

STATE OF SOUTH CAROLINA
IN THE COURT OF APPEALS

ORIGINAL

Appeal from Pickens County

Perry H. Gravely, Circuit Court Judge

THE STATE,

RESPONDENT,

V.

ANGELA D. BREWER,

APPELLANT

APPELLATE CASE NO. 2017-002563

RECORD ON APPEAL

RECEIVED

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SC Court of Appeals

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**THE FOLLOWING EXHIBITS ARE ON FILE WITH THIS COURT:
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	)	COURT OF GENERAL SESSIONS
COUNTY OF PICKENS	)	2016-GS-39-02265
	)	
	)	
	)	
	)	
STATE OF SOUTH CAROLINA,	)	
	)	
vs.	)	TRANSCRIPT OF RECORD
	)	
ANGELA DENISE BREWER,	)	VOLUME I
DEFENDANT.	)	
_____	)	

December 11, and 12, 2017
Pickens, South Carolina.

B E F O R E:

THE HONORABLE PERRY H. GRAVELY, JUDGE; and a jury.

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I N D E X

(SW) - Denotes State's Witness
 (DW) - Denotes DW Witness
 (IC) - Denotes In Camera

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All Exhibits were retained by the Clerk of Court for Pickens County.

1 to that subpoena.

2 MS. RAU: Thank you, Your Honor.

3 THE COURT: And whatever else information I need to
4 put in the order to protect him. I think he -- my reading
5 of the last paragraph is that since he meets exceptions
6 that that should protect him on that.

7 MS. RAU: Thank you, Your Honor.

8 THE COURT: All right. Are you ready to proceed on
9 the Jackson v. Denno?

10 MS. HINTON: Yes, Your Honor.

11 The State would call Lane Byers.

12 THE COURT: And I assume that y'all have made other
13 arrangements for security in this court?

14 MR. LANE BYERS: What's the question?

15 THE COURT: Well, as far as -- are you going to be a
16 witness in this case?

17 MR. LANE BYERS: Yes, sir. Since early on.

18 THE COURT: Well, I'd like -- since we've got jurors
19 coming in that you'd make appropriate arrangements about
20 security in here. And I don't know if I want you on the
21 front desk.

22 MR. LANE BYERS: I've been in Family Court.

23 THE COURT: Okay.

24 THE CLERK: Place your left hand on the Bible and
25 raise your right hand.

1 WHEREUPON,

2 LANE BYERS,

3 after first having been duly sworn, testified as follows:

4 THE CLERK: Have a seat.

5 And state your name for the record, please.

6 THE COURT: And I know y'all were talking there. I
7 want to make sure -- I requested that since he is going to
8 be a witness in this case that he not be security in this
9 courtroom and, also, the front desk during the pending of
10 this trial, so that jurors coming in and out don't see him
11 and give him any --

12 MS. HINTON: Yes, Your Honor.

13 THE COURT: -- additional attention.

14 MS. HINTON: Thank you.

15 THE COURT: So I hope that doesn't mess you up too
16 bad.

17 THE WITNESS: No. We've got it. We've already done
18 it.

19 THE COURT: I knew y'all probably had. Okay.

20 MS. HINTON: Thank you.

21 DIRECT EXAMINATION

22 BY MS. HINTON:

23 Q Will you state your name for the record?

24 A Lane Byers.

25 Q And where are you employed?

1 A Pickens County Sheriff's Office.

2 Q And how long have you been there?

3 A All total, about 35 years, I think.

4 Q Okay. Were you employed there in 2014?

5 A Yes, I was.

6 Q And in what capacity?

7 A I was the lieutenant of the detective division on the
8 adult side.

9 Q Okay. Did you respond to Cannon Hospital on October
10 the 17th of 2014?

11 A Yes, I did.

12 Q Okay. And why did you respond there?

13 A I was called as a supervisor. The on-call detective
14 could not make it. He was tied up. So they called me and
15 I came out.

16 Q Okay. And what did you respond in reference to?

17 A There was a child death in the emergency room there
18 at Cannon Hospital.

19 Q And when you got there, were there any family members
20 present?

21 A Yes. There was -- the grandparents was only -- was
22 the only family that I knew of that was there at that
23 time.

24 Q So would that be the Defendant and her husband, Robby
25 Brewer?

1 A Yes, it would.

2 Q And did you have an occasion to speak with them
3 throughout this process?

4 A Occasionally, yes. They were right close -- there
5 was adjoining rooms where the baby was in the one room,
6 and they were in the next room to it.

7 Q At the time that you arrived and spoke to them, did
8 you have any indication of, other than a child death, what
9 other details you were dealing with?

10 A No, I did not.

11 Q Were you the investigator on this case?

12 A No, ma'am.

13 Q Did you obtain consent to search the home?

14 A I did with Sergeant Mike Hendricks.

15 Q And who did you obtain that consent from?

16 A From Robby Brewer.

17 Q And throughout that process, were Mr. Brewer and the
18 Defendant cooperative?

19 A Sure, they were.

20 Q And did the Defendant make some statements to you
21 regarding a timeline?

22 A She did. I was -- when I was waiting on -- I had
23 called out Lieutenant Burgess due to this being more in
24 her expertise. And as I was waiting, I was just trying to
25 get some kind of timeline, something that we could go

1 ahead and get started with.

2 Q And did she provide that timeline?

3 A She did. She talked about the feedings that she did,
4 what she had fed the child. And that she had put it down
5 to sleep.

6 Q Did she, also, make a comment about the type of
7 medication she was on at that time?

8 A She did. She didn't make it directly to me, but she
9 was making it to someone else. And I was standing there
10 when it was made.

11 Q And did she make any comments about the victim's
12 demeanor that day?

13 A She said he was sickly. He was fussy. He was
14 fretful and had been all day.

15 Q And did you Mirandize her at all?

16 A No, I did not.

17 Q Did you even know that she was a suspect at that
18 time?

19 A No. I had no clue what had happened.

20 Q Was she allowed to leave the hospital on her own free
21 will?

22 A Sure.

23 Q Did she appear to be under the influence at all when
24 you spoke with her?

25 A It was hard to tell. She was crying and upset. So

1 it was hard to tell any influence that -- outside
2 influence that would be on her.

3 Q Did her statement seem, at least, somewhat coherent?

4 A Yes.

5 Q I guess -- were they responsive to your questions?

6 A Sure, they were.

7 MS. HINTON: Lieutenant Byers, that's all I have at
8 this time. Please answer any questions Mr. DeJong may
9 have.

10 THE COURT: Cross-examination.

11 MR. DEJONG: Thank you, Your Honor.

12 May it please the Court.

13 CROSS-EXAMINATION

14 BY MR. DEJONG:

15 Q Mr. Byers, I kind of missed -- I heard the last
16 question the Solicitor asked you of were her answers
17 responsive to your questions. And I think you said yes?

18 A Yes.

19 Q Okay. The question before that, I missed. I wasn't
20 sure -- did that have to do with her responsiveness? Do
21 you recall?

22 A What was the question before? I don't recall.

23 Q I don't remember either at this point in time. I
24 thought it was, Did she change her story? But I --

25 A That was not the question --

1 Q Okay.

2 A -- I think I responded to.

3 Q Okay. If that's not the question you heard, then
4 we're fine and dandy and on an even playing ground.
5 Obviously, she was upset?

6 A Yes, sir.

7 Q I am speaking of Ms. Brewer.

8 A Ms. Brewer.

9 Q She was very upset, crying?

10 A Yes, sir.

11 Q A great deal?

12 A She was crying. She had -- I got there a little
13 later, so she was still crying, but it was sort of soft
14 crying at that time.

15 Q I'm sorry?

16 A She was sort of doing a soft crying. I mean, it was
17 not like the traumatic part right there at that point.

18 Q Hysterical?

19 A I wouldn't call it hysterical.

20 Q But, certainly, more than just crying? She was
21 tremendously upset?

22 A I would say just crying.

23 Q Okay.

24 A I'm not going to say she was tremendously upset.

25 Q Okay. Did you know anything about Ms. Brewer at that

1 point in time?

2 A I had never met her before then. I knew her husband
3 somewhat, but I didn't know her.

4 MR. DEJONG: Nothing further.

5 THE COURT: Any redirect?

6 REDIRECT EXAMINATION

7 BY MS. HINTON:

8 Q In addition to being sad, did you notice anything
9 else about her state?

10 A Worried, maybe concerned.

11 Q Concerned with what?

12 A Just with the events that was unfolding around her.

13 MS. HINTON: That's all I have.

14 THE COURT: Thank you.

15 You may step down.

16 MS. HINTON: Judge, do you want to take these
17 statements -- do you want me to argue after each
18 statement, or do you want to hear the argument at the end?

19 THE COURT: If they're different -- so this is --
20 yeah. Let's argue --

21 You can step down.

22 THE WITNESS: Okay.

23 THE COURT: Let's argue each one since they're not
24 related -- I mean, if the witnesses are related.

25 MS. HINTON: Sure.

1 So just for the record, Your Honor, this is a
2 statement from October the 17th of 2014, made at Cannon
3 Hospital to Lieutenant Lane Byers. She was not in custody
4 at the time. It was not an interrogation. It was simply
5 fact-finding questions. They did not know what they were
6 dealing with at that time. She seemed at least -- at
7 least, coherent enough to respond to his questions
8 appropriately.

9 So we think it's, certainly, admissible under Jackson
10 v. Denno as freely and voluntarily made. We would ask
11 that it be admitted.

12 THE COURT: Okay.

13 MR. DEJONG: Your Honor, I can't argue that she was
14 in custody at the time. I think this -- and I'm not
15 arguing against it coming in. I can't think of any
16 argument to make, in all candor. I think that's a matter
17 for the jury to decide.

18 THE COURT: So -- and I think based on what I've
19 heard that I will allow it. I think it meets the standard
20 of Jackson v. Denno.

21 So I will grant that it is voluntary.

22 MS. HINTON: Thank you, Your Honor.

23 The State would next call Detective Michael
24 Hendricks.

25 THE CLERK: Good morning.

1 THE WITNESS: Good morning.

2 THE CLERK: Place your left hand on the Bible and
3 raise your right hand.

4 WHEREUPON,

5 MICHAEL HENDRICKS,

6 after first having been duly sworn, testified as follows:

7 THE CLERK: Have a seat.

8 And state your name for the record, please.

9 (WHEREUPON, there was no response.)

10 DIRECT EXAMINATION

11 BY MS. HINTON:

12 Q Would you state your name for the record?

13 A My name --

14 THE COURT: I apologize. Can we pull that microphone
15 around?

16 THE WITNESS: My name is Michael Hendricks.

17 BY MS. HINTON:

18 Q Detective Hendricks, where are you employed?

19 A I'm employed at the Pickens County Sheriff's Office.

20 Q And were you employed there in 2014?

21 A I was.

22 Q And in what capacity?

23 A I was -- I worked for the special victims unit as an
24 investigator.

25 Q Okay. And you did respond to the house at some

1 point; correct?

2 A I did, yes.

3 Q Okay. And did you -- and that was on October the
4 17th, 2014?

5 A Correct.

6 Q And did you speak at all to the Defendant at that
7 time?

8 A Other than signing the consent form, no.

9 Q Did you have occasion to meet with her again on
10 November the 6th of 2014?

11 A I did, yes.

12 Q And where did you meet with her?

13 A I met with her in my office at the sheriff's office.

14 Q At the sheriff's office. And were you alone?

15 A Yes. We were alone.

16 Q And was that audio and video recorded?

17 A It was, yes.

18 Q And have you reviewed that audio and video?

19 A Yes, I have.

20 Q Did you Mirandize Ms. Brewer prior to that interview?

21 A No.

22 Q Okay. And explain to me why you did not Mirandize
23 her.

24 A It was my understanding that we were still trying to
25 figure out what had happened to this child. We wanted a

1 timeline to help us understand that. At that time, we
2 didn't know if a crime had been committed.

3 Q At that time, did you have any SLED toxicology
4 reports back?

5 A I did not, no.

6 Q Did you have an autopsy back at that time?

7 A No.

8 Q Did the Defendant come in on her own free will?

9 A She did.

10 Q Did she willingly speak with you?

11 A She did.

12 Q Did you, also, obtain a written statement from her?

13 A I did.

14 Q At the top of that written statement, does it go over
15 your rights?

16 A It does.

17 Q Did she indicate at all that she had any trouble
18 reading or writing?

19 A No.

20 Q Was she able to write well?

21 A She was, yes.

22 Q Did she seem to understand what you were asking her?

23 A She did.

24 Q Did she seem under the influence of any drugs at that
25 time?

1 A No.

2 Q Was she arrested on that day?

3 A No.

4 Q And you were present during the reenactment at her
5 home on October the 17th; correct?

6 A Yes.

7 Q But that was not something you conducted; is that
8 correct?

9 A Correct.

10 MS. HINTON: That's all I have. Please answer any
11 questions Mr. DeJong may have.

12 THE COURT: Cross-examination.

13 MR. DEJONG: Thank you, Your Honor.

14 May it please the Court.

15 CROSS-EXAMINATION

16 BY MR. DEJONG:

17 Q So are we talking about November the 5th? Is that
18 when you're saying that you took the statement that was
19 audio and video recorded?

20 A I believe it was November the 6th.

21 Q Okay. Now -- all right. That's fine. But on
22 November the 6th, you did not Mirandize her?

23 A No.

24 Q Now, where was the interview held?

25 A At the sheriff's office?

1 Q Closed room?

2 A Yes.

3 Q Closed door?

4 A Yes.

5 Q And how were you dressed?

6 A I -- with a pair of slacks, button-up shirt.

7 Q Did you have your weapon on your waist?

8 A I did, yes.

9 Q And, certainly, you were -- you identified yourself
10 as a Pickens County Sheriff's Office deputy or detective,
11 did you not?

12 A I did, yes, sir.

13 Q And what was the educational level of Ms. Brewer?

14 A I could not tell you. I didn't ask her that
15 question.

16 Q All right. How long did the interview last?

17 A It just -- estimating, I'd say a good hour.

18 Q All right. And when she came -- just so the record
19 is clear. It was done at the sheriff's office. That's in
20 the Pickens County Detention Center; correct?

21 A It's not in the detention center. I mean, it's at --
22 they're at the same place.

23 Q All right. Poorly asked question. In the same
24 building as the detention center; correct?

25 A You're correct, yes.

1 Q All right. And when Ms. Brewer came in, do you know
2 where she came in? Did she come in on the detention
3 center level, the downstairs level, or where did she come
4 in?

5 A I did not pick her up. I did not come in the
6 building with her, so I have no idea.

7 Q Well, who escorted her down to the video -- or the
8 interview room?

9 A I was asked by my lieutenant to interview her.
10 Because we had two people there at the same time that
11 needed interviewing.

12 Q I understand what your lieutenant asked you. I asked
13 you who escorted her to the interview room?

14 A When she was -- she came into my office. How she --
15 who escorted her there, I have no idea. I can't remember
16 that. I just know she walked into my office on her own
17 free will.

18 Q Would she have had to have an escort?

19 A She would have had to have somebody to show her where
20 to go.

21 Q Would that have been another police officer?

22 A I would imagine so, yes.

23 Q Well, certainly, she was in a closed room; right?

24 A Correct.

25 Q No windows?

1 A Correct -- wait. Yeah. There's a window in there,
2 yes, sir.

3 Q Is there?

4 A (Witness nodded.)

5 Q Which wall is that window on?

6 A If you walk in the room, it's on your left wall if
7 you're walking straight from the door.

8 Q On which wall?

9 A Your left. You're standing facing the door, it's on
10 your left.

11 Q Okay. Now, were you the only officer in there with
12 her?

13 A Yes.

14 Q Okay. Did you ever tell her she was free to leave?

15 A I felt that was the understanding.

16 Q Well, what would make you think that was the
17 understanding?

18 A Because I didn't call and tell her to come there.
19 And I explained to her from the beginning that we just
20 wanted to sit down and get a timeline. Because they were
21 upset on the incident date. And we felt it would be more
22 appropriate to interview her at a later date when she had
23 had the opportunity to calm down. That's the way I
24 explained it to her.

25 Q That's kind of an ask first and Mirandize later, huh?

1 A Well, you have to understand, we didn't know at that
2 time how this child had died. The best resource of that
3 information was her.

4 Q Well, there was, certainly, other ways of doing that
5 other than bringing somebody to the Pickens County
6 Detention Center -- or the sheriff's office, isn't there?

7 A I would disagree.

8 Q You couldn't go out and talk to her?

9 A We have policies and -- and ways we do things. And
10 one of those things is we bring them down to the sheriff's
11 office where we can record it so we can remember what she
12 had to say.

13 Q And it's, also, a more coercive environment, isn't
14 it?

15 A Just -- I mean, that's your opinion.

16 Q Well, you had your weapon on, didn't you?

17 A I did, yes.

18 Q You identified yourself as a Pickens County sheriff's
19 deputy?

20 A I did.

21 Q How big is that room?

22 A It's a fairly large office. There's, actually, two
23 people that have desks in that office.

24 MR. DEJONG: One moment, please, Your Honor.

25 (Pause.)

1 MR. DEJONG: Nothing further, Your Honor.

2 THE COURT: Is this the one where I'm going to have
3 to listen to the statement?

4 MS. HINTON: No, Your Honor -- I mean, not unless the
5 Defense requests it. But the one I was speaking of that I
6 know he wants you to watch is a different one.

7 THE COURT: Okay.

8 MS. HINTON: Just brief redirect, Your Honor.

9 REDIRECT EXAMINATION

10 BY MS. HINTON:

11 Q Detective Hendricks, does your office have -- or I'm
12 sorry. Does your building have formal interrogation
13 rooms?

14 A They do, yes.

15 Q Is that what you took Ms. Brewer to?

16 A No.

17 Q Okay. You mentioned that she was upset at the
18 hospital and so y'all brought her in later to speak with
19 her. Was this her first interview?

20 A It was her first interview with me. They spoke to
21 her at the hospital trying to get an understanding of what
22 happened. Other than that, I don't think she had been
23 spoken to.

24 Q And what was your understanding of their ability to
25 gather information from her the night that this happened?

1 A It's very -- it's a very delicate process when you're
2 dealing with somebody when a child has just died, because
3 they're very upset. And it's a very sensitive
4 environment. And so a lot of times, we do follow-up
5 interviews when -- when we feel like it's a little more
6 appropriate to ask certain questions.

7 Q And, again, was she cooperative?

8 A She was, yes.

9 Q Did she readily provide you with information?

10 A She did, yes.

11 MS. HINTON: That's all I have, Your Honor.

12 THE COURT: All right. Now, did -- there's a written
13 statement that you're offering in and an oral statement.
14 It's my understanding that the written statement has the
15 Miranda rights on it?

16 MS. HINTON: It does.

17 Your Honor, we would not be admitting that as
18 evidence. But it does have a waiver of rights form on it.
19 You can see her writing on it in the interview. But we
20 would just seek to admit her oral statement.

21 THE COURT: Is that -- I guess explain to me when the
22 timing of those two statements and that writing is. I'm a
23 little confused on that.

24 MS. HINTON: Throughout the video you mean?

25 THE COURT: Yes. When --

1 MS. HINTON: So he questions her for -- my
2 calculation is 35 minutes and 45 seconds. They talk about
3 what happened. And then, at that point, he asked if she'd
4 be willing to give a written statement as to the timeline
5 that she provided. He even offers to provide her the
6 notes as she dictated it to him.

7 She then spends about 20 minutes writing her
8 statement. And then there's a brief discussion after
9 that. And then the interview is completed.

10 THE COURT: All right. And the statement has the
11 Miranda rights on it?

12 MS. HINTON: It does, Your Honor. I'm happy to mark
13 it as a Court's Exhibit.

14 THE COURT: I'd like to see that. But he -- in the
15 interview, did he ever read that to --

16 MS. HINTON: Not to my recollection, Your Honor.

17 He provides it to her and asks her if she can read
18 and write. I do think, in her defense, she says, I can't
19 write well, which does not seem to be an issue. They even
20 comment on it afterwards. But she never indicates that
21 she cannot read, but they're not read aloud.

22 (WHEREUPON, Court's Exhibit No. 2 was marked for
23 identification and admitted into evidence.)

24 THE COURT: Do you contradict anything she's told me
25 about -- as far as the statement goes, Mr. DeJong?

1 MR. DEJONG: Your Honor, I have a real problem with
2 no Miranda.

3 THE COURT: That's not what I'm asking you.

4 MR. DEJONG: Well, I'm sorry. I didn't hear you.

5 THE COURT: I asked you did you have any -- do you
6 contradict any of the facts that she just told me?

7 MR. DEJONG: I can't contradict that that Miranda --
8 or potentially Miranda is on the head of the statement.
9 But I can say there was no indication, at this point in
10 time, that she ever read it.

11 If you'd look at the video, he does the interview --

12 THE COURT: I wasn't asking for argument.

13 MR. DEJONG: Okay. I'm sorry.

14 THE COURT: I'll hear from that in a minute.

15 MR. DEJONG: Okay.

16 MS. HINTON: And, Your Honor, this is marked as
17 State's -- Court's Exhibit No. 2.

18 THE COURT: Okay. Any other additional testimony?
19 Then we'll get to the argument phase.

20 MR. DEJONG: Thank you, Your Honor.

21 THE COURT: I was trying to make sure I didn't need
22 to review the video. If you agree to what she said was on
23 the video, then I don't need to do that.

24 MR. DEJONG: And I'm not trying to be disrespectful.
25 Can you use the microphone, Your Honor? I'm having a hard

1 time hearing you back here. It's not on.

2 THE COURT: It says it's on.

3 Is that better?

4 MR. DEJONG: Much better.

5 Thank you, Your Honor.

6 THE COURT: I'm going to have trouble having to do
7 this. I've not used a microphone. So I'll just talk
8 louder.

9 MR. DEJONG: Thank you.

10 THE COURT: All right. Anything else from this
11 witness?

12 MS. HINTON: No, Your Honor.

13 Just in addition to the statement, there is another
14 Court's Exhibit that I believe Mr. DeJong and I have
15 agreed upon. And there is a significant amount of down
16 time where she's writing her statement.

17 So for efficiency purposes, we would propose that the
18 jury not be required to sit in silence and watch that.

19 MR. DEJONG: I have no objection to that if Your
20 Honor allows the statement in, Your Honor.

21 MS. HINTON: And that's Court's Exhibit No. 1, Your
22 Honor.

23 THE COURT: Okay. Anything else of this witness?

24 MS. HINTON: No, Your Honor.

25 THE COURT: All right. You may step down.

1 All right. I'll be glad to hear from you on these
2 statements.

3 MS. HINTON: Thank you, Your Honor.

4 According to the detective's testimony, this
5 statement was, essentially, the first kind of initial
6 interview. Because they were so upset at the hospital,
7 they weren't able to talk to them at that time. It was
8 not in a formal interrogation room. It was in his office.
9 It lasted roughly an hour, perhaps, a little bit less than
10 that.

11 She was aware that it was video and audio recorded.
12 She happily discussed things with him. She did not seem
13 hesitant in her questioning. She was provided with a
14 written statement form that contains Miranda. She was not
15 under arrest at that time. No toxicology reports had been
16 received. No autopsy had been received.

17 So, at that point, they were not even clear as to
18 what happened. Again, it was merely fact finding. Her
19 statement was voluntary. And she was not arrested that
20 day. She was, actually, arrested over a month later, Your
21 Honor.

22 THE COURT: All right. I'll be glad to hear from you
23 now, Mr. DeJong.

24 MR. DEJONG: Thank you, Your Honor.

25 May it please the Court.

1 My problem is this, she was asked to come to the law
2 enforcement center by law enforcement. She gets to the
3 law enforcement center, presumptively, based on Detective
4 Hendricks' testimony, and is taken to an interview room
5 with Detective Hendricks where the door is closed.
6 Granted, she was told she was being video and audio
7 recorded, sitting with a police officer that has his side
8 arm on, who identifies himself as a Pickens County
9 sheriff's deputy.

10 Now, I don't believe, Your Honor, that the test is
11 what the police officer thought or what the deputy
12 thought. The test is what the Defendant, in this case,
13 who was not a defendant at that point in time, I concede
14 that. But it was the appearance and what the Defendant
15 considered was going on at that point in time.

16 Certainly, I don't recall -- and Your Honor can,
17 certainly, watch the video. I don't really recall the
18 front end of it that much. But, certainly, there was
19 nothing about her being free to leave.

20 And I would submit, Your Honor, that the fact that
21 she was sitting in that room with a police officer with
22 the door closed, she would not have believed, at that
23 point in time, that she was free to leave. Granted, she
24 did not attempt to leave. But I, again, would suggest
25 that from her perception, Your Honor, she was not free to

1 leave.

2 As far as that Miranda at the top of the statement
3 form, Your Honor, if that is, indeed, Miranda, if you were
4 to watch the video, there was no mention of that on the
5 top of that particular statement. I don't believe -- I
6 could be wrong. But I don't believe that Ms. Brewer
7 filled out the top of that statement. She was handed the
8 forms after having been asked if she would give a written
9 statement, which she indicated she would.

10 But, again, I don't recall anything on the video
11 about her reading the top part of that statement form or,
12 again, even being asked by Detective Hendricks if she read
13 the top of that statement form. And, therefore, I would
14 submit, Your Honor, if the State is saying that is
15 sufficient for Miranda, I would oppose that to the upmost.
16 Because I don't think that is what Miranda is all about.
17 You have to be advised of your Miranda.

18 So I would submit, Your Honor, that that statement
19 should not be admissible.

20 THE COURT: Any follow-up?

21 MS. HINTON: Just that our argument is not that that
22 is sufficient for Miranda, Your Honor. Our argument is,
23 at that point, Miranda was not required because this was
24 not a custodial interrogation. That is just merely an
25 extra step that was taken by handing her that form that

1 supplies that information.

2 I think Mr. DeJong's argument -- the only argument he
3 has is it took place at the sheriff's office. And that is
4 only one small factor to consider in whether or not it was
5 freely and voluntarily given.

6 THE COURT: All right. Let me mull over lunch.

7 I assume you're going to call Mr. Hendricks after
8 lunch today?

9 MS. HINTON: Probably tomorrow, Your Honor.

10 THE COURT: All right. Let me mull over that over
11 lunch then.

12 MS. HINTON: Thank you.

13 The State would call Detective Rita Burgess.

14 THE COURT: Is this statement -- just so I'll know
15 before we start the testimony --

16 MS. HINTON: This is a separate statement given on
17 December 18th of 2014, Your Honor.

18 THE COURT: December 18th?

19 MS. HINTON: Yes, Your Honor.

20 THE CLERK: Place your left hand on the Bible and
21 raise your right hand.

22 WHEREUPON,

23 RITA BURGESS,

24 after first having been duly sworn, testified as follows:

25 THE CLERK: Have a seat.

1 And state your name for the record, please.

2 THE WITNESS: Rita Burgess.

3 DIRECT EXAMINATION

4 BY MS. HINTON:

5 Q Detective Burgess, where are you employed?

6 A With the Pickens County Sheriff's Office.

7 Q Were you employed there in 2014?

8 A Yes, ma'am.

9 Q Did you -- were you involved in this case with
10 Ms. Angela Brewer?

11 A Yes, ma'am.

12 Q And, to be clear, does she have more than one name
13 that she goes by?

14 A Yes. Angela Brewer and Angela Harrison.

15 Q Are -- but they are the same person?

16 A Yes, ma'am.

17 Q Okay. Did you have occasion to see her at the
18 hospital on October the 17th of 2014?

19 A Yes, I did.

20 Q Okay. And what was her state emotionally?

21 A She was very emotional, crying, very concerned about
22 **Minor.**

23 Q Was it your determination whether or not to get a
24 statement from her that night?

25 A It was.

1 Q And what did you decide?

2 A Due to her emotional state and the fact that her
3 grandson had just passed away, I chose not to take a
4 written statement from her that very evening, and give her
5 time to cope with and deal with the fact that her grandson
6 had passed.

7 Q But to be fair, y'all did have some conversation at
8 the hospital that night?

9 A Oh, sure, yes.

10 Q Was that subject to your interrogation, or how did
11 that happen?

12 A No. It was just a matter of needing to obtain
13 information as to what happened that day. She was the
14 caregiver for **Minor** during the day. And I wanted to get
15 that information from her as to his demeanor, how he was,
16 things that took place with him throughout the day to give
17 us an idea of possibly what had happened to him.

18 MS. HINTON: And, Your Honor, I apologize. I think I
19 told you this was just to the December statement, but I
20 did recall that she did speak with her briefly at the
21 hospital as well on October the 17th.

22 BY MS. HINTON:

23 Q Did she -- did her answers seem responsive to your
24 questions?

25 A Yes, they did.

1 Q Was she cooperative at that time?

2 A Very cooperative.

3 Q Did you, again, have occasion to meet with her on
4 December the 18th of 2014?

5 A Yes, ma'am.

6 Q Did she drive herself there?

7 A No, ma'am. When I made contact with her by phone,
8 she did not have transportation. And we offered to give
9 her a ride to the sheriff's office.

10 Q And did you go pick her up?

11 A Yes, I did.

12 Q Were you alone?

13 A No. Agent Christine Cauthen with SLED and I went and
14 picked her up.

15 Q When y'all go and pick her up from her residence, do
16 y'all have any conversation about the case from her
17 residence to the police department?

18 A No, ma'am.

19 Q When you get to the police department, where do y'all
20 meet with her?

21 A In one of the interview rooms at the sheriff's
22 office.

23 Q Okay. So would that be one of the formal
24 interrogation rooms we were speaking about?

25 A That's correct.

1 Q And when you get there, is it fair to say that Agent
2 Cauthen took the lead on the interrogation?

3 A Yes.

4 Q But did you provide Miranda?

5 A Yes, I did.

6 Q Okay. And I've handed you a copy of State's Exhibit
7 No. 1. What is that?

8 A That's a copy of the Miranda form that I used, which
9 she initialled and signed.

10 Q Okay. Can you read that form?

11 A Yes, ma'am. At the top, it states, Your rights,
12 Sheriff's Office, Pickens, South Carolina, date,
13 December 18th, 2014. Time is 11:46 a.m.

14 It then reads, Before we ask you any questions, you
15 must understand your rights. You have the right to remain
16 silent. Anything you say can be used against you in
17 court. You have the right to talk to a lawyer for advice
18 before we ask you any questions, and to have him or her
19 with you during questioning.

20 If you have no money to pay a lawyer's fee, the Court
21 will appoint one to represent you without cost, if you
22 wish. If you decide to answer questions without a lawyer
23 present, you still have the right to stop answering at any
24 time. You, also, have the right to stop answering at any
25 time until you talk to a lawyer.

1 There's, also, a waiver of rights that reads, I have
2 read this statement of my rights and I understand what my
3 rights are. I am willing to make a statement and answer
4 questions. I do not want a lawyer at this time. I
5 understand and know what I'm doing. No promises or
6 threats have been made to me. And no pressure or coercion
7 of any kind has been used against me.

8 Q Did she initial and sign that form?

9 A She did.

10 Q Okay. Were you present for that?

11 A Yes, ma'am.

12 Q Who else was present?

13 A Agent Cauthen with SLED.

14 Q Prior to this Miranda, did y'all ask her if she was
15 under the influence of anything?

16 A I don't believe we asked her anything like that
17 before her Miranda, no.

18 Q Okay. Do you recall her telling you, at some point,
19 that she had taken an Oxycodone at 6:00 that morning?

20 A Yes.

21 Q At the time y'all began this interview, did she
22 appear to be able to understand what y'all were
23 discussing?

24 A She did. She seemed very coherent.

25 Q Okay. Did she have coherent responses to your

1 questions?

2 A In the beginning, yes.

3 Q At some point, does it become clear that she is under
4 the influence of something?

5 A Yes, it does.

6 Q Okay. And, at that point, do y'all break in the
7 interview, or what do y'all do?

8 A She made a few statements that were -- that were
9 incoherent. At that point, we stopped the interview. And
10 I stepped out of the interview room and spoke with a judge
11 concerning an arrest warrant.

12 Q Okay. Do you recall whether she was offered anything
13 to eat or drink during that interview?

14 A I do not recall right offhand.

15 Q Okay. Did she willingly provide information to
16 y'all?

17 A Yes, ma'am.

18 Q And this was audio and video recorded; correct?

19 A Yes, ma'am.

20 Q About how long did the interview last? Do you
21 recall?

22 A I don't recall. I want to say 45 minutes to an hour.
23 But I don't recall for certain.

24 Q And do you recall, at some time, her asking for a
25 lawyer?

1 A Yes.

2 Q Okay. And when she asked for a lawyer, what did
3 y'all do?

4 A The interview ended. And I spoke with Judge Dow
5 concerning a warrant.

6 Q Did you obtain a warrant that day?

7 A Yes, ma'am.

8 Q Was she arrested that day?

9 A Yes, ma'am.

10 MS. HINTON: Detective Burgess, that's all I have for
11 you.

12 Thank you.

13 THE COURT: Cross-examination.

14 MR. DEJONG: Thank you, Your Honor.

15 May it please the Court.

16 CROSS-EXAMINATION

17 BY MR. DEJONG:

18 Q So who went out and picked up Ms. Brewer?

19 A Agent Cauthen and I went to pick her up.

20 Q How far was the ride?

21 A It's probably not even five miles.

22 Q Okay. Was there any discussion about the case on
23 that ride?

24 A No, sir.

25 Q Now, I'm going to jump forward here. During -- from

1 the time you first saw Ms. Brewer that day --

2 A On the 18th?

3 Q Yes, ma'am.

4 A Yes, sir.

5 Q Of December, I believe?

6 A Yes, sir. That's correct.

7 Q Did she take any medication?

8 A Not in my presence.

9 Q Okay. Well, from the time you picked her up until
10 the interview was terminated, she was in your presence,
11 wasn't she?

12 A Yes, sir.

13 Q So she did not take any medication?

14 A That's correct.

15 Q All right. Now, would you agree with me that,
16 initially, when the interview started -- and I realize
17 Agent Cauthen did most of the interviewing, but
18 Ms. Brewer's speech was somewhat slurred at that point in
19 time?

20 A In the beginning, she was very coherent, and alert,
21 and talking just like you and I are now.

22 Q All right. Well, how long did that last?

23 A Without looking at the actual video, I couldn't give
24 you a specific time. Maybe 30 minutes.

25 Q You would agree with me, would you not, Detective

1 Burgess, that there was a steady and gradual decline in
2 her ability to speak and her speech being slurred? Would
3 you agree with that?

4 A That's correct.

5 Q All right. And you've been a sheriff's deputy for a
6 number of years now, haven't you?

7 A 27 years.

8 Q A long time?

9 A Yes.

10 Q So you've done a lot of interviews, and all that good
11 stuff; right?

12 A Yes, sir.

13 Q But based on your training and experience, you didn't
14 see anything unusual about Ms. Brewer when you started
15 this interview?

16 A When it first started, no.

17 Q All right. Well, she, obviously -- well, let me ask
18 you this. Did she tell you what she took that morning?

19 A She stated Oxycodone at 6:00 that morning.

20 Q But later on in the interview, she shared something
21 else, didn't she?

22 A She may have. I'd have to go back and review.

23 Q Did she tell you she took a Valium?

24 A Yes, she did.

25 Q And that was way back on the other end of the

1 interview, wasn't it?

2 A Yes.

3 Q And did she tell you what time she took that Valium?

4 A I -- I don't recall her giving me a time.

5 Q Okay. Now, when you were going over the Miranda
6 statement with her, you read it to her?

7 A Yes, sir.

8 Q Did she ever read it?

9 A I read the Miranda to her. And as I read each line,
10 I mark it. I then turn it around to her and tell her to
11 reread it for herself. If she understands each line, to
12 initial on each line. And then if she understands the
13 waiver and chooses to speak with us, to sign at the
14 bottom.

15 Q All right. But as far as the individual rights, she
16 did not read them out loud, did she?

17 A She did not read them out loud.

18 Q She did read the waiver out loud?

19 A Yes.

20 Q And then as she was initialling the waiver, you,
21 actually, pointed out to her where -- excuse me. Let me
22 back up. She initialled each individual right; correct?

23 A Yes.

24 Q And then when she got to the point of signing the
25 waiver, you, actually, pointed out to her where she had to

1 initial, didn't you?

2 A Yes. If she chose to speak with us, she would need
3 to initial that line and sign the form.

4 Q Yes, ma'am. So she, at that point in time, didn't
5 know where to initial, did she?

6 A I can't say she didn't know where to initial.

7 Q But you, certainly, pointed it out to her?

8 A Right. A lot of times when we go over these forms,
9 people do skip a line and we do point it out to them.

10 Q Yes, ma'am. I'm not asking you about a lot of times.
11 I'm asking you about this case with Ms. Brewer.

12 A I did point that out, yes, sir.

13 Q And then without further ado, after you pointed it
14 out to her and said, You sign there, she initialled;
15 right?

16 A She initialed on the left-hand side of the form,
17 which is what she was supposed to do. And then she signed
18 the bottom of the form, which is what she's required to
19 do.

20 Q But you told her what she's supposed to do?

21 A I asked her if she understood the rights, to initial
22 on each line and to sign the bottom of the form if she
23 chose to speak with us. And that is what she did.

24 Q But in view of the fact that she did not take any
25 medication during the interview, she was already under the

1 influence of medication, wasn't she?

2 A She told us that she took the medication at 6:00 a.m.

3 And this interview started at 11:46 a.m.

4 Q Yeah. But that was the Oxycodone; right?

5 A That's correct.

6 Q Not the Valium?

7 A That's correct.

8 Q Do you know what dosage of Valium she took?

9 A I do not.

10 Q So you had very little conversation with her at the
11 hospital on the evening of October the 17th; is that
12 correct?

13 A That's correct. Just enough to get information on
14 his condition throughout the day.

15 Q Okay. Well, what was her response to that?

16 A She said that he had been battling with ear
17 infections off and on for a little while. He had been
18 fussy. They were concerned that he was getting sick
19 again. And that when she put him down for his nap, when
20 she went to wake him back up several hours later, she
21 could not get him to respond.

22 Q So that was the extent of that?

23 A She did make mention of having fed him that morning
24 an apple around 11:00. She gave him lunch around 12:00.
25 It was a grilled cheese or a cheese sandwich, I believe

1 she said. And then around 1:15, she provided him with a
2 cup of pink lemonade.

3 Q Did what now?

4 A Do you need me to repeat all of it?

5 Q Not all of it. She provided him a what?

6 A She said she gave him half of an apple around 11:00
7 or 11:15. Around lunchtime, she gave him a cheese
8 sandwich. And then she gave him a cup of pink lemonade
9 around 1:15.

10 Q She was talking about the pink lemonade. Did she
11 share with you what cup **Minor** drank that out of?

12 A I don't recall her saying what cup.

13 Q Okay. Did she ever tell you that on many occasions
14 that this child drank out of her cup?

15 A Not on that particular day, she did not.

16 MR. DEJONG: All right. Thank you, ma'am.

17 THE COURT: Any redirect?

18 MS. HINTON: Just real briefly.

19 REDIRECT EXAMINATION

20 BY MS. HINTON:

21 Q At the hospital on October the 17th, she, also, made
22 additional statements that this shouldn't be happening,
23 didn't she?

24 A That's correct.

25 MS. HINTON: That's all I have for this witness, Your

1 Honor.

2 THE COURT: All right. You may step down.

3 THE WITNESS: Thank you.

4 MS. HINTON: Your Honor, the State would call Agent
5 Christine Cauthen.

6 THE CLERK: Place your left hand on the Bible and
7 raise your right hand.

8 WHEREUPON,

9 CHRISTINE CAUTHEN,
10 after first having been duly sworn, testified as follows:

11 THE CLERK: Have a seat.

12 And state your name for the record, please.

13 THE WITNESS: Christine Cauthen.

14 DIRECT EXAMINATION

15 BY MS. HINTON:

16 Q Agent Cauthen, where are you employed?

17 A I'm employed with the South Carolina Law Enforcement
18 Division, special victims unit and child fatalities.

19 Q Were you employed in that capacity in 2014?

20 A Yes, ma'am.

21 Q And did you arrive to Cannon Hospital in regards to

22 **Minor** ?

23 A Yes, ma'am.

24 Q And while you were there, did you meet with Angela
25 Brewer?

1 A Briefly, yes, ma'am.

2 Q Okay. And what was the basis of that?

3 A Just to get an idea of -- of the relationship of this
4 child to her, and to find out exactly what had occurred
5 during the day with this child.

6 Q Okay. And to be clear, is SLED called out on every
7 child fatality?

8 A We try very hard to report to every child fatality in
9 our area.

10 Q And why is that?

11 A Just to assist the local agencies. Sometimes, it's a
12 little overwhelming in getting medical paperwork, and
13 those kind of things, and to be a liaison to assist with
14 the -- with a lot of these with medical problems. So,
15 sometimes, we have to deal with forensic pathologists.
16 Sometimes, we have to deal with forensic child abuse
17 specialists. And we know and work with a lot of those
18 people. So sometimes, we can be an in-between.

19 Q And to be clear, just because you guys respond, that
20 does not mean that every case ends in an arrest; correct?

21 A Definitely not, no.

22 Q Okay. When you spoke to the Defendant at Cannon, did
23 she cooperate with you?

24 A Yes. She was very visibly upset. It was hard to get
25 a lot from her on that particular evening.

1 Q Okay. But did she answer the small amount of
2 questions that you asked her?

3 A Yes.

4 Q And you did not Mirandize her; correct?

5 A No.

6 Q At that point, did you know what you were dealing
7 with, other than a child fatality?

8 A Not a clue.

9 Q Okay. On that same date of October the 17th, 2014,
10 did you, also, respond to her residence?

11 A I did.

12 Q And what was the purpose of that?

13 A The purpose is to do what's called a reenactment with
14 the people that were with the child at that time, just so
15 we can get a timeline, or an understanding that you
16 visually see. Because, sometimes, people will tell you
17 things, but you can't quite visualize them until you do a
18 reenactment.

19 Q And just because you do a reenactment, does that mean
20 that somebody is going to be arrested?

21 A No.

22 Q Did you do a reenactment with Ms. Brewer?

23 A Yes.

24 Q And did you let her know that that was being
25 recorded?

1 A Yes.

2 Q Did you ask her if she was willing to do it?

3 A Yes.

4 Q Was she willing?

5 A Yes.

6 Q Okay. Did y'all record that reenactment?

7 A We did.

8 Q Did you Mirandize her for that?

9 A No, ma'am.

10 Q And did you, also, have some conversation with her

11 about dropping her pills while y'all were out there?

12 A Yes, we did.

13 Q Was that Mirandized?

14 A No.

15 Q And how did y'all even figure out the -- that pills

16 were even a possibility?

17 A Because of the toxicology results from the autopsy.

18 Q Okay. So was that a conversation that occurred

19 later?

20 A Yes, ma'am.

21 Q And was that on December the 18th?

22 A On December the 18th was our second interview with

23 her, yes, ma'am.

24 Q Okay.

25 A And that -- I knew what the results were at that

1 time, yes, ma'am.

2 Q So at what point did you have the conversation -- or
3 was it you that had a conversation with her about whether
4 or not she dropped pills, or were you just provided that
5 information from a different interview?

6 A I believe during that initial interview, she had
7 talked about she had never dropped pills, that she kept
8 pills in her -- her Oxycodone in her pocketbook.

9 Q And you're referring to Detective Hendricks'
10 interview? Is that what you're referring to?

11 A Yes.

12 Q Okay. When did you receive those SLED results? Do
13 you recall?

14 A No, ma'am, I do not. I'm sorry.

15 Q Would it surprise you if it was December the 12th?

16 A No.

17 Q Was it prior to you meeting with her on the 18th of
18 December?

19 A Yes, it was.

20 Q And did you go with Rita Burgess to pick her up on
21 the 18th?

22 A Yes, ma'am.

23 Q And did y'all have any conversations between her
24 house and the law enforcement center regarding this case?

25 A No, ma'am.

1 Q When you met with her, y'all had some just general
2 conversation prior to Miranda; correct?

3 A Yes, ma'am.

4 Q And, in fact, she's -- at some point, she starts to
5 talk to you about the case, and you stop her and tell her
6 you need to Mirandize her; is that correct?

7 A Yes, ma'am.

8 Q And did you Mirandize her?

9 A No, ma'am. Lieutenant Rita Byers [sic] used her
10 Miranda forms from her department at that time.

11 Q Were you present for that?

12 A I was.

13 Q Did Ms. Brewer appear to understand what was going on
14 with that?

15 A Yes, ma'am.

16 Q Did you ask her prior to that whether or not she had
17 taken any medication?

18 A I'm not sure if it was prior to Miranda or after
19 Miranda. But I did ask her if she was under the influence
20 of any alcohol or drugs at that time. And she advised me
21 she had taken Oxycodone that morning.

22 Q At what time?

23 A I believe it was 6:00 a.m.

24 Yes, ma'am, it was.

25 Q Sorry. Did you ask her that because you were

1 concerned, or is that just a standard question you ask?

2 A That's a standard question that I ask usually --
3 well, it is a standard question -- I'm sorry -- not
4 usually.

5 Q At the beginning of this interview, did she appear
6 coherent to you?

7 A Yes, ma'am.

8 Q Did she appear to understand what you were asking
9 her?

10 A Yes, ma'am.

11 Q Was she answering your questions?

12 A Yes, ma'am.

13 Q At some point, do you notice that she does not appear
14 to be coherent anymore?

15 A Yes, ma'am. She seemed to be falling asleep.

16 Q And what did you do at that time?

17 A I -- I don't remember if I asked her at that time if
18 she had taken anything else and she didn't tell me, or if
19 I just asked her if she was sleepy. But I know that we,
20 actually, left the room at that point to take a break, to
21 get something to drink. I asked her if she wanted
22 something to eat. I think we got her a Sprite. And then
23 I walked her outside to see if we could wake up some.

24 Q And when you walked her outside, did y'all discuss
25 anything?

1 A No, ma'am.

2 Q So everything you discussed, was that video and audio
3 recorded?

4 A Yes, ma'am.

5 Q Regarding this case?

6 A Yes, ma'am.

7 Q And when she comes back in and y'all get on the
8 subject of her being on Valium, did you bring it to her
9 attention that you had asked her that question before?

10 A Yes, ma'am.

11 Q Did she explain to you why she didn't tell you before
12 that she was on Valium?

13 A I think she told me that it didn't affect her and so,
14 therefore, she didn't need to tell me. And I told her,
15 apparently, it did.

16 Q Did she tell you at what point she had taken Valium?
17 Do you recall?

18 A I know just before we picked her up, but I can't
19 remember exactly what time she told me. I want to say
20 10:00, maybe.

21 Q And what time was this interview? Do you recall?

22 A 11 something, close to lunch.

23 Q Okay. But you did offer her food and drink?

24 A Yes.

25 Q And y'all did take a break?

1 A Yes.

2 Q At some point, do you recall her asking for a lawyer?

3 A Yes, ma'am.

4 Q And did -- what did you do when she asked for a
5 lawyer?

6 A I told her that was well within her rights. And we
7 packed up. And I left the interview room.

8 Q Are you aware of whether or not she was arrested that
9 day?

10 A She was arrested.

11 Q Did you -- State's Exhibit No. 1, I believe I took it
12 back. Did you witness this Miranda?

13 A Yes, ma'am.

14 Q Okay. Is that your signature on it?

15 A It is.

16 Q So prior to you all taking a break, did she appear to
17 understand what was going on and be coherent?

18 A Just before the break, she began to be sleepy. And I
19 couldn't understand some of the stuff she was starting to
20 say. So that's why we took the break.

21 MS. HINTON: Agent Cauthen, that's all I have.

22 Please answer any questions Mr. DeJong may have.

23 THE COURT: Cross-examination.

24 MR. DEJONG: Thank you, Your Honor.

25 May it please the Court.

CROSS-EXAMINATION

BY MR. DEJONG:

Q How long have you been a SLED agent, Agent Cauthen?

A I've been with SLED five years. I've been in law enforcement 25.

Q Okay. So is being in law enforcement for -- I don't know if that 25 includes SLED or we jump it up to 30 if we include SLED. Either way, I gather you've done a lot of interviews over that period of time?

A Yes, sir.

Q Okay. And you're telling me, based on your training and experience, you didn't notice anything unusual about Ms. Brewer when she -- you started this interview?

A No, sir. She seemed fine when we started the interview. It just started sliding downhill.

Q You didn't notice any slurred speech?

A No, sir.

Q Slow speech?

A Not in the beginning.

Q Well, I -- so you go in -- and this part puzzles me. You go in and tell Ms. Brewer that you are there only to try to determine what happened, based on -- as I recall the interview, based on your job description; right, that is to gather information?

A I'm sorry. I didn't hear that. Try it one more

1 time. I apologize.

2 Q Sure. You went in there and told her it was your job
3 to gather information on child fatalities; right?

4 A Uh-huh.

5 Q Is that your job?

6 A That's part of my job, yes, sir.

7 Q All right. Well, my question to you is, if that was
8 your job and that's what you were doing, why do you take a
9 police officer with you?

10 A Well, my job is to investigate child fatalities.

11 Q Is that what you told Ms. Brewer?

12 A I'm not sure exactly what I told Ms. Brewer.

13 Q Okay.

14 A That's clearly my job.

15 Q But, nonetheless, Detective Burgess gives her her
16 Miranda; right?

17 A Yes, sir.

18 Q Detective Burgess backs off. You do the interview,
19 don't you?

20 A I believe so, yes.

21 Q All right. And your -- your statement to her was,
22 whether it was to investigate or whatever, but that was
23 child fatalities; correct -- you told her it was your job
24 to investigate child fatalities in the state?

25 A Yes, sir.

1 Q All right. Not to gain information that you could
2 use against her in court. You didn't share that with her,
3 did you?

4 A I believe the Miranda shared that with her in the
5 beginning.

6 Q Ma'am, my question is, you didn't share it with her,
7 did you?

8 A No.

9 Q Thank you.

10 So at one point in time -- well, let me ask you this.
11 Would you agree with me that as this interview progressed,
12 Ms. Brewer's speech and demeanor became more and more
13 confused, her speech became more slurred, the whole nine
14 yards; correct?

15 A Yes, sir.

16 Q And that started occurring for a good while before
17 you took the break, didn't it?

18 A I don't think it was a good while. I think it was a
19 few minutes maybe. I'm not sure.

20 Q Well, it wasn't -- you didn't just suddenly say, oh,
21 you look sleepy, let's go take a break?

22 A No, sir.

23 Q Something was going on --

24 A Yeah. I had asked her.

25 Q Pardon me?

1 A I had asked her if she was sleepy.

2 Q Yes, ma'am. I know you did. But the point of it is,
3 you had seen something before that. And then it became
4 progressively worse that you asked her if she needed a
5 break?

6 A Yes, sir.

7 Q All right. Now, once you took that break, you came
8 back and you continued to ask her questions, did you not?

9 A Yes, sir.

10 Q Pardon me?

11 A Yes, sir.

12 Q When it was clear to you, at that point in time, that
13 she was having a difficult time or under the influence of
14 something?

15 A It was clear that something was going on, but I
16 wasn't sure until I asked the question.

17 Q All right. Now, I believe it was after the break, at
18 some point in time, you said, We need to get this together
19 so we can finish this. Do you recall that?

20 A No, sir.

21 Q Okay. At some point in time, you shared with her, I
22 can't help you unless you tell me the truth. Do you
23 understand -- do you recall that?

24 A I'm sure I did say that.

25 Q So you were, in essence, telling her you would help

1 her, were you not?

2 A I don't -- I don't know. I told her we couldn't get
3 to the bottom of it.

4 Q But your words were, I can't help you unless you tell
5 me the truth?

6 A I -- I'm sure I said that, yes, sir.

7 MR. DEJONG: Thank you, ma'am.

8 THE COURT: Any redirect?

9 MS. HINTON: No, Your Honor.

10 THE COURT: And this is the one I need to review the
11 statement?

12 MS. HINTON: It is, Your Honor.

13 I would like to put a little bit of argument because
14 I think this is a Jackson v. Denno, as well as a 404(B)
15 analysis, so.

16 THE COURT: I'll be glad to hear from you.

17 MS. HINTON: Okay.

18 THE COURT: Or I can hear from you after I review the
19 thing in the morning.

20 MS. HINTON: It's entirely up to you.

21 THE COURT: I may have to hear both of them -- both
22 times. So I'll give you an opportunity right now.

23 You may step down.

24 THE WITNESS: Thank you, sir.

25 MS. HINTON: So just briefly, Your Honor. I think

1 there's been just now some comment on interrogation
2 tactics. Under Beckwith v. United States, which is 425
3 U.S. 341, the good-guy approach, as they referred to it,
4 it is recognized as a permissible interrogation tactic.
5 That's cited again in State v. Parker, which is a South
6 Carolina Court of Appeals case from Colleton case. It's
7 opinion number 4475. It's a 2008 case.

8 So the State would opine that these interrogation
9 tactics are 100 percent acceptable, and have been upheld
10 throughout our court system.

11 Your Honor, she was Mirandized. She was -- it was,
12 certainly, an interrogation. She was not yet in custody,
13 but she was subsequently arrested. I believe she freely
14 and voluntarily spoke to law enforcement officers. When
15 she asked for an attorney at the end, they closed up
16 their -- their laptops and left the room. She was well
17 advised of her rights. She was coherent at that point.
18 So the State would argue that the -- that it was
19 admissible under Jackson v. Denno.

20 At some point, Your Honor, the State concedes that
21 she becomes, clearly, under the influence of something.
22 So the State would seek to admit that under 404(B) of
23 other wrongs or acts.

24 And, Your Honor, the Court of Appeals for the Fourth
25 Circuit has held that the other bad act must be relevant

1 to the issue, such as an element of the offense, and not
2 offered to establish general character. It must be
3 necessary in the sense that it's probative of an essential
4 claim or element of the offense. It must be reliable.
5 And then you, obviously, do a probative versus unfair
6 prejudice analysis.

7 Your Honor, the State would argue that this is a case
8 regarding -- and I know you know limited facts at this
9 point. It's an Oxycodone overdose. The State's argument
10 is that the Defendant was not honest or forthcoming about
11 how she uses her Oxycodone. And that to prove motive,
12 intent and lack of mistake or accident that it is
13 essential that the State be allowed to show this video to
14 the jury not for the point of showing, you know, this is
15 how she acts, but to show that she does not seriously take
16 this medication and its effect seriously.

17 She tells the interviewers that she was prescribed
18 Valium. She didn't tell them because it doesn't affect
19 them. They have a long discussion about how it clearly
20 does affect you. What does it make you do? It mellows me
21 out. Well, that's an effect.

22 So the State would argue that it's an element in that
23 we have to show some sort of negligence on her part and
24 extreme indifference. And that this video -- the second
25 half of the video goes to show her motive, her intent, and

1 her absence of mistake or accident in dealing with these
2 drugs and in having them end up in the grandson's sippy
3 cup.

4 So that is the State's brief argument, Your Honor, on
5 why this should be admissible.

6 THE COURT: Do you want to say anything at this
7 point?

8 MR. DEJONG: I would prefer to reserve my argument
9 until after Your Honor reviews the tape, Your Honor.

10 THE COURT: Anything else we need to address at this
11 point?

12 MS. HINTON: Not on this, Your Honor.

13 Just logistically, if you want to try to insert it
14 into your laptop -- I don't know if it will work. We're
15 happy to offer our laptop. Like I said, it's saved on the
16 desk top.

17 THE COURT: Yeah. We'll try that before we start
18 back after lunch.

19 MS. HINTON: Okay. And it is State's Exhibit No. 18,
20 Your Honor.

21 THE COURT: All right. Anything else before we break
22 for lunch?

23 MS. HINTON: Just so you're aware, it was brought to
24 my attention -- I didn't personally see it, but there was
25 some media coverage this morning about selecting a jury.

1 So just so you're aware.

2 THE COURT: Right. I was made aware of that, but we
3 have not gotten any requests. And I will let y'all know
4 as soon as that happens.

5 MS. HINTON: Thank you, Your Honor.

6 THE COURT: And usually, you know, under the
7 limitations of the rules, I do allow media coverage. But
8 I have not received anything up to this point.

9 Anything else?

10 MR. DEJONG: Yes, sir. If you would, please. This
11 might be a little bit premature -- well, let me back up.

12 This idea of law enforcement referring to themselves
13 as being with the special victims unit, I take great
14 offense to that, Your Honor. It's prejudicial to my
15 client. That has been something that has come, if memory
16 serves me, in relatively recent times.

17 And, obviously, there is a TV program, Law & Order.
18 Special Victims Unit. And I think that is exactly what
19 they're playing on when they say we are a member of the
20 Pickens County Sheriff's Department Special Victims Unit.
21 That doesn't mean anything to a jury, unless they play
22 that through the filter of -- filters of their mind with
23 this Law & Order Special Victims Unit.

24 And I don't want to get too far off on the TV show.
25 But that TV show, Your Honor, rarely shows anybody going

1 to trial. Usually, it's somebody is arrested and read the
2 credits. And that really just bothers me that we're using
3 that terminology in light of that TV show, which, from my
4 understanding, is a very popular TV show, which I would
5 suggest is watched by many people on this jury panel and
6 probably on our jury.

7 So I just object to the use of that terminology,
8 Special Victims Unit.

9 THE COURT: All right. Well, I mean, I've never seen
10 the program, so I don't really know what you're talking
11 about. So, I mean, I think if that's what their unit is
12 called -- how do you know that they didn't start calling
13 them all over the country and then they realize, oh,
14 that's a good -- so why don't we use that name for the TV
15 program?

16 MR. DEJONG: Well, I never heard it before this TV
17 show, Your Honor. Maybe everybody is calling it that now
18 based on the TV show. I don't know.

19 THE COURT: Well, unless you can show me more
20 prejudice than that, I'm going -- I'm not sure. I guess
21 you're doing it as a motion in limine?

22 MR. DEJONG: I'm sorry, Your Honor?

23 THE COURT: I guess this is in the form of a motion
24 in limine?

25 MR. DEJONG: Yes, sir.

1 THE COURT: All right. I'm going to deny that.

2 MR. DEJONG: Thank you, Your Honor.

3 The other -- we may be a little premature. But when
4 Your Honor asks if there's anything else, I always like to
5 put it out on the table. And that, Your Honor, is going
6 to be with regard to the testimony of Dr. Fulcher, who is
7 the pathologist in this case.

8 As I understand it, Your Honor, the autopsy, I
9 believe, was done on October -- 10/18, I believe, of 2014.
10 Dr. Fulcher did not sign off on his report, if I am
11 looking at it correctly, until November the 17th of 2014.

12 Now, herein lies my problem, Your Honor.

13 Dr. Fulcher --

14 THE COURT: Let me stop you right there. I asked
15 y'all, specifically -- I don't want to deny these -- I
16 don't care about lunch. But I don't want to deny this
17 court staff of a lunch. And we're getting well into --
18 we're down to a 45-minute lunch now.

19 MR. DEJONG: I'll hold it, Your Honor.

20 THE COURT: I don't mean to cut you off and all that,
21 but that's kind of --

22 MR. DEJONG: I want them to have lunch, too.

23 THE COURT: To me, it doesn't matter. I don't mind
24 missing lunch. I probably need to.

25 MR. DEJONG: Sure. That's fine.

1 your Jackson v. Denno ruling --

2 THE COURT: I was getting ready to do that.

3 MS. HINTON: I'm sorry.

4 THE COURT: No. And I need to make sure I'm clear on
5 these.

6 Okay. On the -- there was -- one portion of it
7 related to Lane Byers overhearing things at the hospital.
8 And I ruled on that and said any of that information was
9 admissible. And I don't think there was a contest on
10 that.

11 The second related to Michael Hendricks asking --
12 getting a statement at the sheriff's office. And I
13 believe that was a few days later.

14 MS. HINTON: On November the 6th, Your Honor.

15 THE COURT: Okay. November the 6th. But, at that
16 time, there was no information back as far as any
17 toxicology report?

18 MS. HINTON: That's correct.

19 THE COURT: All right. It looks like to me -- are
20 y'all familiar with State v. Navy?

21 MS. HINTON: Not particularly.

22 THE COURT: It sounds like -- in State v. Navy, it
23 was, actually, a homicide by child abuse as well where
24 they -- they had two parts of that. And the first part of
25 it, they had him at the sheriff's office and they were

1 just getting a fact-finding mission. There wasn't any
2 charges brought. And, at some point, it switched to being
3 kind of a -- more suspect involved.

4 And they said the first part of the statement was
5 clearly admissible, was not custodial, and Miranda was not
6 required. But that the second part was just not -- and
7 Mr. Hendricks -- or Officer Hendricks, it never got to the
8 point of, hey, we know you did it, or anything like that.
9 It was just fact-finding questions as far as I recall.

10 MS. HINTON: That's the State's opinion, Your Honor.

11 Now, I will say at the very end, there's kind of a --
12 a blanket question of, did you do this? But there's not a
13 lot of pressing, or harping, or things like that. But in
14 full disclosure, there is --

15 THE COURT: Do I need to review it then? Or you're
16 not going to call him --

17 MS. HINTON: We're not calling Detective Hendricks
18 today, Your Honor, no. He would be, basically, first
19 thing tomorrow. I just don't want to mislead you.

20 THE COURT: No. I understand.

21 MS. HINTON: We would still say it doesn't amount to
22 a full blown interrogation, but there are, I guess, I
23 would call tougher questions.

24 THE COURT: If you're not going to call him today, I
25 want to make sure we're -- I have a better understanding

1 of that.

2 How long is the video of that one?

3 MS. HINTON: Judge, if you cut out what we put in
4 Court's Exhibit No. 1, which cuts out about 20 minutes,
5 it's probably only about a 30-minute interview all tolled.
6 And then the second one is more like an hour and a half,
7 two hours.

8 THE COURT: I think I may want to review it then just
9 to be sure on that.

10 And I'd ask y'all to look at State v. Navy, which is
11 688 S.E.2d 838, which is what I'm leaning on for my
12 analysis at this moment, so.

13 MS. HINTON: And then in addition to the statements
14 that were made to Lane Byers, I think both Rita Burgess
15 and Christine Cauthen testified that they were, also, part
16 of some conversation on that same day, both at the
17 hospital and at the home.

18 THE COURT: Right. And I find that those were not
19 custodial. And those are admissible as far as it goes.

20 So, therefore, I need to determine the statements to
21 Michael Hendricks and the -- the video statement to Rita
22 Burgess and SLED -- Cauthen, is it?

23 MS. HINTON: Yes, sir.

24 THE COURT: Cauthen. Or Rita Byers, whichever you go
25 by. Sorry.

1 MS. RITA BURGESS: That's okay.

2 THE COURT: I just had to harass her.

3 So are we clear on everything? That doesn't mess
4 anybody up as far as what you're presenting today?

5 MS. HINTON: No, Your Honor.

6 THE COURT: All right. Anything else then before we
7 bring the jury in from the State?

8 MS. HINTON: Not from the State, Your Honor.

9 MR. DEJONG: Not from the Defense, Your Honor.

10 THE COURT: And just for your purposes, Mr. DeJong,
11 you're going to have to convince me that she's not -- I
12 mean, not now, but for your purposes, you're going to have
13 to convince me that she should not be in the State's
14 custody tonight. Just -- I'm letting you -- I'm giving
15 you a heads up.

16 MR. DEJONG: I will do my best to accommodate you,
17 Your Honor.

18 THE COURT: Okay. Just to let you know where we're
19 headed.

20 All right. If the jury is all here, bring them in.

21 (WHEREUPON, the jury came into open court at
22 approximately 2:14 p.m.)

23 THE COURT: All right. Ladies and gentlemen, I hope
24 everybody had a good lunch. We worked very diligently
25 through ours, most of it. We did get a little bit of a

1 THE COURT: Yes.

2 OPENING STATEMENTS

3 MS. NEWTON: Thank you, Your Honor.

4 May it please the Court.

5 Mr. DeJong.

6 Ladies and gentlemen, like they mentioned earlier, my
7 name is Caroline Newton. And I'm one of the assistant
8 solicitors here in Pickens County.

9 Today, we're here for the case of the State of South
10 Carolina v. Angela Brewer. The Defendant has been charged
11 with the crime of homicide by child abuse.

12 And today, Brandi Hinton and I are representing the
13 State in prosecuting the Defendant for that crime. It's
14 our privilege and our honor to do so.

15 It's a crime in South Carolina for a person to cause
16 the death of a child under the age of 11 by committing
17 child abuse or neglect, and the child's death occurred
18 under circumstances that show an extreme indifference to
19 human life. Today, and the rest of this week, we intend
20 to prove to you that on October 17, 2014, the Defendant
21 did just that to her 14-month-old grandson, **Minor**.

22 On October 17th, 2014, the Defendant was the only
23 adult with **Minor** that day. She was in charge of
24 watching her two youngest grandchildren. She had them all
25 day. And we intend to prove to you and the evidence will

1 show you that on October 17th, 2014, while in her care,
2 **Minor** died.

3 And as with any child death in South Carolina, test
4 results were done on **Minor** after he died. And those
5 results will show you that **Minor** died from an Oxycodone
6 overdose, the exact medication that his grandmother,
7 Angela Brewer, was prescribed.

8 Now, we have the burden of proving this case, like
9 the Judge just mentioned. We have the burden of proving
10 this case beyond a reasonable doubt. And later on, the
11 Judge is going to instruct you on what that burden means.

12 But the law doesn't require that we prove that Angela
13 Brewer committed this case beyond any doubt or beyond a
14 shadow of a doubt. Rather, it's proof that leaves you
15 firmly convinced of the Defendant's guilt. And it's a
16 burden that we gladly accept. It's not an impossible one
17 to overcome. It's been the burden of proof in every
18 criminal trial in the United States. And every defendant
19 that's ever been convicted of a crime in this country was
20 convicted because a jury like you determined that that
21 defendant was guilty beyond a reasonable doubt.

22 Basically, proof beyond a reasonable doubt is proof
23 that would not cause a person to hesitate to act.
24 Ultimately, your verdict, like the Judge mentioned, is
25 going to depend on what you think of the testimony and the

1 evidence, not what I think, not what Mr. DeJong thinks.
2 But you're the jury and you get to be the judge of the
3 facts.

4 And so I think the Judge stressed it, but if he
5 hasn't, your role here today is extremely important. And
6 on behalf of the State of South Carolina and **Minor's**
7 family, we want to thank you for being here today.

8 Homicide by child abuse is different -- a different
9 crime than a crime that you may be familiar with, another
10 homicide or murder. It's different because murder
11 requires malice aforethought or an evil and depraved
12 heart. That's not what we have here today.

13 Angela Brewer didn't wake up on October 17th, 2014,
14 thinking how can I kill my grandson today? That's why
15 homicide by child abuse is different. It's different
16 because her actions on that day were so neglectful that
17 they resulted in an extreme indifference to her
18 14-month-old grandson's life.

19 Now, Angela Brewer walked into this courtroom today
20 the same way you and I did, as innocent people. And over
21 the course of this trial, you're going to hear from
22 multiple witnesses and everyone involved in this case.
23 And once you hear the testimony, and see the evidence, and
24 hear in detail **Minor's** toxicity levels, then you'll get
25 to decide whether or not she gets to leave as an innocent

1 person.

2 And when Brandi comes back up here at the end of this
3 trial, we are going to ask you on behalf of the State of
4 South Carolina to do justice and find the Defendant,
5 Angela Brewer, guilty of homicide by child abuse.

6 Thank you.

7 THE COURT: Mr. DeJong.

8 MR. DEJONG: Thank you, Your Honor.

9 May it please the Court.

10 Ms. Hinton.

11 Ms. Newton.

12 You're not here today to find justice. Remember that
13 oath you just took? You will well and truly try this case
14 on the facts and the law. That's what you're here for
15 today. You're not looking for anything else.

16 What you're here for today, ladies and gentlemen, is
17 to determine when all is said and done, has the case --
18 has the State proven their case beyond a reasonable doubt?

19 And I'm not going to belabor reasonable doubt right
20 now. We'll talk about that a little more at the end of
21 the trial. I am not a law giver. Ms. Newton is not the
22 law giver. Ms. Hinton is not the law giver. We may
23 discuss law. But His Honor sitting up there in the black
24 robe, he is the law giver. And you will take the law from
25 him as he instructs you, not from us.

1 At this point in time, ladies and gentlemen, there
2 are absolutely zero facts, if you will, before you to
3 determine. His Honor has shared with you that the fact
4 that Ms. Brewer was arrested is not even to be considered
5 by you.

6 Indeed and, in fact, but for the fact that we have to
7 keep a paper trail, we could tear up that arrest warrant
8 as far as what we're doing here today because it is
9 totally meaningless, just as is the indictment that His
10 Honor read to you. That is totally meaningless for what
11 we are doing here today. Because it is not evidence. It
12 is nothing at all other than, as His Honor shared with
13 you, a piece of paper which is a charging document only.
14 So I ask you, do not consider the fact of arrest or an
15 indictment when you, ultimately, start deliberating on
16 this case.

17 I shared with you earlier, ladies and gentlemen,
18 before y'all were the fortunate ones to get seated in this
19 jury box that I today have the pleasure of representing
20 Ms. Angela Brewer. She is seated at counsel table. She
21 has been introduced to you. I would like to take it one
22 step further than that, though, if I may.

23 I do, indeed, represent Angela Brewer. But I, also,
24 indeed, represent the innocent Angela Brewer. Again,
25 don't let that arrest warrant, don't let that indictment

1 creep into your mind.

2 Now, how can I stand here and say she is innocent?
3 I'll tell you how. She is innocent because that is what
4 the law of this great land that we live in says. Every
5 client that comes in this courtroom has an important,
6 substantial right, not because I say so -- no disrespect
7 to His Honor -- not because he says so. That's what the
8 law of this great country says.

9 Sometimes, that presumption of innocence, ladies and
10 gentlemen, is likened to a cloak of righteousness. I use
11 a little different analogy, but, oftentimes, in the law
12 that's what we use.

13 What I would ask you to do is look at Ms. Angela
14 Brewer. She is seated there dressed in a top and slacks,
15 but she has something much more important. It is because
16 of that presumption of innocence, ladies and gentlemen,
17 that she is covered in a cellophane wrap from the very
18 soles of her feet to the top of her head to the tips of
19 her fingers and toes. And that cellophane wrapping is
20 known as the presumption of innocence. It does not leave
21 Ms. Brewer when I sit down in a few minutes and hush. It
22 does not leave Ms. Brewer after you've heard a witness or
23 several witnesses. It does not leave her.

24 Indeed, ladies and gentlemen, that cellophane
25 wrapping on Ms. Brewer follows her back into this jury

1 room when you decide -- when the Judge says, start
2 deliberating. And it does not leave -- that presumption
3 of innocence does not leave until or unless you have found
4 that the State has proven each and every element of its
5 case beyond a reasonable doubt. And, again, His Honor
6 will charge you on that. We will talk more about it in a
7 little bit.

8 Now, part of that presumption of innocence, ladies
9 and gentlemen -- Ms. Brewer sits at counsel table with me
10 and Mr. King. And she walks in this courtroom and has
11 nothing, zero to bring before you.

12 Because of that presumption of innocence, she is not
13 required to testify. Indeed, and, in fact, again, under
14 the law of this great country, she cannot be required or
15 forced to testify, whether she does or not at this moment
16 in time, I don't know. We'll see that as the case
17 progresses. But, again, I ask you to put in your mind
18 that she has no duty to bring anything before you as the
19 fact finders of this case today.

20 This case, ladies and gentlemen, is what I would
21 consider a -- what we call a circumstantial evidence case.
22 The State comes before you and alleges that Ms. Brewer,
23 through negligence with some -- not malice aforethought,
24 that she had a total and extreme indifference to the
25 child's life.

1 Now, I think you will find that Ms. Brewer was the
2 only caregiver there for most of the day. Beyond that,
3 the State wants you to make a quantum leap because she was
4 the only person there and that this child died -- the
5 child did die, that she did it. They've got to do more
6 than that. They've got to prove beyond a reasonable doubt
7 that she did that.

8 I guess we're all belaboring the point a little bit.
9 And I'll belabor it a little bit more.

10 Thank you for being here, especially this time of the
11 year.

12 There are so many things to be done in all of our
13 lives, and I know in each of your lives. But your being
14 here is so fundamentally important. Some people take
15 issue with me. I believe it was the great late Winston
16 Churchill one time said jury service, what you're doing
17 today, is the highest service you can provide for your
18 community, your state, your country in peacetime. I'm not
19 sure we're in peacetime. Maybe we can paraphrase it a
20 little bit.

21 I would say what you are doing today -- I would tell
22 you voluntarily, but it wasn't voluntarily. What you're
23 doing today is so fundamentally important and it is,
24 indeed, the highest service you can provide to Pickens
25 County, the State of South Carolina, and the United States

1 of America as a noncombatant. It is that fundamentally
2 important.

3 But for the 14 of you at the moment sitting in this
4 jury box, there would be no need for His Honor, there
5 would be no need for me, there would be no need for the
6 Prosecutors. But, ladies and gentlemen, you are the sole
7 finders of fact in this case.

8 I'm not going to go into what the State alleges at
9 this point in time. We'll watch it unfold as we go
10 through this trial. I will ask you to remain attentive.
11 You have been more than gracious and attentive so far
12 listening to me. I deeply appreciate it. But in the
13 discharge of your duties as the jury, I would ask you to
14 remain that attentive.

15 And when this case goes into your hands, and the
16 Judge says you can start deliberating, after you have done
17 your due diligence, I would ask you to bring back a
18 verdict of not guilty for Ms. Angela Brewer.

19 Thank you so much for your time.

20 THE COURT: All right. The State may call its first
21 witness.

22 MS. NEWTON: Thank you, Your Honor.

23 We would call Deputy Billy Trotter to the stand.

24 THE CLERK: Place your left hand on the Bible and
25 raise your right hand, please.

1 WHEREUPON,

2 BILLY TROTTER,

3 after first having been duly sworn, testified as follows:

4 THE CLERK: Have a seat.

5 And state your name for the record, please.

6 THE WITNESS: I'm Deputy Billy Trotter.

7 DIRECT EXAMINATION

8 BY MS. NEWTON:

9 Q Deputy Trotter, where are you employed?

10 A I'm employed with the Pickens County Sheriff's
11 Office.

12 Q In what capacity?

13 A I'm a road patrol officer.

14 Q And how long have you been working for the sheriff's
15 office?

16 A I've been working for the sheriff's office eight
17 years.

18 Q Here, let me have you speak directly into that
19 microphone. Okay.

20 A Okay.

21 Q Prior to starting with the sheriff's office, where
22 were you employed?

23 A I was employed with Parker District Fire Department
24 in Greenville, South Carolina.

25 Q And how many years were you with the fire department?

1 A 16 and a half.

2 Q And were you working on October 17th of 2014?

3 A I was.

4 Q And where were you dispatched to?

5 A I was dispatched to the address on Swiss Entrance to
6 an infant not breathing.

7 Q And what time did you arrive?

8 A 5:53.

9 Q And when you got to that residence, tell me about how
10 you entered the scene.

11 A I pulled up. I was met on the porch by a white
12 female, who directed me inside. Once I stepped in the
13 door, I observed a white male with a small infant laying
14 in the floor. The male was on the telephone.

15 Q Okay. And what -- what was he doing?

16 A He was on -- on the telephone with our communications
17 office. He was actually -- they were talking him through
18 CPR. He looked up at me and asked me for help when I
19 stepped inside the door.

20 Q Okay. And what did you do once you got inside?

21 A When I stepped inside, I had him stop CPR momentarily
22 so I could check the vital signs of the infant to see if I
23 could detect any breathing, or pulse, or anything, which I
24 did not. And then, actually, I helped him with CPR until
25 the ambulance arrived.

1 Q Okay. What was the condition of the child when you
2 arrived?

3 A The child when I opened the door had a -- the first
4 thing I noticed was, like, a blue-gray, waxy appearance.

5 Q Okay. And I think you mentioned this, but you -- was
6 the baby breathing?

7 A No. The baby was not breathing and no pulse.

8 Q Okay. And how long were you there before EMS
9 arrived?

10 A I would say four to five minutes.

11 Q Okay. And what did you do when EMS arrived?

12 A When I heard the ambulance coming, I told the
13 gentleman to step back. I got the baby up on my arm,
14 cradled its head. I went out to the ambulance continuing
15 CPR. And as they backed in, I met them. And we went
16 straight into the back of the ambulance.

17 Q And how long were you in the back of the ambulance?

18 A We were in there for a good while. When something
19 like that is happening, time is irrelevant. I would say
20 probably 10 to 15 minutes, at the minimum.

21 Q Okay. And what, if any, changes did you observe in
22 the baby's condition while you were in the --

23 A There were never any changes. I continued CPR in the
24 back of the ambulance while the ambulance attendants were
25 getting their equipment and stuff together. They told me

1 to continue what I was doing. And once they got the baby
2 hooked up to the monitors and everything, then I stepped
3 out of the ambulance.

4 Q Okay. And did you have an opportunity to gather
5 information from the people at the residence.

6 A I did get the man and woman -- I did get their names.

7 Q Okay. And did they provide you with any timeline
8 throughout the day?

9 A No, ma'am.

10 Q Okay. In your training and experience, did you --
11 you stated that the baby had some waxy blue color?

12 A Yes, ma'am.

13 Q Are you familiar with an approximation of --

14 MR. DEJONG: Your Honor, I'm going to object to this.
15 He has not been qualified as any expert in medicine, or
16 medical care, or anything else. And I think she is
17 calling for speculation on the part of the witness, Your
18 Honor.

19 THE COURT: Well, I'm not sure what the question was.

20 MS. NEWTON: Okay. I'll rephrase.

21 THE COURT: All right.

22 BY MS. NEWTON:

23 Q From your experience at the fire department, had you
24 seen children's deaths before?

25 A Yes, I have.

1 Q And in that experience, did the waxy blue color
2 indicate anything?

3 A That there was a very good possibility the child was
4 deceased.

5 Q Okay. And when did you -- or when you left the
6 residence, did anyone leave with you?

7 A When I came out of the back of the ambulance, the
8 white male, who is sitting back there on the bench, and
9 Ms. Brewer were outside. I told them that the ambulance
10 was going to Cannon Hospital. And they left following the
11 ambulance.

12 Q Okay. At the time that you were in the back of
13 the ambulance, did you ever see the Defendant female
14 outside?

15 A No, ma'am, I didn't.

16 Q Okay. So your only involvement with her was in the
17 house; is that correct?

18 A Yes, ma'am.

19 Q Okay. And you mentioned your arrival time, do you
20 remember when you were dispatched?

21 A At 5:47.

22 Q And how did you travel to the residence?

23 A I had blue lights and siren until I got into the
24 subdivision. And I cut them back as is what we normally
25 do.

1 Q And then when you got out of the vehicle, how did you
2 enter the house?

3 A I got out and walked up to the house, not just real
4 slow, but at a brisk pace. I saw the female standing at
5 the door.

6 MS. NEWTON: No further questions. Please answer any
7 questions Mr. DeJong may have.

8 THE COURT: Cross-examination.

9 MR. DEJONG: Thank you, Your Honor.

10 May it please the Court.

11 CROSS-EXAMINATION

12 BY MR. DEJONG:

13 Q Now, I understood you to say when you got there, you
14 were met by a white female on the porch?

15 A Yes, sir.

16 Q So she was outside?

17 A Yes, sir. She was on --

18 Q So you did have contact with her outside the house;
19 right?

20 A Yes, sir.

21 Q Okay. And did you later identify this white female?

22 A Yes, sir. Before I left the scene, I got them to
23 give me their names.

24 Q Who was it?

25 A She said she was Angela Brewer.

1 Q All right. She met you on the porch. What was her
2 demeanor? Describe her.

3 A She was excited looking, said her baby was inside not
4 breathing.

5 Q Was she upset?

6 A She did not appear to be highly upset, no, sir.

7 Q I see. And was she crying?

8 A I don't recall that she was, no, sir.

9 Q Well, how did they know you were going to Cannon
10 Memorial?

11 A The ambulance attendants told me they were going to
12 Cannon. When I stepped out, they were outside at that
13 point. I told them that they were going to Cannon.

14 Q So, again, you had other contact with Ms. Brewer and
15 Robby Brewer outside of the house; right?

16 A Yes, sir.

17 Q Okay. Did you ever -- well, you did go inside the
18 house; correct?

19 A Yes, sir. I went into the living room.

20 Q And, I guess, for purposes of the record, we need to
21 go back and do this. The white male that was in the
22 house, did you identify him by name?

23 A Yes, sir, before I left the scene.

24 Q Yes, sir. But who was that white male?

25 A He told me his name was Robby Brewer.

1 Q All right. So when you got into the house -- well,
2 let me back up. When you got there, Ms. Brewer met you on
3 the porch?

4 A Yes, sir.

5 Q And you went on in the house. Did she follow you
6 into the house?

7 A Yes, sir, she did.

8 Q All right. And you said Robby was on the telephone,
9 Robby Brewer. Was he on speaker phone, or did he have it
10 to his ear, or --

11 A No. He had it up to his ear. He was talking to
12 someone. I asked him -- I said, Who are you speaking
13 with?

14 He said, 911.

15 And I told him -- I said, Tell them I'm here.

16 Q Well, you indicated earlier that that person was
17 trying to direct him how to give CPR, didn't you?

18 A He was on the telephone with communications that were
19 giving him CPR instructions.

20 Q You couldn't hear that, could you?

21 A That's what he told me. He said, I'm on the phone
22 with 911. They're telling me what to do.

23 Q I see. And where was the child at that point in
24 time?

25 A Laying in the floor.

1 Q Okay. And Robby was trying to do CPR?

2 A Yes, sir.

3 Q Okay. And Ms. Brewer was in the room?

4 A Yes, sir.

5 Q Okay. And then you take over CPR; correct?

6 A I assisted Mr. Brewer. I did the chest compressions
7 and let him do the breathing.

8 Q Okay. And then the ambulance gets there and you take
9 the child out to the ambulance?

10 A Yes, sir.

11 Q Now, are you saying that Robby and Ms. Brewer did not
12 follow you out to the ambulance?

13 A I honestly couldn't tell you. Because I was busy
14 with the child in the back of the ambulance.

15 Q Yes, sir. So you don't really know where they were
16 when you took that child to the ambulance, do you?

17 A No, sir.

18 Q Okay. And as I believe you said, times become a
19 little fuzzy when you're dealing with an experience like
20 this; right?

21 A Yes, sir.

22 Q And you're a seasoned police officer; right?

23 A I would say so, yes, sir.

24 Q All right, sir. Did you go to the hospital?

25 A No, sir.

1 Q Okay. Once you left -- what was this address again?

2 [REDACTED] here in Pickens; is that correct?

3 A Yes, sir.

4 Q Once you -- once the ambulance left, and Ms. Brewer
5 and Robby left, did you go back in the house?

6 A No, sir.

7 Q Okay. Did you, at that point, leave?

8 A Yes, sir.

9 Q And did you have any more involvement with this case?

10 A I was called back a couple hours later by Detective
11 Byers.

12 Q To do what?

13 A Just to give them a rundown of what I observed when I
14 got there.

15 Q All right. But you had no further involvement with
16 either Ms. Brewer or anything else about this case, other
17 than giving Detective Byers a rundown; correct?

18 A No, sir.

19 Q All right, sir. And as to what happened in that
20 residence on October the 17th of 2014, you have no
21 personal knowledge?

22 A No, sir.

23 MR. DEJONG: Thank you, sir.

24 THE COURT: Any redirect?

25 MS. NEWTON: Just briefly, Your Honor.

REDIRECT EXAMINATION

BY MS. NEWTON:

Q Deputy Trotter, you testified earlier that you weren't aware of who was outside. But do you have any recollection of the Defendant screaming at the ambulance?

A No, ma'am, I don't.

MS. NEWTON: Okay.

THE COURT: All right. Thank you.

You may step down.

MS. NEWTON: Your Honor, may this witness be excused?

MR. DEJONG: No objection, Your Honor.

THE COURT: All right. Call your next witness.

MS. NEWTON: Your Honor, next, the State calls Mark Pless to the stand.

THE CLERK: Place your left hand on the Bible and raise your right hand, please.

WHEREUPON,

STEVEN MARK PLESS,

after first having been duly sworn, testified as follows:

THE CLERK: Have a seat.

And state your name for the record, please.

THE WITNESS: My name is Steven Mark Pless.

DIRECT EXAMINATION

BY MS. NEWTON:

Q Mr. Pless, if you'll speak directly into that

1 microphone so we can hear everything.

2 A Okay.

3 Q In what capacity were you employed on October 17th,
4 2014?

5 A As a paramedic for Pickens County EMS.

6 Q Did you have a title within being a paramedic?

7 A No, ma'am, just as a paramedic.

8 Q How long have you been a paramedic?

9 A 24 years this past February.

10 Q And does employment as a paramedic require a certain
11 degree of training?

12 A Yes, it does. It takes, at least, two years.

13 Q And then once you -- is it a certification that
14 it's -- the label of it after the two years?

15 A It is. It's a certification. And then we are
16 required to do further training each year in order to
17 maintain that certification.

18 Q Is that training done monthly?

19 A There is some of it done monthly. There was two
20 hours monthly, and then there were other courses we had to
21 take.

22 Q Okay. And when were you dispatched to the scene in
23 question?

24 A It was around 5:41, 5:42.

25 Q And how did you travel once y'all were dispatched?

1 A We came emergency traffic up there.

2 Q And what does "emergency traffic" mean?

3 A Lights and sirens.

4 Q When did you arrive at the residence?

5 A It was about 13 or 14 minutes. So it would have been
6 around 5:53, 5:54, somewhere in that range.

7 Q Okay. And what happened upon your arrival?

8 A When we pulled in, the deputy was carrying the child
9 down and said they had been doing CPR on him. And we
10 opened the back of the ambulance to let him continue.

11 And I asked the male standing on the porch what had
12 happened. And I was told that he had been asleep since
13 about 1:00. And I asked if he had any medical history, if
14 he took any medication, if he was allergic to any
15 medication. I got no answers to all that.

16 And then I got into in the back of the ambulance
17 where my partner and the other people were there and we
18 continued CPR.

19 Q And what was the condition of the child when you
20 arrived?

21 A He wasn't breathing, and he did not have a pulse.

22 Q Okay. Did you -- you said -- you mentioned the
23 grandfather. Did you ever see the Defendant?

24 A I did not. I saw the deputy, and I saw a male.

25 Q Okay. What was the appearance of the baby?

1 A He was pale, his skin was kind of moist. He was a
2 little cold to the touch -- or a little cool to the touch.

3 Q Okay. And you said that y'all worked from the back
4 of the ambulance?

5 A Yes, ma'am.

6 Q What is the benefit of working right there, rather
7 than just immediately taking off to the hospital?

8 A There's a lot of things that have to be done. One of
9 those is taking control of the airway where, you know, if
10 the patient does recover and they throw up, that nothing
11 gets down in the lungs. But we, also, need to give
12 medications and start IVs in order to be able to get the
13 heartbeat to start.

14 Q And what did you do to this particular child while
15 you were in the ambulance?

16 A The first thing we did was continue the CPR. And my
17 partner, I believe, was doing the ventilation. She was up
18 at the head. And we started a needle in his bone in his
19 leg. That's the fastest and easiest route to do that.

20 Then he was given Epinephrine every three to five
21 minutes. That's a standard. And we attempted to intubate
22 him a couple of times, put a tube down his throat. And
23 both of those were successful going in, but they did not
24 give the response that they were supposed to, so they were
25 removed. And then once that was done, we started towards

1 the hospital.

2 Q Okay. Can you back up and tell me a little bit about
3 the intubation process that you attempted on the baby?

4 A Okay. What we do is with adults, the tubes have
5 cuffs on them. The pediatrics do not have cuffs on them.
6 It's called a laryngoscope. And we insert it down into
7 the throat, lift the tongue up. Once we raise the tongue
8 up, you can see the white of what's called vocal cords
9 leading down into the trachea. And once we visualize
10 those, then we pass this tube in between those.

11 Q Okay. And in this instance, did the tube attach to
12 the vocal cords?

13 A No, ma'am. Once we got it in -- you could see it go
14 in, but we had breath sounds in the chest. But, also, we
15 had them in the stomach. And that's an indication that it
16 did not close up around the vocal cords.

17 Q Does that give an indication to the baby being
18 deceased?

19 A It can --

20 MR. DEJONG: Your Honor, I object. She's leading.

21 THE COURT: Rephrase your question.

22 BY MS. NEWTON:

23 Q What indication does that -- does that lack of
24 attachment indicate? What does that give you?

25 A It can be one of two things. It can either be the

1 vocal cords are no longer able to seal, that the time of
2 cardiac arrest has been too long, or that the tube size is
3 too small.

4 Q In this instance, did you do that once or more than
5 once?

6 A We did it more than once. The first time, we used a
7 tube. And once I got this back, we realized it could be
8 too small. So we put a five and a half inch, which was
9 the largest that we carry for a child this size.

10 Q Okay.

11 A And then I got the same response the second time.
12 There was air in the lungs and in the stomach.

13 Q Okay. You mentioned earlier about CPR. Is vomit
14 normal during CPR?

15 A It can be if CPR is done, especially prior to us
16 getting on the scene. A lot of times the airway has not
17 opened up completely. And just the force of air causes
18 some of it to go into the stomach. Or if the head is not
19 positioned correctly, it can cause -- that creates an
20 avenue for the vomitus to come back up.

21 Q And does the appearance of vomit give any indication
22 of whether the child was alive or dead?

23 A Not necessarily.

24 Q And as a result of your training and experience,
25 could you tell if the baby had recently died?

1 A Given the fact of his skin temperature being cool, it
2 had been a little while. The other thing, we gave
3 medications, but the cardiac monitor was showing what's
4 called asystole, which is flat line. And, typically, with
5 the medications we had given, we should have gotten some
6 form of response.

7 Q And how long were you on scene for?

8 A At least, 30 minutes before we left to go to the
9 hospital. I'd have to look at my notes to see exactly how
10 long we were there.

11 Q Okay. Can you look at your notes?

12 A We arrived on the scene at 5:53. And then we
13 transported to the hospital at 6:23. So we had been there
14 right at 30 minutes.

15 Q And when you first came into contact with the baby,
16 was the baby dead?

17 A By all definition, yes. There was no pulse, and he
18 was not breathing.

19 Q Okay. And you mentioned about normal vomit. Is it
20 common to have an appearance of vomit even when a baby is
21 dead?

22 A Yes.

23 Q And did the condition of the baby ever improve while
24 he was in your care?

25 A No, it never did.

1 Q And did you -- I think you stated earlier that you
2 never saw the Defendant; is that correct?

3 A No, ma'am.

4 Q Do you remember any screaming at the ambulance?

5 A No, ma'am.

6 MS. NEWTON: Okay. Please answer any questions
7 Mr. DeJong may have.

8 THE COURT: Cross-examination.

9 MR. DEJONG: Thank you, Your Honor.

10 May it please the Court.

11 CROSS-EXAMINATION

12 BY MR. DEJONG:

13 Q So I gather your entire attention and focus was on
14 this child; right?

15 A Yes, sir.

16 Q A hundred percent?

17 A Once we got him in and I got into the back, I never
18 got back out.

19 Q Well, who was outside -- not outside, you can't
20 really say, can you?

21 A I know who was there when I arrived on the scene.
22 But once I got in the ambulance, I never got back out.

23 Q Yes, sir. You can't say Ms. Brewer never came out,
24 can you?

25 A True.

1 Q So the first person you saw when you got there was, I
2 gather, a police officer; correct?

3 A Yes. There was a sheriff's deputy and the -- who I
4 found out later was the grandfather. I didn't know who he
5 was at the time.

6 Q Did you ever go in the house?

7 A No, sir.

8 Q Did you ever go up on the porch?

9 A No, sir.

10 Q So you remained in the ambulance and the child was
11 delivered to you by a police officer?

12 A The police officer was carrying him. And I stopped
13 long enough to speak to the grandfather to ask about
14 medical history, medications, and allergies. And then I
15 got in.

16 Q When you got there -- you say you got there at 5:53?

17 A If I can look at my notes?

18 Q Surely.

19 A Yes. We were there at 5:53.

20 Q Okay. And the police officer was already there?

21 A Yes, sir.

22 Q Do you know how long he had been there?

23 A I have no idea.

24 Q Now, how much -- what kind of medication were you
25 putting into this child?

1 A Epinephrine.

2 Q What?

3 A Epinephrine.

4 Q Okay. Epinephrine?

5 A Yes, sir.

6 Q And did you give him that more than once?

7 A Yes, I have.

8 Q How many times?

9 A Over the years, or in this particular call?

10 Q I'm sorry?

11 A Over the years, or in this particular call?

12 Q In this particular case.

13 A I'll have to look and see.

14 Q Pardon me?

15 A I'll have to look and see the number that I gave.

16 Q Please look.

17 A Six doses.

18 Q And I don't know. Do those come in CC's, or what do
19 they come in?

20 A They come supplied in one milligram. Because of his
21 size, it's based off of his weight. And he was given .1
22 milligrams six times.

23 Q Given .1 milligrams six times?

24 A Six times, yes, sir.

25 Q Thank you, sir.

1 Did you ever talk to Ms. Brewer?

2 A No, I did not.

3 Q The only person you talked to was -- well, do you
4 know who you talked to, other than the police officer?

5 A Who I found out later is the grandfather. I didn't
6 know who it was at the time.

7 Q Pardon me?

8 A I did not know who it was at the time.

9 Q I understand. Who was the grandfather? Do you
10 remember his name?

11 A Oh, no, sir. I never even got a name. I just knew
12 the person there was the grandfather.

13 Q Okay. And if I understood you correctly, one of the
14 first things you do is clear the lungs; is that correct?

15 A One of the first things we do is continue breathing,
16 yes, sir.

17 Q Okay. Well, sometimes it all happens quickly. So
18 the first thing you do -- and you continued the CPR;
19 right?

20 A Correct.

21 Q And then you worry about -- or are concerned about
22 clearing the lungs, or the mouth, or the airways, I guess?

23 A Only if it's necessary.

24 Q Okay. Well, in this case, did you find vomit in the
25 child's mouth?

1 A Later on, not initially.

2 Q Okay. So that wasn't something you checked for
3 initially; right?

4 A No, sir. It wasn't present initially.

5 Q So if it was not there initially, then you can't
6 really say when it got there, can you?

7 A We have no way of knowing.

8 Q All right. So then to say whether that vomit was
9 there -- and if that vomit would indicate he was deceased,
10 it would equally indicate that he was still alive,
11 wouldn't it?

12 A No, sir.

13 Q How so?

14 A Vomit doesn't decide whether they're alive or dead.

15 Q Pardon me?

16 A Vomitus doesn't decide whether they're alive or dead,
17 the presence or absence of it.

18 Q Well, that's what I'm saying. Simply because there
19 was vomit, you can't say he was deceased at the time you
20 got there?

21 A Oh, no, sir. It was the fact that he wasn't
22 breathing, and he did not have a pulse.

23 Q I understand that. But the vomit had nothing to do
24 with that determination, did it?

25 A Oh, no, sir.

1 Q Okay. Did the grandfather, Robby, indicate whether
2 or not he had been there during the afternoon or the day?

3 A No, sir. I never asked.

4 MR. DEJONG: Thank you, sir.

5 THE COURT: Any redirect?

6 MS. NEWTON: Just briefly, Your Honor.

7 REDIRECT EXAMINATION

8 BY MS. NEWTON:

9 Q Was the baby administered any other medication
10 besides the Epinephrine?

11 A Let me look and make sure. But that's the only one I
12 remembered.

13 No, ma'am. That was the only thing that was given,
14 medication.

15 Q And just -- so did you administer Oxycodone?

16 A No, ma'am.

17 Q Did you provide any caffeine to the baby?

18 A No, ma'am.

19 Q And would the baby have been given any
20 methamphetamine?

21 A No, ma'am.

22 MS. NEWTON: Okay. No further questions.

23 THE COURT: You can step down.

24 MS. NEWTON: Your Honor, may this witness be excused?

25 MR. DEJONG: No objection, Your Honor.

1 THE COURT: All right. You can be excused.

2 All right. Call your next witness.

3 MS. NEWTON: Your Honor, the State calls Deputy Lane
4 Byers.

5 THE CLERK: Place your left hand on the Bible and
6 raise your right hand.

7 WHEREUPON,

8 LANE BYERS,
9 after first having been duly sworn, testified as follows:

10 THE CLERK: Have a seat.

11 State your name for the record, please.

12 THE WITNESS: Lane Byers.

13 DIRECT EXAMINATION

14 BY MS. NEWTON:

15 Q And where are you employed?

16 A At the Pickens County Sheriff's Office.

17 Q And how long have you worked in law enforcement?

18 A About 35 years now.

19 Q Okay. And in what capacity were you employed on
20 October 17th, 2014?

21 A I was the lieutenant over the male side of the
22 investigation division, the detective division.

23 Q And what location did you respond to on that evening?

24 A I was called to respond to Cannon Hospital emergency
25 room to a death.

1 Q Okay. And who was there when you arrived?

2 A The coroner was there. The -- Mr. and Mrs. Brewer,
3 the grandparents, were there. The child was in another
4 room there. And there was a young lady. I didn't know
5 who she was until later, but she was a SLED agent.
6 Christine Cauthen was there.

7 Q Okay. And what team were you involved with at the
8 sheriff's office? You mentioned lead detective over
9 something. What was that called?

10 A We had at one time -- and both sides has it, the
11 adult side had a homicide investigative team. Any time
12 there was a homicide or an investigation that required any
13 kind of death that looked suspicious, we had a team that
14 went out. They, also, had the same team on the juvenile
15 side that do the same thing, so they had training with
16 juveniles.

17 Q And as a result -- you were not on the juvenile team;
18 correct?

19 A No, I was not.

20 Q So as a result of that, did you do anything to
21 provide the others came and assisted?

22 A Well, when you first get there, you start gathering
23 evidence the best you can, asking questions, trying to get
24 a timeline, trying to get something going to give us an
25 understanding of what has happened prior to. And I was

1 doing that.

2 I had contacted Lieutenant Burgess to come out.
3 Because there's mandates by the state for a death of a
4 child that have to be followed. And I had no clue what
5 that is. And I'm not going to mess it up by trying to
6 guess at that. So I had already called her out.

7 But during the meantime, while she was responding
8 with her team, I was just asking basic questions of what
9 had transpired during the day.

10 Q Okay. And did you obtain a consent to search the
11 residence?

12 A Yes. Later on -- actually, after another detective
13 showed up from the lieutenant's team, Sergeant Michael
14 Hendricks, the -- he and I presented to Mr. Brewer a
15 consent to search to go out to the house to see what was
16 there. And he signed the consent order for that.

17 Q Was that written --

18 A It was a written order. It's, actually, a form that
19 we fill out. And it's worded -- and he writes his name at
20 the top. We fill out who could possibly be going out
21 there. And there's words in there that you don't have to
22 sign this. It gives the address that you're going to.
23 And they sign it and -- to give us permission to go in.

24 Q So you were freely given that permission?

25 A Yes. It's either that or we have to get a warrant.

1 And we was in the investigative state. So we had to find
2 out what we had at the house to see what we had.

3 Q While you were at the hospital that night, what other
4 family members arrived?

5 A The daughter -- a little bit later -- I think they
6 were in Georgia. But the mother of the child and her
7 husband came in just a little bit later. They was
8 responding from Georgia. But due to the distance from
9 where they were, it took a little while for them to get
10 there. So they came a bit later.

11 Q And by "they," do you mean the mother and the father?

12 A The mother and the father.

13 Q Okay. And during your interaction with the
14 Defendant -- you said Ms. Brewer is that the Defendant; is
15 that correct?

16 A Yes, it is.

17 Q What information did you gather from her?

18 A Basically, the address of the home, who had been
19 there that day. And from what I gathered from her,
20 everybody had left. And I think even Robby had gone --
21 Robby Brewer, her husband, had left for a little while.

22 And she said the baby was fussy and fretful. And
23 that she had fed him some food, you know, a couple times
24 during the day. And just basic details of what the day
25 was like, the best I could get from her.

1 Q And do you remember any specifics about those foods,
2 and details, or anything?

3 A I -- I don't remember the exact times. I wrote those
4 down. But there was times, like in the morning, she gave
5 him half of an apple. I think later on around lunchtime,
6 he obtained -- she gave him a cheese sandwich. And I
7 think she heated it up in the microwave to make it softer.
8 And then probably a little after lunch, she gave him a
9 drink. It was a Kool-Aid brand of lemonade that she gave
10 him to drink.

11 Q Okay. And for times, would it help if you looked at
12 your notes?

13 A That would help tremendously, yes. Because I wrote
14 them down.

15 Thank you.

16 Okay. The times on this -- I think about 11:00 to
17 11:30, she said she gave him half an apple. At 12:00
18 noon, it was the cheese sandwich that had been softened.
19 And at about 1:15, after lunch, p.m., she gave him some
20 pink lemonade, which was a Kool-Aid brand of that.

21 Q And did she mention how the -- how the baby had been
22 acting that day?

23 A She said he had been fussy. She acted like he was
24 sickly. And she had been -- you know, he had been just
25 fretful, you know, how a baby will get when they're

1 feeling bad.

2 Q Did she provide you with any information about
3 herself? Did you hear that at the hospital?

4 A I was asking different questions. I mean, I didn't
5 know her. I never knew her. But we was just trying to
6 get some basic information. She -- in the questions,
7 there was some -- it wasn't directed to me, but she was
8 talking to several of us that were standing there. By
9 that time, the lieutenant had arrived and the SLED agent
10 was on the scene already when I got there.

11 So they was sort of giving -- we was going through
12 some things, what medication are you on? What medication?
13 And I don't remember all of it. I just remember one of
14 them being OxyContin that she was prescribed for her to
15 take. That's the only one I can remember.

16 Q Okay. And did you have any reason to Mirandize the
17 Defendant or any other family members that you were
18 talking to?

19 A I was doing an investigation, fact finding. I didn't
20 have anything to do a Miranda about.

21 Q Did you even know the Defendant was a suspect at that
22 time?

23 A No. I had no clue. We had no clue what had
24 happened.

25 Q Okay. What were your observations of the family

1 members that were at the hospital that night?

2 A The mother was distraught, I mean, terribly so.

3 Q And just to be clear. When you say "the mother," do
4 you mean the baby's mother?

5 A The baby's mother was distraught, and, I mean,
6 terribly, and the father. By the time they got there and
7 saw the child, they were, obviously, just gone beyond
8 emotions.

9 Mr. Brewer, Robby Brewer, you could see he had been
10 crying. He wasn't saying much to us. He just answered
11 questions when we asked. And I noticed that Ms. Brewer,
12 she had been crying, also. She had been acting like --
13 you know, like, she had some tears in her eyes, but she
14 was -- I didn't see her crying.

15 Q And how -- how would you characterize how she
16 appeared to you?

17 A Curious about everything we was doing, sort of
18 worried about some stuff. It was just like -- I've been
19 doing this a long time. She paid a lot of attention to
20 what we were up to, what we were doing. And it just come
21 to mind that that was curious.

22 Q Okay. And the residence on your consent to search,
23 is that within Pickens County?

24 A I don't have it here with me. It's [REDACTED]
25 [REDACTED]. It's in Pickens County. That's north of

1 Pickens. It's not in Pickens, but it's within the Pickens
2 County Sheriff's jurisdiction.

3 MS. NEWTON: Please answer any questions Mr. DeJong
4 may have.

5 THE WITNESS: Thank you, ma'am.

6 MR. DEJONG: May it please the Court, Your Honor.

7 THE COURT: Yes.

8 MR. DEJONG: Thank you.

9 CROSS-EXAMINATION

10 BY MR. DEJONG:

11 Q You've been a detective -- or you were a detective --
12 are you still a detective?

13 A No, sir, I'm not. I've stepped away from that now.

14 Q Hung it up?

15 A Finally.

16 Q So in 2014, how long had you been a detective?

17 A I was a detective for 26 years at the end of 2016.
18 So it was about 24 years I had been a detective.

19 Q Well, I'm curious. So you were the lieutenant over
20 the detectives at that point in time; is that correct?

21 A Yes, sir.

22 Q And you were the -- were you the first one to respond
23 to the hospital?

24 A Not the first one. I was the first Pickens County
25 Sheriff's Office officer that responded.

1 Q Okay. So there was no other law enforcement before
2 you got there. You were the first law enforcement?

3 A I was the first one. There was another one that had
4 been called out. He was another detective that was on
5 call. And he, actually, got tied up in another county, so
6 they called me. Being a supervisor, it was my job to come
7 on out and see what we could do.

8 Q How long were you involved in this case?

9 A Just an hour or two at the hospital.

10 Q Well, I'm kind of curious. As the lieutenant of the
11 detectives for Pickens County and being the first officer
12 that arrived at the hospital, did you ever file a written
13 report?

14 A I probably didn't. I turned everything over to
15 Lieutenant Burgess.

16 Q May I see your notes there for a minute?

17 A Sure.

18 Q Well, this allegedly occurred on October the 17th,
19 2014; right?

20 A That sounds correct, yes, sir.

21 Q So that's been a shade over three years?

22 A Right.

23 Q And you didn't file a written report?

24 A No. I called out a team. And then I turned over --

25 Q And that's all you've got are those notes?

1 A That's it.

2 Q I glanced through the notes hurriedly, but I could
3 not see any mention of it in your notes about OxyContin,
4 or Oxycodone, or whatever?

5 A I didn't take notes on that. That was someone else
6 that was asking those questions. And I happened to be
7 still standing there before I walked off.

8 Q So that was not shared with you?

9 A It was shared in my presence.

10 Q I'm sorry?

11 A It was shared in my presence.

12 Q But you didn't make a note of it?

13 A No. Somebody else was taking notes on that.

14 Q Right. But you're here today to testify to it;
15 right?

16 A I answered the request about it, yes.

17 Q All right. And other than your notes, did you review
18 anything else before you came in here to testify today?

19 A No, sir.

20 Q You didn't review anybody else's notes?

21 A I looked at mine to make sure --

22 Q Yes, sir. I understand that. But you're telling me
23 that more than three years ago, and those are the notes
24 you took, you spent an hour, hour and a half on this case.
25 You don't write something down that you heard that might

1 be important to the case?

2 A Those notes was being put in place by another
3 detective. Actually, Lieutenant Burgess was standing
4 there when it happened. So it was getting to be her
5 investigation at that point.

6 Q As far as the parents of the child, did you ever
7 confirm where they were -- or where they were coming from
8 at the time this incident allegedly occurred?

9 A I did.

10 Q And how did you confirm that?

11 A I asked them where they came from.

12 Q Other than asking them where they came from, how did
13 you confirm it?

14 A They said they was coming from Georgia.

15 Q Pardon me. Okay. Now, let's talk a little bit about
16 demeanor of -- I gather when we're talking about the
17 demeanor, we're talking about the demeanor of Ms. Brewer;
18 right?

19 A That was one of the persons, yes. That was one of
20 the persons there.

21 Q And, as I recall, you said she seemed interested in
22 what you were doing?

23 A Yes, sir.

24 Q And maybe a little worried?

25 A Yes, sir.

1 Q Do you remember they had to take her out of the
2 waiting room and take her to another waiting room because
3 she was creating such a ruckus?

4 A I don't recall that. They were in the room right
5 beside -- the baby was in this room -- his room was
6 adjoining. The baby was in this room and they were right
7 here, which is a curtain.

8 Q And that would have been, basically, the waiting area
9 at that point?

10 A That's in the -- it's in the emergency room.

11 Q Do you recall her being removed from that room?

12 A I don't recall that at all.

13 Q It's not in your notes, is it?

14 A Well, it didn't happen. I didn't see it.

15 Q So you recall OxyContin or Oxycodone, but not
16 anything about her being moved out of the waiting room;
17 right?

18 A Well, I never saw her get removed. I did hear the
19 other.

20 Q Pardon me?

21 A I heard about the Oxy [sic], but I don't know
22 anything about her being removed.

23 Q Well, were you there for the duration when somebody
24 law enforcement-wise was talking to her?

25 A I was there for a little bit. And then when they

1 came in, I stepped out and left.

2 Q According to you, as I understand it, Officer
3 Byers -- correct me if I'm wrong. You said Ms. Brewer
4 shared that the child was fussy?

5 A Yes.

6 Q Okay. And I think you used another word as well,
7 which eludes me at the moment.

8 A I don't remember.

9 Q Fussy?

10 A Fussy. I mean, it was whining.

11 Q Okay. Not that he had been sick or anything like
12 that. He was just fussy; right?

13 A There was -- no. She just said he -- she thought he
14 might have been coming down with something.

15 Q Right.

16 MR. DEJONG: Thank you, sir.

17 THE COURT: Any redirect?

18 MS. NEWTON: None from the State. Your Honor.

19 THE COURT: All right. You may step down.

20 MR. DEJONG: No objection to him being excused, Your
21 Honor.

22 THE COURT: You may be excused.

23 We've been going a good little while. Let's take an
24 afternoon break here, just a few minutes. And then we'll
25 get back to the testimony.

1 Now, do not discuss the case. And if y'all will --
2 the 12 original jurors, if y'all will pick your
3 Foreperson. And if you'll write that on a piece of paper
4 and give it to the bailiff.

5 All right. But don't discuss the case. We'll bring
6 you right back out in just a few minutes.

7 (WHEREUPON, the jury was excused from open court at
8 approximately 3:26 p.m.)

9 THE COURT: All right. We'll be at ease for about 10
10 minutes.

11 (WHEREUPON, Court's Exhibit No. 3 was marked for
12 identification and admitted into evidence.)

13 (WHEREUPON, a break was taken.)

14 THE COURT: We attempted to review the video and we
15 were not successful.

16 MS. HINTON: That was which one, Your Honor?

17 THE COURT: The one that -- I don't have the Michael
18 Hendricks video. Let's see if we can work that one. The
19 other one, I could not. It keeps saying needs backup, or
20 the DVR, or something.

21 MS. HINTON: Okay. We had problems, too, Judge. You
22 are -- I don't know if Mr. DeJong has any objection. But
23 we did download it to our desktop here on the laptop so
24 that we didn't have to insert a CD.

25 / So if you want to take this with you to watch it, we

1 don't have any objection to that.

2 THE COURT: I'll probably --

3 MS. HINTON: And then --

4 THE COURT: I'll probably just get here in the
5 morning and watch it.

6 MS. HINTON: And then Mr. Hendricks should --
7 Detective Hendricks' interview should work. It's a normal
8 player.

9 MR. DEJONG: I think I had to download the VLC
10 player. I think I, finally, got it to play on that.

11 THE COURT: Well, our computers don't allow us to
12 download anything.

13 MR. DEJONG: I'm sorry, Your Honor.

14 THE COURT: They don't. And we can't --

15 MS. HINTON: It's convenient. But we'll leave the
16 laptop, Your Honor.

17 THE COURT: You can just leave it. I'll probably
18 watch it in here.

19 MS. HINTON: Okay.

20 THE COURT: Okay. The Hendricks' video works. We
21 can get it to work. Before we leave today, instruct me
22 how to use that.

23 MS. HINTON: Sure.

24 THE COURT: So Hendricks is what's been marked as
25 Defendant's Exhibit No. 17.

1 MS. HINTON: State's, Your Honor.

2 THE COURT: I'm sorry. State's. And then the
3 interview of Angela Brewer is State's Exhibit No. 18.

4 All right. Anything before we bring the jury in from
5 the State?

6 MS. HINTON: No, Your Honor.

7 THE COURT: Anything from the Defendant?

8 MR. DEJONG: Not on behalf of Ms. Brewer, Your Honor.

9 THE COURT: Okay. Ask them if they're ready.

10 (WHEREUPON, the jury came into open court at
11 approximately 3:41 p.m.)

12 THE COURT: Okay. Sarah Williams, you're the
13 Foreperson.

14 I hope -- I didn't tell you this before, but it's not
15 a pay raise, or anything. You don't get any more than the
16 rest of them.

17 Thank you for serving in that capacity.

18 The State may call its next witness.

19 MS. NEWTON: Thank you, Your Honor.

20 The State would call Robby Brewer to the stand.

21 THE CLERK: Place your left hand on the Bible and
22 raise your right hand.

23 WHEREUPON,

24 ROBBY BREWER,

25 after first having been duly sworn, testified as follows:

1 THE CLERK: Have a seat.

2 And state your name for the record, please.

3 THE WITNESS: Robby Brewer.

4 DIRECT EXAMINATION

5 BY MS. NEWTON:

6 Q Mr. Brewer, who are you married to?

7 A Angela Brewer.

8 Q And is that the Defendant?

9 A Yes, ma'am.

10 Q Okay. On the day that **Minor** died, did you see him
11 that morning?

12 A Yes, ma'am, before I went to work.

13 Q Okay. Did you give him anything to eat or drink that
14 day?

15 A No.

16 Q When did you leave your house to go to work?

17 A Around 5:00, 5:15, something like that.

18 Q Okay. And where were you working that day?

19 A I was working for my cousin, Preferred Choice Heating
20 and Air.

21 Q Okay. And was that in Pickens County, or was that
22 somewhere else?

23 A Greenville County.

24 Q Okay. And did you drive on Highway 183 to get to
25 Greenville that day?

1 A Uh-huh.

2 Q Okay. And did you work that entire day?

3 A Yes, ma'am.

4 Q Make sure you speak into the mic. Okay.

5 A All right.

6 Q Did you talk to your wife on the phone some
7 throughout the day?

8 A I usually talk to her around lunchtime, off and on
9 some.

10 Q Okay. And when you talked to her at lunch, who was
11 there?

12 A I guess her, and Kayson, and Minor.

13 Q Okay. Did she tell -- did she indicate anything
14 going on at the home? Were the boys asleep?

15 A I think they was asleep.

16 Q Okay. Where were Kayson and Minor's parents?

17 A Gone to Georgia to do some work.

18 Q Okay. And when you got off work, did you call your
19 wife on your way home?

20 A I did.

21 Q And while you were driving home, what happened?

22 A We was talking like normal. And then she said that
23 Minor was still asleep. And I said, Well, you might want
24 to wake him up, you know. If you don't wake him up, he
25 might have a hard time going back to sleep at night, so,

1 you know.

2 Q About what time did you get off work that day?

3 A I probably got back to the shop -- I probably left
4 the shop around 4:10, maybe something like that.

5 Q And when y'all were on the phone and you were
6 learning that he wouldn't wake up, about what time was
7 that?

8 A By the time I got to where I was at and realized he
9 wasn't waking up, it was probably 4:20 maybe.

10 Q Okay. And, at some point, were you near the Spinx in
11 Dacusville on 183?

12 A Yeah.

13 Q And that's about when you were learning he wasn't
14 waking up?

15 A Yeah.

16 Q And how long does it take to get to your house from
17 that location?

18 A Well, at this particular day when I realized that
19 something was maybe not quite right, thank God there
20 wasn't no Rickens County around. But I put the pedal to
21 the metal. And it took me probably -- maybe 10, 12,
22 15 minutes, at the most, to get home.

23 Q Okay. What time did you get to the house? Do you
24 remember?

25 A I don't remember exactly what time it was. But when

1 I come in the door, it was -- all this started going on.
2 So I -- you know, if I was at the Spinx around 15 after or
3 whatever, it was probably around 4:30 when I got home, I
4 guess.

5 Q Okay. But you don't really know an exact time?

6 A Not an exact time.

7 Q Okay. When you walked into the house, what did

8 **Minor** look like?

9 A Well, when she handed him to me, I noticed his lips
10 was blue, you know. I knew something wasn't right. I
11 just didn't know what wasn't right. I didn't know what
12 was happening.

13 Q Okay. And what did you do?

14 A I grabbed him and put him on the couch and started
15 doing CPR on him.

16 Q Okay.

17 A I don't know how to do CPR, but I was trying
18 something.

19 Q Okay. And then what happened?

20 A Then my wife got on the phone with 911.

21 Q So you called 911 after you got home?

22 A Yeah. As soon as I got home and found out what was
23 going on, she called 911.

24 Q Okay. Where were you when the sheriff's office
25 deputy arrived?

1 A He was still on the couch. And I was still trying to
2 administer CPR.

3 Q Okay. What did you do when the ambulance arrived?

4 A I -- by that time, the police officer done took over
5 doing everything. When I was giving him mouth
6 compressions, he was doing the chest compressions. As
7 soon as the ambulance got there, he grabbed him up and
8 took him out to the ambulance.

9 Q Did you go to Cannon Hospital that night?

10 A Yes, ma'am.

11 Q Okay. And then, at some point, you came back to your
12 house; is that correct?

13 A Later -- yeah, way later that night.

14 Q Do you remember a reenactment happening at your
15 house?

16 A Yeah.

17 Q Okay. Do you know what medications your wife was
18 prescribed?

19 A She was prescribed several different medicines. I
20 couldn't call them all.

21 Q Okay. Where did she keep her medications?

22 A Some of them was in a day-by-day box, you know, like,
23 Monday through Thursday, whatever. But the main
24 medications was in her pocketbook.

25 Q Okay. What do you mean by "main medications"?

1 A Narcotics, I guess you'd say. Strong medicine.

2 Q What narcotics were those? Do you know?

3 A OxyContin.

4 Q Okay. And how was your wife with OxyContin -- you
5 said they were in her purse. How was she with those?

6 A I'm not understanding the question.

7 Q Did you -- did you know where her medication was at
8 all times?

9 A Yes, she did, yeah.

10 Q Had you ever seen her drop any of her OxyContin
11 pills?

12 A Nope.

13 Q Had you ever seen your wife give anyone her pills?

14 A No.

15 Q Okay. Has your wife ever given you any of her
16 prescription pills?

17 A Nope.

18 Q Okay. When y'all were at your house that night, do
19 you remember talking to a DSS caseworker?

20 A Yeah.

21 Q Okay. Do you remember telling him that you crawl on
22 your hands and knees and under houses every day, so you,
23 sometimes, take about a fourth of her pain pill?

24 A I don't remember telling him that.

25 MS. NEWTON: Okay. Please answer any questions

1 Mr. DeJong may have.

2 THE COURT: Cross-examination.

3 MR. DEJONG: Thank you, Your Honor.

4 May it please the Court..

5 CROSS-EXAMINATION

6 BY MR. DEJONG:

7 Q Mr. Brewer, how long have you and Angie been married?

8 A 12 years.

9 Q Were you together for any period of time before you
10 got married?

11 A About a year, I guess, maybe.

12 Q You've been together some 13 years, give or take a
13 little bit?

14 A Yeah.

15 Q You say you saw **Minor** on the morning of October the
16 17th, 2014, before you went to work --

17 A Yeah.

18 Q -- correct?

19 Do you know where he was? And by that, I mean do you
20 know what room he was in when you saw him?

21 A He was already up out of the bed in the living room
22 playing.

23 Q I'm sorry?

24 A He was already in the living room by the time I got
25 ready to go. He had just got up. I saw him for a brief

1 second.

2 Q Okay. Did you notice anything unusual about him?

3 A No.

4 Q Okay. When you talked to Angie at lunchtime, do you
5 know whether or not you were on the speaker phone?

6 A I don't know.

7 Q Pardon me?

8 A Nah. More than likely, I was. That's the only way
9 she talked to anybody was the speaker phone.

10 Q Well, in talking to her, could you hear or did you
11 notice anything unusual going on in the background?

12 A No.

13 Q Could you hear either of the children?

14 A No.

15 Q And then I'm not quite clear. You were on your way
16 home. Did you call Angie, or did she call you?

17 A I called her.

18 Q You called her?

19 A I always call her when I leave the shop.

20 Q Okay. So y'all talk quiet often, I gather; right?

21 A Uh-huh.

22 Q All right. And I'm not asking you what she said.

23 But over the phone, can you describe her tone of voice, or

24 what was going on with her? Again, I'm not asking you

25 what she said. Okay. Was she calm? Mild?

1 A Well, nothing out of the ordinary.

2 Q Okay. Is that the case even when she told you **Minor**
3 wouldn't wake up?

4 A Nah. She done started getting hysteric by that time.

5 Q And by disturbed, what do you mean?

6 A He just wasn't waking up.

7 Q Pardon me?

8 A He just wasn't waking up.

9 Q Well, again, was she calm? Was she crying? Was she
10 hysterical?

11 A She was pretty upset at that time.

12 Q Okay. So it took you from -- now, when y'all first
13 started talking, were you at the Spinx in Dacusville?

14 A Nah. I called her, originally, when I left the shop
15 in Greenville.

16 Q Okay. So then when she became frantic or anxious,
17 you were roughly at the Spinx station in Dacusville?

18 A (Witness nodded.)

19 Q And it took you approximately 12 to 15 minutes to get
20 home?

21 A (Witness nodded.)

22 Q Okay. I'm sorry. You have to answer out loud.

23 A Yes, sir.

24 Q This lady has got to get everything you say down.

25 A Yes.

1 Q Well, when you walked in the house, where was --
2 where was **Minor**?

3 A Angie was holding him.

4 Q Okay. What was her demeanor? How was she acting
5 then?

6 A All to pieces.

7 Q Pardon me?

8 A She was all to pieces then.

9 Q All to pieces?

10 A Yeah.

11 Q Can you tell this jury a little --

12 A Very upset.

13 Q Very upset?

14 A Yeah.

15 Q Was she crying?

16 A Oh, yeah.

17 Q Now, when you got there, what did you do?

18 A She turned to me. And I just got him away from her.

19 Q Okay. What did she do?

20 A She was still in a panic mode.

21 Q Okay. To your knowledge, did she ever make a phone
22 call?

23 A Soon after that --

24 Q Pardon me?

25 A Soon after that, one of us, I don't know if it was

1 her or me made the statement call to 911. I'm not clear
2 on which. But immediately, we got 911 on the phone.

3 Q To your knowledge, did she call 911?

4 A Yes, sir.

5 Q And, again, I'm not asking you what she said. But
6 just as far as your end was concerned, how was she acting
7 when she called 911?

8 A So distraught that the 911 lady told her she needed
9 to calm down so she could tell her what was going on.

10 Q Now, once the officer, I guess, it was -- was it
11 Officer Trotter that got there first. Do you know?

12 A I know it was an officer. I don't remember his name.

13 Q Okay. Once he got there, did you continue to try to
14 administer CPR?

15 A I was still doing CPR when he got there.

16 Q Yeah. But let me ask you this. So Angie called 911;
17 right?

18 A Yeah.

19 Q And when she called 911, do you know whether or not
20 she was or was not on the speaker phone with 911?

21 A She was on the speaker phone. Because they was
22 trying to tell me how to do the CPR.

23 Q Okay. And that was on the speaker phone; correct?

24 A Yeah.

25 Q All right. Once this officer took **Minor** out to the

1 ambulance, where did you and Angie go?

2 A I was running out back and forth in the yard.

3 Q How about Angie?

4 A She was standing close to the porch.

5 Q Did she ever go to the ambulance?

6 A She never made it to the ambulance.

7 Q Okay. Now, other than **Minor**, how many -- well,
8 let's ask that -- how many children lived in the house
9 with you and Angie?

10 A At that time?

11 Q At that time, October the 17th of 2014.

12 A There was four of them.

13 Q Do you know what their ages were?

14 A One month, 14 months, five, and eight, maybe.

15 Q Okay. Now, let's see if we can put some names to
16 those. Okay. One month, what was that child's name?

17 A Kayson.

18 Q 14 months, what was that child's name?

19 A **Minor**.

20 Q Five-year-old, what was that child --

21 A Keegan.

22 Q And I think you said eight years old, what was that
23 child's name?

24 A Cory.

25 Q Now, other than the children, did anyone else live at

1 the house there with you?

2 A Yes.

3 Q And who was that?

4 A Cally and Michael.

5 Q Who's Cally?

6 A My stepdaughter.

7 Q Okay. Is that Ms. Harrison -- I mean, excuse me. Is
8 that Ms. Brewer's daughter?

9 A Yes, ma'am.

10 Q I made that slip. Prior to you being married, what
11 was Ms. Brewer's name, last name?

12 A Harrison.

13 Q Okay. So Cally Harrison was Ms. Brewer's daughter?

14 A Uh-huh.

15 Q And she lived in the home with you?

16 A Yeah.

17 Q And then who was the other person?

18 A Michael.

19 Q And did all of these children belong to -- that's not
20 a good choice of words. Were all the children biological
21 children of Michael and Cally?

22 A I don't know how to answer that.

23 Q Okay.

24 A Some -- biological, some was Michael's. And
25 biological, some was Cally's.

1 Q All right. Well, I probably didn't ask the question
2 very good. Was Michael the father of all the children?

3 A No.

4 Q Which ones was he the father of?

5 A Kayson and Cory.

6 Q Okay. And -- well, obviously, Cally was the mother
7 to all of them; right?

8 A Not Cory.

9 Q Not Cory. Okay. Now, how long did Michael, and
10 Cally, and the children live with y'all?

11 A About a month that time.

12 Q Okay. Had they lived with you in the past?

13 A Yeah.

14 Q Even when they weren't living with you, did Angie
15 take care of the children?

16 A Yeah.

17 Q All four of them?

18 A (Witness nodded.)

19 Q Okay. You have to answer out loud.

20 A Yes. I'm sorry. Yeah.

21 Q All right. And as far as providing medical care for
22 the children -- I'm going back now to this month around
23 October the 17th, 2014. Who provided the medical care for
24 the children?

25 A Cally and Michael.

1 Q Okay. Did you or Ms. Brewer have anything to do with
2 the medical care?

3 A No.

4 Q Okay. Did you ever see Angie give any of these
5 children medicine?

6 A No.

7 Q Okay. To your knowledge, did you and/or Angie have
8 any medicine for these children?

9 A There might have been some in the house for the
10 children.

11 Q Were you and Angie in possession of that?

12 A No.

13 Q Who was in possession of that?

14 A It was sitting on the counter.

15 Q Pardon me?

16 A It was in the medicine cabinet or on the counter.

17 Q Okay. Well, let's talk about the medicine a little
18 bit. Angie kept some of her medication on the counter?

19 A Just a day-by-day pill box.

20 Q Okay. And some of it, she kept in her pocketbook?

21 A Uh-huh.

22 Q The ones that she kept in her pocketbook, did you
23 ever see them on the counter?

24 A No.

25 Q To your -- well, when you were around, were they, to

1 your knowledge, always in her pocketbook?

2 A Yeah.

3 Q Now, the home you lived in -- I can't remember the
4 address, Swiss Entrance, whatever it was. What was the
5 number on it? Two --

6 A 226.

7 Q 226?

8 A Uh-huh.

9 Q Can you describe that home for us a little bit?

10 A It was a double-wide mobile home, just an old double
11 wide. You pull into it. You go in the front door, it's a
12 living room. Off that was my master bedroom. You got a
13 kitchen, dining room opened up. You go down the hallway,
14 bathroom to the left, and a bedroom on the back, and a
15 bedroom on the other side in the back.

16 Q So --

17 A It was [REDACTED], not [REDACTED].

18 Q [REDACTED]. Thank you, sir.

19 So going by your description, the master bedroom
20 would have been to the front end. Would that be fair to
21 say?

22 A Yeah. As soon as you walk in the door to the left.

23 Q Okay. And then the other two bedrooms were on the
24 other end?

25 A Yeah.

1 Q Of the home?

2 A (Witness nodded.)

3 Q And who stayed in the master bedroom?

4 A Me and my wife.

5 Q Okay. And who stayed in the other bedrooms?

6 A Cally, and Michael, and the two little ones stayed in
7 the one on the back on the right. And Cory and Keegan
8 stayed in the bunk beds in the one on the left.

9 Q So **Minor** and Kayson -- well, did they sleep in the
10 room with Michael and Callen?

11 A Yeah.

12 Q Did -- well, once the ambulance left, what did you
13 and Angie do?

14 A During that time, we had called Cally and Michael to
15 let them know what was happening. And just as soon as the
16 ambulance pulled out, we pulled out behind them.

17 Q And did you follow the ambulance to the hospital?

18 A Yes, sir.

19 Q And which hospital was that?

20 A Cannon Memorial.

21 Q Do you recall talking to any police officers while
22 you were at Cannon Memorial?

23 A Not when we first got there.

24 Q I'm sorry?

25 A Not at the first time we got there.

1 Q Were there any police officers there when you and
2 Angie first arrived?

3 A I don't remember. It was so scary. I don't even
4 remember, to be honest with you.

5 Q Okay.

6 A I'm sure there was. I was in a pretty bad state of
7 mind. I wasn't thinking about no police.

8 Q Do you recall police officers coming later on when
9 you were at the hospital?

10 A Yeah. They came to me -- I don't really remember it.
11 But they said they came to me and asked me about going
12 back to the house.

13 Q Okay. Did they ask you for consent to search the
14 house?

15 A Evidently, they did. But I was in a state of mind,
16 you know, it wouldn't have mattered no way if that's what
17 they needed --

18 Q I'm sorry?

19 A I said it wouldn't have mattered anyway. I would
20 have signed it.

21 Q Well, when you were at the hospital, did you stay
22 close to Angie?

23 A Oh, yeah.

24 Q What was her demeanor? How was she acting?

25 A Shock. We was pretty much in shock.

1 Q Do you recall, at some point in time, they asked her
2 to leave the room and go to a different room, or a waiting
3 room?

4 A No.

5 Q You don't recall that?

6 A No.

7 Q Were any medical procedures performed on you and/or
8 Angie that night?

9 A I can't recall if they took blood that night at the
10 hospital. They took blood there. And we had to go to DSS
11 and all that. So I --

12 Q Well, if they did take blood, to the best of your
13 recollection, did they take it from both of you?

14 A Yeah. I'm sure.

15 MR. DEJONG: All right. Thank you, Mr. Brewer.

16 THE COURT: Any redirect?

17 MS. NEWTON: Just one question. Your Honor.

18 REDIRECT EXAMINATION

19 BY MS. NEWTON:

20 Q You said "Minor," is that a nickname for **Minor** ?

21 A Yes. That's what we called him.

22 THE COURT: All right. You may step down.

23 You may call your next witness.

24 MS. NEWTON: Thank you, Your Honor.

25 The State calls Callen Harrison to the stand.

1 THE CLERK: Place your left hand on the Bible and
2 raise your right hand.

3 WHEREUPON,

4 CALLEN HARRISON,
5 after first having been duly sworn, testified as follows:

6 THE CLERK: Have a seat.

7 And state your name for the record, please.

8 THE WITNESS: Callen Harrison.

9 DIRECT EXAMINATION

10 BY MS. NEWTON:

11 Q Okay. Callen, make sure you speak up into that
12 microphone for us. Okay.

13 Where were you living in October of 2014?

14 A With my mom and stepdad.

15 Q Okay. And who is your mom?

16 A Angela Brewer.

17 Q And that's the Defendant; correct?

18 A Yes.

19 Q Okay. And who's your stepdad?

20 A Robby Brewer.

21 Q Okay. Who all was in that house?

22 A It was me and my fiancé, at that point in time,
23 Michael Lusk, and our four boys, and Angie, and Robby.

24 Q And who are your four boys?

25 A It was **Cory L.**, **Keegan C.**, **Minor** [phonetic]

1 [REDACTED], and Kayson L.

2 Q And --

3 A Minor is Minor.

4 Q And so who's the -- is -- was your fiancé the dad to
5 three out of the four boys?

6 A No.

7 Q Okay.

8 A He was the dad to two.

9 Q Okay.

10 A He was the dad of Cory and Kayson.

11 Q But he had -- Minor had his last name; is that
12 correct?

13 A He signed Minor's birth certificate, and he took
14 responsibility for Minor.

15 Q So Minor knew Michael as his dad?

16 A That's the only dad he knew.

17 Q Okay. In October of 2014, how old was Kayson?

18 A Kayson was right at a month old. He was born on
19 [REDACTED]. He was born in [REDACTED], so -- well, it was
20 right at two months.

21 Q And how old was Minor?

22 A He was 13 months.

23 Q Okay. When was his birthday?

24 A [REDACTED].

25 Q Of what year?

1 A 2013.

2 Q Okay. How old was Keegan?

3 A Keegan was five -- I want to say five. He was born
4 in 2009, so yeah.

5 Q What grade was he in?

6 A He was in kindergarten at that point in time, I
7 think.

8 Q Okay. At what school?

9 A He went to Dacusville.

10 Q And how old was Cory?

11 A Cory was about eight.

12 Q Okay. What school did he go to?

13 A To Dacusville Elementary.

14 Q Do you remember what grade?

15 A I think he was in second.

16 Q Okay. Let's back up to the night before on
17 October 16th of 2014. What happened that night?

18 A I know Keegan had gotten sick. And me and Michael
19 ended up taking him to the hospital.

20 Q What kind of sick was he?

21 A I'm not really -- I'm not really sure. I don't
22 remember that.

23 Q Okay. So fast-forward after the ER to that morning,
24 the morning of October 17, 2014. Where did -- where did
25 you go?

1 A We woke up. We woke up late. And when we woke up,
2 we had to take Keegan and Cory to school. But because
3 Keegan had had a fever the night before, I was going to
4 make sure they would let him go and let him stay, because
5 of the fact he had had a fever. And we had to put money
6 on Cory's lunch account anyway.

7 So we both we went. And when -- I went into the
8 nurse with Keegan. And Michael had went to the lunchroom
9 with Cory.

10 Q Who stayed at home when you went to school?

11 A Kayson and **Minor** stayed with my mom.

12 Q And was that pretty common for your mom to watch your
13 kids?

14 A Yeah. She would watch them all the time if we needed
15 to go do something. And, sometimes, she just wanted to
16 spend time with them, so.

17 Q Where did you go when you left Dacusville Elementary?

18 A We went back to the house. Because they wouldn't let
19 Keegan stay because he had had a fever within 24 hours.

20 So we went back to the house. And we were going to
21 drop Keegan off. That was the plan, was to, actually,
22 drop Keegan off and Keegan stay there, too. Because I had
23 to work for two hours.

24 So I was going to go to work after that. And then we
25 were going straight to Georgia.

1 Q Okay. So when you got back to the house, how was

2 **Minor** acting?

3 A He was fine. He was running and playing.

4 Q Was he sick?

5 A No. He was -- he had run up to me and hollered

6 "momma," and was smiling and laughing. He was fine.

7 Q How long was it before you left for work?

8 A It wasn't but just a few minutes. And then Keegan
9 didn't want to stay. He pitched a fit. He didn't want to
10 stay. He wanted to go with us. So we ended up taking
11 Keegan with us.

12 Q When you were there or that morning, did you give

13 **Minor** any food or drink?

14 A No.

15 Q So you said you went to work. Where was work?

16 A Off of -- it was in Liberty. I think it was -- yeah,
17 it was Golden Creek Road.

18 Q What type of work were you doing?

19 A I was doing home health at that point in time.

20 Q So you sat with someone for about two hours?

21 A Yeah.

22 Q Who went with you?

23 A Michael and Keegan went with me. Because I had knew
24 my clients. And we have known each other for a while. So
25 it was -- she didn't have an issue with me bringing them

1 with me.

2 Q Okay. And then what did you do after you left work?

3 A When I got off, I called my mom before we even pulled
4 out of the driveway and checked on the boys. And she said
5 they were fine.

6 Q Could you hear the kids in the background?

7 A Kayson, of course, not... I mean, unless he was
8 screaming, you wouldn't have been able to hear him anyway.

9 **Minor**, I think, was playing at that point in time.

10 Q And about what time was that?

11 A I want to say it was around 12:00.

12 Q At that time, was there any indication that he was
13 sick?

14 A No, ma'am.

15 Q Then where did you go?

16 A We went to -- we went through Anderson to get to
17 Georgia. And we stopped by McDonald's because -- well, we
18 were all hungry. But we was going to make sure Keegan ate
19 something before we left to go all the way into Georgia.

20 Q Why were you going to Georgia?

21 A My dad's girlfriend, at that point in time, had two
22 trailers up there that she was going to get tore down.
23 And she told us that we could get the stuff that we needed
24 to like remodel our house. And there was furniture and
25 all in that.

1 Because we were, actually, renting a house across the
2 street from Angie and Robby. And we were trying to
3 remodel it and get power cut on so we could move there.

4 Q At some point, did you get a phone call from your
5 mom?

6 A Yes.

7 Q Okay. What happened after you got that phone call?

8 A We dropped everything, like, we started throwing
9 everything, like, shutting the trucks [sic], and getting
10 Keegan loaded up, and trying to make everything where it
11 wouldn't move. But we were trying to leave. We wasn't
12 worried about anything else at that point in time. We
13 didn't even lock the doors on the trailer back. We left
14 them all standing wide open.

15 Q And where did you go?

16 A We headed straight towards Cannon.

17 Q Okay. What happened at the hospital?

18 A When we, finally, got there, the truck didn't even
19 get stopped. I'm not even really sure -- Michael still
20 had Keegan. I run in the hospital. And when I run in the
21 hospital, they were trying -- everybody was trying to stop
22 me. There was a bunch of people outside. And they were
23 trying to stop me. And I wouldn't stop. I ran straight
24 to the window and was trying to find him.

25 And then Michael's stepmother and his sister-in-law,

1 actually, was trying to tell me where he was at. And they
2 were trying to show me where **Minor** was -- where I thought
3 that **Minor** was. And they kept telling me to go to this
4 room, go to this room.

5 So they took me to the room. And when I walked in
6 the room, I seen Robby and Angie, and Robby's mom and dad,
7 and Robby's sister. And there was a few other people.
8 But the main people I seen was the coroner. I seen the
9 two pink shirts and it said "Pickens County Corner." And
10 I knew, at that point in time, he was gone. And there was
11 nothing I could do.

12 Q At some point, did you have a conversation or
13 interact with DSS that night?

14 A Yes. I think so.

15 Q And throughout -- after that night, at some point,
16 did you learn about what was in **Minor**'s system?

17 A They come to the house --

18 MR. DEJONG: Objection, Your Honor, to what anybody
19 told her.

20 THE COURT: Sustained.

21 BY MS. NEWTON:

22 Q Yeah. Don't tell me anything that somebody told you.
23 But were you made aware of what was in his system?

24 A Yes.

25 Q Okay. Did DSS -- did something happen that you were

1 made aware --

2 A DSS came and removed the kids. They come and got
3 Keegan, Cory, and Kayson and put them in protective
4 custody.

5 Q Okay. And what was your interaction with the
6 Defendant, like, when you were made aware of that?

7 A I wasn't really sure at that point in time. I didn't
8 want to believe that anything had happened. Because at
9 the hospital, it was always -- I mean, Angela told me as
10 soon as I walked in the door that it was SIDS, it was
11 SIDS.

12 Q Is there anything in particular that the Defendant
13 said to you that you remember?

14 A She just kept telling me that it was SIDS over and
15 over again, that it was SIDS. That they said it was SIDS.

16 Q Have you ever seen the Defendant drop any of her
17 Oxycodone pills?

18 A Yes. I'm not sure if it was Oxycodone, but I know
19 she's dropped pills.

20 Q What kind of pills -- so you don't know any
21 distinguishing -- were they any type of certain pills?

22 A I know there was a bunch of pills. I mean, she would
23 drop pills. And we would search for pills until we found
24 them.

25 Q Were those pills that she kept in her purse?

1 A The pills that -- the main pills that I remember were
2 in a bag in a, like, different colored floral-looking bag.
3 I know she did have the day -- like the days of the week
4 pill containers.

5 Q Okay. So -- and where was that bag of pills kept?

6 A The bag of pills, she usually kept it in her room.

7 Q Okay. And did you see her keep pills in her purse?

8 A I thought all the pills were in the full bag.

9 Q Okay. At any time you've ever seen a pill get
10 dropped --

11 A We would search for it until it got found. Because I
12 didn't want the kids getting ahold of it.

13 Q Did you guys have a dog?

14 A She had -- we had a dog, an outside dog. But she had
15 two inside dogs.

16 Q Okay. Did -- in your interactions with your mother
17 after **Minor** died, did your mom ever make statements to
18 you about how he could have gotten her pills?

19 A She said that he may have picked one up off the
20 floor.

21 Q And --

22 A But that would have been the only way that he would
23 have got it is he got it off of the floor.

24 Q Okay. Tell me a little bit about your mom's schedule
25 during the day.

1 A In the mornings, she would wake up and she would -- I
2 mean, sometimes, she would be up -- she would be up
3 watching TV. But she would usually get the kids in the
4 morning and I would go to work. And she would keep Kayson
5 and **Minor** for me.

6 Because I got released to work, like, two weeks after
7 Kayson was born. And it was -- I mean, by the clock, you
8 could bet at 1:00, she was watching Days of Our Lives.
9 And it was her TV shows after that. She was on the phone
10 with my aunt most of the day.

11 Q So every day during the week, she was watching --

12 A Days of Our Lives.

13 Q Okay. And how did your mom act when she was watching
14 those TV shows?

15 A She was fine.

16 Q Was your mom -- during those shows going on, was your
17 mom doing other things, cooking, or anything like that, or
18 just watching TV?

19 A She would, basically, be there sitting watching TV.
20 She might during a commercial get up and fix her ice and
21 go get a Dr Pepper and pour it in her cup. But usually,
22 she would sit back down by the time it came back on.

23 Q And those shows were on every weekday; is that
24 correct?

25 A Yes, ma'am.

1 Q Do you have any close friends or any family members
2 named Laura that you know of?

3 A I don't.

4 Q Who -- tell me a little bit about who fixed the
5 drinks for the kids in the house?

6 A Usually, if -- well, I mean, if she was the one that
7 was watching the kids, then it would be her. And if me
8 and Michael was there, then, I mean, of course, we would
9 do it. We would cook and feed them, or she would cook and
10 feed them.

11 Q How -- around that time, do you remember your mom
12 fixing pink lemonade?

13 A Yes.

14 Q Okay. When did that start?

15 A It had been about a week, two weeks when she had got
16 the -- started on the pink lemonade.

17 Q And who -- do you remember her seeing -- or giving
18 the kids any pink lemonade that day? Did you see any of
19 that?

20 A I know she would fix it in, like, a gallon. And she
21 would make that for the kids. Because the kids would
22 always drink all the tea. And she didn't want to give
23 them the Dr Pepper's because, number one, they didn't need
24 it anyway. They would, literally, sit there and drink all
25 day. So she had made the pink lemonade for the kids.

1 Q Tell me a little bit about **Minor**'s schedule. What
2 was his normal schedule?

3 A **Minor** would wake up usually about the time that we
4 would wake up to get the kids to school. So he would wake
5 up while we were getting them ready. And if he didn't,
6 then he would stay in his Pack 'n Play.

7 But he would get up and play. And he would usually
8 take a nap around 11:00, anywhere between 11:00 and 3:00,
9 around that area. And then he would be up until we put
10 him to bed at night.

11 Q You said you had been back to work since Kayson was
12 born, like, two weeks after?

13 A Yeah. It was right at two and a half weeks.

14 Q How often did your mom watch both kids all day?

15 A Well, it wouldn't have been that long because of the
16 fact that he was -- I mean, he was still a baby baby, so.

17 Q And when you would work, was that mostly in the
18 two-hour shifts? Is that pretty common?

19 A Yeah. I think it was on Wednesdays that I would work
20 four hours, instead of two.

21 Q Who fixed the pink lemonade in the house?

22 A In the gallon?

23 Q Yes.

24 A Angela.

25 Q Did anyone else ever fix the pink lemonade?

1 A Not to my knowledge.

2 Q Did you give **Minor** any drink or food that day?

3 A No. We were running late that morning.

4 Q And even when you came back to the house with Keegan
5 for that amount of time, did you give him anything to eat
6 or drink?

7 A I think I went to start and she told me that she
8 would get it. Because we were -- I was trying to hurry up
9 so we could get back.

10 Q And you said -- when was **Minor**'s birthday?

11 A [REDACTED].

12 Q And was he able to open his own sippy cups?

13 A No.

14 Q Was he able to fix his own food?

15 A No.

16 Q Drinks?

17 A No.

18 Q And just to clarify. For the napping that **Minor**
19 did, he would just go down any time between 11:00 and
20 3:00, or would he nap for that entire time?

21 A He would go down somewhere in between that time. I
22 mean, he'd sleep anywhere from an hour to two hours.
23 Some -- it was just pretty much how tired he was, or how
24 early he woke up, or what time he went to bed.

25 Q Okay. And you said earlier that DSS had taken your

1 kids into protective custody. Did you get your kids back?

2 A Yes.

3 Q Okay. When did you get those -- when did you get
4 them back?

5 A DSS come the first week of November and took the kids
6 and put them in protective custody. But, thankfully, they
7 were able to be put in protective custody with Michael's
8 mom. But they were only there for about two weeks before
9 we could get them back.

10 Q Okay. Who's "we"?

11 A Me and Michael Lusk.

12 MS. NEWTON: Okay. Please answer any questions
13 Mr. DeJong may have.

14 THE COURT: Cross-examination.

15 MR. DEJONG: Thank you, Your Honor.

16 May it please the Court.

17 CROSS-EXAMINATION

18 BY MR. DEJONG:

19 Q So October the 16th of 2014, you took Keegan to the
20 emergency room?

21 A Yes, sir.

22 Q Was he running a fever?

23 A Yes, sir.

24 Q All right. But you don't know what was wrong with
25 him?

1 A I don't remember what was wrong.

2 Q Was he throwing up?

3 A I'm not sure.

4 Q Do you know if he had any problems with his bowel
5 movements, such as diarrhea?

6 A Honestly, I'm not sure exactly why. I mean, I know
7 he had had a fever because of the fact that the nurse
8 wouldn't let him go back to school since he had had a
9 fever. But I don't remember exactly what was wrong with
10 him.

11 Q So that I'm clear, all four children lived with your
12 mom, Robby, and you, and Michael. It was -- except for
13 being at school 24/7; correct?

14 A Cory would -- well, yeah, because Cory's mom wouldn't
15 get him that much.

16 Q Now, so you took Keegan and Cory to school. What
17 time did you leave the house to take them to school?

18 A I know they were late to school. And we were running
19 late. We woke up late.

20 Q Okay. But do you remember what time you left the
21 house?

22 A I don't remember.

23 Q Okay. But they were late for school?

24 A Yes.

25 Q What time did school start?

1 A They had to be there -- were supposed to be there by
2 8:00.

3 Q 8:00. Well, do you remember what time they got
4 there?

5 A No, sir.

6 Q And you're telling us that Michael went with you when
7 you took the children?

8 A Yes, sir.

9 Q And the school said, no, Keegan can't come to school
10 today; right?

11 A Yes, sir.

12 Q So then you go back to the house?

13 A Yes, sir.

14 Q So how long do you stay at the house before you leave
15 to go to your work?

16 A It was just a few minutes. We weren't there long.

17 Q Okay. Well, what time did you have to be at work?

18 A It was -- as long as I was there two hours, it really
19 didn't matter.

20 Q Well, do you remember what time you got there?

21 A No, sir.

22 Q Okay. Now, did you see **Minor** before you left to
23 take Cory and Keegan to school?

24 A Yes.

25 Q And how was he acting then?

1 A He was fine.

2 Q Okay. And when you, and Michael, and Keegan came
3 back, how,-- did you see **Minor** then?

4 A I sure did.

5 Q And how was he acting then?

6 A He was completely fine. He had run around the couch
7 and was patting my legs and wanting me to pick him up.

8 Q Was there any indication he was running a fever at
9 that point in time?

10 A No, sir.

11 Q Being his mother, was he fussy?

12 A No.

13 Q Okay. Now, when you got up on the morning of October
14 the 17th, you said you didn't feed **Minor**. Did you feed
15 Kayson?

16 A He -- no. I don't think we fed him either.

17 Q So your mother was, in one sense, the sole caretaker
18 for **Minor** and Kayson; right?

19 A What do you mean the "sole caretaker"?

20 Q Well, she fed them, she got them, she dressed them,
21 all of that stuff; right?

22 A No.

23 Q All right.

24 A She was not the sole caretaker of them.

25 Q Well, when the children needed medical treatment or

1 care, who got that for them?

2 A Mostly, me and Michael.

3 Q Okay. And as far as medications, who gave the
4 children medications?

5 A Mostly, me and Michael. But she had on occasions,
6 yes, she had.

7 Q And on occasion, to your knowledge, what did she give
8 them?

9 A She has gave them Tylenol before. She has -- I mean,
10 just Tylenol, ibuprofen, again, was pretty much all they
11 were allowed to have.

12 Q All right. Now, so if you called your mom, as I
13 understood your testimony, right before you were leaving
14 to go to Georgia, you said that was about noon; right?

15 A (Witness nodded.)

16 Q You have to answer out loud.

17 A Yes, sir.

18 Q Okay. So did you work two hours?

19 A Yes, sir.

20 Q Did you work any more than two hours?

21 A No, sir.

22 Q Okay. So if you were leaving Liberty for Georgia --
23 by the way, where in Georgia were you going?

24 A Elberton.

25 Q Elberton?

1 A Yes, sir.

2 Q So if you were leaving Liberty, your place of
3 employment at noon, and you worked two hours -- let's work
4 backwards. You would have gotten there around 10:00;
5 right?

6 A Yes, sir.

7 Q Okay. When you dropped the children off to school,
8 how long did you stay there at the school?

9 A At the school?

10 Q Uh-huh.

11 A Maybe 20 minutes, 30 minutes.

12 Q How far is the school from where you were living at
13 that point in time, that is living with Angie and Robby?

14 A About 20 minutes.

15 Q Okay. So, again, we know they were late. We don't
16 know how late they were; right?

17 A Yes, sir.

18 Q But, again, trying to work backwards, you had to be
19 home for more than a few moments, didn't you, after you
20 took them to school?

21 A I remember being there a few moments.

22 Q Huh?

23 A I said I remember being there a few moments. I know
24 we weren't there too long.

25 Q Well, when you, and Michael, and Keegan got back from

1 taking Cory to school, who went in the house?

2 A I think we all did, I think.

3 Q So you, Michael, and Keegan all went into the house?

4 A I think so.

5 Q All right. And so it took some time to figure out
6 that Keegan wasn't going to stay. He was going with
7 y'all; right?

8 A Yes.

9 Q And were you having any discussion with Angie during
10 that point in time, that is your mother, or talking to
11 Keegan, or talking to Michael? Or what were you doing?

12 A I mean, I'm sure I was talking to everybody.

13 Q Okay. Where was Michael?

14 A I don't remember.

15 Q Okay. Well, do you remember -- at this point in
16 time, do you know how many sippy cups **Minor** may have had?

17 A **Minor** had several sippy cups.

18 Q Pardon? Had several sippy cups?

19 A He had several sippy cups.

20 Q And at different times, different people in the
21 household filled those sippy cups up?

22 A Yes.

23 Q It could have been you; right?

24 A Yeah. I filled his sippy cup up.

25 Q Or Michael?

1 A Michael has filled his sippy cup up.

2 Q Or Angie?

3 A She's -- I mean, all the adults in the house had
4 filled his sippy cup.

5 Q That's what I'm trying to say. Yeah. When you left
6 for Georgia that morning, did he have any sippy cups?

7 A I don't think so.

8 Q Okay.

9 A I'm not sure.

10 Q Okay. Well, aside from the sippy cups, did you ever
11 see **Minor** drinking from Angie's cup?

12 A Yes.

13 Q What kind of cup did she have?

14 A Usually, the little plastic, like, throw-away cups.
15 But she would reuse them like Dodge's or QT.

16 Q Okay. Do you know what she drank?

17 A Dr. Pepper.

18 Q Anything else?

19 A Usually, just Dr. Pepper.

20 Q So she was -- really liked her Dr. Pepper?

21 A Yeah.

22 Q Okay. After you left for Georgia -- excuse me one
23 moment.

24 After you left for Georgia, how many times did you
25 talk to your mother on the phone?

1 A I'm sure several.

2 Q So it was more than one phone call?

3 A I know I called her after -- as we were -- well,
4 before I even pulled out of my client's house, I called
5 her then. And then I want to say we called her about at
6 McDonald's.

7 Q Okay. Well, do you recall what time those calls
8 would have been?

9 A I don't know.

10 Q Well, when you called, could you hear any noise in
11 the background?

12 A Huh-uh.

13 Q Pardon?

14 A No, sir.

15 Q Did you hear any fussy children?

16 A No. She told me that she was going to lay -- Kayson
17 slept most of the time anyway. And she told me that she
18 was going to lay **Minor** down for a nap.

19 Q And **Minor** was 14 months at that point?

20 A He was 13 and a half months.

21 Q Was he walking?

22 A Yes.

23 Q And walking, he pretty much had the run of the house?

24 A Not usually. I mean, he was usually in eyesight at
25 all times.

1 Q Okay. But he had access to the whole house; right?

2 A Usually, yes.

3 Q Okay. Were you on any medications?

4 A I was on a few. I'm not really sure what they were.

5 Q Were you on Lortab?

6 A I think so.

7 Q Were you on Hydrocodone -- well, I guess Lortab is
8 Hydrocodone. I stand corrected. OxyContin?

9 A I think so. I know I gave a list of all the
10 medicines that I had in the house.

11 Q So, to the best of your recollection, on October the
12 17th of 2014, you were on -- you had a prescription --

13 A I had a prescription, but I wasn't taking them.

14 Q But they were in the house?

15 A They were across the street in the other house.

16 Q Well, you weren't living at that house, were you?

17 A No. But if I didn't take them, I didn't see a point
18 in them being there.

19 Q Okay. When you got to the hospital on the evening of
20 October the 17th of 2014, you indicated you saw your
21 mother; is that correct?

22 A Yes, sir.

23 Q How was she acting? I'm not asking you what she
24 said. I'm just asking you how was she acting?

25 A She was crying.

1 Q Was she upset?

2 A She was upset. She was crying.

3 Q Okay. And what was it -- I couldn't really hear.
4 I'm sorry. I have a hearing problem. But you said she
5 was saying something over and over again. What was that?

6 A "They said it was SIDS" is what she said. That is --
7 her exact words was, "They said it was SIDS."

8 Q Okay. And you said there had been occasion where
9 your mom dropped pills?

10 A Yes.

11 Q How many times would you say that was?

12 A She had done it a couple of times. And me and Robby
13 had both looked for pills.

14 Q Do you know what those pills were?

15 A As I told her, I'm not really sure.

16 Q Okay. Now, you, also, said that your mom kept
17 certain pills in a bag?

18 A Yeah. She kept most of her medicines in a flowery
19 different-colored bag.

20 Q You said "most of her medicines." Where did she keep
21 the rest of them?

22 A Most of them was in that bag. And she had the little
23 day and week container.

24 Q Were you aware that she kept any in her pocketbook?

25 A Yeah. I think so. I mean, I think she kept her day

1 of the week one.

2 Q And as far as these meds, do you know what she was
3 taking?

4 A I know she was taking a bunch -- a few of them.

5 Q And so we're clear. To the best of your knowledge,
6 were all those pills prescribed to her?

7 A Yes. To my knowledge, they were.

8 Q And I gather your OxyContin was, also, prescribed to
9 you; correct?

10 A Yes.

11 Q Do you know -- do you know if your mother had an --
12 her aunt or had an aunt by the name of "Laura" or
13 "Lauren"?

14 A I know there was a Laura that she talked to, which,
15 to my knowledge, she hadn't talked to her in years. And I
16 thought she was, actually, my older brother's father's
17 family.

18 Q Okay. But, to your knowledge, she hadn't talked to
19 her in a long, long time?

20 A Yeah. I don't have anything to do with them.

21 Q Okay. Now, you normally work two to four hours a
22 day?

23 A I did at that point in time.

24 Q So what -- did you have a normal go-in time?

25 A Usually, it was just whenever. Like, they would tell

1 me if they had things planned, or doctor's appointments.

2 And we would work around each other's schedules.

3 Q Well, when you weren't working, what did you do?

4 A When I wasn't working, I was with the kids.

5 Q Okay. Now, I think Madam Solicitor asked you about
6 your mom's schedule. And you said something about she
7 watched Days of Our Lives?

8 A Yes, sir.

9 Q Just about every day?

10 A Every day.

11 Q I guess it's just on five days a week; right?

12 A Yeah.

13 Q All right. But when she watched Days of Our Lives
14 with -- well, when she would watch Days of Our Lives, do
15 you know where the children were?

16 A They were in the living room with her when she would
17 watch them.

18 Q And, to your knowledge, was she still keeping an eye
19 on them?

20 A Yes. That's usually when she would try to get them
21 to go to sleep so she could watch Days of Our Lives.

22 Q And I may have asked you, I don't remember if I did.
23 So forgive me if I'm being redundant. Did **Minor** still
24 take naps in the afternoon?

25 A Yes.

1 Q Okay. So it would not be unusual for him to take a
2 nap in the afternoon?

3 A No, sir.

4 Q Okay. Who woke **Minor** up in the mornings?

5 A It would depend. Usually, if I tried to go and wake
6 the kids up or she woke the kids up -- because, I mean, we
7 just -- if she woke up before we did, she would come in
8 there and tell the boys to start getting ready, and wake
9 us up and tell us we needed to get up and get ready.

10 So if the kids woke him up from being loud, or if she
11 just woke him up from being loud or -- he just -- he woke
12 up whenever.

13 Q Okay. So as I think I understand you, you, **Minor**,
14 the two boys, Keegan and Cory, and I guess Michael all
15 kind of got up at the same time?

16 A Yeah, usually.

17 MR. DEJONG: One moment, please, Your Honor.

18 (Pause.)

19 BY MR. DEJONG:

20 Q You say you believe you talked to your mother --
21 well, I don't know -- you gave us a number, but more than
22 once during the day by phone on October the 17th; correct?

23 A Yes.

24 Q Did she ever give you any indication that **Minor** was
25 sick?

1 A No, sir.

2 Q Did she ever give you any indication that **Minor** was
3 running a fever?

4 A No.

5 Q Did she ever give you any indication that **Minor**
6 needed medication?

7 A No.

8 MR. DEJONG: Thank you so much, Ms. Harrison.

9 THE COURT: Any redirect?

10 MS. NEWTON: Just briefly, Your Honor.

11 REDIRECT EXAMINATION

12 BY MS. HOPKINS:

13 Q Ms. Harrison, you said that you did have an Oxycodone
14 prescription. Were you taking that on October 17th, 2014?

15 A No, ma'am.

16 Q So where were those pills?

17 A In the house across the street with the rest of our
18 stuff.

19 Q The house that --

20 A It was really crowded over there. So we tried to
21 keep as much as we could over in that house to keep it out
22 of the way over there.

23 Q But that house over there didn't have any power;
24 correct?

25 A No.

1 Q Were the kids ever over there that day that you know
2 of?

3 A No.

4 Q Did your mom go to that house when you weren't there?

5 A No. She didn't -- I don't think she even had a key.

6 Q Did you ever see Angela, the Defendant, voluntarily
7 give **Minor** her cup to drink out of?

8 A Yes.

9 Q Okay. And did you ever have a conversation with your
10 mom about **Minor** being sick?

11 A No, I don't think.

12 MS. NEWTON: Okay. No further questions.

13 THE COURT: Thank you.

14 You may step down.

15 All right. Ladies and gentlemen, we're going to
16 break for the day. So, at this time, you can go back to
17 your jury room.

18 Again, four things I'm going to tell you every day.
19 Do not discuss the case. Do not do any type of research.
20 Do not pay attention to any media coverage of this
21 event -- or this trial. And if you're contacted, please,
22 let the bailiff know.

23 Other than that, we've got some matters we've got to
24 go over in the morning. So I'm going to ask you to be
25 back in your jury room at 10:00.

1 THE COURT: And no live feeds.

2 UNIDENTIFIED MALE: (Unidentified male shook his
3 head.)

4 THE COURT: And, again, I'm just going to kind of go
5 through this. No pictures of the jury. You know, no
6 pictures of the attorneys discussing anything at their
7 table. And you can be -- and when we're off the record,
8 then you're not to be filming.

9 UNIDENTIFIED MALE: (Unidentified male nodded.)

10 THE COURT: I'm sure they're the same rules that
11 y'all normally deal with. Any questions from you?

12 UNIDENTIFIED MALE: (Unidentified male shook his
13 head.)

14 THE COURT: I know you're going to do what you're
15 supposed to do. I was just kind of letting you know on
16 that.

17 All right. Now, let's talk about the statements.
18 First of all, let's talk about Michael Hendricks'
19 statement. Like I said, I have reviewed that -- oh, let
20 me sign the media order.

21 (Pause.)

22 THE COURT: All right. I've signed your order there.

23 All right. I'll be glad to hear from you on the
24 Hendricks video.

25 MS. HINTON: Your Honor, the State has reviewed State

1 v. Navy, as you asked us to do. And I believe you are
2 correct that this case is on point with the issues that we
3 have.

4 I would say that this is distinguishable from State
5 v. Navy in that Detective Hendricks, at that time, had no
6 idea of the autopsy results or the toxicology results. So
7 even more so, it was less of an interrogation and more of
8 fact finding.

9 And I believe you notice in the video, he says, We're
10 meeting with you now because you were so upset at the
11 hospital. We didn't want to address it at that time. I
12 think everything is within a fact-finding set of
13 questions. So the State would argue it's admissible under
14 State v. Navy and Jackson v. Denno.

15 THE COURT: Anything from the Defendant?

16 MR. DEJONG: Your Honor, my only argument on that
17 particular statement is I think, again, when it comes to
18 custody, we have to look at it from the perception of the
19 person being interviewed, not the perception of a law
20 enforcement officer. And I think her perception would be,
21 under the circumstances, that she was in custody.

22 Granted, they asked her to come in. She did come in.
23 She went down to this interview room. You have seen the
24 video. I don't know who she met with first. And neither
25 does Detective Hendricks, apparently, based on his

1 testimony yesterday.

2 But she goes in the interview room. She's told, I
3 believe, that she is being videoed -- it's audio and
4 video. He is sitting there. "He" being Detective
5 Hendricks is sitting there with his side piece on, one
6 door in and out. Again, you saw the location of the
7 tables and the seating.

8 And I would simply submit, Your Honor, that she
9 should have been Mirandized, based on her perception that
10 she was in custody.

11 THE COURT: I think, like I said, State v. Navy and
12 even in the case of State v. Williams -- by the way, it is
13 a wonderful case. It has a whole laundry list of factors
14 to consider. That's another one we found. That's a good
15 one for your notebooks, by the way.

16 But I think there's even less restrictions discussed
17 in the State v. Navy case. I mean, it's not an
18 interrogation. I think that the casualness of the
19 statement is kind of extenuated by the fact that the
20 officers are changing clothes in the background all the
21 time -- with his tie and coat.

22 I think I'm going to find that that is not custodial,
23 and that that statement comes in.

24 So subject to your objection.

25 All right. And then, finally, the statement of --

1 given to Officer Burgess and Officer Cauthen on, I think,
2 December the 18th, was it?

3 MR. DEJONG: Yes.

4 THE COURT: All right. I'll be glad to hear from
5 you. And there's no question there was Miranda given at
6 some point.

7 MS. HINTON: That's correct.

8 Your Honor, it's the State's argument that it's
9 admissible under Jackson v. Denno because she was
10 Mirandized. She waived her rights. And, at that point,
11 she was competent to do so. The State does not deny that
12 at some point in the video, she clearly becomes under the
13 influence of some sort of drug, as she tells the officer,
14 it's Valium.

15 So the State thinks up to what I have marked as
16 12:28:11, which is when they exit the room for her to go
17 walk around, get a snack, that that is admissible under
18 Jackson v. Denno.

19 The State would argue that the second half of that
20 video is admissible under 404(B), as we discussed
21 yesterday, to go to show intent and lack of accident and
22 mistake when it comes to the injuries that occurred to
23 **Minor**. So that's the State's argument, Your Honor.

24 The State has a concern that if the entire video is
25 not admissible that we are misleading the jury, that we

1 have two lead detectives who did, essentially, nothing in
2 this case. So the State thinks, at least, a portion of
3 that is coherent and is admissible.

4 So we would ask that if you're not going to admit the
5 entire video, which we think is admissible, that you
6 would, at least, admit it until they get up to walk out of
7 the room and take a break to give some sort of --
8 something that we can both agree on as to why the video
9 ended at that point.

10 THE COURT: All right. Mr. DeJong.

11 MR. DEJONG: Thank you, Your Honor.

12 The fact that you have two lead detectives here who,
13 extensively, did nothing if you don't let the statement
14 in, I don't find that to be a very compelling legal
15 argument, Your Honor. That's the State's problem, not
16 mine.

17 And, certainly, I think to allow it in, I think you
18 have to look as the video progressed -- even though I
19 would submit, Your Honor, that at the outset when
20 Ms. Brewer first gets on camera, her speech is already
21 slurred. She, obviously, was under the influence by her
22 statement at the very -- pretty much close to the end of
23 it that she had taken a Valium, as I recall, not too long
24 before Agent Cauthen and Detective Burgess picked her up
25 to take her to the law enforcement center.

1 Being under the influence of that medication,
2 however, and at what point, number one, Your Honor, I
3 think it certainly goes to her making a knowing and -- the
4 word just eludes me, but making a knowing -- knowingly
5 giving up her rights under Miranda.

6 Certainly, the rest of it, being under the influence
7 of that particular drug, which, again, we have nothing
8 other than it was a Valium, certainly, goes to the
9 voluntariness of her statement. And I don't think it goes
10 to the voluntariness of half of the statement, Your Honor.
11 I think it goes to the voluntariness of the entire
12 statement.

13 Because, again, I think you have to go back and look
14 at that knowing and intelligent waiver of her Miranda
15 rights. And being under the influence, I don't think she
16 could make a knowing and intelligent waiver of her rights,
17 Your Honor.

18 And then, certainly, the latter part would be the
19 voluntariness of the statement, Your Honor. And I would
20 move that it not be allowed from the beginning to the end,
21 Your Honor.

22 THE COURT: All right. In reviewing the video, I
23 believe -- there's no question, I think, at the first of
24 it there is some little slurring, I think. But I think
25 that -- her responses to the question and her general

1 conversation, I think shows that it is voluntary, that she
2 knows what's going on.

3 And there's definitely a point where, I guess, you
4 know, the influence of the Valium seems to kick in more
5 based on what she said, if she took it at 10:00 to 11:00.
6 Because she definitely, at some point, becomes almost
7 incoherent and mentions something about a 300-degree
8 fever. I mean, I think there's -- definitely, after the
9 break, it's much worse. I mean, there's a distinct
10 difference.

11 So, you know, but I don't -- I have a problem with a
12 couple of points in there. I don't know if you want to
13 address any specific areas. But I had -- you know, there
14 is some conversation that goes on before the Miranda
15 rights are read to her. And I don't know if -- you know,
16 how crucial they are. They're a little bit of kind of
17 small talk. But some of it is substantive. I marked it.
18 It's -- the Miranda rights were given at 11:49.

19 So I don't think anything prior to that point -- I'm
20 not going to allow that in. I don't think it's real
21 substantive. I think out of an abundance of caution that
22 until the Miranda rights are given -- and, like I said,
23 what I wrote down was 11:49.

24 I don't know, again, how this case is going. I don't
25 know if there's any issue with the coroner. Because

1 there's a discussion in there about what the coroner
2 found. And I don't know if that's something -- I mean, I
3 assume that's coming in and there's no issue with what the
4 coroner found from the Defendants [sic].

5 I mean, y'all don't object to that portion? Because
6 she talks about this is what the autopsy showed.

7 MR. DEJONG: I'm sorry, Your Honor?

8 THE COURT: I said, there's, also, a point where they
9 talk about --

10 MR. DEJONG: Yes, sir.

11 THE COURT: -- this is what the autopsy showed,
12 which, I guess, is beneficial to you, I think. But, you
13 know, if that's going to be an issue. I mean, that's -- I
14 don't know if you can get that in through this video. I
15 didn't know how y'all were dealing with that.

16 MR. DEJONG: That autopsy report -- not to
17 interrupt -- that is kind of fanning out a little bit. My
18 understanding -- Ms. Hinton has graciously shared with me
19 that the coroner will be her second witness this morning.

20 And my whole thrust without arguing it at this point
21 in time are the lab reports. Because that's what it seems
22 everything is based on. It's not SLED lab reports. I'm
23 talking about the NMS lab report, which is a forensic lab
24 out of Willow Grove, Pennsylvania. That's what I'm
25 talking about.

1 THE COURT: And that's not mentioned in -- when she
2 talks about the autopsy, she's talking about the
3 neurovirus and pneumonia. I was just making sure there
4 wasn't an issue with that. It doesn't sound like there's
5 an issue there.

6 The other thing I had some issue with -- and I
7 realize they were anecdotal with the interviewer. But
8 when she talks about other people's issues and -- I have
9 some serious issues with the prejudicial value of that.

10 MS. HINTON: Sure.

11 And Mr. DeJong and I have, actually, discussed that
12 prior to this. The State will concede that the banging of
13 the head thing is probably not in line with what we're
14 dealing with. And I have that marked as minute 12:10:15
15 to 12:10:28. So the State is fine removing that portion.

16 We do think that the Benadryl in the cup is
17 significant. Because that is, essentially, what we have
18 here, giving too much Benadryl, exchanging it for
19 Oxycodone. Because of her reaction to those questions --
20 they're in a Q and A. She never denies that she did that.
21 Instead, she hangs her head, talks about how that's my
22 baby.

23 So the State does think that being more in line with
24 what we have here as a drug overdose is a relevant line of
25 questioning and is appropriate for her to ask.

1 THE COURT: Okay. Well, I mean, I don't -- I
2 disagree with you. I don't think that some other case
3 should be put in front of this jury as, oh, this is
4 similar. Basically, this lady's pattern is following what
5 we had previously with the Benadryl overdose.

6 MS. HINTON: Well, I guess as an interrogation
7 tactic, Your Honor. But I guess, at that point, then
8 where do we pick back up? I mean --

9 THE COURT: I have it at 12:12.

10 MS. HINTON: Right.

11 But I guess, at that point, what are we talking
12 about? Because if we cut that out and she starts talking
13 about that's my baby, that's not a -- that's misleading to
14 the jury. Because that's not how that question flowed.
15 Then it just looks like she's so sad about this child, not
16 that she's nonresponsive to a line of questioning.

17 THE COURT: Well, you may have to cut it there. But
18 I'm going to -- I'm not going to allow the anecdotes about
19 other matters.

20 MS. HINTON: What about getting in a car accident,
21 and all that?

22 THE COURT: I don't have a problem with that as far
23 as -- you know.

24 MS. HINTON: So just the portion about the prior case
25 of Benadryl?

1 THE COURT: The two child abuse incidents she
2 mentions.

3 MS. HINTON: And you have it at 12:12?

4 THE COURT: I've got 12:10 to 12:12. But that's --

5 MS. HINTON: Okay. And, Your Honor, obviously, prior
6 to doing all of this and playing it for the jury, would
7 you allow us to take a quick break?

8 THE COURT: Yeah. We'll figure out what we need to
9 do. And did y'all hook it back up after --

10 MS. HINTON: We did, yes.

11 THE COURT: All right. So that's the first portion.

12 All right. You've got a -- we're still talking about
13 the first portion.

14 MR. DEJONG: Okay. I'm a little -- I don't know if
15 you have ruled on any of it yet, at this point in time, or
16 are you saying you're ruling at a certain point and after
17 that?

18 THE COURT: I am -- my ruling is that the -- the --
19 up until -- from the Miranda rights that were given, which
20 I have as 11:49, until the break is admissible. But
21 you're -- but not the part about the anecdotes, the two
22 incidents where she mentions -- which I think are about
23 12:10 to 12:12.

24 As to the second part, I mean, I understand your Rule
25 404, but I'm not going to allow -- after the break, I'm

1 not going to allow it..

2 MS. HINTON: So how -- how do you propose that we
3 address that? You know, it's not a real natural end to
4 the interview, in my opinion. I mean, obviously, we can
5 just cut it off and say, at that point, they ended the
6 interview.

7 But I think it's important to let the jury know that
8 there's a reason why they were sending it -- or there's a
9 reason why the Court has ruled -- I guess I just don't
10 want it to look like we're not showing the second half.

11 THE COURT: Well, you've got to be careful on
12 anything you say there. Because I don't want them --

13 MS. HINTON: Right.

14 THE COURT: You know, I guess we deal a lot more with
15 this in civil-type cases. But you don't want to let the
16 jury think, oh, they ruled a bunch of stuff out and this
17 lady admitted everything under the sun, too.

18 MS. HINTON: Right, right.

19 THE COURT: You've got to be careful on that. Let me
20 think of something that we can say to the jury that we can
21 discuss and all agree on.

22 MR. DEJONG: And I know Your Honor will share that
23 before you say it.

24 THE COURT: No. That's what I said, something we can
25 all agree on.

1 MR. DEJONG: I think now I understand your ruling.
2 But there is something else in the early part of the tape.
3 And I don't think it was pre-Miranda. I could be wrong.
4 I don't have my times on it.

5 At one point in time, there was a discussion between
6 Ms. Brewer and Agent Cauthen on what time she got up on
7 that morning and what she did after she got up.

8 THE COURT: That was post-Miranda?

9 MR. DEJONG: Pardon me?

10 THE COURT: That was post-Miranda?

11 MR. DEJONG: Yes, sir.

12 And my objection to part of that is when they talk
13 about her watching television, the agent asked her what
14 she was watching. She said she was, I believe, watching
15 ID. Well, then the agent goes on to ask her, well, what
16 is ID about?

17 And then my client, as I understood the video, said,
18 Well, that's a show that tells you how to -- I don't know.

19 THE COURT: How to kill someone and get away with it.

20 MR. DEJONG: Yes, sir.

21 THE COURT: I wrote it down.

22 MR. DEJONG: Yes, sir. And I object to that.

23 There's nothing further than that. It, certainly,
24 has nothing to do with a child or children, any type of
25 allegations of drug overdose, which we vehemently deny

1 that Ms. Brewer did. But, nonetheless, I would move that
2 that be redacted, Your Honor.

3 MS. HINTON: I mean, Judge, are we going to start
4 redacting every dumb comment she makes during her
5 interview?

6 THE COURT: Well, that's more than just a dumb
7 comment.

8 MS. HINTON: But, I mean, that's what she said.

9 THE COURT: I know.

10 MS. HINTON: It wasn't part of a question that was
11 elicited. It wasn't harped on. It was mentioned.
12 They -- oh, I'll have to tell my husband that. It was
13 made in a joking manner. But that is part of the flow of
14 the interview.

15 The fact that she gets up early is important to the
16 State's case. The fact that she watches TV all the time
17 is important to the State's case. And, at that point,
18 we're starting to redact everything that has any relevance
19 to our own case.

20 MR. DEJONG: Well, I do not agree with it, that it
21 wasn't the result of questioning. She was asked what she
22 did in the morning. And she said she took her medication,
23 she watched television. They asked her what she watched.
24 And then there was a follow-up question, as I recall, And
25 what is that about? And that was her response was how to

1 kill somebody and get away with it.

2 MS. HINTON: And, Judge, the timing of her taking her
3 medication is important to the State.

4 THE COURT: No. I guess the timing -- and I guess --
5 and I wrote it down because -- and I go back and forth
6 with how -- I don't know exactly how I'm ruling at this
7 point. Because, I mean, I think that she made it -- I
8 mean, the saying of the program of what it's about -- I
9 mean, that's the -- that's the statement that we're going
10 to consider, not anything up to that point.

11 And I think the way I looked at it -- and this is
12 just kind of my view of it. She said it in jest, yeah, I
13 tell my husband all the time -- or something like that --
14 how to kill somebody and get away with it. But what you
15 go back to is it's more prejudicial than probative. And I
16 haven't made my mind up on that. I will let --

17 MR. DEJONG: It's still hanging, Your Honor?

18 THE COURT: It's still hanging.

19 MR. DEJONG: Okay.

20 THE COURT: So I will let you know on that one.

21 Anything else before we bring the jury in?

22 MR. DEJONG: Nothing, at this point in time, Your
23 Honor.

24 But I think when they get through with this first
25 witness, I'm going to have a matter to take up with the

1 Court outside the presence of the jury. I just wanted to
2 let you know that.

3 THE COURT: All right.

4 MS. HINTON: And, Judge, just for scheduling, I don't
5 know that this first witness will take a large amount of
6 time. So I don't know if you would rather go ahead and
7 hear it now, or if you wanted to hear that first witness.

8 THE COURT: The jury has been waiting. Let's go
9 ahead and begin this first witness.

10 Anything else before we bring the jury in from the
11 State?

12 MS. HINTON: No, Your Honor.

13 THE COURT: Anything from the Defendant?

14 MR. DEJONG: Not at this time.

15 THE COURT: All right. Bring the jury in.

16 (WHEREUPON, the jury came into open court at
17 approximately 10:23 a.m.)

18 THE COURT: All right. Ladies and gentlemen, I hope
19 everybody had a good evening.

20 Thank you for your patience.

21 As mentioned, we had a few things we had to go over
22 before we brought y'all out here.

23 Now, I do want to tell you -- this is just kind of a
24 caveat. As you'll probably notice, at some point this
25 morning, there is media coverage. And all I want to say

1 is that will not be distracting to y'all in any way.

2 And, also, he is fully aware that the rules are that
3 y'all are not to be photographed or put on the news. So I
4 wanted to tell y'all that so that y'all don't have to be
5 concerned about it. This will be just everything else
6 going on in the courtroom. But y'all will not be involved
7 with anything to do with the media coverage. So that's
8 not something you should be concerned about.

9 The State may call its next witness.

10 MS. NEWTON: Thank you, Your Honor.

11 May it please the Court.

12 We would call Michael Lusk to the stand.

13 THE CLERK: Place your left hand on the Bible and
14 raise your right hand.

15 WHEREUPON,

16 MICHAEL LUSK,
17 after first having been duly sworn, testified as follows:

18 THE CLERK: Have a seat.

19 And state your name for the record.

20 THE WITNESS: Michael Lusk.

21 DIRECT EXAMINATION

22 BY MS. NEWTON:

23 Q Mr. Lusk, how many kids do you have?

24 A Me, total, I have three.

25 Q Okay. And who are they?

1 A It'd be Kayson L., Cory L., and Carter
2 Degraw [phonetic].

3 Q Okay. And did you adopt the victim in this case,
4 Minor ?

5 A Yes, I did.

6 Q So he was the only father that you knew?

7 A Only father.

8 Q Or you were the only father he knew? Sorry.

9 A Yes, ma'am.

10 Q Can you tell me about what happened on the morning of
11 October 17, 2014?

12 A We -- we got up late. We was running late to get the
13 kids to school, and all.

14 Q Tell me a little bit about that. What happened?
15 What went on?

16 A Well, we got up late. And Angie come in and she was
17 telling us to get up, that we needed to get up and get the
18 kids ready to go to school, and everything.

19 Q Okay. And did you take some kids to school?

20 A We took Cory and Keegan.

21 Q Okay. And what happened after you got to school?

22 A We took -- Callen took Keegan to the nurse's station.
23 And I took Cory to the cafeteria.

24 Q And why were you taking him to the cafeteria?

25 A To pay on his lunch -- on his school -- for his food.

1 Q Okay. And about how long were you at school that
2 morning?

3 A Probably 20 minutes, tops.

4 Q Okay. And where did you go after that?

5 A We went back to the house.

6 Q And when you say "the house," whose house?

7 A Angie's house.

8 Q And who was there?

9 A Angie.

10 Q Were any --

11 A And the kids, yeah.

12 Q Okay.

13 A **Minor** and Kayson.

14 Q And about how long did y'all stay there?

15 A I'd say we stayed roughly 15, 20 minutes, tops.

16 Q And then what happened?

17 A We left to go to Callen's work.

18 Q Who left?

19 A Me, Keegan, and Callen.

20 Q Did you -- when you were back at the Defendant's
21 house, did you see **Minor**?

22 A Yes.

23 Q How was he acting at that time?

24 A He was fine.

25 Q Okay. What do you mean by "fine"?

1 A Running, playing like he always does.

2 Q Was he sick?

3 A No, ma'am.

4 Q And then you said you went to Callen's work?

5 A Yes, ma'am.

6 Q And then where did you go?

7 A When we left from there, we went to Georgia.

8 Q Why were you going to Georgia?

9 A To get some furniture and stuff out of a trailer that
10 her father's girlfriend, at the time, told us we could
11 get, and some materials and stuff to fix the trailer that
12 we was working on.

13 Q Okay. When you were at the house that morning, did
14 you give **Minor** anything to eat or drink?

15 A No, ma'am.

16 Q Okay. And then what happened when you were in
17 Georgia?

18 A We -- we was getting stuff. We was getting stuff
19 ready. And we got a phone call that **Minor** wasn't
20 breathing.

21 Q Okay. And what did y'all do?

22 A We dropped everything and took off back to South
23 Carolina.

24 Q And where did you go once you got back --

25 A Cannon Memorial.

1 Q All right. Are you and Callen still together?

2 A No, ma'am.

3 MS. NEWTON: Okay. Please answer any questions

4 Mr. DeJong may have.

5 MR. DEJONG: Thank you, Your Honor.

6 May it please the Court.

7 CROSS-EXAMINATION

8 BY MR. DEJONG:

9 Q So were you working at this point in time, Mr. Lusk?

10 A Not that I -- not that I -- if I was doing anything,
11 I'd be working with my dad just here and there.

12 Q Were you under any kind of medical disability, or
13 anything?

14 A No.

15 Q Were you on any medications?

16 A Not at the time.

17 Q Well, you say "not at the time," did you have any
18 unused prescriptions around the house?

19 A No.

20 Q And you say -- well, let me back up here a little
21 bit. So Angie comes in and, actually, wakes you and Cally
22 up; right?

23 A Yeah.

24 Q Now, when she comes in to do that, are Kayson and
25 **Minor** already awake?

1 A No. We had to get **Minor** up.

2 Q I'm sorry?

3 A We had to get Kayson and **Minor** up.

4 Q Well, who got the children up?

5 A We was getting them up -- in the process and she got
6 them after that while we was getting ready.

7 Q Well, **Minor** and Kayson, they were not school age,
8 were they?

9 A No.

10 Q So no need to get them ready?

11 A Well, they was in the room with us at the time.

12 Q Right. I'm with you on that. So what time did you
13 leave the house to go to school?

14 A We probably -- it took -- we left probably 8:15, or
15 so.

16 Q What time does school start?

17 A 8:00.

18 Q So you were there 20 minutes, tops. That would put
19 you to 8:35; right?

20 A Not at the school.

21 Q Okay. Then I misunderstood what you said.

22 A I misunderstood what you said.

23 Q Pardon me?

24 A You was talking about at the house?

25 Q No. How long were you at the school? I'm sorry.

1 A About 20 minutes, or so.

2 Q So about the same. So that would put you at 8:35
3 leaving the school; right?

4 A We didn't sign the kids in until it was a little
5 later.

6 Q All right. So what time did you get back to the
7 house?

8 A Probably nine something.

9 Q Okay. And why did you go back to the house?

10 A Because Keegan didn't get to go to school that day
11 because he was running a fever that night.

12 Q Did **Minor** use sippy cups?

13 A He did.

14 Q Did you ever fix any sippy cups for him?

15 A I did.

16 Q Did you fix a sippy cup for him on the morning of
17 October the 17th --

18 A No, I didn't.

19 Q -- of 2014?

20 And how can you be so sure of that?

21 A Because Angie said she was going to fix his cup.

22 Q Okay. Then you -- how long were you at Cally's work?

23 A We stayed there for two hours.

24 Q And what time did you get there?

25 A I'm not exactly sure on the exact time.

1 Q Okay. Well, when -- what time did you leave for
2 Georgia?

3 A We -- I'm not sure of the time we left for Georgia.

4 Q All right.

5 A It was probably around 12:00, or so.

6 Q But you have no independent recollection of that?

7 A No.

8 Q Okay. And **Minor** was playing and acting very normal;
9 correct?

10 A Yes, sir.

11 Q Now, the night before, Keegan had been sick?

12 A Yes, sir.

13 Q And you took him to the emergency room?

14 A To the emergency room.

15 Q Which emergency room did you take him to?

16 A I think we took him to Easley.

17 Q Okay. Do you recall what doctor he saw there?

18 A I don't.

19 Q Okay. You say later in the afternoon, you received a
20 phone call. Who was that phone call from?

21 A From Angie.

22 Q Now, could you hear that phone conversation?

23 A Not -- I heard -- because she had her on speaker
24 phone, I think, at the time. Because she turned it on
25 because she said that he wasn't breathing. And so she put

1 it on speaker phone trying to find out what was going on.

2 Q And could you hear how Angie was reacting to all
3 that?

4 A She was upset.

5 Q What time did y'all get to Cannon?

6 A I'm not exactly sure what time. Because it took me
7 about an hour and a half, where it takes usually two hours
8 to get back.

9 Q And you were in Elberton?

10 A Elberton, Georgia.

11 Q When you got to the hospital, who was there?

12 A Everybody was there. Angie was there. Robby was
13 there. My brother was there, his wife.

14 Q Did you see Angie?

15 A I did. When I got in the hospital, I did.

16 Q And what was her demeanor then?

17 A She seemed -- she was upset. Everybody was upset
18 that night.

19 Q And upset is probably not a real good word for how --

20 A It's not.

21 Q Okay. Are you sure you went to school with -- with
22 Cally to take the children to school?

23 A I'm a hundred percent sure.

24 MR. DEJONG: One moment, please, Your Honor.

25 (Pause.)

1 BY MR. DEJONG:

2 Q Let me ask you this. How many sippy cups did Minor
3 have? Do you know?

4 A He had a few.

5 Q Pardon me?

6 A He had a few.

7 Q More than one or two?

8 A More than one or two.

9 (Pause.)

10 MR. DEJONG: Okay. Thank you, Mr. Lusk.

11 THE COURT: Any redirect?

12 MS. NEWTON: Briefly, Your Honor.

13 REDIRECT EXAMINATION

14 BY MS. NEWTON:

15 Q Do you remember signing Cory into school that morning?

16 A I do.

17 Q When you arrived at school, is there a sign-in sheet
18 you fill out?

19 A Yes.

20 Q Okay. I'm going to show you something. Do you
21 recognize that?

22 A That's my signature.

23 Q And what date does it say?

24 A 10/17.

25 Q And what time?

1 A 8:40.

2 Q Okay. And this was the sign-in sheet that you filled
3 out --

4 A Yes, ma'am.

5 Q -- is that correct?

6 MS. NEWTON: Okay! No further questions.

7 THE COURT: All right. You may step down.

8 MR. DEJONG: No objection to him being excused, Your
9 Honor.

10 THE COURT: All right. Is there something we need to
11 address at this point?

12 MR. DEJONG: I'm sorry, Your Honor?

13 THE COURT: Is there something --

14 MR. DEJONG: Well, I'm not a hundred percent sure.
15 But, based on a prior conversation, I think this is the
16 time I need to say something to the Court outside the
17 presence of the jury, Your Honor.

18 THE COURT: All right. Is that correct?

19 MS. HINTON: Yes, Your Honor.

20 THE COURT: All right. We've got a matter we need to
21 take up outside your presence.

22 So go back to your jury room. Do not discuss the
23 case.

24 (WHEREUPON, the jury was excused from open court at
25 approximately 10:37 a.m.)

1 THE COURT: All right.

2 MR. DEJONG: May it please the Court, Your Honor.

3 The -- and, obviously, I don't know everything that
4 the coroner may testify to. But Madam Solicitor shared
5 with me that one of the things, as I understand it --

6 And, please, Ms. Hinton, correct me if I'm wrong.

7 -- is as to the cause of death. And it's my
8 understanding that the coroner would testify that the
9 cause of death was homicide. I have a couple of issues
10 with that.

11 Number one, I'm not sure when that determination was
12 made. I was given an updated coroner's report subject to
13 my Rule 5. I don't see a date on that particular updated
14 coroner's report.

15 My problem with either the homicide, Your Honor --
16 and I will, also, parenthetically note that the updated
17 coroner's report that I'm looking at says, "Oxycodone
18 overdose." Well, the problem I have with that is, number
19 one, I don't believe -- and no disrespect to the coroner,
20 Your Honor. But I don't believe he's medically qualified
21 to make that determination on his own.

22 What I think -- what I believe happened is that the
23 findings came back from this outfit called NMS Labs in
24 Willow Grove, Pennsylvania, and both Dr. Fulcher and, if
25 this is what the coroner is going to testify to, used the

1 findings of NMS Labs to make the decision or the cause of
2 death, whatever you want to call it, that they made.

3 Well -- and I guess I'm going to throw Dr. Fulcher in
4 here, too, with the Court's permission, so I don't end up
5 having to argue this twice, Your Honor.

6 My problem with that is this, number one, they're
7 basing that on hearsay. To my knowledge, as far as blood
8 toxicity, gastral fluids, any blood work, there was none
9 of that done -- there was no testing done, except by NMS
10 Labs. Now, first, I would submit that it is hearsay.

11 Secondly, Your Honor, I believe by allowing them to
12 use those lab reports to base their findings on, that is
13 depriving my client of her Sixth Amendment right of
14 confrontation as to NMS Labs. And I base that in large
15 part, Your Honor, on the United States Supreme Court case
16 of Melendez-Diaz v. Massachusetts.

17 And I'll be happy to hand a copy of that up to the
18 Court. It's a fairly voluminous opinion --

19 Oh, I'm sorry, Ms. Hinton. Do you want to look at
20 this before I hand it up? It's not marked.

21 MS. HINTON: No.

22 Thank you.

23 MR. DEJONG: As is usual with the United States
24 Supreme Court, it is a very voluminous statement. But
25 that case, Your Honor, to me, is almost directly on point

1 with this case, especially with regard to Dr. Fulcher.

2 And, in that case -- that was a Massachusetts case.

3 And in that case, Your Honor, the Defendant was charged

4 with -- bear with me one second -- charged with

5 distribution of cocaine, trafficking in cocaine in an

6 amount of 14 to 208 grams. Now, the substance in that

7 case was sent to the lab. I don't even know if there was

8 a report that came back in that.

9 The State simply in Melendez-Diaz offered an

10 affidavit as to what it was. And they said it was cocaine

11 weighing a certain amount, or whatever. The United States

12 Supreme Court says, no, you can't do that.

13 THE COURT: What type of case is the Massachusetts

14 case? What's the charge?

15 MR. DEJONG: Distribution of cocaine and trafficking

16 in cocaine, Your Honor.

17 THE COURT: All right.

18 MR. DEJONG: And the whole thrust of that case was

19 the lab analysis. Well, here, I think the State is trying

20 to back door in -- and I can go into that case a little

21 bit more, but, certainly, Your Honor can read it.

22 What they're trying to do is back door these lab

23 reports in. And my client is totally being deprived of

24 her Sixth Amendment right of confrontation. And that's

25 what Melendez-Diaz deals with, Your Honor. They say, no,

1 you can't deprive the Defendant of their Sixth Amendment
2 right on these lab reports.

3 They say, you can say whatever you want to. And
4 there's a rather lengthy discussion. They talk about the
5 dissent. I think that was -- if I recall, that opinion
6 was a six/three, six majority. I think there were three
7 dissenters, maybe five to three, one concurring and a two
8 dissent. I'm not really sure about that.

9 But they said -- basically, the bottom line is
10 Melendez-Diaz says the Sixth Amendment is the Sixth
11 Amendment is the Sixth Amendment. There's no way we can
12 suspend the Sixth Amendment. The Defendant has an
13 absolute right to confrontation when somebody does this
14 lab analysis.

15 Now, again, I would share with the Court that, to my
16 knowledge, other than a little bit of lab work that was
17 done by SLED, there was no other testing.

18 So, in this case, I would submit that Dr. Fulcher did
19 no independent testing. He relied and based his findings
20 on this lab from Pennsylvania. And I would suggest that
21 the coroner would, also, have done the same thing.

22 And just by way -- and, again, I don't know the date
23 on this updated coroner's report. I may be missing it.
24 But by way of a little background, Your Honor, the autopsy
25 was done, I believe, on October the 18th of 2014.

1 The -- Dr. Fulcher's findings, as I saw the pathology
2 report, was not signed until 11/17 of '14. Well, NMS Labs
3 issued their report. And the date of that was 11/2/14,
4 which was some 15 days prior to the pathologist issuing
5 his report.

6 Now, again, I don't know what the coroner based his
7 or her -- the statement of this was either two things. At
8 one point, they suggest an Oxycodone overdose. And I
9 don't really see homicide in there. But I assume the
10 'Solicitor' is being forthright that the coroner would
11 testify to that.

12 It just -- it just flies in the face of the
13 Constitution, the Sixth Amendment, Your Honor, I would
14 suggest, for them to allow these lab reports to be used
15 when the person or persons that did the lab reports are
16 not present in court and cannot be tested by
17 cross-examination. And, again, that goes back to
18 Melendez-Diaz v. Massachusetts. And that's exactly what
19 the Supreme Court said, the crucible is cross-examination.

20 They, also, Your Honor, talk in that case -- and I
21 think it was Ohio v. Roberts, if I'm not mistaken. In
22 Ohio v. Roberts, they talk about reliability as being the
23 indicia of introducing something.

24 And, again, in Melendez-Diaz, they said, no, in these
25 situations, reliability has nothing to do with it. It has

1 to do with the Defendant's Sixth Amendment right of
2 confrontation. And we're getting away from -- again, I
3 think I'm right it was Ohio v. Roberts. And they said
4 we're getting away from Ohio v. Roberts, especially in
5 these cases. We're not talking about indicia of
6 reliability. We are talking about the Sixth Amendment
7 right of confrontation.

8 So I object to Dr. Fulcher's findings. He can
9 testify to anything he found at the autopsy. I'm not
10 objecting to that. What I am objecting to is, in his
11 findings, he puts in the blood levels, and all that. That
12 was not testing done by him.

13 And, again, I am assuming, Your Honor. I will
14 readily admit that. But I am assuming that's, also, what
15 the coroner based his or her findings on to say it was an
16 Oxycodone overdose. And if they testify to homicide,
17 they're basing it on the same thing, Your Honor.

18 THE COURT: Yes.

19 MS. HINTON: Thank you, Your Honor.

20 I'll start with Mr. Duncan. First of all, we would
21 not elicit the cause of death being an Oxycodone overdose
22 through him. We would elicit the type of death, which is
23 listed on his report -- I can show it to Mr. DeJong -- as
24 homicide. Because we think the coroner's office is vested
25 with the authority to determine the type of death. That

1 is their purpose. That is their job. So that is as to
2 Mr. Duncan.

3 As to Dr. Fulcher, first of all, Melendez-Diaz does
4 not apply. That had to do with submitting affidavits in
5 lieu of any person to testify. That does violate the
6 confrontation clause.

7 However, we are going to admit Dr. Fulcher's
8 testimony under 703, which says that experts can base
9 their opinion on other experts or other documents. Even
10 if those documents are not admissible, even if they are
11 hearsay, he is allowed to rely on those for his own
12 findings.

13 So that is why that is admissible. And it is
14 distinguishable from Melendez-Diaz because we will have
15 someone he can confront. And he can cross-examine him on
16 the fact that these are not his own numbers, that they're
17 from a different lab.

18 In addition to that, Mr. DeJong has his own expert on
19 his witness list that did nothing in this case. So what
20 is good for the goose is good for the gander. If he is
21 allowed to bring a witness in to testify to someone else's
22 findings and report, then the State has the same right to
23 do that.

24 THE COURT: Any response?

25 MR. DEJONG: To say my expert did nothing is a gross

1 understatement, Your Honor. I have chosen not to call
2 that expert.

3 MS. HINTON: Well, my point is she did nothing in
4 this case. She's not a pathologist. She didn't test
5 anything in this case.

6 MR. DEJONG: She was merely a consultant, if we want
7 to get down to the bottom line. But it still goes down
8 on -- even if you get over the hurdle of hearsay under
9 what -- 702 or whatever it is, I still don't think you can
10 bring it in. Because it's still a violation of my
11 client's Sixth Amendment right to bring that in.

12 THE COURT: Let me -- all right. Let me look at the
13 case you presented. And I'll let y'all know in just a
14 second.

15 MR. DEJONG: Thank you, Your Honor.

16 MS. HINTON: And, Your Honor, just so you know, I do
17 have multiple cases that do allow an opinion based on
18 facts not in evidence.

19 THE COURT: Right. I mean, that's -- I'm not sure he
20 disagrees with that. His is all Sixth Amendment. Let me
21 look at this.

22 MR. DEJONG: May we be at ease, Your Honor?

23 THE COURT: You may be at ease.

24 MR. DEJONG: Thank you, Your Honor.

25 THE COURT: Only for five minutes.

1 (WHEREUPON, a break was taken.)

2 (WHEREUPON, State's Exhibit No. 21 was marked for
3 identification only.)

4 THE COURT: All right. I've read the Melendez-Diaz
5 case. I've looked at some other cases in South Carolina.
6 And I believe the confrontation clause is met by the
7 cross-examination of the witnesses here.

8 Those are different -- those were not in --
9 Melendez-Diaz was just trying to get in a report. So I'm
10 going to allow the testimony.

11 MR. DEJONG: I didn't hear the latter part.

12 THE COURT: I said I'm going to allow the testimony
13 in, subject to your objection.

14 MR. DEJONG: And I'm not arguing with Your Honor.

15 THE COURT: That's fine.

16 MR. DEJONG: The second prong of that is -- and I'm
17 quite familiar with State v. Commander upon experts
18 testifying as to cause of death. I'm not -- I don't
19 think -- I could be wrong. But I don't think the State
20 will offer the coroner as an expert witness, number one.

21 Number two, either with Dr. Fulcher or with the
22 coroner -- and again, like I said, I read Commander. I
23 understand Commander.

24 But in this case, I think it is vastly different. My
25 client is charged with homicide by child abuse. That

1 allow me to stipulate, but I'm not stipulating to
2 anything, Your Honor.

3 THE COURT: Well, I think any concerns you have
4 through cross-examination and a proper charge in light of
5 State v. Commander, I believe that would be appropriate.

6 MR. DEJONG: Very well, Your Honor.

7 THE COURT: All right. Anything else before we bring
8 in the jury?

9 MS. HINTON: Just briefly, Your Honor. I think we've
10 already covered this. But I have decided to admit the
11 written statement that Detective Hendricks takes. I think
12 that was covered in your prior Jackson v. Denno ruling,
13 but I just wanted to be abundantly cautious.

14 THE COURT: All right.

15 MR. DEJONG: I have no response to that, Your Honor.

16 THE COURT: All right. Anything else before we bring
17 the jury in?

18 MS. HINTON: No, Your Honor.

19 MR. DEJONG: Not on behalf of Ms. Brewer, Your Honor.

20 THE COURT: Bring them in.

21 (WHEREUPON, the jury came into open court at
22 approximately 11:11 a.m.)

23 THE COURT: All right. Ladies and gentlemen, once
24 again, thank you for your patience.

25 There were quite a few things we had to go over.

1 So, now, I'm going to ask that the State call its
2 next witness.

3 MS. NEWTON: Thank you, Your Honor.

4 The State calls Gary Duncan to the stand.

5 THE CLERK: Place your left hand on the Bible and
6 raise your right hand.

7 WHEREUPON,

8 GARY DUNCAN,
9 after first having been duly sworn, testified as follows:

10 THE CLERK: Have a seat.

11 And state your name for the record, please.

12 THE WITNESS: Gary Duncan.

13 DIRECT EXAMINATION

14 BY MS. NEWTON:

15 Q Mr. Duncan, where are you employed?

16 A The Pickens County Coroner's Office.

17 Q And in what capacity? What is your title?

18 A I am the deputy coroner in Pickens County.

19 Q And were you notified of a child's death on October
20 17, 2014?

21 A Yes, ma'am.

22 Q And where did you respond?

23 A Cannon Memorial Hospital.

24 Q Who responded with you?

25 A The lady that works with me, Joyce Duncan. She was

1 with me.

2 Q Okay. And is Joyce Duncan related to you?

3 A She's my wife.

4 Q Does she work part-time with the coroner's office?

5 A Yes, she does.

6 Q Was law enforcement at the hospital when you arrived?

7 A No, ma'am.

8 Q Did they arrive as a result of some of your actions?

9 A I notified Agent Smith [sic] with SLED. She came up
10 there. Then she notified Pickens County.

11 Q Okay. And did you visually examine the baby at the
12 hospital?

13 A Yes, I did.

14 Q What did you observe?

15 A A lot of medical wires, monitors. I checked the baby
16 for any bruises, cuts, any signs of abuse. And I did not
17 see any.

18 Q Okay. Are you aware of any medical procedures that
19 they performed on the baby at the hospital?

20 A No, I'm not.

21 Q Okay. So based on -- when you said you didn't see
22 any, does that mean that you didn't see any outward signs
23 of abuse?

24 A Right. I didn't see any visible bruises or marks on
25 the child.

1 Q Okay. Did you have an opportunity to speak with the
2 family at the hospital?

3 A Yes, I did.

4 Q Who all was there?

5 A When they brought me around to where the family was
6 at, there was Ms. Brewer, Mr. Brewer, and several other
7 people in there that I didn't know.

8 Q Did you ever tell any of the family that this was
9 SIDS?

10 A No, ma'am.

11 Q Okay. What type of information did you gather while
12 at the hospital?

13 A When I was sitting in there talking to the family, my
14 main concern was them. I was getting names, addresses,
15 who was where, who was who. And in the process of talking
16 to them, about that time, the mother came in.

17 Q What happened when -- and when you say "mother," do
18 you mean the baby's mother?

19 A The baby's mother, yes.

20 Q And what happened when the mother came in?

21 A She came in the door and she was -- I would almost
22 say in a panic state. Where's my baby? What's wrong with
23 my baby. I want to see my baby.

24 MR. DEJONG: Your Honor, I'm going to object to what
25 she said.

1 THE COURT: Yeah. Sustained.

2 THE WITNESS: Okay.

3 BY MS. NEWTON:

4 Q Yeah. Don't tell us what she said, but just what
5 happened.

6 A When she came in, she was upset, like I said, in a
7 panic mode, I would say. I informed her that her child
8 was dead.

9 Q What -- what did you do after -- did you stay at the
10 hospital the whole night?

11 A I stayed there a little while longer. I went back
12 outside where Agent Smith was at. Lieutenant Byers, at
13 the time, with the sheriff's department had arrived. We
14 stood out there and talked a few minutes. I was giving
15 them names and addresses that I had. Then I left and went
16 to the house.

17 Q Okay. And when -- what did you do when you got to
18 the house?

19 A When I got to the house, I went into the house. I
20 observed the scene. I took some photographs of the house.
21 And I stayed there until Agent Smith and Lieutenant Byers
22 arrived at the house, along with Ms. Brewer and
23 Mr. Brewer.

24 Q Okay. And you're saying "Agent Smith," but do you
25 mean the female SLED agent?

1 A Yes, ma'am.

2 Q At the house, did you -- were you there and present
3 when the Defendant was talking about what happened that
4 day?

5 A Yes, I was.

6 Q Okay. And what information was provided to you?

7 A She was -- it was -- we done a reenactment. She was
8 telling me about what time the child got up, what time she
9 put it to bed -- put it down for a nap. Approximately
10 1:15, 1:30, she sat down and watched her soap operas. She
11 went back to the child about 4:00. The child sat up and
12 rolled over -- looked at her, rolled over, and went back
13 to sleep.

14 She went back to the child somewhere around 5:00.
15 She was talking to her husband on the phone. He told her
16 you need to get the child up. Because if you don't, it
17 won't sleep tonight. And she went over there and tried to
18 get the child awake and couldn't get him awake.

19 Q And did she mention when 911 was called?

20 A Not at that time, I don't remember. She did later on
21 in the reenactment.

22 Q Okay. And when you're saying "reenactment," what was
23 your participation and role in that?

24 A I -- I took my camera and I videoed it.

25 Q Okay. And were there -- did you have one video clip,

1 or were there two video clips?

2 A There were two of them.

3 Q Okay. And why was that?

4 A The first part of the clip was when Agent Smith was
5 explaining to her what she was going to do, what the
6 procedure was, and all that. And then the second clip is,
7 actually, the reenactment.

8 Q Okay. I'm going to show you what's been pre-marked
9 as State's Exhibit No. 16. Do you recognize that?

10 A Yes, ma'am.

11 Q What is it?

12 A That is a CD of the reenactment.

13 Q And how do you know that?

14 A It's got my initials on it.

15 Q Does that mean -- that's because you watched it?

16 A I watched it, yes, ma'am.

17 Q Okay. During the reenactment, what did she say as to
18 when they called 911?

19 A She said they didn't call 911. That her husband came
20 in, he was performing CPR on the child. And while he was
21 doing that, she called 911.

22 Q Okay. What was your overall impression of the
23 Defendant during the reenactment?

24 A When she first got there and first started the
25 reenactment, she was fine. She had been crying a little

1 bit. But as the reenactment went on and she went through
2 the procedure, she became a little bit more upset or
3 crying.

4 Q Okay. And what was your -- what did that mean to you
5 while you were observing that?

6 A Well, you know, if it had been my child, I would have
7 been real upset --

8 MR. DEJONG: Your Honor, I'm going to object to that.

9 THE COURT: I'm going to sustain.

10 And just, please, disregard that, ladies and
11 gentlemen.

12 BY MS. NEWTON:

13 Q What did the Defendant use during -- to describe her
14 actions that day?

15 A In the reenactment?

16 Q Yes.

17 A She -- we had a baby doll. She used that baby doll.

18 Q Okay. What did she use in terms of referencing time?
19 Did anything stand out to you?

20 A She -- she went through the time, the time the child
21 got up. She said she put it down for a nap at 1:00 1:15,
22 or 1:30 because her soap operas was fixing to come on.
23 And that's how she knew what time it was.

24 Q Okay. And over the course of your death
25 investigation, was the coroner's office able to determine

1 a type of death?

2 MR. DEJONG: Your Honor, I'm going to object to this
3 line of questioning, based on my prior argument.

4 THE COURT: All right. And overruled as previously
5 noted.

6 BY MS. NEWTON:

7 Q You can answer.

8 A Okay. The coroner's office determined that it was a
9 homicide.

10 Q Okay. During the -- your interaction with the
11 Defendant, either while during the reenactment or any time
12 you were around her, did she mention checking on him while
13 she was watching her soap operas?

14 A No, ma'am.

15 Q Okay.

16 A The only time she mentioned going to him was when he
17 sat up and rolled over, and she went over there. And then
18 she went back and sat down and watched her TV.

19 Q And it was very clear to you -- or was it very --
20 made very clear that she was the only one alone with the
21 child that day?

22 A Yes, yes.

23 MS. NEWTON: Please answer any questions Mr. DeJong
24 may have.

25 THE COURT: All right. Cross-examination.

1 MR. DEJONG: Thank you, Your Honor.

2 May it please the Court.

3 CROSS-EXAMINATION

4 BY MR. DEJONG:

5 Q Mr. Duncan, can you share with us the difference
6 between medical homicide and legal homicide?

7 A No, sir.

8 Q There is a difference?

9 A I'm not about [phonetic] that.

10 Q All right. So -- well, my question then is, how did
11 you arrive -- or the coroner's office arrive at calling
12 this a homicide?

13 A I was called several weeks later by my boss, the
14 coroner of the county. And she informed me that --

15 Q Stop right there. I'm not asking you what she
16 informed you. Okay.

17 Other than -- based on that conversation, did you
18 then rule it as a homicide?

19 A No, sir.

20 Q Well, when did you rule it as a homicide?

21 A I didn't rule it as a homicide.

22 Q Who did?

23 A The pathologist and my boss, the coroner.

24 Q All right. And that was -- well, let me ask you
25 this. I realize you are the deputy coroner. And I'm not

1 trying to be disrespectful, Mr. Duncan. I want you to
2 understand that.

3 Do you have any medical training?

4 A No, sir.

5 Q Do you have any legal training?

6 A Only my experience in law enforcement.

7 Q All right, sir. And so your determination or the
8 coroner's determination, however you want to call it, was
9 made on statements that were made by other people; right?

10 A Yes, sir.

11 Q So there was no, none, independent investigation by
12 the coroner's office that would have arrived at homicide
13 as being the cause of death?

14 A No, sir.

15 Q All right. Everything was based on something someone
16 else told you?

17 A Yes, sir.

18 Q Did -- were you the cameraman at the reenactment?

19 A Yes, sir.

20 Q Well, let's back up to the hospital just a little
21 bit. So when you, initially, got to the hospital, that
22 being Cannon Memorial, where did you go?

23 A I went to the ER.

24 Q Okay. And who all was there at the ER?

25 A Just the medical staff and -- at the time that I seen

1 when I got in the ER, just the medical staff.

2 Q I'm sorry?

3 A Just the medical staff.

4 Q Just the medical staff?

5 A Yes, sir.

6 Q Well, where did you first see Ms. Brewer?

7 A She was in a room adjoining the ER, the side of the
8 ER.

9 Q So she was not in the room?

10 A No, sir, not with the baby.

11 Q Now, you mentioned Ms. Brewer and I believe you
12 mentioned Robby Brewer. But I didn't hear you mention any
13 other names that were there?

14 A I didn't know any other names of the people that was
15 there.

16 Q Well, I thought you gathered names?

17 A That's what I was in the process of doing.

18 Q Okay. Well, did you gather more names than Angie
19 Brewer and Robby Brewer?

20 A Not at that time, no, sir.

21 Q Did you later?

22 A No, sir.

23 MR. DEJONG: Thank you, Mr. Duncan.

24 THE COURT: Any redirect?

25 MS. NEWTON: None from the State, Your Honor.

1 THE COURT: All right. Thank you.

2 You may step down.

3 MS. NEWTON: May this witness be excused?

4 MR. DEJONG: No objection, Your Honor.

5 THE COURT: Yes. He's excused.

6 MS. NEWTON: Your Honor, at this time, the State
7 would move State's Exhibit No. 16 into evidence and play
8 it for the jury.

9 MR. DEJONG: As to that video, Your Honor, I do not
10 have any objection. But I am not waiving or giving up my
11 prior objections to Mr. Duncan's testimony.

12 THE COURT: 16 is the --

13 MS. NEWTON: Reenactment.

14 THE COURT: Reenactment. All right. And subject to
15 his objection.

16 (WHEREUPON, State's Exhibit No. 16 was admitted into
17 evidence.)

18 MS. HINTON: And, Your Honor, while she's getting
19 that set up, as we discussed, we have uploaded all of them
20 onto the computer to play them easier. And I don't
21 believe Mr. DeJong has any objection to us playing them
22 that way.

23 THE COURT: Is that correct?

24 (WHEREUPON, there was no response.)

25 THE COURT: Is that correct, Mr. DeJong? You have no

1 problem with them playing them through the computer versus
2 the disk?

3 MR. DEJONG: None, Your Honor.

4 THE COURT: All right. I was just making sure.

5 MR. DEJONG: I appreciate your asking.

6 MS. HINTON: We can enter the disk. It's just more
7 efficient this way.

8 MR. DEJONG: That's fine.

9 THE COURT: All right. Let's make sure the...
10 Can everybody see?

11 MS. NEWTON: Judge, can you turn it up a little bit?
12 You're in control of the volume.

13 THE COURT: Which one?

14 MS. NEWTON: May I approach and show it to you?

15 THE COURT: Do you know which one it is?

16 MS. NEWTON: I do.

17 THE COURT: I feel like I'm going to launch the space
18 shuttle from this thing.

19 MS. NEWTON: It's that one.

20 (WHEREUPON, State's Exhibit No. 16 was played in
21 open court.)

22 THE COURT: Is that the extent of it?

23 MS. HINTON: Yes, Your Honor.

24 THE COURT: All right. Anything else for this
25 witness?

1 MS. HINTON: No, Your Honor.

2 THE COURT: You may call your next witness.

3 MS. HINTON: Thank you, Your Honor.

4 The State would call Detective Michael Hendricks.

5 THE CLERK: Place your left hand on the Bible and
6 raise your right hand.

7 WHEREUPON,

8 MICHAEL HENDRICKS,

9 after first having been duly sworn, testified as follows:

10 THE CLERK: Have a seat.

11 And state your name for the record, please.

12 THE WITNESS: Michael Hendricks.

13 DIRECT EXAMINATION

14 BY MS. HINTON:

15 Q Detective Hendricks, where are you employed?

16 A I'm employed with the Pickens County Sheriff's
17 Office.

18 Q How long?

19 A I've been there 14 and a half years.

20 Q What's your current position there?

21 A I'm a sergeant in the special victims unit.

22 Q And back on October the 17th of 2014, what was your
23 employment there?

24 A The same. I was a sergeant in the special victims
25 unit.

1 Q Did you respond to assist on a case involving the
2 death of **Minor** ?

3 A I did, yes.

4 Q And where did you respond?

5 A I responded to Road.

6 Q Prior to that, did you go by the hospital at all?

7 A I did, yes.

8 Q Okay. And when you were at the hospital, did anybody
9 hand you a consent to search form?

10 A They did, yes.

11 Q Did you witness that?

12 A I did.

13 Q Who gave consent to search?

14 A It was Angela and Robby Brewer.

15 Q And what did they give consent for y'all to search?

16 A Their entire residence.

17 Q Which was located where?

18 A Road in Pickens.

19 Q Once you obtained that consent, did you go to that
20 residence?

21 A I did.

22 Q And what's the purpose of going to a residence in a
23 case like this?

24 A The main thing is just to collect evidence or -- or
25 to preserve the scene from an investigative standpoint.

1 It's helpful.

2 Q And "to preserve the scene," what do you mean by
3 that?

4 A Just to -- to see it as it is without it being
5 disturbed.

6 Q So is your goal to get there before it's disturbed or
7 tampered with?

8 A Correct. Yes.

9 Q So, to your knowledge, were y'all successful in doing
10 that?

11 A I felt like we were, yes.

12 Q Is there any protocol when you have a child death on
13 how you deal with a crime scene?

14 A There is. We try to approach them all in the same --
15 same way.

16 Q Okay. Can you explain to the jury a little bit about
17 what that protocol is?

18 A It all boils down to just -- just trying to figure
19 out the reason a child has died. When an adult dies,
20 sometimes, the reason is obvious. With children, it's not
21 always as obvious. So we have to approach it -- try to
22 approach them all the same way. Because we have a --
23 proven records and results on the way that we approach
24 them.

25 But the way we approach them is several ways,

1 interviews, preserving the scene, collecting any kind of
2 evidence from the scene, timelines, reenactments. There's
3 like a checklist that we go down and try to make sure we
4 cover everything.

5 Q Did you follow that protocol in this case?

6 A We did, yes.

7 Q I guess, at some point, did you enter the residence?

8 A We did.

9 Q And did you have anybody from forensics with you?

10 A We did, yes.

11 Q And what does forensics do?

12 A Forensics is the one that collects the evidence and
13 keeps track of it. They take pictures. They send things
14 off for analysis, things of that nature.

15 Q So do you personally take anything into evidence?

16 A No.

17 Q And why is that?

18 A Because there's a chain of command -- or chain of --
19 a chain of custody that we go by. And it just -- it just
20 works better that way.

21 Q Were you -- when you were there -- when you first got
22 there, was the Defendant or her husband present?

23 A They were not, no.

24 Q Who did they arrive with? Do you recall?

25 A I -- I think they arrived with SLED Agent --

1 Ms. Cauthen.

2 Q When you got there, did you happen to notice pills on
3 the floor, or anything like that?

4 A I did not see any pills on the floor, no.

5 Q Did you notice any medication in the residence?

6 A I did, yes.

7 Q And where was that medication that you found?

8 A The medication I saw was in the kitchen on the
9 counter.

10 Q In your opinion, would that have been within the
11 reach of a one-year-old?

12 A No.

13 Q The pills that were on the counter, did you take an
14 inventory of them, or did you look at them?

15 A Yes. We took an inventory of the pills on the
16 counter.

17 Q And in any of those pills, were there Oxycodone?

18 A No.

19 Q Were you present for the reenactment?

20 A I was, yes.

21 Q And it was kind of hard to tell in that video, but
22 was the TV on during that reenactment?

23 A I do not recall.

24 Q Where was the baby sleeping, the deceased baby?

25 A In the Pack 'n Play.

1 Q How did you observe the Defendant to be during that
2 reenactment, her emotional state?

3 MR. DEJONG: Your Honor, I'm going to object. That's
4 cumulative. The jury has seen the video. It speaks for
5 itself. I don't think we need somebody to talk about her
6 demeanor at that reenactment any further.

7 THE COURT: Well, I'll let him go into it a little
8 bit.

9 THE WITNESS: In my opinion, she just seemed very
10 stressed.

11 BY MS. HINTON:

12 Q And I'm going to show you what's been marked as
13 State's Exhibit Nos. 2 through 15. Could you look at
14 those real quick for me?

15 A (Witness complied.)

16 Q Do you recognize those?

17 A I do, yes.

18 Q Do they fairly and accurately depict the scene that
19 night?

20 A They do.

21 MS. HINTON: Your Honor, at this time, the State
22 would move State's Exhibit Nos. 2 through 15 into
23 evidence.

24 THE COURT: Any objection?

25 MR. DEJONG: I have an objection to one, Your Honor.

1 If I could see them, please, Ms. Hinton.

2 (Pause.)

3 MR. DEJONG: My objection -- Your Honor, I'll be
4 happy to hand it up or have Ms. Hinton hand it up since
5 it's her proposed exhibit. It's State's Exhibit No. 9 for
6 identification. That picture has no relevance --

7 THE COURT: All right.

8 MR. DEJONG: -- to this case.

9 THE COURT: All right. Let me just see it.

10 MS. HINTON: And, Judge, it does in the -- that
11 container was taken into evidence and was sent down to
12 SLED.

13 THE COURT: All right. I'm going to overrule your
14 objection on State's Exhibit No. 9.

15 And you did not object to State's Exhibit Nos. 2
16 through 15, other than State's Exhibit No. 9; right?

17 MR. DEJONG: That is correct, Your Honor.

18 THE COURT: All right. State's Exhibit Nos. 2
19 through 8 and State's Exhibit Nos. 10 through 15 are
20 entered without objection.

21 And State's Exhibit No. 9 is entered subject to your
22 objection.

23 (WHEREUPON, State's Exhibit Nos. 2, 3, 4, 5, 6, 7, 8,
24 9, 10, 11, 12, 13, 14, and 15 were admitted into
25 evidence.)

1 BY MS. HINTON:

2 Q Detective Hendricks, State's No. 2, can you explain
3 to the jury what that is?

4 A That is vomit or throw up.

5 Q And what kind of surface was that located on?

6 A Carpet.

7 Q And State's Exhibit No. 3?

8 A The same.

9 Q State's Exhibit No. 4?

10 A This is -- from what I remember, there was vomit on
11 the couch and on the floor.

12 Q And State's Exhibit No. 5?

13 A That's a closer look at the couch.

14 Q And what are these numbered markers used for?

15 A Just to keep track of what we're talking about so you
16 could say number two. And it just sort of clarifies what
17 you're talking about.

18 Q State's Exhibit No. 6?

19 A Again, that's -- that's some throw up or vomit.

20 Q State's Exhibit No. 7?

21 A That's the Pack 'n Play where -- where the baby was
22 placed.

23 Q Okay. And when we're talking about the baby, are we
24 referring to **Minor**?

25 A We are, yes.

1 Q State's Exhibit No. 8?

2 A That is -- again, that's the Pack 'n Play. There was
3 a sippy cup in the Pack 'n Play that was there when we
4 arrived.

5 Q Okay. Do you know whether or not that sippy cup was
6 taken into evidence?

7 A It was, yes.

8 Q Okay. State's Exhibit No. 9?

9 A That is some formula for mixing a bottle, and a sippy
10 cup with the lid off.

11 Q All right. Do you know whether or not those were
12 taken into evidence?

13 A Yes.

14 Q State's Exhibit No. 10?

15 A This is just some medication that was on the counter,
16 also, a pill -- I don't know what you call those, but it's
17 a thing you put pills in so you can keep track of the days
18 and what you're supposed -- what kind of medication you're
19 supposed to take.

20 Q And, to be clear, was either this pill counter or
21 this bag of pills within the reach of a one year-old, in
22 your opinion?

23 A No.

24 Q State's Exhibit No. 11, what is that?

25 A That is a sippy cup laying on the floor.

1 Q Is this the same sippy cup that was in the Pack 'n
2 Play, or a different one?

3 A That would be a different one.

4 Q State's Exhibit No. 12?

5 A That's a closer look at the same sippy cup.

6 Q State's Exhibit No. 13?

7 A That's a closer look at the bag of medication that
8 was on the counter.

9 Q And, again, did you find -- is this the bag that you
10 inventoried?

11 A Yes.

12 Q And did you find any Oxycodone in that bag?

13 A No.

14 Q State's Exhibit No. 14?

15 A This is a -- just a picture in the living area at a
16 different angle, some of the furniture. It's in the same
17 room as the Pack 'n Play.

18 Q And what is this right here? Can you tell?

19 A That -- it looks like a drink with a straw in it.

20 Q And then State's Exhibit No. 15?

21 A This is another view of the room where the Pack 'n
22 Play was with the TV on.

23 Q And is this how the living room was when y'all
24 entered?

25 A Yes.

1 Q So aside from collecting the items that we
2 discussed -- and I believe y'all, also, collected bedding;
3 is that correct?

4 A Yes.

5 Q Okay. Did y'all disturb the room in any way?

6 A No.

7 Q Did you have occasion to meet with Angela Brewer
8 again on November the 6th of 2014?

9 A I did, yes.

10 Q And what was the basis of that?

11 A The basis of that was we wanted to do a follow-up
12 interview based on the fact that at the hospital, it was
13 an emotionally charged setting. And we felt it would be
14 to everyone's benefit to have another interview where
15 there had been some time to calm down.

16 On November 6th, my lieutenant -- we had two people
17 that came in for an interview. And she asked me to do one
18 of the interviews.

19 Q And who was your lieutenant?

20 A Rita Burgess.

21 Q Did you interview Ms. Brewer on your own?

22 A I did, yes.

23 Q And did you Mirandize her?

24 A No.

25 Q And why not?

1 A Because it was, 'basically, a -- we had no reason to
2 believe the child had -- we had no reason to believe it
3 was a homicide at that time. We just wanted to sit down
4 with her and try to get some timeline -- get a timeline
5 and try to figure out the cause of death.

6 Q And, at that time, had you received any autopsy
7 results from the pathologist?

8 A I had not, no.

9 Q And, at that time, had y'all received any results
10 from the SLED testing?

11 A No.

12 Q So, at that point, did you know much about what had
13 happened?

14 A No.

15 Q And is it normal for these things to take time for
16 you to get results back?

17 A Yes.

18 Q When you spoke with her, did she provide you with a
19 timeline of events that occurred that day?

20 A She did, yes.

21 Q Do you recall what that timeline was?

22 A I do.

23 Q Okay. Are you able to tell the jury, or do you need
24 a copy of your report?

25 A I'd prefer a copy of my report. But I can do it

1 either way.

2 Q I'll let you find it.

3 A (Witness complied.)

4 Q I'm sorry. Were you able to locate that timeline?

5 A Yes.

6 Q Could you, please, read to the Court what the
7 timeline was she provided you?

8 A The timeline she provided me -- she stated that at
9 5:30, Robby, her husband, left for work. She stated at
10 7:30, Callen, her daughter, took the two children to
11 school, Cory, eight, Keegan, five. She said between 8:30
12 and 9:00, Callen came back. She stated around 10:30,
13 Michael Lusk and Callen left to go to her work and then
14 Georgia for the day.

15 She said she fed **Minor** cheese toast and gave him
16 lemonade. She stated that at 11:00, **Minor** gets changed
17 and has diarrhea. He plays in the living room area and
18 she sits on the couch at times and does work in the house.
19 She stated at 1:00, she changed two dirty diapers with
20 diarrhea. She stated at 1:15, then **Minor** goes to sleep
21 on her and drank lemonade. She stated that he fell asleep
22 while she was holding him. She laid him down in the Pack
23 'n Play. And she fed the other child, Kayson, and watched
24 TV, spoke to her sister by phone.

25 She stated between 2:45 and 3:00, **Minor** sat straight

1 up and smiles at her, and then rolls over and continues to
2 sleep. She stated that she then spoke to her daughter,
3 Cally, by phone.

4 Q And what time was that?

5 A 3:45.

6 Q Okay.

7 A She stated at 4:00, she felt **Minor**'s head for fever.
8 She stated he did not have one. She flipped him over at
9 this time.

10 She stated at 5:15, Robby called her and told her he
11 was on his way home. She stated that she put Robby on the
12 speaker phone. Angela stated she picked up **Minor** out of
13 the Pack 'n Play and tried to wake him. She said Robby
14 said he was on Highway 183 headed her way. She then
15 voices concern to Robby that he's not waking up. She says
16 that he tries to calm her down and she waits for him to
17 arrive.

18 Q She waits for him to arrive before what?

19 A I didn't hear you. What did you say?

20 Q She waits for him to arrive before what?

21 A Before calling 911.

22 Q Did you have her do a written statement as well as to
23 that timeline?

24 A I did, yes.

25 Q I'm going to show you what's been marked as State's

1 Exhibit No. 21. Can you identify what that is?

2 A Yes. That is the statement that Angela wrote at my
3 request.

4 Q Now, she signed it "Angela Harrison." Are Angela
5 Harrison and Angela Brewer the same person?

6 A They are, yes.

7 Q And were you present while she wrote that statement?

8 A I was, yes.

9 MS. HINTON: Your Honor, at this time, we move
10 State's Exhibit No. 21 into evidence.

11 THE COURT: Any objection?

12 MR. DEJONG: Without objection, Your Honor.

13 THE COURT: All right. State's Exhibit No. 21 is in
14 evidence without objection.

15 (WHEREUPON, State's Exhibit No. 21 was admitted into
16 evidence.)

17 BY MS. HINTON:

18 Q And at some point, does that timeline establish at
19 what point she was the only adult present with these
20 children?

21 A 10:30.

22 Q Did she give you any indication that anyone -- any
23 other adult was present that day?

24 A No.

25 Q She mentions in that statement on November the 6th of

1 2014, that Callen -- that she called and talked to Callen
2 sometime during that. Do you recall her saying that
3 during the reenactment?

4 A I don't.

5 Q Do you recall her saying during the reenactment
6 anything about a fever?

7 A No.

8 Q Was there anything -- any -- I'm sorry. Was your
9 interview audio and video recorded?

10 A It was, yes.

11 Q I'm going to show you State's Exhibit No. 17. Is
12 that a copy of that interview?

13 A That is, yes.

14 MS. HINTON: Your Honor, at this time, I would move
15 State's Exhibit No. 17 into evidence.

16 MR. DEJONG: I'm going to object to it, Your Honor.
17 She has introduced the written statement that he took that
18 she gave. This is merely cumulative and bolstering what
19 he has already testified to. And I object to it.

20 THE COURT: I'm going to allow the statement.

21 (WHEREUPON, State's Exhibit No. 17 was admitted into
22 evidence.)

23 MS. HINTON: I'm sorry, Your Honor. Is that in
24 evidence, State's Exhibit No. 17?

25 THE COURT: Yes, subject to his objection.

1 BY MS. HINTON:

2 Q Detective Hendricks, have you reviewed that video?

3 A Yes.

4 Q And, obviously, you were present when it was done?

5 A Correct.

6 Q Was there anything that was said in that video that
7 stood out to you as strange or different?

8 A Yes.

9 Q Okay. Can you explain to me what you heard?

10 A What stood out to me is she talked about -- we talked
11 about if her -- if **Minor** could have got access to her
12 OxyContin. And she was very argumentative about how it's
13 not possible, he could not have done that.

14 She stated that she kept those pills with her at all
15 times. She stated that she counts them every day. She
16 stated that they -- she has to be very careful with them
17 because they could kill her dog.

18 Q I'm sorry. She had to be very careful with them why?

19 A Because if her dog was to get them, it could kill her
20 dog.

21 Q Okay.

22 A She -- again, I gave some scenarios on how the child
23 could have got the OxyContin. And she argued that's not
24 possible. She'd stated they were in a child-proof
25 container. She would count them every day. She kept them

1 right beside her. She always had an answer for any kind
2 of scenario that I gave to her.

3 THE COURT: All right. Now, subject to his
4 objection, I mean, this is getting in -- basically,
5 repeating what -- are you going to put the statement in?

6 MS. HINTON: I am, Your Honor.

7 THE COURT: All right. I'm not going to allow him
8 to, basically, repeat the entire statement.

9 MS. HINTON: Okay.

10 BY MS. HINTON:

11 Q Detective Hendricks, at some point during that video,
12 does she give her written statement while on camera?

13 A Yes.

14 MS. HINTON: And, Your Honor, at -- I believe what we
15 have marked as Court's Exhibit No. 1 is that her statement
16 was given during minute 35:45, and minute 52. And so when
17 we move to admit it, we would not be playing those
18 portions. And I believe the Defense is in agreement with
19 that.

20 MR. DEJONG: She had her back to me, Your Honor. I
21 didn't hear a word she said.

22 MS. HINTON: Are you in agreement with Court's
23 Exhibit 1?

24 THE COURT: All right. He's objected to the
25 statement, but y'all have agreed to a certain stipulation.

1 What portion is not going to be --

2 MR. DEJONG: Not as to the content. I just object,
3 at this point in time, to the whole thing being played,
4 Your Honor. I realize you've overruled my objection. But
5 just to be clear --

6 THE COURT: Okay.

7 BY MS. HINTON:

8 Q Detective Hendricks, after this statement on November
9 the 6th of 2014, was she arrested at that time?

10 A On November 6th, no, she was not.

11 Q Did you have any more involvement in this case?

12 A No.

13 MS. HINTON: Thank you.

14 Please answer any questions Mr. DeJong may have.

15 MR. DEJONG: Well, my question is, before I do that,
16 Your Honor, is she going to publish the video to the jury?

17 MS. HINTON: I am, but not at this time.

18 MR. DEJONG: If she is, then I prefer to hold my
19 cross-examination until afterwards.

20 THE COURT: All right.

21 MS. HINTON: I mean, Judge, it was not my intention
22 to make him awkwardly sit up here while we play the
23 video.

24 MR. DEJONG: I don't care if he comes down from the
25 stand. As long as when he gets back up there, he realizes

1 that he's still under oath, and that he's not to discuss
2 the case with anybody while he's off of the stand.

3 THE COURT: I think he's allowed to cross-examine him
4 after the video, as he's requested.

5 MS. HINTON: Your Honor, at this time, the State
6 would play State's Exhibit No. 17.

7 THE COURT: Let me -- can counsel approach? I have
8 another question.

9 (WHEREUPON, a bench conference was held.)

10 THE COURT: Ladies and gentlemen, we're going to take
11 just a very short break before we watch the video. We'll
12 bring you right back out in just a minute.

13 So don't discuss the case.

14 (WHEREUPON, the jury was excused from open court at
15 approximately 12:03 p.m.)

16 THE COURT: All right. And you can step down, but
17 don't discuss your testimony with anyone.

18 (WHEREUPON, a break was taken.)

19 THE COURT: Are we ready?

20 MS. HINTON: Yes, Your Honor.

21 THE COURT: Bring the jury in, if they're ready.

22 (WHEREUPON, the jury came into open court at
23 approximately 12:11 p.m.)

24 THE COURT: All right. You may proceed.

25 MS. HINTON: Thank you, Your Honor.

1 And, again, for efficiency sake, we put it on the
2 laptop. I don't believe Mr. DeJong has any objection to
3 us playing it straight from the laptop.

4 MR. DEJONG: No objection to that, Your Honor.

5 (WHEREUPON, State's Exhibit No. 17 was played in
6 open court.)

7 THE COURT: I believe this is the part where y'all
8 stipulated to let this portion be forwarded.

9 (WHEREUPON, State's Exhibit No. 17 continued to be
10 played in open court.)

11 THE COURT: Mr. Hendricks, if you'll come back
12 around.

13 All right. Cross-examination.

14 MR. DEJONG: Thank you, Your Honor.

15 May it please the Court.

16 CROSS-EXAMINATION

17 BY MR. DEJONG:

18 Q So you work for the Pickens County Sheriff's Office?

19 | A I do, yes.

20 Q I believe you said you work with the special victims
21 unit?

22 A That's correct..

23 Q Are not all alleged victims special?

24 A We -- we specialize in crimes against children,
25 crimes that are sexual in nature.

1 Q And you then went to -- the first thing you did, I
2 gather, you went to Cannon Hospital; right?

3 A Correct, yes.

4 Q Now, other than getting a consent to search, did you
5 really do anything at the hospital?

6 A No.

7 Q And how -- did you take the consent to search to the
8 premises, or did some other law enforcement officer?

9 A I believe it was David McKenzie that, actually,
10 transported the consent.

11 Q Well, so David McKenzie went to the residence first?

12 A We left and arrived at the same time.

13 Q Pardon me?

14 A We left and arrived at the same time.

15 Q And what time did you get there?

16 A That, I couldn't tell you.

17 Q Okay. Well, you said part of it was to secure the
18 scene. So wouldn't the time you arrived there be rather
19 important as to you securing an undisturbed --

20 A Yeah. It's well documented. I just don't recall
21 what it is.

22 Q Now, you got there and you say no one was there at
23 the residence?

24 A The owner and the occupants of the residence were not
25 there.

1 Q Pardon me?

2 A The owner and the occupants of the residence were not
3 there.

4 Q Was anybody else?

5 A The Pickens County Sheriff's Office.

6 Q Okay. Had they gone in before you got there?

7 A No.

8 Q So did you search the whole house?

9 A We canvassed the whole house, yes.

10 Q I heard you say you canvassed the whole house. Did
11 you search the whole house?

12 A We walked through the house, yes.

13 Q Okay. But your search, as such, was limited to the
14 living room and kitchen areas, as I gather?

15 A That was -- that was the focus.

16 Q Right.

17 A But we entered every room in the residence.

18 Q So did you search Michael and Cally's bedroom?

19 A We did go in there and we did go through some things,
20 yes.

21 Q I think you and I are playing word games. I
22 understand you went in there. To me, a search is you're
23 looking at things, specifically and particularly, and
24 looking for various things. So did you go in looking for
25 various things or did you just canvas --

1 A We went in there looking for anything that might be
2 connected to the death of a small child.

3 Q Now, how many Pack 'n Plays were around the house?

4 A My recollection, I saw one.

5 Q Well, if you went into Michael and Cally's bedroom,
6 did you see one in there?

7 A You're asking me something that happened over two
8 years ago. I can't say that there was one in there or
9 there was [sic].

10 Q You filed a report, didn't you?

11 A I did, yes.

12 Q Pardon me?

13 A I made a report -- I didn't make the report. I did a
14 supplement to the report.

15 Q Well, did you make a supplemental on the search?

16 A No.

17 Q You did not?

18 A No. You have to understand, I was there assisting.
19 We had a detective that was on call. And I was there
20 assisting.

21 Q Well, so it was you and David McKenzie. Who else was
22 there?

23 A There was an ID -- or our guy from forensics, J.T.
24 Albrecht, was there, and the coroner and his wife was
25 there.

1 Q Well, at that point in time, you're the senior person
2 on the scene, aren't you?

3 A That's correct, yes.

4 Q Pardon?

5 A That is correct, yes.

6 Q And part of what you do is file a report so you can
7 preserve it for if there is a trial; right?

8 A Well, we -- we weren't -- we really didn't know what
9 we had at that point. We were just trying to figure out
10 how this child passed away.

11 Q All right. Who determines, Detective Hendricks, if
12 you know, when you collect certain evidence what is sent
13 off for testing?

14 A That's a determination made by those involved in the
15 case. You would have to -- you would have to analyze what
16 you had and determine what was necessary to send off.
17 Usually, you would send anything off that would have any
18 benefit in figuring out --

19 Q Well --

20 A -- what happened to the child.

21 Q Excuse me. I didn't mean to interrupt you. Let me
22 ask you this. You say there was vomit on the sofa and on
23 the carpet; correct?

24 A Correct.

25 Q Was any of that collected for testing?

1 A It was photographed. As far as were there samples
2 taken of it, I can't recall.

3 Q Well, I don't remember the exhibit number and that's
4 all right. One of --

5 MR. DEJONG: Here they are, if I may borrow them for
6 a moment, please, Madam Court Reporter.

7 BY MR. DEJONG:

8 Q Let me show you what's been introduced into evidence
9 as State's Exhibit No. 9, and particularly direct your
10 attention to that sippy cup. Was that taken into
11 evidence?

12 A Yes.

13 Q Pardon me?

14 A As far as I know, yes.

15 Q All right. Do you know if it was tested or not?

16 A I would imagine it was. It wasn't my call to make.
17 But I would imagine it was.

18 Q Well, actually, how many sippy cups were taken into
19 evidence?

20 A From the pictures that I saw, it looks like I saw
21 three in the pictures. So I imagine three were collected.

22 Q Did you find any others?

23 A Whatever is in the pictures is what we found.

24 Q Okay. Let's talk about the pills on the counter.

25 And I think Madam Solicitor asked you, but I'm going to

1 ask you again. Was there any OxyContin in that bag on the
2 counter with pills in it?

3 A No.

4 Q Was there any Lortab in that bag with pills on the --
5 in the bag that had pills in it?

6 A I can't say for certain, but I don't think so.

7 Q Well, I understood you inventoried it.

8 A You're talking about something that happened in 2014.
9 It's documented on the evidence sheet.

10 Q I realize that, Detective. But you said you
11 inventoried it. Did you not take notes of what was in
12 that bag?

13 A We wrote down what was in the bag, me and Detective
14 McKenzie, yes.

15 Q Well, was there any Lortab in there?

16 A That, I can't -- I cannot sit and tell you verbatim
17 what was on that list.

18 Q At one time -- well, let me see, maybe I can find it
19 in here right quick.

20 I'm going to show you what's been introduced as
21 State's Exhibit No. 14. I think Madam Solicitor asked you
22 about a possible cup that you saw?

23 A Yes.

24 Q Was that taken into evidence?

25 A I can't recall. There's not an item number on it, so

1 I would imagine not.

2 Q Let's move up to the statement. So you were asked on
3 November the 6th to interview Angela Brewer?

4 A Correct.

5 Q Well, let me ask you this. Are you aware,
6 Detective -- well, I may not go right there just yet.
7 When Madam Solicitor asked you if the SLED results -- or,
8 excuse me, if the test results were back, what were --
9 what test results were you referring to as of November the
10 6th?

11 A Ask that question again.

12 Q Yeah. It wasn't a very good question, I'll be the
13 first to admit. All right. Do you know which -- was
14 there more than one lab where material was sent for
15 testing? Do you know?

16 A Again, you're asking me questions that I wasn't a
17 part of. I wasn't a part of that -- that part of the
18 investigation. I was not involved in that.

19 Q Okay. Were you aware that the lab results from
20 Pennsylvania came in on November the 2nd?

21 A Again, you're asking me something I wasn't involved
22 in.

23 Q All right. Well, between the time this allegedly
24 occurred -- what Ms. Brewer has been charged with
25 allegedly occurred on October the 17th of 2014; right?

1 A Yes.

2 Q Okay. And you did your interview on November the 6th
3 of 2014?

4 A Correct.

5 Q Some almost, what, three weeks later? Two and a
6 half?

7 A Sounds right.

8 Q All right. But in the interim, between October the
9 17th and November the 6th, you have no idea who she --
10 Ms. Brewer may have talked to, do you?

11 A No.

12 Q Okay. And, indeed, I think she said in her statement
13 that she had talked to Kandy Kelley; is that correct?

14 A She did -- during our interview, she did say that.

15 Q All right. And who is Kandy Kelley, just so we're
16 clear?

17 A She's the coroner of Pickens County.

18 Q Okay. Thank you, sir.

19 So, now, we get to the interview and you were asked
20 to interview Ms. Brewer. And you were asked to interview
21 her by your lieutenant; is that correct?

22 A That's correct, yes.

23 Q And is your lieutenant the lead detective, at this
24 point in time, on that case?

25 A That's correct, yes.

1 Q Now, how, if you know, did Ms. Brewer get to -- well,
2 let's back up. Was the interview done at the Pickens
3 County Law Enforcement Center?

4 A It was.

5 Q At 214 C. David Stone Road?

6 A I believe it's 216 C. David Stone.

7 Q Pardon me, 216. I stand corrected. 214 is here, but
8 not C. David Stone Road.

9 Do you know how she got there?

10 A No.

11 Q Well, when she got there, did you happen to greet
12 her? Initially, when she first got there --

13 A At some point, I had to greet her.

14 Q Well, I know that. But do you know how long she had
15 been there before you greeted her?

16 A No.

17 Q All right. And your office in the detention --
18 Pickens County Law Enforcement Center, where is that?
19 First floor? Second floor? Where is it?

20 A You're asking where is my office in relation to the
21 detention center?

22 Q Where you did the interview, I gather.

23 A They -- the building -- there's two separate parts of
24 the building. There's the detention center that is
25 separated by the office part of the building by a locked

1 door where you have to have a code to get in the other
2 side of the building. We were in the public side of the
3 building. We were not on the side of the detention
4 facility.

5 Q Well, I realize that. But even to get to your
6 office, somebody had to bring her in there because that's
7 a secured area, isn't it?

8 A Yes.

9 Q Well, my question is, do you know who escorted her to
10 your office?

11 A No. Because you're talking about something that
12 happened in 2014. That's just something I can't recall.

13 Q All right. So this room where you were interviewing
14 Ms. Brewer, is that your office?

15 A Yeah. At the time, I shared that office. And, at
16 the time, I was sharing it with a -- well, I share it
17 today, but I was sharing it then, too.

18 Q How many doors are in that room?

19 A One.

20 Q And is that the one door we see in the video?

21 A Yes.

22 Q And I gather when you greeted Ms. Brewer, you
23 identified yourself as a police officer; is that correct?

24 A I'm sure, yes.

25 Q And how were you dressed that day?

1 A I had on my badge and gun -- well, you saw the video.
2 I had a striped shirt on --

3 Q I'm sorry?

4 A I said, you saw the video. I think it's obvious how
5 I was dressed.

6 Q I'm asking you, did you have your side piece on, your
7 weapon?

8 A Yes.

9 Q And you had on your badge?

10 A I did, yes.

11 Q Now, there was certain talk about a phone call. To
12 your knowledge, did anyone ever attempt to obtain
13 Ms. Brewer's telephone, to your knowledge?

14 A I did not.

15 Q To your knowledge, was -- did anyone ever attempt to
16 get a search warrant to search Ms. Brewer's phone, to your
17 knowledge?

18 A To my knowledge, I don't know.

19 Q Well, in your testimony before we played the video,
20 you said that she became argumentative at one point in
21 time. Do you recall that?

22 A Well, if you watch the video, you see she interrupts
23 me a lot of times when I'm trying to explain certain
24 things, or trying to ask certain questions.

25 Q Surely.

1 A She cuts me off and sort of answers the question
2 before I get it out.

3 Q And would you agree with me that she was upset that
4 day?

5 A Oh, without a doubt, yes.

6 Q Pardon?

7 A Yes. I would agree with you, yes.

8 Q So that would not necessarily be unusual, would it?

9 A Would it be unusual? No.

10 Q Okay. I didn't notice. Did you notice how long the
11 total video was?

12 A I don't know.

13 Q Okay. Well, do you know how long it was from the
14 time you started until you gave her the paper to write the
15 statement?

16 A I don't know.

17 Q Okay. And for people you interview, dates are
18 difficult to remember, aren't they?

19 A That -- I would say that some people remember dates
20 quite fine, and some people can't.

21 Q That's right. And times are even more difficult,
22 aren't they?

23 A Again, some people can recall times very easily, some
24 people can't.

25 Q Well, as you're getting to -- you're getting to the

1 point -- let me back up. At the very beginning, you told
2 her you were videoing and recording this; right?

3 A Yes.

4 Q All right. Then you asked her to reduce it to a
5 written statement. And she -- as I recall, she said why,
6 you recorded it? Right?

7 A She did say that, yes.

8 Q Okay. So she, obviously, knew it was being recorded.
9 You knew it was being recorded. So however long that
10 video was -- I want to say roughly 25, 26 minutes, but I
11 don't remember. And her statement of why the written
12 statement because you videoed me, did you really
13 anticipate that she was going to write down verbatim every
14 answer she gave you during that interview?

15 A I was wanting to give her the opportunity to write
16 something in writing. And that was the reason.

17 Q Yes, sir. I understand that. But we both agree that
18 a recording would be much better than a written statement?

19 A You have to understand, recordings sometimes aren't
20 always reliable. And, sometimes, when you get to the
21 trial two years later, the recording may not be -- work,
22 so there, you have a fail safe. You have a statement.

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

24 (Pause.)

25 MR. DEJONG: Thank you, sir.

1 THE COURT: Any redirect?

2 MS. HINTON: Very briefly, Your Honor.

3 REDIRECT EXAMINATION

4 BY MS. HINTON:

5 Q Detective Hendricks, are there formal interrogation
6 rooms in the law enforcement center?

7 A There are, yes.

8 Q Were you in a formal interrogation room when you met
9 with her on that day?

10 A No.

11 Q You mentioned that you shared your office back at
12 that time. Was anyone else in your office, at that time,
13 other than you and Ms. Brewer?

14 A No.

15 MS. HINTON: That's all I have.

16 THE COURT: All right. Thank you.

17 And, ladies and gentlemen, thank you --

18 You may step down.

19 Thank you for your patience.

20 As I told you from the beginning, sometimes, we have
21 to be flexible, depending on where we are. And I
22 apologize for going so late for your lunch since it's now
23 1:20. I didn't realize that, but we needed to get through
24 with this witness.

25 So, anyway, thank you for your patience.

1 MS. HINTON: Yes, Your Honor.

2 MR. DEJONG: Ready for the Defendant.

3 THE COURT: Go ahead and bring the jury in.

4 MS. HINTON: I'm sorry, Judge.

5 THE COURT: I knew that would be too good --

6 MS. HINTON: I didn't know if we were going to go
7 ahead and discuss --

8 THE COURT: Oh, yeah, you're right. We did have
9 something.

10 MS. HINTON: -- the interview, your ruling on that.
11 I did go back and watch it over during lunch. And I've
12 jotted down some times to try to redact, if possible. But
13 I didn't know if you --

14 THE COURT: I guess the only thing -- I mean, I got
15 to thinking. I think there's no probative value over the
16 way she comments about her program ID or DI, whatever it
17 was called. And I'm going to rule that that is more
18 prejudicial than probative in light of this case.

19 Like I said, I've got -- I don't have where the time
20 is on that one.

21 MS. HINTON: So what I have, Your Honor, is that per
22 your order, we would start it exactly at 11:49, which is
23 when Miranda is read.

24 THE COURT: That would be right.

25 MS. HINTON: And then the ID conversation starts at

1 11:53:42 and goes until 11:55.

2 THE COURT: Okay.

3 MS. HINTON: And then there's two separate comments
4 about other incidents, which you've ruled were, also,
5 inadmissible. The first about the bashing the child's
6 head is from 12:10:16 to 12:10:45. And then the second
7 one regarding the Benadryl is from 12:10:56 to 12:11:36.

8 THE COURT: Okay.

9 MS. HINTON: And then I believe your ruling was that
10 we could play it up until she exits to take her break.

11 THE COURT: Right.

12 And I don't know, did we want to make a comment to
13 the jury that any matters that were not related to this
14 case...

15 MR. DEJONG: Any what, Your Honor?

16 THE COURT: I'm trying to figure out what we need to
17 say to the jury for the matters that have been deleted.

18 MS. HINTON: Judge --

19 THE COURT: How about the matters that will be
20 deleted are things that will not be for your
21 consideration?

22 MS. HINTON: That's fine.

23 I guess we would just let the jury know before we
24 played it that there is a portion of the video that will
25 not be for their consideration.

1 THE COURT: All right.

2 MR. DEJONG: Well, I think we have to be a little
3 careful there. But, again, I think there's -- you know,
4 the distinction between the jury's job and your job, and
5 your job is to rule on the admissibility of evidence.
6 You've made a ruling on certain evidence that is not
7 admissible and they're not to read into that, or
8 speculate, or whatever.

9 THE COURT: I'll -- that's probably appropriate.

10 MS. HINTON: Last comment, Judge.

11 THE COURT: Yes.

12 MS. HINTON: So we're calling Dr. Rogers so he can
13 get back to his patients, obviously. So we're calling him
14 a little bit out of order.

15 And then for scheduling purposes, our next witnesses
16 would be Christine and then Rita. I don't know how -- I
17 know Mr. DeJong objected last time for me not playing the
18 video and not allowing him to cross-examine them on that.
19 I don't know timing-wise how we'll end up. But I would
20 like to, just so we can move this along, get that video in
21 today.

22 THE COURT: Okay. I mean, I think it's appropriate
23 that he --

24 MS. HINTON: Sure.

25 THE COURT: -- has a right to cross-examine the

1 witness after the video.

2 MS. HINTON: I just didn't know how long he thought
3 he would take with Agent Cauthen.

4 THE COURT: We'll just -- we'll play it by ear.

5 MS. HINTON: Okay.

6 THE COURT: We'll maybe go a little bit longer if we
7 need to.

8 MS. HINTON: Sure.

9 THE COURT: Bring the jury in.

10 (WHEREUPON, the jury came into open court at
11 approximately 2:43 p.m.)

12 THE COURT: All right. Ladies and gentlemen, I hope
13 everybody had a good lunch.

14 And we will now receive the next witness from the
15 State.

16 MS. HINTON: Thank you, Your Honor.

17 The State would call Dr. David Rogers.

18 THE CLERK: Please place your left hand on the Bible
19 and raise your right hand.

20 WHEREUPON,

21 DAVID STEVEN ROGERS, M.D.,
22 after first having been duly sworn, testified as follows:

23 THE CLERK: Have a seat.

24 And state your name for the record, please.

25 THE WITNESS: David Steven Rogers.

DIRECT EXAMINATION

BY MS. HINTON:

Q Dr. Rogers, where are you employed?

A I'm employed at Oaktree Medical Center in Easley.

Q How long have you been there?

A Since 2001.

Q What is your position over there -- or what type of doctor are you?

A I'm a neurologist.

Q And were you the treating neurologist, at least, for some time for Angela Brewer?

A Yes.

Q Dr. Rogers, can you give us a little bit about your background, starting with your education?

A Yes. My college was at Marshall University Medical School at the University Autonomous of Tamaulipas in Mexico. Postgraduate training internal medicine through West Virginia University. Neurology residency and fellowship at the Medical University of South Carolina in Charleston. Fellowship in pain management at the Medical University of South Carolina, Charleston.

Q And prior to working at Oaktree Medical Center, did you have any other employment prior to that?

A Yes.

Q Where'd you work?

1 A I was the medical director at NCGS Laboratories in
2 Charleston for two years. And before that, I was the
3 medical director of the headache program at the Medical
4 University in Charleston.

5 Q Have you been published at all?

6 A Yes.

7 Q Okay. And how many times?

8 A Twice.

9 Q And I guess -- I assume those are in your field?

10 A Neurology, yeah.

11 Q Are you a member of any groups regarding the medical
12 field?

13 A Yes.

14 Q Okay. What groups are those?

15 A American Academy of Neurology, American Headache
16 Society, Southeastern Headache Society, America Academy of
17 Pain Management.

18 Q And are you board certified?

19 A Yes.

20 MS. HINTON: Your Honor, at this time, the State
21 would move Dr. David Rogers as an expert in neurology and
22 pain management.

23 THE COURT: Any objection or voir dire?

24 MR. DEJONG: I have no voir dire, Your Honor.

25 But before he goes any further testimony --

1 testifying, I'd ask the good doctor to get a little closer
2 to that microphone.

3 THE COURT: Okay. Ladies and gentlemen --
4 You said neurology and?

5 MS. HINTON: Pain management, Your Honor.

6 THE COURT: Pain management. All right.

7 Dr. Rogers has been qualified in the field of
8 neurology and pain management. I will tell you just,
9 generally, a person cannot testify outside of what they
10 observe or what they know by their senses. A person who
11 is qualified as an expert can testify about their opinion,
12 or conclusions in their particular field. And you're to
13 give that weight the -- you're to give that testimony the
14 weight which you feel is appropriate.

15 Thank you.

16 You may proceed.

17 MS. HINTON: Thank you, Your Honor.

18 BY MS. HINTON:

19 Q Dr. Rogers, can you tell me when you began prescribing
20 Oxycodone to Angela Brewer?

21 A Oxycodone, February 27th of 2013.

22 Q And were you prescribing it to her in October of
23 2014?

24 A That was -- yes, in a different form. It was in a
25 long-acting form called OxyContin.

1 Q And we'll get to that. What were you treating her
2 for?

3 A I was treating her for neck pain, shoulder pain,
4 arthritis, carpal tunnel syndrome, lumbar radiculopathy,
5 which is a pinched nerve, and then herniated lumbar disk.

6 Q And in October of 2014, what type of Oxycodone were
7 you prescribing her?

8 A That was OxyContin, long-acting Oxycodone.

9 Q Okay. And what milligram?

10 A 80 milligrams.

11 Q And you say "long-acting," is that the same thing as
12 extended release?

13 A Yes.

14 Q So was it OxyContin 80 milligrams extended release at
15 that time?

16 A Yes.

17 Q And how many times a day was she allowed to take
18 that?

19 A Twice.

20 Q And so was that every 12 hours?

21 A Yes.

22 Q Okay. So how many pills would she be able to get
23 each time she went and had it prescribed?

24 A 60 per month.

25 Q And is 80 milligrams the highest dosage of extended

1 release that they make?

2 A Yes.

3 Q And can you explain the difference between extended
4 release and immediate release?

5 A Extended is in a pill form that will release the
6 medication slowly because it's bound with other chemicals.
7 So it lasts 12 hours. Immediate release, generally, will
8 last three to four hours.

9 Q So if you were to take an extended release in the
10 form of immediate release -- if that makes any sense --
11 would it be much more powerful than if you took it in the,
12 extended-release form?

13 A I don't understand the question. Do you mean if --
14 are you asking me if you changed the pill so that it
15 releases the medicine more quickly?

16 Q Correct.

17 A It's going to release more medicine faster than the
18 proposed 12 hours.

19 Q Thank you.

20 Did you give her any instructions regarding how to
21 take the pills when you prescribed them to her?

22 A Well, yes.

23 Q Okay. And what were those instructions?

24 A Well, we talk about proper use, proper disposal of
25 the medications. The medicines are not to be cut,

1 crushed, or chewed.

2 Q And why is that?

3 A Because then you get more medicine too quickly.

4 Q Okay. Did you, also, instruct her not to accept any
5 other medication from any other doctors?

6 A Yes.

7 Q And why is that?

8 A Because if we're going to be in charge of pain
9 management, we don't want other doctors prescribing
10 controlled substance medicines.

11 Q Okay. Had you had that issue with her?

12 A Once. She went to the emergency department with a
13 urinary tract infection and she got a prescription for
14 Hydrocodone, low dose, not many, though.

15 Q Are you aware of whether or not OxyContin extended
16 released can be manipulated?

17 A Yes, it can.

18 Q One of the ways it can be manipulated, is that by
19 dissolving it?

20 A Well, there's been two formulations of OxyContin.
21 The first formulation was easily manipulated. And then
22 the company that makes OxyContin reformulated it to make
23 it more difficult.

24 Q And when was it reformulated?

25 A I don't know, really.

1 Q Okay. When it was reformulated, does that mean that
2 you cannot manipulate it at this point?

3 A No. When it's reformulated, it was more difficult to
4 manipulate it. And I do remember seeing one study that
5 says it was -- it reduced abuse of the medication by
6 50 percent.

7 Q Okay. If you wanted to dissolve a medication similar
8 to the way that it would dissolve in your stomach, would
9 adding acid to that medication help in that process of
10 dissolving it?

11 A I -- I would assume so. But I'm -- I -- that's a
12 pharmaceutical question. I don't know if I'm authorized
13 to answer.

14 Q Okay. How would someone off the street determine --
15 or figure out how to manipulate medication? I mean, is
16 that information readily available?

17 A Well, yeah. There are web sites people can go to to
18 learn how to abuse medications.

19 Q Okay. You do -- so would it be safe to say that
20 dissolving, cutting, crushing, or chewing this medication
21 would not be an appropriate way to take it?

22 A No. It's not an appropriate way.

23 Q And you do pill counts with your patients; is that
24 correct?

25 A Yes.

1 Q And what is a pill count?

2 A A pill count is where we calculate how many tablets
3 should be remaining. And then we see if medicines are
4 missing.

5 Q Okay. And just because you do those pill counts,
6 that does not ensure that someone is not abusing their
7 medication; correct?

8 A That's correct.

9 Q Because, say, for example, I could take 10 pills in
10 one day and then not take them for nine more days and be
11 correct on my pill count; is that correct?

12 A Yes.

13 Q Is OxyContin in any form appropriate to give a
14 14-month-old child?

15 A No.

16 Q Did you at some point offer -- well, let me say this.
17 Did the Defendant come to you, at some point, and have
18 concerns about what had happened with her grandchild?

19 A Yes.

20 Q Okay. And do you recall what date that was?

21 A I think it was November 12th, 2014.

22 Q And when she came to you with that concern, what did
23 you offer her as a remedy?

24 A Can you -- can you describe what you're saying?

25 Q Or I can show it to you.

1 A With remedy --

2 Q Well, did y'all discuss how she could get off of this
3 medication?

4 A Yes. We discussed that.

5 Q And what did you offer her?

6 A We did discuss inpatient -- I'm reading from my note.
7 We did discuss inpatient detoxification. An inpatient
8 detoxification sheet was provided to the patient for
9 various facilities in the upstate that could detox the
10 patient if she feels that that's what she needs to do.
11 The patient declined reduction in the Oxycodone dosage or
12 elimination of Hydrocodone today.

13 Q Okay. What -- in October of 2014, on what day could
14 she get 60 80-milligram extended release OxyContin --

15 A The medicines were prescribed on October 16th. I
16 don't -- I don't know exactly what day she filled the
17 prescription.

18 Q Sure. But that was the day that she could have gone
19 and gotten it filled, is that safe to say?

20 A Let me check my note.

21 Q Sure.

22 A Yes.

23 Q So that was yes, she could get those 60 80-milligram
24 extended release on October the 16th, 2014?

25 A Well, I gave her a prescription on that day. And it

1 doesn't seem like we predated or had a fill date on the
2 medication. So she could have filled it that day.

3 Q Okay. In August of 2016, did she come to you for
4 another Oxycodone prescription?

5 MR. DEJONG: Excuse me. When?

6 MS. HINTON: August of 2016.

7 MR. DEJONG: Your Honor, I don't see the relevance of
8 that. We're talking about 2014.

9 THE COURT: What's the --

10 MS. HINTON: It's probably something better to
11 discuss off the record, Your Honor. I don't know if you
12 want a sidebar.

13 THE COURT: All right.

14 (WHEREUPON, a bench conference was held.)

15 THE COURT: All right. Based on the sidebar, the
16 objection overruled.

17 MS. HINTON: Thank you, Your Honor.

18 BY MS. HINTON:

19 Q Okay. Dr. Rogers, just to reiterate, on August of
20 2016, did she come to you for another prescription -- or,
21 I guess, another script of OxyContin?

22 A On August 29th, 2016, she returned to my care. She
23 had been off medications for 18 months. She told me that
24 she couldn't take the pain anymore.

25 Q Okay.

1 A She did not -- my notes do not make any mention of
2 her, specifically, asking for any type of medication.

3 Q Okay. Did you prescribe any medication to her at
4 that time?

5 A Yes.

6 Q And did you prescribe her Oxycodone?

7 A No.

8 Q Okay. And did she return to you after -- did you
9 make a follow-up appointment for her after that?

10 A I prescribed Gabapentin for her, 300 milligrams. And
11 she was supposed to follow-up with me in four weeks.

12 Q Okay. And did she follow-up with you in four weeks?

13 A No. That was the last visit with Angela.

14 MS. HINTON: Thank you, Dr. Rogers.

15 Please answer any questions Mr. DeJong may have.

16 THE COURT: Cross-examination.

17 MR. DEJONG: Thank you, Your Honor.

18 May it please the Court.

19 CROSS-EXAMINATION

20 BY MR. DEJONG:

21 Q Dr. Rogers, you went through, in my opinion, a rather
22 lengthy list of what you were treating her for; correct?
23 Neck pain, shoulder pain, I think, pinched nerve,
24 whatever?

25 A Yes, sir.

1 Q And were you treating for -- her for all of those
2 things at one time?

3 A Yes. I was treating her neurologically, but, also,
4 for her chronic pain.

5 Q And were those painful conditions?

6 A Yes, sir.

7 Q And the OxyContin -- I get confused between the two.
8 But the OxyContin was for pain management, was it not?

9 A Yes, sir.

10 Q Okay. And if you -- okay. So you described her --
11 prescribed her 80 milligrams two times a day; is that
12 correct?

13 A Yes, sir.

14 Q All right. Is that a relatively high dosage?

15 A It's the highest strength they make. And two times a
16 day is common. It's a common prescription.

17 Q Right. I understand. But if you didn't take that
18 medication, would your pain become worse?

19 A Yes.

20 Q All right. So the point is, you take the medication
21 to keep your pain away; right?

22 A Yes. It's pain medication.

23 Q If you alter an OxyContin -- I forget exactly what
24 you called it. Extended release, or something like that?

25 A OxyContin is extended release.

1 Q Is that the difference between OxyContin and
2 Oxycodone?

3 A Yes. Oxycodone is immediate release and doesn't last
4 but about three or four hours.

5 Q Okay. When we talk about -- well, Hydrocodone, that
6 is a generic name; is that correct?

7 A It is a generic name.

8 Q Okay. The -- more of a brand name, is it commonly
9 referred to as Lortab?

10 A It was. It's been changed now. I think the brand
11 name now most commonly is Norco.

12 Q Okay. If you alter an OxyContin, does that not
13 change just about everything about that pill? It changes
14 the effects, we really don't know how it affects the body?

15 A Well, the only change is that it will release more
16 medicine more quickly than the pill was designed to do.

17 Q Right. But, again, I understand what you're saying,
18 but the overall pattern, if you will, is very
19 unpredictable, is it not?

20 A I don't understand the question.

21 Q Okay. Well, I understand you say it releases more
22 medicine more quickly; correct?

23 A Faster than it was designed to do.

24 Q Right. But when you start altering an OxyContin, how
25 the body reacts to it or -- well, I'll just leave it at

1 that. How the body reacts to it is not really clear?

2 A No. I think that's well understood.

3 Q I'm sorry?

4 A I think how the body reacts to the Oxycodone molecule
5 is well understood.

6 Q In terms of?

7 A In terms of its action. It works on certain receptor
8 sites in the nervous system.

9 Q Okay. Well, let's go -- let's go to these pill
10 counts. Do your notes or records reflect you ever had a
11 problem with pill counts with Ms. Brewer?

12 A No.

13 Q Okay. So her pill counts were proper?

14 A From my -- yes. From my office notes, her pill
15 counts were always appropriate --

16 Q Okay. And other than -- I'm sorry. I didn't mean to
17 interrupt you, Doctor.

18 A I want to be certain. One moment, please.

19 I believe her pill counts were accurate.

20 Q I'm sorry?

21 A I think her pill counts were accurate.

22 Q Now, other than -- I believe you testified that she
23 went -- she, being Ms. Brewer, went to the emergency room
24 one time?

25 A She went to the emergency department with a urinary

1 tract infection. And they gave her a prescription for
2 Hydrocodone, not a high dose and not very many.

3 Q And not for what, sir?

4 A Not very many tablets.

5 Q Okay. But that was not prescribed by you?

6 A It was not.

7 Q But other than that incident, you're not aware of any
8 other -- what we commonly refer to as doc shopping, are
9 you?

10 A No. She was not doctor shopping. We did four urine
11 drug screens and they were all consistent. The only
12 exception being when she got Hydrocodone from the
13 emergency department.

14 Q Right. And when was that, did you say?

15 A That was July of 2017 -- no, June 27, 2014.

16 Q Well, then she came to you at some point in time, I
17 forget the day you indicated, about, perhaps, stopping the
18 use of OxyContin. Did I understand that correctly?

19 A Well, I think you're referring to the visit of
20 November 12th, 2014. I don't think Angela, specifically,
21 asked to come off these medications. I think that was a
22 discussion we had on that visit.

23 Q Okay. So that was just kind of a general discussion,
24 would you say?

25 A No. Under the circumstance, this was something that

1 we discussed as an option.

2 Q And I understand that. But you said earlier that her
3 blood tests or whatever were consistent?

4 A I think there was one blood test, four urine tests,
5 and the records indicate a hair strand test.

6 Q Okay. But they were all consistent?

7 A They were all consistent. They never showed any
8 illegal substances. They didn't show any medications that
9 were not prescribed for her.

10 Q Okay. So, as I understand it, at that point in time,
11 she -- well, let me back up. Looking at your records, we
12 understand that OxyContin is a powerful drug; right?

13 A Yes, sir.

14 Q Okay. And it can be addictive?

15 A Yes, sir.

16 Q Okay. But looking at your records, was there any
17 indication at that point in time -- I may have asked this
18 in a different form. But was there any indication to you
19 that she was abusing them?

20 A No.

21 Q Okay. So even without abuse, there could become an
22 addiction, if I understand you correctly; right?

23 A Addiction -- to understand the term for everybody.
24 Addiction is when people overtake something. And it can
25 be like cigarettes or caffeine or, in the case of

1 medicines, people are going to take way more medicine than
2 they're prescribed.

3 Q Okay.

4 A That's addiction.

5 Q And I appreciate that. That clears it up for me.

6 But, again, in your records, when you met with her on
7 that particular date when you discussed particular
8 options, there was no indication of an addiction on the
9 part of Ms. Brewer?.

10 A Ms. Brewer came to me. She was very distraught. She
11 was very tearful about what had happened. And I was
12 concerned about her maybe utilizing these medications to
13 harm herself. So that led to the discussion about her
14 coming off these medications.

15 Q Okay. So, at that point in time, because she was
16 very distraught and upset, you had a feeling that there
17 might be a higher probability for misuse?

18 A Yes.

19 Q Okay. That's fine. Now, when she came back to you
20 in August of 2016, if I understood your testimony
21 correctly, she did not, specifically, ask for any
22 particular type of medication?

23 A My records do not indicate she was asking for any
24 specific medication. She had been without medicine for
25 18 months. I do have a direct quote from Angela saying,

1 "I can't take the pain anymore."

2 Q And not having been on that medication for 18 months,
3 based on what you had been treating her for previously,
4 the pain could have been exacerbating?

5 A Yes.

6 MR. DEJONG: Thank you so much, Dr. Rogers.

7 THE COURT: Any redirect?

8 MS. HINTON: Briefly.

9 REDIRECT EXAMINATION

10 BY MS. HINTON:

11 Q Dr. Rogers, you can't say for certain whether or not
12 Angela Brewer was addicted to her medication or abusing
13 her medication; is that correct?

14 A I think I can say with certainty she was not addicted
15 to her medication.

16 Q Okay. But you can't say for certain she wasn't
17 abusing it?

18 A That's correct.

19 Q And Mr. DeJong asked you about when you don't take
20 your medication is the pain worse. And I believe,
21 obviously, the answer is yes. But on the flip side of
22 that, if you take your medication for an extended period
23 of time, isn't it true that you can, also, build somewhat
24 of a tolerance to that medication?

25 A Yes. That is tolerance.

1 Q And that is common, is it not?

2 A It really depends on the medication and the person.
3 But it happens in medicine.

4 MS. HINTON: That's all I have.

5 Thank you.

6 THE COURT: All right. Doctor, you may step down.

7 MR. DEJONG: No objection to him being excused, Your
8 Honor.

9 THE COURT: You're excused.

10 THE WITNESS: Thank you, sir.

11 THE COURT: All right. Next witness.

12 MS. HINTON: Thank you, Your Honor.

13 The State would call Agent Cauthen to the stand,
14 Christine Cauthen.

15 THE CLERK: Place your left hand on the Bible and
16 raise your right hand.

17 WHEREUPON,

18 CHRISTINE CAUTHEN,

19 after first having been duly sworn, testified as follows:

20 THE CLERK: Have a seat.

21 And state your name for the record, please.

22 THE WITNESS: Christine Cauthen.

23 DIRECT EXAMINATION

24 BY MS. HINTON:

25 Q Agent Cauthen, where are you employed?

1 A The State Law Enforcement Division.

2 Q Okay. And how long have you been there?

3 A I've been there for five years.

4 Q And what do you do there?

5 A I work for the special victims unit child fatalities.

6 Q Were you in law enforcement prior to that.

7 A Yes, ma'am, 24 -- 23 years.

8 Q How many areas do you work in South Carolina?

9 A I've got approximately nine counties that I assist
10 with.

11 Q And you say you work child fatalities. Under whose
12 direction or how did that become a thing?

13 A The State back in 1992, actually, enacted the law
14 that we would assist local agencies. Pretty much, we come
15 in and get with the local agencies and assist them in any
16 way that's needed, whether it's bringing doughnuts and
17 coffee, or getting interrogations, getting medical
18 records. We work as a team with the local law enforcement
19 agency, DSS, coroner's office, forensic pathologists.

20 Q And did you do that in Pickens County in this case
21 with **Minor** ?

22 A We did.

23 Q How were you notified of the need to come out? Do
24 you recall?

25 A On this particular case, I believe Mr. Gary Duncan

1 called me to Cannon Hospital.

2 Q Okay. And when you arrived at Cannon, who was there?

3 A I believe it was just him and me at that point.

4 Q Was the deceased, **Minor**, there?

5 A Yes.

6 Q And where was he?

7 A He was in a bed in one of the rooms, one of the ED
8 rooms.

9 Q Is that emergency department?

10 A Yes, ma'am. I'm sorry.

11 Q That's okay. Did you have an opportunity to observe
12 him?

13 A I did.

14 Q And when you observed him, did you observe any
15 outward signs of abuse?

16 A None.

17 Q Is that part of what you do?

18 A Yes. Initially, to every call we go to where the
19 child is first, we do a full physical on the child to make
20 sure there's no outward signs of trauma.

21 Q Okay. And did you observe him being administered any
22 medication at the hospital?

23 A No.

24 Q I know you're not a doctor. But did he appear to be
25 breathing when you were there?

1 A No. He had been pronounced when I was called.

2 Q And "pronounced," meaning that he was deceased at
3 that point?

4 A Yes.

5 Q When there are no outward signs of abuse, where do
6 you shift your focus to and what does that mean?

7 A When there's no outward signs of abuse, nothing
8 apparent to cause this child to die, then a full
9 investigation is started at that point. With every case,
10 the same exact investigation is done.

11 You talk with the people closest to the child, the
12 caregiver of the child. You go back to the residence,
13 check out the residence, do an inventory of the residence,
14 do what we call a reenactment. Then you do the autopsy,
15 and just start knocking things down that don't pertain.

16 Q Is it more or less difficult of an investigation when
17 you don't have those outward signs of abuse?

18 A Very much more difficult, yes.

19 Q In this case, in particular, when you arrived at the
20 hospital on October the 17th of 2014, and observed the
21 child, at that point, did you have any idea what you were
22 dealing with?

23 A I knew that we had a deceased child. That concerned
24 me greatly because of his age and no outward trauma.
25 There was -- we had some issues.

1 Q And when you observed this child, I mean, did he
2 appear malnourished, or anything like that?

3 A No, absolutely not.

4 Q Did you at any point while you were at the hospital
5 tell anybody that you thought that this was SIDS?

6 A No, ma'am. I wouldn't use that term.

7 Q And why not?

8 A SIDS is the -- the acronym for SIDS is sudden infant
9 death syndrome. And I -- my -- do you want my personal
10 opinion as to why?

11 Q Sure.

12 A My personal opinion is there's no such thing as
13 sudden infant death syndrome. Children don't just die.
14 There's a cause for every death. No one just dies.

15 Q So you would not have used that term that night?

16 A No, ma'am.

17 Q When you are at the hospital, do you speak to the
18 family at all?

19 A Very briefly.

20 Q And in your brief discussions, what information are
21 you trying to get from them?

22 A Just basic, who the caregiver was that day, what's
23 typical for **Minor** and his family, what's his typical
24 eating schedule. We usually go back a day or so just so
25 you can see what's typical, because every family is

1 different.

2 Q Do you ask for any medical background?

3 A Yes.

4 Q And what's the importance of that?

5 A To find out if there's any underlying issues that
6 could have caused this child to die.

7 Q Were you able to obtain a medical history from this
8 particular family?

9 A To a degree. There was no medical history from what
10 I was told.

11 Q And did you gather that information from the
12 Defendant, or from someone else?

13 A That's a really good question. I can't remember. I
14 know it was gathered on that night from someone. But I
15 don't know if it was, actually, the coroner who got that
16 information from the Defendant or from Callen, the mother.

17 Q Okay. Well -- and let me ask you this. Do you
18 recall how the family showed up, like, in what order? Do
19 you know?

20 A I know when I arrived that Robby and Ms. Brewer were
21 already there.

22 Q Okay.

23 A And then later, more family arrived. And I was later
24 told it was the mother and father, and several other
25 family members. But I didn't have a whole lot of contact

1 with them, except to tell them why we were there.

2 Q So, at some point, did you have the opportunity to
3 observe all of those people?

4 A Yes.

5 Q And tell me how the mother and father of **Minor**
6 appeared to you.

7 A Distraught, overwhelmed.

8 Q What about Robby Brewer?

9 A Distraught. I mean, there wasn't anyone that wasn't
10 upset.

11 Q Was Angela Brewer, also, distraught?

12 A Yes.

13 Q At some point, do you head to [REDACTED] in
14 Pickens?

15 A I'm sorry. Repeat that. I didn't hear.

16 Q At some point, do you head to [REDACTED] in
17 Pickens?

18 A Yes.

19 Q Why did you head to that location?

20 A There, we gather facts from the family. We gather
21 any evidence that may pertain to what we're dealing with.
22 And we do what's called a reenactment with the family.

23 Q And when you arrived there, were other people already
24 at the house?

25 A There were deputies on the scene, I believe.

1 Q And when you arrived -- who arrived with you -- or at
2 the same time as you?

3 A I believe the assistant coroner and his wife arrived
4 about the same time I did.

5 Q Okay. When did the Defendant and Robby arrive? Do
6 you know?

7 A No, ma'am.

8 Q Do you know if it was before or after you got there?

9 A I couldn't tell you. They may have arrived just
10 shortly before I did, close together, but I'm not sure.

11 Q And when -- before -- you observed the reenactment in
12 court; correct?

13 A Yes.

14 Q Prior to that reenactment, did you guys have any
15 conversation or anything that we -- I mean, obviously, you
16 discussed something, but anything that we didn't see on
17 the video that was relevant?

18 A I don't believe so at that time. But I can't be for
19 sure.

20 Q Okay. And in the reenactment, how did you observe
21 the Defendant to be?

22 A She was upset. She wanted -- she was tired. She
23 wanted us to pretty much be done.

24 Q And after the reenactment, did you gather any more
25 information from her about her medication, or anything

1 like that?

2 A I think we had already gathered most of that
3 information prior to and while they were -- other officers
4 or deputies were gathering that information forensically
5 while I was doing the reenactment. So I didn't get a
6 whole lot of information on that until after the fact.

7 Like I said, we work as a team, so one person may be
8 gathering one thing and another gathering another.

9 Q Okay. Do you recall whether or not DSS was present
10 with you?

11 A I know they -- I believe they were present on the
12 scene.

13 Q At any point during your interaction with the
14 Defendant, did she indicate that anyone other than herself
15 was in charge of the child that day?

16 A No.

17 Q When did you receive -- well, let me ask you this.
18 Were you aware that anything was sent for testing at SLED?

19 A Typically, we ask that things get sent for testing,
20 blood from the --

21 Q Well, in this case, was the sippy cups --

22 A The sippy cups, yes. Typically, we ask for sippy
23 cups, and bottles, and anything associated with the child
24 and his intake for the day.

25 Q And did you receive those results?

1 A Yes, ma'am.

2 Q Do you recall when those results were received?

3 A Not the exact day.

4 Q Do you recall if it was prior to your interview with
5 the Defendant?

6 A Yes, it was prior to.

7 Q Okay. So when you interviewed the Defendant on
8 December the 18th of 2014, did you already know in your
9 head everything that had transpired?

10 A Yes, ma'am.

11 Q Were you missing any information at that point?

12 A No, ma'am.

13 Q Okay. In your interview, you are very friendly with
14 the Defendant and talk about some sicknesses that were
15 found in the victim. Is that an interrogation tactic, for
16 lack of better term?

17 A Yes, ma'am. I mean, there's no reason to be mean.

18 Q Sure. What is the goal of your interview when you
19 interview somebody that you know that you're going to
20 arrest?

21 A The goal is to get a confession. Yeah, to get a
22 confession.

23 Q And prior to this interview, was the Defendant
24 Mirandized?

25 A Yes.

1 Q Did you observe that Miranda?

2 A Yes.

3 Q Who, actually, read her that Miranda?

4 A That would be Lieutenant Burgess.

5 Q Okay. But were you present in the room at the time?

6 A I was.

7 Q And I'm going to show you State's Exhibit No. 1. Do
8 you know what that is?

9 A That is the Miranda form that we filled out that day
10 and I witnessed.

11 Q Did you observe the Defendant signing that?

12 A Yes, ma'am.

13 Q Now, it says "Angela Harrison" on there, is that the
14 same person as Angela Brewer?

15 A Yes, ma'am.

16 MS. HINTON: Your Honor, at this time, the State
17 would move State's Exhibit No. 1 into evidence.

18 THE COURT: Any objection?

19 MR. DEJONG: Same objection I had earlier, Your
20 Honor.

21 THE COURT: All right. Overruled.

22 So that's exhibit what?

23 MS. HINTON: I'm sorry. Your Honor, State's Exhibit
24 No. 1.

25 THE COURT: State's Exhibit No. 1 is admitted subject

1 to objection.

2 (WHEREUPON, State's Exhibit No. 1 was admitted into
3 evidence.)

4 BY MS. HINTON:

5 Q The interview that you conducted on December the 18th
6 of 2014, was that video and audio recorded?

7 A Yes, ma'am.

8 Q I'm going to show you State's Exhibit No. 18. Is
9 that a copy of that interview?

10 A Yes, ma'am.

11 Q And were y'all in -- where were y'all when this
12 interview took place?

13 A We were at the Pickens County Sheriff's Office in one
14 of their interrogation rooms -- interview rooms that they
15 have downstairs.

16 Q How did the Defendant get there?

17 A Lieutenant Burgess and I called her to see about her
18 coming to meet with us. She said she didn't have any
19 transportation. So we arranged to pick her up and bring
20 her to the Pickens County Sheriff's Office. She said she
21 would ride with us there.

22 Q In that ride, did you guys discuss the case at all?

23 A No, ma'am.

24 MS. HINTON: Your Honor, may we have one more
25 sidebar?

1 THE COURT: Yes.

2 (WHEREUPON, a bench conference was held.)

3 MS. HINTON: Your Honor, I'm not sure if I did this
4 or not, but the State moves State's Exhibit No. 18 into
5 evidence at this time.

6 MR. DEJONG: Over all my previous objections.

7 THE COURT: Subject to your objection.

8 (WHEREUPON, State's Exhibit No. 18 was admitted into
9 evidence.)

10 MS. HINTON: Your Honor, do you want to --

11 THE COURT: You want to --

12 Ladies and gentlemen, we're --

13 Are you going to publish it now?

14 MS. HINTON: Yes, sir.

15 THE COURT: We're going to publish one of the
16 statements kind of like what we did before. But I just
17 wanted to remind you that it is my job, as the Judge, to
18 rule on the admissibility of certain things.

19 So if things -- based on my ruling, there will be
20 certain portions of this video that will be deleted,
21 but -- based on the admissibility -- of relevance, or
22 whatever reason. You're not to consider that in any way.
23 But just consider the portions that you do hear, so.

24 (WHEREUPON, State's Exhibit No. 18 was played in
25 open court.)

1 MS. HINTON: Judge, I'm going to unplug the sound
2 each time just to be safe. I've got it up here.

3 THE COURT: Okay.

4 (WHEREUPON, State's Exhibit No. 18 continued to be
5 played in open court.)

6 MS. HINTON: Judge, you'd think there would be a
7 better way. I apologize.

8 (WHEREUPON, State's Exhibit No. 18 continued to be
9 played in open court.)

10 MS. HINTON: And, Judge, for the record, we stopped
11 it at 12:28:15.

12 THE COURT: All right.

13 BY MS. HINTON:

14 Q Agent Cauthen, when you guys walked outside, did
15 y'all have any more conversations about the interview, or
16 anything like that while y'all were outside?

17 A No, ma'am.

18 Q In the video, you talked about his illnesses. At
19 that point, did you believe he had died from his
20 illnesses?

21 A No, ma'am.

22 Q Did you believe that he had died from pneumonia that
23 was hereditary?

24 A No, ma'am.

25 MS. HINTON: That's all I have. Please answer any

1 questions Mr. DeJong may have.

2 THE COURT: Cross-examination.

3 MR. DEJONG: Your Honor, before I do
4 cross-examination, may we have a short break?

5 THE COURT: Ladies and gentlemen, we're going to take
6 a short break. And we'll bring you right back out in a
7 few minutes. Don't discuss the case.

8 (WHEREUPON, the jury was excused from open court at
9 approximately 4:12 p.m.)

10 THE COURT: I would note that we did spare everybody
11 the diaper -- all the stuff about the diapers.

12 All right. We'll be at ease for 10 minutes.

13 (WHEREUPON, a break was taken.)

14 THE COURT: Are we ready?

15 MS. HINTON: Yes, Your Honor.

16 THE COURT: All right.

17 MR. DEJONG: I'm ready, Your Honor.

18 THE COURT: All right. Bring them in if they're
19 ready.

20 (WHEREUPON, the jury came into open court at
21 approximately 4:25 p.m.)

22 THE COURT: All right. Ladies and gentlemen, we will
23 now proceed. I believe we have cross-examination.

24 MR. DEJONG: Thank you, Your Honor.

25 May it please the Court.

CROSS-EXAMINATION

BY MR. DEJONG:

Q So, Agent Cauthen, on October the 17th, 2014, how long had you been with SLED?

A I've been with them five years now. So back two more, so three -- 2012, I came in November of 2012.

Q So about two years, a year and a half?

A Yes, sir.

Q Okay. Now, I wasn't clear. When you got to the hospital, if I understood you correctly, it was you -- was there any law enforcement there at that point in time?

A Gary Duncan, the deputy coroner, was there.

Q Okay. So did Mr. Duncan call you personally?

A I believe he did that time, yes.

Q Okay. Had you and he ever worked together before?

A Yes, sir.

Q And where did you work together?

A I've worked with the coroner's office in every county that I work in. So he's in one of the counties that I work in. I work with local law enforcement and the coroner's office.

Q Okay. You said you work with coroners in every county. You had been with SLED for about a year and a half. Had you worked with Mr. Duncan in his capacity as assistant -- or deputy coroner in that period of time?

1 A Yes, sir.

2 Q Okay. And, again, you say there were no outward
3 signs of abuse?

4 A No outward signs of trauma, no, sir.

5 Q And I think Ms. Hinton cleared up that it's more
6 difficult when there's no outward signs of abuse?

7 A Yes, sir.

8 Q Okay. Now, you stated that, in your personal
9 opinion, there's no such thing as SIDS?

10 A In my personal opinion, yes, there is none.

11 Q And we're not going into the medical. That's just
12 your personal opinion?

13 A Uh-huh.

14 Q So any time that a child would die and there's no
15 outward signs of trauma --

16 A Uh-huh.

17 Q -- you would take the position that somebody did
18 something to that child?

19 A No, sir. The definition would be SUDI, which is
20 sudden unexplained death in infancy.

21 Q So you're just changing the acronym a little bit?

22 A No, sir. SIDS is a syndrome that they say is some
23 type of medical syndrome. SUDI is unexplained.

24 Q I'm sorry?

25 A SUDI is unexplained death. So anything that doesn't

1 have outward trauma would be unexplained until we get the
2 facts.

3 Q Well, I think I understand what you're saying. But
4 then you, also, said that you were there to aid the
5 counties, to assist in whatever they need, I think you
6 said, even getting doughnuts and coffee, if I recall
7 correctly?

8 A Yes, sir, I have.

9 Q But then you said -- and interrogations, that's part
10 of what you said you do; right?

11 A Yes, sir, if asked.

12 Q And your goal in that is to get a confession?

13 A In this particular case, yes, it was.

14 Q All right. And -- well, when you were in the
15 interview, you tell Ms. Brewer that the SLED reports were
16 not back; is that correct?

17 A I believe I did, yes.

18 Q All right. When, in fact, they were back, weren't
19 they?

20 A Yes. I believe they were.

21 Q Yes, ma'am. They were. And this was done in -- in
22 a -- let me start over on that one. The interrogation was
23 done in an interrogation room at the Pickens County Law
24 Enforcement Center; correct?

25 A Yes, sir.

1 Q All right. And present in that room were you and
2 Detective Burgess?

3 A Yes, sir.

4 Q And, obviously, Ms. Brewer?

5 A Yes.

6 Q Okay. Now, was there a particular reason that you
7 had Detective Burgess go over the Miranda rights?

8 A No, just in her county, so.

9 Q Okay. Let me back up just a little bit. So on the
10 evening of October the 17th of 2014 -- let's back up
11 another hop. First, you went to the hospital?

12 A Yes.

13 Q And then you went to the residence -- I can't
14 remember that number. But Swiss Entrance Drive, whatever,
15 that's where you went; right?

16 A Yes, sir.

17 Q Now, when you got to Swiss Entrance Drive, if that's
18 the name of it, I know it's Swiss Entrance something, I
19 believe you said law enforcement was there?

20 A Deputies were on the scene.

21 Q Just the deputy coroner, no other law enforcement?

22 A There were deputies from Pickens County.

23 Q Oh, deputies. I'm sorry. I'm sorry. All right.

24 Did you go in the house before the deputies did?

25 A I don't know. I don't think so. I think they were

1 there first.

2 Q All right. Back to the hospital for a moment. You
3 did, ultimately, see Ms. Brewer along with some other
4 folks?

5 A Yes, sir.

6 Q And everybody there was distraught?

7 A Yes, sir.

8 Q I think we could say extremely distraught, could we
9 not?

10 A Yes, sir.

11 Q And that would include Ms. Brewer, would it not?

12 A Yes, sir.

13 Q And as far as the medical history on **Minor**, you don't
14 know who gave you that medical history, or lack of medical
15 history; is that correct?

16 A Yes, somebody did.

17 Q Now, back to the house. Did you take part in the
18 search?

19 A No, sir.

20 Q Well, did you direct law enforcement to take certain
21 things into evidence?

22 A I asked them to take certain things, yes, sir.

23 Q Such as sippy cups?

24 A Yes.

25 Q Did you ever ask them to take any samples of the

1 vomitus that was on either the sofa or the carpet?

2 A I don't believe I did.

3 Q All right.

4 A I don't know. I can't tell you for sure about that.

5 Q Okay. And there were other items that were taken
6 without your suggestion, or direction, or whatever. But
7 that was just taken on their own; right? That's what law
8 enforcement did?

9 A I assume so. Anything related to the child or could
10 be related to the child's case.

11 Q Well, other than -- I think you mentioned the sippy
12 cup, specifically, that's why I asked about it. Is there
13 anything else you asked them to take into evidence?

14 A Document any medications that were in the house.

15 Q Okay. Was that done?

16 A I believe so, yes.

17 Q Were you a part of that?

18 A I pretty much handled the reenactment with the deputy
19 coroner. We each had our own duties to handle.

20 Q Let me just ask you, Agent Cauthen. To your
21 knowledge, was there any OxyContin found in the house?

22 A I don't know.

23 Q And that's fine. I'm just asking to your knowledge.

24 A I don't know about that particular night, no, sir.

25 Q Pardon me?

1 A I don't know about that particular night if OxyContin
2 was found in the residence.

3 Q Well --

4 A Or any night. I'm sorry.

5 Q Pardon me?

6 A I didn't mean to word it that way. I don't know that
7 any was found in that residence.

8 Q Okay. That was going to be my follow-up question.
9 You don't know of OxyContin ever being found in that
10 house?

11 A Right.

12 Q Okay. So DSS was, also, present at the reenactment?

13 A I believe they were.

14 Q Okay. Once the reenactment was done, you left, I
15 gather?

16 A Yes.

17 Q And, I guess, Mr. Duncan left?

18 A Yes.

19 Q When you left, was Mr. and Mrs. Brewer still in the
20 residence?

21 A To the best of my knowledge, yes, sir.

22 Q Okay. When it comes to -- did you attend the
23 autopsy?

24 A Yes, sir.

25 Q Did you ask Dr. Fulcher to send certain items for

1 testing?

2 A No. Usually, the coroner and Dr. Fulcher handle
3 those. I don't.

4 Q Okay. To your knowledge, was anything taken for
5 testing at the autopsy?

6 A Typically, there is blood taken.

7 Q And in this instance, do you know where those items
8 are sent to be tested? If you know.

9 A Different counties go to different places.

10 Q Yes, ma'am. So the answer to that, you don't know;
11 right?

12 A Yeah.

13 Q Okay. Fair enough. Obviously, you were present when
14 Detective Burgess was going over the Miranda warnings;
15 correct?

16 A Yes, sir.

17 Q Okay. And not necessarily to the initialing on the
18 left side of the Miranda form, which I believe has been
19 introduced as State's Exhibit No. 1, but, more
20 particularly -- and if you need to see this, Agent, I'll
21 be happy to hand it to you. Okay. And let me just do
22 that so we know what we're talking about.

23 When it came to the initials, there wasn't much
24 thought or hesitation on Ms. Brewer's part, she just
25 initialed; right?

1 A Uh-huh.

2 Q The top part?

3 A On the top part?

4 Q Yes, ma'am.

5 A As far as I know, you're, typically, told to read
6 those --

7 Q Right.

8 A -- to them. And then they ask you to read those and
9 initial.

10 Q So I'm clear. You are a law enforcement officer,
11 aren't you?

12 A Yes, sir.

13 Q I'm sure you've given Miranda before?

14 A I have. And that's, typically, how I do it.

15 Q Right. But the point I'm getting at, when it came
16 down to the waiver of rights, would you agree with me that
17 Detective Burgess directed Ms. Brewer where to sign that?

18 A To sign the form?

19 Q Yes, ma'am.

20 A She directed her where to sign the form at the
21 bottom, yes, sir.

22 Q So I'm clear, direct -- Detective Burgess pointed
23 out, directed Ms. Brewer where to sign that form. Do you
24 agree with that?

25 A Yes. Where her signature was to be, yes, sir.

STATE OF SOUTH CAROLINA	)	
	)	COURT OF GENERAL SESSIONS
COUNTY OF PICKENS	)	2016-GS-39-02265
	)	
	)	
	)	
	)	
STATE OF SOUTH CAROLINA,	)	
	)	
vs.	)	TRANSCRIPT OF RECORD
	)	
ANGELA DENISE BREWER,	)	VOLUME II
DEFENDANT.	)	
_____	)	

December 13, and 14, 2017
Pickens, South Carolina

B E F O R E:

THE HONORABLE PERRY H. GRAVELY, JUDGE; and a jury.

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

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I N D E X

(SW) - Denotes State's Witness
 (DW) - Denotes DW Witness
 (IC) - Denotes In Camera

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All Exhibits were retained by the Clerk of Court for
Pickens County.

1 (WHEREUPON, State's Exhibit Nos. 19, 20, and 22 were
2 marked for identification only.)

3 THE COURT: Anything from the State before we bring
4 the jury in?

5 MS. HINTON: No, Your Honor.

6 MR. DEJONG: Nothing from Ms. Brewer.

7 THE COURT: All right. Bring them in.

8 (WHEREUPON, the jury came into open court at
9 approximately 9:06 a.m.)

10 THE COURT: Good morning, ladies and gentlemen, I
11 hope everybody had a pleasant evening. We're now -- the
12 State is still in their case.

13 I wanted to let y'all know, as I'm sure that you saw
14 when y'all were trying to park, there's a lot more people
15 here today than there have been. Remember, I told you we
16 were going to have to be flexible. There's a lot of stuff
17 going on. And there's a couple of things I'm going to
18 have to do during the day. So we may take a couple of
19 breaks unrelated to this. So it's yearend stuff, trying
20 to get a lot of stuff taken care of.

21 But, anyway, with that being said, I'll ask the State
22 to call their next witness.

23 MS. HINTON: Thank you, Your Honor.

24 The State would call Detective Rita Burgess.

25 THE CLERK: Place your left hand on the Bible and

1 raise your right hand.

2 WHEREUPON,

3 RITA BURGESS,

4 after first having been duly sworn, testified as follows:

5 THE CLERK: Thank you.

6 Have a seat.

7 And state your name for the record, please.

8 THE WITNESS: Lieutenant Rita Burgess.

9 DIRECT EXAMINATION

10 BY MS. HINTON:

11 Q And Lieutenant, I apologize. I know I referred to
12 you as detective earlier. But you are a lieutenant where?

13 A With the Pickens County Sheriff's Office.

14 Q And how long have you been employed there?

15 A 27 years.

16 Q How long have you been a lieutenant?

17 A I have been a lieutenant the last four years -- three
18 years, four years.

19 Q And what are you a lieutenant of?

20 A I'm a lieutenant over the special victims unit at our
21 office, which is domestic violence, sex crimes, anything
22 related to a child, victims services, sex offender
23 registry, things of that nature.

24 Q Do you at all focus on adults, or juveniles, or do
25 you do both?

1 A Basically, both. But anything related to a child
2 would come to our unit.

3 Q And did you respond to Cannon Memorial Hospital on
4 October the 17th of 2014?

5 A Yes, I did.

6 Q And what were you responding to?

7 A I received a call to respond to the death of a child.

8 Q And when you arrived, who all was there?

9 A When I arrived, Coroner Duncan was there and his
10 wife, Lieutenant Byers was there, and Agent Cauthen with
11 SLED.

12 Q Okay. Was that all the law enforcement that was
13 present at the time?

14 A Yes.

15 Q Do you know if other law enforcement had been at the
16 hospital prior to your arrival?

17 A Yes, they had.

18 Q Okay. And who was that?

19 A Sergeant Hendricks had been there.

20 Q But he was not there when you got there?

21 A No, ma'am. He had already received a consent to
22 search the home and had left the hospital to go to the
23 home at [REDACTED].

24 Q Outside of law enforcement, was -- was the decedent
25 there?

1 A Yes, he was.

2 Q Okay. And where was he located?

3 A He was located in one of the rooms in the emergency
4 department.

5 Q And was the family there?

6 A Yes, ma'am.

7 Q And who from the family was there?

8 A My first contact was with Ms. Brewer and Mr. Brewer.

9 Q At the time that you made contact with them, were
10 Callen Harrison and Michael Lusk present yet?

11 A No, ma'am.

12 Q What was the emotional state of Ms. Brewer at that
13 time?

14 A She was very emotional. She was crying. She was
15 very upset. She was making statements, you know, this
16 shouldn't be happening, and just very upset and concerned
17 about what was going on.

18 Q Okay. And Mr. Brewer, how was he acting?

19 A He was, also, upset.

20 Q Did you have an opportunity to speak to Callen
21 Harrison?

22 A At the hospital?

23 Q Yes.

24 A Yes, ma'am.

25 Q And how was she reacting?

1 A She was completely distraught. It was very difficult
2 to talk with her because she was having a difficult time
3 even speaking to me.

4 Q Okay. And what about Michael Lusk?

5 A He was the same as Ms. -- Callen.

6 Q Okay. Was there anything you were not able to do
7 that night because of the emotional environment?

8 A I did not -- I chose not to take a written statement
9 from anyone that night. It was a very emotional time, a
10 very sensitive time for the family. And it was my choice
11 to wait until they could cope with the loss of this child
12 before I asked them to provide me with a written
13 statement.

14 Q Okay. That being said, do you have to have some sort
15 of conversation with them to a certain extent?

16 A Yes, ma'am.

17 Q And I know you said that she mentioned that this
18 shouldn't be happening. But did she tell you anything
19 about how the victim was acting that day?

20 A I did have a conversation with her about that. Any
21 time we respond, of course, we need to obtain initial
22 information and try to get as much information about what
23 happened that day as we possibly can. So I asked her to
24 discuss his daily activities with me from that day.

25 Q Okay. And what did she tell you?

1 A She said he had been fussy. He had a history of some
2 ear infections. And she was concerned that maybe he had
3 started developing an earache. That he had been a little
4 bit whiney that day. But other than that, he had a normal
5 routine.

6 Q Did she mention to you at the hospital on October the
7 17th anything about him having a fever, or her checking
8 for a fever?

9 A She did not mention a fever to me that day. She
10 never mentioned she had checked him for a fever, just that
11 he had been a little bit fussy throughout the day.

12 Q Okay. Did she mention to you that she had called
13 Callen and discussed the fact that he was not feeling
14 well?

15 A Not at that particular time, she did not.

16 Q Did you ever tell her that this could be the result
17 of SIDS?

18 A No, ma'am. I would not tell anyone that.

19 Q Okay. And why is that?

20 A Well, first, I'm not a medical physician. And I
21 don't determine what the death of a child would be. So
22 that would be left up to medical staff or the coroner's
23 office for them to provide that information, not me.

24 Q What -- you mentioned that Agent Cauthen was there.
25 What is SLED's role in these cases?

1 A They have a child fatality unit. And we notify them
2 of every child death -- a child death, any person under
3 the age of 18. If we respond to a child death, we notify
4 them whether it's immediately or after we've processed the
5 scene. We may or may not request that they respond to
6 assist. But they're an assisting agency to us.

7 And in this particular case, I did not have to notify
8 them because they had been notified by the coroner's
9 office.

10 Q And does that happen from time to time that the
11 coroner will notify them, rather than y'all?

12 A Yes, ma'am. They are a notifying agency to SLED just
13 the same as we are.

14 Q Did you notify anybody else, any other agencies about
15 what had happened?

16 A Not that I recall.

17 Q October the 17th of 2014, what day of the week was
18 that?

19 A That was a Friday.

20 Q Did you interview or speak to Robby Brewer on
21 November the 6th of 2014?

22 A Yes, ma'am.

23 Q Did you instruct someone else to speak to Angela
24 Brewer?

25 A I did. I requested Sergeant Hendricks to speak with

1 her.

2 Q Did you end up speaking with Ms. Brewer on December
3 the 18th of 2014?

4 A Yes, ma'am.

5 Q And were you present when that was played in court?

6 A Yes, I was.

7 Q Who read her her Miranda rights in that video?

8 A I did.

9 Q And I'm going to show you what's previously been
10 admitted as State's Exhibit No. 1. What is that?

11 A That's the Miranda form that I used for her.

12 Q Okay. Whose form is this?

13 A It's a standard form that we use at our agency.

14 Q And she signed it "Angela Harrison." Is that the
15 same person as Angela Brewer?

16 A Yes, ma'am.

17 Q In your conversations with Ms. Brewer, did she ever
18 establish for you a timeline of the last time that this
19 child had anything to eat or drink?

20 A Yes, she did. I established that at the hospital on
21 October 17th.

22 Q Okay. And what was that?

23 A She said around -- between 11:00 and 11:30, she had
24 given him an apple. Around noon, she had provided him
25 with a cheese sandwich. And that around 1:15, she gave

1 him a cup of pink lemonade.

2 Q Did she state that she had given him anything else to
3 eat or drink after 1:15?

4 A No, ma'am.

5 Q Did she mention to you, at that point, whether he had
6 drank out of her cup or his own cup?

7 A She did not mention that.

8 Q And you did not go to the house; correct?

9 A No, ma'am. I stayed with **Minor** at the hospital
10 while someone else went to the home.

11 Q Okay. When you're dealing with these types of cases,
12 are there a lot of duties to undertake at the same time?

13 A Yes, ma'am.

14 Q Are you responsible for everything, or do you
15 delegate? How does that work?

16 A I delegate. I can't be at the hospital with the
17 deceased and, also, process the home and collect anything
18 that may need to be collected at the home. So that was
19 why Sergeant Hendricks was notified.

20 And he responded to the home simply because he lived
21 closer to the scene than I do. And he was able to get
22 there before I could get there. And we already had
23 someone at the hospital who could stand by with the
24 deceased until I could arrive.

25 Q So was the scene being processed while you and the

1 family were still at the hospital?

2 A Yes, ma'am.

3 Q Okay. And why is it important to go and process a
4 scene as soon as possible?

5 A Well, let me make a correction. I won't say that it
6 was being processed while we were at the hospital. They
7 were, at least, on scene and waiting for the family to
8 arrive while we were at the hospital.

9 Q Okay.

10 A And what was your next question?

11 Q What's the importance of getting to a scene quickly,
12 and photographing, and processing it?

13 A Well, depending on the situation, if someone has
14 intentionally done something to a child, then there's the
15 possibility that they could destroy evidence, or we could
16 lose something that's important to the case.

17 Q And did you have any idea on October the 17th of 2014
18 what type of death you were dealing with?

19 A No, ma'am.

20 Q Do you recall -- well, let me ask it this way. Do
21 you know whether or not evidence was sent to SLED for
22 testing?

23 A Yes, ma'am.

24 Q Is that it was?

25 A It was, yes. /

1 Q And do you recall when those results were received?

2 A I believe we received the results from SLED in
3 December of 2014.

4 MS. HINTON: Lieutenant, that's all I have. Please
5 answer any questions Mr. DeJong may have.

6 THE WITNESS: Yes, ma'am.

7 CROSS-EXAMINATION

8 BY MR. DEJONG:

9 Q So, you went to the hospital on October the 17th of
10 2014?

11 A Yes, sir.

12 Q And did you, as part of your duties, prepare a report
13 as to that, Lieutenant Burgess?

14 A Yes, sir, I did.

15 Q Pardon me?

16 A Yes, sir, I did.

17 Q And accuracy, obviously, is a big thing in reports;
18 correct?

19 A Yes, sir.

20 Q And you work a lot of cases; right?

21 A Yes, sir.

22 Q Okay. And this happened some three years ago; right?

23 A Yes, sir.

24 Q Okay. Well, I'm a little puzzled. And we can let
25 you look at that part of your report, if you want to. You

1 were talking about, I believe, Ms. Brewer saying he had
2 been fussy during the day, and all of those things?

3 A That's correct.

4 Q Did you put that in your report?

5 A No, sir. I didn't document it in that report.

6 Q All right. So your memory is better than your
7 report, is that what you're saying?

8 A I'm not saying that my memory is better than my
9 report. That's just something I didn't put in the
10 incident report.

11 Q Well, that was fairly important, wasn't it?

12 A It's information she provided on his condition that
13 day, yes.

14 Q Yes, ma'am. And that's what you were there for was
15 to gather information; right?

16 A Yes, sir.

17 Q Now, obviously, this was a traumatic experience in
18 this family's life?

19 A Absolutely.

20 Q Everybody's?

21 A Yes.

22 Q My client, her husband, the mother, the father of
23 this child?

24 A That's right. First Responders, everyone involved.

25 Q And, certainly, everybody was reacting to that event

1 as a traumatic experience when you got to the hospital?

2 A Yes, sir, which was my reason for not taking those
3 statements.

4 Q Pardon me?

5 A That's the reason I didn't take those statements.

6 Q Yes, ma'am. I understand that. For that part, you
7 are to be commended. I will share that with you.

8 Okay. Now, then you come back -- well, let me ask
9 you this. You never went to the house?

10 A No, I did not. Sergeant Hendricks did that.

11 Q Okay. And did you attend the autopsy?

12 A No, sir.

13 Q Okay. So the next contact, I gather, that you had
14 with Ms. Brewer was when you and Agent Cauthen spoke to
15 her -- my dates now are all starting to run together. Was
16 that in November or December?

17 A That was December. But I did speak with her by phone
18 in November when she came and met with Sergeant Hendricks.
19 I did speak with her to ask if she would come in and
20 provide that statement.

21 Q Okay. So do you know how Ms. Brewer got to Sergeant
22 Hendricks's office?

23 A As far as driving, I don't know how they got there.
24 I do know that I am the one who went down and brought them
25 up for her to meet with Sergeant Hendricks.

1 Q So you escorted --

2 A Yes.

3 Q -- Ms. Brewer and Robby Brewer?

4 A Yes.

5 Q To Lieutenant -- or Detective Hendricks? I'm sorry.

6 A Yes, I did.

7 Q And how were you dressed that day?

8 A In normal clothing like I've been dressing this week.

9 Q Did you have your sidearm on?

10 A Yes, sir.

11 Q Did you have your badge on?

12 A Yes, sir.

13 Q Okay. Now, you weren't a part of that particular

14 interview?

15 A No, sir.

16 Q Okay. So, now, was it November the 18th or December

17 the 18th? That's where I'm getting fuzzy.

18 A December.

19 Q December the 18th?

20 A Yes, sir.

21 Q That's when you and Agent Cauthen spoke --

22 A Yes, sir.

23 Q -- to Ms. Brewer?

24 And how did she get to the -- well, I gather, that

25 was -- that interview/interrogation was done at the

1 Pickens County Law Enforcement Center?

2 A Yes, sir. That's right.

3 Q Okay. And how did she get there?

4 A Agent Cauthen and I provided her with a ride. She
5 didn't have transportation.

6 Q Do you recall what time you picked her up?

7 A It would have been around -- probably around 11:30.

8 Q All right. How long did the interview -- strike
9 that.

10 So when you got there -- and this confuses me a
11 little bit. So SLED is called in to assist?

12 A Yes.

13 Q All right. But then you did the Miranda warnings;
14 right?

15 A Yes, sir.

16 Q And Agent Cauthen did the interrogation?

17 A Yes, sir.

18 Q Okay. So in that vein, it was a little more than
19 assisting, wasn't it?

20 A Well, in assisting, we work together. I mean, that's
21 what we do. We work together as a team.

22 Q And when you Mirandized her, you, obviously,
23 according to the video, got her to read back the waiver
24 part; right?

25 A Yes, sir.

1 Q Did you get her to read back the top part of that
2 form?

3 A Not out loud. I asked her to read over -- reread
4 what I had read to her at the top, and then to read the
5 waiver at the bottom, out loud.

6 Q Do you have any independent recollection of how long
7 it took her to read over that?

8 A Other than what's on that video, no, sir.

9 Q Okay.

10 A It wasn't very long.

11 Q Okay. Well, on the waiver -- well, let's back up.
12 She initialed on the left side. And let me show you
13 what's been identified as -- excuse me, I believe
14 that's --

15 Has that been introduced?

16 THE COURT: State's Exhibit No. 1.

17 MR. DEJONG: State's Exhibit No. 1.

18 Thank you, Your Honor.

19 BY MR. DEJONG:

20 Q What's been introduced as State's Exhibit No. 1.

21 A Yes, sir.

22 Q There is a top part of that; correct?

23 A Yes, sir.

24 Q And initials on the left?

25 A Yes, sir.

1 Q Now, you get down to the waiver. And when you got
2 down to the waiver, you directed her where to sign, didn't
3 you?

4 A Yes, sir. If you recall from the video, after she
5 read this out loud, she pointed to the left side here and
6 asked me if that's where she needed to sign. And I
7 stated, No, you need to initial here and sign here --

8 Q Okay.

9 A -- in response to her question.

10 Q Right. But she was, certainly, showing some
11 confusion at that point in time, wasn't she?

12 A She wanted to know where to sign the paper.

13 Q Well, that's not a difficult thing, is it?

14 A There's two lines that she -- one she needed to
15 initial, and one she needed to sign. She asked which one
16 she needed to sign. And I pointed that out to her.

17 Q Now, you said that getting there before anybody --
18 back to the house. I'm sorry. Getting there is important
19 so no evidence is destroyed; right?

20 A Yes, sir.

21 Q Now, there's no indication, in this case, that any
22 evidence was ever destroyed, is there?

23 A Oh, no, absolutely not.

24 MR. DEJONG: Okay. One moment, please, Your Honor.

25 (Pause.)

1 BY MR. DEJONG:

2 Q As you worked through this case, Lieutenant -- well,
3 let me back up. Do you know how many people lived in the
4 household with Ms. Brewer and Robby Brewer?

5 A I know what they provided me, the information they
6 provide me as to who lived there.

7 Q Okay.

8 A Which was Mr. and Mrs. Brewer, Callen Harrison,
9 Michael Lusk, and the four children.

10 Q Well, as your investigation progressed, was there any
11 indication that any adult in that household had ever
12 abused any of those children?

13 A No, sir.

14 MR. DEJONG: Thank you, Lieutenant.

15 THE COURT: Any redirect?

16 MS. HINTON: Briefly, Your Honor.

17 REDIRECT EXAMINATION

18 BY MS. HINTON:

19 Q Mr. DeJong asked you how many people were living
20 there. Were you able to determine on the night of the
21 17th how many people had been there that day with those
22 children?

23 A Yes, I did.

24 Q And what was that?

25 A The parents had left early that morning to take the

1 older children to school. They came back to make a trip
2 to Georgia. They were there very briefly. They left out
3 before lunchtime to go to Callen's work and, also, go to
4 Georgia.

5 Then I was told that -- it was determined that
6 Ms. Brewer was home alone with Kayson and **Minor** for the
7 remainder of the day until Mr. Brewer came home from work
8 around 5:30.

9 Q And can you tell me why you and Agent Cauthen didn't
10 tag team that interview on December the 18th of 2014?

11 A Well, we were not there to browbeat her. Before we
12 go into an interview, we determine who's going to be the
13 primary person to question the person that we're talking
14 to. And we go from there.

15 The secondary person will sit back and make notes.
16 And if there's something that's missed, then we may chime
17 in or make a note to the other interviewer. And we
18 just -- you know, we're not there -- it's a very sensitive
19 situation. We're not there to beat her down. We were
20 just trying to get the information that we needed to
21 determine what happened to **Minor** that day:

22 MS. HINTON: That's all I have.

23 THE COURT: All right. You may step down.

24 Call your next witness.

25 MS. HINTON: The State would call Kevin Nichols, Your

1 Honor.

2 THE CLERK: Place your left hand on the Bible and
3 raise your right hand.

4 WHEREUPON,

5 KEVIN NICHOLS,
6 after first having been duly sworn, testified as follows:

7 THE CLERK: Have a seat.

8 And state your name for the record, please.

9 THE WITNESS: Kevin Nichols.

10 DIRECT EXAMINATION

11 BY MS. HINTON:

12 Q Mr. Nichols, where are you employed?

13 A Pickens County Department of Social Services.

14 Q How long have you been there?

15 A Five plus years.

16 Q Prior to your employment with Pickens DSS, did you
17 work anywhere else?

18 A I worked for a year at Greenville County DSS.

19 Q Did you respond to Cannon Memorial Hospital on
20 October the 17th of 2014?

21 A I did.

22 Q Okay. And what were you responding to?

23 A A child fatality.

24 Q And did you have an opportunity to go to [REDACTED]

25 [REDACTED] Lane on that same evening?

1 A Yes, ma'am, I did.

2 Q Or Swiss Entrance. I don't think it's lane. Were
3 you present for the reenactment?

4 A I was.

5 Q And were you able to observe the Defendant's
6 behavior?

7 A Yes, ma'am, I did.

8 Q Is that part of your job, to collect information?

9 A It is.

10 Q Is it fair to say that you have a separate duty from
11 law enforcement?

12 A Yes.

13 Q And what was the Defendant's behavior that evening at
14 the house?

15 A Obviously, it was emotional because of the death, but
16 she was just very erratic. I felt like she may be acting
17 a little bit when it came to the child's death.

18 MR. DEJONG: Your Honor, I'm going to object to that.
19 He said it seemed to me like she was "acting."

20 THE COURT: Right.

21 MR. DEJONG: That's speculation, not an observation.

22 THE COURT: Right. And I'll sustain. I think he
23 needs to stick with what he observed.

24 BY MS. HINTON:

25 Q Aside from her being erratic, did you observe any

1 other behaviors?

2 A No. She was just very emotional.

3 Q Did her emotions seem in line with what had happened?

4 A Yes, I think so.

5 Q During the reenactment, what did you observe -- did
6 anything strike you as odd during the reenactment that she
7 said?

8 A Just when giving the timeline, the time between when
9 the child was found to not be breathing and calling 911.

10 Q Okay. Anything else?

11 A No, ma'am.

12 Q Did you have occasion to talk to Robby Brewer on that
13 evening?

14 A I talked to him very briefly.

15 Q And was that on October the 17th of 2014?

16 A Yes, ma'am.

17 Q And was that at [REDACTED]?

18 A Yes, ma'am.

19 Q And did he tell you anything about Angela?

20 MR. DEJONG: Objection, Your Honor. She's calling
21 for hearsay.

22 MS. HINTON: No, Your Honor.

23 This is impeachment. We had him up on the stand
24 earlier. He previously denied this statement, so this is
25 for the purpose of --

1 THE COURT: All right. I'll allow it.

2 MR. DEJONG: Okay. Withdrawn.

3 BY MS. HINTON:

4 Q Did he tell you anything about Angela giving him any
5 of her medication?

6 A Yes. He did tell me that he worked under houses a
7 lot, and he would take a quarter of a -- one of her pain
8 pills for his back.

9 Q Did he say he did that one time, or sometimes, or
10 more than one time? Do you recall?

11 A He didn't specify how often.

12 Q Did you enter that into a report?

13 A I did go back and do a -- we call it a dictation.
14 That is in the dictation.

15 Q But that was memorialized in writing back in 2014?

16 A Yes, ma'am.

17 MS. HINTON: That's all I have. Please answer any
18 questions Mr. DeJong may have.

19 THE COURT: Cross-examination.

20 MR. DEJONG: Thank you, Your Honor.

21 CROSS-EXAMINATION

22 BY MR. DEJONG:

23 Q First, you went to the hospital; is that correct?

24 A Yes, sir.

25 Q How long did you stay at the hospital?

1 A Two, two and a half hours.

2 Q Okay. And Ms. Brewer was distraught at the hospital,
3 wasn't she?

4 A She sure was.

5 Q Maybe using the word distraught is a bit of an
6 understatement. Would you agree with that?

7 A Yes.

8 Q Okay. And so you were at the hospital for two and a
9 half hours. Did you talk to Ms. Brewer while you were at
10 the hospital?

11 A I was not allowed to.

12 Q Pardon me?

13 A I wasn't allowed to.

14 Q Okay. Now, so then you go to the home at Swiss
15 Entrance. What time did you get there?

16 A 11:00, 11:30.

17 Q In the nighttime?

18 A Yes, sir.

19 Q So we've been through a relatively long day as far as
20 Ms. Brewer and Robby Brewer are concerned?

21 A Absolutely.

22 Q Not only a long day in terms of hours, but a long day
23 in terms of traumatic experience; right?

24 A Yes, sir.

25 Q So you say that what you found odd was the difference

1 between when the child quit breathing and the 911 call.

2 Do you know what time the 911 call went out?

3 A I'm not sure what time the call went out. But I did
4 note that EMS responded at 5:30.

5 Q Well, when you were there for the reenactment, did
6 Ms. Brewer ever tell you what time the child quit
7 breathing?

8 A She told me at 4:30 that she noticed that he had been
9 asleep pretty much all day. So she called Mr. Brewer and
10 they talked through it.

11 Q All right.

12 A So I -- around 4:30 is when she noted that he was no
13 longer breathing.

14 Q But just so I'm clear. At 4:30, she said the child
15 had been asleep a long time; right?

16 A Yes.

17 Q She didn't say the child wasn't breathing, did she?

18 A Around the same time, she told Mr. Brewer that she
19 picked him up and touched his face and he was cold, around
20 that same time.

21 Q Well, you said Ms. Brewer's behavior was a little
22 erratic that night. What do you mean by that?

23 A Just very up and down.

24 Q Okay. And, pretty much, any time the child's death
25 was mentioned, she was very emotional, wasn't she?

1 A Yes.

2 Q All right. And, of course, she was -- well, let me
3 ask you this. When you were there, I guess, Agent Cauthen
4 was there. Was there -- I guess, the deputy coroner was
5 there; is that correct?

6 A Yes, sir.

7 Q Was there any other law enforcement there?

8 A There were many law enforcement there.

9 Q Okay. All in the house?

10 A As far as I know.

11 Q Well, was -- from your observation, was Ms. Brewer
12 cooperative with everyone?

13 A Oh, very cooperative.

14 Q Okay. And you shared with me -- well, you didn't
15 share with me. You shared with the Solicitor that Robby
16 said he -- I'm not exactly sure what your words were, so
17 let me back up. Did he say on October the 17th of 2014,
18 he had taken a fourth of a Lortab?

19 A I was made aware at the hospital by an agency -- I'm
20 not sure who -- that Ms. Brewer took pain medication.
21 So as part of my investigation, I just asked about drug
22 use.

23 And he said, at that point, that he took a quarter of
24 a pill because he -- because of his job, essentially.
25 Now, he didn't say how often, when, how, where. But he

1 did say that.

2 Q Did he say Lortab?

3 A He said -- I think pain pill was how he phrased it.

4 Q Well, did he tell you he took any OxyContin?

5 A No, sir. But she showed me a prescription of
6 Oxycodone. And that would be a pain pill.

7 Q Well, of course. So is Lortab, isn't it?

8 A Yes. But that wasn't presented to me at the house.

9 Q Pardon me?

10 A That wasn't presented to me at the house.

11 Q I'm sorry. I still didn't hear you.

12 A That wasn't presented to me as a medication at the
13 house.

14 Q Well, when you were there, did you have a
15 conversation -- "there" being Swiss Entrance, did you have
16 a conversation with Ms. Brewer about her pills?

17 A Yes, sir.

18 Q Did you do a pill count?

19 A No, I did not.

20 Q Did anybody do a pill count that night, as you
21 recall?

22 A Not that I'm aware of, but I don't know for sure.

23 Q Well, in light of Mr. Brewer's statement to you,
24 whatever he said he had done a quarter of, don't you think
25 a pill count would have been important at that point, in

1 time?

2 A Sure.

3 Q And you didn't do it?

4 A No. But, at that point, I wasn't -- at that point, I
5 had no reason to suspect it -- that drug use might have
6 contributed to the child being deceased.

7 Q Well, I understand. Well, you, certainly, thought
8 something when Robby Brewer told you he had done a quarter
9 of something, or another; right?

10 A And I sent him for a drug test to show that --

11 Q You didn't do the drug test, though, did you?

12 A Yes, I did.

13 Q You did?

14 A Uh-huh.

15 Q What did it show?

16 A I think it was --

17 Q Pardon me?

18 A I didn't in the house -- actually, Ms. --

19 MS. HINTON: Judge, I'm going to object to this,
20 based on one of our prior conversations.

21 MR. DEJONG: I'm sorry.

22 MS. HINTON: No, that's fine. We need to have a
23 sidebar.

24 THE COURT: Let's -- do we need to send the jury out?

25 MS. HINTON: Sure.

1 THE COURT: Okay. I'm going to send y'all out.
2 Don't discuss the case. And we'll bring you right back
3 out in a few minutes.

4 (WHEREUPON, the jury was excused from open court at
5 approximately 9:39 a.m.)

6 THE COURT: All right.

7 MS. HINTON: Your Honor, I believe that Mr. DeJong
8 was about to elicit testimony regarding urine drug screens
9 that were sent to Quest Diagnostics for analysis. Those
10 drug screens were negative. However, as you've heard in
11 testimony, blood was drawn from Mr. and Mrs. Brewer on the
12 night of the incident. Those were sent to NMS for testing
13 and they were positive, both of them.

14 So I think it is misleading to the jury -- well,
15 first of all, it's hearsay.

16 But if you are going to allow him to get into the
17 fact that they had negative urine drug screens, then I
18 think the State is entitled to get into with the
19 pathologist that they had positive blood draws. It's the
20 same confrontation clause argument. It's the same hearsay
21 argument. It's no different.

22 In fact -- and no disrespect to Mr. Nichols, but he
23 is much less qualified to interpret drug results than
24 Dr. Fulcher is.

25 THE COURT: So this is a urine test? Is that what he

1 had?

2 MS. HINTON: Yes, Your Honor.

3 MR. DEJONG: Well, Your Honor, I understand her
4 argument on hearsay. But that has a very familiar ring to
5 it. And I don't know that I'm going to go any further
6 with that other than, perhaps, the urine test. But aside
7 from that, what's good for the goose is good for the
8 gander.

9 If Dr. Fulcher is going to be able to get into these
10 lab reports -- I'm not saying I want to. But if I did,
11 then I think I'm entitled to do it.

12 MS. HINTON: And that's fine, Your Honor. I just
13 wanted to be clear --

14 THE COURT: I think you -- basically, what I'm
15 hearing, you know, if you go along those lines, then you
16 open the door for a response from Dr. Fulcher as to his
17 test. So that's fine.

18 MR. DEJONG: But it's still hearsay, Your Honor.

19 Okay. I'm not going any further with that. But I
20 don't think any testing he did would open the door to
21 anything. And I don't know that he personally did it or
22 not. I can ask that question, and I'll be bound by his
23 answer. If he did it, then I can move forward. If he
24 didn't do it, then I'm done with it. Let me just ask him
25 in camera, Your Honor, if you don't mind.

CROSS-EXAMINATION

BY MR. DEJONG:

Q Did you personally do the drug test?

A No, sir.

Q It was sent off?

A Yes, sir.

MR. DEJONG: Okay. I'm done with it.

THE COURT: All right. If the jury is ready, bring them back.

(WHEREUPON, the jury came into open court at approximately 9:45 a.m.)

THE COURT: All right. You may proceed.

MR. DEJONG: Thank you, Your Honor.

CONTINUED CROSS-EXAMINATION

BY MR. DEJONG:

Q Your job and DSS's job, if you will, is to protect children; correct?

A Yes, sir.

Q It is not criminal -- you're not involved as such in the criminal investigation, are you?

A No, sir.

Q But you were there and a case was opened; correct?

A That's correct.

Q Was that case later unfounded?

A It was because she was determined to be -- not to be

1 in loco parentis.

2 MR. DEJONG: Very good.

3 Thank you, Mr. Nichols.

4 THE COURT: Any redirect?

5 MS. HINTON: Yes, Your Honor.

6 REDIRECT EXAMINATION

7 BY MS. HINTON:

8 Q What does "in loco parentis" mean?

9 A Basically, she was not the caretaker of the children.
10 She was just, essentially, being grandma, babysitting for
11 the day.

12 Q So does being unfounded have anything to do with the
13 actual factual allegations or merits of the case in this
14 particular case?

15 A No, it does not.

16 Q And, in fact, did you return the children to Callen
17 Harrison and Michael Lusk?

18 A Yes. Once they obtained suitable housing, we
19 returned the kids to Mr. Lusk and Ms. Harrison.

20 Q And do you recall how long that was?

21 A Can I check my notes?

22 Q Sure.

23 A It was about a month later.

24 Q Okay. And did you found [phonetic] the case against
25 them either?

1 A No, we did not.

2 Q And they are the parents?

3 A They were in Georgia for the day, so.

4 MS. HINTON: That's all I have.

5 Thank you.

6 THE COURT: All right. Thank you.

7 You may step down.

8 MS. HINTON: May he be excused, Your Honor?

9 MR. DEJONG: No objection, Your Honor.

10 THE COURT: Yes.

11 All right. Next witness.

12 MS. HINTON: Thank you, Your Honor.

13 The State would call J.T. Albrecht.

14 THE CLERK: Place your left hand on the Bible and
15 raise your right hand.

16 WHEREUPON,

17 J.T. ALBRECHT,

18 after first having been duly sworn, testified as follows:

19 THE CLERK: Have a seat.

20 And state your name for the record, please.

21 THE WITNESS: Good morning, ladies and gentlemen.

22 Deputy J.T. Albrecht, Pickens County Sheriff's Office.

23 DIRECT EXAMINATION

24 BY MS. HINTON:

25 Q Deputy Albrecht, how long have you been with the

1 sheriff's office?

2 A Since 2001.

3 Q And prior to that, were you in law enforcement?

4 A Yes, ma'am.

5 Q How long have you been -- well, what division are you
6 currently in?

7 A I'm in the forensics.

8 Q And how long have you been in forensics?

9 A Since 2006.

10 Q Were you working a scene at [REDACTED] in
11 Pickens County on October the 17th of 2014?

12 A Yes, ma'am.

13 Q Did you, actually, go out to that location?

14 A I did.

15 Q And do you recall at whose request you went out
16 there?

17 A I was contacted through our communications system
18 about an infant death and responded.

19 Q Okay --

20 MR. DEJONG: I'm sorry to interrupt, Your Honor.
21 Could we get him a little closer to the microphone,
22 please?

23 THE COURT: Get -- get a little closer to the mic,
24 please.

25 MS. HINTON: Thank you

1 BY MS. HINTON:

2 Q When you responded to the house, other than the fact
3 that a child is deceased, did you know any other specifics
4 regarding the case?

5 A No, ma'am.

6 Q Did you take any photographs?

7 A Yes, ma'am, I did.

8 Q I'm going to show you State's Exhibit Nos. 2 through
9 15. Will you just look at those?

10 A (Witness complied.)

11 Q Do those look familiar?

12 A Yes, ma'am. I took them.

13 Q And did you take them on the night of October the
14 17th, 2014?

15 A I did.

16 Q Other than the photographs that you took, what else
17 did you take into evidence from that residence?

18 A I took an empty bottle from the kitchen, some formula
19 from the kitchen. I took the bedding from the crib that
20 the child had been in --

21 Q Speak up just a little bit more for me.

22 A I'm sorry.

23 Q That's okay.

24 A I took the bedding from the crib that the child had
25 been in. I took a can of formula and an empty bottle from

1 the kitchen.

2 Q And when you say "bottle," are we talking about --

3 A Like a baby bottle.

4 Q Okay.

5 A I took two drink cups that were located either in the
6 Pack 'n Play that the child had been in or directly beside
7 the Pack 'n Play. That's what I took from the house.

8 Q Okay --

9 THE COURT: Any objection to these?

10 MR. DEJONG: I think they've already been introduced.

11 MS. HINTON: They're in evidence.

12 THE COURT: Oh, okay. They are in evidence.

13 MR. DEJONG: Which I believe one of them was over my
14 objection, Your Honor.

15 THE COURT: That's correct.

16 BY MS. HINTON:

17 Q So just to be clear, State's Exhibit No. 9 -- and let
18 me zoom in. What is that a photograph of?

19 A That's the kitchen bottle, the empty bottle that I
20 was talking about.

21 Q Okay. And what's beside it?

22 A Formula.

23 Q Are those the two things you're referring to that you
24 took into evidence?

25 A Yes.

1 Q And then State's Exhibit No. 12, did you take that
2 into evidence?

3 A I did. That's the drink cup that was beside the Pack
4 'n Play that the child had been in.

5 Q Okay. Did that have a liquid in it?

6 A It did.

7 Q I'm sorry?

8 A It did.

9 Q Okay. And then State's Exhibit No. 8, did you take
10 that sippy cup?

11 A I did. That's the cup that was inside the Pack 'n
12 Play with the child.

13 Q And did that have a liquid in it?

14 A It did.

15 Q And what color was the liquid in that container?

16 A (There was no response.)

17 Q You can refer to your notes, if you need to.

18 A Yeah. I think it was --

19 Q If you have it documented.

20 A I don't have the colors documented.

21 Q Okay. Well, let me ask you this. How did you
22 document what liquid was in each cup?

23 A In my notes on the evidence sheet, I -- is delineated
24 whether it was from the sink or beside -- I'm sorry, the
25 sink, the crib, or beside the bed.

1 Q Okay. So, I guess, is it fair to say that you did
2 delineate which liquid was what, but just didn't document
3 what color?

4 A Yes.

5 Q When you get that liquid from those sippy cups, do
6 you keep it?

7 A Yes, ma'am. When I was done collecting what I
8 collected from the residence, then I went to the hospital.
9 When I was done at the hospital, I went back to the
10 Sheriff's Office and put everything that I had collected
11 from both the house and the hospital straight into
12 evidence.

13 Q Okay. And did that include the liquids from the
14 cups?

15 A Yes, ma'am.

16 Q In its entirety?

17 A Yes, ma'am.

18 Q Tell me, when you go to transfer liquid from a cup to
19 something that you can submit into evidence, where do you
20 do that?

21 A At the sheriff's office lab.

22 Q Is that a confined area?

23 A Yes, ma'am. It's a confined restricted area.

24 Q Okay. And do y'all handle any Oxycodone in that
25 area?

1 A No, ma'am.

2 Q Do y'all handle any methamphetamine in that area?

3 A No, ma'am.

4 Q 'And I'm going to show you what's been marked as
5 State's Exhibit No. 19. What is that?

6 A It's the cup from beside the crib.

7 Q Okay. And State's Exhibit No. 22, what is that?

8 A It's the cup from inside the crib.

9 Q From inside. And then what does State's Exhibit
10 No. 20 have?

11 A State's Exhibit No. 20 has the formula and the
12 contents of the two previously mentioned cups.

13 Q Now, whose packaging is State's Exhibit No. 20 in?

14 A It's in SLED's.

15 Q Okay. So have you opened it since it's return from
16 SLED?

17 A No, ma'am.

18 Q Is it in the same condition as they sent it back?

19 A Yes.

20 Q State's Exhibit Nos. 19 and 22, was that in SLED
21 packaging previously?

22 A Was this ever in SLED packaging?

23 Q Well, was it sent down to SLED?

24 A No, ma'am, it was not.

25 Q Has that been in your custody and control?

1 A It has.

2 Q And did you package it for court today?

3 A I did.

4 Q Other than changing the packaging for the ease of
5 court, have you changed the packaging at all?

6 A No, ma'am.

7 Q Is it sealed?

8 A It is.

9 Q And how can you tell that you've sealed it?

10 A My initials are on top of the evidence tape on that
11 bag, as well as this bag. And the evidence tape is not
12 broken.

13 MS. HINTON: Your Honor, at this time, the State
14 would move State's Exhibit Nos. 19 and 22 into evidence.

15 MR. DEJONG: Without objection, Your Honor.

16 THE COURT: All right. That was what exhibits?

17 MS. HINTON: State's Exhibit Nos. 19 and 22.

18 THE COURT: All right.

19 (WHEREUPON, State's Exhibit Nos. 19 and 22 were
20 admitted into evidence.)

21 BY MS. HINTON:

22 Q Once State's Exhibit 20 is sent down for testing, do
23 you go and pick it up?

24 A Yes, ma'am.

25 Q Other than picking it up, have you altered it at all?

1 A No, ma'am.

2 Q And, to be clear, have you opened the packaging at
3 all?

4 A I have not.

5 Q You said you went to the hospital. What did you go
6 to the hospital for?

7 A To photograph the infant, and to collect anything of
8 evidentiary value there.

9 Q And did you gather anything at the hospital -- well,
10 let me ask -- when you got to the house -- and I think you
11 photographed this, but these sippy cups were -- aside from
12 the one on the kitchen counter that was empty, were the
13 ones with liquid in it closed?

14 A Yes.

15 Q Did you move them at all before you photographed
16 them?

17 A No, ma'am.

18 Q There was what appeared to be vomit on the floor and
19 the couch. Do you recall that?

20 A Yes, ma'am.

21 Q Did you take that into evidence?

22 A No, ma'am. I did photograph it, but I did not
23 collect it.

24 Q Okay. And why is that?

25 A It didn't appear to be pertinent. I was not aware of

1 the exact nature of the infant death. I did not collect
2 it.

3 Q Were you even aware, at that time, of the source of
4 the vomit?

5 A I was not.

6 MS. HINTON: Deputy Albrecht, that's all I have.
7 Please answer any questions Mr. DeJong may have.

8 THE COURT: Cross-examination.

9 MR. DEJONG: Thank you, Your Honor.

10 May it please the Court.

11 CROSS-EXAMINATION

12 BY MR. DEJONG:

13 Q I guess the term is still Deputy Albrecht; is that
14 correct?

15 A Yes, sir.

16 Q And you work now in where?

17 A Forensics.

18 Q Forensics. Okay. And, basically -- well, I don't
19 want to say that right now. But you did go to Swiss
20 Entrance on October the 17th of 2014?

21 A Yes, sir.

22 Q Do you recall what time of the day you got there?

23 A Immediately, no, I don't.

24 Q Well, when you got there, was anybody else there?

25 A No. When I first arrived, no, there was nobody else

1 there.

2 Q Did you go in the house at that point in time?

3 A I did not.

4 Q Okay. Well, who, ultimately, showed up?

5 A Detective Hendricks and, I believe, Detective
6 McKenzie.

7 Q Once Detective Hendricks went in, did you go in with
8 him?

9 A I did.

10 Q Now, from what you could tell, had anything been
11 disturbed in that house -- that's not a good question.

12 Had any -- other than, perhaps, the vomit on the
13 floor, did you see or find anything out of the ordinary?

14 A No, sir.

15 Q Okay. Now, were you, actually, involved in the
16 search?

17 A The search?

18 Q Yes. They searched the house, according to, I think,
19 Mr. Hendricks.

20 A No. I don't believe so, no.

21 Q Okay. So you were, basically, there to take
22 photographs and you, also, participated in the collection
23 of evidence, as I understand it; correct?

24 A That's correct.

25 Q And did you notice, Deputy Albrecht, a QT cup with a

1 straw in it that was -- I don't know if we call it a sofa,
2 but it was like a sofa, a chair and a sofa? Do you
3 recall?

4 A Sectional.

5 Q Pardon me?

6 A A sectional sofa.

7 Q All right. Did you notice a sectional?

8 A Yes. I believe it's in the photographs.

9 Q Okay. Well, did you notice that QT cup?

10 A I believe it's in the photographs as well.

11 Q Did you take it into evidence?

12 A No, I did not.

13 Q You never tested it?

14 A No, I did not.

15 Q Okay. So you take into evidence -- well, I gather,
16 you take it into evidence. I don't know if I'm right on
17 that or not. You took the Pack 'n Play bedding?

18 A That's correct.

19 Q Did you see -- or were you aware that there was more
20 than one Pack 'n Play in that residence?

21 A I took the one that I believed the child had been in.

22 Q Okay. But were you aware that there was another Pack
23 'n Play?

24 A No.

25 Q Pardon me?

1 A No.

2 Q All right. Now, the -- State's Exhibit No. 29 and
3 State's Exhibit No. 19 -- State's Exhibit Nos. 22 and 19,
4 now, these are the two sippy cups. One was in the Pack 'n
5 Play, and one was beside the Pack 'n Play?

6 A That's correct.

7 Q Do you recall which was which?

8 A It's marked on the bags.

9 This one was inside the crib, and this one was beside
10 the crib.

11 Q So State's Exhibit No. 22, the yellow-looking cup --

12 A Was in the Pack 'n Play.

13 Q What?

14 A I wrote "crib," but it's Pack 'n Play.

15 Q Okay. And this one was beside it?

16 A Yes.

17 Q Now, as far as how the contents got in there, you
18 don't know, do you?

19 A No, sir.

20 Q And you don't know how long they had been there, do
21 you?

22 A No, sir.

23 Q So you take these two sippy cups. I don't see --
24 maybe I'm missing something here. You took another cup
25 off of the kitchen counter -- or did you?

1 A I did.

2 Q You, actually, took that into evidence; correct?

3 A I did.

4 Q And was there any liquid in that?

5 A None.

6 Q And you took the formula, I guess, for want of a
7 better term?

8 A Yes.

9 Q Now, when you take this into evidence, does it stay
10 with you at that point in time?

11 A I physically have custody of it either on my person,
12 or it's locked in my secured vehicle until I deliver it to
13 the sheriff's office and place it into the secured
14 evidence room, yes.

15 Q Well, here's where I'm not quite clear. State's
16 Exhibit Nos. 22 and 19, the two sippy cups, one outside
17 the Pack 'n Play, one inside the Pack 'n Play. Were they
18 ever sent for testing?

19 A The cups were not.

20 Q Okay. So when you get back to the law enforcement
21 center after you take this into evidence, you, actually,
22 poured liquid into, for want of a better term, two vials;
23 is that correct?

24 A Yes, sir.

25 Q And they've been marked -- they're in a bag, which

1 has been marked as State's Exhibit No. 20. So how did you
2 get the liquid from what you say was in the sippy cup into
3 those vials?

4 A I opened up the sippy cups and poured it in the vial.

5 Q Did you use a funnel, or do you just have a steady
6 hand?

7 A No, sir. I did not use a funnel.

8 Q So you have a steady hand; right?

9 A Steady enough.

10 Q Did you happen to spill any?

11 A Not that I recall.

12 Q Okay. Now, after you did that, did you wash these
13 cups?

14 A No, sir.

15 Q Did you do anything else to them?

16 A No, sir.

17 Q Now, it's kind of hard to see through the plastic,
18 but I'm going to ask you to look at State's Exhibit No.
19 22. I believe that was the one that was found in the Pack
20 'n Play; right?

21 A It is.

22 Q Would you agree with me there's no residue in that
23 cup?

24 A There's none that I can see.

25 Q No particles, no particulates, nothing. Would you

1 agree?

2 A None that I can see. I would.

3 Q All right. And then let me show you what's been
4 marked as State's Exhibit No. 19. And, again, you did not
5 wash these cups; right?

6 A I didn't.

7 Q Do you see any residue of any kind in that cup?

8 A In the lid.

9 Q Pardon me?

10 A In the lid. Not in the cup, in the lid.

11 Q Right. Now, this one was beside the Pack 'n Play?

12 A That's right.

13 Q Well, let's go back to this one since you say there
14 was some in the lid. Do you see any residue in the lid on
15 that one? And I know it's difficult to see. We'll do the
16 best we can.

17 A No, sir.

18 Q And I believe Madam Solicitor asked you about -- my
19 train derailed there. Well, let's go -- let me ask you
20 this. You took several things into evidence?

21 A Yes, sir.

22 Q And, at one point in time, you did an updated
23 property report. Did you do that updated property report?

24 A Yes, sir. This is all my handwriting.

25 Q And you have a copy of it?

1 A Yes, sir.

2 Q Okay. Good. So, now, when it comes time for stuff
3 to go to SLED -- and let's just talk about when it comes
4 time for stuff to go to SLED. Who makes a determination
5 of what goes to SLED and what doesn't go to SLED?

6 A I believe that pretty much what was sent to SLED was
7 sent at the request of the detectives and/or --

8 Q I'm sorry. I'm having a hard time hearing you.

9 A I said what was sent to SLED was sent at the request
10 of the detectives working the case, or it's protocol just
11 because we have an infant death.

12 Q So you're not involved in that determination?

13 A No, sir.

14 Q Did you, actually, take the items to SLED?

15 A I did in November of 2014.

16 Q And does that indicate what you took to SLED?

17 A It does. I took the formula, the sink cup -- empty
18 sink cup, the contents from the bottle from the crib, and
19 the contents from the bottle beside the crib.

20 Q Let me ask you this. Let's go back to State's
21 Exhibit No. 20. And, again, it's hard to see. I'm not
22 going to ask you to open the packages. And the vial that
23 has a yellowish-brownish liquid in there, do you see any
24 kind of particulates in there the best you can see through
25 that plastic bag?

1 A Not that I can see.

2 Q All right. Well, how about in the vial that has the
3 reddish fluid in it? Do you see any particulates in
4 there?

5 A Not that I can see.

6 Q All right. Very well. So what you took to SLED was
7 State's Exhibit No. 19, that sippy cup?

8 A No, sir. That didn't go to SLED. The contents of
9 that cup went to SLED.

10 Q Okay. So the sippy cup did not go. We're in
11 agreement on that.

12 State's Exhibit No. 22?

13 A Did not go to SLED.

14 Q Did not go to SLED for testing. Just the vial that
15 you -- the liquid you poured into the vial?

16 A Correct.

17 Q And then -- well, these are the two vials?

18 A That's correct.

19 Q And this Gerber formula can?

20 A That's correct.

21 Q And all that went to SLED, to your knowledge?

22 A Correct.

23 Q That's what you delivered?

24 A Correct.

25 Q Did you pick it back up?

1 A No, sir. It was picked back up September of 2015 by
2 Lieutenant Robinson.

3 Q When?

4 A September 22nd, 2015.

5 Q Okay. Almost a year later?

6 A Yes, sir.

7 Q Okay. But, to your knowledge, the -- the bedding
8 that you collected from the Pack 'n Play, that never went
9 to SLED?

10 A No, sir, it didn't.

11 Q And the soiled diapers never went to SLED?

12 A No, sir.

13 Q When you say "soiled" -- well, I guess it was one
14 soiled diaper; right?

15 A Excuse me. Yes, sir.

16 Q The infant's clothes didn't go to SLED?

17 A No, sir.

18 Q And those were gathered, I gather -- were they
19 gathered at the home or the hospital?

20 A No, sir. The diaper and clothes came from the
21 hospital.

22 Q Okay. The sample from number three -- are you with
23 me? I'll give you a moment to take a look at it. I
24 believe that's item number seven on your property and
25 evidence report.

1 A Yeah. Those are the -- 7A and 7B are the contents of
2 the bottles.

3 Q I'm sorry?

4 A On the property and evidence sheet, 7A and 7B at the
5 very bottom.

6 Do you have this?

7 Q Nope. You're going to have to point that out for me.

8 A Here you go. 7A and 7B on the evidence sheet.

9 Q Okay.

10 A That's the contents of the two drink bottles.

11 Q Okay. So on item number seven, we then have to go to
12 7A and 7B; correct?

13 A No, sir. You asked about item number three.

14 Q No, no --

15 A Three relates to 7A and 7B.

16 Q Okay. That's what I'm trying to clarify in my mind.

17 A Yes, sir.

18 Q You can't just say item three, then you have to go
19 down and look at 7A and 7B; correct?

20 A Correct.

21 Q That was sent. Okay. I think we've got that. You
22 did observe the vomitus on the sofa and on the carpet, I
23 gather; right?

24 A Yes, sir.

25 Q So you took a soiled diaper into evidence, but you

1 did not attempt to collect any of the vomitus?

2 A That's correct.

3 MR. DEJONG: One moment, please, Your Honor.

4 (Pause.)

5 BY MR. DEJONG:

6 Q Aside from the liquid that was in either State's
7 Exhibit Nos. 19s or 22, one in the Pack 'n Play and one
8 outside the Pack 'n Play, when you took the lids off of
9 those, did you find anything else other than liquid?

10 A No, sir.

11 Q Did you find any lemon rinds, or anything like that?

12 A No, sir.

13 Q Did you check the cups for their functionality at all?

14 A I did not.

15 Q So I realize they're sippy cups. I don't know -- do
16 you know how they work? Because if you don't, I'm not
17 going any further.

18 A No.

19 MR. DEJONG: Okay. I don't either.

20 Thank you, Deputy Albrecht.

21 THE COURT: Any redirect?

22 MS. HINTON: Briefly, Your Honor.

23 REDIRECT EXAMINATION

24 BY MS. HINTON:

25 Q Deputy Albrecht, the photographs that you took of the

1 Pack 'n Play, where was that Pack 'n Play located?

2 A It was in the residence at Swiss Entrance.

3 Q Do you know what room?

4 A That's the living room.

5 Q Okay. And you collected the bedding. If there had
6 been any pills or narcotics in that bedding, would you
7 have noticed that when you collected it?

8 A Yes, ma'am.

9 Q And would you have noted that and taken that?

10 A That's correct, yes.

11 Q You said that these items were sent to SLED in
12 November. When were they sent? What exact date in
13 November?

14 A I delivered them to SLED on November 12th, 2014.

15 Q And where is SLED located?

16 A In Columbia.

17 Q And then the vomit that we discussed, did you clean
18 that up at all?

19 A I did not.

20 Q And then Mr. DeJong asked you about residue left in
21 State's Exhibit Nos. 22 and 19. And I think you said
22 there was residue in the lid of State's Exhibit No. 19.
23 Is that what you said?

24 A Yes.

25 Q Okay. And then you said you couldn't tell whether

1 there was residue or -- I'm not sure, actually, what your
2 answer was. But the residue wasn't easy to see, if at
3 all, in State's Exhibit No. 22; is that fair?

4 A That's fair.

5 Q Okay. What color are these two liquids?

6 A Orange and red.

7 Q Okay. The red liquid, did you note on your report
8 where the red liquid came from?

9 A Yeah. I, also, marked it on the bottles so that it
10 would state that -- remain consistent. This, the red
11 liquid came from inside the bottle inside the Pack 'n
12 Play.

13 Q Okay. So is that State's Exhibit No. 22?

14 A Yes.

15 Q What color is this lid?

16 A It's red.

17 Q And so is that the same color as the liquid?

18 A It is.

19 Q And then the other -- I think you described it as
20 brown?

21 A Brownish-orange.

22 Q Orange. Okay. Where was that liquid from?

23 A That is from the cup that was beside the Pack 'n
24 Play.

25 MS. HINTON: That's all I have, Deputy.

1 Thank you.

2 THE COURT: All right. Thank you.

3 You may step down.

4 MS. HINTON: May he be excused?

5 MR. DEJONG: No objection to him being excused, Your
6 Honor.

7 THE COURT: Okay. Next witness.

8 MS. HINTON: The State would call Agent Tim Grambow.

9 THE CLERK: Place your left hand on the Bible and
10 raise your right hand, please.

11 WHEREUPON,

12 TIMOTHY GRAMBOW,
13 after first having been duly sworn, testified as follows:

14 THE CLERK: Have a seat.

15 And state your name for the record, please.

16 THE WITNESS: My name is Timothy Grambow,
17 G-R-A-M-B-O-W.

18 DIRECT EXAMINATION

19 BY MS. HINTON:

20 Q Agent Grambow, where are you employed?

21 A I work in the toxicology department at the State Law
22 Enforcement Division.

23 Q Is that, also, known as SLED?

24 A Yes, ma'am.

25 Q Are you a separate unit from the agents who go out

1 and investigate cases?

2 A The forensics departments are located separately
3 than, say, the -- excuse me, the investigation field
4 offices. And, of course, we're located at our
5 headquarters building in Columbia. But forensics does
6 operate separately than some of the other investigations.

7 I mean, but, you know, the State police we, also,
8 have SWAT teams, and tracking teams, and so on. There's
9 just different groups of people doing different types of
10 police work.

11 Q And what's your educational background?

12 A I have a Bachelor of Science Degree in Chemistry from
13 Wake Forest University in North Carolina. And from there,
14 I began pretty much working at SLED and underwent their
15 intensive toxicology training, and DNA analysis, and
16 interpretation of drugs and poisons.

17 After being certified by them, I've, also, undergone
18 numerous courses and classes through different groups,
19 such as [inaudible], Indiana University, and, you know,
20 other professional organizations, such as the Society of
21 Forensic Toxicologists. I'm a full member of the Society
22 of Forensic Toxicologists, which is the premier forensic
23 toxicology organization in the U.S.

24 I'm, also, a member of the Palmetto Association of
25 Toxicologists, which is a more regional-based

1 organization. In fact, I'm the secretary of that
2 organization. I am nationally board certified as a
3 forensic toxicologist in the analysis and interpretation
4 of drugs and poisons.

5 Q Are you published?

6 A I have presented at different professional meetings
7 and published some smaller publications through the
8 Society of Forensic Toxicologists.

9 Q And you may have said this and I missed it. But how
10 long have you been a board certified toxicologist?

11 A I've worked in the field for almost 17 years. It
12 will be 17 years in February. And I have been board
13 certified -- I want to say -- many years. I'm not exactly
14 sure. I was, originally, certified through the Forensic
15 Toxicology Certification Board, and then that was merged
16 with the American Board of Forensic Toxicologists. So I
17 am a fellow, which is the highest certification through
18 the American Board of Forensic Toxicologist.

19 MS. HINTON: Okay. Your Honor, at this time, we
20 would move Agent Grambow as an expert in forensic
21 toxicology.

22 THE COURT: Any objection?

23 MR. DEJONG: No voir dire, Your Honor.

24 THE COURT: Any objection?

25 MR. DEJONG: No, Your Honor.

1 THE COURT: All right. Ladies and gentlemen, as I
2 previously told you, when someone is qualified as an
3 expert, then they can testify to more than just what a
4 layperson can. They can testify about opinions and
5 conclusions based on their field of expertise. And in
6 this field -- this -- Agent Grambow had been qualified in
7 the field of forensic toxicology.

8 Now, you are to give that testimony and his opinion
9 the weight which you deem is appropriate.

10 Thank you.

11 All right. You may proceed.

12 MS. HINTON: Thank you, Your Honor.

13 BY MS. HINTON:

14 Q Agent Grambow, have we paid you to be here today?

15 A No, ma'am.

16 Q Are you here subject to my subpoena?

17 A Yes.

18 Q What is forensic toxicology?

19 A Forensic toxicology is the analysis of drugs and
20 poisons that you find in biological samples and the
21 interpretation of such. So we analyze biological samples,
22 whether they may be blood, urine, ocular fluid, tissue
23 samples, and anything related to such. And we analyze
24 them for the presence or absence of drugs or poisons. And
25 we do these for law enforcement cases, whether they be DUI

1 cases, criminal sexual conduct cases, death investigation
2 cases.

3 And we, typically, are doing analysis for different
4 law enforcement agencies, and the coroners, and
5 pathologists in the state. We analyze these samples and
6 then we provide the interpretation of our findings for the
7 different agencies who submitted the samples and then for
8 courts of law.

9 Q And, just to be clear, you don't just test for SLED;
10 correct?

11 A (There was no response.)

12 Q I mean, it doesn't just have to be a SLED case where
13 you're allowed to test it?

14 A Correct. Well, because SLED is an assisting agency
15 by definition, we are there to assist other smaller
16 agencies that don't have the resources to do the types of
17 analysis and investigations.

18 So we are the sole forensic toxicology, full service
19 forensic toxicology lab in the State of South Carolina.
20 So we service every county. And by statute, we are a free
21 service. So almost every county sends some sort of
22 samples to us for analysis. Because, quite frankly, the
23 analysis is quite time consuming and expensive. And it's
24 just not feasible for every law enforcement agency or
25 county to have their own facility to do such analysis.

1 Q And, to be clear, to run your lab isn't free, but you
2 don't charge law enforcement for the testing. Is that a
3 fair statement?

4 A Correct.

5 Q Did you receive items for testing in the case that
6 you've been subpoenaed for?

7 A Yes.

8 Q And do you recall how many items you received?

9 A I believe it was three.

10 Q Okay. And do you recall what those items were?

11 A It was a small can of baby formula -- or residue of
12 baby formula, and two small vials of liquid.

13 Q And I'm going to show you what's been previously
14 marked as State's Exhibit No. 20. Is that what you
15 received in this case?

16 A Yes, ma'am.

17 Q Is it still in the SLED packaging?

18 A Yes. This is the tamper-evidence packaging that we
19 provide for the evidence to be put in so we can help trace
20 who has access to the actual evidence.

21 Q So can you tell whether or not that package has been
22 tampered with at all?

23 A Everything seems to be in the exact condition that
24 was -- as it was processed through our lab. And I can see
25 where I, in fact, cut into the plastic bag in order to do

1 my analysis, and then resealed the bag, and initialed and
2 dated at those times. So that's part of the process, you
3 can help see if anything was tampered with.

4 Q So does it appear that it has been tampered with
5 since it left your lab?

6 A It looks to be in good condition to me.

7 MS. HINTON: Your Honor, at this time, the State
8 would move State's Exhibit No. 20 into evidence.

9 THE COURT: Any objection?

10 MR. DEJONG: Without objection, Your Honor.

11 THE COURT: All right.

12 (WHEREUPON, State's Exhibit No. 20 was admitted into
13 evidence.)

14 BY MS. HINTON:

15 Q Did you test the formula can in this case?

16 A I did not do any physical analysis on it. I did a
17 visual inspection to see if -- what could be analyzed, and
18 if it was in our prerogative worth doing the analysis on.
19 And there was nothing that showed any sort of -- in our
20 opinion, any sort of indication of tampering or
21 non-formula-related materials in there that would require
22 a chemical analysis.

23 Q Okay. So is it safe to say that it looked like
24 formula residue?

25 A In my opinion, yes.

1 Q Did you test two liquids in this case?

2 A I did do a chemical analysis on two different
3 liquids.

4 Q And are these the two liquids that are located in
5 this packing?

6 A Yes.

7 Q And what was the -- let's just -- the first item,
8 item 7A, that you tested, what color was that liquid?

9 A Well, I mean, I can --

10 Q And do you need a copy of your report?

11 A Yes, please.

12 Thank you.

13 Q Sure. So, again, my question, just in case you
14 didn't hear me. 7A, what color was that liquid?

15 A We have it labeled as red liquid.

16 Q Okay. And item 7B, what color is that liquid?

17 A We described it as a yellow-brown liquid.

18 Q Now, let's talk about the testing that you do on
19 these liquids. Is that a nationally recognized test?

20 A Yes. In this case, we did a very standard type of
21 analysis on these samples. We first have to -- we don't
22 really know what's in any sample that we get, whether it
23 be blood, urine, juice, what have you, other than the
24 description we were given when it comes into the lab. So
25 we really don't know what we're looking for.

1 In this case, I performed a solid phase extraction,
2 which is, basically, a chemical process that we use to get
3 any drugs or poisons out of the actual liquid material.
4 Because there's other background stuff that can interfere
5 with the analysis. So we have to try and extract the
6 drugs and poisons out.

7 Once that was performed, I ran the samples on
8 something called a GC Mass Spec, which is the Gas
9 Chromatography Mass Spectrometry, which is the industry
10 standard for analysis of this type.

11 Q Okay. So is this a reliable testing method?

12 A Absolutely.

13 Q Okay. What is the chance of contamination in your
14 lab in testing these samples?

15 A Very, very minimal. We have many, many countless
16 steps in our policies and procedures to prevent any sort
17 of contamination or swabbing of evidence. Because we
18 realize the potential consequences of the results that we
19 publish. So we go -- bend over backwards to limit the
20 possibility of these occurrences.

21 So typical things, when we get a bag of evidence --
22 you know, we get thousands of cases a year. But when we
23 open a bag of evidence in one of these tamper evidence
24 packages, we only open one bag at a time, sample what we
25 need out into the appropriate labeled test tube, reseal it

1 before we open the next one. So that way, you know,
2 containers and things don't get swapped between bags.
3 Everything we do is labeled with a case number.

4 So every case that gets submitted to SLED is given a
5 unique SLED lab identification number. And every piece of
6 evidence gets labeled that as soon as it comes into the
7 lab and is inventoried. The bulk containers are labeled
8 with that lab number, and then each sample taken out is
9 put into a container with those lab numbers. So we can
10 follow that throughout the process whether, you know --
11 just things like that that we do. And we check and
12 double-check positions on the instruments and such just to
13 make sure that there's no possibility of things getting
14 swapped.

15 Also, each report is reviewed in administrative and
16 technical review as well. So there are multiple sets of
17 eyes looking over all the data before a report gets
18 published. So when I look at all my data and everything
19 looks good to me and I publish my results, then
20 somebody -- another senior analyst goes and looks at it
21 and says, yes, everything seems to be in order, everything
22 makes sense from a technical standpoint and administrative
23 standpoint.

24 And then once it's approved, then the report is
25 issued as the final document.

1 Q So when you run these tests through your machine, is
2 it run once or more than once? How is that done?

3 A Well, the way this particular instrument works,
4 there's actually -- it's, essentially, two different types
5 of testing that are coupled together. So in this case,
6 gas chromatography mass spectrometry, the way it works --
7 if you will indulge me here --

8 Q Sure.

9 A This might take a minute. But just so you guys can
10 get an understanding of what I'm talking about -- then I
11 saw all this testing was done and this is what we found.

12 So this testing, what we're going to do -- so when we
13 get the drugs and poisons out of a sample, we concentrate
14 them down and they're put in a very small amount of
15 liquid. Well, the instrument shakes up the vial that has
16 a little bit of liquid and samples of the syringe, a very
17 small amount of liquid. That liquid gets injected into
18 the instrument and is vaporized into a gas. And that is
19 why we call it gas chromatography.

20 Now, once that is in a gas form, it is sucked into a
21 very long glass tube. When I say long, we're talking
22 about a 30-meter column, so, roughly, a hundred feet long.
23 And that glass column has a coating on the inside. And
24 what happens is as that -- everything enters in at the
25 same time. And as it passes along that column, the

1 chemical properties of the different compounds will
2 interact with that coating. And as it passes, things will
3 start to separate out into different times.

4 So the analogy I like to use is if you think about a
5 race car track and different cars, you know. Each race
6 car has slightly different properties, you know, what type
7 of tires they use, whether they're fresh tires, old tires,
8 so on and so forth. And they're going to interact with
9 the actual racetrack.

10 So even though everything starts at the same time as
11 it -- the tires and -- you know, the vehicles go along
12 that racetrack, over the many times it goes around,
13 everything starts to separate out. And so they don't
14 necessarily finish at the same time. So they all finish
15 at a different time. So you can associate, oh, this car
16 finished third at this time. That's how we know what car
17 it is.

18 Same thing with these different compounds and
19 chemicals. As they enter in, as they go along that long
20 pathway, they're going to separate out based on their
21 physical properties. And they're going to exit that
22 column at different times. So we can identify which
23 compound comes out at a specific time.

24 And we run -- we have access -- we have our DEA
25 license. And we have access to hundreds and hundreds of

1 different drugs. We run samples that we know what they
2 are. We run them. So we know exactly what time they come
3 out. So then when we get the different compounds, the
4 unknowns that come out, we can then compare what time they
5 come out, make a comparison, and be able to partially
6 identify what they are based on when they come out.

7 Now, we're not done just on that.

8 So the second half of this test is called mass
9 spectrometry. And this is really kind of neat. Because
10 what it does is as each different compound comes off, it
11 gets a -- what we call a chemical fingerprint of that
12 compound.

13 So it will, actually, as it enters this part of the
14 instrument, it uses high energy and breaks the actual
15 molecules apart. And they break apart based on their
16 chemical properties into the same way every single time.

17 So if we want to continue this car analogy -- so if
18 the cars -- if you can imagine going -- exit the racetrack
19 and they go to the garage. And then if you broke apart
20 the car into tires, fenders, doors, spoilers, what have
21 you, you can look. And if you broke apart that car every
22 time, you would see that, oh, this spoiler goes with the
23 Ferrari, it doesn't go with the Toyota. Or these wheels
24 go with one particular car and not another car, you know.
25 An 18-wheeler has 18 wheels, not four wheels. So if you

1 find all these 18 wheels together, you know they are
2 probably not going to a bicycle; right? You see how that
3 works?

4 So it, basically, does the same thing with these
5 chemicals. As they break apart, they break apart the same
6 every time. And we can look at the different fragments
7 and say, oh, we see this fragment and this fragment in
8 relation to this other fragment. We can tell what
9 compound it is. And, again, we run standards of the known
10 drugs and poisons. And so we know they break apart
11 certain ways. And there are, basically, libraries of
12 these different compounds that you can look and see how
13 they break apart and identify that compound.

14 So now we, actually, have that fingerprint, if you
15 will, to identify it. And then we know, also, that it
16 comes out at the time we expect it to come out. So that's
17 how we can now have a two-part test to identify that
18 compound.

19 Q And is that the testing that you did on both the red
20 liquid and the yellow-brown liquid you received from --

21 A Yes, ma'am.

22 Q And to be clear you had to extract some liquid from
23 that vial in order to test it; right?

24 A Yes.

25 Q But are those vials what you received it in?

1 A Yes.

2 Q So you did not receive any extra liquid. You had to
3 extract from the vial that was already sent to you;
4 correct?

5 A Correct. I opened up these vials, allocated out a
6 sample, recapped the vials, put them back in the evidence
7 bag, resealed the evidence bag, and then tested that small
8 allocated sample.

9 Q And how much do you have to extract to be able to do
10 this testing?

11 A We, typically, do one milliliter a sample.

12 Q Okay. Is that a large amount? Small amount?

13 A It's a relatively small amount. If you think, on a
14 typical person, maybe the bottom joint of your pinkie
15 finger, just that little bit right there. That's roughly
16 one milliliter size.

17 Q Now, I, actually, want to start with the yellow-brown
18 liquid that you tested. What were the results from the
19 testing of that liquid?

20 A So that was SLED item three, the yellow-brown liquid
21 from the juice cup labeled number 7B. We, actually,
22 found -- I found two compounds. One was caffeine and the
23 other was methamphetamine.

24 Q Now, you said you, also, test blood at this lab?

25 A Yes, ma'am.

1 Q Okay. Are you familiar with how a liquid would test
2 positive for methamphetamine, but that methamphetamine
3 would not later be found in blood? Is that within your
4 expertise?

5 A It is. That question -- it's kind of a confusing
6 question.

7 Q Okay.

8 A So, yes, I feel completely comfortable talking about
9 methamphetamine in drugs and blood, and in the liquid, and
10 the urine, and how it goes through your body and all
11 that --

12 Q Well, let me ask you this.

13 A -- associated stuff.

14 Q Let me narrow the question a little bit, because I
15 know I asked you a pretty broad question. Just because
16 methamphetamine -- how is methamphetamine used?

17 A Okay. Methamphetamine is a drug that is abused.
18 Typically -- there's, actually, two forms of
19 methamphetamine. And one can be used -- although it's
20 rarely used, but it can be used as -- it helps as an
21 inhaler. It helps open up your breathing ways, like a
22 Vicks inhaler, which is, typically, not very commonly
23 used.

24 The predominant use of methamphetamine is as an
25 illicit drug. And it is, typically, snorted or more

1 commonly smoked, or can be injected. And it is a
2 stimulant. And it will give you a high and a euphoria.
3 But the vast majority of cases that come through our lab
4 that involve methamphetamine is from illicit use.

5 Q Okay. Now, the methamphetamine that y'all found in
6 this yellow-brown liquid -- let me see if I can narrow the
7 question enough to make sense. Does that have to be from
8 methamphetamine being dropped in that liquid? I mean, how
9 else could you explain that methamphetamine could be
10 present in that liquid?

11 A Well, there's a couple different ways methamphetamine
12 could end up in a liquid in this case. There -- one, it
13 could be directly put into the liquid. It, also, being --
14 methamphetamine, when smoked or even if it's being made
15 illicitly in a clandestine laboratory, as you smoke it, it
16 can be in the vapors in an area.

17 So if the vapors were collected and got residual on
18 the inside of the container, once you put the liquid in
19 there, it could be transferred from the residual on the
20 container into -- dissolved into the liquid itself.

21 Q Okay. So --

22 A But there's no way from my testing to know --

23 Q Sure.

24 A -- exactly how that got there, other than it was
25 there.

1 Q So it could either be put in the liquid, or if it's
2 smoked in that general area, the vapors could infiltrate
3 that cup. Is that fair to say?

4 A Sure. At -- you know, just -- because, again,
5 they're clear vapors that are going around it and they can
6 stick to things. And if it -- if they're in close
7 proximity to the cup, then the cup can become contaminated
8 with it. And then the liquid can then pick it up from the
9 cup itself.

10 Q Okay. Now, you, also, tested the red liquid from the
11 child's juice cup labeled 4A; is that correct?

12 A Yes.

13 Q Did you find any indication of methamphetamine in
14 that cup?

15 A Upon analysis, there was an indication of
16 methamphetamine. But it was not reported on the official
17 report because it did not meet the criteria in order to
18 report it. We're very conservative in our laboratory.
19 And we only report stuff that we are a hundred percent
20 sure of reporting.

21 Because, again, the consequences can be very dire
22 upon our reports. And I am not willing to risk my
23 personal reputation or that of my agency on results that
24 may or may not be accurate. So it has to be very strong
25 criteria met in order for me to report something on an

1 actual report.

2 Q Okay. Well, regarding the yellow juice cup -- I'm
3 sorry, the red liquid from 7A, what did you find suitable
4 for reporting?

5 A Oxycodone.

6 Q What are the synonyms for Oxycodone?

7 A Oxycodone is the actual name of the drug. But it is
8 sold under the trade names of OxyContin and Percodan.

9 Q All right. So the yellow-brown liquid from 7B tested
10 positive for what that you reported?

11 A The yellow-brown, did you say?

12 Q Yes.

13 A Methamphetamine and caffeine.

14 Q And then the red liquid, what did you report that it
15 tested positive for?

16 A Oxycodone.

17 Q And when did you submit -- I guess, when was this
18 report submitted to the agencies? Do you have a date?

19 A When we published the report?

20 Q Yes.

21 A December 12th, 2014.

22 MS. HINTON: Agent Grambow, that's all I have.

23 Please answer any questions Mr. DeJong may have.

24 THE COURT: Cross-examination.

25 MR. DEJONG: Thank you, Your Honor.

1 May it please the Court.

2 CROSS-EXAMINATION

3 BY MR. DEJONG:

4 Q Well, you're talking about that methamphetamine, and
5 you went through the various ways that it could have
6 gotten in the liquid; right?

7 A Yes.

8 Q Okay. And, of course, it could have gotten there by
9 contamination, couldn't it?

10 A At what point of contamination?

11 Q Sheriff's office, laboratory.

12 A I -- I really have no idea how it got there. I just
13 know that it was there.

14 Q Right. And, initially, you did not report the
15 methamphetamine in the red liquid; right?

16 A Yes. It is not on the official report, correct.

17 Q By the way, talking about that red liquid, at one
18 point in time during all this, didn't you opine that red
19 liquid did not appear to be pink lemonade to you?

20 A I do not know -- it very well could be pink lemonade.
21 We don't test for the actual flavorings of different
22 liquids. I don't know. It very well could be. I'm not
23 an expert in all the different brands of pink lemonade.

24 Q That doesn't exactly answer my question. At one
25 point in time, you stated in your opinion it did not

1 appear to be pink lemonade. Yes or no?

2 A I don't recall. But if -- it could be that I said
3 that. I don't know. But, again, that is not my expert
4 opinion. I'm not an expert in the various types of
5 drinks. So that could have been an off-the-cuff statement
6 that I made. It very well could be. But, again, I don't
7 know. I didn't test it. So I don't know.

8 Q Okay. Well, getting back to the -- what you have, I
9 gather, in the lab you called the red liquid and,
10 initially, you don't report the methamphetamine, then you
11 come back later -- well, did you ever amend your report?

12 A No. This is the official report.

13 Q Okay.

14 A And it is not -- again, it is not identified as was
15 stated, it was indicated. But I don't feel confident in
16 reporting it. So, therefore, it's not reported.

17 Q Okay. But you testified to it today, didn't you?

18 A I was asked if it was -- if there was an indication.
19 And I responded that, yes, there was. But, again, it did
20 not meet the criteria for me personally to report it. So,
21 therefore, it was not reported.

22 Q So, basically, you have this marvelous machine that
23 does all this stuff, but when it comes to reporting, it
24 becomes subjective, doesn't it?

25 A Well, you have to have certain criteria, yes, sir.

1 There does need to be an analysis that needs to make a
2 final decision on what's reported and what's not reported.

3 Q And that's a human factor, isn't it?

4 A Yes, sir.

5 Q All right. That has nothing to do with the computer.
6 So all of these lab controls, and this machine that you
7 have, and all of that, bottom line, there's still a human
8 factor?

9 A A well-trained, certified human factor, yes, sir.

10 Q Well, you say when these samples come to you, you
11 don't know what you're looking for; right?

12 A I -- I do not know what will be contained in a
13 particular sample, correct.

14 Q But you know why you're looking, don't you?

15 A I have an indication, yes.

16 Q Right. Because on your report -- and if you need to
17 see it, I will show it to you. On your report, you have
18 toxicology department, December 12th, 2014, SLED number,
19 your case number, which I presume is the sheriff's office
20 incident date. And then it says, victim deceased, **Minor**
21 Lane Lusk.

22 A Was that a question?

23 Q Yes, sir. That's what it says, doesn't it?

24 A Yes, sir.

25 Q And that would, certainly, give you an indication why

1 you were looking, wouldn't it?

2 A That this was a case associated with a death, yes,
3 sir.

4 Q Right.

5 A Because there's different testing parameters that are
6 set up for different types of cases. We handle a criminal
7 sexual conduct case different than we handle a DUI case
8 versus a death investigation case. There's certain
9 statutory limits on the testing that we can perform on a
10 DUI case.

11 So we, actually, have to have separate things in
12 place. So we have to have an idea of what type of case
13 we're performing within the laboratory so we can adhere to
14 the correct policies.

15 Q Let me ask you to, the best you can, look at the
16 vials in a plastic bag that has been marked State's
17 Exhibit No. 20. Now, obviously, you had to extract some
18 of that liquid. But is that -- looking at that liquid and
19 those vials, is that the way it came to SLED?

20 A As far as I can tell, yes.

21 Q And it's not a clear liquid, as such, because they
22 both have coloring; correct?

23 A Yes, sir.

24 Q But did you find any particulates in that liquid at
25 all?

1 A Not that I noticed, no, sir.

2 Q Okay. Well, how much -- let's go to -- well, let me
3 get on the same sheet. Item 7B, which I believe you or
4 your lab designated as yellow-brown liquid from child's
5 juice cup?

6 A Yes, sir.

7 Q How much methamphetamine was in there?

8 A I have no way of knowing. We did not perform a
9 quantitation on there. That analysis was qualitative
10 only.

11 Q Right. And that would be the same thing on item 7A,
12 the red liquid. All you can say is there is a presence of
13 it; right?

14 A Yes, sir.

15 Q You can't tell us how much?

16 A Again, we did not perform a quantitative analysis on
17 there. We did an qualitative analysis only. So we only
18 reported the presence of it.

19 Q And by the same token, how or when it got there, you,
20 certainly, can't say, can you?

21 A No, sir.

22 Q You can't say -- or even how it got into the cup, can
23 you --

24 A No, sir.

25 Q -- on either 7A or 7B; correct?

1 A Correct.

2 Q When you took the samples, when you opened the
3 packet, did you take liquid from both vials at the same
4 time?

5 A Well, I opened one vial, allocated out a sample into
6 a test tube, closed that vial, put it back into the bag,
7 got the other vial, opened it up, allocated a sample into
8 the additional test tube that was labeled, resealed the
9 small vial and put it back into the evidence bag, resealed
10 the evidence bag, initialed and dated it.

11 Q Did you test them both at the same time?

12 A Yes, sir.

13 MR. DEJONG: One moment, please, Your Honor.

14 (Pause.)

15 MR. DEJONG: Thank you, Mr. -- Grambow?

16 THE WITNESS: Grambow, yes, sir.

17 MR. DEJONG: Sorry. I stumbled on that one.

18 Thank you so much.

19 THE COURT: Any redirect?

20 MS. HINTON: One follow-up, Your Honor.

21 REDIRECT EXAMINATION

22 BY MS. HINTON:

23 Q You said you tested them at the same time. You don't
24 shoot them into the same vial and run them at the same
25 time, do you?

1 A No. Our laboratory -- like I said before, we receive
2 thousands of samples a year. And we run analysis of many
3 samples simultaneously. That does not mean we put them in
4 one large vat and then put them together and try and make
5 heads or tails of what is -- everything is done --
6 allocated separately and run at separate times. But they
7 can be put on one instrument at the same time.

8 So we actually -- that extraction that I did was,
9 actually, put on a robot that everything is put in its own
10 individual spot and it analyzes. It extracts each sample
11 one at a time. And then those samples when they're
12 injected on the instrument, the small vials, they're all
13 put on what we call an auto sampler.

14 So they all have certain positions on there. And
15 they're run -- the instrument has a little gripper. It
16 picks up one sample, injects that sample, puts it back.
17 That sample runs approximately 23 minutes. Then the
18 instrument resets and then runs the next sample.

19 But the nice advantage of being able to do that is
20 that I can put it on during the day. It can run
21 overnight. And I can come back in the morning and then
22 start the actual analysis. Otherwise, you know, with as
23 many cases as we work, I may, actually, still,
24 potentially, be working on this case at this time.
25 There's certain processes you have to do in order to be

1 efficient in order to get your work done.

2 MS. HINTON: I don't have anything further, Your
3 Honor.

4 THE COURT: Thank you.

5 You may step down.

6 MR. DEJONG: No objection to him being excused, Your
7 Honor.

8 THE COURT: All right. Are y'all ready for a short
9 break?

10 (WHEREUPON, the jurors indicated in the affirmative.)

11 THE COURT: All right. Ladies and gentlemen, if you
12 will, please, step back in your jury room. Do not discuss
13 the case. And we'll bring you right back out in a few
14 minutes.

15 (WHEREUPON, the jury was excused from open court at
16 approximately 10:55 a.m.)

17 THE COURT: You've got --

18 MS. HINTON: I just have one more witness,
19 Dr. Fulcher.

20 THE COURT: And how long do you think he'll last?

21 I'm going to go ahead and do this. And then we'll
22 break for lunch with them and we'll do the other.

23 MS. HINTON: I can, certainly -- I think he will be
24 done in probably 45 minutes or so.

25 MR. DEJONG: I don't know.

1 THE COURT: We're going to break for 10 minutes.

2 (WHEREUPON, a break was taken.)

3 THE COURT: Are we ready?

4 MS. HINTON: Yes, Your Honor.

5 MR. DEJONG: Your Honor, before you bring the jury
6 out, it's my understanding that Dr. Fulcher is our next
7 witness. I have previously made my motion, which you
8 overruled.

9 But, for the record, since he didn't testify right
10 after that motion, I am renewing that motion as to any
11 discussion or reliance in his report or his testimony on
12 the lab results. And I am objecting to the use of the
13 word "homicide" as a cause of death.

14 THE COURT: Okay.

15 MR. DEJONG: And I think that should cover me.

16 THE COURT: Right. And same objection [sic].

17 And I have -- in working on my charge, I've tried to
18 come up with some language. Because it's, actually,
19 discussed in one of those cases. I think it's discussed
20 in the Commodore case --

21 MR. DEJONG: I'm sorry, Your Honor.

22 THE COURT: I'll go over some language that I'm going
23 to charge the jury on that. I think it's discussed in the
24 Commodore case, one of those cases that I've been looking
25 at.

1 So -- but your objection is noted. And we'll go over
2 the charge when we get to that point.

3 All right. Are you ready for the jury?

4 MS. HINTON: Yes, Your Honor.

5 MR. DEJONG: We are ready for the jury, Your Honor.

6 THE COURT: Bring them in.

7 (WHEREUPON, the jury came into open court at
8 approximately 11:11 a.m.)

9 THE COURT: All right. Ladies and gentlemen, we will
10 now continue with the State's case.

11 Call your next witness.

12 MS. HINTON: Thank you, Your Honor.

13 The State would call Dr. James Fulcher.

14 THE CLERK: Place your left hand on the Bible and
15 raise your right hand, please.

16 WHEREUPON,

17 JAMES WILLIAM FULCHER, M.D.,
18 after first having been duly sworn, testified as follows:

19 THE CLERK: Have a seat.

20 And state your name for the record, please.

21 THE WITNESS: Dr. James William Fulcher.

22 DIRECT EXAMINATION

23 BY MS. HINTON:

24 Q Dr. Fulcher, where are you employed?

25 A I'm a pathologist with Pathology Associates of

1 Greenville, South Carolina.

2 Q Do y'all, also, work with Pickens County?

3 A We do. By contract, we do autopsies for the Pickens
4 County Coroner.

5 Q Can you tell me about your educational background?

6 A Sure. I'm from Virginia. I went to the University
7 of Virginia for my undergraduate education. And I went to
8 medical school at the Medical College of Virginia.

9 And I then went to residency in anatomic and clinical
10 pathology at the Commonwealth of Virginia. And then I did
11 a one-year fellowship in forensic pathology at the chief
12 medical examiner's office in Richmond, Virginia, which is
13 affiliated with that same school.

14 Q Are you board certified?

15 A Yes. I'm board certified in anatomic pathology,
16 clinical pathology, and, most importantly in this case,
17 forensic pathology.

18 Q Okay. And how long have you been with Pathology
19 Associates of Greenville?

20 A Approximately nine years.

21 Q Okay. And do you hold any other employment
22 currently?

23 A Yes. I'm an assistant professor of pathology at the
24 medical school. I teach approximately 70 hours of content
25 to second-year med students.

1 Q Are you appointed as -- on any boards, or anything
2 like that?

3 A My official appointment with Greenville County, which
4 is the only county that has an official medical examiner
5 system, is the deputy medical examiner. There's two of
6 us. My partner is the chief medical examiner. Otherwise,
7 that's the only legal appointment I have.

8 Q Okay. And are you a member of any professional
9 societies related to medicine?

10 A Sure. I'm a member of the American Board of
11 Pathology, which comes with the certification, the AMA,
12 and various other -- the standard medical organizations.

13 Q Have you participated in any research or
14 publications?

15 A Sure. I have approximately 10 publications, various
16 case studies and reports of fatalities in this area, and
17 then my time in Virginia as well. All peer reviewed
18 literature.

19 MS. HINTON: Your Honor, at this time, the State
20 would move Dr. Fulcher as an expert in forensic pathology.

21 THE COURT: Any objection or voir dire?

22 MR. DEJONG: What the Solicitor just said, there is
23 no objection to that as an expert in forensic pathology,
24 Your Honor.

25 THE COURT: All right.

1 MS. HINTON: Well, I see where he's getting with
2 that, Your Honor. And in addition to that, toxicology as
3 part of that pathology.

4 MR. DEJONG: I don't know if she qualified him in
5 toxicology, Your Honor.

6 MS. HINTON: Well, I can --

7 THE COURT: Yes.

8 BY MS. HINTON:

9 Q Dr. Fulcher, can you tell us what, if any, training
10 and experience you have in toxicology?

11 A Part of the practice of being a medical examiner is
12 the interpretation of toxic substances in the body. When
13 someone takes a compound, it's like a baseball game. On
14 one side trying to kill you is the drug, and on the other
15 side is your body's ability to fight against the drug.

16 Forensic pathologists are really the best at
17 interpreting these levels because we know the drug and,
18 additionally, what's going on inside that person. You may
19 think on these cases why don't we just -- not this case,
20 it's a bad example, but why not just run the toxicology
21 and not bother do an autopsy? Why spend the money taking
22 all the organs out and looking at all of them
23 microscopically? It allows me to see things that greatly
24 influence that individual person's tolerance to that drug.
25 So that's the training.

1 We do spend some time in the lab. We do not run the
2 tests. But we would be considered -- across all medical
3 examiner systems and all states that I know of, we would
4 testify to our own toxicology results. If you've been
5 watching the news, you see the opoid epidemic. We do
6 700 cases a year, and 300 of them are overdoses.

7 So I'd be a pretty bad pathologist if I could not
8 interpret those toxicologic results, because I couldn't
9 interpret half my case load.

10 MS. HINTON: Thank you.

11 So, Your Honor, at this time, we move for a
12 qualification in forensic pathology and toxicology.

13 THE COURT: All right. Any voir dire?

14 MR. DEJONG: No voir dire, Your Honor.

15 THE COURT: Any objection?

16 MR. DEJONG: No objection.

17 THE COURT: All right. Ladies and gentlemen, as I
18 previously told you, when someone is qualified as an
19 expert, they can testify more than just as a lay witness.
20 They can testify about their conclusions and opinions in
21 their field of expertise.

22 In this case, Dr. Fulcher has been qualified as an
23 expert in forensic pathology and toxicology. And you can
24 give his testimony the weight which you deem is appropriate.

25 All right. You may proceed.

1 MS. HINTON: Thank you, Your Honor

2 BY MS. HINTON:

3 Q Dr. Fulcher, did you perform an autopsy on **Minor**

4 **██████**?

5 A I did. I performed an autopsy on **Minor** on October
6 18th, 2014.

7 Q Okay. And how old was he at that time?

8 A Approximately one year of age.

9 Q Was he weight-wise a healthy child?

10 A He was. He weighed 29 pounds and was 76 inches in
11 length. His biometric averages were appropriate for
12 approximately a 14-month-old infant at the time.

13 Q Okay. In doing his autopsy, did you determine that
14 he had any viral infections or any viruses in his system?

15 A We did. I noted when taking out Mr. Lusk's lungs
16 that they were congested and heavy to touch, almost wet
17 feeling. That prompted me to do a nasal pharyngeal swab
18 for specialized molecular testing for viruses. And, in
19 fact, I found rhinovirus and enterovirus. Those would be
20 commonly referred to as the common cold. So the child did
21 have a cold.

22 A microscopic examination of his lungs showed some
23 pretty significant inflammation in there as well, which I
24 would associate with that virus.

25 Q Okay. Just to be clear. Were those what,

1 ultimately, resulted in his death?

2 A No. But it would have predisposed him to dying given
3 that it would have reduced his respiratory capacity.

4 Q And we'll get to that. But those, in and of itself,
5 did they kill **Minor**?

6 A The streets would be littered with one-year-olds dead
7 if this would kill them.

8 Q All right. As part of your examination, do you
9 extract blood from the deceased?

10 A We do.

11 Q And did you do that in this case?

12 A Yes, I did, ma'am.

13 Q And I just want to talk real quick before we get to
14 the results of that. Where does that testing happen?

15 A I'm a member of a private group. And we charge money
16 for all these services to cover our costs. My partner and
17 I have decided as a protocol to use who we believe is the
18 best laboratory in the country to run all our specimens.
19 And that laboratory is National Medical Services, which is
20 located in a suburb of Philadelphia.

21 We use them for several reasons. Timeliness is
22 number one. With all due respect to SLED, we could send
23 it to SLED. They do a good job, but they're slow. I get
24 results back in weeks here. So I don't have to wait and
25 let the family wait.

1 It might sound silly in a case like this. It becomes
2 very problematic when it's an adult and there's an
3 insurance policy, and I've got a pending autopsy and that
4 family is about to lose their house because the toxicology
5 lab wants to take six months to do the report. We always
6 use them.

7 I believe in them. They have been the preeminent lab
8 in uncovering novel opiates. And one of the best things I
9 like about them is they take specimens from the entire
10 country. So they see the really weird stuff first,
11 because they do more volume all across the country.

12 They've got a handful, like five or six people that
13 have died from this really weird opiate in two rural
14 counties in Pennsylvania. It happened in a week period
15 and went away. They got a test for that compound. If you
16 sent that anywhere else, they wouldn't find it.

17 So when I get their report back -- I can never say a
18 report is absolute, you know. Only -- only God knows what
19 is absolute truth. And we are trying to get as best we
20 can to that. However, as far as our ability to test, this
21 represents the finest lab in this country that we can send
22 specimens to.

23 Q Thank you, Doctor.

24 Did you receive results back on **Minor**'s blood
25 from this lab?

1 A I did, yes.

2 Q And what were the results of his -- of the testing of
3 his blood?

4 A Oxycodone was present at 2,700, and the units are all
5 the same, nanograms per milliliter. Oxymorphone was
6 present at 120 nanograms per milliliter. Part of me doing
7 an autopsy and part of the reason I do his autopsy is I
8 send unusual specimens.

9 So I, also, took fluid out of his eye. I, quite
10 literally, stuck it -- it's kind of gory. But I stuck a
11 needle in his eye and took fluid out and sent that as
12 well. And the same compounds were present at lower
13 levels, 190 nanograms per milliliter Oxycodone, 15
14 nanograms per milliliter oxymorphone.

15 I then sampled gastric contents, sucked the fluid out
16 of his stomach -- actually, cut open his stomach because I
17 had it out of his body. And in that case, the
18 concentration of Oxycodone was 360,000 nanograms per
19 milliliter with its -- like the metabolite, oxymorphone
20 was present at 920 nanograms per gram -- I'm sorry. It's
21 per grams.

22 Q And just before you move on from that, what is
23 oxymorphone?

24 A Oxymorphone is an opiate. It is the active
25 metabolite of Oxycodone. So in this case, I can't tell

1 you whether it's all Oxycodone metabolized to oxymorphone
2 or both drugs were taken separately.

3 The percentages, if you look at them, make me believe
4 more likely the oxymorphone just is the metabolite of the
5 Oxycodone. That is when your body breaks down Oxycodone.
6 One of the steps in breaking it down is turning it
7 into another drug, which is what your body does
8 naturally.

9 Q Now, given all those numbers, what does that mean?

10 A Oxycodone is a powerful opiate. And I'm going to
11 read NMS's summary of --

12 MR. DEJONG: Your Honor, I'm going to object to that.
13 That is purely hearsay. We visited part of that. But,
14 now, when he wants to start reading from a report, I,
15 certainly, take issue with that. And I would submit it is
16 hearsay and not admissible for him to read it.

17 MS. HINTON: And, Your Honor, I would ask -- under
18 703, he can rely on it, obviously. So I would ask that he
19 be allowed to read it to himself and then interpret the
20 results based on what he's read.

21 THE COURT: All right. If this is something he
22 relied on in his expert opinion, then it's okay for him to
23 review it.

24 THE WITNESS: What I would say about these reference
25 comments -- and one of the reasons we like NMS is they,

1 actually, pay their Ph.D toxicologist to come up with
2 this. This represents, as I've said, one of the best labs
3 in the world, the best in the country --

4 MR. DEJONG: Your Honor, I'm going to object to all
5 the editorializing on this lab.

6 THE COURT: I'm going to sustain.

7 Stick to your --

8 THE WITNESS: Yes.

9 THE COURT: -- report results.

10 THE WITNESS: This is an interpretation of all the
11 current literature. This represents what the medical
12 establishment thinks about this drug, period.

13 Following oral administration of Oxycodone, sustained
14 release in regular formulations peak concentrations in
15 adults at therapeutic levels are, generally, less than 100
16 nanograms per milliliter. However, the sustained release
17 preparation usually results in Oxycodone less than 10
18 milligrams per -- nanograms per milliliter.

19 In overdoses, deaths have occurred at an average
20 concentration of 1,600. However, the range, because every
21 person's ability to fight the drug -- to metabolize the
22 drug is different has ranged from 240 to 8,400. At
23 concentrations well below 1,000, especially in combination
24 with other substances, people have had adverse reactions,
25 including death.

1 BY MS. HINTON:

2 Q Okay. So relating that back to **Minor**'s numbers,
3 what does that mean?

4 A **Minor** had a level of 2,700. And the average for
5 fatalities in adults is 1,600.

6 Q So, I guess, can you tell how many times over this
7 dosage would have killed an average adult?

8 A In my practice, and based on my opinion and
9 experience, I, generally, sign -- will sign people out as
10 an overdose on this, depending on their health, at
11 anything over 300 to 400 nanograms per milliliter. And
12 we're at 2,700.

13 Q So is it safe to say the amount in his system would
14 have killed -- could have killed an adult?

15 A It would have killed anybody.

16 Q The fact that he was a year old at the time, how does
17 that affect his ability to process Oxycodone?

18 A The enzymes that break down drugs in your body mature
19 with age. So his ability to degrade this drug would have
20 been less than all of ours. And it would have affected
21 him, yes. He would have been more susceptible to dying.

22 Q And you mentioned something about his susceptibility
23 to dying with the common cold as well. How did that
24 factor in, if at all, in this overdose?

25 A Opiates kill you by suppressing respiration, reducing

1 your drive in your brain to breath. You can imagine if
2 you're dying from a loss of ability to breath, having a
3 cold that's making you stuffy is only going to make that
4 worse.

5 Q So based on his system at 14 months -- or excuse me,
6 a year old, is that going to be different from someone who
7 has been on 80 milligrams of OxyContin extended release
8 for a year and a half?

9 A Yes. His ability to process this drug would be
10 significantly less than any adult, particularly an adult
11 that was substantially using these drugs over a long
12 period of time. I should point out that Oxycodone is not
13 labeled for use in infants, obviously.

14 Q So is it safe to say it's not appropriate to give to
15 an infant?

16 A Absolutely not.

17 Q And just for semantic purposes, is Oxycodone the same
18 as OxyContin?

19 A It is, yes. It's a brand name.

20 Q Did you find any other drugs in **Minor**'s system?

21 A Only the oxymorphone, which I believe to be the
22 metabolite of the Oxycodone.

23 Q Okay. And there was no methamphetamine in his blood;
24 correct?

25 A There was not.

1 Q Okay. In your expert opinion, would that -- is that
2 possible -- when methamphetamine has been smoked in the
3 house and that's how it gets into a liquid, is it possible
4 that it would not test positive in someone's blood?

5 A Sure. Either the concentration is extremely small,
6 he was in another room. The half life of methamphetamine
7 in the human body is approximately five to 10 hours.

8 So if it was smoked days and days ago and got in the
9 cup, then his body would process it out of his system.
10 So, yeah, that's not unreasonable.

11 Q Okay. Would the -- would EMS administering
12 epinephrine at all affect your test results?

13 A It would not, no.

14 Q And would that have shown positive on the toxicology?

15 A NMS does not test for that as it is not a drug of
16 abuse.

17 Q Would the administration of epinephrine have
18 contributed to his death at all?

19 A No. It probably would have helped. Although at that
20 concentration, nothing would have really helped.

21 Q Can you tell, in your expert opinion, how long after
22 ingesting this Oxycodone it would have taken **Minor**
23 to die?

24 A Depending on how he took it, either in pill form, or
25 solubilized, or dissolved, it would have taken minutes to

1 maybe 30 minutes tops, fairly quick.

2 Q You said whether he took it in pill form or in a
3 soluble form, meaning a liquid, I assume?

4 A Yeah. If you take these extended release -- if you
5 take an extended release pill, you allow more drug to get
6 in your system more quickly. That is to say if the pill
7 is dissolved in a liquid, it will hit your system faster
8 than if you just took the pill.

9 Q In your calculations, were you able to determine
10 whether it was more or less likely that he ingested them
11 through a liquid?

12 A Given the concentration in the stomach, which is very
13 impressive, 360,000, I doubt that that amount of drug
14 would be in that 10 CC's of fluid I sent, unless it had
15 been previously dissolved in a liquid. We do gastric
16 toxicology on lots of overdoses, generally, to see how
17 many pills are in their stomach. And that's a significant
18 amount.

19 Q In addition to that, if someone were to eat a pill,
20 if they were to chew it, would you expect to find
21 something in their stomach contents related to that
22 chewing?

23 A We, generally, find the capsule of the pill if it's
24 chewed. In this case, it was just liquid in the stomach.

25 Q So the lack of fragments, does that make it more or

1 less likely that it was in a liquid?

2 A More likely in a liquid.

3 Q What is -- I guess, are you familiar with extended
4 release versus immediate release?

5 A Not on a personal level, but on a professional level,
6 generally speaking.

7 Q Are you aware of the ability to manipulate an
8 extended release?

9 A The drug manufacturers have made compounds. They're,
10 actually, gels that as you try to crush the pill, they
11 gelatinize and make it harder to crush these pills. And I
12 believe that was the case in 2014.

13 Q But that -- does that affect its ability, in your
14 expert opinion, to dissolve them at all?

15 A It depends on the liquid. They would be more likely
16 to be able to be dissolved in an acidic environment. But
17 in, like, water or something like that, I would doubt
18 that.

19 Q Say that you have a lemonade that you squeeze real
20 lemons into that liquid, would that assist in breaking
21 down that extended release?

22 A It sounds like a very acidic liquid to me, yes.

23 Q In your examination, were you able to determine
24 whether **Minor** likely ingested one pill, or more than
25 one pill?

1 A When you do the math on his body weight and the
2 concentration, it ends up being slightly over one pill on
3 average. It's a range. I won't lie to you, I can't give
4 you an exact number. Technically, it could have been one
5 pill. But it is more likely than not that it was maybe
6 one and a half or two, that range. It's, certainly, not
7 five pills.

8 Keep in mind this is a baby that weighs 20 some odd
9 pounds. So the concentration is going to be higher with
10 an adult dose just by nature of the adult dose.

11 Q Could it have been that -- if a pill was put into a
12 liquid around 3:00 or 4:00 that morning, not fully
13 consumed, and then another pill was added with additional
14 liquid, would that explain over one pill, but not quite
15 two?

16 A Yeah, absolutely. Or the fact that he just drank a
17 portion of the substance. Obviously, there was some left
18 that was tested.

19 Q Just because someone vomits while someone is
20 attempting to perform CPR, does that mean that they are
21 alive?

22 A No. Oftentimes, CPR, particularly with a layperson,
23 can compress the stomach and have some drugs come up -- or
24 substance come up, gastric contents.

25 Q So in your analysis, is it consistent that **Minor**

1 Lusk would have ingested this Oxycodone at 1:15 and died
2 shortly thereafter?

3 A If that's -- it is possible, yes. I can't be exact
4 on that time period. I, obviously, wasn't there. But,
5 generally speaking, what I can tell you is that when

6 **Minor** ingested -- however he ingested this medication, he
7 would have very rapidly become sleepy, tired, and then
8 just kind of died shortly thereafter. There was a fairly
9 short thing -- the interval between ingestion and dying.

10 Q So ingestion of this, I guess -- is drowsiness a side
11 effect of ingesting this?

12 A Absolutely. This is an opiate. This is a
13 depressant. So this slows the body down. It's like being
14 drunk, but only magnified many, many times.

15 Q If that liquid was ingested around 1:15, would you
16 find it consistent that anywhere from 2:15 to 3:00, **Minor**
17 sat up, smiled, and rolled over?

18 A I think **Minor** was dead long before that time period.

19 Q How long does it take a body to turn cold after
20 death?

21 A It depends on the weight of the body. He would have
22 turned -- given his size, he would have turned cold
23 relatively quickly, probably within an hour to an hour and
24 a half. And it depends on what your definition of cold
25 is, obviously.

1 Q Sure.

2 A An adult will lose about one degree per hour. So,
3 you know, 98.7, the next hour, it just keeps going down.
4 Kids lose that more rapidly because there's more surface
5 area of the body weight.

6 Q So in your analysis, was the findings of the contents
7 in his blood and stomach consistent with consuming an
8 extended release that had been dissolved in a liquid?

9 A Yes.

10 Q Was it consistent with being more than one pill?

11 A Slightly more than one --

12 Q Okay.

13 A -- on average.

14 Q Was it consistent that it is less likely that it was
15 picked up and eaten?

16 A It's, certainly, a possibility. I would have
17 expected to have found pill fragments. And if you've ever
18 taken a pill and bitten it, they're rather bitter. Most
19 of these are bitter substances. I would -- it's possible
20 that a child could chew a pill, I suppose. But I would
21 expect to find pill fragments. And I would, also, not
22 expect the child to gleefully eat the bitter substance.

23 Q How high were these concentrations that you found?

24 A The Oxycodone, to be honest, is -- probably sets a
25 record for this county for the concentration of Oxycodone

1 in any person, including adults. The concentration of
2 Oxycodone in the gastric contents is the highest I've ever
3 seen in approximately 3,000 autopsies.

4 We don't do toxicology on those. I've probably done
5 toxicology on 2,500 of those, though. And we do see it in
6 the stomach, but not at this concentration.

7 Q And does the concentration give you any indication
8 about ingestion more likely than not one thing over
9 another or --

10 A The fact that the concentration is so high and I
11 don't have lots of pill fragments sitting in there makes
12 me think it was in liquid form.

13 Q What was the cause of death as you determined it,
14 Dr. Fulcher?

15 A Acute Oxycodone toxicity.

16 Q Is that in layman's term an Oxycodone overdose?

17 A It is, yes. The young man died from respiratory
18 suppression secondary to a very high concentration of
19 Oxycodone present in his femoral blood.

20 Q And those common colds that you found were not the
21 cause of his death; is that correct?

22 A No. Once again, it would have weakened his body.
23 But, certainly, that in and of itself does not explain him
24 dying.

25 Q And what was the manner of death?

1 A The manner of death in this case is -- and this is
2 just a medical legal opinion, is coded as homicide.

3 MS. HINTON: Dr. Fulcher, that's all I have. Please
4 answer any questions Mr. DeJong may have.

5 THE COURT: Cross-examination.

6 MR. DEJONG: Thank you, Your Honor.

7 May it please the Court.

8 CROSS-EXAMINATION

9 BY MR. DEJONG:

10 Q So in large part, Dr. Fulcher, you're talking about
11 the test results on the gastric fluids; is that correct?

12 A The test results in the gastric fluids are part of my
13 analysis. It's important to note that the drug in the
14 stomach doesn't kill you. The drug in your blood kills
15 you.

16 Q Okay. So what was the total volume of his gastric
17 fluids?

18 A Only about 10 CC's, actually. I think that's what I
19 said. Hold on. I have a description.

20 10 CC's.

21 Q So the volume of the stomach contents and the testing
22 would have some correlation, would they not?

23 A Yes, absolutely. In fact, you can do the math and
24 see based on the volume of the gastric contents and the
25 concentration about how many milligrams of drug are

1 present there.

2 Q And I understand that -- well, let me ask you this.

3 As far as literature goes on the effects of OxyContin or
4 Oxycodone on children, there's not much literature on
5 that?

6 A There is not. That's true.

7 Q And, indeed, I realize what you testified to that
8 Oxycodone, OxyContin is not used in the United States; is
9 that correct?

10 A Not in a pediatric setting, no, sir.

11 Q It is still used in England, is it not?

12 A Oh, yeah. It is used. If administered
13 appropriately, it can, technically, be safe, absolutely.

14 Q So when you start talking about -- you gave us some
15 numbers on -- I've got a lot of notes here that made sense
16 when I wrote them. You gave us numbers on toxicity in
17 adults; right?

18 A Yes, yes.

19 Q And therapeutic levels?

20 A Yes.

21 Q And what you're doing is you're equating from adults
22 to a child; right?

23 A That is correct, yes, sir.

24 Q But, again, there's not any real literature on that?

25 A We don't have enough people giving their babies this.

1 Q Yes, sir. And, well, you say it could have been
2 taken in a liquid?

3 A It could have been.

4 Q Well, let's assume for the moment that someone put
5 OxyContin in a liquid 15 hours before?

6 A Yes.

7 Q But the child doesn't drink it until sometime in the
8 morning, afternoon of October the 17th?

9 A I can agree with that, yes, sir.

10 Q All right. So if that OxyContin, let's say, was
11 crushed and put in a drink 15 hours ago, whenever the
12 child drank it, if, indeed, that's what it was, it would
13 still have the same effect?

14 A That is exactly right, sir.

15 Q Now, I always get confused when we talk about
16 metabolites.

17 A Sure.

18 Q Some day I'm going to figure it out, but I haven't
19 yet. So my question is OxyContin is a medication all in
20 and of itself?

21 A It is, yes, sir.

22 Q And then is oxymorphone, if I'm saying that
23 correctly --

24 A Yes. That's correct.

25 Q -- is that, also, a medication in and of itself?

1 A It is. They both, actually, have separate brand
2 names. If you'll indulge me. Oxymorphone is Numorphone,
3 Opian. And then the trade names for Oxycodone is
4 OxyContin and RoxyContin. But they are used, yes.

5 Q All right. So we talk about dosing and dosages?

6 A Yes.

7 Q And I understand what you've testified to, the amount
8 in this case. But you can't say that this child had never
9 been dosed with Oxycodone, OxyContin before, can you?

10 A That is correct, yes, sir.

11 Q All right. And, well, you say you found these
12 infections. I believe your report said something about
13 pneumonia?

14 A Yes. I diagnosed him with a viral pneumonia. That
15 is a viral inflammation of the lung.

16 Q So he had pneumonia at the time as well?

17 A He did, yes.

18 Q And maybe you said that, but I didn't understand the
19 words you used. Okay.

20 A Correct. It's a respiratory infection. But the
21 infection does get down into his lungs, yes.

22 Q When -- my understanding on OxyContin is that is,
23 basically, a time release capsule; is that correct?

24 A That's correct, yes, sir.

25 Q Okay. And while we're talking about that, OxyContin

1 has a fairly bitter taste, doesn't it?

2 A Yes, sir. That's correct.

3 Q And you said you didn't, I believe, find any -- my
4 word would be pill remnants?

5 A That's correct. That's a good word.

6 Q You didn't find any of that in his stomach?

7 A No, sir, I did not.

8 Q But is it not equally as possible that you could bite
9 into an OxyContin and, due to the bitterness, still ingest
10 the drug but not the pill?

11 A That is possible, yes.

12 Q Okay. And, now, as far as the lab -- I know you've
13 given this glowing report. Let's talk about the lab for
14 just a minute. You take certain specimens and you send
15 them off to Pennsylvania. How do they go?

16 A FedEx.

17 Q Okay. So what happens to those specimens between the
18 time you, I presume, turn them over to FedEx and they get
19 all the way over here to Pennsylvania?

20 A I package them in a box. I seal the box. I initial
21 the box. I put it in a sealed envelope for FedEx marked
22 as biohazardous substances. It's next day aired to the
23 lab. They open the package, document that the box hasn't
24 been tampered with, it's still sealed, and start their
25 analysis documenting their processing of the specimens

1 along the way.

2 Q You weren't there when they opened the package, were
3 you?

4 A Oh, no.

5 Q And you, certainly, weren't -- were not in the lab
6 when these tests were performed, were you?

7 A I was not.

8 Q So you can't say anything on this particular case as
9 to the controls that were used; correct?

10 A That's correct.

11 Q You can't say anything on this particular case as to
12 the protocols that were used in that lab?

13 A That is correct.

14 Q You have no knowledge of any of that, do you?

15 A I dot not.

16 Q And, certainly, without that knowledge, it is a
17 possibility there could have been contamination in the
18 lab?

19 A There's always a possibility.

20 Q Yes, sir. So what you're doing -- and when you rely
21 on these amounts of Hydrocodone, oxymorphone, and all
22 that, you're relying on a lab report that you don't even
23 know, in this case, what was done, how it was done, or if
24 it was done properly?

25 A That's correct, sure.

1 Q When you alter an OxyContin, the whole nature of the
2 drug changes, does it not?

3 A The amount of drug available for absorption in the
4 stomach and first part of the gastrointestinal tract is
5 increased. But the actual compound itself stays the same.
6 The drug does not chemically change.

7 Q But once it is altered -- still speaking of
8 OxyContin.

9 A Okay.

10 Q We don't know that it has the same affect on the body
11 in the altered state as in the unaltered state, do we?

12 A We know that a higher level is given. But the drug
13 does not chemically change, therefore, it acts in the same
14 manner.

15 Q All right.

16 A But the concentration will definitely be different
17 and in a fairly unpredictable way when you're altering it,
18 yes.

19 Q But it is a little bit --

20 A Yeah. It's difficult to tell. It depends on how
21 well the drug is solubilized or crushed, how it's used.
22 It can be injected, snorted, any number of things.

23 Q Hypothetically, if an OxyContin were crushed -- well,
24 let me back up and ask you this. OxyContin, obviously, is
25 pills. It's a bit of a capsulized-type pill; correct?

1 A That's correct, yes, sir.

2 Q And then it has little holes in it for the time
3 release?

4 A Yeah. As it goes through the gastric tissue and the
5 acidic environment of the stomach and the gastrointestinal
6 tract, it slowly dissolves and the substance is released.
7 That's correct, yes.

8 Q Well, if you crush that pill, would there not be
9 parts of the husk of the pill that would be involved?

10 A Normally, you'd think so, yes.

11 Q Okay. But you found no husks in this child?

12 A No husks.

13 Q Not whole, part, or anything?

14 A No husks, just fluid.

15 MR. DEJONG: As always, Dr. Fulcher, thank you so
16 much.

17 THE WITNESS: Thank you, sir.

18 MR. DEJONG: I'm sorry. I may have spoken too
19 quickly.

20 Bear with me one moment.

21 (Pause.)

22 BY MR. DEJONG:

23 Q The -- I'm sorry. I spoke too quickly.

24 A Not a problem, John.

25 MR. DEJONG: And I apologize to you, Your Honor.

1 BY MR. DEJONG:

2 Q Pneumonia. How quickly does pneumonia develop?

3 A The virus in a child this age, a day or so, maybe two
4 days.

5 Q Okay. So what you found didn't happen on October --
6 back up. As to the pneumonia, what you found on October
7 the 17th of 2014 did not happen or get to the point it
8 was?

9 A No. I would have expected the child to start feeling
10 sick days before that.

11 Q Yes. All right. But having that, could a child
12 still act in a normal manner?

13 A Yes. This is a fairly low-grade viral infection.
14 This is just a common cold. So it's going to somewhat
15 slow the child down. But I think most things would be
16 capable with these viruses.

17 Q Like they could play normal?

18 A Yeah. They could play normal. They wouldn't be a
19 hundred percent, but they would be, you know, 80,
20 90 percent.

21 Q And it would not necessarily include a fever, would
22 it?

23 A No, not with a virus, not necessarily.

24 MR. DEJONG: Now, Dr. Fulcher, as always, thank you
25 so much.

1 THE WITNESS: You're welcome, sir.

2 THE COURT: Redirect.

3 MS. HINTON: Thank you, Your Honor.

4 REDIRECT EXAMINATION

5 BY MS. HINTON:

6 Q Dr. Fulcher, how often do you use this lab in
7 Pennsylvania?

8 A 100 percent of the time, which would approximately be
9 700 case -- well, 650 cases a year.

10 Q Okay. And on those 650 cases, do you always give a
11 cause of death and a manner of death?

12 A I do, yes.

13 Q And do you sign that report?

14 A I do.

15 Q Would you add your signature to the report if there
16 was any concern of you that this lab does not
17 appropriately test substances?

18 A At some point, you have to trust people to do the
19 right thing, so, yes.

20 Q Do you have any concern that this lab does not
21 appropriately test substances?

22 A I do not. I've had conversations with their
23 director, PhD toxicologists about more unusual substances
24 showing up. And I feel like they're offering me the best
25 product I can purchase.

1 Q Mr. DeJong mentioned that Oxycodone and Oxymorphone
2 can be different drugs; correct?

3 A That is correct.

4 Q Can Oxymorphone, also, be a metabolite of Oxycodone?

5 A Yes, it can.

6 Q So that means it doesn't have to be two separate
7 drugs?

8 A It does not have to be two separate drugs.

9 Q And based on the numbers that you found in the
10 toxicology, is it more or less likely that these are
11 separate drugs, or is it more or less likely that they are
12 a metabolite?

13 A More likely a metabolite. But I could not be
14 absolute on that statement.

15 Q Sure.

16 A It's always possible.

17 Q And then he, also, asked you about if you bit a
18 pill -- a 80 milligram Oxycodone extended release, if you
19 bit it and didn't swallow it if you could ingest some of
20 that drug. And I believe your answer was yes; is that
21 correct?

22 A It was asked as a yes, no question, so I answered
23 yes.

24 Q Okay. Is that what you think happened in this case?

25 A No.

1 Q And why is that?

2 A Because the concentration would be very small,
3 certainly, not -- you would not get this massive
4 concentration in the stomach with that phenomenon.

5 MS. HINTON: Dr. Fulcher, that's all I have.

6 Thank you.

7 THE COURT: Thank you.

8 You may step down.

9 MR. DEJONG: No objection to him being excused, Your
10 Honor.

11 MS. HINTON: Thank you.

12 THE COURT: All right.

13 MS. HINTON: Your Honor, at this time, the State
14 rests.

15 THE COURT: All right. Ladies and gentlemen, the
16 State has rested, which means that they have put forth the
17 evidence they plan to in their case in chief.

18 Now, it's five until 12:00. As I told you, we have
19 some other matters that we have to go over in some other
20 cases. And we, also, have a couple of things that we have
21 to go over in this case as well. So I'm going to give you
22 until 2:15. If you'll be back in your jury room at 2:15.

23 Again, my four rules. Do not discuss the case with
24 anybody, even among yourselves. Do not do any type of
25 research. Do not pay any attention to any media coverage.

1 And, also, if you're contacted by anyone, please, let the
2 bailiff know.

3 Other than that, y'all have a good lunch. And we'll
4 see you at 2:15.

5 (WHEREUPON, the jury was excused from open court at
6 approximately 11:54 a.m.)

7 MR. DEJONG: Your Honor, I do have a motion for
8 directed verdict, but I would like to make that after
9 lunch because--

10 THE COURT: Right. That will be fine. I'd like to
11 go to some of these other matters.

12 So let's -- let me go through this. At some point,
13 you need to let me know whether you're going to put forth
14 any evidence. And we'll need to discuss the jury charge.
15 So let's meet in my office at 1:30.

16 MR. DEJONG: What time?

17 THE COURT: 1:30.

18 (WHEREUPON, a lunch break was taken.)

19 THE COURT: All right. I believe the State has
20 rested. So I'll be glad to hear any motions from the
21 Defendant.

22 MOTIONS

23 MR. DEJONG: Thank you, Your Honor.

24 May it please the Court.

25 At this point in time, I would move for a directed

1 verdict on behalf of Ms. Brewer. This -- Your Honor, I
2 perceive this case as purely a circumstantial evidence
3 case. And what the State has brought before the Court and
4 before the jury is circumstantial evidence, the basic
5 circumstantial evidence that she was there when the child
6 died. There's, certainly, other testimony. I'm not going
7 to rehash all of that.

8 I would hand up to the Court the case of State v.
9 Bostick, a 2011 case from the Supreme Court of South
10 Carolina. It deals to some degree with directed verdict
11 and circumstantial evidence.

12 I understand, Your Honor, and as that case says, a
13 case should be submitted to the jury when the evidence is
14 circumstantial if there is any substantial evidence -- and
15 I always stress that word "substantial evidence" -- which
16 reasonably tends to prove the guilt of the accused or from
17 which his or her guilt may be fairly and logically
18 deduced. The evidence must constitute positive proof of
19 facts and circumstances which reasonably tends to prove
20 guilt.

21 And, again, in this case, Your Honor, I would submit
22 that the circumstantial evidence as I see it is what the
23 State has presented is simply that Ms. Brewer was present
24 when the child allegedly died. I don't think that is
25 sufficient to go to the jury for this reason.

1 Now, all this other evidence has been produced,
2 but -- and that's all well and good. But when it comes to
3 what the State is really trying to show is because she was
4 there and the child died, that is the circumstantial
5 evidence part of it. And I think it takes more than that.
6 And to let it go to the jury just based on that, Your
7 Honor, certainly, opens the door for conjecture and
8 speculation on the part of the jury.

9 So I would, therefore, respectfully request a
10 directed verdict at this point in time.

11 THE COURT: All right. And I think that more
12 controlling than this case is the case -- and I'm sure
13 you're familiar with it, State v. Phillips, which
14 discusses this -- a very similar factual situation and
15 very similar evidence, even though I think the
16 circumstances of that case were drastically different.

17 And I think, based on that, I find there is
18 sufficient evidence for this case to go to the jury.

19 MR. DEJONG: Your Honor, we had a chambers
20 conference, but I wanted to get this on the record. Your
21 Honor took my client into custody on Monday. I'm not
22 arguing with that decision, Your Honor.

23 THE COURT: No. I understand.

24 MR. DEJONG: But the problem that I perceive it has
25 caused, at this moment in time, is she has not had her

1 medication. She takes Cymbalta. She takes 60 milligrams
2 two times a day on that. She, also, takes Trazodone. She
3 takes a very heavy dose of Trazodone, 150 milligrams. She
4 takes two tablets of 150 milligrams at nighttime for a
5 total of 300 milligrams.

6 She shares with me, last night, she got absolutely no
7 sleep. She has, also, been on, basically, a generic
8 Depakote, I believe. She had been taking 250 milligrams
9 of that a day. And what is really concerning her is she
10 hasn't been on her blood pressure medication.

11 Now, that may not necessarily go to -- and, also,
12 she's on a heart pill, Your Honor. And she's very
13 concerned about that. I don't know that either of the
14 latter two would go to her mental state. But the
15 fearfulness that she has expressed to me not taking her
16 blood pressure medication and her heart medication has,
17 certainly, I think overridden to some degree her ability
18 to function and make decisions. And, certainly, I think
19 not having the Cymbalta and Trazodone would, likewise,
20 affect her ability to make decisions.

21 I did ask the family yesterday evening if they could
22 get the medication up here. I'm not sure the jail would
23 have even let her have it. But, nonetheless, they could
24 not get it up here yesterday evening because a one-way
25 trip to where the medication was is 30 to 45 minutes, I

1 believe. So I did ask them to bring it this morning. I
2 do have the medications. They are in my office secured.

3 But my -- well, just to take that one step further.
4 Over the course of this case, Your Honor, I have explained
5 to Ms. Brewer her right to testify, her right not to
6 testify. Again, right at the beginning of the break this
7 afternoon, I have, again, talked to her about her right to
8 testify and not to testify. I asked her about her
9 decision to testify or not to testify. She said, My brain
10 is totally addled. That was not her word, but pretty
11 close to it. I can't think. And, basically, she said I
12 cannot make a decision.

13 So, actually, she asked me to make the decision for
14 her, which, as Your Honor well knows, I cannot make that
15 decision. I can advise her of her right to testify and
16 not to testify, and explain the ramifications of both.

17 Now, having said all that, Your Honor, I know we have
18 been in this trial for a long, long time. It probably
19 seems longer than it has been. But my concern is if she
20 is not in a state of mind to make the decision to testify
21 or not to testify -- and, again, I can't make that
22 decision.

23 So the bottom line is what I am requesting -- it is
24 now 2:30 on Wednesday afternoon. I'm requesting, Your
25 Honor, that we adjourn for the day. Let's get her

1 medication in her and bring her back up in the morning for
2 voir dire from Your Honor, and her decision as to whether
3 to testify or not to testify.

4 THE COURT: Well, how do we know that that's going to
5 make a difference? I mean, I don't know. I'm not a
6 doctor. You're saying she's been off of it for three days
7 now.

8 MR. DEJONG: I don't know that either. I get more
9 from that in talking to her husband than I do from
10 Ms. Brewer herself. "Her husband" being Robby Brewer. I
11 can't say that it's going to work magic and miracles. I
12 can't say that. But I think, at least, she deserves, and
13 as her counsel, I deserve to give it a try, Your Honor.

14 THE COURT: All right. I'll be glad to hear from the
15 State.

16 MS. HINTON: I mean, Your Honor, obviously, I haven't
17 had any conversations with her. However, it was my
18 understanding in chambers that she had been speaking with
19 her lawyers throughout the day. She had asked them
20 questions.

21 Like Your Honor said, we don't know that it would
22 make any difference, nor do we know that the jail would be
23 able to administer it as she needs because they have their
24 requirements, too, on what they can and cannot administer.

25 I think this is an unnecessary delay. There's been

1 no real evidence that she can't effectively communicate
2 with the Court or with her attorneys.

3 THE COURT: All right. Well, first, I'm going to --
4 Yes.

5 MR. DEJONG: One tag line on that, Your Honor. She
6 really has not communicated with me that much today. She
7 has written me a couple of notes. Mr. King, co-counsel,
8 has dealt more with her today and probably dealt with her
9 more throughout the trial than I have. My focus has been
10 more over there.

11 Mr. King can speak for himself and I'll, certainly --
12 if Your Honor will allow, I'll let him address the Court.
13 But he has, apparently, noticed some differences today.

14 MR. KING: May it please the Court, Your Honor.

15 THE COURT: Yes.

16 MR. KING: I have noticed a significant difference in
17 how she's acting today, and her types of questions, and
18 her number of questions, in particular, and just overall a
19 much, much different personality through this whole trial
20 today than the previous two days.

21 THE COURT: All right. Well, let me ask her -- let's
22 go through -- let me ask her some questions along these
23 lines.

24 And, Ms. Brewer, I'll let you just sit there. If you
25 can speak loud enough so that the court reporter can hear

1 you.

2 If you'll raise your right hand. This is just for
3 the purposes of my questions.

4 WHEREUPON,

5 ANGELA DENISE BREWER,

6 after first having been duly sworn, testified as follows:

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

8 DEFENDANT BREWER: Angela Denise Brewer.

9 THE COURT: All right. And where do you currently
10 reside?

11 DEFENDANT BREWER: Clinton, South Carolina.

12 THE COURT: And how long have you lived there?

13 DEFENDANT BREWER: Six months.

14 THE COURT: All right. Now, there's been a mention
15 of -- what medications are you on?

16 DEFENDANT BREWER: I take Cymbalta twice a day. I
17 take Depakote at night once a day -- I mean, once at
18 night. I take two blood pressure pills in the morning. I
19 take Simvastatin at night. I take a heart pill every
20 night. The Trazodone, it helps me sleep. And I have to
21 take an aspirin a day for my heart. And I think that's
22 all.

23 THE COURT: All right. So you're taking Trazodone.
24 What kind of medication is that? What's that for?

25 DEFENDANT BREWER: It's like a mood stabilizer.

1 THE COURT: All right. And all these are taken --
2 are they prescriptions from your doctor?

3 DEFENDANT BREWER: Uh-huh.

4 THE COURT: Who is your doctor?

5 DEFENDANT BREWER: Sarah Moore.

6 THE COURT: How long have you been on the Trazodone?

7 DEFENDANT BREWER: Now, the Trazodone is Dr. Tolbert.
8 She's my psychiatrist.

9 THE COURT: And how long have you been on that?

10 DEFENDANT BREWER: Since November of last year.

11 THE COURT: All right. Now, what's the purpose for
12 your taking the Trazodone?

13 DEFENDANT BREWER: It stabilizes my moods with the
14 Cymbalta. I have manic depressive bipolar, PTSD.

15 THE COURT: And you take Cymbalta?

16 DEFENDANT BREWER: Yeah.

17 THE COURT: And what kind of medication is that?

18 DEFENDANT BREWER: It's psychotic, I guess.

19 THE COURT: And how long have you been taking that?

20 DEFENDANT BREWER: This time, since October, November
21 of last year. I had previously been on it before. That's
22 what I'd been taking for years.

23 THE COURT: All right. And how long -- you have to
24 take the Cymbalta. So, really, the only ones that -- I
25 think that creates some concern are Trazodone and the

1 Cymbalta; is that correct?

2 DEFENDANT BREWER: And my heart pill.

3 THE COURT: And your heart pill. But how does --
4 does the heart pill have any affect on your being aware of
5 things, or it's just --

6 DEFENDANT BREWER: Well, if my heart gets beating too
7 fast, I'll pass out.

8 THE COURT: All right. And is it something you take
9 every day and you took it until Monday when you went into
10 custody?

11 DEFENDANT BREWER: Yes, sir.

12 THE COURT: And what kind of issues have you had
13 since Monday since you haven't taken this?

14 DEFENDANT BREWER: I don't sleep. Cymbalta helps
15 with my fibromyalgia and my mental. So it's been very
16 painful. I mean, that's, basically, all I take for pain
17 anymore.

18 THE COURT: Now, how do these drugs affect you when
19 you do take them?

20 DEFENDANT BREWER: They just kind of keep me in line.
21 My mind don't go from one to the other.

22 THE COURT: All right. Other than that, do you
23 suffer from any mental illness?

24 DEFENDANT BREWER: Just the manic depressive bipolar.

25 THE COURT: And how does that affect you, generally?

1 DEFENDANT BREWER: If I don't take my medication?

2 THE COURT: Yeah. Before you took your medication, I
3 mean, what kind of problems were you having?

4 DEFENDANT BREWER: I mean, I can't focus. I can't
5 concentrate on nothing. My mind goes from here to there
6 to here. And I don't get my words out like they're
7 supposed to be out.

8 THE COURT: And how old are you?

9 DEFENDANT BREWER: 46.

10 THE COURT: And how far did you go in school?

11 DEFENDANT BREWER: Eleventh grade.

12 THE COURT: And were you on -- before the events of
13 2014 -- I mean, have all these medications been prescribed
14 since 2014?

15 DEFENDANT BREWER: No. I was taking the Cymbalta,
16 the Gabapentin, which I don't take anymore, because I had
17 to move from Dr. Rogers. And I didn't go back to a
18 neurologist. I had an appointment, actually, in November
19 and I didn't get to go.

20 THE COURT: Now, did you ever have any period of time
21 in the past where you didn't take this medication because
22 your doctor didn't --

23 DEFENDANT BREWER: Just when I was -- well, I,
24 actually, took Cymbalta while I was in jail.

25 THE COURT: How long were you in jail?

1 DEFENDANT BREWER: I was there 18 months.

2 THE COURT: Okay. When did you get out of jail?

3 DEFENDANT BREWER: June 20th.

4 THE COURT: So you've -- and I realize you've
5 indicated you've had some issues with focus. But you have
6 been able to communicate with both Mr. King and Mr. DeJong
7 today?

8 DEFENDANT BREWER: Uh-huh.

9 THE COURT: And throughout this trial?

10 DEFENDANT BREWER: I mean, I'm not, you know, going
11 to lie or anything. That's not what my --

12 THE COURT: No. I understand. But, I mean, have
13 you -- you've heard the various witnesses that have been
14 on the stand for the past few days. Have you understood
15 everything they've said?

16 DEFENDANT BREWER: Not everything, but I'm kind of
17 trying to follow along with them.

18 THE COURT: Anything you didn't understand, were you
19 able to ask your attorneys to explain it to you?

20 DEFENDANT BREWER: There was a lot I didn't
21 understand.

22 THE COURT: All right. What, in particular, have you
23 not understood?

24 DEFENDANT BREWER: Doctors. I mean, I don't
25 understand all them. I don't know that anybody does.

1 THE COURT: Okay. The doctor's testimony. But as
2 far as -- you heard and you understood, but the
3 terminology --

4 DEFENDANT BREWER: It takes a minute to imprint on
5 my -- what needs to go in.

6 THE COURT: All right. And how would -- say, that
7 your attorney -- based on your attorneys request that you
8 be allowed to take this medication then come back
9 tomorrow, how would it be different tomorrow?

10 DEFENDANT BREWER: Well, I mean, I've only been off
11 it three -- I took it Monday. So I've only been off of it
12 yesterday and this morning. So if I take it now, it will
13 go back -- you know, it will kind of catch me up.

14 THE COURT: All right. And during -- since we broke
15 for lunch, have you had time to talk with your attorney
16 about the various issues?

17 DEFENDANT BREWER: Just a few minutes, yeah.

18 THE COURT: Okay. Have you had any problems
19 understanding my questions?

20 DEFENDANT BREWER: Just now?

21 THE COURT: Yeah.

22 DEFENDANT BREWER: No.

23 THE COURT: You know, I believe -- based on my
24 questions and her responses, I mean, I believe that she --
25 you know, I find that she -- it's appropriate for her to

1 decide whether she needs to testify or not. So I'm going
2 to deny your request that this matter be continued until
3 tomorrow.

4 And now, I guess, I want -- now, I want to, I guess,
5 get into the Fifth Amendment rights, and so forth.

6 MR. DEJONG: Yes, sir.

7 THE COURT: All right. You're already under oath.

8 Let me ask you this before we get there. Have y'all
9 had an indication whether she's going to take the stand or
10 not?

11 MR. DEJONG: Well --

12 THE COURT: All right. Let me ask this question.

13 MR. DEJONG: That would depend on Ms. Brewer's
14 decision, Your Honor.

15 THE COURT: Okay. Ms. Brewer, you realize that we're
16 at the stage of the trial where the State has rested and
17 put up all the evidence that they plan to put up?

18 DEFENDANT BREWER: Yes, sir.

19 THE COURT: In their case in chief?

20 DEFENDANT BREWER: (Defendant Brewer nodded.)

21 THE COURT: Okay. You know, if your attorney puts up
22 any evidence, then they would have the right to put up
23 reply or rebuttal --

24 DEFENDANT BREWER: Yes.

25 THE COURT: -- witnesses on a limited basis. But so,

1 now, it's up to you and -- for you to make a decision
2 whether y'all are going to put up anything or not. And,
3 first of all, I need to explain to you your rights.

4 Under our Constitution under the Fifth Amendment, it
5 says no person shall be compelled in any criminal case to
6 be a witness against him or herself. What that means is
7 you have a right to testify, but you can't -- you, also,
8 have a right not to testify.

9 DEFENDANT BREWER: Yes, sir.

10 THE COURT: That's totally your decision. And that's
11 a decision that you need to make after discussions with
12 your attorney, discussions with your family, if
13 appropriate.. And then, you know, if you testify, you're
14 subject to all the same rules as any other witness. And
15 part of that would be cross-examination by the Prosecutor.

16 Is there any criminal record that would apply?

17 MS. HINTON: No, Your Honor.

18 THE COURT: That's -- one of the reasons I ask that
19 is one of the things -- you can be cross-examined on your
20 criminal record. And based on what she's telling me, that
21 would not come into play here, you know. Your decision to
22 testify or not to testify must be freely, and voluntarily,
23 intelligently made.

24 If you -- if you testify, you know, then that's
25 something that will be presented to the jury. If you fail

1 to testify, decide you don't want to testify, then I will
2 tell the jury that they cannot consider that in any way in
3 their deliberations. That it's still -- it's up to the
4 State to meet their burden to prove you guilty beyond a
5 reasonable doubt.

6 Now, I'm sure there's, also -- as your attorney has
7 talked with you about, there's strategic reasons which
8 benefit the Defense usually for not testifying. And that
9 gives them the last closing argument. There are other
10 strategic reasons, which your attorney can discuss with
11 you. But when it all comes down to it, it's your
12 decision.

13 Do you understand that?

14 DEFENDANT BREWER: Yes, sir.

15 THE COURT: Okay. And that's a decision that, like I
16 said, I always encourage you to make after discussions
17 with your attorney. If you need to talk with your family
18 about that decision as well, then I'll give you time to do
19 that.

20 Do you need additional time to discuss this with your
21 attorney and/or your family?

22 DEFENDANT BREWER: Yes, sir.

23 THE COURT: All right. We'll give you a few minutes
24 then to have those discussions.

25 (WHEREUPON, a break was taken.)

1 THE COURT: He's standing up, therefore, he must have
2 something to say.

3 MR. DEJONG: We've concluded.

4 Thank you, Your Honor for that additional time. I
5 really appreciate it.

6 There was still a struggle, but I think -- I'm not a
7 hundred percent sure, but I think Ms. Brewer has made a
8 decision, Your Honor.

9 THE COURT: All right. Now, Ms. Brewer -- and you
10 can just stay seated. That's fine.

11 Now, you've had a chance to talk with your family and
12 your attorney about whether you should testify or not?
13 Again, this is your decision.

14 DEFENDANT BREWER: Yes, sir.

15 THE COURT: And what do you wish to do?

16 DEFENDANT BREWER: No.

17 THE COURT: You don't wish to testify. And that's
18 your decision?

19 DEFENDANT BREWER: Yes, sir.

20 THE COURT: After consultation with your attorneys
21 and your family?

22 DEFENDANT BREWER: Yeah.

23 THE COURT: All right. And nobody has forced you to
24 make that decision, that's your own decision?

25 DEFENDANT BREWER: Yeah.

1 THE COURT: Okay. It's 10 until 3:00. My thought is
2 to argue and charge. And I'll give you a few minutes
3 to --

4 MR. DEJONG: Your Honor, before we --

5 THE COURT: Well, I say -- now, we talked about her
6 right to testify. But I guess I need to ask you if you
7 were going to -- I mean, do you plan to put any additional
8 evidence up?

9 MR. DEJONG: No, sir.

10 THE COURT: Okay.

11 MR. DEJONG: And we discussed that earlier today, and
12 we discussed that just a few moments ago.

13 THE COURT: All right.

14 MR. DEJONG: There was a potential witness on the
15 witness list. But I shared with Ms. Brewer that if she
16 did not testify, I was not putting a case up at all in her
17 defense. And I think she understands that.

18 THE COURT: One other thing I do have, I guess, did
19 we want -- we had a conference in chambers about the jury
20 charge. We went over that. And I'll be glad to put
21 anything on the record that anybody wants.

22 I would like to note that I -- and this is something
23 we did not discuss. Normally, in my -- in the normal
24 charge when I talk about intent -- criminal intent, it
25 discusses that criminal intent can arise from action or

1 now. But we'll talk about timing, and stuff like that.

2 But with that being said, at this point, we'll have
3 closing arguments.

4 CLOSING ARGUMENTS

5 MS. HINTON: Thank you, Your Honor.

6 May it please the Court:

7 Mr. DeJong.

8 Mr. King.

9 On October the 17th of 2014, **Minor** died
10 senselessly at the hands of Angela Brewer. Angela Brewer
11 got up that day between 3:30 and 4:00. And she took her
12 Oxycodone.

13 And the State maintains that she takes her Oxycodone
14 by fixing a cup of lemonade, adding sugar to it so it
15 won't taste as bad and bitter, and adding lemons to it to
16 help it dissolve. And the reason she does that is because
17 she's been on Oxycodone since February of 2013. And she's
18 built up a tolerance to it. So that helps her get the
19 medication quickly, and that's what she wants.

20 At 5:00 or 5:15, **Minor** wakes up for the day.
21 He's fine. He's playing. His parents, Michael Lusk and
22 Callen Harrison, take the children to school. And then
23 they, also, head off to Georgia. Because they're
24 remodeling the house across the street and they need to
25 get some furniture for it.

1 They leave their youngest, Kayson, who is just two
2 months old, and **Minor** in the care of Angela Brewer. She
3 is the only adult in the house from 10:30 until Robby
4 Brewer arrives back home sometime after 5:00. I believe
5 that is undisputed in this case.

6 Angela Brewer has a routine. Every day during the
7 week at 1:00, she watches Days of our Lives, and then she
8 watches the rest of her shows. She talks to her sister.
9 But those shows are so important to her that she can,
10 actually, tell you what time of day it was based on when
11 the show went off.

12 And **Minor** is not feeling well. He, as you heard,
13 has pneumonia. He has some other viruss, the common cold.
14 So he's a little fussy. And he's supposed to nap between
15 11:00 and 3:00 for an hour or two. But it's time for
16 Angela Brewer's stories, and he hasn't gone to sleep yet.

17 So Angela Brewer decides that she'll give him some of
18 the Oxycodone that she puts in her lemonade and he'll
19 sleep. And, in fact, he does. But, unfortunately, **Minor**
20 **██████████** died sometime between 1:15 and 2:00 by the
21 pathologist's estimation.

22 Angela Brewer does a check on **Minor**. Her
23 husband, Robby, calls on his way home and he tells her,
24 You should probably wake him up. He's not going to sleep
25 tonight if he's slept this long.

1 And then it's a little confusing, based on the
2 reenactment, whether she, actually, goes and checks on him
3 then and picks him up, or whether she checks on him. He's
4 not moving. She goes and sits down for a little while and
5 then picks him up. Either way, when she picks him up,
6 he's lifeless. His head is bobbing around. He's cold to
7 the touch. And instead of immediately hanging up and
8 calling 911, Angela Brewer stays on the phone with Robby
9 for, at a minimum, 12 to 15 minutes.

10 Not only does Angela Brewer not call 911, she
11 couldn't even be bothered to turn on the lights. She
12 tells you she couldn't see him real well. She keeps it
13 dark in the house. And when Robby opened the door and the
14 light came in, she could see him a little bit better. And
15 Robby noticed his lips were blue. That's the State's
16 case.

17 The Defendant's case is what I refer to as a kitchen
18 sink case. They have thrown in a little bit of everything
19 at you hoping that something will stick. Unfortunately
20 for them, Angela Brewer locked herself into several
21 statements throughout the course of this investigation.
22 And those statements cannot be changed.

23 So what I would like to do now is go through some of
24 the testimony and explain to you why the State's case
25 makes sense, and why the Defendant's does not. You're

1 here on a homicide by child abuse. There is no doubt that
2 the death of a child under 11 occurred. **Minor** was
3 only a year old, and he is now dead.

4 The State must prove beyond a reasonable doubt that
5 that death was the result of child abuse or neglect, and
6 that child abuse or neglect showed an extreme indifference
7 to life. And, in this case, we must show that Angela
8 Brewer committed child abuse or neglect, and that that was
9 an extreme indifference to his life.

10 Billy Trotter was the first on scene. And he stated
11 that he arrived at 5:53. So we know that, at least, to
12 some extent, 911 was not immediately called. So that is
13 confirmed that there was some time after Robby arrived
14 before 911 was called and, certainly, 911 was never called
15 before Robby arrived.

16 Why wouldn't someone call 911 right away? You have
17 an emergency situation on your hands. You have a lifeless
18 14-month old. Why doesn't someone call 911? Why doesn't
19 someone run into the street screaming for help, going to a
20 neighbor's house asking someone to help them revive their
21 grandson? And that's because Angela Brewer knows that
22 she's done something bad, and she doesn't want to be alone
23 when law enforcement arrives.)

24 Mark Pless is the EMS guy. And he arrives shortly
25 thereafter. He's not dispatched until 5:41. So, again,

1 we know that 911 was not immediately called. He said that
2 the victim had been dead for sometime.

3 Now, the Defendant says in one of her statements that
4 she's screaming at the ambulance. Mark Pless and Billy
5 Trotter both tell you that's not true. Mark Pless doesn't
6 even remember seeing her. Robby Brewer, her own husband,
7 testified she didn't come off of the porch. That's not
8 someone who's super concerned with what's going on with
9 their grandson. They want to keep their distance from
10 this investigation.

11 Lane Byers told you that the last time that she had
12 lemonade was at 1:15. And I think, at this point, we all
13 know the significance of the lemonade. But I will get to
14 that in more detail.

15 He has been in law enforcement for 20-plus years.
16 And he said that the Defendant seemed incredibly worried
17 and concerned about what law enforcement was doing that
18 night. You're only worried and concerned about what law
19 enforcement is doing if you think that you're a suspect.

20 Robby Brewer stated that he saw the victim before he
21 left. So we know that he was up by, at least, 5:15
22 because that's when Robby said that he left. That he
23 didn't fix any food or drink. That when he got the call
24 he was unresponsive. They had been talking for a while,
25 but he was at the Spinx in Dacusville.

1 Now, as we know, Swiss Entrance is in Pickens. So he
2 said it took him, at least, 12 to 15 minutes to get there.
3 When he got home, the victim was blue. They didn't call
4 911 until after he got home. And that the Defendant
5 doesn't drop her Oxycodone. She keeps them in her purse.
6 She keeps them close to her.

7 He said that when he left for the day that the
8 Defendant had fixed the victim food and drink, that the
9 victim was fine. Callen Harrison said -- and I'm sorry,
10 Callen Harrison said that the Defendant had fixed the
11 victim the food and the drink. The victim was fine. That
12 she never said anything about the victim being sick
13 because that conversation didn't happen.

14 When Callen Harrison gets the call that **Minor** is no
15 longer breathing, she said that she left so quickly that
16 she left the doors of the trailer open in Georgia. That
17 is a normal response to the death of a child, especially a
18 child that you love. You drop everything. And you go
19 straight to where you need to be to see what you can do to
20 help. And that's exactly what Callen Harrison did.

21 She confirmed that her mother watches Days every day
22 at 1:00. And that she tries -- that the Defendant tries
23 to get the victim to nap so that she can watch Days.

24 The first thing that the Defendant tells her is it
25 had to have been SIDS. That didn't come from anyone at

1 the hospital that night, according to their testimony.
2 The Defendant is trying to do whatever she can to throw
3 out anything that it could be.

4 And then she says, He must have gotten one off the
5 floor. How do we know that's not true? Because Angela
6 Brewer said so. She said she knows she took her Oxy at
7 4:00. She doesn't drop them. She said that she keeps
8 them in a pill container that is child proof, zipped up
9 within her purse that's always with her. She's incredibly
10 careful with it. He was not out of her sight. So we know
11 that there's not a chance that she dropped it because
12 Angela never said that she did.

13 Callen admitted to you that she had a prescription
14 for OxyContin, but there's been -- or excuse me,
15 Oxycodone, but there's been no testimony whatsoever that
16 that was in the house. What Callen told you was that was
17 located across the street because she wasn't currently
18 prescribed it. It was old medication. She didn't need it
19 anymore. She voluntarily passed that information along to
20 the coroner because she was trying to be helpful. She was
21 trying to do what she was supposed to do.

22 We know that the victim cannot open a cup for
23 himself. He cannot make his own drink. He cannot reach
24 any medication. So he relies on an adult. And the adult
25 that day was Angela Harrison [sic] to fix his cup and to

1 close the lid on it.

2 We, also, know that the Defendant had not been
3 watching Kayson and **Minor** together for very long.

4 **Minor** [sic] was only two months old. Callen said that
5 she had recently been back to work. She only normally
6 worked two to four hours a day. So this day was
7 different. On this day, Angela Brewer had both children
8 all day long. And that's a lot of work.

9 Kayson sleeps most of the time, so he's fairly easy.
10 I don't think **Minor** is a problem child. But on that day,
11 he was her problem because he was fussy and he wouldn't go
12 to sleep. And all she wanted to do was to watch her
13 stories in peace.

14 Michael Lusk stated that he was gone all day and that
15 the Defendant was the only one that fixed food or drink.

16 Gary Duncan told you that she related all the times
17 to soap operas. And he went to sleep at 5:15 [sic], and
18 that she sat down and watched TV, that no one else was
19 there, and that she never checked on the victim.

20 Now, we get to Angela Brewer's statements. And all
21 of them have been audio and video recorded so that you can
22 review them.

23 And the reenactment, to me, is interesting. Because
24 the first thing that she says on the reenactment is, I
25 need to get this done because I need to go to sleep.

1 That's pretty harsh words on the day that your grandson
2 has died. I, also, notice in that reenactment -- and you
3 can watch it for yourself -- that she can turn it on and
4 she can turn it off.

5 This is her first opportunity to tell police what has
6 happened. And, unfortunately, in death investigations of
7 a child, the best way for a police officer to know what
8 happened is to use a doll to show what happened.

9 So she's reentered the house for the first time where
10 this took place. She is using a doll to show law
11 enforcement what happened. And she talks about it as if
12 she's telling you what she got at the grocery store that
13 day. There is zero emotion in her until the very end
14 where she asked was he dead in that Pack 'n Play. The
15 entire time she picks him up, talking about him being
16 lifeless is completely cold.

17 In her second interview with Michael Hendricks in
18 November of 2014 -- and keep in mind that, at that point,
19 toxicology had not come back yet. So nobody knew what was
20 in the lemonade. We didn't know what was in the lemonade
21 until December the 12th, 2014. This interview took place
22 on November the 8th of 2014.

23 And one of the first things that she says was this is
24 the first time he drank lemonade. She's saying that
25 because she's trying to equate this weird thing happening

1 because this is the first time he had lemonade. No one
2 knows anything about lemonade at that point, no one, but
3 Angela Brewer. Because she's the one who puts her pills
4 in the lemonade.

5 She states he was drinking from her cup. She, also,
6 states that he didn't usually take his second nap until
7 5:00. And that's not what Callen says and that is, also,
8 not what Angela says again ever. So, to me, that was a
9 strange statement.

10 But she had to be careful because if she dropped one
11 of her pills, it would kill her dogs. This is a woman who
12 has already lost a grandchild to a pill overdose. She has
13 three more grandchildren in the house and her biggest
14 concern is not that one of them would get a pill, but that
15 her dogs would.

16 She doesn't know how any pill would have dropped
17 because she always keeps them in her purse. She takes
18 them on her bed. She knows she had her pill that morning.
19 She counts the pills every day. But, interestingly, she
20 didn't count them that day or the day after. And I'll get
21 to the pill counts in a little bit.

22 That no one else in the house is prescribed OxyContin
23 and takes it. That there's no way he could have gotten
24 the pills. There's no way she could have dropped one.
25 And he had to have gotten the pill from her. Those are

1 her words, he had to have gotten it from me.

2 And another interesting thing that she says when
3 they're talking about did you put anything in your drink?
4 And she says, If I put something in my drink, then I'd be
5 asleep. Not why would I put anything in my drink? What
6 is that going to do? That doesn't make any sense. I just
7 swallow my pill. But, If I had put it in my drink, then
8 I'd be asleep..

9 So she knows that if you put Oxycodone in your drink,
10 you go to sleep. And that was confirmed by the
11 pathologist. One of the side effects of Oxycodone is
12 drowsiness.

13 In her interview with Christine Cauthen and Rita
14 Burgess, she says that the victim did not act sick that
15 day. That she woke up around 3:30 or 4:00 and watched the
16 ID channel. She usually sleeps during the day because she
17 wakes up so early. That's really hard to do when you're
18 caring for two small children. That she made the lemonade
19 in the container that morning.

20 So this whole thing of Mr. DeJong trying to say,
21 well, what if somebody made it 15 hours before? How do we
22 know that's not true? Because Angela Brewer told us. She
23 made the lemonade that day.

24 Again, she says it's the first time she had made
25 lemonade for him. She puts actual lemons in her lemonade.

1 The State would submit to you that is because that helps
2 dissolve her Oxycodone pills. Anything she drank out of
3 her cup, he drank. She was so careful with her pills.

4 And when they press her about it being an accident,
5 if you're in a car accident, you know, you don't
6 intentionally hit someone, accidents happen. She doesn't
7 say, I didn't do this. She hangs her head and she says,
8 That was my baby.

9 She had previously told Rita Burgess this shouldn't
10 be happening. And that's right, because I don't think she
11 gave that Oxycodone to **Minor** to kill him. She gave it to
12 him for him to go to sleep. He shouldn't be dead. He
13 should have slept for a little while. That's what she
14 intended to do. He, also, wasn't out of her sight at all
15 that day.

16 And she admits that when they tell her about being
17 sleepy that she's usually napping around that time. And
18 that time was around 12:20 in the afternoon. She, also,
19 says, I thought I had this all in my head. She thought
20 that she had worked out her story in her head and she
21 wouldn't forget it. She, also, stated that she needs it
22 to be over, not I need to figure out what happened to my
23 grandson. She needs this to be over. What did she say?

24 Dr. Rogers told you that you can manipulate
25 OxyContin, that you can dissolve OxyContin. That she

1 received a refill for six 80 milligram extended release
2 pills on October 15th, 2015, the day before **Minor**
3 died. That that is the highest dose of Oxycodone that
4 they make, 80 milligrams. She was on it two times a day.
5 That a simple Google search -- that there are web sites
6 out there that tell you how you can manipulate your pills.
7 It's not hard information to find. And that this is,
8 certainly, not for children.

9 How do we know that Angela Brewer is kind of flippant
10 about her medication? Well, I would, first, submit to you
11 the last interview that you saw where she's slurring her
12 speech and hard to stay wake.

13 The second is we know that Robby Brewer takes some.
14 Now, he got up here and denied that. But Kevin Nichols,
15 who is a DSS worker, who has no dog in this fight, when
16 asked in reference to taking a drug test, he says, Well, I
17 do take a quarter of her pill. He doesn't say how often
18 he does it, or whatever. But he was concerned that that
19 might be in his drug test.

20 Now, the actual evidence in this case was tested.
21 Mr. DeJong wants you to believe that this is human error.
22 Okay. And I'll get to that in a minute, too. But J.T.
23 Albrecht told you that there's no chance of contamination
24 in his lab because OxyContin, methamphetamine, those
25 aren't handled in the same place where he transferred

1 these liquids. And that's important because it's
2 important for you to know that this is solid and reliable
3 evidence. That evidence is sent to SLED.

4 And Agent Grambow tested -- or excuse me, discussed
5 at length that the testing that he does is reliable. That
6 it is peer reviewed. That it is incredibly scientific,
7 frankly, more than I can understand. That the red liquid,
8 which J. T. Albrecht confirmed is the one that was located
9 in the Pack 'n Play where **Minor** was found dead was
10 positive for OxyContin. And that the yellow-brownish
11 liquid was positive for methamphetamine and caffeine.

12 We're not dealing with an innocent grandmother. We
13 are dealing with a house where there is, clearly,
14 methamphetamine, where Oxycodone is given out to other
15 people. This is not Mother Teresa's house.

16 He, also, testified that he takes putting his
17 signature on a report very seriously. And unless he
18 firmly believes that that is what happened, he's not going
19 to attach his signature to it. And he's not going to risk
20 his professional reputation on a report that he doesn't
21 think is accurate. And Dr. Fulcher told you the same
22 thing.

23 There was some question about sending it off to a
24 lab, a nationally-recognized lab. And he said, I would
25 not attach my signature to the thousands of reports that I

1 give if I didn't believe in what that lab was doing, if I
2 didn't believe it was secure.

3 He told you that there were 2,700 nanograms per
4 milliliter in **Minor**'s blood. That there were 360,000
5 nanograms per milliliter in his gastric fluid, which is
6 the stomach contents. That that is the highest he has
7 ever seen. And that he has done thousands of these cases.
8 And that that had to be a record for this county. That
9 the amount in **Minor**'s system would have killed an adult.
10 And that he would have died within 30 minutes, at the
11 most.

12 He, also, told you that acid would absolutely help
13 dissolve. And when I asked him would lemons, that's,
14 certainly, an acid, so yes.

15 Mr. DeJong asked him about biting a pill and then
16 spitting it out. And he said, yes, that's a possible way
17 to get Oxycodone, but that's not consistent with what I
18 found. That's not consistent with the extremely high
19 levels that I found in his system.

20 What it was consistent with is that it is highly
21 likely that this was dissolved in a liquid. Because it is
22 an extended-release tablet that would release a large
23 amount of Oxycodone into the body very quickly. And that
24 that is what he found. That there were no fragments in
25 the stomach that would be consistent with chewing or

1 swallowing. And that it had to be slightly more than one
2 pill.

3 So this is not one pill that was dropped on the floor
4 and popped in **Minor**'s mouth. This is more than one pill
5 at a very high concentration. That he died from an acute
6 Oxycodone overdose. It's the highest level that he had
7 seen in the thousands of cases he's done.

8 Now, as I told you, you have three interviews you can
9 view. And those are three very different Angela Brewers.
10 I don't know what Angela Brewer was there on October the
11 17th, 2014. I imagine it was probably a little bit more
12 like the last interview.

13 It is highly unlikely that we are here based on human
14 error. Because SLED found Oxycodone in the cup, which is
15 a completely different lab than tested **Minor**'s blood.
16 And in **Minor**'s blood was Oxycodone. So either Angela
17 Brewer is the most unlucky person in the State of South
18 Carolina, or she put Oxycodone in **Minor**'s lemonade
19 and he died as a result of it.

20 This is the most senseless death. Angela Brewer
21 could have done any number of things. She could have left
22 the house that day if she was overwhelmed. She could have
23 put **Minor** in his Pack 'n Play, Kayson in his carrier, put
24 them in a room and closed the door. She could have called
25 a neighbor for help. She could have called her sister for

1 help. And we may be here on a different case, but we
2 wouldn't be here because **Minor** was dead.

3 Mr. DeJong will argue to you that this is just a
4 circumstantial case. And I will submit to you that you
5 will not hear the Judge tell you that Angela Brewer is not
6 guilty if the State's case is merely circumstantial.

7 What he will tell you is that circumstantial evidence
8 and direct evidence are given the same weight. But if we
9 rely solely on a circumstantial case, that all the
10 circumstances must be consistent with each other, and when
11 taken together point conclusively to the guilt of Angela
12 Brewer beyond a reasonable doubt.

13 Angela Brewer was the only caretaker for **Minor**.
14 She was the one who made the lemonade. The lemonade cup
15 was found in **Minor**'s crib. And another significant thing
16 is there -- you can look at the vials. There's not much
17 in those vials. So she made **Minor** a cup of lemonade and
18 he drank most of it.

19 She is the only one prescribed OxyContin. She is the
20 only one who had OxyContin in the house. And he died from
21 an acute Oxycodone overdose.

22 The State has the burden of proof in this case. And,
23 as Caroline told you in the opening, it's the same burden
24 in any case. I gladly accept that burden and Caroline
25 gladly accepts that burden that Angela Brewer is guilty of

1 homicide by child abuse beyond a reasonable doubt.

2 Angela Brewer walked through these doors an innocent
3 lady. She is clothed in cellophane, as Mr. DeJong told
4 you. That is a fundamental right of our Constitution.
5 But just because she walked in here an innocent person
6 does not mean that she leaves one.

7 **Minor** should be celebrating his third Christmas
8 with his family. And as Callen Harrison and Michael Lusk
9 begin to prepare for the holidays, they'll do it with a
10 big piece missing, and that's **Minor**.

11 **Minor** didn't have to die that way. I wish we were
12 here on a different case. I wish we were here because
13 Angela Brewer just had more than she could take and she
14 needed a break that day so she left him alone. But that's
15 not what happened.

16 Angela Brewer needed a break that day, but she was so
17 neglectful that she thought that she could give **Minor** a
18 little bit of Oxycodone and he would go to sleep. This is
19 a child who can't speak for themselves. They can't go
20 tell you what happened. They can't tell an adult no.
21 They don't know any better. He was just over a year old.

22 **Minor** can't speak anymore, but I can. And I ask
23 that you speak for him one last time. And I ask that you
24 find the Defendant guilty of homicide by child abuse.

25 Thank you.

1 THE COURT: Mr. DeJong.

2 MR. DEJONG: Thank you, Your Honor.

3 May it please the Court.

4 Ms. Hinton.

5 Ms. Newton.

6 At the outset -- excuse me. Ladies and gentlemen,
7 Madam Forelady, ladies and gentlemen of the jury. At the
8 outset, I made two observations. That is, number one, His
9 Honor is the law giver, not me, not Ms. Hinton, not
10 Ms. Newton. Number two, you have heard all the testimony
11 and seen all the evidence in this case that you're going
12 to see and hear.

13 Now, again, I would ask you to listen as attentive --
14 I can't say the word -- with as much attention to the
15 Judge's charge as, from my observation, each of you have
16 paid during the course of this trial, because the charge
17 on the law is crucial. And that is the law that you will
18 apply.

19 Now, Ms. Hinton shared with you that she thought you
20 will hear from the Judge that -- about circumstantial
21 evidence. And, again, you take the law as he gives it to
22 you. I don't think, if as I understand it, that she gave
23 you all the law on that charge. Because I think that
24 charge goes on to say -- but you listen to the Judge when
25 we talk about circumstantial evidence -- if these

1 circumstances merely portray the Defendant's behavior as
2 suspicious, then proof has not been met.

3 So I think we'll start out by addressing reasonable
4 doubt. I'm going to try to be brief. I know y'all have
5 had a long day, as we all have. And it is not over yet.
6 I'm going to try to be brief. I'm not going to rehash all
7 the testimony.

8 But, you know, I was watching a football game a
9 couple weekends ago, a professional game. And it kind of
10 made me think of a trial, because they do these video
11 replays. And the call on the field was this, that, or the
12 other and it is reviewed. And there must be irrefutable
13 evidence to overturn that call on the field. A trial is
14 much like that, ladies and gentlemen. The call on the
15 field is not guilty. And the State must prove, I submit,
16 by irrefutable evidence the Defendant's guilt.

17 Now -- and His Honor is going to charge you as well
18 on reasonable doubt. I'm not going to belabor that point.
19 I'm going to talk a little bit about the evidence. I
20 will -- well, let me back up a little bit. And, again,
21 take the law from the Judge as you hear it.

22 But the State must prove beyond a reasonable doubt,
23 remembering the call on the field is not guilty. But
24 under what my client is charged with, they must, first,
25 prove beyond a reasonable doubt the death of a child under

1 11. We don't dispute the child was under 11, nor do we
2 dispute his death, unfortunately. It is tremendously
3 tragic. But under the age of 11, committing child abuse
4 and neglect and -- not or -- the death occurs under
5 circumstances manifesting an extreme indifference to human
6 life. Now, both of those must be charged [sic] beyond a
7 reasonable doubt, not just a suspicious, but beyond a
8 reasonable doubt.

9 But I submit to you, number one, there is no direct
10 evidence in this case, none whatsoever. And this is the
11 difference between direct and circumstantial evidence.
12 There's no direct evidence in this case that Ms. Brewer,
13 my client, ever crushed a pill, ever put it in a bottle.

14 Now, I would note when we talk about that, there's
15 been a lot of talk about pink lemonade. I do -- well,
16 y'all can use your common sense. I would suspect all of
17 y'all know what pink lemonade looks like, and it's not
18 red.

19 And I find it rather fascinating that the gentleman
20 from SLED, who says he did the testing, referred to this
21 as a red liquid. And you'll have the evidence back there
22 with you. You can look at it. But, nonetheless, he
23 referred to it as a red liquid. And I apologize, I'm kind
24 of going backwards here, so bear with me.

25 Now, the other thing about that test is this, they

1 talk about these levels of drugs that were in the deceased
2 child. And they want to say, well, there was Hydrocodone
3 in the sippy cup, where parenthetically, the sippy cups
4 were never tested. They never went to SLED.

5 But in testing that, he said, okay, yeah, yeah, yeah,
6 there was Hydrocodone in there. How much? I don't know.
7 I don't do tests like that, as I recall. I don't even
8 have the ability to do a test like that.

9 So, now, they're saying let's make the quantum leap
10 they tested positive for Hydrocodone. We don't know how
11 much was in the cup. But, now, obviously, Ms. Brewer gave
12 the pink lemonade. And whether that substance was a pink
13 lemonade or not, I don't know.

14 The Solicitor makes some deal out of putting lemons
15 in the pink lemonade, as I recall. But I further recall
16 that there is no evidence that has come before you that
17 when either of those sippy cups were collected by Officer
18 Albrecht, none of them had any lemonade. And they want to
19 make a big deal out of there was lemons in that. But it
20 was not there.

21 The other thing I find particularly interesting, I
22 don't know -- excuse me. I don't know how much liquid was
23 in that sippy cup from start to finish. To my knowledge,
24 nobody has really tested it.

25 But jumping up to Dr. Fulcher for a minute with his

1 opinion of how much Hydrocodone, OxyContin, whatever you
2 want to call it, was in that cup, Sergeant -- he's not a
3 sergeant -- Officer Albrecht then goes back to the Pickens
4 County Law Enforcement Center and pours part of both sippy
5 cups into a little bottle.

6 Now, I would submit, ladies and gentlemen -- and we
7 don't know -- number one, we don't know if the pill was
8 crushed up. But if it was crushed up, we don't know what
9 the form would be. I don't believe I heard anybody,
10 including Dr. Fulcher, testifying what form it being in.
11 We talked about husk. I'm not going to belabor that
12 point. But it would make sense if a pill was crushed. I
13 think Dr. Fulcher agreed with me, there would be some
14 husks in there. There were no husks found in the child's
15 system.

16 And the point I make on that, if when you look at
17 State's Exhibit No. 20 -- and you'll have the exhibits
18 back there with you. I asked Deputy Albrecht, Do you see
19 any particulates, that's particles, of anything in that
20 sample you took out of that sippy cup?

21 No.

22 I asked the SLED chemist, toxicologist, whatever he
23 is, Were there any particles in there?

24 No.

25 Now, I would submit, ladies and gentlemen, if, as

1 Dr. Fulcher said, one to one and a half pills -- and,
2 again, we don't know how much liquid is there the cup. I
3 would suggest to you it's kind of like putting sugar in
4 water. It doesn't all just immediately dissolve. There
5 would be particulates floating around, which there were
6 not.

7 Now, the other point I would make, it could have
8 dissolved if it had been put in the cup hours before.
9 That would only make sense. But for it to dissolve as
10 quickly as the State would have you believe and there was
11 that amount, I would still submit to you there would be
12 particulates in that cup. So we talked about that.

13 I want to jump up to Dr. Fulcher here a little bit.
14 And, again, I apologize to you. I'm jumping around a
15 little bit here. But Dr. Fulcher's testimony, he conceded
16 that -- I believe he conceded. You take it the way you
17 believe it. That if a substance, OxyContin, has been put
18 in a drink 15 hours before -- 15 hours was just a number I
19 picked out, and then the child drank it at a later time,
20 it would still have the same effect and level of toxicity
21 as he, Dr. Fulcher, said it was. And in that, I have a
22 little bit of a problem.

23 What Dr. Fulcher found at the autopsy, as I recall --
24 and you take it as you heard it. He found the child had a
25 rhinovirus, I think maybe another virus, maybe some

1 pneumonia, or something like that. He didn't test this
2 child for any drugs.

3 What he did, he took samples and specimens and
4 shipped them off to Pennsylvania to a lab, which he says
5 he's used often. That's fine. But does he know how these
6 specimens were testified -- or tested in this case? He
7 doesn't have a clue.

8 I asked him, Do you know what protocols they follow?
9 Do you know what kind of controls they had? I asked all
10 that stuff. No, he doesn't know. Nor, I believe he said
11 he did not know what condition his package that went
12 FedEx, or whatever, arrived in Pennsylvania, however many
13 miles away that is, and it's quite a few.

14 And something else I find really fascinating --
15 remember the burden of proof is on the State. Where is
16 the person from this lab that did this testing? Why
17 didn't they bring them down here and let them tell you how
18 they did the testing, what the protocols were, what the
19 controls were, how they prevented contamination? Why did
20 they not bring those people in? Certainly, again, the
21 burden of proof is on the State of South Carolina.

22 Let's talk a little bit -- which we could talk. I
23 guess you have to listen and I talk. Let's -- let me talk
24 a little bit about Angela Brewer and they're making a big
25 deal out of her demeanor. She was frantic at the

1 hospital, everybody testified to that.

2 Now, they talk about the reenactment. And, again, I
3 would suggest to you, ladies and gentlemen, that according
4 to one of the witnesses, I believe it was Mr. Nichols from
5 DSS, during the reenactment, he said she was up and down.
6 Now, you've got the video. I suspect if you want to see
7 it again, that is, certainly, possible. You might have to
8 come out here and watch it and listen to it, but that is
9 possible.

10 But you've seen the reenactment. And what I find
11 fascinating throughout this case is how cooperative
12 Ms. Brewer was. They asked her to do a reenactment. She
13 did it. They asked her to give a statement to Detective
14 Hendricks. She came in under her own steam and gave it.
15 Totally cooperative.

16 She was asked by Detective Burgess and Agent Cauthen
17 to come in again and give a statement. And she fully
18 cooperated. On the last statement to Rita Burgess and
19 Agent Cauthen, she said, I don't have a ride. You come
20 and get me and I'll come in. That's exactly what she did.

21 Now, the demeanor, I would suggest to you, ladies and
22 gentlemen, you take it as you saw it, was a tearful, not
23 remorseful, a tearful reaction to this entire tragic
24 event. And I can't really imagine anything worse than
25 having a child die. The only thing I can think worse than

1 that is being charged with that child's death. And if you
2 are responsible for that child's death, would you be that
3 cooperative with law enforcement? I suggest you would not
4 be.

5 His Honor is going to charge you on the Defendant's
6 statements. I'm not sure exactly how that charge goes,
7 but you listen to it. Obviously, they have come in via
8 the video, via the reenactment, all of that stuff. But
9 simply because they are in, you can give those statements
10 such credibility, you can weigh the statements, you can
11 accept them. You can ignore them, or take part of them
12 and not take part of them, whatever. And I think his
13 judge -- His Honor will touch on that.

14 But especially, ladies and gentlemen, I ask you to
15 look at the interview with Detective Burgess and Rita
16 Cauthen -- I'm sorry, Agent Cauthen. Look at that. You
17 saw the video of Sergeant Hendricks. You saw the video of
18 Rita Burgess and Cauthen.

19 Part of what I think His Honor is going to charge you
20 with, you must determine for yourself, number one, whether
21 the Miranda warnings were given. Number two, I believe is
22 were they knowingly and intentionally waived? And, number
23 three, whether the statement given was voluntary. I'm not
24 going to belabor that. I just want you to look at that
25 and think about Ms. Brewer's demeanor and her speech

1 patterns during that interview. And you decide whether it
2 was knowingly and intelligently given. You decide whether
3 the statement was voluntary.

4 And, indeed, on that case -- and, again, you can see
5 it. But I submit to you that Detective Burgess directed
6 Ms. Brewer where to sign the waiver. That is that she
7 would talk. Is that freely and voluntarily, knowingly and
8 intelligently? That's your determination.

9 On the day in question, there's been a lot of
10 different testimony or, at least, the State has tried to
11 elicit testimony that **Minor** was fussy that day. I don't
12 recall any testimony that he was fussy that day, maybe you
13 recall something. I didn't hear anything. They heard
14 from his mother before they left for her to go to work and
15 then on to Georgia that he was doing what he normally
16 does. He was playing. He seemed to be fine. Robby
17 Brewer, the step-grandfather, said he saw him briefly
18 before he went to work. He was doing what a child would
19 do.

20 Dr. Fulcher, when asked about even though he had
21 these viruses, number one, would that slow him down. And
22 he said, Well, it might slow him down a little, but it's
23 not going to really slow him down that much. He would
24 still do what he normally does and go about his business.

25 The reason I bring that up is the State wants you to

1 believe that this child was fussy, irritable, upset,
2 whatever, and that Ms. Brewer then medicated him. I don't
3 recall any testimony to that. I don't recall any evidence
4 to that, that he was fussy or upset. Momma said he
5 wasn't. Ms. Brewer, I believe in her statement, said he
6 wasn't. Michael Lusk, I think he said he wasn't.

7 So I would submit to you that there's no evidence
8 that he was fussy or upset. And Dr. Fulcher said dealing
9 with these infections he had, he would not necessarily run
10 a fever. So even though he had this stuff, according to
11 Dr. Fulcher, the State's expert, that would not slow this
12 child down. It would not really give him any indication
13 or give anybody any indication that he was sick. And he
14 was sick. There's no two ways about that. But not that
15 it would go to the point of slowing him down.

16 Now, this was a crowded household. There were four
17 adults and four children living in a double wide.

18 Ms. Brewer, in her interviews, in her statements
19 readily and openly acknowledges that she had a
20 prescription for OxyContin. No question about that. She,
21 also, said she kept it secured.

22 Callen Harrison, also, had a prescription for
23 OxyContin. She says it wasn't in the house. That's a
24 credibility issue and that's for y'all to decide. You can
25 decide whether it was or not, whether to believe her or

1 not. That's totally up to you.

2 Again, remembering, however, and according to
3 Dr. Fulcher, that if something had been put in a cup
4 15 hours before and not -- what's the word -- not drank, I
5 guess. I'm not sure that's good English. But not drank,
6 but someone drank it at a later date, that would still
7 have the same effect.

8 And jumping back to SLED just for a moment. I may
9 have touched on this. My mind goes in a thousand
10 different directions sometimes. They made a big deal of
11 the pink lemonade. The SLED chemist said, I can't tell
12 you if that's pink lemonade. I don't know. To him, it
13 was a red liquid. That was it. So it's up to you to
14 decide whether or not -- based on what you've heard today,
15 whether or not that was pink lemonade.

16 Ms. Brewer's doctor came in and testified. I don't
17 remember his name right now, hopefully, y'all recall. His
18 name is not particularly that important. But what I would
19 note is that when asked about Ms. Brewer's pill counts, he
20 said they were all -- they were always good. He had no
21 problem with pill counts. Not only that, he said her
22 blood tests, her blood levels -- I think there was
23 something else he said, but they were all consistent with
24 her, as I recall, taking her medication as prescribed.

25 Now, they make a big deal out of Robby Brewer and his

1 admission. And, as far as I know, that's what he said.
2 He did not -- and I don't believe there's any testimony,
3 ladies and gentlemen, that he took a half of an OxyContin.
4 He was tested for Hydrocodone. But I gather the State is
5 trying to portray to you that he took half of one of her
6 OxyContin. And we know that altering OxyContin from the
7 pill capsule it comes in is not a good idea. So simply
8 because there was Hydrocodone in the system does not mean
9 that he took an OxyContin.

10 Now, I'm kind of through with rehashing what I've
11 seen with the case. When I talked to you on Monday, I
12 talked about presumption of innocence. And, again, ladies
13 and gentlemen, that is not -- when we talk about
14 presumption of innocence, that is not legal theory. It is
15 not legal mumbo jumbo. It is a substantial right that is
16 afforded to every citizen of this country who is charged
17 with a crime. And until or unless the State proves beyond
18 a reasonable doubt, Ms. Brewer remains shrouded in that
19 presumption of innocence. It is still there.

20 And they have to prove it -- "they" being the State
21 has to prove it beyond a reasonable doubt, not a mere
22 suspicion, not that she was just there all day. And
23 that's what they're really trying to say is she was there
24 all day.

25 They're asking the 12 of you -- 14 of you for the

1 moment, but only 12 of you will, actually, deliberate.
2 What they're asking you to do is make the quantum leap
3 that because she was there, she was the only one there,
4 she did it. I don't consider that, ladies and gentlemen,
5 proof beyond a reasonable doubt. It might raise a
6 suspicion, but not proof beyond a reasonable doubt.

7 It's obvious, at this point in time, that Ms. Brewer
8 did not testify. And in that regard, I'm going to ask you
9 to go back, way back to Monday, which seems like it's been
10 a long time ago. Remember that oath you took. You will
11 well and truly try this case based on the law and evidence
12 that you got from this courtroom.

13 And His Honor is going to charge you, I believe, on
14 Ms. Brewer not testifying. He'll charge you the law. And
15 it's going to be that you are not to consider that, and
16 you are not to talk about that in your deliberations.
17 Because that kind of goes hand in hand with this
18 presumption of innocence.

19 And I submit to you, ladies and gentlemen, when you
20 get back there and start deliberating and it comes to your
21 mind, boy, if I was charged with this, I probably would
22 want to testify. No, no, no. That's a violation of your
23 oath. And I know all 14 of you -- 12 will go and
24 deliberate and take that oath very seriously.

25 So what I am going to ask you to do, ladies and

1 gentlemen, is in a little bit, after you hear His Honor's
2 charge, not to dwell on the fact that Ms. Brewer was there
3 and that this child died of an Oxy -- I forget what
4 Dr. Fulcher called it, but of an overdose. Certainly, you
5 can take that into consideration.

6 But look at the big picture, look at everything,
7 everything you have heard, everything you have seen, all
8 the evidence that has been presented to you. And once you
9 look at all of that, I'm going to ask you, based on His
10 Honor's charge, to consider this statement, well, maybe
11 you raised a suspicious. But, at best, it is only a
12 suspicion. That is not good enough under the law.

13 And, in this case, ladies and gentlemen, it is a
14 tragic case. It's a horrible case. I will stand before
15 you and say that I think every one of our hearts have been
16 tugged and goes out -- my heart goes out to the parents of
17 the child, certainly, Ms. Brewer. My heart can't go out
18 to the child because of his tragic death.

19 But in this case, it is not to be decided on passion
20 or prejudice. It is to be decided on the law and the
21 evidence. And, in this case, ladies and gentlemen, you
22 have no friends to reward. You have no enemies to punish.
23 Yours is purely under the oath you took to determine
24 whether or not the State has proven its case by the
25 elements of the case beyond a reasonable doubt.

1 And I'm asking you, once you look at that and you
2 look at this entire case, please, don't dwell on any one
3 thing, but you'll come back with a verdict of not guilty.

4 Thank you so much for your time and patience.

5 THE COURT: All right. Ladies and gentlemen, I'm
6 going to ask everybody to just stand for a second before I
7 give my charge.

8 (Pause.)

9 CHARGE ON THE LAW

10 THE COURT: All right. You may sit back down now.

11 All right. This is the charge on the law.

12 And it's -- I told you in the beginning, the
13 indictment charges the Defendant with homicide by child
14 abuse. I remind you of the fact -- that the fact the
15 Defendant was arrested, charged, and indicted is not
16 something that you are -- is not evidence in this case,
17 and not something that can be considered by you in
18 determining the evidence of guilt in this case, nor does
19 it create any type of presumption or inference. This
20 document is simply the formal written charge against the
21 Defendant that brings this matter into court. It's
22 nothing more.

23 As I told you in the beginning, the Defendant has
24 pled not guilty to this indictment. And that plea puts
25 the burden on the State to prove that the Defendant is

1 guilty.

2 A person charged with committing a criminal offense
3 in South Carolina is never required to prove herself
4 innocent. I charge you that that is an important rule of
5 law that the Defendant in a criminal trial, no matter
6 what -- how serious the charges may be will always be
7 presumed innocent of the crime for which the indictment
8 was issued, unless guilt has been proven by evidence
9 satisfying you of that guilt beyond a reasonable doubt.
10 And I'll discuss reasonable doubt with you more in just a
11 few minutes.

12 This presumption of innocence does not end when you
13 begin your deliberations. But it accompanies the
14 Defendant throughout the trial until you reach a verdict
15 of guilt based on evidence satisfying you of that guilt
16 beyond a reasonable doubt.

17 The presumption of innocence is not merely a legal
18 theory. It's not just a legal phrase to be used by
19 lawyers and heard on TV. It is a substantial right which
20 every defendant is entitled to, unless you, the jury, are
21 satisfied from the evidence of the Defendant's guilt
22 beyond a reasonable doubt.

23 As I told you in beginning of this trial, you and I
24 have very distinct -- or very clear and very important
25 roles. My duty is to preside over the trial of the case

1 and rule on the admissibility of evidence that's being
2 offered in the case. You are only to consider competent
3 evidence that was before you.

4 If there was any testimony ordered stricken from the
5 record in the case during the trial, then you're not to
6 consider that testimony. You're to consider only the
7 testimony which has been presented from this witness stand
8 and any exhibits which have been made part of the record,
9 which will go back into the -- in your jury room with you,
10 and any stipulations that counsel have entered into.

11 I have the duty -- the additional duty to charge you
12 the law which applies to this case. I am the sole judge
13 of the law. And it's your duty, as jurors, to accept the
14 law that I charge you here now.

15 If you already have an idea what the law is, or what
16 you think it should be, or that you picked up from any
17 other source, then you are to disregard that. Because you
18 have taken an oath that says you will apply the law that
19 I'm giving to you now.

20 In every case tried before a jury, you are the sole
21 and exclusive judge of the facts. I cannot intimate,
22 state, or have any opinion about those facts, or comment
23 on them. Because that would be invading your province as
24 a jury. And if anything I have said during the trial
25 makes you think that I have an opinion on those facts or I

1 have inferred that I have an opinion about certain facts,
2 please, disregard that because that is not my job. That
3 is your job to determine what the facts are based on the
4 evidence.

5 Like I said, the law says I can't have an opinion on
6 the facts. And, as jurors, it's your duty to determine
7 the effect, value, weight, and truth of the evidence which
8 was presented during this trial.

9 Now, reasonable doubt, that's a phrase that has been
10 mentioned several times by me and throughout the trial.
11 The State has the burden of proving the Defendant guilty
12 beyond a reasonable doubt.

13 Some of you may have served as jurors in a civil
14 matter, which has a totally -- or seen something on TV.
15 That's a totally different standard. That's by the
16 preponderance of the evidence. That does not apply here.
17 But in criminal cases, again, that burden is much higher.
18 It's beyond a reasonable doubt.

19 And what is reasonable doubt? Reasonable doubt is
20 the kind of doubt that would make a reasonable person
21 hesitate to act. Proof beyond a reasonable doubt is proof
22 that leaves you firmly convinced of the Defendant's guilt.

23 There are very few things in this world that we know
24 for absolute certainty. And in criminal cases, the law
25 does not require proof that overcomes every possible

1 doubt.

2 But if based on your consideration of the evidence,
3 you are firmly convinced that the Defendant is guilty of
4 the crime charged, then you must find her guilty. On the
5 other hand, if you think there is a real possibility that
6 the Defendant is not guilty, you must give the Defendant
7 the benefit of the doubt and find her not guilty.

8 Facts and circumstances that merely place upon the
9 Defendant a grave suspicion of the crime charged, or that
10 merely raises a speculation or conjecture of her guilt are
11 not sufficient to authorize a conviction of the accused.

12 Now, there's two types of evidence which are
13 considered in trials, direct and circumstantial. I'm
14 going to define the two to you. Direct evidence directly
15 proves the existence of a particular fact. It does not
16 require deduction. Circumstantial evidence is proof of a
17 chain of facts and circumstances indicating the existence
18 of a fact.

19 Crimes may be proven by direct or circumstantial
20 evidence. The law makes no distinction between the weight
21 to be given to either direct or circumstantial evidence.
22 However, to the extent the State relies on circumstantial
23 evidence, all of the circumstances must be consistent with
24 each other, and when taken together, point conclusively to
25 the guilt of the accused beyond a reasonable doubt. If

1 these circumstances merely portray the Defendant's
2 behavior as suspicious, then the proof has failed.

3 The State has the burden of proving the Defendant
4 guilty beyond a reasonable doubt. That burden rests with
5 the State, regardless of whether the State relies on
6 direct, circumstantial evidence, or some combination of
7 the two.

8 Now, let me talk to you a little bit about the
9 credibility of witnesses. Now, you must normally --
10 necessarily, you have to determine the credibility of the
11 witnesses that testified in this case. Credibility simply
12 means believability. It becomes your duty, as jurors, to
13 analyze and to evaluate the evidence and determine which
14 evidence convinces you of the truth.

15 In determining the believability of witnesses who
16 have testified in this case, you may believe one witness
17 over several witnesses, or several witnesses over one
18 witness. You may believe part of the testimony of a
19 witness and reject the remaining part of that testimony.
20 Or you may believe the testimony of a witness in its
21 entirety or reject the testimony of a witness in its
22 entirety.

23 You may consider whether any witness has exhibited to
24 you any interest, bias, prejudice, or other motive in this
25 case. You may, also, consider the appearance and manner

1 of a witness while on the witness stand.

2 In this matter, there's been a statement alleged to
3 have been made by the Defendant and which has been
4 admitted into the evidence of the case. While the Court
5 has determined that the statement was admissible, I
6 instruct you that you make the ultimate decision of
7 whether or not the Defendant made the statement.

8 If the statement -- if the Defendant did make the
9 statement, you must determine whether the statement was
10 made by the Defendant voluntarily and of her own free
11 will. That means the statement was not caused by
12 pressure, force, fear, threats, coercion, or intimidation,
13 or by hope or a promise of leniency, or a reward of any
14 kind.

15 In determining whether the statement was voluntary,
16 you should consider both the characteristics of the
17 Defendant and the details of the questioning. Here is a
18 list of factors which you can consider when determining
19 whether such a statement was voluntary: The age of the
20 Defendant, the Defendant's education or lack of education,
21 the Defendant's mental ability or capacity, the
22 Defendant's IQ or intelligence, the Defendant's background
23 and environment, the place and length of the detention,
24 the nature of the questioning, and the advice or lack
25 thereof to the Defendant of her Constitutional rights,

1 which include but are not limited to the right to remain
2 silent, that any statement could be used against her in a
3 court of law, the right to have a lawyer present, that if
4 she could not afford a lawyer, a lawyer would be appointed
5 to represent her without any cost, and that she could stop
6 making the statement at any time. You must consider all
7 the surrounding circumstances before you give any weight
8 to such an alleged statement.

9 The State has the burden of proving beyond a
10 reasonable doubt that the alleged statement was voluntary.
11 If you determine it was, then you must give -- then you
12 may give the statement any further consideration that you
13 deem proper. You must decide what weight, if any, should
14 be given to the alleged statement. If you determine the
15 alleged statement was not the free and voluntary statement
16 of the Defendant, you should not consider that statement.

17 There, also, has been evidence -- there's been
18 evidence presented that witnesses have made prior
19 statements which are not consistent with the witness's
20 present testimony. You may use this evidence to decide
21 whether to believe the witness.

22 You may, also, use evidence of the earlier
23 contradictory statements to determine the truth of those
24 statements. It is up to you to decide whether to believe
25 the earlier statement or the testimony given at trial. If

1 the witness is shown to have knowingly testified
2 untruthfully, you may consider this in determining whether
3 to trust the witness's testimony as to other matters. You
4 may reject all the testimony of that witness, or give all
5 or part of the testimony the weight you think it deserves.

6 Now, we, also, had certain witnesses who were
7 qualified as expert witnesses. And, at that time, I gave
8 you a very similar charge to this, but I want to reiterate
9 this because this is something for your consideration.

10 As I said, the rules of evidence normally do not
11 permit witnesses to testify to opinions or conclusions.
12 An exception to this rule exists for witnesses we call
13 expert witnesses. This is a person who by their education
14 and experience have become expert in some art, science,
15 profession, or some calling. And they can state an
16 opinion as to relevant matters in which the witness claims
17 to be an expert. They may, also, state their reasons for
18 that opinion.

19 You should consider any expert opinion received in
20 this case like any other evidence, and give it the weight
21 you think it deserves. If you decide that the opinion of
22 an expert witness is not based on sufficient education and
23 experience, or if you conclude the reason given in support
24 of the opinion is not sound, or the opinion is outweighed
25 by other evidence, you may disregard the opinion entirely.

1 An expert witness's testimony is to be given no
2 greater weight than that of other witnesses simply because
3 the witness has been designated as an expert. Further,
4 you're not required to accept an expert's opinion even
5 though it is not contradicted.

6 All right. I instruct you -- and this is very
7 important. And I emphasize the fact that the Defendant
8 did not testify is not -- and I repeat is not a factor to
9 be considered by you in any way in your deliberations.
10 And in your consideration of the question of guilt or
11 innocence of the Defendant, it must not be considered by
12 you in any manner whatsoever. A Defendant has the
13 Constitutional right to remain silent. And the assertion
14 of this right must not be considered by you in your
15 deliberations.

16 I repeat, under your oath, you are to draw no
17 conclusions whatsoever from the fact the Defendant in the
18 case did not testify. The fact that this Defendant did
19 not testify should not even be discussed in the jury room.

20 The burden of proof, as I have said, is on the State.
21 The Defendant is not required to prove her innocence. The
22 burden of proof remains on the State to prove guilt beyond
23 a reasonable doubt.

24 Now, let's talk about intent. In order to establish
25 criminal liability, criminal intent is required. For

1 example, the mental state required to be proven by the
2 State for a particular crime might be purpose, intent,
3 knowledge, recklessness, or criminal negligence. Criminal
4 intent must be proven by the State beyond a reasonable
5 doubt, as with every element of the crime.

6 Criminal intent is always a matter that must be
7 determined by the jury from the circumstances surrounding
8 the situation. There's no way to prove intent to a
9 mathematical certainty. There's no way medical science
10 can dissect a person's brain and determine what the person
11 had in mind.

12 So the law says that criminal intent may be inferred
13 from the circumstances shown to have existed at the time.
14 This is how you, the jury, make the determination whether
15 or not the element requiring intent was present.

16 It is not necessary to establish intent by direct and
17 positive evidence. But intent may be established by
18 inference in the same way as any other fact by taking into
19 consideration the acts of the parties and all the facts
20 and circumstances of the case.

21 Now, criminal intent is a mental state, a conscious
22 wrongdoing. It is up to you to determine what the
23 Defendant intended to do based on the circumstances shown
24 to have existed at the time. Criminal intent can arise
25 from action or failure to act. But it must arise from

1 extreme negligence as will be defined in just a minute in
2 this charge, which is the equivalent of criminal intent.

3 Now, there's, also, been a reference to homicide by
4 witnesses and testimony by one or more of the witnesses.
5 This term used in this context is from a medical
6 standpoint. It is not the same definition which you must
7 apply in your deliberations, which I'm going to be giving
8 you in just a minute.

9 In determining whether the Defendant is guilty, you
10 must apply the elements and definitions as I will instruct
11 you as to what the elements of this charge are, not based
12 on the term that was used by any of the witnesses.

13 All right. As indicated the charge is homicide by
14 child abuse or neglect. That's what the Defendant is
15 charged with. And the State must prove beyond a
16 reasonable doubt that the Defendant caused the death of a
17 child under the age of 11 while committing child abuse or
18 neglect.

19 Child abuse or neglect is an act or failure to act
20 which causes harm to the child's physical health or
21 welfare. Harm to the child's physical health or welfare
22 means that the Defendant inflicted or allowed to be
23 inflicted on the child physical injury.

24 The State must, also, prove beyond a reasonable doubt
25 that the death occurred under circumstances showing an

1 extreme indifference to human life. An extreme
2 indifference is defined as a mental state akin to intent
3 characterized by a deliberate act culminating in death.
4 So that's the charge, and that's the elements the State
5 must prove.

6 All right. At this time, Madam Forelady, I'm going
7 to hand you the verdict form and go over it with you.

8 All right. If you will look at the top part, that's
9 just merely the caption of the case and the indictment
10 number. It says, Please answer the following question:
11 As to the charge of homicide by child abuse, indictment
12 number 2016-GS-39-2265, we, the jury, unanimously find the
13 Defendant, Angela Denise Brewer, check one. You have to
14 either check -- you're going to have to -- after you --
15 it's a unanimous decision, either guilty or not guilty.

16 All right. There's no significance in the order of
17 those. We have to put them in some order. So, please,
18 pay no attention to the significant -- or what order
19 they're in.

20 But, basically, if you feel that the State has met
21 its burden beyond a reasonable doubt, then you would find
22 the Defendant guilty. If you find after consideration of
23 all the evidence that the State has not met its burden
24 beyond a reasonable doubt, then you would check not
25 guilty.

1 Now, you would, also -- at the time you've reached a
2 verdict, you will sign as foreperson and you will date it.

3 Now, I must remind you that the verdict is unanimous.
4 That means all 12 of you must decide what the verdict is
5 and y'all must agree on it.

6 Now, a verdict cannot be based on sympathy, passion,
7 prejudice, emotion, or any other consideration but the
8 evidence that is presented.

9 Now, a couple of things I want to talk about. You
10 have -- one of your duties as foreperson is if you have
11 any questions or comments -- or questions, then you need
12 to write those on a piece of paper and hand them to the
13 bailiff. The bailiff will bring those to me. And I will
14 either respond by writing back to you, or bringing you out
15 here for further instructions.

16 I will, also, tell you that a lot of time the
17 questions we get from jurors is, we would like to know
18 what such and such report said, or something. You only
19 will be allowed to consider what is in evidence at this
20 time. In other words, that's what the -- that's all
21 that's in evidence. That's all that you can consider.
22 Any additional reports that may be helpful or you may want
23 to hear, you can't hear that. It's only for what's in
24 evidence here.

25 Now, also, I want to talk to you about the timing.

1 All right. I realize it is now 20 until 5:00. And I made
2 a decision that we would put this before you today. As it
3 turns out, it was an ambitious decision, and I realize
4 that now. But -- and I'm going to have to take some
5 direction from you.

6 What I want y'all to do is when I give you the signal
7 to begin your deliberations, I want y'all to deliberate.
8 I don't want to create any undue hardship. But I would
9 like for y'all to begin your deliberations.

10 Madam Forelady, if you have specific concerns after
11 talking with your fellow jurors, or any restraints, then
12 you need to let me know how long -- I want us to do this
13 for a reasonable amount of time. I don't want anybody to
14 be rushed or feel like there's any time constraints. I
15 want y'all to feel that y'all can take as much time as
16 y'all need to take to make this decision. Because this is
17 a very important decision for both the State and the
18 Defendant.

19 So I don't want anybody to feel rushed or pressured
20 in any way. If at some point, you feel we're going to get
21 too long in this evening, then you just need to let me
22 know. And we can come back in the morning and continue
23 deliberations at that time after I give you further
24 instructions. So I'm just going to have to rely on you to
25 communicate with me as you feel necessary.

1 Now, let's see. My alternates, you and you. This
2 has been a little bit different. I want to make -- I want
3 to tell you one thing.

4 Well, first of all, unfortunately, you're not allowed
5 to stay in the room during deliberations or participate in
6 the deliberations. But that does not mean that your role
7 in the matter has not been important, because it is. It's
8 kind of like the backup quarterback in the big game. That
9 backup quarterback may not play, but if that number one
10 quarterback gets hurt, then that backup quarterback is
11 crucial.

12 And that's like I've been in many trials where, for
13 some reason, a juror could not continue and that alternate
14 juror had to step in. Otherwise, we would have had to
15 declare a mistrial. So even though you can't participate,
16 your role has been crucial in this matter. But,
17 unfortunately, you cannot participate further.

18 Once you have reached a verdict, you're to let --
19 you're to knock on the door and let the bailiff know. And
20 then I will call you out after we've gathered everybody
21 together, and stuff like that.

22 So, at this time, I'm going to ask that you put --
23 put the verdict form right there on the bar. You're going
24 to go back. But you're not going to be able to discuss
25 the case quite yet. And the signal is -- one, I've got to

1 make sure that I've told you all the law that I need to
2 tell you. And if there's any corrections to that, I may
3 need to bring you back out here and tell you some
4 additional law.

5 All right. If there's no additional law for me to
6 tell you, then I will give you a signal when you can
7 deliberate -- let me see if I can get this out -- that you
8 can begin deliberations. And that is, you will get the
9 verdict form and the exhibits. And the bailiff is going
10 to exchange those for the two alternates, so -- and bring
11 the alternates out and give you the exhibits and the
12 jury [sic] form. At that point, that's the signal that
13 you can begin discussing the case among yourselves.

14 So, at this time, I'm going to ask that you retire to
15 your jury room and await for further instructions or my
16 signal, so.

17 (WHEREUPON, the jury was excused from open court at
18 approximately 4:41 p.m.)

19 THE COURT: Any exceptions or objections from the
20 State?

21 MS. HINTON: No, Your Honor.

22 THE COURT: Any objections or exceptions from the
23 Defendant?

24 MR. DEJONG: Not as given, Your Honor.

25 But I would renew my request for a mere presence

1 charge.

2 THE COURT: All right. Okay. Well, make sure you
3 have all the exhibits.

4 (Pause.)

5 THE COURT: All right. We'll be at ease until
6 further notice. Don't go far.

7 (WHEREUPON, the proceedings were recessed at
8 approximately 4:44 p.m.)

9 (WHEREUPON, Court's Exhibit No. 4 was marked for
10 identification and admitted into evidence.)

11 NOTE FROM THE JURY

12 THE COURT: All right. Court's Exhibit No. 4, We,
13 the jury, would like to view State's Exhibit Nos. 16, 17,
14 and 18.

15 Are those the videos?

16 MS. HINTON: Yes, Your Honor.

17 THE COURT: I guess we're going to have to have it in
18 the courtroom.

19 MS. HINTON: Yes, Your Honor.

20 THE COURT: And all of those together will be about
21 an hour and a half, all the videos?

22 MS. HINTON: Probably close to that, yes, Your Honor.

23 THE COURT: I'm trying to figure out -- there's no
24 way we can do that and all the other stuff we're supposed
25 to do tomorrow.

1 THE CLERK: Your Honor, could they view the videos in
2 courtroom four?

3 THE COURT: We don't have a way to put them -- have
4 them to listen to them --

5 MS. HINTON: Well, that one is redacted, basically,
6 by hand.

7 THE COURT: That's right. But the other two --

8 MS. HINTON: The other two, we could. We would have
9 to remove some things from our laptop.

10 THE COURT: Okay. We'll figure that out.

11 Given the time of day, we ask to adjourn today and
12 begin deliberations again in the morning. We would like
13 to begin tomorrow at 10:00 a.m., if possible. Thank you,
14 signed the Foreperson.

15 MR. DEJONG: The only -- and that may cover -- we had
16 one juror that was to be protected tomorrow?

17 THE COURT: No. She came up and we excused her
18 during the process.

19 MR. DEJONG: Okay. I just wanted to make sure.

20 THE COURT: All right. I'm going to bring them out
21 and give them instructions -- 10:00 is the starting -- I'm
22 going to ask them.

23 SOLICITOR BAKER CLEVELAND: Judge, if I may?

24 THE COURT: Yes.

25 SOLICITOR BAKER CLEVELAND: Would you consider

1 letting them deliberate on the third floor outside of
2 courtroom four? We can even present the video -- the
3 State can even present the videos up there in courtroom
4 four. Obviously, they would be sealed off. There
5 wouldn't be court going on in there.

6 But that would allow -- and Your Honor can be up
7 there, too. That would just allow the mass to kind of be
8 down here. We can, obviously, take any matters up down
9 here.. But just for purposes of deliberation -- and I
10 think, honestly, by 10:00 in the morning, the crowd
11 usually starts to leave by then. Anybody that's not going
12 to do anything will be sent home.

13 THE COURT: Is that presentable?

14 Does that present a problem, Mr. Clerk?

15 THE CLERK: No, sir.

16 THE COURT: Okay. Bring them out.

17 All right. So I'll tell you what we're going to do.
18 We're going to meet them here and then take them up. That
19 way they don't have to --

20 (WHEREUPON, the jury came into open court at
21 approximately 6:02 p.m.)

22 THE COURT: All right. That was my prediction, what
23 y'all were going to do. I said they will come back at
24 6:00 and want to come back tomorrow, which is perfectly
25 fine. That's what I wanted you to do is communicate.

1 All right. Let me tell you a couple of things that
2 we're going to do. One is let me just kind of read it for
3 the record, We, the jury, would like to view State's
4 Exhibit Nos. 16, 17, and 18. Obviously, we'll set that up
5 in the morning.

6 And because we have some other things going on, we
7 may move y'all to the third floor jury room so we can --
8 anyway, we'll work out the logistics of that in the
9 morning. Given the time of day, we ask to adjourn and
10 begin our deliberations again in the morning.

11 Y'all have requested 10:00 a.m., is that -- does
12 somebody need -- is that pretty firm on that?

13 JUROR #208, SARAH WILLIAMS: Yes, Your Honor. We
14 have personal obligations that the jury has requested
15 10:00 a.m.

16 THE COURT: All right. So I'm going to ask that you
17 be back in this jury room at 10:00 a.m. And then what
18 we're going to do is we're going to move you as a group at
19 that point.

20 So still just come back just like you've done every
21 day. And you'll see a flurry of activity going on in the
22 hallway, but just make sure -- the bailiffs will be out
23 there waiting for you, so grab them. And then once
24 everybody gets here, we will move y'all to the next room
25 up there.

1 All right. Once y'all are back there -- and I
2 realize you want to see these exhibits. And we're going
3 to make arrangements for that. But once y'all are all
4 together and have moved up there, y'all can continue your
5 deliberations at that point.

6 It may take us some time to get everything set up as
7 far as those exhibits that you want to hear. But that
8 doesn't mean you can't continue talking about the case
9 once y'all are all together in that jury room. All right.
10 So that way y'all can do that.

11 So that -- we're good with that. Let me enforce --
12 now, this is even more important than before. It is
13 very -- I know y'all have already started discussing the
14 case among yourselves and began your deliberations. But
15 it is very, very important that you do not discuss the
16 case, you know, as of this point until you get back in the
17 jury room, not only among yourselves, but your family
18 members and friends. I know that's very difficult.

19 I'm sure that many of you are probably going to
20 church tonight. And somebody is going to say, what have
21 y'all been doing today? It's, like, well, you just can't
22 tell them. And that's very, very important.

23 It's, also, very important -- do not do any type of
24 research. I know you probably have a lot more questions
25 than you probably did before. It is not permissible. If

1 you have any questions about anything, then that's what
2 you're to ask me tomorrow. Okay.

3 Do not pay any attention to any media coverage.
4 I'm -- I haven't seen the cameraman back, so I'm not sure
5 there is anything out there. But, again, if there is, do
6 not pay attention to any media coverage. And, also,
7 again, if you receive any contact from anybody other than
8 the Clerk's Office, you know, please, let the bailiffs
9 know when you get here.

10 And it's, also, very, very important that all 12 of
11 you come back tomorrow. So if there's any issues about
12 that, make sure you call the clerk. Because that's very
13 important once the deliberation process has begun.

14 So I'm going to let y'all go home. And y'all can
15 come back tomorrow. And, again, you know, I want to
16 reiterate that there's no pressure on time for y'all.
17 Y'all need to take the time -- as much time as y'all need
18 to deliberate on this.

19 So -- but I'm glad y'all, at least, got a start on it
20 today. Y'all can come back tomorrow fresh and start anew.

21 So, at this point -- did I cover everything, answer
22 all the questions that you would have as far as --

23 JUROR #208, SARAH WILLIAMS: Yes, Your Honor.

24 THE COURT: Our other option is to put you in a hotel
25 tonight. No, we don't do that. You only see that on TV,

1 but I've never had to do it. Go back to your jury room.

2 Again, you're coming back in here. And then we'll
3 move you in the morning when all of y'all get here. If
4 y'all get here a little before 10:00, if everybody's here
5 at 9:45, or something, then we can move you at that point,
6 so.

7 All right. Thank y'all.

8 Have a good evening. And we will see y'all in the
9 morning.

10 (WHEREUPON, the jury was excused from open court at
11 approximately 6:07 p.m.)

12 THE COURT: All right. And let's figure out -- my
13 thoughts are two of the statements they can -- I think
14 they can be reviewed -- if I'm comfortable, they can be
15 reviewed without -- and we can put them in the courtroom
16 up there and let them review them. I know that one, we're
17 going to have to go in there and --

18 MS. HINTON: Right.

19 And the other one, Judge, we did cut out just some
20 silence. You may just want to let them know what we cut
21 out out here so that they can do the same back there to
22 save some time.

23 THE COURT: Well, no, we need to make sure. Anything
24 we're going to do, we need to do exactly the same thing we
25 did in here. So it's just going to be some logistical

1 issues tomorrow, but we'll work through that.

2 MS. HINTON: Okay. Well, that was on the one where
3 there wasn't anything other than her writing her --

4 THE COURT: Right. But we'll still have to go in and
5 stop -- let me think through that.

6 MS. HINTON: Okay.

7 THE COURT: Anything else before we break for the
8 evening?

9 MR. DEJONG: Your Honor, maybe we need to address
10 this in the morning. But I am not comfortable with them
11 having a laptop, unless I know it is a virgin laptop. And
12 it concerns me. I don't think the Solicitor --

13 THE COURT: No, no. I -- we would have -- all right.
14 Let me think through all that. I know in Greenville,
15 they, actually, have one that's totally wiped out.

16 MS. HINTON: And we don't, Your Honor, unfortunately.

17 THE COURT: Well, we'll think about that and see what
18 we can do in the morning.

19 THE CLERK: Your Honor, I do have a county laptop --

20 THE COURT: Well, the problem is -- I bet you can't
21 do that video. The way this video is set up, it wouldn't
22 work on anything but that computer.

23 MS. NEWTON: Well, and that is the one that we have
24 to redact anyway.

25 THE COURT: The best laid plans.

1 THE BAILIFF: Yes.

2 THE COURT: And take this note. And we'll have them
3 in in about 10 minutes.

4 (Pause.)

5 THE COURT: Are the videos ready?

6 MS. NEWTON: Yes.

7 THE COURT: Tell them when they're ready to come in
8 and view the videos to let us know.

9 THE BAILIFF: Okay.

10 (Pause.)

11 NOTES FROM THE JURY

12 THE COURT: All right. This is a note from the
13 Foreperson. She writes really nice notes. I mean,
14 they're all very legible.

15 To clarify timelines and ensure we have an accurate
16 count, we request to take notes during the viewing of
17 State's Exhibit Nos. 16, 17, and 18. Thank you, Sarah
18 Williams, Foreperson.

19 This is my thought. This is what I usually -- I
20 mean, I'm not huge on the note taking thing. But my
21 problem -- I don't know.

22 What are y'all's thoughts?

23 MS. HINTON: I don't really have a problem with them
24 doing it, at this point, as long as you do your standard
25 instruction of, you know, you remember it as you remember

1 it sort of thing.

2 THE COURT: Yeah.

3 MR. DEJONG: Yeah. That's -- everybody is entitled
4 to their own notes, and all of that good stuff.

5 THE COURT: Okay. Well, I'll go with that.

6 Do they have pads? They have plenty of candy.

7 THE CLERK: Are the pads and pencils up here?

8 THE BAILIFF: I'll check.

9 (WHEREUPON, Court's Exhibit No. 5 was marked for
10 identification and admitted into evidence.)

11 THE COURT: Okay. Next note. This will be -- this
12 will be Court's Exhibit 6. We request to have the written
13 instructions and charge given to the jury at the
14 conclusion of court yesterday prior to deliberations.

15 I'm not inclined to do that. I mean, what I will do
16 is tell them when they come out if they need any portion
17 read to them, then I'll be glad to do that. I know some
18 judges do that, but I just haven't crossed that barrier
19 yet. All right. And I'll just explain that to them.

20 What I will do is I will tell them after they've
21 watched the video and they've gone back in there --

22 I'll quit talking so you can do --

23 (WHEREUPON, Court's Exhibit No. 6 was marked for
24 identification and admitted into evidence.)

25 THE COURT: What I will do is I will tell them after

1 they've watched the videos and they have gone back, they
2 can advise me of which portion of the jury instructions
3 they want me to review with them. And I'll be glad to do
4 that upon their request. And I'm not going to do that now
5 because a lot of times what happens, when they go back
6 there, they decide what they, actually, need.

7 MS. HINTON: Sure.

8 THE COURT: Are we ready for the jury to come in?

9 MS. HINTON: The State is, Your Honor.

10 MR. DEJONG: The Defense is ready.

11 THE COURT: What we've got is we're going to watch
12 three videos. And y'all's are all set up -- I know the
13 first one is -- it's in toto?

14 MS. HINTON: Correct.

15 THE COURT: The second one is it goes up to a certain
16 point and then there's that huge gap. And the third one
17 is the one where you have to be very active?

18 MS. HINTON: Correct.

19 THE COURT: All right. Bring them in.

20 (WHEREUPON, the jury came into open court at
21 approximately 10:33 a.m.)

22 THE COURT: Good morning, ladies and gentlemen.

23 I hope everybody had a pleasant evening.

24 And, Madam Forelady, I want to commend you. You have
25 the nicest, neatest, politest notes I've ever gotten.

1 All right. We have the videos. And the reason we
2 weren't able to just send these back to you is because a
3 couple of them have to -- there were some redactions, and
4 that's why we have to watch them in here.

5 All right. One of your notes was to clarify
6 timelines -- now, do you all have pen and paper?

7 (WHEREUPON, the jurors indicated in the negative.)

8 THE COURT: Do you have pen and paper for them?
9 They're going to be able to take notes.

10 THE BAILIFF: We'll have to get it. We don't have it
11 here.

12 THE COURT: All right. I thought that's what we had
13 in place already.

14 Do we have note pads coming?

15 THE BAILIFF: They're coming.

16 THE COURT: Clarify timelines and ensure we have an
17 accurate count, we request to take notes during the
18 viewing of State's Exhibit Nos. 16, 17, and 18.

19 All right. I will allow you to take notes, but I'm
20 going to have an instruction on that.

21 You can take notes during the trial of a case.
22 However, you must remember that some people are better
23 note takers than others. I know I'm a horrible note
24 taker. Jurors notes should not be given any greater
25 weight than the recollection of other jurors. In other

1 words, if you remember something one way and these people
2 over here next to you say, well, my note says that. You
3 need to rely on your memory. The recollection of
4 individual jurors should be considered as reliable as
5 notes taken by any other juror.

6 I, also, warn you that when you're taking notes, you
7 may not notice the body language of a witness, which could
8 be used in deciding that witness's credibility. So I
9 realize it will assist you, but it's only a tool. So it's
10 not to take the place of your own memory -- collective
11 memory.

12 All right. The next note was, We request to have
13 written instructions and charge given to the jury at the
14 conclusion of court yesterday prior to deliberations.

15 What I -- I do not send the written charges back. I
16 think some judges do and some judges don't. I've always
17 taken the position not to. But when you get back -- after
18 you've seen the videos, if you want any particular portion
19 read back to you, then I can bring you back in and give
20 you whatever charge you need.

21 So let's just do it that way. And so, you know, if
22 there's any particular portion that you need, then I'll be
23 glad to recharge you on that part.

24 All right. Well, as soon as we get the note pads,
25 then we'll go ahead and proceed.

1. (Pause.)

2 MS. HINTON: I think we're a few short, Judge.

3 (Pause.)

4 THE COURT: All right. Let's proceed.

5 Thank you for your patience.

6 All right. This will be State's Exhibit No. 16;

7 correct?

8 MS. HINTON: Yes, Your Honor.

9 THE COURT: All right.

10 (WHEREUPON, State's Exhibit No. 16 was played in
11 open court.)

12 THE COURT: All right. Now, State's Exhibit No. 17?

13 MS. HINTON: Yes, Your Honor.

14 (WHEREUPON, State's Exhibit No. 17 was played in
15 open court.)

16 THE COURT: Does anyone need to take a break? The
17 next one is about 25 minutes.

18 JUROR #208, SARAH WILLIAMS: Your Honor, I think
19 we'll continue.

20 THE COURT: Well, I had somebody shake their head.

21 JUROR #208, SARAH WILLIAMS: Don't take a break --

22 UNIDENTIFIED JUROR: Yeah.

23 THE COURT: Okay. Let's just take a quick break.

24 The next one is about 27 minutes. We'll take a quick
25 break. We've been sitting here for a while.

1 (WHEREUPON, the jury was excused from open court at
2 approximately 11:40 a.m.)

3 THE COURT: We'll be at ease for about five minutes.

4 (WHEREUPON, a break was taken.)

5 THE COURT: Are we ready?

6 MS. HINTON: The only thing, Judge, is I can't see
7 really well. So I can't see the time. So do you think it
8 will be distracting if I sit here so I can actually --

9 THE COURT: No. That's fine. Yeah, whatever you
10 need to do.

11 So based upon my rulings, y'all have agreed to the
12 period of time you're cutting out?

13 MS. HINTON: Correct.

14 THE COURT: All right. Are they ready? If so, bring
15 them in.

16 (WHEREUPON, the jury came into open court at
17 approximately 11:51 a.m.)

18 THE COURT: All right. I, also, want to let you know
19 that we have ordered lunch. I believe --

20 Usually it's, pizza, isn't it?

21 THE CLERK: Uh-huh.

22 THE COURT: All right. Pizza. But we have ordered
23 lunch. And it should be ready when you get back there or
24 shortly thereafter.

25 All right. Now, this is State's Exhibit No. 18?

1 MS. HINTON: Yes, Your Honor..

2 THE COURT: You may proceed.

3 (WHEREUPON, State's Exhibit No. 18 was played in
4 open court.)

5 THE COURT: All right. Ladies and gentlemen, those
6 are the three exhibits you wanted to review. So if you'll
7 go back in your room and continue deliberations. Even
8 while you have lunch, you can continue to deliberate.

9 And once you have further discussions, if you want me
10 to recharge any portion of the jury charge, then you just
11 send me a note -- all right -- or any other notes and
12 questions you have.

13 All right. At this time, you can go back to your
14 jury room.

15 (WHEREUPON, the jury was excused from open court at
16 approximately 12:31 p.m.)

17 THE COURT: All right. Any objections or exceptions
18 from the State?

19 MS. HINTON: No, Your Honor.

20 THE COURT: From the Defense?

21 MR. DEJONG: I didn't like it the first time, Your
22 Honor, and even less the second time. But no objection to
23 what was played, Your Honor.

24 THE COURT: I guess we'll be at ease until further
25 notice.

1 (WHEREUPON, the proceedings were recessed at
2 approximately 12:33 p.m.)

3 (WHEREUPON, Court's Exhibit No. 7 was marked for
4 identification and admitted into evidence.)

5 THE COURT: We're back on the record in State v.
6 Brewer.

7 I've got a note marked as Court's Exhibit No. 7. We
8 request to have the charge regarding reasonable doubt and
9 extreme indifference to human life explained or written.
10 Thank you, Foreperson.

11 My thoughts are to read the entire section I said on
12 reasonable doubt in my charge and then reread -- they
13 don't ask for the whole charge on homicide, just,
14 specifically, extreme indifference, which the last
15 paragraph said, The State must prove beyond a reasonable
16 doubt that the death occurred under circumstances showing
17 an extreme indifference to human life. An extreme
18 indifference is defined as a mental state akin to intent
19 characterized by a deliberate act culminating in death.
20 So that's what I will read to the jury.

21 Any additional comments or suggestions?

22 (WHEREUPON, there was no response.)

23 THE COURT: Anything else before we bring the jury in
24 from the State?

25 MS. HINTON: No, Your Honor.