably four or five  
14 of them, I guess, in there.

15 Q. And did you see it when they arrested him?

16 A. Yes, sir. I seen him when they was handcuffing  
17 him because I was -- they had me outside the locked door  
18 at the present.

19 Q. And you told them that Bill Rast would be his at-  
20 torney?

21 A. Yeah, I told him he had a attorney, and that is  
22 when I think -- when I went to them, they got me out  
23 the door open on the other side, and that's when I  
24 called Mr. Rast directly on my cel phone.

25 I called his secretary in the office.

LEXIE DIAL JUNIOR IN CAMERA

1 Q. And you had told the officers that Lexie, Junior,  
2 had a lawyer, Bill Rast?

3 A. Yes, because they was over there. They was around  
4 him -- grouped up around him, and I said, well, he's  
5 got a attorney, Mr. Rast, and that's when they kind of  
6 got me on out of there because I guess they was going  
7 on doing what they had to do.

8 Q. So you made the call to Mr. Rast?

9 A. Yes, time I got out there on the other side of the  
10 door where it locks. I called Mr. Rast's secretary and  
11 she got ahold of Mr. Rast.

12 Q. Thank you. No more questions.

13 THE COURT: Cross examine, Mr. Waters.

14 MR. WATERS: Thank you, Judge.

15 CROSS EXAMINATION

16 BY MR. WATERS:

17 Q. Mr. Dial, . . .

18 A. Yes, sir.

19 Q. . . you say you told the investigators that your  
20 son had a lawyer?

21 A. I did.

22 Q. Who did you say it to?

23 A. It was the gentleman over here.

24 Q. It's Mr. Russell you're pointing to?

25 A. Also he was in there and the other gentleman come

1 out -- the other gentleman he come out -- he come out  
2 later. He was in there and he come out later.

3 I guess Mr. Russell arrested my son.

4 Q. So it was Mr. Grant too that you told that?

5 A. Yeah, outside in the lobby when he come out where  
6 I was at.

7 Q. So it was Investigator Russell and Investigator  
8 Grant?

9 A. Yes.

10 Q. Okay. Nothing further.

11 THE COURT: Redirect, Mr. Floyd?

12 MR. FLOYD: Nothing further, Your Honor.

13 THE COURT: Thank you very much. You may step  
14 down.

15 (Witness excused from stand)

16 THE COURT: All right, you may call your next wit-  
17 ness.

18 MR. FLOYD: Mr. Rast.

19 WILLIAM RAST, being duly  
20 sworn, testified as follows, out of the presence of  
21 the jury:

22 CLERK: Have a seat, sir. Speak up loud and clear  
23 and tell us your full name.

24 WITNESS: My name is William Rast, Junior. I practice  
25 law in West Columbia.

MR. RAST IN CAMERA

1 DIRECT EXAMINATION

2 BY MR. FLOYD:

3 Q. Bill, were you the lawyer for Lexie Dial, Junior?

4 A. Right.

5 Q. Did you receive some kind of call about Lexie Dial,  
6 Third, from . . .

7 A. From what I recall, I was in Court up there at  
8 the Courthouse, probably in Family Court. When I got  
9 downstairs and started to leave, the deputy said my  
10 secretary had called.

11 I called my secretary back then.

12 Q. And as a result of calling your secretary, what  
13 did you do then?

14 A. I went to the Lexington County Jail to talk to  
15 Mr. Dial.

16 Q. What time would you say this was?

17 A. This was in the neighborhood of three o'clock.

18 Q. Okay.

19 A. It might have been a little before or it might  
20 have been a little bit after.

21 Q. And were you allowed to see Lexie Dial, Third?

22 A. Lexie Dial was not checked in at that time. I  
23 stayed over there until four thirty. It seems like I  
24 had some place I had to be at five or something like  
25 that, but I had to leave at four thirty and he was not

MR. RAST IN CAMERA

1 checked in at four thirty that day.

2 Q. Okay. So you got there sometime around three,  
3 maybe a little before or maybe a little after?

4 A. Right.

5 Q. And you were not allowed to see Lexie at that  
6 time?

7 A. Well, they didn't have any record of him. I went  
8 to the jail where they keep the inmates. They had no  
9 record of him being there. So I couldn't see him.

10 They had no idea where he was, and they kept tell-  
11 ing me that he might be en route. He was not booked  
12 into the jail at four thirty.

13 Q. Did you tell them you had gotten a call about  
14 him?

15 A. Yes, I did.

16 Q. That you had received information he was on his  
17 way there?

18 A. Right.

19 Q. And they never made any kind of effort to locate  
20 him for you or anything like that?

21 A. No. They just said they called booking and he  
22 hadn't been booked in. He hadn't been booked in.

23 Q. Thank you.

24 THE COURT: Cross examination, Mr. Waters?

25 MR. WATERS: No questions, Your Honor.

1 THE COURT: Thank you very much. You may step  
2 down, sir.

3 (Witness excused from stand)

4 WITNESS: May I be excused. I've got another case  
5 downstairs?

6 THE COURT: Yes, sir. You may go.

7 All right, you may call your next witness.

8 MR. FLOYD: That's all I have, Your Honor.

9 THE COURT: We are awaiting Detective Rivera?

10 MR. WATERS: Yes, sir. I have two other witnesses I  
11 can call, Your Honor.

12 THE COURT: All right, then call one of them.

13 MR. WATERS: Thank you, Your Honor. We would call  
14 Investigator Grant.

15 THE COURT: Mr. Grant, come around and be sworn  
16 for us.

17 SHAWN GRANT, being duly  
18 sworn, testified as follows out of the presence of the  
19 jury:

20 CLERK: Please be seated. Once you are seated,  
21 speak out loud and clear and give us your name for the  
22 record.

23 WITNESS: Detective Shawn Grant.

24 DIRECT EXAMINATION

25 BY MR. WATERS:



MR. GRANT IN CAMERA

1 Q. Investigator Grant, did you have a particular role  
2 in the matter here today?

3 A. Yes, I'm the lead investigator on this case.

4 Q. Were you present at the hospital when Joshua died?

5 A. Yes, I was.

6 Q. Did -- at any time, did Lexie Dial, Senior, say  
7 to you that Lexie Dial, the Defendant, had an attorney,  
8 Mr. Rast?

9 A. No, sir.

10 Q. He never said that directly to you at any time?

11 A. No, sir.

12 Q. Do you recall seeing him there?

13 A. Yes, sir, I saw him there.

14 Q. But you don't recall him saying that to you?

15 A. No, sir. I never heard him say it.

16 Q. Did he say anything to you?

17 A. No, sir. Not at that time.

18 Q. Nothing further.

19 THE COURT: Mr. Floyd.

20 CROSS EXAMINATION

21 BY MR. FLOYD:

22 Q. Where were you when Mr. Dial was arrested?

23 A. I was initially in the room where he was taken  
24 into custody. Once he was taken into custody, I left  
25 and went back and began talking with Ms. Dial.

MR. GRANT IN CAMERA

1 Q. And were they still in the room when you left?

2 A. For a brief period of time.

3 Q. Thank you. No further questions.

4 THE COURT: Redirect?

5 MR. WATERS: Nothing further.

6 THE COURT: Thank you, Detective Grant. You may  
7 step down.

8 (Witness excused from stand)

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

10 MR. WATERS: Your Honor, we'd call Lieutenant Eric  
11 Russell.

12 THE COURT: All right, you are still under oath.

13 ERIC RUSSELL, having been pre-  
14 viously sworn, testified as follows:

15 DIRECT EXAMINATION

16 BY MR. WATERS:

17 Q. You have already testified you were at the hospital  
18 when Joshua died, is that correct?

19 A. Yes, sir.

20 Q. And then you were present when Mr. Dial was ar-  
21 rested and taken to the Sheriff's Department?

22 A. That's correct.

23 Q. At any time, did Lexie Dial, Junior, the Defendant's  
24 father, ever say to you that he had a lawyer, Bill Rast?

25 A. No, sir, he did not.

MR. RUSSELL RECALLED IN CAMERA

1 Q. Thank you.

2 THE COURT: Mr. Floyd.

3 CROSS EXAMINATION

4 BY MR. FLOYD:

5 Q. Do you recall someone testifying before that he  
6 was told Mr. Dial was on the way there?

7 A. What Mr. Rast said, yes. He said that.

8 Q. You recall that testimony?

9 A. Yes.

10 Q. And did anybody call looking for Lexie Dial?

11 A. Not to my knowledge, no.

12 Q. Did you know there was a lawyer there looking for  
13 Lexie Dial and saying he had been charged with homi-  
14 cide?

15 A. No.

16 Q. You didn't know that?

17 A. I don't know if they'd know what Lexie had been  
18 charged with. They are not -- those people who work  
19 at the jail are not going to know that we have taken  
20 custody of someone until we bring them back to them.

21 Q. Okay.

22 A. It is not uncommon for that to be an hour or two  
23 hours before we're there.

24 Q. Well; it would be a simple process, would it not,  
25 to contact dispatch and ask them to put out a BOLO or

MR. RUSSELL RECALLED IN CAMERA

1 to look out for Lexie Dial? Find out who has Lexie  
2 Dial?

3 A. I assume it could be done but it is not standard  
4 procedure.

5 Q. But it could be done?

6 A. I've been there nineteen years and I don't think  
7 I've ever heard the jail call or have dispatch call on  
8 the radio looking for somebody.

9 Q. It could have been done?

10 A. Sure.

11 Q. The statement was written about four ten?

12 A. That was when we finished everything.

13 Q. How long did it take for the statement to be  
14 actually written?

15 A. From three thirty or three forty-five -- however  
16 long it took him to write and for us to go over the  
17 questions.

18 Q. And he wasn't served with the warrant until after  
19 the statement?

20 A. That's correct.

21 Q. Do you recall whether or not you actually had it  
22 in the room or whether someone brought the warrant to  
23 you?

24 A. . .

25 Q. How did you get it?

MR. RUSSELL RECALLED IN CAMERA

1 A. I would say it's standard procedure that it prob-  
2 ably happened, but I have no direct recollection of  
3 that.

4 Q. But you didn't have it at the hospital?

5 A. In hand? No.

6 Q. You don't recall who brought the warrant?

7 A. No. Like I said, I don't have any direct recol-  
8 lection of it. My guess would be that somebody brought  
9 it to me while I was in the interview  
10 room.

11 Q. But you don't recall who that was?

12 A. No, I don't.

13 Q. Thank you. No more questions.

14 THE COURT: Redirect?

15 MR. WATERS: Nothing further.

16 THE COURT: You may step down.

17 (Witness excused from stand)

18 THE COURT: I only have a copy of the warrant.

19 This has no . . .

20 MR. WATERS: Your Honor, I think the Court's file  
21 has the original. It's with the Clerk.

22 THE COURT: I understand that. This is not a copy  
23 of the original. It is only a copy, and who has the  
24 original is what I wanted to know.

25 CLERK: I'm sorry, Your Honor. I didn't get the

1 back of it.

2 THE COURT: That's all right. This is marked  
3 State's Exhibit 64 for identification.

4 Do you have any objection to the statement on the  
5 back of the warrant, State's 64? Just staple that to  
6 it. Any objection?

7 MR. FLOYD: None from the Defense, Your Honor.

8 MR. WATERS: No, sir.

9 (Brief pause in the proceeding)

10 MR. WATERS: Your Honor, Detective Rivera is here.

11 THE COURT: All right, you may call your next wit-  
12 ness.

13 MR. FLOYD: We'd call Detective Rivera.

14 THE COURT: Come around and be sworn.

15 LUIS RIVERA, being duly  
16 sworn, testified as follows:

17 CLERK: Please have a seat, and once you're seated  
18 state your full name on the record.

19 WITNESS: My name is Luis Rivera, R I V E R A.

20 DIRECT EXAMINATION

21 BY MR. WATERS:

22 Q. Would you quickly tell us what your present posi-  
23 tion is?

24 A. I'm currently a major crimes investigator with  
25 Lexington County, and I also do gang investigations.

MR. RIVERA IN CAMERA

1 Q. What about back in January of 2010?

2 A. I was working at that time as a patrolman before  
3 I became a major crime scene investigator.

4 Q. Did you have any involvement in the case involv-  
5 ing Lexie Dial?

6 A. I did, sir.

7 Q. And did you have any involvement in securing the  
8 arrest warrant?

9 A. I did, sir.

10 Q. Can you explain to us what involvement you had and  
11 how it happened?

12 A. I was at headquarters and I got a call from Detec-  
13 tive Russell. He made me aware of the situation and  
14 the facts of the case.

15 He said for me to go and present the case to a  
16 Judge and get a warrant for injury to a child causing  
17 great bodily harm.

18 Q. And what did you do?

19 A. I went ahead and obtained a warrant.

20 Q. Did you prepare the warrant?

21 A. Yes. I prepared the warrant with the information  
22 Detective Russell had given to me, and I presented it  
23 to the Judge.

24 Q. Okay. Do you know which Judge that was?

25 A. I can't recall.

MR. RIVERA IN CAMERA

1 Q. Take a look at State's Exhibit 64 and tell us  
2 what that is. I believe it's for identification at  
3 this time.

4 A. This is the warrant I got for homicide by child  
5 abuse, which is actually the second warrant.

6 Q. Tell us how that came about.

7 A. After I obtained the first warrant, I heard back  
8 from Detective Russell that the child had passed away,  
9 and I went ahead and began to get the warrant amended  
10 and to the Judge.

11 THE COURT: Speak up, please.

12 WITNESS: Sorry, Your Honor.

13 BY MR. WATERS:

14 Q. So you got another call from Detective Russell?

15 A. Yes, sir.

16 Q. Tell us about that.

17 A. He advised us that the child had passed away, so  
18 I went ahead and got the warrant -- went back to the  
19 Judge and prepared the warrant for homicide by child  
20 abuse.

21 Q. And what is State's Exhibit 64?

22 A. This is the arrest warrant for homicide by child  
23 abuse that I obtained.

24 Q. And is that your signature on there?

25 A. Yes, it is.



MR. RIVERA IN CAMERA

1 Q. And are these the facts that you presented to the  
2 Judge?

3 A. Yes, they are.

4 Q. All right. What did you do with the warrant after  
5 that?

6 A. I advised Detective Russell we had the warrant.

7 Q. All right. Nothing further, Your Honor.

8 THE COURT: All right, Mr. Floyd.

9 CROSS EXAMINATION

10 BY MR. FLOYD:

11 Q. Detective Rivera, where were you when you received  
12 the call from Detective Russell?

13 A. I was at the office.

14 Q. And I'm asking at this time about the child abuse  
15 situation.

16 A. I was at headquarters.

17 Q. That's in the Sheriff's Department?

18 A. The Sheriff's Department, yes, sir. I was at major  
19 crime scene.

20 Q. Do you know what time that was?

21 A. I do not recall.

22 Q. And once you received that call, what did you have  
23 to do about the warrant?

24 A. I had to type another warrant up and send it to  
25 bond court and they went ahead and got the -- or Emailed

MR. RIVERA IN CAMERA

1       it and went ahead and did a new warrant, and I was  
2       in front of the Judge and presented to him the facts of  
3       the case.

4             I was sworn in at that time and signed it in front  
5       of the Judge.

6       Q.     So you were the one applying for the warrant and  
7       standing in front of the Judge?

8       A.     Yes, I was.

9       Q.     But you had no personal knowledge of this -- of  
10      the facts?

11      A.     What I was told by Detective Russell.

12      Q.     You knew nothing about the case at all? You had  
13      no personal knowledge at all?

14      A.     I did -- I got information on private histories,  
15      the past histories, since I was at headquarters. I  
16      actually did an in-house search.

17      Q.     And you had no -- you had no personal knowledge of  
18      the Defendant?

19      A.     No, I did not.

20      Q.     Did you personally contact any of the doctors or  
21      the hospital staff?

22      A.     No, I did not do that.

23      Q.     You were just told something by somebody else who  
24      asked you to get the warrants?

25      A.     Yes, sir.

1 Q. So you made the affidavit without having any per-  
2 sonal knowledge as to the case?

3 A. It was only what I was advised by Detective Russell.

4 Q. But you had no personal knowledge as to what may  
5 have occurred?

6 A. As far as being on the scene, no, sir.

7 Q. There is no way that you could have investigated  
8 the matter?

9 A. No, sir.

10 Q. How long do you think it would take you to type  
11 up a new warrant and cancel the previous arrest war-  
12 rant at that time? Giving the affidavit and going in  
13 front of the Judge and being sworn?

14 A. I wouldn't think something like that would take  
15 more than about ten minutes or so. The actual facts  
16 in the affidavit I had wrote were still saved on the  
17 computer.

18 All I did was change the narrative with the facts  
19 and E-mail that to the bond court. I had to wait and  
20 walk it over when he finished what he was doing, but  
21 we were in the same area.

22 Q. Do you have any knowledge of the time that you  
23 went in front of him?

24 A. I do not recall the time.

25 Q. Ten or fifteen minutes or so from the time you

MR. RIVERA IN CAMERA

1 spoke with Detective Russell?

2 A. Yes.

3 Q. But it could have been more than that?

4 A. It could have been.

5 Q. And what did you do with the warrant after it was  
6 issued?

7 A. I went to Records at the front desk and had them  
8 enter it because of the fact that he was out of the --  
9 not in our County at the time.

10 Q. Do you have any idea what time that happened?

11 A. I'm not sure.

12 Q. You had the warrant issued and had to take it over  
13 and book it into NCIC?

14 A. Yes, sir.

15 Q. And it is your position that is your authority for  
16 other jurisdictions to arrest the Defendant?

17 A. Once the person is entered into NCIC, other juris-  
18 dictions can make an arrest based on that, yes, sir.

19 Q. And there is a log where that is timed in as a  
20 time stamp kind of situation or thing?

21 A. It was time stamped, yes, sir.

22 Q. You don't know what time that was?

23 A. No, I don't, sir.

24 Q. Are the warrants themselves time stamped anywhere?

25 A. Not that I know of.

MR. RIVERA IN CAMERA

1 Q. Just included in the NCIC or you had put it in  
2 NCIC?

3 A. Yes, sir.

4 Q. No further questions.

5 THE COURT: Any Redirect?

6 MR. WATERS: No, sir.

7 THE COURT: You may step down, sir.

8 (Witness excused from stand)

9 THE COURT: All right. I'll be glad to hear from  
10 you. Any further witnesses?

11 MR. WATERS: No, sir, Your Honor.

12 THE COURT: Mr. Floyd?

13 MR. FLOYD: No further witnesses, Your Honor.

14 THE COURT: All right. I'll hear from you, Mr.  
15 Waters.

16 MR. WATERS: Thank you, Judge.

17 Your Honor, with regards to the arrest issue, I  
18 believe it is pretty clear that there was a warrant is-  
19 sued for bodily injury but that was before the child  
20 expired.

21 It was put into NCIC. He was arrested by Sergeant  
22 Dukes who has State-wide jurisdiction.

23 Mr. Russell was present for that, and at a subse-  
24 quent time because the baby died they also had the war-  
25 rant for homicide by child abuse.

1           It was appropriately served on Mr. Dial, but re-  
2   gardless of that they had enough information in that  
3   warrant to support the arrest in the probable cause  
4   section of the arrest warrant.

5           With regards to the confession itself, there was  
6   certainly evidence from Mr. Russell that he did not  
7   threaten or cocerce Mr. Dial; that Mr. Dial was read  
8   his Miranda Rights.

9           Mr. Russell testified that Mr. Dial acknowledged  
10   each one and that he engaged in the conversation that  
11   was testified to.

12           That Mr. Russell did not make him any promises and  
13   ultimately after he was read his rights he agreed to  
14   talk and never invoked his right to counsel.

15           Mr. Dial gave that statement and the testimony is  
16   fully supported by that statement which is written in  
17   his own hand.

18           With regards to this issue regarding whether or  
19   not there was an attempt to advise Mr. Russell -- I  
20   think Detective Russell and Detective Grant -- that Mr.  
21   Rast had been hired, there are a few issues with regard  
22   to that.

23           First of all, I would assert that Mr. Dial, Junior,  
24   is not credible. There was testimony to refute that  
25   by both Detective Russell and Detective Grant, who

1 both said they never heard any such thing from Mr.  
2 Dial.

3 But regardless of that, it would not matter be-  
4 cause the decision to invoke -- the decision of whe-  
5 ther or not to ask for an attorney or to refuse to  
6 answer any questions was for the Defendant and for  
7 him alone.

8 For example, Moran versus Irvine, which is 475  
9 US 412, says that events occurring out of the Defen-  
10 dant's presence have no bearing on whether or not such  
11 waiver occurred.

12 And in State v. Drayton, which is 361 Southeastern  
13 Second 329, the police do not have to tell the Defen-  
14 dant that a public defender or attorney hired without  
15 his knowledge by his family has tried to contact him.

16 The law is very clear, and even if it was an issue  
17 there is no evidence that Investigator Russell was ever  
18 aware of this contact.

19 The witness' statement was given and all the I's  
20 were dotted and all the T's were crossed.

21 I think it is clearly admissible. Thank you  
22 Judge.

23 THE COURT: Thank you, Mr. Russell.

24 MR. WATERS: In regards to the cross examination  
25 on the issue of the Assistant Solicitor -- I don't know

1 if you want me to go forward with this -- it may be  
2 something for down the road.

3 I would say for purposes of this particular pro-  
4 ceeding that Detective Russell was credible. He tes-  
5 tified that the line, if there was any line crossed --  
6 that the line was crossed in October of 2010.

7 At the time the statement was given, which was in  
8 January of 2010, the Assistant Solicitor involved here  
9 was not assigned to this case.

10 Detective Russell testified that before October of  
11 2010 their relationship was purely professional, but  
12 regardless it was very clear that Detective Russell is  
13 a detective of long experience, nineteen years, I be-  
14 lieve, with the Lexington County Sheriff's Department;  
15 that his statement is valid and fair; that everything  
16 was done in an appropriate manner.

17 Regardless of the admissibility of that question,  
18 Your Honor, I think it was fully refuted by Detective  
19 Russell, and it has no bearing on the admissibility of  
20 this issue.

21 Thank you, Judge.

22 THE COURT: All right. Mr. Floyd?

23 MR. FLOYD: Thank you, Your Honor. There are sev-  
24 eral issues involved with the alleged statement made  
25 by Mr. Dial.



1           First of all, I think what has come out in the  
2       testimony is that the arrest of Mr. Dial itself was in-  
3       valid.

4           Seventeen 13 30 says that officers may arrest with-  
5       out a warrant for offenses that are committed in their  
6       view.

7           Detective Russell had no personal knowledge of  
8       anything that had gone on in his presence.

9           THE COURT:   What arrest are you talking about?

10          MR. FLOYD:   I'm talking about the arrest of Lexie  
11       Dial at the hospital.

12          THE COURT:   That arrest was made by Sergeant Dukes.  
13       I thought the testimony was that Sergeant Dukes made  
14       the arrest of Mr. Dial.

15          MR. FLOYD:   That's correct.

16          THE COURT:   Not Detective Russell.

17          MR. FLOYD:   That's an allegation that we will get  
18       to when Sergeant Dukes arrives, I guess, as to whether  
19       there was jurisdiction, because it occurred in Richland  
20       County.

21          I know there were some statements made as to the  
22       authority Sergeant Dukes had, that he had authority to  
23       do that, and we'll address that with Sergeant Dukes at  
24       some stage.

25          But what . . .

1           THE COURT: If that's the question, I want to ad-  
2   dress that now because the uncontradicted testimony is  
3   that Sergeant Dukes has the State-wide jurisdiction.  
4   There has been nothing to refute that.

5           That is the only thing that is in the record at  
6   this point from the testimony of the witnesses.

7           MR. FLOYD: I agree that was the testimony.

8           THE COURT: All right, and that is what confused  
9   me. I thought that service of the arrest warrant --  
10   that Detective Russell served the homicide by child  
11   abuse arrest warrant at the Lexington County Sheriff's  
12   Department.

13          MR. FLOYD: No, Your Honor. The testimony by De-  
14   tective Russell was that Sergeant Dukes arrested him  
15   because he had jurisdiction to arrest in Richland  
16   County for homicide by child abuse.

17          THE COURT: I'm with you.

18          MR. FLOYD: So it is our contention that that ar-  
19   rest was not lawful.

20          THE COURT: Why was that arrest not lawful?

21          MR. FLOYD: Because there was no warrant in place  
22   for that arrest at the time, and basically he said  
23   the arrest was made within three to four, or at most  
24   five, minutes of the death of the child.

25          THE COURT: No warrant for homicide by child abuse?

1 MR. FLOYD: Correct, which is what he was arrested  
2 for.

3 You know, the . . .

4 THE COURT: I understand.

5 MR. FLOYD: . . . best case scenario for the State  
6 to argue this issue is that the warrant could have been  
7 issued as early as fifteen minutes after the death, if  
8 I recall the testimony correctly.

9 There would be a telephone call from Detective  
10 Russell to Detective Rivera. He would re-type the war-  
11 rant, changing the charge, walk over to the Magistrate's  
12 Office -- he might have said ten or fifteen, but some-  
13 thing in that range.

14 But it was a longer period of time than when the  
15 arrest was already made. The arrest would have been  
16 made before the warrant was issued.

17 That is the first issue, Your Honor.

18 THE COURT: All right.

19 MR. FLOYD: The second issue is that the warrant  
20 was improvidently or illegally issued because it was  
21 made by an affiant with no personal knowledge of the  
22 facts contained therein.

23 THE COURT: All right.

24 MR. FLOYD: The affiant in this particular case  
25 was Luis Rivera who freely admitted that he had no

1 personal knowledge of the allegations that he made in  
2 the warrant.

3 So we have an illegal arrest because it was made  
4 without a warrant and for an offense not committed in  
5 the officer's view. That's the original arrest for  
6 homicide by child abuse.

7 It is not curative at all because we also have a  
8 warrant subsequently issued of which the affiant before  
9 the Judge had no personal knowledge of the facts con-  
10 tained in the affidavit going to justify the issues in  
11 the warrant.

12 For those two reasons, or either of those two rea-  
13 sons, any evidence secured as a result of the illegal  
14 arrest, the statement, would not be admissible because  
15 it was received after the illegal arrest.

16 Now, as to the voluntariness of it, what you've  
17 got here is a father weeping for his dead child who is  
18 being taken to the jail and then this interrogation  
19 takes place. He is being taken to the jail and under  
20 arrest and then this interrogation takes place.

21 You've got testimony that the officer was told  
22 there would be a lawyer for Mr. Dial there. The testi-  
23 mony of Mr. Rast is that he got to the jail in the  
24 neighborhood of three o'clock and was denied access to  
25 Mr. Dial.

1           Now, they said they didn't know where he was by  
2 the Sheriff's Department employees, and our position  
3 would be that once Mr. Rast appeared in the Sheriff's  
4 Department area wanting to see Mr. Dial that they had  
5 some obligation to locate Mr. Dial, which they did not  
6 before Mr. Rast had to leave, and while Mr. Dial was  
7 in this interrogation room.

8           For that reason also, the statement should be ex-  
9 cluded.

10          Thank you.

11          THE COURT: Mr. Waters?

12          MR. WATERS: Your Honor, the uncontradicted testi-  
13 mony in this case was that they were certainly aware  
14 he was in Richland County, and that's why Sergeant Dukes  
15 were involved.

16          That they were in the process of obtaining a war-  
17 rant. They were certainly aware of the jurisdictional  
18 limitations.

19          There is no proof whatsoever about it other than  
20 that and no proof anything was violated in regards to  
21 that.

22          So I think the arrest was valid and the confession  
23 itself is admissible.

24          I don't believe I need to add anything to that,  
25 but I will be glad to answer any questions Your Honor

1       might have.

2               THE COURT: Thank you.

3               MR. WATERS: Your Honor, I'm sorry. I did leave  
4       out one point, and I apologize.

5               With regards to lack of personal knowledge, in this  
6       sort of situation police officers rely upon information  
7       provided by another police officer. This is not uncom-  
8       mon and is authorized by law.

9               THE COURT: Thank you.

10              (Brief pause in the proceeding)

11              THE COURT: Did you have any evidence or testimony  
12       you want to put in concerning Sergeant Dukes' author-  
13       ity to make an arrest?

14              Not as to whether it is valid or not, but his  
15       jurisdiction to make an arrest -- I will allow you to  
16       do that but, again, the uncontradicted testimony is  
17       that Sergeant Dukes had State-wide jurisdiction by vir-  
18       tue of being on the U. S. Marshall's Task Force.

19              MR. FLOYD: Your Honor, I don't have any evidence  
20       that is going to dispute that. I would have some ques-  
21       tions -- I don't have any evidence at this point to  
22       dispute that, but I would have some questions as to  
23       that . . .

24              THE COURT: It may not answer all the questions,  
25       but it answered the question as far as jurisdiction.

1           The evidence is that he has the authority, and I  
2   am not saying that alone makes the arrest valid. I'm  
3   not saying that, Mr. Floyd.

4           I'm not trying to box you in in any way, Mr.  
5   Floyd, at all. I'm just saying if you have a question  
6   about the authority of Sergeant Dukes to make an arrest  
7   -- not whether the arrest was valid or not, but to make  
8   an arrest in a County besides Lexington, I will allow  
9   you to address that.

10          The uncontradicted testimony is that Sergeant  
11   Dukes has State-wide jurisdiction by virtue of being a  
12   member of the U. S. Marshall's Task Force.

13          MR. FLOYD: Well, sir, that is apt to be hearsay,  
14   but as a practical matter I would think it is up to  
15   the State to show jurisdiction because certain statutes  
16   would have to be complied with to give him jurisdiction  
17   in Richland County for Lexington County cases.

18          Has that been complied with? I don't know. If so,  
19   it hasn't been furnished to us in the discovery process,  
20   Your Honor.

21          THE COURT: But the standard I'm looking at now  
22   is as a fact-finder.

23          Lieutenant Russell testified that is why he called  
24   Sergeant Dukes, because they were in Richland County --  
25   they called him because he has State-wide jurisdiction.

1           That is why Lieutenant Russell or Investigator  
2 Russell called another officer to come to Richland County  
3 to make that arrest that had the authority to make the  
4 arrest.

5           So, as far as the standard I'm looking at now, and  
6 whether the arrest is valid or isn't, is whether or not  
7 Sergeant Dukes had the authority to make the arrest or  
8 not.

9           The authority to make the arrest is an issue for  
10 the Court.

11          MR. FLOYD: That's correct.

12          THE COURT: I do not think it is for the jury.

13          MR. FLOYD: Well, there are two questions with re-  
14 gard to his arrest.

15          One issue is a purely territorial question, and on  
16 that one I don't at this point have any evidence to  
17 dispute their statements.

18          THE COURT: That's the one -- that's the only one  
19 I am trying to address with you right now.

20          MR. FLOYD: Yes, sir.

21          THE COURT: That if you have any testimony or evi-  
22 dence concerning Sergeant Dukes' territorial jurisdic-  
23 tion -- right now the record, and I've said it four or  
24 five times -- I'm getting tired of hearing myself say  
25 it, quite frankly -- it is undisputed, uncontradicted,



1 in this record that Sergeant Dukes had the authority  
2 to make the arrest in Richland County.

3 MR. FLOYD: Well, I have no evidence at this point  
4 on the question of territorial jurisdiction.

5 One way of saying it is the . . .

6 THE COURT: The validity of the arrest.

7 MR. FLOYD: . . . validity of the arrest itself.

8 THE COURT: Because the issue of the homicide by  
9 child abuse warrant would have had to been a minimal  
10 issue or . . .

11 MR. FLOYD: Where is it?

12 THE COURT: Two twenty-one, and the fact that  
13 Lieutenant Rivera did not have personal knowledge.

14 Given the facts in the record, as I understand  
15 them at this point, Sergeant Dukes had the authority  
16 to make an arrest in Richland County.

17 The next question becomes whether or not that ar-  
18 rest is valid.

19 As I understand the testimony, there was an arrest  
20 warrant that was issued for great bodily injury to a  
21 child; that that had been issued prior to the death of  
22 the child.

23 That one had been issued prior to the death, and  
24 that being said under State versus Redford, R E D F O R D,

25 170

1       281 Southeast Second 471, the Supreme Court held in  
2       that case that where officers clearly had probable  
3       cause to arrest a Defendant for auto theft, the fact  
4       that the arrest was made for another offense did not  
5       render the arrest unlawful.

6       Therefore, I take it that there was a valid arrest  
7       warrant, and I understand from the testimony there was  
8       such an arrest warrant for Lexie Dial, Third, for great  
9       bodily injury to a child.

10       The fact of whether or not they told Mr. Dial that  
11       he was under arrest for homicide by child abuse is not  
12       relevant to the Court's analysis.

13       If it were relevant to the Court's analysis, if  
14       Sergeant Dukes was on the scene and gained personal  
15       knowledge that the child had passed away, had knowledge  
16       of the great bodily injury warrant, the only element  
17       between the great bodily injury warrant and the homicide  
18       by child abuse is the life or death of the child, and  
19       the child had died.

20       I think he could have made that arrest based on  
21       probable cause. I'm not sure I have to reach that analy-  
22       sis, but if I do, that would be my ruling.

23       As far as the timing is concerned, I really don't  
24       know what time the arrest was made. It could have been  
25       after two twenty-one and the warrant for homicide by

1 child abuse could have been issued by that time.

2 Clearly, he was under arrest. He was in custody.  
3 There was custodial interrogation that would require  
4 Miranda. He was appropriately advised. He appeared  
5 to have voluntarily waived his Miranda.

6 Before I get to that issue, there is whether or  
7 not Detective Rivera could get a warrant with no per-  
8 sonal knowledge.

9 As I understand it, the issuance of arrest war-  
10 rants can be based on the hearsay, or search warrants,  
11 and I cite State versus Sullivan, 230 Southeast Second  
12 621, a 1967 case.

13 A warrant can be issued on an affidavit even when  
14 the affiant -- even when the affidavit is based on hear-  
15 say statements.

16 The rules of evidence require personal knowledge.  
17 The rules of evidence -- under Rule 1101, Applicability of  
18 Rules, it states that the rules do not apply to the  
19 following situations:

20 Rule D Three, miscellaneous proceedings, and the  
21 miscellaneous proceedings are issuance of warrants for  
22 arrest, criminal summons and search warrants.

23 So I do not know of any rule or case that requires  
24 personal knowledge by the affiant to present that in-  
25 formation to a judicial officer to get an arrest warrant

1 or a search warrant.

2 As to voluntariness, it is clear that he should  
3 have been apprised of his Miranda Rights and validly  
4 waived those rights.

5 Under Moran versus Irvine, I R V I N E, cited by  
6 the Attorney General at 475 US 412, a 1986 case, the  
7 Court states that failure of the police to inform a  
8 murder suspect of telephone calls from an attorney who  
9 had been contacted by the suspect's sister, before con-  
10 tinuing their interrogation of the suspect, did not  
11 undermine the validity of suspect's waiver of his  
12 Miranda Rights, where the suspect was unaware that his  
13 sister had been contacted.

14 Taking the testimony of Mr. Dial, Junior -- Mr.  
15 Dial, Junior, the father of the Defendant, into account,  
16 his testimony that he informed Detective Grant and De-  
17 tective Russell, although he might not have known them  
18 by name, that he had an attorney -- that he informed  
19 them of that, that he had Lawyer Rast -- he told Mr.  
20 Russell and told Mr. Grant, although Mr. Russell and  
21 Mr. Grant deny that.

22 Mr. Rast, of course, who has credibility with this  
23 Court, states that he was notified by the deputies down-  
24 stairs that his secretary had called in the neighbor-  
25 hood of three o'clock concerning Mr. Dial; that he went

1 to the jail at that time; that he had to leave about  
2 four thirty and Mr. Dial was not in jail, had not been  
3 booked in.

4 Well, that -- all of that is a true statement and  
5 was corroborated by Mr. Russell because he wasn't in  
6 the jail. He was in the interview room and had not yet  
7 been booked in.

8 So it appears that he was booked in about a minute  
9 after Mr. Rast left. He said he thought he left about  
10 four thirty, and he was booked in about four thirty-  
11 one.

12 The right, of course, is personal to the Defendant.  
13 The officers would not have been required, even if they  
14 had known -- even if I take all of the testimony of Mr.  
15 Dial, Junior, into account, that he did tell Detective  
16 Grant and he did tell Detective Russell, there would  
17 not be a requirement for them to inform Mr. Dial, Third,  
18 of that.

19 The question is voluntariness of his statement,  
20 whether or not he knowingly and intelligently waived  
21 his right to his Fifth Amendment protections under our  
22 Constitution.

23 It appears that he did; that there were no promises  
24 made, no threats, no coercion of his statement.

25 Besides that, as identified by Detective Russell,

1     it is in his, Mr. Dial's, writing. He indicates that  
2     he can read and write.

3             He further indicates that he attempted to complete  
4     his high school education on line from his testimony.  
5     The form as completed by Detective Russell indicates  
6     he completed the eleventh grade.

7             So based on State versus Parker and that line of  
8     cases, I would find that the oral statement and the  
9     written statement in question are admissible.

10            Now, Mr. Floyd, you have not addressed the issue  
11     concerning the prosecutor and the admissibility of  
12     that testimony.

13            MR. FLOYD: Your Honor, it is our position that  
14     that testimony -- I didn't make a lot of argument --  
15     I'm not sure the matter of the issue you are deciding  
16     at this point, regarding the statement . .

17            THE COURT: That's why I didn't address it as a  
18     part of this issue.

19            MR. FLOYD: It is our position we should certainly  
20     be allowed to explore that before the jury. We should  
21     always be allowed to explore any evidence that may raise  
22     any possibility of bias.

23            THE COURT: All right. Mr. Waters?

24            MR. WATERS: Thank you, Judge. I would like to  
25     cite a few cases to Your Honor.

1 THE COURT: All right.

2 MR. WATERS: Rule 608 C, which I believe Mr.  
3 Floyd is relying on . . .

4 THE COURT: That's 608 C?

5 MR. WATERS: Yes, sir. Of course, like any rule  
6 of evidence, it is shaped by case law in how it is ap-  
7 plied.

8 There are a number of cases that I think would  
9 call into question its application to this particular  
10 case.

11 THE COURT: All right.

12 MR. WATERS: Detective Russell testified, and there  
13 is no evidence to the contrary, that his issue with  
14 the Assistant Solicitor began October of 2010, and,  
15 of course, his taking of the confession of Mr. Dial oc-  
16 curred ten months earlier.

17 Even if you want to assume that Mr. Floyd's theory  
18 that somehow he would fake the confession to please  
19 the Assistant Solicitor, which I would argue in a min-  
20 ute is a pretential point, the confession occurred long  
21 before that relationship developed beyond a mere pro-  
22 fessional one.

23 I don't think it is appropriate defense argument.

24 The first case I would cite to Your Honor would  
25 be State v. Moore, a Court of Appeals case, 698

1 Southeastern Second 633, and in that particular case  
2 they were asking a witness about allegations of infi-  
3 delity to show bias against the Defendant.

4 The Court, of course, said a number of things.  
5 One thing they pointed out was that the person denied  
6 it, so there would be no showing of bias. Then they  
7 went on to point out that there was no time nexus be-  
8 tween this alleged event and the case.

9 I think that is precisely the point here, but, if  
10 that wasn't enough, we have State v. Baker, a Court  
11 of Appeals case, that came out in 2010, at 700 SE Sec-  
12 ond 440.

13 This was a CSC with a minor case, Your Honor, and  
14 they wanted to cross examine a niece of the Defendant  
15 on some allegations that she had had or some issues  
16 she had had, to show bias and, therefore, was trying  
17 to deflect attention from her own issues by making al-  
18 legations against the Defendant.

19 In the first instance, the Court said, well, it  
20 is such a minor incident that it would be extremely un-  
21 likely that it could show any bias on the part of this  
22 particular witness.

23 I think that is what we have here, Your Honor, in  
24 that the connection is just too tenuous. The connec-  
25 tion between maybe crossing the line to some personal



1 line from that professional relationship, with two  
2 people of long experience in doing things the right  
3 way, is just too tenuous to make, regardless of  
4 the time period.

5       Going on to the second incident, they said, well,  
6 this one is more serious, but there is no way to show  
7 bias because this incident occurred after she had  
8 made allegations against the Defendant, and that  
9 is precisely what we have here.

10       This personal relationship was after he took the  
11 confession and can have no bearing on this particular  
12 case.

13       So that given the allocation of 608 C, the time  
14 periods we have at issue here, and given the tenu-  
15 ous nature of the connection, that is not admissible  
16 under 608 C.

17       But the obvious thing is 403 and 401 beyond 608 C  
18 because it goes back to the tenuous connection with 403.  
19 And as Your Honor is aware and I don't need to cite  
20 the rule, it talks about unfair prejudice, mitigation  
21 of the issues, things like that.

22       I think, given the tenuous nature, in connection  
23 with the fact that it has nothing to do with this case,  
24 and clearly alternate 403, it should also indepen-  
25 dently be excluded.

1           It should be excluded based on 403, and even if  
2       there is anything allowed on that issue that it be very  
3       circumscribed and limited based on 403 as well.

4           That would be the State's presentation, Your  
5       Honor.

6           THE COURT: Thank you, Mr. Waters.

7           Any response, Mr. Floyd?

8           MR. FLOYD: Your Honor, I don't know -- somebody is  
9       saying that's when it started. It beats me, but beyond  
10      that, I don't think it is foreclosed by that.

11          We certainly didn't raise the question on the state-  
12      ment itself or make that argument. However, this evi-  
13      dence should certainly be in front of the jury, and we  
14      should be allowed to go into it in front of the jury  
15      in the case in chief.

16          The work of this officer on this case did not end  
17      with the taking of the statement. He testified that  
18      it was sometime after when the relationship became a  
19      personal one.

20          The fact that she is no longer prosecuting the case  
21      doesn't remove the conflict that has been present on  
22      throughout the preparation of this case, or the inves-  
23      tigation of this case.

24          We think we certainly should be allowed to question  
25      the integrity in this situation in front of the jury,

1 Your Honor.

2 THE COURT: Thank you. Thank you very much.

3 As an initial matter and given the record that is  
4 before this Court at this time that a relationship be-  
5 yond a friendship developed in October of 2010, which  
6 was ten months after the incident that occurred to Josh  
7 Dial in January of 2010, is not relevant.

8 There is no connection between the personal rela-  
9 tionship of the Detective ten months after the event  
10 and the death of the child.

11 It is just not relevant, as there is no way to  
12 connect those dots. Even if it were to be relevant,  
13 you would look at the other analysis under 608 C or 403,  
14 but there is no relevancy of a relationship that deve-  
15 loped thereafter that would in any way bias the testi-  
16 mony of this witness, Lieutenant Russell, in this case.

17 On 608 C, I would agree under Moore and that line  
18 of cases that it would not be admissible.

19 As I read 608 C, based on my understanding of that  
20 line of cases, if it were -- if it withstood the strict  
21 guidelines of 608 C, then I would look at the analysis  
22 under 403.

23 And 403, of course, is that all but relevant evi-  
24 dence may be excluded if its probative value is substan-  
25 tially outweighed by the danger of unfair prejudice,

1       confusion of the issues, or misleading the jury.

2       I do not think it is relevant. If it cleared the  
3       hurdle of 608 C, then it would clear the hurdle of 403,  
4       and within the record and the testimony before the Court  
5       at this time.

6       Of course, Mr. Floyd, if you have any further evi-  
7       dence you want to offer in counter on this issue, I  
8       would certainly listen to it.

9       But with the record that is before the Court at  
10      this time, my ruling would be that it is not admissi-  
11      ble. It does not comply with our rules of evidence.

12      MR. FLOYD: Of course, there was testimony that  
13      he had another case of this nature.

14      THE COURT: Yes, sir.

15      MR. FLOYD: And that she was the prosecutor in the  
16      other case and she may be the prosecutor in this case,  
17      which is just like the other one, and that is another  
18      ground.

19      THE COURT: All right. That gives me some further  
20      speculation, and as I understand that testimony was the  
21      officer testified that Defendant in that case pled guilty.

22      Well, it appears to me then and I would have to  
23      speculate that this was -- if he was biased or it was  
24      relevant -- I don't even know if there was a statement  
25      given in that case by that Defendant or what it is.

1           Whoever that Defendant is, that Defendant decided  
2   to plead guilty because of the officer's bias or preju-  
3   dice -- I took that into account that there were the  
4   other cases.

5           But Detective Russell doesn't assign the cases, and  
6   whoever does -- you know, I'm just going on the record as  
7   before me in this particular case.

8           I know there was testimony of another case with  
9   similar circumstances, although I don't know what those  
10  circumstances are. But similar circumstances.

11          All right.

12          MR. FLOYD: Thank you, Your Honor.

13          THE COURT: Yes, sir. It would further be this  
14  Court's ruling that that part of the testimony would be  
15  under seal and only opened upon further Order of the  
16  Court.

17          Again, Mr. Floyd, if you have other testimony you  
18  want to offer in camera prior to Lieutenant Russell's  
19  testimony, I will certainly listen to it.

20          All right, are there any other motions, Madam  
21  Attorney General?

22          MS. WEISS: Thank you, Your Honor.

23          Your Honor, I would ask for a stipulation that  
24  the statements were given freely and voluntarily, or I  
25  would ask Your Honor, the Court, to make a finding of

1 fact, if the Court would do that.

2 There are three statements to three officers that  
3 physically got a written statement or heard a statement  
4 that the -- first of all, Deputy Clayton was the first  
5 deputy on the scene.

6 The statement she would testify to is the baby  
7 fell on the table and hit his head; he had trouble  
8 breathing.

9 The second one was to Deputy Steele -- the first  
10 statement he had was a written statement, Your Honor.  
11 We would mark that, Your Honor, if we may.

12 REPORTER: State's 65 for ID, Your Honor.

13 THE COURT: Thank you. According to the state-  
14 ment, he -- to Deputy . .

15 MS. WEISS: Deputy Steele, Your Honor. That is  
16 State's Exhibit 65, a statement that Lexie Dial filled  
17 out on the scene, Your Honor.

18 Secondly, Deputy Steele put in his report that he  
19 -- that Lexie Dial said he tripped and fell into the  
20 coffee table and into Joshua.

21 Joshua then hit the back of his head on the coffee  
22 table and was not breathing.

23 Finally, Detective Shawn Grant stated that he  
24 heard -- that Mr. Dial said to him that he was walking  
25 with Joshua when he hit his toe on the vacuum cleaner

1 and fell on Joshua as a result.

2 Secondly, he was walking with Joshua and fell,  
3 causing Joshua to hit his head.

4 THE COURT: All right. Mr. Floyd?

5 MR. FLOYD: That is correct, Your Honor. We don't  
6 object to those statements.

7 MS. WEISS: I'm sorry, Your Honor. Deputy Clayton  
8 and Deputy Steele and Detective Shawn Grant said the  
9 Defendant made a statement that he was asking for a cig-  
10 arette, and Deputy Clayton said he was asking about  
11 Blue -- where is Blue.

12 THE COURT: Where is who?

13 MS. WEISS: Blue -- B L U E, his pit bull, Your  
14 Honor.

15 THE COURT: All right, Mr. Floyd.

16 MR. FLOYD: We don't object to that.

17 THE COURT: The admissibility and to a proper found-  
18 ation laid?

19 MR. FLOYD: That's correct.

20 THE COURT: All right, based on the representation  
21 made by the Attorney -- the representations by the Attorney  
22 General and the statement by the Defendant that he does  
23 not question the voluntariness of those statements,  
24 they would therefore be admissible if the proper founda-  
25 tion is laid.

1 All right, anything further?

2 MS. WEISS: Your Honor, we discussed the photos  
3 earlier, the retinal photos, and whether or not we  
4 could pare them down some.

5 Your Honor, it is the State's position that each  
6 of those photos is different.

7 I do believe that I can -- I was able to pare them  
8 down some, the presentation of the photos, but I need  
9 to confer with my doctor, the expert on that, because I  
10 know that they are taken from different angles of the  
11 eye, from each eye.

12 I will check with my doctor to see which ones he  
13 feels are most important for establishing what he will  
14 testify to.

15 THE COURT: Well, I haven't ruled obviously on any  
16 of those. There is obviously no foundation has been  
17 laid.

18 MS. WEISS: Yes, Your Honor.

19 THE COURT: All of that is still under advisement  
20 at this time, and do not publish any of those to the  
21 jury until I have ruled on them.

22 MS. WEISS: Yes, Your Honor.

23 THE COURT: All right, anything further other than  
24 that, Attorney General? Madam Attorney General?

25 If there is anything further we need to take care



1 of it.

2 MR. WATERS: The Court's indulgence briefly, Your  
3 Honor?

4 THE COURT: All right.

5 (Brief pause in the proceeding)

6 MR. WATERS: Your Honor, we would have marked some  
7 photos from the residence, and once the appropriate  
8 foundation has been laid I don't believe Mr. Floyd  
9 will have any objection to them.

10 THE COURT: Is that correct, Mr. Floyd?

11 MR. FLOYD: Correct, Your Honor.

12 THE COURT: Anything further, Attorney General?

13 MR. WATERS: Court's indulgence.

14 (Brief pause)

15 MR. WATERS: I believe that's it, Your Honor.  
16 Thank you.

17 MS. WEISS: I believe we were going to discuss the  
18 chain ---the blood chain, Your Honor. We can do that  
19 after we recess for the evening, but just to make sure  
20 that will decrease a lot of the witnesses that we in-  
21 tended --- several witnesses that we intended to call.

22 I just wanted to put that on the record, and  
23 we will discuss that after we recess tonight, Your  
24 Honor.

25 THE COURT: All right. Anything further, Mr.

1 Floyd?

2 MR. FLOYD: Nothing further for us at this point,  
3 Your Honor.

4 THE COURT: All right. Thank you very much.

5 Court will be in recess until nine thirty in the  
6 morning.

7 (Whereupon, the Court stood in recess until 9:30  
8 A.M. on April 12, 2011)

9 THE COURT: In case the jury wants to take  
10 notes, please have pads and pens available for them,  
11 and I will appreciate that.

12 (Brief pause)

13 THE COURT: Bring in Ms. Binau.

14 (Juror Binau brought before the Court)

15 (Chelsee M. Binau, second alternate drawn)

16 THE COURT: All right, step right here to the witness  
17 stand where I can hear you a little better. You can re-  
18 lax now.

19 You are Miss Binau?

20 MS. BINAU: Yes, sir.

21 THE COURT: Tell me your situation.

22 MS. BINAU: Um, I have a nine-month old baby and  
23 I'm a single mom. If the case lasts more than like  
24 today, I don't know if I can do it. I'm the only one  
25 for the baby.

1 THE COURT: Well, I can't really predict the future,  
2 but I would say it will last longer than today.

3 Let me ask you a couple of things. When yesterday  
4 I asked the panel about children under the age of seven,  
5 you did not respond.

6 MS. BINAU: I did not really understand the  
7 question. It was my first time and I was a little ner-  
8 vous. I was scared and I'm still scared.

9 THE COURT: Do you have anybody who can provide  
10 adequate care for your child while you are on the jury?

11 MS. BINAU: Yes, but I don't want anyone else to  
12 take care of her but me.

13 THE COURT: So just to get it straight in my mind,  
14 it is not so much the care of the child but it is because  
15 of the finances too, being a single mom?

16 MS. BINAU: Yes, sir.

17 THE COURT: Would you step out and wait for a moment,  
18 please?

19 MS. BINAU: Yes, sir.

20 (Juror Binau excused from Courtroom)

21 THE COURT: All right, Madam Attorney General, I  
22 will be happy to hear your position on this matter.

23 Of course, she is the number two alternate that we  
24 have selected.

25 MS. WEISS: Your Honor, she came here today and

1 prepared to be here for today.

2 Maybe we ought to be sure our jury proceeds this  
3 morning and they all come back from lunch. At that point,  
4 if it looks like they are ready to proceed on with the  
5 trial, then we can excuse her for the rest of the week,  
6 Your Honor.

7 THE COURT: All right. Thank you, Madam Attorney  
8 General.

9 Mr. Floyd?

10 MR. FLOYD: Your Honor, we would leave it in the  
11 Court's discretion.

12 THE COURT: Ask the young lady to step back in,  
13 please.

14 (Juror Binau returning)

15 THE COURT: I'm going to ask you to stay with us  
16 today. I will re-assess the situation this afternoon.  
17 Okay?

18 All right, thank you very much. You may rejoin  
19 your fellow jurors, but do not discuss anything with  
20 your fellow jurors.

21 Thank you very much.

22 (Juror Binau excused from Courtroom)

23 THE COURT: All right, anything from the State be-  
24 fore we bring in our jury, Madam Attorney General?

25 MS. WEISS: Your Honor, if I could approach? We

1 have agreed to stipulate to the chain, the blood chain,  
2 on the blood that was drawn.

3 If we could put the stipulation on the record at  
4 this time?

5 THE COURT: All right. Mr. Floyd?

6 MR. FLOYD: Your Honor, that is correct.

7 THE COURT: All right, anything further, Madam At-  
8 torney General?

9 MS. WEISS: No, Your Honor.

10 THE COURT: Anything from the Defense?

11 MR. FLOYD: Not at this time.

12 THE COURT: All right, thank you very much.

13 You can bring us our jury panel, please.

14 (Jury panel returned to Courtroom at 9:43 A.M.)

15 THE COURT: All right. Welcome back, ladies and  
16 gentlemen.

17 Madam Clerk, would you swear our jury, please?

18 CLERK: Yes, Your Honor.

19 (Whereupon, the jury panel was sworn for the trial  
20 of the case)

21 THE COURT: Thank you very much. Madam Clerk,  
22 Mr. Bailiff, would you provide any of the jurors who  
23 would like it a pen and pad?

24 Ladies and gentlemen, thank you very much for your  
25 service in this case. Also, thank you for your service

1 as the Foreperson of this jury.

2 I have just a few remarks for you and other members  
3 of the jury.

4 I understand from time to time you may need to  
5 have a snack or something of that nature, and you may  
6 feel free to do so, and at any time you or any other  
7 member of the jury panel need a break just raise your  
8 hand.

9 I will cover that in a little more detail momen-  
10 tarily.

11 We have, of course, our Clerk of Court, our elected  
12 Clerk of Court, here with us this morning. We also  
13 have with us a class from Lexington High School Voca-  
14 tional Center, Ms. Hammond's class.

15 Raise your hand for us, Ms. Hammond. There she  
16 is -- Ms. Hammond.

17 They are students who are criminal justice majors.  
18 Most of the young ladies -- I talked with them a few  
19 moments before you came into the Courtroom this morn-  
20 ing. Most of the young ladies are going to be lawyers  
21 although the young men didn't tell me what they want  
22 to do. Most of them look like professional athletes,  
23 quite frankly.

24 A very fine class, Ms. Hammond. We see her clas-  
25 ses every year and we are always glad to accommodate a

1 school class.

2 May I have the Indictment, Madam Clerk? Thank you  
3 very much.

4 Madam Forelady and ladies and gentlemen of the  
5 jury, the case we are about to try is the case of the  
6 State versus Lexie Dial, Third, the Defendant.

7 What I will now say is intended to serve as an in-  
8 troduction to the trial of this case. These remarks are  
9 not a charge on the law. I will instruct you on the  
10 law that applies to the case at the end of the trial,  
11 before you begin your deliberations to consider your  
12 verdict.

13 This is merely an explanation of the procedure we  
14 will follow in the trial of the case, so that you may  
15 better understand what may be happening.

16 The Bailiff informed me earlier so I know that  
17 many of you would like to take notes. You may take  
18 notes during the trial of the case.

19 However, please remember that some people are bet-  
20 ter note-takers than others. Jurors' notes should not  
21 be given any greater weight than the recollections of  
22 other jurors.

23 The recollection of individual jurors should be  
24 considered as reliable as notes taken by other jurors.

25 I would also point out to you that when you are

1 taking notes you may not notice the body language or  
2 the demeanor or the conduct of the witness while on  
3 the witness stand, which can be used by you in deciding  
4 the witness' credibility.

5 The Defendant is charged by an Indictment filed  
6 in this Court with the crime of homicide by child abuse,  
7 the elements of which will be explained to you later.

8 Again, this Indictment is simply the charging docu-  
9 ment. It is the formal document by which an individual  
10 is placed on notice of the charges that have been brought  
11 against him, and it is not in any sense evidence of any  
12 of the allegations it contains.

13 The Defendant has pled not guilty to this Indict-  
14 ment, and the State therefore has the burden of proving  
15 each element of the Indictment beyond a reasonable  
16 doubt.

17 It will be your duty, ladies and gentlemen, to  
18 decide whether or not the State has met that burden.  
19 Your purpose is to find and determine the facts. You  
20 ladies and gentlemen are the sole judge of the facts  
21 of this case.

22 If at any time I make any comment regarding the  
23 facts, you should disregard it. You are to determine  
24 the facts from the testimony you hear and the other  
25 evidence introduced into Court.



1       It is up to you to determine the inferences which  
2       you feel may properly be drawn from the evidence. It  
3       is especially important that you perform your duty of  
4       determining the facts diligently and conscientiously,  
5       because ordinarily there is no way to correct an errone-  
6       ous determination of the facts by a jury.

7       On the other hand, and with equal emphasis, the  
8       same law that makes you the judge of the facts makes  
9       me the judge of the law.

10       The law as given by the Court is the only law you  
11       can consider. You must accept and follow the law, even  
12       though you may disagree with it.

13       I cannot tell you what the facts are, and you  
14       cannot disagree with me about what the law is or should  
15       be.

16       You must take the law as I give it to you and ap-  
17       ply it to the facts as you find them from the testimony  
18       of the witnesses and any other evidence that is intro-  
19       duced.

20       After doing that, you will render your verdict, a  
21       true and just verdict, under the solemn oath that you  
22       have just taken as jurors.

23       Until I advise you to begin your deliberations,  
24       you must not discuss this case with anyone. That in-  
25       cludes your fellow jurors, your family, friends, or

1 anyone else.

2 When the case is submitted to you, you must discuss  
3 it only in your jury room with your fellow jurors.

4 As you recall, the parties and the attorneys in  
5 the case have been advised that they are not to talk  
6 to you at all.

7 So if you see anyone involved in the case as you  
8 are coming and going from the Courthouse and they do  
9 not even say hello, they are not being unfriendly or  
10 rude in any manner. They are following the Court's in-  
11 structions.

12 During the trial, do not read, listen to or watch  
13 any news reports about the case. This includes any-  
14 thing that may be in the newspapers, on the internet,  
15 radio or television.

16 You must not consider anything that you may have  
17 read or heard about the case outside of the Courtroom,  
18 whether before or during the trial.

19 It is important that you keep an open mind and do  
20 not decide any issue in the case until you have heard  
21 all of the evidence presented, the lawyers have made  
22 their closing arguments to you, and I have instructed  
23 you on the law in this case.

24 It is your solemn responsibility to determine  
25 the guilt or the innocence of the Defendant, and your

1 verdict must be based solely upon the evidence as it  
2 is presented to you in this trial and on the law as I  
3 instruct you during and at the conclusion of the trial.

4 In a few moments, ladies and gentlemen, the At-  
5 torney General will make what is called an opening  
6 statement, in which the Attorney General will explain  
7 to you the issues in the case or at least what the  
8 Attorney General thinks the issues are in the case.

9 Mr. Floyd, the Attorney for the Defendant, may  
10 make an opening statement, although he is not required  
11 to do so.

12 The Defendant, regardless of the seriousness of  
13 the charge, is always presumed to be innocent. The  
14 State has the burden of proving its case beyond a rea-  
15 sonable doubt.

16 The Defendant has no burden and is not required  
17 to prove himself innocent.

18 I would advise you, ladies and gentlemen, that  
19 what the attorneys tell you during their openings is  
20 not evidence in the case. It is only their contention  
21 as to what the issues are.

22 Their questions are not evidence in the case. It  
23 is the responses. The questions are the framework by  
24 which a witness may respond.

25 It is the responses of the witnesses under oath

1     that are evidence, not the questions, not the statements  
2     of the attorneys.

3             The evidence in this case will be presented to  
4     you by that testimony of those sworn witnesses from  
5     this very witness stand and/or by any exhibits that  
6     may be introduced into evidence.

7             From time to time during a trial, ladies and gen-  
8     tlemen, you may hear a lawyer say something like, I be-  
9     lieve we have a question of law, or a matter of law,  
10    to discuss with the Court, or, Your Honor, may we ap-  
11    proach the bench.

12            Although it is not my habit to have bench conferences  
13    as they are called, I do sometimes for purposes of time  
14    so I don't have to send you back and forth to your  
15    jury room.

16            Sometimes I might find it necessary to excuse you  
17    from the Courtroom for a short while so that the at-  
18    torneys and I can discuss a matter of law.

19            The reason for this is that you are the judges of  
20    the facts in the case, and sometimes when I am discuss-  
21    ing matters of law with the attorneys it may be neces-  
22    sary for me to make some comment as to the facts in  
23    connection with ruling whether or not a particular law  
24    applies.

25            I am not supposed to tell you what I think the

1 facts are, so I will excuse you from the Courtroom  
2 while these discussions take place so that in no way  
3 will you be influenced by anything that I might say or  
4 do in connection with the facts.

5 In determining what the true facts are, you must  
6 decide whether or not the testimony of a witness is  
7 believable.

8 It will be my responsibility to rule as a matter  
9 of law as to whether certain testimony is admissible  
10 at all or not, but once it is admitted whether or not  
11 you believe it is for you, the jury, to decide.

12 In deciding whether to believe a witness with the  
13 background of our good common sense, you have the  
14 right to consider the interest of any witness, the  
15 bias of any witness, the prejudice of any witness, the  
16 opportunity of a witness to have seen matters or things  
17 about which they may testify.

18 Also, how the witness acts on the witness stand,  
19 his or her demeanor.

20 Whether or not the testimony is corroborated or  
21 made stronger or made weaker by further testimony.

22 You have the right to consider anything that is  
23 in this record that will help you to evaluate the tes-  
24 timony, the believability of the witnesses.

25 Now, ladies and gentlemen, it is your responsibility

1 to pay close attention to the witnesses, to observe  
2 the witnesses, to listen to the witness, to pay close  
3 attention to the attorneys and to the Court.

4 Don't let your thoughts wander, but give strict  
5 attention to the testimony in this case, so that at the  
6 end of all the testimony, after the closing arguments  
7 of the attorneys and the instructions on the law by  
8 the Court, you will then be in a position to determine  
9 what the true facts are and to apply the law to the  
10 facts and thus render a true and just verdict.

11 You have but one focus, and that is to seek and  
12 find the truth.

13 It is your added duty, Madam Forelady, to preside  
14 in the jury room and be the jury spokesperson here in  
15 Court.

16 It will also be your duty to write the verdict,  
17 but I will give you further instructions on that at  
18 the conclusion of the case.

19 Just a few administrative matters, ladies and gen-  
20 tlemen. There is a speaker system in the Courtroom.  
21 However, if you cannot hear a particular witness or the  
22 jurors who are well away from the witness stand, if  
23 you will please get my attention and I will have the  
24 witness speak up.

25 Also, from time to time items may be introduced

1     into evidence such as a document or a photograph or the  
2     like and handed to the Foreperson while you are out here  
3     in your jury box in the Courtroom and passed among mem-  
4     bers of the jury here in the Courtroom.

5           You may look at those items all you wish. Please  
6     keep in mind that if an item is introduced into evidence  
7     you will have that item with you in your jury room at  
8     the time of your deliberations.

9           I tell you that not to limit you in any manner as  
10    to how long you want to look at an item here in the Court-  
11    room, but just to let you know that will not be the  
12    only opportunity you will have to view or to examine  
13    any item, document, photograph or the like that is ad-  
14    mitted in evidence.

15          Also, from time to time you may see me on my com-  
16    puter. I don't Email. I don't play video games or  
17    anything of the like. I may anticipate a legal issue  
18    coming up, and I do -- I say, I do rudimentary research.  
19    She does the heavy lifting as far as the research is  
20    concerned.

21          But I did want to let you know that as other  
22    jurors in other cases have brought that to my atten-  
23    tion.

24          Finally, what am I really in charge of? I am in  
25    charge of breaks. When I want to take a break, we take

1 a break. So just like I told you previously, this is  
2 not some type of judicial marathon. If at any time  
3 your thoughts begin to wander and you need to take a  
4 break, please raise your hand. Then you all will take  
5 your break and we will take ours.

6 That applies to any member of the jury, and if  
7 you have any question to ask during the course of the  
8 trial, Madam Forelady, about anything, just write out a  
9 note, knock on your jury room door, and the Bailiff  
10 will bring that to my attention.

11 All right. To protect everyone's rights, are there  
12 any objections, Madam Attorney General, to anything I  
13 have told the jury?

14 MS. WEISS: No, Your Honor.

15 THE COURT: From the Defense?

16 MR. FLOYD: No, Your Honor.

17 THE COURT: All right, we will now begin the trial.  
18 Mr. Waters, you may address the jury.

19 MR. WATERS: Thank you, Your Honor. May it please  
20 the Court?

21 THE COURT: Yes, sir.

22 MR. WATERS: The evidence in this case will show  
23 that on January 19th of 2010 the Defendant over there,  
24 Lexie Dial, got angry at his five month old son, baby  
25 boy Joshua, and shook him, and so violently that it



1 tore up inside of his head and he died.

2 There is not much more to be said. I should just  
3 sit down.

4 Anyway, my name is Creighton Waters, and I'm a  
5 Senior Assistant Attorney General. This is Heather  
6 Weiss, and she is the Assistant Deputy Attorney Gen-  
7 eral.

8 We are privileged and it is our responsibility  
9 to try this case, this criminal case, against Lexie  
10 Dial here before you today.

11 This is Shawn Grant. He is an investigator  
12 with the Lexington County Sheriff's Department. He  
13 is the lead investigator in this case.

14 Now, the Judge told you what the charge in this  
15 case is and it is homicide by child abuse.

16 As the Judge told you, he has to find what the  
17 law is. That's his job, but I want to briefly explain  
18 to you that charge so that you can understand the evi-  
19 dence that will be presented in this trial.

20 Under the Statute that defines this crime, there  
21 are three major things that we have to show.

22 The first thing is that the Defendant caused the  
23 death of a child under the age of eleven.

24 The second thing is that he did so by committing  
25 child abuse or neglect.

1           We all know what child abuse is, but the statute  
2 defines it, and it says causing harm to a child, and one  
3 way you can do that under the statute is by inflicting  
4 injury on a child by using excessive corporal punish-  
5 ment to the child.

6           And the third thing we have to show is that it  
7 was done under circumstances reflecting an extreme in-  
8 difference to human life.

9           So those are the three things that we have to show  
10 you. There is the death of a child by child abuse or  
11 neglect, and there has to be extreme indifference to  
12 human life. Remember that word, indifference, as we  
13 go forward into the trial.

14          Now, we've talked about the charge, and what is  
15 the evidence in the case? What is the evidence going  
16 to show?

17          The evidence is going to show that Josh's mother  
18 went to work that afternoon; that she was a young mother  
19 and she had a job.

20          She went to work that afternoon, leaving Joshua  
21 in the care of Lexie Dial, Third; that when she left,  
22 that baby was as normal and happy and playful as he  
23 could be.

24          The evidence is going to show that while Misti  
25 was at work, roughly around eightish, more or less,

1 a knock came on the door of Lexie Dial's neighbor, a  
2 man by the name of Michael Szenas, and the Defendant  
3 was there, and he said, can I use your phone?

4 He came in and made a call. He said, come over  
5 quickly, or words to that effect, and he walked out.

6 The evidence is going to show that Mr. Szenas was  
7 surprised when roughly half an hour later he saw an  
8 emergency vehicle across the street -- not across the  
9 street -- at a neighbor's house, Mr. Dial's house.

10 Mr. Dial had not indicated to him at all that  
11 there was any sort of emergency at his house when he  
12 came to use the phone or that there was anything at  
13 all wrong.

14 You will hear the nine one one call, and it was  
15 not the Defendant who called nine one one, but it was  
16 his father. His father was the one who called nine  
17 one one. You will hear that call.

18 His father called nine one one, and the call went  
19 out. Fortunately, there was a K-nine officer who was  
20 going home and he was nearby. He had his dog in the  
21 car with him.

22 He went straight to that residence where he found  
23 the baby on the floor and he started trying to do CPR  
24 which is delicate in a small baby. He tried to do  
25 CPR, and then the EMTs got there and took over.

1           They tried to render aid to that baby, and they  
2   got him breathing. They took him to Memorial Hospital  
3   which is the Lexington Hospital. They managed to get  
4   him breathing on a ventilator, to get his heartbeat  
5   going.

6           Then he is taken to the pediatric intensive care  
7   at Richland, and they were doing their best for him. He  
8   had a little heartbeat going and breathing on the ven-  
9   tilator.

10          The little guy held on for about a day with his  
11   heart beating, and then he died.

12          What did Mr. Dial say about this? What did Lexie  
13   say about this?

14          The evidence is going to show that when that K-  
15   nine officer got there, he was not saying a word.

16          You will hear that he began to tell people what  
17   happened, various people. He was holding the baby  
18   when he tripped and fell on the baby who hit his head;  
19   he tripped and fell on him; but the officers had  
20   talked to the doctors, the doctors who had treated and  
21   tried to save Joshua, and one of them took Mr. Dial  
22   and arrested him, took him down to the station.

23          The officer told Mr. Dial, that isn't what hap-  
24   pened; that's not what the doctors say. At that point,  
25   Lexie Dial confessed.

1           He said he got angry and shook that baby. He got  
2           angry and he shook that baby.

3           Again, I could sit down right here too. That  
4           should be enough.

5           But you know who else is going to testify? Little  
6           Josh is going to testify. He is going to testify with  
7           his little body. It will show what happened to him.  
8           He is going to get on that stand and testify the only  
9           way he can, and that is by the doctors, the nurses, the  
10          medical professionals, whose only job was to try to  
11          treat Joshua and try to save his life, try to preserve  
12          the facts so that they could tell you.

13          His little body is going to tell the story of  
14          what happened to him through the medical professionals.  
15          It is not going to be easy, but it is the only way that  
16          little Josh can tell you what happened.

17          The Judge talked to you a good bit about our sys-  
18          tem and the State's obligation to prove the Defendant  
19          guilty beyond a reasonable doubt.

20          That is exactly right, and we welcome that burden.  
21          As I told you earlier, we have a responsibility, and  
22          that is our responsibility.

23          It is our obligation to prove the Defendant guilty  
24          beyond a reasonable doubt. That is a fundamental part  
25          of our system.

1           When you hear the term reasonable doubt, remember  
2   the emphasis is on reasonable. It must be a reason-  
3   able doubt.

4           Don't let anyone convince you that a reasonable  
5   doubt is anything more than it is. It is a strong  
6   burden on the State, but it is not an impossible bur-  
7   den. It is a high burden.

8           In every case, in every case, there is some lit-  
9   tle inconsistency or some problem with the paper work  
10   or something like that. It is the nature of human  
11   beings being involved.

12          Don't let anybody convince you when they talk  
13   about reasonable doubt that it is more than it is.

14          Once you have heard -- once you have heard Mr.  
15   Dial's confession, that he got angry and shook that  
16   baby, and once you hear little Josh testify to what  
17   happened to him through those doctors, medical profes-  
18   sionals, the evidence is going to show beyond a  
19   reasonable doubt that Lexie Dial is guilty of homi-  
20   cide by child abuse.

21          Thank you.

22          THE COURT: Thank you very much, Mr. Waters.

23          Mr. Floyd?

24          MR. FLOYD: Thank you, Your Honor.

25          Madam Forelady, ladies and gentlemen of the

1 jury, this young man is Lexie Dial, Third.

2 You have just now met him, but yet you this week  
3 are going to decide one of the most important decis-  
4 ions you have ever made about Lexie Dial, Third. You  
5 are going to decide whether based upon the evidence  
6 you hear in this Courtroom -- whether or not Lexie Dial  
7 the Third is a baby killer.

8 And not just any baby, but his son that he loved  
9 more than anything in the world.

10 Now, when you serve on a jury, a criminal jury,  
11 you almost have to set aside human nature because I  
12 suggest to you that human nature is telling you that  
13 this precious child is dead and somebody should be  
14 punished for it.

15 Maybe human nature is telling you that because  
16 Lexie Dial, Third, was arrested in connection with this  
17 matter, because he was charged in connection with this  
18 matter, because he sits now before you to be judged  
19 concerning this matter -- you may have a thought in  
20 your mind, well, he must be guilty.

21 Well, if you've got that kind of thoughts, you'd  
22 better erase them, because what the law says your ob-  
23 ligation as a juror is is that you must look at Lexie  
24 Dial and say in your heart and in your mind, Lexie Dial,  
25 Third, is innocent.

1           That he remains innocent unless the State proves  
2           his guilt and satisfies you of his guilt beyond a rea-  
3           sonable doubt.

4           A Defendant doesn't have to show you anything at  
5           all. He is presumed to be innocent.

6           But let me suggest something to you. Mr. Waters  
7           of the Attorney General's Office has mentioned to you  
8           that they will produce evidence to show you that Lexie  
9           Dial, Third, shook this nearly six month old baby and  
10          shook him and that caused his death.

11          Ms. Howard, the child's mother, was 18 and he 16  
12          years old, and I submit to you that that is probably  
13          too young to have a child, but, you know, he took them  
14          into that home and he became the primary care-giver of  
15          this child.

16          The child became his life because the mother was  
17          dancing at night. He was providing his care.

18          She is sitting somewhere back there, and she is  
19          the one with all the family support, but he was the one  
20          who took care of that child.

21          This child became his life. He loved his family,  
22          loved this child. That was Joshua, his son. Just read  
23          his statement. He was still in high school. It's there  
24          in the statement. He was trying to take care of his  
25          child.



1           Listen to the testimony and the evidence in this  
2 case. You will conclude that Lexie Dial never inten-  
3 tionally harmed Joshua Dial. He wouldn't do that be-  
4 cause he loved him more than anything else in the  
5 world.

6           Now, we thank you for your presence here. We ask  
7 that you listen carefully to the details of this case,  
8 the evidence presented, and you will wonder how it hap-  
9 pened, what made it happen. How could you convict him  
10 of the death of his child.

11           Consider that the State can come and arrest you,  
12 can make a charge against you, take you into custody,  
13 and the only way you can overcome that is if the mem-  
14 bers of the community do not believe the evidence as  
15 presented by the State points to that beyond a reason-  
16 able doubt.

17           We thank you for your presence here, and we ask  
18 for your close attention because it is the most import-  
19 ant day in the life of Lexie Dial.

20           Thank you for your attention, and I look forward  
21 to speaking to you again at the close of all the testi-  
22 mony and evidence in the case.

1 THE COURT: Thank you, Mr. Floyd.  
2 Call your first witness, Madam Attorney General.  
3 MS. WEISS: The State calls Michael Szenas.  
4 THE COURT: All right. Come around and be sworn,  
5 please.  
6 MICHAEL SZENAS, being duly  
7 sworn, testified as follows:  
8 CLERK: Have a seat, please, sir. Once you are  
9 seated, please state your full name and spell your last  
10 name, sir.  
11 WITNESS: My full name is Wesley Michael Szenas.  
12 My last name is spelled S Z E N A S.  
13 DIRECT EXAMINATION  
14 BY MS. WEISS:  
15 Q. Good morning, Mr. Szenas.  
16 A. Good morning.  
17 Q. Would you introduce yourself to the jury and tell  
18 them where you live now?  
19 A. My wife and I live in Reedsville, North Carolina.  
20 Q. How long have you lived there?  
21 A. Approximately five months.  
22 Q. Prior to living in Reedsville, North Carolina,  
23 where did you live?  
24 A. At 321 Oakey Springs Drive in Gaston.  
25 Q. Is that in Lexington County?

MR. SZENAS ON DIRECT

1 A. Yes, it is.

2 Q. What type of work do you do?

3 A. I'm a semi-retired concert and church planner.

4 Q. Mr. Szenas, did you live at 321 Oakey Springs on  
5 January 19, 2010?

6 A. Yes, I did.

7 Q. Is that next door to 317 Oak ey Springs?

8 A. That's correct.

9 Q. Did you have neighbors on both sides of your  
10 home on Oakey Springs?

11 A. Yes.

12 Q. Looking at your house and to the left, were you  
13 friends with those neighbors?

14 A. Looking at my house to the left, yes.

15 Q. Were you close friends of those neighbors?

16 A. Very close.

17 Q. And to the right, who lived on that side?

18 A. The Defendant, Lexie Dial.

19 Q. And were you friends with Mr. Dial and his family?

20 A. No.

21 Q. I'm going to show you what's been marked as State's  
22 Exhibits 79 and 81 for identification. Do you recog-  
23 nize these photos?

24 A. The first photo, 79, is a photograph of my house.  
25 The second photo, marked 80, is a photo partially of

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1 my house and the house looking at my house to the  
2 right, which is the residence of Mr. Dial.

3 The third photo marked 81 is a photo of Mr. Dial's  
4 house and the infamous water tower gas in South  
5 Carolina.

6 MS. WEISS: Your Honor, at this time I would  
7 like to move State's Exhibits 79, 80 and 81 into evidence.

8 MR. FLOYD: No objection.

9 THE COURT: All right, 79, 80 and 81 are in evi-  
10 dence without objection.

11 (Photographs admitted without objection as State's  
12 Exhibits 79, 80 and 81 in evidence)

13 BY MS. WEISS:

14 Q. Let me show the jury what you have just identi-  
15 fied.

16 (photographs exhibited to the jury)

17 Mr. Szenas, can you identify this picture for the  
18 jury?

19 A. It's a picture of my house.

20 Q. And this picture?

21 A. A picture of Mr. Dial's house.

22 Q. And this photo?

23 A. That is a picture of my house to the left in re-  
24 lationship to Mr. Dial's house to the right.

25 Q. You stated in Court that you are not friends with

1 the Dials, with Lexie Dial and his wife or girlfriend  
2 or anybody who lived in that house?

3 A. I do not know Mr. Dial, no.

4 Q. Did you know that Mr. Dial had a child?

5 A. Yes.

6 Q. Had you met the child or seen the child?

7 A. Only from a distance.

8 Q. Let me take you at this time back to January 19,  
9 2010, a little before eight o'clock.

10 Do you remember that day?

11 A. Yes, I do.

12 Q. And it was a Tuesday evening. Please tell the  
13 jury why that particular day stands out in your mind?

14 A. Actually, between seven forty-five and seven  
15 fifty there was a knock at our door, and . .

16 Q. Let me stop you a minute. Can you describe that  
17 knock at the door?

18 A. It was a typical knock, I guess. You know, as a  
19 pastor, it wouldn't be my type of knock, which my type  
20 of knock is, you know, to let people know I'm there.  
21 It was just a knock.

22 Q. Please continue.

23 A. I responded to the knock by not opening the door  
24 but asking who was there, and there was no answer so I  
25 -- I do have a voice that projects, so I asked again,

1     who's there, and the response was, it's your neighbor  
2     next door.

3             Well, I didn't recognize the voice as being the  
4     neighbor to my right because we were very close friends.  
5     Therefore, I assumed it was the neighbor to my left.

6             At that time, I turned on the porch light and I  
7     opened the door.

8     Q.     What did you see when you opened the door?

9     A.     I assumed it was the neighbor next door. That  
10    was my assumption, and the reason I say it was my as-  
11    sumption was because I had only seen Mr. Dial at a  
12    distance.

13    Q.     Can you describe what he was doing or what he was  
14    wearing?

15    A.     He -- I recollect that he was in -- what do you  
16    call them -- the pajama -- long striped things that I  
17    wear to bed, and a pair of sneakers and a shirt, tee  
18    shirt, and he was smoking.

19             We are a non-smoking residence, and so I noticed.

20    Q.     And what was his demeanor?

21    A.     Casual.

22    Q.     What happened next?

23    A.     He asked me if he could use the phone, and I said,  
24    yes; put your cigarette out and come on in.

25    Q.     And what did he do?

1 A. Put the cigarette out, threw it over the porch and  
2 came in.

3 Q. Did you have any small talk or conversation?

4 A. No, none whatsoever.

5 Q. What did he do next?

6 A. I went to the kitchen area, which is right around  
7 where I was standing, and I took the phone off the wall  
8 and handed it to him.

9 I was approximately maybe no more than three feet  
10 away.

11 Q. And did you hear the conversation he was having?

12 A. Yes, I did.

13 Q. What did you notice about that?

14 A. Well, he apparently called a number and there ap-  
15 peared not to be an answer, and he called another num-  
16 ber. I don't know who answered, of course, but the  
17 conversation was very short.

18 Q. What did he say?

19 A. He said, daddy, you gotta come home. Come now.  
20 The lip's swelling.

21 REPORTER: The lip's what?

22 WITNESS: Swelling or swollen. Something to that  
23 effect.

24 BY MS. WEISS:

25 Q. And did you have any idea what he was talking

1 about?

2 A. None whatsoever, no.

3 Q. And did -- what was his demeanor on the conversa-  
4 tion?

5 A. That was it. I -- it was just a normal conversa-  
6 tion. I don't know what other to tell you than that.

7 Q. And did he give you the phone back?

8 A. Yes, he did.

9 Q. Okay.

10 A. He walked out the door.

11 Q. He never did exchange any pleasantries or any-  
12 thing?

13 A. No, nothing.

14 Q. Did he appear to be in a hurry when he left?

15 A. No.

16 Q. Did you watch him walk back next door or . .

17 A. No, I had no reason to.

18 Q. In that conversation, did you form any opinion  
19 about that phone call or what that was about?

20 A. Not at that time, no.

21 Q. And at some later time, did something happen that  
22 brought this back to your attention?

23 A. Yes.

24 Q. What was that?

25 A. Several things. First of all was I had gone back



- 1 to my office.
- 2 Q. Can you see where this was on this picture?
- 3 A. Yes.
- 4 Q. Point it out for us.
- 5 A. Well, you see the large tree that looks dead,  
6 which it's not -- it's a hickory.
- 7 Q. Okay.
- 8 A. Right to the end of that, right there is my office.
- 9 Q. Okay, and . . .
- 10 A. There is no window, by the way, facing Mr. Dial's  
11 house. It faces the front.
- 12 Q. It's kind of like to the side?
- 13 A. That's correct.
- 14 Q. That was your office?
- 15 A. That's correct.
- 16 Q. Okay.
- 17 A. I was in my office doing some studying and I no-  
18 ticed flashing, and simultaneously I heard a siren.
- 19 Q. Do you recall approximately how much later that  
20 was?
- 21 A. I would say probably about twenty to twenty-five  
22 minutes.
- 23 Q. What did you do then?
- 24 A. I opened the blind and there were flashing lights  
25 everywhere.

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1 Q. Okay.

2 A. Which shocked me.

3 Q. Why did that shock you?

4 A. Well, I had no idea that there was a fire and had  
5 no idea there was a problem. It was just absolutely  
6 nothing that would, you know, bring me to some kind  
7 of thought or thought pattern that something was wrong.

8 Q. What did you do after that?

9 A. I went out on the front porch. Being it was very  
10 dark, there was quite a bit of light from the emergency  
11 vehicles.

12 There was ambulances, fire trucks, Lexington County  
13 Sheriff's Department vehicles, and about that time the  
14 neighbor to my right came, and I was just recovering  
15 from a total knee replacement and he and I went next  
16 door.

17 And at that time I was met by a Lexington County  
18 Sheriff's deputy who was putting up crime scene tape  
19 around the trees.

20 That shocked me, so I asked him -- I said, hey,  
21 we're neighbors next door here. What's happening, and  
22 he didn't offer any information other than to say it  
23 was a crime scene investigation.

24 And that was it.

25 Q. Did you have the opportunity to talk to someone

1 or to a deputy that night, about the phone call?

2 A. One of the deputies came over later. I'm not sure,  
3 but it had to be an hour or hour and a half later and  
4 knocked on the door and asked if I had heard or seen  
5 anything.

6 And I said, well, the next door neighbor, and I  
7 didn't even know his name at that time -- had come and  
8 asked to use my telephone.

9 Q. What did that deputy do?

10 A. Well, he gave me a sheet of paper and asked if I  
11 would be willing to basically write what happened, which  
12 I did.

13 Q. Did you later have an opportunity to talk to some-  
14 one else from the Sheriff's Department?

15 A. I did.

16 Q. Who was that?

17 A. Detective Shawn Grant.

18 Q. And where did you meet him?

19 A. I met him at the Sheriff's Department.

20 Q. Did you have an opportunity to finish filling out  
21 that statement?

22 A. Yes, I did.

23 Q. Did you give the statement to Detective Grant?

24 A. I did.

25 Q. You said you are a pastor, a retired pastor?

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1 A. Semi-retired.

2 Q. Semi-retired. How many years have you been doing  
3 that?

4 A. Forty-five.

5 Q. During that time, have you had the opportunity  
6 to deal with families in crisis?

7 A. Yes.

8 Q. Have you dealt with families who have lost child-  
9 ren?

10 A. I have.

11 Q. Was there anything in the demeanor or actions of  
12 the person who came to your door that night that alerted  
13 you or rang a bell? Anything . .

14 MR. FLOYD: Objection, Your Honor.

15 THE COURT: Sustained.

16 BY MS. WEISS:

17 Q. Mr. Szenas, is the person who came to your door  
18 that night in the Courtroom now?

19 A. He is.

20 Q. Can you identify him, please?

21 A. That gentleman sitting over there with the white  
22 shirt and striped tie.

23 Q. Thank you.

24 MS. WEISS: Let the record indicate that he has  
25 identified the Defendant, Lexie Dial.

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1 THE COURT: The record will so reflect.

2 BY MS. WEISS:

3 Q. Thank you, Mr. Szenas. If you would please answer  
4 any questions Mr. Floyd might have.

5 A. Sure.

6 THE COURT: You may cross examine, Mr. Floyd.

7 MR. FLOYD: Thank you.

8 CROSS EXAMINATION

9 BY MR. FLOYD:

10 Q. You gave a written statement?

11 A. Speak up, sir. I can't hear you.

12 Q. You gave a written statement about this event?

13 A. Yes, I did.

14 Q. And I believe you said what he said was, to his  
15 father, come home now, get here quick?

16 A. To that effect, yes. That's entirely what I wrote.

17 Q. That's what you wrote?

18 A. What I wrote.

19 Q. And that is all you wrote about what he said?

20 A. Yes.

21 Q. Just come home now, come home quick.

22 A. Yes.

23 Q. That's all I have.

24 THE COURT: Redirect, Madam Attorney General?

25 MS. WEISS: Nothing further.

1 THE COURT: Thank you for being with us. You may  
2 step down.

3 MS. WEISS: Your Honor, may this witness be ex-  
4 cused?

5 THE COURT: Any objection?

6 MR. FLOYD: No objection.

7 THE COURT: Yes, sir, you may be excused.

8 (Witness excused)

9 THE COURT: All right, you may call your next wit-  
10 ness.

11 MR. WATERS: Yes, Your Honor. We'd call Ms.  
12 Rodgers.

13 THE COURT: Ms. Rodgers, if you'd come around,  
14 please, and be sworn.

15 NIKKI RODGERS, being duly  
16 sworn, testified as follows:

17 CLERK: Please have a seat and once you are seated  
18 state your name for the record.

19 WITNESS: My name is Nikki Rodgers.

20 DIRECT EXAMINATION

21 BY MR. WATERS:

22 Q. Ms. Rodgers, how you doing today?

23 A. Good.

24 Q. Would you tell us what your current position is?

25 A. I'm the nine one one communications coordinator

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1 for Lexington County.

2 Q. And explain what that would be for the members  
3 of the jury.

4 A. I oversee the nine one one communications center  
5 for everything from training to scheduling, equipment,  
6 quality assurance, budget, and I keep the records for  
7 the nine one one system, together with any other duties  
8 that appear.

9 Q. You are essentially head of the nine one one?

10 A. Correct.

11 Q. And as head of that, you are familiar with how  
12 the calls work, how they . .

13 A. I am.

14 Q. . . come into your office, how they are processed,  
15 and that sort of thing?

16 A. I am.

17 Q. And do you supervise generally the dispatchers  
18 in the operation?

19 A. I do.

20 Q. Tell us a little about when a call comes in what  
21 sort of information pops up to the dispatcher?

22 A. It depends on what kind of call it is. If it is  
23 a land-line call, the old-timey telephone or hard  
24 phone system, we get your name, address, telephone  
25 number and time of the call and what police, fire or

1 EMS jurisdiction you are in in the county.

2 If it is a wireless call, it depends on what kind  
3 of wireless phone you have. Basically we get no in-  
4 formation.

5 Q. Will anything pop up about it?

6 A. Occasionally. It depends on the phone that you  
7 have. Sometimes it's the tower phone number. Some-  
8 times it is the actual telephone number of the caller.

9 Q. Calls that come in to nine one one, are they typi-  
10 cally recorded?

11 A. They are. They are recorded, all of our telephone  
12 lines, radio lines, nine one one lines, and administra-  
13 tive lines are recorded also.

14 Q. Recorded contemporaneously with the call taking  
15 place?

16 A. Yes, it is.

17 Q. And is that the regular practice to do that?

18 A. It is.

19 Q. Part of the regular business of nine one one to  
20 calls coming in?

21 A. It is. Our calls are recorded for ninety days  
22 and then they are recorded over.

23 Q. And how is a call preserved for that ninety day  
24 period beyond that ninety day period?

25 A. If someone requests it in writing, we actually



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1     make a copy of the call, but if it is not requested  
2     it is no longer available.

3     Q.     Was such a request made in this particular case?

4     A.     It was.

5     Q.     Do you have a record of a call occurring on Jan-  
6     uary 19, 2010, regarding a baby not breathing?

7     A.     I do.

8     Q.     And what time did that call come in?

9     A.     That call came in at twenty fourteen.

10    Q.     And that is, in regular people time . .

11    A.     At eight fourteen.

12    Q.     And that is P.M.?

13    A.     P.M.

14    Q.     Okay   Eight fourteen in the evening?

15    A.     Correct.

16    Q.     Was Emergency Services dispatched as a result of  
17    that call?

18    A.     Emergency Services, fire service and law enforce-  
19    ment responded.

20    Q.     Okay, and did you preserve -- as you said you  
21    were requested, did you preserve a copy of that call?

22    A.     Yes, sir.

23    Q.     Do you have a copy of that with you?

24    A.     I do.

25    Q.     Is this an actual copy of the recording?

MS. RODGERS ON DIRECT

1 A. Yes.

2 MR. WATERS: If I could have that marked.

3 REPORTER: I've marked it 82, Your Honor.

4 THE COURT: All right.

5 MR. WATERS: Your Honor, at this time I'd move  
6 State's Exhibit 82 in evidence. I believe it's with-  
7 out objection.

8 MR. FLOYD: No objection, Your Honor.

9 THE COURT: State's 82 is in evidence without ob-  
10 jection

11 (Recording of nine one one call admitted without  
12 objection as State's Exhibit 82 in evidence)

13 MR. WATERS: Your Honor, I would request to pub-  
14 lish the call to the jury.

15 THE COURT: You may publish.

16 MR. WATERS: One second, Your Honor, please.

17 THE COURT: You might want to pull that microphone  
18 down. (Nine one one call played)

19 BY MR. WATERS:

20 Q. Is this the nine one one recording relating to  
21 this incident?

22 A. It is.

23 Q. Thank you. I have nothing further.

24 THE COURT: Mr. Floyd?

25 MR. FLOYD: No questions.

1 THE COURT: Thank you, you may step down.  
2 MR. WATERS: May Ms. Rodgers be excused?  
3 THE COURT: Any objection?  
4 MR. FLOYD: No objection.  
5 THE COURT: Yes, maam. You may be excused.  
6 (Witness excused)  
7 THE COURT: Madam Forelady and ladies and gentle--  
8 men, I'm going to allow you to take a brief recess.  
9 During this recess, leave your pads upside down  
10 on the chairs. You may not have the notes with you  
11 until you begin your deliberations.  
12 Write your juror number on it although, of course,  
13 I'm sure you'd be able to recognize your own handwrit-  
14 ing. I can recognize mine. I just can't read it some-  
15 times.  
16 Leave them upside down on your chairs, and they  
17 will be there upon your return. If you will go with  
18 your bailiff at this time.  
19 (Jury excused from Courtroom)  
20 THE COURT: We'll take a fifteen minute recess.  
21 (Whereupon, the Court took a brief recess after  
22 which the case resumed)  
23 (The following occurred out of the presence of the  
24 jury)  
25 THE COURT: All right, Mr. Floyd. You have a

1     matter you wanted to address?

2           MR. FLOYD:  Yes, Your Honor.  At this time, Your  
3     Honor, we would move for a mistrial.

4           I understand this is a matter with great emotion,  
5     but the whole time the victim's mother, seated right  
6     here next to the jury, has just cried her eyes out the  
7     whole time.

8           Your Honor, I can't help but think about the impact  
9     it is having on the jury, and we would respectfully  
10    at this time move for a mistrial.

11          THE COURT:  All right.  Thank you, Mr. Floyd.

12          Yes, Mr. Waters?

13          MR. WATERS:  Your Honor, obviously her little boy  
14     died and we concede this is a very emotional trial.  I  
15     don't believe -- obviously, a motion for mistrial is  
16     very extreme.

17          I do not think anything has occurred that would  
18     rise to the extreme relief asked for.

19          THE COURT:  All right.  I'm going to deny the mo-  
20     tion for a mistrial.  It is an extreme remedy.

21          I will advise the jury upon their return that the  
22     verdict may not be based upon sympathy, passion, pre-  
23     judice or any other consideration that will not be a  
24     part of this record.

25          Mr. Floyd, if there is anything further you would

1     like me to advise the jury in this regard, I will cer-  
2     tainly consider it, if you have certain language or  
3     anything you want to write out for me to consider.

4             I do realize the emotions that are involved on  
5     both sides of the Courtroom from my observations.

6             Quite frankly, I thought I saw the maternal grand-  
7     father being very emotional also.

8             That is not in any way a criticism but just by way  
9     of observation. There are perhaps others.

10            The jury has a difficult task, as it is, and do  
11     not make that task any more difficult for the jury than  
12     it has to be.

13            I would advise that if you cannot control your  
14     emotions it would be best not to be in the Courtroom.  
15     There are certain locations from which you could observe  
16     the trial; for example, back in the press room, as far  
17     as one side is concerned, or the other, if you feel  
18     you cannot control your emotions.

19            For example, as an aside, the ceremonial composi-  
20     tion of the Third United States Infantry that escorts  
21     our soldiers on a daily basis at Arlington and the way  
22     in which they are able to control their emotions -- I  
23     would recommend that for your thought processes.

24            I do not wish to have to remove anyone from the  
25     Courtroom in this regard.

1           Again, Mr. Floyd, if there is anything you would  
2     like me to consider in addition, I will certainly con-  
3     sider it.

4           MR. FLOYD: Thank you, Your Honor.

5           (Brief pause)

6           THE COURT: Anything from the State before we  
7     bring our jury?

8           MR. WALKER: No, Your Honor.

9           THE COURT: Mr. Floyd?

10          MR. FLOYD: No, Your Honor. It does appear that  
11     someone left something down there on the bench.

12          MS. WEISS: Your Honor, I believe that belongs to  
13     the victim's grandmother.

14          (Brief pause)

15          THE COURT: Are all the jurors' pads over there?  
16     All right, at each break I want the pads collected  
17     prior to the jury leaving the Courtroom.

18          Sheriff, I want an officer stationed at the back  
19     and I don't want anyone coming or going during the  
20     time in which a witness is on the stand. I don't know  
21     why this gentleman is here in my Courtroom in shorts.

22          I thought there was something posted on the Court-  
23     house door that gave the proper dress code for this  
24     Courtroom.

25          So you may escort him out, Sheriff, and anyone else

1     -- if there is anyone else dressed like that, you can  
2     escort them out also.

3             People can leave between witnesses but not during  
4     witnesses. They can't come in. They can't leave.

5             Now, back to the issue. Do we know whose pads  
6     these are?

7             MS. WEISS: Yes, Your Honor.

8             THE COURT: Whose pads are these?

9             MS. WEISS: They belong to the victim advocate and  
10     the victim's mother from yesterday.

11            THE COURT: Well, I think it is very unseemly just  
12     to leave them around. If they would please keep pos-  
13     session of them throughout the course of the trial. You  
14     may have these now, Madam Attorney General.

15            MS. WEISS: Thank you.

16            THE COURT: Anything additionally you would like  
17     me to address with the jury upon their return?

18            MR. FLOYD: I don't have magic words for you, Your  
19     Honor . . .

20            THE COURT: I'm not sure I have any magic words  
21     either, Mr. Floyd, but, again, I will remind all parties  
22     in the Courtroom that it is a difficult task that the  
23     jurors have in all cases, but cases like this are more  
24     so.

25            They are many times charged with emotions on both

1 sides, but I will not allow anything arbitrary to in-  
2 fluence this jury in any way or any manner, and, if I  
3 have to, I will remove and ban people from the Court-  
4 room, if necessary.

5 Bring us our jury, please.

6 (Jury returned to Courtroom)

7 THE COURT: All right, does everyone have their  
8 pad? Anyone missing their pad?

9 (No audible response)

10 All right, thank you very much. Ladies and gen-  
11 tlemen, before we start back, I would like to advise  
12 you that in this or in any case you cannot yourself  
13 to be governed by sympathy, by prejudice, by passion,  
14 or public opinion, by emotion, or any other arbitrary  
15 factor that is not in evidence in this case.

16 Both the State and the Defendant have a right to  
17 expect that each of you will carefully and impartially  
18 consider all of the evidence in the case, and that  
19 each of you will follow the law as I explain the law  
20 to you.

21 Please remember that you decide the case based on  
22 the evidence from the sworn witnesses, testifying under  
23 oath, any documentary evidence, any inferences you,  
24 the jury, choose to draw from the evidence.

25 With that being said, we will continue in the



1 trial of the case by the presentation of evidence by  
2 the State in its case in chief.

3 Mr. Attorney General, you may call your next wit-  
4 nes.

5 MR. WATERS: Thank you, Judge. We would call Adam  
6 Clayton.

7 THE COURT: All right. Come around and be sworn,  
8 please.

9 ADAM CLAYTON, being duly  
10 sworn, testified as follows:

11 CLERK: Please have a seat on the witness stand.  
12 Once you are seated, please speak up and state your  
13 full name on the record.

14 WITNESS: Adam Clayton.

15 DIRECT EXAMINATION

16 BY MR. WATERS:

17 Q. Mr. Clayton, how are you doing today?

18 A. I'm fine, sir.

19 Q. Thank you. Can you tell us what your current pos-  
20 ition is?

21 A. I am a K-nine deputy with the Lexington County  
22 Sheriff's Department.

23 Q. All right, and how long have you been -- well,  
24 give us a brief history of your law enforcement exper-  
25 ience?

MR. CLAYTON ON DIRECT

1 A. I've been in law enforcement since '01, approxi-  
2 mately ten years now. Eight of those years I have been  
3 in K-nine either with Calhoun County or Lexington  
4 County.

5 Q. Do you have a particular dog you work with?

6 A. I do.

7 Q. And what's his name?

8 A. His name is Gunter.

9 Q. What kind of -- just what kind of jobs have you  
10 had? Has he had?

11 A. He is what you call a full service patrol dog. He  
12 can --that pretty much means he does everything. He  
13 can find people, track them down, whether it be a bad  
14 guy or a missing child, something like that.

15 He does apprehension, which is the biting. He  
16 also can find drugs.

17 Q. He's a German Shepherd, is that right?

18 A. He's a -- he's half German Shepherd and half Bel-  
19 gan Melanois.

20 Q. All right. Let me ask you, back on January 19th,  
21 2010, were you employed with the Lexington County Sher-  
22 iff's Department at that time?

23 A. Yes.

24 Q. And do you recall what you were doing on that day?

25 A. On that day I was on my way home from K-nine

MR. CLAYTON ON DIRECT

1 training, such as today which is our normal training  
2 day, and we train all the various aspects of our K-nines  
3 on Tuesdays to keep them up to date for certification  
4 purposes.

5 I was on my way home to Swansea from K-nine train-  
6 ing somewhere in the County.

7 Q. You live in Swansea?

8 A. I do.

9 Q. And on your training day, do you typically respond  
10 to calls? Is that what you usually do?

11 A. No. On training days we only respond to K-nine  
12 calls. Obviously if they need a K-nine for any reason  
13 we will respond to that.

14 But that day is set aside for training purposes.

15 Q. You said you were on your way home?

16 A. Yes.

17 Q. Do you recall what time that was?

18 A. Eight o'clock -- eightish -- eight P.M.

19 Q. And did anything unusual happen?

20 A. I was on my way home and in the Gaston area of  
21 Lexington County when I heard a dispatch by Sergeant  
22 Howard or was advised by radio that there was secure  
23 the scene for EMS on Oakey Springs Drive in the Gaston  
24 area of Lexington County.

25 Q. Let me ask you, what is a secure the scene for EMS

MR. CLAYTON ON DIRECT

1 all about?

2 A. A secure the scene is something that we as law en-  
3 forcement respond to make sure the scene for EMS is  
4 danger-free, so to speak, or as danger-free as possi-  
5 ble.

6 EMS personnel respond to different scenes for dif-  
7 ferent things, anything of a high nature, whether it be  
8 still a suspect on the scene, or there may be danger to  
9 EMS personnel.

10 So we respond and make sure they are going to be  
11 okay so as to allow them to do their jobs.

12 Q. When you heard that call on the radio, what did  
13 you decide to do?

14 A. When I heard that call go out on the radio, I im-  
15 mediately started heading in that direction.

16 Q. Is there a particular reason why you responded to  
17 that?

18 A. Well, that call went out as a six month old infant  
19 that was not breathing, and I was two or three miles  
20 away from the scene, so I wanted to respond to see if  
21 there was anything I could do.

22 Q. Let me ask you this, do you have any sort of train-  
23 ing in emergency medical care or anything along those  
24 line?

25 A. I have training along those lines for CPR. I have

MR. CLAYTON ON DIRECT

1     been certified over the past ten years and taken several  
2     classes to update me and refresh me as far as being able  
3     to perform CPR.

4     Q.    So did you ultimately respond to 317 Oakey Springs?

5     A.    I did.

6     Q.    And when you arrived at the mobile home, what did  
7     you see?  What's the first thing you saw?

8     A.    When I arrived at the mobile home at 317 Oakey  
9     Springs Drive, I exited my car and I observed a person,  
10    a human figure, in the doorway of the residence.

11    Q.    Continue, please.

12    A.    I saw them disappear back into the house, and I  
13    went up to the little porch area and went in the house.

14    Q.    What did you see when you got inside?

15    A.    As soon as I opened the door, the first thing I  
16    saw was that the house was in complete disarray.  It  
17    was a mess.

18           Household items and clothing were just all over  
19    what appeared at that time to be a living room to me.

20    Q.    I'm going to show you what's been marked State's  
21    67 for identification, and do you recognize that?

22    A.    Yes, sir.  That's the condition in that home.

23    Q.    That's what you saw when you went in the house?

24    A.    Correct.

25           MR. WATERS:  Your Honor, I'd move State's 67 into

MR. CLAYTON ON DIRECT

1 evidence, I believe without objection.

2 MR. FLOYD: No objection.

3 THE COURT: State's 67 in evidence without objec-  
4 tion.

5 (Photograph admitted without objection as State's  
6 Exhibit 67)

7 BY MR. WATERS:

8 Q. It's a little dark, but is that the scene that  
9 you saw when you went inside?

10 A. Yes, sir, it is.

11 Q. And do you recall where -- what did you see when  
12 you went inside, as far as individuals or anything?

13 A. When I went inside immediately I did not see any-  
14 one. I heard voices coming from my left.

15 So as you come in through the door, that door there,  
16 that should be the entrance to the bedroom. Correct?

17 Q. Okay.

18 A. I heard voices coming from that area. I directed  
19 my attention toward that area, and I remember stepping  
20 over certain things in the -- that were in the way.

21 Q. All right. As you stepped over those things, did  
22 you move anything or turn anything over or anything of  
23 that nature?

24 A. No, I didn't touch anything.

25 Q. What did you find when you got inside the bed room

MR. CLAYTON ON DIRECT

1 area?

2 A. Well, as I got closer to the bedroom, I could see  
3 an infant child laying on the floor. He was facing the  
4 living room, laying on his back.

5 That was the first impression I got, that the  
6 baby's color was blue.

7 Q. Blue where?

8 A. His whole body.

9 Q. All right, did you see any other individuals in  
10 the room?

11 A. At the time, I didn't know who it was, but then  
12 I later learned that it was the grandfather of the  
13 child. He was performing what appeared to be CPR on  
14 the child.

15 Q. Did you see anybody else?

16 A. As I got farther into the room and started commun-  
17 icating with the grandfather, and just inside the  
18 threshold of the door, I could see who I later learned  
19 to be the Defendant, Lexie Dial, on the bed on his  
20 back.

21 Q. Did he say anything or do anything?

22 A. No. He did not.

23 Q. What did you do at that point?

24 A. . .

25 THE COURT: Would you get our lights back on for

MR. CLAYTON ON DIRECT

1 us, please.

2 MR. WATERS: Yes, sir.

3 BY MR. WATERS:

4 Q. What did you do next?

5 A. At that point, I obviously saw the baby was -- it  
6 appeared he was not getting enough oxygen so I got down  
7 on the floor and listened for a heartbeat by putting  
8 my ear up to the baby's chest.

9 I did not hear anything, so I started CPR, doing  
10 chest compressions, and a few breaths of air, and then  
11 I realized that I needed to make sure that there was  
12 not an obstruction in the baby's airway.

13 So that is when I took my finger, my right index  
14 finger, and I swept the baby's mouth to see if there  
15 was anything stopping him from breathing.

16 I did not find anything, so I continued with com-  
17 pressions and CPR procedure.

18 Q. And did anyone else arrive?

19 A. At that point?

20 Q. While you were doing CPR?

21 A. While I was doing CPR, EMS eventually arrived.

22 Q. Okay, and what did they do?

23 A. Well, when EMS got there, obviously that is their  
24 job and they are trained better than I am, so I let them  
25 take over.



MR. CLAYTON ON DIRECT

1 Q. Is that what they did?

2 A. That's exactly what they did.

3 Q. And what did you do after EMS took over?

4 A. When EMS started CPR on the child, they asked me  
5 what happened.

6 Q. Okay, and what did you do?

7 A. At that point I asked the Defendant, Lexie Dial,  
8 what had happened?

9 A. Was that for the purpose of trying to provide in-  
10 formation to EMS so they could render aid?

11 A. Yes, sir.

12 Q. All right, and what did the Defendant tell you  
13 or how did he tell you it happened?

14 A. At that point, we were standing in the kitchen  
15 area.

16 Q. Okay.

17 A. And . . .

18 Q. Before we go on, let me show you what's been  
19 marked as State's Exhibit 76 for identification and  
20 see if you recognize that?

21 A. . . .

22 Q. Do you recognize that?

23 A. I do.

24 Q. And what is that?

25 A. That appears to be the threshold of the kitchen

MR. CLAYTON ON DIRECT

1 area, or of the kitchen.

2 Q. Okay.

3 MR. WATERS: Your Honor, I would offer into evi-  
4 dence State's 76 in evidence.

5 THE COURT: Mr. Floyd?

6 MR. FLOYD: No objection.

7 THE COURT: State's 76 in evidence without objec-  
8 tion.

9 (Photograph admitted in evidence without objection  
10 as State's Exhibit 76)

11 BY MR. WATERS:

12 Q. Is that the kitchen area you described?

13 A. Yes, it is.

14 Q. And approximately where were you standing?

15 A. Basically . . .

16 (Sound of phone ringing)

17 THE COURT: Take that phone into custody, please,  
18 Sheriff.

19 You may continue.

20 A. The view you see there is the view I had, so I'm  
21 facing that direction.

22 Q. All right, and what did the Defendant tell you when  
23 you asked him what happened?

24 A. Well, I asked him what happened, and he stated  
25 that the baby fell on a table.

MR. CLAYTON ON DIRECT

1 Q. Did he provide any detail or did you further ques-  
2 tion him?

3 A. Yes, I did. I didn't completely understand that,  
4 so I said, he fell on the table? Was he walking at  
5 the time, and he said, no.

6 Okay, the baby is too young to walk, and that is  
7 when I realized that he was a very small child.

8 Q. All right, and did he say anything about where  
9 the baby hit the table or how he hit the table?

10 A. Right. We went further, and I said, well, when  
11 the baby hit the table, what happened, and he said,  
12 the baby hit the back of his head, and at that point  
13 he gestured to the back of his head and said the baby  
14 hit the back of his head.

15 Q. And what did he say after that?

16 A. At that point, he said at that point the baby  
17 started having trouble breathing and was making noise,  
18 so he began CPR on the child.

19 Q Did you get that information back to EMS personnel  
20 who were working on Josh?

21 A. Yes, sir, I did

22 Q. What was the Defendant's demeanor like during the  
23 time you were speaking with him?

24 A. The whole time I was speaking with the Defendant  
25 in reference to the Baby Joshua's condition, he seemed

1 spaced out, as if he was high.

2 As -- he couldn't make eye contact and when he  
3 spoke to me, he mumbled. I had to keep asking him  
4 questions and repeating him or getting closer to him  
5 so I could understand what he was saying.

6 His eyes were glossy, they were red, but he wasn't  
7 crying. He was very emotionless.

8 Q. Emotionless?

9 A. Emotionless.

10 Q. Did he ever ask about the welfare of the child or  
11 anything, showing concern for the child?

12 A. Not as far as I ever heard.

13 Q. Did he ask about anything else or anyone else?

14 A. One of the things that really sticks out in my  
15 mind after responding to the scene was the fact that  
16 he constantly -- I don't know how many times, but it  
17 was several -- he asked about Blue, where is Blue,  
18 where is Blue?

19 Five or six times I heard him ask that in the  
20 thirty minutes I was there, where is Blue. Well, I  
21 later learned that Blue was the dog. He was concerned  
22 about the dog, Blue.

23 Q. Did he make any other requests that you heard him  
24 say?

25 A. I did not hear him make any other requests.

MR. CLAYTON ON DIRECT

1 Q. All right.

2 MR. WATERS: Your Honor, Court's indulgence.

3 THE COURT: Yes, sir.

4 (Brief pause in the proceeding)

5 BY MR. WATERS:

6 Q. Those are all the questions I have. Please answer  
7 any questions Mr. Floyd may have.

8 THE COURT: Mr. Floyd.

9 MR. FLOYD: May it please the Court? Thank you,  
10 Your Honor.

11 CROSS EXAMINATION

12 BY MR. FLOYD:

13 Q. Officer Clayton, one of the things you had to step  
14 over was a broken table, was it not?

15 A. Yes, sir.

16 Q. In fact, there was a broken coffee table right  
17 there in the middle of that room?

18 A. Yes, sir.

19 Q. And that was the table that Mr. Dial said the  
20 baby fell on, is that correct?

21 A. That's my understanding.

22 Q. Now, you don't know Mr. Dial, do you?

23 A. No, sir.

24 Q. You don't know what his normal reaction would be  
25 to a crisis?

MR. CLAYTON ON CROSS

1 A. I never met him before that night.

2 Q. Now, you were giving the child CPR?

3 A. Yes.

4 Q. Can you explain what CPR is, in case some of the  
5 jurors may not be familiar with it? What the proced-  
6 ures of CPR would be?

7 A. I can give you my basic account of it, if that's  
8 okay.

9 Q. Yes.

10 A. CPR, as most of you I'm sure know, is chest com-  
11 pression and then breaths of air to try to revive a  
12 person.

13 Q. And how long did you perform CPR on the child?

14 A. What time frame are you asking? Just the total  
15 time frame?

16 Q. Yes.

17 Q. Probably no more than five minutes. Three to five  
18 minutes. EMS was there pretty quickly after I got in  
19 there.

20 Q. Did they continue the CPR procedure?

21 A. Yes, sir.

22 Q. So basically what you do is put pressure on the  
23 child's chest and then you alternate blowing into the  
24 child's mouth?

25 A. Yes.

MR. CLAYTON ON CROSS

1 Q. And that's what you did?

2 A. Yes, sir.

3 Q. And when you got there, a man who you later dis-  
4 covered was the child's grandfather was already per-  
5 forming CPR?

6 A. That's correct.

7 Q. When you got there?

8 A. That's correct.

9 Q. And you don't know how long he had been there?

10 A. I do not.

11 Q. And isn't it true that you -- you observed the  
12 baby, did you not?

13 A. I did.

14 Q. And you did not observe any physical injuries to  
15 the baby?

16 A. That's correct.

17 Q. And the room was light enough that you got a good  
18 look at the baby?

19 A. Average.

20 Q. And you are trained to observe, are you not?

21 A. I am, yes, sir.

22 Q. And you didn't observe anything; any injuries to  
23 the baby?

24 A. No, I did not. There were no physical injuries  
25 to the baby, other than the child being blue.

MR. CLAYTON ON CROSS

1 Q. Thank you, Mr. Clayton. I have no further ques-  
2 tions.

3 THE COURT: Any Redirect?

4 MR. WATERS: Nothing further, Your Honor.

5 THE COURT: Thank you for being with us today. You  
6 may step down.

7 MR. WATERS: May he be excused, Your Honor?

8 THE COURT: Any objections?

9 MR. FLOYD: No, sir.

10 THE COURT: You may be excused, yes, sir.

11 (Witness excused)

12 THE COURT: All right, you may call your next wit-  
13 ness, Madam Attorney General.

14 MS. WEISS: Yes, Your Honor. The State calls Mark  
15 Schermerhorn.

16 THE COURT: All right. Yes, sir, if you'd come  
17 around and be sworn, please.

18 MARK SCHERMERHORN, being  
19 duly sworn, testified as follows:

20 CLERK: Have a seat and once you are seated, loud  
21 and clear, state your full name, spelling your last  
22 name.

23 WITNESS: My name is Mark Schermerhorn. Last name  
24 spelled S C H E R M E R H O R N.

25 DIRECT EXAMINATION



1 BY MS. WEISS:

2 Q. Good morning.

3 A. Good morning.

4 Q. Mr. Schermerhorn, would you please tell the jury  
5 where you are currently employed?

6 A. I work part-time for the County Emergency Medical  
7 Services. I work full-time for American Medical Pro-  
8 viders which is a private ambulance service.

9 Q. How long have you been working on ambulances?

10 A. I have been in EMS for approximately twenty years.  
11 I've been certified since late 1990 or early 1991.

12 Q. And what is your current rank with EMT?

13 A. Private First Class and Lexington County MS.

14 Q. And you are an EMT, emergency medical technician?

15 A. Yes, maam.

16 Q. Would you explain to the jury what that means?

17 A. There are four basic levels of emergency medical  
18 technician. You have first responder who will come out  
19 and be able to provide basic first aid.

20 You have emergency medical technician basic, which  
21 is myself, which is a little more advanced than a first  
22 responder.

23 You have EMT intermediate, a person who can do  
24 IVs, start an intravenous to administer fluids, and  
25 can do intratracheal intubations.

MR. SCHERMERHORN ON DIRECT

1           And then you have a paramedic who can do all of  
2   that, plus cardiovert.

3           REPORTER: Cardio . .

4           WITNESS: vert -- V E R T.

5   A.   Which is to apply electricity to the heart. They  
6   can defibrilate, which is the same thing. They can also  
7   give cardiac medications, pain medications, and any  
8   other medications that are needed.

9   BY MS. WEISS:

10   Q.   And when you ride with the Lexington County EMS,  
11   are you usually with a paramedic?

12   A.   Yes, maam. There is always an EMT basic or inter-  
13   mediate, and a paramedic.

14   Q.   How long have you been with Lexington County EMS?

15   A.   Approximately three years.

16   Q.   Were you working on January 19, 2010, around eight  
17   o'clock in the evening?

18   A.   Yes, maam. My shift started at seven o'clock that  
19   evening.

20   Q.   Do you recall this evening in particular?

21   A.   Yes, maam, I do.

22   Q.   At seven o'clock, how do you find out who you are  
23   paired up with for the evening?

24   A.   You can find out after seven o'clock in the evening  
25   prior to your shift. There is a schedule line that we

MR. SCHERMERHORN ON DIRECT

1 call to find out which substation you are assigned to,  
2 and it also tells you who your partner would be.

3 Q. And what do your shifts run?

4 A. Seven A.M. to seven P.M., and seven P.M. to seven  
5 A.M.

6 Q. Your shift was seven P.M. to seven A.M.?

7 A. Yes, maam.

8 Q. On the evening of January 19, 2010, who were you  
9 paired up with?

10 A. It would be Sergeant Debra Fields Kermack.

11 Q. Which substation were you working out of?

12 A. Swansea Substation.

13 Q. Do you recall a call you received that night when  
14 you came on shift?

15 A. Yes, maam. It was approximately ten after eight.  
16 The day crew was late getting off so we were getting  
17 prepared to receive the truck.

18 Just as they backed the unit in and we were check-  
19 ing off our truck as we do at the beginning and end of  
20 each shift, the tones dropped on our pager, which is a  
21 pager that just beeps or vibrates to let us know we  
22 have a call.

23 It went off. The NDT . . .

24 REPORTER: I'm sorry. The what?

25 WITNESS: The NDT.

MR. SCHERMERHORN ON DIRECT

1 A. It is the terminal, which is our computer in the  
2 truck. It sends off a tone, and that also alerts us  
3 that we have a call.

4 The call came in as an unresponsive pediatric  
5 non-breathing.

6 Q. Where does that call rank in seriousness to the  
7 other calls you receive?

8 A. That's a life-threatening call, an emergent call.

9 Q. When you responded, did you respond with just Ser-  
10 geant Fields?

11 A. No. We also had EMT Corporal Lee with us.

12 Q. And what is her training?

13 A. Her training is as an EMT intermediate, which is  
14 one level above mine.

15 Q. Why would you take three members of EMS to a call  
16 like that?

17 A. It gives an extra set of advanced life support  
18 hands. That way we can just -- it's pretty much called  
19 a load and go.

20 That would allow me to drive and you would have  
21 two advanced people in the back of the unit caring for  
22 the patient.

23 Q. The call directed you to 317 Oakey Springs Drive?

24 A. Correct.

25 Q. And are you familiar with that address?

MR. SCHERMERHORN ON DIRECT

1 A. I am now, yes, maam.

2 Q. Is that in Lexington County?

3 A. Yes, maam.

4 Q. Approximately how far away were you from that  
5 address?

6 A. Less than five miles.

7 Q. When you got this call, the pediatric non-breath-  
8 ing, approximately how long did it take you to get the  
9 truck ready and get to the address?

10 A. According to the report, patient care report, we  
11 received the call at twenty fourteen, which would be  
12 eight fourteen in the evening, and we were dispatched  
13 at twenty fifteen, which is eight fifteen in the even-  
14 ing; left our substation at eight sixteen, and arrived  
15 at the residence at eight twenty-three. Seven minutes.

16 Q. When you arrived at 317 Oakey Springs Drive, what did  
17 you find?

18 Who was the first person who went into the house?

19 A. I was the first person. I was driving and was the  
20 first person out of the truck.

21 As I got out of the front of the truck and went  
22 around the front of the vehicle, I noticed an elderly  
23 gentleman towards the back passenger side of a pickup  
24 truck, smoking a cigarette and saying, save my baby,  
25 save my baby.

1 Q. Do you know who that person was?

2 A. No, maam, I do not.

3 Q. And as you got close to the house, did you see  
4 anyone else?

5 A. There was a gentleman, as you're looking at the  
6 front door of the residence, to the right of the front  
7 door, squatting in almost a catcher's like position,  
8 sitting there smoking a cigarette.

9 Q. Did that person say anything to you?

10 A. No, maam. He was extremely stoic.

11 Q. How would you say as far as age -- what was the  
12 difference in age of the two men?

13 A. The gentleman at the pickup truck was an older  
14 gentleman, possibly in his fifties. The gentleman at  
15 the front door was a very younger man, late teens or  
16 early twenties.

17 You know, it was just a really quick visual.

18 Q. And what did you do?

19 A. With my crew members close behind, I went in the  
20 house. I noticed the house looked like the interior  
21 was imploded. There was stuff all over the house.

22 I looked to my left. I saw a broken coffee table  
23 that we had to step over, and other items that we had  
24 to step over.

25 I noticed in the bedroom to the left of the front

1 door on the floor, with the baby's head toward the liv-  
2 ing room, a K-nine officer performing CPR on the child.

3 Q. Did you touch or remove anything in that living  
4 room?

5 A. No, maam.

6 Q. Nothing?

7 A. No, maam. I stepped over as much as I could.

8 Q. You didn't pick anything up or move anything?

9 A. No, maam.

10 Q. And where did you go once you went in?

11 A. I went straight to the child and went to the child's  
12 head because on the NBT notes we got a note that stated  
13 that the child was dropped onto the coffee table.

14 I did a quick palpative, which is to feel the child's  
15 head. I noted absolutely no deformities or bruising, no  
16 cuts. I felt no crepitus, which is the grating of bones  
17 or broken bone.

18 That's when I assumed CPR from the officer.

19 Q. Who did a further exam of the child, looking in  
20 the child's eyes?

21 A. Sergeant Fields.

22 Q. What did yo do then?

23 A. I kept part of me assuming CPR. I verified the  
24 fact that we had no brachial, which is the artery that  
25 runs in the arm, and we had no femoral pulses, which

MR. SCHERMERHORN ON DIRECT

1 is the artery that runs on the inside of the leg toward  
2 the pelvic region.

3 And at that point I relayed to my partners, we have  
4 no pulse, we have no respirations. I'm continuing CPR.

5 At that point, one of my partners reached around  
6 me and placed the cardiac pads which go on the front  
7 and the rear of the patient to allow us to see and hear  
8 if there are any electrical or muscular activities.

9 Once we got those pads on, I stopped CPR quickly  
10 so we could get a look on the monitor.

11 We noted asystole which is no cardiac activity at  
12 all, electrical or mechanical.

13 I scooped the child up with the equipment still  
14 attached and headed for the ambulance.

15 Q. Is it your recollection that any family members  
16 -- did any family members come into the room while you  
17 were in there?

18 A. No, maam.

19 Q. Did anyone try to ask you what you were doing?

20 A. No, maam.

21 Q. Thank you. No further questions. Please answer  
22 any questions Mr. Floyd may have.

23 A. Yes, maam.

24 THE COURT: Thank you, Madam Attorney General.

25 Mr. Floyd?



MR. SCHERMERHORN ON CROSS

1 MR. FLOYD: Thank you, Your Honor. May it please  
2 the Court?

3 CROSS EXAMINATION

4 BY MR. FLOYD:

5 Q. Mr. Schermerhorn, how long did you perform CPR on  
6 the child?

7 A. Approximately two minutes.

8 Q. Two minutes?

9 A. Yes, sir.

10 Q. And would you agree there were no bruises on the  
11 child?

12 A. The child looked healthy, well fed and well main-  
13 tained.

14 Q. No bruises on his chest, face, arms or legs?

15 A. Not that I saw at that point, no.

16 Q. Thank you. I have no further questions.

17 THE COURT: Any Redirect?

18 MS. WEISS: Very briefly.

19 REDIRECT EXAMINATION

20 BY MS. WEISS:

21 Q. You talked about doing CPR?

22 A. Yes, maam.

23 Q. Can you explain to the jury how CPR is different  
24 on an infant and an adult?

25 A. In an adult, you would take both hands and lock

MR. SCHERMERHORN ON REDIRECT

1 -- may I stand?

2 THE COURT: Yes, you may stand but keep your voice  
3 up.

4 WITNESS: Yes, sir.

5 A. You would place both hands, palm down, in between  
6 the nipple line, and compress one and a half to two  
7 inches straight down for a hundred beats per minute.

8 On an infant, you take two fingers between the  
9 nipple line and compress about a half inch down at a hun-  
10 dred twenty to a hundred and forty beats per minute.

11 Q. Thank you. Nothing further.

12 THE COURT: Recross, Mr. Floyd?

13 MR. FLOYD: Two more questions, Your Honor.

14 RECROSS EXAMINATION

15 BY MR. FLOYD:

16 Q. You said you observed a K-nine officer on the  
17 scene doing CPR?

18 A. Yes, sir.

19 Q. What procedure was he using?

20 A. He was using the two finger procedure between the  
21 nipple line.

22 Q. No further questions.

23 THE COURT: Thank you. You may step down.

24 WITNESS: Thank you.

25 MS. WEISS: May he be excused?

1 THE COURT: Any objection?

2 MR. FLOYD: No objection.

3 THE COURT: Yes, sir, you may be excused.

4 (Witness excused)

5 THE COURT: You may call your next witness.

6 MS. WEISS: Your Honor, the State calls Amy Lee.

7 Corporal Lee.

8 THE COURT: All right, Corporal Lee. Come around

9 and be sworn, please.

10 AMY LEE, being duly sworn,

11 testified as follows:

12 CLERK: Please have a seat, and once you are seated

13 speak up loud and clear and state your full name for

14 the record.

15 WITNESS: My name is Amy Lee.

16 DIRECT EXAMINATION

17 BY MS. WEISS:

18 Q. Good morning.

19 A. Good morning.

20 Q. Where are you currently employed?

21 A. Lexington County Emergency Medical Services.

22 Q. And what is your position there?

23 A. I'm a Corporal, which is an intermediate. It's

24 the step above a basic. I can sometimes crew chief or

25 be a basic EMT.

MS. LEE ON DIRECT

1 Q. How long have you been working with EMS?

2 A. About five and a half years.

3 Q. When did you become an EMT intermediate?

4 A. About a year into -- I did a year as a basic, and  
5 I then went further to the intermediate, so probably  
6 about four years.

7 Q. Typically what are the shifts of EMS?

8 A. From seven A.M. to seven P.M., and seven P.M.  
9 to seven A.M. Twelve hour shifts.

10 Q. Were you working on Tuesday, January 19, 2010?

11 A. Yes, maam.

12 Q. What shift were you working that day?

13 A. I was on the day shift, the A.M. crew. I had been  
14 on from seven A.M.

15 Q. And which substation were you working out of?

16 A. The Swansea substation.

17 Q. Do you remember approximately what time you got  
18 back from your last call that day or what was supposed  
19 to be your last call that day?

20 A. It was roughly quarter to eight or in that time  
21 frame somewhere.

22 Q. And do you recall -- did you clock out and go  
23 home once you got in that night?

24 A. No, maam.

25 Q. What do you remember happening when you brought

MS. LEE ON DIRECT

1 your truck back that night?

2 A. We were in the process of doing the change where  
3 -- the crew change where you have to turn over the  
4 equipment to the paramedics and the crew chief signs  
5 for drugs.

6 In the process of doing that, a call had come out  
7 when we were only there minutes for an infant not breath-  
8 ing, approximately five months old, and asked the crew  
9 chief, Sergeant Fields, if she would like for another  
10 person to be on board, because I don't believe at that  
11 time they had told us whether or not our service was  
12 already en route.

13 Q. And why is that important?

14 A. It allows a second set of hands besides the driver  
15 in an emergent call.

16 Q. And a pediatric non-breathing call, is that an  
17 emergent call?

18 A. Well, all our calls are emergent because they are  
19 nine one one, but that is high.

20 Q. And what struck you that made you ask if they needed  
21 your help?

22 A. Because a pediatric call can be stressful, and know-  
23 ing there is a possibility that they might have to wait  
24 for a driver. It just makes -- it secured the fact that  
25 there was a driver and two people in the back of the

MS. LEE ON DIRECT

1 truck.

2 Q. And you would have been one of the people in the  
3 back of the truck?

4 A. Yes.

5 Q. So you went along on this call?

6 A. I did.

7 Q. When you got to 317 Bogey Springs, where the call  
8 was, where did you go to get out of the truck?

9 A. Well, I was in the back because there's two seats  
10 up front, and being in the back I was communicating  
11 through the window to the paramedic exactly what all  
12 equipment she needed so we could get in quicker.

13 So I was grabbing the monitor, the bag, and I be-  
14 lieve she grabbed the bag and O-two.

15 I was in the back of the truck so I was the third  
16 person actually to make it into the residence.

17 Q. What did you see when you got out of the truck?

18 A. I saw the officer's car there, the pickup truck,  
19 and a gentleman, an older gentleman, standing beside the  
20 pickup truck. He was smoking a cigarette.

21 Then as I walked, the third person, into the house,  
22 a younger fellow was squatted down by the door.

23 Q. And did the person squatted by the door say any-  
24 thing to you?

25 A. Yes.

MS. LEE ON DIRECT

1 Q. What did he say to you?

2 A. Asked me to not let the dog out.

3 Q. Did you have any idea who that man was at the  
4 time?

5 A. No, ma'am.

6 Q. What did you do when he said that?

7 A. I just continued in the door.

8 Q. When you went inside, what did you find?

9 A. There was a lot of items all throughout the house.  
10 There was a wooden table because that was our informa-  
11 tion that the child had been dropped on a table, and  
12 it was broken.

13 We stepped over items there in the doorway where  
14 the baby was laying, and by the time I got in there the  
15 paramedic and EMT were doing CPR, and I was giving them  
16 the rest of the equipment.

17 Q. Did you give hands-on with the baby inside the  
18 house?

19 A. I believe I -- yes, I put the pads on the child.  
20 We placed one on the front and one on the back, being  
21 a child, but that was the only hands-on I actually had.

22 Q. And how long were you all in there before you left  
23 the residence?

24 A. I'd say maybe three or four minutes.

25 Q. Did anyone come in and ask what was going on?

MS. LEE ON DIRECT

1 A. Nobody made any contact with us other than the  
2 officer.

3 Q. Once you got the baby and got back into the truck,  
4 where were you?

5 A. I was in the back of the truck with the paramedic.

6 Q. What did you do at that time?

7 A. I took over compressions and assisted her with  
8 airway once she got the equipment together to intubate  
9 the baby.

10 Q. You say you assisted with airway. What does that  
11 mean?

12 A. We use what's called a BM. It's a breathing mask.  
13 You hook it up to oxygen, and it is a good way of get-  
14 ting oxygen into the baby until you can intubate the  
15 child, which is a secured airway.

16 Q. And do you have to hold that mask on the child?

17 A. We do.

18 Q. Can you demonstrate to the jury how you hold that  
19 mask on the child?

20 A. Um, . . .

21 Q. I realize it's hard to demonstrate without . . .

22 A. Kind of hard. Basically, you secure it onto the  
23 chin bone and above the nasal, and in that way it is  
24 going to seal around the mouth.

25 And you also place an OPA, which is a small little



MS. LEE ON DIRECT

1 hook-type instrument, into the mouth. It allows you  
2 to hold the tongue down so that the tongue doesn't block  
3 the airway. It's just a little plastic piece.

4 Then you hold the mask and . .

5 Q. I show you what's been marked as State's Exhibit  
6 15 for identification. Do you recognize this?

7 A. Yes, I do.

8 Q. What is this?

9 A. That would be the . .

10 THE COURT: Raise your voice a little bit.

11 A. That would be the pediatric child we were doing  
12 CPR on.

13 Q. And that would be the pads that you were talking  
14 about?

15 A. The pads that you lay -- one goes on the back and  
16 the front, and it shows you in the picture the one on  
17 the front of the baby.

18 Then on the back is the back of the pad, which  
19 would be behind the baby. That would be one, two.

20 You usually put a third one on the side, and that  
21 shows you the heart rate.

22 Q. And that was after you all had been with the  
23 child?

24 A. Right.

25 MS. WEISS: We would move to enter State's Exhibit

MS. LEE ON DIRECT

1 15 into evidence.

2 THE COURT: Any objection, Mr. Floyd?

3 MR. FLOYD: No objection.

4 THE COURT: State's 15 in evidence without objec-  
5 tion.

6 (Photograph admitted in evidence without objection  
7 as State's Exhibit 15)

8 BY MS. WEISS:

9 Q. Showing the jury Exhibit 15, is this the pad you  
10 have talked about?

11 A. Yes, maam.

12 Q. What do the pads do?

13 A. That is if you need to shock a patient. We place  
14 it on the front and the back. They are round, circular  
15 pads.

16 There are three of those, placed on the chest, the  
17 back and the side of the child, so you can see the heart  
18 rate and what type of cardiac there is, whether they  
19 have a flat line or not.

20 Q. And you were describing the thing that you put  
21 on the chin?

22 A. Right.

23 Q. Do you see this mark right here on the child?

24 A. Yes, maam.

25 Q. Would that mark have been caused by when you put

MS. LEE ON DIRECT

1 the thing on the child?

2 A. No, ma'am, because you have your thumb placed on the  
3 chin, not on the side.

4 Q. And you said that provides you with what type of  
5 heartbeat?

6 A. Yes.

7 Q. What type of response were you getting?

8 A. In the back of the truck we have what is called a  
9 PEA, which means --this is generally if you're a para-  
10 medic, it means there some type of electrical. The  
11 heart is not actually working, but it has electrical  
12 going through it.

13 Q. So in the time you were with Joshua Dial, from the  
14 home to the hospital, was there ever a heartbeat, a  
15 true heartbeat?

16 A. Not that I recall.

17 Q. Was there ever unassisted breathing?

18 A. Was there ever what?

19 Q. Unassisted breathing.

20 A. He never breathed.

21 Q. No further questions, Your Honor.

22 THE COURT: Thank you, Madam Attorney General.

23 Mr. Floyd?

24 MR. FLOYD: Thank you, Your Honor.

25 CROSS EXAMINATION.

MS. LEE ON CROSS

1 BY MR. FLOYD:

2 Q. Ms. Lee, isn't it true that upon your arrival at  
3 the scene that there were no external signs of injury?

4 A. At that time there was no signs of injury.

5 Q. No bruising?

6 A. No, sir.

7 Q. No lacerations?

8 A. No, sir.

9 Q. No redness, swelling or contusions on the child?

10 A. There was nothing that I saw.

11 Q. No obvious signs of trauma?

12 A. Correct.

13 Q. Now, did you do some CPR also on the child?

14 A. I did.

15 Q. How long did you do CPR?

16 A. Um, I guess maybe seven minutes. I did not stay  
17 in the truck the full way to the hospital because  
18 another paramedic got on.

19 Q. Okay.

20 A. So I'm only guessing on that time.

21 Q. At the house, when you were in the house -- so you  
22 were inside the house before the child was removed from  
23 the house?

24 A. We were in that residence approximately two or  
25 three minutes.

MS. LEE ON CROSS

1 Q. So the rest of the time you were in the presence  
2 of the child?

3 A. Yes, sir.

4 Q. And you gave CPR?

5 A. Yes, sir.

6 Q. Did the EMS vehicle -- how many people were --  
7 well, let me ask you this. Was the child in the back  
8 of the vehicle?

9 A. Yes, sir. On a stretcher.

10 Q. And how many people were back there with the child?

11 A. Myself and Sergeant Fields, the paramedic.

12 Q. All right.

13 A. That allows one to do CPR and one to do airways.

14 Q. You were doing the CPR?

15 A. Yes, sir.

16 Q. You were doing the two fingers?

17 A. Right.

18 Q. Well, I take that back. Were you doing the fingers  
19 and she doing the breaths? Is that the way that worked?

20 A. We would switch off, and in the process of doing  
21 it. You don't do it at the same time, so you do compres-  
22 sion and then you stop and do airways, and then you do  
23 compression, and then you check to make sure there is  
24 no pulse.

25 Q. When you are doing compressions, it's not just a

MS. LEE ON CROSS

1 -- not just one compression and one blow, is it?

2 A. No. You use your two fingers per twenty compres-  
3 sions per minute for a pediatric.

4 Q. So you would do that and then stop, and she would  
5 do the airway?

6 A. Right.

7 Q. Okay.

8 A. She would do the airway and in the meantime she  
9 was getting the tube ready to secure the tube for the  
10 airway for intubation.

11 Q. Was there intubation done prior to the hospital?

12 A. Yes, sir.

13 Q. And when you say intubation, what do you mean by  
14 that?

15 A. It is a secured airway device that sprays into  
16 the trachea and secures an airway for the baby or the  
17 adult, whoever, while you do the compression.

18 It is more secure than doing the mask.

19 Q. Did you start with a mask?

20 A. Yes.

21 Q. And the mask is just something you hold to the  
22 baby?

23 A. It goes over the nose and mouth.

24 Q. Now, is it sized?

25 A. It is.

1 Q. And fit a five month old child?

2 A. It is.

3 Q. How many different sizes do you have?

4 A. We have an infant that is small. It's a little  
5 tiny mask. Then you have a pediatric, a little bit  
6 bigger, for pediatric type patients, and then you have  
7 your adult mask, which is for adults.

8 Q. And which size did you use here?

9 A. I believe the pediatric was used for him.

10 Q. And that would be for children what age to what  
11 age?

12 A. Um, it just depends on the size of the child. He  
13 was a very healthy sized baby.

14 I'd have to look at the paramedic paperwork to  
15 confirm that it was a pediatric mask that we used, the  
16 pediatric one for an infant.

17 Q. Now, the pediatric one would be one to cover a  
18 small child, a five, six, seven year old child?

19 A. Usually pediatric would be probably more like a  
20 two year age frame.

21 Again, it depends on the size of the child. We  
22 have three different sizes.

23 Q. So you really can't say that this was the abso-  
24 lutely correct size for the child's face?

25 A. We had the correct size on the child's face. I

MS. LEE ON CROSS

1 cannot tell you because I did not write the paperwork,  
2 and I didn't see what was actually used.

3 Q. I believe I already asked you this question, but  
4 what you can tell us is that this particular mask was  
5 the same size as this child's face?

6 A. Yes, sir.

7 Q. Okay.

8 A. It was the right size. It fitted properly over  
9 the nose and the mouth.

10 Q. So you are saying this was a five month old size  
11 mask?

12 A. I would have to look at our paperwork. I would  
13 assume that it was the infant or the pediatric, depend-  
14 ing on his size.

15 Q. And the pediatric is for an older child?

16 A. The pediatric is for -- I would say two to probably  
17 three.

18 MS. WEISS: Objection, Your Honor. This has been  
19 asked and answered.

20 THE COURT: I'll allow it.

21 BY MR. FLOYD:

22 Q. The youngest child would get a pediatric mask or  
23 an infant?

24 A. Again, it really would depend on the size of the  
25 child's face, the mouth and the nose, to secure a proper



MS. LEE ON CROSS

1 fit. I can't really say an age. Children do vary in  
2 sizes.

3 Q. What is the oldest child you've used that mask  
4 on?

5 A. Um, the pediatric one? It would depend again on  
6 the size of the child's face.

7 Q. Then what is the youngest child you have used the  
8 pediatric mask on?

9 A. I suppose . .

10 Q. What I'm asking you is every child's face is not  
11 the same, is it?

12 A. No, sir.

13 Q. And the masks are not adjustable, are they?

14 A. No, sir.

15 Q. It's one size?

16 A. Yes, it is.

17 Q. The same mask is used on a seven year old's face,  
18 down to a child just months of age. Is that fair?

19 A. . .

20 Q. There is not a specific size for this child's face?

21 A. She would have gone to a size smaller, if he  
22 needed a size smaller. Or she could go to a size big-  
23 ger as well.

24 Q. But the same size mask would be used on a seven  
25 year old child as a child just months of age?

MS. LEE ON CROSS

- 1 A. It really depends on the child.
- 2 Q. And you have to hold that mask over the child?
- 3 A. Yes, sir.
- 4 Q. And who was doing that?
- 5 A. I believe the paramedic and I were doing it, de-
- 6 pending on what was going on at the moment.
- 7 Q. So there would be some switching back and forth?
- 8 A. Yes.
- 9 Q. Did that mask remain on the child all the way to
- 10 the hospital?
- 11 A. No, sir, because the child was intubated.
- 12 Q. How long was the mask on the child?
- 13 A. I would say again within the general framework
- 14 of five to seven minutes. I did not stay on the truck
- 15 the whole way, so . . .
- 16 Q. When did you get off the truck?
- 17 A. About five to seven minutes down the road.
- 18 Q. What happened at that time?
- 19 A. We pulled over to the gas station at 321, and I
- 20 jumped off, and the paramedic jumped on.
- 21 Q. And who was that?
- 22 A. Captain Jason Hentz. He's the shift captain.
- 23 Q. At that point in time was the mask still on?
- 24 A. I don't recall.
- 25 Q. Let me show you what's been marked as State's

MS. LEE ON CROSS

1 Exhibit 15. Does there appear to be some kind of dis-  
2 colored area there?

3 A. . . .

4 Q. Under the chin?

5 A. More to the side.

6 Q. Some to the -- well, below the jaw?

7 A. Right.

8 Q. Now, that was not present in the home when you  
9 saw the child, was it?

10 A. No, sir.

11 Q. And when was this picture taken?

12 A. I don't know that. I didn't take it.

13 Q. So this very likely then could be a bruise that  
14 came about at some point after the child left the home?

15 A. I have no way of knowing that. I wasn't present  
16 for all this with the child.

17 Q. And I believe you told us that you were with the  
18 child for about seven minutes in the vehicle before you  
19 got out?

20 A. Yes.

21 Q. And the bruise wasn't there when you got to the house?

22 A. No, sir.

23 Q. Thank you. No further questions.

24 THE COURT: Redirect, Madam Attorney General?

25 MS. WEISS: Nothing further, Your Honor.

1 THE COURT: You may step down.

2 MS. WEISS: May the witness be excused?

3 THE COURT: Any objection?

4 MR. FLOYD: No objection, Your Honor.

5 THE COURT: Yes, maam, you may be excused.

6 (Witness excused)

7 THE COURT: You may call your next witness.

8 MR. WATERS: Thank you, Judge. The State would

9 call Kevin Steele.

10 THE COURT: Come around and be sworn, please.

11 KEVIN STEELE, being duly

12 sworn, testified as follows:

13 CLERK: Please have a seat and state your name for

14 the record.

15 WITNESS: Kevin Steele, S T E E L E.

16 DIRECT EXAMINATION

17 BY MR. WATERS:

18 Q. Mr. Steele, how you doing today?

19 A. Excellent. Your self?

20 Q. Fine. Can you tell us your profession?

21 A. I am a field training officer in the south region

22 area.

23 Q. Just give us a quick rundown of your law enforce-

24 ment experience.

25 A. I've been currently employed by the Lexington

MR. STEELE ON DIRECT

1 County Sheriff's Department for three years in my cur-  
2 rent status. Law enforcement experience for three  
3 years.

4 I'm also currently an operator with the Lexington  
5 County Sheriff's Department SWAT team.

6 Q. You're on the SWAT team?

7 A. I am.

8 Q. And what does a SWAT team do?

9 A. Respond to high risk emergencies and barricaded  
10 subjects, things of that nature.

11 Q. You wear a helmet and armor and all that sort of  
12 stuff?

13 A. We do.

14 Q. All right. Back on January 19, 2010, were you  
15 employed with the Sheriff's Department of Lexington  
16 County?

17 A. Yes, sir, I was.

18 Q. And do you recall that date?

19 A. I do.

20 Q. Do you remember responding to an incident at 317  
21 Oakey Springs?

22 A. I do.

23 Q. And what kind of call was that that you had?

24 A. It was actually a call to secure the scene for EMS  
25 which was responding to an approximately six month

MR. STEELE ON DIRECT

1 old non-breathing child.

2 Q. And do you know what county that address is in?

3 A. It's in the Gaston area of Lexington County, South  
4 Carolina.

5 Q. All right. Did you respond to the scene?

6 A. I did.

7 Q. What's the first thing you saw when you got there?

8 A. The first thing I saw was a K-nine police car, I  
9 believe, along with EMS.

10 Q. And what did you do?

11 A. I exited my vehicle and walked up to the front and  
12 there was an individual sitting on the front steps smok-  
13 ing a cigarette.

14 I bypassed him and went ahead and went on inside.

15 Q. Do you know who that individual was who was on the  
16 front steps?

17 A. I do.

18 Q. And who was it?

19 A. It was the Defendant.

20 Q. Can you identify him now?

21 A. I can. He's the Defendant in the white shirt and  
22 striped tie.

23 MR. WATERS: Let the record reflect he has identi-  
24 fied the Defendant.

25 THE COURT: The record will so reflect.

MR. STEELE ON DIRECT

1 BY MR. WATERS:

2 Q. You said you went inside. What did you see when  
3 you went inside?

4 A. First of all I went inside and the door was obvi-  
5 ously open.

6 I heard a commotion to the left and noticed the  
7 surroundings to be completely in disarray with things  
8 thrown everywhere.

9 There was sandwich bags thrown around and chip bags  
10 thrown on the ground. There was a broken small table  
11 on the ground.

12 Q. Okay, and I'm going to show you what has already  
13 been admitted into evidence as State's Exhibit 67 and  
14 ask you to take a look at that.

15 Do you recognize that?

16 A. I do.

17 Q. What does that depict?

18 A. The living room when you first walk in, the room  
19 to the left.

20 Q. Okay, and does that fairly depict what you saw  
21 that evening?

22 A. Exactly.

23 Q. Okay, and when you went in there did you move any-  
24 thing around that was on the floor or anywhere else in  
25 the room?

MR. STEELE ON DIRECT

1 A. No, sir.

2 Q. And is there a reason for that?

3 A. Yes. We try to -- when we go in any house and we  
4 don't know what's going on, we try to walk around and  
5 not to disturb anything.

6 Q. Okay. You can see right here -- let me put this  
7 on the screen, for better or worse.

8 Tell us if you can what that is there?

9 A. A black coffee table.

10 Q. And is that where that table was when you first  
11 arrived?

12 A. Yes, sir.

13 Q. Did you disturb or remove anything?

14 A. No, sir.

15 Q. All right, what was the first thing you saw when  
16 you first went inside other than the scene itself?

17 A. I first went inside and saw everything on the  
18 ground. Of course, I saw EMS and Officer Clayton lean-  
19 ing over a small child.

20 Being that I had a small child at home, and I did-  
21 n't know exactly what was going on, so I removed myself  
22 and walked into the kitchen.

23 Q. And what did you see in the kitchen?

24 A. The kitchen was kind of in disarray and, well, the  
25 Defendant had actually made his way back inside into



1 the kitchen.

2 Not knowing what was going on since I hadn't spoken  
3 to anyone, I talked to the Defendant to see what hap-  
4 pened and what he could tell me about the baby.

5 Q. All right. What did the Defendant say?

6 A. Well, the first thing he asked for was a cigarette,  
7 which I told him I did not smoke, and he asked me if  
8 anyone else had a cigarette. I said I didn't have any  
9 idea.

10 Once again, I asked him what happened.

11 Q. And what did he say?

12 A. He didn't say a whole lot. He was -- he definitely  
13 didn't want to look at me, kind of mulling around and  
14 moving his head from side to side, and he once again  
15 asked me for another cigarette.

16 He finally said that -- he told me he had tripped  
17 over a table and that Joshua had hit his head.

18 Q. And Joshua was . . .

19 A. Joshua was the small child.

20 Q. What was his demeanor like, his emotional state  
21 at this point?

22 A. He showed no emotion whatsoever.

23 Q. Okay.

24 A. In fact, at one point, I almost thought he might  
25 have been high on some kind of narcotic.

1 Just from dealing with people who are under the  
2 influence, dealing with them, he showed alpha signs of  
3 someone under the influence of something.

4 Q. You said he asked about a cigarette. Did he ask  
5 about anything or anyone else?

6 A. After he asked me for a cigarette, he asked me  
7 where Blue was. I found out Blue was his pet dog.

8 Q. Did he ask about the condition of the victim, his  
9 son?

10 A. He never asked me one time.

11 Q. After you talked to him in the kitchen, did you  
12 do anything else to secure or protect the scene?

13 A. I did. Once I spoke with him and tried to gather  
14 what he told me -- I believe EMS had loaded the small  
15 child in the ambulance.

16 At that time we could have had a possible crime  
17 scene, so to preserve anything if it was a crime scene,  
18 I went ahead and put yellow crime tape completely around  
19 the entire property.

20 Once everyone was outside of the house, I shut the  
21 door to where no one else could walk in, so as to pre-  
22 serve the crime scene if it was a crime scene.

23 Q. Okay. Where was Josh at this time?

24 A. He was already in the ambulance heading to the  
25 hospital.

MR. STEELE ON DIRECT

1 Q. So he was taken by EMS?

2 A. He had already left.

3 Q. Did you ask the Defendant to do anything?

4 A. I did. Once I wrapped the crime scene tape -- it  
5 was in January and it was cool outside that night. He  
6 was smoking a cigarette, and I asked if he wanted to  
7 sit back in my car where it was warm. He did so.

8 I asked him if he wanted to write me a statement,  
9 which he said he would.

10 Q. And was he arrested or cuffed or anything like  
11 that?

12 A. No, sir.

13 Q. So he sat in the patrol car, and what happened  
14 next?

15 A. He sat in my patrol car for quite a while. I let  
16 him sit in the front seat writing up a report. It  
17 didn't seem like he was writing a whole lot at the  
18 time.

19 He then asked me if he could get out and smoke a  
20 cigarette, which he's not going to smoke in my car, so  
21 I allowed him to step outside my vehicle and . .

22 Q. Let me stop you for a minute. Did you give him  
23 anything once you got him to the car?

24 A. I gave him a piece of paper and a pen so he could  
25 write a statement.

MR. STEELE ON DIRECT

1 Q. What kind of paper was it?

2 A. A voluntary statement form.

3 Q. I'm going to show you what's been marked as State's  
4 65 for identification. See if you recognize that?

5 A. I do.

6 Q. What is that?

7 A. That's one of the Lexington County Sheriff's De-  
8 partment voluntary statement forms that people use to  
9 write down an account of what happened that night.

10 Q. Is this the one that you gave to Mr. Dial?

11 A. It is.

12 MR. WATERS: Your Honor, we'd offer this. I be-  
13 lieve it is without objection.

14 MR. FLOYD: No objection.

15 THE COURT: State's 65 is in evidence without ob-  
16 jection.

17 (Statement of Mr. Dial admitted without objection  
18 in evidence as State's Exhibit 65)

19 BY MR. WATERS:

20 Q. Before we get to this itself, explain to me -- he  
21 was in the car and tell us where you were?

22 A. I was in the car in the front seat where I had the  
23 dome light on. I asked him what sort of radio station  
24 he preferred and he didn't say anything to me.

25 He sat the whole time and never uttered a word

MR. STEELE ON DIRECT

1 other than ask if he could step outside and have a cig-  
2 arette.

3 Q. And was he the one that wrote this particular  
4 statement in his own hand?

5 A. He was.

6 Q. Did you frighten him or promise anything to him when  
7 he was writing the statement?

8 A. No, sir.

9 Q. Did you coerce him or anything of that nature?

10 A. No, sir.

11 Q. Were you mean to him, yelling at him or anything  
12 like that?

13 A. No, sir.

14 Q. This is the statement that he wrote out at that  
15 time, is that correct?

16 A. That's correct.

17 Q. It says, I was feeding Joshua and I was getting  
18 something to wipe his mouth, and I fell on top of him  
19 on the coffee table and hit his head and neck, and he  
20 was gasping for air and his heart was beating, and I  
21 did CPR on him.

22 Is that what the statement says?

23 A. Yes, sir.

24 Q. And whose signature is that down at the bottom?

25 A. That would be the Defendant's.

MR. STEELE ON DIRECT

1 Q. After he handed that statement back to you, what  
2 did you do?

3 A. I collected his statement, and he wanted to step  
4 outside and have another cigarette. We stepped outside  
5 and had another cigarette.

6 Q. You did?

7 A. No, I don't smoke.

8 Q. So where was he when he was having the cigarette?

9 A. He was at the back of my car with the door still  
10 open in my car. He was just kind of laying up against  
11 my vehicle.

12 Q. Did he have more than one cigarette at that time?

13 A. Oh, yeah. Numerous.

14 Q. Did you ultimately take the Defendant anywhere  
15 else?

16 A. I can't give you a time frame, but quite a while  
17 later, after he wrote his statement, I was actually  
18 going to transport him to Lexington Medical Center.

19 Q. Okay, and did you take him there?

20 A. I did, sir.

21 Q. Was anyone there with you?

22 A. It was just me and him in the back of my car. I  
23 think I actually followed Detective Shawn Grant up  
24 there.

25 Q. Was he under arrest at that time?

MR. STEELE ON DIRECT

1 A. No, sir.

2 Q. Was he in handcuffs or in custody?

3 A. No, sir.

4 Q. And you took him where?

5 A. I took him to the Lexington Medical Center.

6 Q. And what did you do when you got there?

7 A. We walked into the E.R., went to -- I'm not sure  
8 what the name of the room is, but we went into a room  
9 in the E.R. and sat there and waited.

10 Q. How long did you wait?

11 A. Ten minutes. Some nurses come in.

12 Q. All right. What happened then?

13 A. After the nurses had come in, I actually left the  
14 scene.

15 Q. So you left and that was the extent of your in-  
16 volvement?

17 A. That was the extent of my involvement.

18 MR. WATERS: Nothing further, Your Honor. Thank  
19 you.

20 THE COURT: Thank you. Mr. Floyd?

21 MR. FLOYD: Thank you, Your Honor.

22 CROSS EXAMINATION

23 BY MR. FLOYD:

24 Q. He freely and voluntarily gave you this statement,  
25 did he not?

MR. STEELE ON CROSS

1 A. He did.

2 Q. I'm going to show you State's Exhibit 67. Does that  
3 show the coffee table that was broken?

4 A. It does.

5 Q. Was the coffee table broken?

6 A. It was.

7 Q. And I don't think all the jury got to see it. Is  
8 that the coffee table there?

9 A. It is.

10 Q. It was busted up pretty good?

11 A. It was.

12 Q. Now, one reason -- when you first observed Mr.  
13 Dial, did you give a report that he was sleeping and  
14 lethargic?

15 A. I did. Very slow.

16 Q. Very slow, and he had trouble speaking?

17 A. He did.

18 Q. Now, you had never met him before?

19 A. No, I had not.

20 Q. So you have no idea what his normal demeanor would  
21 be in a crisis?

22 A. I have no idea.

23 Q. In fact, wasn't one of the reasons you took him  
24 to the hospital so they could draw blood from him?

25 A. Correct.



MR. STEELE ON CROSS

1 Q. Because you wanted to have a blood test on Lexie  
2 to see if he was on something?

3 A. I'm not sure. I wasn't told that.

4 Q. What made you think he was on something?

5 A. At the time I figured he might have been under  
6 the influence of something.

7 Q. Because he was so stoic and lethargic?

8 A. That is correct.

9 Q. And your only explanation could be that he was  
10 on something?

11 A. Correct.

12 Q. Thank you. I have no further questions.

13 THE COURT: Redirect?

14 MR. WATERS: Nothing further.

15 THE COURT: You may step down. Thank you, sir.

16 (Witness excused from stand)

17 THE COURT: All right, you may call your next wit-  
18 ness.

19 MS. WEISS: Dr. Wesley Shuler.

20 THE COURT: All right, Doctor, if you'd come around  
21 for us, please?

22 WESLEY SHULER, being duly  
23 duly sworn, testified as follows:

24 CLERK: Please have a seat and when you are seated  
25 state your name for the record.

1           WITNESS: Wesley Shuler, S H U L E R.

2       DIRECT EXAMINATION

3       BY MS. WEISS:

4       Q.    Good morning, Dr. Shuler. How are you?

5       A.    Fine.

6       Q.    Dr. Shuler, would you introduce yourself to the  
7       jury and tell them where you are currently employed  
8       and your position there?

9       A.    Right. I'm a physician at Lexington Medical Center.  
10      I've been there for twenty-six years.

11      I did my undergraduate at the College of Charleston.  
12      Medical school at the Medical University of South  
13      Carolina; residency at the University of South Florida.

14      I'm boarded in emergency medicine and family medi-  
15      cine.

16      Q.    And do you continue to keep those credentials up-  
17      dated?

18      A.    That's correct.

19      Q.    And through what type of classes do you -- what  
20      types of classes do you take in order to keep it up-  
21      dated?

22      A.    I'm required by each of those boards to maintain  
23      at least fifty hours of continuing medical education  
24      each year.

25      I have far exceeded that by getting about two

DR. SHULER ON DIRECT

1     hundred and fifty hours per year.

2           MS. WEISS: Your Honor, at this time I would like  
3     to qualify Dr. Shuler as an expert in emergency medi-  
4     cine and family medicine.

5           THE COURT: Mr. Floyd?

6           MR. FLOYD: No inquiry.

7           THE COURT: All right. Ladies and gentlemen of  
8     the jury, normally a person cannot give opinion testi-  
9     mony. Normally when a person testifies they must tes-  
10    tify to either what they saw, heard or sensed by smell  
11    or something of that nature.

12          However, there is an exception when someone is  
13    qualified because of education, training or experience  
14    in a particular field, science or profession. They are  
15    permitted to give their opinions in certain areas if  
16    the Court qualifies them that way.

17          This witness, Dr. Wesley Shuler, is qualified in  
18    the area of emergency medicine and family medicine to  
19    give opinion testimony in those areas.

20          That does not mean that you must accept his opin-  
21    ions but it is evidence for you, the jury, to use in  
22    any way you see fit.

23          Thank you, Madam Attorney General. You may pro-  
24    ceed.

25          MS. WEISS: Thank you, Your Honor.

DR.. SHULER ON DIRECT

1 BY MS. WEISS:

2 Q. Dr. Shuler, what is your position at Lexington  
3 Medical Center?

4 A. I'm currently the Medical Director of Emergency  
5 Services.

6 Q. What does that mean?

7 A. I am the Director over the emergency room, which  
8 means I am involved in all policies, procedures, staff-  
9 ings, scheduling, disciplinary action -- whatever comes  
10 up.

11 Q. Do you also practice medicine?

12 A. I do.

13 Q. And do you take shifts? Are you on call through-  
14 out the week, or do you take shifts?

15 A. I primarily practice emergency medicine, and we  
16 are basically shift workers, so I have scheduled shifts.  
17 However, in a crisis or disaster I am often called in.

18 Q. Were you working on the evening of January 19,  
19 2010?

20 A. I was.

21 Q. What type of shift were you working?

22 A. We typically work nine hour shifts. As I recall,  
23 I was on the three to twelve shift tha day.

24 Q. Three in the afternoon to twelve midnight?

25 A. Correct.

DR. SHULER ON DIRECT

1 Q. When you are working at the hospital, are you  
2 basically waiting on emergencies to come in?

3 A. Lexington is fairly busy. We usually have people  
4 there all the time so we are not usually waiting for  
5 someone to come in.

6 Q. Do you happen to recall the particular case we're  
7 here about today of Joshua Dial?

8 A. I do. I saw him on that day, the 19th of January.

9 Q. What first brought this case to your attention?

10 A. As I recall, EMS in-coded us with information  
11 about an infant that was coming in in cardiac arrest.  
12 When they arrived, they gave me some other information.

13 I didn't have any other information as far as a  
14 history at that point.

15 Q. Is there anything significant about an infant in  
16 cardiac arrest?

17 A. They are usually pretty resilient. Once they  
18 have had a cardiac arrest or collapse and stop breath-  
19 ing, they usually have pretty serious causes for that.

20 Q. What did you do once you became aware that the  
21 infant was coming into your hospital?

22 A. As we typically do when someone comes into the  
23 hospital in cardiac arrest, you maintain an airway. As  
24 I recall, this child was already intubated.

25 So I listened for breath sounds, listened for

DR. SHULER ON DIRECT

1 heart sounds.

2 Q. So you got information that the child was coming  
3 in, and did you continue work on other patients?

4 A. No. All efforts are involved when someone comes  
5 in who is critical, whether it be an infant or adult.  
6 All the focus becomes on that one patient.

7 Q. Roughly how many people did you have focusing on  
8 that one patient?

9 A. At least two or three nurses, a nurse tech, the  
10 clerical people, respiratory therapist.

11 Q. And were you the primary attending doctor for the  
12 child?

13 A. That's right.

14 Q. So when the EMS got to the hospital, were you wait-  
15 ing to accept them?

16 A. Yes. You know, once we become aware that someone  
17 critical is coming in, then we call all the insular ser-  
18 vices and get things ready with all the equipment that  
19 we may need.

20 Q. When the ambulance arrived, what did you do at that  
21 point?

22 A. As I recall, I listened for breath sounds, lis-  
23 tened for heart sounds. As I said, the child was intu-  
24 bated and had IV access.

25 REPORTER: Had what?

1           WITNESS:    IV access.

2           BY MS. WEISS:

3           Q.    What did you find with Joshua Dial?

4           A.    Initially I got the history that he was not breath-  
5           ing, had no cardiac sounds; that EMS would arrive with  
6           him shortly.

7           I found that he had a heartbeat at that point and  
8           there were respiratory efforts on his own.

9           Q.    They were able to restore a heartbeat?

10          A.    Correct.

11          Q.    Is there a window of time that you can establish  
12          in your expert opinion from when his heart stopped beat-  
13          ing to you were able to -- the time frame within which  
14          you are able to sometimes get a heartbeat back, and an  
15          outside window when that is no longer possible?

16          A.    Well, that is very variable. It depends on the  
17          circumstances or why they arrested in the first place,  
18          the body temperature, different variables.

19          Q.    Based on this case, could you provide any sort of  
20          time frame?

21          A.    I don't have any independent comment on that.

22          Q.    Okay. Is it likely -- is it likely that you  
23          will get a heartbeat when there has been an arrest af-  
24          ter three or four hours?

25          A.    No.

DR. SHULER ON DIRECT

1 Q. Can you narrow that down to under an hour?

2 A. Probably within fifteen or thirty minutes.

3 Q. Once you were able to get the heartbeat back, what  
4 did you do next?

5 A. We then made sure that all lines were secure, ordered  
6 ancillary tests that were indicated. We set up a CT scan  
7 and did some blood tests.

8 Q. A CT scan and what?

9 A. Blood work.

10 Q. Did you have a chance to review that CT scan?

11 A. I did. Any special procedures like CT scans or  
12 ultrasounds -- those are available all hours of the day  
13 so they read the critical ones that come in like that  
14 and then call me in a report.

15 Q. And did you independently read that?

16 A. I don't recall that I did.

17 Q. What did the CT scan reflect?

18 A. As I recall, they called in a report of a bilateral  
19 subdural hematoma.

20 Q. Can you please explain to the jury what that  
21 means?

22 A. It means that there is blood collected between the  
23 brain and the skull itself.

24 Q. And is that significant to you in any decision  
25 you make as a physician?



DR. SHULER ON DIRECT

1 A. Yes, because scholars have very little experience  
2 with bleeding in that area, and it compresses the brain  
3 and causes changes in vital functions.

4 Q. What type of changes?

5 A. Respiratory depression that goes along with cardiac  
6 arrest.

7 Q. Looking at the child, did you find any other symp-  
8 toms or any other signs that would have caused this  
9 child to have gone into cardiac arrest?

10 A. I don't recall any.

11 Q. Do you recall any other bruises on the child or  
12 abrasions?

13 A. I don't recall any.

14 Q. Were you able to get a history of what had alleg-  
15 edly happened to the child?

16 A. From the EMS workers, there was a history that the  
17 child had been dropped on a coffee table.

18 Q. And were you able to make an opinion as to whether,  
19 based on what you knew at this point, how -- what you  
20 thought about that history?

21 A. Certainly consistent with the findings of sub-  
22 dural hematoma.

23 REPORTER: I'm sorry.

24 WITNESS: Consistent.

25 BY MS. WEISS:

DR. SHULER ON DIRECT

1 Q. You would have bilateral bleeding from being  
2 dropped on a table?

3 A. Correct.

4 Q. Okay. What was your first thought when you were  
5 assessing all the different aspects that the child --  
6 different aspects of how the child presented?

7 A. Well, basically, with those situations, you have  
8 to think about some inference of trauma that may have  
9 caused them.

10 Q. What would be your opinion on that?

11 A. A high probability being that there was some bi-  
12 lateral bleeds.

13 Q. And are those bilateral bleeds caused from just  
14 a minor fall?

15 A. They could be.

16 Q. When this child first came in, did you have any  
17 opinion on what type of trauma caused him to go into  
18 cardiac arrest or respiratory failure?

19 A. Just from the history the suspicion was high that  
20 he may have a head injury.

21 Q. Did you have any idea if it was accidental or non-  
22 accidental at that point?

23 A. I did not.

24 Q. Did you know how severe the bleeding was at that  
25 point?

DR. SHULER ON DIRECT

1 A. Only when the CT scan came back.

2 Q. And what did you find at that point?

3 A. It was reported to be a bilateral subdural hema-  
4 toma, which means that there is limited space, again,  
5 for expanding that hematoma.

6 He obviously needed services beyond my capabili-  
7 ties.

8 Q. So what did you do?

9 A. In this community, there is a children's hospital  
10 in Richland that has pediatric neurosurgeons and pedia-  
11 tric attendants and intensive care units which aren't  
12 available in Lexington.

13 So we immediately contacted them for transport.

14 Q. And how long did it take before you were able to  
15 set up transport to Richland?

16 A. I don't recall exactly, but it would be in the  
17 records.

18 I got the CT scan very quickly and it reported very  
19 quickly, so probably an hour to hour and a half for  
20 transport.

21 Q. What did your team do during that hour or hour and  
22 a half?

23 A. Just continued monitoring. He continued to have  
24 a pulse and the blood pressure that was reasonable. We  
25 continued the mechanical ventilation.

DR. SHULER ON DIRECT

1 Q. When you got the CTs and x-rays back, was there  
2 anything you needed to do as the attending physician?

3 A. As I recall, the endotracheal tube needed to be  
4 repositioned.

5 Q. And did that cause any additional injury to this  
6 child?

7 A. No.

8 Q. You got a report back on the blood gas that was  
9 one of the tests?

10 A. Right.

11 Q. What did that report show?

12 A. Severe acidosis. PH levels was significantly up.

13 Q. And what did that mean?

14 A. Probably that he hadn't had adequate circulation  
15 for a significant period of time.

16 MS. WEISS: Beg the Court's indulgence for a mo-  
17 ment, Your Honor.

18 THE COURT: Yes, maam.

19 (Brief pause in proceeding)

20 BY MS. WEISS:

21 Q. Let me show you what's been entered as State's Ex-  
22 hibit 15 in evidence. Do you recognize this picture?

23 A. I do not specifically recognize that.

24 Q. But is it a child?

25 A. A child.

DR. SHULER ON DIRECT

1 Q. Do you see that mark . .

2 A. I do.

3 Q. . . right there?

4 A. I do.

5 Q. Is there anything that you did to Joshua Dial  
6 that could have caused that mark?

7 A. No.

8 Q. I show you this mark right here. Is there any-  
9 thing you would do that could have caused that mark?

10 A. No.

11 Q. Thank you.

12 MS. WEISS: No further questions at this time,  
13 Your Honor.

14 THE COURT: Thank you. Mr. Floyd.

15 MR. FLOYD: Thank you, Your Honor.

16 CROSS EXAMINATION

17 BY MR. FLOYD:

18 Q. How long was the child in the emergency room be-  
19 fore you got to him?

20 A. Actually I was probably waiting in the room for  
21 the child. If you look at the record, the times may  
22 be different because we are actually taking care of a  
23 patient and documenting later.

24 Q. And can you tell me the different procedures that  
25 were performed on this child?

DR. SHULER ON CROSS

1 A. Right. As I recall, he had a difficult IV access  
2 so that we had to do an interosseous approach to get  
3 access to give medications and fluids.

4 Q. What is an interosseous approach?

5 A. It's a device where we make entry into the bone  
6 marrow itself.

7 Q. And would those procedures leave marks?

8 A. At the site, yes.

9 Q. At the site?

10 A. Yes.

11 Q. Any other procedures that were performed?

12 A. We re-positioned the endotracheal tube. We at-  
13 tempted peripheral IV access.

14 Q. What is a peripheral IV access?

15 A. Starting an intravenous line in the vein.

16 Q. And that was unsuccessful?

17 A. I think it was unsuccessful several times. Finally  
18 we were successful in getting access on the foot, I  
19 think.

20 Q. Would those efforts leave marks?

21 A. Yes.

22 Q. And could that marks sometimes turn into bruises?

23 A. Correct.

24 Q. Now, you had to re-position, you said, the endo-  
25 tracheal tube?

DR. SHULER ON CROSS

1 A. Right.

2 Q. You had to re-position that?

3 A. Right.

4 Q. If in fact it -- and wasn't it so deep that the  
5 child's left lung collapsed?

6 A. That's correct.

7 Q. And how long had that been in place before -- do  
8 you have any idea -- before it was discovered?

9 A. Um, probably from the x-rays -- I don't know the  
10 exact time frame from the time he was intubated in the  
11 field until the time the x-rays were taken.

12 Q. And that was done by EMS? The EMS people?

13 A. As I recall.

14 Q. So from the period of time while riding in the  
15 EMS truck and until discovery at the hospital, the child  
16 was actually operating with only one lung?

17 A. I don't know, sir. Probably.

18 Q. Now, can a child continue to -- is that a signi-  
19 ficant loss?

20 A. . .

21 Q. Would that contribute to his failure to respond,  
22 getting oxygen with only one lung?

23 A. With one lung he would probably still have signi-  
24 ficant oxygenation. The circulation was intact.

25 Q. Do you recall any bruises in the neck area, on the

DR. SHULER ON CROSS

1 back of the head or any trauma?

2 A. I don't specifically recollect that being in the  
3 record. I would have to look at the record.

4 Q. I ask you if you can identify this document?

5 A. This is probably the nurses' notes. I see an en-  
6 try of a small bruise to the left jaw, dime-size.

7 Q. What else does it say?

8 A. She also noted some bruising to the back of the  
9 head, to the occipital area.

10 Q. And would you tell the jury where the occipital  
11 area is?

12 A. The posterior part of the skull.

13 REPORTER: I'm sorry.

14 WITNESS: The posterior part of the skull.

15 BY MR. FLOYD:

16 Q. I'm going to show you what's been marked as State's  
17 Exhibit 14, and is that the area of the occiput, or  
18 the occipital area?

19 A. It is.

20 Q. So the posterior part is on this part, and could  
21 you give a size of that bruising? Or did they give a  
22 size?

23 A. There is no size on the medical record.

24 Q. Would you be able to tell by looking at photographs  
25 of the infant?



DR. SHULER ON CROSS

1 A. The dimensions would be there, I imagine. Probably  
2 as much as a couple of inches. Two to three inches.

3 Q. And would that mark be consistent with the head  
4 striking an object?

5 A. It could be.

6 MR. FLOYD: I don't know if this has been -- it  
7 has not been introduced yet?

8 MS. WEISS: No.

9 BY MR. FLOYD:

10 Q. An infant's head is very small, is it not?

11 A. Right.

12 Q. And the area of the scalp and the bone structure  
13 -- the area inside the scalp, the bone structure, that  
14 is also very small, is it not?

15 A. Yes.

16 Q. It doesn't take much bleeding to create a problem  
17 in those areas?

18 A. That is correct.

19 Q. And it doesn't take much volume of blood to raise  
20 or increase the pressure inside the brain?

21 A. That's correct.

22 Q. And if the child is experiencing pressure from  
23 something like that, great pressure, that likewise can  
24 cause additional hemorrhaging in that area, is that  
25 right?

DR. SHULER ON CROSS

1 A. Um, potentially, yes.

2 Q. Also, if people have performed CPR on the child,  
3 that procedure itself can increase the pressure inside  
4 the scalp?

5 A. Um, I'm not sure that I agree with that.

6 Q. Thank you, Dr. Shuler. I have no further ques-  
7 tions.

8 THE COURT: Redirect?

9 MS. WEISS: Briefly, Your Honor.

10 REDIRECT EXAMINATION

11 BY MS. WEISS:

12 Q. Dr. Shuler, once you received Joshua Dial into  
13 your care, you got him stabilized, or as stabilized  
14 as you could?

15 A. Yes.

16 Q. And at that point, there was bilateral bleeding  
17 to the brain?

18 A. Correct.

19 Q. And then he would need assistance -- he had a pulse  
20 but he needed assistance breathing, is that correct?

21 A. Correct.

22 Q. And you testified that the injuries at that point  
23 were so serious that he needed more specialized care,  
24 and he was transferred to the Pediatric Intensive Care  
25 Unit?

DR. SHULER ON REDIRECT

1 A. That's correct.

2 Q. And you did no further investigation into the causes  
3 of his injuries?

4 A. I did not.

5 Q. No further questions.

6 THE COURT: Recross, Mr. Floyd.

7 MR. FLOYD: Nothing further.

8 THE COURT: Thank you, Doctor. You may step down.

9 MS. WEISS: Your Honor, may the doctor be excused?

10 THE COURT: Mr. Floyd?

11 MR. FLOYD: No objection.

12 THE COURT: Thank you, Doctor. You may be excused.

13 (Witness excused)

14 THE COURT: All right. I believe now would be a  
15 good time for us to take our luncheon recess.

16 Ladies and gentlemen, you are not to discuss this  
17 case at all, and that includes your fellow jurors, your  
18 lunch-mates, family, friends or anyone else.

19 Do not read or listen to any news reports about  
20 the case. Do not use your computer, cellular phone or  
21 other electronic device with communication capabilities,  
22 or any other method, to obtain or disclose any informa-  
23 tion about the case.

24 Prohibited information includes, but is not lim-  
25 ited to the following: Any information about a party,

1 a witness, attorney or court officer; news accounts of  
2 the case; information collected through your research  
3 on any topic raised or testimony offered by any witness;  
4 or information collected through your research on any  
5 other topic which you think might be helpful in decid-  
6 ing the case.

7 Do not do any investigation on the Internet in per-  
8 son or otherwise.

9 Please remember to keep an open mind about this  
10 case and do not begin your deliberations until you are  
11 instructed to do so by the Court.

12 I will ask you to please be back promptly at two  
13 fifteen. Please be back in your jury rooms at two fif-  
14 teen.

15 Thank you very much. Have a pleasant lunch, and  
16 leave your notes which will be secured by the Clerk's  
17 Office during the luncheon recess.

18 (Jury excused from Courtroom for the luncheon re-  
19 cess)

20 THE COURT: All right, Madam Clerk, if you will  
21 secure the jury's notes for me?

22 I have told them to put their juror numbers on  
23 them, but however you want to do it.

24 CLERK: Yes, sir.

25 (Jury pads collected)

1 THE COURT: Anything from the State before we take  
2 our recess?  
3 MS. WEISS: Nothing further.  
4 THE COURT: Mr. Floyd?  
5 MR. FLOYD: No, sir.  
6 THE COURT: All right. We'll be in recess until  
7 two fifteen.  
8 Thank you very much.  
9 (Whereupon, the Court recessed for the lunch period,  
10 after which the matter resumed)  
11 THE COURT: Anything from the State before we bring  
12 in our jury?  
13 MR. WATERS: No, sir.  
14 THE COURT: From the Defense?  
15 MR. FLOYD: No, Your Honor.  
16 THE COURT: All right, you can bring us our jury.  
17 (Jury returned to the Courtroom)  
18 THE COURT: Welcome back, ladies and gentlemen.  
19 We will continue in the trial of the case with the  
20 presentation of evidence and testimony by the State in  
21 its case in chief.  
22 You may call your next witness, Mr. Waters.  
23 MR. WATERS: We would call Dr. Sarah Webb-Wood.  
24 THE COURT: All right. If you would come around  
25 and be sworn, please.

1 SARAH WEBB-WOOD, being  
2 duly sworn, testified as follows:

3 CLERK: Have a seat there, Doctor, and once you  
4 are seated please speak up loud and clear.

5 WITNESS: Okay.

6 CLERK: State your full name for the record.

7 WITNESS: My name is Sarah Webb-Wood.

8 THE COURT: Mr. Waters?

9 DIRECT EXAMINATION

10 BY MR. WATERS:

11 Q. You were married very recently, correct?

12 A. That's correct.

13 Q. That's Evers?

14 A. That's Evers. It hasn't been changed legally as  
15 yet.

16 Q. Okay. Describe to me what your profession is?

17 A. I'm a pediatrician.

18 Q. And tell us what your educational background is  
19 before you became a pediatrician?

20 A. Sure. I did four years of undergrad at Emory Univer-  
21 sity in Atlanta, Georgia.

22 Q. What did you study there?

23 A. Anthropology and human biology. I got a Bachelor of  
24 Science in that.

25 Q. All right.

DR. WEBB-WOOD ON DIRECT

1 A. And then I left there in 2003. From there I went  
2 to medical school at the University of South Carolina  
3 in Columbia, and then after medical school I did three  
4 years of pediatric training in a residency program in  
5 Columbia.

6 Q. Okay, and explain a little bit about the residency  
7 program and particularly a residency in pediatrics?

8 A. Sure. Well, it is just more focused, specialized  
9 training in strictly pediatric medicine.

10 You don't do any adult medicine. You do just ped-  
11 iatric medicine, and it's a three year program that  
12 over the course of that three years each has a different  
13 practicing area.

14 There is clinic, on the hospital floor, and ICU, where  
15 you do different training, and over the course of three  
16 years you do multiple roles in each of those three areas  
17 to get kind of a rounded pediatric background.

18 Q. And you said ICU. Is that pediatric ICU?

19 A. It is. There is a dedicated pediatric ICU.

20 Q. And you had experience in pediatric ICU?

21 A. Correct.

22 Q. By the time you get to the third year of your resi-  
23 dency, do you have sort of special status, or are you  
24 called a certain thing, or . . .

25 A. You are called Senior Resident, so you do typically

DR. WEBB-WOOD ON DIRECT

1 have more responsibilities and you do much more over-  
2 night work in the ICU. A night there is a pediatric  
3 resident who is on call that stays there and takes care  
4 of the patients.

5 So you do more of that as you progress in the years  
6 of residency.

7 Q. All right. Do you have a significant involvement  
8 and responsibility in patient diagnosis and patient  
9 treatment and care?

10 A. Correct. Typically, the resident is the physician  
11 that is in the hospital at all times. When there is a  
12 need for it, the attending physician will come in, but  
13 the resident is the one who is there overseeing the  
14 patients at night.

15 Q. Okay, and in January of 2010 were you in the third  
16 year of your residency?

17 A. I was.

18 Q. When did you finish your residency?

19 A. I finished in June of 2010, and since that time I  
20 have gone into private practice.

21 Q. Okay. Where are you in private practice?

22 A. In Clive, North Carolina.

23 Q. And what sort of practice is it?

24 A. It's a group practice of five physicians and two  
25 nurse practitioners. Just a general pediatric practice.



DR. WEBB-WOOD ON DIRECT

1 Q. And do you have your own case load of patients?

2 A. Uh hm.

3 Q. And the age range?

4 A. We see birth to twenty-one. Typically we see more  
5 patients that are younger because that's the nature of  
6 kids is that we see them more when they are sick when  
7 they are younger.

8 Q. And Clive, North Carolina, is that -- what is that  
9 near?

10 A. It's just west of Ashville, about twenty miles west  
11 of Ashville, North Carolina.

12 Q. And you, of course, are a licensed physician?

13 A. Correct. Board certified.

14 MR. WATERS: Your Honor, at this time I would ask  
15 to qualify Dr. Webb-Wood as a pediatric expert, or a  
16 medical expert in pediatrics.

17 THE COURT: Mr. Floyd?

18 MR. FLOYD: May I ask her just a few questions,  
19 Your Honor.

20 THE COURT: Certainly.

21 CROSS EXAMINATION

22 BY MR. FLOYD:

23 Q. Dr. Webb-Wood, back in January of 2010, you were  
24 in a residency status?

25 A. Correct, third year.

DR. WEBB-WOOD ON CROSS

1 Q. That's a training status, is it not?

2 A. Yes, it is still training.

3 Q. So had you any involvement in this particular case,  
4 you were a resident and not a full-fledged physician.

5 Is that right?

6 A. No, I was a physician. You get your MD, your  
7 medical degree, at the finish of medical school. So  
8 I had been a physician at that point for two and a half  
9 years.

10 I was taking more specialized training.

11 Q. You were not a full-fledged pediatric specialist  
12 though?

13 A. I was not the attending physician. I was the resi-  
14 dent physician.

15 Q. And you are licensed now in the State of North  
16 Carolina?

17 A. Correct.

18 Q. And you are not licensed in the State of South  
19 Carolina?

20 A. I am not.

21 Q. No further questions.

22 THE COURT: All right. Any objections to the qual-  
23 ification of the Doctor in the field -- in what field?

24 MR. WATERS: In pediatrics.

25 MR. FLOYD: Yes, Your Honor, we would object because

1 at the time she was not a qualified pediatric physician  
2 . . .

3 THE COURT: I can't hear you, Mr. Floyd. I apolo-  
4 gize.

5 MR. FLOYD: At the time the care was given to the  
6 child, Dr. Webb-Wood was not a pediatric expert at the  
7 time. She was in training to be a pediatric expert and  
8 was just a regular M.D., plus she is not licensed in  
9 the State of South Carolina.

10 THE COURT: All right. I believe that second one  
11 has been addressed previously by our Court. Be that as  
12 it may, subject to the Defense objection -- ladies and  
13 gentlemen, you have heard me advise you of this before,  
14 that a normal person cannot give opinion testimony.

15 Normally, when a person testifies, they must tes-  
16 tify as to what they either saw or sensed by smell or  
17 something of that nature.

18 However, there is an exception where someone is  
19 qualified because of education, experience, training in  
20 a particular field or science, profession or trade, and  
21 they are permitted to give their opinion in certain  
22 areas if the Court qualifies them that way.

23 This witness will be qualified--this witness Dr.  
24 Sarah Webb-Wood will be qualified in the area of pedia-  
25 trics to give opinion testimony in that area.

1           Again, that does not mean that you must accept the  
2           opinions, but it is up to you, the jury, to use in any  
3           way that you see fit.

4           Thank you. You may continue.

5           DIRECT EXAMINATION CONTINUED

6           BY MR. WATERS:

7           Q. Doctor, just so we're clear, you were a licensed  
8           physician at the time you were doing -- as you were doing  
9           your residency?

10          A. Correct.

11          Q. I want to take you back to January of 2010. What  
12          exactly were you doing at that point in time?

13          A. I was on call, as I said before, in the ICU, which,  
14          as a resident, you stay overnight and you take care of  
15          the patients on the ward.

16          That month, I wasn't dedicated to the ICU but was  
17          covering as the senior resident, and on that particular  
18          night we . . .

19          Q. That was January 19, 2010?

20          A. On January 19, correct. We had a patient that  
21          was admitted from the outside ER that came to us, a five  
22          month old little boy, who basically at the time we saw  
23          him had no spontaneous movement or activity or anything  
24          that was resembling that he had life. That was at the  
25          time he came to us.

DR. WEBB-WOOD ON DIRECT

1 Q. Okay, and let me ask you a little bit about the  
2 process.

3 Did you have any kind of communication device or  
4 did you personally get the call, or how did that work?

5 A. The way that it works is the resident who is on  
6 call carries an admission pager, and any outside hospital  
7 or clinic or anything like that that is going to be ad-  
8 mitting somebody to the ICU calls the hospital operator.

9 We then receive a page about it, and we call back  
10 to the outside facility.

11 So I received that page and spoke with the outside  
12 facility at that time to accept the patient for admis-  
13 sion.

14 Q. And it was from that outside facility that the  
15 patient . . .

16 A. Correct, Joshua Dial.

17 Q. . . Joshua Dial came from the Lexington Medical  
18 Center. Is that correct?

19 A. Correct.

20 Q. And what is the role of the attending physician?  
21 Did you notify the attending physician on this case?

22 A. Yes. I called Dr. Harper that evening. Again,  
23 any serious case that looks like it is going to be very  
24 intensive, we always call the attending to help and  
25 to kind of guide us.

1           So I did talk with her, and she came over to the  
2   hospital.

3   Q.   That doesn't change the fact though that you had  
4   a role in the diagnosis and treatment of Joshua Dial?

5   A.   Correct.

6   Q.   Is that correct?

7   A.   Correct.

8   Q.   Well, you describe a little bit about Joshua when  
9   he came in. Can you describe what sort of state he was  
10  in, in regards to when he arrived?

11  A.   Sure. So he came in lifeless.. There was no sign  
12  of spontaneous activity. He was very cold. His tempera-  
13  ture was just eighty-nine degrees when he got to us.

14           His pupils were fixed and dilated which show that  
15  they are not reactive.. His brain stem wasn't function-  
16  ing properly, and there are other tests we do as well  
17  to kind of monitor for brain-stem function. None of  
18  those were present.

19  Q.   Is that sort of like the cough and the gag reflex?

20  A.   Correct. So we will test their eye with a piece  
21  of cotton to see if they'll blink. That's a natural  
22  reflex.

23           That didn't occur. His eyes were open and fixed  
24  that way.

25           We checked for gag reflex. He did not have that.

1           We do what we call a cold water test, which you  
2       put ice cold water in the ear and because of the brain  
3       stem reflexes the eyes react appropriately, and his  
4       did not react appropriately.

5           By all accounts at that time, he did appear to be  
6       brain dead.

7       Q.    How was he breathing?

8       A.    He wasn't spontaneously breathing at that time.  
9       He had been intubated at the outside facility with a  
10      tube down his throat. There was a machine that was  
11      breathing for him at that time. He had no spontaneous  
12      respirations, which again is controlled by the brain.

13      Q.    You said he was cold and had a temperature of  
14      eighty-nine degrees.

15      A.    He was hypothermic, which is what we call that,  
16      and there is some concern because people who are hypo-  
17      thermic can have a similar lack of these reflexes.

18           So it is important that we warm them up to within  
19      a normal range and then recheck those reflexes to en-  
20      sure that it was not due to hypothermia.

21           And we warmed him up to a normal range of tempera-  
22      ture but he still had no brain reflexes.

23      Q.    Let me back up real quick. I'm sure you might  
24      have answered this, but explain to me a little better  
25      what pediatrics is.

DR. WEBB-WOOD ON DIRECT

1 A. Yes, sir. It is the care of all children, and I  
2 again see ages zero to twenty-one, to a varying degree  
3 of that.

4 There are differing subspecialties within that.  
5 Currently I'm a general pediatrician. I do just basic  
6 sick and well child checkups, but the purpose of doing  
7 them through our residency is to get experience in all  
8 different fields of pediatrics.

9 So there is intensive care, there is inpatient, and,  
10 you know, there are all the subspecialties like pulmonol-  
11 ogy and gastroenterology and that sort of thing.

12 So it is just kind of a broad category for physi-  
13 cians and nurse practitioners and that sort of thing  
14 who take care of children specifically.

15 Q. Did you look at a CT scan in this case?

16 A. Yes.

17 Q. Before you go on, explain to us quickly what a  
18 CT scan is?

19 A. A CT scan is an image of the brain. There are a  
20 lot of very thin pictures that it takes of the brain,  
21 and in doing so you can see all of the different parts  
22 of the brain, bone, grey matter, blood, that sort of  
23 thing.

24 The CT scan is just a picture that they did in  
25 Lexington, and we received those images on a disc that



1 we were able to view.

2 Q. And what was your finding once you looked at those?  
3 What did you see?

4 A. He had bleeding on both sides of his brain, and  
5 there are two sort of parts of the brain, the grey  
6 matter and the white matter, and those are usually dis-  
7 tinct on a CT scan where you can the ridges and that  
8 sort of thing.

9 And his brain had swollen so much that you -- that  
10 there was no differentiating the grey and the white mat-  
11 ter on the scan.

12 Q. Is that normal?

13 A. That is extremely abnormal.

14 Q. And what is that usually a result of?

15 A. It's usually a result of extreme force, severe move-  
16 ment, violent action, that sort of thing, that can cause  
17 very significant swelling.

18 Q. And you mentioned bleeding on the brain, and I've  
19 heard the terms subdural hemorrhage and subarachnoid ones.

20 Can you explain those terms to us?

21 A. In the brain there are layers of tissue that kind  
22 of surround it, called the meninges, and blood can set-  
23 tle in between those layers and between the layer that  
24 surrounds the brain and the brain.

25 Just depending on where the blood is tells you if

1 it is subarachnoid, or beneath the arachnoid level, or  
2 subdural, or beneath the subdural layer.

3 Q. Okay, and Josh had bleeding in those areas?

4 A. Yes, right.

5 Q. Did you mention that there was bilateral bleeding?

6 A. There was bilateral bleeding.

7 Q. Does the bilateral bleeding have any particular  
8 significance to you in trying to assess the major cause  
9 of these injuries?

10 A. It does. It -- if the infant had fallen and had  
11 struck his head on an object or surface, you would ex-  
12 pect there to potentially be bleeding in that area.

13 The multiple locations of the bleeding is unusual.

14 Q. Is unusual from a fall and . .

15 A. Correct.

16 Q. All right. Did you -- at the hospital, did you  
17 all do any sort of assessment of further injuries, like  
18 to the skeleton or anything of that nature?

19 A. In any case that we're concerned about other injur-  
20 ies, we do what is called a skeletal survey.

21 That looks for old injuries, old broken bone and  
22 that sort of thing.

23 The other thing that we typically do is examine the  
24 eyes because the vessels in the back of the eyes can  
25 be injured in any sort of severe trauma or motion.

1           So we looked in the back of his eyes and there was  
2   bleeding, very significant bleeding, throughout all of  
3   the layers of the back part of the eye.

4   Q.   Could that bleeding have been caused by someone  
5   doing CPR?

6   A.   There is the possibility that a small bleed could  
7   happen, but the extent of the bleeding is not consist-  
8   ent with CPR.

9   Q.   So there was so much severe bleeding that it would  
10   not be consistent with being caused by CPR?

11   A.   No.

12   Q.   What about the bleeding on the brain?

13           Could CPR cause increased pressure or bleeding in  
14   the brain?

15   A.   It could potentially cause some increased pressure  
16   and potentially a small bleed, but the extent of the  
17   bleeding that was in his brain was not caused by CPR.

18   Q.   In Josh's brain?

19   A.   Correct.

20   Q.   All right. Doctor, the diagnosis that you talked  
21   about of loss of brain function, was there any issue  
22   with respiratory function?

23   A.   He was not -- his brain and his respiratory sys-  
24   tem were not communicating whatsoever. He could not  
25   breathe on his own at all.

1           The way that he was being oxygenated and ventilated  
2       was with the help of the machine.

3       Q.    And so the respiratory issue would be secondary to  
4       the brain?

5       A.    Correct.

6       Q.    What about his blood pressure. Did you have any  
7       issues with that?

8       A.    Initially, he came to us on a dopamine drug, which  
9       is a medicine to help keep your blood pressure up, and  
10      when we first took his blood pressure it was normal.

11       Over time, his blood pressure bottomed out or de-  
12      creased significantly. He became hypotensive and he  
13      did require increasing amount of medication, including  
14      epinephrine, to keep the blood circulating in his body.

15      Q.    His level, could that be related in any way to  
16      his lack of brain function?

17      A.    Correct, yes.

18      Q.    What is that connection?

19      A.    Usually your brain is just a regulatory organ, and  
20      if it is not producing significant hormones that affect  
21      chemicals in your body, the cells in the rest of your  
22      body can't respond by increasing or decreasing blood  
23      pressure as it needs to.

24      Q.    Is there any consequence of being on a ventilator  
25      with the chemistry of the blood?

1 A. There is. We do see some abnormality with having  
2 to use mechanical ventilation. It can alter the amount  
3 of acid that's in your blood if you are not ventilating  
4 properly, and your tissue and cells and your organs are  
5 -- if they are not receiving enough oxygen, you can also  
6 have a biproduct that is basically acid.

7 So your blood becomes acidic, and you have to give  
8 bicarbonate to help counteract the acidity that is in  
9 the blood.

10 Q. Essentially the CO two is not coming out?

11 A. Correct, so you are not blowing off the acid, and  
12 it can build up in your body. We do adjust again for  
13 that, but the lack of oxygenation to the tissue can cause  
14 the acidity.

15 Q. Okay. Did Joshua display those symptoms as well?

16 A. He did. He had -- when he first came to us, he  
17 right at the dot for acid. The acid in his blood was  
18 very high. We had to give him medication and adjust  
19 the ventilator accordingly to help correct that.

20 Q. I know I'm going to butcher this term but coagulop-  
21 athy -- what is that?

22 A. Coagulopathy is when . .

23 Q. Could you spell that for us, please?

24 A. Right. It's C O A G U L O P A T H Y.

25 So in your blood you have different proteins that

DR. WEBB-WOOD ON DIRECT

1 help you to make a clot. With the help of your plate-  
2 lets in your blood stream, you make a clot.

3 The liver is responsible for making many of those  
4 or help you clot.

5 If your liver is not receiving enough oxygen and  
6 the rest of your body is not receiving enough oxygen,  
7 there is the potential that you are not going to make  
8 those clotting factors, which increases the risk of  
9 bleeding.

10 And we knew that Joshua already had blood in his  
11 brain, and it was important for us to correct that so  
12 that he didn't bleed further.

13 In order to do that, you have to give a transfus-  
14 ion basically of those clotting factors. A blood trans-  
15 fusion is just a different part of the blood that you  
16 are giving to him to help him clot.

17 Q. Having all of these issues, was Joshua in a stable  
18 or unstable condition?

19 A. He was incredibly unstable the entire time that he  
20 was in our care.

21 Q. Given these issues that he had, was prognosis of  
22 survival favorable or unfavorable?

23 A. It was very grave from the beginning. The outlook  
24 was grave.

25 Q. During the course of time that he was there, did

1 he ever -- did you observe any brain function, given the  
2 tests that you all performed?

3 A. He did not ever have any body movements. He never  
4 had any spontaneous respirations. He never had any nor-  
5 mal brain reflexes.

6 He never displayed any activity that anything was  
7 functional in his body the entire time he was in our  
8 care.

9 Q. You talked a little bit about retinal hemorrhage.  
10 If you would explain briefly what the retina is, and a  
11 little bit about retinal hemorrhaging?

12 A. The retina is the back part of the eye that really  
13 helps you focus, and a hemorrhage is bleeding. Any va-  
14 riety more than it should be.

15 And there are vessels in the retina and multiple  
16 layers of the retina. When the layers are disrupted,  
17 the vessels can break and can bleed.

18 And the blood was noted in Joshua's case very ex-  
19 tensively in the back of his eyes, and . .

20 Q. So that is something that you can see?

21 A. Something that we can see, so when we looked in  
22 his eyes -- one other thing that we noticed that kind  
23 of clued us in that his brain stem wasn't working was  
24 that his pupils again were very wide and dilated. They  
25 weren't responsive to light.

DR. WEBB-WOOD ON DIRECT

1           Normally, in order to get a really good look in  
2           the back of the eye, you have to put drops in that will  
3           dilate the pupil. In his case there was no need for  
4           that because his pupils were so big and fixed.

5           So you could just look in with a special opthalmo-  
6           scope, a special light, that you can see into the back  
7           of the eyes with.

8           Q.    Would you characterize the amount of hemorrhaging  
9           as a small amount, a medium amount or a severe amount?

10          A.    The severest amount of bleeding, I would say.

11          Q.    What sort of force is necessary to cause that sort  
12          of thing?

13          A.    In infants -- in kids and infants especially, they  
14          are very resilient and pliable and plastic, and they  
15          tend to heal and rebound quite easily.

16          I'm sorry.

17          THE COURT: If you please, Mr. Attorney General,  
18          rephrase your question.

19          MR. WATERS: I'll be glad to.

20          BY MR. WATERS:

21          Q.    Did you come to a conclusion as to the nature of  
22          the trauma in this particular case?

23          A.    . .

24          THE COURT: Excuse me a moment, please. Madam Fore-  
25          man and ladies and gentlemen of the jury, if you would



DR. WEBB-WOOD ON DIRECT

1 please leave your notes and step out momentarily.

2 Leave your notes on your chairs and do not discuss  
3 the case while you are out.

4 (Jury excused from Courtroom)

5 THE COURT: All right, I'll take about a five min-  
6 ute recess. You may step down.

7 Doctor, you may not discuss your testimony.

8 Thank you very much.

9 (Whereupon, the Court took a brief recess, after  
10 which the matter was resumed)

11 THE COURT: Come back around, please.

12 (Witness resumed witness stand)

13 THE COURT: Anything from the State before we bring  
14 our jury back in?

15 MR. WATERS: No, sir, Your Honor.

16 THE COURT: The Defense?

17 MR. FLOYD: No, Your Honor.

18 THE COURT: Bring the jury, please. Thank you.

19 (Jury returned to jury box)

20 THE COURT: All right, the jury is back in the  
21 Courtroom. You may ask your next question, Mr. Waters.

22 MR. WATERS: Thank you, Your Honor.

23 BY MR. WATERS:

24 Q. Was Josh the first baby you have seen with these  
25 sorts of injuries?

DR. WEBB-WOOD ON DIRECT

1 A. Unfortunately not, and throughout residency I did  
2 do a lot of work in ICU and we see a fair amount of  
3 children who have injuries like this, with this type  
4 of trauma.

5 Q. And you were describing about how babies are resil-  
6 ient. Could you finish that explanation for us?

7 A. Babies do tend to be resilient with minor injur-  
8 ies, with falls, with minor trauma. They tend to heal  
9 quite quickly and to have, you know, few to minor im-  
10 pairments from minor injuries or even sometimes to moder-  
11 ate injuries.

12 Q. Did you come to a conclusion or diagnosis as to the  
13 nature of these injuries?

14 A. The . . .

15 MR. FLOYD: Objection, Your Honor. She has only  
16 been qualified as a pediatrician to . . .

17 THE COURT: That is correct, Mr. Floyd. She has  
18 been qualified as a pediatrician. That's correct, Mr.  
19 Floyd.

20 I would sustain the objection.

21 MR. FLOYD: Thank you.

22 BY MR. WATERS:

23 Q. Let me ask you this way. In your experience and  
24 your training, your knowledge as a physician, is it pos-  
25 sible for the injuries which occurred to Joshua to have

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1 happened from a fall from the height of . .

2 MR. FLOYD: Objection, Your Honor. This is . .

3 THE COURT: I can't hear you.

4 MR. FLOYD: I would object to the form of the  
5 question.

6 THE COURT: You will have to rephrase the ques-  
7 tion, Mr. Waters.

8 BY MR. WATERS:

9 Q. Did Joshua's injuries come from a fall?

10 A. . .

11 MR. FLOYD: Your Honor, I would object. Same ques-  
12 tion.

13 THE COURT: No, sir.. That is not the proper -- I  
14 would sustain the objection.

15 Q. If a child were to fall from adult height and hit  
16 their head on a coffee table, what sort of injuries  
17 would you expect to see?

18 A. . .

19 MR. FLOYD: Objection, Your Honor. she is . .

20 REPORTER: I'm sorry. I can't hear you.

21 MR. FLOYD: The witness is not qualified to answer  
22 that question.

23 THE COURT: Thank you, Mr. Floyd. It is very dif-  
24 ficult to hear you, both for my Court Reporter and  
25 myself. I think the height of the bench distorts the

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1     sound somewhat.

2             Step up to the bench, please. You can let those  
3 individuals in at this point, Sheriff.

4             (Conference at the bench between counsel and the  
5 Court off the record)

6             THE COURT: Thank you, Mr. Attorney General, and  
7 thank you, Mr. Floyd.

8             You may continue.

9     BY MR. WATERS:

10    Q. Can you tell us what your final diagnosis with re-  
11 gard to this child was?

12    A. My final diagnosis was a traumatic brain injury,  
13 secondary to accidental trauma.

14    Q. And is there any doubt in your mind that the trauma  
15 caused Joshua's death?

16    A. No.

17             MR. FLOYD: Your Honor, I would object, and I would  
18 ask that that be stricken. She cannot testify as to  
19 cause . . .

20             THE COURT: Well, I think it is proper -- she can  
21 be asked that question.

22    BY MR. WATERS:

23    Q. I think we've covered this. Given the nature of  
24 the injuries, what was the nature of the stability of Josh?

25    A. He was very unstable. His brain and body were

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1 completely unregulated, and there was no sign of life,  
2 nor would we have expected there to be signs of life,  
3 given the injury and extent of what he suffered as far  
4 as his brain injury goes.

5 Q. So due to the severe injuries that he had?

6 A. Correct.

7 Q. Nothing further. Thank you.

8 THE COURT: Thank you, Mr. Waters.

9 Mr. Floyd?

10 MR. FLOYD: Thank you, Your Honor.

11 CROSS EXAMINATION

12 BY MR. FLOYD:

13 Q. Dr. Evers, you mentioned that there was bilateral  
14 hematoma?

15 A. Yes.

16 Q. How much blood did you see?

17 A. It was noted without giving a specific volume.

18 Q. So you can't tell us the volume?

19 A. Not based on my review of the film.

20 Q. Whatever volume there was, that would increase the  
21 pressure on the brain?

22 A. Correct. If there is blood in the brain space,  
23 it would increase the pressure of the brain. Excuse me,  
24 the pressure within the skull.

25 Q. The area inside the skull is very small, is it not?

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1 A. Compared to an adult, yes, it is.

2 Q. Increasing the pressure of the intercranial area,  
3 that would contribute to the injury to the brain?

4 A. No.

5 Q. You don't think so?

6 A. No.

7 Q. Isn't retinal hemorrhaging caused by pressure?

8 A. It is caused by pressure and by shearing forces  
9 within the body.

10 The extent of the hemorrhages that were in his  
11 eyes would cause increased pressure in his brain.

12 REPORTER: Would cause what?

13 WITNESS: Increased pressure.

14 BY MR. FLOYD:

15 Q. You mentioned the CPR can also cause some retinal  
16 hemorrhaging?

17 A. It could potentially cause some retinal hemorrhag-  
18 ing, but not this type of blood.

19 Q. Now, even though there is no brain activity, the  
20 blood was still pumping through his body, was it not?

21 A. It was. We were helping that process with medica-  
22 tion.

23 Q. And in fact at one point he had pretty normal blood  
24 pressure?

25 A. ..

1 Q. Mechanical but it was normal?

2 A. He did have normal blood pressure, yes.

3 Q. So through mechanical mechanisms, blood was being  
4 forced throughout his body, is that correct?

5 A. Forced within his body.

6 Q. Forced within his body?

7 A. Yes.

8 Q. So any -- had there been any kind of disruption  
9 to the integrity of the venous structure, that would  
10 cause continuous bleeding, would it not?

11 A. Potentially, yes. If there was a broken vessel  
12 or ruptured vessel, you could have continuous bleeding.

13 Q. So in the course of this retinal hemorrhaging that  
14 was observed, it could have in fact been caused after he  
15 came to the hospital?

16 A. I guess there is -- not with the retinal hemorrhages  
17 that we saw. No way that that could have come from  
18 anything that was done in the hospital.

19 Q. Well, the hemorrhaging occurs, does it not, when  
20 there is some breach in the integrity of the brain?  
21 Is that correct?

22 A. Or artery or capillary, yes.

23 Q. These are the various things that are inside the  
24 eye, is that correct?

25 A. Correct.

1 Q. In the retinal area?

2 A. . .

3 Q. You have veins, you have capillaries, you have  
4 arteries in the retinal area?

5 A. Right.

6 Q. Now, if there has been some tear or some type of  
7 breach in the integrity of either of those structures,  
8 there is going to be bleeding?

9 A. Correct.

10 Q. Now, he was in a situation where his blood could  
11 not coagulate, is that correct?

12 A. It could coagulate, but there was a decrease in  
13 the clotting factor.

14 Q. A decrease?

15 A. Correct.

16 Q. And that would mean that the blood would continue  
17 to leak because the body's ability to cause the blood  
18 to coagulate is severely distressed or is severely com-  
19 promised?

20 A. Potentially. We took steps because of the decreased  
21 clotting factor, yes.

22 Q. So what you have here is a young child -- let's  
23 say a young baby comes in, and he's been put on this  
24 mechanical device to continue the blood pressure.

25 We know it was an effort to save him,...



1 A. Right.

2 Q. . . and we all appreciate that, but if the cogula-  
3 tion process has been compromised and as that blood is  
4 continuing to pump through his body, it is going to  
5 continue bleeding, is it not?

6 A. If there was already a breached vessel, it would.

7 Q. Now -- and that's what I meant.

8 So if this breached vessel is in the retinal area,  
9 as he is on the artificial blood pressure machine, that  
10 is going to continue to bleed?

11 A. There is a potential for that.

12 Q. Okay. Do you know when they started this device  
13 that was for the blood pressure?

14 A. It was a medication, dopamine, that we gave him  
15 through a vein. We also gave him epinephrine, and I  
16 do not know the exact time that was given.

17 Q. Basically, what you give is dopamine, and the epi-  
18 nepherine is kind of artificially stimulating his blood  
19 pressure?

20 A. Correct. It protracts the blood vessels to keep  
21 his blood pressure elevated to a normal range.

22 Q. So since that happened, and we assume there was  
23 some breach of integrity in the vessels, arteries or  
24 capillaries that would continue his bleeding some time  
25 after that, . . .

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1           REPORTER: I'm sorry.

2           MR. FLOYD: You want me to start over?

3           REPORTER: No, sir. I couldn't hear you, begin-  
4           ning with continue his bleeding.

5           Q.    . . continue his bleeding for some period of time  
6           after the precipitating incident, it caused the child  
7           additional distress?

8           A.    There is a potential for it to continue the bleed-  
9           ing but not to cause the vessels to bleed.

10          Q.    Okay. Now, if there has been a compromise in the  
11          integrity of the vessel or arteries or the capillaries,  
12          would the administration of CPR cause additional hemor-  
13          rhaging?

14          A.    It should not cause new hemorrhages.

15          Q.    In what way does the CPR cause hemorrhaging?

16          A.    Occasionally you see a small retinal hemorrhage,  
17          just from the pressure. I have never personally had  
18          that.

19          Q.    But it is in the literature?

20          A.    It's in the literature, yes.

21          Q.    So what you are doing is adding increased pressure  
22          which is putting additional stress on the baby, and it  
23          can cause a rupture?

24          A.    Yes, it is to push the blood flow around so there  
25          is an increased pressure.

1 Q. And so giving CPR could actually cause retinal  
2 hemorrhaging?

3 A. Potential small retinal hemorrhaging.

4 Q. And it can also occur that when an infant has in  
5 fact fallen and that fall itself can cause retinal  
6 pressure?

7 A. That is correct. Potentially small retinal pres-  
8 sure.

9 Q. And the retinal hemorrhaging is not something the  
10 doctor could actually see with the naked eye?

11 A. You would have to use the ophthalmoscope in the  
12 eye to see the retinal hemorrhages.

13 Q. Now, isn't it true that some infants have retinal  
14 hemorrhage just as a result of being in the birth canal  
15 or the pressure from the birth canal?

16 A. Again, potential, but not common.

17 Q. Isn't it true that a baby that is born that exper-  
18 iences retinal hemorrhaging with birth can actually  
19 re-bleed at some other time?

20 A. There is potential, but again it is not common.  
21 It is uncommon.

22 Q. And isn't it also true that retinal hemorrhaging  
23 can be caused by some acute bacteria in the eye?

24 A. That is a potential, yes, but uncommon.

25 Q. And what about thrombocytosis?

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1 A. That should not cause the bleeding.

2 Q. And . . .

3 A. I guess potentially it could if there were fewer  
4 platelets -- potentially. We don't see that in the retina  
5 typically. It is typically a skin finding.

6 REPORTER: A what?

7 WITNESS: A skin finding, such as on the arm or leg.

8 BY MR. FLOYD:

9 Q. But you are not present when some incident occurs  
10 that might cause retinal hemorrhaging?

11 A. I have no way of doing that. I don't know if any-  
12 one else potentially does, but I don't have a way to do  
13 that.

14 Q. Thank you.

15 THE COURT: Any Redirect?

16 MR. WATERS: Thank you, Your Honor. Just very  
17 briefly.

18 REDIRECT EXAMINATION

19 BY MR. WATERS:

20 Q. You were asked about the baby on machines and arti-  
21 ficial ventilation, and that sort of stuff. This child  
22 was brain-dead when he arrived and you have talked about  
23 that, correct? About those indications?

24 A. Yes, correct.

25 Q. Do you recall what time he arrived at Richland?

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1 A. I don't recall the exact time. I believe it was  
2 somewhere between eleven P.M. and midnight on January  
3 19.

4 Q. And you were asked about whether or not you could  
5 pinpoint the particular time when the injuries occurred,  
6 but one thing you could say though is that the child  
7 wasn't healthy at that particular time and had had the  
8 injuries when you saw him, and that was within that  
9 range?

10 A. Correct.

11 Q. You were asked about the CC amount of blood on  
12 the CT scan. Does the CT scan show a CC amount?

13 A. It doesn't display that on the screen, but there  
14 is a potential with specific measuring tools in the  
15 radiology program to be able to measure specific vol-  
16 umes.

17 We got the CD from an outside source, and we didn't  
18 have that capability on our machine because it was from  
19 their program to ours.

20 Q. You were asked a little bit about retinal hemorrhag-  
21 ing, as you mentioned, and sharing forces. What does  
22 that mean?

23 A. Just basically layers of tissues that kind of slide  
24 against each other, and there are vessels through all  
25 the layers of the retina.

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1           And with sharing forces, it is back and forth, and  
2   it can be disrupted.

3   Q.   Back and forth and then come apart like that, is  
4   that right?

5   A.   Yes.

6   Q.   Does it take significant force to do that?

7   A.   It does..

8   Q.   And you were asked about whether CPR or -- I don't  
9   know -- throm-something or other -- bacteria and that  
10   and the other thing -- whether any of those could cause  
11   bleeding or retinal hemorrhages.

12           Is there something about the extent or the nature  
13   of Josh's injury that causes you to say that is what  
14   caused his death?

15   A.   Yeah. It was extreme, and there is nothing else  
16   in my mind other than him being moved back and forth very  
17   rapidly that would have caused that injury.

18   Q.   Thank you. No further questions.

19           THE COURT: Recross, Mr. Floyd?

20           MR. FLOYD: Briefly.

21   RE CROSS EXAMINATION

22   BY MR. FLOYD:

23   Q.   Did you not admit that bleeding or retinal hemor-  
24   rhage can occur long after an incident?

25   A.   There is a potential for persistent bleeding.

1 Q. And I believe that you also said you saw whatever  
2 you base your finding on on a CT scan made at a cer-  
3 tain time showing a certain amount of blood and reti-  
4 nal hemorrhaging?

5 A. The bleed that was shown on the CT scan was in his  
6 brain, not in his retina.

7 Q. Okay, just talking about the CT scan.

8 A. I'm sorry?

9 Q. Talking about the subdural hematoma.

10 A. I'm sorry. I thought you mentioned the CT scan.

11 Q. The CT scan was only the . . .

12 A. Just the brain.

13 Q. The CT scan was not of the retina?

14 A. No, the retina you would have to see with the oph-  
15 thalmoscope to see the back of the eye, which is where  
16 the bleeding was.

17 Q. The hemorrhaging you were referring to just then,  
18 . . .

19 A. I'm sorry. I thought you mentioned the CT scan.

20 Q. Well, tell us what the CT scan showed or what it  
21 measured?

22 A. It measured or showed the blood that was in the  
23 brain. In the layers of the brain is what I was talking  
24 about.

25 Q. The layers of the brain?

1 A. The meninges, the dura, the arachnoid space --  
2 that sort of thing.

3 Q. The subdura?

4 A. Correct.

5 Q. And how much blood was there?

6 A. Again, I can't give you a volume but he had bleed-  
7 ing on both sides of his brain.

8 Q. And if a child was dropped or received a blow to  
9 the head, that could cause subdural injury, could it  
10 not?

11 A. That could cause subdural hemorrhage, yes.

12 Q. Now, if there had been some disruption in a vessel  
13 or capillary or in the brain, that could have caused  
14 bleeding?

15 A. Correct.

16 Q. And if there was -- if that had occurred, and in  
17 the vessel or capillary or brain, there would continue  
18 to be bleeding from the artificial blood pressure that  
19 had been induced?

20 A. Typically, the blood in the brain, because it is  
21 a fixed space, will flow and stop relatively rapidly.  
22 The blood pressure medicine we were giving him did not  
23 cause him to have an elevated blood pressure.

24 We were trying to keep him at what we call normal  
25 tensive or normal blood pressure.



1           So when a normal brain has normal vessels, the blood  
2           should flow and potentially stop relatively quickly.

3           Q.    But if the ability to coagulate had not been com-  
4           promised, that would be . . .

5           A.    If there is a coagulation problem, there is the  
6           potential for continued bleeding.

7           Q.    That is all I'm trying to establish.  Then as we  
8           refer to the irregularity in the brain, the subdural  
9           area where you saw the problem on the CT scan, you've  
10          still got the same process?

11          You've got blood going through that area artificially,  
12          the coagulation deficiency, and the disruption to the  
13          vessels at some point, and, therefore, the possibility  
14          that blood was continuing to seep into the cerebral  
15          area?

16          A.    That is a possibility.

17          Q.    Thank you.  No more questions.

18          MR. WATERS:  Nothing further, Your Honor.

19          THE COURT:  Thank you very much, Doctor.  You may  
20          step down.

21          (Witness excused from stand)

22          THE COURT:  All right, you may call your next wit-  
23          ness.

24          MR. WATERS:  Your Honor, we call Rick Zureich.

25          THE COURT:  Come around and be sworn, sir.